FATF GREYLISTING

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Agenda for today

1. Introduction and Background to the Financial Intelligence Centre (FIC) and the Financial Action Task Force (FATF)
2. Why we are in the position we are in
3. Government's and the Legislature's response
4. Timeframes and deadlines
5. What needs to be done – the 8 areas of Strategic Deficiencies that need to be addressed:
   - New categories of designated "Accountable Institutions"
   - FIC's requirements for Compliance

What is the Financial Action Task Force and what Role does it Play?

- The Financial Action Task Force (FATF) is a global inter-governmental body that promotes policies and sets international standards relating to the combating of:

  1. money laundering,
  2. terrorist financing, and
  3. the financing of the proliferation of weapons of mass destruction

- There are currently 39 members of the FATF which includes South Africa which is the only African member of FATF

- Other African jurisdictions participate through FATF Regional Bodies like the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) who are associate members of FATF

What is Meant by the FATF "Grey List"?

- The FATF grey list refers to the FATF's practice of publicly identifying countries with strategic Anti- Money Laundering and Countering the Financing of Terrorism (AML/CFT) deficiencies. The FATF maintains two such lists:

    1. jurisdictions under *"increased monitoring"* that are actively working with the FATF to address strategic deficiencies in their regimes" and
    2. *"high-risk jurisdictions subject to a call for action"* that are not actively engaging with the FATF to address these deficiencies

- The jurisdictions on the first list, which is often referred to as the *"grey list"*, are under increased monitoring and are actively working with the FATF to address their strategic deficiencies

- This means that the country has committed to an action plan which will swiftly resolve the identified strategic deficiencies within agreed timeframes and is subject to increased monitoring in the interim

Why has SA been Greylisted by FATF?

- South Africa did poorly in its 2021 mutual evaluation and was deemed to have too many weaknesses in its legal framework
- As a result, we were put under a one-year observation period in October 2021, giving the country time to address 67 recommended actions
- Progress was made during the observation period but unfortunately not enough
- After a further assessment by the FATF, South Africa was greylisted while further steps are introduced and implemented

What are the Implications for a Country that is Greylisted by FATF?

- The most significant implication to a country that is greylisted is the reputational damage to the country and the economic effect this has on that country
- The second and related implication arises from consequential action taken regarding cross-border transactions
- As a result, selected institutions are expected to undertake more enhanced monitoring (that is Know Your Client (KYC) and Customer Due Diligence (CDD)
- Also, institutions based in a greylisted country that engage in cross-border trade and other activities may be subject to higher levels of customer due diligence by financial institutions outside of that country
- In practice, this means that companies must be more thorough in the processing and vetting of their clients and in their understanding of the sources of their funds

How Long Does it take Countries to get off the Grey List?

- Generally, it takes from one to three years for countries to address the deficiencies and to be taken off the grey list
- This happens after a final, on-site assessment when both FATF and the relevant country agree that all elements of the action plan have been properly addressed
- South Africa is aiming to address the 8 areas of strategic deficiencies identified by the FATF by no later than the end of January 2025
- Legal and Compliance deadlines: most already in place, next deadline is 31 July for DNFBPs to register

What are the 8 Areas of Strategic Deficiencies Identified by FATF that need to be Addressed?

- During the period of the review South Africa (ie next two years) will need to:

1. demonstrate a sustained increase in outbound Mutual Legal Assistance requests that help facilitate money laundering/terrorism financing (ML/TF) investigations
2. improve risk-based supervision of Designated Non-Financial Businesses and Professions (DNFBPs) and demonstrate that all AML/CFT supervisors apply effective, proportionate, and effective sanctions for non-compliance
3. ensure that competent authorities have timely access to accurate and up-to-date Beneficial Ownership (BO) information on legal persons
4. demonstrate a sustained increase in law enforcement agencies' requests for financial intelligence from the Financial Intelligence Centre for its ML/TFML/TF investigations
5. demonstrate a sustained increase in investigations and prosecutions of serious and complex money laundering and the full range of terrorist financing activities in line with its risk profile
6. enhance its identification, seizure, and confiscation of proceeds of crimes, in line with its risk profile
7. update its terrorist financing risk assessment to ensure the implementation of a comprehensive national counter-financing of terrorism strategy
8. show the effective implementation of targeted financial sanctions against non-compliant accountable institutions

What are the Next Steps to Implement the Action Plan by FATF?

- We will need to continue working to improve the AML/CFT system to meet the FATF requirements in the 8 specific areas
- In this regard, continuously improving the integrity of the financial system is not just a FATF exercise, but rather part of government's objectives for the regulation of the financial sector
- National Treasury is particularly working to:

1. continue to strengthen and expand anti-money laundering (and combatting terror finance) systems in the financial sector, and
2. minimise perceived risks relating to this sector, including from new and emerging risks (eg crypto-related risks)

- How to do this?
  - New categories of "Accountable Institutions"
  - The FIC's requirements for compliance

The new categories of “Accountable Institutions”

- As a result of the FATF assessment, several new categories of accountable institutions were added to Schedule 1 of the Financial Intelligence Centre Act, 2001 (“FICA”) at the end of November 2022, which became effective mid-December 2022. The newly added accountable institutions include:

1. life insurance business (excluding reinsurance business)
2. credit providers under the National Credit Act (“NCA”)
3. certain credit providers excluded in the NCA
4. financial services providers under the Financial Advisory and Intermediary Services Act
5. business of a money or value transfer provider
6. business of dealing in high-value goods in respect of any transaction where such a business receives payment in any form to the value of ZAR100 000 or more
7. certain crypto asset service providers
8. certain trustees and entities which assist others in establishing companies

The FIC's Requirements for Compliance

- In terms of FICA, every accountable institution referred to in Schedule 1 to FICA must, within the prescribed period and in the prescribed manner:

1. register as an accountable institution with the FIC
2. formulate and implement a Risk Management and Compliance Programme ("RMCP")
3. appoint a Money Laundering Control Officer
4. train employees
5. identify and verify new clients
6. do ongoing due diligence in respect of existing clients
7. keep records of identities of clients and of transactions entered into with clients
8. sanction screening
9. report certain transactions to the FIC

Who is responsible for this?

The board of directors of an accountable institution which is a legal person with a board of directors, or the senior management of an accountable institution without a board of directors, must ensure compliance by the accountable institution and its employees with the provisions of FICA and its RMCP

Failure to comply with these new requirements can lead to significant penalties, including imprisonment for a period not exceeding 15 years or a fine not exceeding R100 million.

There are already obligations imposed on these new accountable institutions in terms of FICA and the FIC will be closely monitoring compliance to try and get South Africa off the grey list as soon as possible

Q&A

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