




# A legal analysis of the application of the FATF grey-listing standards on South Africa

Mthembu Z

 0009-0002-3026-8377

Mini dissertation accepted in partial fulfilment of the requirements for the degree *Master of Laws with Mercantile Law* at the North-West University

Supervisor: Prof Howard Chitimira

Co-Supervisors: Dr Elfias Torerai

Dr Luck Mavhuru

Graduation: June 2025

A decorative wave pattern in shades of blue and teal is located at the bottom of the page, mirroring the design at the top.

***SOLEMN DECLARATION***

I Zanele Mthembu hereby declare that the dissertation entitled: **A legal analysis of the application of the FATF greylisting standards on South Africa**, is submitted in fulfilment of the requirements for the Master of Laws (LLM) degree is the product of my research and opinion with the exception of references of the sources acknowledged herein and that I have not at any prior time submitted it to any university or by any person for any qualification.

Signature of student:.....

Signed at ..... on this ..... day of ..... 2024

Declared before me on this ..... day of ..... 2024

Signature of supervisor:.....

## ***ACKNOWLEDGEMENTS***

I would like to express my heartfelt gratitude to all those who have supported and guided me throughout the journey of completing this Master of Laws dissertation.

To my family, thank you for your unwavering love, encouragement, and understanding. Your support has been my anchor, and your belief in me has kept me motivated even during the most challenging times.

To my employer, thank you for your understanding and flexibility, which enabled me to balance the demands of work and academic pursuits. Your support was invaluable in helping me achieve this milestone.

To my supervisors, thank you for your exceptional guidance, patience, and dedication. Your expertise, insights, and constructive feedback have been instrumental in shaping this research. I am deeply grateful for the time and wisdom you shared with me, which has enriched not only this dissertation but also my personal and professional growth.

This accomplishment would not have been possible without the collective contributions of these remarkable individuals.

## ***DEDICATION***

This dissertation is dedicated to myself, as a testament to my perseverance, hard work, and determination in pursuing and achieving this milestone.

It is also dedicated to my beloved family, whose unwavering love, support, and encouragement have been the foundation of my success. Your belief in me has been my greatest source of strength.

Lastly, this work is dedicated to everyone who wished me well and cheered me on throughout my studies. Your kind words and positive energy carried me through this journey, and for that, I am deeply grateful.

## **ABSTRACT**

The Financial Action Task Force (FATF) is a watchdog established to counter the abuse of the financial system by criminals for money laundering, the financing acts of terrorists and proliferation financing. For the FATF to achieve its mandate, it came up with a set of global standards in the form of Recommendations. The Recommendations seek to mitigate the risks of money laundering and terrorist financing and to assess whether FATF member countries are taking effective action to combat money laundering and terrorist financing. South Africa is a member of the FATF and therefore, is obliged to comply with the standards set to combat money laundering and terrorist financing and proliferation. The FATF uses assessments done through peer mutual evaluations. In other words, FATF members assess one another's anti-money laundering and counter-terrorism financing (AML/CTF) regulatory frameworks for compliance with FATF's standards. Following the FATF's assessment in the years 2003, 2009 and 2018, South Africa's AML/CTF regulatory framework was found to be weak leading to greylisting in 2023. The greylisting of South Africa follows the findings of strategic deficiencies in the country's implementation of the FATF AML/CFT standards. Greylisting by the FATF carries various economic and reputational implications for South Africa such as increased scrutiny from international partners resulting in increased compliance costs for financial institutions, an estimated reduction in South Africa's gross domestic product (GDP) and a decrease in foreign direct investment (FDI). Since the greylisting, South Africa has embarked on a legislative and regulatory journey to address the shortcomings with a view to be taken off the greylist. This dissertation provides a detailed analysis of the FATF standards, evaluates South Africa's legislative and institutional responses in the form of the *Prevention of Organised Crime Act 121 of 1998*, *Financial Intelligence Centre Act 38 of 2001* and the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004*, and assess their effectiveness in addressing the identified deficiencies. Recommendations are suggested to assist in fortifying South Africa's AML/CTF regulatory framework.

**Keywords:** Money laundering, terrorism financing, recommendations, accountable institutions, greylist, mutual evaluation

## Table of Contents

<b>SOLEMN DECLARATION</b>	<i>ii</i>
<b>ACKNOWLEDGEMENTS</b>	<i>iii</i>
<b>DEDICATION</b>	<i>iv</i>
<b>ABSTRACT</b>	<i>v</i>
<b>CHAPTER ONE</b> .....	<b>2</b>
<b>RESEARCH OUTLINE</b> .....	<b>2</b>
<b>1.1 Introduction</b>	<b>2</b>
<b>1.2 Problem Statement</b>	<b>4</b>
<b>1.3 Background of the Study</b>	<b>8</b>
<b>1.4 Motivation</b>	<b>12</b>
1.4.1 Rationale of the Study .....	12
1.4.2 Limitation of Study .....	13
1.4.3 Research Question.....	13
<b>1.5 Research Aim and Objectives</b>	<b>13</b>
1.5.1 Aims.....	13
1.5.2 Objectives.....	14
<b>1.6 Research Methodology</b>	<b>14</b>
<b>1.7 Framework of Chapters</b>	<b>15</b>
<b>1.8 Relevance for Research Unit</b>	<b>16</b>
<b>1.9 Statement Regarding Ethics</b>	<b>16</b>
<b>CHAPTER TWO</b> .....	<b>18</b>
<b>HISTORICAL BACKGROUND ON GREYLISTING CHALLENGES IN SOUTH AFRICA</b> .....	<b>18</b>
<b>2.1 Introduction</b>	<b>18</b>
<b>2.2 Historical Overview of Money Laundering and Terrorist Financing and Proliferation Regulation in South Africa</b>	<b>18</b>
2.2.1 The Apartheid Era.....	18
2.2.2 The Post Apartheid Era .....	20
<b>2.3 FATF's Assessment of South Africa's AML/CFT Regulations and Greylisting</b>	<b>25</b>
2.3.1 General Overview of the FATF's Operations and Greylisting Process.....	25
2.3.2 FATF's Greylisting Process.....	27
<b>2.4 FATF Evaluation of South Africa AML/CFT Framework</b>	<b>28</b>
2.4.1 FATF Mutual Evaluation of 2003 .....	28
2.4.2 FATF Mutual Evaluation of 2009 .....	29

2.4.3	<i>FATF Mutual Evaluation of 2021</i> .....	29
<b>2.5</b>	<b><i>Conclusion</i></b> .....	<b>35</b>
<b>CHAPTER THREE</b> .....		<b>36</b>
<b>THE CURRENT AML/CTF REGULATORY FRAMEWORK IN SOUTH AFRICA</b> .....		<b>36</b>
<b>3.1</b>	<b><i>Introduction</i></b> .....	<b>36</b>
<b>3.2</b>	<b><i>Brief Background of South Africa’s AML/CTF Regulatory Framework</i></b> .....	<b>37</b>
3.2.1	<i>POCA and AML/CTF Regulation in South Africa</i> .....	37
3.2.2	<i>The FIC Act and the AML/CTF Framework in South Africa</i> .....	39
3.2.3	<i>POCDATARA and the AML/CTF Framework in South Africa</i> .....	44
<b>3.3</b>	<b><i>Analysis of the Current AML/CTF Framework in South Africa</i></b> .....	<b>46</b>
<b>3.6</b>	<b><i>Conclusion</i></b> .....	<b>47</b>
<b>CHAPTER FOUR</b> .....		<b>48</b>
<b>CHALLENGES AND FLAWS THAT INFLUENCED THE GREYLISTING OF SOUTH AFRICA</b> .....		<b>48</b>
<b>4.1</b>	<b><i>Introduction</i></b> .....	<b>48</b>
<b>4.2</b>	<b><i>What are Immediate Outcomes</i></b> .....	<b>48</b>
4.2.1	<i>Policy and coordination (Immediate Outcome 1 and 2)</i> .....	49
4.2.2	<i>Prevention and detection (Immediate Outcome 3 to 5)</i> .....	51
4.2.3	<i>Disruption &amp; Effectiveness (Immediate Outcome 6 to 11)</i> .....	53
<b>4.3</b>	<b><i>Measures Adopted by South Africa to Address Deficiencies Identified in the 2021 MER</i></b> .....	<b>58</b>
<b>4.4</b>	65	
4.4.1	66	
4.4.2	66	
4.4.3	67	
4.4.4	67	
4.4.5	68	
4.4.6	68	
4.4.7	68	
<b>4.5</b>	<b><i>CONCLUSION</i></b> .....	<b>63</b>
<b>CHAPTER FIVE</b> .....		<b>64</b>
<b>RECOMMENDATIONS AND CONCLUSIONS</b> .....		<b>64</b>
<b>5.1</b>	<b><i>Introduction</i></b> .....	<b>64</b>
<b>5.2</b>	<b><i>General Observations</i></b> .....	<b>66</b>
<b>5.3</b>	<b><i>Recommendations</i></b> .....	<b>69</b>
<b>5.4</b>	<b><i>Conclusion</i></b> .....	<b>71</b>
	<b><i>Bibliography</i></b> .....	<b>74</b>

## CHAPTER ONE

### RESEARCH OUTLINE

#### ***1.1 Introduction***

The greylisting of South Africa has brought significant attention to the country's anti-money laundering and counter-terrorism financing (AML/CFT) framework.<sup>1</sup> The Financial Action Task Force (FATF) greylisted South Africa in February 2023 following concerns over the

---

<sup>1</sup> Khouny, H and Drissi H "Addressing the Challenges of Weak AML Measures in Developing Countries: Key Concerns of FATF and Consequences of Greylisting" 2024 *Multidisciplinary Science Journal* 1, 7-9; Financial Action Task Force (FATF) *Jurisdictions Under Increased Monitoring – 23 February 2023* <https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Increased-monitoring-february-2023.html> accessed 27 June 2024; Oseghale E 2024 *Kenya and Namibia Join 10 African Countries on FATF Grey-list* <https://www.mariblock.com/kenya-and-namibia-join-10-african-countries-on-fatf-grey-list/> accessed 27 June 2024; National Treasury 2023 [https://www.treasury.gov.za/comm\\_media/press/2023/2023022501%20FATF%20Grey%20Listing%20Fact%20Sheet.pdf](https://www.treasury.gov.za/comm_media/press/2023/2023022501%20FATF%20Grey%20Listing%20Fact%20Sheet.pdf); National Treasury 2023 *What Does FATF Greylisting Mean for a Country?* [https://www.treasury.gov.za/comm\\_media/press/2023/2023022501%20FATF%20Grey%20Listing%20Fact%20Sheet.pdf](https://www.treasury.gov.za/comm_media/press/2023/2023022501%20FATF%20Grey%20Listing%20Fact%20Sheet.pdf) accessed on 4 April 2024.

country's AML/CFT framework. FATF is a global intergovernmental body tasked with the responsibility of setting standards to combat money laundering, terrorist financing and financing of proliferation.<sup>2</sup> The greylist refers to a catalogue maintained by the FATF which comprises jurisdictions or countries under increased monitoring for money laundering and terrorist financing.<sup>3</sup> While greylisted jurisdictions would have failed to fully comply with the FATF standards to counter money laundering and terrorist and proliferation financing, such jurisdictions are committed to work closely with the FATF to address the deficiencies in their AML/CFT regimes.<sup>4</sup> Once the deficiencies are addressed, an affected country is taken off the greylist.

The FATF has AML/CFT standards through the Recommendations it issues from time to time. These Recommendations are used as standards to measure FATF member countries' criminal justice systems, financial sectors, nonfinancial businesses and professions, transparency and international cooperation in AML/CFT.<sup>5</sup> The FATF coordinates with the International Money Fund (IMF), the FATF-Style Regional Bodies (FSRB) and the World Bank to monitor countries' compliance with these Recommendations.<sup>6</sup>

The FATF relies on peer review processes known as mutual evaluations to assess member countries' compliance with its Recommendations.<sup>7</sup> For South Africa, the first observation to

---

<sup>2</sup> Van Jaarsveld IL *Aspects of Money Laundering in South African Law* (LLD-thesis University of South Africa 2011) 1, 223; Mekpor ES, Aboagye A and Welbeck J "The Determinants of Anti-Money Laundering Compliance Among the Financial Action Task Force (FATF) Member States" 2018 *Journal of Financial Regulation Compliance* 442, 443; Khouny and Drissi 2024 *Multidisciplinary Science Journal* 1, 9.

<sup>3</sup> Shah AR "The Geopolitics of Pakistan's 2018 Greylisting by the Financial Action Task Force" 2021 *International Journal* 280, 281; Beebeejaun A and Dulloo L "A Critical Analysis of the Anti-Money Laundering Legal and Regulatory Framework of Mauritius: A Comparative Study with South Africa" 2023 *Journal of Money Laundering Control* 401, 403; Van Wyk J "South Africa's Imminent Greylisting: 'Sword of Damocles' or a Wake-up Call for Our Economy?" 2023 *TAXtalk* 22, 22; Khouny and Drissi 2024 *Multidisciplinary Science Journal* 7.

<sup>4</sup> De Koker L "Editorial: FATF Greylisting: Time to Revisit the Approach" 2024 *Journal of Money Laundering Control* 621, 621; Shah 2021 *International Journal* 283; Beebeejaun and Dulloo 2023 *Journal of Money Laundering Control* 403; Van Wyk 2023 *TAXtalk* 22; Khouny and Drissi 2024 *Multidisciplinary Science Journal* 7.

<sup>5</sup> Nanyun M and Nasiri A "Role of FATF on Financial Systems of Countries: Successes and Challenges" 2021 *Journal of Money Laundering Control* 234, 234; Khouny and Drissi 2024 *Multidisciplinary Science Journal* 2; Mekpor, Aboagye and Welbeck 2018 *Journal of Financial Regulation Compliance* 444; Van Wyk *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* 42.

<sup>6</sup> De Koker L, Howell J, and Morris N "Economic Consequences of Greylisting by the Financial Action Task Force" 2023 *Risks* 1, 4; Khouny and Drissi 2024 *Multidisciplinary Science Journal* 2; Mekpor, Aboagye and Welbeck 2018 *Journal of Financial Regulation Compliance* 443; Shah 2021 *International Journal* 283-284.

<sup>7</sup> De Koker L "Editorial: Towards Meaningful Action Against Proliferation Financing" 2023 *Journal of Money Laundering Control* 213, 213; Bissett B, Steenkamp P and Aslett S "An Analysis of the 2021 South African FATF Mutual Evaluation Report: Terrorist Financing and NPOs" 2023 *Journal of Financial Crime* 1534, 1535; Khouny and Drissi 2024 *Multidisciplinary Science Journal* 7; Shah 2021 *International Journal* 283.

check the country's compliance with the FATF AML/CFT Recommendations was conducted in 2003. However, the report did not provide an overall assessment of the effectiveness of South Africa's AML/CFT regime.<sup>8</sup> The first mutual evaluation on South Africa was done in 2009 and the report's findings thereof are detailed in the subsequent chapters.<sup>9</sup> The most recent and perhaps the topical mutual evaluation of South Africa was conducted in 2019 and its report, which ultimately led to greylisting in February 2023, was released in 2021.<sup>10</sup>

Greylisting by the FATF carries various economic and reputational implications for South Africa. Some of the negative economic implications include increased scrutiny from international partners resulting in increased compliance costs for financial institutions, an estimated reduction in South Africa's gross domestic product (GDP) and a decrease in foreign direct investment (FDI).<sup>11</sup> However, on a positive note, greylisting presents an opportunity for South Africa to reassess and fortify its AML/CFT framework.

## **1.2 Problem Statement**

South Africa's current AML/CTF framework falls short of international standards on key areas such as beneficial ownership transparency, the effectiveness of law enforcement agencies and the monitoring of politically exposed persons (PEPs).<sup>12</sup> The 2021 mutual evaluation report on South Africa found that South Africa's AML/CFT regulatory framework does not

---

<sup>8</sup> International Monetary Fund 2004 *South Africa: Report on the Observance of Standards and Codes — FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism* <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> accessed on 30 April 2024.

<sup>9</sup> FATF 2021 *Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report* <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> accessed on 10 March 2024 1; 15; International Monetary Fund 2010 *South Africa: Report on Observance of Standards and Codes* <https://www-elibrary-imf-org.nwulib.idm.oclc.org/view/journals/002/2010/272/article-A001-en.xml> accessed on 2 July 2024; FATF 2009 *Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism* [https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofsouth\\_africa.html](https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofsouth_africa.html) 15 accessed on 2 July 2024.

<sup>10</sup> FATF 2009 *Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism* [https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofsouth\\_africa.html](https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofsouth_africa.html) 15, accessed on 2 July 2024.

<sup>11</sup> Khouny and Drissi 2024 *Multidisciplinary Science Journal* 1, 7-10; Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 1543; Van Der Berg D "Shaking up South Africa's Anti-Money Laundering and Counter-Terrorism Financing measures" 2022 *Without Prejudice* 18, 18-19; Powell S and Roux A "Where Are Taxpayers Hiding The Money?" 2023 *TaxTalk* 18, 19-20; Beebeejaun and Dullo 2023 *Journal of Money Laundering Control* 403.

<sup>12</sup> Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 1536; FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> accessed on 10 March 2024; Van Wyk 2023 *Taxtalk* 22-25; FATF 2023 *Anti-Money Laundering and Counter Terrorist Financing Measures South Africa – Follow up Report & Technical Compliance Re-Rating* <https://www.fatf-gafi.org/en/publications/Mutualevaluations/south-africa-fur-2023.html> 4; Powell and Roux 2023 *TaxTalk* 19; Khouny and Drissi 2024 *Multidisciplinary Science Journal* 9-10.

make provision for the above-listed key areas. Consequently, South Africa is vulnerable to financial crimes such as money-laundering, terrorist financing and proliferation.<sup>13</sup> The identified gaps in legislation enable criminals to either launder money or finance acts of terrorism due to the lack of beneficial ownership transparency, poor law enforcement action on activities related to money laundering and terrorist financing as well as deficient monitoring of PEPs. The legislative and regulatory gaps identified by the FATF in the various mutual evaluations possibly justify South Africa's inclusion in the FATF's greylist in February 2023. The identified legislative and regulatory gaps highlight South Africa's non-compliance with the FATF standards.

A jurisdiction is added to the FATF greylist after it fails to comply fully with the FATF's AML/CFT standards.<sup>14</sup> After every plenary meeting, the FATF publishes two types of jurisdiction statements or lists, namely, "Jurisdictions Under Increased Monitoring" and "High Risk Jurisdictions Subject to a Call for Action".<sup>15</sup> The first list applies to countries that have been identified to have flaws in their AML/CFT compliance levels and they have committed to work with the FATF to remedy the identified strategic deficiencies.<sup>16</sup> The second list is that of greylisted countries which are seen as potentially high-risk jurisdictions with weak AML/CTF frameworks and they are put under increased monitoring.<sup>17</sup> Increased monitoring entails that the greylisted countries report to the FATF on the progress achieved in addressing their AML/CFT strategic deficiencies as well as completing their action plans within the agreed timeframes.<sup>18</sup> In this regard, South Africa is under increased monitoring

---

<sup>13</sup> Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 1536; Kingah S and Zwartjes M "Regulating Money Laundering for Terrorism Financing: EU-US Transnational Policy Networks and the Financial Action Task Force" 2015 *Contemporary Politics* 341, 350; Van Wyk 2023 *TaxTalk* 22-25; Shah 2021 *International Journal* 281; Nanyun and Nasiri 2021 *Journal of Money Laundering Control* 237-238; Van Der Berg 2022 *Without Prejudice*, 18-19; Powell and Roux 2023 *TaxTalk* 19.

<sup>14</sup> De Koker, Howell and Morris 2023 *Risks* 1; De Koker 2023 *Journal of Money Laundering* 213; Nanyun and Nasiri 2021 *Journal of Money Laundering Control* 237-238; Van Wyk 2023 *TaxTalk* 22-25; Beebeejaun and Dullo 2023 *Journal of Money Laundering Control* 403.

<sup>15</sup> See the FATF's "name and shame" strategy Lacey KA and B George "Crackdown on Money Laundering: A Comparative Analysis of the Feasibility and Effectiveness of Domestic and Multilateral Policy Reforms" 2003 *Northwestern Journal of International Law and Business* 265; Shah 2021 *International Journal* 299, 346-348.

<sup>16</sup> Shah 2021 *International Journal* 283; Beebeejaun and Dullo 2023 *Journal of Money Laundering Control* 403; Van Wyk 2023 *TAXtalk* 22; De Koker 2024 *Journal of Money Laundering Control* 621.

<sup>17</sup> Shah 2021 *International Journal* 281; Nanyun and Nasiri 2021 *Journal of Money Laundering Control* 238; Powell and Roux 2023 *TaxTalk* 19-20.

<sup>18</sup> FATF 2024 <https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Increased-monitoring-february-2024.html> accessed on 27 June 2024.

by the FATF and has until January 2025 to remedy the shortcomings before another round of FATF reviews.<sup>19</sup>

The FATF has 40 Recommendations designed to detect, prevent and suppress money laundering, terrorist financing and related crimes such as proliferation. There are also nine additional special recommendations set out to detect, prevent and suppress the financing of terrorism. The 40 Recommendations broadly cover AML/CFT policies, confiscation, financing of proliferation, preventive measures, transparency and beneficial ownership, law enforcement role-players, and international cooperation.<sup>20</sup> The nine special recommendations cover the ratification and implementation of the United Nations (UN) instruments, criminalisation of financing of terrorism and associated money laundering, the freezing and confiscation of terrorist assets, the reporting of suspicious transactions related to terrorism, international cooperation, alternative remittance, wire transfer, non-profit organisations and cash couriers.<sup>21</sup>

South Africa is a FATF member and, therefore it is bound by the 49 Recommendations.<sup>22</sup> Failure to implement or follow the FATF Recommendations leads to either greylisting or blacklisting.<sup>23</sup> In this regard, blacklisting is done to member countries whose AML/CFT frameworks are very weak and the FATF and other international bodies could impose further economic penalties and restrictions on such countries.<sup>24</sup> At present, there are 21 countries under increased monitoring namely, Bulgaria, Burkina Faso, Cameroon, Democratic Republic

---

<sup>19</sup> National Treasury 2023 [https://www.treasury.gov.za/comm\\_media/press/2023/2023112901%20MEDIA%20STATEMENTPROGRESS%20IN%20ADDRESSING%20TECHNICAL%20COMPLIANCE%20DEFICIENCIES%20IN%20SOUTH%20AFRICAS%20ANTIMONEY%20LAUNDERING%20SYSTEM.pdf](https://www.treasury.gov.za/comm_media/press/2023/2023112901%20MEDIA%20STATEMENTPROGRESS%20IN%20ADDRESSING%20TECHNICAL%20COMPLIANCE%20DEFICIENCIES%20IN%20SOUTH%20AFRICAS%20ANTIMONEY%20LAUNDERING%20SYSTEM.pdf) accessed 4 March 2024.

<sup>20</sup> The Forty Recommendations of the Financial Action Task Force are available at <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.core.download.inline.pdf> accessed on 20 February 2024; Lacey and George 2003 *Northwestern Journal of International Law and Business* 319; Mekpor, Aboagye and Welbeck 2018 *Journal of Financial Regulation Compliance* 444; Van Wyk *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* 42; Nanyun and Nasiri 2021 *Journal of Money Laundering Control* 234

<sup>21</sup> The Nine Special Recommendations of the Financial Action Task Force are available at <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Ixspecialrecommendations.html> accessed on 2 October 2024.

<sup>22</sup> Hugo C and Spruyt W "Money Laundering, Terrorist Financing and Financial Sanctions: South Africa's Response by Means of the Financial Intelligence Centre Amendment Act 1 of 2017" 2018 *Journal of South African Law* 1; 232; Van Wyk *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* 42; See South Africa's FATF membership available at <https://www.fatf-gafi.org/en/countries/detail/South-Africa.html> accessed on 10 March 2024.

<sup>23</sup> Shah 2021 *International Journal* 282-283; De Koker 2023 *FATF's Greylisting of South Africa: Navigating Myths and Truths About Economic Impact* <https://www.linkedin.com/pulse/fatfs-greylisting-south-africa-navigating-myths-truths-louis-de-koker/> accessed on 10 June 2024.

<sup>24</sup> Shah 2021 *International Journal* 282; De Koker 2023 <https://www.linkedin.com/pulse/fatfs-greylisting-south-africa-navigating-myths-truths-louis-de-koker/> accessed on 10 June 2024.

of Congo, Croatia, Haiti, Jamaica, Kenya, Mali, Mozambique, Namibia, Nigeria, Philippines, Senegal, South Sudan, Syria, Tanzania, Turkey, Vietnam, Yemen and South Africa.<sup>25</sup> Put differently, the mentioned 21 countries are greylisted.

Greylisting has placed a spotlight on South Africa's AML/CTF framework. The identified flaws and challenges in South Africa's AML/CTF framework were presented in the October 2021 mutual evaluation report (hereinafter, the report).<sup>26</sup> The report also sheds light on the socio-economic and political status of South Africa that places it at high-risk of money-laundering and terrorist financing activities.<sup>27</sup> The report's key conclusions on South Africa's AML/CFT framework include concerns that cash is widely used in the country and has been identified as having a high risk of being used for money laundering and terrorist financing, including cross-border movement.<sup>28</sup> The FATF also found that law enforcement agencies in South Africa lacks the resources and expertise to actively investigate cases of money laundering and terrorist financing.<sup>29</sup>

In addition to the above mentioned, the report concluded that local authorities in South Africa have a poor understanding of terrorist financing and terrorist financing risks.<sup>30</sup> It further highlighted the country's conservative classification of acts of violence influenced by politics as terrorism, which potentially hinders South Africa's ability to investigate and prosecute terrorist financing. Also, there is reluctance to use targeted financial sanctions to prevent terrorism, and the UN Security Council's resolutions pertaining to terrorist financing have not been implemented since 2017.<sup>31</sup> These findings pertaining to South Africa's

---

<sup>25</sup> FATF "Jurisdictions under Increased Monitoring- 23 February 2024" 2024 <https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Increased-monitoringfebruar-y-2024.html> accessed on 27 June 2024.

<sup>26</sup> FATF 2021 *Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Mutual Evaluation Report* <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.online.pdf>; Nanyun and Nasiri 2021 *Journal of Money Laundering Control* 241; Van Der Berg 2022 *Without Prejudice* 18-19; Powell and Roux 2023 *TaxTalk* 19-20.

<sup>27</sup> Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 1534; Van Der Berg 2022 *Without Prejudice* 18-19.

<sup>28</sup> FATF 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.online.pdf>; Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 1534-1548; Khouny and Drissi 2024 *Multidisciplinary Science Journal* 9-10.

<sup>29</sup> Gillmer J, Amardien N, Harwin J and Kleinsmidt L 2023 Understanding South Africa's FATF Greylisting <https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Corporate/corporate-and-commercial-alert-29-march-Understanding-South-Africas-FATF-greylisting-.html> accessed 10 April 2024; FATF 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.online.pdf>.

<sup>30</sup> FATF 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.online.pdf>.

<sup>31</sup> FATF 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.online.pdf>.

measures to regulate acts of terrorism allude to the deficiencies in the definition of terrorist activities in the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act (POCDATARA)* which are inconsistent with the Terrorist Financing Convention.<sup>32</sup> Furthermore, South African law enforcement agencies encounter difficulties in obtaining up-to-date and accurate information regarding the beneficial ownership of businesses and trusts, which makes it difficult for them to adequately investigate cases of money laundering and terrorist financing.<sup>33</sup> Lastly, the report found that inspections of non-financial sectors are conducted far too infrequently and they primarily concentrate on basic compliance and controls rather than evaluating the efficacy of the AML/CTF programs.<sup>34</sup>

Thus, the greylisting has resulted in South Africa being categorised as a high-risk jurisdiction for money laundering and as well as terrorist and proliferation financing. This makes South Africa vulnerable to the negative implications associated with countries on the FATF greylist.<sup>35</sup> As argued earlier, greylisting carries with it reputational damage on affected jurisdictions.<sup>36</sup> Reputational damage leads to increased risk factor assessment by potential investors and other international institutions which adversely affects South Africa's trade and investment profile.<sup>37</sup> Some international financial institutions and investors can cease to conduct business or invest in countries that are on the FATF greylist.<sup>38</sup>

---

<sup>32</sup> See also section 1 of *Protection of Constitutional Democracy Against Terrorist and Related Activities Act* no. 33 of 2004 (*POCDATARA*); FATF 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.online.pdf>.

<sup>33</sup> See also FATF 2009 Mutual Evaluation Report on South Africa highlighting the challenges on obtaining beneficial ownership information; FATF 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.online.pdf>.

<sup>34</sup> International Monetary Fund 2021 <https://www-elibrary-imf-org.nwulib.idm.oclc.org/view/journals/002/2021/227/002.2021.issue-227-en.xml> accessed on 2 July 2024 13-165; FATF 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.online.pdf> accessed on 10 March 2024.

<sup>35</sup> Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 1543; Van Der Berg 2022 *Without Prejudice* 18-19; Powell and Roux 2023 *TaxTalk* 19-20; Beebeejaun and Dullo 2023 *Journal of Money Laundering Control* 403.

<sup>36</sup> Mekpor, Aboagye and Welbeck 2018 *Journal of Financial Regulation Compliance* 443; Beebeejaun and Dullo 2023 *Journal of Money Laundering Control* 403.

<sup>37</sup> Mekpor, Aboagye and Welbeck 2018 *Journal of Financial Regulation Compliance* 443; Shah 2021 *International Journal* 284; Van Der Berg 2022 *Without Prejudice* 18-19; Beebeejaun and Dullo 2023 *Journal of Money Laundering Control* 403.

<sup>38</sup> Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 1534; Beebeejaun and Dullo 2023 *Journal of Money Laundering Control* 403.

### **1.3 Background of the Study**

During the 1980s, the international community, including South Africa, experienced an alarming rate of drug trade and the cross-border movement of proceeds from such trade.<sup>39</sup> There was an absence of an effective legal regime to regulate the phenomenon and therefore the Organisation for Economic Development and Cooperation (OECD) established the FATF in 1989 at the Group of Seven (G7) Economic Summit in Paris<sup>40</sup>. The FATF is an international overseer of matters pertaining to money laundering and terrorist and proliferation financing.<sup>41</sup> In 1989, the G7 comprised the United States of America (USA), the United Kingdom (UK), France, Germany, Italy, Canada and Japan.<sup>42</sup> The FATF was established to address growing money laundering and terrorist financing concerns within the international financial system.<sup>43</sup> Currently, the FATF has 38 member states and two regional organisations, namely the European Commission (EC) and the Gulf Cooperation Council (GCC).<sup>44</sup> In addition, the FATF has nine associate members and more than 20 bodies that hold observer status each.<sup>45</sup> As indicated above, South Africa became an FATF member in 2003. The organisation seeks to combat money laundering and terrorist financing through recommendations and standards that apply across the globe.<sup>46</sup> There are over 40 Recommendations the FATF designed to combat money laundering and terrorist and

---

<sup>39</sup> Van Wyk *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* 41; Van Jaarsveld *Aspects of Money Laundering in South African Law* 257-288; Nanyun and Nasiri 2021 *Journal of Money Laundering Control* 234.

<sup>40</sup> Van Jaarsveld *Aspects of Money Laundering in South African Law* 222-232; Van Wyk *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* 178; Nanyun and Nasiri 2021 *Journal of Money Laundering Control* 234.

<sup>41</sup> Mekpor, Aboagye and Welbeck 2018 *Journal of Financial Regulation Compliance* 443; Van Der Berg 2022 *Without Prejudice* 18; Powell and Roux 2023 *TaxTalk* 19; Van Jaarsveld *Aspects of Money Laundering in South African Law* 223; Van Wyk *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* 2; Van Wyk J 2023 *TAXtalk* 22.

<sup>42</sup> Mekpor, Aboagye and Welbeck 2018 *Journal of Financial Regulation Compliance* 443-444; Shah 2021 *International Journal* 281-282; De Koker 2023 *Journal of Money Laundering* 213; Beebeejaun and Dullo 2023 *Journal of Money Laundering Control* 403.

<sup>43</sup> Mekpor, Aboagye and Welbeck 2018 *Journal of Financial Regulation Compliance* 443; Nanyun and Nasiri 2021 *Journal of Money Laundering Control* 234.

<sup>44</sup> Hugo and Spruyt 2018 *Journal of South African Law* 232-233; Van Wyk *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* 42.

<sup>45</sup> Financial Action Task Force (date unknown) *Countries* <https://www.fatf-gafi.org/en/countries.html> accessed on 10 March 2024.

<sup>46</sup> Mekpor, Aboagye and Welbeck 2018 *Journal of Financial Regulation Compliance* 444; Shah 2021 *International Journal* 282; De Koker 2023 *Journal of Money Laundering* 213-214; De Koker L "The FATF's Customer Identification Framework: Fit For Purpose?" 2014 *Journal of Money Laundering* 281; Carrington I and Shams H 2006 *Elements of an Effective AML / CFT Framework : Legal , Regulatory , and Best Institutional Practices to Prevent Threats to Financial Stability and Integrity* <https://www.imf.org/external/np/seminars/eng/2006/mfl/cs.pdf> 10-11; Powell and Roux 2023 *TaxTalk* 19.

proliferation financing.<sup>47</sup> In 2019, ministers from FATF member states, South Africa included, agreed to an open-ended mandate for the organisation to counter money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.<sup>48</sup>

During the early 1990s, only countries that were party to the OECD were concerned with the fight against money laundering. This excluded South Africa. However, these countries soon realised that criminals were avoiding countries with well-established AML laws. Rather, criminals were rerouting illegally obtained funds to countries with little to no AML standards.<sup>49</sup> In response to the risk of money laundering, the FATF initiated the process of greylisting and blacklisting in September 1999.<sup>50</sup> The FATF relies on mutual evaluations, which are basically a peer-driven mechanism to assess a country's compliance with its AML/CTF standards.<sup>51</sup> Thus, mutual evaluations are peer reviews where FATF member countries assess each other's compliance with the FATF's AML/CTF framework.<sup>52</sup> The onus lies with the country being assessed to prove its compliance with the FATF standards.<sup>53</sup> Following the mutual evaluations, the FATF issues two types of jurisdiction statements or lists.<sup>54</sup> These are the 'jurisdictions under increased monitoring' or greylist and the 'high-risk jurisdictions subject to a call for action' also known as the blacklist.<sup>55</sup>

Since joining the FATF in 2003, two mutual evaluations have been done on South Africa. The first one was in 2009 and then the other in 2021.<sup>56</sup> Nonetheless, upon joining the FATF

---

<sup>47</sup> Mekpor, Aboagye and Welbeck 2018 *Journal of Financial Regulation Compliance* 444; Nanyun and Nasiri 2021 *Journal of Money Laundering Control* 234; Van Jaarsveld *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* 19; Van Wyk *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* 42.

<sup>48</sup> Financial Action Task Force (FATF) *Mandate* available at <https://www.fatf-gafi.org/en/publications/Fatfgeneral/Fatf-mandate.html> accessed on 2 July 2024.

<sup>49</sup> Sharman JC "Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States" 2008 *International Studies Quarterly* 635, 641.

<sup>50</sup> Shah 2021 *International Journal* 282-283; De Koker 2023 <https://www.linkedin.com/pulse/fatfs-greylisting-south-africa-navigating-myths-truths-louis-de-koker/> accessed on 10 June 2024.

<sup>51</sup> Shah 2021 *International Journal* 283; Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 1535; Van Der Berg 2022 *Without Prejudice* 18-19; Powell and Roux 2023 *TaxTalk* 19-20; De Koker 2023 *Journal of Money Laundering* 213.

<sup>52</sup> Shah 2021 *International Journal* 283; FATF 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Fatf-methodology.html> accessed on 27 June 2024; Van Der Berg 2022 *Without Prejudice* 18-19; Powell and Roux 2023 *TaxTalk* 19-20.

<sup>53</sup> Shah 2021 *International Journal* 283; Van Wyk *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* 43-44; Van Jaarsveld *Aspects of Money Laundering in South African Law* 224.

<sup>54</sup> Shah 2021 *International Journal* 283; Van Der Berg 2022 *Without Prejudice* 18-19.

<sup>55</sup> Shah 2021 *International Journal* 283.

<sup>56</sup> International Monetary Fund 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> accessed on 30 April 2024; FATF <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofsouthafrica.html> accessed on 2 July 2024.

in 2003, South Africa's AML/CFT framework was measured against the FATF standards. Among others, it was observed that the *FIC Act* was still in the early stage of implementation and some of its measures had not yet been fully put into effect.<sup>57</sup> The assessment also found that South Africa needed to quickly develop a framework to combat the financing of terrorism.<sup>58</sup> It also found that at the time, the financing of terrorism, terrorist acts or terrorist organisations were not yet criminalised in South Africa.<sup>59</sup> The evaluation further found that South Africa did not seize property used to finance terrorist activities and had limited ability to freeze funds in financial institutions.<sup>60</sup> Additionally, the FATF expressed concern that since 1997, out of a total of 4 523 suspicious transaction reports (STRs), only 41 culminated in criminal investigations which led to five convictions for offences other than money laundering.<sup>61</sup> The FATF further found that money laundering offences had not been adequately investigated and prosecuted.<sup>62</sup> Moreover, there was no general duty to identify the beneficial owner of the property.<sup>63</sup> Following the 2003 assessment, South Africa was provided with an action plan to improve its compliance with the FATF Recommendations.<sup>64</sup> However, some of the deficiencies identified in the 2003 assessment were flagged again in the mutual evaluation conducted in 2018. It may be argued that policymakers in South Africa have been slow in addressing gaps within the AML/CFT framework. Thus, it is observed that the eventual greylisting of South Africa could have been avoided.

In 2013, the FATF adopted a methodology for assessing the compliance and effectiveness of its Recommendations using two specific tests.<sup>65</sup> The first test was the effectiveness assessment which measured the usefulness of South Africa's AML/CFT framework.<sup>66</sup> The second one was the technical assessment which evaluated whether a member state's

---

<sup>57</sup> International Monetary Fund 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 2; Njotini MN "The Transaction or Activity Monitoring Process: An Analysis of the Customer Due Diligence Systems of the United Kingdom and South Africa" 2010 *Obiter* 556, 565.

<sup>58</sup> International Monetary Fund 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> accessed on 30 April 2024 2.

<sup>59</sup> International Monetary Fund 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 2.

<sup>60</sup> International Monetary Fund 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 2-3.

<sup>61</sup> International Monetary Fund 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 3.

<sup>62</sup> International Monetary Fund 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 3.

<sup>63</sup> International Monetary Fund 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 4.

<sup>64</sup> International Monetary Fund 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 6-7.

<sup>65</sup> Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 1535; Van Wyk 2020 *MCom Forensic Accounting – dissertation* 44; Van Wyk *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* 43-44.

<sup>66</sup> FATF 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Fatf-methodology.html> accessed on 27 June 2024; FATF 2023 <https://www.fatf-gafi.org/en/publications/fatf-recommendations/documents/fatfissuesnewmechanismtostrengthenmoneylaunderingandterroristfinancin compliance.html> accessed on 27 June 2024.

AML/CFT framework meets all the technical requirements of each of the FATF Recommendations.<sup>67</sup> Based on the methodology and the findings of the 2021 evaluation, South Africa was found to be compliant with only three out of the 40 Recommendations.<sup>68</sup> It is partially compliant with 15 Recommendations<sup>69</sup> and has low compliance with 17 Recommendations.<sup>70</sup> Lastly, it was found to be totally non-compliant with five Recommendations.<sup>71</sup> The poor levels of compliance ultimately led to the greylisting of South Africa.

Since the greylisting in February 2023, accountable institutions in terms of the *FIC Act*, regulatory bodies such as the Financial Sector Conduct Authority (FSCA), the South African Reserve Bank (SARB) and other stakeholders have been under pressure to implement measures that can bring about compliance with the FATF standards.<sup>72</sup> These role-players are working hard to improve AML/CFT compliance levels with the view to take South Africa off the greylist.

## **1.4 Motivation**

### *1.4.1 Rationale of the Study*

This research is premised on the argument that South Africa's AML/CFT legislative and regulatory framework falls short of the FATF standards, hence the greylisting in February 2023. This dissertation assesses the deficiencies pointed out by the FATF in its 2021 mutual evaluation report in order to highlight the legislative and regulatory flaws that enable criminals to use the South African financial system to launder money and finance acts of terrorism. The researcher analyses the 2021 mutual evaluation report as well as South

---

<sup>67</sup> FATF 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Fatf-methodology.html> accessed on 27 June 2024; FATF 2023 <https://www.fatf-gafi.org/en/publications/fatfrecommendations/documents/fatfissuesnewmechanismstostrengthenmoneylaunderingandterroristfinancingcompliance.html>.

<sup>68</sup> South Africa is compliant with Recommendations 21, 30 and 31; Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 1535.

<sup>69</sup> South Africa is partially compliant with Recommendations 1, 2, 5, 7, 10, 14, 18, 22, 23, 24, 25, 26, 27, 28 and 32; Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 1535.

<sup>70</sup> South Africa has low compliance with Recommendations 3, 4, 9, 11, 13, 16, 19, 20, 29, 33, 34, 35, 36, 37, 38, 39 and 40; Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 1535.

<sup>71</sup> South Africa is not compliant with Recommendations 6, 8, 12, 15 and 17; Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 1535.

<sup>72</sup> See Schedule 1 of the *Financial Intelligence Centre Act 38 of 2001* in Conjunction with Section 1 of the Act for the Definition of "Accountable Institution"; Sovereign Group March 2024 <https://www.sovereigngroup.com/news/news-and-views/south-africa-says-removal-from-fatf-grey-list-in-2025-remains-a-challenge/> accessed on 31 March 2024.

Africa's AML/CFT legislative framework in the form of the *FIC Act*, *POCA* and *POCDATARA*. This dissertation further discusses, albeit briefly, the application of the FATF greylisting standards in South Africa. The researcher seeks to propose measures that South Africa can take to enhance its AML/CFT framework so that it is removed from the greylist. Thus, the researcher also provides an analysis of the extent to which South Africa has gone in addressing AML/CFT weaknesses in its regulatory and legislative framework. The study also endeavours to examine the role of AML/CFT role-players in South Africa to establish if they are carrying out their duties effectively and diligently. It is significant that South Africa was put on the greylist for the first time in its history. Owing to this, there is limited literature on the analysis of the deficiencies in South Africa's AML/CFT regime. In this regard, the researcher intends to contribute to the discourse that seeks to strengthen the South African AML/CFT framework to remove South Africa from the FATF greylist.

#### *1.4.2 Limitation of Study*

This research is limited to the relevant sections of the *FIC Act* dealing with the obligations of accountable institutions, and the relevant provisions of the *POCA* and *POCDATARA* as they are the main legislative interventions to fight against money-laundering and terrorist financing in South Africa. The research is further limited to the application of the FATF Recommendations and their application in South Africa. Relevant AML/CFT role-players are also discussed to understand their relevance and responsibilities in taking South Africa off the greylist. Anything that falls outside the scope of the aforesaid is not included in this dissertation.

#### *1.4.3 Research Question*

Is the current South African AML/CTF regulatory framework sufficient to combat money laundering and the flaws identified by the FATF regarding greylisting?

### **1.5 Research Aim and Objectives**

#### *1.5.1 Aims*

For the purposes of this research, aims include the goals and targets that the researcher wishes to achieve at the end of this research.

In this regard, this research seeks to:

- a) evaluate the current legislative framework governing money laundering and counter-terrorist financing in South Africa, focusing on key sections of the *FIC Act*, *POCA*, *POCDATARA* and related regulations;
- b) examine relevant case law and/or relevant examples of money laundering and terrorist financing activities in South Africa to assess the adequacy of existing laws on deterring and combating financial crimes;
- c) identify specific gaps, deficiencies, or inconsistencies in the South African AML/CFT laws that may hinder compliance with the FATF's AML/CFT standards by reading the existing legislation in line with the findings outlined in the 2021 mutual evaluation report.

### *1.5.2 Objectives*

For the purposes of this research, the objectives include any measures or specific stages that are undertaken by the researcher to achieve the overall goals and aims of the research.

To achieve the aforesaid aims, the researcher:

- a) analyses the South African AML/CFT laws against the FATF's 40 Recommendations , assessing areas of convergence and divergence;
- b) investigates the practical implementation and enforcement of AML/CTF laws in South Africa, considering the effectiveness of regulatory supervision, enforcement actions, and coordination among relevant authorities; and
- c) proposes recommendations for legislative reforms, regulatory enhancements, and capacity-building measures to strengthen South African AML/CTF laws and ensure alignment with FATF standards.

### **1.6 Research Methodology**

This research is done using the qualitative research methodology based on a desktop literature review. In this regard, the researcher critically analyses both primary and secondary sources of literature to deduce sound opinions in order to provide recommendations that can improve South Africa's efforts in conforming to the FATF's AML/CFT standards. Thus, the researcher uses this methodology as it appropriately serves the purpose of analysing the FATF greylisting standards as well as South Africa's AML/CTF

regime in a way that answers the research question. Therefore, the following research methods are used:

a) Primary and Secondary Sources

This research analyses primary and secondary sources. The primary sources include legislation, regulations and case law. The secondary sources comprise of journal articles, books, and Internet publications to access relevant information on South Africa's AML/CFT legislative and regulatory framework as well as the application of FATF greylisting standards in South Africa.

b) Relevant Legislation

This research analyses the sections of the *FIC Act*, alongside the *POCDATARA* and the *POCA* to determine their relevance and adequacy in aiding compliance with FATF Recommendations to combat money laundering and the financing of terrorism in South Africa.

c) Relevant Case Law

Relevant case law on how South Africa historically investigated and prosecuted cases of money laundering and terrorist financing to identify areas to be strengthened through legislative and regulatory measures are studied.

d) Historical Analysis

The researcher uses this method in Chapter Two of this research to discuss South Africa's AML/CFT legislative framework post-apartheid and considers legislation enacted in the constitutional era as it has set the standard for the current existing legislation. The history also looks at South Africa's FATF membership and its obligation to comply with the FATF standards. This analyses South Africa's legislative measures to evaluate their compliance with the FATF standards and gives context to how the country was added to the FATF's greylist in 2023 and what it needs to do to get off the greylist.

## **1.7 Framework of Chapters**

This Research is made up of five chapters as outlined below:

Chapter One discusses the research outline and provides the context of the study. This chapter introduces the problem statement, research question, rationale of the research, aims and objects, limitations of the research and the research methodology.

Chapter Two provides the background of the study focusing on FATF's operations and how South Africa has dealt with the crimes of money laundering and terrorist financing post the apartheid era. The researcher only considers legislation that was enacted from 1994, which was the year in which South Africa endorsed constitutional supremacy, up to 2024. This is important to give context to the objectives of the existing legislation and how it failed to make provision for all the AML/CFT standards established by the FATF to combat money laundering and terrorist financing in South Africa. Such failure to fully comply with the FATF standards has resulted in South Africa being added to the FATF greylist.

Chapter Three analyses the current AML/CFT framework in South Africa. It analyses the adequacy of the provisions of the *FIC Act*, *POCA* and *POCDATARA* legislation in ensuring compliance with the FATF standards as full compliance therewith ensures the effectiveness of South Africa's measures to combat money laundering and terrorist financing.

Chapter Four discusses the greylisting challenges that affected and exposed the flaws in the South African AML/CFT legislation. This chapter discusses South Africa's non-compliance with the FATF Recommendations as identified in the Mutual Evaluation Report of 2021.<sup>73</sup>

Chapter Five provides recommendations and conclusions to improve South Africa's AML/CFT legal framework and ensure full compliance with the FATF Recommendations.

### **1.8 Relevance for Research Unit**

This research focuses on the application of the FATF greylisting standards in South Africa by analysing South Africa's AML/CFT legal framework. This research is relevant to the Law Faculty's Research Unit as it falls under the Finance, Trade and Innovation sub-category. The research analyses the adequacy of South Africa's AML/CFT legal framework in ensuring compliance with the FATF's 40 Recommendations. This research is important in understanding the shortcomings of the legislation which resulted in the greylisting of South Africa. It is hoped that this research can shed light on legislation shortcomings to combat money laundering and terrorist and proliferation financing. The research provides recommendations on how South Africa's AML/CFT framework can be improved to comply with the FATF standards. The study outlines the findings identified by the FATF in the 2021 mutual evaluation report. The recommendations can help policymakers align the AML/CTF

---

<sup>73</sup> FATF 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline.pdf>.

legislation with FATF's 40 Recommendations by addressing the legislative and regulatory deficiencies identified in the Mutual Evaluation Report .

### ***1.9 Statement Regarding Ethics***

This research uses a qualitative literature review of FATF greylisting standards and South Africa's AML/CFT legal framework. This is done to analyse the application of the FATF greylisting standards on South Africa and South Africa's compliance with the FATF AML/CFT standards since gaining FATF membership in 2003. To achieve this purpose, the researcher reviews the FATF greylisting standards in conjunction with South Africa's legislative interventions to date. The primary and secondary sources which the researcher refers to in this research are properly referenced. There are no interviews and questionnaires held with an individual or a group of people with the purpose of discussing a topic or an issue that might be upsetting, embarrassing or sensitive to any person. No criminal disclosures or other disclosures which require legal action and/or those that can cause adverse effects, risks and danger to research participants would be done during this research. Therefore, there is no need to plan for insurance and/or indemnity to provide for the potential legal liability of the university caused by harm to participants due to this research.

## **CHAPTER TWO**

### **HISTORICAL BACKGROUND ON GREYLISTING CHALLENGES IN SOUTH AFRICA**

#### ***2.1 Introduction***

A country is greylisted when it has failed to adhere to the Financial Action Task Force (FATF) AML/CFT standards and has committed to swiftly resolve the identified strategic deficiencies within agreed timeframes.<sup>74</sup> South Africa is one such country that has been placed under FATF greylist. Following the 2021 FATF mutual evaluation report, South Africa's AML/CFT regulatory framework was deemed inadequate in effectively addressing money laundering and terrorism financing.<sup>75</sup> It is important to note that greylisting is a consequence resulting

---

<sup>74</sup> De Koker, L "FATF Greylisting: Time to Revisit the Approach" 2024 *Journal of Money Laundering Control* 621, 261; De Koker L, Howell J & Morri N, "Economic Consequences of Greylisting by the Financial Action Task Force" 2023 *Risks* 1, 1.

<sup>75</sup> Kempen A, "Not our Colour of Choice Implications of the Grey-listing on South Africa" 2023 *Community-based Safety & Security Magazine*; FATF 2024 Jurisdictions Under Increased Monitoring; Bissett B, Steenkamp P & Aslett D "An Analysis of the 2021 South African FATF Mutual Evaluation Report: Terrorist Financing and NPOs 2023 *Journal of Financial Crime* 1534, 1535.

from a series of events. This chapter explores the history of South Africa's financial regulation landscape, with a particular focus on the legal challenges that led to the country's blacklisting. The chapter focuses on two distinct periods: the apartheid era and the post-apartheid period.

## ***2.2 Historical Overview of Money Laundering, Terrorist Financing and Proliferation Regulation in South Africa***

### *2.2.1 The Apartheid Era*

Apartheid was a system of institutionalised racial segregation that prevailed in South Africa from 1948 until the early 1990s.<sup>76</sup> During this era, South Africa did not have specific laws addressing the crime of money laundering.<sup>77</sup> The absence of an AML/CFT regulatory framework may be attributed to the country's isolation during this period. Apartheid South Africa had limited engagement with global financial markets and by extension, international best practices in combating money laundering and related crimes.<sup>78</sup> However, because of the prevailing political climate during that period, there was a substantial number of statutory provisions enacted to regulate the financial sector. Among many regulations that dealt with terrorism-related offences were the *Terrorism Act* of 1967, the *Internal Security Act* of 1982, the *Arms and Ammunition Act* of 1969 and the *Explosives Act* of 1956. The *Terrorism Act* provided that any person who, with the intent to threaten the maintenance of law and order in the Republic or any part thereof, incites, instigates, directs, assists, advises, encourages, or persuades another individual to commit such acts would be guilty of the offence of participating in terrorist activities.<sup>79</sup> Accordingly, it was an offence to assist individuals in committing acts of terrorism, and it can be inferred that financing such activities constitutes a form of assistance. Therefore, the financing of terrorist activities was indirectly criminalised by the *Terrorism Act* during the apartheid era. The *Internal Security*

---

<sup>76</sup> Beinart W & Dubow S, *Segregation and Apartheid in Twentieth Century South Africa* 14; Mariotti M, Labor Markets During Apartheid in South Africa 2009 *Working Papers in Economics & Econometrics* 2.

<sup>77</sup> South African Law Commission 1996 *Money Laundering and Related Matters Report* [https://www.justice.gov.za/salrc/reports/r\\_prj104\\_1996aug.pdf](https://www.justice.gov.za/salrc/reports/r_prj104_1996aug.pdf) 1 accessed on 14 October 2024.

<sup>78</sup> Barnes, C "International Isolation and Pressure for Change in South Africa" in Griffiths A & Barnes C (ed) *Powers of Persuasion Incentives, Sanctions and Conditionality in Peace-making* 38; Habib A & Padayachee V "Economic Policy and Power Relations in South Africa's Transition to Democracy" 2000 *World Development* 245, 263.

<sup>79</sup> Section 2 of *Terrorism Act 74 of 1967*; Current History, "The Terrorism Act of South Africa" 1969 *Current History*, 298, 298.

*Act* was enacted to provide for the state security and the maintenance of law and order.<sup>80</sup> Although it was not explicitly anti-terrorism legislation by today's standards, the *Act* granted broad powers to the government to suppress activities it deemed subversive, seditious, or potentially destabilising.<sup>81</sup> The *Arms and Ammunition Act* established strict licensing requirements for the possession, sale, and transfer of firearms and ammunition.<sup>82</sup> By controlling legal access to weapons, the government aimed to prevent them from reaching groups or individuals who might use them in acts of terrorism or resistance.

An analysis of the above statutes revealed that prior to 1990, South Africa lacked comprehensive AML/CFT legislation. There were no laws or regulations addressing money laundering at that time. In other words, money laundering was not recognised as a criminal offence. While there were no AML regulations, there were so many laws against terrorism. It is worth noting that the terrorism-related regulations were not specifically aimed at curbing the financing of terrorist activities. Instead, they were designed to suppress the legitimate activities of political parties involved in the struggle for freedom by imposing a range of criminal sanctions such as movement restrictions, imprisonment, and even the death penalty. Except for the *Terrorism Act*, which indirectly criminalised the financing of terrorism, none of the other anti-terrorism regulations explicitly criminalised or even mentioned terrorism financing. It was only towards the end of apartheid that an AML statute was introduced, in the form of the *Drug Trafficking Act* of 1992. The *Act* concerned itself with the offence of the "conversion of the proceeds of drug trafficking"<sup>83</sup> and marked the beginning of South Africa's campaign against money laundering.<sup>84</sup> It is worth mentioning that the *Act* was ineffective in combating money laundering activities because its scope was limited, focusing primarily on drug-related offences and failing to encompass all forms of money laundering.<sup>85</sup> The money laundering activities prohibited by the *Drugs and Drug Trafficking Act* were only limited to proceeds of specific drug-related offences.<sup>86</sup> The *Act's*

---

<sup>80</sup> See the *Internal Security Act* 74 of 1982.

<sup>81</sup> See the *Internal Security Act* 74 of 1982.

<sup>82</sup> The *Arms and Ammunition Act* of 1969.

<sup>83</sup> See *Drugs and Drug Trafficking Act* no. 140 of 1992; South African Law Commission [https://www.justice.gov.za/salrc/reports/r\\_prj104\\_1996aug.pdf](https://www.justice.gov.za/salrc/reports/r_prj104_1996aug.pdf) 1; 3 accessed on 14 October 2024

<sup>84</sup> See now repealed *Drugs and Drug Trafficking Act 140 of 1992*.

<sup>85</sup> De Koker, L Money laundering Control: The South African Model 2003 *Journal of Money Laundering Control* 166

<sup>86</sup> Chitimira H "An Exploration of the Current Regulatory Aspects of Money Laundering in South Africa" (2021) *Journal of Money Laundering Control* 789, 790; De Koker L, "Money Laundering Control; The South Africa Model" 2002 *Journal of Money Laundering Control* 166, 169; Njotini MN "The

effectiveness was further undermined by the fact that it imposed the obligation to report drug-related transactions or property acquired from the proceeds of such activities on only a limited number of relevant persons.<sup>87</sup> Therefore, the pre-democratic South African laws did not recognise cases of manipulation of proceeds of crime that fell outside of the *Drugs Act*.<sup>88</sup> This means that South Africa was particularly susceptible to money laundering and terrorism financing during this period. To this extent, Chitimira argues that before 1998, money laundering operations were widespread and inadequately controlled in South African financial markets and financial institutions.<sup>89</sup>

### 2.2.2 The Post-Apartheid Era

As previously mentioned, the years preceding 1994 were characterised by non-comprehensive AML/CTF regulations. Consequently, post-apartheid South Africa inherited a similarly weak AML/CTF legal framework, which prompted the country to initiate AML/CTF regulatory reforms to create a framework that could combat money laundering and terrorism financing. These reforms were marked by the enactment of several pieces of legislation aimed at strengthening the country's AML/CTF framework. This led to the introduction of laws such as the *Proceeds of Criminal Activities Act*, the *Prevention of Organised Crime Act (POCA)*, the *Financial Intelligence Centre Act (FIC Act)*, and the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act (POCDATARA)*.<sup>90</sup> This section of the dissertation discusses and analyses the effectiveness of these statutes, highlighting the shortcomings that were identified by FATF which resulted in South Africa's placement on FATF greylist.

---

Transaction or Activity Monitoring Process: An Analysis of the Customer Due Diligence Systems of the United Kingdom and South Africa" 2010 *Obiter* 556, 556.

<sup>87</sup> See Section 10 of now repealed *Drugs and Drug Trafficking Act 140 of 1992*; Van Wyk, R "Current Situation and Countermeasures Against Money Laundering in South Africa" (2001) *Resource Material Series* 419, 419.

<sup>88</sup> South African Law Commission [https://www.justice.gov.za/salrc/reports/r\\_prj104\\_1996aug.pdf](https://www.justice.gov.za/salrc/reports/r_prj104_1996aug.pdf) 1; 3 accessed on 14 October 2024.

<sup>89</sup> Chitimira 2021 *Journal of Money Laundering Control* 790.

<sup>90</sup> Kersop M & Du Toit per SF 2015 "Anti-Money Laundering Regulations and the Effective use of Mobile Money in South Africa" (2015) *PER/PELJ* 1637; Khumalo K "The Problem with the Removal of the Motive Requirement from the Offence of Terrorism – A Short Commentary" 2023 *African Security Review* 289. 289; Cachalia "A Counter-terrorism and International Cooperation Against Terrorism – An Elusive Goal: A South African Perspective" 2010 *South African Journal on Human Rights* 510, 510.

The first statute to directly and comprehensively address AML/CTF in South Africa was the *Proceeds of Crime Act*, enacted in 1996.<sup>91</sup> The *Act* was established to facilitate the recovery of proceeds derived from criminal activities and prohibit money laundering.<sup>92</sup> This statute expanded laundering offences in the *Drugs and Drug Trafficking Act* to include proceeds from all types of crimes and introduced provisions for the confiscation of criminal proceeds upon conviction.<sup>93</sup> It created a general reporting obligation for businesses coming into possession of suspicious property and also made provision for the freezing and confiscation of the proceeds of crime.<sup>94</sup> The enactment of this legislation marked a significant development in South Africa's AML/CTF legal framework, as the previous *Drugs and Drug Trafficking Act* was limited to money laundering activities related only to drug dealing and trafficking.<sup>95</sup> The *Proceeds of Crime Act* is credited for expanding the scope of the prohibition on money laundering to encompass a wider range of trading activities and offences in South Africa. However, the *Act* was short-lived, as it was repealed by the *POCA* in 1998.<sup>96</sup>

The *POCA* was enacted in 1998.<sup>97</sup> It was promulgated primarily because South Africa's common and statutory laws were ineffective in combating organised crime and the country had fallen behind in aligning with international standards on the matter.<sup>98</sup> *POCA* forbids illegal acts like money laundering, criminal gang activity, and racketeering.<sup>99</sup> The *Act* distinguishes between two money laundering offences: one concerning money laundering offences relating to proceeds of all forms of crimes and the other relating to money laundering offences relating to proceeds of racketeering.<sup>100</sup> The *Act* further distinguishes

---

<sup>91</sup> Proceeds of Crime Act 76 of 1996; De Koker L *South African Money Laundering and Terror Financing* 2-3.

<sup>92</sup> Preamble of *Proceeds of Crime Act* 76 of 1996; Thomas K "Prosecuting with the Prevention of Organised Crime Act. A Review of South Africa's Anti-gang Provisions" 2022) *Research Paper Issue 1*, 3.

<sup>93</sup> Van Wyk R "Current Situation and Countermeasures Against Money Laundering in South Africa" 2000 Resource Material Series 419, 420.

<sup>94</sup> See section 4 & 8 *Proceeds of Organised Crime Act* 76 of 1996; Van Wyk Resource Material Series 420.

<sup>95</sup> De Koker (2003) *Journal of Money Laundering Control* 166.

<sup>96</sup> Section 79(c) of the *Proceeds of Crime Act*; De Koker (2003) *Journal of Money Laundering Control* 166.

<sup>97</sup> See Prevention of Organised Crime Act 121 of 1998 (POCA); Chitimira 2021 *Journal of Money Laundering Control* 790; Powell CH "South Africa's Legislation Against Terrorism and Organised Crime" 2002 Singapore *Journal of Legal Studies* 104, 106.

<sup>98</sup> Powell *Singapore Journal of Legal Studies* 106; Cowling 1998 *SACJ* 356; the Preamble of the POCA; Aslett *Combating Organised Crime in South Africa* 237.

<sup>99</sup> See the *Prevention of Organised Crime Act* 121 of 1998; Chitimira 2021 *Journal of Money Laundering Control* 790; Kersop m & Du Toit sf (2015) *PER/PELJ* 1621.

<sup>100</sup> Chitimira 2021 *Journal of Money Laundering Control* 791; De Koker 2002 [https://www.files.ethz.ch/isn/124022/2002\\_09\\_01.pdf](https://www.files.ethz.ch/isn/124022/2002_09_01.pdf) 1; 4.

between three main categories of money laundering offences.<sup>101</sup> The first category deals with a person who knows or should reasonably know that certain property is tied to unlawful activities and engages in a business relationship that facilitates money laundering, or such a person helps an offender evade prosecution, or conceals property linked to the crime.<sup>102</sup> A person who knows or should have reasonably known that another person has gained the proceeds of illegal activity and helps that person profit from those proceeds falls under the second category. Anybody who purchases, uses, or owns property knowing or should have reasonably known that it is a component of the proceeds of illegal activity falls under the third category.<sup>103</sup> As a result, any businessperson who owns or comes into contact with property or the proceeds of questionable illegal activity and does not notify the police and/or other appropriate authorities faces a fine or a maximum sentence of 15 years in jail.<sup>104</sup>

The problems that money laundering presents are not entirely addressed by *POCA*. While it outlines the actions that constitute money laundering offences, it falls short in specifying the measures necessary to effectively detect and prevent money laundering activities.<sup>105</sup> Critics contend that the *Act* has contributed little to substantive criminal law. The "new" offences it introduces largely overlap with activities already prohibited under South African common law and existing statutes, offering minimal additional legal enhancement.<sup>106</sup> The offence of money laundering could be dealt with under the South African common law crime of fraud. The common law doctrines of conspiracy, incitement, common purpose, and defeating the administration of justice collectively establish broad accomplice liability, which aligns with the evident aim of section 9 of *POCA*.<sup>107</sup> The offence of passing on information about an investigation which could prejudice that investigation in section 75 of *POCA* is similarly an extension of the common law offence of defeating the administration of justice.<sup>108</sup> As a result, under *POCA*, South Africa's AML/CTF regulations remained weak and vulnerable to exploitation by money laundering and terrorism financing activities.

---

<sup>101</sup> Chitimira 2021 *Journal of Money Laundering Control* 791.

<sup>102</sup> Section 5 & 6 of *POCA*; De Koker Money Laundering Control: The South African Model 2003 *Journal of Money Laundering Control* 166.

<sup>103</sup> See Section 6 of *POCA*.

<sup>104</sup> Chitimira 2021 *Journal of Money Laundering Control* 791.

<sup>105</sup> Powell 2002 *Singapore Journal of Legal Studies* 106; Burchell J "Criminal Justice at the Crossroads" 2002 *South African Law Journal* 579, 580.

<sup>106</sup> Powell 2002 *Singapore Journal of Legal Studies* 107.

<sup>107</sup> Powell 2002 *Singapore Journal of Legal Studies* 107.

<sup>108</sup> Powell 2002 *Singapore Journal of Legal Studies* 107.

At the turn of the millennium, signatories of the United Nations (UN) Convention on Transnational Crime, including South Africa, faced significant international pressure to enact domestic legislation aimed at combating money laundering.<sup>109</sup> Building on the foundation established by *POCA*, the South African government enacted the *FIC Act* in 2001 to enhance and fortify its AML framework further. The *FIC Act* was passed in order to combat money laundering, stop the financing of terrorism and related activities, and assist in identifying the proceeds of illicit activity.<sup>110</sup> The *FIC Act's* AML regulatory framework introduces several measures primarily aimed at detecting, preventing, and combating money laundering as well as the financing of terrorist-related activities in South Africa.<sup>111</sup> These measures include enforcing customer due diligence (CDD), record-keeping obligations, financial sanctions, reporting of suspicious transactions, compliance requirements, and supervision of accountable institutions.<sup>112</sup> In order to identify, stop, and combat money laundering and similar activities in South Africa, the *FIC Act* mainly depends on customer due diligence procedures. Financial institutions are required to have adequate knowledge of their customers, maintain transaction records, and report unusual or suspicious activities to the relevant authorities.<sup>113</sup>

Notably, the Financial Intelligence Center (FIC) and the Money Laundering Advisory Council were founded by the *FIC Act*.<sup>114</sup> FIC is the central body for, *inter alia*, collecting and analysing information on financial transactions and creating responsibilities for accountable institutions for matters connected with the curbing of money laundering and financing of terrorism and related activities.<sup>115</sup> The resulting financial intelligence reports are requested by or, where necessary, referred to the competent authorities including law enforcement and prosecutorial authorities for them to use in their investigations, prosecutions, and

---

<sup>109</sup> Van Jaarsveld I "The Financial Intelligence Centre Regulations Demystifying the KYC-regime" 2002 *Juta's Business Law* 200, 200; see the United Nations Convention Against Transnational Organized Crime,

<sup>110</sup> Chitimira 2001 *Journal of Money Laundering Control* 789; Section 3 of FICA; De Koker 2003 *Journal of Money Laundering Control* 169.

<sup>111</sup> See ss 20A-45 of the FICA; Chitimira 2001 *Journal of Money Laundering Control* 793; Kersop and Du Toit 2015 *PER/PELJ* 1645.

<sup>112</sup> Ss 20A-45 of the FICA; Chitimira 2001 *Journal of Money Laundering Control* 793; Kersop and Du Toit 2015 *PER/PELJ* 1640.

<sup>113</sup> See 21 & 22 of FICA; Mavhuru L *A comparative analysis of the regulations governing mobile money services in South Africa and Zimbabwe and their impact on sustainable financial inclusion of the poor and vulnerable people* (PhD thesis University of Cape Town 2022) 62.

<sup>114</sup> See section 2 of FICA; Hatchard J "The Role of Financial Intelligence Units in Combating Money Laundering: An African Perspective" 2022 *Journal of International and Comparative Law* 103, 110.

<sup>115</sup> See Chapter 3 & Schedule 1 of FICA in Conjunction with Section 1 of the Act for the Definition of "Accountable Institution"; De Jager MJ *A Comparative Study Between South-African Anti-Money Laundering Legislation and International Standards* (LLM Thesis, University of Pretoria 2018) 8

applications for forfeiture of criminal assets. Additionally, the FIC periodically publishes guidance notes that advise financial institutions and regulatory agencies on how to interpret the *FIC Act's* provisions.<sup>116</sup> The purpose of these notes is to bolster South Africa's efforts to stop money laundering and terrorist financing.

The South African Law Commission Report of 2002 on the review of security legislation found that there were shortcomings in the legislation on combating terrorism.<sup>117</sup> The report found that the offence of terrorism was very narrow and there was a need to address the financing of terrorism in South Africa.<sup>118</sup> The report further recommended amendments to the *FIC Act*. The events in the United States of America (USA) on 11 September 2001, when the World Trade Centre and the Pentagon were attacked prompted the whole world to put measures to combat terrorism.<sup>119</sup> Due to the terrorist events of 11 September 2001, South Africa was expected to have measures in place to, *inter alia*, combat the financing of terrorism.<sup>120</sup> In accordance with the UN Security Council Resolutions that South Africa is bound by as a UN member state, the *POCDATARA* was passed in 2004 to comply with international treaties that forbid terrorism and related illegal actions.<sup>121</sup> The *Act* is aligned to the UN Convention against Terrorist Financing in which South Africa is a signatory.<sup>122</sup> In

---

<sup>116</sup> See Section 4 of the FICA; Chitimira 2001 *Journal of Money Laundering Control* 798; Symington J "Financial Intelligence Centre Amendment Act: Pre-implementation Study in South Africa" 2016 *Finmark Trust* 1, 16.

<sup>117</sup> Lumina C "Counter-terrorism Legislation and the Protection of Human Rights: A Survey of Selected International Practice 2007 *African Human Rights Law Journal* 35, 46; South African Law Commission 2002 [https://www.justice.gov.za/salrc/reports/r\\_prj105\\_2002aug.pdf](https://www.justice.gov.za/salrc/reports/r_prj105_2002aug.pdf) 1: 18 accessed on 15 October 2024.

<sup>118</sup> Lumina 2007 *African Human Rights Law Journal* 46; South African Law Commission 2002 [https://www.justice.gov.za/salrc/reports/r\\_prj105\\_2002aug.pdf](https://www.justice.gov.za/salrc/reports/r_prj105_2002aug.pdf) 1: 5 accessed on 15 October 2024.

<sup>119</sup> South African Law Commission 2002 [https://www.justice.gov.za/salrc/reports/r\\_prj105\\_2002aug.pdf](https://www.justice.gov.za/salrc/reports/r_prj105_2002aug.pdf) 1: 608 accessed on 15 October 2024; Gearty C "11 September 2001, Counter-Terrorism, and the Human Rights Act" 2005 *Journal of Law and Society* 18, 24.

<sup>120</sup> South African Law Commission 2002 [https://www.justice.gov.za/salrc/reports/r\\_prj105\\_2002aug.pdf](https://www.justice.gov.za/salrc/reports/r_prj105_2002aug.pdf) 1: 608 accessed on 15 October 2024.

<sup>121</sup> See the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act* 33 of 2004 (POCDATARA); Aslett *Combating Organised Crime in South Africa* 271; Ncube PT & Kabwe R "The Regulation of Cryptocurrencies to Combat Money Laundering Crimes in South African Banking Institutions Special Edition on Rethinking Global Economies, Financial Markets, Corporate Practices & Business Activities Post-COVID-19 Pandemic" 2023 *De Jure* 354, 358; Cayle L A "Comparative Analysis of the Targeted Financial Sanctions Regulatory Framework of the European Union and United Kingdom: Lessons for South Africa" 2023 *Journal for Contemporary Roman-Dutch Law* 40, 46.

<sup>122</sup> See International Convention for the Suppression of the Financing of Terrorism <https://www.unodc.org/documents/treaties/Special/1999%20International%20Convention%20for%20the%20Suppression%20of%20the%20Financing%20of%20Terrorism.pdf> accessed on 15 October 2024; Ncube & Kabwe 2023 *De Jure* 358.

accordance with worldwide best practices, the *Act* focuses on fighting terrorism and related activities in South Africa rather than outright banning money laundering.<sup>123</sup>

## **2.3 FATF's Assessment of South Africa's AML/CFT Regulations and Greylisting**

### *2.3.1 General Overview of the FATF's Operations and Greylisting Process*

An intergovernmental organization created in 1989 to combat money laundering and the funding of terrorism, the Financial Action Task Force (FATF) was joined by South Africa in 2003.<sup>124</sup> The FATF Recommendations are international guidelines that offer a thorough framework for preventing money laundering and terrorist financing.<sup>125</sup> Membership in the FATF requires adherence to its standards for combating money laundering and the financing of terrorism.<sup>126</sup> These Recommendations are organised into three categories which are guidance for law-making bodies on establishing a legal framework to combat money laundering, directives on regulating national financial systems, and guidelines promoting international cooperation among governments.<sup>127</sup> FATF conducts regular peer reviews, or mutual evaluations, where member countries assess each other's compliance with FATF standards.<sup>128</sup> These evaluations examine both technical compliance and the effectiveness of AML/CTF measures in place in a member state.

---

<sup>123</sup> Chitimira H & Munedzi S "Historical aspects of customer due diligence and related anti-money laundering measures in South Africa" 2023 *Journal of Money Laundering Control* 138, 145; Chitimira 2001 *Journal of Money Laundering Control* 798.

<sup>124</sup> Pavlidis G "The Dark Side of Anti-Money Laundering: Mitigating the Unintended Consequences of FATF Standards" 2023 *Journal of Economic Criminology* 1,2; Nance MT "The Regime that FATF Built: An Introduction to the Financial Action Task Force " (2018) *Crime Law Soc Change* 109, 111; Ronald FP "Anti-Money Laundering: The World's Least Effective Policy Experiment? Together, We Can Fix It 2020 Policy Design and Practice 73, 75.

<sup>125</sup> Mekpor E, Aboagye A and Welbeck J "The Determinants of Anti-Money Laundering Compliance among the Financial Action Task Force (FATF) Member States 2018 *Journal of Financial Regulation Compliance* 442, 444; Van Wyk *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* 42; Nanyun & Nasiri 2021 *Journal of Money Laundering Control* 234; OECD Report "Global Forum on Transparency and Exchange of Information for Tax Purposes: South Africa (Second Round, Combined Review)" 2022 *OECD Report* 6.

<sup>126</sup> Hugo C and Spruyt W "Money Laundering, Terrorist Financing and Financial Sanctions: South Africa's Response by Means of the Financial Intelligence Centre Amendment Act 1 of 2017" 2018 *Journal of South African Law* 227; 232; Van Wyk A *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* 42.

<sup>127</sup> Van Jaarsveld 2002 *Juta's Business Law* 200, 225, 226; "The FATF's Nine Special Recommendations: A Too Soft Approach to Combating Terrorism" 2011 *Touro Int'l L. Rev* 363.

<sup>128</sup> Van Wyk *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* 43; Shah AR "The Geopolitics of Pakistan's 2018 Greylisting by the Financial Action Task Force" 2021 *International Journal* 280, 283.

Based on these evaluations, FATF provides ratings and detailed feedback to help countries improve their AML/CFT efforts. A country can be rated as compliant (C) where there are no shortcomings in its AML/CFT framework. A largely compliant (LC) rating is applied where there are minor shortcomings in the country's AML/CFT framework. A country gets rated as partially compliant (PC) where there are moderate shortcomings to its AML/CFT framework. A rating of non-compliant (NC) is applied where there are major shortcomings in the country's AML/CFT framework. A non-applicable (N/A) rating is made where the requirements do not apply to that specific country due to structural, legal or institutional aspects of the country. To this extent, FATF maintains a "greylist" and a "blacklist" of countries with deficiencies in AML/CFT compliance. The greylist includes jurisdictions that are working with FATF to address identified shortcomings, while the blacklist includes countries that have failed to take adequate corrective actions.<sup>129</sup> Being on either list can result in increased scrutiny and restrictions from the international financial community.

### 2.3.2 FATF's Greylisting Process

The process of greylisting is twofold. Firstly, it follows a review process of a country's AML/CFT performance conducted by the International Cooperation Review Group (ICRG).<sup>130</sup> During this review, the FATF looks at the flaws and progress made by the country during this assessment phase. The FATF then formulates an action plan if the country has not made sufficient progress and needs to strengthen its efforts to remedy the identified strategic deficiencies of its AML/CFT regime.<sup>131</sup> All legal, regulatory, and operational steps outlined in the action plan must be implemented by the reviewed country. At this stage, the affected country has a one-year observation period to work with the FATF or FSRB to address the flaws in its AML/CFT framework. If a country fails to improve its AML/CFT compliance during this review period, the second step is the listing of the country on either the greylist or

---

<sup>129</sup> Shah 2021 *International Journal* 283; Beebeejaun A and Dullo L "A Critical Analysis of the Anti-Money Laundering Legal and Regulatory Framework of Mauritius: A Comparative Study with South Africa" 2023 *Journal of Money Laundering Control* 401, 403; Van Wyk J "South Africa's Imminent Greylisting: 'Sword of Damocles' or a Wake-up Call for Our Economy?" 2023 *TAXtalk* 22; De Koker L "Editorial: FATF Greylisting: Time to Revisit the Approach" 2023 *Journal of Money Laundering Control* 621.

<sup>130</sup> Shah 2021 *International Journal* 287; Bissett & Steenkamp and Aslett 2023 *Journal of Financial Crime* 1535; De Koker Howell & Morri 2023 *Risks* 3; Sykes R "Some questions on the FATF 40+9 and the Methodology for Assessing Compliance with the FATF 40+9 Recommendations" 2007 *Journal of Banking Regulation* 236, 237.

<sup>131</sup> Beebeejaun and Dullo 2023 *Journal of Money Laundering Control* 403; Gardner KL "Fighting Terrorism the FATF Way" *Global Governance* 325, 328.

blacklist.<sup>132</sup> For the majority of countries entering this review process, the 12-month period has proved to be too short to address the identified AML/CFT deficiencies.<sup>133</sup> Countries such as Pakistan, remained on the FATF greylist for a period of not less than 3 years. Pakistan was added to the FATF greylist in 2018 and was removed in 2022.<sup>134</sup> Failure to address the deficiencies within the stipulated time frame may result in a country being categorised as a higher risk country subjecting it to the adverse consequences associated with such a designation. It would be progressive for the FATF to consider the deficiencies identified in individual countries and set the review period according to the needs of the individual countries to remedy the deficiencies. The 12-months review period should not be applied across all countries under the review process as it would render a high number of countries non-compliant with the 40 Recommendations. A more flexible and risk-based approach should be applied to avoid many countries being added to the greylist.

## **2.4 FATF Evaluation of South Africa AML/CFT Framework**

### **2.4.1 FATF Mutual Evaluation of 2003**

The first FATF evaluation of South Africa's AML/CFT framework was conducted in 2003 in collaboration with the International Monetary Fund (IMF).<sup>135</sup> The evaluation noted that the *FICA* had only recently been implemented, and some of its measures had not yet been fully enforced.<sup>136</sup> It also identified the need for South Africa to promptly develop a framework to combat the financing of terrorism.<sup>137</sup> The evaluation report found that at that time, the

---

<sup>132</sup> Shah 2021 *International Journal* 287; De Koker L, Howell J & Morri N, "Economic Consequences of Greylisting by the Financial Action Task Force" 2023 *Risks* 1,6.

<sup>133</sup> Van Wyk 2023 *TAXtalk* 23; De Koker 2023 *Journal of Money Laundering Control* 623.

<sup>134</sup> Iftikhar NF & Iqbal, Saman S "The International Cooperation Challenge: Mapping Pakistan's Response to Terrorist Financing and Money Laundering" 2021 *RSIL Law Review* 54, 56; Shah AR "The Geopolitics of Pakistan's 2018 Greylisting by the Financial Action Task Force" 2021 *International Journal* 280,281; Ahmad S "The Role of Developing Countries in Investor-State Arbitration: Reflections on Tethyan Copper v Islamic Republic of Pakistan" 2023 *LSE Law Review* 453, 463.

<sup>135</sup> Bester H, De Koker L & Hawthorne R "Access to Financial Services in South Africa: A brief case study of the effect of the implementation of the Financial Action Task Force Recommendations 2004" *Genesis Analytics* 1, 8; IMF 2004 *South Africa: Report on the Observance of Standards and Codes — FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism* <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> accessed on 30 April 2024.

<sup>136</sup> International Monetary Fund 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 1; 2; Njotini 2010 *Obiter* 556.

<sup>137</sup> IMF 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 1; 2; OECD Report 2022 *Global Forum on Transparency and Exchange of Information for Tax Purposes: South Africa* available at [https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/11/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-south-africa-2022-second-round-combined-review\\_56613ecb/0cb5c667-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/11/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-south-africa-2022-second-round-combined-review_56613ecb/0cb5c667-en.pdf) 29 accessed on 28 October 2024.

financing of terrorism, terrorist acts or terrorist organisations were not criminalised yet.<sup>138</sup> The review further found that South Africa did not seize property used to finance terrorist activities and had limited ability to freeze funds in financial institutions.<sup>139</sup> During the 2003 review, the FATF was also concerned that since 1997, out of a total of 4,523 suspicious transaction reports (STRs) generated only 41 criminal investigations were conducted, leading to five convictions for offences other than money laundering.<sup>140</sup> It noted that money laundering offences had not been adequately investigated and prosecuted.<sup>141</sup> Additionally, there was no general duty to identify the beneficial owner of the property.<sup>142</sup> Following the 2003 observance, the FATF provided South Africa with an action plan to improve compliance with the FATF Recommendations.<sup>143</sup>

#### 2.4.2 FATF Mutual Evaluation of 2009

The second mutual evaluation of South Africa was conducted in 2009.<sup>144</sup> The assessment found that South Africa had made good progress in developing its AML/CFT framework since the 2003 mutual evaluation. Provisions criminalising the financing of terrorism were comprehensive. It found that the FIC was an effective unit. Since the 2003 evaluation, South Africa has adopted mechanisms to freeze terrorist-related assets. It further found that the *FIC Act* imposes various customer due diligence, record keeping and reporting obligations on accountable institutions. However, the report highlighted that the issue of beneficial ownership had not yet been addressed and South Africa still needed to adopt measures to deal with politically exposed persons (PEPs). Additionally, it noted that the *FIC Act* covers some DNFBPs, but the legislation needs to include precious metals and stones, company service providers, and accountants as accountable institutions. Additional progress noted in

---

<sup>138</sup> Beebeejaun A and Dulloo L "A Critical Analysis of the Anti-money Laundering Legal and Regulatory Framework of Mauritius: A Comparative Study with South Africa" 2023 *Journal of Money Laundering Control* 401, 412; IMF 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 1; 2.

<sup>139</sup> IMF 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 1; 2. Chitimira & Munedzi 2023 *Journal of Money Laundering Control* 139.

<sup>140</sup> IMF 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 1; 3.

<sup>141</sup> IMF 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 1; 3.

<sup>142</sup> IMF 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 1; 3.

<sup>143</sup> IMF 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> 1; 6.

<sup>144</sup> IMF 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> accessed 2 July 2024; FATF 2009 *Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism* <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofsouthafrica.html> accessed 24 June 2024.

the report was the enactment of the *POCDATARA*, the various amendments to the *FIC Act*, and that STR reporting had increased from securities and investment firms and casinos.<sup>145</sup>

### 2.4.3 FATF Mutual Evaluation of 2021

The most recent FATF mutual evaluation on South Africa was carried out in 2021. The report indicated that while South Africa's legislative framework is sufficient to combat money laundering and terrorist financing, there was ineffective implementation.<sup>146</sup> More than half of reported crimes fall into categories that generate proceeds, according to the 2021 Mutual Evaluation Report, which also showed that crime in South Africa is quite high in both volume and intensity.<sup>147</sup> It was observed that cash is widely used and that the region has a sizable informal sector, which includes informal cross-border remittances that mostly entail the physical transportation of cash. Banks were singled out as the main entry points into the financial system including from abroad. The evaluation report also noted that the deficiency in beneficial ownership transparency, previously highlighted in FATF's 2003 and 2009 mutual evaluations, remained insufficient. Companies and trusts were still frequently misused for money laundering, leaving various accountable institutions vulnerable to exploitation.<sup>148</sup> The following section outlines specific deficiencies within the statutes discussed above, as identified in the FATF Mutual Evaluation Report on South Africa.

#### 2.4.3.1 Deficiencies within the *FIC Act*

On the effectiveness of the *FIC Act*, the mutual evaluation report highlighted that the *Act* lacks robust requirements to ensure transparency in identifying the beneficial owners of

---

<sup>145</sup> IMF 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> accessed 2 July 2024; FATF 2009 *Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism* <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofsouthafrica.html> accessed 24 June 2024.

<sup>146</sup> Bissett & Steenkamp and Aslett 2023 *Journal of Financial Crime* 1535; Khouny H and Drissi H Addressing the Challenges of Weak AML Measures in Developing Countries: Key Concerns of FATF and Consequences of Greylisting 2024 *Multidisciplinary Science Journal* 1,9.

<sup>147</sup> IMF 2021 *South Africa: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism* IMF Country Report No.21/22; FATF Mutual Evaluation Report 2021 *Anti-money Laundering and Counter-terrorist Financing Measures South Africa 2021* available <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline.pdf> accessed 30 October 2024.

<sup>148</sup> Spruyt W "The Financial Intelligence Centre Amendment Act and the Application of a Risk-Based Approach" 2017 *Annual Banking Law Update* 1; 19-30; IMF 2021 *South Africa: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism* IMF Country Report No.21/227 <https://www-elibrary-imf-org.nwulib.idm.oclc.org/view/journals/002/2021/227/002.2021.issue-227-en.xml> 12, 17, 161-165 accessed 2 July 2024.

entities.<sup>149</sup> The report highlighted a significant vulnerability of South Africa to money laundering, as companies and trusts are frequently exploited for such purposes or to facilitate predatory crimes.<sup>150</sup> This vulnerability was attributed to the challenges in obtaining beneficial ownership information on companies and trusts. The report noted that although authorities depended on accountable institutions to access beneficial ownership information, existing *FIC Act* measures were inadequate to ensure that these institutions consistently provide sufficient, accurate, current, and verified information in a timely manner.<sup>151</sup>

The report also identified gaps in the *FIC Act* regarding the beneficial ownership of trusts and partnerships. It pointed out that the *FIC Act* only mandates identifying beneficial owners when natural persons are partners in a partnership or parties to a trust agreement.<sup>152</sup> However, it does not cover scenarios where non-natural persons are partners in a partnership or the trust agreement involves non-natural persons.<sup>153</sup> Therefore, it recommended that South Africa should ensure that beneficial owners are suitably identified for all partnerships and trusts.

The report also pointed out that the *FIC Act* does not require all relevant entities to engage an anti-money laundering obligated person on an ongoing basis.<sup>154</sup> It also noted that although the *Act* allows for the risk-based CDD, it does not specify how often this information should be updated, which may result in outdated information in some cases. In other words, there is no specified period for updating CDD on customers by accountable institutions in the *FIC Act*. It thus recommended that South Africa should put in place a comprehensive and effective supervision and enforcement programme to ensure the availability of

---

<sup>149</sup> IMF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 5 accessed 10 March 2024; OECD *Peer Review Report 2023* [https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/11/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-south-africa-2022-second-round-combined-review\\_56613ecb/0cb5c667-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/11/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-south-africa-2022-second-round-combined-review_56613ecb/0cb5c667-en.pdf) 15.

<sup>150</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf>.coredownload.inline 5; Open Ownership "Beneficial ownership transparency of trusts in South Africa" 2022 *Policy Briefing* 1, 7.

<sup>151</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf>.coredownload.inline 11; OECD 2023 *Peer Review Report* 27.

<sup>152</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf>.coredownload.inline 12.

<sup>153</sup> OECD 2023 *Peer Review Report* [https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/11/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-south-africa-2022-second-round-combined-review\\_56613ecb/0cb5c667-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/11/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-south-africa-2022-second-round-combined-review_56613ecb/0cb5c667-en.pdf) 30.

<sup>154</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf>.coredownload.inline; OECD 2023 *Peer Review Report*

adequate, accurate and up-to-date beneficial ownership information for all legal entities and legal arrangements.

On the 2017 *FIC Act* amendments, the report observes that several exemptions from reporting obligations were removed, but some entities are subjected to just general reporting obligations.<sup>155</sup> It specifically highlights that dealers in precious metals and stones, and crypto asset service providers are not classified as accountable institutions under the *FIC Act* and are not subjected to strict reporting obligations nor required to be registered with the FIC.<sup>156</sup> It is worth noting that reporting obligations aim to ensure transparency, traceability, and accountability in financial transactions, enabling law enforcement to detect and address potential financial crimes effectively. Exempting some entities from reporting obligations creates risk for money laundering and terrorism financing.

The report also raised concerns over the *FIC Act's* definition of politically exposed persons (PEPs). The *FIC Act* differentiates between two types of politically exposed persons, domestic prominent influential persons (DPIPs) and foreign prominent public officials (FPPOs).<sup>157</sup> Under the *Act*, a DPIP is an individual who, in South Africa, holds or has held a prominent public position (including in an acting role exceeding six months) within the last 12 months.<sup>158</sup> These roles are listed in Schedule 3A of the *FIC Act*.<sup>159</sup> Similarly, an FPPO is an individual who holds or has held a significant public function within the preceding 12 months, in any foreign country, as detailed in Schedule 3B of the *FIC Act*.<sup>160</sup> The 2021 FATF mutual evaluation report highlighted shortcomings in these definitions, pointing out that the current legal descriptions of PEPs are insufficiently clear.<sup>161</sup> It recommended that the time limits in the *FIC Act's* definition of PEPs should be removed because they were short. The

---

<sup>155</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline.pdf> 10.

<sup>156</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline> 4.

<sup>157</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline> 43.; OECD *Peer Review Report 2023* [https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/11/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-south-africa-2022-second-round-combined-review\\_56613ecb/0cb5c667-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/11/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-south-africa-2022-second-round-combined-review_56613ecb/0cb5c667-en.pdf) 4.

<sup>158</sup> Financial Intelligence Centre "Guidance on Measures Relating to Foreign Prominent Public Officials, Domestic Prominent Influential Persons, their Immediate Family Members and Known Close Associates" *Public Compliance Communication No. 51*.

<sup>159</sup> Schedule 3A of the FICA.

<sup>160</sup> Financial Intelligence Centre *Public Compliance Communication No. 51*; Schedule 3B of the FICA.

<sup>161</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline> 43 & 103.

timelines are conflicting with international standards which encourage ongoing monitoring of former PEPs due to their continued influence.<sup>162</sup> This deficiency can hinder the identification and monitoring of PEPs, affecting South Africa's ability to fully comply with FATF's anti-money laundering and counter-terrorist financing standards.<sup>163</sup>

On money laundering related issues, the report commended that the FIC should have access to extensive reports and tools but it also noted significant gaps in financial intelligence due to cash risks, irregular reporting, and a low volume of high-risk Designated Non-Financial Businesses and Professions (DNFBPs). The report further observed that the South African Police Service (SAPS) and South African Revenue Services (SARS) mainly use financial intelligence for investigating predicate crimes, overlooking money laundering and terrorist financing cases.<sup>164</sup> The report recommended that law enforcement agencies need more skills and resources to use this information effectively. The report found that there is limited proactive investigation of money laundering in South Africa, and this should change.

#### *2.4.3.2 Deficiencies within POCA*

The 2021 FATF mutual evaluation report commended South Africa's efforts in combating organised crime, particularly highlighting the effective implementation of the *POCA* by the National Prosecuting Authority's (NPA) Asset Forfeiture Unit (AFU) since its founding in 1999.<sup>165</sup> South Africa was recognised for making asset confiscation a key policy goal, actively pursuing the forfeiture of criminal proceeds. It noted that over 600 court judgments have developed case law on asset forfeiture under *POCA*, addressing various principles such as the constitutionality of the asset forfeiture regime, interpretation of specific legal standards, and procedural issues.<sup>166</sup> The report emphasised that *POCA* provides for both conviction-based and non-conviction-based (civil) forfeiture. Chapter 5 of *POCA* covers conviction-based forfeiture, which requires a criminal conviction to confiscate assets connected to criminal activity.<sup>167</sup> In contrast, Chapter 6 addresses civil forfeiture, allowing for asset seizure

---

<sup>162</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline> 14.

<sup>163</sup> Greenberg TS & Gray L et al *Politically Exposed Persons* 17.

<sup>164</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline>.

<sup>165</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline> 72.

<sup>166</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline> 72.

<sup>167</sup> See Chapter 5 of POCA.

based on the "preponderance of evidence" standard, without needing a criminal conviction.<sup>168</sup> According to the report, the AFU places more emphasis on using its civil forfeiture powers under POCA than on criminally seizing property of comparable value, which requires a conviction for money laundering or related offences.<sup>169</sup> Despite notable successes in civil forfeiture, the FATF mutual evaluation report concludes that the NPA faces ongoing challenges related to limited resources and staffing. Nevertheless, the report acknowledged that the NPA has achieved a reasonable number of convictions, indicating some effectiveness in tackling money laundering and related offences despite these constraints.<sup>170</sup> The civil recovery regime has proven highly effective in South Africa, benefiting from well-established legal precedents and thorough implementation in practice. However, the report raised concern over the prevalence of non-custodial or suspended sentences in money laundering cases.<sup>171</sup>

#### 2.4.3.3 *Deficiencies within Non-Profit Organisations Act*

The FATF mutual evaluation report gave a negative assessment of the country's counter-financing of terrorism regime concerning its oversight and regulation of non-profit organisations (NPOs). The NPOs in South Africa, like in other parts of the world, face a risk of being exploited for terrorism financing due to their charitable nature, reliance on donations, and often minimal oversight.<sup>172</sup> This makes it easier for some actors to misuse these organisations to funnel funds for illicit purposes. South Africa enacted the *Non-Profit Organisations Act (NPO Act)* to define and regulate the sector in 1997.<sup>173</sup> The 2021 mutual evaluation report noted that the *NPO Act* was of limited scope in preventing money laundering because it only applies to NPOs registered in terms of the *Act* in a jurisdiction

---

<sup>168</sup> See Chapter 6 of POCA.

<sup>169</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline> 75.

<sup>170</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline> 75.

<sup>171</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline> 95.

<sup>172</sup> Langa FM "An Assessment of South Africa's Vulnerability to Terrorism Financing and the Counter-Terrorist Financing Framework" 2023 *Journal of Central and Eastern European African Studies* 125, 126. FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline>

<sup>173</sup> Non-Profit Organisation Act 71 of 1997; Wyngaard RG & Hendricks PS "South Africa's King III: Highlighting the Need for a Separate Non-Profit Governance Code" 2010 *International Journal of Civil Society Law* 177, 177.

where NPO registration is voluntary.<sup>174</sup> Furthermore, the *Act* was criticised for failing to provide clear and effective sanctions against those convicted of terrorism related crimes. This is because anyone found guilty of an offence covered by the NPO Act faces the possibility of a fine, jail time, or both.<sup>175</sup> The FATF criticised the absence of a specific amount of the fine and length of imprisonment in the *NPO Act* for anyone found guilty of terrorism-related offences.<sup>176</sup> The report notes that no additional information has been provided in the *Act* regarding sanctions imposed on NPOs found guilty of terrorism-related offences or those acting on behalf of such entities.<sup>177</sup> Furthermore, the *Act* makes no mention of the rules and processes that would be applied in the event that an international request for information on a NPO that may be implicated in financing terrorism is received.<sup>178</sup> The report also found that law enforcement agents in South Africa do not understand the complexities that accompany NPOs, trusts and companies, rendering them unable to effectively combat terrorism crimes.<sup>179</sup> The nature of the terrorism financing risks, and the methods employed by terrorists to abuse NPOs have never been assessed. The report also showed that the *NPO Act* remains ineffective in preventing terrorism financing.

The researcher notes that the results of the 2021 FATF mutual evaluation report are poor. It is clear that South Africa's AML/CFT framework is adequate, however, there are shortcomings with the implementation of the framework. It is evident that some of the deficiencies identified by the FATF in South Africa's AML/CFT framework are recurring throughout the three mutual evaluations conducted to date. It is rather interesting that law-making bodies have failed to address long standing deficiencies such as beneficial ownership transparency since 2003. It is also important to consider whether South Africa was given sufficient time in between the mutual evaluations to address the identified deficiencies. The poor results of the 2021 mutual evaluation led to South Africa being added to the FATF's greylist. Although no country is fully compliant with the FATF's 40 Recommendations and

---

<sup>174</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline> 94; See section 12 of Non-Profit Organisation Act 71 of 1997 (NPO Act).

<sup>175</sup> See chapter 5 of the NPO Act.

<sup>176</sup> See chapter 5 of the NPO Act.

<sup>177</sup> Bissett & Steenkamp and Aslett 2023 *Journal of Financial Crime* 1540; FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline> 94.

<sup>178</sup> FATF Mutual Evaluation Report 2021 <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-South-Africa.pdf.coredownload.inline> 75.

<sup>179</sup> Bissett & Steenkamp and Aslett 2023 *Journal of Financial Crime* 1539.

11 Immediate Outcomes, South Africa was found to have too many weaknesses when it comes to the implementation of its AML/CFT framework.<sup>180</sup>

## **2.5 Conclusion**

The above assessment shows that South Africa's AML/CFT framework has significantly improved, and the country has transitioned from a previously weak regulatory structure to a strong regime. From the initial steps in the early 1990s to the establishment of a more comprehensive AML/CFT framework in the 2000s, South Africa has aimed to align its AML/CFT framework with international best practices. This progress is evident in the enactment of key laws such as the *FIC Act*, the *POCA*, and the *POCDATARA*. However, areas remain where further strengthening is necessary to fully align with FATF standards and reduce vulnerability to financial crimes. The recent greylisting by the FATF indicates that there still remains work to be done to strengthen South Africa's AML/CFT legal and regulatory framework, especially on enforcement.

---

<sup>180</sup> De Koker L 2023 FATF's Greylisting of South Africa: Navigating Myths and Truths About Economic Impact <https://www.linkedin.com/pulse/fatfs-greylisting-south-africa-navigating-myths-truths-louis-de-koker/> accessed 2 July 2024.

## CHAPTER THREE

### THE CURRENT AML/CTF REGULATORY FRAMEWORK IN SOUTH AFRICA

#### 3.1 Introduction

The regulation of money laundering and terrorist financing is a fairly recent development that gained steam since the late 1990s in South Africa.<sup>181</sup> Several laws such as the *Financial Intelligence Centre Act (FIC Act)*,<sup>182</sup> the *Prevention of Organised Crime Act (POCA)*,<sup>183</sup> and the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act (POCDATARA)*<sup>184</sup> were enacted to form the core of South Africa's anti-money laundering and counter-terrorist financing (AML/CTF) regulatory framework. Nevertheless, South Africa remains susceptible to money laundering, terrorism financing and related crimes owing to several factors. The Financial Action Task Force (FATF) notes that South Africa faces high levels of tax evasion, corruption, bribery, fraud, trafficking in illicit drugs and considerable use of cash particularly in the unregulated informal economy.<sup>185</sup> While the mentioned aspects are not money laundering or terrorism financing, most of them are predicate offences and others create a conducive environment for organised crimes in South Africa.

---

<sup>181</sup> Gaviyau W and Sibindi A.B "Anti-Money Laundering and Customer Due Diligence: Empirical Evidence from South Africa" 2023 *Journal of Money Laundering Control* 224; 225; See Chitimira H "An Exploration of the Current Regulatory Aspects of Money Laundering in South Africa" 2021 *Journal of Money Laundering Control* 789, 789-791; Nortier C "The role of the South African regulatory authorities in combating money laundering and terrorist financing perpetrated through alternative remittance systems" 2010 (University of Pretoria – dissertation)1; 65-73.

<sup>182</sup> *Financial Intelligence Centre Act* 38 of 2001, see section 64; Nortier *The Role of the South African Regulatory Authorities in Combating Money Laundering and Terrorist Financing Perpetrated Through Alternative Remittance Systems* 1; 79; Bester, De Koker and Hawthorne 2004 *Genesis Analytics (Pty) Ltd* 1; 6; Langa MF "An Assessment of South Africa's Vulnerability to Terrorism Financing and the Counter-Terrorist Financing Framework" 2024 *Journal of Central and Eastern European African Studies* 125; 129-131.

<sup>183</sup> *Prevention of Organised Crime Act* 121 of 1998, see sections 4, 5 and 6; Nortier *The Role of the South African Regulatory Authorities in Combating Money Laundering and Terrorist Financing Perpetrated Through Alternative Remittance Systems* 1; 79; Bester, De Koker and Hawthorne 2004 *Genesis Analytics (Pty) Ltd* 1; 6; Langa 2024 *Journal of Central and Eastern European African Studies* 125; 129-131.

<sup>184</sup> *Protection of Constitutional Democracy Against Terrorist and Related Activities Act* 33 of 2004, sections 2-24; Nortier *The Role of the South African Regulatory Authorities in Combating Money Laundering and Terrorist Financing Perpetrated Through Alternative Remittance Systems* 1; 79; Bester, De Koker and Hawthorne 2004 *Genesis Analytics (Pty) Ltd* 1; 6; Langa 2024 *Journal of Central and Eastern European African Studies* 125; 129-131.

<sup>185</sup> FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 1; 18-19 accessed 10 March 2024; Naidoo 2023 *Anti-Money Laundering and Counter-Terrorist Financing Measures: South Africa Mutual Evaluation Report 2021, with Specific Focus on the Ultimate Beneficial Ownership Requirement*; Bissett B, Steenkamp P and Aslett S "An Analysis of the 2021 South African FATF Mutual Evaluation Report: Terrorist Financing and NPOs" 2023 *Journal of Financial Crime* 1534; 1540-1542.

Moreover, South Africa has the largest economy in the Southern Africa Development Community (SADC) region and indeed continentally which makes it attractive to organised criminal syndicates.<sup>186</sup> It follows that without sufficient AML/CTF statutory measures to deter criminals, money laundering and terrorism financing can thrive in South Africa.<sup>187</sup> Against this backdrop, this chapter seeks to discuss South Africa's AML/CTF regulatory framework in light of its greylisting.

### **3.2 Brief Background of South Africa's AML/CTF Regulatory Framework**

For the purposes of this dissertation, the researcher discusses three statutes that form the core of South Africa's AML/CTF regulatory framework. The three are *POCA*, *the FIC Act* and *POCDATARA*. Each of the statutes is discussed separately below.

#### *3.2.1 POCA and AML/CTF Regulation in South Africa*

*POCA* was enacted in 1998 to criminalise money laundering and provides for the confiscation of criminal proceeds.<sup>188</sup> The *Act* also provides for the National Prosecuting Authority (NPA) to have civil forfeiture powers both through criminal and civil channels to disrupt the use and benefit of criminal proceeds in South Africa. *POCA* seeks to combat organised criminal activities in all their forms in South Africa.<sup>189</sup> In this regard, money laundering and terrorist financing can be classified as organised crime.<sup>190</sup> *POCA* has been amended several times as

---

<sup>186</sup> Gillmer, Amardien, Harwin and Kleinsmidt 2023 <https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Corporate/corporate-and-commercial-alert-29-march-Understanding-South-Africas-FATF-greylisting-.html> accessed 10 April 2024; for further comments on organised crime in South Africa also see Holt A "South Africa in the War on Terror" 2004 *Terrorism Monitor* 1; 1-6.

<sup>187</sup> See related comments by Beebeejaun A and Dulloo L "A Critical Analysis of the Anti-Money Laundering Legal and Regulatory Framework of Mauritius: a Comparative Study with South Africa" 2023 *Journal of Money Laundering Control* 1, 3

<sup>188</sup> FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 [https://www.fatf-gafi.org/en/publications/Mutual evaluations/Mer-south-africa-2021.html](https://www.fatf-gafi.org/en/publications/Mutual%20evaluations/Mer-south-africa-2021.html) 1: 8 accessed 10 March 2024; Chitimira H "An Exploration of the Current Regulatory Aspects of Money Laundering in South Africa" 2021 *Journal of Money Laundering Control* 789: 790; Nortier "The Role of the South African Regulatory Authorities in Combating Money Laundering and Terrorist Financing Perpetrated Through Alternative Remittance Systems" 1; 79; Bester, De Koker and Hawthorne 2004 *Genesis Analytics (Pty) Ltd* 1; 6; Langa 2024 *Journal of Central and Eastern European African Studies* 125; 129-131.

<sup>189</sup> Sections 4-8 of *POCA*; Nortier "The Role of the South African Regulatory Authorities in Combating Money Laundering and Terrorist Financing Perpetrated Through Alternative Remittance Systems" 1; 79; Bester, De Koker and Hawthorne 2004 *Genesis Analytics (Pty) Ltd* 1; 6; Langa 2024 *Journal of Central and Eastern European African Studies* 125; 129-131.

<sup>190</sup> See section 4-8 of *POCA* on how the *Act* describes organised crime.

the legislature sought to keep the law up to speed with the evolving nature of money laundering and terrorism financing in South Africa.

*Money laundering, illegal gang activity, and racketeering are all prohibited by POCA.*<sup>191</sup> Businesses are required by Section 7 of the Act to report any suspicions they may have about the proceeds of illegal activity.<sup>192</sup> This reporting obligation reconciles with the FATF's Recommendation 20 which requires the reporting of suspicious transactions for all member countries.<sup>193</sup> *POCA* further provides for penalties towards those obligated to report those who fail to honour this obligation.<sup>194</sup> Failing to report could result in a fine or a maximum sentence of 15 years in prison. In addition, *POCA* empowers courts in South Africa to issue confiscation and restraint orders in respect of property and proceeds of criminal activities.<sup>195</sup> In this regard, sections 18-22 of *POCA* are in line with the FATF's Recommendation 30 which provides for responsibilities of law enforcement and investigative authorities.<sup>196</sup> Recommendation 30 provides that countries should designate competent law enforcement authorities to identify, trace, and initiate freezing and seizing of property linked to criminal activities.<sup>197</sup> Recommendation 4 also provides for the confiscation of illegally acquired property and that countries should have policies that prioritise asset recovery.<sup>198</sup> *POCA* distinguishes between two money laundering offences: one concerning money laundering offences relating to proceeds of all forms of crimes and the other relating to money

---

<sup>191</sup> See *Prevention of Organised Crime Act 121 of 1998*; Chitimira 2021 *Journal of Money Laundering Control* 790; Gupta D "Republic of South Africa's Prevention of Organised Crime Act: A Comparative Bill of Rights Analysis" 2002 *Harvard Civil Rights-Civil Liberties Law Review* 159-183;

<sup>192</sup> See Section 7 of *Prevention of Organised Crime Act 121 of 1998*.

<sup>193</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf> accessed on 20 February 2024.

<sup>194</sup> See section 8(2) of *POCA*.

<sup>195</sup> Sections 18-22 of the *Prevention of Organised Crime Act 121 of 1998*; Chitimira 2021 *Journal of Money Laundering Control* 791.

<sup>196</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf> accessed on 20 February 2024.

<sup>197</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

<sup>198</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

laundering offences linked to proceeds of racketeering.<sup>199</sup> This distinction is in line with Recommendation 3 which requires that countries should criminalise money laundering and include the widest range of predicate offences.<sup>200</sup> Additionally, *POCA* makes a distinction between three primary types of money laundering offences.<sup>201</sup> The first category addresses situations in which someone who knows or should have reasonably known that a particular piece of property is part of the proceeds of illegal activity enters into a business relationship with that property, which has the effect of money laundering or allowing someone who has committed an offence in South Africa to evade prosecution or to remove or destroy any property linked to an illegal deed.<sup>202</sup> The second category concerns with someone who helps someone else profit from illegal activity even though they knew or should have reasonably known that the other person received the proceeds of illegal activity. Anyone who purchases, uses, or owns property that they know or should have reasonably known was obtained via illegal means falls under the third category.<sup>203</sup> Any person convicted in terms of sections 4, 5 and 6 will be liable for a fine not exceeding R100 million or imprisonment for a period not exceeding 30 years.

### 3.2.2 The *FIC Act* and the AML/CTF Framework in South Africa

The *FIC Act* was enacted in 2001 as the main AML/CTF legislation in South Africa.<sup>204</sup> It provides that accountable institutions should implement measures to counter money laundering and terrorist financing.<sup>205</sup> The *Act* was amended in 2017 to enhance due diligence requirements and provide for the adoption of a risk-based approach for business risk

---

<sup>199</sup> Chitimira 2021 *Journal of Money Laundering Control* 791; De Koker, Centre for the Study of Economic Crime, RAU University "Money Laundering in South Africa" 2002 [https://www.files.ethz.ch/isn/124022/2002\\_09\\_01.pdf](https://www.files.ethz.ch/isn/124022/2002_09_01.pdf) accessed on 30 June 2024.

<sup>200</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf> accessed on 20 February 2024.

<sup>201</sup> Chitimira 2021 *Journal of Money Laundering Control* 791.

<sup>202</sup> See section 6 of the *Prevention of Organised Crime Act no. 121 of 1998*.

<sup>203</sup> See section 8(1) of the *Prevention of Organised Crime Act 121 of 1998*; Chitimira 2021 *Journal of Money Laundering Control* 792.

<sup>204</sup> South African Law Commission "Review of Security Legislation (Terrorism: Section 54 of the *Internal Security Act, 1982*" 2002 [https://www.justice.gov.za/salrc/reports/r\\_prj105\\_2002aug.pdf](https://www.justice.gov.za/salrc/reports/r_prj105_2002aug.pdf) 1; 36 accessed on 14 October 2024.

<sup>205</sup> See Chapter 3 of the *Financial Intelligence Centre Act 38 of 2001*; See also Schedule 1 of the *Financial Intelligence Centre Act no.38 of 2001* in Conjunction with section 1 of the Act for the Definition of "Accountable Institution".

assessment within the private sector.<sup>206</sup> The 2017 amendment is in line with the FATF's Recommendation 1 which requires member countries to identify, assess and understand their money laundering and terrorist financing risks.<sup>207</sup> When conducting such an assessment, FATF member countries should apply the risk-based approach to ensure that controls to prevent money laundering and terrorist financing correspond to the identified risks.

Chapter 3 of the *FIC Act* creates responsibilities for accountable institutions for matters connected to the curbing of money laundering and the financing of terrorist and related activities.<sup>208</sup> The *Act* identifies accountable institutions such as, *inter alia*, attorneys, executors, trust companies, nominee companies as defined in the *Companies Act*, authorised users of exchange as defined in the *Financial Markets Act*, managers registered in terms of a *Collective Investment Schemes Control Act*, estate agents, a business of a bank, a mutual bank; co-operative bank, life insurance business, a business of gambling activity, a business of dealing in foreign exchange, a credit provider, a financial services provider, business of a money or value transfer provider, a high-value goods dealer, business dealing in crypto asset and a clearing system participant.<sup>209</sup> The provisions of the *FIC Act* are enforced by the Financial Intelligence Centre (FIC) established in terms of section 2 of the *Act*.<sup>210</sup>

In accordance with FATF Recommendation 29, which states that nations should set up a financial center unit tasked with analyzing a) suspicious transaction reports (STRs); and b) other data pertaining to money laundering and terrorist financing, the FIC was established.<sup>211</sup> A number of authorities, including an investigating authority, the National

---

<sup>206</sup> FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 1; 31 accessed 10 March 2024; Gaviyau and Sibindi 2023 *Journal of Money Laundering Control* 233.

<sup>207</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf> accessed on 20 February 2024.

<sup>208</sup> See Chapter 3 of the *Financial Intelligence Centre Act 38 of 2001*; See also Schedule 1 of the *Financial Intelligence Centre Act 38 of 2001* in Conjunction with section 1 of the Act for the Definition of "Accountable Institution".

<sup>209</sup> Chapter 3 of the *Financial Intelligence Centre Act 38 of 2001*; Also see Schedule 1 read together with section 1 of the Act.

<sup>210</sup> See sections 2-5 of the *Financial Intelligence Centre Act 38 of 2001*.

<sup>211</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf->

Prosecuting Authority (NPA), an intelligence agency, the South African Revenue Services (SARS), the Independent Police Investigative Directorate (IPID), the National Defense Force's (NDF) intelligence division, the Special Investigating Unit (SIU), the Public Protector (PP), an investigative division in a national department, a supervisory body, or the investigative division of the Auditor-General (AG), must receive advice and cooperation from the FIC in accordance with Section 4.<sup>212</sup> This provision is in line with FATF's Recommendation 2 which provides for national cooperation and coordination amongst relevant authorities to combat money laundering, terrorist financing and the financing of proliferation.<sup>213</sup> Sections 3(2)(b), 40(1) and (1B) of the *FIC Act* enables the FIC to exchange information on money laundering and related offences with other financial intelligence units, financial supervisors and law enforcement agencies.<sup>214</sup> These provisions are in line with Recommendation 40 which requires that countries should authorise their relevant institutions to cooperate in order to combat money laundering and terrorism financing.<sup>215</sup>

In essence, the *FIC Act* seeks to, *inter alia*, combat money laundering activities and the financing of terrorism and related activities in South Africa.<sup>216</sup> As such, the *FIC Act* provides that accountable institutions have the duty to perform customer due diligence prior to entering into any business relationship.<sup>217</sup> This provision is in line with FATF's Recommendation 10 which requires member countries to undertake customer due diligence measures when establishing business relationships.<sup>218</sup> The customer due diligence provisions extend to the identification and verification of politically exposed persons (PEPs) and prominent influential persons both domestically and internationally.<sup>219</sup> However, the customer due diligence provision fails to explicitly prohibit institutions from relying on third

---

gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf accessed on 20 February 2024.

<sup>212</sup> See sections 4(a) and (b) of the *Financial Intelligence Centre Act 38 of 2001*; Chitimira 2021 *Journal of Money Laundering Control* 793.

<sup>213</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

<sup>214</sup> See sections 3(2)(b), 40(1), (1B) of the *Financial Intelligence Centre Act 38 of 2001*.

<sup>215</sup> The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

<sup>216</sup> See the Long Title of the *Financial Intelligence Centre Act 38 of 2001*.

<sup>217</sup> See Section 20A of the *Financial Intelligence Centre Act 38 of 2001*; Njotini MN "The Transaction or Activity Monitoring Process: An analysis of the Customer Due Diligence Systems of the United Kingdom and South Africa" 2010 *Obiter* 556; 557-558.

<sup>218</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

<sup>219</sup> See sections 21F, 21G, schedule 3A, 3B and 3C of the *Financial Intelligence Centre Act 38 of 2001*.

parties to perform customer due diligence.<sup>220</sup> This shortfall is inconsistent with FATF's Recommendation 17 which permits financial institutions to rely on third parties for customer due diligence subject to specified criteria.<sup>221</sup> These provisions are in line with Recommendation 12 which deals with additional measures when dealing with politically exposed persons.<sup>222</sup> They must also establish and verify the nature of the business relationship, the intended purpose of the business relation as well as the source of funds that a prospective customer intends to use in the course of such a business relationship.<sup>223</sup> Since the FIC Act does not specifically state if the client identification and verification process is time-bound, it is argued that there may be a flaw in it.<sup>224</sup> It is further submitted that strict adherence to the customer identification and verification process could amount to financial exclusion in instances where a customer is unable to produce certain documentation required in the process.<sup>225</sup> Moreover, it is averred that the *Act* does not specify the type of documents to be considered when establishing and verifying a prospective customer's identity.<sup>226</sup>

Accountable institutions are also required to maintain client due diligence and transaction data for a predetermined amount of time.<sup>227</sup> The aforementioned clause aligns with FATF's Recommendation 11, which mandates that financial institutions preserve transaction and CDD measure records for a minimum of five years. The researcher notes that the *FIC Act* does not limit the record keeping requirement to only financial institutions as provided for under Recommendation 11, but extends the obligation to all accountable institutions. Accountable institutions are also prohibited from conducting business with persons and

---

<sup>220</sup> FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 1: 189-190 accessed 10 March 2024.

<sup>221</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf> accessed on 20 February 2024.

<sup>222</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf> accessed on 20 February 2024.

<sup>223</sup> See section 21 of the *Financial Intelligence Centre Act 38 of 2001*; FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

<sup>224</sup> Chitimira 2021 *Journal of Money Laundering Control* 794.

<sup>225</sup> Njotini 2010 *Obiter* 568.

<sup>226</sup> Chitimira 2021 *Journal of Money Laundering Control* 794; See also Section 21A of the *Financial Intelligence Centre Act 38 of 2001*.

<sup>227</sup> See sections 22 – 25 of the *Financial Intelligence centre Act 38 of 2001*.

entities identified by the Security Council of the United Nations or assets belonging to such persons.<sup>228</sup> This requirement aligns with FATF's Recommendations 5, 6, and 7, which state, in brief, that member nations should impose targeted financial sanctions in order to comply with UN Security Council resolutions pertaining to the prevention and suppression of terrorism and terrorist financing, as well as criminalize terrorist financing based on the Terrorist Financing Convention.<sup>229</sup>

Reporting suspicious or anomalous transactions to the FIC is outlined in section 29 of the *FIC Act*.<sup>230</sup> This clause, along with section 7 of the POCA, is consistent with FATF's Recommendation 20, which mandates that financial institutions notify the FIC of any unusual transfers of funds that are associated with terrorist funding or the proceeds of criminal activity.<sup>231</sup> Sections 51 to 52 of the *FIC Act* provide that failure to report cash transactions, property associated with terrorists and related activities as well as suspicious and unusual transactions is an offence which is subject to an administrative sanction.<sup>232</sup> These sanctions are in line with FATF's Recommendation 35 which requires countries to ensure effective sanctions for failure to comply with AML/CFT requirements.<sup>233</sup> Section 29(3) and (4) of the *FIC Act* prohibits disclosing the fact that a suspicion is reported to the FIC, also known as "tipping-off".<sup>234</sup> Section 38 of the *Act* protects persons making reports to the FIC from criminal and civil liability when reporting suspicious activities and transactions in good faith.<sup>235</sup> Section 29(3), (4) and section 38 of the *FIC Act* are in line with FATF's Recommendation 21 which provides for tipping-off and confidentiality of suspicions reported

---

<sup>228</sup> See Section 26B of the *Financial Intelligence Centre Act 38 of 2001*.

<sup>229</sup> See section 4 of the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004*; FATF 2009 Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofsouthafrica.html> accessed 2 July 2024.

<sup>230</sup> See Section 4 of the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004*; FATF 2009 Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofsouthafrica.html> accessed 2 July 2024.

<sup>231</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf> accessed on 20 February 2024.

<sup>232</sup> See sections 51, 51A and 52 of the *Financial Intelligence Centre Act 38 of 2001*.

<sup>233</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

<sup>234</sup> See section 29 of the *Financial Intelligence Centre Act 38 of 2001*.

<sup>235</sup> See section 38 of the *Financial Intelligence Centre Act 38 of 2001*.

to the FIC.<sup>236</sup> Section 45 of the *FIC Act* provides for the responsibilities of the supervision of accountable institutions which is in line with Recommendations 26, 27 and 28.<sup>237</sup>

### 3.2.3 POCDATARA and the AML/CTF Framework in South Africa

In accordance with Security Council Resolutions and the UN Terrorist Convention, the *POCDATARA*'s primary goal is to combat terrorist financing and associated operations in South Africa.<sup>238</sup> Money or any other movable, immovable, corporeal, or incorporeal substance is considered "property" according to section 1 of *POCDATARA*. This definition also encompasses any rights, privileges, claims, securities, and any interest in or revenues from such assets.<sup>239</sup> This definition includes funds or other assets from both legitimate and illegitimate sources.<sup>240</sup> Section 4 criminalises "terrorist activity" as defined under section 1 which includes terrorist financing.<sup>241</sup> The *Act* specifically criminalises the collection, use or provision of property with the intention that it be used for the purposes of committing an act of terrorism.<sup>242</sup> Regarding property that one knows or should reasonably have known or suspected to have been acquired, collected, used, possessed, owned, or provided for the benefit of a specific entity named in a notice issued by the President, section 4(2) makes it illegal for anyone to deal with, enter into, or facilitate any transaction, perform any other act, or provide financial or other services in relation to such property.<sup>243</sup> Section 4 subsection 2 is in line with the FATF's Recommendation 5 which requires member countries to

---

<sup>236</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

<sup>237</sup> See section 45 of the *Financial Intelligence Centre Act 38 of 2001*; FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf> accessed on 20 February 2024.

<sup>238</sup> Chitimira 2021 *Journal of Money Laundering Control* 790.

<sup>239</sup> See section 1 of the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004*.

<sup>240</sup> FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 <https://www.fatf-gafi.org/en/publications/Mutual%20evaluations/Mer-south-africa-2021.html> 1: 166 accessed 10 March 2024.

<sup>241</sup> See Section 4 of the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004*; FATF 2009 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofsouthafrica.html> 7; FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 1: 167.

<sup>242</sup> See Section 4 of the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004*; FATF 2009 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofsouthafrica.html> 7.

<sup>243</sup> See section 25 of the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004*.

criminalise terrorist financing.<sup>244</sup> In terms of section 17, the terrorist financing offence is not dependent on whether the funds were used to carry out or attempt acts of terrorism.<sup>245</sup>

### 3.2.3.1 *The FATF's findings on POCDATARA*

The FATF's mutual evaluation report of 2021 found that the definition of "terrorist activity" in the *POCDATARA* excludes certain acts committed during an armed struggle.<sup>246</sup> This deficiency in the definition narrows the scope of the *Act* and limits its conformity to the Terrorist Financing Convention.<sup>247</sup> Section 25 of the *Act* requires the President to make a notification in the government gazette in respect of entities who commit or attempt to commit or participated in the facilitation of the committing of any terrorist and related activity.<sup>248</sup> Section 23(1) also provides for the freezing of property controlled or owned by such an entity.<sup>249</sup> *POCDATARA*'s sections 23(1) and 25 are consistent with FATF's Recommendation 6, which mandates that nations abide by United Nations Security Council resolutions pertaining to the prevention and suppression of terrorism and terrorist financing by putting in place targeted financial sanctions regimes. Recommendation 6 also mandates that nations immediately freeze the money or other assets of any person or organization designated by the UN Security Council in accordance with resolutions 1267 and 1373, and make sure that no money or other assets are made available to or for the benefit of any of these parties.<sup>250</sup> The maximum penalty for a terrorist financing offence in South Africa is a

---

<sup>244</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

<sup>245</sup> See section 17 of the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004*; FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 1: 166 accessed 10 March 2024.

<sup>246</sup> FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html>.

<sup>247</sup> See Article 6 of the TF Convention states that '*Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature*'.

<sup>248</sup> See section 25 of the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004*.

<sup>249</sup> See section 23(1) of the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004*.

<sup>250</sup> FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

fine of R100 million or imprisonment for a period not exceeding 15 years.<sup>251</sup> However, there have not been convictions on this front in South Africa.

### **3.3 Analysis of the Current AML/CTF Framework in South Africa**

In line with the discussions above, the researcher argues that South Africa's current AML/CFT legislative framework largely complies with the FATF Recommendations. Although there are areas that require improvement, South Africa stands a better chance to combat money laundering and related crimes than some of the countries in the SADC region. As outlined above, *POCA* ensures compliance with the FATF's Recommendations 20, 30, 4 and 3. The *FIC Act* aligns with Recommendations 1, 2, 10, 11, 12, 5, 6 and 7, 29, 35, 40. The *POCDATARA* makes provision for compliance with Recommendations 5, 6 and 7. Thus, South Africa's AML/CFT regulatory and legislative framework makes provision for compliance with the majority of the FATF's Recommendations through *POCA*, the *FIC Act* and *POCDATARA*. Currently, the FATF's Recommendation 8 which requires the registration of non-state actors is regulated under the *Non-Profit Organisation Act* and South Africa was rated non-compliant with Recommendation 8 in the 2021 mutual evaluation report. Recommendation 9 is currently made provision under the *POPI Act* and was rated largely compliant. Recommendation 13 is currently regulated under regulations relating to banks and was rated largely compliant. Recommendation 14 is currently regulated under the Exchange Controls Regulations and was rated partially compliant. At the time of the recent mutual evaluation of South Africa, virtual assets were not required to comply with all the AML/CFT obligations as other accountable institutions, thus South Africa's compliance with Recommendation 15 was rated to be non-compliant.<sup>252</sup> Recommendation 16 is currently regulated under the SARB EFT Directive 1 and was rated largely compliant.<sup>253</sup> South Africa was rated non-compliant with Recommendation 17 and rated partially compliant with Recommendation 18. The country was found to be largely compliant with Recommendation 19. Recommendations 24 and 25 was rated partially compliant. Recommendation 32 is regulated under other

---

<sup>251</sup> See Section 18 of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004; FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 1: 166 accessed 10 March 2024.

<sup>252</sup> FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 185-187.

<sup>253</sup> See Government Gazette notice no. 47019 available on <https://www.resbank.co.za/content/dam/sarb/what-we-do/payments-and-settlements/regulation-oversight/FATF%20Electronic%20Funds%20Transfers%20Directive%201%20of%202022.pdf>.

legislation save for the ones discussed in this research and was rated partially compliant. South Africa was rated largely compliant with Recommendations 33, 34 and 36. Recommendation 39 is currently regulated under the *Extradition Act* and was rated largely compliant.

### **3.6 Conclusion**

In conclusion, South Africa's regulatory framework for combating money laundering and terrorist financing demonstrates a comprehensive commitment to international standards set by the FATF. The collaboration of multiple legislative instruments such as the *FIC Act*, the *POCA* and the *POCDATARA* illustrates a multifaceted approach to align with FATF Recommendations.

The *POCA*'s stringent prohibitions on money laundering, racketeering, and criminal gang activities underscore the legislative focus on deterring criminal proceeds, while its requirements for reporting suspicious activity highlight the emphasis on transparency and compliance among businesspersons. The *FIC Act* complements this framework by mandating customer due diligence and risk-based assessments within accountable institutions, fortifying South Africa's defences against financial crime and supporting robust information-sharing mechanisms across authorities.

Gaps still remain in areas such as reliance on third parties for customer due diligence, which may diverge from the FATF's recommendations. Future amendments addressing these gaps could enhance the efficacy of South Africa's AML/CFT regulatory framework.

## CHAPTER FOUR

### CHALLENGES AND FLAWS THAT INFLUENCED THE GREYLISTING OF SOUTH AFRICA

#### 4.1 Introduction

The 2021 Mutual Evaluation Report (MER) on South Africa's anti-money laundering and counter-terrorist financing measures highlighted multiple aspects of the country's financial regulations that were not in compliance with the Financial Action Task Force's (FATF) Recommendations.<sup>254</sup> The report revealed several critical shortcomings, including a lack of skills and resources among South Africa's law enforcement agencies to proactively investigate money laundering and terrorist financing.<sup>255</sup> It also highlighted the ineffectiveness of the country's investigation and prosecution units, gaps in the regulation of beneficial ownership information, and the absence of adequate mechanisms for international cooperation.<sup>256</sup> These shortcomings were measured against the FATF Immediate Outcomes, which detail the challenges South Africa faces in aligning with each of the FATF's recommendations. As a result, South Africa was placed under increased monitoring by the FATF. Currently, South Africa is undergoing regulatory changes to address these FATF regulatory concerns for it to be removed from the list. This chapter offers a comprehensive analysis of each of the FATF Immediate Outcomes concerning South Africa's non-compliance with the Financial Action Task Force's Recommendations, as highlighted in the 2021 MER.<sup>257</sup>

#### 4.2 What are the Immediate Outcomes

The FATF Immediate Outcomes are a set of measurable benchmarks used to assess the effectiveness of a country's anti-money laundering (AML) and counter-terrorist financing

---

<sup>254</sup> Kempen A & Botha M "Money laundering Terrorist financing T-H-R-E-A-T-S T-H-R-E-A-T-S South Africa has urgent work to do" 2022 *Servamus Community-based Safety and Security Magazine* Volume 24- 25; Bissett B, Steenkamp P and Aslett S "An Analysis of the 2021 South African FATF Mutual Evaluation Report: Terrorist Financing and NPOs" 2023 *Journal of Financial Crime* 1534-1548;

<sup>255</sup> Bissett , Steenkamp & Aslett 2023 *Journal of Financial Crime* 1534-1548; FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 1.

<sup>256</sup> Kempen A, "Not our Colour of Choice Implications of the Grey-listing on South Africa" 2023 *Community-based Safety & Security Magazine* 1-3.

<sup>257</sup> Bissett , Steenkamp & Aslett 2023 *Journal of Financial Crime* 1534-1548; FATF "Anti-Money 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 1.

(CFT) systems.<sup>258</sup> Unlike the FATF Recommendations, which focus on technical compliance, these outcomes focus on achieving tangible results rather than just implementing technical compliance measures. Currently, the FATF has 11 Immediate Outcome benchmarks which are grouped into three overarching themes of policy and coordination, prevention, detection, and disruption.<sup>259</sup> Immediate Outcome 1 and 2 fall under the policy and coordination theme, and Immediate Outcomes 3 to 5 fall under prevention and detection. Disruption is made up of Immediate Outcome 7 to 11. These Immediate Outcomes are assessed during FATF evaluations to determine how well a country is implementing its AML/CFT framework in practice, beyond just meeting technical compliance with FATF Recommendations. The following sections offer a detailed explanation of each of the above Immediate Outcome themes, highlighting FATF's assessment of effectiveness of South Africa's AML/CFT system in each thematic area.

#### *4.2.1 Policy and Coordination (Immediate Outcomes 1 and 2)*

As noted above, the policy and coordination theme encompasses Immediate Outcomes 1 and 2. The FATF's Immediate Outcome 1 evaluates whether a country has a comprehensive understanding of its money laundering and terrorist financing risks and whether appropriate domestic actions are effectively coordinated to combat money laundering, terrorist financing, and proliferation financing.<sup>260</sup> Immediate Outcome 1 is closely related to FATF Recommendations 2 and 34. Recommendation 2 provides national cooperation and coordination. It stipulates that countries should ensure effective mechanisms for domestic cooperation and coordination among policymakers, the Financial Intelligence Unit (FIU) and law enforcement agencies to develop and implement policies on combating money

---

<sup>258</sup> Pol F "Anti-money Laundering Effectiveness: Assessing Outcomes or Ticking Boxes? " 2018 *Journal of Money Laundering Control* 215-217; APG The international AML/CFT standards <https://apgml.org/about-us/page.aspx?p=acbf69ba-a694-4db0-b1be-f27172dde9fc> ; Sisira Jayasekara SD "How Effective are the Current Global Standards in Combating Money Laundering and Terrorist Financing? " 2021 *Journal of Money Laundering Control* 257-258.

<sup>259</sup> FATF "Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT/CPF systems" 2024 *FATF Report* 19.

<sup>260</sup> Pol F 2018 *Journal of Money Laundering Control* 217; Goldbarsht & Benson " From later to sooner: exploring compliance with the global regime of anti-money laundering and counter-terrorist financing in the legal profession" 2023 *Journal of Money Laundering Control* 795-795; FATF "Methodology For Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems" 2023 <https://www.fatf-gafi.org/en/publications/fatfrecommendations/documents/fatfissuesnewmechanismstostrengthenmoneylaunderingandterroristfinancingcompliance>.

laundering and terrorist financing.<sup>261</sup> Recommendation 34 provides that competent authorities should provide guidelines and feedback to help financial institutions to detect and report suspicious transactions and comply with national anti-money laundering and counter-terrorism financing measures.<sup>262</sup> When assessing South Africa's compliance with Immediate Outcome 1, FATF found that South African authorities have a reasonable understanding of domestic money laundering threats but a limited grasp of terrorist financing risks.<sup>263</sup> Additionally, key authorities lack awareness of money laundering risks associated with foreign proceeds, possibly due to insufficient education on these threats. The MER rated South Africa as having a moderate level of effectiveness for Immediate Outcome 1.<sup>264</sup>

Immediate Outcome 2 assesses the extent to which competent authorities effectively seek and exchange financial intelligence, supervisory information, law enforcement data, and other relevant information with foreign counterparts in a timely and appropriate manner for AML/CFT purposes.<sup>265</sup> This outcome relates to Recommendations 36 to 40. Recommendation 36 advises countries to take steps to become parties to international treaties on anti-money laundering, such as the Vienna Convention and the United Nations Convention against Corruption.<sup>266</sup> The Recommendation requires members to ensure their competent authorities are capable of swiftly, effectively, and constructively providing comprehensive international cooperation in matters related to money laundering, related predicate offences, and terrorist financing.<sup>267</sup> The MER identified several gaps in South Africa's mutual legal assistance system, including delays in responding to requests from

---

<sup>261</sup> FATF 2024 Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT/CPF Systems [www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-Methodology-2022.html](https://www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-Methodology-2022.html) 33 accessed 10 November 2024.

<sup>262</sup> FATF 2024 Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT/CPF Systems [www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-Methodology-2022.html](https://www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-Methodology-2022.html) 33 accessed 10 March 2024.

<sup>263</sup> FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 1: 3-5 accessed 10 March 2024.

<sup>264</sup> FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 48.

<sup>265</sup> FATF CONSOLIDATED FATF STANDARDS ON INFORMATION SHARING Relevant excerpts from the FATF Recommendations 2017 31.

<sup>266</sup> Recommendation 36.

<sup>267</sup> FATF 2024 Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT/CPF Systems [www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-Methodology-2022.html](https://www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-Methodology-2022.html) 33 accessed 10 November 2024

foreign counterparts.<sup>268</sup> As a result, the FATF recommended South Africa to improve its case management system to ensure the timely processing, prioritisation, and execution of incoming mutual legal assistance and extradition requests.<sup>269</sup> Based on these findings, the MER assessed South Africa's effectiveness in Immediate Outcome 2 as moderate.

#### 4.2.2 Prevention and Detection (Immediate Outcomes 3 to 5)

The prevention and detection theme underscores the importance of robust preventive measures such as customer due diligence, suspicious transaction reporting, and supervision of financial sectors to detect and prevent ML and TF activities before they can cause harm. This theme is addressed in Immediate Outcomes 3 through 6. For a country to demonstrate effective AML/CFT prevention and detection measures, it must achieve compliance with Immediate Outcomes 3 through 5.

In accordance with their risks, Immediate Outcome 3 evaluates whether supervisors are adequately monitoring, supervising, and regulating financial institutions, designated non-financial businesses and professions, and virtual asset services providers to ensure compliance with AML/CFT regulations.<sup>270</sup> The MER found that banks in South Africa were subject to a higher level of supervision compared to other industries. However, deficiencies were identified in market entry requirements. The MER noted that fit and proper requirements did not apply to beneficial owners and that criminal background checks were not conducted to verify applicants' declarations.

The FATF recommended, among other measures, that all regulatory authorities subject beneficial owners to fit and proper requirements as part of the market entry process. The MER noted that the South African financial sector acknowledges the importance of

---

<sup>268</sup> FATF 2024 Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT/CPF Systems [www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-Methodology-2022.html](https://www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-Methodology-2022.html) 33 accessed 10 November 2024

<sup>269</sup> FATF 2024 Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT/CPF Systems [www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-Methodology-2022.html](https://www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-Methodology-2022.html) 33 accessed 10 November 2024

<sup>270</sup> FATF "Methodology For Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems" 2023 <https://www.fatf-gafi.org/en/publications/fatfrecommendations/documents/fatfissuesnewmechanismtostrengthenmoneyla underingandterroristfinancingcompliance.html> accessed 27 June 2024; FATF 2023 <https://www.fatf-gafi.org/en/publications/fatfrecommendations/documents/fatfissuesnewmechanismtostrengthenmoneyla underingandterroristfinancingcompliance.html> 18; FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 117-136.

significant owners meeting fit and proper requirements. However, this standard was not consistently applied across other economic sectors. To effectively combat money laundering and terrorist financing, FATF pointed out that South Africa's AML/CFT framework should ensure that all significant owners, regardless of the sector, are subject to fit and proper requirements. The FATF further recommended that the South African Reserve Bank Prudential Authority conduct regular inspections of higher-risk financial institutions, ensuring these are aligned with their risk profiles.<sup>271</sup> To this extent, the MER rated South Africa as having a moderate level of effectiveness for Immediate Outcome 3.

Immediate Outcome 4 assesses whether financial institutions, virtual asset service providers (VASPs), and designated non-financial businesses and professions (DNFBPs) appropriately report suspicious transactions and successfully implement AML/CFT preventive measures that match their risk profiles.<sup>272</sup> This outcome is linked to Recommendations 9 through 23, as well as specific aspects of Recommendations 1, 6, and 29. The MER found that certain high-risk economic sectors in South Africa such as estate agents and attorneys had a limited understanding of their AML/CFT risks.<sup>273</sup> The MER also urged accountable institutions to properly implement beneficial ownership requirements. Additionally, the FATF raised concerns about the inadequate legal definition for determining the PEP status of clients and beneficial ownership.

As far as Immediate Outcome 4 is concerned, the FATF recommended South Africa to ensure that accountable institutions conduct comprehensive business risk assessments, enhance the application of customer due diligence obligations, and ensure that regulators assist these institutions in effectively identifying PEPs. The FATF also recommended increasing the filing of suspicious transaction reports (STRs) by accountable institutions in line with their risk profiles and extending AML/CFT requirements to include high-risk sectors not currently

---

<sup>271</sup> FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 117-118.

<sup>272</sup> FATF "Methodology For Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems" 2023 <https://www.fatf-gafi.org/en/publications/fatfrecommendations/documents/fatfissuesnewmechanismstostrengthenmoneyla underingandterroristfinancingcompliance.html> accessed 27 June 2024; FATF 2023 <https://www.fatf-gafi.org/en/publications/fatfrecommendations/documents/fatfissuesnewmechanismstostrengthenmoneyla underingandterroristfinancingcompliance.html> 18; FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 103-115.

<sup>273</sup> FATF 2023 <https://www.fatf-gafi.org/en/publications/fatfrecommendations/documents/fatfissuesnewmechanismstostrengthenmoneyla underingandterroristfinancingcompliance.html> 18; FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 103-115.

covered. The MER rated South Africa as having a moderate level of effectiveness for Immediate Outcome 4. The findings under Immediate Outcome 4 support the need for education amongst accountable institutions on their money laundering and terrorist financing risks. South Africa's AML/CFT legislative and regulatory framework should make provision for education and training on money laundering and terrorist financing risks for accountable institutions, especially in the high-risk economic sectors.

Immediate Outcome 5 evaluates whether legal persons and arrangements are effectively safeguarded against misuse for money laundering or terrorist financing, and whether information on their beneficial ownership is readily accessible to competent authorities without obstacles.<sup>274</sup> This outcome corresponds to Recommendations 24 and 25, along with elements of Recommendations 1, 10, 37, and 40. The MER highlighted that South African companies and trusts continue to play a significant role in money laundering schemes, while the extent of their misuse for terrorist financing remains uncertain. The FATF also expressed concerns regarding the timely access to beneficial ownership information. As a result, South Africa was rated as having a low level of effectiveness for Immediate Outcome 5.

#### *4.2.3 Disruption & Effectiveness (Immediate Outcomes 6 to 11)*

The disruption and effectiveness theme of the outcomes focuses on the processes and mechanisms for identifying, analysing, and disrupting money laundering, terrorist financing, and proliferation financing activities. As outlined earlier, this theme is addressed under Immediate Outcomes 6 to 11. The detection theme is crucial as it ensures that financial systems have robust mechanisms to uncover illicit activities, enabling timely intervention by authorities. Immediate Outcome 6 evaluates whether competent authorities effectively utilise financial intelligence and other relevant information in investigations related to money laundering and terrorist financing investigations.<sup>275</sup> Immediate Outcome 7 evaluates whether money laundering offences and activities are properly investigated, and whether offenders are prosecuted and subjected to effective, proportionate, and dissuasive

---

<sup>274</sup> FATF "Methodology For Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems" 2023 <https://www.fatf-gafi.org/en/publications/fatfrecommendations/documents/fatfissuesnewmechanismstostrengthenmoneyla underingandterroristfinancingcompliance.html> accessed 27 June 2024; FATF 2023 <https://www.fatf-gafi.org/en/publications/fatfrecommendations/documents/fatfissuesnewmechanismstostrengthenmoneyla underingandterroristfinancingcompliance.html> 18; FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 137-144.

<sup>275</sup> FATF 2024 [www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-Methodology-2022.html](http://www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-Methodology-2022.html).

sanctions.<sup>276</sup> This outcome is linked to Recommendations 3, 30 and 31, and parts of Recommendations 1, 2, 15, 32, 37, 39, and 40. Immediate Outcome 8 evaluates whether the proceeds and instrumentalities of crime are effectively confiscated.<sup>277</sup>

In evaluating South Africa's effectiveness in detecting money laundering and terrorist financing under Immediate Outcomes 6 to 8, the MER noted that the Financial Intelligence Centre (FIC) does not regularly receive reports on courier activities, and that the volume of reports from high-risk Designated Non-Financial Businesses and Professions (DNFBPs) is low.<sup>278</sup> This deficiency may highlight limited financial intelligence on courier activities and DNFBPs which may allude to a possible risk of money laundering and terrorist financing that is not monitored. There could also be a lack of knowledge by the relevant accountable institutions on their reporting obligations and/ or minimal regulatory supervision. South African authorities and law enforcement agencies rely on financial intelligence to investigate crimes other than money laundering and terrorist financing. The lack of use of financial intelligence to investigate money laundering and terrorist financing crimes resulted in the FATF rating South Africa's AML/CFT controls under Immediate Outcome 6 as moderately effective.<sup>279</sup> To comply with Immediate Outcome 6, the FATF recommended that South African authorities also use reports from the FIC for money laundering and terrorist financing financial intelligence and that the FIC collaborate with other authorities to obtain more information to supplement its reports.<sup>280</sup>

The MER states that most of the money laundering offences investigated and prosecuted by key authorities in South Africa are in respect of fraud and not high-risk areas such as corruption, drugs and tax offences.<sup>281</sup> The FATF recommended that law enforcement agencies of South Africa prioritise the investigation of money-laundering cases for South Africa to effectively implement measures to comply with Immediate Outcome 7. The MER rated South Africa as having a moderate level of effectiveness for Immediate Outcome 7.

---

<sup>276</sup> FATF 2024 Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT/CPF Systems [www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-Methodology-2022.html](https://www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-Methodology-2022.html) 33 accessed 10 November 2024

<sup>277</sup> Jensen N & Png C Implementation of the FATF 40 1 9 Recommendations A perspective from developing countries 2021 *Journal of Money Laundering Control* 110-116

<sup>278</sup> FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 49.

<sup>279</sup> FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 49, 51.

<sup>280</sup> FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 51.

<sup>281</sup> FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 49-50.

The findings by the FATF under Outcome 7 allude to South African key authorities having limited understanding of money laundering risks and thus the need for South Africa's AML/CFT framework to make provision for education and training on money laundering and terrorist financing risks.

Furthermore, the MER notes that South Africa's efforts to recover assets and proceeds of corruption such as systemic political corruption known as "State Capture" should continue to be prioritised.<sup>282</sup> The FATF recommended that more focus should be placed on recovering proceeds from foreign offences and that cross-border cash flows should be closely monitored by relevant authorities. Proceeds from foreign offences qualify as "property" in terms of section 25 of the Constitution of the Republic of South Africa as well as the definition of "property" in terms of section 1 of *POCDATARA* and section 48 of *POCA* provides for the forfeiture of property that is proceeds of unlawful activities.<sup>283</sup> Therefore, South African authorities are empowered to recover foreign proceeds of crime including money laundering and terrorist financing and they should prioritise the recovery thereof to ensure compliance with Immediate Outcome 8. The MER rated South Africa as having a moderate level of effectiveness for Immediate Outcome 8 for lack of prioritising the recovery of proceeds from foreign crimes.

The MER refers to the case of Radovan Krejcir as a case study.<sup>284</sup> The case study demonstrates how the use of financial intelligence collected by the FIC from various authorities including law enforcement agencies led to the investigation and conviction of numerous members of a criminal syndicate and the recovery of proceeds of crime. The use of the case study reaffirms the importance of the collection of financial intelligence by authorities such as the FIC to prevent and combat financial crimes and support law enforcement agencies to ensure compliance with the FATF standards.

Immediate Outcome 9 evaluates whether terrorist funding offences and activities are looked into, terrorist financing individuals are prosecuted, and they face effective, reasonable, and deterrent penalties.<sup>285</sup> The outcome relates to Recommendations 5, 30, 31, 39 and elements

---

<sup>282</sup> FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 52.

<sup>283</sup> See *National Director of Public Prosecutions v Dhurgasamy (18/36715) [2023] ZAGPJHC 829 (26 July 2023)* on "bulk cash smuggling" and criminal and civil forfeiture of unlawful proceeds.

<sup>284</sup> FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 58; See also *State v Krejcir and Others (SS26/2014) [2015] ZAGPJHC 300*.

<sup>285</sup> FATF "Methodology For Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems" 2023 <https://www.fatf->

of Recommendations 1, 2, 15, 32, 37 and 40. The MER found that the low level of terrorist financing investigations does not correspond with the country's terrorist financing risk profile.<sup>286</sup> South Africa has only convicted one person of terrorist financing since the last mutual evaluation in 2009.<sup>287</sup> The said convicted individual is Henry Okah who was convicted of acts of terrorism under the *POCDATARA*.<sup>288</sup> In contrast to the views and recommendation of the FATF that South Africa should ensure that it has policies and procedures in place to identify, investigate and prosecute terrorist financing activity, Mashimbye is of the view that the arrest of Brandon Thulsie and Tony Thulsie (the Thulsie brothers) who are linked to the Islamic State is evidence of South Africa's strong intelligence capability.<sup>289</sup> The fact that the Thulsie brothers were arrested in 2016 and were only convicted in 2022 supports the FATF's findings in the MER pertaining to the investigation and prosecution of terrorist activity. The MER recommended *inter alia* that South Africa increase its ability to proactively identify potential terrorist financing cases, integrate terrorist financing investigations into its terrorist sanctions framework and that the *POCDATARA* be amended to align with the Terrorist Financing Convention.<sup>290</sup> The MER rated South Africa as having a low-level effectiveness for Immediate Outcome 9. This rating is a call for concern as South Africa has over the last two decades served as a hub for terrorist activity.<sup>291</sup> The current terrorist activity taking place in neighbouring countries such as Mozambique further increases the threat of terrorist activity spilling into South Africa, and thus increasing the risk of terrorist financing. South Africa's measures to combat terrorist financing should be strengthened to reduce the country's risk to terrorist financing.

Immediate Outcome 10 evaluates the extent to which terrorists, terrorist organisations, and terrorist financiers are stopping the collection, transfer, and use of money as well as the

---

[gafi.org/en/publications/fatfrecommendations/documents/fatfissuesnewmechanismstostrengthenmoneylaunderingandterroristfinancingcompliance.html](https://www.fatf-gafi.org/en/publications/fatfrecommendations/documents/fatfissuesnewmechanismstostrengthenmoneylaunderingandterroristfinancingcompliance.html) accessed 27 June 2024.

<sup>286</sup> FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 83-92.

<sup>287</sup> FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 86, 91.

<sup>288</sup> See *S v Okah (CCT 315/16; CCT 193/17) [2018] ZACC 3; 2018 (4) BCLR 456 (CC); 2018 (1) SACR 492 (CC)*.

<sup>289</sup> Mashimbye R " Terrorism, Insurgency, and Regional Stability: The Case of Mozambique" 2022 *International Journal of African Renaissance Studies* 60, 77 Follow PER style fully & put at least 4 credible & relevant sources on each footnote

<sup>290</sup> FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 83-92.

<sup>291</sup> Buchanan-Clarke S "Strengthening South Africa's Response to the Threat of International Terrorism" 2021 *South African Journal of International Affairs* 187-202.

misuse of the non-profit sector.<sup>292</sup> Since the relevant AML/CFT system does not guarantee the prompt implementation of UNSCRs 1267/1988 and 1989 and subsequent resolutions, the MER concluded that the targeted financial sanctions implemented by key authorities against terrorist financing are ineffective.<sup>293</sup> The FATF criticizes the framework which South Africa applies to implement the United Nations Security Council Resolutions 1267/1988 and 1989.<sup>294</sup> The framework requires the publication of a proclamation in the government gazette before the changes to the Targeted Financial Sanctions list bring about obligations.<sup>295</sup> The FATF also found that no proclamations have been published since 2017. In addition, the FATF found that South Africa did not consider the risks of terrorist financing in non-profit organisations. The MER rated South Africa as having a low level of effectiveness regarding measures to address Immediate Outcome 10.

In accordance with the pertinent UN Security Resolutions, Immediate Outcome 11 evaluates whether individuals and organisations engaged in the spread of weapons of mass destruction are stopped from obtaining, transferring, and utilizing cash.<sup>296</sup> The MER found that there is an uneven understanding of proliferation financing amongst the different economic sectors in South Africa and that the regulators do not provide enough guidance on the implementation of proliferation financing Targeted Financial Sanctions.<sup>297</sup> The FATF recommended that amongst others, South Africa should ensure that the implementation of Targeted Financial Sanctions related to proliferation financing is without delay to prevent the movement of ill-gained funds and to comply with the United Nations Security Resolutions. The MER rated South Africa as having a moderate level of effectiveness for Immediate Outcome 11 which means that there is room for South Africa to enhance its

---

<sup>292</sup> FATF 2023 <https://www.fatf-gafi.org/en/publications/fatfrecommendations/documents/fatfissuesnewmechanismtostrengthenmoneyla underingandterroristfinancingcompliance.html> 18; Bissett B, Steenkamp P and Aslett S "An Analysis of the 2021 South African FATF Mutual Evaluation Report: Terrorist Financing and NPOs" 2023 *Journal of Financial Crime* 1534, 1538; FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 92-97 Follow PER style fully & put at least 4 credible & relevant sources on each footnote

<sup>293</sup> FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 92-97.

<sup>294</sup> See United Nations Security Council (UNSC) Res 1267 (1999), 1988 (2011) and 1989 (2011).

<sup>295</sup> FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 92-93.

<sup>296</sup> FATF 2023 <https://www.fatf-gafi.org/en/publications/fatfrecommendations/documents/fatfissuesnewmechanismtostrengthenmoneyla underingandterroristfinancingcompliance.html> 18; FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 97-101.

<sup>297</sup> FATF 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> 100-101.

legislative and regulatory measures in implementing the United Nations Security Resolutions without delay in order to protect the integrity of South Africa's financial system.

### **4.3 Measures Adopted by South Africa to Address Deficiencies Identified in the 2021 MER**

Based on the 2021 MER of South Africa, the technical compliance results warranted South Africa to be placed on enhanced follow-up.<sup>298</sup> On 23 November 2023, the FATF published the follow-up report on South Africa's Technical Compliance Re-rating.<sup>299</sup> The FATF re-rated 18 of the 20 deficiencies identified in the 2021 MER. It found that 15 of these were no longer deficient as 14 Recommendations are now fully or largely compliant, and one Recommendation was rated as not being applicable to South Africa.<sup>300</sup> Based on these findings, South Africa is deemed to be largely compliant with 35 of the 40 FATF Recommendations. The follow-up report further found that South Africa is left with 5 technical compliance deficiencies that still have to be addressed.

Since the greylisting, the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act ("General Laws Amendment Act") has been enacted and amends the Companies Act, the FIC Act, the Trust Property Control Act as well as the Nonprofit Organisations Act.<sup>301</sup> The General Laws Amendment Act amends the Trust Property Control Act by inter alia inserting the definition of "accountable institution" and "beneficial owner"; imposes certain requirements on trustees as well as the collecting and keeping of beneficial ownership information in respect of trusts.<sup>302</sup> The Act also amends the Nonprofit Organisations Act by inter alia making it mandatory for certain NPOs to be registered as well as imposing additional disclosure and administrative obligations on trustees.<sup>303</sup> Furthermore,

---

<sup>298</sup> FATF 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/south-africa-fur-2023.html> 1.

<sup>299</sup> FATF 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/south-africa-fur-2023.html> 1-43.

<sup>300</sup> FATF 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/south-africa-fur-2023.html> 1-43; National Treasury 2023 [https://www.treasury.gov.za/comm\\_media/press/2023/2023112901%20MEDIA%20STATEMENTPROGRESS%20IN%20ADDRESSING%20TECHNICAL%20COMPLIANCE%20DEFICIENCIES%20IN%20SOUTH%20AFRICAS%20ANTIMONEY%20LAUNDERING%20SYSTEM.pdf](https://www.treasury.gov.za/comm_media/press/2023/2023112901%20MEDIA%20STATEMENTPROGRESS%20IN%20ADDRESSING%20TECHNICAL%20COMPLIANCE%20DEFICIENCIES%20IN%20SOUTH%20AFRICAS%20ANTIMONEY%20LAUNDERING%20SYSTEM.pdf) 1.

<sup>301</sup> See *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022*; Gillmer, Amardien, Harwin and Kleinsmidt 2023 <https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Corporate/corporate-and-commercial-alert-29-march-Understanding-South-Africas-FATF-greylisting-.html> accessed 10 April 2024.

<sup>302</sup> See Long Title of *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022*; Also see *Trust Property Control Act 57 of 1988*.

<sup>303</sup> See Long Title of the *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act no.22 of 2022*; Also see *Nonprofit Organisations Act no.71 of 1997*; Bissett B, Steenkamp

the Act amends the *FIC Act* by, *inter alia*, amending the definitions of "beneficial ownership", "domestic prominent influential person" and "foreign prominent public official", inserting a definition of "prominent influential person", amending the objectives and functions of the Financial Intelligence Centre and makes provision for additional and ongoing due diligence measures.<sup>304</sup> The General Laws Amendment Act also affects the Companies Act in that certain private companies will have to report on beneficial ownership.<sup>305</sup> In terms of the FIC Act, accountable institutions such as high-value goods dealers, trust and company service providers, crypto asset service providers and credit providers that were previously exempt are now obligated to adopt a Risk Management and Compliance Programme. The POCDATARA Amendment Act has also been enacted and took effect in 2023.<sup>306</sup> The Amendment Act *inter alia* expands the POCDATARA to include aspects such as cyber terrorism, refine the offence of terrorist financing and improve the implementation of financial sanctions.<sup>307</sup>

#### **4.4 South Africa's Post-Greylisting AML/CFT Legislative Adjustments Vis A Vis South Africa's Obligation to Comply with the FATF Standards**

Based on the 2021 MER as well as the follow-up report, South Africa has put measures in place to align its AML/CFT framework with the FATF standards. In addition to the legislative adjustments and enactments discussed in paragraph 4.3 above, certain measures have been implemented to address specific deficiencies identified in the 2021 MER.

---

P and Aslett S "An Analysis of the 2021 South African FATF Mutual Evaluation Report: Terrorist Financing and NPOs" 2023 *Journal of Financial Crime* 1534; 1545.

<sup>304</sup> See Long Title of *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022*; Also see the *Financial Intelligence Centre Act 38 of 2001*.

<sup>305</sup> Gillmer, Amardien, Harwin and Kleinsmidt 2023 <https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Corporate/corporate-and-commercial-alert-29-march-Understanding-South-Africas-FATF-greylisting-.html> accessed 10 April 2024; Also see Companies Act no.71 of 2008.

<sup>306</sup> Minister of Finance 2022 "General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill", Government Gazette no. 46744; National Treasury 2023 [https://www.treasury.gov.za/comm\\_media/press/2023/2023112901%20MEDIA%20STATEMENTPROGRESS%20IN%20ADDRESSING%20TECHNICAL%20COMPLIANCE%20DEFICIENCIES%20IN%20SOUTH%20AFRICAS%20ANTIMONEY%20LAUNDERING%20SYSTEM.pdf](https://www.treasury.gov.za/comm_media/press/2023/2023112901%20MEDIA%20STATEMENTPROGRESS%20IN%20ADDRESSING%20TECHNICAL%20COMPLIANCE%20DEFICIENCIES%20IN%20SOUTH%20AFRICAS%20ANTIMONEY%20LAUNDERING%20SYSTEM.pdf) 2.

<sup>307</sup> National Treasury 2023 [https://www.treasury.gov.za/comm\\_media/press/2023/2023010601%20MEDIA%20STATEMENT-ENACTMENT%20OF%20KEY%20ANTI-MONEY%20LAUNDERING%20AND%20COMBATING%20OF%20TERROR%20FINANCING%20LAWS%20.pdf](https://www.treasury.gov.za/comm_media/press/2023/2023010601%20MEDIA%20STATEMENT-ENACTMENT%20OF%20KEY%20ANTI-MONEY%20LAUNDERING%20AND%20COMBATING%20OF%20TERROR%20FINANCING%20LAWS%20.pdf) 1; 2.

#### *4.4.1 Legislative and Regulatory Measures Implemented Post The Greylisting to Comply with Recommendations 1, 7, 10, 12, 14, 18, 22, 23, 26, 27, 28*

The *FIC* Act has been modified to address the various shortcomings identified in the MER report and to comply with the FATF Recommendations. Institutions like credit providers, Financial Technology businesses that do not offer financial services, dealers of precious metals and stones, and other businesses have been added to the *FIC* Act as accountable institutions to remedy the gaps.<sup>308</sup> The amendment to the *FIC* Act has also tackled deficiencies with the delays in the execution of the targeted financial sanctions. It has also eliminated the time and scope restrictions from the concept of PEPs.

#### *4.4.2 Legislative and Regulatory Measures Implemented Post The Greylisting to Comply with Recommendation 2 which Provides for National Cooperation and Coordination*

South Africa's Interdepartmental Committee on AML/CFT now includes various government departments and agencies to cover the supervision of accountable institutions under the *FIC* Act in South Africa.<sup>309</sup> The government departments and agencies are responsible for the implementation of the FATF Action Plan to remove South Africa from the FATF greylist include the South African Police Services' Directorate for Priority Crime Investigations (the Hawks), the National Prosecuting Authority, the Special Investigating Unit, the State Security Agency, the Financial Intelligence Centre, the South African Reserve Bank, the Financial Sector Conduct Authority, the Department of Justice and Constitutional Development, the Companies and Intellectual Property Commission and the South African Revenue Services.<sup>310</sup>

---

<sup>308</sup> See Schedule 1 of the *Financial Intelligence Centre Act 38 of 2001*; FATF "Anti-Money Laundering and Counter Terrorist Financing Measures South Africa – Follow up Report & Technical Compliance Re-Rating" 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/south-africa-fur-2023.html> accessed 10 March 2024.

<sup>309</sup> FATF "Anti-Money Laundering and Counter Terrorist Financing Measures South Africa – Follow up Report & Technical Compliance Re-Rating" 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/south-africa-fur-2023.html> accessed 10 March 2024; National Treasury "Greylisting: Positive Progress in Addressing Technical Compliance Deficiencies in South Africa's Anti-Money Laundering System" 2023 [https://www.treasury.gov.za/comm\\_media/press/2023/2023112901%20MEDIA%20STATEMENTPROGRESS%20IN%20ADDRESSING%20TECHNICAL%20COMPLIANCE%20DEFICIENCIES%20IN%20SOUTH%20AFRICAS%20ANTIMONEY%20LAUNDERING%20SYSTEM.pdf](https://www.treasury.gov.za/comm_media/press/2023/2023112901%20MEDIA%20STATEMENTPROGRESS%20IN%20ADDRESSING%20TECHNICAL%20COMPLIANCE%20DEFICIENCIES%20IN%20SOUTH%20AFRICAS%20ANTIMONEY%20LAUNDERING%20SYSTEM.pdf) accessed 4 March 2024.

<sup>310</sup> National Treasury 2023 [https://www.treasury.gov.za/comm\\_media/press/2023/2023112901%20MEDIA%20STATEMENTPROGRESS%20IN%20ADDRESSING%20TECHNICAL%20COMPLIANCE%20DEFICIENCIES%20IN%20SOUTH%20AFRICAS%20ANTIMONEY%20LAUNDERING%20SYSTEM.pdf](https://www.treasury.gov.za/comm_media/press/2023/2023112901%20MEDIA%20STATEMENTPROGRESS%20IN%20ADDRESSING%20TECHNICAL%20COMPLIANCE%20DEFICIENCIES%20IN%20SOUTH%20AFRICAS%20ANTIMONEY%20LAUNDERING%20SYSTEM.pdf) 3.

South Africa has taken measures to improve coordination on AML/CFT and it remains Partially Compliant with Recommendation 2.

#### *4.4.3 Legislative and Regulatory Measures Implemented Post the Greylisting to Comply with Recommendation 5 which Provides for the Terrorist Financing Offence*

To comply with Recommendation 5, South Africa has amended *POCDATARA* to criminalise terrorist financing in line with the Terrorist Financing Convention.<sup>311</sup> The follow-up report and technical compliance re-rating on South Africa's AML/CFT measures has re-rated Recommendation 5 as Compliant from Partially Compliant.<sup>312</sup>

#### *4.4.4 Legislative and Regulatory Measures Implemented Post the Greylisting to Comply with Recommendation 6 which Provides for Targeted Financial Sanctions Related to Terrorism and Terrorist Financing*

The *FIC* Act and the *POCDATARA* have been amended to make provisions for targeted financial sanctions and freezing orders for property connected with terrorist activity.<sup>313</sup> The follow up-report discusses how South Africa has mostly addressed the deficiencies relating to Recommendation 6 such as the introduction of the TFS Operational Framework that sets out the inter-agency collaboration, process flows for designations in terms of the United Nations Security Council Resolution 1267 and the process for South Africa to identify a person or entity at the United Nations level.<sup>314</sup> However, the follow-up report maintains a deficiency in this additional measure in that it does not explicitly reference the United Nations Security Council Resolution 1988. The follow-up report has re-rated Recommendation 6 as Partially Compliant from Non-Compliant.

---

<sup>311</sup> FATF 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/south-africa-fur-2023.html> 6-7.

<sup>312</sup> FATF "Anti-Money Laundering and Counter Terrorist Financing Measures South Africa – Follow up Report & Technical Compliance Re-Rating" 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/south-africa-fur-2023.html> accessed 10 March 2024.

<sup>313</sup> Gillmer, Amardien, Harwin and Kleinsmidt 2023 <https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Corporate/corporate-and-commercial-alert-29-march-Understanding-South-Africas-FATF-greylisting-.html> accessed 10 April 2024

<sup>314</sup> FATF "Anti-Money Laundering and Counter Terrorist Financing Measures South Africa – Follow up Report & Technical Compliance Re-Rating" 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/south-africa-fur-2023.html> accessed 10 March 2024.

#### *4.4.5 Legislative and Regulatory Measures Implemented Post the Greylisting to Comply with Recommendation 8 which Provides for Non-Profit Organisations*

The amendment to the Nonprofit Organisation Act 71 of 1997 addresses some of the deficiencies identified in the 2021 MER.<sup>315</sup> However, the follow-up report notes that South Africa still needs to improve on assessing the terrorist financing risks and threats associated with non-profit organisations.<sup>316</sup> The follow-up report and technical compliance re-rating on South Africa's AML/CFT measures has re-rated Recommendation 8 as partially compliant from non-compliant.

#### *4.4.6 Legislative and Regulatory Measures Implemented Post the Greylisting to Comply with Recommendation 24 which Provides for Transparency and Beneficial Ownership of Legal Persons*

The amendment to the Companies Act and regulations thereunder provide for a clearer obligation in respect of beneficial ownership information.<sup>317</sup> The follow-up report has re-rated Recommendation 24 as Largely Compliant from Partially Compliant.

#### *4.4.7 Legislative and Regulatory Measures Implemented Post the Greylisting to Comply with Recommendation 25 which Provides for Transparency and Beneficial Ownership of Legal Arrangements*

The Trust Property Control Act 57 of 1988 was amended in 2023 to address the beneficial ownership deficiency identified in the 2021 MER.<sup>318</sup> The amendment implements the requirements related to the holding of beneficial ownership information. The Act now required the trustees to keep to-date information relating to beneficial owners of the trust.

---

<sup>315</sup> Gillmer , Amardien , Harwin and Kleinsmidt 2023 <https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Corporate/corporate-and-commercial-alert-29-march-Understanding-South-Africas-FATF-greylisting-.html> accessed 10 April 2024.

<sup>316</sup> FATF 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/south-africa-fur-2023.html> 14-17.

<sup>317</sup> Gillmer , Amardien , Harwin and Kleinsmidt 2023 <https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Corporate/corporate-and-commercial-alert-29-march-Understanding-South-Africas-FATF-greylisting-.html> accessed 10 April 2024.

<sup>318</sup> General Laws (Anti Money-Laundering and Combating Terrorism Financing) Amendment Act, 2022; FATF "Anti-Money Laundering and Counter Terrorist Financing Measures South Africa – Follow up Report & Technical Compliance Re-Rating" 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/south-africa-fur-2023.html> accessed 10 March 2024; Gillmer , Amardien , Harwin and Kleinsmidt 2023 <https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Corporate/corporate-and-commercial-alert-29-march-Understanding-South-Africas-FATF-greylisting-.html> accessed 10 April 2024.

The Act also prescribes the information required on beneficial owners of trusts. The follow-up report has re-rated Recommendation 25 as Largely Compliant from Partially Compliant.

#### ***4.5 Conclusion***

The 2021 MER has brought forth several areas where South Africa's legal and regulatory mechanisms for combating money laundering and terrorist financing fall short of the FATF's standards. Key areas such as ineffective investigations and prosecutions, law enforcement agencies lacking skills and resources to proactively investigate money laundering and terrorist financing, weaknesses in cash detection and recovery, gaps in beneficial ownership information and inadequate international cooperation. However, South Africa has since made progress in remedying most of the technical compliance deficiencies identified in the 2021 MER.<sup>319</sup> Following the greylisting, legislation such as the FIC Act, POCDATARA, Companies Act, Trust Property Control Act as well as the Nonprofit Organisations Act has been amended to remedy the strategic deficiencies in South Africa's AML/CFT regime.

---

<sup>319</sup> FATF 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/south-africa-fur-2023.html> 38.

## CHAPTER FIVE

### RECOMMENDATIONS AND CONCLUSIONS

#### 5.1 Introduction

The South African legislature has gone to great lengths in enacting an anti-money laundering and counter-terrorist financing (AML/CTF) legislative framework that seeks to conform to the Financial Action Task Force (FATF) standards. South Africa has been a major role player in the international financial system since joining the broader community of nations after the fall of apartheid in the early 1990s. The transition to democracy required South Africa's legislative framework to be updated and aligned with international best standards in order to combat financial crimes.<sup>320</sup> South Africa became an FATF member in 2003 and this enjoined the country to put in place measures that comply with the international watchdog's AML/CTF standards.

As discussed in Chapter Three above, the South African legislature enacted a raft of legislation such as the *POCA* in 1998 to criminalise money laundering and provide for the confiscation of criminal proceeds, the *FIC* Act in 2001 as the main AML/CTF legislation and the *POCDATARA* in 2004. The effectiveness of these laws has been subjected to several FATF assessments in 2003, 2009 and 2019 with the mutual evaluation reports for each assessment highlighting deficiencies in South Africa's AML/CTF regulatory framework.<sup>321</sup> For

---

<sup>320</sup> Aslett D "Combating Organised Crime in South Africa" (LLD in Formal Law – Dissertation North-West University 2018) 1; 10; Hviding K "Liberalizing Trade and Capital Transactions: An Overview" 2005 *International Monetary Fund "Post-Apartheid South Africa – The First Ten Years"* 1; 133-141; for related comments see Laverty A "Impact of economic and political sanctions on apartheid" 2007 *The African File* and Nagan WP "Economic Sanctions, US Foreign Policy, International Law and the Anti-Apartheid Act of 1986" 1988 *Florida International Law Journal* 87; 190-213.

<sup>321</sup> Bester H, De Koker L and Hawthorne R "Access to Financial Services in South Africa: A Brief Case Study of the Effect of the Implementation of the Financial Action Task Force Recommendations" 2004 Genesis Analytics (Pty) Ltd 1; 8; FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> accessed on 10 March 2024 1; 15; International Monetary Fund "South Africa: Report on Observance of Standards and Codes" 2010 <https://www-elibrary-imf-org.nwulib.idm.oclc.org/view/journals/002/2010/272/article-A001-en.xml> accessed on 2 July 2024; FATF "Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism" 2009 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofsouthafrica.html> 1; 15 accessed on 2 July 2024; for similar comments also see Nortier C "The Role of the South African Regulatory Authorities in Combating Money Laundering and Terrorist Financing Perpetrated Through Alternative Remittance Systems" 2010 (University of Pretoria – Dissertation) 1; 64-65.

instance, the FATF found that South Africa's AML/CTF framework has weaknesses in, *inter alia*, ensuring transparency of beneficial ownership of legal persons and arrangements, poor law enforcement action on activities related to money laundering and terrorist financing as well as deficient monitoring of politically exposed persons.<sup>322</sup> South Africa was added to the FATF's list of jurisdictions under heightened monitoring, also known as the greylist, in February 2023 as a result of the agency's identification of shortcomings in the country's efforts to combat money laundering and terrorist financing.<sup>323</sup>

The greylisting of South Africa has had various economic and reputational implications for South Africa such as increased scrutiny from international partners resulting in increased compliance costs for financial institutions, an estimated reduction in South Africa's gross domestic product (GDP) and a decrease in foreign direct investment (FDI).<sup>324</sup> However, it is not all doomy and gloomy. Greylisting presents an opportunity for South Africa to reassess and fortify its AML/CTF regulatory framework working closely with the FATF. Therefore, the greylisting of South Africa requires the South African AML/CTF policy reform and coordination to ensure that South Africa's AML/CTF measures align with the FATF standards and that the key strategic deficiencies identified by the FATF are addressed.

Since February 2023, South Africa has amended various legislation following the FATF's Action Plan that was agreed between the South African authorities and the FATF to address the identified AML/CTF deficiencies.<sup>325</sup> Failure to address all the action plan items by January

---

<sup>322</sup> Bissett B, Steenkamp P and Aslett S "An Analysis of the 2021 South African FATF Mutual Evaluation Report: Terrorist Financing and NPOs" 2023 *Journal of Financial Crime* 1534-1548; Bissett B "Vulnerabilities in the South African Non-Profit Sector to Economic Crimes: Money Laundering and Terrorist Financing (Doctoral Dissertation, North-West University (South Africa)) 1; 40.

<sup>323</sup> Khouny, H and Drissi H "Addressing the Challenges of Weak AML Measures in Developing Countries: Key Concerns of FATF and Consequences of Greylisting" 2024 *Multidisciplinary Science Journal* 1; 7-9; FATF 2024 Jurisdictions Under Increased Monitoring – 23 February 2024 <https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Increased-monitoring-february-2024.html> accessed 27 June 2024; Oseghale E 2024 Kenya and Namibia Join 10 African Countries on FATF Grey-list <https://www.mariblock.com/kenya-and-namibia-join-10-african-countries-on-fatf-grey-list/> accessed 27 June 2024; National Treasury 2023 [https://www.treasury.gov.za/comm\\_media/press/2023/2023022501%20FATF%20Grey%20Listing%20Fact%20Sheet.pdf](https://www.treasury.gov.za/comm_media/press/2023/2023022501%20FATF%20Grey%20Listing%20Fact%20Sheet.pdf) National Treasury "What Does FATF Greylisting Mean for a Country?" 2023 [https://www.treasury.gov.za/comm\\_media/press/2023/2023022501%20FATF%20Grey%20Listing%20Fact%20Sheet.pdf](https://www.treasury.gov.za/comm_media/press/2023/2023022501%20FATF%20Grey%20Listing%20Fact%20Sheet.pdf) accessed on 4 April 2024.

<sup>324</sup> Khouny and Drissi 2024 *Multidisciplinary Science Journal* 7-10; Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 1543; Van Der Berg D "Shaking up South Africa's Anti-Money Laundering and Counter-Terrorism Financing measures" 2022 *Without Prejudice* 18; 18-19; Powell S and Roux A "Where Are Taxpayers Hiding The Money?" 2023 *TaxTalk* 18; 19-20; Beebeejaun and Dullo 2023 *Journal of Money Laundering Control* 403.

<sup>325</sup> FATF 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/south-africa-fur-2023.html> 1-43; National Treasury 2023 <https://www.treasury.gov.za/commmedia/press/2023/2023112901%20MEDIA%20STATEMENTPROGRESS%20IN%20ADDRESSING%20TECHNICAL%20COMP>

2025 could result in South Africa remaining on the FATF greylist, at least for the foreseeable future.<sup>326</sup> Additionally, if South Africa fails to address all the Action Plan items by the stated deadline, the country will be required to continue reporting to the FATF every four months, until all the deficiencies have been fully addressed.

The researcher submits that South Africa has a robust AML/CFT legislative and regulatory framework that falls short of minor strategic and effectiveness deficiencies. Consequently, these minor deficiencies have led to South Africa to be placed on the FATF's greylist. Countries that have major flaws in their AML/CTF regulatory frameworks are considered high-risk jurisdictions subject to a call for action, also known as the blacklist. Thus, the researcher submits that as robust as South Africa's AML/CFT regime is, its policy makers have failed to ensure that the country's AML/CTF measures wholly align with the FATF standards as well as the United Nations resolutions and conventions on countering terrorism and terrorist financing. Moreover, economic industry regulators and law enforcement agencies have failed to effectively implement the AML/CTF measures to ensure the efficiency of South Africa's measures to combat money laundering and terrorist financing.

In this chapter, the researcher provides some recommendations that can assist in bringing about a quick removal of South Africa from the greylist. The chapter also provides conclusions and proffers recommendations that policymakers can consider in order to improve South Africa's AML/CTF regulatory framework.

---

LIANCE%20DEFICIENCIES%20IN%20SOUTH%20AFRICAS%20ANTIMONEY%20LAUNDERING%20SYST  
EM.pdf 1; De Koker L "Editorial: FATF Greylisting: Time to Revisit the Approach" 2024 *Journal of Money  
Laundering Control*, 621-624; De Koker L, Howell J, and Morris N "Economic Consequences of Greylisting  
by the Financial Action Task Force" 2023 *Risks* 1; 3-4; Idrees M, Naazer MA and Khan HU "Pakistan and  
the FATF: Exploring the Role of Diplomacy in Getting off the Grey List" 2020 *Liberal Arts and Social Sciences  
International Journal* 413; 419.

<sup>326</sup> National Treasury "FATF Greylisting: South Africa's Progress in Addressing its Action Plan as at June 2024"  
2024 [https://www.treasury.gov.za/comm\\_media/press/2024/2024070201%20MEDIA%20STATEMENT%20-%20PROGRESS%20IN%20ADDRESSING%20DEFICIENCIES%20IN%20THE%20COUNTRY%27S%20AML-CFT%20SYSTEM.pdf](https://www.treasury.gov.za/comm_media/press/2024/2024070201%20MEDIA%20STATEMENT%20-%20PROGRESS%20IN%20ADDRESSING%20DEFICIENCIES%20IN%20THE%20COUNTRY%27S%20AML-CFT%20SYSTEM.pdf) accessed on 30 July 2024; for related comments see Bester, H, Chamberlain, D, De Koker, L, Hougaard, C, Short, R, Smith, A, Walker, R "Implementing FATF Standards in Developing Countries and Financial Inclusion: Findings and Guidelines" 2008 *Genesis Final Report* 1, 2-41; De Koker, L "Identifying and Managing Low Money Laundering Risk: Perspectives on FATF's Risk-Based Guidance" 2009 *Journal of Financial Crime* 334, 334-352; Chitimira, H and Munedzi, S "Overview International Best Practices on Customer Due Diligence and Related Anti-Money Laundering Measures" 2022 *Journal of Money Laundering Control* 53, 54-62 and Chitimira H, Animashaun O "The Adequacy of the Legal Framework for Combating Money Laundering and Terrorist Financing in Nigeria" 2023 *Journal of Money Laundering Control* 110, 111-126.

## ***5.2 General Observations***

In Chapter One, it was observed that South Africa's AML/CFT legal and regulatory framework falls short of international standards which resulted in South Africa being added to the FATF's list of Jurisdictions Under Increased Monitoring. One of the negative consequences of this listing is reputational damage and enhanced due diligence when dealing with foreign counterparts. However, it also presents an opportunity for South Africa to remedy its AML/CFT to align with the FATF standards. South Africa has a deadline of January 2025 to remedy all the deficiencies identified in the latest mutual evaluation report as well as long-standing deficiencies that have been present since the 2003 and 2009 mutual evaluations.

In Chapter Two, the historical background of greylisting challenges in South Africa was explored. The historical overview of money laundering, terrorist financing and proliferation regulation in South Africa was explored. The FATF's process of greylisting and blacklisting for non-compliance with the FATF Recommendations was also explored including the FATF's compliance methodology to assess compliance with the FATF Recommendations. South Africa's mutual evaluation reports of 2003, 2009 and 2021 were briefly discussed including legislative and regulatory challenges identified. It was observed that by virtue of this membership, South Africa has obligations to formulate and implement an AML/CTF framework that aligns with the FATF standards to combat money laundering and terrorist financing. It was further observed that South Africa failed to meet the said standard, which resulted in it being placed on the list of Jurisdictions Under Increased Monitoring.

In Chapter Three, the researcher delved into the current regulation of money laundering and terrorist financing in South Africa. South Africa's current AML/CTF regime's alignment with the FATF standards was also analysed. It was observed that South Africa has a robust AML/CTF framework and provision has been made through various legislative provisions to ensure alignment with the FATF Recommendations. However, there remains gaps in the current regulation of money laundering and terrorist financing in South Africa.

In Chapter Four, the specific AML/CTF challenges and flaws that influenced the greylisting were explored in comparison to the FATF's compliance expectations. It was observed that the gaps in South Africa's AML/CTF framework contributed to the non-compliance with FATF's standards. The identified weaknesses necessitated the application of the FATF greylisting standards. It was further observed that as a result of the greylisting, new legislation was enacted and existing legislation was amended to address the identified

AML/CTF deficiencies. It was further observed that South Africa has earnestly begun the process of addressing the AML/CTF areas of concern as raised in the 2021 mutual evaluation report.

Chapter Five answers the research question of whether the current South African AML/CFT framework is robust enough to combat money laundering and the deficiencies identified by the FATF. The chapter also provides a conclusion and recommendations that can be considered to improve South Africa's AML/CTF legal framework to ensure full compliance with the FATF standards.

It should be noted that the FATF changed the greylisting criteria in October 2024, a move that has generally been welcomed by those in developing countries.<sup>327</sup> The revision to the greylisting criteria seeks to focus on countries that pose the greatest risk to the stability and integrity of international financial systems while supporting low-capacity countries to improve their AML/CTF frameworks.<sup>328</sup> Before a country is greylisted, it has to be ascertained whether such country meets the referral criteria, is an FATF member, is on the World Bank's high-income countries list and such a country should have financial sector assets above the value of USD 10 billion.<sup>329</sup> Countries that do not meet the set criteria would not be greylisted unless there is compelling evidence that such countries pose significant money laundering, terrorist financing and proliferation financing risks.<sup>330</sup> Even when such countries are found wanting, greylisting would not be rushed. Rather, there will be a longer period of observation than it used to be in the past. Against this latest development on greylisting, it should be noted that the above criteria offer cold comfort to South Africa. Firstly, the revision seems too little too late. Secondly, the changes to the greylisting criteria do not apply retrospectively, hence they are of no benefit to South Africa. Moreover, while South Africa is a developing economy, it does not meet most of the criteria owing to the size of its economy.

---

<sup>327</sup> Financial Action Task Force "FATF Changes its Grey Listing Criteria to Further Focus on Risk" <https://www.fatf-gafi.org/en/publications/Fatfgeneral/FATF-grey-listing-criteria.html> accessed on 01 November 2024.

<sup>328</sup> FATF "FATF Changes its Grey Listing Criteria to Further Focus on Risk" <https://www.fatf-gafi.org/en/publications/Fatfgeneral/FATF-grey-listing-criteria.html>.

<sup>329</sup> FATF "FATF Changes its Grey Listing Criteria to Further Focus on Risk" <https://www.fatf-gafi.org/en/publications/Fatfgeneral/FATF-grey-listing-criteria.html>.

<sup>330</sup> FATF "FATF Changes its Grey Listing Criteria to Further Focus on Risk" <https://www.fatf-gafi.org/en/publications/Fatfgeneral/FATF-grey-listing-criteria.html>.

The following section provides a discussion of the recommendations proffered for South African policymakers to consider in improving the country's AML/CTF regulatory framework.

### **5.3 Recommendations**

As outlined and discussed in this dissertation, various flaws are still embedded in South Africa's current AML/CTF legislative and regulatory framework. Therefore, to address these flaws, it is submitted that:

a) *The key supervisory bodies such as the FIC, FSCA and SARB should enhance risk-based ongoing supervision and monitoring of all accountable institutions, especially in high-risk sectors.*

Risk-based regulation and supervision mostly works for banks and other traditional financial institutions. The same cannot be said of non-traditional financial institutions and designated non-financial businesses and professions despite the susceptibility of these institutions and professions to money laundering and terrorist financing in South Africa.<sup>331</sup> Generally, AML/CTF inspections in accountable institutions are infrequent and inconsistent in South Africa. Regarding non-profit organisations (NPOs), authorities have not commenced the monitoring and supervision of non-profit organisations they deem to be at risk of terrorist financing abuse.<sup>332</sup> Furthermore, the effectiveness of supervision by the FSCA is hampered by a severe lack of resources. Thus, key supervisory bodies in South Africa should strengthen risk-based supervision by conducting detailed sectoral risk assessments to identify high-risk institutions and sectors. Furthermore, they should conduct frequent on-site and off-site inspections of all accountable institutions especially those in the high-risk sectors to assess

---

<sup>331</sup> FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 [https://www.fatf-gafi.org/en/publications/Mutual evaluations /Mer - south-africa-2021.html](https://www.fatf-gafi.org/en/publications/Mutual%20evaluations/Mer-south-africa-2021.html) accessed on 10 March 2024 1; 4; for more comments on the risk-based approach, also see De Koker L, Goldbarsht D "FATF's Risk-Based Approach: Has the Pendulum Swung too Far?" 2024 *Financial Crime and the Law* 247-262 and Pavlidis G "The Dark Side of Anti-Money Laundering: Mitigating the Unintended Consequences of FATF Standards" 2023 *Journal of Economic Criminology* 1; 2.

<sup>332</sup> FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 [https://www.fatf-gafi.org/en/publications/Mutual evaluations/Mer-south-africa-2021.html](https://www.fatf-gafi.org/en/publications/Mutual%20evaluations/Mer-south-africa-2021.html) accessed on 10 March 2024 1; 9; Bissett *Vulnerabilities in the South African Non-Profit Sector to Economic Crimes: Money Laundering and Terrorist Financing*; for further comments on the combating of terrorist financing in non-government organisations see De Willebois EV "Nonprofit organizations and the Combatting of Terrorism Financing: A Proportionate Response" 2010 *World Bank Publications* 1-28 and Romaniuk P and Keatinge T "Protecting Charities from Terrorists... and Counterterrorists: FATF and the Global Effort to Prevent Terrorist Financing Through the Non-Profit Sector" 2018 *Crime, Law and Social Change* 265-280.

compliance with AML/CTF obligations.<sup>333</sup> In addition, supervision capacity should be increased for the relevant supervisory bodies to ensure that reportable cases are reported to the FIC.

*b) Policy makers should develop sector-specific AML/CTF guidelines for high-risk sectors.*

This recommendation follows the fact that only the larger banks and authorised dealers with limited authority are submitting sufficient suspicious transaction reports and suspicious activity reports in South Africa. Nonetheless, the casino industry is the most outlier among high-risk or materially significant industries, which significantly underreport.<sup>334</sup> Economic industry regulators and supervisors should conduct sector-specific risk assessments using the findings from the National Risk Assessment (NRA) to determine sectors with heightened vulnerabilities, such as real estate, casinos and gambling, non-profit organisations, virtual asset service providers and designated non-financial businesses and professions such as attorneys and accountants.<sup>335</sup> The regulators should analyse specific money laundering and terrorist financing threats within each sector and formulate specific AML/CTF guidelines and obligations addressing the unique risks of each sector.

*c) Economic industry regulators should provide regular training for accountable institutions and law enforcement agencies on money laundering and terrorist financing risks in South Africa's economic sectors.*

This follows the FATF's finding that the larger banks file the best quality suspicious transaction reports and suspicious activities reports, whereas attorneys and estate agents file the worst reports. Additionally, by offering greater information to connect the two ends of reported transactions, banks could further enhance their reporting. This alludes to the need for training of accountable institutions on the filing of good quality reports that will

---

<sup>333</sup> Bissett B, Steenkamp P and Aslett S "An Analysis of the 2021 South African FATF Mutual Evaluation Report: Terrorist Financing and NPOs" 2023 *Journal of Financial Crime* 1534; 1545; Nortier The Role of the South African Regulatory Authorities in Combating Money Laundering and Terrorist Financing Perpetrated Through Alternative Remittance Systems 1; 50-51.

<sup>334</sup> FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 [https://www.fatf-gafi.org/en/publications/Mutual evaluations/Mer-south-africa-2021.html](https://www.fatf-gafi.org/en/publications/Mutual%20evaluations/Mer-south-africa-2021.html) accessed on 10 March 2024 1; 10; Njotini MN "Anti-Terrorism Measures in South Africa: Suspicious Transaction Reporting and Human Rights" 2015 *African Human Rights Law Journal* 515; 527-533; Goredema C "Measuring Money Laundering in Southern Africa" 2005 *African Security Studies* 2005 27-37.

<sup>335</sup> FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 [https://www.fatf-gafi.org/en/publications/Mutual evaluations/Mer-south-africa-2021.html](https://www.fatf-gafi.org/en/publications/Mutual%20evaluations/Mer-south-africa-2021.html) accessed on 10 March 2024 1; 20-22.

assist the FIC in gathering good quality financial intelligence. The key authorities' limited understanding of the relative scale of money laundering threats in South Africa and weak understanding of terrorist financing risks allude to the need for education and training among law enforcement agencies. Furthermore, large banks have a more developed understanding of the money laundering risks and are better at implementing measures relative to those risks. However, some financial organisations, as well as several non-finance enterprises and occupations, do not concentrate on recognizing and comprehending their money laundering threats.<sup>336</sup> The FATF also found that supervisors demonstrated varied levels of understanding of money laundering risks for their respective sectors. Additionally, law enforcement agencies are not able to identify beneficial owners in complex legal structures which suggests the need for training. The researcher is of the view that South African regulators should ensure adequate training to accountable institutions on their AML/CFT obligations, including reporting.

*(d) The FATF should consider the implications of greylisting before implementing this drastic action.*

Greylisting has several consequences, especially for developing economies, therefore, they should be done as a last resort. South Africa has experienced several economic setbacks due to greylisting such as negative investor sentiment, high costs of borrowing and increased scrutiny by international lenders. Oftentimes, the consequences of greylisting can be felt long after a country is removed from the list. As such, it is the researcher's recommendation that the FATF should use greylisting as a last resort, perhaps after an affected country fails or refuses to cooperate in addressing the noted deficiencies. Where there is willingness to address flaws within a country's AML/CTF regulatory framework, greylisting should never be used.

#### **5.4 Conclusion**

All in all, greylisting is a punitive measure meted out to a country whose AML/CTF regulatory framework is fraught with strategic deficiencies. The FATF uses the greylisting period to

---

<sup>336</sup> FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> accessed on 10 March 2024 1; 4; Nyaude AB "The Compliance Duties of Commercial Banks with Regard to On-Line Money Laundering (Master's thesis, University of Pretoria); De Koker L "The Money Laundering Risk Posed By Low-Risk Financial Products in South Africa: Findings and Guidelines" 2009 *Journal of Money Laundering Control* 323-338.

work with the affected country to try and address the identified AML/CTF flaws. It appears that the FATF has realised the far-reaching implications of greylisting hence it has come up with revisions in the greylisting criteria. In October 2024, the FATF announced that greylisting will no longer be a rushed process. A considerable period of observation will be accorded to an affected country and if such country corrects the identified weaknesses, it will not be greylisted. Nevertheless, the revised greylisting criteria are not applicable to South Africa due to factors discussed above. As such, South Africa is left to address the strategic deficiencies before it can be taken off the greylist. This comes at a huge economic cost to South Africa and it can be justified for the country to feel hard-done by the whole greylisting move by the FATF.

It is equally crucial to consider the aspects identified in South Africa's AML/CTF framework that led to the greylisting. For instance, it has been established that the shortcomings in South Africa's AML/CFT legal and regulatory framework led to the country's inclusion on the FATF's list of jurisdictions under increased monitoring in February 2023.<sup>337</sup> The FATF's findings in the 2021 mutual evaluation report reveal that South Africa's framework falls significantly short of international standards, with deficiencies in implementation that were long-standing and unresolved despite prior mutual evaluations in 2003 and 2009. The placement of South Africa on the greylist has brought about reputational damage and increased scrutiny in international transactions, with enhanced due diligence requirements posing challenges to South Africa's financial and economic sectors. However, it also provides an opportunity for the country to critically review and strengthen its AML/CFT framework to meet FATF standards and improve the overall resilience of its financial systems.

In response to the deficiencies identified in the 2021 mutual evaluation report, South Africa has demonstrated commitment through legislative reforms and amendments aimed at addressing gaps in its AML/CTF framework. These efforts include enacting new laws and amending existing legislation for a robust response to money laundering and terrorist financing risks. Despite these advancements, the researcher submits that South Africa's current AML/CTF regulatory framework still requires significant improvement to meet the FATF's compliance expectations. Improvements such as enhanced supervision and monitoring of accountable institutions especially in high-risk sectors, promote the

---

<sup>337</sup> Langa MF "An Assessment of South Africa's Vulnerability to Terrorism Financing and the Counter-Terrorist Financing Framework" 2024 *Journal of Central and Eastern European African Studies* 125; 133-134.

implementation of sector-specific guidelines for high-risk sectors to address their unique money laundering and terrorist financing vulnerabilities. Furthermore, there is a need to provide regular training for economic industry supervisors, accountable institutions and law enforcement agencies on identifying and mitigating money laundering and terrorist financing risks across various economic sectors.

With the January 2025 deadline approaching, South Africa has a narrow window to fully address the deficiencies identified in the mutual evaluation report. By implementing these recommendations, the country will not only strengthen its AML/CFT regime but also restore confidence among international stakeholders, thereby fostering economic stability and growth.

## ***Bibliography***

### ***Literature***

Aslett *Combating Organised Crime in South Africa*

Aslett D *Combating Organised Crime in South Africa* (LLD in Formal Law – Dissertation North-West University 2018)

Beebeejaun and Dulloo 2023 *Journal of Money Laundering Control*

Beebeejaun A and Dulloo L "A Critical Analysis of the Anti-Money Laundering Legal and Regulatory Framework of Mauritius: A Comparative Study with South Africa" 2023 *Journal of Money Laundering Control* 401-417

Berega 2023 *Mizan Law Review*

Berega YG "Ethiopia's Regulatory Regime on Advocates' Duty to Report Suspicious Transactions to Combat Money Laundering" 2023 *Mizan Law Review* 285-312

Bester, De Koker and Hawthorne 2004 *Genesis Analytics (Pty) Ltd*

Bester H, De Koker L and Hawthorne R "Access to Financial Services in South Africa: A brief case study of the effect of the implementation of the Financial Action Task Force Recommendations" 2004 *Genesis Analytics (Pty) Ltd* 1-28

Bisset, Steenkamp and Aslett 2023 *Journal of Financial Crime*

Bissett B, Steenkamp P and Aslett S "An Analysis of the 2021 South African FATF Mutual Evaluation Report: Terrorist Financing and NPOs" 2023 *Journal of Financial Crime* 1534-1548

Bissett *Vulnerabilities in the South African Non-Profit Sector to Economic Crimes: Money Laundering and Terrorist Financing*

Bissett B "Vulnerabilities in the South African Non-Profit Sector to Economic Crimes: Money Laundering and Terrorist Financing (Doctoral Dissertation, North-West University (South Africa)).

Buchanan-Clarke 2021 *South African Journal of International Affairs*

Buchanan-Clarke S "Strengthening South Africa's Response to the Threat of International Terrorism" 2021 *South African Journal of International Affairs* 187–202

Chitimira 2021 *Journal of Money Laundering Control*

Chitimira H "An Exploration of the Current Regulatory Aspects of Money Laundering in South Africa" 2021 *Journal of Money Laundering Control* 789-805

De Koker 2009 *Journal of Money Laundering Control*

De Koker L "The Money Laundering Risk Posed By Low-Risk Financial Products in South Africa: Findings and Guidelines" 2009 *Journal of Money Laundering Control* 323-338

De Koker 2014 *Journal of Money Laundering*

De Koker L "The FATF's Customer Identification Framework: Fit For Purpose?" 2014 *Journal of Money Laundering* 281-295

De Koker 2023 *Journal of Money Laundering*

De Koker L "Editorial: Towards Meaning Action Against Proliferation Financing" 2023 *Journal of Money Laundering*, 213-214

De Koker 2024 *Journal of Money Laundering Control*

De Koker L "Editorial: FATF Greylisting: Time to Revisit the Approach" 2024 *Journal of Money Laundering Control* 621-624

De Koker and Goldbarsht 2024 *Financial Crime and the Law*

De Koker L, Goldbarsht D "FATF's Risk-Based Approach: Has the Pendulum Swung too Far?" 2024 *Financial Crime and the Law* 2024 247-262

De Koker, Howell and Morris 2023 *Risks*

De Koker L, Howell J, and Morris N "Economic Consequences of Greylisting by the Financial Action Task Force" 2023 *Risks* 1-32

De Willebois 2010 *World Bank Publications*

De Willebois EV "Nonprofit organisations and the Combatting of Terrorism Financing: A Proportionate Response" 2010 *World Bank Publications* 1-28

Gaviyau and Sibindi 2023 *Journal of Money Laundering Control*

Gaviyau W and Sibindi A.B "Anti-Money laundering and Customer Due Diligence: Empirical Evidence from South Africa" 2023 *Journal of Money Laundering Control* 224-238

Goredema 2005 *African Security Studies*

Goredema C "Measuring Money Laundering in Southern Africa" 2005 *African Security Studies* 2005 27-37

Gupta 2002 *Harvard Civil Rights-Civil Liberties Law Review*

Gupta D "Republic of South Africa's Prevention of Organised Crime Act: A Comparative Bill of Rights Analysis" 2002 *Harvard Civil Rights-Civil Liberties Law Review* 159-183

Holt 2004 *Terrorism Monitor*

Holt A "South Africa in the War on Terror" 2004 *Terrorism Monitor* 1-6

Hugo and Spruyt 2018 *Journal of South African Law*

Hugo C and Spruyt W "Money Laundering, Terrorist Financing and Financial Sanctions: South Africa's Response by Means of the Financial Intelligence Centre Amendment Act 1 of 2017" 2018 *Journal of South African Law* 227-255

Hviding 2005 *Post-Apartheid South Africa – The First Ten Years*

Hviding K "Liberalizing Trade and Capital Transactions: An Overview" 2005 *International Monetary Fund "Post-Apartheid South Africa – The First Ten Years"* 1-211

Idrees, Naazer and Khan 2020 *Liberal Arts and Social Sciences International Journal*

Idrees M, Naazer MA and Khan HU "Pakistan and the FATF: Exploring the Role of Diplomacy in Getting off the Grey List" 2020 *Liberal Arts and Social Sciences International Journal* 413-423

Khouny and Drissi 2024 *Multidisciplinary Science Journal*

Khouny, H and Drissi H "Addressing the Challenges of Weak AML Measures in Developing Countries: Key Concerns of FATF and Consequences of Greylisting" 2024 *Multidisciplinary Science Journal* 1-15

Kingah and Zwartjes 2015 *Contemporary Politics*

Kingah S and Zwartjes M "Regulating Money Laundering for Terrorism Financing: EU–US Transnational Policy Networks and the Financial Action Task Force" 2015 *Contemporary Politics* 341-353

Korten 2023 *TaxTalk*

Kortern M "Calming Waters in Mauritius" 2023 *TaxTalk* 40-44

Lacey and George 2003 *Northwestern Journal of International Law and Business*

Lacey KA and B George "Crackdown on Money Laundering: A Comparative Analysis of the Feasibility and Effectiveness of Domestic and Multilateral Policy Reforms" 2003 *Northwestern Journal of International Law and Business* 265-352

Langa 2024 *Journal of Central and Eastern European African Studies*

Langa MF "An Assessment of South Africa's Vulnerability to Terrorism Financing and the Counter-Terrorist Financing Framework" 2024 *Journal of Central and Eastern European African Studies* 125-138

Laverty 2007 *The African File*

Laverty A "Impact of economic and political sanctions on apartheid" 2007 *The African File*

Mashimbye 2022 *International Journal of African Renaissance Studies*

Mashimbye R " Terrorism, Insurgency, and Regional Stability: The Case of Mozambique" 2022 *International Journal of African Renaissance Studies* 60-77

Mekpor, Aboagye and Welbeck 2018 *Journal of Financial Regulation Compliance*

Mekpor ES, Aboagye A and Welbeck J "The Determinants of Anti-Money Laundering Compliance Among the Financial Action Task Force (FATF) Member States" 2018 *Journal of Financial Regulation Compliance* 442-459

Nagan 1988 *Florida International Law Journal*

Nagan WP "Economic Sanctions, US Foreign Policy, International Law and the Anti-Apartheid Act of 1986"1988 *Florida International Law Journal* 87-213

Naidoo 2023 *Anti-Money Laundering and Counter-Terrorist Financing Measures: South Africa Mutual Evaluation Report 2021, with Specific Focus on the Ultimate Beneficial Ownership Requirement*

Naidoo S "Anti-Money Laundering and Counter-Terrorist Financing Measures: South Africa Mutual Evaluation Report 2021, with Specific Focus on the Ultimate Beneficial Ownership Requirement" 2023 Master's in Banking Law Dissertation (University of Johannesburg)

Nanyun and Nasiri 2021 *Journal of Money Laundering Control*

Nanyun M and Nasiri A "Role of FATF on Financial Systems of Countries: Successes and Challenges" 2021 *Journal of Money Laundering Control* 234-245

Njotini 2010 *Obiter*

Njotini MN "The Transaction or Activity Monitoring Process: An analysis of the Customer Due Diligence Systems of the United Kingdom and South Africa" 2010 *Obiter* 556-573

Njotini 2015 *African Human Rights Law Journal*

Njotini MN "Anti-Terrorism Measures in South Africa: Suspicious Transaction Reporting and Human Rights" 2015 *African Human Rights Law Journal* 515-535

Nortier *The Role of the South African Regulatory Authorities in Combating Money Laundering and Terrorist Financing Perpetrated Through Alternative Remittance Systems*

Nortier C "The role of the South African regulatory authorities in combating money laundering and terrorist financing perpetrated through alternative remittance systems" 2010 (University of Pretoria – dissertation)

Nyaude *The Compliance Duties of Commercial Banks with Regard to On-Line Money Laundering*

Nyaude AB "The Compliance Duties of Commercial Banks with Regard to On-Line Money Laundering (Master's thesis, University of Pretoria (South Africa)).

Pavlidis 2023 *Journal of Economic Criminology*

Pavlidis G "The Dark Side of Anti-Money Laundering: Mitigating the Unintended Consequences of FATF Standards" 2023 *Journal of Economic Criminology* 1-5

Powell and Roux 2023 *TaxTalk*

Powell S and Roux A "Where are Taxpayers Hiding the Money?" 2023 *TaxTalk* 18-21

Romaniuk and Keatinge 2018 *Crime, Law and Social Change*

Romaniuk P and Keatinge T "Protecting Charities from Terrorists... and Counterterrorists: FATF and the Global Effort to Prevent Terrorist Financing Through the Non-Profit Sector" 2018 *Crime, Law and Social Change* 265-280

Shah 2021 *International Journal*

Shah AR "The Geopolitics of Pakistan's 2018 Greylisting by the Financial Action Task Force" 2021 *International Journal* 280-297

Sharman 2008 *International Studies Quarterly*

Sharman JC "Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States" 2008 *International Studies Quarterly* 635-656

Spruyt 2017 *Annual Banking Law Update*

Spruyt W "The Financial Intelligence Centre Amendment Act and the Application of a Risk-Based Approach" 2017 *Annual Banking Law Update* 19-30

Van Der Berg 2022 *Without Prejudice*

Van Der Berg D "Shaking up South Africa's Anti-Money Laundering and Counter-Terrorism Financing Measures" 2022 *Without Prejudice* 18-19

Van Jaarsveld *Aspects of Money Laundering in South African Law*

Van Jaarsveld IL *Aspects of Money Laundering in South African Law* (LLD-thesis University of South Africa 2011)

Van Wyk 2023 *TAXtalk*

Van Wyk A *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector* (MCom Forensic Accounting – Dissertation North-West University 2020)

Van Wyk *An Analysis of Anti-Money Laundering Measures in the South African Real Estate Sector*

Van Wyk J "South Africa's Imminent Greylisting: 'Sword of Damocles' or a Wake-up Call for Our Economy?" 2023 *TAXtalk* 22-25

### **Legislation**

*Drugs and Drug Trafficking Act 140 of 1992*

*Financial Intelligence Centre Act 38 of 2001*

*General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022*

*Prevention of Organised Crime Act 121 of 1998*

*Proceeds of Crime Act 76 of 1996*

*Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004*

*Protection of Constitutional Democracy against Terrorist and Related Activities Amendment Act, 2022*

### **Case Law**

*National Director of Public Prosecutions v Dhurgasamy (18/36715) [2023] ZAGPJHC 829 (26 July 2023)*

*S v Okah (CCT 315/16; CCT 193/17) [2018] ZACC 3; 2018 (4) BCLR 456 (CC); 2018 (1) SACR 492 (CC)*

*State v Krejcir and Others (SS26/2014) [2015] ZAGPJHC 300*

### **Internet Sources**

Carrington I and Shams H "Elements of an Effective AML / CFT Framework: Legal, Regulatory , and Best Institutional Practices to Prevent Threats to Financial Stability and Integrity" 2006 <https://www.imf.org/external/np/seminars/eng/2006/mfl/cs.pdf> accessed 10 April 2024

De Koker L "FATF's Greylisting of South Africa: Navigating Myths and Truths About Economic Impact" 2023 <https://www.linkedin.com/pulse/fatfs-greylisting-south-africa-navigating-myths-truths-louis-de-koker/> accessed 2 July 2024

De Koker L, Centre for the Study of Economic Crime, RAU University "Money Laundering in South Africa" 2002 [https://www.files.ethz.ch/isn/124022/2002\\_09\\_01.pdf](https://www.files.ethz.ch/isn/124022/2002_09_01.pdf) accessed on 30 June 2024 1-50

FATF "Anti-Money Laundering and Counter Terrorist Financing Measures South Africa – Follow up Report & Technical Compliance Re-Rating" 2023 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/south-africa-fur-2023.html> accessed 10 March 2024

FATF "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa, Fourth Round Mutual Evaluation Report" 2021 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-south-africa-2021.html> accessed 10 March 2024.

FATF "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations" 2023 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf> accessed on 20 February 2024

FATF "Jurisdictions Under Increased Monitoring – 21 October 2022" 2022 <https://www.fatf-gafi.org/content/fatf-gafi/en/publications/High-risk-and-other-monitored-jurisdictions/Increased-monitoring-october-2022.html> accessed 16 August 2024

FATF "Jurisdictions Under Increased Monitoring – 23 February 2024" 2024 <https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Increased-monitoring-february-2024.html> accessed 27 June 2024

FATF "Methodology For Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems" 2023 <https://www.fatf-gafi.org/en/publications/fatfrecommendations/documents/fatfissuesnewmechanismstostrengthenmoneylaunderingandterroristfinancingcompliance.html> accessed 27 June 2024

FATF 2009 Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofsouthafrica.html> accessed 2 July 2024

Financial Action Task Force "FATF Changes its Grey Listing Criteria to Further Focus on Risk" <https://www.fatf-gafi.org/en/publications/Fatfgeneral/FATF-grey-listing-criteria.html> accessed on 1 November 2024

Financial Intelligence Centre "A New Approach to Combat Money Laundering and Terrorist Financing" Date Unknown  
<https://www.treasury.gov.za/legislation/regulations/FICA/A%20new%20approach%20to%20combat%20money%20laundering%20and%20terrorist%20financing.pdf> accessed 3 April 2024

Financial Intelligence Centre "Case Studies and Indicators 2017-2022 Collection (2022)"  
Date Unknown <https://www.fic.gov.za/wp-content/uploads/2023/09/2023.05-CS-Case-studies-and-indicators-collection-2017-2022.pdf> accessed 22 March 2024

Financial Intelligence Centre "Guidance Note 7 on the Implementation of Various Aspects of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001)" Date Unknown  
<https://www.fic.gov.za/wp-content/uploads/2023/09/2017.10-Guidance-Guidance-Note-7-FIC-Act-obligations.pdf> accessed 3 April 2024

Gillmer J, Amardien N, Harwin J and Kleinsmidt L 2023 Understanding South Africa's FATF Greylisting  
<https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Corporate/corporate-and-commercial-alert-29-march-Understanding-South-Africas-FATF-greylisting-.html>  
accessed 10 April 2024

Government Gazette notice no. 47019 available on  
<https://www.resbank.co.za/content/dam/sarb/what-we-do/payments-and-settlements/regulation-oversight/FATF%20Electronic%20Funds%20Transfers%20Directive%201%20of%202022.pdf> accessed on 30 October 2024.

International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999)  
<https://www.unodc.org/documents/treaties/Special/1999%20International%20Convention%20for%20the%20Suppression%20of%20the%20Financing%20of%20Terrorism.pdf>  
accessed on 15 October 2024

International Federation of Accountants "Case Study: Pakistan's Journey Off the FATF Grey List and the Role of the Institute of Chartered Accountants of Pakistan" 2023  
<https://www.ifac.org/knowledge-gateway/discussion/case-study-pakistan-s-journey-fatf-grey-list-and-role-institute-chartered-accountants-pakistan#:~:text=In%20September%202022%2C%20the%20FATF,Grey%20List%20in%20October%202022.> accessed 16 August 2024

International Monetary Fund "South Africa: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism IMF Country Report No.21/227" 2021  
<https://www-elibrary-imf-org.nwulib.idm.oclc.org/view/journals/002/2021/227/002.2021.issue-227-en.xml> accessed 2 July 2024

International Monetary Fund "South Africa: Report on the Observance of Standards and Codes— FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism 2004 <https://www.imf.org/external/pubs/ft/scr/2004/cr04119.pdf> accessed 30 April 2024

International Monetary Fund 2010 South Africa: Report on the Observance of Standards and Codes— FATF Recommendations for Anti-Money Laundering and Combating the Financing

of Terrorism 2010 <https://www-elibrary-imf-org.nwulib.idm.oclc.org/view/journals/002/2010/272/article-A001-en.xml> accessed 2 July 2024

National Treasury "'FATF Greylisting": South Africa's Progress in Addressing its Action Plan as at June 2024" 2024 [https://www.treasury.gov.za/comm\\_media/press/2024/2024070201%20MEDIA%20STATEMENT%20-%20PROGRESS%20IN%20ADDRESSING%20DEFICIENCIES%20IN%20THE%20COUNTRY%27S%20AML-CFT%20SYSTEM.pdf](https://www.treasury.gov.za/comm_media/press/2024/2024070201%20MEDIA%20STATEMENT%20-%20PROGRESS%20IN%20ADDRESSING%20DEFICIENCIES%20IN%20THE%20COUNTRY%27S%20AML-CFT%20SYSTEM.pdf) accessed on 30 July 2024

National Treasury "Greylisting: Positive Progress in Addressing Technical Compliance Deficiencies in South Africa's Anti-Money Laundering System" 2023 [https://www.treasury.gov.za/comm\\_media/press/2023/2023112901%20MEDIA%20STATEMENTPROGRESS%20IN%20ADDRESSING%20TECHNICAL%20COMPLIANCE%20DEFICIENCIES%20IN%20SOUTH%20AFRICAS%20ANTIMONEY%20LAUNDERING%20SYSTEM.pdf](https://www.treasury.gov.za/comm_media/press/2023/2023112901%20MEDIA%20STATEMENTPROGRESS%20IN%20ADDRESSING%20TECHNICAL%20COMPLIANCE%20DEFICIENCIES%20IN%20SOUTH%20AFRICAS%20ANTIMONEY%20LAUNDERING%20SYSTEM.pdf) accessed 4 March 2024

National Treasury "Treasury on South Africa's Anti-Money Laundering Mutual Evaluation Report Released by the Financial Action Task Force" 2021 <https://www.gov.za/news/media-statements/treasury-south-africa%E2%80%99s-anti-money-laundering-mutual-evaluation-report> accessed 3 May 2024

National Treasury "What Does FATF Greylisting Mean for a Country?" 2023 [https://www.treasury.gov.za/comm\\_media/press/2023/2023022501%20FATF%20Grey%20Listing%20Fact%20Sheet.pdf](https://www.treasury.gov.za/comm_media/press/2023/2023022501%20FATF%20Grey%20Listing%20Fact%20Sheet.pdf) accessed on 4 April 2024

Oseghale E "Kenya and Namibia Join 10 African Countries on FATF Grey-list" 2024 <https://www.mariblock.com/kenya-and-namibia-join-10-african-countries-on-fatf-grey-list/> accessed 27 June 2024

South African Law Commission "Money Laundering and Related Matters Report" 1996 [https://www.justice.gov.za/salrc/reports/r\\_prj104\\_1996aug.pdf](https://www.justice.gov.za/salrc/reports/r_prj104_1996aug.pdf) accessed on 14 October 2024

South African Law Commission "Review of Security Legislation (Terrorism: Section 54 of the Internal Security Act, 1982" 2002 [https://www.justice.gov.za/salrc/reports/r\\_prj105\\_2002aug.pdf](https://www.justice.gov.za/salrc/reports/r_prj105_2002aug.pdf) accessed on 14 October 2024

Sovereign Group "South Africa says Removal from FATF Greylist in 2025 remains a Challenge" 2024 <https://www.sovereigngroup.com/news/news-and-views/south-africa-says-removal-from-fatf-grey-list-in-2025-remains-a-challenge/#:~:text=The%20South%20African%20National%20Treasury,action%20items%20by%20February%202025> accessed 31 March 2024