



## Forensics Accounting in Business Law of the Kingdom of Saudi Arabia

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### **Abstract**

*This paper is dealing with one of the major challenges confronting the development of forensic accounting primarily legislation to combat fraudulent practices in the Kingdom of Saudi Arabia. The focus of our research is corporate and practice in the finance and banking sectors, since business operations are becoming more complex, especially with the recent developments in information and communication technology and as a consequence of the global pandemics of Covid-19 and the looming economic crisis. This has changed the nature of corporate fraud and fraudulent practices. This study has a primary goal to investigate the theoretical aspects of the integration of forensic accounting and corporate law and related regulation as tools for combating corporate and cyber fraud. In that sense, forensic accounting with a more than strong backing in the legislative aspects is strongly geared towards the minimization of the cost of employed capacities for forensic accounting activities to mitigate and eventually eliminate cyber fraud.*

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*The study also explores the effect of integrating forensic accounting and management control systems on banks' reputations and the huge loss of revenue resulting from cyber fraud. The study develops a conceptual model to show the relationship between forensic accounting, the management control system, and cyber fraud in the banking sector. A legal context analysis methodological research approach was employed to express the relationship amongst the variables considered in this study to reduce corporate and public sector fraud, minimize cost and improve the reputation of corporate and public government sectors. Preliminary research in the formulation of clear conclusions gives an idea of the feasibility of combining the components of forensic accounting, corporate and related laws and regulations, management control systems, and corporate reputation to combat business fraud. This was validated in some general conclusions which resulted in an acceptable, logical, and feasible model of forensic accounting solidly founded in corporate law and structure. Some of the findings are that the speed and ease of convergence process symbiotic integration of forensic accounting and corporate law is the best solution that is feasible and suitable for achieving the set objectives. Our initial conclusion and recommendation are that the government of the Kingdom of Saudi Arabia should introduce legislation that would ensure strict corporate disclosure standards, requirements, and norms as this would defend companies' critical assets as well as its anti-fraud programs.*

**Keywords:** *Forensics Accounting, Fraud, Business Law, Kingdom Saudi Arabia.*

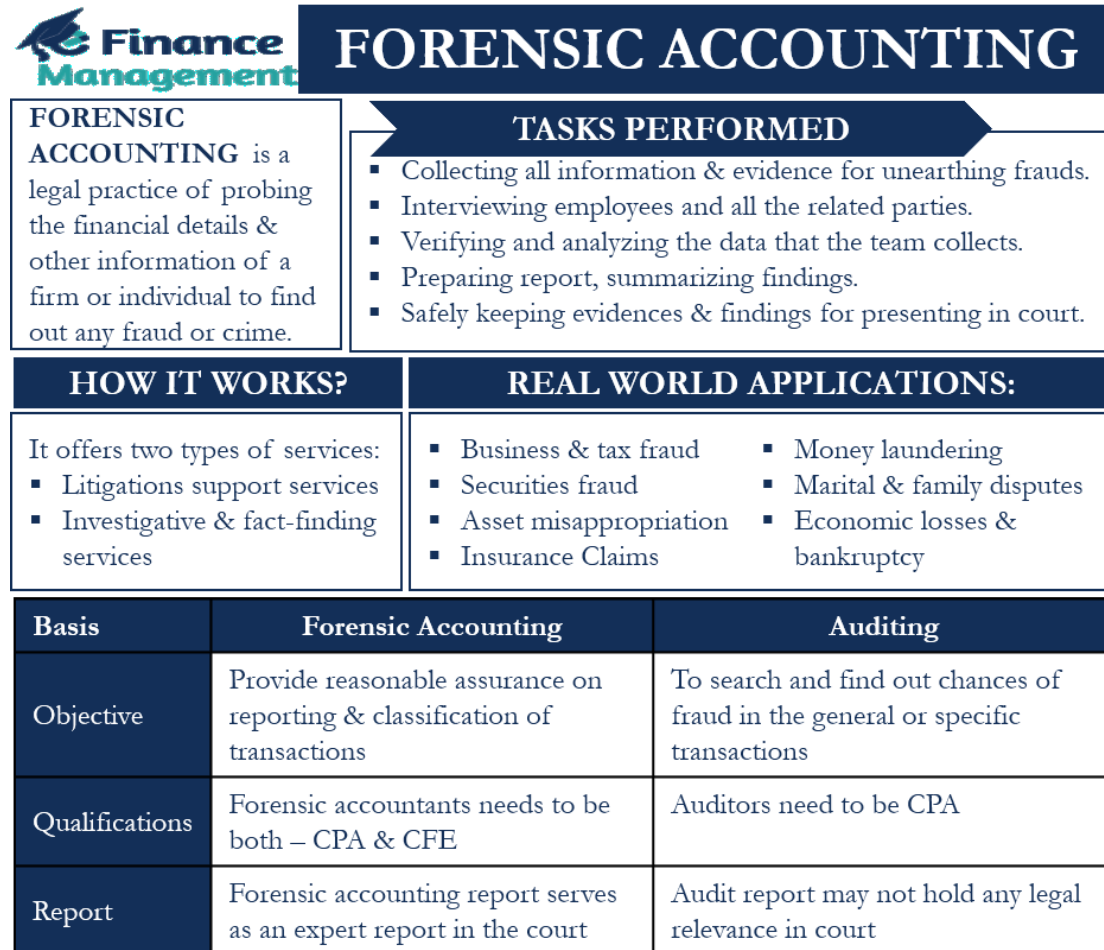
## **1. Introduction**

Since the second decade of the XXI century, Saudi Arabia has been updating the legislative structure as an agenda of the Saudi 2030 vision. Therefore, new legislative principles were adopted, including the voluntariness principle in disclosing information that opens a wild reign to forensic accountants throwing inspection of data checks with structured. As a result of this change, many cases of tax evasion have been detected, which has attracted the attention of different scales of society. During this phase, the concept of forensic accountants became more popular.

That's why the researcher sees the importance of illustrating the most common forensic accountant applications in business law. Thus, through this paper, the researcher will discuss the application of forensic accountants in financial crimes investigations, corporate governance, and corruption, as the money has spilled over to the page, tax evasion, and fraud.

See the following Table 1. which is depicting the inclusive framework of contemporary forensic accounting.

Figure 1. A framework of Contemporary Forensic -Accounting



Source: <https://efinancemanagement.com/wp-content/uploads/2022/02/Forensic-Accounting.png> Accessed: 09.12.2022.

Through the different types of forensics investigation, we can reach cases of financial fraud, and employment fraud, and ensure the quality of disclosed data, which enhances the principles of corporate governance in the business sector. Modern forensic accounting and legal practice are mostly within the scope of corporate law, with a focus on financial information analyzed from the point of view of detecting corporate fraud. Forensic accountants do perform various tasks and duties from collecting financial and related information and evidence of fraud in the format acceptable in the court and legal procedures and fraud investigations. Forensic accountings are performing investigative internal actions in the firms, from interviewing employees and also related parties in the suspicious transactions. The collected data are verified

and analyzed, various reports are created, and forensic accounting evidence is safeguarded to be evidenced in front of the court of law. Generally, forensic accounting is offering two types of service: litigation supporting and investigative / fact-finding. Forensic accounting has its use in real corporate life, while forensic accounting and auditing have a different set of objectives, qualifications, and the form of reporting

Where the researcher sheds light on the legal protection of commercial books of a firm, the government exercised control over financial statements and judicial applications for tax fraud investigation is clear and based on the extensive tax legislation. The flow of the forensic accounting investigation cycle is having three distinct steps. The first step is discovery where the forensic accountant together with a corporate lawyer is detecting and finding the legally acceptable evidence of the financial crime. Step two is narrowly focused on how to analyze the data while determining what was done and how the acts of possible financial crime have been taking place. The final step No. 3 is reporting in which forensic accountants and lawyers are preparing the legal case for authorities and court/s.

## **2. Literature Review**

The researcher would like to review the most important previous studies in the field of judicial accounting. The first study published in this area (Saleh Abdulrahman Al-Saad, 2013) focuses on the root of forensic accounting. The other studies took place in the Western side of the world from the beginning of the 1990s, focusing mostly on multiple angles.

The position and role of the forensic accounting profession in auditing and financial arbitration are well-defined in the Kingdom of Saudi Arabia (Siralkhati, 2019). The developed and one of the strongest economies globally oil and energy-rich Kingdom of Saudi Arabia is evidencing the high rates of lawsuits and commercial disputes of various types. That is creating an increasing need for the expert services of the top skilled forensic accountants having experience in financial law cases to express their expert opinions and to contribute with their expertise on the quality of judicial proceedings of financial disputes. Forensic accountants explain and analyze financial information presented in financial statements or the business books of a firm, assisting the judges and arbitrators to make informed judgments and bring rational lawful decisions, while at the same time helping the court to understand the complex jargon and vocabulary of judicial accounting. Many top forensic accounting firms in the Kingdom of Saudi Arabia are assisting lawyers, judges, and arbitrators to resolve disputes, to better communicate financial information in the court process. Knowledge of the court system

and procedures is a pre-condition and special skilled and trained personnel which is monitoring, analyze, summarize, and present the complex financial and business-related issues specific to the legal system of the Kingdom of Saudi Arabia. Such forensic accounting services are generally including the following:

- Arbitration
- Financial and commercial dispute
- Inheritance disputes
- Contractual agreement disputes
- Financial fraud, including misrepresentation and financial statement fraud
- Liquidation & Bankruptcy
- Data mining and reporting

New studies are concluding the knowledge of forensic accounting is very important for the development of the Saudi Arabian economy (Alzahrane, 2021). A solid foundation for that is adequate high-quality education of forensic accountants, while the experience and skills are equally important in the private and public sectors. The developed Saudi economy is very complex and it could not be achieved further growth without the adequate development of forensic accounting, which is helping the judiciary to carry out its duties effectively.

In the government sector, the embezzlement rate was 5% of administrative offenses in 2013, bribery also accounted for 16% of administrative offenses in the same year. However, Saudi Arabia's governance achieved the first Arab position in the field of anti-money laundering (Saudi Prosecution, 2022).

## **2. Forensic Accounting Relationship to Business Law**

Forensic accounting plays a fundamental role in addressing manipulations and financial fraud. Not only is it linked to accounting as a science, but it is based on the science of law to provide legal evidence acceptable to the court. Forensic accountability played a key role in achieving the goals of the National Vision 2030. One of the most important methods of forensic accounting is to audit information provided to government agencies. This has contributed to the frustration of many largest money laundering operations in Saudi criminal history. The activation of forensic accounting contributes to the stability of the national economy and creates an enabling environment for fair competition and equal opportunities. Undoubtedly business law is largely based on forensic accounting, given the ephemeral relationship between

commercial transactions and accounting. Based on the foregoing, the researcher will clarify the relationship between Saudi business laws and forensic accounting.

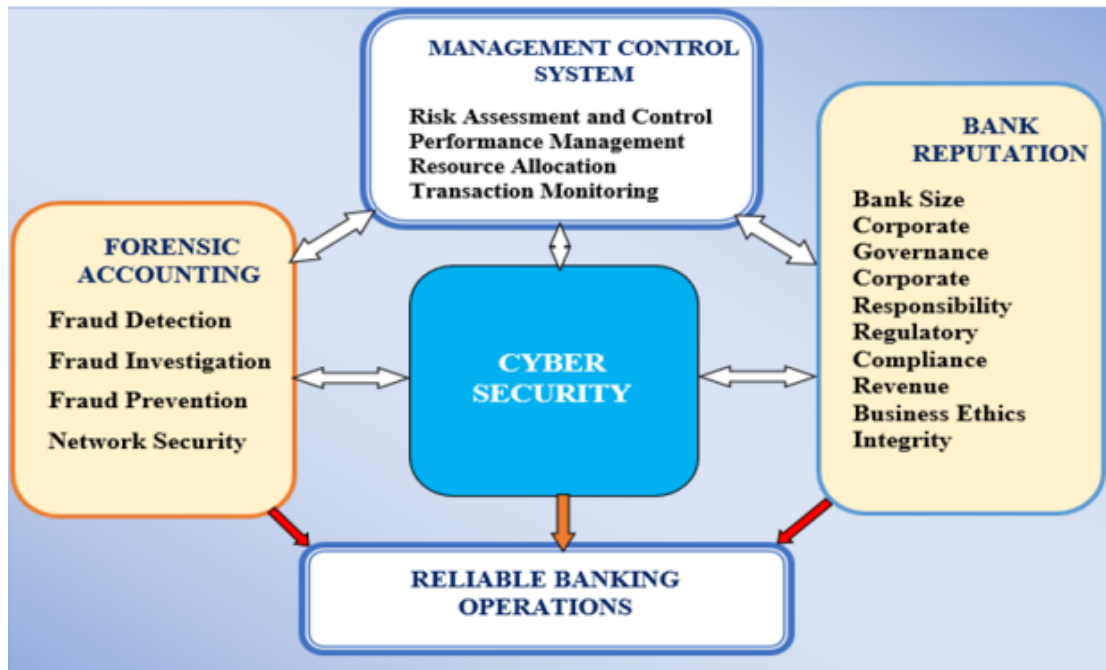
The Commercial Books Act (Law of Commercial Books, 1989) obliges anyone who engages in the trade profession to comply with the obligation to maintain commercial books, restricting their daily operations. Article 1 stipulates: "Each trader must maintain the business books necessitated by the nature and importance of his or her trade in such a way as to ensure that his or her financial position is accurately stated, his or her rights and obligations concerning his or her trade". These books must be regular and in Arabic, and must at least maintain the following books: original journal book, inventory book, and general ledger. A merchant whose capital is not more than 100,000 rials shall be exempt from holding these books. The commercial notebooks have full legal authenticity before the court, so the dealer undertakes the validity of the information tied to the business notebooks, and whenever the dealer proves to have manipulated or circumvented the codification of misleading or incorrect information, he bears full legal liability. Here, the role of forensic accounting is highlighted in the examination and control of business books to counter tax fraud, financial embezzlement, or money laundering.

The Saudi Companies Act more precisely KSA Company Law, as of June 28, 2022, was approved by the Saudi Council of Ministers, issued on 4 July 2022 (KSA Company Law, 2022),. obliges the company to contribute to the employment of an external auditor and an internal auditor to monitor the company's performance over time. Internal auditing services and practices are widely accepted as one of the best and most reliable methods in forensic accounting investigations and reporting. Article 101 of the Companies Regulations (KSA Company Law, 2022) stipulates: "By decision of the ordinary general assembly of the shareholding companies, a review committee shall be established from non-executive members of the Board of Directors, whether shareholders or others, provided that the number of its members shall not be less than three and not more than five and that the functions of the Committee, the controls of its work and the remuneration of its members shall be specified in the resolution." Article 104 also stipulates that: "The audit committee shall consider the financial statements of the company and the reports and observations submitted by the auditor and, if any, shall give its views thereon. It shall also prepare a report on its opinion on the adequacy of the company's internal control system and other actions within its competence. The Board of Directors shall deposit sufficient copies of this report at the center of the main

company at least (twenty-one) days before the General Assembly, to provide a copy of it to all those who wish to shareholders. The report shall be read during the Assembly.”

This relationship is depicted in the following Graph 1.

*Graph 1. The conceptual model of the integration of forensic accounting, the management control system, and the bank's reputation*



Source: <https://www.abacademies.org/articles/the-integration-of-forensic-accounting-and-the-management-control-system-as-tools-for-combating-cyberfraud-10274.html> Accessed: 9.12.2022.

It is worth mentioning that the most common types of financial crime dealt with by forensic accounting in the control of the corporate business are profit management operations, which are intended to attempt to mislead some other parties by deliberately concealing the company's real financial performance when preparing financial reports.

The Saudi Financial Markets Act (Capital Markets Law, 2003) affirms the criminalization of shareholder misinformation, whether through manipulation of the issuance of a prospectus or the periodic disclosure of financial statements. Indeed, article 44 (b) affirms this: "If the prospectus contains incorrect information about material matters, false or misleading statements, or omits material information or data that would render the prospectus in such cases misleading or incorrect." The law on capital markets was adopted to create a transparent, fair,



and regulated capital market which is serving the needs of Saudi Arabia and keeping pace with international developments and trends, with articles formulated to efficiently regulate and develop the capital market, issuance of securities and supervise its transactions while protecting investors and citizens from illegal and fraudulent activities.

The resolution of financial disputes is undoubtedly the inevitable consequence of everyone working in this field. In the event of a dispute before the competent court, which contains technical evidence, the judge cannot be familiar with all the substantive aspects of this evidence. He appoints a long-standing body in this area, called a house of expertise, to guide the judge's understanding of the technical evidence before him so that he is sufficiently satisfied with this matter. As is the case in the use of forensic medicine to determine the cause of death and the weapon of crime. However, in financial cases, the judge enlists a financial expertise house (judicial accountant) to estimate the appropriate amount of compensation, the amount of the embezzled amount, or to identify the neglected partner in the event of a dispute between the partners, etc. The new Saudi Law of Evidence is a new page in the Saudi judiciary history (Negm, Tamimi, 2022) deals with the use of the expert in 14 articles (110-124), and the expert is required to be and to be long-standing in his field of work, so that there be no conflict of interest between the expert and the parties to the dispute, that the expert's report includes the following data:

- a) Mission statement mandated following the assignment decision.
- b) The work performed in detail, the statements of litigants and others, the documents and evidence submitted by them, and the technical analysis thereof.
- c) Views of the experts engaged.
- d) The outcome of his work and his technical opinion, and the aspects on which he relied precisely and clearly.

The parties to the dispute have the right to discuss the expert's report and in cases of the duration of the expert's dismissal application. Through our experience in the functioning of the Saudi courts, we can say that the court does not hesitate to appoint an expert, particularly in financial commercial disputes, and the expert's report will be considered as the judge in handing down his decision on the dispute.

In the past decades, accounting offices have been the first instance<sup>7</sup> for companies to appeal in tax disputes, as they are the most in contact with tax authorities in Saudi Arabia. During the past year, the Council of Ministers decided to prevent non-lawyers from pleading with judicial



bodies, including tax dispute segregation committees. Thus, the role of an independent forensic accountant in this type of dispute is no longer a major one and the primary destination of the stakeholders, but only a minor role to express a very narrow technical opinion. Since the tax authorities have qualified technical cadres that sign the recourse to a third party.

It should be noted that there is an urgent need for a legal cadre with a good accounting background to deal with tax disputes in preparation for the establishment of houses of expertise in this area.

### **3. Conclusion and Recommendations**

Fraud or embezzlement is an intentional act of an individual or a group of taking an individual's or a company's benefits and valuable resources illegally. Anti-fraud control at the corporate level based on strong internal control and internal audit can effectively reduce the likelihood and potential impact of fraud. In practice, the obvious truth is that no corporate entity is immune to this threat. Based on the numerous studies this further is leading to the conclusion that corporate fraud cannot be eliminated but rather reduced and minimized. This study is focused on the integration of forensic accounting and corporate law in the context of the framework of business regulation and compliance, and also on the heavy hand application of the effective management control system geared towards the minimization of corporate fraud. This resulted in the formulation of a theoretical prescription of combining the feasible aspects of forensic accounting, business law, management control systems, and corporate reputation to combat fraud. Therefore, the corporate sector and financial sector should ensure that forensic accounting techniques with a strong reliance on the business law should be employed to combat corporate fraud in their business organizations and that all the beforementioned elements are compatible with the management control systems introduced into the business organization.

## References

- Alzahrane, M. (2021). *Forensic Accounting Education, Practice, and Career Path in Saudi Arabia*. [Doctoral dissertation, University of South Florida]. USF Tampa Graduate Theses And Dissertations. Retrieved from: <https://digitalcommons.usf.edu/etd/9572>
- CNNArabic. (2022). Saudi prosecution: confiscation of more than 4 billion riyals and prison sentence for money laundering gang. Retrieved from: <https://arabic.cnn.com/> (Accessed 12/09/2022).
- Fattani, A. A. (2021). Education of Forensic Accounting in the Kingdom of Saudi Arabia: Filed Study. [Master thesis, King Abdul Aziz University, Faculty of Economics and Administration].
- KSA Company Law. (06 July 2022). Retrieved from: <https://www.pwc.com/m1/en/services/tax/me-tax-legal-news/2022/ksa-companies-law.html> (Accessed 09.12.2022.)
- Lakshmi, P., & Menon, G. (2016). Forensic accounting: A checkmate for corporate fraud. *Journal of Modern Accounting and Auditing* 12(9), pp. 453-460.
- Law of Commercial Books. (Royal Decree No. M/61, 17 Dju Al Hijah 1409 [27 June 1989]). The Embassy of the Kingdom of Saudi Arabia, Washington, D.C. Retrieved from: <https://www.saudiembassy.net/law-commercial-books> (Accessed: 09.12.2022.)
- Negm, M., & Al Tamimi, A. (2022). *The Saudi New Law of Evidence: New Page in the Saudi Judicial History*. Retrieved from: <https://www.tamimi.com/pdflawupdate/?pageID=23598> (Accessed 09.12.2022)
- Saleh, A. Al-Saad. (2013). Forensic Accounting in the Kingdom of Saudi Arabia: Current Practice and Future Perspective: An Empirical Study (Exploratory). *Journal of King Abdulaziz University: Economics and Administration* 27(1), pp. 3-94.
- Siralkhatim , A. B. (2019). The Role of Forensic Accounting on Auditing and Financial Arbitration in the Kingdom of Saudi Arabia . *Global Journal of Economics and Business* 6 (3), pp. 486-495. Retrieved from: <https://doi.org/10.31559/GJEB2019.6.3.6>
- The Capital Markets Law. (Royal Decree No. M/30 dated 2/6/1424H - 31/7/2003). Retrieved from: <https://cma.org.sa/en/RulesRegulations/CMALaw/Pages/default.aspx> (Accessed 09.12.2022)

## Sažetak

*Ovaj rad se bavi jednim od glavnih izazova sa kojima se suočava razvoj forenzičnog računovodstva, prvenstveno zakonodavstva za borbu protiv praksi prevara u Kraljevini Saudijskoj Arabiji. Fokus našeg istraživanja je korporativno pravo i praksa u finansijskom i bankarskom sektoru. Poslovanje postaje sve složenije, posebno sa nedavnim razvojem informacionih i komunikacionih tehnologija i kao posledica globalne pandemije COVID-19 i predstojeće ekonomske krize. Navedeno je promenilo prirodu korporativnih prevara i praksu računovodstvenih prevara. Ova studija ima primarni cilj da istražuje teorijske aspekte integracije forenzičnog računovodstva i korporativnog prava i srodnih regulativa kao alata za borbu protiv korporativnih i sajber prevara. U tom smislu, forenzično računovodstvo sa više nego jakom podrškom u zakonodavnim aspektima snažno je usmereno ka minimiziranju troškova korišćenih kapaciteta za forenzične računovodstvene aktivnosti za ublažavanje i na kraju eliminisanje sajber prevara. Studija takođe istražuje uticaj integrisanja forenzičnog računovodstva i sistema kontrole upravljanja na reputaciju banaka i ogroman gubitak prihoda koji je rezultat sajber prevara. Studija razvija konceptualni model koji pokazuje odnos između forenzičnog računovodstva, sistema kontrole upravljanja i sajber prevara u bankarskom sektoru. Metodološki istraživački pristup pravne analize konteksta korišten je za izražavanje odnosa između varijabli razmatranih u ovoj studiji kako bi se smanjile prevare u korporativnom i javnom sektoru, smanjili troškovi i poboljšala reputacija korporativnog i javnog sektora. Preliminarna istraživanja u formulisanju jasnih zaključaka daju ideju izvodljivosti kombinovanja komponenti forenzičnog računovodstva, korporativnih i srodnih zakona i propisa, sistema kontrole menadžmenta i korporativne reputacije u borbi protiv poslovnih prevara. Ovo je potvrđeno u nekim opštim zaključcima koji su rezultirali prihvatljivim, logičkim i izvodljivim modelom forenzičnog računovodstva čvrsto utemeljenim u korporativnom pravu i strukturi. Neki od nalaza su da je brzina i lakoća procesa konvergencije simbiotska integracija forenzičnog računovodstva i korporativnog prava najbolje rešenje koje je izvodljivo i pogodno za postizanje postavljenih ciljeva. Naš početni zaključak i preporuka su da vlada Kraljevine Saudijske Arabije treba da uvede zakone koji bi osigurali stroge standarde korporativnog objelodanjivanja, zahtjeve i norme, jer bi to branilo kritičnu imovinu kompanija, kao i programe za borbu protiv prevara.*

**Ključne riječi:** *forenzično računovodstvo, prevara, poslovno pravo, Kraljevina Saudijska Arabija*