

RSIL BRIEF

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FATF PLENARY UPDATE

MARCH 2022

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FATF and Global Governance

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FATF AND GLOBAL GOVERNANCE 01

FATF PLENARY UPDATE – MARCH 2022

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The Financial Action Task Force (FATF) is an international financial watchdog that develops policies for curbing money laundering and financing of terrorism (ML/TF). As a gatekeeper of the international financial system, the FATF sets policies and standards, to be adopted by all jurisdictions of the world. Failure in implementing these standards can result in increased financial costs of doing business, and in the worst cases, complete ouster from the international financial community. Developing countries seeking to expand their economies can be particularly hurt by such measures, as global lending institutions levy harsher conditions on loans for riskier jurisdictions. In this capacity, the FATF wields wide-ranging influence in promoting AML/CFT policies and can deeply impact a country's legal and administrative framework – with sometimes even fiscal repercussions that go beyond the realm of AML/CFT.

In 2018, the FATF placed Pakistan on the 'grey-list' – citing 'structural deficiencies' that resulted in failure to effectively target TF/ML.¹ The Asia Pacific Group's Mutual Evaluation Report (MER)² provided a detailed assessment of the nature of these deficiencies. These included a lack of necessary legal frameworks to target TF/ML; lack of coordination amongst governmental actors and law enforcement agencies; no coherent risk-based assessment tools; no laws/regulations for certain high-risk sectors such as Designated Non-Financial Businesses and Persons (DNFBPs); and lack of mechanisms to promote international cooperation.³ Pakistan has been subject to an intense, dual evaluation process and made to abide by extensive Action Plans – compliance with which will result in the country exiting the grey-list. Pakistan had been instructed to complete all points on the Action Plan, or risk being placed on the FATF's list of Non-Cooperative Countries and Jurisdictions subject to Call to Action" (the 'black-list'). However, by February 2021, Pakistan achieved

¹ Shahbaz Rana, "Pakistan Formally Placed on FATF Grey-list," The Express Tribune, June 29, 2018, <https://tribune.com.pk/story/1746079/1-pakistan-formally-placed-fatf-grey-list>.

² The Asia/Pacific Group on Money Laundering, "Pakistan Mutual Evaluation Report October 2019" <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG-Mutual-Evaluation-Report-Pakistan-October%202019.pdf> (hereafter cited as MER 2019)

³ Ibid.

comprehensive progress on its Action Plan, and was able to evade the FATF black-list.

This brief discusses the results of latest FATF Plenary held between February-March 2022, as well as the outstanding areas that are required for Pakistan to address as well as next steps for Pakistan once all Action Plan points are completed. In addition, it also highlights the FATF's functioning as an institution of global governance, particularly its evolving role given its recent stance on states with nascent conflicts in Afghanistan and Russia.

March 2022 Plenary Decision

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MARCH 2022 PLENARY DECISION 02

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On 4th March, 2022⁴, the FATF Plenary deliberated upon Pakistan’s progress in achieving deliverables under the 27-Point Action Plan (2018) and a consequent 7-Point Action Plan (2021). The Plenary found Pakistan largely compliant **with 26 out of the 27 Points on the 2018 Action Plan**, mainly targeting terrorism financing, while Pakistan had further achieved **6 out of 7 Points from the 2021 Action Plan**, handed to the government only in the previous Plenary in June. This brings Pakistan’s compliance to **32 out of 34 Action Plan Points, combined**.⁵

Initially, a 27-Point Action Plan centered around terrorism financing (TF) and related concerns was formulated. By February 2021, Pakistan achieved comprehensive progress on the TF Action Plan to evade the FATF black-list. In June 2021, the FATF issued a separate 7-Point Action Plan centered around money laundering (ML) concerns to Pakistan, presenting a total of 34 Action Plan points – out of which 32 have been achieved, and one point per plan remains outstanding.

The Government of Pakistan is required to fulfill all FATF Requirements and achieve all the points within the Action Plans. The FATF commended Pakistan in its monumental effort to enhance its compliance, particularly with regards to the 2021 Action Plan.⁶ However, until all objectives are achieved, Pakistan continues to be retained under “Jurisdictions under Increased Monitoring” – or the FATF ‘grey-list.’

⁴ March 2022 Plenary Outcome - Financial Action Task Force
<https://www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-fatf-plenary-march-2022.html>

⁵ Ibid.

⁶ Ibid.

Outstanding Areas for Pakistan

Out of the initial 27-Point Plan (2018), only one point remains outstanding on behalf of Pakistan: demonstrating that TF investigations and prosecutions target senior leaders and commanders of UN designated terrorist groups.⁷ From the consequent ML-based Action Plan, only one point remains outstanding as majority of the plan (6 out of 7) were achieved within the span of less than a year. This swift and remarkable progress was duly noted by the FATF, as Pakistan was further encouraged to work on the last remaining AML/CFT deficiency. This final outstanding point again revolves around continuing to demonstrate a “positive and sustained trend” of ML investigations and prosecutions.⁸ The statement also noted Pakistan’s swift response in being able to address 6 out of 7 new Action Plan points ahead of the deadlines set for the country.

These outstanding areas highlighted by FATF in its latest statement continue to focus on the element of demonstration. This primarily refers to the effective operation of the AML/CFT framework in place, in that it continues to fruitfully produce results, leading to convictions in ML/TF cases. However, it is essential to address these outstanding areas in tandem with pursuing broader criminal justice sector reform. Justice sector actors (including investigators, prosecutors and the judiciary) are at the forefront of interpreting and applying the revamped AML/CFT framework, thereby ensuring adherence to 1267 and 1373 frameworks in ML/TF cases. It is important to train justice sector actors to incorporate international cooperation in investigations, as doing so will not merely aid in completing the Action Plan, but will also enhance investigative capacity and mitigate ML/TF risks in the long run. As it stands, the Government of Pakistan remains highly committed to achieving the FATF Action Plans and is duly performing its international obligations in doing so.⁹

⁷ Ibid.

⁸ Ibid.

⁹ "New Action Plan Items by FATF to Be Fulfilled in 12 Months: Hammad Azhar." DAWN.COM. June 25, 2021. <https://www.dawn.com/news/1631416>.

Next Steps for Pakistan

Pakistan is at the cusp of completing all Action Plan points and exiting the grey-list. It has definitively evaded the black-list (since February 2021) and continues to register remarkable progress well-ahead of the deadlines set by the FATF itself. The two outstanding points, as mentioned above, revolve around the concept of demonstrating effectiveness of AML/CFT regimes, which can take time as pursuing ML/TF investigations can be time-intensive. It is also important to note that Article 10-A of the Constitution of Pakistan promulgates the right to a fair trial and due process. This ensures that all ML/TF investigations are subject to due process. These safeguards cannot be compromised upon in any case, hence increasing the number of convictions while properly investigating, prosecuting and adjudicating on ML/TF cases - which are at the core of the last two points - may require more time.

As per the FATF Methodology and 4th Round Mutual Evaluations, once Pakistan does fully complete all 34 Action Plan Points, then an on-site inspection will take place. In this inspection, evaluators from the Asia Pacific Group and the FATF will visit the country and meet with public sector stakeholders, and will report their findings to the FATF Secretariat. In the next plenary session, all member countries will then review the findings and finally take the decision to take Pakistan off the grey-list.¹⁰ This entire process typically takes until the next plenary session – for example, if the FATF finds Pakistan fully compliant on all 34 Points by October 2022, then it will complete its on-site inspection and submit findings to the FATF Secretariat, and a final decision to take the country off the grey-list will be taken in the next plenary session (February 2023).

In the meantime, Pakistan will be required to continue to exhibit the effective functioning of its revamped AML/CFT frameworks as well as pursue international cooperation through mutual legal assistance in ML/TF cases.

¹⁰ Procedures for the Fourth Round of AML/CFT Mutual Evaluation Procedures - FATF
<http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF-4th-Round-Procedures.pdf>

Evaluating the FATF's stance on Russia and Afghanistan

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EVALUATING THE FATF'S STANCE ON RUSSIA AND AFGHANISTAN 05

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The risks of cross border illicit financing remain a concern in both the Taliban takeover in Afghanistan in 2021 as well as the on-going Ukrainian crisis. The FATF issued statements in its plenaries pertaining to these crises. In doing so, the FATF continued to establish itself as a critical international institution, one that is in touch with political developments occurring across jurisdictions by entrenching relevant United Nations Security Council Resolutions in its frameworks, while still retaining a technical outlook by basing its ideals in mitigating the threat of heightened ML/TF risks.

After the Taliban takeover in Afghanistan, the FATF's statement endorsed the United Nations Security Council Resolution 2593, demanding that the Afghan territory “not be used” for threats or further terrorist attacks or for financing of terrorist activities.¹¹ However, it also reiterated the importance of non-profit organizations (NPOs) and humanitarian actors providing necessary assistance on-ground, while ensuring that NPOs are not misused for terrorist financing.¹² It further issued a statement on the financing of ISIL (Daesh) and Al Qaeda entities and all affiliates following violence in parts of Africa, South Asia and Central Asia – including Afghanistan.¹³ The statement highlighted the challenges presented by such organizations as well as the varied revenue streams of proscribed organizations. The FATF then called on all jurisdictions to issue relevant guidance and implement FATF standards swiftly to curb the risks of these organizations.¹⁴

In Afghanistan's case, the FATF's approach was largely in line with that of the broader international community. However, the Russian advance into Ukraine in 2022 saw the FATF significantly alter its tone, despite the fact that the aggressor in question remains a Member State of the FATF body. In March 2022, the FATF issued a statement on the Ukrainian issue, reiterating “grave concern” about the “(Russian) invasion's impact on the ML, TF and proliferation financing risk environment,” as well as the its jeopardizing

¹¹ FATF Public Statements on the Situation in Afghanistan – October 2021

<https://www.fatf-gafi.org/publications/fatfgeneral/documents/afghanistan-2021.html>

¹² Ibid.

¹³ FATF Public Statement on the Financing of ISIL, Al Qaeda and Affiliates – October 2021

<https://www.fatf-gafi.org/publications/fatfgeneral/documents/statement-isil-al-qaeda.html>

¹⁴ Ibid.

impact on the sanctity of the broader international financial system.¹⁵ In a departure from its usual even-handed statements, the FATF went on to categorically state that actions such as the invasion of Ukraine were fundamentally opposed to the FATF's core principles and “represent a gross violation of the commitment” of the FATF Mandate. It also stated that Russia's role at the FATF is under “review” and that the body will “consider what future steps are necessary to uphold these core values.”¹⁶

The latter underscores not merely the alignment of the FATF with the Western bloc on the Ukraine issue, but also that the watchdog body – unlike the United Nations - is willing to censure its own Member States without the threat of any veto or such powers being used to paralyze its functions. This gives the institution considerable influence in imposing extreme economic costs as well as undermining a State's actions if in violation of international commitments. Whether the FATF decides to use its own mechanisms to impose counter measures, or demote Russia to the FATF's grey-list (or black-list) in line with the incremental nature of economic sanctions imposed on the country), or if it chooses to oust the country from its decision-making forum entirely, however, remains to be seen.

RSIL will continue to provide impartial analysis and research on the progress of the remaining points on the FATF Action Plan, Pakistan's Compliance with the FATF Recommendations as well as independently evaluating the FATF's performance as an institution of global governance.

¹⁵ FATF Public Statement on the Situation in Ukraine – March 2022
<https://www.fatf-gafi.org/publications/fatfgeneral/documents/ukraine-2022.html>

¹⁶ Ibid.

