

Mauritius - the state of AML/CFT compliance

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Since early 2020, first through the grey listing by the Financial Action Task Force (**FATF**) and, subsequently, the blacklisting by the European Commission (**EC**), Mauritius has found itself under intense scrutiny. As a result, doubt has been cast on the long-standing choice of Mauritius as a reliable investment platform. The prospect of being subjected to enhanced due diligence purely by structuring through Mauritius, despite its proven attractiveness, has understandably been a hurdle some investors have not been willing to overcome.

The announcement by the FATF on 21 October 2021 of the removal of Mauritius from its grey list restores the reputation of Mauritius as a jurisdiction intent on ensuring the highest standards of compliance with international anti-money laundering norms and instilling renewed confidence in the investor community in the international financial centre.

In this article, we shed light on the events leading to increased monitoring from the international community, rationalise the situation Mauritius found itself in, and focus on the way forward.



Issues requiring review

Several Mutual Evaluation Reports by the Eastern and Southern Africa Anti-Money Laundering Group (**ESAAMLG**) bear testament to how well Mauritius has implemented the technical requirements of the FATF recommendations and how effective its anti-money laundering and counter-terrorist and proliferation financing (**AML/CFT**) system is.

However, these did not deter the FATF from placing the country on its grey list for increased monitoring. A fact that is generally not reported is that a jurisdiction under increased monitoring is one that has committed to resolving identified strategic deficiencies within agreed timeframes, hence the increased monitoring and what is referred to as the 'grey list'.

Although Mauritius was making progress towards completing the agreed FATF action plan expeditiously, through an amendment of the Delegated Regulation (EU) 2016/1675 (**Regulation**), the EC identified Mauritius as a high-risk third country with strategic deficiencies in its AML/CFT regime. This was done on the basis that any country that has been identified by the FATF as representing a risk to the international financial system will affect the European Union (**EU**).

Amongst the conclusions reached about Mauritius were, *inter alia*:

- deficiencies in demonstrating that the supervisors of its global business sector and designated non-financial businesses and professions have implemented risk-based supervision;
- failure in demonstrating that law enforcement authorities have capacity to conduct money-laundering investigations, including parallel financial investigations and complex cases; and
- failure in implementing a risk-based approach for the supervision of its non-profit organisation sector to prevent abuse for terrorist financing (**TF**) purposes.



Efforts to get back on track

Given its track record of compliance with international laws and standards, Mauritius redoubled its efforts to demonstrate that not only are laws in place from an AML/CFT perspective, but that it also has the necessary tools for effective enforcement.

The recently promulgated Finance (Miscellaneous Provisions) Act 2021 (**FA**) further consolidated the laws and processes around AML/CFT to address concerns raised by the FATF with the following notable changes:

- **Setting up a core group on AML/CFT**

The core group aims to: (i) supervise the efforts being undertaken to remove Mauritius from the FATF grey list and consequently the EU blacklist; and (ii) ensure that Mauritius has a system in place that is compliant with international standards and also adapts to the ever-changing landscape around AML/CFT, bearing in mind that any relapse may result in a review and re-listing by the FATF.

Members of the core group include some of the highest-ranking officials in Mauritius, including the Financial Secretary at the Ministry of Finance, the Governor of the Bank of Mauritius and the Director General of the Independent Commission against Corruption (**ICAC**).

The functions of the core group include deciding on matters pertaining to the implementation of AML/CFT standards which a relevant authority in Mauritius may refer to; and making recommendations to the Prime Minister on implementation, strategy and international developments pertaining to AML/CFT.

- **Obliging real estate agents to register with the FIU**

The FATF has identified real estate agents as being gatekeepers to counter AML/CFT risk. According to the National Risk Assessment report, 2019, the real estate sector has a medium-high risk of being used for money laundering (**ML**).

The FA has amended the Real Estate Agent Authority Act, itself enacted in 2020 as part of the efforts to meet FATF requirements, such that a real estate agent is required to register with the Financial Intelligence Unit (**FIU**) within five working days of being registered with the Real Estate Agent Authority.

- **Empowering the National Sanctions Secretariat**

The United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019 has been amended to avoid ambiguity and better empower the National Sanctions Secretariat in the conduct of its duties.

One of the principal amendments is that **notwithstanding any confidentiality provision in any enactment**, any person is obliged to immediately notify the National Sanctions Secretariat where he or she holds, controls or has in his or her custody or possession, any funds or other assets of a designated party or listed party.



- **Facilitating and speeding up the asset recovery processes**

Previously when an attachment order was to be served, it could only remain in force for 60 days unless renewed for successive periods of 60 days on an application made to a Judge in Chambers of the Supreme Court.

This was a cumbersome process with a risk of disposal during the process of renewal. As a result, the Prevention of Corruption Act 2002 has been amended extending the validity of the attachment order to a period of six months.

In addition, the ICAC has now been empowered, with a view to protecting the value of recovered assets, to realise the sale (with the consent of the owner thereof). The proceeds are then transferred to an account managed by the ICAC itself.

Furthermore, through amendments made to the Prevention of Terrorism Act 2002, the Commissioner of Police has been empowered to make an application to a judge for an account monitoring order, which entails giving the Commissioner access to information pertaining to the account/s held by a person with a financial institution, details of which would have been specified in the application for the order.

- **Introducing a legal requirement to assess the beneficial owners of charitable organisations**

Under the Foundations Act 2012, a charitable foundation (**Foundation**) is now required to confirm the identity, credentials and good standing of each of its beneficiaries and beneficial owners; verify the identity of any of its significant donors; and ensure that none of them are involved in terrorist-related activities or making use of the Foundation to support terrorists/terrorist organisations.

The Foundation is further required to maintain records containing details of all movements of funds over a seven-year period.

Moreover, should any competent authority request information from a Foundation, the latter is required to authorise an officer (or any person residing in Mauritius) to provide the authority with all basic information including:

- o the name, proof of registration, legal form and status, address of registered office, basic regulatory powers, including the charter, and list of members of its council; and
- o a register of founders and persons who may have endowed assets to the Foundation.

- **Obliging all company service providers to report suspicious transactions**

There is now an obligation on company service providers registered with the Registrar of Companies, other than secretaries referred to under the Companies Act and management companies licensed by the Financial Services Commission (**FSC**) who were already subject to such obligations, to report with the FIU as soon as practicable, but not later than five working days from the date on which it becomes aware of a suspicious transaction.



Status update regarding Technical Compliance

In its latest follow-up report of September 2021 (the **Report**), ESAAMLG analysed the progress made by Mauritius to address technical compliance, whilst clarifying that no analysis was made as part of this particular exercise on the progress made by Mauritius on improving its effectiveness. Through the technical re-ratings as detailed in the Report, there is evidence on record that Mauritius has demonstrated sufficient progress.

Notable conclusions arising from the Report include the fact that significant measures have been taken to address deficiencies with regards to the Non-Profit Organizations (NPOs), which were divided broadly into four categories: Associations, Foundations, Charitable Trusts and Companies Limited by Guarantee. With Associations constituting 96% of NPOs in Mauritius and most of the deficiencies identified relate to other types of NPOs (which make up 4% of total NPOs), the impact of the deficiencies was weighted as low. Added to the fact that Mauritius has further carried out a risk assessment and identified a sub-set of NPOs at the risk of terrorism financing abuse and the country having adopted risk-based supervision of NPOs, any shortcomings were considered to be minor and hence the re-rating of Mauritius to Largely Compliant.

With the various re-ratings that allows Mauritius to reach satisfactory compliance with the FATF recommendations, the main issue remained that of effectiveness, with the Report citing eleven outcomes that had been rated at low or moderate levels of effectiveness. It is in this context that the work undertaken by the FATF has been crucial in the determination as to whether or not to de-list Mauritius.

Conclusion

Critically, the FATF observed at its June 2021 Plenary that Mauritius had made key reforms by: (i) conducting outreach to promote understanding of ML and TF risks and obligations; (ii) developing risk-based supervision plans effectively; (iii) ensuring access to accurate basic and beneficial ownership information by competent authorities in a timely manner; and (iv) providing training to law enforcement authorities to ensure that they have the capability to conduct ML investigations.

The FATF further acknowledged that it had come to an initial determination that Mauritius had substantially completed its action plan; that on-site inspection was warranted to verify that the implementation had begun and was being sustained; and that the necessary political commitment remained in place to sustain implementation in the future. With the outcome of the onsite inspection which effectively took place between 13 and 15 September 2021 being the de-listing of Mauritius on 21 October 2021, the jurisdiction has demonstrated its capacity to meet its commitment towards the international community. The target for Mauritius should now not only be to achieve sustained compliance with relevant AML/CFT laws but to further enhance its regulatory and supervisory framework through capacity building. Our own view is that the measures taken as highlighted in this article are very much a step in the right direction.