The Financial Action Task Force (FATF), an intergovernmental organization founded 30 years ago to develop and uphold policies to combat money laundering and terrorist financing, is conducting a peer review (or “mutual evaluation”) of the United Arab Emirates (UAE) this year.

FATF last assessed the UAE in 2008, and found the country’s systems and frameworks geared to prevent criminal abuse of the financial system to be “satisfactory” at that time. FATF made a number of suggestions for improvement, including expanding the range of predicate offenses in the law, extending customer due diligence (“CDD”) requirements to Designated Non-Financial Businesses and Professions (“DNFBPs”), clarifying the bases upon which suspicious activities/transactions are expected to be reported, and providing greater powers to enforcement authorities.

In the context of this year’s mutual evaluation, the UAE has undertaken a number of proactive initiatives to ensure best practice anti-money laundering and counter-terrorist financing measures, including enacting an important new law and seeking to combat financial crime in cooperation with international partners.
On October 30, 2018, the UAE issued by Federal Decree Law No. 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organizations (the “AML Law”). The AML Law introduced a number of concepts recommended by FATF designed to enhance the UAE’s effectiveness in identifying and preventing attempts at money laundering and terror financing. Specifically:

- At Article 1, the AML Law defines a “predicate offense” as any act constituting a felony or misdemeanor under the applicable laws of the UAE, whether the act is committed inside or outside of the UAE.

- At Article 1, the AML Law imposes AML/CFT compliance obligations on DNFBPs as well as financial institutions. DNFBP is a “catch-all” acronym coined by FATF to cover any business or profession that poses a money laundering or terror financing risk but that cannot be classified as a financial institution. Just like financial institutions, DNFBPs also now are required to conduct risk-based assessments of their business activities and possible exposure to financial crimes, and to implement adequate preventative systems and controls.

- At Article 1, the AML Law defines “funds” very broadly and expressly includes in the definition “electronic or digital” assets, demonstrating the UAE’s commitment to tackling online money laundering and terror financing involving the use of cryptocurrency.

- At Article 1, the AML law introduces the concepts of “Controlled Delivery,” which is when authorities allow money laundering to occur, including cross border, and “Undercover Operation,” which is when a non-disclosed law enforcement official participates in money laundering, in both instances to identify and apprehend the true perpetrators.

- At Article 2, the AML Law defines a “perpetrator” of the crime of money laundering and includes as one of the offenses simply “gaining” or “possessing” illegal proceeds (Article 2.1(c)). Moreover, the AML Law states that money laundering offenses are independent of the predicate offense. This means that a conviction of the predicate offense does not preclude the prosecution of a money laundering offense; nor is a conviction of the predicate offense necessary to prove the illegality of the source of proceeds (Articles 2.2 and 2.3).

- At Article 9, the AML Law requires the creation of an independent Financial Information Unit (an “FIU”), to which suspicious activity/transaction reports are to be sent, and which is empowered and able to exchange information with comparable units in other countries (Article 9.2).

- At Article 14, the AML Law empowers the authorities to impose continuing reporting obligations on financial institutions/DNFBPs, which can be in addition to the levy of administrative penalties, the arrest of responsible individuals, and the disqualification of activities or operations.

- At Article 15, the AML Law requires financial institutions and DNFBPs to
prepare and file promptly with the FIU detailed suspicious activity/transaction reports upon the identification of any plausible reasons to suspect money laundering or terror financing.

- Also at Article 15, the AML Law introduces, for the first time in the UAE, a legal and professional privilege exception to the reporting obligation, applicable to lawyers, notaries, and other legal professionals and independent legal auditors.

- At Articles 18 and 19, the AML Law requires requests for international cooperation related to money laundering and terror financing to be prioritized and executed urgently (Article 19.1). In particular, local authorities are required to assist with document collection, witness interrogation, and extradition of suspects. Moreover, requests for international cooperation should not be refused if the crime is under investigation and/or prosecution locally as well as internationally (save where cooperation would hinder the local investigation and/or prosecution), or because of confidentiality restrictions on the relevant financial institution/DNFBPs (save where the restrictions are imposed by UAE law) (Article 19.2).

- Notably, the AML Law includes no time bar on the prosecution of money laundering and terror financing.

Additional Considerations

The UAE’s efforts to ensure its financial sector strongly complies with international best practices on financial crime prevention are not limited to the new AML law.

Just last month, the UAE Banks Federation, a not-for-profit organization representing 52-member banks, hosted Sigal Mandelker, Under Secretary of the United States Treasury for Terrorism and Financial Intelligence. A particular focus of the interaction between the Chief Executive Officers of a number of UAE banks and the US delegation headed by Ms. Mandelker was a discussion of the ways in which UAE and US financial institutions can work collaboratively to prevent the growing threats of cybercrime, fraud, money laundering and terror financing.

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