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GREYLIST

Understanding the impact of South Africa's greylisting on trustees and service providers

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SOUTH Africa was greylisted by the Financial Action Task Force (FATF) in February 2023 for failing to meet international standards on money laundering, terrorist financing, and proliferation financing. The FATF is an intergovernmental body that assesses countries' ability to combat illicit financial activity. Remaining on the FATF's greylist would negatively impact all South Africans, both reputationally and economically. The government is, therefore, making a concerted effort to exit the greylist in early 2025, two years after we have been greylisted. One of the outstanding action items that must be addressed for the last scheduled reporting cycle, concluding in February 2025, is timely access to beneficial ownership information concerning companies and trusts.

Government's reaction to greylisting reaping benefits for South Africans

Although many South Africans (including trustees and trust service providers) are of the view that the additional requirements imposed on them as a result of the greylisting are just another schlepp, its positive effect will be markedly noticed, especially given South Africa's turmoil post state capture, with rife corruption and crime. The interdepartmental committee chaired by the National Treasury, which is coordinating the process to exit the FATF greylist, has indicated that some of its focus areas have been action items related to outbound mutual legal assistance requests, seizure and confiscation of proceeds of crime, the implementation of a terror financing strategy and ensuring the effective implementation of targeted financial sanctions, and action items related to investigations and prosecutions.

Deadlines

Although the government's target was to address the action item relating to beneficial ownership information by September 2024, the coverage for both companies and trusts was assessed to be too low by the FATF Africa Joint Group in September 2024. The Department of Justice and Constitutional Development issued a Media Statement on 17 September 2024 titled "Trustees not complying with the provisions of the amended Trust Property Control Act to face harsher punishment". Trustees were warned that the low compliance rate in submitting beneficial ownership registers for trusts is expected to jeopardise South Africa's chances of meeting the early 2025 deadline for exiting the greylist. In a drive to improve our chance to exit the greylist in early 2025, the media statement then set a deadline for filing the beneficial ownership registers with the Master by November 15, 2024.

National Treasury provided a progress update on October 25, 2025, following the FATF Plenary, which took place on the same day. National Treasury also called upon all companies and professional trustee service providers to ensure registration by companies and trusts they engage (or are involved) with before 30 November 2024 to increase the coverage in beneficial ownership registries significantly.

The Master conducted a webinar, "Unlocking Transparency: Paving the way for trust and accountability with our Trust Beneficial Ownership Register", on October 29, 2024 to discuss challenges and solutions. The aforementioned deadlines were reiterated. Trustees were warned about possible penalties for non-compliance with the legal requirement to submit these registers, as discussed below.

Whose responsibility is it?

The legislation is clear: it remains the trustees' responsibility to submit the beneficial ownership registers to the Master. The reality is that, in South Africa, many trusts do not have an independent trustee, and all the trustees are laypersons. So many of these trustees may be unaware of the aforementioned deadlines. Others believe their service providers, such as accountants, have all under control. If accountants do not provide such a service, they must communicate that to their clients so they can get help elsewhere. An engagement letter could typically contain these messages. Accountants should, however, not remain silent, knowing their clients expect that they will do everything for them. Trustees may blame the trust service providers when they are fined for non-compliance.

Many trust service providers reckon they cannot submit the beneficial ownership registers as their clients have not provided them with the required information to submit. Such an argument may get the trust service provider into trouble, as they may very well qualify as an "accountable institution" and should be registered with the Financial Intelligence Centre (FIC). Then, such trust service provider should 'know their clients' and have the required documents to verify the information.

Penalties for Non-compliance

Failure to comply with these requirements can result in substantial penalties, including fines (up to R10 million) and/or imprisonment for trustees. Trust service providers may incur fines for non-compliance as 'accountable institutions'. The FIC may also fine-trust service providers who do not comply with the FIC Act.

Conclusion

The FATF requirements around beneficial ownership are here to stay, and people must comply. Otherwise, they may very well face fines. Ahead of the January 2025 FATF deadline, continued intensified supervisory activity is anticipated, with increased frequency and quantum of financial penalties being imposed for non-compliance, both for trustees and trust service providers. An effort should be made to comply by November 30, 2024, to avoid penalties.

In anticipation of such increased activity, accountable institutions should proactively review, and where necessary update, their RMC Programmes, and AML/CFT policies and procedures in order to ensure compliance, as well as auditing the effectiveness of the same. Many may have missed the November 15, 2024 deadline.

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