

PROPER APPLICATION OF THE RISK-BASED APPROACH ON FILIPINOS FOLLOWING THE INCLUSION OF THE PHILIPPINES IN THE FATF'S GREY LIST

On 25 June 2021, the Financial Action Task Force (FATF) included the Philippines in its list of "Jurisdictions Under Increased Monitoring", which is often referred to as the "FATF Grey list". The Philippines has expressed its high-level political commitment in swiftly resolving its identified strategic deficiencies. The FATF gave the Philippines until January 2023 to address all identified deficiencies

The statement, as published in the FATF website, clarifies that the FATF **does not call for the application of enhanced due diligence (EDD) measures to be applied to these jurisdictions but only encourages its members and all jurisdictions to account the information presented in the FATF website in their risk analysis.**¹

The effect of the grey listing is more clearly understood in relation to the International Co-operation Review Group (ICRG) Procedures² which provides:

"If a country fails to provide high-level political commitment to its action plan or a country has not made sufficient progress on its ICRG action plan one year after providing its high-level commitment, the FATF would call on its members to consider the risks arising from the deficiencies associated with each jurisdiction. In order to align such language with Recommendation 19 on higher-risk countries, the language would state: "The FATF calls on its members to advise their financial institutions to apply enhanced due diligence measures proportionate to the risks arising from the deficiencies associated with each jurisdiction". It should be clarified that this would not be a call for countermeasures, which is the second part of Recommendation 19. (Underscoring supplied)

To put into proper context, Recommendation 19 of the FATF Standards states:

19. Higher-risk countries

Financial institutions should be required to apply enhanced due diligence measures to business relationships and transactions with natural and legal persons, and financial institutions, from countries for which this is called for by the FATF. The type of enhanced due diligence measures applied should be effective and proportionate to the risks.

¹ Refer to <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-june-2021.html>

² Sec 2.7, par. 10 of the ICRG Procedures

Countries should be able to apply appropriate countermeasures when called upon to do so by the FATF. Countries should also be able to apply countermeasures independently of any call by the FATF to do so. Such countermeasures should be effective and proportionate to the risks. (Underscoring supplied)

Despite the clear pronouncements of the FATF, the Philippine Government has been receiving reports that Philippine-related transactions have been subjected to more scrutiny, or worse, de-risking. These are clear cases of over compliance and disproportionate application of the following FATF Recommendation 19 measures against grey-listed countries, their citizens and businesses:

- 1) Requiring financial institutions to apply specific elements of enhanced due diligence.
- 2) Limiting business relationships or financial transactions with the identified country or persons in that country.
- 3) Requiring financial institutions to review and amend, or if necessary, terminate correspondent relationships with financial institutions in the country concerned.

Moreover, this is not in line and inconsistent with FATF's expectations on the application of risk-based approach, which is central to the effective implementation of the FATF Standards.

In the statement, *FATF clarifies risk-based approach: case-by-case, not wholesale de-risking*, dated 23 October 2014,³ "de-risking" should never be an excuse for a bank to avoid implementing a risk-based approach, in line with the FATF standards. The *FATF Recommendations* only require financial institutions to terminate customer relationships, on a case-by-case basis, where the money laundering and terrorist financing risks cannot be mitigated. This is fully in line with AML/CFT objectives. What is not in line with the FATF standards is the wholesale cutting loose of entire classes of customer, without taking into account, seriously and comprehensively, their level of risk or risk mitigation measures for individual customers within a particular sector."

Hence, in the case of Philippine-related transactions, the obligation of financial institutions and Designated Non-Financial Businesses and Professions is to conduct CDD in accordance with the Anti-Money Laundering Act (AMLA) and their usual processes, which is to assess their customers comprehensively to determine the level of risk they pose, and thereafter apply the commensurate risk mitigation measures. **Filipino businesses or nationals should not be considered as high risk based solely on the inclusion of the Philippines in the FATF's list of "Jurisdiction Under Increased Monitoring"**.

It must be stressed that **Section 8.1⁴, Rule 19** of the 2018 Implementing Rules and Regulations (IRR) of the Anti-Money Laundering Act (AMLA) of 2001, as amended, **does not apply**

³ <https://www.fatf-gafi.org/documents/news/rba-and-de-risking.html>

⁴ Sec 8.1, Rule 19, 2018 IRR - Covered persons shall apply EDD, proportionate to the risks, to accounts, transactions, and business and professional relationships with customers who are nationals or citizens from foreign jurisdiction

to Philippine covered persons and foreign covered persons conducting business in the Philippines with respect to the Philippines. Therefore, covered persons should not apply enhanced due diligence, or any form of countermeasure against Filipino businesses or nationals, by reason only of jurisdictional/country risks arising from the grey list. Instead, covered persons should continue observing the risk-based approach in conducting customer due diligence as provided under Section 9, Rule 18 of the 2018 IRR.

Government agencies and covered persons are also enjoined to provide assistance to the Anti-Money Laundering Council by reporting incidents of de-risking, changes in correspondent banking relationships, EDD or special measures imposed on Philippine-related accounts, or imposition of any countermeasures, as a result of the inclusion of the Philippines in the FATF Grey List. Supervisors may issue their own Advisories or any issuance to provide guidance to their covered persons.

or geographical location that presents greater risk for ML/TF or its associated unlawful activities, or is recognized as having inadequate internationally accepted AML/CTF standards, as determined by the relevant domestic or international bodies such as the Financial Action Task Force (FATF) and the FATF-Style Regional bodies.