FATF grey listing
Seeing the rays through the grey

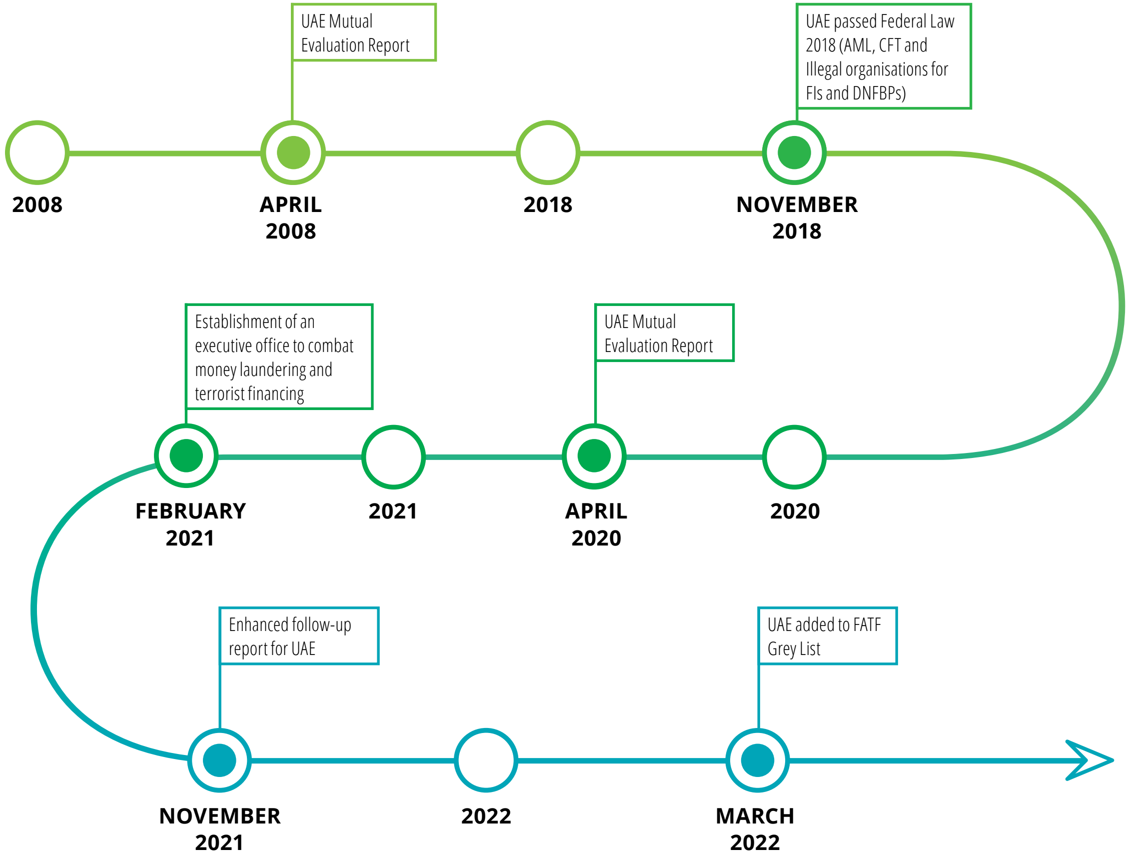
FATF grey listing

The Financial Action Task Force (FATF) published the Mutual Evaluation Report (MER) of the United Arab Emirates in April 2020, analysing the level of technical compliance with the FATF 40 Recommendations, the level of effectiveness of its Anti-Money Laundering /Combatting of Financing Terrorism (AML/CFT) system and recommendations on how the system could be strengthened.

Based on the assessment ratings, and in accordance with the procedures of mutual evaluation, the FATF plenary meeting decided that the UAE should be subject to enhanced follow-up (EFU). The first EFU report was adopted in November 2021 at the 33rd MENA FATF Plenary.

In the follow up, FATF identified a number of strategic deficiencies and, as a result placed the UAE on its 'grey list' in March 2022.

This article describes the grey listing process, potential repercussions and what can be expected in the future.



How does grey listing work?

FATF is the international standard setter for AML, CFT and Counter Proliferation Financing (PF). It can subject a jurisdiction which fails to meet its standards to enhanced monitoring as well as declaring it as a jurisdiction with strategic deficiencies, colloquially referred to as being placed on the 'grey list'. A jurisdiction can be added to the grey list when it follows a mutual evaluation listed below (refer to Appendix):

- The jurisdiction has 20 or more Non-Compliant (NC) or Partially Compliance (PC) ratings for technical compliance; or
- It is rated NC/PC on three or more of the following Recommendations: 3, 5, 6, 10, 11, and 20; or
- It has a low or moderate level of effectiveness for nine or more of the 11 Immediate Outcomes (IOs) which are key goals that an effective AML framework should achieve, with a minimum of two lows; or
- It has a low level of effectiveness for six or more of the 11 IOs.

How did the UAE get here?

Following its on-site inspection in 2019, FATF assessed the UAE to have low or moderate effectiveness ratings for 10 of the 11 IOs, with only terrorist financing investigations and prosecutions (IO 9) assessed as being substantially effective.

Following the MER publication, FATF provided the UAE with a 12-month window known as the 'observation period' to address as many deficiencies as possible before publicly identifying them as a jurisdiction with strategic deficiencies.

Following this observation period, in March 2022, FATF placed the UAE on the FATF 'grey list'.

What happens now?

FATF's International Co-operation Review Group (ICRG) will now closely monitor the UAE on a quarterly basis via a mutually agreed action plan to address the identified deficiencies. The ICRG, made up of FATF member representatives, follows the usual FATF approach by a consensus vote. As the UAE makes progress the ICRG will be able to approve requests for upgrades to the MER ratings. The UAE will continue to be subject to EFU, and the second EFU report will be tabled at the 34th MENAFATF Plenary in May 2022.

The MER Findings

Firstly, the MER acknowledged that the UAE has made significant improvements to its AML/CFT systems in the past few years, noting for example strengthened co-ordination mechanisms across the Emirates, a strengthened Financial Intelligence Unit (FIU) and the introduction of supervisory frameworks for previously out of scope business sectors. As part of the technical compliance assessment, the UAE achieved Largely Compliant and Compliant ratings in five of the 'Big Six' technical recommendations.

In addition, the FATF noted a number of improvements against recommendations in its first EFU report. This suggests that the considerable efforts made by the UAE in advance of the mutual evaluation, and since the publication of the MER, have built a solid foundation on which a more effective AML/CTF regime can now be built.

Secondly, for all countries under ICRG review, FATF requires a high-level political commitment that the jurisdiction will implement the legal, regulatory, and operational reforms required by the action plan[1]. UAE senior leaders in the Executive Office of Anti-Money Laundering and Countering the Financing of Terrorism publicly set out their commitment to work closely with FATF to quickly remedy the areas of improvement identified.

The MER created several priority actions[2] (summarised below) which will form the basis of the ICRG action plan.

(a) Deepen and refine the UAE's understanding of ML/TF risk utilising a broader base of available information sources, including intense outreach to the private sector.
b) Use evolving risk analysis and stakeholder insight to inform the application of mitigation measures.
c) Enhance the use of financial intelligence in the UAE.
d) Prioritise the pursuit of money laundering charges.
e) Embed the pursuit of asset confiscation in all agency actions plans and procedures.
f) Implement Targeted Financial Sanctions for Terrorist Financing and Proliferation Financing without delay.
g) Enhance the monitoring of business sectors' awareness of risk, mitigation measures and compliance, with a particular focus on Designated Non-Financial Business and Professions.
h) Ensure and monitor the full implementation of risk-based supervision using sanctions in an effective, proportionate and dissuasive manner.
i) Develop the understanding of beneficial ownership across the registries through guidance, training and, where necessary, regulatory sanction.
j) Make significantly greater use of formal international legal assistance processes such as mutual legal assistance, extradition, asset freezing and confiscation.

[1] https://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc(fatf_releasedate)
[2] Page 13, UAE FATF MER

Additional considerations

Our research[3] and experience shows that one of the greatest enablers of AML/CFT system effectiveness is collaboration and partnership between the public and the private sectors, which is also recognised by FATF[4].

Public Private Partnership (PPP) is fundamental to the development of a comprehensive understanding of AML risk at the national level, as required by immediate outcome one, demonstrating that money laundering and terrorist financing risks are understood.

PPP creates the framework to bring together the key public and private stakeholders in the system. Insight from the private sector, both financial and non-financial, can lead to a richer and more powerful understanding of risk, such as, how risks crystalise through exploitation of products, services or delivery channels. This is particularly useful in relation to sectors with complex products and services or those with low levels of Suspicious Transaction Reports (STR).

Once developed, it is also important that this shared understanding of risk is appropriately, but adequately, communicated. Empowering the private sector as the first line of defence is invaluable in preventing financial crime at scale. Through the development of an enhanced, co-ordinated risk picture via PPP, the risk-based approach within the regulated sector and risk-based supervision (IO 3) can be more effectively applied, and enhanced feedback loops created that allow emerging risks to be quickly identified and fed back into the national risk picture.

[3] gx-iif-the-effectiveness-of-financial-crime.pdf (deloitte.com) & The global framework for fighting financial crime | Deloitte | Financial Services
[4] (Private-Sector-Information-Sharing.pdf (fatf-gafi.org)

Similarly, PPPs can assist public and private sector FIUs reach their true potential (IO 6). Active cross-sector collaboration enables improvements in STR focus and quality, which in turn drives enhanced operational outcomes against key threats and enables more expeditious and effective responses to international enquiries (IO 2).

PPP can also help enhance sector specific understandings of product and service risks by building a culture of collaboration and cooperation between stakeholders that encourages knowledge exchange. This can be particularly powerful in relation to complex and novel money laundering schemes e.g., money laundering through capital markets. In this instance the detailed knowledge of how complex products and services operate can be hugely important to understanding suspicion, but where that knowledge is unlikely to reside in the FIU.

The PPP benefits also drive operational outcomes by enabling better quality intelligence on priority areas to go quickly and comprehensively into the hands of law enforcement, leading to increased money laundering investigations (IO 7).

We note that the UAE has begun work to establish a PPP model, starting with the development of an appropriate information sharing legal gateway. This is a vital first step on a journey that will take patience and commitment from all stakeholders, including law makers, regulators, the regulated and law enforcement alike, to develop and successfully implement a PPP. It takes time to build the trust between stakeholders however, they all share the common goal of combatting financial crime and terrorist financing, as well as recognising the importance of PPP in fighting financial crime is the vital first step.

A concerted effort, underpinned by robust PPP and collaborative functioning of the national AML/CFT eco-system, is required to first contain the potential economic impact of the grey listing, and, in parallel to strengthen compliance with FATF recommendations and immediate outcomes, leading to the de-listing at the earliest.

As an immediate step, the country must focus its effort to come back strongly in the second EFU review scheduled in May 2022. Further, the eco-system must devise steps to counter potential impact on Foreign Direct Investment, Capital Inflows and the reduction in internal trade. The financial sector is urged to strengthen its processes to keep tabs on customer, transaction and correspondent banking costs, resulting from stricter regulation and enhanced due diligence that shall be applied by the global financial system.

The UAE, led by the government and supported by the private sector, is committed to enhancing the effort against money laundering. The commitment is evident in the fast-paced progress that has been made, and with the current momentum, the country is well positioned to bounce back strongly over as short a period of time.

Appendix

	Immediate Outcomes
1	Risk, policy and coordination
2	International cooperation
3	Supervision
4	Preventive measures
5	Legal persons and arrangements
6	Financial intelligence
7	ML investigation & prosecution
8	Confiscation
9	TF investigation & prosecution
10	TF preventive measures & financial sanctions
11	PF financial sanctions

	FATF 40 Recommendations
1	assessing risk & applying risk-based approach
2	national cooperation and coordination
3	money laundering offence
4	confiscation & provisional measures
5	terrorist financing offence
6	targeted financial sanctions – terrorism & terrorist financing
7	targeted financial sanctions - proliferation
8	non-profit organisations
9	financial institution secrecy laws
10	Customer due diligence
11	Record keeping
12	Politically exposed persons
13	Correspondent banking
14	Money or value transfer services
15	New technologies
16	Wire transfers
17	Reliance on third parties
18	Internal controls and foreign branches and subsidiaries
19	Higher-risk countries
20	Reporting of suspicious transactions
21	Tipping-off and confidentiality
22	DNFBPs: Customer due diligence
23	DNFBPs: Other measures
24	Transparency & BO of legal persons
25	Transparency & BO of legal arrangements
26	Regulation and supervision of financial institutions
27	Powers of supervision
28	Regulation and supervision of DNFBPs
29	Financial intelligence unit
30	Responsibilities of law enforcement and investigative authorities
31	Powers of law enforcement and investigative authorities
32	Cash couriers
33	Statistics
34	Guidance and feedback
35	Sanctions
36	International instruments
37	Mutual legal assistance
38	Mutual legal assistance: freezing and confiscation
39	Extradition
40	Other forms of international cooperation

Contacts

Muzzi Ebrahim
Partner
Financial Crime & Analytics Leader
Deloitte Middle East
+971 52 883 5537
muebrahim@deloitte.com

Chris Bostock
Director
Financial Crime
Deloitte UK
+44 7919 692 124
cbostock@deloitte.co.uk

Rachel Cundall
Manager
Financial Crime
Deloitte UK
+44 20 7303 5036
rcundall@deloitte.co.uk

Saad Qureshi
Assistant Director
Financial Crime
Deloitte Middle East
+971 56 524 5191
saqureshi@deloitte.com

Zohaib Ali
Director
Financial Crime
Deloitte Middle East
+966 508 174 811
zalizahid@deloitte.com

Designed by CoRe Creative Services. RITM01006606