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Guidance Note prepared by the Financial Intelligence Analysis Unit ("FIAU") on the interpretation of the principle of "reputable jurisdiction" as defined in the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008 ("the Regulations")

This Guidance Note is being released pursuant to the issuance by the Committee on the Prevention of Money laundering and Financing Terrorism of a Common Understanding on third party equivalence on 18th April 2008

The FIAU would like to bring to the attention of subject persons the fact that EU Member States participating in the EU Committee on the Prevention of Money Laundering and Terrorist Financing on 18th April 2008 have agreed on a list of equivalent third countries for the purposes of the relevant parts of the Third Money Laundering Directive[1]. The list is a voluntary, non-binding measure that nevertheless represents the common understanding of Member States.

The FIAU would like to draw the attention of subject persons that the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008 ("the Regulations") have retained the concept of a "reputable jurisdiction". The definition of "reputable jurisdiction" in Regulation 2 provides that for a country to be deemed to be reputable it should be established that that country has "appropriate legislative measures" in place for the prevention of money laundering and the funding of terrorism. The definition itself guides subject persons to take into account *inter alia* that country's membership of any international organisation recognised as laying down internationally accepted standards for the prevention of money laundering and for combating the funding of terrorism. The Regulations therefore do not require the FIAU to issue a list of "reputable jurisdictions".

Subject persons may therefore be required to establish whether a jurisdiction is to be considered a "reputable jurisdiction", as defined in Regulation 2 of the Regulations, for a number of reasons, including the assessment as to whether an applicant for business qualifies for simplified due diligence in terms of Regulation 10, whether a subject person can rely on a third party's customer due diligence under Regulation 12 or whether the prohibition laid down in Regulation 6 applies to a particular jurisdiction.

[1] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Consequently, domestically, the common list, which is also endorsed by the FIAU, should be seen to be particularly relevant to assist subject persons in their assessment as to whether a jurisdiction is to be considered a reputable jurisdiction in terms of and for the purposes of the Regulations.

While EU and EEA Member States, on the basis of the principle of mutual recognition applicable in view of the implementation of the EU anti-money laundering directives, may be automatically presumed to satisfy the criteria of "reputable jurisdiction", acceptance of business or transactions from third countries would require a more detailed assessment by subject persons. The list of countries contained in the Common Understanding issued by Member States is to be seen to be an added tool to assist subject persons in this assessment. It should be noted, however, that the mere omission of a State from the said list does not necessarily mean that the anti-money laundering and combating of financing of terrorism legislation and standards of due diligence in those countries are low and should therefore be classified as a non-reputable jurisdiction. Neither does it mean that states included in the list are to be automatically deemed to classify as a reputable jurisdiction.

Indeed, the onus remains on subject persons to carry out their own assessment of particular countries based on up-to-date information on that country. Not only should the subject person consider its own knowledge and experience of the country concerned, but particular attention should be paid to any FATF, FATF-style or IMF/World Bank evaluations undertaken, membership of groups that only admit those meeting a certain benchmark, contextual factors, incidence of trade with the particular jurisdiction, public announcements of non-cooperation and other relevant factors.

In this context, it should be highlighted that subject persons would be expected to document in writing at the time the decision is made the reasons for concluding that a particular jurisdiction is considered to be a "reputable jurisdiction".

The complete text of the Common Understanding is hereby being reproduced:

Common Understanding on Third Country Equivalence

These third countries are currently considered as having equivalent AML/CFT systems to the EU. The list may be reviewed, in particular in the light of public evaluation reports adopted by the FATF, FSRBs, the IMF or the World Bank according to the revised 2003 FATF Recommendations and Methodology.

- Argentina
- Australia
- Brazil
- Canada
- Hong Kong
- Japan
- Mexico
- New Zealand
- The Russian Federation
- Singapore
- Switzerland
- South Africa
- The United States

The following text is included as a footnote to the Common Understanding.

The list does not apply to Member States of the EU/EEA which benefit de jure from mutual recognition through the implementation of the 3rd AML Directive. The list also includes the French overseas territories (Mayotte, New Caledonia, French Polynesia, Saint Pierre and Miquelon and Wallis and Futuna) and the Dutch overseas territories (Netherlands Antilles and Aruba). Those overseas territories are not member of the EU/EEA but are part of the membership of France and the Kingdom of the Netherlands of the FATF. The UK Crown Dependencies (Jersey, Guernsey, Isle of Man) may also be considered as equivalent by Member States.

24th December 2008