

A CRITICAL ANALYSIS OF THE
FINANCIAL DECLARATION SYSTEMS
FOR PUBLIC OFFICIALS IN OMAN AND
OTHER JURISDICTIONS. IS THERE
SCOPE FOR REFORMING THE OMANI
SYSTEM?

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ABSTRACT

A financial declaration system (FD system) is a key anti-corruption instrument, particularly as it is directed at public officials, that has gained broad international recognition, especially since the adoption of the United Nations Convention against Corruption in 2003. The FD system in Oman was adopted in its current form as part of a legislative reform package introduced in 2011. Despite these important changes, there has been no significant study conducted to date of the operation and effectiveness of the legal framework within which the country's FD system operates, and certainly not in respect of the system's policy objectives, key mechanisms and operational features. It is this gap in the existing literature, along with the wider aspects that emerge from a comparative analysis of other countries' disclosure systems, that prompted this research.

This thesis critically evaluates Oman's FD system. It examines the legal framework and identifies strengths and weaknesses in the system with a view to developing and improving it as an effective anti-corruption mechanism. The study carefully examines the key elements of FD systems including the institutional arrangements of the body responsible for managing them and the scope of coverage of public officials and others, such as family members, who are also subject to disclosure requirements. Furthermore, it examines operational issues, policy implementation and related aspects, for example data checks, and how they are assisted by mechanisms such as 'whistleblowing'.

As the FD system in Oman is a relatively new one, and there is much to learn from other FD systems' design and modus operandi, full use is made of the comparative law method, which is essential for the effectiveness of the study, enriching the project and enabling the research to benefit from the experiences of other countries' systems and operational challenges, some of which are not dissimilar to Oman's. A

comparative analysis of comparable systems, particularly those operating in other Gulf Cooperation Council States, as well as some of the key features of other well-established (but still evolving) systems helps to inform the research and conclusions. The study also makes full use of semi-structured interviews with officials who possess an intimate knowledge and experience of the Omani FD system's operation. This proves to be an important source, offering invaluable insights into the system's design, operational characteristics, and strengths and weaknesses. It helps to provide a critical understanding of the significant challenges that Oman faces as it seeks to develop an improved and effective legal framework.

This thesis concludes that Oman's current FD system is not sufficiently regulated and ineffective, primarily due to the weaknesses of the legal framework regulating the FD system's requirements. In particular, there are no comprehensive provisions regulating such requirements. In addition, the current provisions are tainted by certain deficiencies. The most notable shortcomings are: (i) There are no powers and competencies granted to the SAI under Law No. 112/2011 to perform the FD system's tasks, (ii) The law surrounds declarations with a high level of confidentiality to the extent that it hinders the FD Department's ability to verify declarations on an ongoing and systematic basis, (iii) Officials are not required to submit their declarations periodically and regularly at specific times, such as upon taking office, upon leaving office and periodically while assuming office. Instead, the law gives the SAI's Chairman discretionary power to request declarations, and (iv) Sanctions provided in the law upon violation of the FD requirements are insufficient.

The thesis proposes recommendations that aim to address the weaknesses in the current law and improve the FD system, the most important being the establishment of comprehensive provisions which regulate the FD requirements, whether by making amendments to the current law or enacting a new, dedicated law for the FD system.

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ABBREVIATIONS

ACA	Anti-Corruption Authority
AD system	Annual Disclosure System
BFD Law	The Bahrain Financial Disclosure Law
C&AG	The Comptroller and Auditor General
CCD	Complaints and Communication Department
CPI	Corruption Perceptions Index
DCCO	Directorate for Combating Corruption Offences
EKACA Law	The Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities law.
FAVD	Financial and Administrative Violations Department
FD	Financial Declaration
FD Department	The Financial Declarations Department at the State Financial and Administrative Audit Institution
FD body/unit	A competent body responsible for managing an FD system
FD form	Financial Declaration Form
FD regime	Financial Declaration Regime
FD system	Financial Declaration System
GCC States	The Gulf Cooperation Council States
GRECO	Group of States Against Corruption
IBFD	The Inspection Body of Financial Declarations
MP	Member of Parliament
OBSS	The Omani Basic Statute of the State
PPFACI Law	Protection of Public Funds and Avoidance of Conflict of Interests Law
SAI	State Financial and Administrative Audit Institution
SFAA Law	State Financial and Administrative Audit Law
SFAI	State Financial Audit Institution
UNCAC	The United Nations Convention against Corruption
USAA	Units of State Administrative Apparatus
UK	The United Kingdom
WB&UNODC	The World Bank and United Nations Office on Drugs and Crime

1 CHAPTER ONE: INTRODUCTION

1.1 BACKGROUND

Corruption is a global phenomenon that threatens all countries worldwide, developed and developing alike. The term 'corruption' is used to express a broad range of unethical behaviours such as embezzlement, bribery, abuse of power, illicit enrichment, money laundering and obstruction of justice.¹

Anti-corruption measures should be designed and directed to simultaneously serve two primary purposes: prevention and enforcement. These are two complementary approaches that contribute to strengthening anti-corruption efforts.² Preventive approaches include, for example, establishing effective anti-corruption policies aimed at upholding the rule of law and enhancing the principles of integrity, transparency, accountability and the participation of society in anti-corruption efforts.³ Enforcement approaches involve criminalising a wide range of corruption acts such as bribery, embezzlement, trading in influence, abuse of functions and illicit enrichment.⁴ However, these must also be supplemented by administrative and civil measures, including those that promote transparency among key groups such as public officials. In this respect, a financial declaration system⁵ (FD

¹ Sujit Choudhry and Richard Stacey, 'Combating Corruption: Constitutional Frameworks for the Middle East and North Africa', vol 116 (2015) ,p.12 <<https://www.idea.int/publications/catalogue/combating-corruption-constitutional-frameworks-middle-east-and-north-africa>>; Philippine Institute for Development Studies; Philippines APEC Study Center Network, 'Anti-Corruption and Governance: The Philippine Experience', *APEC Study Center Consortium Conference* (2006) ,p.3 <<https://www.scribd.com/document/92938956/Anti-Corruption-and-Governance-The-Philippine-Experience>>.

² World Bank and United Nations Office on Drugs and Crime, *Public Office, Private Interests: Accountability through Income and Asset Disclosure (English)* (The World Bank 2012) ,p.1 <<https://openknowledge.worldbank.org/handle/10986/6010>>.

³ The United Nations Convention Against Corruption (2003),Chapter II Preventive measures, art1.

⁴ The United Nations Convention Against Corruption (2003),Chapter III Criminalization and law enforcement, art 15 – 20.

⁵ For the definition of the financial declaration system, see Chapter 3, Section 3.2.

system) is among the key anti-corruption tools that are able to support efforts in both areas of prevention and enforcement.⁶ Indeed, it has become one of the main requirements of the United Nations Convention against Corruption (UNCAC),⁷ and given that Oman is a State Party of the UNCAC, an FD system is now considered a significant feature of Oman's anti-corruption system.

Several countries have adopted FD regimes that require public officials,⁸ especially those who hold positions vulnerable to corruption, to declare their financial interests and assets to a competent body or unit at the State (FD body/unit).⁹ Some states' experiences with financial declaration regimes (FD regimes) indicate the significant legal and practical challenges faced by FD systems. Allegations of the unconstitutionality of certain aspects of FD requirements – for example those that may impinge on human rights, and 'privacy' rights – is one of these challenges. For instance, despite the fact that the publicity of financial declarations (FDs) is considered one of the essential elements of an effective FD regime¹⁰ as an important example of 'transparency', it has been argued that the publication of FDs is unconstitutional as it violates privacy.¹¹ However, courts such as the United States Federal Appeals Courts, as well as constitutional courts in countries such as Albania, Chile, Germany, Peru and Romania, have determined that the publication of FDs is not contrary to any right of privacy.¹²

⁶ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.1.

⁷ The United Nations Convention against Corruption 2003, art 8, 52.

⁸ See Chapter 5, Section 5.2.1/1 concerning the concept of public officials subject to the requirements of FD systems.

⁹ Marie Chene, 'African Experience of Asset Declarations' (*U4 Anti-Corruption Resource Centre*, 2008) ,p.1 <<https://www.u4.no/publications/african-experience-of-asset-declarations>> accessed 22 March 2018.

¹⁰ Regional School of Public Administration (ReSPA), 'Comparative Study: Income and Asset Declarations in Practice' (2013) ,ReSPA,p.181 <<https://www.respaweb.eu/11/library#financial-documents-18>>.

¹¹ Ruxandra Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (2009) 55004 ,Stolen Asset Recovery (StAR) initiative Washington, D.C. : World Bank Group, 103 <<http://documents.worldbank.org/curated/en/126741468151478453/Income-and-asset-declarations-tools-and-trade-offs>>.

¹² Tilman Hoppe, 'The Case for Asset Declarations in the Judiciary: Identifying Illicit Enrichment and Conflicts of Interests' [2014] U4 Anti-Corruption Resource Centre ,p.3 <<https://www.u4.no/publications/the-case-for-asset-declarations-in-the-judiciary-identifying-illicit-enrichment-and-conflicts-of-interests?>> accessed 20 March 2018.

In addition, FD regimes in many countries require family members of public officials, such as spouses and minor children, to declare their assets and income. The aim is to ensure that the financial declaration laws (FD laws) are not circumvented by public officials by transferring their assets and income to their family members. Nevertheless, this requirement has been challenged in some countries on the basis of the violation of privacy¹³ and interference in 'family life' (a form of interference protected against by the European Convention on Human Rights; ECHR) but which is subject to the 'public interest' under Article 8 (2).¹⁴ These aspects of constitutionality and human rights requirements are further discussed, respectively, in Chapters Five and Six.¹⁵

FD systems face other kinds of challenges that hinder their implementation in practice. Some of these challenges relate, for example, to the weakness of the legal framework in which they have to operate, the lack of adequate legal powers to require effective compliance, and the resources and capacity problems required to carry out the tasks of FD systems efficiently, as well as political resistance to implementation. Furthermore, the negative influence of powerful vested interests cannot be underestimated. Hence, it is periodically crucial to assess FD systems' performance, identify their shortcomings and weaknesses, and subsequently identify appropriate solutions and reforms that can contribute to enhancing the effectiveness of FD systems as a tool to combat corruption.

¹³ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.37; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.9.

¹⁴ Article 8 of the ECHR stipulates that:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of other".

¹⁵ See Sections 5.2.1/2 and 6.2.3/2 (D)

1.2 ISSUES WITH THE CURRENT FD SYSTEM IN OMAN (STATEMENT OF THE RESEARCH PROBLEM)

In Oman, as in other countries, public officials – especially senior officials – enjoy the authority to manage sizeable amounts of public funds that are allocated for the implementation of capital and development projects and the delivery of public services. Therefore, it is important to promote the mechanisms of transparency and accountability in the public sector to ensure corruption is combated. A financial declaration system is one of these mechanisms, which is aimed at focusing, among other things, on the monitoring and detection of suspicious activities and the illicit wealth of any official who exploit their positions to gain private interests.

The FD system requirements in Oman are regulated by the Law for the Protection of Public Funds and Avoidance of Conflicts of Interest (PPFACI Law) issued under Royal Decree No.112/2011.¹⁶ This represents one of the key legislative measures passed by the government to fight corruption.¹⁷ This law includes a set of legal norms that prohibit government officials from conduct that involves waste or misuse of public funds, or the abuse of office to gain personal interests. Disclosure using the FD system plays a central role. The law entrusts the management of the FD system to the State Financial and Administrative Audit Institution (SAI).¹⁸ However, the law does not specify a particular FD unit within the SAI responsible for carrying out FD system's tasks. Furthermore, Royal Decree No.6/2012 on the Adoption of the SAI's Organisational Structure does not include any mention of a specialised FD unit.

Considering the importance of operationalising the provisions of the law, especially those related to the FD system, the system began to be

¹⁶ For more details on the provisions of the PPFACI Law, see Chapter 2, Section 2.2.4 and Chapter 3, Sections 3.5.1/2 and 3.5.1/3).

¹⁷ For more details on the significant legislative reforms taken by the Sultanate of Oman to combat corruption since 2011, see Chapter 2.

¹⁸ For more information on the role and tasks of the SAI, see Chapter 2, Section 2.2.2.

implemented at the beginning of 2013.¹⁹ However, it has, since then, faced challenges that have limited its effectiveness. Most of these challenges can be attributed to the weakness of the institutional arrangements of the FD body and the legal framework of the FD system.

At the beginning of the implementation of the FD system, several public officials were asked to submit their FDs to the SAI despite the absence of a specialised unit to conduct the FD system tasks.²⁰ Consequently, many of these FDs were not subjected to the periodic verification and examination processes. There are two main reasons for this; first, the absence of a specialized FD unit;²¹ second, the confidentiality surrounding FDs under the legal provisions which do not allow access to FD data without prior permission from the SAI Chairman.²² In practice, it was necessary for the Chairman to form screening teams to verify and examine declarations when he deemed it necessary to do so.

In November 2013, a significant event occurred when Oman joined the UNCAC via Royal Decree No.64/2013. This was followed by the establishment of a unit within the SAI in 2014 called the Financial Declarations Department (FD Department): the mandate of which was to carry out FD system tasks.²³ However, the Department was granted general responsibilities without endowing it with the necessary powers to enable it to discharge its duties and responsibilities efficiently and effectively.²⁴ Moreover, the lack of human and technical resources provided to the Department has been considered among the challenges that limit the FD system's effectiveness.²⁵ These challenges and others are discussed in greater detail in subsequent chapters of the thesis, but the problems listed above were clearly articulated by some of the key interviewees who provided helpful insight into the problem.

¹⁹ SAI, 'The SAI Requires a Number of Government Officials to Declare and Submit their Financial Declarations' (SAI, 2013) <<https://www.sai.gov.om/News.aspx#NewsD&NewsID=62>> accessed 19 November 2019.

²⁰ Interviewee (2) on 05 August 2019, Interviewee (6) on 08 August 2019.

²¹ Interviewee (6).

²² Interviewee (2), Interviewee (6).

²³ Resolution no.110/2014 issued by the Chairman of the SAI on 03 December 2014 .

²⁴ Interviewee (2), Interviewee (6).

²⁵ *ibid.*

In addition to the above, the FD system's legal framework is tainted by certain shortcomings that limit its effectiveness.²⁶ Again, the issue is explored more fully later, but one aspect of the system provides an important illustrative example of the challenges. FDs are submitted upon the request of the SAI Chairman. Hence, there is no clear time schedule for submitting FDs.²⁷ Moreover, giving the Chairman a considerable discretion in requesting FDs could be considered as risking the abuse of this power.²⁸ Furthermore, the request of the FDs is associated with the availability of 'necessity' cases. However, the concept of necessity is not specifically identified or catered for under the law. In addition, although the law provides a criminal sanction for the violation of FD system provisions, it is a general sanction, and it is not clear which offences fall under it.²⁹ Furthermore, the law does not impose administrative sanctions on violations which do not amount to criminal offences.

There are other key areas of the Omani system which are not adequately catered for, and where there are some discernible 'gaps'. It is worth noting, for example, that although it appears the system aims to detect and deal with illegal enrichment, illicit enrichment is not, in fact, currently criminalised by the law. Consequently, criminalising illicit enrichment is seen as a necessary step, not least because it is considered one of the essential tools for an FD system's success.³⁰ Among other things, this thesis argues that the legal regulation of the recovery of illegal funds by using civil remedies as well as criminal and administrative laws is a vital reform.

It is evident from the above that the current Omani FD system suffers

²⁶ Interviewee (11) on 30 November 2020, Interviewee (12) on 30 November 2020, Interviewee (13) on 01 December 2020, Interviewee (14) on 04 December 2020, Interviewee (15) on 09 December 2020, Interviewee (16) on 11 December 2020, Interviewee (17) on 14 December 2020, Interviewee (18) on 03 January 2021, Interviewee (19) on 06 February 2021

²⁷ Interviewee (2), Interviewee (11), Interviewee (12), Interviewee (13), Interviewee (14), Interviewee (15), Interviewee (16), Interviewee (17), Interviewee (18), Interviewee (19).

²⁸ Interviewee (19)

²⁹ Interviewee (2), Interviewee (6), Interviewee (11), Interviewee (19).

³⁰ Interviewee (2), Interviewee (6), Interviewee (11), Interviewee (12), Interviewee (13), Interviewee (14), Interviewee (15), Interviewee (16), Interviewee (18).

from certain weaknesses that limit its effectiveness. This highlights the need for a closer study of the system's legal framework and the institutional arrangements for its management. Such a study must consider the analysis of the key elements of the system's legal framework.

The following are the key elements addressed by most of the relevant studies³¹ and, therefore, are the topics covered by this thesis: (i) the institutional arrangements of FD bodies; (ii) the scope of the coverage of FD systems; (iii) the contents of FD forms; (iv) the process of submitting FD forms and verifying their content; and (v) sanctions imposed on violations of the provisions of the FD law.

In addition to the above elements, the thesis also addresses the issues related to whistleblowing systems and the criminalisation of illicit enrichment and the role they play in the effectiveness of FD systems.

1.3 AIMS AND OBJECTIVES OF THE RESEARCH

The main aim of this research is to examine and assess the performance and legal framework of the current Omani FD system and identify its weaknesses. This is essential to develop and improve the FD system into an effective anti-corruption mechanism. The following four objectives assist in achieving this aim:

- (i) To study and analyse the legal provisions regulating Oman's FD system, and investigate how the system operates in practice.
- (ii) To identify and examine the key elements of FD systems and whether or not they are covered by the current FD regime in Oman.
- (iii) To explore the experiences of certain countries that have adopted FD systems and conduct a comparative legal study primarily

³¹ See for example: Ivana Maria Rossi, Laura Pop and Tammar Berger, *Getting the Full Picture on Public Officials: A How-to Guide for Effective Financial Disclosure (English)* (World Bank 2017) <<http://documents.worldbank.org/curated/en/517361485509154642/Getting-the-full-picture-on-public-officials-a-how-to-guide-for-effective-financial-disclosure>>; World Bank and United Nations Office on Drugs and Crime (n 2); OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (Organization for Economic Cooperation and Development 2011) <<http://dx.doi.org/10.1787/9789264095281-en>>; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11).

focused on countries with comparable legal systems to the Omani system and which have similar cultural, social, economic and political conditions.

- (iv) To propose appropriate recommendations that could contribute to addressing legal gaps in the law and the creation of an effective legal framework for the FD system in Oman.

1.4 RESEARCH QUESTIONS

The central question for this research is as follows: To what extent can the current Omani system be improved? Four sub-questions are formulated to map onto the aims and objectives previously described and answer the main question. First, what are the deficiencies and shortcomings of the FD system in Oman? Second, to what extent can Oman benefit from the experiences of other countries to improve and develop its FD system? Third, what are the key elements of the legal frameworks of FD systems that should be considered when improving the current FD system in Oman? Fourth, what are the legal solutions and appropriate recommendations that can address the deficiencies of the current FD system?

1.5 THE SIGNIFICANCE AND IMPACT OF THE RESEARCH

This research is significant for a variety of reasons. First, it highlights the importance of FD systems and identifies their essential elements as part of Oman's anti-corruption regime. It is anticipated that this study's recommendations will assist policymakers in Oman when developing further features of current anti-corruption regimes. It is expected to be the first critical legal study concerning Oman's FD system, focusing on the scope for reform and improvement. The new Sultan of Oman has emphasised that the modernisation of laws and legislation is among the significant goals presented by Oman's 2040 vision.³² The plans set out in this policy highlight the importance of enhanced integrity and

³² 'Oman Vision 2040' <<https://www.2040.om/>> accessed 2 May 2021.

accountability principles. In this regard, it is worth mentioning that the researcher and author of this thesis was appointed as a Director of the Financial Declaration Department in December 2020. In January 2021, he submitted an analysis study of the FD system to the SAI Chairman which concluded with a set of recommendations aimed at reforming and improving the current FD regime. This study drew extensively on the initial results of this thesis.

Second, this research also enriches the current state of knowledge of FD systems in other regional systems, primarily those in the Gulf Cooperation Council States (GCC States). Furthermore, it functions as an important reference point for researchers. Undoubtedly, there is currently a lack of knowledge and understanding of the Omani FD system. Therefore, this research is relevant to researchers and policymakers not only in Oman but also in other jurisdictions when considering the operation of anti-corruption systems and, in particular, the FD aspects of those systems.

Third, this research relies on a comparative study with other foreign FD systems. This enabled it to explore and draw upon the experiences of other countries in this field. To the best of the author's knowledge, this is the first comparative study to date that includes comparisons between the FD systems of the GCC States.

Fourth, this study highlights the need for additional efforts and measures in Oman, as in other States, to ensure the eradication or reduction of corruption. In so doing, it will improve Oman's performance in the Corruption Perceptions Index (CPI),³³ which is one of the key goals of the Oman 2040 vision.

1.6 RESEARCH METHODOLOGY

The main aim of this research, as stated above, is to examine and assess the performance and legal framework of the current Omani FD

³³ See Chapter 2, Section 2.4.

system and identify its weaknesses. This is essential to subsequently develop and improve the FD system as an effective anti-corruption mechanism. As an essential preliminary step, this necessitates an analysis of the FD system's legal framework by analysing the legal provisions regulating the FD requirements. This is then followed by an exploration of comparator countries' experiences, particularly those that rely on disclosure mechanisms. In doing so, the project's methodology relies on two main approaches, the analytical method and the comparative law method, alongside semi-structured interviews and a relevant literature review. These approaches are now considered further below.

1.6.1 Analytical method

The analytical method is used in this research to examine and analyse a broad range of legal provisions related to the research topic, with a focus on constitutions, laws, implementing regulations, resolutions, and codes in Oman and countries covered by this research, as well as the legal provisions of certain international conventions such as the UNCAC. Equally important is the project's investigation into the way in which the system operates in practice.

1.6.2 Comparative law method

A comparative law approach is used in this research to highlight the differences and similarities between the legal regulation of FD systems in Oman and comparator countries. The following sections address the importance of the comparative law method in legal studies and how it is used in this research.

1. Definition of comparative law

Comparative law can be defined as: 'the study of, and research in, law by the systematic comparison of two or more legal system; or of parts,

branches or aspects of two or more legal systems'.³⁴ It is also known as the 'comparative study of law and comparative legal study and research'.³⁵

2. Aims of comparative law

One of the primary purposes of comparative law is to gain a better knowledge of the subject under comparison by studying the legal rules of two or more different legal systems, or the parts of these systems that relate to the subject. The aim is to highlight the similarities and differences between them.³⁶ Hence, comparative law assists the comparators in understanding either national and foreign laws or systems regarding specific matters. It also benefits studies, like this one, where reform processes are helpful in shaping new policies.

In addition to the above, comparative law contributes to establishing policy solutions, resulting in improvements to the national legal system and helping to fill its legislative lacunae. However, some legal solutions from abroad will not be appropriate to the circumstances of the local law or system.³⁷ In addition, comparative law may be helpful for avoiding impractical solutions when they are proposed for domestic law.³⁸ Therefore, it is used to assist the legislative process and the process of law reform by legislation. Some comparators believe this is the main function of comparative law.³⁹

This research relies on comparative law with a view to examining the FD system in Oman and other countries in order to gain extensive knowledge regarding the working mechanism of such systems and their role in combating corruption. Reviewing and examining foreign countries'

³⁴ Kamba.W.J, 'Comparative Law : A Theoretical Framework' (1974) 23 Cambridge University Press ,p.486 <<http://www.jstor.org/stable/757885>>.

³⁵ *ibid* ,p.487.

³⁶ Rodolfo Sacco, 'Legal Formants : A Dynamic Approach to Comparative Law (Installment I of II)' (1991) 39 OXFORD JOURNALS 1, p.6 <<http://www.jstor.org/stable/840669>>.

³⁷ Mark Van Hoecke, 'Methodology of Comparative Legal Research' [2015] Law and Method ,p.3 <<http://www.lawandmethod.nl/tijdschrift/lawandmethod/2015/12/RENM-D-14-00001>>.

³⁸ Kamba.W.J (n 34) ,p.496.

³⁹ *ibid* ,p.495.

experiences and detecting similarities and differences between the Omani legal system and other foreign systems will contribute to identifying the weaknesses and strengths of the former and proposing practical solutions to improve the FD system in Oman and address the legal lacuna.

3. The subject of comparative law

Kamba indicates that the subject matter of comparative law should be between two or more legal systems; or the parts, branches or aspects of two or more legal systems.⁴⁰ He adds that the extension of the meaning of comparative law to cover a single foreign system law or some aspects of it is unjustified and should be discarded.

Comparative law in this research is mainly conducted between the Oman FD system, which applies to the public officials and FD systems of Kuwait and the Kingdom of Bahrain (Bahrain). However, whenever possible and appropriate, a comparison with the UK's FD system is conducted to benefit from its experience as a developed country.

4. Selection of legal systems for comparison

Some comparatists argue that the legal systems of comparison need to be at the same level of legal development.⁴¹ Kamba argues that this restriction is not necessary.⁴² He adds that the primary aim or aims of a comparative study play an important role in determining the selection of the legal systems for comparison, regardless of whether they are at the same level of development or not. However, when conducting a comparative study, there should be a certain amount of commonality between national and foreign legal systems to ensure a possible and a useful comparison; for example, the countries' socioeconomic and historical contexts.⁴³ Furthermore, language plays a significant part in

⁴⁰ *ibid* ,p.505.

⁴¹ *ibid* ,p507.

⁴² *ibid*.

⁴³ Sacco (n 36) ,p.6.

choosing legal systems to be compared.⁴⁴ Hence, researchers should have a basic knowledge of the languages used in such systems, particularly when considering statutory provisions.

To conduct an appropriate, applicable and reliable comparison, this research conducted a comparative study with countries that possess unified legal traditions and similar cultural, religious, political, linguistic, social, and economic features and conditions. As these characteristics and features are found in the GCC States,⁴⁵ this research relies primarily on comparing the GCC states that have adopted FD systems.

The GCC is a regional, political and economic union consisting of six member states: Kuwait, Oman, Qatar, the Kingdom of Bahrain, the Kingdom of Saudi Arabia, and the United Arab Emirates. Several common factors led to the establishment of the GCC including the unique relationships between states, characteristics, features and similar systems based on Islamic Sharia; and the desire to enhance the coordination, cooperation and integration between the GCC States.⁴⁶

According to Article 4 of the GCC Charter, the primary objectives of the Cooperation Council include formulating similar regulations in various fields such as: economic and financial affairs, commerce, customs, communications, education and culture.⁴⁷ Some unified laws and conventions have been adopted on the GCC States level, such as: Common Customs Law,⁴⁸ the Unified Economic Convention and the Unified Convention for the Execution of Judgments, Delegations and Judicial Notifications.⁴⁹ Hence, a comparative study that includes legal systems of the member states can contribute not only to improving the

⁴⁴ Van Hoecke (n 37) ,pp.3-4.

⁴⁵ Aumar Hasan, 'The Gulf Cooperation Council: Reasons of the Establishment from the Official Perspective' (Al Jazeera, 2015) <<http://studies.aljazeera.net/ar/files/gccpath/2014/10/2014101491936106853.html>> accessed 21 November 2017.

⁴⁶ 'The Charter of the GCC' <<http://www.gcc-sg.org/en-us/AboutGCC/Pages/Primarylaw.aspx>> accessed 10 December 2018.

⁴⁷ *ibid.*

⁴⁸ 'Common Custom Law' (Royal Oman Police) <<https://www.customs.gov.om/portal/en/esw/lawsreg>> accessed 21 November 2017.

⁴⁹ 'Conventions - GCC' (The Cooperation Council for the Arab States of the Gulf) <<http://www.gcc-sg.org/ar-sa/CognitiveSources/Pages/Agreements.aspx>> accessed 21 November 2017.

FD system in Oman but also to establishing a common bill or guidelines regarding the FD system on the GCC States level.

Given that there are only three GCC States that have adopted FD systems for wide categories of public officials so far, namely Bahrain, Kuwait and Oman, this research principally compares these countries. Unlike the FD system in Oman, the FD systems in Bahrain and Kuwait are characterised as their requirements are regulated under a separate and comprehensive law. In addition, Bahrain and Kuwait adopted the FD systems after their ratification on the UNCAC. Moreover, unlike Oman, illicit enrichment is criminalised in both countries. Thus, it is useful to explore their experiences on the implementation of the requirements of the convention in the field of the FD system and illegal enrichment.

Although the comparison in this research is primarily conducted by reference to the FD systems in the GCC States, the experience of the United Kingdom (UK) is also addressed whenever possible. The main reason for this is to explore the UK's experience in relation to the use of disclosure-related systems as well as whistleblowing systems in fighting corruption.

It is worth noting that in addition to the comparison with these countries, the thesis also reviews other countries' experiences in the FD systems field whenever the context is appropriate. This helps to identify successful practices for the development of Oman's FD system. It also highlights unsuccessful experiments that should be avoided.

5. Stages of comparative law

According to Kamba, there are three main stages involved in comparative law: the descriptive, identification and explanatory stages.⁵⁰ He adds that such stages are not always separate from each other, and it is not necessary to deal with them in a specific order.

⁵⁰ Kamba.W.J (n 34) ,pp.511-512.

A. Descriptive stage

The descriptive stage aims to describe the norms, concepts and institutions of different legal systems, including the socioeconomic problems and legal solutions provided in such systems.⁵¹

In this stage, the legal frameworks and all legal norms related to the FD systems and relevant topics of comparator countries are described, whether regulated under a constitutional, law, code, executive regulation or administrative resolution. Ultimately, this stage assists in gaining a clear picture regarding the legal regulation of the comparative subject in all comparator countries.

B. Identification stage

The identification stage aims to identify the differences and similarities between systems under comparison.⁵² Eberle explains the steps as follows:

First, we can focus on similarities. How are the multiple data points similar? Is it by word, rule, meaning, application, impact, or some other underlying basis? Or is it because of the context of the legal norm, a functional meaning, or something else? We need to understand the similarities between the legal data points under review. The meaning of words and norms can vary with their setting. What provides the basis for the similarity? What is the meaning of the similarity? How does the similarity translate across legal cultures? These are just some of the questions to pose. . .⁵³

The same technique should then be applied to assessing differences among legal data points.

In this stage, the key elements of each system are identified to answer the following questions: What are the main elements of each FD system? How are they regulated? What are the main differences and similarities between the systems subject to comparison?

⁵¹ *ibid* ,p.511.

⁵² *ibid* ,p.512.

⁵³ Edward J Eberle, 'The Method and Role of Comparative Law' (2009) 8 Washington University Global Studies Law Review ,pp.460-461.

C. Explanatory stage

The explanatory stage aims to explain the similarities and differences and explore the reasons behind them to build a comprehensive conception and fuller understanding of the subject under study.⁵⁴

In this stage, the similarities and differences between the Omani system and other foreign systems are analysed and examined. This is not limited to just describing and analysing the legal provisions of the FD systems but also includes presenting critical opinions on each matter related to the comparative subject in order to make appropriate solutions for the FD system in Oman.

1.6.3 Semi-structured interviews

Given the absence of a literature review on the FD system in Oman, this research uses a qualitative method through semi-structured interviews aiming to gain a vast knowledge of the FD system's working mechanism and identify challenges that hinder its effectiveness.

Due to the newness of the research topic in Oman, it was essential to simultaneously make the interviews organised but flexible. Consequently, semi-structured interviews were adopted for this research. This type of interview is characterised by its flexibility as it allows reciprocity in the discussion between the interviewer and recipient.⁵⁵ It also enables the interviewer to improvise follow-up questions during the interview based on the participant's responses.⁵⁶

➤ Research ethics

The research is conducted following Staffordshire University's Research Ethical Review policy;⁵⁷ more detail about the ethical considerations for

⁵⁴ Kamba.W.J (n 34) ,p.512; Eberle (n 53) ,p.461.

⁵⁵ Hanna Kallio and others, 'Systematic Methodological Review: Developing a Framework for a Qualitative Semi-Structured Interview Guide' (2016) 72 Journal of Advanced Nursing ,p.2955.

⁵⁶ *ibid.*

⁵⁷ See: <https://www.staffs.ac.uk/research/docs/pdf/ethical-review-policy.pdf>

this research can be viewed in the ethics application form appended as Appendix 1. Accordingly, the identity of the participants is not disclosed for ethical reasons. Therefore, the interview data can be recognised using distinctive codes for each participant without revealing his or her name. Ethical Approval is attached in Appendix 2.

➤ **Aims of the interviews and the sample of participants**

Two stages of interviews⁵⁸ were conducted in this research with 19 key officials. They were selected based on their practical experience and positions that enable them to participate in the decision-making in their department. Some of the interviewees participated in preparing the draft of the PPFACI Law No. 112/2011, which regulates the current FD requirements. In addition, some are former and current members of the expert team who reviewed Oman's implementation of the UNCAC.

A participation letter for this research with a consent form was sent to the participants sufficiently in advance of the interview appointment. Subsequently, after obtaining their signed consent form, the interviews arrangement was completed. Some of the interviews were conducted face-to-face and others online via the Zoom Application.

The first stage was performed in August 2019 (face-to-face interviews) with 10 participants. It had an exploratory character. The primary aim here was to gain a broad knowledge and understanding of how the FD system operates in practice and to recognise the main challenges and difficulties that it faces. The interviews also discussed the workings of the whistleblowing system in practice and how it could enhance the effectiveness of the FD system. As the SAI is the competent body

⁵⁸ Bogdan and Biklen point out that 'Different types of interviews can be employed at different stages of the same study. At the beginning of the project, for example, it might be important to use the more free-flowing, exploratory interview because your purpose at that point is to get a general understanding of a range of perspectives on a topic. After the investigatory work has been done, you may want to structure interviews more in order to get comparable data across a larger sample or to focus on particular topics that emerged during the preliminary interviews'. See: Robert C Bogdan and Sari Knopp Biklen, *Qualitative Research for Education: An Introduction to Theory and Methods* (2007) ,p.104.

responsible for managing the FD and whistleblowing system, the interviews in this stage featured some of Oman's SAI officials.

The second stage of the interviews took place from November 2020 to February 2021. This stage covered nine participants. Due to the Coronavirus pandemic, most of the interviews were conducted online via the Zoom Application. In this stage, the discussions included the deficiencies in the FD system's legal framework and the challenges that hinder the effectiveness of the FD system in practice, which were topics highlighted by the preliminary interviews (stage one).⁵⁹ In addition, the interviews discussed the appropriate solutions for developing and improving the FD system. Interviews during this stage featured key officials with legal expertise in the SAI, the Ministry of Justice and Legal Affairs, the Public Prosecution, the Judiciary and Sultan Qaboos University. The decision to target individuals with practical experience in these institutions for interviews in this stage was made for the following reasons:

- As highlighted earlier, the SAI is responsible for managing the FD system. Thus, the SAI is competent for preparing the required proposed amendments to the FD regime.
- The Ministry of Justice and Legal Affairs is competent to review draft laws, regulations, and decisions of a legislative character prepared by units of the state's administrative apparatus and other public legal persons prior to their issuance and publication in the Official Gazette.
- Some questions are related to the FD system's coverage for judges and public prosecutors, the mechanism of dealing with declarations that raise suspicion of criminal crimes, sanctions, etc. Therefore, the interview sample of the covered participants with expertise in the Judiciary and Public Prosecution.

⁵⁹ A sample of the interview questions is attached in Appendix 3.

- The interviews included an academic participant from Sultan Qaboos University with expertise in the field of scientific research, the aim being to take advantage of the contribution of the university's legal research in addressing legal gaps in national laws.

➤ **Managing the interview data**

The interviews were audio-recorded with the interviewees' consent. The audio-recording method ensures that the original data is kept, allowing the interviewer to verify the accuracy of transcribed data at any time.⁶⁰ McCracken indicates that interviewers should record interviews on tape or videotape rather than taking their own notes. He adds that the latter method (taking own notes) could cause an unnecessary and dangerous distraction and many hinder the subsequent analysis process.⁶¹ Indeed, the interviewer may find that, during the process of analysing the obtained data, some significant data were not included within their own notes, and it would be difficult to obtain it again due to the absence of any recorded audio.

Subsequently, the audios recordings were transcribed into written texts consistent with the interviewees' spoken word.⁶² The transcription method was made manually due to the interviews being conducted in Arabic. The texts were then paraphrased, summarised and reduced inductively to include data that the researcher of this thesis believes is relevant to the research topic.⁶³ This is a significant step as it is not required to analyse all collected data. Consequently, data that does not serve the research purposes must be excluded.

⁶⁰ Irving Seidman, *Interviewing as Qualitative Research: A Guide for Researchers in Education and the Social Sciences*. (2006) ,p.114.

⁶¹ Grant Mccracken, *THE LONG INTERVIEW* (Marc L Miller, John Van Maanen and Peter K Manning eds, 13th edn, SAGE 1988) ,p.41.

⁶² Seidman believes that interviewers should transform spoken words into a written text in order to work reliably with interviewees words as any spoken word reflects an interviewees' understanding and consciousness, see Seidman (n 60).

⁶³ *ibid* ,p.117.

➤ **Thematic analysis**

The interview data were analysed by using thematic analysis. This is a process of identifying patterns or themes within qualitative data.⁶⁴ Braun and Clarke identify six phases of thematic analysis: familiarising with interview data, generating initial codes, searching for themes, reviewing themes, defining and naming themes and producing the report.⁶⁵

After reading and reviewing the interview transcriptions, the interview data were coded. Codes which had similar data were then sorted into relevant themes. Next, the data for each theme were reviewed, modified, and analysed.

The key findings of the interview data are presented and discussed within the thesis chapters. They are used to support and clarify certain points and arguments. In addition, they are also used as supportive evidence for the conclusions. The interview data are clearly discussed in each chapter in the course of examining and analysing the requirements and elements of Oman's FD system.⁶⁶

1.6.4 Primary and secondary sources

Primary sources are used widely in this research, such as laws, implementing regulations of laws, codes and certain international conventions concerning anti-corruption such as the UNCAC. This study also relies on library-based research, including a literature review related to the subject of this research which encompasses books, journal articles, newspaper articles and working papers. In addition, reference is made to reports and research published by international organisations and institutions concerned with combating corruption such as the United

⁶⁴ Moira Maguire and Brid Delahunt, 'Doing a Thematic Analysis: A Practical, Step-by-Step Guide for Learning and Teaching Scholars' (2017) 3 All Ireland Journal of Higher Education ,p.3353 <<http://ojs.aishe.org/index.php/aishe-j/article/view/335>>.

⁶⁵ Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 (2) ,pp.16-23.

⁶⁶ The interview data are mainly discussed in the comparative study sections, particularly in Chapters 4,5 and 6: see Sections 4.3, 5.3, 6.3 and 6.4. Some of the interview data are also presented and discussed in Chapters 1,2 and 3: see Sections 1.2, 2.5, 3.4 and 3.5.2

Nations Office on Drugs and Crime (UNODC), the World Bank (WB), Organisation for Economic Co-operation and Development (OECD) and Transparency International.

Because that the UNCAC was adopted by the UN General Assembly in 2003, the literature concerning FDs has begun to appear much more recently. This is why there is little existing literature and jurisprudence on FDs as indicated by Silviu Popa⁶⁷ in the International Monetary Fund's Annual Meeting– 'Discussions on Financial Disclosure Systems for Public Officials'.⁶⁸

It should be noted that the thesis does not contain a literature review within a separate chapter. Instead, each chapter includes a discussion of the relevant literature related to its topic.

1.7 STRUCTURE OF THE THESIS

The thesis comprises seven chapters, including this introductory chapter.

Chapter Two presents an overview of the Sultanate of Oman's efforts in combating corruption since 2011, focusing on the legislative procedures and reforms designed by the government to enhance the anti-corruption programme, whether through enacting new laws or amending existing ones. It also assesses the extent to which anti-corruption reforms, including the development of the FD regime, are now playing a key role in combating corruption in the public sector, and in

⁶⁷ Silviu Popa has been the Secretary General of the Romanian National Integrity Agency (ANI) since January 2016. He has a 12 years' experience in the area of corruption prevention, being specialised in financial disclosure systems. Mr Popa was a short-term expert in several training and anti-corruption projects with the Council of Europe, European Commission and the World Bank. He also contributed to several publications on topics concerning methods of reviewing the content of financial disclosures submitted by public officials and conflicts of interests or establishing effective financial disclosures systems. See: https://www.imfconnect.org/content/imf/en/annual-meetings/calendar/open/2019/10/18/anti-corruption_session4-tacklingcorruptionfinancialdisclosuresy_149666.html?display=none

⁶⁸ Silviu Popa, 'IMF Annual Meetings - Discussions on Financial Disclosure Systems for Public Officials (23 October 2019)' <<https://www.youtube.com/watch?v=Jd5chMcydh4&t=2716s>> accessed 26 May 2021.

improving Oman's 'ranking' in the CPI issued by Transparency International.

Chapter Three provides an overview of FD systems in terms of their definition and historical background. It also examines the legal basis and primary purposes of FD systems, with a focus on the countries subject to this study. This chapter paves the way for examining and analysing the elements of Oman's FD system, in addition to comparator countries' systems in subsequent chapters, making use of the comparative study method.

Chapter Four critically examines and analyses the regulatory framework and institutional arrangements of FD bodies. It assesses the legal provisions of the UNCAC that regulate the establishment of the preventive anti-corruption bodies. It also includes a comparative study of the essential requirements provided to FD bodies in comparator countries with a focus on the FD body's independence and the provision of material and human resources.

Chapter Five examines the scope of individuals who should be subject to FD systems and the essential contents of the FD forms they are required to declare. This chapter addresses approaches countries have adopted to identify public officials who should be covered by FD systems and their family members. It also conducts a comparative study on the provisions of the FD systems that regulate the coverage of FD systems and the content of FD forms in comparator countries.

Chapter Six addresses the implementation and enforcement of FD systems beginning from the point when FD forms are submitted to the competent body and ending with the prosecution action and sanctions imposed upon a violation of FD systems' requirements and related legal provisions. It also examines the need for the criminalisation of illegal enrichment to facilitate the detection of unjustified wealth. In addition, it investigates the growing importance of whistleblowing systems and their role in FD systems' effectiveness.

Chapter Seven presents the key findings of the thesis in addition to recommendations of measures the Omani government can take to improve the FD system. The chapter concludes with an exposition of the implication and limitation of the thesis.

2 CHAPTER TWO: THE SULTANATE OF OMAN'S EFFORTS IN COMBATING CORRUPTION SINCE 2011

2.1 INTRODUCTION

During the period of protests in Arab States in late 2010 and early 2011, known as the 'Arab Spring',⁶⁹ Oman saw demonstrations of its own at the beginning of 2011. Protesters sought political, economic and social reforms.⁷⁰ Combating government corruption was among their primary demands. However, there were other demands such as strengthening the separation of powers and independence of the judiciary (granting full independence to the public prosecution), granting broader powers to the Majlis Al-Shura (Consultative Council), dismissing some ministers, providing jobs, and increasing wages and salaries.⁷¹ Significant attention was paid to meeting these demands, and most have been the subject of responses by the government.⁷²

This chapter provides some introductory context for the reform project in Oman after these events, in particular by highlighting the political and legislative reforms adopted by the government since 2011, and the prosecution of corruption offences in Oman. This prepares the way for wider considerations and analyses, including comparisons between Oman's reform agenda and developments in other GCC States, and wider afield, in order to gauge the scope for further improvements to the current legal system. This chapter also discusses the extent to which reforms and prosecutions have impacted Oman's ranking in the CPI, as issued by Transparency International. By the end of this chapter, a clear picture can be derived of the importance of studies concerning reforms

⁶⁹ Abdul Qadirmushtaq and Muhammad Afzal, 'Arab Spring: Its Causes And Consequences' (2017) 30 Journal of the Punjab University Historical Society 10 <http://pu.edu.pk/home/journal/40/V_30_No_1_Jun_2017.html> accessed 14 November 2018.

⁷⁰ James Worrall, 'Oman: The "Forgotten" Corner of the Arab Spring' XIX Middle East Policy Council <<http://www.mepc.org/oman-forgotten-corner-arab-spring>> accessed 12 March 2018.

⁷¹ *ibid*; Kenneth Katzman, 'Oman: Reform, Security, and U.S. Policy' (2018) p.5 <<https://fas.org/sgp/crs/mideast/RS21534.pdf>>.

⁷² Worrall (n 70).

and measures against corruption, especially those related to FD regimes, in the enhancement of the CPI. Clearly, such studies are important and help to inform the government's efforts in fighting corruption.

This part of the thesis relies mainly on primary sources such as the Basic Statute of the State and some other decrees and laws issued or amended in 2011 and subsequently, with a focus on legislative reforms that enhance anti-corruption efforts. Whenever appropriate, the chapter includes comparisons with the legislation and experiences of other countries.

2.2 THE MOST IMPORTANT POLITICAL AND LEGISLATIVE REFORMS IN OMAN

2.2.1 Extension of the legislative and oversight powers of Majlis Al-Shura

The Oman Council was established under a 1996 Omani Basic Statute of the State (OBSS) issued by Royal Decree 101/96, consisting of an elected council called 'Majlis Al-Shura' and an appointed State Council called 'Majlis Al-Dawla'. The Chairman and members of Majlis Al Dawla are appointed by a Royal Decree. The appointees of the Majlis Al-Dawla are selected from specific categories identified by the OBSS amended by Royal Decree 99/2011, such as former ministers, former ambassadors, former senior judges and dignitaries and businessmen. However, the OBSS issued under Royal Decree 96/101 was abolished and a new OBSS was issued under Royal Decree 6/2021 in January 2021. Unlike the repealed OBSS, categories selected for the membership of Majlis Al Dawla are not identified by the new OBSS. Nevertheless, it leaves this matter to be determined in the new Oman Council Law No. 7/2021. Article 6 of Law No.7/2021 states that members of Majlis Al Dawla are to be selected from those who have a long service record at the Units of the State Administrative Apparatus (USAA) and other public legal persons and persons who have performed great

services to the Nation. It also includes those who are known for their competence and experience in the fields of science, art and culture; professors at universities, colleges and higher institutes; dignitaries and businessmen; and whomever His Majesty the Sultan chooses and who does not fall under the previous categories.

The structure of the Oman Council is similar, to some extent, to the formation of the UK Parliament and contains two houses: the House of Commons (an elected house) and the House of Lords (a body now largely composed of groups who are members by virtue of their judicial or religious status or are members of the government, or else 'Life Peers' under the Life Peerages Act 1958 and who have been rewarded for their achievements in business, politics, the arts, academia, etc).⁷³

Majlis Al-Shura was first established on 12 November 1991 under Royal Decree 94/91 to replace the Consultative Council of the State,⁷⁴ which had been in operation from 1981 to 1991.⁷⁵ Its role was to participate and advise the government on socioeconomic issues,⁷⁶ for instance (i) providing recommendations to the Ministers Council regarding development plans and public budgets referred to it by the government,

⁷³ 'Parliament and the Government - UK Parliament' (House of Common, 2013) <<https://www.parliament.uk/about/how/role/parliament-government/>> accessed 22 March 2020, For a fuller commentary on the workings of the UK system, including the House of Lords, see Bradley, K. Ewing and C. Knight, *Constitutional and Administrative Law* (16th edn, Harlow: Pearson,2018), pp.147-184.It is noteworthy that the formation of the parliamentary system in the GCC States varies from country to another. For instance, according to Article 3 of the statutes of the Saudi Shura Council issued by Royal Ordinance No. A/91 of1992, members of the Council are selected by the King. In Qatar, based on Article 77 of the Constitution, the Shura Council includes 45 members (15 members are appointed by the Prince and the rest are elected). In Kuwait, according to Article 80 of the Constitution, the Nation Assembly contains 50 elected members, and unelected ministers in the Nation Assembly are considered members of it by virtue of their functions. In the United Arab Emirates, based on Articles 68 and 69 of the Constitution, the Federal National Council are formed from 40 members. The number of the Council's seats are distributed on the member's Emirates and each emirate identifies the mechanism for selecting citizens who represent it in the Federal National Council. Similar to the Parliament system in Oman, according to Articles 52 and 56 of the Bahrain Constitution, the National Council includes two chambers. The first is called 'Shura Council' and contains 40 members appointed by the King and the second is an elected chamber called 'Deputies Council' which comprises 40 members.

⁷⁴ Under Articles 2 and 3 of Royal Decree 84/81 regarding Establishment of the Consultative Council of the State, the Consultative Council consisted of government and community sectors. Members of the Consultative Council, the Chairman and his Deputy and the Secretary-General were appointed by Royal Decree.

⁷⁵ 'Majlis Shura - Our History' (*Majlis Al Shura*) <<https://www.shura.om/About-Us/Work-History/?lang=en-GB>> accessed 16 February 2018.

⁷⁶ 'Elections to Oman's Consultative Council - BBC News' (*BBC NEWS*, 2011) <<http://www.bbc.co.uk/news/world-middle-east-15288960>> accessed 28 February 2018.

(ii) consideration of issues related to public services and facilities, (iii) consideration of obstacles facing the economic sector and proposing means to overcome them.⁷⁷

The experience of Al-Shura in Oman has been seen as a progressive development since 1991, particularly in terms of election and voting mechanisms, and in its legislative and oversight powers.⁷⁸ The focus here is on the legislative and oversight powers granted to Majlis Al-Shura under the amendments made in 2011 to the OBSS and their role in the fight against corruption.

Regarding legislative powers, such powers had gone through gradual stages of development since the establishment of Majlis Al-Shura and until 2011. In 1994, the Majlis had the power to only review economic and social draft laws prepared by the competent ministries prior to their enactment.⁷⁹ By 1997, this power was developing further and had been extended to enable the Majlis to review any draft laws that were prepared by ministries and government bodies prior to their enactment, except for laws that His Majesty the Sultan deems necessary, in the public interest, to be issued immediately.⁸⁰ Subsequently, in 2000, the Majlis was given the authority to review draft laws before their enactment, except for administrative and procedural laws and other laws that the Ministers Council deems necessary to be forwarded directly to His Majesty the Sultan for enactment.⁸¹ In 2003, Majlis Al-Shura was granted the power to review draft laws prior to their enactment. Again, there was an exception in the case of laws that could, on public interest grounds, be forwarded directly to His Majesty the Sultan.⁸² However, the role of the

⁷⁷ Royal Decree regarding Majlis Oman, No.86/97, art 29, Royal Decree regarding amendment on some provisions of the Regulation of Majlis Al Dawla and Majlis Al Shura, No.74/2003, art 29/D.

⁷⁸ Mohammed Al Yahyaei, 'Al Shura Experience and Public Participation in Oman' (*Rawabet Center for Research and Strategic Studies*, 2015) <<http://rawabetcenter.com/archives/13954>> accessed 22 February 2018.

⁷⁹ Royal Decree on the Establishment of Majlis Al Shura, No.94/91, art 9/1.

⁸⁰ Royal Decree regarding Majlis Oman, No.86/97, art.18/D.

⁸¹ Royal Decree on the amendment of some provisions of the regulation of Majlis Al Dawla and Majlis Al Shura, No.104/2000, art.18/D.

⁸² Royal Decree on the amendment of some provisions of the regulation of Majlis Al Dawla and Majlis Al Shura, No.74/2003, art.18/D.

Majlis Al-Shura in these stages was limited to a consultative one. It could provide mere recommendations: but it did not have the authority to propose, amend, and reject draft laws.

Following the demonstrations of 2011, the constitutional amendments to the OBSS granted Majlis Al-Shura extensive new legislative and oversight powers. For instance, Majlis Oman has the power to approve or amend draft laws prepared by the government and submit them directly to His Majesty for enactment.⁸³ Furthermore, it gained the power to propose draft laws.⁸⁴ In addition, the constitutional amendments gave Majlis Al-Shura the authority to review the draft laws referred to it by the Council of Ministers and decide whether to approve or amend them.⁸⁵ Moreover, it was granted the right to provide an opinion regarding the draft economic and social agreements referred to it by the Council of Ministers, and to present its findings to them to take whatever actions it deems appropriate.⁸⁶

⁸³ Article (58/bis 35) of the Basic Statute of the State states:

Draft laws prepared by the Government shall be referred to Majlis Oman for approval or amendment, and then they shall be directly submitted to His Majesty the Sultan to be promulgated. In case of any amendments by Majlis Oman on the draft law, His Majesty the Sultan may refer it back to the Majlis for reconsideration of the amendments and then resubmission to His Majesty the Sultan.

⁸⁴ Article (58/bis36) of the Basic Statute of the State stipulates:

Majlis Oman may propose draft laws and refer them to the Government for review, and then the Government shall return the same to the Majlis. The procedures stipulated in Article (58)(bis35) shall be followed in approving, amending or promulgating the said draft laws.

⁸⁵ Article (58/bis 37) of the Basic Statute of the State stipulates:

The draft laws shall be referred by the Council of Ministers to Majlis Al Shura, which shall decide on the draft by approval or amendment within a maximum period of three months from the date of referral. The same shall then be referred to Majlis Al Dawla which shall decide on it by approval or amendment within a maximum period of forty five days from the date of referral. If the two Majlis disagree upon the draft law, they shall hold a joint meeting under the chairmanship of the Chairman of Majlis Al Dawla and by his invitation, to discuss the differences between the two Majlis, and then vote on the draft law in the same meeting. The decisions shall be adopted by absolute majority of the members present, and in all cases the Chairman of Majlis Al Dawla shall submit the draft to His Majesty the Sultan along with the opinion of the two Majlis.

⁸⁶ Basic Statute of the State No.101/96, art58 bis 41.

After abolishing the OBSS No.101/96, these powers were introduced into the new Oman Council Law No. 7/2021.⁸⁷

It is clear that the current legislative powers of Majlis Al-Shura are not limited to expressing an opinion on draft laws but extend to making a decision to approve or amend them. In addition, such powers are not limited to specific draft laws but include various draft laws prepared by the government or referred by the Ministers Council. Furthermore, the legislative powers extend to draft laws of an urgent nature referred by the Council of Ministers to Majlis Al-Shura.⁸⁸ Notably, His Majesty the Sultan can enact Royal Decrees that have the force of law between the sessions of Majlis Oman and during the period when Majlis Al-Shura is dissolved and when the sessions of Majlis Al Dawla are suspended.⁸⁹

The reforms that have impacted the ability of oversight bodies to provide mechanisms for accountability as part of developing anti-corruption measures merit consideration. Majlis Al-Shura has been granted a variety of powers that enable it to operationalise the accountability principle. This point, coupled with the importance of wider legislative changes that have impacted the separation of powers in Oman, is of particular significance in developing areas of the administration such as anti-corruption standards and mechanisms, their detection and enforcement. A key consideration is the need for accountability in the manner in which governmental powers are used. For instance, the services ministers are obliged to provide an annual report to Majlis Al-Shura on the implementation stages of the projects related to their ministries, and the Majlis has the right to invite any of them to provide a statement on some matters relevant to the competences of their Ministry and to discuss these matters with them.⁹⁰ Majlis Al-Shura may use the available parliamentary means to exercise its oversight over the work of the government, such as interpellation (question), urgent statements,

⁸⁷ Royal Decree on the issuance of Majlis Oman Law, No.7/2021, arts 47,48,49,58 .

⁸⁸ Royal Decree on the issuance of Majlis Oman Law, No.7/2021, art 50.

⁸⁹ Royal Decree on the issuance of Majlis Oman Law, No.7/2021, art 51.

⁹⁰ Royal Decree on the issuance of Majlis Oman Law, No.7/2021, art 55.

briefings requests and discussion requests.⁹¹ The interpellation is the most critical parliamentary means granted to Majlis Al-Shura as, unlike the other parliamentary mechanisms, it enables matters to be forwarded to His Majesty the Sultan.⁹²

With these important developments in mind, consideration can be given to their influence on anti-corruption systems and how these have been developing.

Given the importance of oversight bodies' cooperation with Majlis Al-Shura, aimed at operationalising its oversight role over the government's performance, the SAI is required to send a copy of its annual report to Majlis Al-Shura.⁹³ The annual report contains the results of the SAI's work, including an assessment of the performance of entities subjected to the SAI's audit activities and any financial and administrative irregularities detected in such entities. In addition, the Chairman of the SAI may inform Majlis Al-Shura of the contents of reports submitted to His Majesty the Sultan on the subjects and issues of particular importance and issues not implemented by the entities subject to the SAI's audit.⁹⁴ This approach – 'the enhancement of the relationship between the Parliament and the SAI' – is consistent with some developed countries' legislation. For instance, in the UK, the National Audit Act 1983 enables the Comptroller and Auditor General (C&AG) to report the results of the examination carried out by them in matters indicated under Section 9 (Reports to House of Commons) to the House of Commons. This underlines the importance of strengthening work between the National Audit Office and the House of Commons.

Based on the preceding considerations, it can be concluded that Oman's developing institutions and public law system, and the powers referred to, enable Majlis Al-Shura to play a significant role in combating corruption in two key respects. The first is the legislative powers of the

⁹¹ Royal Decree on the issuance of Majlis Oman Law, No.7/2021, art 56.

⁹² Royal Decree on the issuance of Majlis Oman Law, No.7/2021, art 75.

⁹³ Royal Decree on the Basic Statute of the State, No.6/2021, art 66, State Financial and Administrative Audit Law, No. 111/2011, art 29.

⁹⁴ State Financial and Administrative Audit Law No.111/2011, art 28.

Majlis that enable it to propose draft laws including those that contribute to combating or reducing corruption as well as its ability to approve and amend anti-corruption draft laws referred to it. The second is the ability to operationalise the principle of accountability through its oversight role on the government's performance and the use of available parliamentary tools.

It is evident from the above that one of the main aims of the extensive legal powers granted to Majlis Al Shura is to enhance the government's integrity and accountability. Such developments are mostly similar to those in certain jurisdictions in the GCC States, such as Kuwait, and other countries such as the UK. However, it is crucial to operationalise the powers granted to Majlis Al-Shura in practice and develop its parliamentary tools.

The use of interpellation is one of the parliamentary tools that requires consideration. Broadly speaking, this refers to the ability of a person or organisation to question the actions of a minister or body that exercises power, and to hold them to account (and, in some contexts, to effect changes to decisions, policies or programmes). In the present context, it envisages holding the actions of ministers and officials to account. However, in formal terms, this tool cannot be used unless there is a request signed by at least fifteen members of Majlis Al-Shura to interpellate any of the services ministers on matters related to exceeding their competences in violation of the law.

According to the statistics of Majlis Al-Shura issued in September 2019 on the use of parliamentary tools, interpellation was used only once from 2015 to 2019.⁹⁵ It seems that the requirement for the approval of fifteen members of the Majlis to use the interpellation tool represents an obstacle to holding ministers to account. Reaching the required quorum to interpellate ministers clearly presents a challenge, one made clear

⁹⁵ Majlis Al-Shura (@ShuraCouncil_OM), 'The members 'supervisory performance' 29 September 2019, 2:27 p.m. Tweet.

when the Omani procedure is compared with the interpellation tools required in other jurisdictions.

For instance, in Kuwait, every member of the National Assembly has the right to address interpellations to the prime minister and to ministers with regard to matters falling within their competence.⁹⁶ The interpellation may lead to a question of no-confidence being put to the National Assembly.⁹⁷ However, the subject of confidence in a minister must either be raised upon the request of the minister or upon a demand signed by ten members of Assembly, following a debate on an interpellation addressed to him or her.⁹⁸

In Bahrain, interpellation of ministers on matters that fall within their competence requires an application signed by at least five members of the Deputies Council.⁹⁹ The interpellation may lead to a question of confidence in the minister to the Deputies Council.¹⁰⁰ Like the Kuwait system, the subject of confidence in a minister cannot be raised except upon the minister's request or upon a demand signed by ten members of the Deputies Council, following the debate of the interpellation addressed to them.¹⁰¹

In the UK, parliamentary questions are one of the tools used by members of parliament (MPs) to hold the government to account. Each MP has the right to submit at least two questions for an oral answer at question time on each sitting day. However, an MP on a named day can submit up to five questions for a written answer. It may be noted that an MP can submit an unspecified number of questions if the answer is not required on a specific date.¹⁰² In the House of Lords, a peer may also ask questions of ministers of the government and require answers. Oversight is also provided in select committees of the House of Commons. These

⁹⁶ Kuwait Constitution 1962, art 100.

⁹⁷ *ibid.*

⁹⁸ *ibid.*, art 101.

⁹⁹ Constitution of The Kingdom of Bahrain 2002, art 65.

¹⁰⁰ *ibid.*

¹⁰¹ *ibid.*, art 66 (B).

¹⁰² 'Brief Guide to Parliamentary Questions' (2013) <<https://www.parliament.uk/documents/commons-information-office/Brief-Guides/Parliamentary-Questions.pdf>>.

have the role of 'shadowing' and monitoring the work of government departments and officials.¹⁰³

2.2.2 Extension of the powers of the State Financial and Administrative Audit Institution

The State audit institution in Oman has seen gradual development since 1970. It was established as a department at the Ministry of Finance prior to 1970, and it then became a General Directorate under the Ministry of the Royal Diwan Affairs in 1983. In 1989, it was upgraded to General Secretariat for account auditing under Royal Decree 81/89.¹⁰⁴

The year 1999 marked a radical transformation in the field of financial auditing. A new institution called the State Financial Audit Institution (SFAI) was established and granted financial and administrative autonomy.¹⁰⁵ In 2000, a new law was issued regarding State financial audit under Royal Decree 55/2000. However, the powers given to the SFAI by this law were limited. For instance, its audit on public funds was confined to the later stages of the disbursement; it was therefore difficult to detect irregularities and corrupt acts that could occur before the disbursement procedures or prevent them. In addition, the SFAI had no authority to refer irregularities concerning suspicion of criminal crimes directly to the Public Prosecution. Furthermore, the law did not impose sanctions upon the violation of its provisions. These were surprising omissions for a modern anti-corruption system.

In 2011, the legislative reforms in the period subsequent to the protests included the repeal of Law No.55/2000 and the enactment of a new law regarding State financial and administrative oversight. This was Royal Decree No. 111/2011 and the SFAI was changed to the SAI under Royal Decree No.27/2011. One of the essential aims of this law has been to

¹⁰³Select Committees - UK Parliament
<<https://www.parliament.uk/about/how/committees/select/>> accessed 15 February 2021.

¹⁰⁴ Royal Decree regarding conducting amendment on the State Audit regulation No 81/89, art1.

¹⁰⁵ Royal Decree regarding Financial State Audit No. 95/99, arts 1,2.

strengthen the role of the SAI in fighting corruption by granting it wider powers compared with the repealed law.

Although the repealed law granted the SFAI administrative and financial autonomy, the current law, in addition to its assertion of the independence of the SAI, explicitly states that the SAI is directly subordinate to His Majesty the Sultan. The aim is to give the SAI sufficient independence to perform its tasks free from undue influence, especially from influence that the executive branch could otherwise exert. Such formal and operational independence is a vital feature of modern audit systems. For example, when discussing the development of the UK's National Audit Office (a body that undertakes comparable work to the SAI), it has been observed that one of the three 'fundamental principles' of public audit is the necessity for auditors and officers engaged in audit-related work to be able to operate independently of executive and legislative bodies.¹⁰⁶

Furthermore, the function of the SAI now is not restricted to mere financial audit but its tasks have been extended to include, for example, the administrative audit, performance audit and investment audit,¹⁰⁷ a clear widening of its power and influence. Moreover, under the current law, the SAI has also been entrusted with the responsibility of managing the complaints system (whistleblowing system).¹⁰⁸ Under Article 10 (9) of the State Financial and Administrative Audit (SFAA) Law No.111/2011, the SAI is competent to review the complaints received on negligence or violation of applicable laws, regulations and decisions as per the controls stipulates in the regulations. This represents one of the significant functions granted to the SAI to operationalise its role in fighting corruption. This approach has been adopted in some developed countries. For example, in the UK, the C&AG ¹⁰⁹ is a prescribed person

¹⁰⁶ Peter Wilkins, 'Performing Auditors?: Assessing and Reporting the Performance of National Audit Offices-a Three-Country Comparison' (1995) 54 Australian Journal of Public Administration 421; Michael Sherer and Stuart Turley, Current Issues in Auditing (3rd edn, Sage,1997) p.308, p.321.

¹⁰⁷ State Financial and Administrative Audit Law, No. 111/2011, art 9.

¹⁰⁸ *ibid*, art 10 (9).

¹⁰⁹ The C&AG is the head of the National Audi Office (a body that undertakes comparable work to the SAI in Oman). The C&AG under s.6 of the National Audit Act 1983, as amended, may

listed, in accordance with the Public Interest Disclosure Act 1998, who is responsible for scrutinising the whistleblowing disclosures relating to the proper conduct of public business, value for money, fraud and corruption in relation to the provision of public services.¹¹⁰ Under Section.43F of the 1998 Act, a worker can make a qualifying disclosure to a prescribed person if:

. . . the worker— (a) makes the disclosure in good faith to a person prescribed by an order made by the Secretary of State for the purposes of this section, and (b) reasonably believes — (i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and (ii) that the information disclosed, and any allegation contained in it, are substantially true . . .

Further in-depth analysis of the whistleblowing system is provided in Chapter Six.

One of the most significant powers under the current law is that members of the SAI carry out their functions as judicial officers to implement the provisions of the law.¹¹¹ Plainly, this is an important feature of Oman’s reforms, and it links to the previous point regarding the need for officers involved in audit and related processes to be independent of governmental interference in the performance of their duties. In Oman, they cannot be arrested or remanded to custody without permission from the Chairman of the SAI, except in the case of catching them red-handed in the act of committing an offence.¹¹² In addition, no investigative action or public proceeding can be initiated against any member, unless with

‘carry out examinations into the economy, efficiency and effectiveness with which any department, authority or other body to which this section applies has used its resources in discharging its functions’. The main limitation is in s.6 (2). This states that the power does not entitle the Comptroller and Auditor General ‘to question the merits of the policy objectives of any department, authority or body in respect of which an examination is carried out’.

¹¹⁰‘National Audit Office Whistleblowing Annual Report’ (2019) p.3 <<https://www.nao.org.uk/contact-us/whistleblowing-disclosures/>>.

¹¹¹ *ibid*, art 7.

¹¹² *ibid*, art 17, in accordance with art 38 of the Omani Criminal Procedures Law No.97/99, the offender is caught red-handed, in the following cases: (i) Immediately at the time of committing an offence, (ii) a short while after the commission of an offence, (iii) if the victim or the public follow the offender with shouting after the commission of an offence, and (iv) if, sometime after the commission of an offence, the offender is found carrying instruments, weapons, goods, papers or any article which provides evidence that he has committed or is an accomplice to the offence or if, at that time, he has traces or perceptible signs which provide testimony to this.

the Chairman's permission upon the request of the Public Prosecution.¹¹³ The power of the judicial officers granted to the SAI allows them to access and enter any site belonging to entities subject to the SAI's audit without prior authorisation and at any time, including the outside of the official working hours.¹¹⁴ This power also enables the members of the SAI to conduct necessary inquiries, gather evidence, arrest accused persons, and refer them to the Public Prosecution.¹¹⁵ It should be noted that the SAI is the only supreme audit institution in the GCC States that grants its members such legal immunity and powers to implement the provisions of the law.

It is clear that the above powers granted to the SAI and its members aim to enhance its autonomy to enable it to perform its functions and activities independently without interference from the legislative and executive branches, which indicates the government's seriousness in fighting corruption. Such independence requirements are consistent with the Mexico Declaration on SAI Independence (ISSAI 10) adopted by the 19th International Organization of Supreme Audit Institutions (INTOSAI) Congress in 2007.¹¹⁶

2.2.3 Granting full independence to the Public Prosecution

In 1972, the Public Prosecution was a part of the Royal Oman Police apparatus, which handled investigations and prosecutions in criminal cases.¹¹⁷ Subsequently, Royal Decree No.25/84 was issued regarding the regulation of criminal justice. According to Article 10 of this Decree, the Royal Oman Police undertakes public prosecutions before the criminal courts. The office known as the Public Prosecution Office was established within the General Department of Penal Investigations

¹¹³ State Financial and Administrative Audit Law, No. 111/2011, art 18.

¹¹⁴ *ibid*, art 12 (A).

¹¹⁵ Resolution No.13/2013 on the implementing regulation of the State Financial and Administrative Audit Law, art 12 (C,E,F).

¹¹⁶ 'INTOSAI on SAI Independence' (*Supreme Audit Office*, 2011) <<https://www.nik.gov.pl/en/news/intosai-on-sai-independence.html>> accessed 26 March 2020.

¹¹⁷ 'Press Interview with the Public Prosecutor' (*Public Prosecution*) <<http://www.opp.gov.om/tabid/180/Default.aspx#>> accessed 2 March 2018.

at the Royal Oman Police to carry out public prosecution tasks. At a subsequent stage, the office was upgraded to a department and then, in 1992, to a general department.¹¹⁸

In 1999, Royal Decree No.92/99 was issued regarding the establishment of an autonomous body called the 'Public Prosecution'. However, it was subordinate to the General Inspector of Police and Customs.¹¹⁹ Considering that for more than a decade since its establishment the Public Prosecution's has lacked self-autonomy contrary to the principle of judicial independence, in 2011 demonstrators demanded full independence for the Public Prosecution's work. As a response to protesters' demands, Royal Decree No.25/2011 was issued granting the Public Prosecution full administrative and financial independence.¹²⁰

Clearly, the attainment of autonomy by the Public Prosecution was an important landmark in the Omani criminal justice system's evolution. Undoubtedly, the provision of sufficient independence for prosecutors is essential to enable them to perform their function with no external interference, especially from the State's executive power. This is emphasised by the United Nation Guidelines on the Role of Prosecutors in section 4:

States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.¹²¹

The change has also been significant in the context of reforms directed at securing a more robust anti-corruption regime in Oman.

¹¹⁸ *ibid.*

¹¹⁹ Royal Decree regarding the Establishment of the Public Prosecution 1999, no.92/99, art 1.

¹²⁰ Royal Decree regarding the Independence of the Public Prosecution 2011, no.25/2011, art1.

¹²¹ 'Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice' (*United Nation Office Drugs and Crime*, 2016) p.309 <<https://www.unodc.org/unodc/en/justice-and-prison-reform/compendium.html>> accessed 27 March 2020.

2.2.4 Enactment of a new law regarding the protection of public funds and avoidance of conflict of interest

The PPFACI Law No.2012/2011 is among the legislation passed after the protests in 2011, replacing the previous law No. 39/82. This law includes numerous provisions that emphasise the protection of public funds and the impermissibility of misusing them. Unlike the repealed law, the concept of 'government official' is extended by this law to include any person who holds a governmental position or a job in the USAA, including the members of Majlis Oman, representatives of the government in the companies, and the employees of companies that the government fully owns or in which the government own more than 40% of their capital. Under the provisions of this law, government officials are prohibited from undertaking acts that involve a conflict of interest, or lead to the waste or misuse of public funds. Such provisions are addressed in section five of the next chapter.

The current law establishes two essential tools to detect and prevent conflict of interest and illegal enrichment. The first is the FD system, and the second is the annual disclosure system (AD system). Although this study examines the former system, it is vital to highlight the role of the AD system in order to distinguish it from the FD system.

The AD system is regulated under Article (10) of the PPFACI Law which stipulates that:

The government official shall be prohibited from combining his position or work, whether temporary or permanent, with any other work in the private sector related to his position or work, except after obtaining a permission from the Council of Ministers, if he is a Minister or of the same rank, an Undersecretary or of the same rank, and from the concerned ministers or Chairman of the organisation/establishment for other government officials. Every government official that obtained such permission shall submit an annual disclosure to State Audit Institution as per the form prescribes by the Institution for this purpose. This disclosure shall contain all transactions with the governmental units and the

establishment in which the government owns more than (40%) of the share capital.¹²²

According to Article 10 above, the annual disclosure can be defined as a statement that contains all transactions conducted by a government official with governmental units and establishments in which the government owns more than 40% of the share capital. Unlike the FD system which applies to wide categories of public officials, the AD is only applied selectively to government officials who obtain permission to combine their official positions and any other work in the private sector associated with their official duties.

This thesis argues that allowing government officials to combine their official duties and their private work, particularly when the latter has a connection with their official work (and which is otherwise relevant to their post) could be problematic and certainly requires careful assessment. It is clear that the justification for banning such a combination is to prevent officials from abusing their positions for their personal interests. However, the grounds or reasons to grant the Ministers Council and the Chairmen of Units an absolute authority to exempt some officials from this prohibition is far from clear. This argument was supported by some of the interviewees with legal expertise.¹²³ In the literature, Vitanski indicates that certain state authority can be granted a discretionary power, provided that such discretion is based on a legal ground determining the framework of this authorisation 'minutely and unambiguously'.¹²⁴ It is unclear how the current Omani system adequately circumscribes the use of exemptions.

It is worth noting that, unlike Oman, most of the GCC States impose an absolute prohibition on public officials doing any work in the private

¹²² The permission should issue from the Council of Ministers if the public official is a Minister or of the same rank, an Undersecretary or of the same rank, and from the Chairman of the unit for other government officials.

¹²³ Interviewee (12), Interviewee (16), Interviewee (17), Interviewee (18), Interviewee (19).

¹²⁴ Dejan Vitanski, 'Discretionary Powers of Administration' (2015) 3 *Journal of Process Management – New Technologies, International* 27 <<https://scindeks-clanci.ceon.rs/data/pdf/2334-735X/2015/2334-735X1502027V.pdf>>.

sector, without any exception whenever such work is relevant to their positions or to the entities to which they belong.

For example, in Bahrain, Article 34 of the Civil Service Regulation No.51/2012 prohibits public officials from private work even if it is not related to their posts or positions. However, public officials have the right to own a share in a trading company that they gain through inheritance or as a donation from their relatives up to the fourth degree.

In Qatar, under Article 80 of the Human Resources Act No.15/2016, public officials are prohibited from carrying out any private work or business that conflicts with their official posts or could result to direct or indirect interest to them in any contracts or tenders related to the government entities where the public officials belong.

In the Kingdom of Saudi Arabia, according to the Resolution of the Minister of Civil Service No.703/10800 on the Functional Duties Regulation, public officials are prohibited from conducting activities that grant them a trader status. In contrast, the legislator has identified some private works exclusively that public officials can do provided that such work is not related to the government entities to which the public officials belong.

In the United Arab Emirates, under Article 72 of the Human Resources Act No.11/2008 and its amendments, public officials (citizens) are allowed to own a share in any private company or institution or manage it, provided the following criteria are satisfied: (i) The private work must be outside the official working hours, (ii) The private work may not impact negatively on the duties of the post, (iii) The private work may not be relevant to the official function in any form.

Consequently, this thesis argues that such an exception may pave the way to misuse of power and abuse of office. Thus, this legal loophole should be addressed, in line with most legislation in the GCC States, by establishing an absolute prohibition on public officials doing any private work relevant to their official position. However, if the legislator deems

that there is an urgent necessity to allow some public officials to do some of the private work related to their positions (as a justifiable exception), then it should be done in accordance with specific controls and conditions which ensure the avoidance of conflicts of interest. It should also guarantee that the exception is not contrary to the public interest and is not misused.

2.2.5 The Promulgation of a Royal Decree concerning the accession of the Sultanate of Oman to the United Nations Convention against Corruption

In November 2013, Oman joined the UNCAC by Royal Decree No. 64/2013. The Decree reflects the seriousness of Oman's legislator in combating corruption and the importance of taking the necessary measures to eliminate all forms of corruption in accordance with the requirements of the UNCAC and with the cooperation of the international community. There is not as of yet a dedicated anti-corruption agency in Oman. Accordingly, the SAI has been assigned the responsibility of following up the implementation of the UNCAC since 2014. In addition to the SAI, various governmental agencies play important roles in fighting corruption, each one in its respective areas of competence such as the Public Prosecution, the National Centre for Financial Information and the Department for the Fight against Economic Crimes in the General Administration of Criminal Investigations within the Royal Omani Police. Furthermore, public funds cases are considered by specialised departments within the courts.¹²⁵

2.3 PROSECUTIONS OF CORRUPTION OFFENCES IN THE GOVERNMENT SECTOR (ANTI-CORRUPTION CAMPAIGNS)

As indicated earlier, most of the legislative reforms on combating corruption were passed after the demonstrations that occurred in Oman in 2011. Such reforms were followed by campaigns to fight corruption,

¹²⁵ 'Country Review Report of The Sultanate of Oman. "International Cooperation" of the United Nation Convention against Corruption for the Review Cycle 2010-2015' (2015) p.8 <http://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016_07_04_Oman_Final_Country_Report_English.pdf>.

which began in 2012. This underlines the government's desire to eradicate public sector corruption. It was also the first time that the media has been allowed to cover corruption cases. Nevertheless, the media covered only the early trials; subsequently, resolutions and orders were issued by the courts to prevent the media from publishing cases and their judgments.¹²⁶ One of the aims behind this could have been to avoid publishing details of cases ahead of the final judgments. Clearly, this was unhelpful in terms of promoting 'transparency'.

In September 2012, the media reported that more than 30 cases were referred to the Public Prosecution for investigation by the SAI. Among such cases were those dealing with the abuse of public office to gain personal benefits, the smuggling of oil products backed by the government, forging official documents, and embezzlement.¹²⁷ In August 2017, the SAI announced that 223 cases had been referred to the Public Prosecution during the period 2011–2016. The courts issued judicial judgments in 101 cases, 36 cases were considered before the courts, and 30 irregularities were taken up for the Public Prosecution's consideration.¹²⁸ The chart below illustrates the total number of public funds cases referred to the Public Prosecution between 2012 and 2018, including those referred by the SAI.¹²⁹

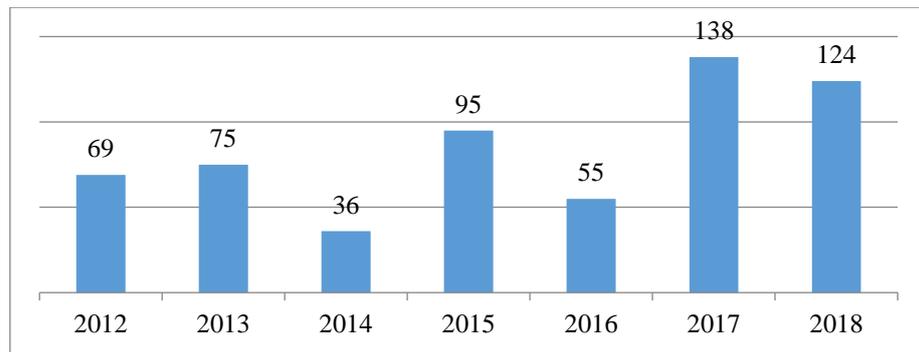
¹²⁶ AlAurimi Fatima, 'New Convictions against Officials in Bribe Cases' (*Atheer*, 2014) <<http://www.atheer.om/archives/18815/>> accessed 12 February 2018.

¹²⁷ 'Corruption Cases Set to Go on Trial' *Times of Oman* (Muscat, 23 October 2012) <<http://timesofoman.com/article/865/Oman/Corruption-cases-set-to-go-on-trialdiscussion-5>> accessed 4 February 2018.

¹²⁸ 'State Audit Institution Referred More than 220 Cases to the Public Prosecution during Five Years' *Al Shabiba* (2017) <<http://www.shabiba.com/article/188411/>> accessed 12 February 2018.

¹²⁹ Public Prosecution, 'Outcomes of the Cases Undertaken by the Public Prosecution for the Year 2016' <<http://www.opp.gov.om/Portals/0/oman/haf/website-casses.pdf>> accessed 17 January 2018.

**Figure 2.1 . Number of public funds referred to the Public Prosecution
2012 – 2018**



Corruption in the oil and gas sector was one of Oman's greatest corruption scandals in the period after 2011.¹³⁰ The Public Prosecution declared in a press conference held on 01 March 2016 that several oil and gas corruption cases were being investigated, and it was observed that 'the scourge of corruption' had indeed proliferated and moved from one project to another, and from one establishment to another, and from one sector to another. This underlined a concern that corruption could become acceptable and justifiable socially and had become an economic reality.¹³¹ The number of accused persons reached 60 in 56 bribery cases over the period since 2012. The common right fines amounted to approximately \$182 million, and the funds frozen abroad in respect of these cases in favour of Oman totalled \$ 37 million. Most of these cases were referred to the courts.¹³²

Information from the Public Prosecution has shown how the bribes paid in these cases varied from one case to another. The highest bribe was \$17 million paid to obtain a project, and the lowest was \$55 thousand paid to an employee. Moreover, the method of the payment of such bribes differed from one incident to another. In all cases, bribes were

¹³⁰ It should be noted that in 2005, over 30 government and private sector employees, including the Under Secretary of the Ministry of Housing, Electricity, and Water, were convicted on charges of bribery and forgery, representing one of the biggest corruption scandals in Oman (quoted from: U.S.Department of State, 2014 Investment Climate Statement- Oman.PDF, www.state.gov/e/eb/rls/othr/ics/2014/227218.htm, accessed 7 March 2018).

¹³¹ Public Prosecution, 'Public Prosecution Declares the Criminal Indicator for the Various Cases Undertaken by Them during the Last Year' (*Public prosecution (Oman)*, 2016) <<http://www.opp.gov.om/tabid/95/ItemId/191/vw/1/Default.aspx#>> accessed 11 January 2018.

¹³² *ibid.*

paid to employees to exploit their positions to gain private benefits. Investigations exposed significant funds being transferred abroad, which required the Public Prosecution to seek the international judicial assistance of numerous countries in the investigations to obtain the evidence and recover the funds. Court's judgments issued in these cases included imprisonment, fines and the confiscation of buildings, houses and vehicles.¹³³

Notably, some senior officials were involved in corruption cases, including the former Minister of Commerce and Industry who appears to be the highest senior official prosecuted in Oman's corruption cases to date. He was found guilty of paying bribes worth \$1 million, in his time as minister, to the former Transport Ministry undersecretary. This was to ensure that the Muscat airport expansion contract was given to a building firm in which he was a shareholder.¹³⁴ Corruption cases like this underline the need to establish special rules that apply to the most senior officials to ensure that their official duties are not abused to advance their private interests.

In addition to the corruption cases in the gas and oil sector above, it was announced in 2019 that several public officials had been involved in another corruption scandal in Oman, known as 'the embezzlements of the Ministry of Education'. The first trial hearing was held on 07 July 2019 and 18 individuals were announced as official suspects in this case.¹³⁵

In the trial hearing held on 09 September 2019, the public prosecution presented the SAI's report which showed that one of the suspects issued 256 cheques in total that were cashed in the name of the Ministry of Education, to provide school supplies and bonuses without any legal basis for such payments.¹³⁶ The Public Prosecutor indicated that a total

¹³³ Public Prosecution (n 129).

¹³⁴ 'Oman Jails Former Commerce Minister for Corruption - BBC News' (2014) <<http://www.bbc.co.uk/news/world-middle-east-27469354>> accessed 17 January 2018.

¹³⁵ Khalid Al Hamarani and Mahmoud Wassim, 'A Green Light to Prosecute: Lessons Learned from the Omani Ministry of Education Embezzlement Case' (*Al Tamimi & CO*) <<https://www.tamimi.com/law-update-articles/a-green-light-to-prosecute-lessons-learned-from-the-omani-ministry-of-education-embezzlement-case/>> accessed 16 June 2021.

¹³⁶ *ibid.*

of approximately US\$ 18.2 million was embezzled in 2017 through issuing fake exchange bonds without any legal support or the requisite internal audit approvals. Suspects faced multiple charges including intentional negligence, fraud, embezzlement with forgery, money laundering, electronic fraud and abuse of public office.¹³⁷

2.4 OMAN'S RANK IN THE CORRUPTION PERCEPTIONS INDEX ISSUED BY TRANSPARENCY INTERNATIONAL

The CPI is an indicator issued annually by Transparency International. It scores and ranks countries based on how corrupt a country's public sector is in the view of experts and business executives.¹³⁸ This indicator relies on various data sources that reflect the assessment of experts and business executives on several corrupt behaviours in the public sector, such as bribery, abuse of public office for private gain and nepotism in the civil service.¹³⁹ Some of the sources also focus on the procedures taken to prevent corruption such as the effective prosecution of corrupt officials; the existence of adequate laws on financial disclosure; conflict of interest prevention and access to information; and providing legal protection for whistle-blowers, journalists and investigators.¹⁴⁰ The data are standardised to a scale of 0–100, as 0 represents the highest level of perceived corruption whereas 100 represents the lowest level.¹⁴¹ The following chart illustrates Oman's score in the CPI in the period 2012–2020.¹⁴²

¹³⁷ *ibid.*

¹³⁸ Transparency International, 'Methodology - Corruption Perception Index 2019: Frequently Asked Questions' (2019) p.1 <<https://www.transparency.org/cpi2019>>.

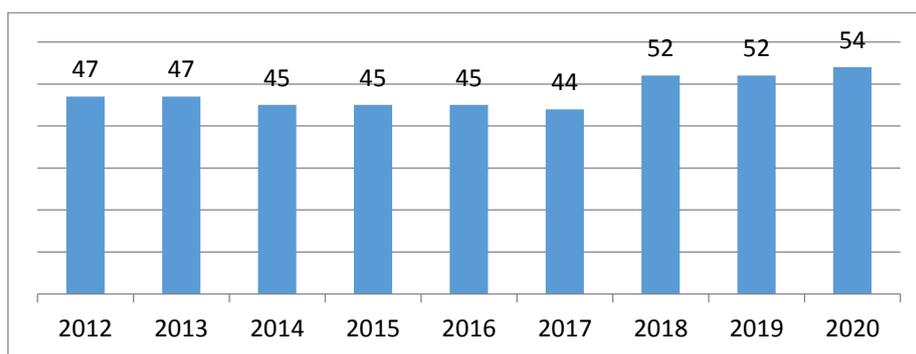
¹³⁹ Transparency International, 'Methodology - Corruption Perceptions Index 2019: Technical Methodology Note' (2019) p.1 <<https://www.transparency.org/cpi2019>>.

¹⁴⁰ *ibid.*

¹⁴¹ Transparency International, 'Methodology - Corruption Perceptions Index 2019: Short Methodology Note' (2019) ,p.1 <<https://www.transparency.org/cpi2019>>.

¹⁴² Economics Trading, 'Oman Corruption Index | 2003-2019 Data | 2020-2022 Forecast | Calendar | Historical' (*Economics Trading*, 2020) <<https://tradingeconomics.com/oman/corruption-index>> accessed 12 February 2020.

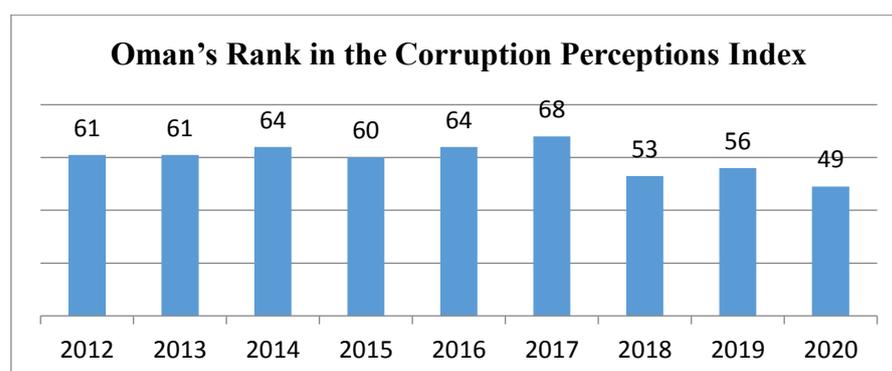
Figure 2.2 . Oman’s Score in the Corruption Perceptions Index



It is evident from the above chart that Oman’s score in the CPI has seen a gradual decrease from 2012–2017 by three points from a score of 47 to 44, respectively. However, with a score of 54, Oman improved by ten points in 2020.

Likewise, Oman’s rank in the CPI has improved in the recent three years.¹⁴³ In 2020, Oman reached its highest level since 2012 (rank 49), increasing by 19 ranks compared to the lowest rank obtained in 2017 (rank 68), as the chart below shows.

Figure 2.3 . Oman’s Rank in the Corruption Perceptions Index



Evidently, anti-corruption efforts taken by the government since 2011, including legislative reforms and prosecutions against corrupt officials, have played a positive role in improving Oman’s score and rank in the CPI in recent years. Nevertheless, such efforts should be maintained,

¹⁴³‘CORRUPTION PERCEPTIONS INDEX’ (Transparency International) <<https://www.transparency.org/en/cpi/2020/index/omn>> accessed 16 February 2021.

and further reforms and measures are still required to ensure that the government is serious in fighting corruption and improving Oman's CPI ranking.

2.5 THE DEVELOPMENT OF THE FD REGIME AND ITS IMPACT ON THE IMPROVEMENT OF THE CPI

The FD system requirements were regulated under successive civil service laws issued between 1974 and 2004. Such laws included an article that required public officials – upon the request of the legally authorised body – to submit a declaration of their own movable and immovable property or those in their possession, whether they are registered in their name or the name of any of their spouses and minor children.¹⁴⁴ However, owing to a lack of clarity about the authorised body responsible for dealing with FDs, the FD system was ineffective in practice. In 2011, the FD system was reorganised under the PPFACI Law No.112/2011 and the SAI was entrusted with the responsibility to manage the FD system. This represents a step forward in the area of fighting corruption in that period, although there is a lack of detailed provisions that regulate the requirements of the FD system.

As observed in Section 2.2 above, Oman has been following a phased approach in developing its policies and legislation, allowing the system to review, update and improve its laws and legislation periodically. This applies to the FD requirements, particularly given the earnest desire of the government to eradicate corruption in the public sector and enhance Oman's rank and score in the CPI. Interviewees who participated in preparing the draft of the PPFACI Law 112/2011 stated that due to the newness of the FD system's experience in Oman during this period, its requirements were not regulated comprehensively under the law.¹⁴⁵ Moreover, the law placed some restrictions on it that were subsequently

¹⁴⁴ See, for example, art 163 of the Civil Service Law issued under Royal Decree 47/74, art 105 of the Civil Service Law issued under Royal Decree 120/2004.

¹⁴⁵ Interviewee (11), Interviewee (12), Interviewee (17).

revealed to be hindering its effectiveness.¹⁴⁶ There was concern that implementing the FD system comprehensively upon its first establishment would constitute a considerable burden to the SAI, which could hinder its implementation in practice.¹⁴⁷ Consequently, it was regulated in this way as a first experience. The effectiveness and efficiency of this experience would be subsequently reviewed and evaluated, allowing the SAI to implement the system gradually.¹⁴⁸

Therefore, almost ten years since the law was enacted, the time has come to review and develop the current FD system. Notably, the new Sultan of Oman announced in his speech to Omani citizens on 23 February 2020 that the modernisation of the laws and legislation and the enhancement of integrity and accountability are among the significant goals in Oman's 2040 vision:

In order to furnish means of support towards the achievement of our future goals, we are determined to undertake necessary measures to restructure the state's administrative apparatus, modernising the schema of laws and legislations, work programs and mechanisms, enhancing the values of work, its principles, and espousing and streamlining procedures and performance governance, integrity, accountability to guarantee complete harmony with the requirements and goals of our vision¹⁴⁹

This speech was followed by some practical steps to implement its contents. The most significant is restructuring the State's administrative apparatus, and government companies aim to develop their performance and raise their efficiency in line with Oman's 2040 vision. It is anticipated that the next steps will focus on reviewing and updating national legislation and laws in keeping with the goals of Oman's 2040 vision, especially regarding the operationalisation of the performance governance, integrity and accountability principles. The targeted performance of Oman's 2040 vision for the CPI is to achieve 63 scores

¹⁴⁶ Interviewee (12), Interviewee (17).

¹⁴⁷ Interviewee (11), Interviewee (12), Interviewee (17).

¹⁴⁸ Interviewee (11), Interviewee (12).

¹⁴⁹ HM The Sultan Delivers Royal Speech' (Oman News Agency, 2020) <<https://omannews.gov.om/NewsDescription/ArtMID/392/ArticleID/8872/HM-The-Sultan-Delivers-Royal-Speech>> accessed 1 March 2020.

or one of the top 30 countries in 2030, and 73 scores or one of the top 20 countries in 2040.¹⁵⁰

This thesis therefore argues that studies on anti-corruption, including those concerning the FD regime, are significant for policymakers in Oman to take advantage of in developing current anti-corruption legislation or establishing new legislation as appropriate. This would have a positive impact on the improvement of Oman's overall international ranking in the CPI. As explained in Section 2.4, adequate and effective laws on financial disclosure and the provision of legal protection for whistle-blowers are among the key sources for evaluating countries in the CPI. The thesis addresses these two key subjects and considers how they may be improved and developed as a part of enhanced anti-corruption measures.

2.6 CONCLUSION

This chapter highlighted the efforts that the Government of Oman has taken in combating corruption since 2011 and how these have helped to improve Oman's rank in the CPI. The extension of the legislative and oversight powers of Majlis Al-Shura was one of the significant reforms. The current legislative powers enable the Majlis to propose, approve, amend and reject draft laws, including those related to anti-corruption. The new oversight powers grant the Majlis a set of formal mechanisms (parliamentary tools) to hold ministers to account. The use of interpellation is the most powerful mechanism. However, it is the least used tool. The analysis of Oman's legal requirements for the use of interpellation tool compared with the requirements of Bahrain, Kuwait and the UK shows that the request of interpellation of ministers in Oman shall be submitted by at least fifteen members, representing an obstacle to achieving interpellation. Consequently, the legislator should consider lowering the current quorum.

¹⁵⁰ 'Oman Vision 2040' (n 32) ,p.41.

The chapter also examined legislative reforms on the extension of the SAI's powers, including granting the Public Prosecution full independence and enacting the PFACI Law a part of the anti-corruption measures. The analysis of Article 10 of the PFACI shows that this Article is open to criticism due to the lack of objective legal justifications for allowing a public official to combine their public post and any private work related to their official position, as an exception from the general rule that prohibits such a combination. The position in Oman is clearly at odds with other comparable systems. This thesis argues that this represents a weakness in the law and, without reform, would pave the way for conflicts of interests.

Clearly, as this chapter demonstrated, the legislative system in Oman has seen gradual development in combating corruption. This has reflected positively on Oman's ranking in the CPI in recent years. However, further legislative measures are required to enhance anti-corruption tools, including the FD system's requirements and whistle-blowing system. Achievement of these goals would play a significant role in Oman's 2040 vision for the CPI, particularly as the existence of adequate laws on the FD system and the provision of legal protection for whistle-blowing are among the data sources that the CPI relies on to evaluate countries.

The next chapter provides a detailed overview of FD systems in terms of the definition, historical background, legal basis and key purposes, thereby laying the groundwork for the analysis of the key elements of FD systems in subsequent chapters.

3 CHAPTER THREE: GENERAL BACKGROUND OF FINANCIAL DECLARATION SYSTEMS

3.1 INTRODUCTION

An FD system has become a universally recognised tool in fighting corruption, especially since the adoption of the UNCAC in 2003.¹⁵¹ At present, the Convention has widespread recognition, with 140 signatories out of 187 parties (as of 06 February 2020).¹⁵² It is considered an international legally binding instrument aiming to, inter alia, establish preventive anti-corruption measures, enhance international law enforcement, and provide legal mechanisms for asset recovery with the cooperation of State Parties.¹⁵³

Implementation of the Convention at the national level is assisted by a policy-making body, the UN's Conference of the States Parties. This supports parties and signatories with guidance on implementation. Implementation of the Convention is evaluated through a peer review system, the Implementation Review Mechanism. Progress in implementation is tracked through country review reports (which are recorded on the Country Profiles Database).¹⁵⁴ For example, Oman's implementation of Chapter Three (criminalisation and law enforcement) and Four (international cooperation) of the Convention was reviewed by Saudi Arabia and Kiribati in 2015. Subsequently, it was subjected to the review of its implementation of Chapter Two (preventive measures) and Chapter Five (asset recovery) by Saudi Arabia and Canada in 2018.¹⁵⁵

¹⁵¹ The Convention was adopted by the UN General Assembly on 31 October, Resolution 58/4, in force from 14 December 2005, see: 'United Nations Convention against Corruption' <<https://www.unodc.org/unodc/en/corruption/uncac.html>> accessed 19 August 2021.

¹⁵² 'Ratification Status' (UNODC, 2020) <<https://www.unodc.org/unodc/en/corruption/ratification-status.html>> accessed 1 March 2020.

¹⁵³ 'United Nations Convention against Corruption' (United Nations) <<https://www.unodc.org/unodc/en/treaties/CAC/>> accessed 25 April 2020.

¹⁵⁴ 'Country Profile' (UNODC) <<https://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html>> accessed 1 March 2020.

¹⁵⁵ 'Oman's Country Review' (United Nation Office on Drugs and Crime) <<https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fomn.html>> accessed 17 February 2021.

Given the significant role of the FD system in fighting corruption, several international and regional anti-corruption conventions contain legal provisions similar to those in the UNCAC which require public officials to declare their assets such as the Inter-American Convention Against Corruption,¹⁵⁶ the African Union Convention on Preventing and Combating Corruption¹⁵⁷ and the Arab Anti-Corruption Convention.¹⁵⁸

The FD system is mainly used as a tool to detect illicit enrichment and conflict of interest. It is also considered a robust means of securing public accountability by highlighting the cases of abuse of public office and prosecuting corrupt public officials. It therefore contributes to enhancing transparency and accountability in the public sector.¹⁵⁹

This chapter aims to introduce a general overview of FD systems including a discussion of the definition of the FD system, a historical background of the FD system, the legal basis of the FD system, and the FD system's purposes. However, as an FD system is one of the preventive measures adopted by the UNCAC to combat corruption, this chapter begins by briefly explaining the concept of corruption, in addition to the measures provided by the UNCAC to combat corruption.

The chapter mainly relies on library-based research, which includes a literature review related to FD systems. However, whenever required, primary sources are used such as laws, implementing regulations and codes related to FD systems as well as some international conventions on anti-corruption. In addition, at the end of the chapter, some

¹⁵⁶ Article 3 (4), 'INTER-AMERICAN CONVENTION AGAINST CORRUPTION' (OAS, 1 August 1996) <http://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption.asp> accessed 9 June 2018.

¹⁵⁷ Article 7 (1), 'African Union Convention on Preventing and Combating Corruption | African Union' (*African Union*) <<https://au.int/en/treaties/african-union-convention-preventing-and-combating-corruption>> accessed 11 June 2018.

¹⁵⁸ Article 28 (5), 'Arab Convention Against Corruption | Stolen Asset Recovery Initiative (StAR)' (*Stolen Asset Recovery Initiative*) <<https://star.worldbank.org/document/arab-convention-against-corruption>> accessed 11 June 2018.

¹⁵⁹ Gustavo A Vargas and David Schlutz, 'Opening Public Officials' Coffers: A Quantitative Analysis of the Impact of Financial Disclosure Regulation on National Corruption Levels' (2016) 22 *European Journal on Criminal Policy and Research* p.439, 441 <<http://link.springer.com/10.1007/s10610-016-9320-3>> accessed 3 December 2018.

comparative aspects are utilised to identify the primary purpose of the FD systems in comparator countries subjected to this study.

3.2 DEFINITION OF CORRUPTION

The preamble of the UNCAC begins with the description of corruption and by expressing concern regarding its severely negative impacts. It states that:

The States Parties to this Convention,

Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardising sustainable development and the rule of law,

Concerned also about the links between corruption and other forms of crime, in particular organised crime and economic crime, including money laundering,

Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,

Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential,

Convinced also that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively,

The Convention does not give a specific definition for corruption. Instead, it lists a range of acts that State Parties are required to criminalise or consider criminalising under their domestic legislation. This includes, for example, bribery, embezzlement, trading in influence, abuse of function, illicit enrichment, money laundering, concealment and obstruction of justice.¹⁶⁰

Given the lack of a universal standard definition of 'corruption', whether before or after the adoption of the UNCAC, various definitions have been provided by the literature.

¹⁶⁰ The United Nations Convention Against Corruption (2003), art 16 -25.

One of the most common definitions, which we may refer to as the traditional conception of corruption, is that introduced by the World Bank.¹⁶¹ It simply defines corruption as ‘the use of public office for private gain’. However, this definition has been criticised as it focuses on corruption at the individual level. It has been argued that corruption has become a systematically inherent political problem exceeding the individual level.¹⁶²

The absence of a unified and comprehensive definition covering all aspects of corruption has inspired scholars to provide different conceptions and theories of corruption. Mark Jorgensen contends that there is a continued challenge in the literature regarding the definition and concept of corruption, contributing to the fragmentation of corruption studies. He concludes that this led to the absence of a unified model or theory of corruption.¹⁶³

Many theories of corruption have been discussed by the literature, such as the political, bureaucratic, democratic, individual, institutional, private, collective, redistribution and extractive theories. Adeyemi argues that the plurality of such theories can be attributed to the fact that every theory defines corruption based on society’s perception of the concept regarding its nature, ramification, manifestation, pattern, mode and appearance.¹⁶⁴

This chapter does not address all the theories mentioned above. Nonetheless, it briefly highlights the differences between two common theories: individual and institutional theory.

¹⁶¹ Arne Disch, Endre Vigeland and Geir Sundet, *Anti-Corruption Approaches - A Literature Review* (The Swedish International Development Cooperation Agency 2009) ,p.40, <<https://www.sida.se/en/publications/anti-corruption-approaches-a-literature-review>>.

¹⁶² *ibid* ,p.40.

¹⁶³ Mark Jorgensen Farrales, ‘What Is Corruption?: A History of Corruption Studies and the Great Definitions Debate’ [2005] SSRN Electronic Journal ,p.1, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962>.

¹⁶⁴ Adeyemi, O, ‘THE CONCEPT OF CORRUPTION : A THEORETICAL EXPOSITION’ (2021) 2 TheJournalish: Social and Government 1, ,p.6, <<https://thejournalish.com/ojs/index.php/thejournalish/article/view/98>>.

Individual theory and institutional theory

Thompson presents a clear distinction between the individual and institutional theories. Accordingly, individual corruption provides a benefit or service arising from relationships outside the institution's scope and does not serve it under conditions that reveal a quid pro quo motive. Although under institutional corruption, the institution and its officials receive a benefit that is useful to performing the institution's purpose, this is nonetheless under conditions that tend to undermine the institution's procedures.¹⁶⁵

Lessig defines the institutional corruption as any form of influence (even the legal or ethical kind) that leads to weakening an institution's effectiveness or performance, undermining its purposes, and weakening either the public's trust in the institution or its inherent trustworthiness.¹⁶⁶

Thompson uses some examples to distinguish between both theories. For instance, when a public official requests or receives a bribe in exchange for political favour, the exchange here does not serve a valid institution. Therefore, this is considered direct individual corruption.¹⁶⁷ In contrast, accepting a campaign contribution by a legislator, even while providing a favour for the contributor, cannot be considered a corrupt political benefit whenever this practice aims to enhance political competition, citizen representation or any other essential institutional processes. However, it is considered institutional corruption if this practice undermines the institution's process by violating its legitimate procedures and hindering its purposes.¹⁶⁸

Thompson highlights the fact that institutional corruption charges do not mean agents (individuals) are innocent of such charges and that

¹⁶⁵ Dennis F Thompson, 'Two Concepts of Corruption' (2013) 16 ,p.3, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2304419>.

¹⁶⁶ Lawrence Lessig, " Institutional Corruption " Defined' (2013) 41 Journal of Law, Medicine & Ethics 553 <<https://journals.sagepub.com/doi/abs/10.1111/jlme.12063?journalCode=lmec>>.

¹⁶⁷ Thompson (n 165) ,pp.6-7.

¹⁶⁸ *ibid.*

only the institution is at fault. In this case, individuals are the agents of institutional corruption and, therefore, must be held accountable.¹⁶⁹

It is clear from the above that institutional theory widens the concept of corruption, whereas individual theory narrows it. First, the traditional theory confines corruption to the personal level (individual) and ignores it at the institutional level. Second, individual theory links corruption to the public sector and excludes the private sector, in contrast to institutional theory which can be applied to both sectors. Third, unlike institutional theory, individual theory requires the existence of a quid pro quo exchange. Fourth, individual theory links corruption with a violation of laws and rules. In contrast, under institutional theory, corruption can occur even if a process or act is legal but it is exploited to undermine the institution's purpose and performance.

Preventive measures to combat corruption provided by the UNCAC

States Parties are required to adopt effective policies and strategies that aim to prevent corruption, based on the promotion of the principles of the rule of law, proper management of public affairs and public property, integrity, transparency, and accountability.¹⁷⁰

Chapter II of the UNCAC covers a wide range of anti-corruption measures in the public and private sectors. Such measures include:

- (i) The establishment of preventive anti-corruption body or bodies.¹⁷¹
- (ii) The establishment of effective systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials.¹⁷²

¹⁶⁹ *ibid*, p.8.

¹⁷⁰ United Nations Office on Drugs and Crime, 'Technical Guide to the United Nations Convention Against Corruption' (2009), p.3 <<https://www.unodc.org/unodc/en/treaties/CAC/technical-guide.html>> accessed 25 April 2018.

¹⁷¹ The United Nations Convention Against Corruption (2003), art 6.

¹⁷² *ibid*, art 7.

- (iii) The establishment of effective systems that promote transparency and prevent conflicts of interest.¹⁷³
- (iv) The establishment of measures and systems to facilitate the reporting by public officials of acts of corruption to the appropriate authorities.¹⁷⁴
- (v) Measures related to strengthening the procedures of public procurement and management of public finances, which should be established based on transparency, competition and objective criteria in decision-making.¹⁷⁵
- (vi) Measures relating to the enhancement of the judiciary and prosecution services.¹⁷⁶
- (vii) The establishment of measures to prevent corruption in the private sector and enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failing to comply with such measures.¹⁷⁷
- (viii) The establishment of appropriate measures that enable individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations, to participate in efforts to prevent and combat corruption.¹⁷⁸

The Convention does not just require state parties to ensure the existence of such measures but also expects them to evaluate anti-corruption measures periodically to ensure their effectiveness and adequacy to prevent and fight corruption.

¹⁷³ *ibid.*

¹⁷⁴ *ibid.*, art 8.

¹⁷⁵ *ibid.*, art 9.

¹⁷⁶ *ibid.*, art 11.

¹⁷⁷ *ibid.*, art 12.

¹⁷⁸ *ibid.*, art 13.

FD systems are one of the anti-corruption measures provided by the UNCAC to combat corruption. Article 8 (5) requires State Parties to endeavour to establish systems under which public officials are required to submit declarations to competent body/bodies including, for example, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

The following sections provide an overall view of FD systems regarding their definition, historical background, legal basis and purposes as a precursor to a broader analysis and examination of the elements of FD systems in forthcoming chapters.

3.3 DEFINITION OF THE FINANCIAL DECLARATION SYSTEM

There is no uniformly used (or accepted) definition for FDs. Rossi and others define an FD system as ‘a mechanism by which a public official must periodically submit information about his or her income, assets, liabilities, and/or interests’.¹⁷⁹ Article 8 (5) of the UNCAC deals with the requirements of an FD system. It is understood from this Article that an FD is a statement submitted by public officials to appropriate regulatory authorities containing information about their private activities and financial details such as their outside activities, employment, investments and assets. It also includes substantial gifts or benefits from which a conflict of interest may result concerning their functions as public officials.

Some jurisdictions have focused on definitions of an FD within their FD law. For instance, Kuwaiti Law No.2/2016 defines the subject-matter of an FD as

the cash money, real estate or movables owned by the person subject to the provisions of this law and his minor children and those under his guardianship, custodianship or curatorship inside and outside Kuwait, including their rights and their

¹⁷⁹ Rossi, Pop and Berger (n 31) p.xix.

indebtedness to third party, as well as the agencies or authorizations, which have financial effect, issued by him to third party or issued to him by third party, in addition to the usufruct¹⁸⁰

The Bahrain FD Law No.32/2010 defines an FD as a statement including real estate owned by public officials and their minor children inside and outside Bahrain as well as balances in banks, shares in companies and their rights and debts.¹⁸¹

Despite the absence of a common definition of a financial declaration (FD), it is obvious that definitions generally focus on two key elements: (i) the contents of FDs, and (ii) the persons subject to FD systems. In terms of the contents of an FD, Rossi and others conclude that the FD often focuses on assets owned by public officials including real estate, vehicles, jewellery and financial investments beside their liabilities and their amount of incomes.¹⁸² However, it is vital that FD regimes identify explicitly the details of private activities and financial information that public officials are required to declare. The issues relating to the content of FDs and other relevant issues are examined in more depth in Chapter Five.

In terms of persons obliged to submit FDs,¹⁸³ this obligation often applies to public officials and their family members. However, the scope of the family members differs from one jurisdiction to another. For instance, some systems limit family members to minor children; the FD systems in Kuwait and Bahrain are an example.¹⁸⁴ Others restrict family members to only spouses and minor children; the FD system in Oman is an instance of this.¹⁸⁵ Some systems require that the interests of an of an

¹⁸⁰ Establishment of the Kuwait Anticorruption Authority Law, No. 2/2016, art 1.

¹⁸¹ Bahrain Financial Disclosure Law, No.32/2010, art 1.

¹⁸² Rossi Ivana and others, *Using Asset Disclosure for Identifying Politically Exposed Persons* (World Bank 2012) <<https://openknowledge.worldbank.org/handle/10986/26790>>.

¹⁸³ The categories of public officials who FD regimes apply to and legal matters on obligating their family members to declare their financial information are examined in Chapter Five.

¹⁸⁴ Establishment of the Kuwait Anti-corruption Authority Law No. 2/2016, art 1.

¹⁸⁵ Protection of Public Funds and Avoidance of Conflict-of-Interest Law No.112/2011, art 12.

official's spouse or partner and close family are declared; the UK Ministerial Code is a case in point.¹⁸⁶ So, too, do systems requiring disclosure of information in registers of interests, and in notices to monitoring officers of a 'direct or indirect pecuniary interest' and 'advantage', in the case of UK local government members.¹⁸⁷

Based on the foregoing, an FD can be defined as a statement which includes the movable and immovable possessions, obligations and rights of a public official and their family members as well as public appointments and positions held by a public official outside the office, all within the scope determined by law. It is noteworthy that an FD can be described in a variety of ways: a financial disclosure, asset disclosure, income and asset declaration, wealth reporting and interest declaration.¹⁸⁸

3.4 HISTORICAL BACKGROUND OF THE FINANCIAL DECLARATION SYSTEM

Although FDs have been used as a tool to combat corruption since the 1970s, they have gained global momentum since the adoption of the UNCAC in 2003.¹⁸⁹ In the United States, the message of President Truman to the United States Congress in 1951 included a political statement on the need to require certain federal officials to publicly disclose their personal finances because of the corruption scandals that had occurred in that period.¹⁹⁰ Nonetheless, great attention was given to FDs in the late 1970s in the aftermath of the Watergate Scandal, through the enactment of the 1976 Government Sunshine Act and the 1978 Ethics in Government Act.¹⁹¹ The implementation of the FDs led to a number of cases before the courts claiming illegality on the basis of a

¹⁸⁶ The Ministerial Code, August 2019, Section 7(3).

¹⁸⁷ Local Government Act 2000, c.22, s 81.

¹⁸⁸ Rossi, Pop and Berger (n 31) p.xix.

¹⁸⁹ Transparency International, 'Asset Declarations in MENA Countries: Illicit Enrichment and Conflicts of Interest of Public Officials' (2016) p.2 <https://www.transparency.org/whatwedo/publication/asset_declarations_in_mena_countries_2015>.

¹⁹⁰ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) p.22.

¹⁹¹ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) p.28.

breach of the right to privacy. Nevertheless, it was recognised that at the State is entitled to require such declarations.¹⁹²

In the 1980s, FD systems were adopted in most of Western Europe Countries except the UK, which adopted such a system in 1974.¹⁹³ Although the Prevention of Corruption Act was adopted in the UK in 1889, there was reluctance in Parliament to make strict provisions requiring disclosure: 'A select committee established in 1969 concluded that there was no need for a register of interests because of trust in the honour and self-restraint of individual MPs'.¹⁹⁴ Nonetheless, the House of Commons established the MPs' register of interests in 1974.¹⁹⁵ The UK now has disclosure requirements at different levels of government, including ministers, MPs, civil servants and local government officials.

In the 1990s, FD regimes have seen a substantial increase in several countries, including African countries.¹⁹⁶ In the Arab States, Egypt was the first Arab country to adopt the FD system (1975).¹⁹⁷ FD systems began to appear in their modern concept in the GCC States after the adoption of the UNCAC. Three GCC States have adopted such a system – Kuwait, Bahrain, and Oman.

Kuwait's FD regime

In Kuwait, the FD system was introduced under Decree No.24/2012. However, this Decree was challenged before the Constitutional Court on the grounds of unconstitutionality. In December 2015, the Constitutional Court ruled in Appeal No.24/2015 that the Decree was unconstitutional, as it was issued without reference to the Kuwaiti Parliament as an

¹⁹² OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) p.22.

¹⁹³ *ibid.*

¹⁹⁴ *ibid.*, p.22.

¹⁹⁵ *ibid.* p.22.

¹⁹⁶ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) p.28.

¹⁹⁷ Noura Alshehri, 'The Role of Applying Financial Disclosure in Combating Corruption and Integrity Protection in Saudi Arabia' (Naif Arab University for Security Sciences 2014) p.81.

'exigency decree'. It explained that the decree was not among the urgent issues which necessitated expediting the legislative procedures.¹⁹⁸

The Constitutional Court's judgment has resulted in all the criminal charges related to illegal enrichment cases being dropped. These charges included reports referred by the National Assembly to the Anti-Corruption Authority for its investigation.¹⁹⁹ Moreover, all other criminal charges related to non-submission of the FDs on time, including those announced by the President of the Anti-Corruption Authority regarding a referral of forty-three officials to the Public Investigation Department to take legal actions against them, were dropped.²⁰⁰ The judgement led to the enactment of a new law No.2/2016 issued in January 2016. Part IV (Chapter 1) of this law now deals with the provisions of the FD system.

Bahrain's FD regime

The FD regime was adopted in Bahrain under Law No.32/2010, the Bahrain Financial Disclosure Law (BFD Law). It was issued in June 2010. Prior to this, there were strongly held views opposed to the enactment of a dedicated FD regime. It was argued that there was no need for an FD law as the provisions of criminal law and other national laws were sufficient to protect the public funds. It was further contended that the draft law violated the constitutional principle that a person is innocent until proven guilty as, in the case of detecting an increase in wealth, the burden of proof is shifted to the public official to prove the legality of this increase.²⁰¹

¹⁹⁸ Al-Hamoud Jaber, 'PACA Law Unconstitutional: Court - LAW NOT QUALIFIED UNDER DECREE OF NE' *Arab Times* (Kuwait, 21 December 2015) <<http://www.arabtimesonline.com/news/paca-law-unconstitutional-court-law-not-qualified-under-decree-of-ne/>> accessed 25 October 2017.

¹⁹⁹ Abulhalim Adam, 'Constitutional Court Judgement Regarding the Repeal of Anti Corruption Authority' *Al Taleea* (23 December 2015) <<http://altaleea.com/?p=15567>> accessed 26 October 2017.

²⁰⁰ *ibid.*

²⁰¹ 'The Twelfth Report of the Legislative and Legal Affairs Committee of the Council of Representative on the Draft Law of the Financial Disclosure' (2006) p.3. In fact, presumptions of this kind are not uncommon in both new and more developed anti-corruption systems. In the UK, for example, there is an evidential burden on owners of newly acquired wealth to demonstrate that their holdings are lawful and not, for example, the result of 'money laundering'. Powers are extensive in this regard, for example in the use of 'Unexplained Wealth Orders' (under the Criminal Finances Act 2017 ss.1-9) The UK's National Crime Agency also has the ability to make Account Freezing Orders while holdings are investigated.

It is also noteworthy that the implementation of the FD law was delayed for more than two years.²⁰² The Executive Regulation of this law was issued in December 2012 under Decree No.82/2012. There were no clear explanations given for this delay.

Oman's FD regime

In Oman, successive civil service laws, the latest being the law issued in 2004, have included a legal text requiring public civil servants to submit FDs to the competent body.²⁰³ However, the competent body responsible for managing the FD system was not identified under these laws. Owing to a lack of clarity in the scheme – particularly regarding the precise status of the FD system in these laws and the absence of an organisation with responsibility for enforcing the system – the FD system was inactive.

In October 2011, a new law, the PPFACI Law, was issued under Royal Decree No.112/2011. Since then, and under this law, the requirements of the FD system have been reorganised, and the SAI has now become the competent body responsible for managing the FD system.

3.5 THE LEGAL BASIS OF FINANCIAL DECLARATION SYSTEMS

Article 8 (5) of the UNCAC states:

Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials

Article 52 (5) of the UNCAC stipulates:

²⁰² Ali Al Mosawi, 'The Financial Declaration Law Is Still Sitting on the Shelf for Two Years' (*Alwasat news*, 2012) <<http://www.alwasatnews.com/news/660716.html>> accessed 23 October 2019.

²⁰³ For instance, Article 163 of the Civil Service Law issued under Royal Decree 47/74, Article 105 of the Civil Service Law issued under Royal Decree 120/2004.

Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance

Article 8 (6) provides that:

Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article

It is clear from these Articles that the UNCAC encourages State Parties to establish appropriate FD systems for public officials. However, these provisions are not mandatory. This is clear from the phrases in these Articles: 'shall endeavour where appropriate. . .' and 'shall consider establishing . . .'. This interpretation is affirmed by the legislative guide for the implementation of the UNCAC, which states that the provisions of the Convention do not all have the same level of obligation, for instance, the language 'shall endeavour to' or 'shall consider adopting' means that States are urged to consider adopting a certain measure that is compatible with their legal system.²⁰⁴ However, at the international level, the UNCAC created an international legal basis for the FD systems of State Parties.²⁰⁵ It is worth noting that the number of State Parties of the UNCAC has reached a membership of 187 as of February 2020,²⁰⁶ and FD systems have been adopted in some 160 countries as of April 2018.²⁰⁷ In addition, the UNCAC requires State Parties, under Article 8 (6), to consider taking appropriate procedures to sanction public officials who breach the codes or standards established in accordance with Article 8. The technical guide of the UNCAC indicates that State Parties should identify who or which agency is responsible for the receipt,

²⁰⁴ 'Legislative Guide for the Implementation of the United Nations Convention against Corruption' (*United Nations Office on Drugs and Crime*, 2012) p.4 <<https://www.unodc.org/unodc/en/treaties/CAC/legislative-guide.html>> accessed 22 October 2019.

²⁰⁵ Transparency International, 'Asset Declarations in MENA Countries: Illicit Enrichment and Conflicts of Interest of Public Officials' (n 189) p.2.

²⁰⁶ 'Ratification Status' (n 152).

²⁰⁷ Majdhassan, 'Asset Disclosure' (*Global Investigative Journalism Network*, 2018) <<https://gijn.org/2018/04/16/اقرارات-الذمة-المالية/>> accessed 27 October 2019.

verification and investigation of allegations concerning assets, gifts or hospitality, as well as adjudicate the violation of the codes and standards mentioned above.²⁰⁸

In addition to the UNCAC, there are other international conventions that require their parties to create such systems, including the Inter-American Convention Against Corruption,²⁰⁹ the African Union Convention on Preventing and Combating Corruption²¹⁰ and the Arab Anti- Corruption Convention.²¹¹

At the level of national laws, FDs should be regulated under a set of legal norms to ensure their success and effectiveness, regardless of the form of their legal framework.²¹² The UNCAC gives each State Party the liberty to choose an appropriate legal mechanism to regulate the provisions of the FD system consistent with the fundamental principles of its domestic law, as evidenced by Article 8 (5).

States' experiences show that the legal regulation of FD systems varies from one jurisdiction to another. The legal frameworks of FD systems can be divided into two categories: (i) the FD systems regulated under dedicated and special laws: FD Law in Bahrain is an example; and (ii) FD systems regulated under other laws, for instance the Illegal Enrichment Law in Egypt, the PPFACI Law in Oman and the Anti-Corruption Law in Kuwait.

²⁰⁸ United Nations Office on Drugs and Crime, 'Technical Guide to the United Nations Convention Against Corruption' (n 170) ,p.27.

²⁰⁹ Article 3 (4) of the Inter-American Convention Against Corruption provides that: 'For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen: 4. Systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public'.

²¹⁰ Article 7 (1) of the African Union Convention on Preventing and Combating Corruption states that: 'In order to combat corruption and related offences in the public service, State Parties commit themselves to: 1.Require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service'.

²¹¹ Article 28 (5) of the Arab Convention Against Corruption stipulates that: 'Each State Party may consider drawing-up effective methods for financial statement declaration, in accordance with its domestic legislation, in respect of public employees and set proper penalties for non-compliance. Each State Party may consider adopting measures allowing its competent authorities to share information with the competent authorities of other State Parties when necessary to investigate illicit revenues, according to the present Convention, and recover such revenues'.

²¹² World Bank and United Nations Office on Drugs and Crime (n 2) p.23.

It should be noted that, unlike Oman, the FD systems in Bahrain and Kuwait are regulated under a comprehensive law that includes the general rules of the FD system and an executive regulation of the law issued to address the detailed provisions. In Oman, the requirements of the FD system are regulated under a single Article (Article 12 of the PPFACI Law). In the context of discussing the legal framework of the FD system, all the interviewees affirmed that Article 12 is extremely limited and does not sufficiently cover the FD system's requirements.²¹³ This is one of the fundamental weakness of the current FD system which shows the need for comprehensive legal provisions for it.

Some countries regulate the requirements of FD systems for particular branches of sectors and agencies within specific laws, regulations or codes. Such requirements apply to a single category of a public official or public officials working in a particular sector or body.²¹⁴ In the UK, for instance, the requirements of the FD system are found in a variety of measures. For example, requirements operate in different forms under the Civil Service Management Code and apply to all civil servants;²¹⁵ the FD system's requirements requiring disclosure in a register of interests are contained in the House of Commons Code, which applies to MPs;²¹⁶ and ministers are subject to a form of disclosure and reporting system under the Ministerial Code.²¹⁷ At a local government level, members and local government officials, as employees of local authorities, must not have pecuniary and non-pecuniary interests that conflict with their responsibilities (and these are subject to regulation by designated 'monitoring officers').²¹⁸

²¹³ Interviewee (2), Interviewee (6), Interviewee (8), Interviewee (11), Interviewee (12), Interviewee (13), Interviewee (14), Interviewee (15), Interviewee (16), Interviewee (17), Interviewee (18), Interviewee (19).

²¹⁴ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) p.35.

²¹⁵ The Civil Service Management Code, November 2016, s 4.3.9.

²¹⁶ The Code of Conduct for Members of the House of Commons, January 2019, s 14

²¹⁷ Ministerial Code, August 2019, s 7.

²¹⁸ The Localism Act 2011, s28(2), s29(1).

In some countries, the requirements of FD systems are regulated by constitutions; Afghanistan is an example.²¹⁹ Although it is unusual to include the provisions of FD systems within constitutions,²²⁰ the World Bank and the United Nations Office for Drugs and Crime study (WB&UNODC) indicates that the inclusion of FD systems' requirements within constitutional provisions contributes to providing a powerful legal framework and can be considered a firm legal basis for effective FD laws.²²¹ However, it adds that regulating the FD systems' provisions under constitutional law requirements is more common for heads of state, MPs, and ministers, and less common for civil servants.

The WB&UNODC study states that FD systems, especially new and emerging ones, may face various types of challenges, including legal ones, and for that reason they require an on-going review of their legal frameworks.²²² Consequently, this thesis argues that regulating the provisions of FD systems which are dealt with in constitutions, especially rigid constitutions, could make it harder to ensure a responsive process of review and change, and inhibit the necessary amendments required to strengthen and improve systems. For example, in the United States, an amendment to the Constitution requires stricter procedures than those required to amend ordinary legislation. According to Article 5 of the Constitution, the United States Congress can propose amendments to it if two-thirds of both the House of Representatives and the Senate deem it necessary or by request of two-thirds of the States legislature to call for a convention to propose amendments. The amendment must then be ratified by the legislatures of three-quarters of the States.²²³

²¹⁹ Article 154 of the Constitution of Afghanistan stipulates : 'The wealth of the President, Vice-Presidents, Ministers, members of the Supreme Court as well as the Attorney General, shall be registered, reviewed and published prior to and after their term of office by an organ established by law', see: 'Constitution | Chapter 11 - Miscellaneous Provisions | Ministry of Foreign Affairs - Islamic Republic of Afghanistan' <<https://www.mfa.gov.af/constitution/chapter-eleven-miscellaneous-provisions.html>> accessed 24 October 2019.

²²⁰ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) p.34.

²²¹ World Bank and United Nations Office on Drugs and Crime (n 2) p.26.

²²² *ibid.*

²²³ The mechanism of the enactment and amendment of laws in the United States is easier than the amendment of the constitution. Article 1 (7) of the Constitution explains how the law is made. It states that: 'All Bills for raising Revenue shall originate in the House of

Likewise, in Oman, a change of the Basic Statute of the State requires different procedures than those required to amend ordinary laws. Article 98 of the Statute stipulates that 'This Statute shall not be amended except in the manner in which it was promulgated'. This Basic Statute is promulgated by His Majesty the Sultan by a Royal Decree.

However, it can be argued that regulating the provisions of the FD systems as part of constitutional arrangements makes them stronger in legal terms.²²⁴ Therefore, the legal frameworks of FD systems based on constitutions could, in both theory and principle, make such systems more potent in combating corruption. However, the findings of a study conducted in 2006 on 16 FD laws found no relationship between the inclusion of FD requirements in constitutions and the reduction of corruption. It concluded that the level of corruption in six of the examined countries whose FD systems' provisions were derived from constitutions was actually higher compared with other countries who do not have a constitutionally-based FD systems.²²⁵

Most of the interviewees in this project agreed that it is appropriate for the Omani FD system to set out the general legal provisions of the system within a legal framework.²²⁶ At the same time, the law should

Representatives; but the Senate may propose or concur with Amendments as on other Bills. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively, If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law. Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill'.

²²⁴ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) p.34.

²²⁵ Omer Gokcekus and Mukherjee Ranjana, *Official Asset Declaration Laws - Do They Prevent Corruption, Global Corruption Report 2006* (Pluto Press/Transparency International 2006) p.326 <http://works.bepress.com/omer_gokcekus/36/>.

²²⁶ Interviewee (2), Interviewee (6), Interviewee (11), Interviewee (13), Interviewee (14), Interviewee (15), Interviewee (16), Interviewee (17), Interviewee (18), Interviewee (19).

consider the status of the body which is responsible for anti-corruption measures such as FD schemes. Such a body should be able to make the necessary legal provision to implement the law,²²⁷ for example in the form of regulations or orders. In other words, the law should entrust the FD body (SAI) with powers to issue an executive regulation which includes the detailed and implementation provisions of the FD system.²²⁸ This procedure is attractive as it grants the FD body great flexibility to keep the system under review and then respond with necessary measures: in effect, an on-going review and assessment of the FD system's performance. This approach enables it to conduct legal reforms on the basis of executive regulation and facilitates easier and faster procedures than would be necessary in order to amend laws embedded in constitutions. However, the laws and executive regulations approach necessitates – as in some systems – judicial oversight to ensure the conformity of laws and regulations with the constitution as well as the judicial control of the functions of the management. The aim is to ensure the legality of the applicable laws and regulations and that judicial protection is provided to individuals against administrative actions that are contrary to the provisions of the constitution and laws.²²⁹ This approach is similar to that followed in Bahrain and Kuwait in terms of regulating the general provisions of the FD systems in law and regulating the detailed provisions under an executive regulation of this law. However, unlike this approach, the executive regulation in these jurisdictions is issued by an ordinance.

3.6 THE PURPOSES OF FINANCIAL DECLARATION SYSTEMS

The existence of an effective FD system can serve multiple purposes, contributing to reducing corruption and meeting the objectives identified

²²⁷ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11), p.62.

²²⁸ Interviewee (2), Interviewee (6), Interviewee (11), Interviewee (13), Interviewee (14), Interviewee (15), Interviewee (16), Interviewee (17), Interviewee (18), Interviewee (19)

²²⁹ See, for example, the earlier discussion of the Constitutional Courts' intervention in Kuwait. In the UK, decisions and actions by FD bodies are subject to judicial review to test their legality, rationality and procedural propriety, as well as compatibility with human rights: this is catered for in the Senior Courts Act 1981 s.31 and Civil Procedure Rules 1998, Part 54

as necessary in international and national laws. It plays a vital role in preventing, detecting, investigating and prosecuting corruption. Requiring public officials to submit periodic FDs aims to ensure that the public office is not abused for private gain.²³⁰ FDs remind public officials that their wealth and interests (and possible misuse of power) are monitored, and that abuse of their public function for private gain can be detected through examining their FDs.²³¹ Thus, FDs perform a preventive function as they could lead to deterring corrupt acts, such as conflict of interest cases, before they occur.²³² They could, at least, deter officials from committing corrupt acts, especially those who think about or attempt to commit corruption offences but fear the detection of their crimes.²³³

In addition, FDs have the potential to perform the function of detecting corrupt acts as they are used mainly as a tool to detect illicit enrichment and conflict of interest among public officials.²³⁴ In Vietnam, in 2014, the FDs of the former government chief inspector Tran Van Truyen revealed that he abused his public position to seize real estate worth \$10 million. Consequently, he was prosecuted for abusing his office to gain personal enrichment for himself and his family.²³⁵ Moreover, the examination of FDs can lead to the detection and investigation of irregularities. In some cases, FDs can provide supplementary evidence in criminal investigations related to criminal offences. For instance, several cases of unpaid taxes were detected in Latvia by screening FDs.²³⁶

FD systems cannot detect and prevent all cases of corruption as directly and comprehensively as might be hoped, especially when it is difficult to prove corrupt acts. However, even in such cases, they have the potential

²³⁰ World Bank and United Nations Office on Drugs and Crime (n 2) p.7.

²³¹ *ibid* p.5.

²³² *ibid* p.1.

²³³ Richard Messick, 'Income and Assets Declarations: Issues to Consider in Developing a Disclosure Regime' (U4 Anti-Corruption Resource Centre 2009) p.7 <<https://www.u4.no/publications/income-and-assets-declarations-issues-to-consider-in-developing-a-disclosure-regime/pdf>>.

²³⁴ Rossi, Pop and Berger (n 31) p.10.

²³⁵ Vargas and Schlutz (n 159) p.439.

²³⁶ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) p.96.

to prosecute officials merely by their violation of the FDs' provisions and requirements.²³⁷

Although the primary purpose of an effective FD system is to prevent and detect conflict of interest and illegal enrichment, as stated above, it also contributes to achieving other wider-ranging purposes and objectives including: (i) Enhancing public confidence in government²³⁸ as the operationalisation of the FD system in practice reassures the public that the government is serious about combating corruption and wants to prevent and detect conflict of interest and illegal enrichment among public officials; (ii) Building a climate of integrity and enhancing public accountability principles,²³⁹ particularly when the application of FD law applies to all officials, especially senior ones, without exception, and bringing them to justice when this is necessary; (iii) Protecting public officials' reputation.²⁴⁰ The purpose of FD systems should not just be punitive: they also protect public officials' reputation from undue suspicion and allegations of malfeasance. Thus, for instance, scrutinising public officials' FDs does not mean they are an offender: but the completion of such a 'check' will help to protect them by helping to remove suspicions about their actions.

3.6.1 The main purpose of FD systems

The main purpose of FD systems differs between countries. Some countries aim, through their FD systems, either to prevent and detect conflicts of interests or illicit enrichment. Other countries aim to achieve both purposes. The findings of this thesis suggest that the latter is certainly the case and, indeed, there may be wider-ranging aims as part of improving public sector governance standards (as considered at later points in the thesis).

²³⁷ World Bank and United Nations Office on Drugs and Crime (n 2) p.7.

²³⁸ Chene, 'African Experience of Asset Declarations' (n 9) p.1,2,6; World Bank and United Nations Office on Drugs and Crime (n 2) p.8; Messick (n 233) p.7.

²³⁹ Chene, 'African Experience of Asset Declarations' (n 9) p.1,2,6; OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) p.29; World Bank and United Nations Office on Drugs and Crime (n 2) p.ix,1,7; Messick (n 233) p.7.

²⁴⁰ Chene, 'African Experience of Asset Declarations' (n 9) p.2,6.

Illicit enrichment is defined under Article 20 of the UNCAC as ‘a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income’.²⁴¹ As illicit enrichment is addressed later in Chapter Six, this section focuses on conflicts of interest.

1. Definition of conflict of interest

The UNCAC encourages State Parties under Article 7 (4) to adopt, maintain and strengthen systems that aim to enhance transparency and prevent conflict of interest. The Convention itself does not specifically define conflict of interest. However, certain legislation and organisations have defined the concept. For example, the Code of Conduct for Public Officials adopted by the Council of Europe on 11 May 2000 states in Article 13(1) that

Conflict of interest arises from a situation in which the public officials have a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.

Article 13(2) of the same Code interprets private interest as an advantage that public officials seek to gain to themselves, their family, close relatives, friends and persons or organisations with whom they have or have had a business or political relation. It also states that any related financial or civil liability is also considered as a part of private interest.²⁴²

According to the OECD, a conflict of interest occurs when the private interests of officials contradict their public duty; therefore, the official duties and responsibilities can be influenced by this interest.²⁴³ The UK's National Audit Office defines a conflict of interest as a risk that arises

²⁴¹ Messick (n 233) p.13.

²⁴² The Committee of Ministers, ‘Council of Europe Committee of Ministers Recommendation No. R(2000) 10 to Member States on Codes of Conducts for Public Officials | OSCE POLIS’ (2000) <<https://polis.osce.org/council-europe-committee-ministers-recommendation-no-r2000-10-member-states-codes-conducts-public>> accessed 6 November 2019.

²⁴³ OECD, *Managing Conflict of Interest in the Public Sector* (2005) p.13 <<https://www.oecd.org/publications/managing-conflict-of-interest-in-the-public-sector-9789264018242-en.htm>>.

from a certain situation whereby the ability of an individual to apply judgement or act is, or could be, influenced by a secondary interest.²⁴⁴ It adds that such a situation can occur when an individual or organisation (private or government) takes advantage of their professional or official duty to gain personal or another benefit.

It is clear from the above that the concept of conflict of interest is associated with officials' unlawful conduct which could lead to gaining a benefit or interest for them or others as a result of abusing their official position. Obviously, the promotion of the principle of integrity and honesty among public officials in the performance of their official duties plays a significant role in avoiding conflict of interest cases.

2. Legal framework governing conflicts of interest

Many countries have established a set of written standards and rules to address potential conflicts of interest, whether in their criminal, civil and administrative legislation or in the form of codes of conduct.²⁴⁵ Some countries have enacted dedicated laws on conflicts of interest, and countries examined in this study follow different approaches to addressing the issue. For example, Oman has adopted a specific and dedicated law to regulate the provisions of conflicts of interest (the PPFACI Law 112/2011). It applies to all government officials at the USAA including ministers and MPs, and includes a set of restrictions and prohibitions on government officials that aim to avoid conflicts of interest. The law imposes criminal sanctions on the violation of these prohibitions, ranging from fines to imprisonment. In addition to this law, some provisions are embedded within other national legislation dealing with conflicts of interest such as the Basic Statute of State 6/2020, the

²⁴⁴ The Comptroller and Auditor General, 'Conflicts of Interest - National Audit Office (NAO) Report' (2015) ,p.6 <<https://www.nao.org.uk/report/conflicts-interest-2/>> accessed 27 March 2020.

²⁴⁵ United Nations, 'Conflicts of Interest, Reporting Acts of Corruption and Asset Declarations, Particularly in the Context of Articles 7-9 of the Convention (Chapter II)', vols 12-54431 (2012) p.5 <<https://www.unodc.org/unodc/en/corruption/WG-Prevention/conflict-of-interest.html>>.

Judicial Authority Law 90/1999, the Civil Service Law 120/2004, the Tender Law 36/2008, and the Penal Law No.7/2018.

In 2019, the Code of Conduct for Civil Servants at the USAA was issued under Resolution No. 7/2019 of the Civil Service Council. This includes a set of principles of moral and values as well as personal attributes and behaviours that civil servants should display when performing their duties, aiming to enhance integrity and combat corruption. It should be noted that governmental entities which are not subject to the Civil Service Law apply their own regulations and standards to its staff.

In Kuwait, there is no separate law dealing with conflicts of interest. However, the Kuwaiti legislator incorporates the provisions of conflicts of interest within various national legislation such as the Constitution of Kuwait 1962, the Election Law 35/1962, the Internal Regulation of the National Assembly Law 12/1963, the Civil Service Law 15/1979, Judicial Organization Law 23/1990 and the Public Tender Law 49/2016.

Similar to the situation in Kuwait, there is no dedicated law regulating conflicts of interest in Bahrain. Although a proposed special law on conflicts of interest was prepared, it failed at the end of the parliamentary session in 2012.²⁴⁶ At present, some rules concerning the avoidance of conflicts of interest are regulated under various pieces of national legislation including the Constitution 2002, Civil Service Law 48/2010 and its Executive Regulation issued by resolution 51/2012, the Judicial Authority Law 42/2002, and the Regulation of the Government Tenders and Purchase Law 36/2002. In addition to such legislation, a Code of Conduct and Public Service Ethics was issued by the Civil Service Bureau in 2016. A number of entities, which are not subject to the Civil Service Bureau authority, have issued codes of conduct for their staff.

The legal approach of the UK in dealing with conflicts of interest differs from those adopted in Oman, Kuwait and Bahrain. It is essentially based on ethical standards in the public sector. A set of codes of conducts

²⁴⁶ 'The Executive Summary of the Review of Bahrain Implementation of the United Nations Convention against Corruption', vols 10–10900 (2019) p.4.

have been adopted, for example, for ministers, special advisers, MPs and civil servants. Such codes include legislative provisions that regulate the mechanism of dealing with potential conflicts of interests and their avoidance.

The Nolan principles are considered the basis of the ethical standards expected of public office-holders.²⁴⁷ They include seven principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. They apply to anyone who works as a public office-holder. The seven principles of public life were adopted in 1995 by the Committee on Standards in Public Life. This Committee advises the Prime Minister on ethical standards in the whole of public life in England, and monitors and reports any issues concerning the standards of conduct of all public officeholders.²⁴⁸

It should be noted that some countries establish separate or 'special' rules that only apply to the most senior officials such as ministers because of the particular sensitivity involved at that level and the specific nature of their position (the aim being to ensure there is no conflict of interest between their public functions and private interest). For instance, in the UK, ministers are subject to a special Code called 'the Ministerial Code' which includes a set of legal rules that aim to avoid conflict of interest between ministers' duties and their private interest. Such special treatment does not appear to be in conflict with international standards, for example those in the International Standards of Supreme Audit Institutions as long as the provision is sufficiently clear, robust, and transparent, and is consistent with the general requirements on transparency and accountability. A further essential expectation is that arrangements, overall, must have effective monitoring mechanisms.

Given that senior officials and ministers are more likely to be in the public eye, it is important to be mindful of one of the primary reasons for

²⁴⁷ 'The 7 Principles of Public Life - GOV.UK' (*Committee on Standards in Public Life*, 1995) <<https://www.gov.uk/government/publications/the-7-principles-of-public-life>> accessed 9 April 2020.

²⁴⁸ 'Committee on Standards in Public Life' <<https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life/about>> accessed 9 April 2020.

effective 'disclosure' and other anti-corruption systems at that senior level, which is that one of the most harmful effects of corruption and misconduct is public mistrust. This point was stressed, for example, in the opening address of the President of the Organisation of Latin American and Caribbean Supreme Audit Organisations, Nelson Shack Yalta, at the 2019 Annual International Conference for Integrity in Lima, Peru, in which he stressed the harmful effects of corruption and misconduct among officials, and the potentially negative impact this can have on countries' national stability and economic growth.²⁴⁹

The UK system for countering public perceptions of ministerial conflicts of interest and financial misconduct is a case in point. The UK has mainstream auditing procedures in the National Audit Act 1983 and other legislation, as well departmental measures (and sanctions) directed at requiring officials at national and local level to disclose conflicts of interest. Nevertheless, procedures operate at a political level, rather than a legal one, to combat ministerial level 'conflicts'. Specifically, on their appointment, UK ministers must submit to their permanent secretary a full list of their interests that could raise any conflicts of interest.²⁵⁰ The list should also include interests of their spouse or partner and close family that could give rise to a conflict. Subsequent interests must be notified, and potential conflicts disclosed. Any issue related to conflict of interest is then reviewed by the permanent secretary (the most senior civil servant who reports to the prime minister) and by an independent adviser on ministers' interests.²⁵¹ The requirement is that ministers themselves must self-regulate, i.e. ensure their conduct is not affected by any conflicts. The code states that:

Ministers must scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests. They should be guided by the general principle that they should either dispose of the interest giving rise to the conflict or take alternative steps to

²⁴⁹ 'Fighting Corruption: OLACEFS Launches Regional Forum and Participates in 2019 CAII' (2020) 47(1) International Journal of Government Auditing.

²⁵⁰ Ministerial Code, Cabinet Office, August 2019, s 7/3, <<https://www.gov.uk/government/publications/ministerial-code>> accessed 14 February 2020.

²⁵¹ *ibid*, s 7/4.

prevent it. In reaching their decision they should be guided by the advice given to them by their Permanent Secretary and the independent adviser on Ministers' interests. Ministers' decisions should not be influenced by the hope or expectation of future employment with a particular firm or organisation.²⁵²

In appropriate cases, the prime minister must be consulted and sanctions imposed. It could be necessary for the minister to cease to hold office.²⁵³ It is noteworthy that statements covering the relevant ministers' interests are published twice yearly.²⁵⁴

3. The common restrictions and prohibitions imposed on public officials

This section examines the legal provisions and rules regulating certain restrictions that aim to void conflicts of interest in the countries examined in this study.

A. Restrictions on assuming public functions

The jurisdictions examined in this study impose various restrictions on assuming public functions to ensure that conflicts of interest are avoided. Such restrictions often apply, in varying degrees, for example, to ministers, civil servants and MPs.

The constitutions of Kuwait and Bahrain place an absolute prohibition on ministers from assuming another public function in addition to their ministerial posts.²⁵⁵ In the UK, the Ministerial Code requires ministers to give up any other public appointment during the period of their ministry.²⁵⁶ However, if it is proposed that the minister should retain such appointment as an exception, he/she should seek the advice of his/her permanent secretary and the independent adviser on ministers' interests. Unlike Kuwait, Bahrain and the UK, there is no legislation

²⁵² *ibid*, s 7/7.

²⁵³ *ibid*, s 7/9.

²⁵⁴ *ibid*, s 7/5.

²⁵⁵ The Kuwait Constitution, Art 131, The Bahrain Constitution, art 48.

²⁵⁶ The Ministerial Code, August 2019, s 7.11.

which bans ministers combining their post as minister with another public function in Oman. This could be attributed to the fact that ministers are appointed by His Majesty the Sultan; therefore, they cannot assume other public offices outside the scope of this appointment without his approval.

With regards to civil servants, the Bahrain Civil Service Law does not allow civil servants to hold two permanent governmental functions.²⁵⁷ Likewise, in Oman, the Civil Service Law does not allow civil servants to combine their posts and any other public function at the State Administrative Apparatus unless the public interest requires it via specific legal requirements and conditions and on a temporary basis only.²⁵⁸ In contrast, there are no explicit legal provisions or rules allowing or prohibiting civil servants from combine their posts with other public functions under the Kuwait Civil Service Law and the UK Civil Service Management Code.

It appears that the prohibition of combining public functions aims to achieve the following: (i) reducing the waste of public funds as such combination results in more paid functions for a single public official, (ii) enabling public officials to perform their duties efficiently and effectively, as combining roles may influence to perform the duties of both simultaneously, (iii) avoiding conflicts of interest, as the combination of functions could grant public officials wide powers, which opens the door to abuse of their duties for their personal benefit.

In relation to MPs, the countries examined in this study follow different approaches with regards to the combination of parliamentary membership and holding public office. Bahrain and Oman prohibit MPs in an absolute term from assuming any public office during their time in parliament.²⁵⁹ It appears that this prohibition aims to maintain the

²⁵⁷ The Civil Service Law 48/2010, art 10(4).

²⁵⁸ The Civil Service Law 120/2004, art 104 (A).

²⁵⁹ The Bahrain Constitution 2002, art 97, Majlis Oman Law 7/2021, art 22. It should be noted that according to Article 12 of Majlis Oman Law.7/2021, the following categories of the members of Majlis Al Dawla are exempted from this prohibition: (i) those who are known for their competence and experience in the fields of science, arts, and culture, (ii) dignitaries and businessmen, and (iii) those who are selected by His Majesty.

principle of separation of powers and ensure that no conflict arises between parliamentary and executive work.

In Kuwait, Members of the National Assembly are prohibited from combining between their membership and holding public offices except for Ministers,²⁶⁰ as Ministers are appointed from amongst the Members of the National Assembly and from others. The number of Ministers in all shall not exceed one-third of the number of the Members of the National Assembly.²⁶¹ Ministers who are not elected in the National Assembly are considered as a Member of the Assembly by virtue of their posts.²⁶²

In the UK, there is no a legal rule in the Code of Conduct for both members of the House of Lords and the House of Commons that prohibit members from assuming any public functions during their membership. Indeed, UK ministers are members of the House of Commons or the House of Lords yet in the government.²⁶³ However, Section 15 of the Code of Conduct for the House of Commons states that

. . . the members shall always be open and frank in drawing attention to any relevant interest in any proceeding of the House or its Committees, and in any communications with Ministers, Members, public officials or public office holders.

It is clear that this requirement aims to ensure that members do not abuse their membership for private interests.

B. Restrictions on an outside appointment or employment after leaving public office

The UK Civil Service Management Code of Conducts regulates the Business Appointment Rules for Civil Servants. They apply to all civil servants who intend to assume an outside appointment or employment after leaving the Civil Service.²⁶⁴ They should not accept or announce

²⁶⁰ The Internal Regulation of the National Assembly Law No.12/1963, art 12,13.

²⁶¹ The Constitution 1962, art 56.

²⁶² *ibid*, art 80.

²⁶³ 'Ministers' (*UK Parliament*) <<https://www.parliament.uk/site-information/glossary/minister/>> accessed 21 April 2020.

²⁶⁴ The Civil Service Management Code, November 2016, s 4.3.7.

any new appointment or offer of employment before receiving the required approval. Such rules apply to members of the senior civil service and equivalent, including special advisers of equivalent standing, for two years after the last day of paid civil service employment and one year for those below the senior civil services and equivalent, including special advisers of equivalent standing, unless, exceptionally, the role has been designated as one where a longer period of up to two years will apply.²⁶⁵

These rules aim to counter concerns that could arise by allowing civil servants to take up an outside appointment after leaving the civil service without getting the required permission.²⁶⁶ Some of these concerns are as follows: (i) civil servants seeking to secure future employment in a particular firm or organisation while in their posts could influence the performance of their official duties, (ii) a former civil servant might improperly exploit privileged access to contacts in government or sensitive information after leaving office, (iii) civil servants, in virtue of their official posts, could abuse their duties to provide information in favour of a particular firm or organisation which intends to employ them or provide commercially valuable or sensitive information about any of the firm's competitors.

With regards to ministers, according to Section 7 (25) of the Ministerial Code, they shall seek advice from the independent Advisory Committee on Business Appointments concerning any appointments or employment they intend to assume within two years of leaving office. However, such rules are procedural in nature and lack a statutory basis, and there are no sanctions for non-compliance.²⁶⁷

²⁶⁵ *ibid*, s 4.3.7.

²⁶⁶ The Civil Service Management Code, November 2016, s 4.3 annex A.

²⁶⁷ House of Commons, 'Managing Ministers' and Officials' Conflicts of Interest: Time for Clearer Values, Principles and Action - Public Administration and Constitutional Affairs Committee' (2017) p.4
<<https://publications.parliament.uk/pa/cm201617/cmselect/cmpubadm/252/25207.htm>>.

In Kuwait, Bahrain and Oman, there are no restrictions imposed on outside appointments or employment after leaving public office, whether for ministers or civil servants.

C. The prohibition of combining a public function and private business

Some countries place restrictions for public officials on exercising private businesses in addition to their official positions, particularly when such business is relevant to the public function. However, the legal regulation of such restrictions differs from country to another.

As illustrated earlier in Section 3.5.1(2), Oman has enacted a special law on conflicts of interest. This law applies to all government officials at the USAA, including ministers. Article 10 of the PPFACI Law prohibits government officials from combining their official post and any work in the private sector unless they receive permission from the competent authority. It is clear that this Article aims to prevent government officials from abusing their positions for their personal benefit. However, there is an exception provided under this Article which allows public officials to get permission from the Ministers Council or chairmen of governmental units to combine their official position and any private work related to their official duties. As previously explained in Chapter Two, this exception is extremely problematic.

The law imposes certain restrictions not only on government officials but also on their minor children to ensure that such officials do not exercise private business relevant to their official posts under the name of their minors. According to Article 11 of the law, government officials or their minors are prohibited from owning a share in any company or institution, or any work aimed at making a profit if this work is directly associated with the entities to which they belong. In addition, they are prohibited from undertaking the role of a broker, agent or sponsor to any company

or establishment whose activities are related to the governmental entity where they work.²⁶⁸

It should be noted that the Basic Statute of State 6/2021 provides some restrictions on ministers under Article 60. It prohibits them from combining ministerial duties with the chairmanship or membership of a board of directors of any public shareholding company. Furthermore, under this Article, the government units which are under the responsibility or supervision of ministers shall not deal with any company or establishment in which ministers have a direct or indirect interest.

In Kuwait and Bahrain, it is evident that the legal provisions on the prohibition of combining public functions with private business are broadly similar. Both countries' constitutions prohibit ministers from practising any free profession or industrial, commercial or financial work. In addition, they shall not participate in contracts concluded by the government or by public establishments, and they shall not combine their position as ministers and their membership on the board of directors of any company.²⁶⁹ In addition, under both countries' constitutions, MPs shall not be appointed, during their membership period, to the board of directors of any company nor are they allowed to contribute to commitments concluded by the government or public institutions.²⁷⁰

The analysis of the provisions of the above Articles shows that the legislators in both countries differentiate between the restrictions imposed on ministers and that on MPs. Whereas the prohibition placed on ministers is the impermissibility of combining their ministerial duties and membership of the board of directors of any company, the prohibition imposed on MPs is the impermissibility of appointing them to the board of directors of any company during the period of their membership. This means MPs can retain their appointment on the board

²⁶⁸ The Protection of Public Funds and Avoidance of Conflict-of-Interest Law 112/2011, art 8.

²⁶⁹ The Kuwait Constitution 1962, art 131, The Bahrain Constitution 2002, art 48 (B).

²⁷⁰ The Kuwait Constitution 1962, art 1, The Bahrain Constitution 2002, art 48 (B).

of directors of any company if such appointment is prior to their membership of parliament.

With respect to restrictions on civil servants, in Kuwait, they cannot practise commercial, industrial and professional activities unless they obtain permission from the Civil Servant Council.²⁷¹ Likewise, in Bahrain, civil servants are prohibited from practising commercial business. However, they may have a stake in a commercial company provided that they do not practise any work there.²⁷² In both countries, civil servants shall not be a member of the board of any commercial shareholding company except if they represent the government in Kuwait or after getting permission from the competent authority in Bahrain.²⁷³ Such restrictions aim to prevent public officials from abusing their public posts for their personal interests.

In the UK, there are no explicit provisions similar to those in Kuwait, Bahrain and Oman prohibiting ministers and civil servants from combining a public position with private business. However, ministers are required to provide a full list of all interests that might constitute a conflict of interest to their permanent secretary,²⁷⁴ and civil servants must declare their interests to senior management whenever conflict arises.²⁷⁵

In addition, there are no rules preventing MPs from undertaking any outside employment during their membership. However, for example, new members of the House of Commons are required to register all financial interests within one month of their election, and any registrable benefits (other than earnings) received in the 12 months before their election. Subsequently, they are responsible for updating any change in their interests within 28 days of any change occurring. The mechanism of the registration is explained in detail in the guide to the rules relating to members' conduct.

²⁷¹ The Civil Service Law 15/1979, art 26.

²⁷² The Executive Regulation of the Civil Service Law, Resolution No.51/2012, art 34 (5/B).

²⁷³ The Kuwait Civil Service Law 15/1979, Art 26, the Bahrain Executive Regulation of the Civil Service Law, Resolution No.51/2012, art 34 (5/C).

²⁷⁴ The Ministerial Code, August 2019, s 7.3.

²⁷⁵ The Civil Service Management Code, November 2016, s 4.1.3 (C).

In the UK, the contract for the provision of face masks to the NHS during the coronavirus pandemic that was awarded to Ayanda Capital Company was one of the cases that raised questions regarding whether there was a potential conflict of interest involved in the contract's awarding. In 2020, the UK government spent £156m on a single contract for approximately fifty million face masks for the NHS. These masks later turned out to be invalid and could not be used because they did not meet basic safety requirements. It had been revealed that the deal was formulated by a government trade adviser who also advised the board of Ayanda. In addition, the company had no track record of producing personal protective equipment as well as little or no link to the healthcare sector.²⁷⁶

Consequently, the consideration of the need for more effective rules is required to ensure that conflicts of interest between public officials' private business and their official position is avoided.

D. Exclusion of public officials themselves in participating in any administrative act whenever they have a private interest

All countries covered in this study have established provisions and rules that prevent public officials from participating in any procedure or decision whenever they have a private interest in it. Such provisions are often associated with procedures of contracts and procurements.

In Oman, according to Article 14 of the Tender Law, members of the Tender Board or the Internal Tender Commissions at the entities subjected to the Tender Law shall notify the Chairman of the Board or the Commission on any interests they have in the launched tender and exclude themselves from participating in all procedures relating to the tender. Furthermore, they shall refrain from reviewing the tender if their

²⁷⁶ Alex Nelson, 'Ayanda Capital: Everything about the Company That Supplied 50 Million Faulty Face Masks to the UK - and Who Is Advisor Andrew Mills?' (*The Scotsman*, 2020) <<https://www.scotsman.com/health/ayanda-capital-everything-about-company-supplied-50-million-faulty-face-masks-uk-and-who-advisor-andrew-mills-2935155>> accessed 2 October 2020; 'UK Government Spent £156m on Single Contract for Ineffective PPE' (*MetaNews*, 2020) <<https://metanews.archahosting.com/uk-government-spent-156m-on-single-contract-for-ineffective-ppe/>> accessed 2 October 2020.

spouse or one of their relatives to the second degree is the bidder, owns a share therein, is a director at the bidding's company, an employee therein, an agent or a sponsor thereof. Kuwait and Bahrain have embedded analogous provisions to those in Oman in their tender laws.²⁷⁷

In the UK, as noted earlier, public officials are required to declare their interests. This enables them to avoid participation in any procedure or decision that they have an interest in.

E. The prohibition imposed on public officials from conducting financial transactions or concluding contracts relevant to their official post

Conflicts of interest are more likely to occur in any situation that allows public officials to enter into contracts or financial actions relevant to their official posts or the entity where they work. For this reason, some countries are interested in including in their legislation provisions banning this form of conflict of interest situation.

The Constitutions of Kuwait and Bahrain include legal texts requiring a minister to ‘ . . . refrain from purchasing or hiring any Government property even though public auction, and he may not lease or sell to the Government any of his property or part thereof, or conclude with it barter thereon’.²⁷⁸ In addition, both countries’ constitutions prohibit MPs from purchasing or renting a State asset or leasing or selling or bartering any of their assets to the State, unless by way of public auction or public tender or under the expropriation system for the public interest.²⁷⁹

Civil servants in Kuwait must not purchase or lease real or movable property from the government entities where they belong.²⁸⁰ In Bahrain, civil servants are prohibited from purchasing a movable or immovable property that is put for sale by the judicial or administrative authority if this process is relevant to their function.²⁸¹ In addition, public officials of

²⁷⁷ The Kuwait Public Tender Law 49/2016, art 82, the Bahrain Regulation of the Government Tenders and Purchase Law 36/2002, art 15.

²⁷⁸ The Kuwait Constitution 1962, art 131, the Bahrain Constitution 2002, art 48 (B).

²⁷⁹ The Kuwait Constitution 1962, art 121, the Bahrain Constitution 2002, art 98.

²⁸⁰ The Civil Service Law No.15/1979, art 25 (1).

²⁸¹ The Executive Regulation of the Civil Service Law, Resolution No.51/2012, art 34 (5/A).

the entities to whom the provisions of the Tender Law apply shall not submit bids or offers to the government or such entities personally or through third parties.²⁸²

In Oman, Article 6 of the Tenders Law prohibits public officials of the entities subjected to this law from submitting bids or offers to such entities, directly or indirectly. Contracts may not be made with them for the purchase of items nor may they be charged with the execution of works or provision of services. This prohibition also extends to their spouses and relatives to the second-degree. The Ministry of Justice and Legal Affairs²⁸³ concluded in its legal opinion No. 5 / 1/ 902 / 2013 that the concerned governmental entity shall not contract with companies owned by relatives of public officials even if they submit the best bids in terms of price and quality.²⁸⁴ In another legal opinion, it ruled invalid contracts concluded by the Administrative Unit with a company for which the chairman of the management board was a government official at the Unit, given that such cases raise suspicion of influence-peddling and conflict of interest.²⁸⁵

F. The prohibition of accepting gifts, hospitality or any other benefits

The abuse of an official position by accepting gifts, benefits and hospitality, aiming to provide a service or interest for others, is one of the common forms of conflicts of interest. The UK National Audit Office noted that receiving gifts is among the conflicts of interest cases more likely to arise in a situation where individuals or organisations are dealing with a third party.²⁸⁶ It added that it is crucial to manage this risk by

²⁸² The Regulation of the Government Tenders and Purchase Law 36/2002, art 7.

²⁸³ In accordance with Royal Decree No. 14/94, the competences of the Ministry of Justice Affairs include the issuance of the legal opinions and official interpretations of royal decrees, laws, regulations, and ministerial decisions, aiming to unify their understanding, and facilitate implementing their provisions.

²⁸⁴ The legal opinion No. 5 / 1/ 902 / 2013 issued by the Ministry of Legal Affairs on 30 April 2013, pp.239 – 245.

²⁸⁵ The legal opinion No. 7 / 1/ 705 / 2014 issued by the Ministry of Legal Affairs on 10 April 2014, p.220.

²⁸⁶ The Comptroller and Auditor General (n 244).

establishing appropriate safeguards around such an operation.²⁸⁷ The OECD argues that the acceptance of gifts by public officials should be completely banned as they can represent the first step to a bribe.²⁸⁸ Given the gravity of this type of conflict of interest, many countries prohibit the acceptance of gifts and other benefits, not only under administrative rules but also in their criminal laws.

A set of rules that govern the mechanism of dealing with gifts and hospitality and other benefits offered to public officials have been placed within civil service laws and codes of conduct for civil servants in the countries featured in this study. Both Oman and Bahrain prohibit civil servants under their civil service laws from accepting any gift, reward or commission that influences the performance of their duties or is in return for performing their official duties.²⁸⁹ A violation of this Article may bring forth administrative sanctions up to dismissal, considering the procedures of criminal accountability in the case of suspicion of a criminal offence.

In Kuwait, there are no rules that govern the acceptance of gifts in the Civil Service Law. However, Circular No.11/2012 on the Directions and Guidance of Conduct for staff at the government entities includes some rules dealing with gifts. Public officials shall not ask for or accept gifts or service or hospitality for themselves or their relatives, close friends or any other individual or institution whenever such gifts or hospitality influence the performance of their official duties.²⁹⁰ In the event that there is a suspicion of illegality for accepting a gift or hospitality or if the acceptance could raise a conflict of interest, they shall consult their

²⁸⁷ *ibid.*

²⁸⁸ OECD, 'Conflict of Interest Policies and Practices in Nine EU Member: A Comparative Review' (2005) 36 p.30 <<http://www.oecd-ilibrary.org/docserver/download/5kml60r7g5zq-en.pdf?expires=1521561479&id=id&accname=guest&checksum=EB7AE9226A451C71ADA A71A6D52F2BAE>>.

²⁸⁹ The Oman Civil Service Law 120/2004, art 11, the Bahrain Executive Regulation of the Civil Service Law, Resolution No. 51/2012, art 34 (3).

²⁹⁰ The Circular No.11/2012 on the Directions and Guidance of Conduct for staff at the Government entities

highest-ranking official. In the case where it is impossible to reject the gift, they shall deliver it to the entity where they work.²⁹¹

Unlike Kuwait, Bahrain and Oman, the UK has more detailed rules concerning the deal with gifts including those offered to ministers. According to the Ministerial Code, ministers should not accept gifts, hospitality or services from others whenever this appears to influence their judgment or place them under an improper obligation. This rule also applies if gifts are offered to a member of their family.²⁹²

As a general principle, gifts given to ministers in their ministerial capacity should be delivered to the government, and they become its property. They do not need to be declared in the Register of Members' or Peers' Interests. However, the recipient may retain gifts that have a small value (£140 or less). Gifts of higher value should be delivered to the department for disposal unless the recipient wishes to purchase the gift abated by £140. Departments publish details of gifts received and given by ministers, which are valued at more than £140, on a quarterly basis²⁹³.

In respect of civil servants, the Civil Service Management Code prohibits civil servants from receiving gifts, hospitality or any type of benefit from a third party whenever this could influence their judgment or integrity.²⁹⁴ Before accepting them, civil servants should be notified by their departments and agencies about the situations that require them to report offers of gifts, hospitality, awards, decorations and other benefits, and the circumstances that require permission is sought.²⁹⁵

In addition to the above administrative rules, all countries examined in this study criminalise the bribery of public officials in their penal laws. However, the UK is distinguished from other countries as it has a special law for fighting bribery. Unlike other comparator countries, the UK Bribery Act 2010 criminalises the bribery of foreign public officials.

²⁹¹ *ibid.*

²⁹² The Ministerial Code, August 2019, s 1.3(G), s 7.20.

²⁹³ *ibid.*, s 7.22.

²⁹⁴ The Civil Service Management Code, November 2016, s 4.1.3 (D).

²⁹⁵ *ibid.*, s 4.3.5.

It is evident from the above comparison aspects that Oman has established strict provisions on conflicts of interest under the PPFACI Law in addition to other provisions and rules embedded under other national legislation. However, there are certain situations not addressed in the Omani legislation that could raise potential conflicts of interest but are regulated under the UK codes of conduct. Hence, there is a scope to take advantage of the UK experience in this regard.

3.6.2 The primary purpose of the FD systems in Kuwait, Bahrain, the UK and Oman

The purpose of FD systems, whether to prevent conflicts of interest or detect illicit enrichment or both, can be inferred from the specific requirements of each FD regime. For instance, asset values are not required to be revealed when the purpose of the FD system is to prevent and detect conflicts of interest. In contrast, the actual values of assets and the amount of any income earned from outside activities must be declared if the FD system aims to monitor officials' wealth.²⁹⁶ Contents of FD forms are examined in depth in Chapter Five.

In Kuwait, the provisions of the FD regime are mostly associated with illicit enrichment. For instance, Article 35 of Law No.2/2016 on the Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities (the EKACA Law) state that the FDs' inspection committees shall prepare reports for those officials likely to have increased their wealth as a result of illegal gain after hearing their statements. However, the FD form requires some details that can facilitate detecting a conflict of interest such as securities and shares in firms as well as received gifts.

In Bahrain, it is inferred from the provisions of Law No.32/2010 that the primary aim of the FD system is to detect illicit enrichment. For instance, Article 3 of the law states that financial disclosure forms following the first declaration should include any increases in declaration elements. In

²⁹⁶ *ibid*,p.12,13.

addition, Article 6 requires the FD body to prepare reports for persons who cannot prove the legality of the increase of their wealth or the wealth of their minor children. Moreover, sanctions provided under the law are primarily directed to illegal enrichment cases.

In Oman, the PPFACI Law is the legal framework of the FD system. This law emphasises the inviolability of public funds and the impermissibility of misusing or disposing of them in violation of the legal provisions. It includes several provisions that prohibit government officials from conducting any acts leading to a conflict of interests and the abuse of public funds.²⁹⁷ It is clear that Omani law generally aims to provide greater protection for public funds and to prevent public officials using their official function to gain personal benefit. In this regard, the main purpose of the FD system is to prevent and detect a conflict of interest. However, the FD form requires details of the values of assets to be provided as well as the amount of cash balance saved at banks or anywhere else. In addition, the FD form requires public officials to provide information on their memberships of any company management board, institution, commission and civil society association, or others. Therefore, the FD system combines two main purposes, the prevention and detection of conflict of interests, and the monitoring and detection of illicit enrichment.²⁹⁸

²⁹⁷ It is noteworthy that the Omani Penal Law no.7/2018 criminalises a range of acts committed by public official and form cases of a conflict of interest and abuse of the official function. These acts include, for example, the following:

1. Carrying out or breaching his/her official duties to harm individuals or to obtain benefit for himself/herself or other.
2. The abuse of public function to block the implementation of laws, royal decrees, royal orders, and judgments or orders issued by body of judicial nature.
3. Disclosing secrets of which a public official is aware, or obtains, by virtue of his/her function.
4. Requesting or accepting any remuneration or compensation, or getting a promise to obtain it, for himself/herself or other, in order to do any duty which are within his/her official function or to refrain to do it.
5. Appropriation of public funds by a public official or helping or facilitating others to do such act.

²⁹⁸ Interviewee (11), Interviewee (13), Interviewee (18), Interviewee (19).

Unlike Kuwait, Bahrain and Oman, the primary purpose of FD systems in the UK is to prevent and detect conflicts of interest. For instance, paragraph 4.3.9 of the Civil Service Management Code requires civil servants to declare any business interests or holding of shares or other securities owned by them or immediate family members. Under Section 7 of the Ministerial Code, ministers must ensure that no conflict arises between their ministerial position and their private and financial interests. Ministers are obliged to disclose in writing their relevant private interests and those of their close family members, and specifically those that are directly relevant to the minister's public duties.²⁹⁹ The list of interests' disclosure includes, for example, financial interest, directorships and shareholdings, investment property and public appointments.³⁰⁰ Notably, the FD provisions in the UK require public officials to only declare financial and non-financial interests that could influence their official duties without declaring income and assets. This justification aims to avoid actions by regulators that could amount to an invasion of privacy.³⁰¹

3.7 CONCLUSION

This chapter addressed the definition of FD systems and highlighted the historical background of the emergence of FD systems, particularly in the comparator countries. It also discussed the legal basis of the FD systems, concluding that the UNCAC can be considered as an international legal basis for them. At the national level, States's legislation governing the FD requirements is the legal basis of their own FD systems.

The legal framework regulating Oman's FD system and other countries examined in this study was explained. As illustrated, the current legal

²⁹⁹List of Ministers' Interests' (Cabinet Office, 2019) p.2
<<https://www.gov.uk/government/publications/list-of-ministers-interests>> accessed 6 November 2019.

³⁰⁰ ibid p.3.

³⁰¹ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) p.29. There is scope, in particular, for an infringement of rights under key ECHR provisions such as art 8 and the right to privacy and family life.

regulation of the FD system in Oman is very limited. It is vital that its requirements be regulated under comprehensive legal provisions, particularly given that the FD regime in Oman is considered an emerging system. Consequently, it is crucial to subject it to review, improvement and development periodically. This is consistent with the WB&UN study that indicates that new and emerging FD systems require ongoing review as such systems may face challenges that limit their effectiveness, especially at the beginning of their implementation. It is appropriate to set out the general legal provisions of the FD system within the law, and the detailed and implementation provisions of the FD system should be regulated within an executive regulation issued by the FD body (SAI). This approach is broadly similar to that followed in Bahrain and Kuwait.

This chapter also clarified the purposes of FD systems with a focus on the detection and avoidance of 'conflicts of interest' as one of the main objectives. A comparative study of the legal frameworks regulating conflicts of interest in Oman, Bahrain, Kuwait and the UK was conducted. Although, in general, the comparison showed that these countries take procedures to prevent conflicts of interests that are broadly similar, there is nonetheless a scope to take advantage of the UK experience in other aspects to ensure that conflicts of interest are avoided. The most important are (i) the establishment of rules of conduct to govern the mechanism which allows public officials to take up an outside appointment after leaving public office, (ii) the establishment of more structured rules to deal with gifts, hospitality or any type of benefits, and (iii) the establishment of a special code of conduct for senior officials such as ministers and deputy ministers because of the nature of their position which is more prone to conflicts of interests, (iv) criminalising the bribery of foreign public officials.

The first element of the requirements of FD systems is discussed in the next chapter. This element is related to the regulatory frameworks and institutional arrangements of a body/unit responsible for managing declarations.

4 CHAPTER FOUR: THE REGULATORY FRAMEWORKS AND INSTITUTIONAL ARRANGEMENTS OF BODIES RESPONSIBLE FOR MANAGING FINANCIAL DECLARATION SYSTEMS

4.1 INTRODUCTION

The establishment of units or bodies for managing FD systems (FD bodies) is one of the major ingredients for the success and effectiveness of such systems. However, the mere existence of FD bodies is not sufficient, as there are certain institutional arrangements that should be provided to such bodies to ensure that their tasks are conducted independently and without any external influence or interference. The regulatory frameworks and institutional arrangements of FD bodies vary between countries. Some countries have established independent and specialised bodies for this purpose, whereas others have entrusted the management of FDs to a civil service commission or other personnel agency, as clarified by a key source.³⁰² For instance, in the United States, under Section 111 of the Ethics in Government Act of 1978, the Office of Government Ethics is entrusted with the responsibility of regulating the FD system of the executive branch of the U.S. government, whereas ethics committees in the legislative and judicial branches are responsible for managing their own FD system. In Albania, under Article (3) of the law No. 9049 on the Declaration and Audit off Assets, Financial Obligations of Elected Persons and Certain Public Officials, a specialised body called the High Inspectorate of the Declaration and Audit of Assets is responsible for dealing with declarations submitted by public officials of all government branches.

Whatever the legal or structural form of the FD body, it should be granted the necessary autonomy to carry out its tasks.³⁰³ In addition, it should be given the appropriate powers, authorities and resources to enable it to perform its duties effectively. The absence of adequate powers of the FD bodies, the lack of external sources of data and the absence of sufficient

³⁰² Messick (n 233) ,p.14.

³⁰³ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.99.

resources including human, material, financial and technical resources are considered among the obstacles typically faced by those managing such FD systems.³⁰⁴

This chapter aims to examine the regulatory frameworks and the institutional arrangements required to establish effective FD bodies based on the requirements of the UNCAC. Section One (4.2) begins by analysing the legal provisions of the UNCAC that regulate the establishment of preventive anti-corruption bodies. This section is also informed by a literature review, which addresses the institutional arrangements of FD bodies.

Section Two (4.3) includes a comparison between the legislation of the GCC States examined in this study. This is provided in order to examine and analyse the regulatory frameworks and institutional arrangements of the FD bodies and identify similarities and differences between such bodies in these countries. This is followed by a consideration of the extent to which Oman could benefit from the experiences of such comparator countries in addressing the shortcomings in its FD regime. The comparative study focuses on the essential requirements that should be provided to preventive anti-corruption bodies under Article 6 (2) of the UNCAC: specifically independence, material resources, human resources and training. In addition, legal powers are one of the requirements that should be provided to FD bodies. However, this is discussed later in Chapter Six.

This section mainly draws upon primary sources such as laws, regulations and regulatory decisions related to FD systems, as well as data on such matters. As this study focuses on identifying and addressing the weaknesses of the FD system in Oman, this section also refers to the commentary of interviewees with experience of Oman's system gathered during semi-structured interviews in order to assist the

³⁰⁴ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.40; OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.99.

assessment of the regulatory framework and institutional arrangements of the current FD body.

As the regulatory framework of the FD bodies responsible for managing FDs in the UK varies from those adopted in the GCC States, Section Three (4.4) addresses the approach adopted in the UK. This section is based on a set of code of conducts.

4.2 THE ESSENTIAL REQUIREMENTS OF ESTABLISHING AN FD BODY/BODIES IN ACCORDANCE WITH THE UNCAC

Article 6 (1) of the UNCAC stipulates that ‘Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption. . .’. Article 6 (2) states that:

Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialised staff, as well as the training that such staff may require to carry out their functions, should be provided.

It is understood from the phrase ‘shall ensure’ that Article 6 (1) above places an obligation on State Parties to ensure the existence of preventive anti-corruption body or bodies. However, the Convention allows State Parties to opt to entrust the responsibility of preventing corruption to an existing body or bodies or to establish a new body or bodies to carry out this responsibility. The technical guide to the UNCAC supports this interpretation by indicating that the Convention does not dictate whether State Parties should entrust the responsibility of institutional focus to a single agency or multiple agencies.³⁰⁵

³⁰⁵ United Nations Office on Drugs and Crime, ‘Technical Guide to the United Nations Convention Against Corruption’ (n 170) ,p.8.

Article 6 (2) of the UNCAC identifies four essential requirements that should be provided to preventive anti-corruption bodies to ensure their effectiveness: independence, material resources, specialised staff and training; however, independence is the most significant of these. Therefore, the legal and institutional framework of the anti-corruption bodies should ensure that the necessary independence is provided to such bodies to enable them to perform their tasks efficiently and effectively.³⁰⁶ This independence should be granted to such bodies under an explicit legal text within the provisions of the law and not via by-laws or executive regulations, whenever possible, to ensure the stability and continuity of the bodies in performing their mandated tasks.³⁰⁷

Hussmann and others argue that the concept of independence included in Article 6 (2) is not qualified and thus left to interpretation.³⁰⁸ Therefore, they devised a conceptual framework to illustrate the types of independence based on the distinctions used by INTOSAI. Accordingly, independence can be divided into three types: (i) organisational independence, which aims to avoid the least possible intervention of government in the appointment of Supreme Audit Institution authorities, and the implementation of its functions and its decision-making, (ii) functional independence, which aims to enable the Supreme Audit Institutions to perform their functions without any undue interference by a third party or the executive, and (iii) financial independence, which aims to ensure that the government does not impede the Supreme Audit Institution's activities by reducing its budget and/or the budget of other associated agencies. The authors contend that these types of independence are applicable to preventive anti-corruption bodies in different political and legal contexts.³⁰⁹

³⁰⁶ OECD, *Specialised Anti-Corruption Institutions* (OECD 2013) ,p.27 <http://www.oecd-ilibrary.org/governance/specialised-anti-corruption-institutions_9789264187207-en>.

³⁰⁷ *ibid* ,p.28.

³⁰⁸ Karen Hussmann and Hannes Hechler, 'Institutional Arrangements for Corruption Prevention: Considerations for the Implementation of the United Nations Convention against Corruption Article 6' (2009) 4 U4ISSUE ,p.12 <<https://www.u4.no/publications/institutional-arrangements-for-corruption-prevention-considerations-for-the-implementation-of-the-united-nations-convention-against-corruption-article-6.pdf>>.

³⁰⁹ *ibid* ,p.21.

However, this thesis argues that although the UNCAC does not identify these types of independence explicitly, they can be deduced from analysing the legal text of Article 6 (2). The Convention requires State Parties to provide necessary independence for the anti-corruption body to enable it to carry out its functions effectively and free from any undue influence, which means they are required to grant such body the appropriate organisational and functional independence. Furthermore, the Convention requires State Parties to provide the necessary material resources and specialised staff for the anti-corruption body. This necessitates granting it the financial independence that ensures it receives the fiscal allocations required to provide the necessary human and material resources to carry out its functions.

Forms of independence

There are various procedures that enhance the independence of anti-corruption bodies, such as their funding mechanism, the procedure of appointing their head, and the provision of appropriate functional and legal immunity for staff. In terms of funding anti-corruption bodies, the technical guide to the UNCAC determines two methods.³¹⁰ The first is that an anti-corruption body submits its annual business plan with budgetary details to the budgetary committee of the legislature for approval. The second is that an anti-corruption body receives an overall budget amount without the need for a line-item review. The latter method ensures the absence of legislative influence on budgetary items. It appears that this method grants anti-corruption bodies greater financial autonomy compared with the first method. However, such bodies should submit an annual account to be subjected to the appropriate external audit instruments without compromising their autonomy.³¹¹

In terms of the appointment of the head of the anti-corruption body, the appointment and selection of the head should not be left to the executive

³¹⁰ United Nations Office on Drugs and Crime, 'Technical Guide to the United Nations Convention Against Corruption' (n 170) .p.12.

³¹¹ *ibid.*

branch individually. Countries' experiences show different methods for such an appointment.³¹² For instance, in some countries, the head is appointed by the president or the governor. Other countries' heads are appointed by the president or prime minister with the consent of, or upon the recommendation of, the Cabinet. In some countries, the parliament appoints the head upon the recommendation of the Cabinet. Furthermore, providing the appropriate professional immunity for staff, especially for senior officials against civil litigation, is among the essential procedures that promote the independence of the anti-corruption body.³¹³

4.2.1 Independence of FD bodies

As the prevention of corruption is one of the essential anti-corruption functions, the UNCAC requires State Parties to take appropriate procedures to adopt several preventive measures under Chapter II, for instance, an FD system, the reporting of corruption acts, the prevention of conflicts of interest and the prevention of money laundering. As one key source clarified, preventive anti-corruption functions are usually performed by various bodies or units as they cannot be carried out by a single institution.³¹⁴

Consequently, a body responsible for managing the FD system can be viewed as a preventive anti-corruption body. Therefore, such a body should enjoy adequate independence and not be subject to government in any form to protect it from any undue interference and avoid the violation of the principle of separation of powers.³¹⁵ According to the OECD, the establishment of a body or unit within the government to carry

³¹² United Nations Development Programme, *Institutional Arrangements to Combat Corruption - a Comparative Study* (UNDP Regional Centre 2005) ,p.5 <https://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/institutional-arrangements-to-combat-corruption.html>.

³¹³ *ibid* ,p.116; Hussmann and Hechler (n 308) ,p.5.

³¹⁴ OECD, *Specialised Anti-Corruption Institutions* (n 306) ,p.21-22.

³¹⁵ According to the Wex Legal Dictionary, the separation of powers is the "Political doctrine of constitutional law under which the three branches of government (executive, legislative, and judicial) are kept separate to prevent abuse of power", 'Separation of Powers | Wex Legal Dictionary / Encyclopedia | LII / Legal Information Institute' <https://www.law.cornell.edu/wex/separation_of_powers> accessed 16 September 2018.

out the responsibility of receiving and scrutinising FDs of all elected and high-level officials, such as members of the government, parliament and judges, could represent an infringement on the principle of separation of powers.³¹⁶

However, it is not a requirement to grant the FD body full independence that is equivalent to that granted, for instance, to the judiciary and public prosecution. It is sufficient that the level of independence should be within the scope or limit which enables the body to perform its functions effectively and free from any undue influence, as explained by Article 6(2) of the UNCAC. For example, anti-corruption bodies responsible for conducting investigation and prosecution tasks need to be granted a higher level of independence than those responsible for preventive functions.³¹⁷

The independence requirement should not be restricted to only the specialised and centralised FD institution (single agency). Decentralised institutions (multiple agencies), which are entrusted with the responsibility of managing FD systems, should also enjoy the necessary protection to perform their tasks without any political or other undue interference.³¹⁸ The WB&UNODC study indicates that it could be challenging to mandate a single agency with the oversight of declarations of all branches of government. Therefore, an alternative option is to mandate the tasks of managing the FD system to different bodies for each branch, provided that each body is relatively independent.³¹⁹

Notwithstanding the importance of granting FD bodies adequate independence to ensure their effectiveness, as explained earlier, the independence requirement is not by itself sufficient. Sufficient resources, specialised staff and training are considered other crucial elements that

³¹⁶ OECD, *Specialised Anti-Corruption Institutions* (n 306) ,p.25.

³¹⁷ *ibid* ,p.24.

³¹⁸ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.14.

³¹⁹ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.28.

should be provided to enhance FD bodies' independence and ensure their success.³²⁰

4.2.2 Financial resources of FD bodies

The lack of financial resources is one of the challenges that face certain FD bodies in the implementation of their tasks.³²¹ FD bodies should be granted a sufficiently independent budget to ensure the continuity of funding and guarantee there will be no interference that limits the necessary resources required to implement their mandated functions effectively.

The WB&UNODC study highlights that the gap between the estimated budget and the actual approved budget represents another challenge to the ability of the FD body to carry out its tasks and targets in conformity with its estimated budget.³²² It suggests that budgetary challenges are centred on two aspects: budget setting and budget implementation. On the one hand, the FD body must develop an accurate and precise annual business plan comprising the requirements of the actual human, material and technical resources that enable it to perform its mandated function. Furthermore, it should make its estimated budget reasonable and credible to ensure the competent authority is persuaded to approve it. On the other hand, it is necessary for the FD body to adopt performance measurements for its annual targeted tasks to provide a convincing justification to its needs to greater budgetary resources.³²³ For instance, a growing number of received FDs compared with the lack of qualified staff would support the need to request an increase in the budget allocated to human or technical resources.

³²⁰ United Nations Convention against Corruption, art 6(2).

³²¹ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.40; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.60.

³²² World Bank and United Nations Office on Drugs and Crime (n 2) ,p.41.

³²³ *ibid.*

4.2.3 Human resources of FD bodies

The experiences of some countries show that the lack of adequate human resources represents an obstacle that hinders the implementation of FD systems. Therefore, FD bodies should have adequate staff, perhaps commensurate with the number of declaration forms received from public officials, in order to carry out their tasks effectively.³²⁴

The OECD indicates that the instability of staff numbers or the insufficient strengthening of staff despite an increase in the number of FDs is a common obstacle faced by FD systems.³²⁵ For instance, the lack of staff is one of the challenges which have posed a threat to the effectiveness and success of the FD bodies in Tunisia and Zimbabwe.³²⁶ In Kenya, two years after the passing of the Public Officer Ethics Act of 2003, a report by the Efficiency Monitoring Unit indicated that the responsible commissions suffered from a lack of resources and capabilities to enable them to deal with declarations. Consequently, such commissions lacked the capacity to analyse and verify the FDs submitted by public officials. In addition, there were inadequate financial resources to cover the costs associated with FD system administration.³²⁷ Some FD systems that suffered from the absence of adequate staff have been compelled to focus on submission compliance rather than on verifying and analysing FD declarations data.³²⁸

Some countries have adopted mechanisms to overcome the above human resources issue, as Burdescu and others highlight.³²⁹ For example, Argentina has sought to institute an electronic system to

³²⁴ Ruxandra Burdescu and others, 'Income and Asset Disclosure Systems : Establishing Good Governance through Accountability' [2010] Economic Premise 1, ,p.3 <<http://hdl.handle.net/10986/10175>>.

³²⁵ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.99.

³²⁶ Jorum Duri, 'Assets Declarations by Public Officers in Zimbabwe as an Anti-Corruption Tool' (University of The Western Cape 2016) ,p.16 <<https://www.semanticscholar.org/paper/Assets-declarations-by-public-officers-in-Zimbabwe-Duri/8ee346c864c695f3fbc79e85d8c08bae6d78d011>>.

³²⁷ Chene, 'African Experience of Asset Declarations' (n 9) ,p.7.

³²⁸ Burdescu and others, 'Income and Asset Disclosure Systems : Establishing Good Governance through Accountability' (n 324) ,p.3.

³²⁹ *ibid.*

facilitate the verification process of the declarations in order to reduce the need for staff. In Mongolia, the resources of the Independent Agency Against Corruption centred on the declarations of the top 256 officials, whereas the responsibility for the declarations related to the other officials was moved to ethics officials within individual government agencies.

The OECD has illustrated that several anti-corruption institutions, in practice, face challenges in recruiting sufficient and/or specialised staff, not because of the lack of financial resources but because of the absence of a political commitment to tackle the corruption phenomenon, or because policymakers are unaware of the complexities of this phenomenon.³³⁰

Based on the above considerations, it is essential to provide an FD body with a sufficient group of staff with specialised skills proportionate to the functions entrusted to it, including skills relating the tasks of receiving, storing, verifying, analysing and inspecting FDs, as well as dealing with detected violations.³³¹

Given the significant role of the FD bodies as a preventive anti-corruption agency, their staff-hiring procedures should be based on the principle of competition to ensure that highly qualified individuals are recruited.³³² Here it should be noted that Article 6 (2) of the UNCAC does not merely require the provision of specialised staff but also their training, which emphasises the importance of associating the recruitment plan with training to improve the performance of FD bodies.

Anti-corruption training and programmes

Under Article 60 of the UNCAC, the Convention requires State Parties to develop or improve specific training programmes for staff in charge of preventing and combating corruption. The Convention emphasises the

³³⁰ OECD, *Specialised Anti-Corruption Institutions* (n 306) ,p.27.

³³¹ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.44.

³³² Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.57.

importance of enhancing international cooperation between State Parties by providing technical assistance, especially for the benefit of developing countries, with their respective plans and programmes to combat corruption, including those related to anti-corruption specialised training. Article 60 (2) of the UNCAC states that:

States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including material support and training in the areas referred to in paragraph 1 of this article . . .

As stated earlier in section 4.2.1, the bodies responsible for managing FD systems are considered preventive anti-corruption bodies. Therefore, FD bodies should be provided with specialised staff and the training that such staff require to carry out their functions. The OECD notes a convergence of view within the international community that the implementation of anti-corruption legislation and associated measures require monitoring by specialised bodies with adequate powers, resources and training.³³³

Transparency International's 2016 report highlights that a common challenge facing the FD systems covered by the report is the lack of sufficient resources for verifications, including staff trained on the specifics of the financial analysis of declarations and on conflicts of interest.³³⁴ This indicates the importance of providing specialised training and programmes that enable FD bodies' staff to carry out their tasks effectively. The implementation of FD systems' tasks requires well-trained professionals to address the various processes of such systems. For example, the process of receiving, documenting and archiving FD forms, the process of verifying the complementation of FD forms' data, the process of analysing financial data, and the process of investigating

³³³ OECD, *Specialised Anti-Corruption Institutions* (n 306) ,p.17.

³³⁴ International, 'Asset Declarations in MENA Countries: Illicit Enrichment and Conflicts of Interest of Public Officials' (n 189) ,p.7.

the violation of FD systems' requirements. Well-trained staff would help FD bodies deal with sophisticated electronic FD systems.³³⁵

Burdsecu and others refer to Hong Kong's Independent Commission Against Corruption (ICAC) as good practice in the development of human resources in the world of anti-corruption agencies.³³⁶ Although the ICAC has 1300 staff, extensive and ongoing training is provided to every one. In addition, the ICAC offers training programmes to overseas anti-corruption agencies. Training modules include investigation into corruption allegations, preventive corruption, and the engagement of the public in the fight against corruption.³³⁷

4.3 AN EXAMINATION AND COMPARATIVE ANALYSIS OF THE REGULATORY FRAMEWORK AND INSTITUTIONAL ARRANGEMENTS OF THE FD BODIES IN KUWAIT, BAHRAIN AND OMAN

The GCC States examined in this study have adopted various regulatory frameworks and institutional arrangements for anti-corruption bodies. For instance, in Oman, anti-corruption tasks are entrusted to an existing body, the SAI, which was established prior to joining the UNCAC. As earlier outlined, the SAI has also been entrusted with the responsibility of managing the FD system under the PPFACI Law. In Kuwait, a new body was established called the 'The Anti-Corruption Authority' (ACA) to carry out the functions of anti-corruption, including carrying out the FD system's tasks.³³⁸ In Bahrain, the Directorate for Combating Corruption Offences (DCCO) was established within the General Directorate for Combating Corruption and for Economic and Electronic Security at the

³³⁵ Burdsecu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11), p.58.

³³⁶ *ibid* p.58.

³³⁷ 'International Perspective - Training Modules' (ICAC) <<https://www.icac.org.hk/en/intl-persp/int-regional-capacity/training-modules/index.html>> accessed 31 January 2022.

³³⁸ The Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 3.

Ministry of the Interior.³³⁹ However, unlike the SAI and the ACA, the tasks of the FD system are not within the scope of the DCCO's functions. In 2010, a new body called 'The Inspection Body of Financial Declarations' (IBFD) was established under Royal Decree No.32/2010 to carry out the FD system's tasks.

4.3.1 Independence of Kuwait, Bahrain and Oman FD bodies

1. Independence of the ACA in Kuwait

Kuwait signed the UNCAC on 09 December 2003 and ratified the Convention on 16 February 2007.³⁴⁰ Kuwait has various bodies responsible for combating the corruption and misuse of public funds, including the ACA.³⁴¹

The ACA was first established in 2012 under Decree No.24/2012 in response to Article 6 (1) of the UNCAC.³⁴² However, this Decree was appealed before the Constitutional Court on the grounds of unconstitutionality. In December 2015, the Constitutional Court ruled that the Decree is unconstitutional, as it was issued as an "exigency decree" in the absence of the Kuwaiti Parliament and there were no circumstances or cases that required issuing it in urgency.³⁴³

On January 2016, a new law was issued under Decree No.2/2016. Article 3 of this law provided for the establishment of the ACA.³⁴⁴ By this law, this Authority has been entrusted with several anti-corruption

³³⁹ 'Conference of the States Parties to the United Nations Convention against Corruption, Review of Implementation of the United Nations Convention against Corruption (Executive Summary)' (2015) <<https://www.unodc.org/unodc/en/treaties/CAC/IRG-session6-resumed.html>>.

³⁴⁰ United Nations Office on Drugs and Crime, 'Implementation Review Group - Kuwait' (*United Nation Office Drugs and Crime*, 2013) <<https://www.unodc.org/unodc/en/treaties/CAC/IRG-session4.html>> accessed 23 October 2017.

³⁴¹ *ibid.*

³⁴² Kuwait Anti Corruption Authority, 'About Anti Corruption Authority (Nazaha)' (*Kuwait Anticorruption Authority*) <<http://www.nazaha.gov.kw/EN/pages/aboutus.aspx>> accessed 27 October 2017.

³⁴³ Jeber Al-Hamoud, 'PACA Law Unconstitutional: Court - LAW NOT QUALIFIED UNDER DECREE OF NE - ARAB TIMES - KUWAIT NEWS' (*Arab Times*, 2015) <<http://www.arabtimesonline.com/news/paca-law-unconstitutional-court-law-not-qualified-under-decree-of-ne/>> accessed 3 December 2019.

³⁴⁴ The Authority is managed by the Trustees Council composed of seven persons who possess experience, integrity and efficiency, among them the President and Vice president.

functions such as receiving reports and complaints relating to corruption offences, receiving FDs and forming committees to scrutinise them, and providing protection for whistle-blowers.

According to Article 3 of the law, the ACA is supervised by the Minister of Justice and performs its tasks independently with integrity in accordance with the legal provisions.³⁴⁵ Nonetheless, legal views have been raised on the legitimacy of subjecting the ACA to the supervision of the Minister of Justice; it is argued that it is not acceptable for the ACA to be subject to their supervision while it simultaneously receives and scrutinises the FDs of the Minister of Justice and other members of the government.³⁴⁶

Consequently, some legislative amendments to Article 3 of the law were proposed regarding the subordination of the ACA. Some have argued that the ACA should be subordinate to the Nation Council³⁴⁷ and that keeping the ACA subordinate to the Justice Minister risks violating the provisions of the constitution because of the oversight nature of the ACA, which is incompatible with the executive nature of the Justice Minister's tasks.

According to another view, the ACA should be subordinate to the Nation Council, and if this is not possible for constitutional reasons then it should be subordinate to the Ministers Council.³⁴⁸ However, subordinating the ACA as an oversight body to the Minister Council, which represents the supreme executive body, could influence the independence of the ACA, particularly given that the prime minister, deputies of prime minister, and

³⁴⁵ The Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 3.

³⁴⁶ 'The Independence of "Anti-Corruption Authority" Protects It from Government Domination' (Al Qabas, 2017) <<https://alqabas.com/article/345755-استقلالية-مكافحة-الفساد-تحميها-من-ب-ب>> accessed 3 December 2019.

³⁴⁷ Farhan Al Fahiman, 'Legislative Committee Resolves the Disagreement Regarding Subordination of Anti- Corruption Authority to the Minister of Justice and Reducing the Number of Trustees Council Members' (Al Rai, 2017) <<https://www.alraimedia.com/Home/Details?Id=b0fd7754-7706-4b31-99ba-09dfe6ca0856>> accessed 17 August 2020.

³⁴⁸ *ibid.*

ministers are all obliged to submit their FDs to the Anti-Corruption Authority.

Some consider that the ACA should be granted independence similar to that enjoyed by the State Audit Bureau, or else it should be part of its organisational structure.³⁴⁹

2. Independence of the IBFD in Bahrain

Bahrain signed the UNCAC on 08 February 2005 and ratified the Convention in February 2010. Bahrain has various anti-corruption agencies including the General Directorate for Combating Corruption and for Economic and Electronic Security, which is one of the most prominent. It is part of the Ministry of the Interior and is composed of various directorates, including the Directorate for Combating Corruption Offences and the Financial Investigations Unit.³⁵⁰

The BFD Law No. 32/2010 was issued in June 2010. By this law, the IBFD was established to receive and scrutinise FDs and related complaints. It is subordinate to the Supreme Judicial Council and is chaired by a judge of the Supreme Court who is assisted by an appropriate number of judges. The chairman and members of this body are assigned by royal ordinance for two years, which may be renewable for another period upon nomination by the Supreme Judicial Council.

As is the case in Kuwait, the issue of the independence of the IBFD in Bahrain has been hotly contested. The question of the subordination of the IBFD to the Supreme Judicial Council has been extensively debated in the discussion sessions of the bill at the Consultative Council (Shura Council). For example, during the discussion, some argued that this body should enjoy financial and administrative autonomy, and it should be directly subordinate only to His Majesty the King. From this perspective,

³⁴⁹ *ibid.* Article (1) of the Law No. 30/1964 on the establishment of the Audit Bureau states that: " There shall be established an independent commission for financial control which shall be called the Audit Bureau and shall be attached to the National Assembly".

³⁵⁰ 'Conference of the States Parties to the United Nations Convention against Corruption, Review of Implementation of the United Nations Convention against Corruption (Executive Summary)' (n 339) ,p.2.

the provisions of the law apply to judges; therefore, it is not acceptable for the body to be subordinate to the Supreme Judicial Council as judges in this case represent both the judge and the plaintiff simultaneously. Others believe that this can be answered by the Chairman and members of the FD body recusing themselves when scrutinising their FDs or those related to their relatives as is the case in litigation procedure, for example.

3. Independence of the SAI in Oman

According to Article (4) of the SFAA Law issued under Royal Decree 111/2011, the SAI is the responsible body for conducting financial and administrative audits on funds owned by the State or those under its management or its supervision and all financial and administrative dispositions, as well as monitoring the performance of the entities under its audit.³⁵¹ Article (9) of the law identifies the competencies of the SAI and the means of undertaking its competencies. However, the tasks of the FD system are not provided by this law. The SFAA Law was followed by the issuance of a new law under Royal Decree 112/2011 (the PPFACI Law). Article (12) of this law entrusts the responsibility for requesting and receiving FDs to the SAI.

In 2013, Oman acceded to the UNCAC under Royal Decree 64/2013.³⁵² Oman is now required under Article 6 (1) of the UNCAC to ensure the existence of a preventive corruption body or bodies. Consequently, the

³⁵¹ Article (20) of the State Financial and Administrative Audit Law set out a list of entities subject to the audit of the SAI as follows:

- Units of State Administrative Apparatus, unless exempted by a special provision in the decree of the establishment of the unit
- Public bodies and institutions, and other legal public persons
- Investment and pension funds as well as any other governmental fund
- Companies fully owned by the government or those where the government's shareholding – whether singly or jointly – is more than 40% of the share capital
- The companies to whom the government has granted a concession to exploit a public utility or a natural resource, and companies and establishments that have been contracted or licenced to manage or operate any of the public funds
- Private funds managed or supervised by any of the entities subject to the audit of the SAI
- Entities which are not subjected to the audit of the SAI, upon the request of such entities, if the SAI deems the public interest so necessitates.

³⁵² Oman joined the UNCAC on 20 November 2013 under Royal Decree 64/2013.

SAI was assigned by the Ministers Council in 2014³⁵³ the responsibility for conducting the anti-corruption authority tasks and following up the implementation of UNCAC.³⁵⁴

The legal basis for the independence of the SAI is found in Article 2 of the SFAA Law. This states explicitly that the SAI enjoys legal personality as well as financial and administrative autonomy. Furthermore, under this Article the SAI is directly subordinate to His Majesty the Sultan. This ensures that the SAI is not subject to any undue interference, particularly from the executive branch, which is under the audit of the SAI. The SAI's subordination to His Majesty is also stated now under Article (66) of the new Basic Statute of the State issued by Royal Decree No.6/2021 (OBSS).

The SFAA Law includes some legal texts that strengthen the independence of the SAI's members when carrying out their functions. For example, they possess the authority of judicial officers in the implementation of the financial and administrative audit functions provided by the law. Furthermore, they cannot be arrested or detained without permission from the SAI Chairman; however, this does not apply in the case of flagrant offences. Moreover, no investigation or public actions can be taken against them without the permission of the Chairman upon the request of the Public Prosecutor.

In addition, some aspects in the law enhance the independence of the SAI's work. For instance, (i) the SAI has the right to request and review documents, records, accounts or any papers it deems necessary to carry

³⁵³ 'Review of Implementation of the United Nations Convention against Corruption, First Resumed Tenth Session (Executive Summary)', vol CAC/COSP/I (2019) ,p.3 <<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1904134e.pdf>>.

³⁵⁴ It is noteworthy that in addition to the SAI, there are other bodies in Oman that perform anti-corruption tasks such as the Department of Public Prosecution for Public Funds Crimes, the Financial Intelligence Unit in the Royal Omani Police and the Department for the Fight against Economic Crimes in the General Administration of Criminal Investigations within the Royal Omani Police.

out its responsibilities properly without prior notice, (ii) entities subjected to the audit of the SAI are obliged to respond to the observations and correspondence of the SAI within 30 days from the date of notification. Failure to reply to the SAI or a delay in reply without proper justification is considered among the financial and administrative irregularities punishable by law, (iii) the SAI Chairman has the authority to inform the Public Prosecution on any irregularities that form a suspicion of crime, (iv) the SAI has the right to appeal against the decision taken by the Public Prosecution to suspend the investigation.

To ensure the principles of transparency and accountability, the Chairman of the SAI shall submit an annual report on the results of the SAI work directly to His Majesty the Sultan and send a copy of this report to the Council of Ministers, the Shura Council and the State Council. However, this report is not available to the public. In addition, the Chairman of the SAI shall submit reports to His Majesty The Sultan on matters of particular significance which have not been implemented by the entities subject to the SAI audit and the difficulties faced by the SAI in performing its tasks. The content of such reports can be reported by the SAI Chairman to the Council of Ministers, Shura Council and State Council if deemed necessary.

It is clear from the above that the independence granted to the SAI is compatible with the nature of its essential roles as a supreme audit institution and anti-corruption body. However, it appears that, legally, the mechanism of the assignment of anti-corruption body tasks to the SAI by the Ministers Council challenges this independence.

Article (51) of the OBSS states that the Council of Ministers is the authority entrusted with the implementation of the general policies of the State. One of its tasks is to supervise the functioning of the administrative apparatus units of the State and pursue their performance, whereas the units of the administrative apparatus of the State are subject to the audit of the SAI. Hence, it seems that mandating anti-corruption tasks to the SAI in this manner may risk violating the principle of separation of powers

between the SAI as an independent oversight body and the Ministers Council as an executive branch of the State. Furthermore, this mandate suggests the SAI is subordinate to the Ministers Council, which is, arguably, contrary to Article (2) of the CFAA Law. This Article emphasises that the SAI shall report directly to His Majesty the Sultan. Moreover, Article (9) sets up some responsibilities and competencies of the SAI including Paragraph (6), which states explicitly that the SAI is responsible for carrying out any other competencies assigned to it by His Majesty the Sultan. Consequently, the anti-corruption tasks and following up the implementation of the UNCAC should be mandated to the SAI by His Majesty the Sultan. One of the key interviewees, who is a legal adviser, argued that it is inappropriate to mandate the tasks of following up the implementation of the UNCAC to the SAI via the Cabinet decision; instead, this mandate should be entrusted to the SAI under a royal decree (law). One reason for this is that the UNCAC becomes akin to a domestic law once it is passed.³⁵⁵ It is argued that legislative intervention is required to correct this problematic situation.³⁵⁶

Another legal matter worth examining is the extent to which the SAI and its members enjoy the manifestations of independence as stated under the SFAA Law regarding the implementation of the FD system tasks. The provisions of the SFAA law indicate that the SAI enjoys the privileges of independence only within the scope of implementing its competences provided under the SFAA law. This is emphasised, for example, by Article 7 of the SFAA Law, which explicitly states that members of the SAI hold the status of a judicial officer in the implementation of this law. Consequently, due to the FD system being governed by another law (the PPFACI Law), and this law containing no reference to applying the provisions of the SFAA Law to the FD system, this thesis argues that there is a need for a legislative intervention that grants the SAI the same authorities, powers and privileges provided under the SFAA law to perform the provisions of the FD system, in

³⁵⁵ Interviewee (11).

³⁵⁶ Interviewee (2).

addition to a range of special powers to perform the FD system's tasks. This argument is supported by one of the interviewees with legal expertise.³⁵⁷

4.3.2 Financial resources of Kuwait, Bahrain and Oman FD bodies

1. The budget of the ACA in Kuwait

According to Article 18 of the Law No. 2/2016, the budget of the ACA is appended to the general State budget, and the draft budget should be submitted to the Ministry of Finance for approval. In the event of a disagreement between the Finance Ministry and the ACA on the estimated budget, this disagreement shall be referred by the Minister of Finance to the Ministers Council to decide what the council deems appropriate.

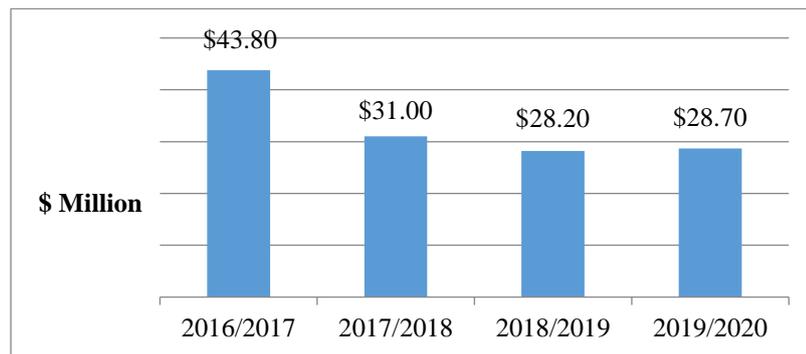
It appears from the above Article that the financial budget of the ACA is subject to the review and approval of the Ministry of Finance and the Ministers Council. In other words, it could be prone to interventions from both bodies, thus indicating that the ACA does not enjoy absolute financial independence.

Despite the absence of published data on the financial allocations for the FD system, the approved annual financial budget of the ACA is available on the website of the Ministry of Finance.³⁵⁸ The analysis of the approved budget of the ACA, since its establishment to present, indicates that the budget has fallen considerably between fiscal years 2016/2017 and 2019/2020, from \$43.8 million to \$28.70 million, an approximate \$15.1 million drop, or 34.5%. However, it cannot be asserted that this decline is a result of unjustified interventions from the Ministry of Finance. The following chart illustrates the approved budget of the ACA for fiscal years 2016–2020.

³⁵⁷ Interviewee (2).

³⁵⁸ 'The General State Budget' (Ministry of Finance- Kuwait) <<https://www.mof.gov.kw/MofBudget/MofBudgetDetail.aspx#mofBudget2>> accessed 28 January 2020.

Figure 4.1 . Approved budget of Kuwait's ACA



2. The budget of the IFBD body in Bahrain

The IBFD is a body that falls under the Supreme Judicial Council, which was established under Judicial Authority Law No. 42/2012. In relation to the financing of the IFDB, there are no provisions in Law No.32/2010 on Financial Disclosure referring to granting the IBFD an independent financial budget. This indicates that the financial allocations of the IBFD are included within the budget of the Supreme Judicial Council. Article 73 bis of the Judicial Authority Law stipulates that the Supreme Judicial Council shall have an independent annual budget.

Although the Council enjoys an independent budget, one of the challenges faced by the Council is the failure to provide the required financial allocations to cover certain of its expenses. For instance, a National Audit Office indicated that the actual expenses of the Council exceeded the expenditure of its approved budget for 2015.³⁵⁹ The Council explained that this was due to the Ministry of Finance failing to approve its request to provide additional financial allocations because of economic circumstances.

3. The budget of the FD Oman's SAI

Unlike Kuwait and Bahrain, Omani law states that the SAI shall have an independent budget included as one sum in the general State budget,

³⁵⁹ 'According to the Financial Audit: The Supreme Judicial Council Violates the Budget Law' (*Al Wasat News*, 2016) <<http://www.alwasatnews.com/news/1178566.html>> accessed 12 January 2020.

whereas the detailed budget shall be approved by the Chairman of the SAI.³⁶⁰ Moreover, the SAI self-audits its budgetary account. It seems that this method of funding the SAI is broadly consistent with the second method of funding anti-corruption bodies indicated in the technical guide to the UNCAC, as explained earlier in this chapter.³⁶¹

As the FD Department is within the regulatory structure of the SAI, there is no special budget for it as it is funded from the SAI budget. Therefore, the financial allocations of the FD Department could not be assessed because of insufficient data. Nonetheless, SAI budget data are available on the website of the Ministry of Finance.³⁶² The data indicate that the approved budget for 2015 rose by 21% compared with 2014. It appears that mandating the anti-corruption tasks to the SAI in 2014 was one of the key factors that led to this increase. However, the budget has declined in the following years between 5.4–9.4%. A main reason for this decrease is the impact of the falling oil price on the State's General Budget performance³⁶³. Given the importance of budgetary considerations to this key area of the research, the following chart shows the approved budget of the SAI from fiscal year 2014 to fiscal year 2020.³⁶⁴

³⁶⁰ The Financial and Administrative State Audit Law 111/2011, art 3.

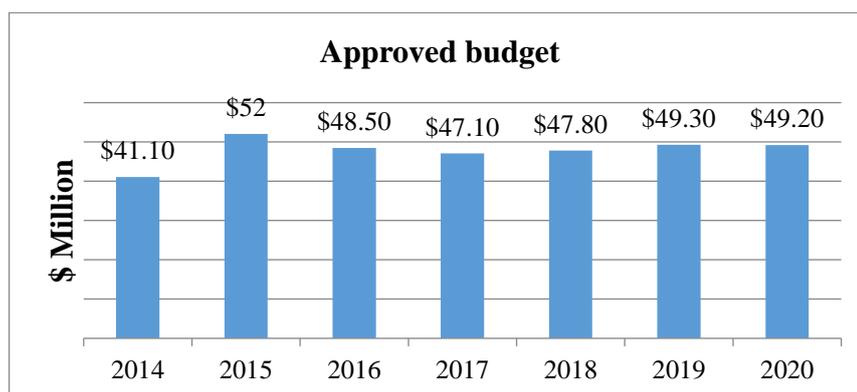
³⁶¹ See Section 4.2 (Forms of independence) above.

³⁶² 'State's General Budget' (*Ministry of Finance - Sultanate of Oman*) <<https://www.mof.gov.om/2015-المالية-التقارير-الموازنة-العامة-للدولة-الموازنة-العامة-للسنة-المالية-2015>> accessed 12 January 2020.

³⁶³ Ministry of Finance, 'State's General Budget for Fiscal Year 2016' (2016) ,p.3-4 <<https://www.mof.gov.om/Portals/1/documents/Financial-reports/The-state-budget/2016/2016.pdf>>.

³⁶⁴ It is worth noting that the Government undertook further fiscal and economic measures in 2020 to counter the consequences of the COVID-19 pandemic besides the sharp decline in oil price, resulting in cutting 10% from the approved allocations of Government units in the State's General Budget 2021, see: [https://mof.gov.om/Portals/1/documents/Financial-reports/The-state-budget/2021/2021\(Eng\).pdf](https://mof.gov.om/Portals/1/documents/Financial-reports/The-state-budget/2021/2021(Eng).pdf)

Figure 4.2 . Approved budget of Oman's SAI



Arguably, the comparative study of the budget funding for the bodies responsible for managing FD systems in the GCC States shows that, in legal aspects, the mechanism of adopting the SAI's budget grants the SAI greater fiscal independence compared to the same bodies in Bahrain and Kuwait.

4.3.3 Human resources of Kuwait, Bahrain and Oman FD bodies

1. Human resources of the ACA in Kuwait

The ACA is managed by a Board of Trustees composed of seven persons including the Chairman and Vice-Chairman. The President, Vice-president and members of the Board are appointed by decree upon the nomination of the Minister of Justice in his capacity as supervisor of the ACA,³⁶⁵ which indicates that the procedures for appointing the Chairman of the ACA are not subject to the executive branch.

With respect to the recruitment of the ACA staff, the law requires that staff are hired with the necessary experience, competence, integrity and scientific disciplines, considering the principle of transparency.³⁶⁶ Moreover, the law prohibits the hiring of individuals connected by family ties up to the second degree with the President, Vice-president and

³⁶⁵ Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 6.

³⁶⁶ Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 12.

members of the Trustees Board, the aim being to avoid favouritism in employment procedure.³⁶⁷

In terms of staff training, the law requires the ACA to provide training and professional development not only for its staff but also for those nominated by entities subjected to the law to follow up on works identified by the ACA, including those related to the FD system.³⁶⁸ Therefore, in legislative terms, the recruitment and training procedures in the ACA are consistent with the requirements of the UNCAC under Articles 6 (2) and 7.³⁶⁹

Although there are no available data on the number of staff in the ACA responsible for operating the FD system, the minimum number of members responsible for verifying and inspecting FD forms can be deduced from the formation of inspecting commissions stated by the executive regulatory of the law. According to Article (24) of the Executive Regulatory of the Law No.32/2016, three inspecting commissions shall be formed by the Chairman of the ACA to conform with the positions and functional levels of officials obliged to submit FDs.

Each committee is competent to inspect the returns provided by specific categories of public officials. Committee (A) is composed of a chairman and four members, amongst whom is at least one member with legal expertise and another with financial expertise. Each of the other two committees (B) and (C) include a chairman and at least two members, amongst whom is at least one member with legal expertise and another

³⁶⁷ *ibid*, art 3.

³⁶⁸ *ibid*, art 13, The Executive Regulation No.300/2016 of the Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 14.

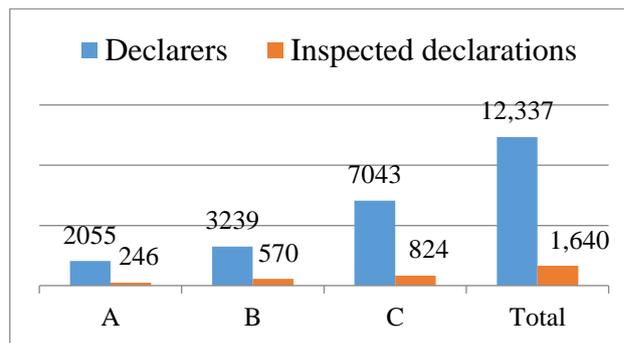
³⁶⁹ Article 7 of the UNCAC states that

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials: (a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

with financial expertise. The ACA has the right to choose people of the judiciary and public prosecution for chairmanship and membership of the mentioned committees, with the consent of the Higher Judicial Council.³⁷⁰ In addition to the above committees, the chairman and members of the Board of Trustees shall submit their FDs to the president of the Supreme Judiciary Council to be inspected by a special committee which includes three judges,³⁷¹ thus enhancing the principles of transparency, accountability and integrity.

The formation of the inspecting committees above shows that there are at least 11 individuals who undertake the verification and inspection process of the FD data. This number does not include the employees responsible for carrying out administrative tasks such as receiving and storing FDs. The committees meet weekly and the number of meetings since their formation stood at 266 as of November 2019. The number of declarers for whom their FDs were inspected reached 1,640 of a total 12,337 in the same period. The following chart illustrates the number of the FDs referred to the inspecting committees as of November 2019.

Figure 4.3 . The Number of financial declarations referred to the inspecting committees at the Kuwait's ACA as of November 2019



Although there are three main committees formed to inspect FDs, composed of not fewer than 11 members, the chart above shows that the

³⁷⁰ Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No. 2/2016, art 31.

³⁷¹ *ibid*, art 33.

number of inspected declarations is extremely low compared with the number of declarers, the former accounting for less than 13 % of the total.

2. Human resources of the IBFD in Bahrain

As stated earlier in this chapter, the IBFD was established under Law No.32/2010 to receive and inspect FDs and related complaints. It is headed by a judge from the Supreme Court, assisted by an appropriate number of judges and staff. The judges, including the Chairman of the IBFD, are assigned by Royal Ordinance upon the nomination of the Supreme Judicial Council for two years, which may be extended for a further period. Although this approach enhances the independence of the IBFD, as the judges enjoy absolute independence in implementing their competences according to Justice Authority Law No.42/2002, and it also prevents any executive branch intervention in the appointment of the chairman of the IBFD, it seems that the formation of the IBFD lacks stability as it is reconstituted every two years. This feature could adversely affect the body's performance.

Royal Ordinances issued in 2016 and 2018 on the formation of the IBFD indicate that the number of deputed judges to assist the Chairman did not exceed three judges in each period. According to Resolution no.1/2014, issued by the Chairman of the Supreme Judicial Council, the IBFD contains three Sections: (1) the Follow-up and Documentation Control Section, (2) the Complaints and Investigations Section, and (3) the Inspection Section. Such administrative division is vital as it plays a significant role in the distribution of tasks and jurisdictions between different Sections and the identification of each Section's responsibility. However, there are no available data on the number of staff nor statistical data of FDs that have been submitted, inspected and prosecuted.

3. Human resources of the SAI (FD Department) in Oman

The FD Department was established in 2014 within the SAI to carry out the functions of the FD system. The Chairman and the two Vice-

Chairmen of the SAI shall be appointed by Royal Decree.³⁷² As discussed earlier,³⁷³ this approach ensures the executive branch is separate from the process of appointing the head of the SAI, which enhances both the autonomy of the FD and the principle of the separation of powers. In addition to the Chairman and Vice-Chairmen, the SAI includes members and staff appointed by the Chairman.³⁷⁴

The law defines “the members of the SAI” as employees who undertake oversight and audit tasks, whereas ‘the staff’ are defined as employees undertaking the administrative and technical functions.³⁷⁵ The employment procedures of the members are subject to a set of conditions based on the grounds of transparency, integrity, competence and merit criteria. For instance, they are subject to functional tests and interviews prepared and conducted by an independent academic committee derived from Sultan Qaboos University. Moreover, before assuming their position, they swear an oath before the Chairman to be trustworthy to public funds; respect the laws, regulations and systems; perform their duty with integrity, honour and honesty; and maintain the dignity of their function and its confidentiality.³⁷⁶

Prior to the establishment of the FD Department, the task of managing the FD system was entrusted to a department under the Chairman's Office called the ‘Coordination and Follow up Department’. However, the Department's tasks related to the FD system were limited to receiving, following up and storing FDs and did not include a verification and inspection process. A considerable challenge facing the FD system at the beginning of its operation was the absence of assigned employees to perform such tasks on a full-time basis. Another challenge was requiring a large number of public officials to submit their FDs prior to the completion of the the structural arrangements of the unit responsible for managing the FD system within the SAI. This was supported by an

³⁷² Financial and Administrative State Audit Law 111/2011, art 13.

³⁷³ See Section 4.2 (Forms of independence) above.

³⁷⁴ Financial and Administrative State Audit Law 111/2011, art 13.

³⁷⁵ Financial and Administrative State Audit Law 111/2011, art 1.

³⁷⁶ *ibid*, art 15.

interviewee with knowledge of this issue.³⁷⁷ Consequently, inspecting teams were established to verify and inspect the FDs. However, their work was limited as they had been established for the purpose of verifying and inspecting specific declarations. One important consequence of this was that they lost the element of continuity.

Even though the FD Department was established in 2014, it has continually suffered from a lack of members and staff.³⁷⁸ At the beginning of its operation, there were no employees in the department except for the director, which resulted in utilising some employees from the Coordination and Follow up Department.³⁷⁹ The recent available data on the FD Department's human resources indicate that, until August 2019, the Department was enhanced by two members with legal experience as well as one administrative staff member.³⁸⁰ Nevertheless, in comparison with the total received FDs, the current level of human resources at the FD Department is very small.³⁸¹ Furthermore, the Department lacks a specialised cadre in the field of FD financial analysis. In terms of staff training, although the SAI provides programme training on the financial and administrative audit, there is a lack of specialised courses related to the FD system.³⁸² This represents one of the considerable weaknesses faced by the FD system.

The comparative study shows that, unlike Bahrain and Oman, the law in Kuwait has created a mechanism that ensures a minimum number of members are provided for carrying out screening tasks of the received FDs via the formation of stable and constant inspecting committees, therefore ensuring the operation of the FD system. Oman can take advantage of the Kuwait experience in this regard to address the lack of human resources in the FD Department. One solution is to give the SAI the authority to form a screening committee/team composed of members/staff with legal and financial expertise until a fully qualified staff

³⁷⁷ Interviewee (2).

³⁷⁸ Interviewee (2), Interviewee (6), Interviewee (8).

³⁷⁹ Interviewee (2).

³⁸⁰ *ibid.*

³⁸¹ *ibid.*

³⁸² *ibid.*

for the FD Department is in place. This committee/team should, when deemed necessary, be enabled to use outside expertise, such as engaging prosecutors in the examination process of declarations. However, some of the interviewees expressed opposition to involving external staff in the implementation of the SAI's tasks to ensure the maintenance of the declaration's confidentiality and SAI's independence.³⁸³ This objection may be valid, particularly as the oversight units within the SAI have been provided with qualified members with legal, financial and accounting expertise. Thus, such a committee/ team could be composed of qualified members of the oversight units within the SAI.

The SAI should consider re-organising the administrative structure of the FD Department; it is essential to establish administrative sections under it, similar to the case of the IBFD in Bahrain, and identify their tasks and responsibilities as appropriate.

In addition, the adoption of an integrated electronic system to administrate declarations would contribute to reducing the need for a considerable number of staff to manage the system, as Argentina's experience has shown. Most of the interviewees agreed that the establishment of an electronic FD system in Oman to fill, submit, receive and analyse declarations would play a significant role not only in resolving the issue of the lack of human resources but also in ensuring the system operates effectively.³⁸⁴

4.4 FD BODIES RESPONSIBLE FOR MANAGING UK FDs

As stated earlier in Chapter Two, the UK has adopted a different approach to that of Kuwait, Bahrain and Oman. In particular, there is no single FD system that applies to all public officers, whether elected or unelected, and public officials in general. This means that each branch or sector has its own FD system, which is governed and operated by its

³⁸³ Interviewee (13), Interviewee (14), Interviewee (15).

³⁸⁴ Interviewee (11), Interviewee (12), Interviewee (13), Interviewee (14), Interviewee (15), Interviewee (16), Interviewee (17), Interviewee (18), Interviewee (19).

own FD agency and set of legal provisions. The system in question may have developed at different times and in different ways, reflecting the priorities at the time it was made or when it was later modified. Examples of the competent authorities responsible for dealing with declarations/disclosures submitted by public officials in certain branches are as follows.

4.4.1 Members of Cabinet Ministers

On appointment to each new office, ministers are required to provide a full list of their interests which could raise a conflict of interest to their permanent secretary. Declarations are passed to the Cabinet Office Propriety and Ethics team and the Independent Adviser on Ministers' Interests.³⁸⁵ An independent advisor is responsible for scrutinising declarations before they are published. Considered an independent observer who provides advice to ministers regarding their private interests, the independent advisor has the authority to investigate allegations of a breach of the Ministerial Code by order of the prime minister.³⁸⁶

4.4.2 The House of Commons

Members of the UK's House of Commons are responsible for registering their interests in the Register of Members' Financial Interests and disclosing their interests in accordance with the requirements of a Code of Conduct.³⁸⁷ Any allegations related to the failure to register or declare such interests are considered by the Parliamentary Commissioner for Standards, who reports to the Committee on Standards.³⁸⁸

³⁸⁵ 'List of Ministers' Interests' (n 299).

³⁸⁶ Georgina Ryan-white, 'The Ministerial Code and the Independent Adviser on Ministerial Interests' (2018) <<https://commonslibrary.parliament.uk/research-briefings/sn03750/>>.

³⁸⁷ The Code of Conduct for Members of the House of Commons, January 2019, s 14, the Guide to the Rules relating to the Code of Conduct for Members of the House of Common, s 5.

³⁸⁸ The Guide to the Rules relating to the Code of Conduct for Members of the House of Commons, s14.

4.4.3 The House of Lords

Members of the House of Lords are required to register their relevant interests in the Register of Lords' Interest and submit them to the Lord's Interests Registrar.³⁸⁹ They must also make a full disclosure of their interests in accordance with the requirements of a Code of Conduct.³⁹⁰ The House of Lords Conduct Committee supervises the operation of the Code, supported by the Registrar of Lords' Interests.³⁹¹ Allegations of breaches of the Code of Conduct, including those related to the registration of interests, are investigated by the House of Lords Commissioner for Standards (an independent officer appointed by the House as a whole).³⁹²

4.4.4 The Civil Service

Under Section 4.3.9 of the Civil Servants Management Code, civil servants must declare to their department or agency all their private interests that could influence the performance of their official positions or may raise conflicts of interest. Such interests include any business interests or holdings of shares or other securities that they or any member of their immediate family own.

4.4.5 The Local governments/ Local authorities

Under the Localism Act 2011, each code of conduct of a relevant authority must include rules or provisions that regulate the registration of pecuniary interests and other interests as well as disclose them.³⁹³ The monitoring officer of a relevant authority shall establish a register of interests of members and co-opted members of the authority.³⁹⁴ The monitoring officer is responsible for ensuring that a copy of the

³⁸⁹ The Code of Conduct for Members of the House of Lords, July 2020, s 11 (a), the Guide to the Rules relating to the Code of Conduct for Members of the House of Lords, s 36, s40.

³⁹⁰ The Guide to the Rules relating to the Code of Conduct for Members of the House of Lords, s 44.

³⁹¹ *ibid*, s 2.

³⁹² *ibid*, s 4.

³⁹³ The Localism Act 2011, s 28 (2).

³⁹⁴ *ibid*, s 29 (1).

authority's register is available for inspection at a location in the authority's area at all reasonable hours and for ensuring the publishing of the register on the authority's website.³⁹⁵ The Act does not identify an independent authority or committee responsible for investigating allegations of breaching a code of conduct issued by a relevant authority. The Act entrusts to each relevant authority the requirement to establish appropriate mechanisms to investigate such allegations.³⁹⁶ However, each authority must appoint at least one independent person whose advice is considered before making a decision on investigated allegations.³⁹⁷

It is clear from the above examples that there are a number of different FD systems operating in the UK. Unlike Bahrain, Kuwait and Oman, there is no central independent body to oversee or carry out the tasks of receiving and investigating declarations and disclosures submitted by all public officials. This approach may be problematic and raises a question as to consistency in the operation of the different systems, and a potential lack of commonly applied standards and systems. There may also be a lack of independence in the performance of scrutiny and investigation tasks after such declarations and disclosures. For example, Transparency International UK has found that the current Localism Act has removed the supporting institutions which previously played a role in monitoring and enforcing compliance with codes of conduct.³⁹⁸ Previously, allegations of misconduct by a member would have been referred to the Standards Board for England to conduct its own investigation after such allegations. Under the current Act, a conduct committee is formed by councils to carry out this task. Transparency International has also highlighted that the majority of members on any committee investigating a person's misconduct could be their political allies. However, it seems that the absence of a single regulation and a

³⁹⁵ *ibid*, s 29 (5).

³⁹⁶ *ibid*, s 28 (6).

³⁹⁷ *ibid*, s 28 (7).

³⁹⁸ Transparency International UK, 'Corruption in UK Local Government: The Mounting Risks' (2013) ,p.47
<https://www.transparency.org.uk/sites/default/files/pdf/publications/Corruption_in_UK_Local_Government-_The_Mounting_Risks.pdf>.

single independent body governing the FD system for all public officials can be attributed to the fact that the Codes of Conduct in the UK is an approach that relies on the seven principles of public life, which form a body of ethical standards common across the public sector. Consequently, it is assumed that public officials perform their official duties with the commitment to key ethical principles such as integrity, accountability and honesty.

4.5 CONCLUSION

This chapter examined the regulatory frameworks and institutional arrangements of FD bodies based on the requirements of the UNCAC. It analysed Article 6 (1) and 6 (2) of the UNCAC to identify the essential requirements of anti-corruption bodies and also critically examined and comparatively analysed the regulatory frameworks and institutional arrangements of the FD bodies in Kuwait, Bahrain and Oman.

It was concluded that an FD body is considered as a preventive anti-corruption body; therefore, it should be provided with the necessary independence, material resources, specialised staff and training to enable it to operate FD systems effectively.

The comparative analysis highlighted that the Oman's SAI has been granted adequate independence to enables it to carry out its legally mandated tasks. However, the mechanism of mandating the anti-corruption tasks to the SAI was criticised. Consequently, legislative intervention is required to address this legal situation by entrusting the mandate to the SAI by His Majesty or a Royal Decree (Law), not the Ministers Council.

Regarding the financial resources of the FD bodies, the comparative study demonstrated that each country follows a different method to fund its FD body. It appears that, in statutory terms, the budget of the SAI is not subject to direct intervention from external entities and is largely in line with one of the methods stated in the technical guide of the UNCAC.

Nonetheless, the analysis of the SAI's budget illustrated that it has been reduced in recent years. One of the main reasons for this budget reduction is the falling oil price and its impact on the government budgets of oil-producing States.³⁹⁹ This thesis argues that the SAI, as an anti-corruption body, should be provided with an adequate and stable budget to ensure that it performs its tasks effectively even in difficult economic circumstances. Consequently, the SAI should receive ongoing support to ensure fighting corruption and preventing its negative impact on the economic growth of the State.

With regards to human resources, the available data on the staff responsible for managing the SAI's FD system in Oman indicates that the FD Department suffers from a lack of staff. The advantages evident from Kuwait's experience are helpful when addressing the problems associated with the lack of human resources in the FD Department, and particularly in enabling the SAI to form an inspection team or commission, composed of members with legal, financial and accounting expertise, to examine submitted declarations. In addition, it is crucial that the SAI adopts an integrated electronic FD system. This would contribute to reducing the need for human resources. Argentina's experience is advantageous in this regard. In addition, establishing administrative divisions within the FD Department, as is the case with the FD body in Bahrain, is a necessary step. This ensures a separation between tasks of receiving and storing declarations, and the tasks of inspection and examination on the one hand, and the identification of each section's responsibility on the other.

The next chapter examines and analyses the requirements of the coverage of the FD system as another essential element of the establishment of an effective FD system.

³⁹⁹ Simeon Nanovsky, 'The Impact of Oil Prices on Trade' (2017) 8 *Review of International Economics* 7, ,p.12 <https://ijbssnet.com/journals/Vol_8_No_2_February_2017/2.pdf>.

5 CHAPTER FIVE: THE SCOPE OF THE COVERAGE OF FINANCIAL DECLARATION SYSTEMS

5.1 INTRODUCTION

The previous chapter addressed the regulatory framework and institutional arrangements for bodies dealing with FD bodies as one of the essential elements of establishing effective FD systems. This chapter examines the coverage of individuals to whom such systems should apply as well as the common contents of FD forms.

One of the crucial questions that arise when policymakers decide to enact an FD law is who should be subject to it. Should it apply to all public officials, whatever their seniority and irrespective of the role they are in? If the answer is 'no', what is the standard for determining the categories of public officials who are subject to such a law, and the extent of requirements for those particular groups within the public domain?

After identifying the kinds of public officials subject to the law, a further question concerns the coverage of such officials' family members. Should the law apply to family members? Does such a requirement violate the principle of privacy and the right to 'family life'? If the answer to the second question is 'no', are there any limits to the scope of coverage of family members, and should the public interest, and the need to protect public finances, outweigh such privacy and family rights? The issue is an important one, not least because it is not uncommon for public officials to benefit when public resources are improperly and illicitly channelled through their family members as a method of evading accountability.

This chapter aims to address these questions. It is divided into two primary sections: the first (5.2) critically evaluates the criteria for determining the categories of public officials subjected to FD systems as well as their family members and any other individuals. It then examines the essential contents that should be declared in the FD forms. It begins by analysing the provisions of the UNCAC concerning the identification of individuals to which FD systems are applied and the information that

should be declared. In the course of this analysis, reference is made to the current literature and the arguments it raises with regards these matters.

The second section (5.3) draws comparisons between FD regimes in the countries examined in this study. The aim is to identify the most fundamental differences and similarities in the provisions related to the scope of coverage of FD systems and the contents of the FD forms. After comparing usage in the comparator countries, the weaknesses in the Omani FD regime are identified and appropriate recommendations proposed to address them. This section mainly relies on an analysis of primary sources such as laws, regulations and codes of conduct but is also assisted by the results of semi-structured interviews with key officials who have experience of working in Oman.

5.2 EXAMINATION AND ANALYSIS OF THE REQUIREMENTS OF THE COVERAGE OF FD SYSTEMS AND THE CONTENTS OF FD FORMS

5.2.1 The coverage of FD systems (Individuals subjected to FD systems)

1. Public officials subject to FD systems

According to Article 8 (5) of the UNCAC, FD systems primarily apply to public officials. The Convention gives a broad definition of a public official. Article 2 (a) states that:

Public official shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a 'public official' in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, 'public official' may mean any person who

performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.

It is clear from this Article that the Convention uses a broad concept of 'public official' to include persons who hold positions in the three branches of a government (legislative, judicial and executive branches), whether they are appointed or elected, permanently or on a temporary basis, and with or without pay. It also allows the concept to be extended to cover any other person defined as a public official in accordance with the domestic law of State Parties, provided that the definition covers, at a minimum, that which is required by the Convention.⁴⁰⁰ The legislative Technical Guide of the UNCAC confirms that the word 'executive' provided in Article (2) of the UNCAC should cover the military branch where appropriate.⁴⁰¹

The Open-ended Intergovernmental Working Group report on the Prevention of Corruption (September 2018) states that three essential categories of public officials are required to be covered by FD systems: (i) politically appointed public officials and those who hold high-level positions; (ii) public officials who serve in the administration of the executive, legislative and judicial branches of power; and (iii) public officials who perform functions vulnerable to corruption risk.⁴⁰²

It is crucial to emphasise here that to establish an effective FD system, it is sufficient to simply stipulate that public officials are covered by the requirements of FD systems. In determining the scope of the system, it is also important to ensure that public officials, especially senior officials such as ministers, are within the scope of inquiry and accountability procedures. Such procedures should enable an examination of their FDs to support investigative measures whenever these are required. It must also make provision for accountability where there are allegations of

⁴⁰⁰ 'Legislative Guide for the Implementation of the United Nations Convention against Corruption' (n 204) ,p.10.

⁴⁰¹ *ibid* ,p.11.

⁴⁰² United Nations Office on Drugs and Crime, 'Open-Ended Intergovernmental Working Group on the Prevention of Corruption', vol V.18-04122 (2018).

impropriety or governance failures on the part of State officials involved in the management of public resources. This is also an important consideration in other jurisdictions.

For example, in Northern Ireland, there was an investigation into the failures of a Renewable Heat Incentive Scheme (RHI) providing for subsidies/financial support for business costs. This followed a very serious report involving allegations of failures in the design, management, and oversight of the scheme by ministers and officials. The report was compiled by the Comptroller and Auditor General and Audit Commission, which the Public Accounts Committee then considered. As in other parts of the UK, the Northern Ireland Assembly has an “oversight” committee which, under Standing Order 56, enables it to consider reports and accounts and to consider, among other things, value for money, governance issues, and the implementation of government schemes. This may necessitate asking government ministers and officials to attend and be examined.⁴⁰³ In doing so, it normally abides by the convention that whereas ministers are, indeed, ‘officials’, they are not usually required to attend such investigations and enquiries unless the examining body decides it necessary.⁴⁰⁴ In the RHI case, which involved serious issues about government failures, lack of oversight and other accusations, Northern Ireland’s First Minister Arlene Foster was asked to attend a hearing. This reflects the importance of criteria that ensure senior officials are subject to accountability. This applies to FD systems requirements which should ensure that certain categories of public officials, particularly senior officials, are covered based on specific criteria. This is considered in the next section.

⁴⁰³ ‘Committee Is Determined That Inquiry Will Get to the Bottom of RHI Scheme’ (*Northern Ireland Assembly*, 2016) <<http://www.niassembly.gov.uk/news-and-media/press-releases/session-2016-2017/committee-is-determined-that-inquiry-will-get-to-the-bottom-of-rhi-scheme/>> accessed 17 September 2020; ‘Minister Invited to Give Evidence in RHI Scheme Inquiry’ (*Northern Ireland Assembly*, 2016) <<http://www.niassembly.gov.uk/news-and-media/press-releases/session-2016-2017/minister-invited-to-give-evidence-in-rhi-scheme-inquiry/>> accessed 17 September 2020.

⁴⁰⁴ ‘Minister Invited to Give Evidence in RHI Scheme Inquiry’ (n 403).

A. The approaches adopted to determine which public officials should be subjected to FD systems

The relevant literature highlights that there is no standardised approach to determining the scope of the coverage of public officials subject to FD systems. Therefore, each country should adopt an appropriate approach for its own FD system, considering the cost, benefits and the available system's capacities.⁴⁰⁵ However, there are two main discernible approaches adopted by most countries: the broad coverage approach and the narrow coverage approach.⁴⁰⁶ According to the former, an FD system applies to all public officials, whereas according to the latter, specific categories of public officials are subject to an FD system. The legal framework of any FD system should clearly identify the public officials obligated to submit FDs.⁴⁰⁷ This is an essential requirement as the absence of a clear and explicit legal provision regulating this matter may lead to interpretations that could exclude some categories of officials whose positions, in fact, are highly vulnerable to the risk of corruption.⁴⁰⁸

➤ Broad coverage approach

The broad coverage approach is, in theory, more effective than the narrow one as it enables FD bodies to monitor the interests and wealth of all public officials. This appears to facilitate the process of preventing and detecting conflicts of interest and illicit enrichment and offers the best protection for public resources. One of the justifications for adopting such an approach is that all public services are (or might be) susceptible to corruption. Consequently, this approach sends a message that anti-corruption efforts are operating that cover all levels of public function.⁴⁰⁹

⁴⁰⁵ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) p.14.

⁴⁰⁶ Rossi, Pop and Berger (n 31) p.19; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) p.97; World Bank and United Nations Office on Drugs and Crime (n 2) pp.34-35.

⁴⁰⁷ Don Bowser and others, 'Asst Declarations: An Effective Tool To Fight Corruption' (2014) # 01 / 2014 p.3; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) p.11.

⁴⁰⁸ See, for example, the arguments raised on the ambiguity of the legal text on the application of the FD system in Oman to public officials in the security and military agencies as well as the judiciary and public prosecution on Chapter 5, Section 5.3.1.1.

⁴⁰⁹ Rossi, Pop and Berger (n 31) p.19.

However, this approach has been criticised by some studies. A comparative analysis of the FD laws of 16 countries conducted by Gokcekus and Mukherjee shows that there is no evidence that broad coverage leads to a reduction in corruption. The study found that 7 of the 16 countries examined required all public officials to submit FDs; nonetheless, the average score of the CPI in these countries was not significantly lower than the other countries.⁴¹⁰ In addition, it has been argued that the broad coverage approach, in practice, is overwhelmingly impractical and ineffective as it negatively affects the ability of FD bodies to implement FD systems.⁴¹¹ Indeed, requiring all public officials to submit FDs leads to the collection of a massive amount of information that potentially outstrips the available human and technical resources of FD bodies. This could represent a weakness in the implementation of FD systems. It has been found that whenever the number of submitted FDs increases, the efficiency of FD systems decreases, even if FD bodies are provided with extensive professional staff.⁴¹²

Some of the literature highlights examples of difficulties in the implementation of the verification and investigation process of FDs in countries which have adopted the broad coverage approach. For instance, upon enacting the FD law in Uganda and Argentina, an enormous number of public officials were required to submit FDs to the competent agencies, although such agencies were not equipped to deal with this massive amount of data. Consequently, a significant number of FDs were not examined, a poor level of scrutiny and oversight was provided in practice, and the FD system lost its credibility.⁴¹³ In Kenya, the Public Ethics Act of 2003 required all public officials to fill FDs. Two years after passing the law, the Efficiency Monitoring Unit's report indicated that FD commissions suffered from a lack of resources and capabilities that enable them to deal with submitted FDs effectively.⁴¹⁴

⁴¹⁰ Gokcekus and Ranjana (n 225) pp.326-327.

⁴¹¹ World Bank and United Nations Office on Drugs and Crime (n 2) p.35.

⁴¹² Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) pp.97-98.

⁴¹³ Messick (n 233) p.11.

⁴¹⁴ Chene, 'African Experience of Asset Declarations' (n 9) p.7.

Thus, the broad coverage approach has resulted in operational difficulties and challenges to the FD system.⁴¹⁵ Likewise, in Cameroon, the FD system encountered difficulties related to the implementation process, which made it impossible to handle the high number of FDs.⁴¹⁶ In Albania, some amendments to the Asset Disclosure law were passed in 2012 to widen the coverage of public officials subjected to the law. The Council of Europe's Project against Corruption in Albania indicated that such an amendment would burden the institutional capacity of the High Inspectorate of the Declaration and Audit of Assets.⁴¹⁷

➤ **Narrow coverage approach**

For the reasons outlined above, it is notable that few countries have adopted the broad coverage approach,⁴¹⁸ and most of the studies and experts recommend applying FD systems to specific categories of public officials rather than all officials. This enables FD bodies to implement and monitor such systems adequately and efficiency.⁴¹⁹ Chene finds that such categories are more targeted and tend to include officials with a certain level of seniority as well as those who hold positions that are likely to be vulnerable to illicit enrichment.⁴²⁰ These categories could also include, for example, officials in charge of projects involving significant public expenditure or who have responsibilities such as concluding agreements and contracts.⁴²¹ However, the narrow approach necessarily requires the elaboration of appropriate criteria to identify the categories of public officials subjected to FD systems as well as proper justification beyond

⁴¹⁵ *ibid.*

⁴¹⁶ *ibid* p.3.

⁴¹⁷ Matthew Jenkins, 'Albania: Overview of Political Corruption' (*Transparency International*, 2014) p.10 <<https://knowledgehub.transparency.org/helpdesk/albania-overview-of-political-corruption>> accessed 29 May 2020.

⁴¹⁸ Williams Aled, 'International Experience of Asset Declarations' (*Anti-Corruption Resource Centre*, 2006) 1 p.2 <<https://www.u4.no/publications/international-experience-with-asset-declarations>> accessed 30 August 2018; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) p.97; World Bank and United Nations Office on Drugs and Crime (n 2) p.35.

⁴¹⁹ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11); World Bank and United Nations Office on Drugs and Crime (n 2) p.11,34,97; Chene, 'African Experience of Asset Declarations' (n 9) p.7; Duri (n 326) p.26.

⁴²⁰ Chene, 'African Experience of Asset Declarations' (n 9) p.3.

⁴²¹ *ibid.*

the selection of such categories. These categories are mostly classified based on two criteria: the ranks of public officials and the risks associated with the function. Each of these are now considered.

- **The criterion of positions or ranks of public officials**

According to this criterion, ranks of public officials can be classified into three categories: high-, mid- and lower-ranks. It has been argued that FD law should at least cover higher-ranking officials such as ministers, ambassadors, the senior civil service, and senior management in state-owned enterprises as they mostly have authority over decision-making.⁴²² Therefore, they might find themselves in a situation in which their personal interests affect decisions that they make or in which they participate. It has been contended that coverage based on 'high-ranking public officials' can be considered an effective approach because this category of public officials mostly enjoy wide discretion powers, or at least a certain margin of discretion that places them in a position to abuse their post.⁴²³ The WB&UNODC state that one advantage of this approach, when compared to the criterion based on the risk associated with function, is that it facilitates, to some extent, the mechanism of maintaining and updating the register list of public officials required to fill FDs.⁴²⁴ In addition, this approach is more suitable to emergent FD systems as it enables such systems to be implemented gradually, beginning with the most senior elected officials and moving to the lower tiers, which is particularly helpful where such systems suffer from a lack of resources and limited capacities.⁴²⁵

- **The criterion of risks associated with the public office**

This criterion classifies public officials obligated to fill FDs in accordance with their functional duties and responsibilities and the extent to which they are prone to corruption risks, regardless of the level of their official

⁴²² Messick (n 233) p.10; World Bank and United Nations Office on Drugs and Crime (n 2) p.36.

⁴²³ World Bank and United Nations Office on Drugs and Crime (n 2) p.36.

⁴²⁴ *ibid* ,p.36.

⁴²⁵ *ibid* pp.17,36.

positions, job titles or pay level. This approach covers, for example, the functions of ministers, deputy ministers, legislators, judges, prosecutors and civil servants who deal with the public fund or have functions that grant them decision-making authority.⁴²⁶ It has been claimed that the presence of public officials at the same grade or pay level does not mean that all their posts are prone to corruption risk.⁴²⁷ In contrast, for example, due attention should be paid to subjecting all members of tender committees to FD law as the duties and tasks of such committees are often vulnerable to corruption risk regardless of functional grades or members' pay levels.

It is clear from the debate above that there is a consensus that the narrow coverage of FD systems is more effective than a broad coverage. Within the scope of narrow coverage, some believe that FD systems should be limited to only high-ranking officials whereas others claim they should cover all categories of functions vulnerable to corruption, whether such functions are occupied by high-, middle- or low- ranking officials.

It is obvious that both criteria ensure that the senior officials are covered by FD systems. This is consistent with Principle 3 of the G20 on asset disclosures by public officials, which states that

Disclosure should first be required of those in senior leadership positions and then, as capacity permits, of those in positions most influencing public trust or in positions having a greater risk of conflict of interest or potential corruption.⁴²⁸

Thus, it can be concluded that the capabilities and resources (financial, human, material and technical) provided to FD bodies, as well as the number of public officials and the level of corruption in a state, play a

⁴²⁶ Messick (n 233); Transparency International, 'Asset Declarations in MENA Countries: Illicit Enrichment and Conflicts of Interest of Public Officials' (n 189); OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) p.14.

⁴²⁷ Messick (n 233) p.11.

⁴²⁸ Matthew Jenkins, 'Interest and Asset Disclosure' (*International Transparency*, 2015) <<https://knowledgehub.transparency.org/guide/topic-guide-on-interest-and-asset-disclosure/5867>> accessed 25 September 2020.

significant role in determining the coverage and scope of FD systems.⁴²⁹ However, there is no evidence to support the argument that a specific type of coverage is ideal and appropriate for all countries. It might be appropriate for countries that choose the narrow approach to adopt the criterion based on risk of corruption associated with function, in addition to covering high-ranking officials. Hence, countries should not neglect the application of FD systems to middle- and lower-ranking officials who hold functions likely to be vulnerable to the risk of corruption. For example, some corruption prosecutions in Oman have shown that some public officials who held functions below a director or head of department were prone to involvement in corruption cases. For example, an official responsible for entering data at the Land Registration Department was prosecuted after he accepted a bribe to complete illegal transactions related to selling and buying lands.⁴³⁰ In addition, a medical record clerk – a relatively low-level official in the government service – was prosecuted after he falsified financial stamps used for old medical cards and reused them for new cards, seizing the money paid for the new cards.⁴³¹ In another case, a number of officials were accused of abusing their functions to provide benefits for others as they participated in the disposal of lands within the Project of the Development of Al Duqm City, the property of which was expropriated for the public interest, following which they issued titles for land for others within the area of the project.⁴³² Some of the accused in this case held jobs as an engineer, surveyor and cartographer; some worked for the Land Registration Department. Again, it is clear that these were relatively low-level/mid-level officials in terms of their jobs offered opportunities for corruptly benefiting from transactions over which they had control.

⁴²⁹ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) p.10.

⁴³⁰ Set of judgments issued by the Penal Chamber at the High Supreme Court (01/10/2007 - 30/06/2008), Appeal No.394,350/2007, 25/11/2007. p.254 – 262.

⁴³¹ Set of judgments issued by the Penal Chamber at the High Supreme Court, Appeal No.67/2004, p.160 – 162.

⁴³² Set of judgments issued by the Penal Chamber at the High Supreme Court (01/10/2014 - 30/06/2016), Appeal No.15/2016, 15/03/2016. p.229 – 235.

It is notable that some countries tend to combine the above two criteria to determine the public officials subject to FD systems. In other words, FD requirements not only apply to high-ranking officials but also to officials with lower and mid ranks who hold functions prone to risks of corruption. For instance, in the United States, there are two types of FD system regulated under the Ethics in Government Act of 1978 and the Code of Federal Regulations:⁴³³ Public Financial Disclosure⁴³⁴ and Confidential Financial Disclosure.⁴³⁵ The former applies to the most senior appointed and elected positions of all three branches of the federal government,⁴³⁶ whereas the latter applies to officials in positions below

⁴³³The Code of Federal Regulations, Title 5, Sec 2634.104' <<https://www.law.cornell.edu/cfr/text/5/2634.104>> accessed 13 July 2020.

⁴³⁴ Certain categories of public officials (senior employees of the executive branch and particular employees of the legislative and judicial branches) are required to submit public financial disclosure, including (1) special government employees whose positions are classified above GS-15; (2) those whose rate of basic pay is fixed, other than under the General Schedule, at a rate equal to or greater than 120% of the minimum rate of basic pay for a GS-15; (3) employees in positions which are exempted from the competitive service by reason of being a confidential or policy-making character (Schedule C); and (4) Administrative Law Judges, see title I, section 101 of the Ethics in Government Act of 1978, also see 'Financial Disclosure' (*The United States, Department of Justice*, 2020) <<https://www.justice.gov/jmd/financial-disclosure>> accessed 23 July 2020.

⁴³⁵ Title 5, Section 2634.904 of the Code of Federal Regulation states that 'the term confidential filer includes (1) Each officer or employee in the executive branch whose position is classified at GS-15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is less than 0-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; if:

(i) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially (as defined in §§ 2635.402(b)(4) and 2640.103(a)(2) of this chapter) through decision or the exercise of significant judgment, and without substantial supervision and review, in taking a Government action regarding: (A) Contracting or procurement; (B) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits; (C) Regulating or auditing any non-Federal entity; or (D) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(ii) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, or to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by the employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law'.

⁴³⁶ According to Title 18, Section 202 of the United States Codes, **(1) executive branch** includes: 'each executive agency as defined in title 5, and any other entity or administrative unit in the executive branch'; **(2) Judicial branch** means: 'the Supreme Court of the United States; the United States courts of appeals; the United States district courts; the Court

senior level but whose functional duties are prone to a higher risk of conflict of interest. Each legislative branch and judicial branch manages its own FD system.⁴³⁷ In the executive branch, each department or agency is responsible for managing and reviewing the financial disclosures submitted by its officials.⁴³⁸ A list of public officials required to report financial information is defined explicitly under the Ethics in Government Act.⁴³⁹ The list includes, among others, the President, the Vice President, ministers, judges, members of Congress and any officer or employee in the executive branch, including special government employees as defined in title 18, section 202 (a) of the United States Code. In addition, public officials subject to the FD systems are required to provide financial information concerning their family members. The concept of family members here is confined to spouses and dependent children.⁴⁴⁰

B. The most common categories of public officials covered by FD systems

Given the wide executive powers granted to ministers and the legislative powers given to MPs, most FD systems focus on applying FD regimes to these categories of public officials and then civil servants. Based on research conducted by the World Bank Group of Public Accountability Mechanisms Initiative on the legal frameworks for asset disclosure in 74 countries worldwide, Burdescu and others indicate that MPs are the most regulated, with 100% of countries in the high–income bracket applying

of International Trade; the United States bankruptcy courts; any court created pursuant to article I of the United States Constitution, including the Court of Appeals for the Armed Forces, the United States Court of Federal Claims, and the United States Tax Court, but not including a court of a territory or possession of the United States; the Federal Judicial Center; and any other agency, office, or entity in the judicial branch' and **(3) legislative branch** means : '(A) the Congress; and (B) the Office of the Architect of the Capitol, the United States Botanic Garden, the Government Accountability Office, the Government Publishing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the United States Capitol Police, and any other agency, entity, office, or commission established in the legislative branch'.

⁴³⁷ The Ethics in Government Act of 1978, s 105.a, s 306.a.

⁴³⁸ *ibid*, s 206.a.

⁴³⁹ *ibid*, s 101.

⁴⁴⁰ Confidential Financial Disclosure Report (Executive Branch), OGE Form 450, 5 CFR Part 2634, Subpart I U.S. Office of Government Ethics (Nov 2019).

FD requirements to them.⁴⁴¹ Ministers are the second biggest category covered by FD regimes in all country income classifications, with a range of 70–90%; 60–85% of the sample countries covered civil servants in their FD systems; and 60–75% of the sample countries required heads of state to submit FDs.⁴⁴²

It is evident from this statistic that civil servants and heads of states are less regulated by FD systems than ministers and MPs. Burdescu and others argue that heads of state are covered by FD systems most likely because they are considered the single most significant policymaking agents in most governments.⁴⁴³ The relatively low percentage of civil servants covered is primarily due to the large proportion of civil servants excluded from the scope of schemes due to being in categories treated as ‘low- risk’ in terms of the likelihood of corruption or conflict of interest.⁴⁴⁴

Most of the relevant literature shows that the scope of public officials subjected to FD systems varies among countries; such systems usually cover heads of state, ministers and members of the cabinet, MPs, senior staff members of government agencies, heads and senior staff members of publicly owned enterprises, senior civil servants, judges and senior members of the judiciary, and candidates for elected office. However, debate has arisen regarding the application of FD systems to judges.⁴⁴⁵

Arguments on the legality of subjecting judges to FD systems

Although judges are exposed to potential corruption risks as they enjoy vast discretionary powers, not all countries apply FD regimes to judiciary members⁴⁴⁶ in order to maintain the independence of judges as a distinct group within the separation of powers model.⁴⁴⁷ However, some jurisdictions treat judges as officials for the purposes of transparency and

⁴⁴¹ Burdescu and others, ‘Income and Asset Declarations: Tools and Trade-Offs (English)’ (n 11), p.31.

⁴⁴² *ibid*, pp.31,34.

⁴⁴³ *ibid*, p.31.

⁴⁴⁴ *ibid* p.31.

⁴⁴⁵ World Bank and United Nations Office on Drugs and Crime (n 2) p.35.

⁴⁴⁶ Hoppe (n 12) p.1.

⁴⁴⁷ *ibid*.

accountability, and there are some notable court decisions which have ruled that it is constitutional to apply FD systems to judges. For example, the US Federal Court of Appeals for the Fifth Circuit affirmed the constitutionality of mandatory financial disclosure by federal judges under the Ethics in Government Act and rejected appeals based on the separation of powers.⁴⁴⁸ Furthermore, The Indian High Court of Delhi ruled in Case of Number W.P. (C) 288/2009 that

Asset declarations of Supreme Court judges should be disclosed if there is a public interest in disclosure; where the interest is shown, the authority should consult the judge concerned and balance the interest in disclosure against privacy concerns.⁴⁴⁹

Hence, it is obvious from these judgments that the requirements of FD systems should apply to judges along the same lines as other public officials.

Some countries have established separate and special FD systems for judges managed by the judicial authority itself to ensure that the independence of the judiciary is maintained. Hence, judges are subject to a system different to that which is applied to executive branch officials.⁴⁵⁰ However, some have called into question the ability of judicial bodies to administer FD systems as they often lack certain aspects of expertise required when dealing with FD data, such as detecting hidden cash flows that require financial expertise.⁴⁵¹ Therefore, the provision of the required capacities and resources for the judiciary to manage separate FD systems could form a further burden on countries, especially developing countries and those in transition.⁴⁵²

It has been argued that FD systems, and the requirement to make disclosures, do not affect the independence and security of judges, and

⁴⁴⁸ Louis Bernard Jack, 'Constitutional Aspects of Financial Disclosure under the Ethics in Government Act' (1981) 30 Cath. U. L. Rev. 538, p.576.

⁴⁴⁹ 'The CPIO, Supreme Court of India v. Subhash Chandra Agarwal & Anr. — Right2Info.Org' <https://www.right2info.org/cases/plomino_documents/r2i-the-cpio-supreme-court-of-india-v.-subhash-chandra-agarwal-anr> accessed 26 June 2020.

⁴⁵⁰ World Bank and United Nations Office on Drugs and Crime (n 2) p.35.

⁴⁵¹ Hoppe (n 12) p.3.

⁴⁵² *ibid.*

that the judiciary could be fertile ground for corruption, like other branches in government which are obliged to file declarations as other officials.⁴⁵³ Judicial misconduct may take various forms that cast doubt over the integrity of judiciary, such as improper demeanour; a conflict of interest, judicial delay, bias and engaging in ex parte communication.⁴⁵⁴ In addition, bribery is one of the common corruption problems in the judicial system in developing countries and developed economies.⁴⁵⁵

The argument for bringing the judiciary into FD systems is strengthened by the findings of the Global Corruption Barometer (GCB) 2013. Based on a survey of more than 114,000 respondents in 107 countries, it showed that the police and the judiciary are the institutions most vulnerable to bribery among the eight services evaluated.⁴⁵⁶ The results reveal that 31% of people who came into contact with the police report having paid a bribe, and 24% of people report having paid the judiciary.⁴⁵⁷ Furthermore, based on a survey which covered 60,000 people across 42 countries in Europe and Central Asia, the GCB 2016 found a significant degree of corruption among judges, the president's office, tax officials, the police, and local government councillors: this was in an analysis that showed proportion of corruption ranging from 22% for the police to 26% for local government councillors and 24% for judges.⁴⁵⁸

Given that some judges are clearly involved in corruption in some countries, this sends a powerful message that measures to address this problem are needed. Accordingly, it has become critical to apply the requirements of FD systems to judges and their family members just as

⁴⁵³ *ibid* p.1.

⁴⁵⁴ David J Sachar, 'Judicial Misconduct and Public Confidence in the Rule of Law' (UNODC) <<https://www.unodc.org/dohadecoration/en/news/2019/08/judicial-misconduct-and-public-confidence-in-the-rule-of-law.html>> accessed 22 September 2020.

⁴⁵⁵ Siri Gloppen, 'Courts, Corruption and Judicial Independence' in Tina Søreide and Aled Williams (eds), *Corruption, Grabbing and Development: Real World Challenges* (Edward Elgar Publishing 2014) p.69 <<https://www.cmi.no/publications/5091-courts-corruption-and-judicial-independence#author-details>>.

⁴⁵⁶ The evaluated services include Police, Judiciary, Registry, Land, Medical, Education, Tax and Utilities.

⁴⁵⁷ Transparency International, 'Global Corruption Barometer' (2013) pp.3,11 <<https://www.transparency.org/en/publications/global-corruption-barometer-2013>>.

⁴⁵⁸ Transparency International, 'People and Corruption: Europe and Central Asia (Global Corruption Barometer)' (2016) pp.9-10 <http://www.transparency.org/whatwedo/publication/people_and_corruption_europe_and_central_asia_2016>.

with other public officials. This trend is also supported by the report of the First Meeting of the Judicial Group on Strengthening Judicial Integrity.⁴⁵⁹ It recommended requiring all judicial officers to publicly declare their assets and those of their parents, spouse, children and other close family members. Ms Vita Habjan-Barborič, Bureau member of the Group of States against Corruption (GRECO) of the Council of Europe, stated in June 2017 in her speech in the Conference on ‘Assessing the Implementation and Effectiveness of Systems for Disclosing Interests and Assets by Public Officials’ that GRECO recommended widening the scope of declarations to also include information on spouses and dependent family members or close relatives of MPs, judges and prosecutors.⁴⁶⁰

In practice, the FD system as an anti-corruption tool is one of the measures that have shown its effectiveness in this regard. For example, in April 2019, the Tribunal of the Code of Conduct in Nigeria found Chief Justice Walter Onnoghen guilty of submitting a misleading asset declaration and hiding his actual wealth.⁴⁶¹ The Tribunal ordered the treasury to seize cash found in his five foreign accounts which he failed to disclose. He was suspended and prohibited from holding any public office for a decade.

This thesis argues that concerns about subjecting judges to a single FD system that apply to all public officials are not warranted, especially if the FD body enjoys full independence from the executive branch. On the one hand, such independence ensures that the executive branch does not intervene in the FD body’s tasks. On the other hand, where an FD body exercises its mandate to verify judges’ FDs, the aim here is to ensure that

⁴⁵⁹ United Nations Office for Drug Control and Crime prevention, ‘Report of the First Meeting of the Judicial Group on Strengthening Judicial Integrity Vienna, April 2000’ (2000) p.5.

⁴⁶⁰ Ms Vita Habjan Barborič, ‘Conference on “Assessing the Implementation and Effectiveness of Systems for Disclosing Interests and Assets by Public Officials” (Tbilisi, 6-7 June 2017) - Newsroom’ (Council of Europe, 2017) <https://www.coe.int/en/web/greco/home/newsroom/-/asset_publisher/sCelUhEJG5bw/content/conference-on-assessing-the-implementation-and-effectiveness-of-systems-for-disclosing-interests-and-assets-by-public-officials-tbilisi-6-7-june-2017-> accessed 23 June 2020.

⁴⁶¹ ‘Nigeria’s Chief Justice Banned from Holding Public Office | News | Al Jazeera’ <<https://www.aljazeera.com/news/2019/04/nigeria-chief-justice-banned-holding-public-office-190418184032315.html>> accessed 20 June 2020.

judges do not engage in corrupt practices. This can be detected by inspecting their FD statements, and it can be done without any interference in their judicial tasks, as has been affirmed by the Constitutional Court in Kuwait, as explained later.⁴⁶²

2. Family members

Even though Article 8 (5) of the UNCAC does not explicitly provide that public officials shall declare interests and assets of their family, the technical guide of the UNCAC indicates that State Parties are required to adopt rules and means for public officials to disclose financial or family interests, gifts and hospitality.⁴⁶³ This requirement is entirely logical as it aims to ensure that public officials do not hide their unlawful wealth and interests by simply transferring them to their family members. Consequently, some countries require not only that public officials declare their assets and income but also that of their family members, especially spouses and minor children.⁴⁶⁴ Some contend that an effective FD system should cover, at a minimum, the immediate family members of public officials as they are the closest people that they trusts and they could hide their illegal wealth behind them.⁴⁶⁵ Action on this is necessary obviously particularly as it has been shown in practice that officials can and do use their family members to circumvent FD requirements, and otherwise thwart anti-corruption measures. For instance, Swiss Bank accounts were used by some African leaders to hide their wealth gained illegally. These accounts were created in the names of their children, relatives, spouses and bodyguards.⁴⁶⁶

⁴⁶² See Chapter 5, Section 5.3.1/1.

⁴⁶³ United Nations Office on Drugs and Crime, 'Technical Guide to the United Nations Convention Against Corruption' (n 170) .p.20.

⁴⁶⁴ Messick (n 233) p.11; World Bank and United Nations Office on Drugs and Crime (n 2) p.36; Rossi, Pop and Berger (n 31) p.25.

⁴⁶⁵ Transparency International, 'Asset Declarations in MENA Countries: Illicit Enrichment and Conflicts of Interest of Public Officials' (n 189) p.3; OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) p.14; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) p.98.

⁴⁶⁶ E Gyima Boadi, 'Enhancing the Credibility of the Public Office Holders Asset Declaration Regime' (2005) 7 Ghana Center for Democratic Development <<https://www.cddgh.org/vol-7-no-3enhancing-the-credibility-of-the-public-office-holders-asset-declaration-regime/>>.

Although FD systems mostly define family members as spouses and minor children,⁴⁶⁷ the concept of family members being required to submit FDs varies from one country to another.⁴⁶⁸ For example, the Republic of Korea extends this requirement to cover a set of family members including spouses, lineal ascendants and lineal descendants of a person liable for registration (married daughters who are lineal descendants of a person liable for registration are excluded), maternal great grandparents, maternal grandparents, and the children and grandchildren of daughters.⁴⁶⁹ Other countries widen the net, particularly by extending the concept of ‘family’ to include persons who are not usually family members. For instance, under the Code of Ethical Conduct and Disclosure of Member’s Interest for Assembly and Permanent Council, South Africa defines immediate family as ‘a Member’s spouse, permanent companion or dependants’. A permanent companion is defined as ‘a person who is publicly acknowledged by a Member as that Member’s permanent companion’.⁴⁷⁰ Nonetheless, some claim that states should not extend the coverage of the FD to include the potentially enormous number of persons who are not public officials – primarily to limit the extent to which the privacy of this group is invaded.⁴⁷¹ In contrast, some Islamic countries (e.g. Kuwait and Bahrain) narrow the coverage of family members to only include minor children and to exclude spouses. The latter exclusion is based on a principle of Islamic Sharia law – ‘The independence of the financial responsibility of both spouses’ – and is discussed later.⁴⁷²

⁴⁶⁷ Some FD systems requirements, such as those in the United States, use the term ‘independent children’ rather than ‘minor children’ to include broad coverage of an individual who is (1) a son, daughter, stepson, or stepdaughter of the filer; and (2) unmarried, under age 21, and living in the filer’s household or considered a dependent by tax code standards. See Confidential Financial Disclosure Guide, Section 2, Version: 1/2019, p.19.

⁴⁶⁸ Ivana and others (n 182) ,p.20; Rossi, Pop and Berger (n 31) ,p.25.

⁴⁶⁹ ‘Public Service Ethics Act No. 3520/1981, art.4, (KLT KOREA LAW TRANSLATION CENTER) <https://elaw.klri.re.kr/eng_service/lawView.do?hseq=33394&lang=ENG> accessed 15 October 2019.

⁴⁷⁰ The Code of Ethical Conduct and Disclosure of Members’ Interests for Assembly and Council Members, 2014, P.1.

⁴⁷¹ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) p.15.

⁴⁷² See Chapter 5, Section 5.3.1/2.

Violation of privacy right

The extension of the scope of FD systems to cover public officials' family members has raised a question regarding the legality of this coverage in light of the absence of any functional ties between them and the government.⁴⁷³ In some countries, the requirements of FD systems have been challenged on grounds of the violation of the privacy right.⁴⁷⁴ Some countries such as Slovenia have been cautious in this regard. It does not require spouses, children, and household members to declare their assets unless there is a suspicion that an official is hiding income or assets behind the name of his/her family members.⁴⁷⁵

It has been argued that the disclosure of financial information of public officials and their family under FD systems breaches Article 8 of the ECHR. However, although the Convention guarantees the right of individuals to have their private and family life, home and correspondence respected under Article 8, this right is not absolute. It can be restricted whenever this interference is in accordance with the law and necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country; for the prevention of disorder or crime; for the protection of health or morals; or for the protection of the rights and freedoms of others.⁴⁷⁶ In the ECHR case *Mr Andrzej Wypych v. Poland*, the applicant claimed – among other grounds of appeal – that requiring him to disclose details of his financial situation and property portfolio was in breach of Article 8 of the ECHR as this requirement allowed access to the information of his financial resources and his family's property, which was considered interference in his private life. The court indicated that the alleged interference should be considered to decide whether it was justified under paragraph 2 of Article 8.

⁴⁷³ World Bank and United Nations Office on Drugs and Crime (n 2) p.37.

⁴⁷⁴ Dr George Larbi, 'Between Spin and Reality: Disclosure of Assets and Interests by Public Officials in Developing Countries', *Redesigning the State Political Corruption in Development Policy and Practice* (2005).

⁴⁷⁵ World Bank and United Nations Office on Drugs and Crime (n 2) p.37.

⁴⁷⁶ The European Convention Human Rights, Art 8.

With regard to the first requirement provided under paragraph 2 – ‘in accordance with the law’ – the Court stated that:

. . . the measures complained of were explicitly provided for by the 1998 Act, read together with Articles 8 and 9 of the Access to Information Act. The Court finds nothing to suggest that the measures did not comply with domestic legislation or that the effects of the relevant law were not sufficiently foreseeable for the purposes of the quality requirement which is implied by the expression “in accordance with the law” in Article 8 § 2 . . .

The Court added that:

. . . As to whether the measures complained of pursued the aims listed in this provision, the Court observes that they undoubtedly pursued the legitimate aim of ‘the prevention of crime’, namely corruption, in connection with the local political process in local councils, by providing a legal framework for transparency with regard to councillors’ financial situations and evaluation of them during the latter’s terms of office.

With respect to the second requirement ‘is necessary for a democratic society’, the Court stated that:

. . . Under the Court’s settled case-law, the notion of ‘necessity’ implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued . . . In determining whether an interference is ‘necessary in a democratic society’ the Court will take into account that a certain margin of appreciation is left to the Contracting States . . .⁴⁷⁷

It is clear from the above that the State cannot interfere with individuals’ private and family lives, homes and correspondence except in accordance with the strict conditions provided under Article 8 (2).⁴⁷⁸ Thus, to ensure that such interference is justified, it must be: (i) in accordance with the law and (ii) necessary in a democratic society.

Two general principles were affirmed by the Court in the context of the interpretation of the condition of ‘in accordance with law’. Firstly, the word

⁴⁷⁷ Andrzej WYPYCH v Poland App no.2428/05 (ECtHR,25October2005).

⁴⁷⁸ Marck v Belgium App no.6833/74 (ECtHR,13June1979), para 31.

'law' here is not restricted to only statutes but also covers unwritten law.⁴⁷⁹ Secondly, the 'interference' must have some basis in domestic law.⁴⁸⁰ In addition, the law must be adequately accessible, meaning that citizens are able to access to the law in question adequately.⁴⁸¹ Furthermore, the law must be precisely worded to ensure the possibility of foreseeing circumstances in which public authorities are entitled to take action that affects individuals' rights and the consequences of such action.⁴⁸²

The Court summarised four certain principles to illustrate its understanding of the phrase 'necessary in a democratic society' as follows:⁴⁸³ (i) the phrase 'necessary' here is not in the same sense of 'indispensable' and it does not have the flexibility of such expressions as 'admissible', 'ordinary', 'useful', 'reasonable' or 'desirable'; (ii) the Contracting States has a certain discretion to impose restrictions. However, the Court has the authority to give the final ruling on whether the interference is compatible with the Convention; (iii) The interference must, inter alia, correspond to a 'pressing social need' and be 'proportionate to the legitimate aim pursued'; and (iv) paragraphs of Articles of the Convention that include an exception to a right guaranteed must be interpreted narrowly.

Considering all the above, it can be said that the extension of the coverage of FD systems to cover family members cannot be considered a violation of privacy and family life as long as it is based on an explicit and justified legal basis. In terms of the pressing social need, the coverage of public officials' families members primarily aims to prevent and fight corruption by detecting illegal assets and wealth hidden under the names of family members. Consequently, FD systems serve several legitimate aims through fighting corruption including national security, public safety, the community's economic wellbeing, and the prevention

⁴⁷⁹ *The Sunday Times v the United Kingdom* App no.6538/74 (ECtHR,26April1979), para 47.

⁴⁸⁰ *Silver and Others v the United Kingdom* App no.5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75 (ECtHR,25March1983),para 86; *Malone v the United Kingdom* App no.8691/79 (ECtHR,2August1984), para 66.

⁴⁸¹ *The Sunday Times v the United Kingdom* (n 479),para 49.

⁴⁸² *ibid*,para 49.

⁴⁸³ *Silver and Others v the United Kingdom* (n 480),para 97.

of crime and upholding of morals.⁴⁸⁴ This has been affirmed by several judicial judgments and international conventions. For example, the Supreme Court of India indicated in the criminal appeal No.1648/2012 that: 'Corruption is not only a punishable offence but also undermines human rights, indirectly violating them, and systematic corruption, is a human rights violation in itself, as it leads to systematic economic crimes. . .'.⁴⁸⁵ The UNCAC states in its preamble that the State Parties to this Convention:

. . . Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law . . .

5.2.2 Contents of FD forms

Financial information that needs to be declared by public officials and their family members is one of the core elements of any effective FD system.⁴⁸⁶ Article 8 (5) of the UNCAC provides examples of such information, including outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. FD laws should define the type of required data clearly to ensure that such data is accurate and sufficient to detect potential illegal activities.⁴⁸⁷ However, some jurisdictions do not identify the contents of FD forms within the provisions of FD laws.⁴⁸⁸ One potential reason for this is that FD bodies are responsible for identifying the contents of FD forms whether under additional regulations or through FD filing forms with instruction.⁴⁸⁹ Nonetheless, it is crucial to determine the essential contents of FD forms

⁴⁸⁴ Tilman Hoppe, 'Expert Opinion on : Financial Control of Asset Declarations in Ukraine (Section VII of the Law " On Prevention of Corruption " – LPC)' (2016) para ,p.23.

⁴⁸⁵ State Of Maharashtra TrCBI v Balakrishna Dattatrya Kumbhar (15October2012),para 14.

⁴⁸⁶ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) p.34.

⁴⁸⁷ Hoppe (n 12) p.2; Chene, 'African Experience of Asset Declarations' (n 9) p.4; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) p.35.

⁴⁸⁸ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) p.35.

⁴⁸⁹ *ibid.*

in the law as the provisions of the law have more binding legal force than an FD body's regulations.

Countries' experiences suggest that the amount of information required to be filed varies from one FD system to another.⁴⁹⁰ Certain elements play a role in determining the amount and detail of this information, such as level of corruption, political systems' and agencies' capacities to deal with targeted information and, more importantly, the main purpose of FD systems.⁴⁹¹

As discussed earlier in Chapter Three,⁴⁹² the two primary purposes of FD systems are the detection of conflicts of interest and illegal enrichment. However, some FD systems are designed only to prevent and detect conflicts of interests (financial interest disclosures). With regards to this type of system, it usually aims to verify that no conflict exists between the official duties of public officials and their personal and financial interests.⁴⁹³ Therefore, public officials are required to submit information related to, for example, public appointments and positions held outside the office, including unpaid positions, corporate board memberships and ownership of shares. Furthermore, sources of income and gifts may be required to be declared.⁴⁹⁴ However, it is essential that FD forms are designed to gather adequate and accurate information in such a manner that facilitates effective analysis. Ultimately, they must be able to detect the potential conflicts of interest and enable public officials to be held accountable.

The United States is an example of a country that has adopted FD systems (public and confidential disclosure systems) for the purpose of avoiding and identifying potential conflicts of interest between public

⁴⁹⁰ *ibid* p.34; World Bank and United Nations Office on Drugs and Crime (n 2) p.37.

⁴⁹¹ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) p.34; World Bank and United Nations Office on Drugs and Crime (n 2) p.37 .

⁴⁹² See Chapter 3, Section 3.5.

⁴⁹³ World Bank and United Nations Office on Drugs and Crime (n 2) p.67.

⁴⁹⁴ Transparency International, 'Asset Declarations in MENA Countries: Illicit Enrichment and Conflicts of Interest of Public Officials' (n 189) p.3; Ivana and others (n 182) p.6; World Bank and United Nations Office on Drugs and Crime (n 2) p.37.

officials and their financial interests and affiliations.⁴⁹⁵ The substantive contents of disclosure forms relate to key matters such as the holding of outside positions; the source and value of assets and income, liabilities, agreements and arrangements; the source and value of gifts; and travel reimbursements.⁴⁹⁶ Financial disclosure guides have been issued to facilitate the process of inputting the disclosure forms data. They include detailed instructions on how to file disclosure forms and information about, for example, the reporting period, the scope of the disclosure, the definition of terms, who must file disclosure, and where and when to file, as well as a detailed explanation of the items that should be declared. It is vital to establish a financial disclosure guide for public officials as this ensures that the required data are identified clearly and that public officials are helped to file data accurately. Some studies have indicated that certain FD regimes fail because of a lack of clarity about the assets, liabilities and interests that public officials are required to disclose.⁴⁹⁷

As is evident from the above, the U.S systems are generally able to collect accurate data from FD forms, and are therefore able to provide authorities with a clear picture of public officials' financial and private interests. This, in turn, helps and eases the identification of potential conflicts that may emerge between the private interests of public officials and their official duties. It also helps to reduce opportunities for officials to abuse their positions for private gain.

The expectation of transparency in the U.S. system extends to the most senior of officials, including the President – the most senior, elected public office in the government; and this is assisted by public disclosure requirements in 1978 legislation⁴⁹⁸ with regard to some of ex-President

⁴⁹⁵ 'Public Financial Disclosure' (*United States Office of Government Ethics*) <[https://www.oge.gov/web/oge.nsf/Public Financial Disclosure](https://www.oge.gov/web/oge.nsf/Public%20Financial%20Disclosure)> accessed 24 July 2020; 'Confidential Financial Disclosure' (*United States Office of Government Ethics*) <[https://www.oge.gov/web/oge.nsf/Confidential Financial Disclosure](https://www.oge.gov/web/oge.nsf/Confidential%20Financial%20Disclosure)> accessed 24 July 2020.

⁴⁹⁶ Confidential Financial Disclosure Report (n 36).

⁴⁹⁷ Chene, 'African Experience of Asset Declarations' (n 9) p.4.

⁴⁹⁸ Under the Ethics in Government Act of 1978, the President of the United States, the Vice-President and any officer or employee in the executive branch listed in S.101 (Persons Required to File) are among the public officials required to make public financial disclosures. There is detailed provision prescribing what is to be included in disclosure reports (prescribed by S.102 Content of Reports).

Donald Trump's actions relating to the coronavirus pandemic during his period in office. Some commentators have asserted that there have been occasions when administrative decisions and measures may have been taken in response to the pandemic that were influenced by the personal business interests of President Trump, his family, and their close associates.⁴⁹⁹

It has also been argued that the resistance of the Trump administration to stay-at-home orders during the pandemic was, in part, to avoid harming the hospitality industry, which is one of the core businesses of the Trump Organisation⁵⁰⁰. There has also been a degree of suspicion regarding the precise scope of some of the Trump administration's measures. For example, it has been suggested that the UK and Ireland were among the countries initially exempted from the thirty-day ban on travel from Europe; this was despite the increased number of coronavirus cases there.⁵⁰¹ Critics believe that this exemption may be linked to Trump's private interests as he owns hotels and golf courses in these countries.⁵⁰² Moreover, in March 2020, the Aid, Relief, and Economic Security Act was passed by Congress. It includes the Paycheck Protection Program which primarily aimed to support small businesses by giving them loans to protect jobs. However, the Trump administration extended the programme to cover large businesses including those with ties to the Trump administration.⁵⁰³ In addition, President Trump

⁴⁹⁹ Matthew Stephenson, 'Tracking Corruption and Conflicts of Interest in the Trump Administration' (*The Global Anticorruption Blog*, 2020) <<https://globalanticorruptionblog.com/2020/05/15/tracking-corruption-and-conflicts-of-interest-in-the-trump-administration-may-2020-update/>> accessed 21 July 2020.

⁵⁰⁰ *ibid.*

⁵⁰¹ Phil Thomas, 'Coronavirus: Trump Says He Excluded UK from Europe Travel Ban Because Britain "Doing a Good Job"' (*The Independent*, 2020) <<https://www.independent.co.uk/news/world/americas/us-politics/coronavirus-travel-ban-uk-trump-europe-flights-countries-a9397756.html>> accessed 24 September 2020.

⁵⁰² Stephenson (n 499); Ryan Heath, 'Trump's Travel Ban Sidesteps His Own European Resorts' (*Politico*, 2020) <<https://www.politico.com/news/2020/03/12/trump-coronavirus-travel-europe-resorts-126808>> accessed 24 September 2020. The scale of the President's personal interests and investments would, of course, have been subject to disclosure under the 1978 Act.

⁵⁰³ Martha Kinsella and others, 'Trump Administration Abuses Thwart US Pandemic Response' (*Brennan Center For Justice*, 2020) <<https://www.brennancenter.org/our-work/research-reports/trump-administration-abuses-thwart-us-pandemic-response#s4>> accessed 24 September 2020; Jack Gillum and others, 'Trump Friends and Family Cleared for Millions in Small Business Bailout' (*ProPublica*, 2020) <<https://www.propublica.org/article/trump-friends-and-family-cleared-for-millions-in-small-business-bailout>> accessed 24 September 2020.

vigorously supported hydroxychloroquine as a potential treatment for COVID-19 even though there were no scientific studies showing that it is an effective and safe remedy.⁵⁰⁴ This drug is produced by a French pharmaceutical company called 'Sanofi', in which the President and three of his family's trusts had small investments.⁵⁰⁵ Such trusts are within the requirements to file disclosure reports; and Trump family members were 'reporting individuals' under the reporting scheme.

Concerning FD systems that combine both purposes, they often focus on the value and source of assets,⁵⁰⁶ liabilities⁵⁰⁷ and income,⁵⁰⁸ in addition to information related to the interest disclosures mentioned above.⁵⁰⁹ This helps to provide a detailed overview of all cash flows (incoming side) and expenditures (outgoing side) that should be declared by public officials. This facilitates the monitoring of changes to public officials' wealth and the detection of potential illegal enrichment, as well as verifying the accuracy of declared assets data.⁵¹⁰ Hong Kong was one of the first countries that used financial disclosures as a tool to monitor public officials' wealth, under which public officials are required to provide a periodic statement of the value of their assets.⁵¹¹ If a significant change is detected in such wealth, they might be asked to prove the legality of this change. They could face criminal charges for illicit enrichment if they fail to prove the legality of their wealth.

⁵⁰⁴ Stephenson (n 499); Peter Baker and others, 'Trump's Aggressive Advocacy of Malaria Drug for Treating Coronavirus Divides Medical Community' (*The New York Times*, 2020) <<https://www.nytimes.com/2020/04/06/us/politics/coronavirus-trump-malaria-drug.html?action=click&module=Spotlight&pgtype=Homepage>> accessed 24 September 2020; Steve Goldstein, 'Trump's Personal Stake in the Malaria-Drug Maker Sanofi Could Be as Small as \$99' (*MarketWatch*, 2020) <<https://www.marketwatch.com/story/trumps-personal-stake-in-the-malaria-drug-maker-sanofi-could-be-as-small-as-99-2020-04-07>> accessed 24 September 2020.

⁵⁰⁵ Stephenson (n 499); Baker and others (n 504); Goldstein (n 504).

⁵⁰⁶ Assets typically include, among others, real estate, domestic and foreign bank accounts, vehicles, shares, bonds, debentures, yachts, boats, jewelleries and art works.

⁵⁰⁷ Liabilities usually include all debts, obligations, loans, mortgages and guarantees.

⁵⁰⁸ Income is money received by an individual from a variety of sources such as salaries, wages and investments.

⁵⁰⁹ OECD and World Bank, 'Good Practices in Asset Disclosure Systems in G20 Countries' (2014) p.5 <<https://www.unodc.org/unodc/en/corruption/g20-anti-corruption-resources/by-thematic-area.html>>; Ivana and others (n 182); Hoppe (n 12) p.2; Messick (n 233) p.12; World Bank and United Nations Office on Drugs and Crime (n 2) p.37.

⁵¹⁰ Hoppe (n 12) p.2; Messick (n 233) p.13; World Bank and United Nations Office on Drugs and Crime (n 2) p.67.

⁵¹¹ Messick (n 233) p.13.

Some of the literature suggests that the large amount of data required to be filled out in FD forms is one of the challenges facing some FD systems.⁵¹² Therefore, some countries do not require that all assets, income and gifts should be declared but only those above a certain amount. For example, the FD system in the United States requires a declaration of the amount of liabilities owed by public officials, their spouses or dependent children to any creditor which exceeds \$10,000; any real property, stocks, bonds, commodity futures and other securities when the amount of the transaction exceeds \$1,000; and any gifts or travel reimbursements totalling more than \$390 from any one source.⁵¹³ Clearly, this aims to ease the burden on both declarants and FD bodies. On the declarants' side, requiring them to declare all assets and possessions regardless of their value causes a significant strain on declarants as they have to declare all possessions including those of a very low value. On the FD bodies' side, this requires providing such bodies with huge resources and capacities to enable them to deal with this large amount of data.

5.3 AN EXAMINATION AND COMPARATIVE ANALYSIS OF THE REQUIREMENTS OF THE COVERAGE OF FD SYSTEMS AND THE CONTENTS OF FD FORMS IN COMPARATOR COUNTRIES

5.3.1 Scope of persons covered by FD systems

1. Categories of Public officials subjected to the FD systems

In this section, further consideration is given to the approaches adopted in the countries examined in this study to determine the public officials covered by the FD systems. In Kuwait Law, Article 2 of the EKACA Law No. 2/2016 identifies the categories of public officials subjected to the FD

⁵¹² *ibid* p.12.

⁵¹³ Confidential Financial Disclosure Report (n 36).

system exclusively in 11 clauses.⁵¹⁴ The FD system covers a variety of public officials in the legislative, judicial and executive branches such as ministers, MPs, judges and prosecutors. It also applies to public officials who occupy leadership and supervisory positions. Clause 7 defines the leaders as follow: (i) the incumbents of leading positions in the general schedule salary scale. This includes senior ranked positions, the undersecretary and assistant undersecretary; (ii) members of management boards, general managers and their deputies or assistants, and secretaries-general and their deputies or assistants in the public bodies or institutions or any government agency; (iii) the equivalent of a leader, such as heads of departments or administrative units and their deputies or members entrusted to the public bodies and institutions; and (iv) directors of the departments and the equivalents.

⁵¹⁴ Under Article 2 of the Establishment of the Kuwait Anticorruption Authority Law No. 2/2016, the provisions of the law apply to:

1. The Prime Minister, deputies of the Prime Minister, the ministers and whoever holds an executive office at the ministerial rank.
2. The speaker, deputy-speaker and members of the National Assembly.
3. The president and members of the Supreme Judicial Council, president and justices of the Constitutional Court and the Technical Department of the Court, judges, members of the Public Prosecution, the president and members of the Fatwa and Legislation Department, the Director General and members of the General Administration of Investigations at the Ministry of Interior, the Legal Department of Kuwait Municipality, arbitrators, experts at the Ministry of Justice, liquidators, receivers, agents of creditors, notaries and the registrar at the Departments of Real Estate Registration & Authentication at the Ministry of Justice.
4. The Chairman and vice-chairman and members of the Municipal Council.
5. The chairman and members of boards, authorities and committees which undertake executive functions, which a law, decree or resolution is issued by the Council of Ministers on the formation thereof or appointment of their members.
6. The Chief of the Finance Controllers Body, his deputy and heads of sectors and finance controllers.
7. The Leaders are as follows:
 - Holders of the group of leading positions in the general schedule pay scale (Senior ranked positions / Undersecretary / Assistant Undersecretary).
 - Members of Boards of Directors and general managers and their deputies or assistants and secretaries-general and their deputies or assistants in the public bodies or institutions or any government agency.
 - The equivalent of a leader, such as heads of departments or administrative units and their deputies or members entrusted to the public bodies and institutions.
 - Directors of the departments and the equivalents, such as heads of the organizational units, which depend in the structures thereof on a level of management or higher.
8. The chairman, vice-chairman, members of the Board of Trustees, the Secretary General, Assistant Secretaries-General, directors and the technical staff of the Kuwait Anti-Corruption Authority.
9. The chairman, vice-chairman, deputies, directors and the technical staff of the State Audit Bureau of Kuwait.
10. Representatives of the State in the membership of the Boards of Directors of the companies in which the State or one of the governmental agencies, public bodies or institutions or other public legal entities directly contribute in a proportion not less than 25% of the capital.
11. The members of the boards of directors of the cooperative societies and sports authorities.

Paragraphs (iii) and (iv) above also apply to the military personnel, diplomats and civilians in the ministries, governmental departments, public bodies and institutions, and agencies with an independent or supplementary budget.

Article 2 indicates that Kuwait adopts the narrow coverage approach, based on the criterion of positions or ranks of public officials. The coverage of the FD system mostly includes senior public officials who occupy a director of department position and above. Likewise, in Bahrain, Financial Disclosure Law No.32/2010 (the BFD Law) applies to specific categories of public officials; most are senior officials in the legislative, judicial and executive branches, such as ministers, MPs, judges and prosecutors.⁵¹⁵

Notably, a concern regarding the legality of applying the FD system to judges was raised during the discussion of the proposed amendments to the provisions of the EKACA Law in Kuwait. However, the Legislative – Parliamentary Committee concluded that the FD system should apply to public officials, including judges. The Committee based its eventual decision on the experiences of some States which apply the requirements of FD systems to judges.⁵¹⁶ Clearly, this is consistent with the definition of a public official provided under the UNCAC, which covers judges.

⁵¹⁵ Article 1 of the Bahrain Financial Disclosure Law No.32/2010 stipulates that: 'The provisions of the law apply to the following categories:

1. The chairmen and members of the Shura Council and MPs.
2. The deputies of the prime ministers.
3. Ministers and their equivalents.
4. Undersecretaries and their deputies, assistant deputies, directors-general in the civil sector and public security sector and their equivalent of government officials in the public bodies and institutions, and the consultative council and the chamber of deputies, and municipalities.
5. Governors and their deputies.
6. Heads of diplomatic missions and their equivalents.
7. Judges and prosecutors.
8. Heads and members of the municipal councils.
9. Chairmen and members of management boards (representatives of Government) in the public bodies and institutions and State-owned companies.
10. Directors of departments in the civil sector and public security sector and the technical staff of the National Audit Office.
11. The Chairman, Deputy Chair and members of the Tender Board, technical and administrative staff of the Tender Board who hold positions as directors of departments or above . . .'

⁵¹⁶ Al Fahiman (n 347).

In 2017, several judges challenged the unconstitutionality of the EKACA Law.⁵¹⁷ Their appeal was based on a number of arguments, including the claim that the application of the provisions of the FD system to judges violated the principle of separation of powers and prejudiced the independence of the judiciary as judges are obligated under the provisions of the law to submit their FDs to the ACA. This is subject to the supervision of the Justice Minister, suggesting some erosion of the judges' independence from the Executive. However, the Court ruled that subjecting judges to the requirements of the FD system does not prejudice their independence, nor does it deprive them of their fundamental guarantees set out in the Constitution. It added that the role of the FD body (The ACA) is to gather evidence and information to verify any suspicion of corruption crime, whereas all procedures necessary to prosecute judges are taken by a competent judicial body (the Public Prosecution) after getting permission from the judicial council and its approval. Consequently, there is no encroachment upon the independence of the judiciary or prejudice to the principle of separation of powers.

In contrast to the FD systems in Kuwait and Bahrain, the FD system in Oman does not apply to specific and exclusive categories of public officials. Rather, it applies to any person considered to be a governmental official regardless of position. The term 'governmental official' is defined as any person who occupies a permanent or temporary governmental position job in any of the USAA, whether paid or unpaid. The USAA, as defined in the law, are the Council Ministers, the ministries and all administrative and technical bodies subordinate to them; the specialist councils; the public authorities and establishments; other public legal persons; or any administrative unit that derives its authority from the State. In addition, members of the Oman Council (MPs), representatives of the government in the companies, workers in the companies that are

⁵¹⁷ The Constitutional Court's judgement on the challenge submitted by 6 of appeal judges on the unconstitutionality of the Law No2/2016 (2017) 4–2017.

fully owned by the government and those in which the government owns more than 40% of its capital are all considered governmental officials.

It is clear that Oman has adopted an approach that differs from that adopted in Kuwait and Bahrain, as well as the other common approaches in most of the countries discussed earlier.⁵¹⁸ One of the most striking disparities lies in the mechanism of requesting FDs.⁵¹⁹ In most jurisdictions, public officials are required to make FDs periodically under obligatory legal provisions, whereas, according to Article 12 of the PPFACI Law, public officials in Oman only have to submit FDs upon the request of the Chairman of the FD body (SAI); and this can be at any time that he deems necessary. In other words, officials are not required to submit FDs within specific periodic times provided under the provisions of the law. Arguably, this is a significant weakness that threatens the effectiveness of Oman's FD system. For example, it is possible to exclude some senior officials from the requirements of the FD systems as the system entrusts the Chairman of the SAI with discretionary power to decide who should submit FDs. In addition, Article 12 of the law does not clearly identify which public officials and government entities are to be covered by the FD system, resulting in differences of view on the interpretation of the legal text of this Article. This is explained further below.

Arguments regarding the mechanism of identifying public officials subjected to the FD system in Oman:

Article 12 of the PPFACF Law No.112/2011 grants the SAI's Chairman discretionary power to identify which public officials are required to submit FDs regardless of their positions and whether they hold a high-, mid- or lower-ranking position. This approach was criticised by several interviewees.⁵²⁰

⁵¹⁸ See Chapter 5, Section 5.2.1/1 above.

⁵¹⁹ The requirements of submitting declarations are examined in depth in the next chapter.

⁵²⁰ Interviewee (2), Interviewee (6), Interviewee (8), Interviewee (11), Interviewee (12), Interviewee (13), Interviewee (14), Interviewee (15), Interviewee (16), Interviewee (17), Interviewee (19).

As previously proposed in Section 5.2.1, the coverage of FD systems should primarily target senior officials. However, this approach does not guarantee that all senior officials, such as ministers and equivalent, are required to declare their FDs to the SAI.⁵²¹ Furthermore, it could limit the system's ability to monitor officials' wealth changes as officials are not required to submit declarations periodically and regularly at specific times.⁵²² This is because of the discretionary power granted to the Chairman of the SAI.⁵²³ Consequently, it is argued that there is no clear justification to grant the SAI's Chairman this power.⁵²⁴ Most of the interviewees stressed that this approach is not practical and that this discretionary power should be abolished.⁵²⁵ Instead, public officials should be required to submit their declarations at specific times provided in the law and under clear and compulsory legal provisions.⁵²⁶

Nevertheless, it is recognised that obligating all public officials to submit FDs periodically to the SAI (the broad coverage approach) would certainly constitute a burden on the SAI, particularly given the limited human and material resources available to the FD Department.⁵²⁷ This problem is illustrated by the experiences of some of the countries which have adopted such an approach, and which face challenges and difficulties handling the vast number of declarations that such an open approach has caused.⁵²⁸ Therefore, it would be appropriate to obligate more carefully targeted senior public officials to submit FDs to the SAI periodically under an explicit legal text in the law; this view was supported by several interviewees.⁵²⁹ In addition, the SAI would be given the

⁵²¹ Interviewee (16), Interviewee (19).

⁵²² Interviewee (11), Interviewee (13), Interviewee (14), Interviewee (15), Interviewee (16), Interviewee (17).

⁵²³ Interviewee (6), Interviewee (11), Interviewee (13), Interviewee (14), Interviewee (15), Interviewee (16), Interviewee (17), Interviewee (19).

⁵²⁴ Interviewee (14), Interviewee (15), Interviewee (19).

⁵²⁵ Interviewee (11), Interviewee (12), Interviewee (13), Interviewee (14), Interviewee (15), Interviewee (16), Interviewee (17), Interviewee (19).

⁵²⁶ Interviewee (2), Interviewee (6), Interviewee (8), Interviewee (11), Interviewee (12), Interviewee (13), Interviewee (14), Interviewee (15), Interviewee (16), Interviewee (17), Interviewee (19).

⁵²⁷ See the discussion of the lack of human resources in the FD Department at the SAI in Oman in Chapter 4, Section 4.3.3.3.

⁵²⁸ See Chapter 5, Section 5.2.1/1 (A) above.

⁵²⁹ Interviewee (6), Interviewee (11), Interviewee (13), Interviewee (16), Interviewee (17), Interviewee (18), Interviewee (19).

authority to request declarations from other officials (middle- and low-ranking officials) who hold functions prone to corruption risks.⁵³⁰ On the one hand, this would ensure that the FD system applies to all high-ranking officials as they are more prone to corruption risks (particularly because of the wide powers, access to resources, etc. that they normally enjoy). At the same time, this mechanism would not neglect the category of public official who does not fall within the classification of 'senior' official but may be prone to potential corruption risk as the SAI would be given discretionary power to ask any official within this category to submit FDs.

Arguments regarding the scope of coverage of the governmental entities subject to the FD system in Oman

As stated earlier, the FD system applies to governmental officials who work in the USAA. Article 1 of the PPFACI Law No.112/2011 defines the USAA as:

The Council Ministers, the Ministries and all their administrative and technical bodies, the specialised councils, the public authorities and establishments; other public legal persons, or any administrative unit that derives its authority from the State.

Some of the interviewees contended that the definition of the USAA provided in the law is unclear as it does not clearly and explicitly identify the sectors and agencies covered by the law.⁵³¹ Consequently, this opens the door to various interpretations and assumptions regarding the entities and sectors subject to the law, particularly the judiciary, military and security sectors. For example, some of the interviewees argued that the definition should not be extended to cover the judiciary, public prosecution, military and security sectors because of the absence of any explicit legal text to include them.⁵³² However, one of the interviewees maintained that the definition involves all units of the executive branch, including the security and military units. Another stated that the judiciary

⁵³⁰ Interviewee (6), Interviewee (11), Interviewee (16), Interviewee (18).

⁵³¹ Interviewee (8), Interviewee (16), Interviewee (19).

⁵³² Interviewee (6), Interviewee (13).

and the public prosecution could be considered as a 'public legal person' provided in the definition.⁵³³ A further interviewee argued that the judiciary and the public prosecution could be included within 'specialised councils'.⁵³⁴ Some of the interviewees contended that the definition does not cover the judiciary and the public prosecution.⁵³⁵

It appears that to find a solution to the legal controversy over the interpretation of the term 'the units of the Administrative Apparatus of the State', it will be essential for the legislator to identify the entities and agencies to which the FD system applies explicitly and clearly, as in the case of the FD regimes of the other countries examined in this study and most of the comparative jurisdictions. It should be noted that the interviewees, among them two judges, agreed that the FD system should apply to judges and prosecutors. They added that subjecting them to the FD system does not violate judges' independence and separation of powers. Some of the interviewees argued that a separate FD system for judges can be established if there are concerns over subjecting them to a centralised system that applies to all public officials.⁵³⁶

It is worth noting that, unlike the abolished Royal Decree No.26/75 on the Regulation of the Administrative Apparatus of the State, the new Royal Decree No.75/2020 explicitly provides that the security and military agencies fall within the administrative apparatus of the State.⁵³⁷ However, this definition does not apply to the USAA provided under the PPFACI Law 112/2011.

Unlike the countries mentioned above, the UK adopts a different approach to determining the scope of its FD systems. There is no single FD system which applies to all public officials or specific categories of public officials. Instead, there are multiple FD systems which are directed

⁵³³ Interviewee (15).

⁵³⁴ Interviewee (8).

⁵³⁵ Interviewee (6), Interviewee (17), Interviewee (19).

⁵³⁶ Interviewee (6), Interviewee (12), Interviewee (15).

⁵³⁷ Royal Decree No.75/2020 on the regulation of the administrative apparatus of the State issued on 12 August 2020 defines the administrative apparatus of the State as ministries, the security and military agencies, councils, and other executive units that derives its authority from the State including public legal persons based on administrating a public utility with a service or economic characters such as the public authorities and establishments.

at specific categories of public officials. Such FD systems apply, for instance, to ministers, MPs, local authorities, councillors and civil servants. Surprisingly, there is no separate legislative provision requiring judges in the UK, except in Scotland, to declare and register their interests even though the matter of the disqualification of judges because of conflicts of interest has been a feature of cases in which some judges have failed to disclose interests in the proceedings in which they were involved. One such case was when Lord Hoffmann – a senior judge in the UK’s highest court⁵³⁸ – failed to disclose his connection with Amnesty International during the proceeding to extradite the former Chilean Head of State, the General Pinochet. It was later decided to invalidate the decision because of his perceived bias against the Pinochet.⁵³⁹ As a result of this and other cases where judges have had a financial or other bias, there have been repeated calls for judges in all parts of the UK to record their interests in a public register to enhance judicial transparency.⁵⁴⁰ This is already done in Scotland.⁵⁴¹ It is worth noting that the UK’s Judicial Conduct Investigations Office’s annual reports indicate that a total of 112 complaints were received on conflicts of interest during the period 2014–2019,⁵⁴² so the scale of the problem makes it a significant one for the UK, as for other countries.

⁵³⁸ Lord Hoffman was one of the five judges in the House of Lords which ruled on 25 November 1998 that General Pinochet, the ex-Chilean dictator who was on a visit to the UK, had to be extradited to Spain to face criminal charges. The court allowed Amnesty International (AI) to be one of the parties in the case (as interveners). Hoffman was an unpaid director and chairperson of Amnesty International Charity Limited (AICL), an organisation set up and controlled by AI, and his wife was employed by AI. Based on this links between Hoffman and AI, General Pinochet challenged the court’s judgement as Hoffman did not declare this links and had not disqualified himself from hearing the case, therefore, this could forms the appearance of bias. On this ground, this judgement was quashed by a new panel of five law lords, see Kate Malleson, ‘Judicial Bias and Disqualification after Pinochet (No . 2)’ (2000) 63 (1) *Modern Law Review* ,pp119-127.

⁵³⁹ *R v Bow Street Magistrates Court ex parte Pinochet Ugarte* [2000] 1 AC 119, House of Lords. The case was widely reported; see, for example, ‘Judges Ask: “Anything to Declare?”’ (*BBC News*, 1999) <<http://news.bbc.co.uk/1/hi/uk/478059.stm>> accessed 23 September 2020.

⁵⁴⁰ Martin Hannan, ‘Fresh Call for All UK Judges to Register Interests’ (*The National*, 2017) <<https://www.thenational.scot/news/15449949.fresh-call-for-all-uk-judges-to-register-interests/>> accessed 30 September 2020.

⁵⁴¹ *ibid.*

⁵⁴² ‘Judicial Conduct Investigations Office Annual Reports’ (*Judicial Conduct Investigations Office*) <<https://judicialconduct.judiciary.gov.uk/reports-publications/>> accessed 30 September 2020.

2. Family members of public officials

Even though the technical guide of the UNCAC affirms that State Parties are required to adopt an FD system to ask the public official to disclose their assets and interests including family interests, some jurisdictions exempt officials from declaring their spouses' interests, Bahrain and Kuwait being two examples.

In Kuwait, it is significant that there are no legal provisions in the EKAA Law No. 2/2016 that oblige public officials' spouses to submit FDs to the FD body. It is understood from the definition of the 'financial disclosure' provided under Article 1 of the law that the FD system applies to public officials, their minor children and those who are under their guardianship and custodianship, i.e. not including their spouses. The Kuwait Transparency Society has argued that the coverage of the FD system should be extended to include spouses, especially as there have been some detected cases where officials have transferred their money to their spouse's bank accounts.⁵⁴³ Likewise, in Bahrain, when the FD Law came into force in 2010, family members of public officials (spouses and minor children) were covered by the FD system. However, in 2016, Royal Decree No.19/2017 was issued to exclude spouses from the requirements of the FD system.

The reasons for this exclusion are clear: both Kuwait and Bahrain rely on the principles of Islamic Sharia in excluding spouses from the provisions of their FD systems, under which the financial liability of spouses is independent of each other.⁵⁴⁴ In other words, each spouse has the right to possess their assets independently of the other. Therefore, public officials shall not be compelled to declare the assets and income of their spouses.

⁵⁴³ 'Observations of Kuwait Transparency Society on the Anti-Corruption Law' (*Arab Anti-Corruption Organization*) <<http://arabanticorruption.org/article/24355/>>- الشفافية الكويتية تصدر - ملاحظاتها على قانون مكافحة الفساد accessed 20 August 2020.

⁵⁴⁴ 'The Legislative - Parliament Committee Agreed in Principle the Anti-Corruption Law' (*Kuwait News Agency*, 2005) p.56 <<https://www.kuna.net.kw/ArticleDetails.aspx?id=1550757&language=ar>> accessed 20 August 2020; Representatives Council, 'The Twenty-Sixth Session of the Representatives Council of the Third Ordinary Annual Meeting of the Fourth Legislative Term', vol 26 (2017) <<https://www.nuwab.bh/wp-content/uploads/pdf/1971200000010-26001مضبطةالجلسة.pdf>>.

Despite the fact that Islamic Sharia emphasises the principle of the separation of the financial liability of spouses, requiring spouses to submit a separate declaration would be a practical legal solution to what is a potentially significant problem. This solution would ensure that officials' spouses are committed to declaring their interests, therefore, ensuring the detectability of hidden assets/income under their name; simultaneously it would ensure that the application of the Islamic Sharia principle is considered.

In contrast with the FD regimes in Kuwait and Bahrain, under Article 12 of the Omani PPFACI Law.112/2011, public officials are required to submit an FD form containing all of their moveable and immovable possessions as well as those owned by their spouses and minor children.

During the discussion of the question of obligating public officials to declare their spouse's possessions within their same declaration form, a number of the interviewees agreed that this contradicts the principle of Islamic Sharia law.⁵⁴⁵ However, they affirmed that official's spouses should not be excepted from declaring their possessions to ensure that officials do not hide or transfer their unlawful wealth or possessions to their spouses.⁵⁴⁶ Some of the interviewees stated that, in practice, corruption cases revealed certain corrupt officials who hid their illegal wealth and registered it under their spouses' names.⁵⁴⁷

Interestingly, some of the interviewees argued that the implementation of this Article could face some challenges in practice, for example in the case of public officials' spouses refraining to declare their possessions due to the absence of a mandatory legal provision applying to them.⁵⁴⁸ Indeed, under the current provisions of the law, the legal obligation here is on officials to declare their spouses' possessions. Some of the

⁵⁴⁵ Interviewee (6), Interviewee (12), Interviewee (13), Interviewee (14), Interviewee (16), Interviewee (17), Interviewee (18).

⁵⁴⁶ Interviewee (6), Interviewee (13), Interviewee (14), Interviewee (16), Interviewee (17), Interviewee (18).

⁵⁴⁷ Interviewee (14), Interviewee (16).

⁵⁴⁸ Interviewee (2), Interviewee (6).

interviewees were supportive of requiring each spouse, under mandatory legal text, to submit a separate declaration to the SAI, which is as a clear legal solution that could overcome these challenges.⁵⁴⁹

Similar to Oman, FD systems in the UK require public officials to declare the interests of family members, and that includes spouses and children. For example, ministers, when taking office, must submit a list of all of their interests that could rise to a conflict of interest, including interests of their spouse or partner and close family.⁵⁵⁰ Likewise, under the Civil Service Management Code, civil servants must declare to their department or agency any business interests or holdings of shares or other securities which they or members of their immediate family hold. Family members here include the spouse, partner where relevant, and children.⁵⁵¹

5.3.2 Contents of FD forms

The comparative analysis of the FD systems in the countries examined in this study shows the variation in the scope of content of FD forms. One notable difference is that Kuwait and Oman require public officials to declare more detailed financial information than that required in Bahrain and the UK. Such information in both countries is similar to a large extent. It includes, for example, the source and value of the real estate, movables, usufruct rights, securities, bonds, shares in companies, cash, personal bank accounts, rights and debts.

In Bahrain, although the primary aim of the FD system is to detect illicit enrichment, surprisingly, the amendments that have been made to the executive regulation of the FD Law since its enactment include the

⁵⁴⁹ Interviewee (2), Interviewee (8), Interviewee (11), Interviewee (15).

⁵⁵⁰ The Ministerial Code, August 2019, s 7.3.

⁵⁵¹ The Civil Servants Management Code, November 2016, s 4.3.9. The breadth of the disclosure requirement can be seen from the wording of this provision. It states:

Civil servants must therefore declare to their department or agency any business interests (including directorships) or holdings of shares or other securities which they or members of their immediate family (spouse, including partner where relevant, and children) hold, to the extent which they are aware of them, which they would be able to further as a result of their official position. They must comply with any subsequent instructions from their department or agency regarding the retention, disposal or management of such interests.

exclusion of 'movables' from the contents required to be declared by public officials. One of the arguments for this is the practical difficulty of enumerating and checking all the movables that are likely to be owned by public officials. The counter-argument is that this amendment has meant excluding movables with high-value such as luxury cars, yachts and jewellery, significant weakening the FD system as a tool for combating corruption.⁵⁵² It appears that such a challenge could be overcome by requiring public officials to declare movables which only exceed a certain amount in value, ensuring the exclusion of movables with a small value. Table 1 shows a comparison of the information that is required to be declared by public officials in Kuwait, Oman and Bahrain.⁵⁵³

The FD forms in the UK vary from those in Kuwait, Bahrain and Oman. In the UK, there is no single FD system applying to all public officials as each branch or sector administers its own FD system. Therefore, there is no common FD form applicable to all officials. It is notable that detailed information on assets and income is not required to be declared, such as cash and personal accounts as well as rights and debts. It has been contended that one reason for this is due to concerns over the violation of privacy that such requirements imply.⁵⁵⁴ This could be an acceptable justification as there are FD systems designed to detect conflicts of interest which are similar to the UK in this regard; however, they require public officials to declare some details of income and assets: the FD system in the United States is an example, as explained earlier.⁵⁵⁵

The information required to be declared under FD systems in the UK varies and mostly relates to the kinds of interests that could influence official positions in the context of the particular activities concerned. For example, under Chapter One of the Guide to the Rules relating to the Code of Conduct for Members of the House of Commons, members must provide information on employment and earnings outside the house,

⁵⁵² Representatives Council (n 544) p.65.

⁵⁵³ The comparison in this table does not include the UK as there is no standard FD form that applies to all FD systems. A comparison of some FD content in the UK is provided in a separate table (see Table 2).

⁵⁵⁴ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31).

⁵⁵⁵ See Section 5.2.2 above.

donations and other support for activities as an MP: the system extends, as well, to gifts, benefits and hospitality from UK sources, visits outside the UK, and gifts and benefits from sources outside the UK. In contrast, civil servants are required to declare less detailed information. Under section 4.3.9 of the Civil Servants Management Code, they must declare any business interests such as directorships, shares or securities which they or members of their immediate family hold to the extent to which they are aware of them and which they would be able to further as a result of their official position. Hence, it appears that the scope of the contents of FD forms in the UK varies in accordance with the specific responsibilities vested in officials and the degree to which their positions could be prone to conflicts of interest. Table 2 highlights this difference by showing a comparison of the contents of the FD forms that apply to ministers, MPs, councillors and civil servants to highlight this differentiation.

Table 5.1 Examples of Contents of Financial Declarations Forms in Kuwait, Oman and Bahrain

Kuwait *	Oman **	Bahrain ***
<ul style="list-style-type: none"> • Real estate • Usufructuary rights • Financial securities and shares in companies • Deposits, bank accounts and rights • Debts • Movable property including gifts and cash the amount of which exceeds \$9800 • The agencies or authorisations with a financial effect 	<ul style="list-style-type: none"> • Real estate (such as lands and buildings of all uses as well as usufructuary rights, investments and leasing) • Movable Property: <ul style="list-style-type: none"> a. Movable with value exceeding 1000 R.O. b. Financial securities and shares in companies c. Cash balances (Any national or foreign currencies the government official holds in banks, vaults or private funds) d. Memberships • Rights (Credits owed to a government official, spouse and children under the age of 18 in the possession of others (debtors)) • Debts (Accrued liabilities [debts] of a government official, their spouse and children under the age of 18 to others) 	<ul style="list-style-type: none"> • Real estate and its financial implications • Balances in banks • Shares in companies • Rights in the possession of others and debts • The source of increased wealth

* Data source: Financial declaration form, see: <https://www.nazaha.gov.kw/EN/Pages/financialform.aspx>

** Data source: Financial declaration form, see: <https://www.sai.gov.om/en/fdgo.aspx>

*** Data source: Article 6 of the Bahrain Implementing Regulation No.82/2012 of the Financial Disclosure Law No.32/2010.

Table 5.2 A Comparison of the Required Contents of FD Forms in the UK

Ministers*	Members of the House of Commons**	Councillors***	Civil servants****
<ul style="list-style-type: none"> • Financial interests • Directorships and shareholdings • Investment property • Public appointments • Charities and non-public Organisations • Any other relevant interests • Interests of spouse, partner or close family member • Compliance with legal obligations 	<ul style="list-style-type: none"> • Employment and earnings • Donations and other support for activities as an MP • Gifts, benefits and hospitality from UK sources • Visits outside the UK • Gifts and benefits from sources outside the UK • Land and property • Shareholdings • Miscellaneous • Family members employed and remunerated through parliamentary expenses. • Family members engaged in lobbying 	<ul style="list-style-type: none"> • Employment, office, trade, professions or vocation carried on for profit or gain • Sponsorship • Contracts with the council • Land in the area of the City Council • Licences to occupy land • Corporate tenancies • Securities 	<p>Business interests such as directorships, shares or securities which they or members of their immediate family hold to the extent to which they are aware of them, which they would be able to further as a result of their official position.</p>

* Data source: List of Ministers' Interests, July 2020.

** Data source: The Code of Conduct together with The Guide to the Rules relating to the Conduct of Members, October 2019.

*** Data source: The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, Statutory Instrument 2012 No.1464.

**** Data source: The Civil Servants Management Code, November 2016, S 4.3.

Table 5.1 shows that the contents of FD forms in Kuwait and Oman are similar to a large extent and more comprehensive than those in the Bahrain FD form. The main difference lies in the information related to the 'movables'. Unlike Kuwait and Oman, the Bahraini FD system does not require public officials to declare any information on their movables. As explained earlier, this is one of the significant shortcomings of the Bahraini FD system.

Table 5.2 indicates the variation of the type of the contents of FD forms that are required to be declared by public officials in the UK. The absence of a single FD system that applies to all public officials is the main reason for this variation. In addition, unlike the information provided in Table 5.1, Table 5.2 shows that FD forms do not include any information related to assets and income, such as cash and personal accounts as well as rights and debts. This is because FD systems in the UK are primarily oriented to the detection of conflicts of interest, not illicit enrichment.

5.4 CONCLUSION

This chapter provided a critical examination and analysis of the coverage of FD systems and the data required to be declared within FD forms. The pros and cons of the 'broad' and 'narrow' coverage approaches for identifying public officials who should be subject to FD systems were examined. In addition, the two most common criteria to determine the categories of public officials subject to FD regimes were addressed. The first is the criterion based on the position or rank of public officials, and the second is the criterion based on risks associated with the particular public office or role. Furthermore, the chapter discussed the arguments as to whether judges should be subjected to the requirements of FD systems. It also addressed the issue of extending FD systems' requirements to cover officials' family members.

The chapter concluded that most studies and experts recommend that FD systems should be applied to specific categories of public officials (the narrow coverage approach): in general, the justification is that this helps FD bodies to implement their tasks more efficiently and effectively. It would therefore be appropriate for countries to identify public officials who are subject to FD systems based on: (i) their position or rank; and the (ii) risks associated with their particular public office or role.

This chapter also concluded that judges should be covered just like other officials. Among other things, this is supported by the incidence of conflict of interests and protentional bias that can affect the judicial role. There are no convincing reasons why judges should be exempted from a disclosure regime. Regarding the coverage of officials' family members and the extent to which it violates privacy rights, it can be concluded that this coverage does not breach privacy rights as long as it is in accordance with the law and necessary in a democratic society. This conclusion has been supported by the ECHR jurisprudence and specific rulings, in particular, the case of *Mr Andrzej Wypych v Poland*.

Concerning the contents of FD forms, the chapter concluded that a key function of any FD legal framework should be to regulate what kinds of information are to be provided in forms, reports, and other mechanisms for supporting disclosure. Countries should, in their legislation and schemes, identify the objectives of their FD regime, whether it aims to detect conflicts of interests or illicit enrichment or both. The specific content and scope of FD forms and other mechanisms, such as reporting and updating of disclosures, should be designed around those objectives if they are to function effectively.

A comparative analysis of the provisions of FD systems that regulate the coverage of FD systems and the content of FD forms in comparator countries have been conducted. This comparison proved

valuable in highlighting some important weaknesses in the Omani system. For example, unlike the countries subjected to the comparison, the law in Oman does not oblige public officials to submit FDs on a regular basis. Instead, it grants the SAI's Chairman a discretionary power to request FDs whenever he deems necessary. In practice, this may mean that some officials may not be subject to disclosure at all, or, if this happens, it is infrequent. Interviewees' views on this were critical in showing how this approach could limit the system's ability to monitor officials' wealth changes. The report of the review of Oman's implementation of the UNCAC (2019) considers this a weakness in the FD Law that limits the effectiveness of the FD system.⁵⁵⁶ This adds force to the arguments for reform of this key feature of Oman's FD system. Consequently, it would be appropriate to require senior officials to submit their declarations periodically at specific times provided in the law. However, the SAI would be given the authority to request declarations from other middle- and low-ranking officials who hold positions prone to corruption risk.

In addition, the definition of the USAA subjected to the law are not identified under a clear and explicit legal text. This has led to different views on the interpretation of this definition. For example, interviewees provided divergent opinions on whether or not the provisions of the law were applicable to the judiciary, the public prosecution, the security and the military.

Moreover, the current law obliges an official to submit a declaration including information of his/her spouse's movable and immovable possession. This is problematic, particularly in the event that an spouses refrain from declaring their financial possessions due to the absence of spousal legal liability. On the other hand, it is argued that obligating public officials to declare their spouses' possessions within

⁵⁵⁶ 'Review of Implementation of the United Nations Convention against Corruption, First Resumed Tenth Session (Executive Summary)' (n 353) ,p.10.

the same declaration form contradicts the principle of Islamic Sharia law. Despite the difficulties this poses, reform will need to consider whether and to what extent Oman should legislate to address this. Obligating each spouse to submit a separate declaration may be considered a legal solution to overcome these challenges.

The next chapter examines the subsequent procedures after FD forms have been completed, including submitting, receiving, verifying and scrutinising the forms. It also examines the procedures for dealing with detected irregularities and the sanctions that should be applied when the law is violated.

6 CHAPTER SIX: IMPLEMENTATION AND ENFORCEMENT OF FD SYSTEMS

6.1 INTRODUCTION

The previous chapter examined the elements of FD systems related to identifying the scope of individuals subjected to FD regimes and the contents of FD forms. This chapter examines and analyses the process of submitting FD forms to oversight bodies (FD bodies) and the subsequent procedures that should be taken to deal with submitted FD forms, starting with the receipt of FD forms and ending with the referral of suspicious declarations to an investigative authority and the imposition of prescribed sanctions. This thesis argues that FD bodies should be given appropriate legal powers to enable them to carry out these functions. All these processes and procedures are important to assess whether an FD system is operating effectively and efficiently.

This chapter is divided into three main sections. Section One (6.2) examines and discusses the requirements of the UNCAC and studies related to the elements of the implementation and enforcement of FD systems. It is divided into four subsections: The first examines the significant legislative powers and mandates that should be given to FD bodies to implement FD system tasks; the second analyses the mechanism of submitting FD forms; the third addresses the procedures and methods of verifying and investigating declarations; and the fourth discusses the sanctions imposed upon the violation of FD requirements.

Subsequently, Section Two (6.3) includes a comparative study on the mechanisms of implementing and enforcing FD systems in Oman and the other jurisdictions examined in this study.

Finally, Section Three (6.4) examines Oman's whistleblowing system and its role in the effectiveness of the FD system

6.2 AN EXAMINATION AND ANALYSIS OF THE REQUIREMENTS OF THE IMPLEMENTATION AND ENFORCEMENT OF FD SYSTEMS

This section addresses the key powers that should be granted to FD bodies to enable them to implement and enforce FD systems. It examines the process of submitting declarations, verifying their contents, and the sanctions imposed following the violation of FD systems' requirements.

6.2.1 Powers and mandate granted to FD bodies

The UNCAC does not require that specific powers and mandates be given to FD bodies to perform their functions. Instead, it leaves the determination of the scope of such mandates and powers to State Parties. The justification for this is that such powers should be identified according to each country's circumstances and the administrative and legal systems to which FD bodies should be responsive.⁵⁵⁷ However, the technical guide of the UNCAC stresses that anti-corruption bodies should be given statutory powers to carry out their tasks.⁵⁵⁸ Therefore, it is vital to grant FD bodies the appropriate legislative powers to perform their mandated tasks effectively. Such tasks include the ability to receive FD forms; verify submitted declarations; check their authenticity, completeness, and accuracy; access financial information; and request any related documents from concerned agencies.⁵⁵⁹

The Transparency International Report (2016) indicates that some FD bodies do not have the necessary powers provided under the law, such as access to databases, to verify the accuracy of FD data. In contrast, even though some countries grant broad legal powers to the FD body, in practice such powers are not used. Yemen is one such example

⁵⁵⁷ United Nations Office on Drugs and Crime, 'Technical Guide to the United Nations Convention Against Corruption' (n 170) ,p.9.

⁵⁵⁸ *ibid.*

⁵⁵⁹ Bowser and others (n 407) ,p.4; Chene, 'African Experience of Asset Declarations' (n 9) ,p.4.

identified by Transparency International. Moreover, in Lebanon, the law has not only been criticised for the lack of such powers but it also does not even stipulate an oversight body responsible for verifying the declarations data.⁵⁶⁰

A study conducted by the WB&UNODC indicates that although approximately 60% of a total of 74 countries identified the FD bodies responsible for carrying out the tasks of verifying and reviewing declarations, only 30% identified the explicit criteria of this responsibility in their legislation.⁵⁶¹ The OECD notes that this is one of the flaws in the legal frameworks that create obstacles to the implementation of FD systems.⁵⁶² However, this thesis argues that it is not essential to identify criteria for the verification process of declarations in FD laws. Indeed, such criteria are part of an FD body's internal procedural instruments used to verify declarations.⁵⁶³ Therefore, these criteria can be regulated under the internal regulations issued by an FD body. What is important, however, is that FD laws ensure that an FD body is granted sufficient and appropriate legal powers to enable it to implement these criteria.

The 2014 EU Anti-corruption Report,⁵⁶⁴ concerning the verification of FDs, notes that FD bodies in some EU Member States have limited powers and tools, and gives some examples of FD bodies that conduct comprehensive checks on declarations via a specialised independent anti-corruption body that enjoys the necessary powers and tools to check the origin of assets using a wide range of databases. Such outside databases include, for example, tax administration data and trade register data.

⁵⁶⁰ Transparency International, 'Asset Declarations in MENA Countries: Illicit Enrichment and Conflicts of Interest of Public Officials' (n 189) ,p.9.

⁵⁶¹ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.98.

⁵⁶² OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31).

⁵⁶³ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.42.

⁵⁶⁴ European Commission, 'Report from the Commission to the Council and the European Parliament - EU Anti-Corruption Report' (2014) ,p.11 <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf>.

Obviously, granting an FD body adequate powers to carry out its tasks is one of the essential factors for the success of FD systems. Hence, without such powers, even the best-designed FD system will function poorly. Granting an FD body adequate authorities that enable it to request, receive and verify declarations are the most important powers that should be explicitly embedded under the FD system's legal framework. It should also be granted the authority to refer offenders to prosecution and punish them appropriately. Issues related to these powers and authorities are considered in the following sections.

6.2.2 The submission process of FD forms

Ensuring the compliance of all obligated public officials in submitting their declarations is the first step for the success of the subsequent processes related to the implementation and enforcement of FD systems. Some authors consider the submission process a channel that transfers FD forms' data from officials to an FD body,⁵⁶⁵ enabling it to take subsequent implementation actions such as the verification and examination of declarations, and ultimately bring violators to justice. It is therefore crucial to ensure their effectiveness that FD bodies focus on strengthening the mechanisms and elements linked to the submission process.

When policymakers decide to establish a new FD system or develop the existing one, three key elements related to the submission process should be carefully considered to ensure its effectiveness. Firstly, an FD regime should explicitly identify the frequency with which declarations are submitted. Secondly, an FD body should create an accurate register of the individuals required to submit declarations and keep it up to date. Thirdly, an FD body should ensure that various types of methods are

⁵⁶⁵ Rossi, Pop and Berger (n 31) ,p.49,.

available to support declarants in providing accurate data and to guarantee that they can easily complete the submission process.

1. The frequency of submitting financial declarations

The UNCAC encourages State Parties to establish measures and systems which require public officials to make declarations to appropriate authorities. However, it leaves to State Parties the power to identify the frequency with which such declarations must be submitted. Consequently, legal provisions governing the frequency of submitting declarations vary between FD regimes.

Studies indicate three common patterns regarding declaration submission frequency:⁵⁶⁶ submission upon assuming and leaving office, periodic submission, and submission whenever there is a significant change in the official's wealth.

A. Submission upon assuming and leaving office

Most FD systems require public officials to submit their declarations upon assuming and leaving their office.⁵⁶⁷ This is a basic pattern to establish an effective FD system. It enables an FD body to build a foundation upon which to monitor future suspicious changes in officials' wealth and detect potential conflicts of interests since taking their office and leaving it.⁵⁶⁸

B. Periodic submission

Some FD laws require public officials to submit declarations periodically at a specific time while they are in office in addition to the submission

⁵⁶⁶ Transparency International, 'Asset Declarations in MENA Countries: Illicit Enrichment and Conflicts of Interest of Public Officials' (n 189); Chene, 'African Experience of Asset Declarations' (n 9); Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11); Ivana and others (n 182).

⁵⁶⁷ Bank and United Nations Office on Drugs and Crime (n 2) ,p.38.

⁵⁶⁸ Transparency International, 'Asset Declarations in MENA Countries: Illicit Enrichment and Conflicts of Interest of Public Officials' (n 189) ,p.3,.

upon taking and leaving office.⁵⁶⁹ Some countries that adopt this approach require officials to submit an annual periodic declaration;⁵⁷⁰ the U.S. and Argentina are examples of this. Other countries use a more extended period of up to two years (e.g. Jordan⁵⁷¹), four years (e.g. Ghana⁵⁷²) and five years (e.g. Egypt⁵⁷³). The Conference of the States Parties to the UNCAC on asset and interest disclosure systems (2018) indicates that requiring officials to submit annual declarations is the most common pattern reported by States parties.⁵⁷⁴

In fact, the periodic submission pattern is no less critical than the submission pattern upon assuming and leaving office because it allows declarations to be regularly updated during the term of office. Hence, these two approaches appear to be complementary to each other. Therefore, periodic submission is necessary so that FD bodies can keep monitoring changes in public officials' assets and income and prevent and detect potential conflicts of interests during the period from assuming to leaving office.⁵⁷⁵

C. Submission based on a significant change in the official's wealth or property

This submission pattern aims to ensure that public officials update their declarations on an ongoing basis once a significant change occurs in their property or wealth. It has been argued that such a pattern could

⁵⁶⁹ United Nations, 'Implementation of Conference Resolutions 7/5, Entitled "Promoting Preventive Measures against Corruption", and 7/6, Entitled "Follow-up to the Marrakech Declaration on the Prevention of Corruption": Thematic Discussion on Asset and Interest Disclosure Sys', *Asset and interest disclosure systems (article 8, paragraph 5, of the United Nations Convention against Corruption)* (United Nations Office on Drugs and Crime 2018) ,p.8.

⁵⁷⁰ Chene, 'African Experience of Asset Declarations' (n 9) ,p.4.; Bank and United Nations Office on Drugs and Crime (n 2) ,p.38.

⁵⁷¹ Article 7 of the Illicit Gains Law and its amendments No.21/2014.

⁵⁷² Section 1 (4) of the Public office Holders (Declaration of Assets and Disqualification), Act 1998 (ACT 550).

⁵⁷³ Article 3 of the Illicit Gains Law No.62/75.

⁵⁷⁴ United Nations (n 569) ,p.8.

⁵⁷⁵ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.12,.

cause some difficulties that limit its effectiveness.⁵⁷⁶ Determining the threshold of the 'significant change', by which public officials are obliged to update their declarations is one such difficulty.⁵⁷⁷

On the one hand, identifying a very low threshold means that an FD body will receive a significant number of declarations, causing a considerable burden on both the FD body and declarants.⁵⁷⁸ On the other hand, placing too high a threshold could send a message to the public that an FD body is not serious in monitoring officials' declarations, thus undermining its credibility.⁵⁷⁹

However, this thesis argues that this could represent a challenge to systems that adopt this pattern and simultaneously require officials to submit periodic declarations while assuming office during a short period, whether annually or every two years. This would explain why France requires public officials to declare any significant change in their assets' value without requiring them to make an annual submission.⁵⁸⁰ This challenge would not be faced by systems that place a longer duration between periodic submissions, such as those that require declarations to be updated every three years or over. In addition, to ensure this approach's effectiveness, an FD body should be provided with adequate resources which enable it to monitor officials who do not update their declarations when their wealth or possessions increase.

Another challenge of this approach, as noted by the OECD, could be its practical implementation.⁵⁸¹ For example, identifying the increase of the value of an asset such as real estate is difficult as it is mostly not clear nor fixed.⁵⁸² This could place an extra strain on declarants as they have

⁵⁷⁶ Bank and United Nations Office on Drugs and Crime (n 2) ,p.38.

⁵⁷⁷ *ibid* ,pp.38-39.

⁵⁷⁸ *ibid* ,p.38.

⁵⁷⁹ Bank and United Nations Office on Drugs and Crime (n 2).

⁵⁸⁰ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.12,.

⁵⁸¹ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.68.

⁵⁸² *ibid*.

to constantly evaluate their assets to establish their actual value and identify whether there is a significant increase that must be declared.

This thesis therefore concludes that it is not possible to assert that a specific pattern of frequency submission is the best practice for all countries due to the variety of circumstances and factors surrounding each FD system. For example, in theory, a periodic annual submission is more effective than requiring officials to submit their declarations periodically every two years or over as the yearly submission allows an FD body to receive annually updated declarations and make accurate comparisons over the period of office.⁵⁸³ However, in practice, this pattern could constitute a burden on FD bodies, especially those suffering from a lack of human, material and technical resources. In these circumstances, such FD bodies are unable to deal with the number of declarations received annually. Some studies have highlighted that the decision to determine the frequency of declarations should weight several factors, including the balance between the requirement to update declarations and the capacity of an FD body to handle the updated declarations.⁵⁸⁴ Furthermore, this decision should avoid imposing an unduly overwrought obligation on officials, which may risk non-compliance.⁵⁸⁵

2. Establishment of a register of public officials subjected to an FD system

The obligation of all public officials to submit their declarations in accordance with the requirements and procedures provided in the law is an essential factor in the success of an FD system.⁵⁸⁶ Therefore, the law

⁵⁸³ Matthew Jenkins, 'Income and Asset Disclosure' (*Transparency International*, 2015) ,p.5 <<https://knowledgehub.transparency.org/guide/topic-guide-on-interest-and-asset-disclosure/5545>>.

⁵⁸⁴ Bank and United Nations Office on Drugs and Crime (n 2) ,p.38,; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.37,.

⁵⁸⁵ Bank and United Nations Office on Drugs and Crime (n 2) ,p.38,; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.37,.

⁵⁸⁶ Ivana and others (n 182) ,p.17,.

must determine the agency responsible for monitoring officials' compliance with the submission of declarations. Subsequently, such an agency should create a register of all officials subjected to an FD system (database). This database enables an FD body to determine the categories of all public officials subjected to an FD system using their names and posts and thus allows them to follow up with both committed officials and those who do not fulfil their obligation to submit declarations within the legal time limits.

Burdescu and others argue that an FD body's ability to ensure the availability of an updated registry of officials is a fundamental first step that enables it to monitor officials' compliance with the requirements of an FD system.⁵⁸⁷ For instance, in Latvia, the report of the Fourth Audit Department of the State Audit Office (2015) on the performance audit of the declaration system of public officials found that the lack of a determination of all public person institutions' entities responsible for preparing and submitting lists of officials was one of the factors why the State Revenue Service was not taking appropriate measures to monitor the compliance of public officials in submitting their declarations.⁵⁸⁸

The responsibility for preparing and updating the public officials list

One of the essential tasks of an FD body is maintaining an up-to-date registry for public officials, which can be automated.⁵⁸⁹ An electronic registry system assists the FD body in verifying the public officials' list and tracking those who fail or are late submitting their declarations more easily than the manual verification process. However, entrusting an FD

⁵⁸⁷ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11), p.71.

⁵⁸⁸ The Fourth Audit Department of the State Audit Office (Latvia), 'Are Submission, Revision and Publication of the Declarations of Public Officials Effective?' (2015) pp.3,12.

⁵⁸⁹ Marie Chene, 'The Use of Technology for Managing Income and Asset Declarations' [2015] U4 Anti-Corruption Resource Centre ,p.4.

body with the responsibility of creating and updating the registry of officials' names by itself would place a significant burden on it.

Ivana and others argue that building and enhancing communication and coordination with other agencies (HR offices) is a significant step in ensuring an accurate and up-to-date officials list.⁵⁹⁰ They posit that the absence of a legal obligation for HR officers to support the disclosure system is one of the challenges that may arise when trying to draw up this list. Consequently, it is preferable that the law obliges the agencies in which public officials work to provide the necessary support and assistance to the FD body, including the provision of up-to-date lists of officials' names and posts. This can be achieved through an electronic system that links the FD body with such agencies.

In addition, agencies should be responsible for notifying the FD body of any change regarding officials' functional status, such as their appointment, dismissal or moves to other positions.⁵⁹¹ It has been argued that it is better to make this notification a legal requirement of agencies.⁵⁹² However, this thesis argues that a more effective method is if the law imposed sanctions on agencies that fail to comply with this obligation.

In some countries, such agencies' role is not only to provide the FD body with an up-to-date registry of public officials but also to monitor officials' compliance with file declarations.⁵⁹³ This practice is more convenient for FD systems that require officials to submit their declarations directly to the agencies in which they are employed. For example, Argentina's FD system entrusts the Human Resources Offices at the agencies with the responsibility of monitoring officials who submit their declaration on time as well as those who fail to comply. Furthermore, they are obligated to

⁵⁹⁰ Rossi, Pop and Berger (n 31) pp.51,52.

⁵⁹¹ Timan Hoppe and Valts Kalniņš, 'Eastern Partnership-Council of Europe Facility Project on " Good Governance and Fight against Corruption ", Practitioner Manual on Processing and Analysing Income and Asset Declarations of Public Officials' (2014) ,p.8.

⁵⁹² Hoppe and Kalniņš (n 591).

⁵⁹³ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.72.

notify the FD body when any official takes or leaves office. It should be noted that the Human Resources Offices task here does not extend to verifying the declarations' content as this falls within the competent FD body's responsibility.⁵⁹⁴

3. Methods and supportive means of the submission process of FD forms

Countries' experiences indicate three types of methods used to receive, fill and submit declarations: electronic, paper-based or both.⁵⁹⁵ Some countries allow public officials to receive and fill declarations forms electronically; however, they must print forms as hard copies and then sign and submit them in a paper format.⁵⁹⁶ The paper-based method requires an FD body to transfer data from paper into an electronic database to facilitate the analysis process,⁵⁹⁷ which is one of the major challenges of the paper-based method that potentially limits the effectiveness of an FD system as it requires sufficient staff to carry out this task. In addition, the process of transferring data is time-consuming. Ivana and others highlight that the manual transfer of data is an unsustainable process. It requires considerable resources that conform to the high volume of submitted declarations, which are frequently unavailable. Analysing the data is also problematic due to potential, unanticipated and unavoidable human errors.⁵⁹⁸

As a result of the above, some studies have indicated that the electronic method can be considered a practical solution to the challenges of using the paper-based method.⁵⁹⁹ Furthermore, a well-designed electronic

⁵⁹⁴ *ibid* ,pp.72-73.

⁵⁹⁵ United Nations (n 569) ,p.8.

⁵⁹⁶ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.70,; Bank and United Nations Office on Drugs and Crime (n 2) ,p.53,.

⁵⁹⁷ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) pp.52,56,.

⁵⁹⁸ Rossi, Pop and Berger (n 31).

⁵⁹⁹ Kotlyar Dmytro and Pop Laura, 'E-Filing Asset Declarations Benefits and Challenges (English)' (2019) <<http://documents.worldbank.org/curated/en/448191561650076794/E-filing-Asset-Declarations-Benefits-and-Challenges>>; Marie Chene, 'The Use of Technology for

method has several advantages compared with a paper-based method. The most important are:

- It allows declarations data to be entered directly into the system's database without employing a large number of staff to carry out this job manually. It therefore reduces the need for human resources and eliminates the cumbersome process of transferring data from paper to electronic databases.⁶⁰⁰
- It facilitates the data entry process. From the declarants' side, an electronic method enables them to enter data at any appropriate time and from any location.⁶⁰¹ It also allows them to review entered data and save and update it at any time prior to submitting the form.⁶⁰² In addition, the electronic system can be designed to enable declarants to use previous declarations forms as a draft of a new one without the need to re-enter the same data each time.⁶⁰³ This feature saves declarants' both time and effort.

From an FD body viewpoint, this method ensures that they receive precise printed data, contrary to written data in papers which could suffer from a lack of clarity due to the poor quality of declarants' handwriting. Rossi, Pop and Berger found that in paper-based submission, an FD body must spend a significant amount of time deciphering the handwriting on thousands of declaration forms and faces difficulty dealing with scanned or edited forms in various layouts and formats.⁶⁰⁴

Managing Income and Asset Declarations' (*U4 Anti-Corruption Resource Centre*, 2015); Rossi, Pop and Berger (n 31); Bank and United Nations Office on Drugs and Crime (n 2); OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31).

⁶⁰⁰ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,pp.69-70; Bank and United Nations Office on Drugs and Crime (n 2) ,p.48; Chene, 'The Use of Technology for Managing Income and Asset Declarations' (n 589) ,p.2.

⁶⁰¹ Dmytro and Laura (n 599) D.C. : World Bank Group,p.4,.

⁶⁰² Dmytro and Laura (n 599).

⁶⁰³ *ibid.*

⁶⁰⁴ Rossi, Pop and Berger (n 31) ,p.62.

- An electronic method can be considered a solution to the challenge of storing FD paper forms. On the one hand, it would help reduce the need for large volumes of papers, and it relieves the burden on an FD body's resources, which are often limited.⁶⁰⁵ On the other hand, it enables an FD body to retain and access declaration data electronically for a long time without the need to destroy old declarations to provide adequate space for new FD forms.⁶⁰⁶
- An electronic method would prevent incomplete FD forms being accepted. For example, in fully automated systems, declarants cannot complete the submission process if they leave blank fields.⁶⁰⁷

Tools and means provided to support officials in filling out and submitting FD forms

The success of an FD system relies mainly on the accuracy and clarity of the contents of FD forms, as the subsequent processes of submitting declarations are directly associated with the data provided by public officials.⁶⁰⁸ Hence, an FD body should ensure that the fields required to be filled in the FD forms are clear and understandable for declarants.

Some countries do not only identify the required contents of FD forms within their legislation but also provide guidance in paper format or online to help declarants fill out FD forms correctly and accurately and avoid different interpretations for the same required data.⁶⁰⁹ Such guidance can be considered a support instrument for declarants on how to fill out FD forms. It is argued that a financial declaration guide can play a role

⁶⁰⁵ Bank and United Nations Office on Drugs and Crime (n 2) ,p.3.

⁶⁰⁶ *ibid* ,p.48; Chene, 'The Use of Technology for Managing Income and Asset Declarations' (n 599) ,p.3.

⁶⁰⁷ Chene, 'The Use of Technology for Managing Income and Asset Declarations' (n 599) ,p.4.

⁶⁰⁸ Rossi, Pop and Berger (n 31) ,p.29.

⁶⁰⁹ United Nations (n 569) ,p.10.

in making FD forms easier and less time consuming to fill in, thus increasing the data quality.⁶¹⁰

The United States is an example of a country that has established financial disclosure guides to facilitate inputting the disclosure form data.⁶¹¹ These include detailed instructions on how to file disclosure forms and information about, for example, the reporting period, the scope of the disclosure, the definition of terms, who must file disclosure, and where and when to file, as well as a detailed explanation of the items that should be declared. In addition, some countries post video tutorials on their website aimed at guiding declarants when they submit their declarations, Indonesia being one example.⁶¹²

In addition, an FD body should ensure that various communication channels are available alongside FD guides. Such channels include, for example, the media, telephone hotlines and online chat services.⁶¹³ However, an FD body should ensure that specialised and trained staff are available to manage such communication channels and support officials in completing FD forms correctly and raising awareness of the importance of declarations as well as their role in enhancing the integrity principle in the public sector.⁶¹⁴

It is worth noting that an FD body should build communication channels with officials not only to support the filling and submitting of FD forms but also to notify officials about their obligation to submit declarations and the consequences of failing to meet this obligation.⁶¹⁵ Furthermore, they should contact declarants via email, phone or SMS after the submission

⁶¹⁰ Rossi, Pop and Berger (n 31) ,p.54.

⁶¹¹ See for example: 'OGE Form 278 Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT' (*United States Office of Government Ethics*) <https://www.oge.gov/Web/278eGuide.nsf/Chapters/OGE_Form_278e?opendocument> accessed 19 April 2021.

⁶¹² United Nations (n 569) ,p.10.

⁶¹³ Rossi, Pop and Berger (n 31) ,p.54.

⁶¹⁴ *ibid*; United Nations (n 569) ,p.10.

⁶¹⁵ Bank and United Nations Office on Drugs and Crime (n 2) ,p55.

process to request the completion, clarification or correction of any deficient or unclear data.⁶¹⁶

Based on the foregoing, it is clear that providing multiple and various means to support the submission process of FD forms plays a significant role in reducing the risk of incomplete or incorrectly filed declarations or any delay of their submission.⁶¹⁷ It also contributes to saving officials both time and effort during the data-inputting process. Some studies have indicated that certain FD regimes fail because of a lack of clarity about the assets, liabilities and interests that public officials are required to disclose.⁶¹⁸

6.2.3 The verification process of FD forms

Verification of the content of FD forms is another vital process of the success of an FD system. An FD system that only allows an FD body to collect FD forms and store them without verification and scrutiny is both an ineffective and a useless system.⁶¹⁹ Consequently, an FD body should be endowed with the necessary powers to enable it to verify, analyse, inspect and scrutinise the contents of FD forms.⁶²⁰ As Chene argues, the existence of a legal requirement allowing submitted declarations to be verified is essential for anti-corruption purposes.⁶²¹ An FD body's commitment to take such actions in practice sends a message that a government is serious in combating corruption and deters officials from committing corrupt activities, as they are aware that their declarations are checked and their unlawful income and assets can be detected.⁶²² In their study on the role of FD laws in preventing corruption, Gokcekus and

⁶¹⁶ *ibid* ,p.60.

⁶¹⁷ *ibid* p.38; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) p.35.

⁶¹⁸ Chene, 'African Experience of Asset Declarations' (n 9) p.4.

⁶¹⁹ 'Are Submission, Revision and Publication of the Declarations of Public Officials Effective?' (n 588) ,p.3; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.19.

⁶²⁰ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.74.

⁶²¹ Chene, 'African Experience of Asset Declarations' (n 9) ,p.4.

⁶²² Rossi, Pop and Berger (n 31) ,p67.

Mukherjee conclude that countries that verify submitted declarations have significantly lower corruption than countries that do not.⁶²³

However, given the significant number of declarations received by FD bodies, verifying all declarations would be unrealistic, rarely cost-effective and cumbersome for FD bodies, especially those with limited resources.⁶²⁴ Therefore, FD bodies must set standards for the selection of declarations that require verification. The following section addresses the criteria used for this purpose.

1. Criteria for selecting declarations

Determining which declarations should be verified is one of the challenges facing FD bodies, especially those with limited resources. In their analysis of the FD laws in 41 jurisdictions, Rossi and others found that only 27% of jurisdictions verify all declarations.⁶²⁵ This underlines the need to establish precise criteria for the selection of declarations.

A. Verification of the declarations of high-ranking officials

This criterion aims to ensure that all or at least most declarations submitted by high-ranking officials are subject to the verification process. This category of public officials is often relatively small.⁶²⁶ For example, Argentina's FD body verifies the declarations of most senior officials systematically. This represents approximately 5% of total filers.⁶²⁷ Next, a sample of other declarations is verified according to different criteria, such as verification based on a risk assessment focusing on function, agency or significant changes in wealth.

It has been argued that one of the disadvantages of this criterion is that it does not cover officials with lower-level positions who hold high-risk

⁶²³ Gokcekus and Ranjana (n 225) ,p.327.

⁶²⁴ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.26; OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p72.

⁶²⁵ Rossi, Pop and Berger (n 31).

⁶²⁶ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.72.

⁶²⁷ World Bank and United Nations Office on Drugs and Crime (n 2).

functions.⁶²⁸ However, an FD body can combine this criterion with other criteria to ensure other categories of officials are covered, for example by targeting a specific percentage or number of declarations to be verified based on a random selection of various positions or based on the risk associated with the position regardless of its classification, as in the case of Argentina above.

B. Verification using random selection

This criterion requires a specific number or percentage of declarations to be randomly selected and fully verified.⁶²⁹ Ivana and others maintain that a random selection is appropriate for FD systems that receive a significant number of declarations.⁶³⁰ This criterion allows various levels of positions over time to be verified. Therefore, selecting a different sample for verification each year ensures that all public officials are covered over time.⁶³¹

The WB&UNODC study indicates that adopting only this criterion would risk the perception of political interference in the FD body's enforcement procedures⁶³²; for example, interference in excluding names of certain senior officials from the random sample. It is therefore recommended to use other criteria besides random selection to avoid this issue.⁶³³ However, a random sample can be done by using the initial letters of officials' names or unique numbers associated with officials or declarations.⁶³⁴ In this manner, the identity of filers will not be known at the time of random selection. Thus, the possibility of excluding some officials during the selection process is very slim, especially with electronic FD systems.

⁶²⁸ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.72; Erekle Urushadze, 'Verification of Asset Declarations: Why Georgia Needs It and What International Practice Tells Us' (2015) ,p.4.

⁶²⁹ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.72; Urushadze (n 628) ,p.4.

⁶³⁰ Rossi, Pop and Berger (n 31) ,p.73.

⁶³¹ Hoppe and Kalniņš (n 591) ,p.13.

⁶³² World Bank and United Nations Office on Drugs and Crime (n 2) ,p.62.

⁶³³ Bank and United Nations Office on Drugs and Crime (n 2).

⁶³⁴ *ibid* ,p.66.

One disadvantage of this criterion is that it does not ensure that corrupt officials are chosen within the random sample.⁶³⁵ However, this possibility can be avoided by establishing other criteria besides random selection, as recommended above by the WB&UNODC.

C. Verification based on risk assessment

According to this criterion, the sample of declarations to be verified is selected based on the risk analysis.⁶³⁶ The sample could target officials in specific sectors or agencies carrying out activities vulnerable to corruption risk, e.g. tax, customs and strategic sectors such as banking, energy and telecommunication.⁶³⁷ In addition, it could also target officials who hold certain positions or functions more prone to corruption risks, regardless of the agency in which they work, such as officials responsible for managing state funds, procurement, or granting permits or licenses.⁶³⁸ The WB&UNODC note that this requires an FD body to establish clear criteria that identify the roles of public officials and track and update them, for example upon promotion or transfer from one post to another.⁶³⁹ In addition, a risk analysis can be based on the information provided in declarations, as is discussed later.

The OECD claims that the risk assessment criterion places a significant administrative burden on an FD body, which could explain why it is not considered a common criterion.⁶⁴⁰

D. Criterion based on the information provided in declarations (red flag criterion)

This criterion is based on risks indicators (red flags criterion) inferred by examining the contents of declarations over time or across a whole

⁶³⁵ Urushadze (n 628).

⁶³⁶ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.72.

⁶³⁷ Hoppe and Kalniņš (n 591) ,p.13; World Bank and United Nations Office on Drugs and Crime (n 2) ,p.62; Rossi, Pop and Berger (n 31) ,p74.

⁶³⁸ Hoppe and Kalniņš (n 591) ,p.13; World Bank and United Nations Office on Drugs and Crime (n 2) ,p.62; Rossi, Pop and Berger (n 31) ,p.74.

⁶³⁹ World Bank and United Nations Office on Drugs and Crime (n 2) ,pp.62,65.

⁶⁴⁰ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) .p.72.

sample of declarations followed by comparing their key elements.⁶⁴¹ Red flags indicators include, for example, the detection of a significant increase in wealth or significant differences between declared asset and legal sources of income; inconsistencies between the variations in assets and income across years after accounting for liabilities; significant differences in assets, liabilities and income across years; and significant interests related to outside-office activities.⁶⁴²

E. Verification upon receipt of complaints

According to this criterion, declarations of officials for whom complaints or reports have been received from the public and media are subject to in-depth verification.⁶⁴³ The content of complaints could be allegations related to the violations of FD requirements or reports on suspicions of corruption. In their analytical study of 41 jurisdictions, Ivana and others found that complaints (the whistleblowing system) are the most common approach relied on by FD bodies to verify declarations submitted by public officials.⁶⁴⁴ This criterion was used by 73% of jurisdictions, the highest percentage compared with other criteria.⁶⁴⁵ In addition, some systems rely on complaints as the only criterion for verifying declarations, such as the FD systems in Croatia and Jordan.⁶⁴⁶

However, the success of such a criterion requires an effective complaints system (whistleblowing system) not only because of its assistance to the FD system in the selection of declarations but also due to its significant role in combating corruption.⁶⁴⁷ Therefore, all global and regional treaties

⁶⁴¹ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.65.

⁶⁴² OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.72; World Bank and United Nations Office on Drugs and Crime (n 2) ,p.65; Rossi, Pop and Berger (n 31) pp.73,74.

⁶⁴³ Rossi, Pop and Berger (n 31) ,p.74.

⁶⁴⁴ *ibid* ,p.71.

⁶⁴⁵ The percentage of jurisdictions that use other criteria was as follow: red flags (54%), media reports (54%), referrals from other agencies (46%), risk-based criteria (44%), randomly selected sample (32%), hierarchy-based criteria (32%) and all declarations selected (27%).

⁶⁴⁶ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.13.

⁶⁴⁷ Transparency International, 'A Best Practice Guide for Whistleblowing Legislation' (2018) ,p.1 <https://www.transparency.org/whatwedo/publication/best_practice_guide_for_whistleblowing_legislation>.

on tackling corruption, including the UNCAC, have set requirements that encourage States Parties to establish such a system.⁶⁴⁸

In addition, some FD bodies prioritise the verification of declarations submitted by officials for whom allegations against them have been referred from other agencies such as the tax administration when irregularities are detected.⁶⁴⁹

2. Methods of reviewing declarations

Different types of approaches are used to verify declarations to monitor any suspicious changes in public officials' wealth and detect potential conflicts of interest.⁶⁵⁰ The verification of FD systems that aim to prevent or detect conflict of interests usually focuses on potential incompatibilities between an official's personal and financial interests and official duties.⁶⁵¹ In contrast, the verification of FD systems oriented to detect illicit enrichment aims to monitor changes in the value of assets and income across time. It also aims to detect inconsistencies between assets provided in declarations and other data sources related to an official's income and assets.⁶⁵²

The OECD states that the verification of the content of the declarations depends on the factors of scope and depth.⁶⁵³ The former focuses on items that must be verified in declarations, whereas the latter relates to the level of verification. For example, an FD body can carry out a basic verification to check whether declarations are completed correctly and accurately, or whether there are obvious errors, missing information or incorrect entries.⁶⁵⁴ Furthermore, the verification can be either be simple or that which is called arithmetic and logical checking, which aims to

⁶⁴⁸ *ibid.*

⁶⁴⁹ Rossi, Pop and Berger (n 31) ,p.71.

⁶⁵⁰ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.60.

⁶⁵¹ *ibid.* ,p.67.

⁶⁵² *ibid.*

⁶⁵³ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.73.

⁶⁵⁴ *ibid.*

check the content of the declaration itself.⁶⁵⁵ For instance, checking the compatibility of declared assets with declared legal sources of income.

In addition, the verification can be more extensive and go well beyond the declarations data itself⁶⁵⁶. For example, comparing declared data with outside resources data such as public registers, banks and lifestyle information.

A. Checking the completeness and consistency of declarations data

This type of verification can be used to monitor and detect irregularities or inconsistencies within a single declaration form. In addition, it can be used to detect such irregularities or inconsistencies by reviewing, analysing and comparing the submitted declarations of officials and their family members across time.⁶⁵⁷

It has been argued that this approach would be more effective in systems that allow reviewers to seek clarification or corroboration from filers.⁶⁵⁸

This emphasises the importance of granting an FD body adequate powers to communicate with officials even after submitting declarations, in order to ensure it can request any clarifications related to declared data. For example, in Slovakia, whenever there are doubts about the completeness or veracity of declarations, the FD body has the power to request an explanation and clarification from declarants.⁶⁵⁹

⁶⁵⁵ *ibid.*

⁶⁵⁶ *ibid.*

⁶⁵⁷ Ruxandra Burdescu and others, 'Income and Asset Disclosure Systems : Establishing Good through Accountability' ,p.3 <<https://openknowledge.worldbank.org/handle/10986/10175>> accessed 21 October 2017; OECD and World Bank (n 509) ,p.17; Hoppe and Kalniņš (n 591) ,p.39.

⁶⁵⁸ Burdescu and others, 'Income and Asset Disclosure Systems : Establishing Good Governance through Accountability' (n 324) ,p.3.

⁶⁵⁹ United Nations (n 569) ,p.13.

B. Cross-Checking declarations by comparison with reliable external sources

This verification process depends on the availability of external sources related to each item provided in a declaration form.⁶⁶⁰ Such data sources include, for example, land, vehicle and property registries; bank account records; tax information; and company securities registries.⁶⁶¹

The success of this approach requires an FD body to have direct access to these external sources. It is preferable to provide such sources online to reduce the time and cost of the verification process.⁶⁶² However, if such access is unavailable for all or some external sources, then effective collaboration between an FD body and other public and private agencies is required to ensure they are provided whenever necessary.⁶⁶³

An FD law should grant an FD body the authority to gain such access and oblige other agencies to collaborate with it under an explicit legal text. For instance, the Bulgarian FD system enables an FD body to access the electronic registers, databases and other information repositories maintained by other State bodies, except for the security services. Such bodies are obliged to provide the necessary information required by an FD body within 30 days from the receipt of the request.⁶⁶⁴

Bank secrecy could represent an obstacle to reviewing declarations.⁶⁶⁵ For example, in some countries, an FD body is not allowed to access

⁶⁶⁰ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.18; World Bank, *Income and Asset Disclosure- Case Study Illustrations* (The World Bank ed, The World Bank 2013) ,p.4 <<http://elibrary.worldbank.org/doi/book/10.1596/978-0-8213-9796-1>> accessed 21 October 2017.

⁶⁶¹ Burdescu and others, 'Income and Asset Disclosure Systems : Establishing Good through Accountability' (n 657) ,p.3; Bank and United Nations Office on Drugs and Crime (n 2) ,p.18; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.78.

⁶⁶² World Bank and United Nations Office on Drugs and Crime (n 2) ,p.69; World Bank (n 660) ,pp.4,5; Urushadze (n 628) ,p.5.

⁶⁶³ World Bank and United Nations Office on Drugs and Crime (n 2) ,pp.18,19; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.78.

⁶⁶⁴ Article (44) of Counter Corruption and Unlawfully Acquired Assets Forfeiture Act, Promulgated, SG No. 7/19.01.2018, amended and supplemented, SG No. 20/6.03.2018, effective 6.03.2018, supplemented, SG No. 21/9.03.2018, effective 23.01.2018, SG No. 41/18.0.

⁶⁶⁵ Urushadze (n 628) ,p.5.

bank transactions unless the declaration is extremely suspicious and an investigation has been already launched regarding it.⁶⁶⁶ In Guatemala, the FD body has the authority to obtain bank account information from the Superintendent of Banks but only without violating bank secrecy laws, resulting in the process of verifying officials' bank accounts being slow because the banks claim protection for their client.⁶⁶⁷ In Argentina, the FD body cannot access certain personal information declared to be in a 'private annexe', including bank account numbers, without a court order.⁶⁶⁸

C. Lifestyle checks

A lifestyle check is a method by which the actual living standards of officials and their families are checked and compared with declared income and assets.⁶⁶⁹ This check can utilise various methods. For example, visiting an official's house and searching for various clues such as luxury vehicles and retinues (e.g. bodyguards and maids).⁶⁷⁰ Another method is asking officials or their neighbours, acquaintances and colleagues for information regarding foreign trips, children sent abroad for schooling, sumptuous parties, etc.⁶⁷¹ However, this thesis argues that it is illogical to ask 'officials' themselves about their assets and income in order to check on their lifestyles unless there is actually suspicion regarding their declared income and assets.

In addition, the receipt of complaints from the public is one of the effective methods used for lifestyle checks. It allows for reporting on an official whose lifestyle changes significantly and suddenly. Furthermore, in systems that allow the public to access declarations, complaints may

⁶⁶⁶ World Bank and United Nations Office on Drugs and Crime (n 2) p.61.

⁶⁶⁷ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.79.

⁶⁶⁸ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.60.

⁶⁶⁹ OECD and World Bank (n 509) ,p.17; World Bank (n 660) ,p.5; World Bank and United Nations Office on Drugs and Crime (n 2) ,p.61.

⁶⁷⁰ Hoppe and Kalniņš (n 591) ,p.39.

⁶⁷¹ *ibid.*

play an essential role in checking officials' lifestyles. For example, in Kosovo, a complaint was submitted by an anonymous individual to the ACA, informing it that an official had not declared his luxurious house with a swimming pool.⁶⁷² Consequently, both the Agency officials and anonymous source visited the house and requested data from the land registry. Ultimately, the documents proved that the official was the house owner.

D. Public access to declarations

This method allows investigative journalists, media, scholars and civil society to monitor the accuracy of publicly available declarations data and assist an FD body in the verification process.⁶⁷³ Different channels can be used to make declarations available to the public, such as the media, open registry to public scrutiny or through internet databases.⁶⁷⁴

Some have argued that allowing public access to declarations increases the impact and promotes the value of FD systems.⁶⁷⁵ It also encourages the reporting and detecting of corruption and enhances FD systems' transparency.⁶⁷⁶ For example, Mukherjee and Gocke's conclude that countries that gave the public access to officials' asset declarations had significantly lower corruption than the group that restricted public access.⁶⁷⁷ In addition, they found that the combination of content verification and public access to declarations demonstrates an even greater association with reduced corruption.⁶⁷⁸ Another argument in favour of public access to declarations data is that it can help government agencies ensure its integrity and validity by enabling external parties such as media and civil society to check its accuracy.⁶⁷⁹

⁶⁷² Regional School of Public Administration (ReSPA) (n 10) pp.145,146.

⁶⁷³ 'Analysis of the System of Asset Declarations of Prosecutors in Albania' (2018) ,p.7.

⁶⁷⁴ Chene, 'African Experience of Asset Declarations' (n 9) ,p5.

⁶⁷⁵ United Nations (n 569) ,p.13.

⁶⁷⁶ *ibid.*

⁶⁷⁷ Gokcekus and Ranjana (n 225) ,p.12.

⁶⁷⁸ *ibid.*

⁶⁷⁹ Rossi, Pop and Berger (n 31) ,p.91.

Moreover, it can increase the deterrent effect of FD systems as officials are aware that their declarations are subject to public checking. Therefore, it can deter officials from intentionally submitting false or incomplete data and encourage them to correct unintentional errors.⁶⁸⁰

However, extensive debate has arisen regarding the right of public access to declarations, particularly in terms of its impact on security and privacy.⁶⁸¹ Regarding security concerns, there is a fear that the public disclosure of certain data such as home addresses and car models could threaten the safety of public officials or their family, particularly in countries where officials are under threat of kidnapping or violence.⁶⁸² Nonetheless, the WB&UNODC study indicates no evidence that such declarations are directly correlated to these types of violence.⁶⁸³

Regarding privacy concerns, although several courts have concluded that asset and income declarations laws do not violate privacy rights,⁶⁸⁴ public access to declarations has become the subject of controversial debate, even in countries with robust FD systems.⁶⁸⁵ Due to the challenges of security and privacy laws that could limit public access to declarations in some countries, some have suggested that public access should be limited to only that information which does not compromise privacy rights or the personal security of officials and their families, ensuring the balance between privacy and the right to access public information.⁶⁸⁶

This thesis argues that culture and traditions are other societal factors that could represent an obstacle to making public access to declarations.

⁶⁸⁰ Bowser and others (n 407) ,p.3; Rossi, Pop and Berger (n 31) ,p.90.

⁶⁸¹ Rossi, Pop and Berger (n 31) ,p.89.

⁶⁸² World Bank and United Nations Office on Drugs and Crime (n 2) ,p.87; Rossi, Pop and Berger (n 31) ,p.91.

⁶⁸³ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.87.

⁶⁸⁴ 'Asset Declarations — Right2Info.Org' <<https://www.right2info.org/testing/deleted-stuff/asset-declarations>> accessed 8 March 2020.

⁶⁸⁵ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.84.

⁶⁸⁶ Maíra Martini, 'DECLARATION OF INTERESTS , ASSETS AND LIABILITIES : OVERSIGHT MECHANISMS , DISCLOSURE POLICY AND SANCTIONS' (*Anti-Corruption Helpdesk*, 2013) ,p.4 <<https://knowledgehub.transparency.org/helpdesk/declaration-of-interests-and-assets-oversight-mechanisms-disclosure-policy>> accessed 25 May 2021.

This could explain why FD laws in several Arab countries, including Kuwait, Bahrain and Oman, do not allow the public to access declarations. For example, Popa describes how he was called to provide recommendations to improve the Jordanian FD regime, yet was then informed that such recommendations must exclude any proposal allowing declarations to be publicly available because of the need to consider the country's traditions.⁶⁸⁷

To summarise, it appears that the combination of the approach of cross-checking declarations by comparing their data with external sources and other above-listed methods would make the verification process more effective.⁶⁸⁸ In the event of a lack of external sources, other methods such as lifestyle checks and public access to declarations are advisable. In addition, it is crucial to enhance the complaints system as it is often associated with allegations of the violation of FD requirements. Moreover, complaints can be considered an alternative verification method in countries where public access to declarations is not allowed.

It would be helpful to establish an effective electronic FD system to improve the verification process of declarations by using the methods mentioned above. For instance, countries' experiences show that an automated FD system greatly assists and facilitates the verification process. For example, the Armenian electronic system is used to verify all declarations in the system and analyse existing data.⁶⁸⁹ The system is designed to perform a set of verification methods, including checking the internal consistency of declarations data, cross-checking declarations using a comparison with external sources, a comparative analysis of declarations across years, the mathematical analysis of data, and analysing data based on risk assessment. Moreover, Argentina argues that its electronic FD system would work effectively in improving the interoperability of data, the possibilities of compiling statistics, the

⁶⁸⁷ Popa (n 68).

⁶⁸⁸ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.62.

⁶⁸⁹ United Nations (n 569).

generation of reports and general enforcement.⁶⁹⁰ In Ukraine, the establishment of a fully automated FD system was one of the critical reforms introduced by the Law on Corruption Prevention in 2015.⁶⁹¹ Some features of the system related to the verification process are: (i) checking data for inconsistencies within one declaration; (ii) comparing a declaration with previous declarations submitted by the same declarant to monitor deviations or other 'red flags'; (iii) comparing data from the declaration with external data sources.

6.2.4 Sanctions for the violation of FD system requirements

Article 52/5 of the UNCAC states that:

Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance

It is clear from the above Article that the Convention does not identify specific sanctions to be imposed for non-compliance with FD systems' requirements. Instead, it leaves it to State Parties to set the appropriate sanctions. However, the Convention emphasises that State Parties should consider the proportionality of sanctions in line with the gravity of violations.

The existence of proportionate and dissuasive sanctions is a crucial element to ensure the success and effectiveness of FD systems and enhance their credibility.⁶⁹² The OECD argues that the lack of adequate and effective sanctions is one of the serious deficiencies in the legal framework regulating FD systems.⁶⁹³ Chene highlights that some FD systems have failed because of the lack of effective sanctions for officials who do not submit declarations.⁶⁹⁴

⁶⁹⁰ *ibid.*

⁶⁹¹ Dmytro and Laura (n 599).

⁶⁹² Martini (n 686) ,p.1.

⁶⁹³ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.99.

⁶⁹⁴ Chene, 'African Experience of Asset Declarations' (n 9) ,p.5.

Ineffectiveness here does not necessarily mean the absence of severe sanctions. In some cases, administrative sanctions might be more appropriate than criminal sanctions as long as they are more likely to be reasonable and actually implemented.⁶⁹⁵ For instance, applying tough sanctions disproportionate to the gravity of offences, such as imprisonment for failure to submit a declaration on time, could limit the enforcement of FD laws.⁶⁹⁶ For example, in Argentina, the data indicates that judges are reluctant to contemplate custodial a tough sanction (imprisonment) to officials accused of failing to complete their declaration form entirely or correctly.⁶⁹⁷ Consequently, in such cases, a strict sanction becomes less credible and effective because of its inapplicability.⁶⁹⁸ Hence, sanctions must be simultaneously characterised by credibility and proportionality.⁶⁹⁹ This would explain why the UNCAC requires State Parties to ensure sanctions are proportional to the gravity of offences.

1. Identification of sanctionable violations

Studies have highlighted four common violations of FD requirements that should be sanctionable: (i) late submission of a declaration; (ii) submission of incomplete information; (iii) failure to submit a declaration; and (iv) submission of inaccurate information in the declaration (intentionally submitting false statements or an intentional omission).⁷⁰⁰

⁶⁹⁵ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.74.

⁶⁹⁶ OECD and World Bank (n 509) ,p.18; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) p.81; World Bank and United Nations Office on Drugs and Crime (n 2) p.74.

⁶⁹⁷ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.81.

⁶⁹⁸ OECD and World Bank (n 509) ,p.18.

⁶⁹⁹ *ibid* ,p.18; World Bank (n 660) ,p.5; World Bank and United Nations Office on Drugs and Crime (n 2) ,p.74.

⁷⁰⁰ Anna Tytko and Hanna Stepanova, 'INTERNATIONAL EXPERIENCE OF DECLARING PROPERTY, ASSETS AND PRIVATE INTERESTS' (2019) 5(1) *Baltic Journal of Economic Studies* p.216 <<http://www.baltijapublishing.lv/index.php/issue/article/view/622/pdf>> accessed 19 November 2020; Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.80; OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.80; Martini (n 686) ,p.5.

The WB&UNODC classify the above offences into two main categories.⁷⁰¹ The first focuses on the submission process and is associated with compliance with the requirement to declare in a timely fashion. This category includes offences (i), (ii) and (iii). The second focuses on the content of declarations and is associated with the veracity of submissions. Offence (iv) falls into this category. Burdescu and others stress the importance of including the submission of false information among sanctionable offences. This facilitates the prosecution of corrupt officials even if corruption acts are difficult to prove.⁷⁰²

2. Types of sanctions

FD systems provide a variety of sanctions for the violation of their requirements. These sanctions can be classified into two main groups: administrative and criminal.⁷⁰³

Administrative sanctions are many and diverse. They include, for example, a warning, reprimand, fines, temporary suspension of salary or reduction of salary, demotion, and removal from office or dismissal from duty.⁷⁰⁴ Administrative sanctions are usually applied to public officials who serve in the civil service. However, it is rare that such sanctions are applied to elected and political officials, such as MPs, ministers and heads of state. This is because certain administrative sanctions, including dismissal from office and reprimand or suspension from duty, cannot be applied to elected and political officials in the same manner as for public officials in the civil service.⁷⁰⁵

⁷⁰¹ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.72.

⁷⁰² Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.80; OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.39.

⁷⁰³ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.80; World Bank and United Nations Office on Drugs and Crime (n 2) ,p.72.

⁷⁰⁴ Burdescu and others, 'Income and Asset Declarations: Tools and Trade-Offs (English)' (n 11) ,p.80; World Bank and United Nations Office on Drugs and Crime (n 2) ,p.72.

⁷⁰⁵ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.81; World Bank and United Nations Office on Drugs and Crime (n 2) ,p.76.

A fine is the most common administrative sanction.⁷⁰⁶ This is an effective means for promoting the disciplined and adequate observance of FD systems, especially if a wide range of public officials is involved.⁷⁰⁷

In addition, some FD regimes establish criminal liability for the violation of FD systems requirements. However, criminal sanctions should be applied to grave offences,⁷⁰⁸ ensuring a prescribed sanction is proportionate to the level of violation and thus effective. For example, criminal sanctions frequently apply to non-compliance with the submitting of declarations and the intentional submission of false declarations, including intentional errors or omissions.⁷⁰⁹ These breaches may allow, at least, the prosecution of perpetrators of these offences, mainly if there is a suspicion of corruption that is difficult to prove. For example, Armenia imposes criminal sanctions on the submission of false data, the concealing of data and the non-submission of declarations.⁷¹⁰ In Argentina, criminal sanctions can be applied in the case of intentional omitting or falsifying FD data, ranging from a prison term of 15 days to two years and permanent disqualification from the exercise of public duty.⁷¹¹

Some countries do not only apply sanctions upon the breach of FD laws but also apply what is called 'reputational penalties', whereby public officials' violations and imposed sanctions are published in the official gazette or website of an FD body.⁷¹² In this case, the publicising of

⁷⁰⁶ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p.80.

⁷⁰⁷ 'Are Submission, Revision and Publication of the Declarations of Public Officials Effective?' (n 588) ,p.31.

⁷⁰⁸ Transparency International, 'Asset Declarations in MENA Countries: Illicit Enrichment and Conflicts of Interest of Public Officials' (n 189) ,p.4.

⁷⁰⁹ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.77.

⁷¹⁰ United Nations (n 569) ,p.12.

⁷¹¹ OECD, *OECD Public Governance Reviews, OECD Integrity Review of Argentina* (2019) <https://www.oecd-ilibrary.org/sites/g2g98ec3-en/1/2/4/index.html?itemId=/content/publication/g2g98ec3-en&_csp_=1ab78f5d4a4ece9279200593e6465429&itemIGO=oecd&itemContentType=book> accessed 16 May 2020.

⁷¹² 'Are Submission, Revision and Publication of the Declarations of Public Officials Effective?' (n 588) ,p.32; Bank and United Nations Office on Drugs and Crime (n 2) ,p.72.

information regarding such sanctions themselves could be regarded as a deterrent measure⁷¹³.

3. Criminalisation of illicit enrichment

Article 20 of the UNCAC states that:

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

According to Article 20 above, illicit enrichment is an offence that occurs once a significant increase has been detected in the assets of a public official which is disproportionate to the official's lawful income and that cannot reasonably be justified or the legality proved. The legislative guide for the implementation of the UNCAC indicates that the criminalisation of illicit enrichment has been helpful in several jurisdictions as a deterrent measure against corruption.⁷¹⁴

Unlike other criminal crimes, an illicit enrichment offence is characterised by whether the prosecution can easily prove it.⁷¹⁵ Therefore, the prosecution can initiate the procedures of a criminal investigation once such an increase is detected.⁷¹⁶ In addition, the investigation of unexplained wealth can lead to the exposure of other criminal activities such as bribery and embezzlement.⁷¹⁷

Although international conventions against corruption such as the UNCAC, the Inter-American Convention against Corruption⁷¹⁸ and the

⁷¹³ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (n 31) ,p16.

⁷¹⁴ 'Legislative Guide for the Implementation of the United Nations Convention against Corruption' (n 204) ,p.84.

⁷¹⁵ 'Legislative Guide for the Implementation of the United Nations Convention against Corruption' (n 204).

⁷¹⁶ World Bank and United Nations Office on Drugs and Crime (n 2) ,p.82.

⁷¹⁷ *ibid.*

⁷¹⁸ Article IX, 'INTER-AMERICAN CONVENTION AGAINST CORRUPTION' (n 156).

African Union Convention on Preventing and Combating Corruption⁷¹⁹ have adopted illicit enrichment as a criminal offence, some countries are reluctant to do so due to possible human rights violations and constitutional challenges.⁷²⁰ It has been argued that this offence shifts the burden of proof from prosecutions to defendants, who are required to provide sufficient evidence of the legitimacy of their assets, contradicting one of the essential principles of criminal procedure whereby the burden of proof in criminal cases remains with the prosecution.⁷²¹ Critics claim that these reverse-onus provisions violate fundamental human rights that protect the defendant, including the presumption of innocence and the related rights to silence and protection against self-incrimination.⁷²² This explains why the UNCAC does not consider the criminalisation of illicit enrichment a mandatory requirement.⁷²³

However, other countries stress that defendants are simply required to justify the significant increase in their assets whereas the legal burden of proof, in reality, remains with the prosecution.⁷²⁴ In addition, some courts have concluded that reverse-burden provisions in the criminalisation of illicit enrichment aim to enhance the overriding public interest that requires the detection and conviction of corrupt officials.⁷²⁵ For example, the ECHR held that rebuttable presumptions which transfer some of the evidentiary burden of proof to the defendant can be acceptable whenever the legislature has decided that this would be in the public interest, as determined by the court, considering the facts of

⁷¹⁹ Article 8, 'African Union Convention on Preventing and Combating Corruption | African Union' (n 157).

⁷²⁰ Jeffrey R Boles, 'Criminalizing the Problems of Unexplained Wealth: Illicit Enrichment Offenses and Human Rights' (2013) 17 *New York University Journal of Legislation and Public Policy* 835 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2588488>; and Tammar Berger Lindy Muzila, Michelle Morales, Marianne Mathias, *On the Take Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank 2012) ,pp.27-28 <<https://star.worldbank.org/document/take-criminalizing-illicit-enrichment-fight-corruption>>.

⁷²¹ Boles (n 720) ,pp.859-860.

⁷²² *ibid* ,pp.859-862; Lindy Muzila, Michelle Morales, Marianne Mathias (n 720) ,pp.30-33.

⁷²³ Maud Perdiel, 'The Accumulation of Unexplained Wealth by Public Officials : Making the Offence of Illicit Enrichment Enforceable' [2012] U4 Breif 1, p.2.

⁷²⁴ Boles (n 720) p.860.

⁷²⁵ *ibid* ,p.866.

the case and within reasonable limits that respect the rights of the defence.⁷²⁶ Likewise, silence and protection against self-incrimination are not absolute rights and can be restricted by countries in certain cases, such as public safety emergencies and public interest.⁷²⁷

This thesis argues that the criminalisation of illicit enrichment or unexplained enrichment plays a significant role in the effectiveness and success of FD systems, especially those designed to detect illicit enrichment. Indeed, an FD body and prosecution face difficulty in proving the illegality of an official's wealth, particularly if it has been gained for a long period. In this case, even if an official's wealth is in reality generated from criminal activities, it is difficult to prove this because of the potential absence of any trace or evidence of them⁷²⁸.

6.3 AN EXAMINATION AND COMPARATIVE ANALYSIS OF THE MECHANISMS OF THE IMPLEMENTATION AND ENFORCEMENT OF THE FD SYSTEMS IN KUWAIT, BAHRAIN, OMAN AND THE UK

6.3.1 Powers and responsibilities of the FD body

This section further examines the powers and competencies granted to the FD bodies in Kuwait, Bahrain and the UK and compares these with those provided to the FD body in Oman. It also assesses the extent to which Oman's FD system can take advantage of the experience of comparator countries in this regard.

1. Powers and competencies granted to Kuwait's ACA

The ACA has been granted a set of powers and responsibilities to carry out its tasks by Law No. 2/2016, including those related to inspecting and

⁷²⁶ Lindy Muzila, Michelle Morales, Marianne Mathias (n 720).

⁷²⁷ Boles (n 720) ,.866; Lindy Muzila, Michelle Morales, Marianne Mathias (n 720) p.38.

⁷²⁸ Perdriel (n 723) p.2.

investigating corruption crimes which also apply to illicit enrichment offences detected by examining the FDs.

For instance, in the event of a suspicion of a corruption offence, the ACA has the authority to undertake procedures to immediately collect information. Such procedures include, for example, gaining access to the records, papers and documents related to such a crime and summoning any person involved with a corruption offence so their statement can be heard⁷²⁹.

One of the most significant powers of the ACA is that all individuals and agencies affiliated with the public or private sectors at the State are required to cooperate with it to enable it to implement its tasks. Such parties are prohibited from refraining, without legal justification, to provide the ACA with records, documents and other information that could detect corruption acts. They are also prohibited from obstructing the ACA's work, pressuring the ACA to obstruct it in its work, or interfering with its competencies with the intention of influencing it.⁷³⁰ The law imposes sanctions for contravening these provisions, ranging from a fine to prison.⁷³¹

Furthermore, Article 34 of the law states special legal procedures for cases of suspicion of illegal enrichment crimes, giving the ACA the right to request secretly information, clarification and documents related to such a crime from individuals, or governmental or private entities, whether inside or outside Kuwait. It should be noted that the ACA does not have direct access to data or information related to accounts, deposits, safes at banks or financial institutions, except under a direct order issued by the public prosecutor or a representative if this would assist in revealing the truth required in one of the respective offences.⁷³²

⁷²⁹ Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 24, 25,45.

⁷³⁰ *ibid*, art 26.

⁷³¹ *ibid*, art 45.

⁷³² *ibid*, art 34.

In addition to the foregoing, special powers and authorities are granted to the inspecting committees to enable them to detect the truth when verifying and inspecting the FDs. For instance, hearing statements of the declarer or any person whose statement the committees deem it necessary to hear, asking the declarant to present details or documents or any clarification or complementation data that the committees view as necessary, and requesting that the competent entities conduct required inquests.⁷³³ Furthermore, the committees shall prepare reports on cases of suspicion of illicit enrichment and refer these to the ACA's Chairman for them to be sent to the Public Prosecution.⁷³⁴

In addition to the procedures of exploration and investigation stated above, the law and its executive regulation regulate the powers and competencies of the ACA related to requesting, receiving, keeping and managing declarations, as explained later in this chapter.

2. Powers and responsibilities of the FD body in Bahrain

The Bahrain FD Law No.32/2010 includes a legal text regulating the powers of the IBFD regarding the inspection of declarations and investigation of complaints related to the FD systems. This is necessary to gather legal evidence that helps detect irregularities of FDs and illicit enrichment crimes. According to Article 5 of the law, the IBFD has the authority to ask administrative competent entities, institutions, banks and corporate bodies to provide data, documents and explanations, including any confidential information it deems necessary for the completion of FD elements. However, in contrast with Kuwait, the law in Bahrain does not place any sanction on entities and institutions that fail to provide the required information to the IBFD.

⁷³³ The Executive Regulation No.300/2016 of the Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 28.

⁷³⁴ Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 35.

It could be argued that there is no explicit legal text giving the IBFD the authority to access declarants' bank accounts, which is one of the significant powers for detecting illicit enrichment. However, the term 'confidential information' provided in Article 5 above specifically includes bank accounts as they are classified as confidential information subject to disclosure. Thus, unlike the situation in Kuwait, the IBFD has direct access to declarants' bank accounts without the need to gain permission from the Public Prosecution. Moreover, unlike the ACA in Kuwait, the IBFD receives complaints related to the breach of the FD system's requirements and the investigation therein, in addition to receiving and inspecting declarations.⁷³⁵

In addition, a significant feature of the system is the ability of the IBFD to include the National Audit Office or other administrative entities or investigation officers in the inspection and investigation procedures. In the event of the strong suspicion of an illicit enrichment offence, the Chairman of the IBFD shall refer the case file to the Public Prosecution.

Furthermore, the executive regulation of the law includes provisions regulating the FD body's competencies and powers related to the mechanisms of requesting and submitting declarations.

3. Powers and responsibilities of the FD body in the UK.

In the UK, there is no centralised body responsible for managing the declarations submitted by all public officials. Instead, each branch or sector operates its own FD system. Some examples are given below:

- An independent adviser is responsible for scrutinising the declarations submitted by ministers before they are published. However, there are no broad powers given to advisors to verify and investigate suspected declarations. They cannot investigate breaches of the rules of the Ministerial Code unless by order of the prime minister. There have

⁷³⁵ Bahrain Financial Disclosure Law No.32/2010, art 5.

been calls to reconsider this restricted power, particularly as there has been debate on successive prime ministers' decisions not to subject individuals to an adviser's investigation.⁷³⁶

- With regard to the registration of interests for MPs, the parliamentary commissioner for standards has the power to investigate specific matters related to a member's breach of the rules of code of conduct.⁷³⁷ This includes the violation of the requirements of the House of Commons in respect of the registration of interests.⁷³⁸ The Committee on Standards considers any report referred by the commissioner and reports its conclusions and recommendations to the House.⁷³⁹
- Concerning the registration of pecuniary interests and other interests under the Localism Act 2011, the Act grants each relevant local authority the power to utilise appropriate investigation mechanisms in the face of allegations for breaching a code of conduct. As illustrated in Chapter Four, this procedure has been criticised because of the practice of councils forming conduct committees, and the fact that the majority of members of a committee investigating a person's misconduct may be their political allies.
- Breaches of the Civil Service Code are addressed internally by competent departments. However, civil servants have the right to appeal to the Civil Service Commission against the department's response if they are dissatisfied with its decision.

⁷³⁶ Ryan-white (n 386).

⁷³⁷ The Code of Conduct for Members of the House of Commons, January 2019, s20.

⁷³⁸ 'Allegations Currently under Investigation by the Commissioner' (*UK Parliament*) <<https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/complaints-and-investigations/allegations-currently-under-investigation-by-the-commissioner/>> accessed 5 July 2021.

⁷³⁹ The Code of Conduct for Members of the House of Commons, January 2019, s21.

4. Powers and responsibilities of the FD body in Oman

As discussed in Chapter Two, the SAI was given broad powers by the legislative reforms of 2011 under the SFAA Law. One such power is that members of the SAI have been entrusted with the powers of investigation officers. They have the authority, for example, to access and enter any site subject to the SAI's audit without prior authorisation and conduct necessary inquiries, gather evidence, arrest accused persons and refer them to the Public Prosecution. However, SAI powers in this regard are restricted to the implementation of its tasks as provided under the SFAA Law.

Unlike the Kuwaiti and Bahraini FD regimes, there are no specific powers and competencies granted to the SAI, whether in the SFAA Law or the PPFACI Law, to manage the FD system and deal with submitted declarations; for example, those concerning the procedures of requesting, receiving, inspecting and investigating declarations. In practice, the SAI exercises the same powers and competencies as stated in the SFAA Law to implement the FD system's tasks. However, this procedure is legally flawed. Firstly, the powers and competencies provided in the SFAA Law are confined solely to the implementation of its provisions and shall not be extended to the performance of the FD system's requirements as regulated under the PPFACI Law. Secondly, the PPFACI Law was passed after the SFAA Law and did not include any legal text referring to granting the SAI the same powers as provided in the SFAA Law to implement the FD functions. Consequently, such procedures could be challenged for their illegality, especially those related to criminal investigation procedures. This has the potential to weaken this feature of the system; a viewpoint supported by one of the key interviewees.⁷⁴⁰

⁷⁴⁰ Interviewee 2.

During the course of discussing the current powers of the SAI in the implementation of the FD system, most interviewees agreed that the current law lacks the powers and competencies to enable the SAI to carry out the FD system's tasks effectively and efficiently.⁷⁴¹ The most significant powers that should be granted to the SAI, as highlighted by the interviewees, are as follows:

- Powers and competencies that regulate the mechanism of submitting and receiving declarations. For example, the law should give the SAI broad authority to identify appropriate methods to fill and submit declarations.⁷⁴²
- Powers and competencies that regulate the procedures of verifying and examining declarations.⁷⁴³ The law should grant the SAI a set of powers to verify the accuracy of declarations data; for example, the authority to request data from both the public and private sectors whenever the SAI deems it necessary.⁷⁴⁴ In addition, it should be given the authority to access essential external resources relevant to declared data, especially bank accounts, considering the maintenance of banking secrecy.⁷⁴⁵ In addition, the law should obligate public and private agencies and institutions to cooperate with the SAI to facilitate its tasks.⁷⁴⁶
- Powers and competencies that enable the SAI to take appropriate action dealing with verified and examined declarations, whether by closing a declaration case due to the absence of irregularities or

⁷⁴¹ Interviewees (2), Interviewees (6), Interviewee (11), Interviewee (12), Interviewee (13), Interviewee (16), Interviewee (19).

⁷⁴² Interviewee (6), Interviewee (11), Interviewee (12), Interviewee (14), Interviewee (16), Interviewee (19)

⁷⁴³ Interviewee (12), Interviewee (13), Interviewee (14), Interviewee (16), Interviewee (19).

⁷⁴⁴ Interviewee (13).

⁷⁴⁵ Interviewee (2), Interviewee (6), Interviewee (13), Interviewee (16)

⁷⁴⁶ Interviewee (11), Interviewee (16)

referring a suspected declaration to the Public Prosecution for more investigation.⁷⁴⁷

Clearly, as the comparative analysis shows, the FD bodies in Kuwait and Bahrain enjoy adequate powers to verify and investigate declarations compared with Oman and the UK FD regimes. This is in line with international FD requirements. In this regard, lessons can be taken from the Kuwaiti and Bahraini experience to improve the Omani FD regime.

6.3.2 The submission process of FD forms

As discussed in Section 6.2.2, the submission process of declarations is one of the essential steps required for the success of FD systems. This section examines and analyses the provisions regulating the mechanism of submitting declarations under the FD regimes in comparator countries.

1. The frequency of submitting financial declarations

States subject to this study have adopted various approaches to regulating the frequency of submitting declarations.

Like most FD systems, Kuwaiti Law requires public officials to submit three types of declarations. The first must be submitted within 60 days from the date of assuming office. Officials are then required to update their declarations periodically within 60 days at the expiry of every three years as long as they are in the same position. The final declaration shall be submitted within 90 days after leaving the office.

Bahrain's FD system has adopted similar frequency submission patterns to Kuwait. However, the difference lies in the timing of the submission. According to Bahrain's FD Law, officials shall submit the first declaration within 60 days of being provided with an FD form, not from the date of

⁷⁴⁷ Interviewee (6), Interviewee (11), Interviewee (12), Interviewee (13), Interviewee (14), Interviewee (16), Interviewee (19).

assuming office. The periodic declarations should be submitted every three years during the month of January following the expiration of three years after submitting the latest declaration. A final declaration must be submitted within 60 days after leaving office.

There are no standardised patterns regulating the mechanism of submitting declarations that apply to all public officials in the UK. For example:

- The Ministerial Code requires ministers to provide their permanent secretary with a full list, in writing, of all relevant interests on appointment to each new office.⁷⁴⁸ It could be argued that requiring ministers to submit their interests only on appointment to each new office limits the ability to monitor future changes in their interests. However, this should not be seen as a concern as ministers in the UK are members of the House of Commons and the House of Lords.⁷⁴⁹ Consequently, they are also subject to the interests registration requirements of both Houses.
- MPs must register all their current financial interests and any registrable benefits (other than earnings) received in the 12 months prior to their election.⁷⁵⁰ They are then required to provide an update within 28 days of any change in those registrable interests. The latter approach is somewhat similar to the third pattern discussed in Section 6.2.2 (1/C) above, which requires public officials to update their declarations once a significant change occurs in their property, wealth and interests. Although this approach ensures that members' financial interests are subject to the House's control, it would be challenging to monitor members who fail to update the House on changes in their interests later than the first registration.

⁷⁴⁸ Ministerial Code, August 2019, s7.3.

⁷⁴⁹ 'Ministers' (n 263).

⁷⁵⁰ Guide to Rules relating to the Conduct of Members, Registration of Members' Financial Interests, s2.

- Members of the House of Lords shall register all relevant interests, whether financial or non-financial, in the Register of Lords' Interests and submit registration forms to the Registrar of Lord's Interests within one month of taking their seat.⁷⁵¹ Members returning to the House at the start of a Parliament having been on a leave of absence at the end of the previous Parliament are required to register interests within one month of taking the oath in the new Parliament.⁷⁵² In addition, members are responsible for updating their registrable interests within one month of each change occurring.⁷⁵³

- Members and co-opted members of local authorities are required to disclose their pecuniary interests on taking office. They must notify the authority's monitoring officer of any disclosable pecuniary interests that they have at the time when the notification is given before the end of 28 days, beginning with the day on which they become members or co-opted members of the authority.⁷⁵⁴ In addition, in the event of a member or co-opted member of a relevant authority participating in a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority, the member must disclose any pecuniary interest in any matter considered at the meeting. If such an interest is not entered in the authority's register and is not the subject of a pending notification, then the member must notify the authority's monitoring officer of the interest before the end of 27 days, beginning with the date of the disclosure. This can be considered as updating for the registrable pecuniary interests of members.

- Unlike ministers, members of the House of Commons and the House of Lords, and members and co-opted members of local authorities,

⁷⁵¹ The Guide to the Rules relating to the Code of Conduct for Members of the House of Lords, July 2020, s36, 38, 40.

⁷⁵² *ibid*,s40.

⁷⁵³ *ibid*.

⁷⁵⁴ Localism Act 2011, s 30(1).

civil servants are not required to register their interests at specific times upon taking, during or after leaving office. However, they are required to declare to their department or agency any business interests or holdings of shares or other securities which they or members of their immediate family hold, to the extent to which they are aware of them.⁷⁵⁵ In other words, they shall declare these interests and possessions once they get them at any time, whether early upon having taken office or while assuming office. This approach appears to rely mainly on the truthfulness of civil servants in declaring their interests; an argument against it is that it would be difficult to detect and monitor those who do not comply with the declaration of such interests and positions.

Clearly, unlike the Kuwaiti and Bahraini FD systems, under the UK's FD regime, public officials, except for civil servants, are required to declare and register their interests when they first assume office as an essential submission pattern. They are not required to declare or register their interests periodically while in office or leaving office. However, they are required to update their declarations in certain situations, as discussed above.

In Oman, the mechanism of submitting FDs varies from those adopted in comparator countries and most jurisdictions. The law does not require public officials to submit their declarations at specific times. Instead, it grants the SAI Chairman the power to request an official to submit a declaration at any time according to the chairman's discretion, as necessary. This pattern of submitting declarations has been the subject of criticism. Some of the interviewees argued that there is no apparent justification to grant the SAI Chairman this authority.⁷⁵⁶ However, the interviewees who participated in preparing and reviewing the draft of the

⁷⁵⁵ The Civil Servants Management Code, November 2016, s.4.3.9.

⁷⁵⁶ Interviewee (14), Interviewee (15), Interviewee (19).

current law attributed this to the newness of the FD system in 2011.⁷⁵⁷ They added that there was a concern that requiring officials to submit their declarations periodically under an explicit legal text in the law could constitute a burden on the SAI and weaken its ability to deal with the large number of declarations expected to be submitted. It was therefore decided to grant the SAI Chairman the authority to request declarations in order to control the volume of submitted declarations with respect to the available capacity and resources of the SAI. Nonetheless, the interviewees noted that experience shows this approach is not a practical one; most argued that this approach limits the system's ability to monitor officials' wealth and interests and monitor changes that occur over time because of the absence of regular and periodic submission.⁷⁵⁸ Indeed, there could be officials with accumulative wealth who have not been required to submit their declarations. In addition, there is the potential that this discretionary power could be abused by not requiring some officials to submit their declarations as a result of nepotism and favouritism relationships or for other unclear and unjustified reasons.⁷⁵⁹

During the discussion of the appropriate patterns to submit declarations, all interviewees agreed that officials should be obligated to submit their declarations on a periodic and regular basis at specific times provided by the law: upon taking office, upon leaving office and periodically while assuming office, not upon the request of the SAI's Chairman and without the need to link the request to the availability of necessity. These proposed patterns of submission are similar to those adopted under the Kuwaiti and Bahraini FD regimes.

Most interviewees suggested that officials should submit periodic declarations every three to five years while in office, not annually, because of the limited current material and human resources provided

⁷⁵⁷ Interviewee (11), Interviewee (12) , Interviewee (17).

⁷⁵⁸ Interviewee (11), Interviewee (12) , Interviewee (13), Interviewee (14), Interviewee (15) , Interviewee (16), Interviewee (17), Interviewee (19).

⁷⁵⁹ Interviewee (14), Interviewee (15) , Interviewee (16), Interviewee (17), Interviewee (18).

to the FD Department.⁷⁶⁰ However, some argued that five years is a long time. Therefore, they maintained that it would also be appropriate to oblige officials to update their declarations whenever there is a considerable increase or change in their wealth and interests.⁷⁶¹ This thesis argues that this approach is impractical for emerging FD systems such as the Omani system due to the challenges that face such an approach, as discussed earlier in Section 6.2.2(1/C). Therefore, it would be appropriate to grant the SAI the authority to identify the period of time that constituted periodic submission within the provisions of an executive regulation of the law. This would enable it to determine the appropriate period for the periodic submission consistent with its available material, human and technical resources and then subject it to ongoing review.

2. Establishment of a register of public officials subjected to an FD system

As explained earlier in Section 6.2.2 (2), FD bodies should establish a registry for public officials subjected to FD regimes to facilitate the process of monitoring officials' compliance in fulfilling the FD requirements.

Kuwait's FD regime has an effective mechanism to provide the FD body with an up-to-date registry for public officials. The responsibility for creating the registry lies with the entities and agencies to which officials belong. Each entity shall provide the FD body with a statement of all the public officials subject to the FD system.⁷⁶² Moreover, each entity is required to notify the FD body of those whose service has ended or who have left their position for any reason and any changes in the employment status of officials subject to the FD system.⁷⁶³ The role of

⁷⁶⁰ Interviewee (12), Interviewee (14) , Interviewee (15), Interviewee (16), Interviewee (17), Interviewee (18), Interviewee (19).

⁷⁶¹ Interviewee (12), Interviewee (17).

⁷⁶² The Executive Regulation No.300/2016 of the Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 20/B.

⁷⁶³ *ibid.*

the FD body in this regard is to supervise and follow up on the entities' performance and verify the undertaking of the obligations assigned to them under the law.⁷⁶⁴ Entities that do not comply with these requirements may be subject to criminal sanctions.⁷⁶⁵

Under Bahrain's FD regime, entities and agencies are required to provide the FD body with a list of officials subject to the FD system requirements. However, there is no explicit legal text that requires such entities to update the list.⁷⁶⁶ In addition, unlike the Kuwait FD regime, no sanctions are imposed on entities that fail to comply with this requirement.

It is evident that obliging such entities to provide and update a registry of public officials, whether in Kuwait or Bahrain, plays a significant role in easing the burden on the FD bodies and enables them to focus on the processes of verifying and inspecting declarations rather than being preoccupied with contacting each entity to provide their own lists and periodically following up with updates.

In the UK, there is no centralised FD body. Instead, each agency/department is responsible for managing its FD system's requirements. Therefore, the maintenance of an up-to-date registry list of public officials has not represented a challenge.

Unlike the Kuwaiti and Bahraini FD regimes, Omani law has no provisions that require entities and agencies to which officials belong to provide the SAI with a list of public officials subjected to the FD system. As reported by one of the key officials, this is one of the law's weaknesses,⁷⁶⁷ particularly considering the limited resources provided to the FD Department. In practice, the FD Department faces a challenge in

⁷⁶⁴ The Executive Regulation No.300/2016 of the Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 20/D.

⁷⁶⁵ The Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 45.

⁷⁶⁶ The Financial Disclosure Law No.32/2010, art 4.

⁷⁶⁷ Interviewee (2).

requesting such a list and updating the functional status of officials by itself.⁷⁶⁸ This highlights the importance of placing an explicit legal text in the law which obliges entities to provide the SAI with an up-to-date registry for their public officials and impose sanctions on non-compliance, as is the case in Kuwaiti law. As discussed earlier in Section 6.2.2 (2), it would be more effective to establish an integrated electronic FD system and link it with other agencies. This would allow the SAI to easily obtain the list and enable it to monitor the extent to which officials comply with submitting their declarations electronically.

Modes of filling and submitting FD forms

Under the Kuwaiti FD regime, the mechanism of filling and submitting declarations for those inside Kuwait is regulated under Resolution no. (294) of 2016, issued by the ACA. FD forms are available on the ACA website. A declarant is required to print, fill out and then sign the form. In addition, the website allows the form to be filled out electronically before being printed. After completing the form, the declarant puts it into a special file provided by the ACA and submits it to the concerned employee at the ACA's headquarters or at the body in which the declarant works according to the date specified by the ACA. For those outside Kuwait, the same procedures are applied except for the mode of submission. The declarant shall complete the FD form and send it to the ACA via an international mail provider identified by it.⁷⁶⁹

In Bahrain, under Article 7 of Executive Regulation No.82/2012 of the Financial Disclosure Law No.32/2010, a public official is required to fill the FD form, sign it and put it in a sealed envelope. The FD form is sent to the IBFD by certified mail with proof of delivery or hand-delivered to the competent department. FD forms cannot be submitted electronically.

⁷⁶⁸ *ibid.*

⁷⁶⁹ 'The Guidance Model of Financial Declaration' (*Nazaha- Kuwait Anti Corruption Authority*) <<https://www.nazaha.gov.kw/AR/Pages/guidingform.aspx>> accessed 13 July 2021.

In the UK, for example, under the guides to the rules of conduct for ministers, the House of Lords, and the House of Commons, members are required to register and declare their financial interests. However, there is no indication that members can fill and submit registration/declaration forms electronically.

In Oman, the FD forms are available on the SAI's website. A public official downloads the form and fills it out electronically, then prints it out and signs on all the form's pages. The form is placed into a sealed envelope and sent to the SAI. As stated earlier in Section 6.2.2 (3), filling out FD forms electronically ensures that an FD body receives precise printed data, compared to handwritten data which could be unclear due to the poor quality of a declarant's handwriting.

Nonetheless, there are no specific rules regulating the modes of submitting FD forms to the SAI. In practice, three methods of submitting declarations can be distinguished, as stated by a key official:⁷⁷⁰ (i) submission of FD forms at the SAI's headquarters, (ii) submission of FD forms at entities in which officials work, and (iii) in particular cases, a member of the SAI can travel to an official's location to ensure receipt of the FD form. The key official further argued that the mechanism of submitting FD forms to the SAI should be legally regulated to ensure that officials' responsibilities in this regard are as clear as possible, rather than leaving it to officials' personal judgment.

Clearly, the steps of filling and submitting FD forms under Oman's FD system are similar to some extent to those under Kuwait's FD system. However, the procedures of submitting FD forms are well codified under the Kuwaiti FD system. Therefore, in Oman, it is crucial to regulate such procedures under an executive or internal regulation, as is the case in Kuwait.

⁷⁷⁰ Interviewee (2).

Seemingly, FD systems in comparator countries do not allow declarants to submit FD forms electronically, divesting them of the privileges of electronic submission, as discussed in Section 2.2.6 (3). Therefore, it is vital as part of the future improvement of Oman's FD system to establish an electronic system which enables declarants to fill in and submit FD forms electronically.

Tools and means provided to support officials to fill out and submit FD forms

On its website, Kuwait's ACA provides a step-by-step guide to filling out and submitting FD forms. It concludes with answers to some frequently asked questions.⁷⁷¹ It also provides a guidance model for filling an FD form field.⁷⁷²

In addition to the FD guide, the law requires the ACA to communicate with officials using various media means when it deems it appropriate.⁷⁷³ For example, the ACA may use media to announce the dates when declarations must be submitted by and alert officials of the legal periods for submitting declarations at least one month before the lapse of such dates.⁷⁷⁴ Moreover, the ACA shall communicate with officials who are late to submit a first declaration or update it within the period indicated by the law and warn them that if the delay period exceeds 90 days, they will be subject to the punishment under the law.⁷⁷⁵

In the UK, most guides to the codes of conduct, including, for example, those for ministers and members of the House of Commons and House of Lords, provide the details of the financial interests that need to be registered and declared according to their categories and value. Such

⁷⁷¹ 'Steps of Filling and Submittig a Financial Declaration' (*Nazaha- Kuwait Anti Corruption Authority*) <<https://www.nazaha.gov.kw/AR/Pages/financialsteps1.aspx>> accessed 13 July 2021.

⁷⁷² 'The Guidance Model of Financial Declaration' (n 769).

⁷⁷³ The Executive Regulation No.300/2016 of the Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 112.

⁷⁷⁴ *ibid*, art 112.

⁷⁷⁵ *ibid*, art 116

details provide a clear picture of the contents of FD forms and help officials fill out FD forms accurately regarding the required categories of financial interests.

Just as with the Kuwait ACA's website, Oman's SAI provides a step-by-step guide on its website that includes instructions for declarants on how they should fill out the FD forms. In addition, it also provides contact phone numbers on its website as 'a communication channel' between declarants and the SAI for declarants' inquiries and information and technical support. The availability of such guides as well as a communication channel enable declarants to fill out FD forms data correctly and accurately.

Unlike Kuwait, the UK and Oman, there is no available guide on the IBFD website that explains the steps of filling out and submitting FD forms.

6.3.3 The verification process of FD forms' data

As discussed earlier in Section 6.2.3, an FD body should be given the necessary powers to enable it to verify and inspect declarations. Without this verification process, an FD system operates poorly.

This section examines the procedures of verifying FD forms by the FD bodies in comparator countries and the criteria used for selecting declarations that are subject to the verification process, as well as the methods by which they are reviewed.

The chairman of Kuwait's ACA shall form three committees to verify and inspect the declarations submitted by public officials. According to the ACA report for the period January 2019– March 2020,⁷⁷⁶ 1,843 officials had their declarations verified as of December 2019. This indicates that submitted declarations are subject to verification and examination

⁷⁷⁶ 'The Kuwait Anti-Corruption Authority Report for the Period from January 2019 to March 2020' (*Kuwait Anti Corruption Authority*) <<https://www.nazaha.gov.kw/AR/Pages/default.aspx>> accessed 14 July 2021.

process in practice. The criteria adopted by inspection committees to select the sample of declarations to be verified and examined are not identified under the law or its executive regulation but instead regulated under the internal regulations of committees. However, it is clear from the ACA report that complaints and suspected corrupt activities monitored by the Detection of Corruption Sector at the ACA are among these criteria.⁷⁷⁷ The report shows that the declarations of 12 declarants were examined based on complaints and cases referred by the Detection of Corruption Sector. In addition, the formation of inspection committees ensures that a sample of various functional levels of officials is subject to committee verification and examination (each committee that is competent to inspect the specific categories of FDs according to the public officials' functions and positions).⁷⁷⁸

Under Article 4 of the Bahrain Law, the IBFD has the authority to receive and examine declarations. However, the law places restrictions that prevent the IBFD from conducting ongoing verification and examination on declarations. For example, Article 14 of the Executive Regulation of the Law prohibits the IBFD from accessing the place where FD forms are stored unless two delegated IBFD judges are present. In addition, an FD form cannot be opened unless in the presence of the declarant or the declarant's legal deputy. Moreover, the Executive Summary of the Review of Bahrain Implementation of the United Nations Convention against Corruption indicates that the FD system is limited as FD forms remain sealed unless a criminal investigation is opened.⁷⁷⁹ It recommends that Bahrain strengthens the FD system to allow for the verification and use of the information provided to detect conflict of

⁷⁷⁷ The report shows that 12 declarants had their declarations examined based on complaints and cases referred by the Detection of Corruption Sector.

⁷⁷⁸ The Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 31.

⁷⁷⁹ 'The Executive Summary of the Review of Bahrain Implementation of the United Nations Convention against Corruption' (n 246) ,p.10,12.

interest cases and illicit enrichment in the absence of any criminal investigation.

Notably, the law entrusts the IBFD with the power to verify and examine complaints related to the violations of the FD system's requirements. This indicates that the IBFD relies on complaints as an essential criterion for identifying the sample of declarations subject to verification and investigation.

In the UK, the requirements of the FD system that apply to public officials are multiple and varied depending on the sectors/agencies where officials work. Examples of investigation procedures for the breach of FD requirements are set out below:

➤ **Ministerial Code**

The Code does not include clear and detailed procedures regulating the mechanism of verifying the accuracy of ministers' interests submitted to their permanent secretary and the investigative procedures of any breaches of the Code. Under Section 7.5, a statement covering relevant ministers' interests is published twice yearly. In practice, an independent advisor oversees the statement in the form of a List of Ministers' Interests, advising on what is necessary to publish, as relevant, within the List. Allegations of a breach of the Code are investigated by the cabinet secretary and the independent adviser on ministers' interests upon the prime minister's request. This includes allegations of breaches of the requirements of registration and declaration of ministers' interests.

➤ **Code of Conduct of the House of Commons**

The parliamentary commissioner has the authority to investigate members' alleged breaches of the Code, including the violation of the requirements related to the declaration of members' interests and registration of their interests. The commissioner enjoys a discretionary power to investigate allegations of breaches of the Code. The

commissioner will only initiate an inquiry if satisfied that the evidence produced is sufficient to justify such an inquiry.⁷⁸⁰

A complaint is an essential source that the commissioner relies on to investigate any breach of the Code. Chapter Four of The Guide to the Rules Relating to the Conduct of Members for the House of Commons regulates the mechanism of submitting a complaint and its handling procedures. For example, in the event that the commissioner accepts a matter for inquiry, the member shall be invited to respond to the allegation. Members are required under the Code of Conduct to cooperate with such an inquiry and to not lobby the Committee on Standards and the commissioner in a manner calculated to influence their judgment. If something like this occurs, it is considered a serious breach and leads to suspension from the House.⁷⁸¹

The investigation may conclude with one of the following results:

- If the commissioner concludes that there is no evidence supporting the allegation, the commissioner reports the conclusion briefly to the committee.⁷⁸²
- If the commissioner concludes that the breach is minor, the commissioner may decide that the matter can be resolved through the rectification procedure. If the member agrees to this procedure and apologises, the commissioner will determine the matter on that basis and report the fact briefly to the committee.⁷⁸³

In both results, the determination letter and the evidence relevant to that inquiry will be published on the commissioner's webpages.

In the event that the commissioner concludes that the breach is not suitable for the rectification procedure, or that the inquiry raises issues

⁷⁸⁰ The Guide to the Rules relating to the Code of Conduct for Members of the House of Commons, Chapter 4, s 1-5.

⁷⁸¹ The Guide to the Rules relating to the Code of Conduct for Members of the House of Commons, Chapter 4, s 13.

⁷⁸² *ibid*, s 14.

⁷⁸³ *ibid*, s15.

of broader importance, then they will report the conclusion to the committee in the form of a memorandum. The committee publishes the commissioner's memorandum on the case as well as a report of its conclusions in the matter, including any recommendation to the House on whether further action is required.⁷⁸⁴

➤ **Code of Conduct of the House of Lords**

A House of Lords commissioner for standards is responsible for investigating alleged breaches of the Code. If the commissioner has concluded that there is no breach or the member and commissioner have agreed remedial action for a minor breach, the report of these results is published on the commissioner's webpages. In the event that the commissioner concludes that the member has breached the Code and remedial action is inappropriate or has not been agreed, the commissioner shall report the result of the investigation with recommended sanctions to the Conduct Committee, which shall report its conclusion, along with any appropriate sanctions, to the House. For the most serious sanctions, the final decision rests with the House.⁷⁸⁵

Like the parliamentary commissioner, a House of Lords commissioner for standards usually relies on complaints made by a third party to initiate an investigation.⁷⁸⁶ The failure to register relevant interests and failure to declare relevant interests in the course of parliamentary business, including committee proceedings, are matters within the commissioner's remit.⁷⁸⁷

Investigation procedures of the breach of codes of conduct for members of both the House of Lords and House of Commons are substantially similar.

⁷⁸⁴ *ibid*, s16.

⁷⁸⁵ The Code of Conduct for Members of the House of Lords, July 2019, s 20,21,22.

⁷⁸⁶ The Guide to the Rules relating to the Code of Conduct for Members of the House of Lords, July 2019, s 120.

⁷⁸⁷ *ibid*.

Unlike Kuwait, Bahrain and the UK, there are no provisions in Omani Law that regulate the verification and investigation procedures of declarations. This is one of the major weaknesses in the law, as was addressed earlier in Section 6.3.1(4). Moreover, Article 12 emphasises that declarations shall be confidential, and none shall have access thereto without the approval of the SAI Chairman. This high level of confidentiality was criticised by the interviewees, who argued that it hinders the FD Department from carrying out its essential tasks of verifying and investigating declarations on an ongoing and systematic basis.⁷⁸⁸ Under the current law, the department can only verify the exterior envelopes of declarations without verifying the completion or the accuracy of FD forms' data, except those approved by the chairman.⁷⁸⁹ Therefore, it is crucial that the confidentiality restrictions are eased, at least to the extent that it enables the FD Department to perform regular verification and examination of declarations without the need to seek the chairman's permission for each case.

As is the case in comparator countries, the SAI relies on complaints and communications as an essential criterion to verify the submitted declarations after getting permission from the chairman.⁷⁹⁰ Given the importance of the whistleblowing system (complaints system) in initiating the verification and investigation of suspected declarations, Section 6.4 examines the complaints system in Oman and assesses its effectiveness.

It is clear from the comparative study that the mechanisms of verifying and investigating declarations are more regulated under the provisions of Kuwait's FD regime than other comparator countries. In contrast, unlike comparator countries, the Oman FD regime does not provide provisions that empower the SAI to verify and investigate declarations.

⁷⁸⁸ Interviewee (2), Interviewee (12), Interviewee (13), Interviewee (14), Interviewee (16), Interviewee (17), Interviewee (18), Interviewee (19).

⁷⁸⁹ Interviewee (2), Interviewee (6).

⁷⁹⁰ Interviewee (2).

This highlights the importance of granting the SAI legal powers that enable it to implement and enforce the FD system, including those related to the verification processes of declarations. Oman can draw on comparator countries' experiences to improve its FD system. It can also utilise certain studies that highlight the best practices of the criteria adopted for selecting a sample of declarations to be verified and the methods used to review declarations, as discussed in detail in Section 6.2.3.

6.3.4 Sanctions determined for the violation of the FD systems requirements

Under Articles 45, 46, 47 of the Kuwait Law, the sanctionable offences for the breach of the FD system requirements can be classified into three primary violations, as follows:

(i) Late submission of a declaration. The law imposes criminal sanctions on this violation, depending on the type of declaration.

- Officials who are late to submit their first declaration are punished with a fine of no less than 500 dinars and no more than 3,000 dinars. Furthermore, if the delay exceeds 90 days after the warning to submit the declaration, the official may be removed from office.
- Officials who are late to update their declarations are punished with a fine of no more than 3,000 dinars. If the delay exceeds 90 days after the warning to update the declaration, the official is punished with imprisonment for no more than a year and a fine of no less than three 3,000 dinars and no more than 10,000 dinars, or one of these sanctions. Removal from office may then follow.
- Officials who are late to submit their final declaration are punished with a fine of no more than 5,000 dinars. If the delay exceeds 90 days after the warning to update the declaration, the official is punished with imprisonment for no more than three years and a

fine of no less than 3,000 dinars and no more than 30,000 dinars or one of these sanctions. The official may be removed from office.

(ii) Non-submission of a declaration, submission of an incomplete declaration or provision of a false declaration. The law imposes sanctions ranging from imprisonment of no more than three years and a fine of no less than 3,000 dinars and not more than 1,000 dinars or one of these sanctions. In addition, the sanction of removal from the office can be applied to this violation.

(iii) Non-cooperation with the ACA and obstruction of its work. The law imposes imprisonment of no more than three years and a fine of no less than 2,000 dinars but no more than 10,000 dinars, or either punishment, if any public or private sector unit or any natural or legal person undertakes any of the following acts:

- Refraining, without legal justification, from providing the ACA with records, documents and information that could contribute to the detection of corruption.
- Obstruction of the ACA's work or pressurising on the ACA in order to obstruct it from practising its tasks, or interfering with its responsibilities with the intention of influencing it.

Similar to Kuwaiti law, Bahraini law imposes criminal sanctions on officials who do not comply with the FD system's requirements. An analysis of Article 8 of the Bahrain Law shows that it identifies three main violations that are punished as violations of the FD requirements, as follows: (i) failure to submit declarations on time (late submission of a declaration), (ii) failure to submit declarations and (iii) Submission of incorrect or misleading data. The law imposes a sanction of a fine of no less than 500 dinars for violation (i). For violations (ii) and (iii), an offender shall be punished with the more strict sanction: imprisonment and a fine of no less than 1,000 dinars and no more than 3000 dinars or

one of these sanctions. The law does not specify the length of imprisonment; therefore, it is left to the judge's discretion. Unlike the Kuwait Law, although the Bahrain Law includes a legal text granting the IBFD the power to ask administrative competent entities, institutions, banks and corporate bodies to provide data, documents and explanations, including confidential information it deems necessary for the completion of financial declaration elements, the law does not impose penalties for a non-response to the IBFD request.

Kuwait and Bahrain criminalise the four common violations of FD requirements, as discussed earlier in Section 6.2.4 (1). This is an important step in strengthening the mechanisms of the implementation and enforcement of the FD system. Although legislators in both Kuwait and Bahrain do not impose administrative sanctions for the violations of the FD requirements, the level of criminal sanctions imposed are varied according to the gravity of violations,

Unlike the Kuwaiti and Bahraini laws, Omani law imposes a criminal sanction only for the failure to submit declarations. Whoever violates this requirement shall be punishable by imprisonment of not less than six months and not exceeding two years. The law does not impose any sanctions on those who are late in submitting declarations or who provide incorrect, false or misleading declarations. Most of the interviewees agreed that there is a need to impose sanctions on these acts too to ensure the effectiveness of the system.⁷⁹¹ Some of the interviewees argued that administrative sanctions, as well as penal fines, should be applied to the violation of the FD system's requirements as they are more enforceable and act as more of a deterrent.⁷⁹²

⁷⁹¹ Interviewee (2), Interviewee (6), Interviewee (14), Interviewee (15), Interviewee (16), Interviewee (17), Interviewee (18).

⁷⁹² Interviewee (2), Interviewee (6), Interviewee (11), Interviewee (12), Interviewee (15), Interviewee (16), Interviewee (19).

In the UK, there are no specific sanctions identified under the Ministerial Code, the Code of Conduct of the House of Commons, and the Code of Conduct of the House of Lords.

Criminalisation of illicit enrichment

The crime of illicit enrichment in both Kuwait and Bahrain is linked directly to the FD system. This crime is identified once the verification and examination of a public official's declaration detects a significant increase of wealth that is not commensurate with the official's income. In this case, the burden of proof of the legitimacy of the wealth lies with the official. An official that cannot justify the legality of such wealth is found guilty of the crime of illicit enrichment.

Under Kuwaiti Law, the inspection committees are required to prepare a report of each official likely to have an increase in his or her assets and liabilities that resulted from illicit gain, after hearing his statements.⁷⁹³ Such a report shall be referred to the ACA and sent to the Public Prosecution to take action. If the inspection committees find no suspicion of illicit gain, they shall propose a reasoned decision to close the verification and examination process.⁷⁹⁴

The Kuwaiti legislator places severe sanctions on the perpetrator of such a crime: imprisonment for a period not exceeding five years, and a fine equal to the value of the illicit gain acquired, in addition to the confiscation of the illicit gain.⁷⁹⁵ Moreover, the perpetrator shall be removed from office or have any membership of a body removed, as well as being barred from assuming public positions and from appointment or nomination for membership of any representative body until rehabilitation.⁷⁹⁶ The law also punishes any person who earnestly

⁷⁹³ The Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 35.

⁷⁹⁴ The Executive Regulation No.300/2016 of the Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 32.

⁷⁹⁵ The Establishment of Kuwait Anti-Corruption Authority and the Provisions on Disclosure of Assets and Liabilities Law No.2/2016, art 48.

⁷⁹⁶ *ibid*,art 49.

benefited from the illicit gain with half of the perpetrator' sanction related to the term of imprisonment, the fine and the confiscation of the illicit gain.⁷⁹⁷

Under Bahraini law, the IBFD shall prepare a report of officials who fail to prove the legality of the increase of their wealth. Whenever there are strong indications or evidence of the illicit gain, such a report shall be referred to the Public Prosecution.⁷⁹⁸ Similar to Kuwaiti law, a perpetrator of illicit gain crime under Bahraini law faces strict sanctions as follows:⁷⁹⁹ (i) imprisonment for a period not exceeding five years and a fine no less than 5,000 dinars, (ii) removal from office and barred from assuming any public position and from any appointment or nomination for membership of any representative or municipal body until rehabilitation and (iii) confiscation of any illicit gain to the public treasury or its value paid in the event of the loss, damage or expenditure of the illicit gain.

Illicit enrichment crime is not criminalised under the UK and Omani FD regimes. However, most of the interviewees argued that the criminalisation of illicit enrichment under the Omani FD regime would enhance the effectiveness of the FD system.⁸⁰⁰ Some of the interviewees provided justifications that support the need to criminalise illicit enrichment. For example, they argued that under the current FD regime, officials cannot be held accountable even if there is a significant increase in their wealth disproportionate to their income unless the Public Prosecution proves they have gained such wealth by committing a criminal crime.⁸⁰¹ Consequently, perpetrators have enjoyed impunity in some criminal cases even though they gained significant wealth disproportionate to their income because of the absence of illicit

⁷⁹⁷ *ibid.*

⁷⁹⁸ The Financial Disclosure Law No.32/2010, art 6.

⁷⁹⁹ *ibid.*, art 9.

⁸⁰⁰ Interviewee (2), Interviewee (6), Interviewee (8), Interviewee (11), Interviewee (12), Interviewee (13), Interviewee (14), Interviewee (15), Interviewee (16), Interviewee (17), Interviewee (18).

⁸⁰¹ Interviewee (11).

enrichment crime and the lack of any evidence they have committed other criminal offences.⁸⁰² Furthermore, the means of committing offenses have evolved and it has become increasingly difficult to detect them. Thus, the criminalisation of illicit enrichment would help detect illicit wealth gained by officials by examining and investigating their declarations.⁸⁰³

One interviewee claimed that this crime should be applied in very narrow circumstances because it represents a controversial issue in some countries as it contradicts the principle of the accused being innocent until proven guilty.⁸⁰⁴

6.4 AN EXAMINATION OF OMAN'S WHISTLEBLOWING SYSTEM AND ITS ROLE IN THE EFFECTIVENESS OF THE FINANCIAL DECLARATION SYSTEM

As was stated previously in section 6.2.3 (1/E), complaints are one of the common criteria used by FD bodies as an essential criterion for the selection of the sample of declarations subject to the verification and examination process. As the comparative study shows, this is also the case of FD bodies in comparator countries. This demonstrates that the existence a robust whistleblowing system (complaints system) contributes positively to the effectiveness of an FD system. Consequently, it is vital that reforms concerning FD systems involve the improvement of whistleblowing systems because of the complementary association between them in some aspects, as illustrated above, and their common objective of fighting corruption. Therefore, it is crucial to conduct a regular review of the legal provisions of whistleblowing systems to identify the weaknesses and

⁸⁰² Interviewee (14), Interviewee (18).

⁸⁰³ Interviewee (16).

⁸⁰⁴ Interviewee (12).

obstacles that such systems face and subsequently address these to establish an effective whistleblowing system.

This section aims to provide an overview of the whistleblowing system in Oman and to examine the extent to which its requirements are compatible with those of the UNCAC.

6.4.1 The legal framework of the whistleblowing system in Oman

The legal grounds of the whistleblowing system in Oman are found in the Law No. 111/2011, and its Implementing Regulation No.13/2013 (IR). Article 10 (9) of the Law states that:

In the undertaking its responsibilities under this law, the Institution shall: 9) Review the complaints received by the Institution on negligence or violation of applicable laws, regulations and decision as per the controls stipulated in the Regulations.

Under this Article, the SAI is entrusted with the jurisdiction of receiving and dealing with wrongdoing reports (complaints).⁸⁰⁵ In 2012, a unit within the SAI was established for this purpose called the ‘Community Communication Department’.⁸⁰⁶ Subsequently it was upgraded to a specialised department – the ‘Complaints and Communications Department (CCD)’ – in 2016.⁸⁰⁷

Chapter 4 of the IR regulates the legal provisions of the whistleblowing system. According to such provisions, any person has the right to report wrongdoing related to entities subjected to the SAI audit, provided that the reported wrongdoing is relevant to the violation of applicable laws, regulations and decisions as well as dereliction and negligence in the performance of official duties and misuse of public funds.⁸⁰⁸ The IR

⁸⁰⁵ The State Financial and Administrative Audit Law, No. 111/2011, art 10(9).

⁸⁰⁶ Resolution No. 9/2012 issued by the Chairman of the SAI on 28 February 2012.

⁸⁰⁷ Resolution No. 44/2016 issued by the Chairman of the SAI on 28 April 2016 .

⁸⁰⁸ The State Financial and Administrative Audit Law, No. 111/2011, art 10(9), the Implementing Regulation No. 13/2013, art 15.

emphasises the confidentiality of the whistle-blower's identity, which cannot be disclosed unless the subject of whistleblowing is relevant to the personal right of the whistle-blower.⁸⁰⁹ According to Article 21 of the IR, the SAI is prohibited from reviewing the complaints in four cases. First, those previously considered by the SAI; second, those already ruled on by the judiciary; third, those still being considered by the judiciary; and fourth, the invalidity of the complaints and communications or the absence of their importance or the lack of specific facts. Furthermore, the SAI has the right to withhold any complaint or communication for any reason as dictated by the public interest.

6.4.2 The working mechanism of the whistleblowing system in Oman

The process of verifying and examining complaints by whistle-blowers, and communications, goes through two main stages: a preliminary examination by the CCD followed by a substantive examination by the competent oversight units within the SAI.⁸¹⁰ At the first stage, the complaint is verified and examined by the CCD. This can yield one of the following results:⁸¹¹ (i) the conservation of the complaint, (ii) if there is sufficient evidence of the suspicion of a crime, the complaint is referred to the Financial and Administrative Violations Department (FAVD) within the SAI for further study and examination prior to being referred to the Public Prosecution, (iii) the referral of the complaint to the competent oversight unit within the SAI for substantive examination (the second stage).

At the second stage, a written mandate for verifying and examining the complaint should be issued by a General Director or a director of a competent oversight unit.⁸¹² This includes the subject of the

⁸⁰⁹ *ibid*, art 20.

⁸¹⁰ Oversight units are General Directorates and Departments formed within the SAI to carry out the financial and administrative oversight tasks in the entities subjected to the SAI audit.

⁸¹¹ Interviewee (1), Interviewee (5).

⁸¹² Interviewee (4), Interviewee (7).

complaint, the members of the team audit responsible for verifying and examining the complaint, the period required for completing the examination process, and the name of the entity subjected to the SAI audit (the place where the wrongdoing is committed). The oversight unit should then prepare a report in accordance with the outcomes of the examination, as follows: (i) for irregularities that do not amount to a suspicion of criminal offence or serious irregularities, the report shall be sent to the entity where the wrongdoing accrued to take the appropriate legal measures,⁸¹³ (ii) for irregularities that form a suspicion of a criminal offence, the report shall be referred to the FAVD for further study and examination before referral to the Public Prosecution,⁸¹⁴ (iii) in the absence of irregularities, the report shall be submitted to the CCD to conserve the complaint.⁸¹⁵

It is evident from the foregoing that the SAI represents an organised and operative mechanism for receiving and examining complaints and communications. Most of the interviewees who were interviewed for this research agreed that the whistleblowing system in Oman plays an essential role in detecting corruption.⁸¹⁶ In practice, complaints and communications have led to corruption cases involving bribery, embezzlement and abuse of public function.⁸¹⁷ It also plays a preventive role in fighting corruption as it conveys a message to the public officials that their corrupt acts can be reported by any individual, following which the officials will be held accountable.⁸¹⁸ However, practice indicates that there are some challenges that could limit the effectiveness of the whistleblowing

⁸¹³ Interviewee (4), Interviewee (7), Interviewee (9).

⁸¹⁴ Interviewee (3), Interviewee (4) , Interviewee (7) , Interviewee (9)

⁸¹⁵ Interviewee (4), Interviewee (7).

⁸¹⁶ Interviewee (1) on 04 August 2019, Interviewee (3) on 08 August 2019, Interviewee (4) on 06 August 2019, Interviewee (5) on 08 August 2019, Interviewee (7) on 18 August 2019, Interviewee (8) on 19 August 2019, Interviewee (9) on 22 August 2019

⁸¹⁷ Interviewee (1), Interviewee (5).

⁸¹⁸ Interviewee (4), Interviewee (9).

system, as is explained and discussed later in the subsequent sections.

6.4.3 The requirements of the whistleblowing system in accordance with the UNCAC and compared with those of Oman's whistleblowing system

Given the significant role played by whistleblowing systems in exposing and detecting corruption, all global and regional treaties on combating corruption, including the UNCAC, have requirements that encourage States Parties to establish such a system.⁸¹⁹ The UNCAC does not require a specific legal framework to regulate the provisions of the whistleblowing system. Thus, it can be regulated under a comprehensive law or a sectoral law. For example, the UK has enacted a dedicated and comprehensive law regulating the provisions of the whistleblowing system called 'The Public Interest Disclosure Act 1998'. This is now incorporated into the UK's main employment legislation, the Employment Rights Act 1996, ss.43A–43L. In contrast, the provisions of the whistleblowing system in Kuwait are regulated under a sectoral law (Law No. 2/2016). Likewise, the whistleblowing system in Oman is regulated under a sectoral law (Law No.111/2011).

Article 33 of the UNCAC stipulates that:

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.⁸²⁰

⁸¹⁹ Transparency International, 'A Best Practice Guide for Whistleblowing Legislation' (2018), p.1, <https://www.transparency.org/whatwedo/publication/best_practice_guide_for_whistleblowing_legislation>.

⁸²⁰ It should be noted that Article (8/4) of the UNCAC requires State Parties to establish measures and systems that encourage public officials to report corruption acts that come to their attention when they perform their function.

It can be concluded from the analysis of the above Article that to establish an effective whistleblowing system, its legal framework should regulate a number of core elements as follows:

1. Protected persons

It is understood from the term 'any person' in Article 33 that the UNCAC grants States Parties substantial discretion to identify protected persons. Hence, this protection is not limited only to public officials who belong to organisations where wrongdoing is committed, but it may cover any person who wishes to report any facts concerning offences established in accordance with this Convention.

In Oman, there is no legislation as yet that provides protection for whistle-blowers. An important question here is to what extent there is a need to enact such legislation. Most of the interviewees believe that it is crucial, at present, to provide such protection. In practice, there are some cases of unjustified treatment against whistle-blowers, such as unfair dismissal, discriminatory treatment, and the removal of some employees from their positions and their transferal to other posts.⁸²¹ To cite one example, the Appeal Court ruled on 28 January 2019 that a company must pay compensation of approximately \$142 thousand in favour of an employee as a result of an unfair dismissal taken by the company on 27 May 2018.⁸²² The reason for the dismissal dates back to May 2018, when the employee appealed to the SAI via an online newspaper to take actions towards officials in the company because of the unfair dismissal. The company justified its decision on the grounds that the employee violated the work regulation as she disclosed misleading information related to the company and its staff in the media. In another instance of unjustified treatment, a member of staff faced harassment and

⁸²¹ Interviewee (1), Interviewee (4), Interviewee (7).

⁸²² Lawyer Asad Al-Hadhrami (@asadlawfirm), "New precedent in unfair dismissal lawsuits" 28 January 2019, 5:34 p.m. Tweet.

discriminatory and arbitrary treatment in the workplace as a result of reporting his employer's wrongdoing to the SAI. Ultimately, the discriminatory treatment led to his unfair dismissal.⁸²³

Another question worth raising here concerns the scope of the protected person in Oman: should it cover any person who wishes to report wrongdoing, or should it be restricted to only employees and workers? Arguably, ordinary individuals who are non-staff personnel could also suffer from detrimental actions as a result of reporting wrongdoing. For instance, the transactions of some individuals who deal with agencies in the public sector could be obstructed or disrupted as a result of reporting earlier wrongdoing related to such agencies, and in some cases, the unjustified treatment could result in assaults on them, particularly when reporting wrongdoings related to criminal offences.⁸²⁴ Consequently, this thesis argues that it is essential to provide protection for whistle-blowers in Oman and that such protection should extend to any person who reports wrongdoing, whether they are staff or non-staff personnel.⁸²⁵

2. The Competent Body or Person to Whom Disclosure is Made

The UNCAC requires the identification of competent authorities to receive and deal with wrongdoing reports. It is understood from the term 'competent authorities' that there is a possibility to establish more than one authority to address wrongdoing reports. According to the technical guide to the UNCAC, it is useful to entrust the responsibility for receiving and dealing with such reports to at least two levels of competent authorities.⁸²⁶ The first level should include, as a first stage, units or

⁸²³ Interviewee (1), Interviewee (7).

⁸²⁴ Interviewee (4).

⁸²⁵ Some countries, Kuwait for example, do not confine the protection to only employees but also extend it to any person who wishes to report wrongdoing. This is compatible with the requirements of the UNCAC.

⁸²⁶ For example, this approach is adopted in the UK. The Employment Rights Act 1996 explicitly stipulates multiple channels for wrongdoing disclosure (internal and external channels). The disclosure can be made to the worker's employer or to another responsible person; or, in the course of obtaining legal advice, to a Minister of the Crown; to a person prescribed by the Secretary of State (sections 43C-43F). However, workers or employees are encouraged to

persons within the organisation where wrongdoing is committed (internal authority) such as supervisors and heads of the organisation. The second level is an external authority such as an anti-corruption agency or an auditor general, who are relevant if the first authority does not positively address wrongdoing reports.⁸²⁷ This approach allows organisations to investigate allegations and correct wrongdoing internally.⁸²⁸ However, it might be practical to report wrongdoing directly to an external authority, particularly in the event that organisations are not legally bound under the law to establish effective internal policies for whistle-blower protection, for the following reasons: First, to ensure prompt action against reported suspicions of corruption, especially those that involve serious risks. Second, to avoid duplication in the event the same wrongdoing is reported to the internal and external agencies simultaneously. Third, to avoid interference which prevents any action that could be taken toward officials who are reported within the internal agency, mainly when whistleblowing relates to senior officials.

In Oman, the SAI is the competent body for receiving and examining complaints and communications. However, the jurisdiction of the SAI is restricted to complaints relevant only to entities subjected to its audit. Therefore, the jurisdiction of the SAI does not extend to entities which

disclose to their employers as a first step (internal disclosure). All civil service departments across the UK have adopted policies and procedures ensuring that employees are protected. Integrity units have been established in all government agencies to be responsible for the detection and verification of complaints and their management (see: 'Report of the Conference of the States Parties to the United Nations Convention against Corruption, an Executive Summary of the United Kingdom of Great British and Northern Ireland' (2019) It should be noted that whistle-blowers may enjoy protection if they make a disclosure to third parties (external disclosure) provided that they meet the more stringent conditions. For instance, they are likely to get protection relatively easily if they make disclosures to a responsible third party or a prescribed person, whereas disclosures to the media, for example, could be protected in minimal cases (see: Fraser Younson, 'Whistleblowing In The UK — What's New And What's In The Pipeline' (WHOS'WHOLEGAL) <<https://whoswholegal.com/features/whistleblowing-in-the-uk--whats-new-and-whats-in-the-pipeline>> accessed 27 February 2019).

⁸²⁷ United Nations Office on Drugs and Crime, 'Technical Guide to the United Nations Convention Against Corruption' (n 170) ,p.106.

⁸²⁸ Transparency International, 'Alternative to Silence: Whistleblower Protection in 10 European Countries' (2009), p.2,<https://www.transparency.org/whatwedo/publication/alternative_to_silence_whistleblower_protection_in_10_european_countries>.

are not under its audit. It might be argued that the aforesaid restriction could undermine efforts taken in combating corruption, particularly as the SAI is the competent body for following up the implementation of the UNCAC.

Most of the interviewees argued that the whistleblowing system should apply to all entities and organisations in the public sector,⁸²⁹ including those not subject to the SAI audit. In contrast, some argued that this could lead – in practice – to difficulties in the verification and examination process of the complaints and communications within such entities.⁸³⁰ However, such concerns should not be obstacles to this process. First, in practice, the SAI performs its audit and oversight tasks on entities not under its audit in certain circumstances, based on Article 20 of Law No.111/2011.⁸³¹ Second, the jurisdiction of the SAI with regards to the implementation of the FD system extends to some entities who are not subject to the SAI audit.⁸³²

3. The subject of wrongdoing that falls within protected disclosure

According to the UNCAC, the scope of protection covers any disclosure that includes facts concerning offences provided under the Convention.⁸³³

⁸²⁹ Interviewee (1), Interviewee (3), Interviewee (4), Interviewee (5), Interviewee (7), Interviewee (8).

⁸³⁰ Interviewee (4), Interviewee (6).

⁸³¹ Article 20 of Law no.111/2011 stipulates that: “The following are entities subject to the audit of the Institution: 9) The entities, not subject to the audit of the Institution, upon their request and if the Institution finds that the public interest so necessitates”.

⁸³² The Protection of Public Fund and Avoidance of Conflict-of-Interest Law no.112/2011, art.1.

⁸³³ For example, the Kuwait law requires that the subject of whistleblowing should be facts concerning one of the corruption crimes provided under the provisions of the law in order to protect whistle-blowers (Law No.2/2016, art. 22). In contrast, the UK legislator does not confine the scope of wrongdoing that falls within protected disclosure only to corruption offences. It includes any disclosure of information that tends to show one or more of the following: a criminal offence, a failure to comply with any legal obligation, a miscarriage of justice, endangering the health or safety of any individual, environmental damage or the concealment of information that tends to show any matter related to any of the aforementioned wrongdoings (Act No. 1996, section 43B(1)). One of the remarkable features

In Oman, Article 15 of the IR No.13/2013 expands the subject of wrongdoing to include a violation of applicable laws, regulations and decisions as well as dereliction and negligence in the performance of official duties and misuse of public funds. It has been shown that the SAI has the competence to consider a wide range of wrongdoing, regardless of its gravity. In other words, the IR does not make a specific classification of wrongdoing that falls within the category of whistleblowing. Therefore, the SAI should review and examine all violations which are within the scope and subject of the complaints above, including minor wrongdoing and those related to the personal rights of the whistle-blowers.

This broad scope of wrongdoing could place a significant burden on the SAI,⁸³⁴ which could require considerations to be made to narrow the scope. However, some interviewees disagreed with the proposal to restrict complaints and communications to only serious wrongdoing and that which threatens the public interest directly.⁸³⁵ Firstly, in practice, the examination of some complaints leads indirectly to the detection of serious wrongdoing that threatens the public interest, even though the same complaint is not related directly to the public interest and is seemingly minor.⁸³⁶ Secondly, the creation of a dedicated working team within the SAI to examine complaints and communications has contributed to lightening this burden.⁸³⁷ Thirdly, the existence of a database of all complaints submitted to the SAI, even those that are not grave, contributes to providing an indicator for the performance measurement of entities subjected to the SAI audit.⁸³⁸

of UK law is that protected disclosure is not limited to wrongdoing that has already occurred but also extends to those likely to occur (Act No. 1996, section 43B(1))

⁸³⁴ Interviewee (6), Interviewee (8).

⁸³⁵ Interviewee (1), Interviewee (4), Interviewee (5), Interviewee (7).

⁸³⁶ Interviewee (7).

⁸³⁷ Interviewee (4).

⁸³⁸ Interviewee (10).

However, it is necessary to establish a legal mechanism to deal with complaints that serve the personal rights of whistle-blowers more than the public interest, as well as complaints that involve minor wrongdoing. Employees' complaints submitted to the SAI often aim to claim their personal rights despite the fact that the legislator has made alternative legal channels to claim such rights; for instance, the right to petition the employer and then have recourse to the Administrative Court.⁸³⁹

As a consequence of the above, it would be ideal to adopt a mechanism somewhat similar to that in the UK by providing internal and external channels to report wrongdoing.⁸⁴⁰ Under this mechanism, all serious complaints would be submitted directly to the SAI, such as those that threaten public funds, public interest and public health, whereas minor complaints and those related directly to the personal rights of whistle-blowers would be submitted to the employer at the first stage. They would then be submitted to the SAI if there is no action taken to address such complaints in 30 days. This mechanism would contribute to easing the burden on the SAI and provide an opportunity for the employer to correct the situation. However, it is essential to set up legal provisions to oblige entities subjected to the whistleblowing system to deal with such complaints positively and provide periodic reports to the SAI on actions taken regarding the complaints.

4. The form of submitting wrongdoing (The form of disclosure)

Article 33 of the UNCAC does not require a specific form to report wrongdoing. Hence, it can be reported in written or oral form. There is no specific form required to submit complaints under Oman's law No.11/2011. Complaints can be made in writing or verbally. They can be

⁸³⁹ Interviewee (1), Interviewee (4), Interviewee (9).

⁸⁴⁰ See footnote 826.

submitted by hand, regular mail, email, a complaint form on the SAI website, or via any other means.⁸⁴¹

In addition, whistle-blowers can report complaints anonymously. These type of complaints often contain valuable information on serious wrongdoing.⁸⁴² It has been observed that people prefer to report wrongdoing anonymously, especially when the whistleblowing is relevant to serious irregularities.⁸⁴³ Nevertheless, anonymous reports are considered one of the challenges faced by the SAI when the evidence or documents provided are insufficient.⁸⁴⁴

Some of the interviewees argued that one reason people prefer to submit anonymous complaints in Oman is the fear of revealing their identity and suffering reprisals due to the absence of whistle-blower protection.⁸⁴⁵ Consequently, some whistle-blowers refuse to provide sufficient details of wrongdoing even though they possess them. Some contended that the provision of appropriate protection for whistle-blowers in Oman would play a significant role in encouraging people to report wrongdoing.⁸⁴⁶ This thesis argues that providing such protection would also contribute to a reduction in anonymous complaints and give confidence to whistle-blowers to provide documents and evidence that could lead to the detection of corrupt acts.

Indeed, a debate has arisen regarding anonymous reports. On the one hand, it has been argued that anonymous disclosures encourage people to report wrongdoings, especially in certain circumstances, for example, the absence of protection for whistle-blowers, the lack of adequate protection and the lack of the culture of reporting wrongdoings in

⁸⁴¹ The implementing regulation No.13/2013 of the SFAA Law No.11/2011, art 16.

⁸⁴² Interviewee (4), Interviewee (5), Interviewee (7).

⁸⁴³ Interviewee (3), Interviewee (10), Interviewee (4).

⁸⁴⁴ Interviewee (1), Interviewee (3), Interviewee (4), Interviewee (5), Interviewee (7), Interviewee (9), Interviewee (10).

⁸⁴⁵ Interviewee (5), Interviewee (7), Interviewee (10).

⁸⁴⁶ Interviewee (4), Interviewee (3), Interviewee (6), Interviewee (8), Interviewee (9), Interviewee (10).

society.⁸⁴⁷ On the other hand, the extension of protection to cover anonymous reports is opposed by some. The acceptance of anonymous reports may make whistle-blowers unaccountable and lead to time wasting due to their unknown identity.⁸⁴⁸ In addition, it may lead to difficulties in investigating the allegation of wrongdoing, particularly in the case of the provision of insufficient information.⁸⁴⁹ This thesis argues that even if protection is provided for whistle-blowers, countries should not neglect the importance of anonymous reports in exposing wrongdoings. Authorised bodies should have the ability to evaluate anonymous reports and overcome the concerns raised about them; for instance, the establishment of a particular channel for anonymous disclosures that utilises technical methods to gather further information from anonymous whistle-blowers.⁸⁵⁰

5. Reasonable belief and good faith as requirements to make a protected disclosure

In accordance with Article 33 of the UNCAC, any person who reports wrongdoing in good faith and on reasonable grounds to the competent authority should be protected against any unjustified treatment. The technical guide to the UNCAC illustrates that good faith should be presumed in favour of the person claiming protection; therefore, the burden of proof of the reverse should lie on the person who claims bad faith.⁸⁵¹

⁸⁴⁷OECD, *Committing to Effective Whistleblower Protection* (OECD 2016), p.62, <https://www.oecd-ilibrary.org/governance/committing-to-effective-whistleblower-protection_9789264252639-en> accessed 2 May 2019.

⁸⁴⁸ Paul Latimer and AJ Brown, 'Whistleblower Laws: International Best Practice' (2008) 31 UNSW Law Journal 766 <<https://core.ac.uk/download/pdf/143859790.pdf>>.

⁸⁴⁹ OECD, *Committing to Effective Whistleblower Protection* (n 847).

⁸⁵⁰ Transparency International, *Whistleblower Protection and the UN Convention Against Corruption* (Transparency International 2013), p.12, <https://www.transparency.org/whatwedo/publication/whistleblower_protection_and_the_un_convention_against_corruption>.

⁸⁵¹ United Nations Office on Drugs and Crime, 'Technical Guide to the United Nations Convention Against Corruption' (n 170).

A debate has arisen regarding the concept of good faith.⁸⁵² Some deem it linked to the information provided by whistle-blowers, claiming that this requirement is simply fulfilled if the whistle-blowers believe that they provide accurate information. Others link the concept of good faith to the personal motivation of whistle-blowers. Therefore, protection should be limited to honest whistle-blowers and those who are motivated to speak up because they want the wrongdoing investigated.⁸⁵³ According to Transparency International, the second interpretation focuses on the investigation of whistle-blowers' motivation rather than evaluating the information provided, which can pose a serious obstacle to potential whistle-blowers. Consequently, Transparency International principles do not require good faith as a condition to protect whistle-blowers.⁸⁵⁴ This thesis agrees with Transparency International's view as the main aim of reporting wrongdoing is to gain accurate information on illegal activities in institutions, especially those which threaten the public interest, regardless of the whistle-blower's motivation. Therefore, good faith should not be an essential requirement to make a protected disclosure.⁸⁵⁵

With regards to the requirement of reasonable grounds, this is fulfilled once whistle-blowers reasonably believe that the information they provide shows wrongdoing and if any person in the same situation or

⁸⁵² Transparency International, 'A Best Practice Guide for Whistleblowing Legislation' (n 647) ,p.15.

⁸⁵³ *ibid*, p.15.

⁸⁵⁴ *ibid*, p.15.

⁸⁵⁵ In the UK, good faith was an essential requirement to make a protected disclosure.

However, this requirement was removed in 2013. The Minister, Viscount Younger of Leckie, explains that a claim now will not fail as a result of an absence of good faith. Instead, the employment tribunal has the power to reduce the compensation if it concludes that the disclosure was not made in good faith (see: Doug Pyper, 'Whistleblowing and Gagging Clauses' (2016), p.15). Fraser Younson notes that whistle-blowers will enjoy protection even if they make a disclosure in bad faith. However, in this case, the tribunal may reduce any award it makes in favour of the whistle-blower by no more than 25% (see: Doug Pyper, 'Whistleblowing and Gagging Clauses' (2016), p.15). It is noteworthy that the public interest requirement was added to replace the good faith requirement. Accordingly, the disclosure of wrongdoing should be made in line with the public interest.

position would reach the same belief based on such information.⁸⁵⁶ Consequently, whistle-blowers would be protected in such circumstances even if no wrongdoing is found, unless they know the information that they have provided is false.⁸⁵⁷

In Oman, as stated earlier, Law No.111/2011 does not provide protection for whistle-blowers. However, it places two main requirements on reporting wrongdoing to the SAI. Firstly, complaints should be within the scope of wrongdoing provided under Article 10 (9). Secondly, they should be related to entities subjected to the SAI audit. Some interviewees disagree, at present, over whether to place more restrictions in the law on the reporting of wrongdoing – for instance, the public interest and good faith requirements – as they worry such requirements could prevent people from reporting wrongdoing.⁸⁵⁸ However, it is important to impose sanctions on whistle-blowers who wilfully submit false and malicious complaints.

6. Detrimental actions or unjustified treatment covered by a protected discloser

The UNCAC does not set out specific types of unjustified treatments against whistle-blowers who make a protected disclosure. Consequently, it can include any type of unjustified treatment, which could take several forms such as unfair dismissal, retaliation, discrimination or disadvantage, and in extreme cases, can amount to being assaulted or killed.⁸⁵⁹ It seems that the extension of the protected disclosure to cover a wide range of unjustified treatments plays a

⁸⁵⁶ United Nations Office on Drugs and Crime, Good Practices in the Protection of Reporting Persons (United Nations 2015), p.24, <<https://search.un.org/results.php?query=Resource+Guide+on+Good+Practices+in+the+Protection+of+Reporting+Persons&tpl=desa&lang=en>>.

⁸⁵⁷ *ibid*, p.24,25.

⁸⁵⁸ Interviewee (1), Interviewee (5), Interviewee (7).

⁸⁵⁹ Transparency International, 'A Best Practice Guide for Whistleblowing Legislation' (n 647), p.1.

significant role in encouraging people to report wrongdoing and detecting corrupt activities.⁸⁶⁰

However, the proof of detriment to whistle-blowers is not sufficient alone to protect them. There must be a causal link between the wrongdoing disclosure and the detriment. In other words, whistle-blowers must prove that they were dismissed or suffered a detriment as a result of making a disclosure. This is, for example, provided explicitly under both Kuwait and UK law.⁸⁶¹

7. Appropriate measures to protect whistle-blowers

The UNCAC encourages State Parties to take appropriate measures to protect whistle-blowers who are subject to any type of unjustified treatment without identifying the scope and type of such measures. Consequently, types of protection provided to whistle-blowers differ between countries.

For example, Kuwaiti law provides three types of protection:⁸⁶² personal protection,⁸⁶³ administrative and functional protection,⁸⁶⁴ and legal protection.⁸⁶⁵ Moreover, the State has an obligation to provide compensation to whistle-blowers and their heirs for any material or moral damage that arises as a result of making a wrongdoing disclosure.⁸⁶⁶ However, procedures for claiming compensation for detrimental action suffered by whistle-blowers and the mechanisms and controls of such compensation are not provided under the law.

⁸⁶⁰ Kuwait Law and the UK Law provide protection for whistle-blowers from any type of detriment caused to them because of making a protected disclosure. This is compatible with the requirements of the UNCAC

⁸⁶¹ The Establishment of the Kuwait Anticorruption Authority Law 2/2016, Art 43, Employment Right Act 1996, section 47 (B), section 103 (A).

⁸⁶² The Establishment of the Kuwait Anticorruption Authority Law 2/2016, Art 41.

⁸⁶³ It aims to avoid the disclosure of the whistle-blower's identity or the place where they reside and provide them with personal security or a new place of residence, if necessary.

⁸⁶⁴ It aims to prevent any administrative action being taken against whistle-blowers and guaranteeing the continuation of their employment salary, rights and benefits.

⁸⁶⁵ It aims to prevent punitive, civil, or disciplinary proceedings from being taken against whistle-blowers.

⁸⁶⁶ The Establishment of the Kuwait Anticorruption Authority Law 2/2016, Art 43.

The UK law does not provide types of protections similar to those in Kuwait law. Under UK law, whistle-blowers who suffer detriment as a result of making protected disclosure have the right to present a complaint to an employment tribunal to claim a compensation.⁸⁶⁷ If the complaint is well-founded, compensation is paid by the employer to the whistle-blower.⁸⁶⁸ The assessment of compensation is subject to tribunal discretion.⁸⁶⁹ In some cases, the compensation may include an award for injury to feelings but not apply to the case of unfair dismissal.⁸⁷⁰ If the protected disclosure is the main reason for unfair dismissal, there is no limit on the amount of compensation that can be awarded to whistle-blowers.⁸⁷¹ In some cases, workers can get an injunction to return to work within a week of the date of their complaint.⁸⁷²

Unlike Kuwait law, UK law makes clear by section 48 of the 1996 Act, the procedures that should be taken by whistle-blowers to make a claim as a result of making a protected disclosure. The claim should be presented to an employment tribunal within three months, beginning with the date of the act or the failure to act to which the complaint relates. The tribunal may extend the period if it deems the three-month period is not reasonably practicable. However, some claim that the government must establish a dedicated tribunal for investigating whistleblowing claims to avoid a delay in the adjudication of such claims⁸⁷³.

⁸⁶⁷ The Employment Rights Act 1996, s 48.

⁸⁶⁸ *ibid*, s 94 (1).

⁸⁶⁹ *ibid*, s 94 (2).

⁸⁷⁰ Practical Law Employment, 'Whistleblower Protection | Practical Law' <[https://uk.practicallaw.thomsonreuters.com/8-200-3903?originationContext=document&transitionType=DocumentItem&contextData=\(sc.Default\)&comp=pluk&firstPage=true&bhcp=1&bhhash=1](https://uk.practicallaw.thomsonreuters.com/8-200-3903?originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)&comp=pluk&firstPage=true&bhcp=1&bhhash=1)> accessed 15 March 2019.

⁸⁷¹ The Employment Rights Act 1996, s 124 (1A).

⁸⁷² David Banisar, 'Whistleblowing: International Standards and Developments' [2011] Corruption and Transparency: Debating the Frontiers between State, Market, and Society 1 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1753180>.

⁸⁷³ Chris Baynes, 'Whistleblowing Law "wholly Inadequate" for Protecting Staff Who Speak out, Say MPs and Campaigners' (*INDEPENDENT*, 2018) <<https://www.independent.co.uk/news/uk/home-news/whistleblowing-law-inadequate-nhs-staff-blacklisted-public-interest-disclosure-act-norman-lamb-a8442621.html>> accessed 08 October 2019.

As was pointed out previously, Oman's whistleblowing system does not provide any protection for whistle-blowers.

To summarise, it can be said that although the complaint system (whistleblowing system) is well organised under the Oman's law, the absence of whistle-blower protection represents a significant weakness. It should be noted that the Country Review Report of Oman (2015) recommended that Oman provide protection for whistle-blowers. Consequently, the Omani legislator should consider taking appropriate procedures to protect whistle-blowers, noting the importance of taking the observations discussed above into account.

6.5 CONCLUSION

This chapter examined the requirements of the implementation and enforcement of FD systems. In addition, it discussed the powers and competencies that should be granted to FD bodies to carry out their tasks; in particular, those related to the procedures for submitting declarations, procedures for verifying and investigating declarations, and the sanctions that should be imposed upon the violation of FD requirements.

Regarding the submission process of declarations, the findings indicate that requiring officials to submit their declarations upon taking office, upon leaving office and periodically are the most common patterns adopted by most FD bodies. However, the availability of an FD bodies' human, material and technical sources play a significant role in determining the appropriate submission patterns, especially the period for periodic submission. In addition, it is crucial that the law obliges agencies in which public officials work to provide an FD body with an up-to-date registry for the public officials subjected to the FD system. It is advisable that this be done electronically to facilitate the process of checking the registry and tracking officials who fail or are late submitting their declarations more easily than the manual verification process.

Moreover, an FD body should provide the necessary support for officials to facilitate the submission process of declarations. For example, enabling officials to fill out and submit declarations electronically, providing guidance or instructions for filling out and submitting declarations, and establishing communication channels to contact officials through different media and via telephone hotlines.

Concerning the mechanisms of verifying declarations, the chapter concluded that it is crucial that FD bodies adopt specific criteria to identify the priority of declarations that need to be subject to the verification process and adopt appropriate methods for reviewing and examining declarations. The most common criteria and verification methods were discussed.

In respect of the sanctions imposed upon the violation of FD requirements, the findings suggest that failure to submit a declaration, failure to submit a declaration on time (late submission), submission of an incomplete declaration, and submission of incorrect or misleading declarations are the most critical violations that should be punished under FD laws. In addition, criminalising illicit enrichment under FD laws is essential to ensure the effectiveness of FD systems. This crime should not be seen as a violation of human rights as long as it serves the public interest of combating corruption, as upheld by the ECHR.

A comparative analysis of the implementation and enforcement of FD systems in Kuwait, Bahrain, the UK and Oman was conducted. The comparison proved valuable in highlighting the weaknesses of the Omani FD system. Unlike the comparator countries, the comparison showed that the FD system in Oman is tainted by several deficiencies that hinder its implementation and enforcement in practice. The absence of the provision of powers and competencies to the SAI to perform the FD system's tasks is one of the significant weaknesses in the law. Therefore, it is vital to grant the SAI the adequate powers and authorities to implement the FD system's requirements, especially those discussed

in Section 6.3.1 (4). In addition, this chapter determined that the current law places certain restrictions that limit the effectiveness of the FD system. For example, restrictions that link the submission of declarations to the request of the SAI's chairman, and confidentiality restrictions that hinder the FD Department's ability to verify and examine declarations unless permission is granted from the SAI's chairman.

Moreover, the law imposes a sanction only for the failure to submit a declaration. Thus, there are no sanctions on the failure to submit a declaration on time or the submission of an incomplete, incorrect and misleading declaration. In addition, illicit enrichment is not criminalised by the law.

With regards to the whistleblowing system, as discussed in this chapter, complaints are one of the common criteria used by FD bodies as an essential criterion for the selection of the sample of declarations that are subject to the verification and examination process. Therefore, an effective complaint system would contribute positively to the effectiveness of an FD system. The analysis and examination of Oman's complaint system showed that although Oman has a well-organised complaint system, it does not meet the UNCAC requirements regarding the provision of protection for whistle-blowers. This represents a significant weakness in Law No.111/2011. This chapter therefore concluded that, in practice, it is necessary to protect whistle-blowers. Consequently, the Omani legislature should consider taking appropriate procedures to protect whistle-blowers and other observations discussed in this chapter as part of the reform of the current whistleblowing system.

7 CHAPTER SEVEN: CONCLUSION

7.1 INTRODUCTION

The primary aim of this thesis was to assess the performance of the FD system in Oman and examine and analyse its legal framework in order to identify its weaknesses and establish how it should be developed to ensure an effective FD system. The principal research question was, 'To what extent can the current Omani FD system be improved?'

To get a clear answer to the main question, four sub-questions were posed and explored: What are the deficiencies and shortcomings of the FD system in Oman? To what extent can Oman benefit from the experiences of other countries to improve and develop its FD system? What are the key elements of the legal frameworks of the FD systems that should be considered to improve the current FD system in Oman? What are the legal solutions and appropriate recommendations that could address the deficiencies and shortcomings of the current FD system?

To answer the research questions, the legal provisions regulating the Oman FD system's requirements under the PPFACI Law were examined and analysed to identify the significant deficiencies and weaknesses in the law. This was assisted by semi-structured interviews with key officials, the aim of which was to understand the FD system's working mechanism and identify challenges that hinder its effectiveness in practice.

Given the newness of Oman's FD system, a comparative study with other jurisdictions that have adopted FD systems was conducted. The main comparison was with countries that have comparable legal systems to the Oman system, namely Bahrain and Kuwait. This method helped to understand how FD requirements are regulated in other countries and identify weaknesses and strengths in the Omani legal system.

The key elements of the FD system in Oman were examined, particularly in Chapters Four to Six. Overall, this thesis argues that the current FD system in Oman is insufficient and ineffective.

This chapter aims to highlight the key findings of the thesis based on the discussions of the preceding chapters, particularly Chapters Four to Six, which examined and analysed the key elements of FD systems. It also provides appropriate recommendations to reform and improve the current FD system in Oman. The chapter concludes with the implications and limitations of the thesis as well as recommendations for future research.

7.2 KEY FINDINGS AND RECOMMENDATIONS

This thesis critically examined the key elements of Oman's FD system in Chapters Four, Five and Six using the comparative analysis method, with the assistance of semi-structured interviews and the discussion of existing literature concerning FD systems. The key conclusion is that the FD system in Oman is not sufficiently regulated and ineffective. This is primarily because of the weaknesses of the legal framework regulating the FD system's requirements. The legal framework lacks comprehensive provisions that regulate such requirements. The current FD system in Oman is only regulated under a single Article (Article 12 of the PPFACI Law 112/2011). The findings of this thesis indicate that the provisions of this Article are extremely limited and deficient in key areas. Furthermore, certain key elements are not regulated under the law.⁸⁷⁴

In Chapter Four, the SAI's regulatory framework and institutional arrangements (FD Department) were examined, the findings indicating that the FD Department suffers from a significant staff shortfall which prevents it from discharging its functions effectively. The current staff numbers are very small compared with the number of declarations

⁸⁷⁴ See Chapter Three, Section 3.4.

submitted by officials. Moreover, the Department lacks a specialised cadre in the field of financial analysis. Furthermore, there is a lack of training in the implementation of the FD system's tasks. Undoubtedly, all of these factors directly impact the effectiveness of the FD system.⁸⁷⁵

In Chapter Five, the elements related to identifying individuals subject to the FD system and the contents of FD forms were analysed. It was concluded that the current approach adopted for requesting declarations is a significant weakness in the law and that granting the SAI Chairman the discretionary power to decide who should submit declarations hinders the system's effectiveness. This means that some officials may not be subject to disclosure at all, or, if they are, then it is only infrequently. In addition, there may be officials who have accumulative wealth but have not been required to submit their declarations. Moreover, there is the potential that this discretionary power could be abused through nepotism and favouritism, whereby some officials are not required to submit their declarations.⁸⁷⁶

Moreover, it was argued that the current definition of the USAA provided in the law is ambiguous and has led to divergent opinions on whether or not the provisions of the law are applicable to the judiciary, the public prosecution, the security and the military. This results in excluding officials who work for these important sectors from the provisions of the FD system.⁸⁷⁷

In Chapter Six, the thesis critically examined the elements of the implementation and enforcement of FD systems. One of the significant findings is the absence of powers and competencies that should be granted to the SAI to carry out the FD system's tasks under the PPFACI Law.⁸⁷⁸ Moreover, the law provides declarations with a high level of confidentiality to such an extent that it hinders the FD Department's

⁸⁷⁵ See Chapter Four, Sections 4.3.3(3) above.

⁸⁷⁶ Chapter Six, Section 6.3.2(1) above.

⁸⁷⁷ Chapter Five, Section 5.3.1(1) above.

⁸⁷⁸ Chapter Six, Section 6.3.1(4) above.

ability to verify declarations on an ongoing and systematic basis.⁸⁷⁹ Regarding the procedures for submitting declarations, the findings indicate that the law does not require officials to submit their declarations periodically and regularly at specific times, such as upon taking office, upon leaving office, and periodically while assuming office.⁸⁸⁰ This is among the significant weaknesses in the law, limiting the system's ability to monitor officials' wealth and interests regularly.

Furthermore, it was argued that the current sanctions provided in the law for violating the FD requirements are insufficient. For example, the law does not impose sanctions upon the delay of submitting declarations or the provision of incorrect, false or misleading declarations, limiting the FD system's effectiveness. Consequently, the system loses its credibility.⁸⁸¹

It was concluded that the criminalisation of illicit enrichment would enhance the effectiveness of the FD system. This would help officials to be accountable once an examination of their declarations reveals an unjustified significant increase in their wealth and possessions.⁸⁸² In addition, the findings indicate that complaints are one of the common criteria used by FD bodies as an essential criterion for selecting the sample of declarations subject to the verification and examination process. This is also the case with Oman's SAI. Consequently, the existence of an effective whistleblowing system (complaints system) would contribute positively to the effectiveness of an FD system. The thesis' findings indicate that even though the current complaint system in Oman is well-organised, it does not satisfy the UNCAC requirements regarding the provision of protection for whistle-blowers.⁸⁸³ This is a significant weakness in the SFAA Law No.111/2011.

⁸⁷⁹ Chapter Six, Section 6.3.3 above.

⁸⁸⁰ Chapter Six, Section 6.3.2 (1) above.

⁸⁸¹ Chapter Six, Section 6.3.4 above.

⁸⁸² Chapter Six, Section 6.3.4 above.

⁸⁸³ Chapter Six, Section 6.4 above.

To address the weaknesses in the current law and improve Oman's FD system, this thesis recommends that the Omani legislature establish comprehensive provisions regulating the FD requirements, whether by conducting legislative amendments to the PPFACI Law 112/2011 or enacting dedicated law for the FD system. The new provisions should consider the following proposals:

- Identifying the categories of public officials and entities subject to the FD system under an explicit provision in the law. Such categories should mainly target senior public officials and those who are prone to corruption risks.
- Requiring officials to submit their declarations on a periodic and regular basis at specific times provided by the law: upon taking office, upon leaving office and periodically while assuming office, not upon request of the SAI Chairman.
- Granting the SAI the necessary powers to perform the FD system's tasks effectively and efficiently under the provisions of the law.
- Relaxing the confidentiality restrictions surrounded declarations, at least to the extent whereby the FD Department can perform the regular verification and examination of declarations without the need to gain permission from the chairman for each case.
- Imposing criminal and administrative sanctions on violating the FD system requirements, including delaying submitting declarations or providing incorrect, false or misleading declarations.
- Criminalising illicit enrichment and providing appropriate protection for whistle-blowers.

This thesis also recommends that the SAI, as a competent body responsible for managing the FD system:

- Provide the FD Department with adequate financial, human and material resources. It is suggested that the SAI be granted the

authority to form a screening committee(s) or team (s) composed of members or staff with legal and financial expertise until a fully qualified staff for the FD Department is in place.

- Establish administrative subdivisions subordinate to the FD Department. This division would ensure the separation of each administrative section's tasks and clearly identify their responsibilities.
- Establish an integrated electronic system to administer all the FD system processes such as the submission process of declarations, the verification process of declarations and the analysis process of declarations. Oman, as a State Party of the UNCAC, can take advantage of its membership of the Convention by enhancing international cooperation and benefit from countries that have successful experience in the field of FD systems, especially in the area of FD electronic systems, such as Argentina and Ukraine.

7.3 THESIS IMPLICATIONS

The findings and recommendations of this thesis are valuable for policymakers in Oman. On the one hand, the findings help identify the legal gaps and shortcomings in the PPFACI Law. On the other hand, the recommendations of this thesis help identify solutions to fill the legal lacunas in the law and develop and improve the current FD System. Consequently, it is essential to consider making legislative amendments to the current law in light of the findings and recommendations of the thesis.

In addition, the findings and recommendations of this thesis are important for the SAI as a body responsible for managing the FD system. They help it to improve and develop the working mechanisms of the FD system, such as the mechanisms of receiving, verifying and examining FDs. They also enable it to develop the FD Department by providing appropriate human, material and technical resources.

Moreover, given the lack of academic studies on FD systems, this thesis is vital for scholars, especially in the GCC States, as it enriches the current state of knowledge of the FD systems and could serve as a starting point for future research in this field.

7.4 LIMITATIONS AND SUGGESTIONS FOR FUTURE STUDIES

As with most studies, this thesis may be subject to some potential limitations. One of the primary limitations is restricting the use of semi-structured interviews to the examination and analysis of the Omani system without an examination of comparator countries' systems. Consequently, there was an unclear picture of certain aspects of the working mechanisms of FD systems in these countries. For example, Chapter Six examined the criteria for selecting FD forms subject to inspection and the methods used for reviewing and verifying declarations. Such criteria and methods are not usually regulated within the provisions of FD laws. Instead, they are regulated as part of the internal working regulations of FD bodies. Therefore, conducting interviews with competent officials of these bodies is crucial to obtain useful data regarding these matters.

In addition, the limited sample size was another limitation. Interviews were not conducted with sample declarants who have filled and submitted FD forms to the SAI in order to assess the procedures of filling and submitting the forms in practice and identify the challenges and difficulties they face.

It would therefore be beneficial for future studies to consider addressing these limitations.

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Appendix

Appendix 1 The Ethics Application Form

RESEARCH ETHICS *Proportionate Review Form*



The Proportionate Review process may be used where the proposed research raises only minimal ethical risk. This research must: focus on minimally sensitive topics; entail minimal intrusion or disruption to others; and involve participants who would not be considered vulnerable in the context of the research.

PART A: TO BE COMPLETED BY RESEARCHER

Name of Researcher:	Sultan Al- Bahri
School	Law Department, LSF

Student/Course Details (If Applicable)		
Student ID Number:	16029533	
Name of Supervisor(s)/Module Tutor:	Keith Puttick	
PhD/MPhil project:		
Taught Postgraduate Project/Assignment:	Award Title:	PhD
	Module Title:	
Undergraduate Project/Assignment:		

Project Title:	An Examination of the Legal Framework of the Financial Declaration System for Public Officials in Oman		
Project Outline:	This project examines the financial declaration system (FDS) by reference to the system's legal framework in Oman, and in a number of other comparable jurisdictions, with a view to identifying strengths and weaknesses in the Omani system; and ultimately to evaluate the system as a means of combatting corruption. The evaluation will be achieved by studying and analysing the legal provisions regulating the FDS in Oman, exploring the experiences of countries that have adopted FDS schemes, and making recommendations that could contribute to addressing legal gaps in the law, and creating a more effective anti-corruption regime.		
Give a brief description of participants and procedure (methods, tests etc.)	This research has two main phases. Phase one aims to conduct a comparative study including examining and analyzing legal provisions regulating financial declaration system in Oman. This phase requires collecting data from some institutions in Oman aimed at evaluating the efficiency of the current FDS in practice. Phase two aims to collect qualitative data via semi-structured interviews with legal professionals in different institutions in Oman such as the State Audit Institution, the Oman Council, and the Ministry of the Legal Affairs. Interviews of personnel, including legal professionals, would also be conducted in countries operating FDS-type systems and with which comparisons should prove valuable. It is anticipated that 6-12 interviews will be undertaken. Information from the interviews will inform the project's understanding of the way FDS systems operate, and enable the views of those with experience of their operation to assist the research.		
Expected Start Date:	Phase one: 4/2019 Phase two: 10/2019	Expected End Date:	Phase one: 09/ 2019 Phase two: 02/2020

Relevant professional body ethical guidelines should be consulted when completing this form.

Please seek guidance from the School Ethics Coordinator if you are uncertain about any ethical issues arising from this application.

There is an obligation on the researcher and supervisor (where applicable) to bring to the attention of the School Ethics Coordinator any issues with ethical implications not identified by this form.

Researcher Declaration

I consider that this project has no significant ethical implications requiring full ethical review

I confirm that:	
1. The research will NOT involve members of vulnerable groups. Vulnerable groups include but are not limited to: children and young people (under 18 years of age), those with a learning disability or cognitive impairment, patients, people in custody, people engaged in illegal activities (e.g. drug taking), or individuals in a dependent or unequal relationship.	
2. The research will NOT involve sensitive topics. Sensitive topics include, but are not limited to: participants' sexual behaviour, their illegal or political behaviour, their experience of violence, their abuse or exploitation, their mental health, their gender or ethnic status. The research must not involve groups where permission of a gatekeeper is normally required for initial access to members, for example, ethnic or cultural groups, native peoples or indigenous communities.	
3. The research will NOT deliberately mislead participants in any way.	
4. The research will NOT involve access to records of personal or confidential information, including genetic or other biological information, concerning identifiable individuals.	
5. The research will NOT induce psychological stress, anxiety or humiliation, cause more than minimal pain, or involve intrusive interventions. This includes, but is not limited to: the administration of drugs or other substances, vigorous physical exercise, or techniques such as hypnotherapy which may cause participants to reveal information which could cause concern, in the course of their everyday life.	
6. The research WILL be conducted with participants' full and informed consent at the time the study is carried out: <ul style="list-style-type: none"> • The main procedure will be explained to participants in advance, so that they are informed about what to expect. • Participants will be told their involvement in the research is voluntary. • Written consent will be obtained from participants. (<i>This is not required for self-completion questionnaires as submission of the completed questionnaire implies consent to participate</i>). • Participants will be informed about how they may withdraw from the research at any time and for any reason. • For questionnaires and interviews: Participants will be given the option of omitting questions they do not want to answer. • Participants will be told that their data will be treated with full confidentiality and that, if published, every effort will be made to ensure it will not be identifiable as theirs. • Participants will be given the opportunity to be debriefed i.e. to find out more about the study and its results. 	YES N/A
7. A risk assessment has been completed for this research project	YES N/A

If you are unable to confirm any of the above statements, please complete a **Full Ethical Review Form**. If the research will include participants that are **patients**, please complete the Independent Peer Review process.

8. Information and Data
Please provide answers to the following questions regarding the handling and storage of information and data:
a) How will research data be stored (manually or electronically)? Electronically
b) How is protection given to the participants (e.g. by being made anonymous through coding and with a participant identifier code being kept separately and securely)? Participants will be allocated an anonymous identifying code (i.e. xxx 1, xxx 2, xxx 3, etc.) These codes will be kept securely electronically and the laptop will be locked away. No other person will have access.
c) What assurance will be given to the participant about the confidentiality of this data and the security of its storage? All data will be kept secure, being password protected, with only the researcher having access.
d) Is assurance given to the participant that they cannot be identified from any publication or dissemination of the results of the project? Yes, this will also be reiterated at the start of the interview as well as being in the participant information letter
e) Who will have access to this data, and for what purposes? The researcher only
f) How will the data be stored, for how long, and how will it be discarded? The data will be stored on a laptop that will be password protected and locked away with the researcher being the only person with access. Data will be deleted once the doctorate has been awarded.

Supporting Documentation

All key documents e.g. consent form, information sheet, questionnaire/interview schedule are appended to this application.

Signature of Researcher:	Sultan al Bahri	Date:	27/3/19
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NB: If the research departs from the protocol which provides the basis for this proportionate review, then further review will be required and the applicant and supervisor(s) should consider whether or not the proportionate review remains appropriate. If it is no longer appropriate a full ethical review form **MUST** be submitted for consideration by the School Ethics Coordinator .

Next Step:

STUDENTS: Please submit this form (and supporting documentation) for consideration by your Supervisor/ Module Tutor.

STAFF: Please submit this form to your Head of Department or a Senior Researcher in your School. Once they have reviewed the form, this should be forwarded to the Research Administrators in RIIS (ethics@staffs.ac.uk) who will arrange for it to be considered by an independent member of the School's College of Reviewers .

PART B: TO BE COMPLETED BY SUPERVISOR/MODULE TUTOR (If student) OR Head of Department/ Senior Researcher (if staff)

I consider that this project has no significant ethical implications requiring full ethical review by the Faculty Research Ethics Committee.

I have checked and approved the key documents required for this proposal (e.g. consent form, information sheet, questionnaire, interview schedule).

Signature of Supervisor/ Head of Department/ Senior Researcher:	Keith Puttick Jo Turner	Date:	5/4/19
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Next Step: Please forward this form to the Research Administrators in RIIS (ethics@staffs.ac.uk) who will arrange for it to be considered by an independent member of the School's College of Ethical Reviewers , having no direct connection with the researcher or his/her programme of study.

PART C: TO BE COMPLETED BY A MEMBER OF THE SCHOOL'S COLLEGE OF ETHICAL REVIEWERS

This research proposal has been considered using agreed University Procedures and is now approved.

Or

This research proposal has not been approved due to the reasons given below.

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Recommendation (delete as appropriate): Approve/ Amendments required/ Reject

Name of Reviewer:	Date:
Signature:	

Signed (School Ethical Coordinator)	Date:
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School of Law, Policing and Forensics



School Ethics/Proportionate Review Report

Researcher Name:	Sultan Al- Bahri
Title of Study:	An Examination of the Legal Framework of the Financial Declaration System for Public Officials in Oman
Panel Reviewer:	Dr Jo Turner

Comments:	
I am happy that this project is well thought out and is ethically sound. Happy to approve	
Recommendation: (please indicate recommendation)	
Approved	
Date: 11 th April 2019	
If you recommended Review and Resubmit – do you wish to see the revised application?	YES NO

Appendix 2 Ethical Approval



Law, Policing and Forensics

ETHICAL APPROVAL FEEDBACK

Researcher name:	Sultan Al-Bahri
Title of Study:	An examination of the legal framework of the Financial Declaration System for public officials in Oman
Award Pathway:	PhD
Status of approval:	Approved

Your project **proposal has been approved** by the Ethics Panel and you may commence the implementation phase of your study. You should note that any divergence from the approved procedures and research method will invalidate any insurance and liability cover from the University. You should, therefore, notify the Panel of any significant divergence from this approved proposal.

You should arrange to meet with your supervisor for support during the process of completing your study and writing your dissertation.

When your study is complete, please send the ethics committee an end of study report. A template can be found on the ethics BlackBoard site.

The Ethics Committee wish you well with your research.

Signed:

Date: 11.04.19

A handwritten signature in black ink, appearing to read "John Cassella".

Professor John Cassella
Chair of the Law, Policing and Forensics Ethics Panel

Appendix 3 A sample of the Interviews Questions

Preliminary

Thank you for taking the time to be interviewed.

Please confirm that you have read my letter and information about the project.

Before we begin, please tell me about your experience of Oman's FD system.

- **The Oman's Financial Declaration System (FD system)**

The working mechanism of the FD system

1. Could you kindly explain the working mechanism of the FD system?
2. What is your assessment of the FD system in Oman? Do you see particular strengths in the way the system operates?
3. What are the significant deficiencies in the FD system?

The legal framework of the FD system

4. The provisions of the FD system are regulated under Article 12 of the Law.112/2011. Do you think this Article is comprehensive and covers all requirements of the FD system or there is a need to make a legislative amendment whether through adding new provisions to the current law or enacting a separate law?
5. Do you support the proposal of regulating the general provisions of the FD requirements within a general law and then leaving detailed provisions within an executive regulation to be issued by the Chairman of the SAI?

Human and technical resources of the FD Department

6. The lack of human resources is one of the challenges facing the Financial Declaration Department. In your opinion, what are the practical solutions to address this challenge?
7. To what extent do you think that the establishment of an electronic system to submit, verify and examine the declarations would help to address the lack of human resources?

Categories of public officials subjected to the FD system

8. Do you think the definition of a "government official" in Law 112/2011 is adequate, eg to enable it to conform to the definition of a "public officials" provided in the UNCAC?
9. Do you think the definition of a "government official" covers judges, prosecutors, and the security and military officials? If not, should the FD system be extended to apply to them?
10. Do you think applying FD system to judges would be problematic, eg by violating the independence of judges or affect separation of powers principles in any way?
11. In your opinion, should the FD system in Oman apply to all public officials or just specific categories of officials?

The mechanism of requesting/submitting declarations

According to Article 12 of Law.112/2011 officials submit their declarations upon the request of the Chairman of the SAI.

12. What is the justification for granting the Chairman this authority?
13. Do you think this approach is problematic. Eg does it limit the ability of the system to monitor changes to officials' wealth?
14. Do you think the requirement of the necessity could preclude or hinder the SAI from requesting declarations?
15. Do you agree that the frequency of submitting declarations should be provided by the law in specific times instead of leaving it to the request of the Chairman of the SAI?
16. Do you think that requiring officials to declare financial information of their spouses contravenes the principle of Islamic Sharia law – "The independence of the financial responsibility of both spouses"? Would you support a change that would require spouses to submit separate declarations?

The SAI's powers and competencies related to managing the FD system

17. What are the most important responsibilities and powers that should be provided to the SAI to enable it to manage the FD system effectively?
18. Article 12 of Law 112/2011 states that "*the declarations shall be confidential, and none shall have access thereto without the approval of the Chairman of the*

Institution". Do you think this limits the ability of the Financial Declaration Department to conduct an on-going review of submitted declarations as each declaration needs to get approval from the Chairman?

Sanctions imposed on the violations of the FD provisions

19. Do you think that the sanctions provided for the violation of Article 12 of Law.112/2011 are commensurate with the gravity of the offences established in the law? Are changes to the sanctions regime needed? If so, what do you suggest?
20. To what extent do you think the criminalisation of illicit enrichment would contribute to the effectiveness of the FD system? Is there a need to criminalise illegal enrichment in Oman?

• The whistleblowing system

21. Could you kindly explain the working mechanism of the whistleblowing system?
22. What are the major challenges and difficulties facing the whistleblowing system? In your opinion, what would be the best ways to overcome them?
23. To what extent do you think the whistleblowing system - a system that encourages people (including public officials to bring information to the attention of the SAI) would contribute to the effectiveness of the current FD system?
24. Do you think it is crucial to provide protection to whistleblowers? If yes, what types of protection are required?
25. Do you think whistle-blower protection laws should be restricted only to employees and workers or extend to cover any person wishes to report wrongdoing?
26. How does the SAI deal with anonymous complaints especially those involving information about suspected crimes?
27. Do such complaints pose problems for the process of gathering evidence when there is a lack of whistleblower identification?
28. Do you agree that it is important to set up rigorous (or more rigorous) controls or conditions in order to accept anonymous complaints?

29. Finally, are there any further observations or suggestions you would like to make about the FD system and whistleblowing system – eg having regard to other countries' systems do you think there are any specific changes or improvements you would like to see which we have not already discussed?