FATF Jurisdictions: Important Notice with respect to Iran

Background

The FIAU would like to bring to your attention the latest FATF ‘High-Risk Jurisdictions subject to a Call for Action’ (previously known as 'Public Statement') and ‘Jurisdictions under Increased Monitoring’ (previously known as 'Improving global AML/CFT compliance: on-going process') documents issued by the FATF on the 21 February 2020. A copy of these documents has been uploaded on the FIAU’s website under ‘Statements’.

The FATF classifies the jurisdictions included in these documents into different categories, in accordance with the deficiencies present in such jurisdictions and the level of commitment and progress made in addressing such deficiencies.

The categories are the following:

1. Jurisdictions that have failed to meaningfully address their AML/CFT deficiencies and are subject to a call for counter-measures (listed under ‘High-Risk Jurisdictions subject to a Call for Action’);

2. Jurisdictions that have not made sufficient progress in addressing their AML/CFT deficiencies or have not committed to an action plan developed with the FATF (also listed under ‘High-Risk Jurisdictions subject to a Call for Action’);

3. Jurisdictions that have developed an action plan with the FATF and have made a high-level political commitment to address their AML/CFT deficiencies (listed in the ‘Jurisdictions under Increased Monitoring’ document). This document also lists jurisdictions that are no longer subject to monitoring, where applicable.

Subject persons are required to implement the measures set out under Chapter 8 of the FIAU Implementing Procedures Part I, which is legally binding on all subject persons in terms of Regulation 17 of the Prevention of Money Laundering and Funding of Terrorism Regulations - S.L. 373.01 (‘PMLFTR’).

Important notice with respect to Iran

In the previous statement issued in October 2019, the FATF had called upon its members and urged all jurisdictions to require increased supervisory examination for branches and subsidiaries of financial institutions based in Iran; introduce enhanced relevant reporting mechanisms or systematic reporting of financial transactions; and require increased external
audit requirements for financial groups with respect to any of their branches and subsidiaries located in Iran.

Now, given Iran’s failure to enact the Palermo and Terrorist Financing Conventions in line with the FATF Standards, the FATF has fully lifted the suspension of counter-measures, and calls on its members and urges all jurisdictions to apply effective counter-measures, in line with Recommendation 19.

Iran will remain on the FATF statement on [High Risk Jurisdictions Subject to a Call for Action] until the full Action Plan has been completed. If Iran ratifies the Palermo and Terrorist Financing Conventions, in line with the FATF standards, the FATF will decide on next steps, including whether to suspend countermeasures. Until Iran implements the measures required to address the deficiencies identified with respect to countering terrorism-financing in the Action Plan, the FATF will remain concerned with the terrorist financing risk emanating from Iran and the threat this poses to the international financial system.

On the 17th December 2019 the FIAU had issued a legally binding Directive to all subject persons in relation to dealings with Iran. Now that the FATF has lifted the suspension of counter-measures and has called upon jurisdictions to apply effective counter-measures, the Directive is being withdrawn and the provisions of Regulation 11(2) of the PMLFTR, which supersede the Directive, have now come into force instead. In this regard and until further notice from the FIAU, Iran is to now be considered as a jurisdiction in respect of which there has been an international call for counter-measures (i.e.: a FATF ‘Category 1’ jurisdiction in terms of Chapter 8 of the Implementing Procedures Part I).

To date and until further notice, the Category 1 jurisdictions are Iran and the Democratic People’s Republic of Korea (i.e.: North Korea).

Subject persons are reminded of their obligations and of the FIAU’s powers under Regulation 11(2) of the PMLFTR, which provides that:

[…] when undertaking occasional transactions for, or establishing a business relationships, or acting in the course of a business relationship with a natural or legal person established in a jurisdiction as is referred to in sub-regulation (1)(c) in respect of which there has been an international call for counter-measures, subject persons shall inform the Financial Intelligence Analysis Unit which may, in collaboration with the relevant supervisory authority, require a business relationship not to continue or a transaction not to be undertaken or apply any other counter-measure as may be adequate under the respective circumstances.

Interpretation of Regulation 11(2) of the PMLFTR

In order to comply with Regulation 11(2):

1. Subject persons must immediately notify the FIAU of:
i. Any existing business relationships connected with Iran;¹
ii. Any pending transactions connected with a Category 1 jurisdiction;
iii. Any requests to establish a business relationship or carry out a transaction (whether occasional or otherwise) connected with a Category 1 jurisdiction.

2. Notification shall be made by email to analysis@fiumalta.org with the subject field indicated as ‘Notification of Category 1 Jurisdiction’ and shall provide all the following details:

In the case of a transaction:
   i. Full name and details of the customer and, where applicable, the beneficial owner, having a business relationship or carrying out a transaction in the context of which transactions connected with the Category 1 jurisdiction are to take place;
   ii. Details of any other known parties to those transactions;
   iii. The manner/channel through which the transaction is to be made;
   iv. The exact value of the transaction; and
   v. A description of the transaction, including its purpose and scope.

In the case of a business relationship:
   i. Full name and details of the customer and, where applicable, the beneficial owner;
   ii. The nature of the connection with Iran;
   iii. The type of service or product provided to/requested by the client;
   iv. For existing relations, the date of the commencement of the business relationship.

3. Subject persons may only execute transactions or establish business relationships if there is no written opposition by the FIAU within five (5) working days from when the aforementioned notification is sent to the FIAU. Provided that where it is not possible to refrain from carrying out the transaction, the subject person shall inform the FIAU immediately after the transaction is effected.

Concluding remarks

Subject persons are reminded that failure to comply with provisions of the PMLFTR, including Regulation 11(2), may render them liable to administrative sanctions in terms of Regulation 21 of the PMLFTR.

The requirement to notify the FIAU pursuant to Regulation 11(2) is not connected with Regulation 15(3), i.e.: the requirement to report a suspicious transaction to the FIAU. Notifications under Regulation 11(2) must therefore be made irrespective of whether there is a suspicion of money laundering, funding of terrorism or proceeds of crime, or not.

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¹ This requirement applies with respect to any Category 1 jurisdiction, however given that counter-measures on North Korea have been in force for several years, subject persons are not permitted to have any business relationships connected with North Korea.