

South Africa is ‘Grey listed’: The Amendment Anti-Money Laundering Act and Beneficial Owners’ Challenges

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Abstract

The Financial Action Task Force (FATF) aims to regulate and mitigate money laundering, funding terrorist activities and organised criminal funding of weapons of mass destruction activities. The FAFT mandated the South African government to tighten legislation around these activities to avoid sanctions and being grey-listed. The introduction by the South African government of the Amendment of the Anti-Money Laundering and Combating Terrorism Financing Act 22 of 2022 in alignment with the FATF scope of work. Since then, South Africa has been grey-listed. There has been a significant backlash, unrealistic expectations, and contradictions with laws and regulations as the beneficial owners struggle to comply. The research method combined desktop research of the Acts and conversations with lawyers, property practitioners, and trustees in the real estate sector. The aim is to explore the expanding definition of accountable institution, introducing the concept of the beneficial owner, changes of name and obligations of trustees and the new scope of public identification and extent of information sharing. Due to a lack of infrastructure, accountable institutions have faced pervasive challenges, resulting in an involuntary imbalance of compliance with multiple laws and regulations. The Real Estate Sector had to adopt amendments to The Financial Intelligence Centre Act 38 of 2001, Property Practitioner Act No. 22 of 2019, Trust Property Control Act 57 of 1988, Companies Act 71 of 2008, Close Corporations Act 69 of 1984, Protection of Personal Information Act 4 of 2013, and Tax legislations of 2023/2024. Though this is not an exhaustive list, the aim is to demonstrate the adverse impact of rapid changes in complex laws and regulations, creating a deluge of information for accountable institutions.

Keywords: Anti-monetary laundering, Accountable institution, involuntary noncompliance, beneficial owners, Real Estate Sector