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Client Alert

International Trade

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Key Developments Coming Out of FATF's Plenary Meeting

The Financial Action Task Force ("FATF") held its 31st plenary meeting during February 19-21, 2020. Among other things, the FATF classified Iran as a "high-risk jurisdiction" and called for certain countermeasures to be imposed. In addition, FATF announced a number of jurisdictions that are subject to increased monitoring due to their deficiencies in combatting money laundering and terrorist financing.

COUNTERMEASURES ON IRAN

In June 2016, with the FATF's approval, Iran adopted an action plan to address a number of significant deficiencies relating to money laundering and the financing of terrorism. Iran failed to implement the plan, which expired in January 2018. Consequently, the FATF placed Iran on its "blacklist" and encouraged countries to deploy a variety of countermeasures, including:

- Limiting business relationships or financial transactions with Iran, and, if necessary, terminating all correspondent relationships with financial institutions in Iran.
- Requiring financial institutions to implement specific elements of enhanced due diligence.
- Introducing enhanced reporting mechanisms or systematic reporting of financial transactions.

The countermeasure relating to the possible termination of correspondent accounts with financial institutions in Iran mirrors the prohibition by the Financial Crimes Enforcement Network ("FinCEN") against the opening or maintaining of correspondent accounts in the United States on behalf of Iranian financial institutions pursuant to Section 311 of USA Patriot Act.[1] Other countermeasures suggested by FATF include barring financial institutions from using third parties in Iran for purposes of conducting customer due diligence as well as increased or enhanced auditing requirements for any financial institutions that maintain branches or subsidiaries in Iran.

Given that most transactions or dealings by U.S. companies with Iran are prohibited as a result of existing U.S. sanctions, the FATF's countermeasures on Iran may have their greatest impact on European companies. Generally, under the EU blocking statute, European companies who refuse to engage in certain business with Iran due to compliance with U.S. secondary sanctions may face criminal and civil penalties. Although FATF's standards carry no formal sanctions or penalties on either the jurisdiction deemed to be high-risk or the countries or jurisdictions that deal with them, EU-based companies may be able to cite to these countermeasures as grounds for declining Iran-related business given the weight and credibility placed on FATF's recommendations, pronouncements, and determinations.

JURISDICTIONS WITH INCREASED MONITORING

The FATF places jurisdictions with deficiencies in combatting money laundering, terrorist financing, and proliferation financing under increased monitoring, also referred to as the "gray list." Countries on the gray list have committed to swiftly resolve their deficiencies within an agreed timeframe. Currently, the countries on the gray list include: Albania, the Bahamas, Barbados, Botswana, Cambodia, Ghana, Iceland, Jamaica, Mauritius, Mongolia, Myanmar, Nicaragua, Pakistan, Panama, Syria, Uganda, Yemen, and Zimbabwe. Although each country's action plan is different, the gray list countries generally have committed to:

- Establishing effective controls to detect and prevent criminal infiltration of the country's economy;
- Ensuring that beneficial ownership information is accurate and available on a timely basis and demonstrate the imposition of appropriate sanctions for non-compliance; and
- Establishing a fully operational financial intelligence unit.[2]

FATF'S OTHER STRATEGIC INITIATIVES

Digital Identity: During the plenary session, the FATF adopted new guidance on the use of a digital identity. The guidance details the FATF's requirements for customer identification and verification and how these potentially can align with key components of digital ID systems. In addition, the guidance outlines the decision-making process to determine whether a digital ID meets the FATF's requirements for customer due diligence.

Risks of Virtual Assets: In light of the FATF's new standards to address money laundering and the risk of virtual assets in terrorist financing, the FATF has monitored the progress and the implementation of the "travel rule," which requires transparency of the originator and beneficiary of payments. The FATF will report its findings to the G20 in July 2020.

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[1] https://www.fincen.gov/sites/default/files/2019-10/Iran%20311%20Final%20Rule_20191025_508.pdf
[2] http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documets/increased-monitoring-february-2020.html