

FATF to visit, Sebi lays the groundwork

Synopsis

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Mumbai: A crucial evaluation of India scheduled in November by the Financial Action Task Force (FATF), the global body to combat money laundering (ML) and terror funding (TF), has led the local capital market regulator to ask asset managers, stockbrokers, and foreign [venture capital](#) funds to disclose their proportion of high-risk clients and mechanisms to report suspicious transactions.

The last FATF evaluation happened in 2010, and the upcoming review assumes significance in the wake of alleged lobbying by a few countries against India and the Hindenburg report on Adani companies, a person familiar with the subject told ET.

Even though the FATF is not backed by a statute, global investors attach a lot of significance to its observations. A country which finds itself on the grey list or under FATF's increased monitoring regime loses out on hard currency inflows.

Earlier this month, the Securities and Exchange Board of India (Sebi) sought responses from [financial services](#) entities to a slew of issues: the number of anti-ML training programmes organised; the percentage of clients which were pulled up by the regulator in the last 2 years; whether jurisdictions of countries where they have branches or subsidiaries allow sharing of information; how often are board of directors and senior management apprised of AML related matters; enhanced due diligence by politically

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surveillance, among other things.

Best Foot Forward



The FATF review was postponed due to Covid

A membership FATF is key for attracting inflows

India has been tightening its AML framework

The evaluation process can go on for months



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The FATF is believed to have sent more than 350 questions to the government. This is typically followed by several counter-questions.

Earlier, domestic private equity and VC houses were asked to share details on a similar set of issues.

"With India emerging as one of the most promising emerging markets, FATF membership becomes very crucial. If one looks closely, then the recent changes in the anti-money laundering laws and beneficial ownership rules for FPIs seem to suggest the government's and Sebi's efforts towards ensuring that India remains a stable and transparent economy," said Prakhar Dua who leads the financial services and regulatory practice at the law firm Nishith Desai Associates.

Due to the Covid-19 pandemic and the pause in the FATF's assessment process, the mutual evaluation of India was postponed to 2023. In June 2013, the FATF recognised that India had made significant progress in addressing deficiencies identified in its mutual evaluation report and decided that the country should be removed from the regular follow-up process, according to the FATF website.

The Prevention of Money Laundering Act, The Unlawful Activities (Prevention) Act, 1967, (UAPA) (which was amended in 2004 to criminalise, inter alia, terrorist financing), and subsequent and recent amendments to the PMLA have contributed to the framework for AML and combating TF.

After a recent finance ministry notification, professionals such as a practising chartered accountant, company secretary, and certified management accountant have now been designated as 'reporting entities' under PMLA if they carry out financial transactions on behalf of their clients in relation to specified activities such as buying and selling of any immovable property, managing of client money, and a string of other activities.

"As reporting entities, they are subject to onerous obligations such as conducting client due diligence (including identification of the beneficial ownership); applying professional judgement to identify and maintain records of suspicious transactions; maintaining records of other notified transactions; fulfilling reporting requirements; etc. The only mitigating feature of obligations cast upon them is the levy of fine without being exposed to further civil or criminal proceedings," said Harshal Bhuta, partner at the accountancy firm PR Bhuta & Co.

In fact, as part of a broader reporting regime, even debentures trustees would be required to alert the government if there is a decline in the debt cover of a borrowing entity. Over the years measures to discourage cash transactions and making banks responsible to generate cash transaction reports and suspicious transaction alerts have been introduced. Cash dealings over ₹2 lakh have been prohibited while submission of PAN is mandatory for cash transactions of ₹50,000 or more.

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"The US has a lot of influence within FATF. The evaluation process can spread over months when a close look is taken at the various measures put in place by a country. Since there are different interests at play, India has to make sure that its AML framework is robust and convincing," said another person.

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