



Strengthening the system

Eversheds Sutherland reviews the measures and recommendations outlined in the FATF Mutual Evaluation Report on the UAE.

The Financial Action Task Force (“FATF”), the inter-governmental global money laundering and terrorist financing watchdog, has now issued its 2020 Mutual Evaluation Report of the UAE following its site visit which took place during July 1 – 18, 2019. The purpose of the report is to summarise the anti-money laundering (“AML”) and counter-terrorist financing (“CTF”) measures in the UAE, analyse the level of compliance with the 40 FATF recommendations and the level of effectiveness of the UAE’s AML/CTF system. FATF also provides recommendations on how the UAE’s system could be further strengthened.

POSITIVE CHANGES TO THE AML/CTF SYSTEM

FATF credited the UAE for taking significant steps in strengthening its AML/CTF framework since its last evaluation, most notably, the development of the National Risk Assessment (“NRA”) and

the enactment and amendment of its AML legislation in 2018 and 2019. This is evident in the ratings; FATF rated the effectiveness of the UAE’s system as ‘Moderate’ or ‘Substantial’ (rather than ‘Low’) in the majority of areas assessed and none of the areas evaluated for technical compliance with the 40 recommendations were rated as ‘Non-Compliant’. This shows a continuous improvement by the UAE in achieving the robust standards set by FATF since its 2008 Mutual Evaluation when 11 areas were rated as non-compliant (noting however that the UAE’s overall compliance status was then re-rated and deemed to be satisfactory during FATF’s 2014 follow up process.)

As well as its implementation of a comprehensive legislative framework, the report also recognises the number of non-legislative measures taken by the UAE to address its AML and CTF risks. These include the following activities which form part of the National AML/CTF Strategy, which in turn is supported by the UAE’s National Action Plan:

- » Appointment of AML/CTF supervisors for Designated Non-Financial Businesses and Professions (“DNFBPs”);
- » On-going development of a National Economic Register of basic ownership information on legal persons to address company registration across 39 different registries;
- » Increased training, guidance and awareness raising to increase the rate of money laundering investigations, enhancements of the Ministry of Interior and Financial Intelligence Unit (“FIU”) databases and IT systems and the formation of an inter-agency money laundering investigation committee to improve coordination, sharing of information and development of expertise;
- » Increased focus on risk-based supervision and the formation of a Supervision Committee to improve coordination amongst multiple supervisors, sharing of information and development of expertise;
- » Development of a typology by the FIU on the abuse of legal persons in Commercial Freezones and the real estate sector for money laundering purposes;
- » Development of a new mechanism for communicating targeted financial sanctions without delay.

FATF also highlights the positive steps taken by the UAE to control its CTF risks. FATF found that the UAE actively identifies and investigates terrorist financing activities including the role of the terrorist financier. Reference was also made to the UAE’s high conviction rates for terrorist financing offences at 82 per cent during the period of 2013 - 2019. The report also recognises that State Security has a robust array of tools, data sets and capabilities it can employ to investigate and analyse terrorist finance related activity.

CONTINUOUS IMPROVEMENT

Whilst the report highlights the numerous positive steps taken by the UAE, it also indicates areas where there will be further follow up, taking into account the fact that several changes to the UAE’s legislative framework were implemented only recently. Further FATF follow-up is therefore required in order to build on the work carried out to date and to evaluate the full impact on the effectiveness of the system. It is important to put the FATF report in context in this regard, specifically the fact that FATF follow ups are common place

given the high standards it rightly sets in its fight against financial crime. For example, jurisdictions such as Denmark and Singapore were both placed in Enhanced Follow following their FATF visits in 2016 and 2017, notwithstanding their global reputations for having strong, secure and well established financial systems.

FATF recognises that in terms of technical compliance, the UAE’s legal framework has been significantly enhanced and is now comprehensive in a number of respects. Further enhancements however have been suggested in the following areas: (1) risk assessment and mitigation; (2) targeted financial sanctions; (3) higher risk countries; (4) beneficial ownership requirements and (5) the analysis function of the FIU, although these areas were all rated ‘partially compliant’ in the report.

In rating the effectiveness of the system, FATF identifies the following areas as those requiring further change: (1) international cooperation; (2) legal Persons and arrangements; (3) money laundering investigation and prosecution; (4) targeted financial sanctions related to proliferation financing.

Identifying the precise nature of its AML and CTF risks is an ongoing priority and a core part of any jurisdiction’s program designed to combat financial crime. The efforts undertaken by the UAE to better understand those risks are recognised in FATF’s report, with the compilation of the NRA and the implementation of its ambitious National AML Strategy being identified as key steps forwards. However, the report also recognises that it is too early to assess the precise impact that this has had on the UAE’s ability to mitigate some of the more sophisticated risks posed by, for example, professional money laundering networks or trade-based money laundering. FATF recommends deepening and refining the UAE’s understanding of money laundering and terrorist financing residual risk at both a national and Emirate-level by assessing how threats are exploiting system vulnerabilities, while taking into account the impact of mitigating measures. In particular, the report recommends focusing on the most immediate and pressing money laundering risks (such as professional money laundering networks and foreign proceeds of crime).

Inevitably an understanding of inherent AML/CTF risks facing the private sector will



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also take time to filter down to firms that are newly regulated such as DNFBPs outside of Financial Free Zones and this is reflected broadly in the FATF findings. These firms will need time to embed a culture of compliance and their risk management frameworks. FATF recommends enhanced monitoring of sectors' awareness of risk, mitigation measures and compliance, most notably ensuring that all DNFBPs are aware of their obligations through supervisory tools and enhanced guidance, education and outreach including the completion of STRs and transaction monitoring systems.

This increased focus on supervisory engagement and education is also prevalent in other FATF recommendations, including those designed to embed the concept of a 'risk based approach' to supervision and those which help firms understand their obligations surrounding targeted financial sanctions.

FATF have made several other recommendations to help the UAE refine some of its more recently implemented risk mitigation measures. These include; use of evolving risk analysis and stakeholder insight by the National Committee and NRA Sub-Committee to help inform its application of measures; continued support for the FIU to help further enhance the UAE's use of financial intelligence ; ongoing commitment to the high-level policy objective of routinely pursuing confiscation in all agency actions plans and procedures; enhanced overall understanding of beneficial ownership across registries through guidance and training and greater use of formal international legal assistance processes.

WHAT NEXT?

The UAE has always been committed to combating financial crime and it has already made significant improvements to tighten its AML/CTF framework in a relatively short timeframe. There is no doubt that we will soon start to see the wider impact of some of the more recent changes made to the AML/CTF framework along with further steps taken to implement FATF's recommendations.

It is difficult to predict precisely what will happen next and when but we expect to see continued support for authorities and the private sector firms with steps being taken to help increase coordination, knowledge sharing, training, awareness and resources.

As these changes embed, the UAE's ability to demonstrate its enhanced understanding of the complex and nuanced risks facing the jurisdiction and particular sectors and the effectiveness of its risk management measures will no doubt follow.

The UAE has always led the way in the Middle East region in its commitment to combatting financial crime with its legislative framework and investment in risk management evolving at a pace. Such commitment has consistently earned the UAE its high positions in the various league tables, such as TRACE's Bribery Risk Matrix reports, the Transparency International Corruption Index and the Ease of Doing Business ratings. We have no doubt that it will embrace the recommendations of the FATF report and continue to enhance its ongoing progress, to meet the international gold standards set by FATF. 🇦🇪



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