CLIENT ALERT /// FEBRUARY 24, 2020

FATF Calls for Reimposition of Countermeasures on Iran

The Financial Action Task Force (FATF) on February 21, 2020, reintroduced its call for countries to impose countermeasures to protect themselves from illicit finance threats emanating from Iran. The call for countermeasures will increase risk for financial institutions with exposure to Iran.

- This move follows repeated warnings from FATF that it would once again call for the imposition of countermeasures if Iran failed to fulfill its obligations under the FATF-agreed action plan to remedy Iran's systemic anti-money laundering/combating the financing of terrorism (AML/CFT) deficiencies.[1]
- In June 2016, FATF had suspended its call for countermeasures on Iran to allow Iran time to implement the action plan. Iran however failed to make sufficient progress, particularly with respect to the criminalization of the financing of terrorism, and FATF gradually increased pressure on Iran.[2]
- FATF's consensus decision demonstrates widespread recognition of Iran's failure to address serious deficiencies in its AML/CFT system, despite repeated warnings and opportunities to do so.
- Iran and North Korea are the only countries subject to a FATF call for countermeasures.

The practical effects of FATF's renewed call for countermeasures will depend on the specific countermeasures key countries around the world choose to apply. As a result, financial institutions (FIs) should closely monitor the steps taken by FATF members in the wake of the announcement and should ensure that they comply with the requirements of each jurisdiction in which they operate.

- Countries can deploy a variety of countermeasures ranging from imposing a requirement that financial institutions perform enhanced due diligence (EDD) on transactions involving Iran—which all financial institutions were already encouraged to do—to limiting or ending financial transactions with institutions or customers in Iran.
- Financial groups will likely be required to apply the countermeasures put in place by their home jurisdiction to all financial institutions in the group and from an enterprise risk management perspective should implement the strictest

countermeasures selected by any jurisdiction in which they operate. Based on this new information they should update their risk ratings for clients and counterparties doing business in Iran or with Iranian financial institutions.

- Financial institutions should be aware that Iranian businesses and financial institutions may increase and expand their efforts to obfuscate their involvement in transactions and business relationships, tactics they have been employing to attempt to evade U.S. sanctions.

- In a 2018 advisory, the Financial Crimes Enforcement Network (FinCEN) at the United States Department of the Treasury warned against the Iranian regime's use of front and shell companies to evade sanctions and to engage in terrorist financing and weapons proliferation.[3]

European Union (EU) states' decision to support the call for the reimposition of countermeasures suggests that they are increasingly willing to adopt a harder line on Iran. The specific measures that the EU and its FIs implement will be an important signal about the EU's evolving policy toward Iran.

- The EU has expressed concern that taking an overly aggressive approach towards Iran could cause Iran to withdraw from the Joint Comprehensive Plan of Action (JCPOA), the nuclear deal agreed to by Iran, the United States, Britain, France, Germany, Russia, and China.

- The decision to call for the reimposition of countermeasures does not foreclose EU efforts to salvage the JCPOA but, taken together with the EU's decision to trigger the JCPOA's dispute resolution mechanism, signals that EU states are beginning to take a harder line approach to Iran.[4]

- FATF's decision may also impact the EU's efforts to shield its companies from U.S. sanctions on Iran. As part of the EU's response to the U.S. reimposition of sanctions following withdrawal from the JCPOA, the EU amended its blocking statute, providing legal recourse against European companies who refuse to do Iran-related business because of certain U.S. sanctions risks. European companies can still decline Iran-related business, as long as they are doing so for reasons other than compliance with U.S. sanctions. These companies can now point to the FATF call for the reimposition of countermeasures as the rationale for declining such business, making successful challenges under the EU blocking statute more difficult.

Endnotes

[1] http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html.

[2] Although Iran passed new laws in 2018 and 2019 that made some improvements to its AML/CFT regime, its action plan expired in 2018 with more than half of the agreed items left undone. These included key steps such as the criminalization of financing of terrorism. Due to this lack of satisfactory progress, in June 2019, the FATF called on member states to introduce enhanced reporting for financial transactions involving Iran and increase external audit requirements for financial groups that have branches and subsidiaries located in Iran. In October 2019, FATF publicly called on Iran to ratify key UN conventions related to terrorism and money laundering by February 2020 or have countermeasures reimposed. Iran's Parliament passed legislation ratifying the conventions, but Iran's leadership rejected the bills.

[3] https://www.fincen.gov/sites/default/files/advisory/2018-10-11/Iran%20Advisory%20FINAL%20508.pdf.

[4] https://www.washingtonpost.com/world/europe/european-countries-to-hold-iran-accountable-for-violating-nuclear-deal/2020/01/14/4788c1d2-36bf-11ea-a1ff-c48c1d59a4a1_story.html.