

Corporate & White Collar Investigations ALERT

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Anti-Money Laundering: A reminder to comply with legislation and work towards South Africa's removal from the FATF grey list

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Anti-Money Laundering: A reminder to comply with legislation and work towards South Africa's removal from the FATF grey list

Money laundering is the illegal practice of making proceeds obtained through criminal activities, such as the trafficking of illegal drugs, corruption, ransom demands, and human trafficking, appear to have been obtained from legitimate commercial activities and sources.

There is a concerted global effort to prevent money laundering and terrorist financing by implementing and driving measures to protect financial systems from being used to transmit illicit funds and profits from criminal activities. The international standard for the fight against money laundering, terrorist and proliferation financing has been established by the Financial Action Task Force (FATF). States bear the responsibility for adopting and implementing the FATF standards by passing legislation which gives effect to the standards and creating bodies that ensure compliance with such legislation.

On 24 February 2023, FATF placed South Africa on its "grey list". FATF has a practice of assessing and publicly identifying countries with anti-money-laundering and counter terrorist financing shortcomings and South Africa failed to remedy these when it was evaluated, thus resulting in it being greylisted. This means that it is a jurisdiction that is under "increased monitoring" and is working with the FATF to address the identified deficiencies.

This article reiterates South Africa's commitment to fighting money laundering by considering the applicable legislation, enforcement and the current position as we work to remedy the shortcomings that resulted in our greylisting.

South Africa's legislative framework

A strong and effective legal framework is crucial for addressing the threat of money laundering. South Africa is a member of the FATF and has developed an anti-money laundering legislative framework which consists of a number of Acts. The most pertinent are the Financial Intelligence Centre Act 38 of 2001 (FICA), General Laws (Anti Money Laundering and Combating the Financing of Terrorism) Amendment Act 23 of 2022 (AML Amendment Act), the Prevention of Organised Crime Act 121 of 1998 (POCA), and the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004 (POCDATARA).

FICA

FICA is South Africa's primary anti-money laundering and counter-terrorism financing legislation. The main purpose of FICA is to prevent and detect the proceeds of criminal activities in South Africa by imposing regulatory requirements on accountable institutions. Regulations have been issued to give further guidance on the implementation and applicability of FICA.

AML Amendment Act

The Amendment Act is the recent legislation that is aimed at addressing the deficiencies identified by the FATF through amending the following Acts to increase the obligations on organisations to prevent money laundering:

- FICA
- Companies Act 71 of 2008
- Trust Property Control Act 57 of 1988
- Financial Sector Regulation Act 9 of 2017
- Non-profit Organisations Act 71 of 1997

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POCA

POCA makes it a punishable offence to engage in all forms of money laundering. POCA criminalises money laundering.

POCDATARA and the Amendment Bill of 2021

POCDATARA gives effect to a number of instruments that address the threat of terrorist financing which is closely related to money laundering. Illicit proceeds from criminal activities can be laundered and channeled through financial systems to fund terrorist activity. It must be noted that financial terrorist activity is a crime.

Prevention of money laundering

FICA seeks to prevent and detect the proceeds of criminal activities in South Africa by imposing regulatory requirements on accountable institutions. Compliance with FICA, together with the effective implementation of POCA and POCDATARA, contributes to making it more difficult for financial criminals to hide their illicit proceeds in the formal financial sector and thereby profit from their criminal activities, and to cutting off the resources available to those seeking to use terror as a means to promote their cause.

In conclusion, South Africa and the relevant regulatory bodies remain committed to ensuring compliance with the anti-money laundering legal framework and the successful de-listing of South Africa from the FATF's grey list in the near future.

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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