

BUSINESS LAW & TAX

Turning tables on corruption

● Companies, trusts and even individuals need to prepare for a sea change of tough new measures

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SA is running out of time to prevent being greylisted by the global Financial Action Task Force (FATF) after its February 2023 plenary meeting.

However, whatever the decision is, major new requirements to tighten up on corruption are coming and companies, state-owned entities, nonprofit organisations and individuals need to be prepared for a sea change of tougher new standards from 2023.

This all comes after the FATF visited SA in 2019 and found that SA had solid legal frameworks and policies but significantly lacked effective systems to tackle financial crime and money laundering. In November, the cabinet moved quickly to approve the national strategy on anti-money laundering, terrorist financing and proliferation of financing, together with the National Risk Assessment.

The strategy was developed as a response to the risk assessment prepared by all the relevant security and finance agencies.

The impact will be broader than many realise as the operationalisation of this strategy – which provides three high-level goals with 13 strategic objectives – will involve law enforcement agencies, intelligence agencies, financial and nonfinancial institutions and private sector representatives, among others.

The implementation of the strategy will ensure the

country strengthens its financial systems to support economic growth interventions by reducing levels of finance-related crimes. The strategy also responds to some of the 40 recommendations made after SA was assessed by the FATF.

The government has drafted many pieces of legislation to plug the holes, with the most important being the Anti-Money Laundering and Combating Terrorism Financing bills. A General Laws Amendment Bill has also been introduced to parliament and, among others, will require companies doing

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business in SA to beef up their compliance.

It is important to remember that although the public sector is at the forefront as witnessed in “state capture”, this is not just a government issue. All companies in SA will from next year have to enact improved compliance standards.

The Companies Act, 2008, subject to approval/adoption of the proposed amendment(s) for instance may be amended by inserting a definition of “beneficial owner”.

It will also provide for a comprehensive mechanism through which the Compa-

nies and Intellectual Property Commission can keep accurate and updated beneficial ownership information.

A company will have to keep a record of a natural person who owns or controls the company in terms of the definition of “beneficial owner” or “ultimate beneficial owner”, and timelines will be specified within which the company must record any changes in this information.

Records of any natural person who owns or controls the company in terms of the definition of “beneficial owner” will also have to be filed with the commission.

Meanwhile, persons who are convicted of offences relating to money laundering, terrorist financing or proliferation financing activities are prohibited from registering as company directors.

Businesses also need to be aware that the Financial Sector Regulation Act, 2017 has a new chapter dealing with beneficial owners, which provides a definition of “beneficial owner”, and empowers standards and regulator’s directives to be made in relation to beneficial owners.

REQUIREMENTS

Trusts and trustees are also going to face changes to improve accountability and transparency. The Trust Property Control Act, 1988 will be changed by inserting definitions of “accountable institution” and “beneficial owner”; by imposing certain requirements on trustees; by specifying matters that would disqualify a person from being appointed or continu-

BAD TO THE CORE



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ing to act as a trustee; by providing for the removal of a trustee who becomes disqualified to continue to act as a trustee; by specifying information that must be kept by trustees in relation to beneficial owners in relation to trusts; by requiring the master to maintain a register containing information relating to beneficial ownership of trusts, and providing for access to information regarding beneficial ownership; and by specifying certain offences.

Then there are new functions of the Financial Intelligence Centre to include the provision of forensic information; by empowering the centre to request information held by other organs of state;

by providing for additional and ongoing due diligence measures, and by amending the process followed when there are doubts about the veracity of information.

Certain provisions and schedules 3A and 3B will also be aligned to appropriately refer to domestic and foreign “politically exposed persons”, as distinct from “politically influential persons”, who will

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be dealt with in a new schedule 3C.

This may all seem like a lot to take in, but it is all necessary. The reality is if we do not get this right, then some investors may not want to deal with SA entities.

At a minimum, much stricter compliance and due diligence will be on the table, some of which could be deal breakers.

HEED MEASURES

Those doing business with SA will also have to heed supplementary measures of their own to avoid falling foul of their own regulators. The best answer is for SA to avoid the greylisting early in 2023 as the economic consequences could be severe. While we believe there is a strong possibility greylisting can be avoided, based on all the above changes it will mean fast action early in the year and all parties improving their compliance levels and measures.

THOROUGH REVIEW

The ongoing implementation of the rules will be monitored and so there will be no room to hide.

Our best advice will be for companies to do a thorough review of the Companies Act, Financial Intelligence Centre Act, exchange control regulations and other changes and ensure their governance protocols and codes are updated to ensure compliance.

There is little doubt the prosecuting service is improving co-operation and oversight, so there is a growing risk that companies that fail to meet standards and participate in financial crimes – in SA or overseas – will come in for far greater scrutiny and face criminal sanction.