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Researching Capital Markets and Financial Services

Sword of Damocles: South Africa's FATF Grey Listing

Mitigation and exit strategies

A report for

BUSINESS LEADERSHIP SOUTH AFRICA

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Researching Capital Markets and Financial Services

About this report

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Acronyms

ACTT	Anti-Corruption Task Team
AML/CFT	Anti-money laundering and combating the financing of terrorism
CFT	Countering the Financing of Terrorism
CFP	Countering the Financing of Proliferation
CIPC	Companies and Intellectual Property Commission
DIRCO	Department of International Relations and Co-operation
DNFBPs	Designated Non-Financial Businesses and Professions
DPCI	Directorate of Priority Crime Investigation
DTIC	Department of Trade, Industry and Competition
DoJ	Department of Justice
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FIC	Financial Intelligence Centre
FICA	Financial Intelligence Centre Act
FSRB	FATF-style regional body
G7	Group of Seven
GDP	Gross Domestic Product
ICRG	International Cooperation Review Group
IDC	Inter-Departmental Committee
IMF	International Monetary Fund
IO	Immediate Outcomes
KRA	Key Recommended Actions
LEA	Law Enforcement Agencies
MER	Mutual Evaluation Report
ML	Money laundering
MLA	Mutual Legal Assistance
MVTS	Money or value transfer services
NACAC	National Anti-Corruption Advisory Council
NCCT	Non-cooperative countries or territories
NCOP	National Council of Provinces
NPA	National Prosecuting Authority
OECD	Organisation for Economic Cooperation and Development
POCDAT	Protection of Constitutional Democracy Against Terrorist and
ARA	Related Activities Act
PF	Proliferation financing
POPR	Post-Observation Period Reports
SARB	South African Reserve Bank
SARS	South African Revenue Service
SCOF	Standing Committee on Finance
SOE	State-owned entity
STR	Suspicious transaction report
TCRR	Technical Compliance Re-Ratings
TF	Terrorist financing
TFS	Targeted Financial Sanctions
UN	United Nations
UNSC	United Nations Security Council

Executive Summary

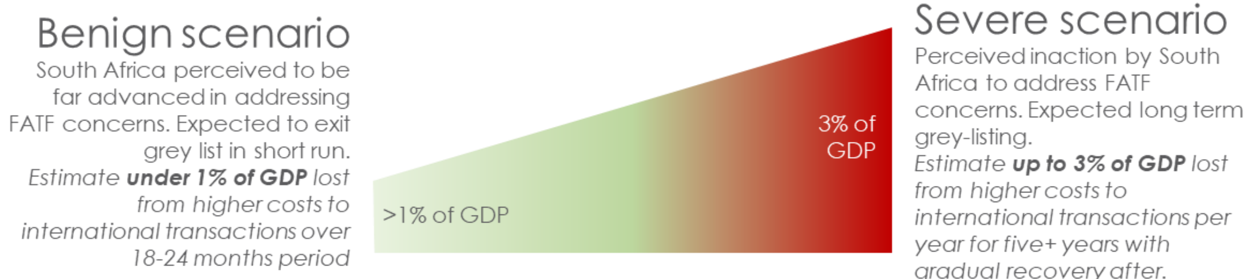
- There is a **high probability** that South Africa will be "grey listed" by the Financial Action Task Force (FATF) in February 2023. FATF polices global compliance with anti-money laundering (AML) and combatting the financing of terrorism (CFT) measures. We estimate this probability at 85%. This is primarily a result of the undermining of institutions in the criminal justice system during the state capture era.

Economic impact

- The economic impact of grey listing **depends substantially on the seriousness with which South Africa is perceived to be acting to address the FATF's concerns**. A serious government-wide effort to fully implement the FATF's recommended actions to comply with all FATF requirements urgently, will assure counterparts that grey listing will be short-lived. In contrast, if South Africa is perceived as being inactive in addressing the FATF's concerns, the costs will be high.

- The first-order effects will be an **immediate increase in the risk category for all South African clients** at many international financial institutions, particularly those in the European Union and United Kingdom. South African clients will become subject to enhanced due diligence, which will mean more frequent (usually annual instead of every three years) and invasive assessments (requiring senior management to directly report to offshore counterparts) of clients for AML and CFT risks. This will mean an increase in costs for South African businesses and individuals that trade internationally and have bank accounts or investment accounts abroad. Costs will increase particularly for South African banks in managing correspondent banking relationships and relationships with global infrastructure providers such as payment systems.

Figure 1: The economic impact of grey listing depends substantially on perceptions of how determined South Africa is perceived to be in addressing FATF concerns



- If South Africa is not perceived to be acting swiftly to deal with FATF requirements, foreign counterparts may opt to reduce their compliance costs by **terminating relationships with South African clients** and not entering any new relationships.

- Grey listing will **complicate official and multilateral development assistance**, including funding of South Africa's energy transition investment needs. Multilateral funders may introduce conditionalities relating to AML/CFT compliance and conduct more detailed due diligence to satisfy themselves on South African risks.

- The **capital markets impact will be relatively minor** in the short run – bond and equity investors have no automatic response to grey listing and are already well aware of the risks. However, there will be some down-weighting of South African exposure by ESG funds that use grey-listing as a proxy for governance.

- The second-order effects will be through **negative publicity and reputation** associated with grey listing. This will affect South Africa's international relationships in myriad ways, ultimately resulting in reduced appetite for business relationships with South African associates.

FATF requirements of South Africa

- South Africa must address the fact that it is **partially compliant or non-compliant with 20 of the "Forty Recommendations"** which all conforming nations must adhere to.
- Additionally, South Africa must satisfy an effectiveness assessment that has found it to be **critically weak on all 11 "immediate outcomes"** that are expected to reflect effectiveness of an AML/CFT regime.
- The FATF's mutual evaluation report set out **12 "priority actions"** for South Africa to address the deficiencies outlined in the FATF's report. South Africa needs to demonstrate substantial progress on the priority actions. On our analysis, South Africa has only fully implemented two of these recommendations**.** The other 10 are being addressed, but we believe that there has not been any notable progress on three of these.
- We anticipate the following to be the **most problematic** among the priority actions for South Africa to undertake:
    - Little to **no progress has been made in implementing AML/CTF supervision of designated non-financial businesses and professions** such as estate agents, Krugerrand dealers, and attorney firms. Draft legislation envisages enabling the Financial Intelligence Centre (FIC) to supervise the AML/CTF obligations of NFBPs, but the FIC will require significant additional budget and resources to effectively do so. We expect it will take two to three years for the FIC to build capacity and develop the market to achieve effective supervision.
    - The **beneficial ownership regime** will take time to become effective. Draft legislation will enable the Companies and Intellectual Property Commission (CIPC) and the masters' offices of the high courts to access information about beneficial owners of companies and beneficiaries of trusts respectively. However, it will take some time for the CIPC and particularly the masters' offices to fully capture this information and make it available for use.
    - The Directorate for Priority Crimes Investigations (the Hawks) in the police services has been slow to implement the recommendation to take on more staff, especially **financial investigators and forensic accountants**, so that it can better use financial intelligence and place more emphasis on proactively identifying and investigating money laundering (ML) cases. A handful of investigators have been appointed, but there needs to be considerably more.

TIMELINE OF KEY EVENTS

2019: Peer review undertaken of South Africa's anti-money laundering (AML) and Combatting the Financing of Terrorism (CFT) system.

October 2021: Mutual evaluation report adopted by FATF identifying serious weaknesses in South Africa's AML/CFT framework and effectiveness. One-year observation period begins.

August 2022: South Africa submits a report on its technical compliance.

October 2022: South Africa submits a further report to FATF on its technical compliance and effectiveness, demonstrating implementation of recommended actions.

October 2022: Observation period ends with FATF plenary.

December 2022: The regional subgroup of the International Co-operation Review Group submits its report on South Africa's progress on recommended actions and invites South Africa to respond.

January 2023: Face-to-face meetings are held between FATF countries and South Africa.

February 2023: FATF plenary is held to consider progress and possibly adopt an action plan that may include grey listing.

- There are other areas where South Africa will be able to demonstrate good progress since the mutual evaluation, which was undertaken in 2019, particularly progress in prosecutions, arrests and asset forfeiture related to state capture. This will be a positive in South Africa's case to the FATF which must amount to a credible plan. However, we believe the issues above will be very difficult to progress in time for the February FATF plenary and that South Africa will therefore be grey listed.

Figure 2: The Mutual Evaluation Report considered South Africa's compliance with the 40 Recommendations (technical compliance) and the 11 Immediate Outcomes (effectiveness). Given the deficiencies, 12 Priority Actions were identified for SA to avoid grey listing

Recommendations

- Given our view that South Africa is unlikely to avoid grey listing, the focus must be on minimising its impact. This is achieved by a) mounting a comprehensive and credible effort to address FATF concerns and exit the grey list as soon as possible; and b) preparation by the private sector to engage with foreign counterparts to minimise the impact of enhanced due diligence.

- To deliver such a programme, we believe it is important that leadership is provided from the top. The most difficult challenges in meeting FATF expectations are to build institutional capacity, processes and systems in key parts of the supervisory, investigation and prosecution services, as well as departments like Home Affairs and Social Development, requiring coordinated action across government. This is best achieved with dedicated focus from the Presidency.

- We recommend that the Presidency set up an internal task team to lead the government response to grey listing, working with the Inter-Departmental Committee assembled by National Treasury. The task team must be resourced with expertise to facilitate the change management and capacitation that must happen in key institutions such as the Hawks and Financial Intelligence Centre. It must be able to focus on blockages and capacity constraints in partnership with the Police Ministry, Justice Ministry, Home Affairs, National Treasury, SA Revenue Services and others.

- Private sector companies and individuals must prepare for the enhanced due diligence that will accompany grey listing. They should engage foreign service providers to establish a) how their risk rating is affected by grey listing; b) what enhanced due diligence measures will be taken (if any); and c) how they can prepare.

1. Background and context of FATF

The Financial Action Task Force (FATF) is the leading global forum for the development and monitoring of international standards against money laundering and terrorism financing. The FATF was initially commissioned by the G7 countries during an economic summit in Paris in 1989 as a temporary task force to develop policies and make recommendations that combat money laundering. In 1990, the FATF set up an international framework by introducing the Forty Recommendations (or FATF standards) on money laundering (Pavlidis, 2021; Perkins, 2021; Shah, 2018).

The 40 FATF Recommendations

The "Forty Recommendations" is a key document of reference which comes with interpretive notes, guidelines and best practices. The recommendations cover the criminalisation of money laundering, the regulation of the financial system, the confiscation of money laundering proceeds and international cooperation. These recommendations have become the reference text for anti-money laundering strategies around the world and have influenced the work of other international bodies, such as the Council of Europe and the European Union (Pavlidis, 2021). As such, when the FATF grey lists a country, the EU automatically blacklists the country under review, while the UK places it on its list of high-risk countries.

The EU Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing limits business relationships or transactions that involve high-risk third countries when there are significant weaknesses in the anti-money laundering and combating financing terrorism (AML/CFT) regime of concerned third countries unless adequate additional mitigating measures or countermeasures are applied. Member States compel obligated entities to undertake enhanced customer due diligence measures to manage and reduce risks when dealing with high-risk situations, business partnerships or transactions – each Member State decides at a national level the type of enhanced due diligence measures to be applied in relation to high-risk third countries. The EU Commission has found weaknesses in the management of business relationships involving high-risk third countries as a result of the varied methods used by Member States. The Directive further allows international organisations and standard setters with competence in AML/CFT to call for the application of appropriate countermeasures to protect the international financial system from the ongoing and substantial risks relating to money laundering (ML) and terrorist financing (TF) emanating from certain countries. In addition, Member States compel obliged entities to apply additional mitigating measures regarding high-risk third countries identified by the Commission by taking into account calls for countermeasures and recommendations, such as those expressed by the FATF, and responsibilities resulting from international agreements.

FATF evolution

During the 1990s, anti-money laundering (AML) was largely an issue for wealthier nations in the Organisation for Economic Cooperation and Development (OECD). Soon after realising that criminals would simply bypass countries with rigorous AML rules by rerouting their funding through countries that had no such laws, these nations were compelled to adjust their strategy. As a result, the FATF initiated the process of "blacklisting" by compiling a list of non-cooperative countries or territories (NCCT) in September 1999 to enforce necessary AML reforms among non-member states. After a review process, the FATF released the first such list of 15 blacklisted countries in June 2000, thereby profoundly impeding international financial transactions with these NCCT. The FATF's mandate was expanded to include the fight against terrorism financing in the wake of the US terrorist attacks on September 11, 2001. The 40 recommendations

were subsequently updated with eight special recommendations. Additionally, the FATF required nations to fully execute resolution 137 of the United Nations Security Council (UNSC) and the 1999 United Nations Convention for the Suppression of the Financing of Terrorism. By approving UNSC Resolution 2462, the UNSC strengthened the FATF's mandate and urged all nations to adhere to its criteria and recommendations.

Mutual evaluation

The FATF heavily relies on mutual evaluations to assess a country's level of compliance with its AML/CFT regime and accordingly makes the necessary recommendations. Mutual evaluations are peer reviews, where members from different countries assess another country. The examined nation is required to demonstrate that it has an effective framework to protect the financial system from abuse. The forum also brings together experts in the fields of finance and law, and the standards incorporate expertise and experience from participating jurisdictions. Overall, the FATF aims to (i) set standards and (ii) promote the effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system (Pavlidis, 2021; Perkins, 2021; Shah, 2018).

Steps in FATF's country listing guidelines

There are two steps involved in the FATF's guidelines for the listing of any country. First, the International Co-operation Review Group (ICRG) conducts a "**review process**" of a country's AML/CFT performance. During the assessment phase, the FATF looks for all the flaws and progress made by the country. FATF then crafts an "action plan" for the country in the case that it has not made sufficient progress and needs to deal with deficiencies in its AML/CFT regime. For the review process to progress, the country under review must formally agree to enacting all legislative, regulatory and operational improvements as described in the action plan. At this point, the jurisdiction has a one-year observation period in which to fix its AML/CFT system's problems with the FATF or FATF-style regional bodies (FSRBs), or risk being listed and reviewed by the FATF. The second step is "**public identification**" of a country in one of the two lists (i.e., grey list or blacklist). If a country fails to improve its AML/CFT during its review process or it does not cooperate at all, it can be publicly identified on either of the two lists after plenary meetings. FATF plenary meetings are held every four months viz; in February, June, and October every year (Pavlidis, 2021; Perkins, 2021; Shah, 2018).

Table 1: FATF maintains two public lists of countries with weak AML/CFT regimes

Greylist	Blacklist
• **Jurisdictions under increased monitoring** • Applies to countries that, after having been identified for having flawed compliance levels, have already committed to and are actively working with the FATF to address strategic deficiencies in their regimes to counter money laundering and terrorist financing within a specific timeframe. • As of June 2022, there are 23 countries on FATF's greylist including: Albania, Barbados, Burkina Faso, Cambodia, Cayman Islands, Gibraltar, Haiti, Jamaica, Jordan, Mali, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Philippines, Senegal, South Sudan, Syria, Türkiye, Uganda, United Arab Emirates and Yemen	• **High risk jurisdictions subject to a call for action** • Countries under this jurisdiction have significant strategic deficiencies in curbing money laundering, terrorist financing, and financing of proliferation. • For a country on the blacklist, FATF calls on other countries to apply enhanced due diligence and countermeasures, increasing the cost of doing business with the country and in some cases severing business relations altogether. • There are only two countries on the blacklist: Iran and North Korea.

Technical compliance and effectiveness assessment

Technical compliance and effectiveness assessment are two components of the FATF's methodology for assessing how well the AML/CFT system works.

Technical compliance assessment addresses the specific requirements of the FATF Forty Recommendations, principally as they relate to the relevant legal and institutional framework of the country, and the powers and procedures of the competent authorities. These represent the fundamental building blocks of an AML/CFT system.

The **effectiveness assessment** differs fundamentally from the technical compliance assessment. It seeks to assess the adequacy of the implementation of the FATF recommendations and identifies the extent to which a country achieves a defined set of outcomes that are central to a robust AML/CFT system. The focus of the effectiveness assessment is therefore on the extent to which the legal and institutional framework is producing the expected results. **Effectiveness assesses 11 Immediate Outcomes (IO) that should stem from effective implementation of the legal framework.**

The assessment of the effectiveness of a country's AML/CFT system is equally as important as the assessment of technical compliance with the FATF standards. Assessing effectiveness is intended to:

- Improve the FATF's focus on outcomes;
- Identify the extent to which the national AML/CFT system is achieving the objectives of the FATF standards and identify any systemic weaknesses; and
- Enable countries to prioritise measures to improve their system.

In the AML/CFT context, effectiveness is the extent to which financial systems, the criminal justice system and economies more widely mitigate the risks and threats of money laundering and the financing of terrorism and proliferation. This could be in relation to the intended result of a given (a) policy, law, or enforceable means; (b) programme of law enforcement, supervision, or intelligence activity; or (c) implementation of a specific set of measures to mitigate the money laundering and financing of terrorism risks and combat the financing of proliferation.

The goal of an effectiveness assessment is to provide an appreciation of the country's entire AML/CFT system and how well it works. Assessing effectiveness is based on a fundamentally different approach to assessing technical compliance with the Recommendations. It does not involve checking whether specific requirements are met, or that all elements of a given Recommendation are in place. Instead, it requires judgment as to whether, or to what extent, defined outcomes are being achieved, i.e., whether the key objectives of an AML/CFT system, in line with the FATF standards, are being effectively met in practice. The assessment process is reliant on the judgment of assessors, who work in consultation with the assessed country. It is the responsibility of the assessed country to demonstrate that its AML/CFT system is effective. If the evidence is not made available, assessors can only conclude that the system is not effective.

An effective AML/CFT system normally requires certain structural elements to be in place, for example: **political stability; high-level commitment to address AML/CFT issues; stable institutions with accountability, integrity and transparency; the rule of law; and a capable, independent and efficient judicial system**. The absence of such structural elements, or significant weaknesses and shortcomings in the general framework, may significantly hinder the implementation of an effective AML/CFT framework; and, where assessors identify a lack of compliance or effectiveness, missing structural elements may be a reason for this and should be identified in the mutual evaluation report, where relevant.

Other contextual factors that might significantly influence the effectiveness of a country's AML/CFT measures include the maturity and sophistication of the regulatory and supervisory regime in the country; the level of corruption and the impact of measures to combat corruption; or the level of financial exclusion. Such factors may affect the ML/FT risks and increase or reduce the effectiveness of AML/CFT measures (FATF, 2021b).

FATF follow-up processes

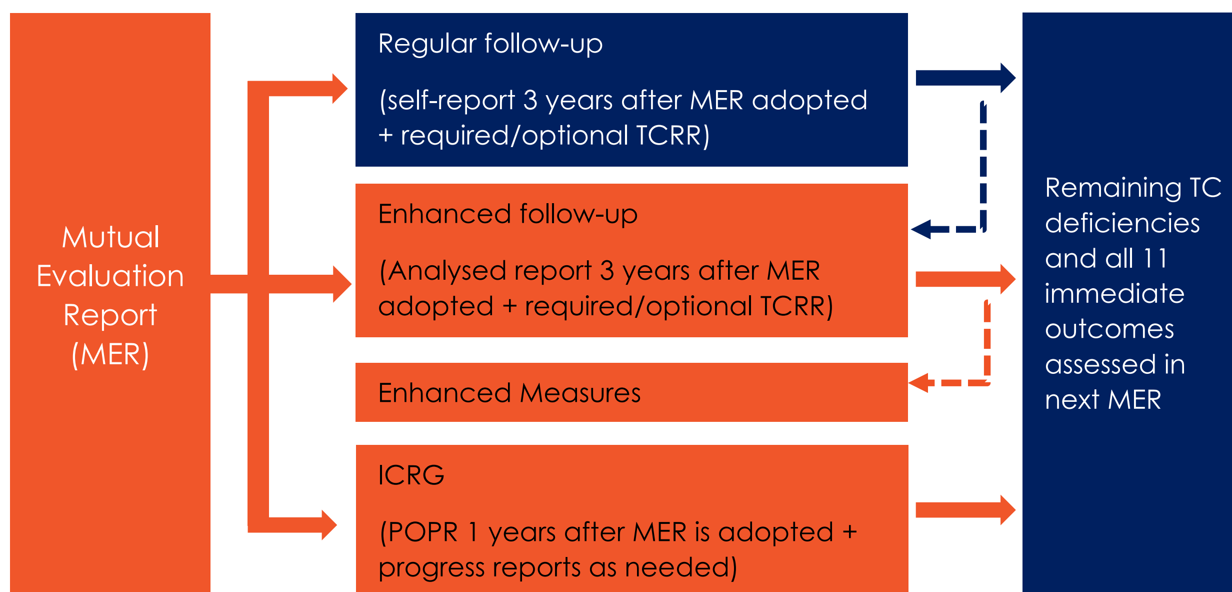
Following the discussion and adoption of a mutual evaluation report (MER), a country could be placed in either a regular follow-up, or enhanced follow-up (referred to as the ICRG) process. Regular follow-up is the default monitoring mechanism for all countries. Follow-up experts produce an independent report outlining the measures a country has taken to address the key recommended actions (KRA) in their KRA Roadmaps. The recommended actions include (i) improving the technical compliance with the FATF standards; (ii) compliance with the FATF standards that have changed since the mutual evaluation report or last follow-up report with technical compliance re-ratings (TCRR); and (iii) any area in which the country's technical compliance has diminished.

The International Co-operation Review Group (ICRG) process

Enhanced follow-up is based on the FATF's traditional policy that deals with members where the AML/CFT/CPF system needs major improvements (for technical compliance or effectiveness) and involves a more intensive process of follow-up. The ICRG is a compliance-enhancing mechanism for countries across the Global Network where the system needs fundamental improvements and involves more direct monitoring by the FATF. In essence, ICRG actively assesses whether positive and tangible progress is made by a country under review.

Joint Groups are regional sub-groups of the ICRG and carry out analytical work on its behalf. The Joint Groups make recommendations, which are discussed by ICRG and put to plenary for decision making. Each ICRG Joint Group is responsible for assessing the degree and quality of progress made by the countries in its region that are under ICRG review and presenting its findings to each ICRG meeting. When necessary, a Joint Group may propose amendments to an FSRB member's KRA roadmap at the start of the observation period, for approval by ICRG and the FATF Plenary. Joint Groups are also responsible for preparing post-observation period reports (POPR) and, when necessary, developing revised KRA Roadmaps. In South Africa's case, it is an ICRG Joint Group that will review progress and produce a report into the FATF Plenary to take place in February 2023 that will decide on grey listing.

Figure 3: Basic overview of the follow-up and ICRG processes post MER



Source: FATF procedures for the FATF AML/CFT/CPF mutual evaluations, follow-up and ICRG

As a basic commitment of membership, the FATF expects that, in the three-year period (10 plenary cycles) since the MER was adopted, countries would have:

- Fully or largely addressed all key recommended actions in their KRA roadmap (improved their technical compliance with any recommendation rated non-compliant or partially compliant to the extent that re-rating to largely compliant or compliant is warranted); and
- Made necessary changes to comply with any FATF standards revised since the date the country's technical compliance submission was due.

2. Risks identified in South Africa's mutual evaluation report

South Africa has faced significant challenges in the investigation and prosecution of commercial crime, particularly during and following the state capture era when it experienced systematic undermining of key institutions of the criminal justice system (Swilling, 2017). Institutions like the police and national prosecuting service were cynically undermined and rendered ineffective in the later years of the Zuma presidency. This legacy has proved difficult to undo, although clear progress has been made, particularly more recently.

South Africa's AML/CFT mutual evaluation assessment was conducted in 2019 and the report was adopted in October 2021. The time of the assessment was arguably a low point in South Africa's criminal justice system to deliver investigations and prosecutions related to state capture. It is striking that the FATF noted frequently that the lack of progress in state capture related crimes was a particular problem. While ML/TF risks are a sub-category of commercial crime, the FATF was clearly influenced by the wider dysfunction of the criminal justice system in dealing with commercial crime in general (FATF, 2021a).

The mutual evaluation gave South Africa a very poor ratings assessment namely:

- **Technical compliance**: failed in 20 of the 40 FATF recommendations/standards;
- **Effectiveness assessment**: failed in all 11 effectiveness measures (immediate outcomes), scoring moderate and low.

Technical compliance ratings

Technical compliance refers to the extent to which the laws and regulations of a country match the Forty Recommendations. Half (20) of South Africa's technical compliance rating is partially compliant or non-compliant:

- Largely compliant (17)
- Compliant (3)
- Partially compliant (15)
- Non-compliant (5) (see Table 2 below for detailed ratings outcome).

In order to meet FATF requirements, countries need to be mostly largely compliant or compliant, although the FATF has accepted some cases of partial compliance where there is evidence of progress being made.

Table 2: South Africa's technical compliance ratings

Largely Compliant (17)	Compliant (3)	Partially compliant (15)	Non-compliant (5)
• **R.3** Money laundering offence • **R.4** Confiscation & provisional measures • **R.9** Financial institution secrecy laws • **R.11** Record keeping • **R.13** Correspondent banking • **R.16** Wire transfers • **R.19** Higher-risk countries	• **R.21** Tipping off and confidentiality • **R.30** Responsibilities of law enforcement and investigative authorities • **R.31** Powers of law enforcement and investigative authorities	• **R.1** Assessing risk & applying risk-based approach • **R.2** National cooperation and coordination • **R.5** Terrorist financing offence • **R.7** Targeted financial sanctions – proliferation • **R.10** Customer due diligence (CDD)	• **R.6** Targeted financial sanctions – terrorism & terrorist financing • **R.8** Non-profit organisations • **R.12** Politically exposed persons • **R.15** New technologies • **R.17** Reliance on third parties

• **R.20** Reporting of suspicious transactions • **R.29** Financial intelligence units • **R.33** Statistics • **R.34** Guidance and feedback • **R.35** Sanctions • **R.36** International Instruments • **R.37** Mutual legal assistance • **R.38** Mutual legal assistance: freezing and confiscation • **R.39** Extradition • **R.40** Other forms of international cooperation		• **R.14** Money or value transfer services • **R.18** Internal controls and foreign branches and subsidiaries • **R.22** DNFBPs: Customer due diligence • **R.23** DNFBPs: Other measures • **R.24** Transparency & BO of legal persons • **R.25** Transparency & BO • of legal arrangements **R.26** Regulation and supervision of financial institutions • **R.27** Powers of supervision • **R.28** Regulation and supervision of DNFBPs • **R.32** Cash couriers	

South Africa needs to urgently address its technical compliance issues, particularly the prioritisation of three core FATF recommendations, but also deal with the remaining 17. The recommendations the FATF has highlighted are:

- Recommendation 5 (TF offence): Partially compliant
- Recommendation 6 (TFS): Non-compliant
- Recommendation 10 (CDD): Partially compliant.

Effectiveness assessment

When it comes to effectiveness rating, all 11 immediate outcomes (IO) were determined to be critically weak for South Africa:

- Moderate – (8) IO achieved to some extent. Major improvements needed;
- Low – (3) IO not achieved or achieved to a negligible extent. Fundamental improvements needed (see Table 3).

With all immediate outcomes critically weak, South Africa needs to demonstrate positive and tangible progress towards increasing its effectiveness.

Table 3: SA's effectiveness ratings

Immediate Outcome	Description	Rating
IO.1	**Risk, policy and co-ordination** • Money laundering and terrorist financing risks are understood and, where appropriate, actions coordinated domestically to combat money laundering and the financing of terrorism and proliferation.	Moderate
IO.2	**International cooperation** • International cooperation delivers appropriate information, financial intelligence, evidence and facilities action against criminals and their assets.	Moderate
IO.3	**Supervision** • Supervisors appropriately supervise, monitor and regulate financial institutions and DNFBPs for compliance with AML/CFT requirements commensurate with their risks.	Moderate
IO.4	**Preventive measures**	Moderate

	• Financial institutions and DNFBPs adequately apply AML/CFT preventative measures commensurate with their risks and report suspicious transactions.	
IO.5	**Legal persons and arrangements** • Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.	Low
IO.6	**Financial intelligence** • Financial intelligence and all other relevant information are appropriately used by competent authorities for money laundering and terrorist financing investigations.	Moderate
IO.7	**Money laundering investigation & prosecution** • Money laundering offences and activities are investigated, and offenders are prosecuted and subject to effective, proportionate, and dissuasive sanctions.	Moderate
IO.8	**Confiscation** • Proceeds and instruments of crime are confiscated.	Moderate
IO.9	**Terrorist financing investigation & prosecution** • Terrorist financing offences and activities are investigated and persons who finance terrorism are prosecuted and subject to effective, proportionate, and dissuasive sanctions.	Low
IO.10	**Terrorist financing preventive measures & financial sanctions** • Terrorists, terrorist organisations and terrorist financiers are prevented from raising, moving and using funds and from abusing the NPO sector.	Low
IO.11	**Proliferation financial sanctions** • Persons and entities involved in the proliferation of weapons of mass destruction are prevented from raising, moving and using funds, consistent with the relevant UNSCRs.	Moderate

Effectiveness ratings can be High, Substantial, Moderate and Low. South Africa's consistent rating in the bottom two categories must be addressed, with substantial progress made in the immediate outcomes including upgrading many categories to Substantial or High.

3. Progress on South Africa's priority actions

South Africa's poor rating assessment in its mutual evaluation report resulted in it being placed in an enhanced follow-up process, involving more frequent reporting to the FATF, until it addresses all identified deficiencies. In addition, South Africa was placed under a one-year International Co-operation Review Group (ICRG) observation period, effective from October 2021 to October 2022.

In terms of the follow-up process, South Africa was required to submit its first follow-up report to the FATF at the end of August 2022 (brief report on Technical Compliance), and a second report in October 2022 (detailed report on Technical Compliance and all 11 Effectiveness Measures), in preparation for the February 2023 FATF Plenary. This follow-up process requires demonstrating improvements in (i) the legal framework (technical compliance) and (ii) effectiveness in combating financial crimes. The Plenary meetings in February 2023 will consider recommendations by ICRG's Joint Group. As we explain in this report, South Africa faces a very high probability of being grey listed during the Plenary. The post-observation period reports (POPRs) will follow the plenary sessions.

While it could take several years for South Africa to complete all the required changes, the government has demonstrated its commitment to adopt key recommendations in line with the United Nation's international conventions and standards. For instance, the implementation of the Targeted Financial Sanctions (TFS) for proliferation financing in April 2019 (FIC is responsible for administering TFS measures as adopted by the United

Nations Security Council). More recently, the National Prosecuting Authority (NPA), Directorate of Priority Crime Investigation (DPCI), Department of Justice (DOJ) and the South African Revenue Service (SARS), led by the Financial Intelligence Centre (FIC) and operating under the auspices of the Anti-Corruption Task Team (ACTT), have collaborated on the joint project to deprive those who support their lifestyles with ill-gotten gains from their unexplained wealth. This will better enable South Africa to confiscate criminal proceeds in line with FATF recommendations. The law enforcement agencies will use existing asset recovery legislation to secure appropriate orders issued by the courts to confiscate unexplained wealth, thereby enabling authorities to recover suspected ill-gotten gains.

An Inter-Departmental Committee (IDC) for AML/CFT was also formed to urgently work on an Omnibus Bill that would simultaneously amend several different pieces of legislation to ensure South Africa meets the technical compliance requirements. The IDC is chaired by the acting Director-General of the National Treasury, with the working group comprising:

- National Treasury
- Financial Intelligence Centre
- Department of Justice and Constitutional Development
- Department of Social Development
- Civilian Secretariat for Police Service
- Department of Trade, Industry and Competition
- Companies and Intellectual Property Commission
- South African Reserve Bank
- South African Revenue Service
- Prudential Authority
- Financial Sector Conduct Authority.

South African authorities have also secured technical assistance from the World Bank and the European Union, to learn the lessons of other countries on how to strengthen the AML/CFT system to better tackle financial crimes and corruption, and to prevent the country from being grey listed. Other initiatives include Cabinet's approval of the tabling of the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill in Parliament (often referred to as the "Omnibus Bill"), the finalisation of the Money Laundering and Terror Financing National Risk Assessment, the proposal to amend the Financial Intelligence Centre Act, and recent state capture prosecutions among others.

The Omnibus Bill proposes to amend five pieces of legislation, including:

- Financial Intelligence Centre Act, 2001 (Act 38 of 2001);
- Non-profit Organisation Act, 1997 (Act 71 of 1997);
- Trust Property Control Act, 1988 (Act 57 of 1988) –
- Companies Act, 2008 (Act 71 of 2008) and
- Financial Sector Regulations Act, 2017(Act 9 of 2017).

These Acts are administered by different Ministers, and they seek to fully satisfy the identified technical compliance deficiencies in the mutual evaluation report. The

Omnibus Bill seeks to strengthen the country's AML/CFT laws and addresses 14 of the technical compliance deficiencies including **Recommendations 7, 8, 12, 15, 17, 18 and 22 to 28**. The Omnibus Bill was recently taken to Cabinet (August 2022), and when enacted into law, the Bill will improve South Africa's adherence to international best practices in combating financial crimes and corruption. In parallel, the Protection of Constitutional Democracy against Terrorist and Related Activities (POCDATARA) Amendment Bill was tabled by the Ministry of Safety and Security in July 2022 and is currently in Parliament and addresses two deficiencies, namely **Recommendations 5 and 6** and the remaining four deficiencies (**Recommendations 1, 2, 14 and 32**) will be dealt with via regulatory and policy interventions. These efforts, demonstrate the country's commitment to the fight against corruption, money laundering and terror financing.

The two Bills' (Omnibus and POCDATARA) legislative revisions, which address 16 of the 20 technical compliance deficiencies, are the first important corrective actions to prevent grey listing. We expect that Parliament will have made significant progress toward passing the two Bills by the end of October, and that both Bills will be in force in January 2023. However, amendments to these laws are not enough to avoid a FATF grey listing, as South Africa still needs to demonstrate effectiveness in implementation. We analyse the parliamentary process in more detail in section 4.

The mutual evaluation report includes 12 "priority actions" that we list in Table 4. We track SA's progress to date against priority actions recommended in the FATF's mutual evaluation report in the second column.

Table 4: FATF's priority actions for South Africa.

Priority Actions	Progress to date (Intellidex assessment: green = action delivered, orange = some progress, red = minimal progress)
1. Develop policies to address higher ML/TF risks for: o Beneficial Owner, o Use of cash and its cross-border movement (physically and through illegal MVTS); o Third-party Money Laundering; o Foreign predicate crimes; and o Terrorism Financing. Ensure that all financial institutions, Designated Non-Financial Businesses and Professions (DNFBPs) and Virtual Asset Service Provider (VASPs) are subject to AML/CFT obligations unless they pose proven low risks.	• The General Laws (anti-money laundering and combating terrorism financing) Amendment Bill was tabled in Parliament and made public on 29 August 2022. The Omnibus Bill amends the following Acts: o Financial Intelligence Centre Act, 2001 (Act 38 of 2001); o Non-profit Organisation Act, 1997 (Act 71 of 1997); o Trust Property Control Act, 1988 (Act 57 of 1988); o Companies Act, 2008 (Act 71 of 2008); and o Financial Sector Regulations Act, 2017(Act 9 of 2017). • Amendments to the Companies Act and the Trust Property Control Act will allow for the provision of beneficial ownership information. However, while the legislative changes will be made, effective compliance will require gathering the corresponding data from all companies and trusts which will take time beyond the observation period; • There is progress in enhancing preventive measures by the financial sector, led by SARB, the Prudential Authority and FSCA, including the FSCA taking on the supervision of virtual asset financial services providers like crypto currency trading; • Limited progress in enhancing preventive measures by DNFBPs sector such as estate agents, Krugerrand dealers, casinos, attorneys and vehicle dealers. Amendments to FIC Act schedules are anticipated to provide a framework for the supervision of DNFBPs by the FIC. The amendments are awaiting Parliamentary approval; • **As further explained below, there has been policy progress, but the effective AML/CFT supervision of DNFBPs and VASPs has not been developed. Nevertheless as this priority action is primarily about policies and obligations, rather than effective supervision, we score it as intermediate progress.**

2.	Analyse how to substantially improve the availability of information on domestic PEPs and then support accountable institutions (Ais) to identify such PEPs. Remove the time limit in the definition of PEP in the FIC Act.	• Amendment of Schedules 3A and 3B to appropriately refer to domestic and foreign "politically exposed persons", as distinct from "politically influential persons", who will be dealt with in a new Schedule 3C; • Schedule 3A is amended to change the name to "domestic politically exposed persons" and to provide for those individuals to be considered a domestic politically exposed person if that person currently holds or has held the position at any time; • **Whilst there is legislative progress with amendments to s3A and s3B, which this priority action requires, there is no effectiveness progress in supporting accountable institutions to identify PEPs.**
3.	Provide the SAPS Directorate for Priority Crimes Investigations (SAPS: DPCI) with more staff, especially financial investigators and forensic accountants, so that it can better use financial intelligence and place more emphasis on proactively identifying and investigating ML cases, particularly high level and complex cases such as those related to "State capture" and others involving third party laundering, foreign predicates, ML networks, and professional enablers.	In progress, however there is still large gap for SAPS DPCI (Hawks) to build required skills and methods for tackling money laundering as a primary crime, targeting money laundering syndicates. The following changes will also support ML/TF investigations: • **The Financial Intelligence Centre (FIC)** has made efforts to improve the sharing of intelligence information with law enforcement agencies, thus improving support, especially the investigating authorities to be more effective with dealing with ML investigations and prosecutions. This ensures that ML investigations are more purposeful and targeted – thus, developing systems that are more proactive in identifying evidence but constrained by what the investigative authorities will do with the information; • The FIC is also working with the investigative agencies to develop a training manual for investigators on how to bring the FIC's information together with investigations; • FIC is in discussions with the Hawks and FSCA to provide interns with accounting qualifications (this has not yet come to fruition). This is not a quick fix either as it takes time for people to start delivering results after being trained; • **Business Leadership South Africa (BLSA)** signed a memorandum of understanding with the NPA in August, this enables organised business to mobilise skills from the private sector to assist with complex cases; • **National Anti-Corruption Advisory Council (NACAC)** President Cyril Ramaphosa appointed members of the NACAC, a multi-sectoral partnership for advocacy and action against fraud and corruption that will augment the work done by law enforcement agencies who play an independent role in terms of combating corruption and other criminal activities. The Council has been established to deepen the country's efforts to rid society and the administration of corruption, improve investor confidence and secure higher levels of public trust. The new body will advise government on the critical preventative measures, institutional capabilities and resources that are required to proactively curb a recurrence of state capture and to prevent fraud and corruption in South Africa; • **The primary weakness is the capacity and capabilities of the DPCI (Hawks) to investigate and build cases directly focused on ML/TF crimes. We believe it will take considerable time to build this capacity and to demonstrate its effectiveness in line with FATF recommendations.** This is important for effective compliance, particularly IO.9, which means we will fall short of effectiveness.
4.	Keep prioritising efforts to stem the flow of and recover assets from "State capture", including assets transferred to countries outside of South Africa, until satisfactory results are achieved.	Some progress in confiscating assets relating to complex money laundering cases, including state capture cases, but much more to do especially efforts to recover assets from abroad. • **Collaboration:** The NPA and its leading State Capture corruption unit, Investigative Directorate (ID) are under new leadership, and have entered an exciting era, rebuilding staff morale and cohesion, brought in additional skills, put in place much needed systems and processes and, critically, deepened its partnership and collaboration with key actors in the criminal justice system – domestically and internationally. This has enabled it to ramp up its impact in recent months to enrol seminal cases against the architects of State Capture. The ID is taking the state capture report and its recommendations seriously. Hawks have also collaborated with the NPA in implementing the recommendations of the Zondo commission of inquiry into state capture. • **State capture SOE cases:** o Transnet: R398.4m fraud and corruption case (former Transnet executives Brian Molefe and Anoj Singh and Regiments Capital directors Nevin Pillay and Litha Nyhonyha have been charged and arrested by the NPA's Investigating Directorate, assisted by the Hawks in connection with R398.4m in Transnet

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fraud and corruption charges. The four were granted R50,000 bail each with conditions including the handing in of their passports);
o Transnet: R93m fraud case (State v Kuben Moodley & 7others);
o Eskom: fraud and corruption at Kusile Power Station (State v Muhammed Mooidheen & 3 others);
o Eskom: R107.5m Tegeta and Optimum coal mine (State v Ronica Ragavan & 2 others);
o Eskom: fraud and corruption at Kusile Power Station (State v France Hlakudi & 4 others).
• Other state capture matters include:
o A total of 29 cases enrolled, with 22 being criminal and 7 civil matters;
o Restraining orders issued valued at R6.75bn;
o 11 security sector cases enrolled.
• The Investigating Directorate matters include:
o Enrolled over 20 matters;
o Charged 65 accused;
o Obtained freezing orders to the value of R5.5bn, with the Asset Forfeiture Unit (AFU) including the single biggest restraint of R3.78bn obtained with respect to Optimum Coal Mine – a major asset in the Gupta network;
• In the past year the NPA has seen a major improvement in the finalisation of corruption cases at other levels, in particular:
o The Specialised Commercial Crimes Unit (SCCU) finalised 380 cases with 344 convictions – a conviction rate of 90.5%;
o The number of government officials convicted of corruption increased by 38.4% (from 86 to 119) year-on-year;
o The performance in private sector corruption prosecution improved by 39.5% (from 147 to 205 people convicted).
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<tr><td>5. Actively seek formal and timely Mutual Legal Assistance (MLA) for ML, associated predicate offences and TF that have transnational aspects and follow-up on such requests, including proactively pursuing “state capture” requests through all available channels.</td><td>
• The DoJ, the NPA and DIRCO are in advanced stages of completing a case management system for monitoring mutual legal assistance and extradition requests. The DoJ also in the process of enhancing the use of mutual legal assistance procedures to obtain evidence from foreign jurisdictions, in particular state capture cases, following the Gupta Case. In parallel, DoJ in process of amending its Extradition Act;
• The DoJ is also prioritising its International Cooperation on Criminal Matters Act to facilitate the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of crime between SA and foreign States – this helps in resolving criminal cases in other countries. For instance, the Bridgette Motsepe-Radebe $10bn money laundering theft to finance terrorism case in Botswana in 2019 was quickly resolved, thanks to the International Cooperation on Criminal Matters Act.
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<tr><td>6. Make major enhancements to the effectiveness of measures at borders to detect and seize illicit cash flows and to identify and address unlicensed cross-border MVTS.</td><td>
• FIC is in discussions with SARS to implement cash declaration systems at national borders for cash thresholds of R25,000 (or ZAR equivalent on other currencies).
• The FIC has proposed to the National Treasury for the amendment of the FIC Act to require reporting of electronic transfers of cash in and out of the SA, for cash thresholds of R5,000 (mainly basic subsistence remittance).
• However, as it stands no cash thresholds have been implemented and consequently there is no effective policing of these thresholds. We understand field testing will begin at a pilot site, but national rollout will take some time.
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<tr><td>7. Greatly improve ability to proactively identify TF activity and reconsider the policy of not pursuing the domestic designations as a tool to counter terrorism or terrorist financing.</td><td>
• The South African National Terrorism Financing Risk Assessment is finalised and was published by FIC in March 2022;
• POCDATARA Amendment Bill was tabled by the Ministry of Safety and Security in July 2022 and is currently in Parliament and addresses two deficiencies: R.5 and R.6;
• FIC put measures and mechanisms in place to increase vigilance and to ensure a coordinated approach between stakeholders within the public and private sector to detect, disrupt and prevent terrorism financing.
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<tr><td>8. Revise the Targeted Financial Sanctions (TFS) legal framework to address the major shortcomings identified in R.6 and create robust procedures</td><td>
Proposed amendments relating to TFS (clauses 15, 25, 26, 27 of Omnibus Bill) include
• The definition of proliferation financing is added consistent with the term being introduced through the amendments contained in the Bill;
• Section 26A is amended to provide for the resolutions of the United Nations Security Council to become enforceable immediately on the adoption of a resolution;
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for implementing UN listings without delay.	• Section 26B prohibits, among others, any person from transacting with a person or entity identified in terms of a resolution of the United Nations Security Council. The amendment extends this prohibition to also include persons who are acting on behalf of or at the direction of the designated person or entity; • The process for transferring TFS for terror financing from the POCDATARA Act to FIC Act is not yet completed; • **There is great need for the development of a strategy for asset identification and tracking in response to new TFS designations and enhance communication of consolidated Targeted Financial Sanctions list.**
9. Establish much better mechanisms to collect beneficial owner (BO) information about companies and trusts, and train relevant Law Enforcement Agencies (LEAs) about complex structures and how they can be abused for ML/TF purposes.	As part of the forthcoming Omnibus Bill, the amended Companies Act, 2008, will insert a definition of "beneficial owner" by providing for a comprehensive mechanism through which the Commission can keep accurate and updated beneficial ownership information; • By requiring a company to keep a record of a natural person who owns or controls the company in terms of the definition of "beneficial owner"; • By providing for specified timelines within which the company must record any changes in this information; • By requiring a company to file a record of any natural person who owns or controls the company in terms of the definition of "beneficial owner", with the Commission; • By specifying that persons who are convicted of offences relating to money laundering, terrorist financing, or proliferation financing activities are prohibited from registering as company directors; • The Financial Sector Regulation Act, 2017, by providing that a financial institution, key person, representative or contractor to which a regulator's directive in terms of Part 2 of Chapter 10 has been issued must comply with the directive; • By inserting a new Chapter dealing with beneficial owners into the Act, which provides a definition of "beneficial owner" and empowers standards and regulator's directives to be made in relation to beneficial owners; • **However, the legislative changes have not yet led to better "mechanisms" being established by the CIPC and Master's Offices to collect beneficial owner information. We expect this could take some years to drive compliance and implement systems to collect, store and distribute beneficial owner information.**
10. South Africa should ensure that accountable institutions (Ais) adequately implement a risk-based approach (RBA), including through better assessing and understanding their inherent risks and refining and implementing their risk management and compliance programmes (RMCPs) to mitigate their risks. The authorities should provide better guidance on these matters and on major ML/TF risks such as corruption.	• Proposed amendments relating to the risk management and compliance programme (clause 36 of the Bill) o Section 42 is amended to include the requirement that accountable institutions must take into account the proliferation financing risks when developing its RMCP; o Section 42 is amended to provide for the manner and processes by which group-wide programmes of an accountable institution for all its branches and majority owned subsidiaries is implemented so as to enable the institution to comply with the requirements of the Act. This also extends to the exchange of information within its branches or subsidiaries relating to the analysis of suspicious transaction report (STRs). Institutions are now also required to have adequate safeguards to protect the confidentiality of information exchanged; o Section 42 also provides for the additional obligation for Ais to provide for the manner in which the AI will apply appropriate additional measures to manage the risks if the host country does not permit the implementation of measures required in terms of the Act; • The proposed amendments to the FIC Act schedules include extending the list of accountable institutions to include motor vehicle, Krugerrand and precious stones dealers; crypto asset services providers; high-value goods dealers receiving payments of R100,000 or more; money or value transfer providers; and trust and company service providers involved in conducting transactions on behalf of their clients such as accountants, estate agents, lawyers and notaries. Credit providers other than banks would also be included; • **However, the Financial Intelligence Centre has not yet been able to begin the process of generating guidance on ML/TF risks, particularly for non-bank AIs.**
11. Supervisors should improve how they conduct risk-based AML/CFT supervision, including by improving their understanding of	Proposed amendments relating to Schedule 2 of the FIC Act (clauses 17, 43, 47 of the Bill) • Section 75 of the FIC Act to provide for the Minister to have the discretionary power, consistent in sections 73 and 76, to add to the list of supervisory bodies in Schedule 2 of the Act a supervisory body which will be responsible for supervising and enforcing compliance with the Act;

inherent ML/TF risks at sector and institutional levels and using that to prioritise their supervisory activities.	• The amendment also makes provision for the Minister to delete any supervisory body from Schedule 2 if the Minister reasonably believes that a supervisory body is not satisfactorily performing its supervisory or enforcement functions in terms of the Act; • The deletion of the Estate Agency Affairs Board and the provincial licensing authorities. The FIC will be responsible for supervising and enforcing compliance of the Act for both estate agents and gambling sector; • Section 4 is amended by removing the reference to accountable institutions being regulated by any other law consistent with the recent amendments to Schedule 2 that removed a number of supervisory bodies and for which the FIC is now responsible for supervising and enforcing compliance of the Act; • **Again, legislative progress, but inadequate effectiveness as supervisors are still in the process of revising their risk-based supervision manuals and their understanding of money laundering and terror financing risks in order to conduct risk-based supervision of regulated entities.**

12. Ensure the securities sector, attorneys, estate agents, TSPs, CSPs, and DPMS are supervised or monitored for AML/CFT commensurate with their risk profiles, by increasing supervisory resources and closing gaps in sector coverage.	• Proposed amendments to FIC Act to broaden the scope of accountable institutions under its purview;
	• FIC is in discussions with National Treasury to improve the FIC's capacity (FIC needs to be capacitated with more people, especially on the analysis side. There are currently 30-35 people, and the Centre is in talks to doubling that number. FIC also needs to improve its systems and skills to be more efficient);
	• This change will force both small and large companies to comply with FIC Act regulations. By doing this, the FIC aims to identify the proceeds of crime, combat ML/TF as well as supervise and enforce compliance with FIC Act. The proposed amendments argue for the following types of entities to be included as accountable institutions:
	  o Certain legal practitioners;
	  o Credit providers;
	  o Boards of executors or a trust company;
	  o Estate agents;
	  o Long-term life insurance businesses
	  o Dealers in motor vehicles;
	  o Dealer in goods over R100,000;
	  o Dealers in crypto assets;
	  o Dealers in Krugerrands, and;
	  o Gambling institutions.
	• **In our view, considerable work still needs to be done to give the FIC the capacity to become an effective regulator of non-financial accountable institutions.**

Despite progress, more remains to be done to combat tax crimes, illicit financial flows, money laundering and terror financing. That includes efforts to improve data analysis and coordination, harmonising laws and practice to cut back on red tape to promote the timeous exchange of accurate and reliable information, embedding the ongoing measurement of the maturity of inter-agency collaboration and inter-agency trust and reviewing South Africa's bilateral and multilateral treaties for fitness of purpose.

In certain key areas implementation of the FATF's priority actions **seems impossible within the specified timeline**. In particular, South Africa does not appear to have made much progress on the following priority actions:

- Priority action 3 requires providing the Hawks with more staff, especially financial investigators and forensic accountants to better pursue money laundering. To our knowledge limited progress has been made on this front. As a result there will be minimal improvement in the effectiveness of money laundering and terrorist financing investigation and prosecution, as required by immediate outcome 9;

- Several priority actions, particularly the 10th,11th and 12th, require the Financial Intelligence Centre to be able to fully supervise non-financial accountable institutions such as Krugerrand dealers, estate agents and attorneys. Although the Omnibus Bill does provide legislative scope for this, as yet the FIC has not begun the process of augmenting its existing capacity. We estimate that the FIC will require twice the staff and budget to be able to cover non-financial institutions. This is a longer-term project that will require considerable focus and effort;

- The sixth priority action is to implement cash declaration systems at borders and measures to detect and seize "elicit cashflows". This has not been implemented in practice yet, meaning there is no restriction on cash that can be brought into the country;

- The nineth priority action is to establish much better mechanisms to collect beneficial owner information about companies and trusts and to train relevant law enforcement agencies about complex structures in the role they can play in ML/TF. Requirements to collect this information has been incorporated into the Omnibus Bill, but the requirement is for it to be operationalised through specific mechanisms. These will need to be in the form of new returns, or amendments to existing returns. It will require some time for these to be implemented.

These are complex to address because they **require focused institutional reform, development, a budgetary perspective (to a limited degree) and attracting relevant skills of the right calibre in the context of recent erosion of state institutional capacity**. This goes beyond the legislative and policy domain, into the realm of focused development of systems and institutions. These cannot be solved through legislation – they must be solved through deliberate interventions and change management to build capacity. They are also focused on institutions in the public sector that have at times struggled to achieve institutional reform, such as the police and border management by SARS. Overall if there isn't widespread belief that we have turned the corner on grand-scale corruption, ethical, skilled people are unlikely to elect to enter state service.

4. FATF parliamentary process

A complex parliamentary process has started to ensure that South Africa meets the technical compliance of the FATF standards.

National Treasury's original plan was to table a single Omnibus Bill encompassing all issues across all departments. There was initial pushback from parliament and the Department of Justice, the Department of Police and the Department of Trade, Industry and Competition which delayed the process for a short while. The Department of Justice and Department of Police were protective of what they see as their own competencies on terrorism related issues and the broader criminal justice reform agenda they are shepherding post state capture, while the DTIC has also been keen to align the issues under its own wider Companies Act. National Treasury has broadly won this argument within government and cabinet has now approved one single Omnibus Bill which was tabled in parliament on 29 August 2022.

The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill [B18-2022] covers a wide range of issues:

- Trust Property Control Act, 1988
    - Covering issues like beneficial ownership registration with the Master, record keeping and reporting requirements on trustees, disqualification of trustees, access to information for law enforcement, listing various offenses related to trusts;
- Nonprofit Organisations Act, 1997
    - Requiring NPO registration, allowing the NPO Directorate to collaborate with law enforcement, record keeping and reporting requirements including control structures and office bearers, access to information requirements for law enforcement, disqualification of office bearers, other offenses.
- Financial Intelligence Centre Act, 2001
    - Changing beneficial owner definition, definitions related to influential persons and public officials, changing the objectives of the FIC, increasing possible due diligence measures and information gathering powers including access to a wider variety of institutions, dealing with UN sanctions, increasing empowerment actions possible by FIC;
- Companies Act, 2008
    - Covering registration details required, beneficial ownership and related matters, increasing the information CIPC must collect and how CIPC relates to various entities, expanding list of convictions that can disbar directors;
- Financial Sector Regulation Act, 2017
    - Covering various reporting issues, relationships between financial companies and SARS, the FIC and other state entities; increasing the powers of regulators like the FSCA and the PA to issue directives that are applicable to beneficial owners.

The Bill has been tagged to the Standing Committee on Finance (SCOF). Initial discussions in parliament over the need for the different Acts being amended to have those sections deliberated by different committees or in joint committee between relevant departmental committees has come to nothing – only SCOF will deal with the Bill. This is a positive and will prevent additional logistical problems.

SCOF however has currently pencilled in limited time in its published committee schedule and has only had one internal meeting on the Bill which was a briefing from National Treasury and the FIC and then (today the day of publication) one public consultation session. It has not had a "strategy" meeting as would normally occur when legal advice on the process of dealing with the Bill is heard and the committee decides its timeline until it hands it back to the National Assembly.

A public consultation process will be required during committee stage which can take a lengthy amount of time. The Bill is tagged as a section 75 Bill which means it does not require public consultation during the National Council of Provinces (NCOP) phase.

The key problem now is one of timing. Our view is that a 'normal' Bill would take a minimum of 18 months to feed through parliamentary processes after cabinet approval and before Presidential assent. Presidential assent additionally can take weeks to even years for contentious issues – on average it takes several months.

National Treasury however has been guiding expectations as being three months. We see this as logistically hugely challenging for a number of reasons:

- SCOF is prioritising the *Tax Administration Laws Amendment Bill* (TALAB) and the *Taxation Laws Amendment Bill* (TLAB) which are hangovers from the February budget and must be passed before the MTBPS (currently pencilled in for 26 October 2022). This is always urgent and yet this year delayed given additional recess time for summer to encompass the ANC policy conference. This could take several more weeks;
- In addition, SCOF is also showing more interest in the *Financial Matters Amendment Bill* [B20-2022], which though tabled after the *General Laws Bill*, is politically important and heavily backed and pushed by unions, especially Cosatu, into the ANC caucus. This Bill is the one that will split pension pots into two to allow for early access to savings;
- In the first committee meeting to discuss the *General Laws Bill*, there was strong pushback from the Committee Chairman Joe Maswanganyi and other committee members on rushing the Bill – something National Treasury was trying to persuade the committee to do in its briefing. It showed some resistance to the complexity of the changes, including on trusts beneficial ownership and on politically exposed persons definitions.

In the committee stage we think there will be some strong pushback from NGOs on registration given a complex relationship in the past few years between the Department of Social Development and NGOs on the need to register (it was seen as a way of controlling NGOs and especially ones critical of government – a perhaps not unjustified concern). We also see problems potentially emerging on beneficial trusts and political exposed person definitions though quite who brings these to committee – i.e., puts up a hand to argue for an unjustifiable status quo – will be interesting to watch.

We therefore currently struggle to see a committee stage itself of less than four months as our baseline. Further time would then be needed in the NCOP and National Assembly before it is passed. Adding in Presidential Assent we struggle to see the Bill in law before the February plenary on the current trajectory. This would already be an accelerated path we should note and there is the risk that it slips further. It is possible but a huge stretch.

In addition to this Bill, small amendments will also be made to *Protection of Constitutional Democracy Against Terrorist and Related Activities Amendment Bill* [B15-2022] to cover terrorist financing issues and powers of law enforcement related to this. This Bill is currently before the Police Committee but was tabled without the

requirements to be FATF compliant in July 2022. The amendments will be added in committee.

While National Treasury has been working through its parliamentary councillor staff to try and shepherd things, a political route is required. This would involve the ANC caucus – via the deputy president who is responsible for parliamentary business, the minister of finance and the ANC economic transformation committee chair (and Cabinet economic cluster chair) Minister Mmamoloko Kubayi – instructing the ANC caucus and the ANC chair of chairs who manages committee logistics, to accelerate the Bill. We do not believe this has happened yet, despite Organised Business structures such as BLSA urging Parliament's expeditious processing of the Bill.

Case Study – Mauritius

At its Plenary meeting on 21 October 2021, FATF announced that it had removed Mauritius from its grey list of jurisdictions with strategic deficiencies in its approach to AML/CFT. The move followed an onsite assessment of Mauritius's AML-CFT Framework by the FATF's Africa/Middle East Joint Group (AME JG) from 13 to 15 September 2021. The AME JG assessment was to verify that implementation of its AML/CFT reforms had begun and was being sustained, and that the necessary political commitment remained in place to sustain implementation in the future. The delegation met with the relevant ministries and authorities and visited the premises of a number of institutions.

Mauritius was first placed on the FATF grey list in February 2020. The nation was subsequently included on the European Union's revised list of high-risk countries with strategic deficiencies in their AML-CFT framework (EU blacklisting), effective 1 October 2020.

Following its listing, Mauritius made a **high-level political commitment** to the FATF to address the strategic deficiencies identified. A committee headed by the Prime Minister was assembled to accelerate the implementation of its FATF Action Plan and secure removal from the FATF list by September 2021.

Mauritius made the following key reforms:

- **Conducting outreach to promote understanding of ML and TF risks and obligations**
- **Developing risk-based supervision plans effectively for the Financial Services Commission (regulatory authority)**
- **Ensuring access to accurate basic and beneficial ownership information by competent authorities in a timely manner**
- **Providing training for law enforcement authorities to ensure that they have the capability to conduct money laundering investigations.**

"In its 21 October 2021 communique, the Financial Services Commission (FSC) reiterated its unflinching commitment in the fight against money laundering, terrorism financing and proliferation financing. The FSC said it will spare no effort to take all necessary actions to protect the integrity of the financial services sector, including the global business sector, with a view to uphold the reputation of Mauritius as a robust and credible jurisdiction."

- Overall Mauritius strengthened the effectiveness of its AML/CFT regime and addressed related technical deficiencies to meet the commitments in its action plan regarding the strategic deficiencies that the FATF identified in February 2020. Thus, at its Plenary meeting in June 2021, FATF decided that Mauritius had "substantially completed" its Action Plan. It commended Mauritius for the progress achieved in addressing its strategic deficiencies, especially under difficult circumstances caused by the COVID-19 pandemic.

In parallel, Mauritius made applications for an upgrading against FATF Recommendations 8, 24 and 33, which were considered during the 21st Council of Ministers Meeting and 42nd Task Force of Senior Officials' Meeting of the Eastern & Southern Africa Anti-Money Laundering Group (ESAAMLG), for 26 August to 7 September, and the island was re-rated as follows:

- 'Non-Compliant' to 'Largely Compliant' for Recommendation 8 (Non-Profit Organisations)
- 'Partially Compliant' to 'Largely Compliant' for Recommendation 24 (Transparency and Beneficial Ownership of Legal Persons)
- 'Partially Compliant' to 'Compliant' for Recommendation 33 (Statistics).

This means that Mauritius is now 'Compliant' or 'Largely Compliant' with 39 out of the 40 FATF Recommendations and is only now rated as 'Partially Compliant' in respect of Recommendation 15 (New Technologies). Mauritius continues to work with the ESAAMLG to strengthen its AML/CFT regime. The government also circulated a draft Virtual Assets Business Bill for consultation in view of seeking the comments from stakeholders.

The removal of Mauritius from the FATF grey list re-establishes its position as a jurisdiction of substance and reinforces its credentials as the leading investment destination and domicile of choice for structuring cross-border

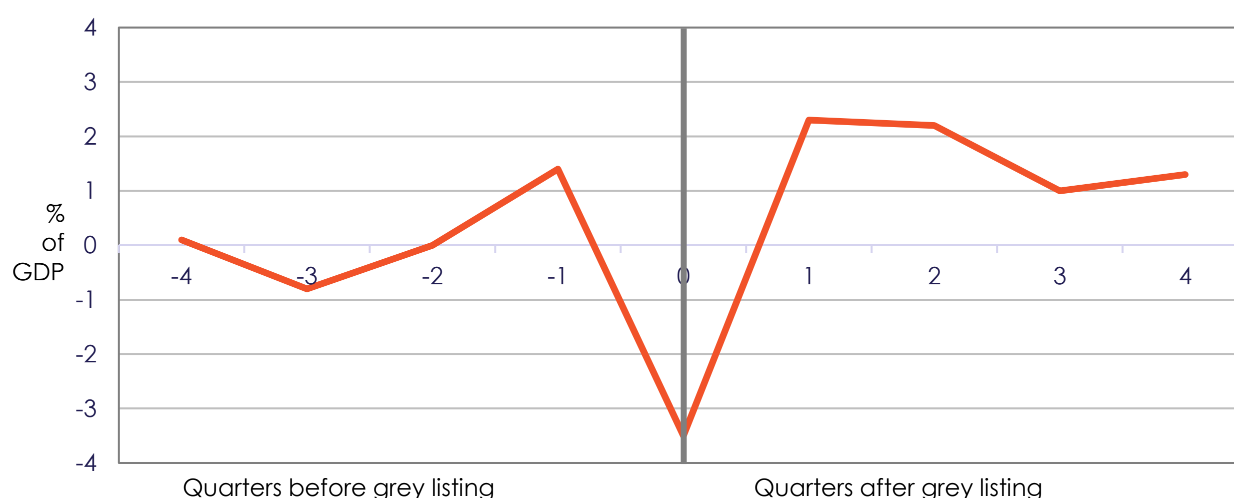
5. Grey listing economic impact

Since the FATF recommendations are an integral part of the United Nations and other major international conventions, the Task Force exerts considerable hard power through sanctions and economic coercion to interdict the financing of terrorist organisations internationally and disrupt the targeted economies.

FATF sanctions deal specifically with the financial sector and international financial transactions of the country concerned, and thus grey listing increases scrutiny of any listed country by other members and international financial institutions and banking systems. For the listed country, the result is higher costs of transactions with its partners. Risks are even higher for the blacklisted or "high risk" countries, with the possibility that they may no longer be able to do business at all. In its Interpretive Note to Recommendation 19 related to high-risk countries the FATF prescribes a list of extensive measures targeting the financial sector of listed countries. The measures vary from "enhanced due diligence" of transactions with the listed country, to prohibiting financial institutions from establishing branches or representative offices in and limiting business relationships or financial transactions with the country concerned. Not all grey listed jurisdictions necessarily end up on the blacklist (Shah, 2018), indeed currently only North Korea and Iran are blacklisted.

The event of grey listing triggers provisions in supervision requirements to treat grey listed countries as high risk. It also has a general reputational effect in signalling to investors that a grey listed country is not compliant with international anti-money laundering and terrorist financing standards. Both of these factors would be negative for the South African economy, although estimating the extent is difficult and depends on perceptions about how quickly South Africa is responding and will be able to exit the grey list.

Figure 4: Net capital flows before and after grey listing



Source: Kida & Paetzold (2021). Note: based on regression analysis of IMF data for 89 countries that were grey listed at any point 2000-2017.

Previous studies generally find that grey listing negatively affects capital flows into countries, with consequent effects on economic activity and growth. The International Monetary Fund (IMF) last year published a paper that analysed 89 countries that were grey listed at some point between 2000 and 2017, showing that capital flows declined by an average of 7.6% of GDP when a country is grey listed. It also finds that foreign direct investment (FDI) inflows decline by 3.0% of GDP, portfolio inflows decline by 2.9% of GDP and other inflows decline by 3.6% of GDP(Kida & Paetzold, 2021).

Other effects that have been discussed in the literature include:

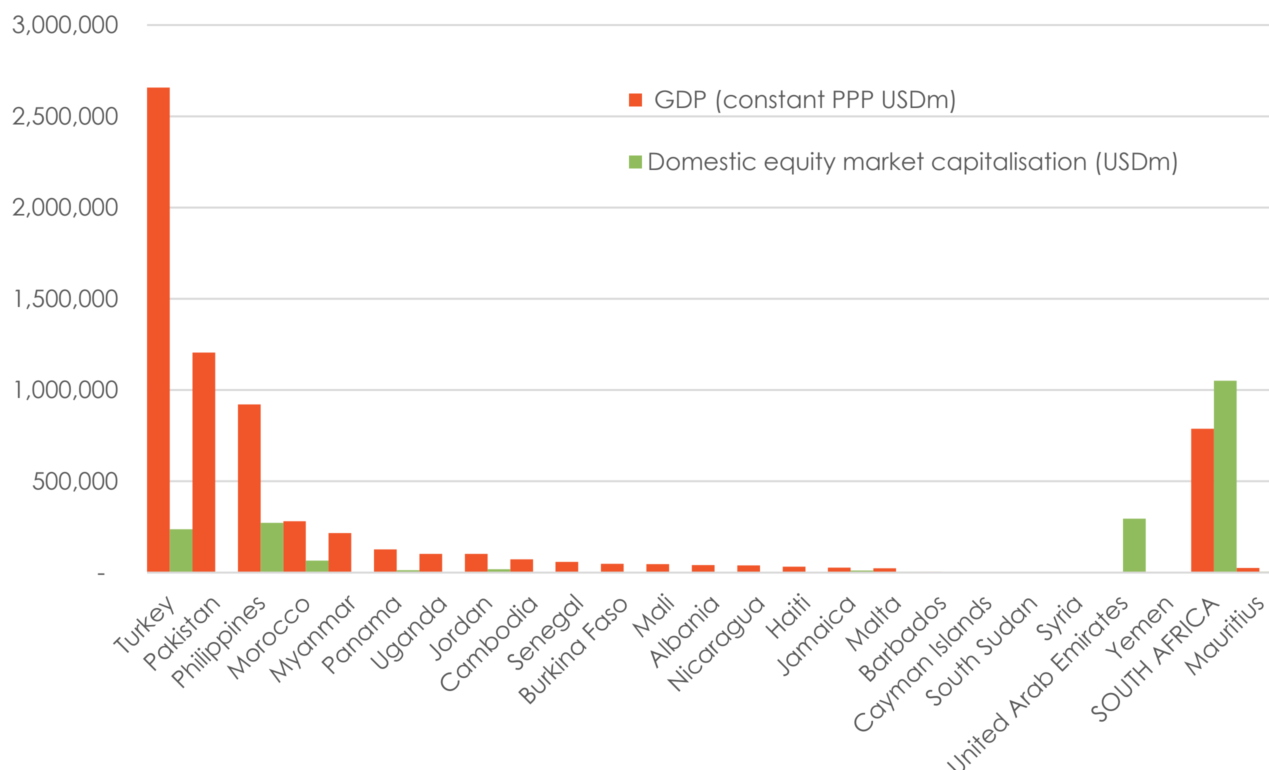
- **De-risking:** banks may exit relationships with customers that are based in high-risk countries to reduce their compliance costs (Alleyne et al., 2017; Collin et al., 2016);
- **Market enforcement**: investors use grey listing as a heuristic for evaluating the risk of doing business with a country, and therefore reallocate resources to reduce their exposure to the country (Morse, 2019);
- **Cross-border payments**: using SWIFT monthly numbers of cross-border payments between customers in every country connected to the SWIFT network between 2004 and 2014, a study found that being grey listed results in a 7%–10% reduction in the number of payments sent to an affected country by the rest of the world (Collin et al., 2016).

Generally, capital flows correlate with positive economic growth although the literature on this point is mixed. The early debate in the literature is split between the modernisation theory developed by Max Weber (1864-1920) that argued that FDI inflows into recipient countries drive economic growth, and the dependency theory that argued that foreign investment supported the exploitation of target countries and damaged growth. This theoretical background has been subject to much testing. In the South African context, Tshepo (2014) analysed the period 1990-2013 and found a positive long-run relationship between FDI, GDP and employment. External borrowing is also important to growth, with Joshua *et al.*, (2020) arguing that external debt is a predictor of economic expansion in South Africa. Studies that dispute the positive relationship between foreign capital flows and economic growth, mostly find the specific institutional arrangements make the difference, with appropriate capital markets infrastructure and domestic investment key to ensuring positive effects of foreign capital flows including avoiding debt traps. Given South Africa's positive history of mobilising global capital flows to supplement a weak domestic savings rate since the advent of democracy, a negative investment shock from grey listing would likely have negative effects on growth.

South Africa would be the most sophisticated economy to face grey listing to date and only the second member of the G20 after Turkey. It is not the biggest – Turkey, Pakistan and the Philippines are bigger, but on many measures, it is more financially sophisticated and integrated into the global financial system (see Figure 5). It is a more open economy than other grey listed countries and has a larger participation by foreign investors in both portfolio investment and FDI.

This makes it difficult to extrapolate from studies of the impact of grey listing on other countries to determine how South Africa will be affected. There have also been numerous changes in anti-money laundering and terrorist financing regulations in the world's major economies affecting how institutions in those economies treat counterparts from grey-listed economies, generally making them more stringent. South Africa's relatively larger exposure to foreign funding might exacerbate the impact, but it may also have the opposite effect in minimising it thanks to the diversity of sources of funding from portfolio flows, direct lending and FDI. South Africa's large and liquid capital markets could replace direct lending that may be withdrawn so we would expect the effects to be less than in other countries that rely on narrower channels of funding such as external lending and aid.

Figure 5: GDP and market capitalisation of FATF grey-listed countries compared to South Africa and Mauritius



Source: World Bank World Development Indicators. Latest data available is 2020

In this section we analyse likely effects by examining each of the main channels for flows of money between South Africa and the rest of the world. The economic impact of grey listing will largely be through heightened transaction costs on these flows, primarily driven by enhanced due diligence by global counterparts. There will be additional costs should counterparts choose to de-risk themselves by severing relationships with South African clients to reduce their compliance costs. The flows will be affected differently depending on the source of flows including the banking system, capital markets flows and FDI.

The implications are clearest for foreign institutions that are accountable institutions in terms of the FATF regulations such as banks and other financial services providers. We do not expect there will be significant disruption to normal trade, such as from suppliers to South African companies or from customers in routine buying and selling of goods and services, other than indirectly through their respective banks who may apply enhanced due diligence to transactions with South African receivers or senders.

Banking relationship effects

South African businesses (and individuals) using foreign bank accounts and other financial services will face heightened due diligence costs. Accountable institutions in foreign jurisdictions, particularly banks, but also financial infrastructure providers such as payments systems, clearing houses and wholesale financiers, will categorise South Africa as higher risk and apply more stringent oversight accordingly.

The European Union has directed member countries to ensure that relevant institutions apply enhanced due diligence to high-risk countries, and that FATF grey listing automatically implies a country is high risk. An EU directive to member countries declares that "Member States should require obliged entities to apply additional mitigating measures regarding high-risk third countries identified by the Commission by

taking into account calls for countermeasures and recommendations, such as those expressed by the FATF, and responsibilities resulting from international agreements" (European Union Directive, 2018).

Similarly, the United Kingdom amended regulations with effect from 11 July 2022 to provide that "high risk third countries" must mirror the FATF grey list in terms of money-laundering regulations. New and existing customers in such countries must then be subject to enhanced due diligence: "regulation 33(1)(b) requires businesses to apply enhanced customer due diligence and enhanced ongoing monitoring in any business relationship with a person established in a high-risk third country or in relation to any relevant transaction where either of the parties to the transaction is established in a high-risk third country" (UK Department for Education, 2022).

Regulatory authorities worldwide provide guidance on how institutions should undertake due diligence on high-risk countries, but there is scope for certain degrees of national discretion. The FATF specifies that "Enhanced due diligence measures include obtaining additional information on the customer, obtaining information on the source of funds and source of wealth of the customer, and enhanced monitoring of the business relationship" (FATF, 2022). Institutions within each country also have some latitude on precisely how they implement enhanced due diligence, so South African clients may be able to find service providers with more efficient due diligence processes that have a lower impact on transaction costs.

One international bank we spoke to, which is not headquartered in the EU or UK, said it used the FATF grey list as an automatic "high risk country" signifier and would apply enhanced due diligence to all South African clients following grey listing. In that case the enhanced due diligence would be more frequent – moving to annual reviews rather than every three years – and more stringent with company executives and directors needing to confirm compliance with various anti-money laundering provisions and details on the sources of funds.

Kida & Paetzold (2021) show that bank inflows tend to drop in the months before grey listing but partly recover thereafter. They also find that there are limited outflows post grey listing in the 89 countries they studied.

Banks operating in South Africa will incur higher transactional, administrative, compliance, auditing and funding costs, due to heightened demands by foreign counterparts. This could come in the form of being subjected to due diligence checks by financial institutions as often as biannually, depending on risk profile.

The SARB's adoption of global best practices underpins the country's robust institutional framework for financial sector regulation, which should translate into sound governance at banks. While banks' digital transformation has contributed to embedding AML/CFT requirements into their risk management, the financial sector is indirectly exposed to gaps from the private sector, which might have weaker understanding and management of these risks.

We expect that the FATF will note progress in effective compliance by the banking sector with the specified immediate outcomes that the FATF set. This positive endorsement of the banking sector should support some counterparts to minimise the risk. Despite some reputational risk and potentially higher cost of compliance, the implications of grey listing for the banking sector are likely to be muted.

Capital market effects

Credit rating agencies' Fitch and S&P recently stated that it is unlikely that South Africa's transition to being grey listed will affect the nation's rating or the ratings outlook. Although these risks are generally considered in the sovereign, financial institution, and company ratings, S&P believes the grey listing could increase the costs of financial

transactions and compliance for the economy. We should not discount the risk however that ratings agencies do not have a particularly strongly formed view given the unique situation here of such a liquid market like South Africa facing grey listing.

Institutional investors and fund managers must apply due diligence when accepting money from their clients, which will include establishing the source of the funds. Following grey listing we expect that international asset managers and other firms managing wealth on behalf of South African clients will change their risk rating to high risk and apply enhanced due diligence. There are no specific requirements for what this means in major jurisdictions such as the UK or EU, but clients should expect enhanced ongoing monitoring and greater involvement by senior management in reviewing client exposures. We also expect the "refresh cycle" through which firms review clients to be higher, typically one year, and that institutions will generally be more reluctant to onboard new clients.

We do not anticipate that enhanced due diligence by international institutional investors will have a significant economic or balance of payments impact, other than through the contribution to higher transaction costs. Certain South African firms who contract offshore asset managers will face greater scrutiny, but this will be relatively isolated.

Importantly, we do not expect that FATF grey listing will have a notable impact on **capital market flows**, i.e. investments into South Africa's equity and bond markets, at least in secondary market activity. There is no requirement in any regulatory guidelines that we are aware of that vet the target investment universe in response to FATF grey listing. Certain investment strategies involving ESG integration may incorporate FATF grey listing as one factor in modelling governance risks, but this will be relatively minor in affecting wider flows. From conversations with asset managers, we believe that most major internal asset managers will "note" South Africa's grey listing in terms of standardised internal score sheets and tracking of attributes of assets, but we can find no real evidence from such discussions that this forces credit or investment committees to take any particular view, nor to undertake any form of enhanced due diligence.

Generally, investors in South African debt and equities will be aware of the risks of corruption and FATF grey listing will not shift these risk perceptions. There may be some adjustment to investors' outlook for South African growth as a result of grey listing which may have indirect effects on appetite for South African exposure, but again this will be relatively minor and swamped by other fundamental issues on the horizon for the economy (macro and micro) that impact performance. This indirect effect will likely be priced in before grey listing.

Kida & Paetzold (2021) show that there is generally a surge in capital outflows a few quarters ahead of grey listing, but that portfolio flows tend to be more sensitive and prone to a reversal after the shock of grey listing itself.

There may be more of an impact in primary market activity, largely through enhanced due diligence by arranging banks where an international bookbuild is contemplated. This could affect state-owned entities as well as the sovereign in efforts to issue new hard currency bonds in that it may be more difficult to secure the services of investment banks. However, we anticipate that the effect in this respect will be small, amounting to a minor increase in arranging fees rather than a material change in access to capital markets.

Grey listing will not have any first order impacts on asset allocation choices of domestic asset managers. However similar to comments above it might have impacts in terms of asset managers' perceptions of broader flows and pricing.

Foreign direct investment

The impact on FDI will be indirect too. Grey listing has no direct impact on global firms' ability to invest in South African firms through either listed or unlisted mechanisms. There will be indirect frictional costs from higher costs of related banking transactions, including the cost and availability of financing for such deals but these will be marginal in our view vs deal size. The primary impact will be reputational, in driving perceptions of South Africa as a high-risk destination, which would be negative for FDI and align with wider concerns of the general "doing business" environment

Development funding

Grey listing may complicate South Africa's access to development funding such as concessionary funding from the World Bank or regional institutions like the European Investment Bank and African Development Bank. It may also affect programmes underway such as the Just Energy Transition Partnership (JETP) that is aiming to arrange official funding of $8.5bn to fund South Africa's energy transition – where there have been corruption and fraud concerns expressed by civil society and even foreign governments themselves. These are, however, subject to variation in terms of specific commitments. For example, Pakistan was able to access several IMF packages while it was grey listed (Economist Intelligence, 2018), however negotiations with any multilateral financial institution will likely be more complicated and may include conditions regarding improvements in FATF compliance. FATF status can be used in politically complex assistance discussions to dissuade certain countries from providing bilateral finance or supporting multilateral deals.

Overall, we think that grey listing would add complication and time to processes as further negotiations and due diligence were undertaken, rather than necessarily derailing funding.

Overall economic impact

To summarise the discussion in this section, we expect that the primary economic impact will arise from increased transaction costs related to enhanced due diligence applied to most South Africans' client relationships with foreign service providers. This will increase the cost of capital and generally reduce overall foreign investment in South Africa. There will also be greater costs in the primary issuance of debt and equity particularly to international investors stemming from reputational effects and due diligence costs by book builders.

The extent of these costs depends substantially on South Africa's ability to demonstrate progress in meeting FATF requirements and that it will exit the grey list as soon as possible. If South Africa is perceived as an entrenched grey list member, counterparts will become more reluctant to do business and multilateral funders will become more reticent to engage. South Africa will need to make clear and deliberate moves toward compliance and ensure these are publicly visible and well understood by international counterparts to limit the costs.

In an optimistic scenario in which South Africa is able to do this, the cost of grey listing would be fairly low, and we would expect an impact of under 1% of GDP per annum for the period of grey listing. However, in the event that grey listing is sustained and global confidence in South African efforts to address FATF recommendations is low, the reputational impact will over time have a material effect on investment flows and financing costs, while counterparties will be more likely to reject South African clients on compliance cost and risks. Given South Africa's relatively high integration in the global financial system and the high proportion of economic activity that depends on this integration, grey listing will have an order of magnitude greater GDP impact and over a

longer period. The economic impact could result in two to three percentage points lower GDP per annum for a sustained period, recovering only gradually once grey listing is lifted.

6. Conclusion and recommendations

South Africa will likely be grey listed. Our primary recommendation is that all stakeholders need to prepare to minimise the impact.

We anticipate that the FATF will acknowledge achievements on several of the priority actions that were set out in the mutual evaluation report. In particular, legislative amendments, though they may not be finalised by the time of the February 2023 plenary, will be far advanced and able to demonstrate progress.

The remaining challenge will be the effectiveness assessment. In South Africa's favour will be the progress made since the mutual evaluation report undertaken in 2019 in bringing those implicated in state capture to justice. The National Prosecuting Authority now has 29 cases on the court role including 22 criminal and seven civil matters. It has issued restraining orders valued at R6.75bn in those matters. Additionally, key Gupta family members have been arrested in Dubai and extradition is underway.

The qualitative nature of the effectiveness assessment provides a level of uncertainty on how the FATF will decide. The assessment will involve answering "to what extent is the outcome being achieved" and "what can be done to improve effectiveness". The assessors need to consider context and progress, but ultimately need to be convinced by successful prosecutions and other enforcement actions related to money laundering and terrorist financing.

On this front, the bar appears to be too high to meet. The NPA's success in mounting prosecutions has not yet resulted in convictions. It has been more successful in freezing assets domestically but has not yet recovered assets from abroad. As we outlined in section 3, there are considerable institutional reforms that still need to be undertaken by the police, the FIC and other institutions such as the CIPC and Master's Office.

We anticipate that the February 2023 plenary will highlight the lack of progress in these areas, as well as on the effectiveness of ML/TF prosecutions. It is important that South Africa has a clear and credible response to these concerns.

One important feature required for that credibility is demonstrated political will at the highest level. The progress required is a focused effort at aligning disparate parts of the public sector and ensuring effective institutional reform and development. The Mauritian example provides guidance here: effective change required the clear intervention of the prime minister whose office oversaw the required changes to meet FATF expectations as quickly as possible.

Our **primary recommendation** is that the South African presidency needs to establish a specific task team to drive the institutional development and change management needed to ensure effective compliance with the FATF requirement. This task team will need to supplement ministerial efforts, particularly in the ministry of police, home affairs ministry and department of justice. The task team will need to work with National Treasury's Inter-Departmental Committee team to ensure delivery of immediate outcomes to meet the FATF's effectiveness determination. The task team should primarily be focused on resource mobilisation and support for institutions to implement change. It should be able to draw on private sector support to mobilise capacity where there are blockages that are slowing progress.

The Presidency's Operation Vulindlela, formed with National Treasury, has proved effective at clearing blockages to the successful implementation of policy in priority areas. This provides inspiration for how an AML/CFT task team should function between the Presidency and National Treasury, with active monitoring and public reporting of progress in achieving compliance.

For the private sector, banks and other institutions with cross-border financial services relationships will need to prepare for enhanced due diligence. This will require senior management time. A review of key relationships should be a first step, then an active engagement with those counterparts to query what impact FATF grey listing will have in their risk management frameworks and whether it will trigger an increased risk categorisation. Based on this feedback, firms should ascertain what enhanced due diligence will require and establish the capacity to comply with enhanced due diligence with minimal inconvenience. Firms can also actively engage with counterparts to share knowledge of South Africa's efforts to deal with grey listing and assure them it has the highest political priority and that rapid progress should be expected.

On the whole, South Africa needs to unite to act swiftly and effectively to meet the FATF's expectations. It needs to communicate clearly to the international community on its intentions and progress. The aim must be to build confidence that South Africa's grey listing will be short lived and that the country will soon return to a fully compliant FATF member. This effort will require a united front between government and business.

Should South Africa effectively deliver, the FATF grey listing experience may well prove a long-term positive legacy for the country, providing the impetus to make considerable improvements in its overall commercial crime investigation and prosecution architecture, as well as the appropriate supervision of higher risk institutions. This would be highly positive for the business environment, giving business a clear interest in motivating and supporting FATF compliance, quite beyond the avoidance of the enhanced due diligence and transaction costs that will be caused by grey listing.

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