

Mauritius Added to the European Union’s AML High-Risk Third Country List—Implications for European Businesses

5 June 2020

CLIENT NOTE

As part of a series of measures to strengthen the EU’s framework against money laundering and terrorist financing, the European Commission identified Mauritius as a “high-risk” third country for the purposes of its anti-money laundering (“AML”) and combatting terrorist financing legal framework under the EU Anti-Money Laundering Directive on 7 May 2020. The designation means that Mauritius is now regarded as a country that presents a strategic deficiency in its AML regime and thereby poses threats to the EU’s financial system. Subject to approval by the European Parliament and EU Council, the change will apply on 1 October 2020.¹

The Commission’s move follows the steps taken earlier this year by the Financial Action Task Force (“FATF”) to place Mauritius on its “grey list” of countries, which are countries identified as having deficiencies in their anti-money laundering framework and which have committed to resolve those deficiencies. Though not strictly linked, the [European Commission’s guidance](#) makes it evident that the EU sees this decision as a way to better align itself with the latest FATF list. It is clear from [the initial communique issued](#) by the government of Mauritius that Mauritius will seek to be removed from the FATF grey list and EU high-risk third country list (the “EU High-Risk List”) as soon as possible. A [further communique](#), issued on 2 June from the Prime Minister’s Office, resolves to accelerate the implementation programme agreed with FATF, bringing it forward by one year with a view to completing it by August 2020. Discussions are already underway between the European Commission and the Mauritius government with a view to overturning the Commission’s decision.

The Commission has recognised that Mauritius has committed to address the deficiencies identified and has developed an action plan to comply with FATF recommendations. It is likely that the removal of Mauritius from the FATF grey list—

¹ Note: In addition to Mauritius, The Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mongolia, Myanmar, Nicaragua, Panama and Zimbabwe will be added to the EU High Risk List in October 2020.

on the basis of its action plan—will prompt the EU to remove Mauritius from the EU High Risk List, at the time the Commission next makes a review.

Consequences for European businesses transacting with Mauritius entities

EU entities subject to the Fourth and Fifth EU Anti-Money Laundering Directives (“AMLD 4”, “AMLD 5”, and together the “AMLD”) (including EU banks, funds and other asset managers, other regulated financial institutions, accountants and lawyers) must perform customer due diligence checks in relation to their clients and counterparties. This includes initial verification of identity (including on beneficial owners) and ongoing monitoring of transactions undertaken in the business relationship, with scrutiny of the “background and purpose” of initial and ongoing transactions that may raise suspicions of money laundering. EU entities are obliged to apply “enhanced” customer due diligence when dealing with clients or counterparties established in countries identified as “high-risk” by the Commission. UK-regulated entities (e.g., FCA-authorized sponsors or advisers of private equity firms) will remain subject to the same obligations as the UK government has transposed AMLD 4 and has agreed to transpose AMLD 5 through secondary legislation this year, regardless of the Brexit process.

In practical terms, EU entities in scope of the AMLD, including UK businesses, that enter into transactions with Mauritian entities (in particular holding companies) will need to apply enhanced due diligence checks before entering into that relationship. EU entities in scope of the AMLD include EU-regulated asset managers and insurers that invest in Mauritian entities and EU asset managers and other brokers that transact with Mauritian counterparties. This will likely entail EU firms obtaining additional information on Mauritian entities, including on their beneficial owners and the source of their funds, to ensure the Mauritian vehicle is not used for money laundering purposes. In addition, EU firms must obtain approval of senior management to establish a relationship with a client or counterparty in a high-risk jurisdiction, and some EU firms may be restricted, as a matter of policy, from establishing subsidiaries in high-risk jurisdictions.

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Please do not hesitate to contact us with any questions.

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