

REGULATORY INTELLIGENCE

UAE lawyers express surprise at FATF findings, say compliance will take time but intent is good

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Peter Shaw-Smith in Dubai

Lawyers have expressed surprise at the severe findings of a report by the Financial Action Task Force (FATF) highlighting deficiencies in the United Arab Emirates anti-money laundering framework. In 2018, the UAE rolled out new anti-money laundering/countering the financing of terrorism (AML/CFT) legislation, and last year took steps to tighten up regulations in the financial free zones. This followed FATF visits in 2008 and 2014.

Some major cases of fraud have recently been identified in the UAE, including the Abraaj Group scandal, and the accounting crisis at London Stock Exchange-listed NMC Health.

Intrusive scrutiny

The UAE's focus on deterrence was working without the need stricter enforcement, said Charles Laubach, partner at Afridi & Angell Legal Consultants in Dubai.

"Today, in 2020, banks, accountancy firms and law firms conduct fairly intrusive scrutiny on proposed clients and their [ultimate beneficial owners], and it would be quite a task to set up here if your objective were illicit. You would get caught anyway, because of the [suspicious transaction reports]. The compliance requirements here are much stricter than elsewhere — America, for example, [where banks] are nowhere near as strict in their [know-your-customer] processes as banks over here," he said.

The same was true of law firms, he said. His firm had found the new AML/CFT measures were having an impact. Some businesses, for example, family-owned businesses that had trusts in the corporate structure, had been deterred from setting up in the UAE because it was too difficult to satisfy the banks regarding ultimate beneficial ownership.

Strong and secure financial systems

Another lawyer was anxious to put the FATF report in context.

"In recent years, FATF issued its reports for Denmark and Singapore, both countries considered to have strong and secure financial systems. However, both countries were placed in enhanced follow-up...and various changes have since been made in response to the respective FATF findings. This in turn led to an improvement in their ratings," she said.

"The UAE will no doubt follow suit and...improve on the significant steps already taken to strengthen its AML/CFT systems. These include the amendments of its AML/CFT laws in 2018 which brought about significant changes...The UAE is also developing its national economic register and advancing its risk-based approach to supervision with improved coordination among supervisors and law enforcement agencies. All of these steps have been recognised by FATF, but they take time to embed."

Adverse findings

A number of firms had departments in private practices dedicated to financial crime and the UAE had made constructive attempts to put more effective regulation in place, particularly in financial free zones, sources said.

"[T]he report doesn't sufficiently credit all the positive and proactive steps that the UAE has taken recently, to make sure that it is one of the world's leading financial centres. [T]he Central Bank's Banking Supervision Department now needs ... to help the banks understand and effectively 'operationalise' them," one lawyer said.

The UAE raised eyebrows by scoring "low" in four FATF areas: international cooperation; legal persons and arrangements; money laundering investigation and prosecution; and proliferation finance (PF) financial sanctions.

"Cases have been identified where North Korean or Iranian [actors were] making investments, but people involved with implementation were reluctant to act. They did not recognise that the cases fell under the PF sanctions, and that they should have frozen funds or filed a report directing the freezing of assets. It seems that those involved in these cases were afraid of acting. It's a matter of making sure the people in charge are trained, and also giving them the backing to act," one lawyer said.

Proper training

The main issue was that bank employees, prosecutors, and people in the financial intelligence unit had not received appropriate training from instructors experienced in the implementation AML/CFT regulation, he said.



"Fraudsters and money launderers are very creative; you put new regulations in place and they attempt to find a new 'solution'. The whole cryptocurrency phenomenon that has come up in the last 10 years is a clear indication that 'standard' money laundering is developing into other areas. The need for regulation and countermeasures will continue ... Like a virus, new permutations always emerge, constantly changing the way they operate. Regulators and enforcers need to adapt fast and be on top of their game."

"Collective-action problem"

Clay Fuller, principal of Fuller Solutions LLC in Washington, D.C., said economic competition was bifurcating countries into two camps. "It's difficult to pin down precise causes, but you could generally call it the [global] system of governance: rule of law — democracies versus rule by law — dictatorships, or the United States versus China. Everyone depends on everyone and today's bifurcation fuels massive increases in money laundering and financial crime. [E]ach side is trying to leverage comparative advantages in the movement of money," he said.

The West and the developed world were taking advantage of the fact they developed most of the avenues and pathways for money, while the authoritarian side was using its advantage — secrecy and opaqueness, lack of a free press, lack of rule of law — to facilitate the movement of money more secretly.

"The core problem is the clash of democracies and non-democracies in a truly global financial system. I think the UAE is trying really hard. They try much harder, and do better, than most non-democratic countries, and deserve some credit for that."

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