



***WEALTH SUCCESSION PLANNING:***  
***Grey Listing and the Future of South African  
Cross-Border Savings***

*YOUR KEY TO THE TAX COMMUNITY*

# About The Panel



**Hanneke Farrand**  
**Farrand Global**

Hanneke specialises in international tax and trust law and provides litigation support to both individuals and businesses. She has more than 25 years' experience in this niche service.

Hanneke runs a boutique cross-border legal practice. Along with a team in South Africa, she helps her clients expand their international operations, grow their personal wealth and plan for future generations.

Hanneke enjoys running, cooking and is a passionate music lover.



**Mauro Forlin**  
**Global & Local Investment Advisors**

Mauro has well rounded experience in the investment industry having begun his career in 1994 as Administrative Departmental Head at a SA unit trust management company. Mauro then moved to investment banks and asset managers and finally built his own client investment consulting business. In 2009 he merged his business with Global & Local. Mauro has developed an understanding of all areas of asset management. Mauro holds a PGDip in Financial Planning and an International Capital Markets Qualifications through the London Securities Institute and is a CFP.



**Gordon Stuart**  
**Accuro**

Gordon Stuart is Managing Director of the Accuro Mauritius office with overall responsibility for the Mauritian operations. Gordon has 18 years' experience in the private client and trust industry in South Africa with extensive knowledge and experience in South African exchange controls, tax, trusts and wills. Gordon is a regular guest on various Business Day television shows and also regularly delivers public talks on all aspects pertaining to trusts, tax and other estate planning topics.



**Stuart Theobald**  
**Intellidex**

Stuart Theobald is chairman of Intellidex, a research and consulting house specialising in capital markets and financial services. Stuart advises investors, financial services businesses, senior policy makers and global development institutions on developing capital markets and financial sectors. He has studied finance, economics and philosophy and holds a PhD from the London School of Economics, where he is also a visiting researcher.



# Outline

- The Financial Action Task Force (FATF): Objective and Standards
- Grey and Black lists
- South African's pending grey list status and impact
- Mauritius now off the grey list
- Targets and accountable institutions
- Impact on Trusts, Non-Profits and Companies

# Who is FATF?

- The Financial Action Task Force (FATF) was established in July 1989 initially to examine and develop measures to combat **money laundering (1)**.
- In 2001, the FATF mandate was expanded to include efforts to address **terrorist financing (2)**. In 2012 FATF added efforts to counter the **financing of proliferation of weapons of mass destruction (3)**.
- The Task Force's objective is to:  
*“set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.”*
- FATF have drafted **40 recommendations** (i.e. required standards) applicable to all countries to achieve this purpose and ensure a co-ordinated global response.
- +200 countries and jurisdictions are committed to implementing FATF's regulatory reforms

# Key FATF Standards

- FATF's Recommendations include:
  - Countries (and local participants) should apply a risk-based approach (RBA) to ensure that measures prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified.
  - Countries should adopt measures, including legislative measures, to enable their competent authorities to freeze or seize and confiscate:
    - a) property laundered,
    - b) proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences,
    - c) property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations, or
    - d) property of corresponding value.
  - Financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names.
  - Financial institutions should be required to maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities

# The Grey List

- FATF identifies **high-risk jurisdictions** which have **significant strategic deficiencies** in their regimes to counter money laundering, terrorist financing, and financing of proliferation.
- Such jurisdictions are placed under increased monitoring and work with FATF to address deficiencies within agreed timeframes.

*Placement under the increased monitoring list is externally referred to as the 'grey list'.*

- Countries on the grey list include:
  - Barbados
  - Cayman Islands
  - Democratic Republic of Congo
  - Gibraltar
  - Morocco
  - Mozambique
  - Philippines
  - Senegal
  - Tanzania
  - Turkey
  - Uganda
  - United Arab Emirates

# The Black List

- In the most serious of cases, FATF will go beyond increased monitoring where jurisdictions continue to struggle with addressing significant strategic deficiencies.

*Jurisdictions displaying serious cases of strategic deficiencies and no to minimal efforts to address them are placed on what is known as the 'black list'.*

- Countries on the black list are Democratic People's Republic of Korea and Iran
- **Interpretative Note to Recommendation 19** specifies examples of the counter-measures:
  - Requiring financial institutions to apply specific elements of enhanced due diligence.
  - Limiting business relationships or financial transactions with the identified country or persons in that country.
  - Requiring financial institutions to review and amend, or if necessary terminate, correspondent relationships with financial institutions in the country concerned.

# **SOUTH AFRICA'S GREYLISTING STATUS**

**The complexities of avoiding the grey list**



# South Africa's Grey Listing Status

- BLSA's Intellidex Report estimates a **85% probability** that South Africa will be grey listed by FATF in February 2023.
- A second question is how long it will take to come off the list once South Africa is listed.

## Technical Compliance Assessment

- South Africa **falls short on half of FATF's 40 Recommendations** being found to only be partially compliant with 15 and non-compliant with 5 of the recommendations. This part will be easier to solve.

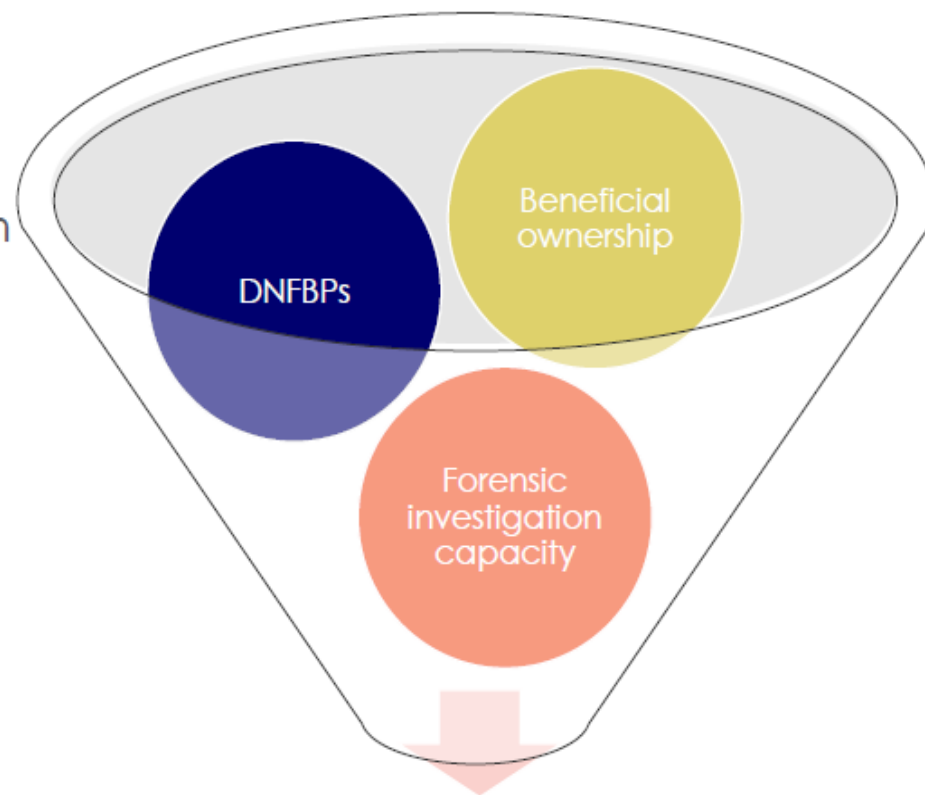
## Effectiveness Assessment

- South Africa found to be **deficient in all 11 immediate outcomes** scoring moderate or low in all immediate outcomes. This problem will be harder to solve given South Africa's overall difficulties in implementation.

# Most problematic action list items to undertake

Little to no progress made in implementing  
AML/CTF supervision of designated **non-financial  
businesses and professions (DNFBPs)**

DPCI (Hawks): has been slow to implement the recommendation to take on more staff, especially **financial investigators & forensic accountants**



The **beneficial ownership regime** will take time to become effective – masters offices must record all trust beneficial owners and CIPC all companies' beneficial owners

# Progress on SA's priority actions



## Targeted Financial Sanctions (TFS)

- The implementation of the TFS for proliferation financing in April 2019
- Enhanced with the launch of the list containing particulars of persons and entities identified for TFS
- FIC is responsible for administering TFS measures as adopted by the United Nations Security Council in its Resolutions.



## National Terrorism Financing Risk Assessment

- SA's first national risk assessment on terror financing - finalised and published by FIC in March 2022
- Aims to assist govt, private sector & the general public to understand associated risks and vulnerabilities, and to assist in the implementation of appropriate preventive measures.



## Inter-Departmental Committee (IDC)

- IDC for AML/CFT formed to urgently work on an Omnibus Bill that would simultaneously amend several different pieces of legislation



## General laws (Anti-Money Laundering and Combating Terrorism Financing)

- Tabled in Parliament and made public on 29 August 2022
- Committee discussions took place this afternoon (11 October 2022) – NT brought Bill late, rush to meet FATF deadline. New committee dates to be scheduled



## Anti-Corruption Task Team (ACTT)

- Collaboration between the NPA, DPCI: Hawks, DOJ & SARS, led by the FIC and operating under the auspices of the ACTT
- Joint project to recover assets acquired through suspected unlawful activities (corruption, fraud, tax evasion & ML)

# ***Impact on Macro Environment***

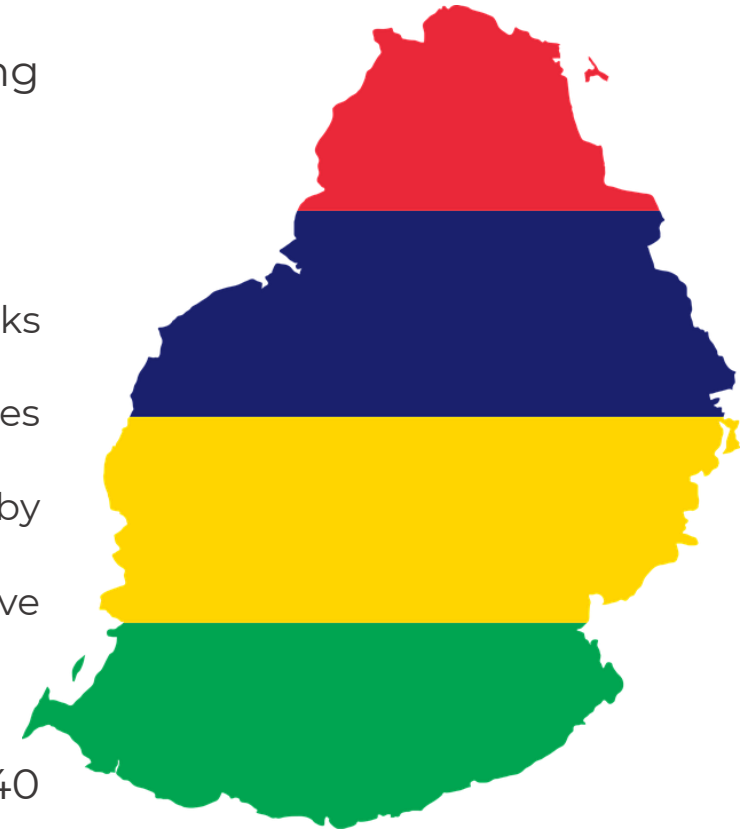
- Research finds that grey listing negatively affects capital flows and foreign direct investment into grey listed jurisdictions.
- Based on market perceptions of South Africa's efforts to address FATF's concerns, BLSA suggests impact could range from 0-3% of GDP lost from higher costs to international transactions.
- Duration of impact in the less extreme scenario could span over 18-24 months, while in the most extreme case could exceed 5 years.
- Credit rating agencies Fitch and S&P stated that it is unlikely that SA's rating or ratings outlook would be affected.





# ***Mauritius as a Case Study***

- In October 2021, Mauritius was removed from the grey list following extensive efforts to address its strategic deficiencies.
- Actions taken by Mauritius include:
  - Conducting outreach initiatives to promote understanding of ML and TF risks and obligations
  - Developing risk-based supervision plans effectively for the Financial Services Commission
  - Ensuring access to accurate basic and beneficial ownership information by competent authorities in a timely manner
  - Providing training for law enforcement authorities to ensure that they have the capability to conduct money laundering investigations.
- Mauritius is now 'compliant' or 'largely compliant' with 40 out of 40 Recommendations



## **Specifics**

**New Government and Private Sector Reporting  
Requirements**

# Three Targets

1

## **Beneficial Ownership**

- Required naming of parties
- Looking through nominees
- Looking through indirect ties
- \* (also required by the common reporting standards)

2

## **Suspicious Transactions**

- Cash and other suspicious transactions (including from questionable countries)
- Must trace source of funds

3

## **Politically exposed persons**

- A domestic politically exposed person is a person who holds, including in an acting position for a period exceeding six months, or has held a prominent public function in the Republic.
- A foreign politically exposed person is an individual who holds, or has held, a prominent public function in any foreign country.

# Accountable Institutions (SA Version)

## ○ Accountable Institutions include:

- An attorney, notary or conveyancer
- A board of executors or a trust company or any other person that invests, keeps in safe custody, controls or administers trust property
- An authorised user of an exchange
- A manager of a Collective Investment Scheme
- A person who carries on the 'business of a bank'
- A person who carries on a 'long-term insurance business'
- A person who carries on the business of making available a gambling activity
- A mutual bank
- A person who carries on the business of dealing in foreign exchange.
- A person who carries on the business of lending money against the security of securities
- A person who carries on the business of a financial services provider to provide advice and intermediary services on financial products
- The Ithala Development Finance Corporation Limited
- A person who carries on the business of a money remitter

## Obligations of Accountable Institutions (notable changes to the Financial Intelligence Centre Act)

- If an **accountable institution suspects that a transaction or activity is suspicious or unusual**, and the institution reasonably believes that performing the customer due diligence requirements will disclose to the client that a report will be made in terms of section 29, it may discontinue the customer due diligence process and consider making a report under section 29.

### ○ When an accountable institution

- **doubts the veracity or adequacy** of previously obtained information which the institution is required to verify  
or
- makes a **suspicious or unusual transaction report** in terms of section 29

*the institution must repeat the steps in sections 21 and 21B in accordance with its Risk Management and Compliance Programme and to the extent that is necessary to confirm the information previously obtained*



# Changes to the Trust Property Control Act (1)

## Beneficial Owner

- a natural person who ultimately owns the relevant trust property or exercises effective control of the administration of the trust, including—
  - each **founder** of the trust (if founder is a legal person, the natural person who ultimately owns or exercises effective control of that legal person)
  - each **trustee** of the trust
  - each **beneficiary** referred to by name in the trust deed or founding instrument (if beneficiary is a legal person or person acting in pursuance of the provisions of a trust agreement, the natural person who ultimately owns or exercises effective control of that legal person or trust)
  - a person who, through the ability to control the votes of the trustees or to appoint the trustees, or to appoint or change the beneficiaries of the trust, exercises **effective control** of the trust.

## Disqualified Trustee

- unrehabilitated insolvent
- person prohibited by a court to be a director of a company, or declared to be delinquent
- removed from an office of trust, on the grounds of misconduct involving dishonesty
- convicted, in South Africa or elsewhere for theft, fraud, forgery, perjury or an offence involving fraud, misrepresentation or dishonesty, money laundering, terrorist financing or proliferation financing activities, etc
- unemancipated minor

# Changes to the Trust Property Control Act (2)

## ○ **Trustee Requirements**

- must disclose position as trustee to any **accountable institution** with which the trustee engages in that capacity,
  - must make it known to the accountable institution that the relevant transaction or business relationship relates to trust property
  - record the prescribed details relating to accountable institutions which the trustee uses as agents to perform any of the trustee's functions or from which the trustee obtains any services relating to trust property
  - establish and record the beneficial ownership of the trust
  - keep a record of the prescribed information relating to the beneficial owners of the trust
  - lodge a register of the prescribed information on the beneficial owners of the trust with the Master's Office
  - ensure that the prescribed information is kept up to date
- A trustee who **fails to comply with an obligation** referred to in section 10(2), 11(1)(dA) or 11A(1), commits an offence and on conviction is **liable to a fine not exceeding R10 million, or imprisonment for a period not exceeding five years**, or to both such fine and imprisonment.
- A trustee may at any time be **removed** from office by the Master

# ***Changes to the Nonprofit Organisations Act***

## **Registration & Compliance with Act**

- A NPO that is not an organ of state, including a foreign NPO, that intends to operate within South Africa must be registered in terms of this Act
- A NPO, whether registered in terms of the Act or not, must comply with the requirements of this Act

## **NPO Register**

- The director must keep a register of prescribed information about the office-bearers, control structure, governance, management, administration and operations of NPOs
- Information must be made available to any person as prescribed

## **Disqualified Office-Bearers**

- unrehabilitated insolvent
- person prohibited by a court to be a director of a company, or declared to be delinquent
- removed from an office of trust, on the grounds of misconduct involving dishonesty
- convicted, in South Africa or elsewhere for theft, fraud, forgery, perjury or an offence involving fraud, misrepresentation or dishonesty, money laundering, terrorist financing or proliferation financing activities, etc
- unemancipated minor

# Changes to the Companies Act

- A company must record in its securities register prescribed information regarding the natural persons who are the **beneficial owners** of the company, and must ensure that this information is updated within the prescribed period after any changes in beneficial ownership have occurred.
- Companies must also file a record with the Commission regarding its beneficial owners and ensure that the information is updated within the prescribed period.

## Ineligibility and disqualification of persons to be directors or prescribed officers

- Persons who have been convicted for offences
  - involving money laundering, terrorist financing, or proliferation financing activities
  - OR
  - under the POCDATARA Act, or the Tax Administration Act





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