

Myanmar Added to FATF Call to Action List, Cayman Islands Remains on Grey List

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The FATF Plenary in Paris was concluded on the 21st October. Myanmar, having been set a deadline of September 2021 to address its strategic deficiencies as exposed in its 2018 Mutual Evaluation Report, has been placed on the list of jurisdictions subject to a “Call for Action”.

This list, aka the “Black List”, comprises high-risk jurisdictions exhibiting significant strategic deficiencies in their anti-money laundering, countering the financing of terrorism, and anti-proliferation financing regimes. Other jurisdictions are expected to apply enhanced due diligence to business relations with nations on the Black List, and in certain cases to apply countermeasures against them to protect the international financial system.

Myanmar had been given an eight-point plan of action, none of which have so far been adequately addressed. Nonetheless, the requirements for FATF members at this point is only to exercise enhanced due diligence in business relationships with Myanmar; no other countermeasures have so far been recommended, much less urged.

Two other nations are on the Black List: North Korea (DPRK) and Iran.

FATF has been urging members to advise its financial institutions to pay careful attention to business relationships with North Korea since 2011. Jurisdictions are urged to apply targeted financial sanctions in line with United Nations Security Council Resolutions, and countermeasures including the closure of branches, subsidiaries, and representatives of North Korean banks in their territories, and terminating correspondent relationships with North Korean banks.

Iran’s plan of action to address its strategic deficiencies was put in place in 2016, but the deadline expired in 2018 with the plan incomplete and since then its failure to enact anti-terrorist financing conventions has led to a previous suspension in countermeasures to be lifted. Business relationships with Iran are expected to be subject to enhanced due diligence, along with increased examination of subsidiaries and branches of financial institutions based in Iran, increased external audit requirements, and enhanced reporting mechanisms of financial transactions.

Thus, comparing Myanmar with these two nations, Myanmar is, for now, in a slightly lower category than North Korea and Iran, but above that of those countries on the so-called “Grey List”.

The Grey List is a list of jurisdictions under increased monitoring. Jurisdictions on this list are not automatically subject to enhanced due diligence, however, when conducting business activities, the reasons why a jurisdiction is on the Grey List should form part of any risk assessment. Inclusion on the Grey List is due to the deficiencies highlighted in the 4th Round Evaluation process, which is still ongoing.

Not all jurisdictions have been subject to this round of mutual evaluations, meaning that not appearing on the list does not automatically mean that that jurisdiction has no deficiencies, it could be that they have not had their 4th Round Evaluation.

Since February 2021, the Cayman Islands was placed on the Grey List due to three deficiencies in its regime. Contrary to popular expectation, the Cayman Islands remains on the Grey List, despite it was acknowledged that two of the three steps in its plan of action have been addressed. However, the Cayman Islands is yet to demonstrate that it is prosecuting *“all types of money laundering cases in line with the jurisdiction’s risk profile and that such prosecutions are resulting in the application of dissuasive, effective, and proportionate sanctions.”*

Given that in most cases prosecutions are the result of lengthy investigations, especially in cases involving money-laundering which often involve surveillance over time, the Cayman Islands continued position on the list would appear to reflect the length of time it has taken for the plan of action to have been partially fulfilled.

The deadline to complete the plan of action expired in June this year with the second point, the imposition of adequate and effective sanctions against those not filing beneficial ownership information accurately and timely manner, having only been fulfilled after the expiry of the deadline. As mentioned above, the last remaining item is still to be addressed.

Finally, further restrictions were imposed upon Russia, with its participation in current and future FATF project teams suspended, and attendance at FATF-Style Regional Bodies as an FATF Member prohibited. Russia had previously been stripped of all leadership roles within the task force.