Symposium on IFFs: Grey-Listing, Global Anti-Money Laundering Regulation and the Classic Divide

By:

Michelle Gallant

May 14, 2024

South Africa was recently put on the Financial Action Task Force's grey-list. The Financial Action Task Force (FATF) – an authoritative quasi-regulatory global body - relegates countries to 'grey-list' status when they fail to live up to global anti-money laundering, anti-terrorism, and anti-proliferation financing standards. Following an evaluation and extensive engagements with the African country, the FATF decided that a series of 8 strategic deficiencies needed to be addressed by South Africa before the end of 2025. It therefore placed South Africa under 'increased monitoring', a listing informally known as grey-listing.

The FATF was created in 1989 to oversee the development and implementation of global anti-money laundering law. Through a series of developments – including the September 11, 2001 terrorism strikes in the United States – the FAFT's mandate expanded to capture terrorist finance and proliferation financing. Drawn from the content of a series of international instruments

attentive to the relationship between money and crime, the FATF compiled a set of 40 recommendations known as the global anti-money laundering, anti-terrorist finance, and anti-proliferation financing standards. The recommendations comprise matters such as specific money-laundering offences and confiscation regimes as well as measures designed to promote financial transparency (for instance, financial reporting requirements and beneficial ownership registries) and to facilitate international cooperation.

'Listing' is a tactic the FATF uses to promote compliance with the recommendations. The FATF evaluates countries for congruence with the global standards. When the FATF identifies a country as seriously deficient in meeting the global standards, it labels that jurisdiction as high-risk and calls upon countries to apply enhanced due diligence in dealing with the offending state and, in some cases, calls for specific countermeasures to be taken. This is informally known as 'black-listing'. Grey-listing, a lesser evil, is an informal designation when countries have deficiencies in their anti-money laundering frameworks and are diligently working with the FATF to resolve those matters. Rather than require enhanced diligence or counter-measures, the FAFT asks that countries undertaking any financial relationships with the 'grey-listed' country merely take account of the risk posed.

For a country such as South Africa, the impact of grey-listing is in part reputational – the temporary taint of money laundering improprieties – and in part practical - banks, financial facilitators and investors can be reluctant to engage with a country identified with risks of money laundering activity. Either way, grey-listing constitutes a form of shaming, or pressure, on countries to bring their standards into compliance with the global norms.

The scrutiny of norms by the FATF, and the listing mechanism, perform important functions. Money laundering is a global activity linked to multiple evils – drugs, corruption, tax flight, terrorism and proliferation. Tightening domestic laws, and ensuring that all states adhere to bedrock global minimums, is crucial to tackling such problems. Grey-listing can help speed up the typically glacial pace of the implementation of global projects.

But whether black or grey, there is reason to suspect that the exposure of South Africa's money laundering transgressions results less from the particular

foibles and failings of a distinct country on the African continent than from the distorted orientation of the FATF.

The FATF lists, since their inception, have been rather uniquely populated by non-Western, less-developed countries. The 2023 lists – both black and grey – show that not a single developed nation has managed to make it onto the list. Over the course of the history of these lists, habitual occupants have never been European countries, America, Canada or Australia, nor Japan or other states that might be said to have a greater presence, or a more influential voice, in international forums.

The FATF itself is a creature of the West established by the G-7 group of nations and is tightly tied to the organization of economic cooperation and development. It might be thought that developed nations, particularly ones with healthy financial districts, fully comply with FATF recommendations and therefore unlikely to warrant a South Africa-like listing. Curiously, there is ample reason to question whether the FATF, as an international actor, favors developed, or powerful countries, and, obedient to those powers, is disinclined to label certain countries for their misdeeds.

Secrecy is the *sine qua non* of money laundering. Illicit financial flows, be they connected to the drugs trade, to prohibited weaponry or to tax flight thrive on secrecy. That secrecy may be the product of strong domestic secrecy protections or a jurisdictional penchant for complex financial structures routed through multiple corporate vehicles or multiple trusts. The Financial Secrecy Index, a global mechanism, ranks jurisdictions on their provision of financial secrecy. It takes into account the norms that contribute to secrecy as well as the amount of financial secrecy that a jurisdiction supplies to other countries - the ranking system of the Financial Secrecy Index accounts for domestic laws and the degree to which the jurisdiction activity supplies secrecy. The provision of a high degree of secrecy that intersects with very little global financial activity would rank lower than a country with less secrecy but that is a much heavier transit for financial activity. In 2022, the United States and Switzerland are the top ranked secrecy suppliers. Strangely, although secrecy is central to money laundering, the top rankings of the United States and of Switzerland are not sufficient, nor have such high secrecy supplier identities ever been sufficient, to trigger any concerns by the FATF. In fact, of the current top five

secrecy suppliers – none of whom is African – Singapore, Hong Kong, Luxembourg and Japan – none has been listed for any failures to meet international anti-money laundering standards.

And of particular concern to the African continent, a 2015 report into illicit financial flows identifies the 'secrecy' of other jurisdictions as central to the flow of illicit finance across African borders. Those 'others' include European, or non-African, nations, the penchant for financial secrecy facilitating the exodus of resources from Africa.

A credible case could be made that Canada, given a spate of recent findings, ought to attract a negative perspective from the FATF. From 2017 through 2022 , a series of studies revealed rampant money laundering in the province of British Columbia. Just before these revelations began to emerge, in 2016 the FATF evaluated Canada for its compliance with global standards and conducted a follow-up report in 2021. The FATF scrutiny, at least with respect to British Columbia, appears to be seriously at odds with domestic evaluations of the state of affairs. It is rather stunning that although the capital city of British Columbia acquired a unique global identity in money laundering circles as the 'Vancouver model', that was not sufficient to prompt the FATF to consider whether Canada ought to be 'grey-listed'. Searing assessments of the BC money laundering situation appeared to have completely escaped the purview of the global regulator.

For an African country, the ubiquitous absence of any assigning of fault to developed, western, or more powerful states discloses the disordered lens of the FATF. Chastised by the FATF for failing to meet the global anti-money laundering standards, the FATF does not appear prepared to shame its foundational members or their progeny. Maybe it is time that those historically less vocal in international matters, less powerful, less able to determine the course of global narratives, author their own grey, and black lists. For certain, the contents of those would differ starkly from what the FATF typically offers.

View online: Symposium on IFFs: Grey-Listing, Global Anti-Money Laundering Regulation and the Classic Divide

Provided by Afronomicslaw