

Going grey: enough for investors to see red

HAVING the most developed and sophisticated financial sector of any country in Africa, South Africa was poised, some years ago, to be the financial hub for the continent, or at least for the continent south of the Sahara. We even amended our legislation to accommodate shariah-compliant financial products to attract investment from the global Islamic community.

That worthwhile goal has sadly receded, and South Africa is now facing the unenviable prospect of being placed on a grey list of countries by the Financial Action Task Force (FATF), a global money laundering and terrorist financing watchdog. This would lump us with pariah states such as Pakistan, Myanmar, South Sudan and Syria as an unattractive country with which to do business and, if you did want to do business, would require added reams of red tape.

The problem lies not only in our financial regulations, which need to go further in preventing shady individuals and entities from opening bank accounts or using shelf companies to stash away ill-gotten gains; it also lies, crucially, in the enforcement of existing legislation – in other words, ensuring that crooks, fraudsters and corrupt officials are pursued and convicted. (Unfortunately, we have a dismal record in this respect: no major convictions for state capture and none of the assets lost to state capture yet recovered.)

The government has had plenty of time to make the necessary changes and to show the FATF that we are serious about doing business in the



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international arena.

After being warned last year about a possible greylisting, South Africa was given until October this year to at least demonstrate that it intends to remedy matters.

The government responded by cobbling together an “omnibus” bill, which it will publish shortly, but which, even if passed into law without undue delay – an unlikely scenario given the inordinate amount of time much legislation takes to be passed and implemented – will not, it seems, go far enough in preventing us from being “downgreyed” (my spelling).

This week the Minister of Finance, Enoch Godongwana, published an explanatory note on the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, which he aims to present to parliament by the end of September.

The bill seeks to amend the Trust Property Control Act, the Nonprofit Organisations Act, Financial Intelligence Centre Act (Fica) and Companies Act to, among other things, require



more information about owners, trustees and key personnel in trusts, non-profit and for-profit organisations, and provide for the removal of trustees and office bearers under certain circumstances. More legislation will follow.

Banks also need to clean up their act. In its latest Banking Sector Risk Assessment Report, the Prudential Authority of the South African Reserve Bank (SARB) said the biggest banks were at “high risk” of being used for money laundering and terrorism funding.

The SARB warned that Standard Bank, FNB, Absa, Nedbank and Investec had to improve their reporting of financial crimes and their ability to identify and report illegal cash flows

and crimes by October.

The report said: “The sub-sector is still targeted by criminals, as clients use cash extensively, and can use non-face-to-face methods, such as automated teller machines, to deposit cash, while the source of funds and details of depositors are largely unknown.”

A week ago, Nedbank was fined R35 million by the SARB for failing to comply with certain provisions of Fica, although not in connection with money laundering or terrorism.

So it appears that, one way or another, extra compliance measures will be instituted, which will translate into additional costs, paperwork and hurdles to be crossed for everyone – from the man in the street wanting

to open a bank account, to investors wanting to take money offshore, to companies wanting to attract foreign investment.

In a webinar discussion this week with Jennifer Anderson, investment platform INN8's head of product and communications, Stanlib chief compliance officer Njabulo Duma said extra legislation was all very well, but he was not hearing anything about beefed-up enforcement, which would require more people employed in enforcement agencies.

Duma said it was 99% likely that South Africa would be greylisted early next year.

In looking at the implications, he said IMF research showed that capital flows declined when a country was greylisted. Importantly, it is our relationships with the UK, EU and US that we need to worry about: there is a high level of trust among loyal FATF members that due diligence standards are maintained. When a country is greylisted, a range of due diligence measures comes into play, which translates into higher costs and added administration.

Yolande Butchart, a foreign exchange consultant at Brenthurst Wealth Management, quoted in a Brenthurst Wealth investment report, said: “[Greylisting] doesn't mean exclusion from international markets and banking systems, but it does add layers of complexity, bureaucracy, and inconvenience. You will still be able to invest offshore and open bank accounts, but this will come with enhanced due diligence that is more vigorous than the usual know-your-client checks.”