



‘We made the grey list – what now?’

My dad used to tell me that it is about the number on the scoreboard. Right? You can play a hard netball or rugby match and give 120% and still end up with a loss on the scoreboard. The scoreboard is unfair as it is not always an accurate reflection of the effort that was clearly visible on the court or field. This is how I feel about South Africa’s recent addition to the Financial Action Task Force (FATF)’s grey list.

I have been told that there is a saying at the FATF that a country gets the Mutual Evaluation Report (MER) which the country deserves. I am going to be bold and blunt and say that there are parts of the MER which we did deserve, but to date, I am not convinced that we deserved the report in its totality. So, did we deserve the grey listing?

If you are not 100% sure what the grey list is and how South Africans managed to land in this predicament, read on. If you know all of this, you can skip the next few paragraphs.

What is the Grey List?

FATF identifies jurisdictions with weak measures to combat money laundering and terrorist financing in two FATF public documents that are issued three times a year. As of February 2023, the FATF has reviewed 125 countries and jurisdictions and publicly identified 98 of them. Of these 98, 72 have since made the necessary reforms to address their Anti-Money Laundering (AML)/Combating the Financing of Terrorism (CFT) weaknesses and have been removed from the process¹, i.e., off the list. To be clear, the “grey list” is colloquial language for being subjected to increased monitoring by FATF.

South Africa, the only African country which is a member of FATF, was subjected to a mutual evaluation just before COVID-19 turned our worlds upside down in 2019. Our next round, which is the 5th round of FATF mutual evaluations, will take place in 2027. South Africa has been Africa’s star achiever, since becoming a FATF member 20 years ago, or so we thought. South Africa is only the second G20 economy, after Turkey, to appear on the FATF grey list.

With that said, I am still of the view that there were some things in the AML/CFT arena we did exceptionally well, and yes, some things we really managed to take to new levels of low. For example, preventing state capture and shebeens in Saxonwold. This grey listing means that South Africa is now in the company of African countries like, inter alia, Nigeria, South Sudan, Tanzania, Mozambique and the United Arab Emirates (UAE).

What are the impacts of South Africa’s Grey Listing?

After the MER was published in October 2021 South Africa was allowed, as part of a standard process, to present a report to the FATF International Co-operation Review Group (ICRG) addressing all the MER findings and our actions on how we are going to address the gaps (essentially 11 outcomes and approximately 68 recommendations). We had a year to do so. This Post Observation

¹ <https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html>



Period Report (POPR) was apparently over 300 pages long. Our country's hand-picked delegates took the POPR to Rabat, Morocco in February this year. Did you know that every single country to date which has been subjected to the ICRG process, ended up on the grey list? So, to be honest, the question about whether we would be added to the grey list was never the right question to ask. We should have asked – how long will we remain on the list?

Grey listing no doubt has somewhat of a reputational impact on the country, as its effectiveness in combatting Money Laundering/Terrorist Financing/Proliferation of weapons of mass destruction (ML/TF/PF) matters is deemed to be below international standards. Cross-border transactions will also be impacted by enhanced due diligence standards being implemented by foreign correspondent banks on local banks, resulting in higher levels of due diligence than normal being applied. All of this will add to the cost of conducting international business. Although FATF does not call for the application of enhanced due diligence measures, in reality, these are applied. We have been privy to some of those correspondent bank phone calls where we spend a lot of hours just trying our best to confirm **WE ARE OK**.

To add some colour to our predicament, the United Kingdom and European Union ("EU") will also add South Africa to their list of high-risk countries. In terms of EU Directive 2015/849 South Africa will be added to the EU's list of high-risk third countries 1 month after FATF's grey listing. I am told that in the past the 1 month period is more likely to be 10 months depending on the EU Commission's workload and geopolitical factors. Be warned, and we have experienced this first-hand in Mauritius. Grey listing can become an excuse when you need a reason to walk away from an already disputed business relationship. This is not something our country can afford right now.

Our country's current timelines for deliverables as set out in the action plan, tweaked in Rabat, takes us up to January 2025. This does not mean that we can only be removed then; we can be removed from the list before the January 2025 milestone date. Of course, we are going to try our darndest to do so sooner.

Why did South Africa end up on the Grey List?

Given all the positive steps South Africa has taken with the raft of recently passed new legislation, what were the primary contributors to our 'grey-listing'? Our strategic deficiencies are²:

- demonstrating a sustained increase in outbound Mutual Legal Assistance (MLA) requests that help facilitate money laundering/terrorist financing investigations and confiscations of different types of assets in line with its risk profile
- improving risk-based supervision of Designated Non-Financial Businesses and Professions (DNFBPs) and demonstrating that all AML/CFT supervisors apply proportionate and effective sanctions for noncompliance
- ensuring that competent authorities have timely access to accurate and up-to-date Beneficial Ownership (BO) information on legal persons and arrangements and applying sanctions for breaches of violation by legal persons to BO obligations
- demonstrating a sustained increase in law enforcement agencies' requests for financial intelligence from the Financial Intelligence Centre (FIC) for its ML/TF investigations

² National Treasury Media Statement dated 24 February 2023



- demonstrate a sustained increase in investigations and prosecutions of serious and complex money laundering and the full range of TF activities in line with its risk profile
- enhancing its identification, seizure and confiscation of proceeds and instrumentalities of a wider range of predicate crimes, in line with its risk profile
- updating its TF Risk Assessment to inform the implementation of a comprehensive national counter financing of terrorism strategy; and
- ensuring the effective implementation of targeted financial sanctions and demonstrating an effective mechanism to identify individuals and entities that meet the criteria for domestic designation

From the above, it is clear that some of the required remedial action is beyond financial services regulation and relates to a quantifiable improvement in the investigative and prosecutorial arena. This, in my opinion, is where the MER and the score board are aligned. The MER highlighted that South Africa only had one TF conviction in the period 2009 – 2019. The number of ML convictions are higher, but we will need to demonstrate an improvement in our ability to investigate and prosecute corruption, especially those identified in the state capture. In this regard, some of the more prominent individuals identified in recent judicial commissions of enquiry need to be fast tracked for purposes of prosecution – we need to show progress i.e., incarcerating both the “*giver*” and the *taker*”.

In discussions with Corruption Watch, their Executive Director, Karam Singh noted that the NPA have now enrolled a number of high-profile cases in 2023 relating to state capture. What remains in doubt however, Singh noted, is the readiness of the NPA to successfully prosecute these matters. There remain issues around the prosecutorial capacity to successfully drive complex corruption cases to successful convictions. Capacitating the NPA further, both in terms of skills and in terms of the requisite policy and legal frameworks to drive non trial resolution of some corporate corruption matters in the future is an area to monitor, noted Singh.

This will require more qualified investigative resourcing with financial investigation and forensic accounting skills. This will also require deliberate interventions in building capacity within the law enforcement authorities, as well as institutional reform. We have not seen any meaningful results in this area.

A Hopeful Outlook

I was told recently that we should not dwell on the question whether we deserved to be added onto the list or not. What is done, is done. Each and every one of us should rather put that effort into contributing to getting South Africa off the list. For example, the scope of Accountable Institutions (AI) was increased in December 2022. For the newbies on the list, the 90-day period to register as an AI expired on Monday, 20 March 2023. An AI can only submit a regulatory report to the Financial Intelligence Centre if it is registered. I normally tell my kids when they need to clean the dinner table... “*this is the least you can do*”, especially since they did not help with cooking dinner in the first place.



So, South Africa, we have eight strategic areas we need to address. The message for me is clear, it is NOT just about getting ourselves off the grey list. It is about fixing our country; it is about making our country a place people want to invest in and not repeat history by allowing a hand-full of morally bankrupt individuals to take over the steering wheels and determine the direction we should be going in.

We are seeing some exciting developments happening in our supervisory and regulatory space. However, a concerted effort between government and the private sector will be required to ensure that our grey listing is short lived. May we never be complacent again. May we never keep quiet when things go wrong. The little *right* I do, must matter. It has to.

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