



Code of Practice for the Remote Gambling Industry:

**Anti-Money Laundering and Countering the Financing of
Terrorism Arrangements**

- v.1.1.2018

Issued by the

Gambling Commissioner

**As approved by the Minister for Gambling, pursuant to
S.6(6)(f) of the Gambling Act 2005.**

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1. Introduction

- 1.1 This version of the Gibraltar Code of Practice for the Remote Gambling Industry has been issued consequent upon the EU 4th Money Laundering Directive (4MLD) which has been transposed into Gibraltar law by the Proceeds of Crimes Act 2015 (POCA) and supersedes and replaces all previous versions and associated correspondence.
- 1.2 The Gambling Commissioner is the regulator for the gambling industry in Gibraltar and is a supervisory body listed under Part 1 of Schedule 2 of POCA for the purposes of supervising licensed gambling operators' (**Licence Holders**) compliance with relevant Gibraltar laws and regulations for anti-money laundering and countering the financing of terrorism.
- 1.3 This Code applies to all transactions and processes undertaken by Licence Holders in Gibraltar or any other place under the authority of a Gibraltar gambling licence, including those transactions and processes that are additionally licensed by another regulatory authority as well as those associated with places which have no relevant gambling or AML/CFT regulation.
- 1.4 This Code is 'interpretive guidance' to the Gibraltar remote gambling sector in respect of the statutory and other requirements referenced in the document. The Code is issued under S.6 of the Gambling Act with the consent of the Minister responsible for gambling and may be taken into account in any proceedings before a court or in any matter to be determined by the Licensing Authority (S.6(7)).
- 1.5 Licence Holders should refer to POCA and associated legislation detailed below when making decisions in respect of their AML/CFT obligations and seek legal advice where necessary. This Code is not intended to be a substitute for legal advice.
- 1.6 This Code follows the general principles contained in the FATF's 40 Recommendations, recognised by international bodies such as the European Commission and International Monetary Fund, as the framework for the advice and requirements of this Code. Any regulatory action in respect of Licence Holders, employees or agents (including a range of sanctions) will be based on the statutory provisions contained in POCA and the content and principles of this Code, not on the absence or existence of equivalent legislation in the originating state. Criminal prosecution rests with other authorities.

2. General Considerations on Our Approach

- 2.1 Consistent with international guidelines and relevant legislation, for the purposes of this document, ‘anti money laundering’ (**AML**) should be read as ‘anti money laundering and countering the financing of terrorism’ (**AML/CFT**), unless otherwise stated.
- 2.2 4MLD provides at some length the European Parliament and European Council’s overview of the risk posed by ‘Gambling Services’ as defined in article 3(14). Recital 21 of 4MLD makes clear that all types of gambling are to be included in AML/CFT Customer Due Diligence provisions unless exempted due to low risk. POCA carries these principles forward and does not provide for any exemptions in the remote sector. Separate guidance will be issued for the non-remote sector in Gibraltar.
- 2.3 The Gambling Commissioner is aware, and international evidence indicates, that properly regulated gambling industry’s security and recording processes can be highly effective in deterring conventional money laundering. The Gambling Commissioner broadly concurs with the 2013 MONEYVAL report¹ which makes reference to various researchers into remote gambling which conclude that the money laundering and terrorist financing (**ML/TF**) risks linked to regulated online gambling are relatively low and the sector is not likely to be the preferred option for money launderers or terrorist financiers
- 2.4 This revised Code is designed to help ensure the remote gambling sector in Gibraltar continues to meet the expected international standards.
- 2.5 The Gambling Commissioner is mindful that the very large economic scale of remote gambling operations licensed and located in Gibraltar amplifies the significance of even low risk and impact to a higher level, particularly in terms of reputational damage to the sector and the jurisdiction.
- 2.6 Consequently, the regulated industry must be committed to maintaining high standards and take appropriate and proportionate steps to address any indications its systems are being or may be used for the purposes of ML/TF. The Gambling Commissioner believes that the gambling industry in Gibraltar should meet its legal obligations in this area in full, embrace developments in knowledge and legislation and develop AML/CFT processes that are visible, credible and resilient, and will assist in overcoming any misconceptions. POCA, 4MLD, the Financial Action Task Force’s (**FATF**) 40 Recommendations and the various regulations published pursuant to POCA are the source documents for this Code.
- 2.7 This Code, POCA and 4MLD are aimed at ensuring that in addition to the general AML/CFT responsibilities applicable to all persons, those business sectors determined by Article 2 of the 4MLD as ‘Obligated Entities’ and S.9 POCA as a ‘relevant financial business’ i.e. “providers of gambling services”, should also apply, on a risk based approach, Customer

¹ MONEYVAL (2013), ‘The Use of Online Gambling for Money Laundering and the Financing of Terrorism Purposes’, <https://rm.coe.int/research-report-the-use-of-online-gambling-for-money-laundering-and-th/168071509c>

Due Diligence measures designed to deter, prevent and avoid facilitating ML/TF through those gambling services.

2.8 These measures are also designed to ensure that, where such events occur or are suspected, they are appropriately reported, and a substantive audit trail is available that will allow the relevant authorities to investigate and where appropriate use that material to prosecute those involved.

2.9 The following documents are also relevant to licence holders:

- i) GFIU AML/CFT Guidance Notes;
- ii) Supervisory Bodies (Powers etc) Regulations 2017;
- iii) National Coordinator for Anti-Money Laundering and Combatting the Financing of Terrorism (Amendment) Regulations 2017.

POCA can be found on: <http://www.gibraltarlaws.gov.gi/articles/2015-22o.pdf> and the Regulations can be located on a search of the index of the laws of Gibraltar webpage on: http://www.gibraltarlaws.gov.gi/full_index.php

2.10 All Licence Holders should also be familiar with Gibraltar's published National Risk Assessment (**NRA**) for AML/CFT, which confirms remote gambling operators as one of the risks facing the jurisdiction².

2.11 The European Commission, as part of its Supranational Risk Assessment (**EUSNRA**), has also published a report assessing the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities in which gambling sector products are evaluated and assessed³. There are various risks identified in the gambling sector, not all of which are present in Gibraltar. Future National Risk Assessments will provide further information on the areas deemed to be at most risk, taking into account the EUSNRA and tailoring it to a local context.

2.12 While POCA and the Gambling Act identify the Gambling Commissioner as the competent authority for supervising anti-money laundering policies and procedures in the Gibraltar gambling industry, it should be understood that this authority relates only to Licence Holders' regulatory responsibilities, and only extends into the sphere of criminal liability in so far as the Gambling Commissioner may provide formal guidance (this Code) to the industry and the industry may use this Code in criminal (or civil proceedings) to demonstrate compliance with POCA (S.33(2)).

2.13 The Gambling Commissioner is mindful that Licence Holders have obligations and liabilities arising from the anti-money laundering arrangements of every country in which they are licensed or where their customers are located. Licence Holders should have systems in place that bring to the attention of the Gambling Commissioner all external enquiries,

²https://www.gibraltar.gov.gi/new/sites/default/files/HMGoG_Documents/2018%20NRA%20Public%20Final.pdf

³http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=81272

including those from other gambling regulators and law enforcement, into ML/TF suspicions involving their Gibraltar infrastructure or licensed activities.

2.14 The Gambling Commissioner expects Licence Holders to take reasonable and proportionate steps, consistent with a risk-based approach and the terms and conditions of their Licence Agreements, to manage their AML responsibilities. Consequently, the Gambling Commissioner can advise that any examination of reported events alleging money laundering will entail establishing whether what the Licence Holder did was consistent with this Code and reasonable in the circumstances. This approach puts the responsibility for developing and applying adequate and effective AML procedures on Licence Holders.

2.15 Licence Holders will therefore have to establish the means for demonstrating the effectiveness of their AML procedures. Such means will include properly documented AML/CFT risk assessments, policies and procedures as well as detailed record keeping and the maintenance of statistics. The Gambling Commissioner will consider, *inter alia*, internal and external audits, regulatory returns, desk-based reviews, customer engagements and complaints, inspections and/or other suitable and proportionate measures as the means to establish the effectiveness of Licence Holders' AML systems and controls.

2.16 The National Coordinator for Anti-Money Laundering and Combatting Terrorist Financing Regulations 2016 place a responsibility on the National Coordinator to maintain comprehensive statistics on matters relevant to the effectiveness of systems to combat ML/TF. This in turn places an obligation on the Gambling Commissioner to collect and analyse licensee's data and maintain records relevant to these statistics. The Gambling Commissioner therefore intends to undertake annual data surveys requesting the provision of data relevant to AML/CFT issues in order to better determine where the primary risks lie and ensure supervision and systems are consistent with a risk based approach.

2.17 The Risk Based Approach

The Gambling Commissioner supports a risk based approach which incorporates operators carrying out their own risk assessment of AML/CTF risk, putting in place control measures to reduce that risk to the lowest practicable level (considering factors such as time, cost and resources in proportion to the size and scale of the business). Operators should have credible policies and procedures in this area and ensure those are reviewed and updated in light of changing and emerging risks, vulnerabilities and learnings. The role of the Gambling Division is to monitor and evaluate the efficacy of operator's systems and controls and to use a range of regulatory tools to ensure that high standards in the sector are maintained. A risk based approach does mean that from time to time an operator's defences may be breached by those determined to identify and exploit control weaknesses. Therefore, it is vital that when weaknesses are identified that remedial action, including process change, takes place as quickly as possible so as to avoid systemic failure. When considering any enforcement action, where an operator self identifies issues and implements appropriate and prompt remedial action, this will be taken into account by the Gambling Commissioner.

3. AML/CFT Risks in the Remote Gambling Sector

3.1 The AML risks in the remote gambling sector are generally acknowledged to lie principally in two areas, namely:

- I. The possible ownership and control of gambling Licence Holders by criminals or their associates;
- II. The possible use of Licence Holders as conduits for ML/TF.

3.2 In both cases, the parties of concern may not be the persons immediately visible or identified as the supplier or the customer. One of the purposes of any due diligence process is to ensure the ultimate beneficial owners of assets are sufficiently identified to ensure meaningful due diligence is undertaken.

3.3 The first of these risks is mitigated through the licensing process in which all applicants are required to fully disclose the real persons who own and control the applicant entities, including financing, as opposed to nominee directors and employed managers and extensive due diligence is carried out with regard to their historic activities and interests, not solely in the gambling sector.

3.4 The second risk materialises in the context of Licence Holders' relationships with their customers and can be mitigated through the proper identification of account holders and a continuing due diligence process. This is the main focus of the advice in this Code.

4. Methods of Money Laundering/Terrorist Financing

4.1 Sections 2, 3, 4 and 6B POCA create the primary money laundering offences in respect of any Gibraltar based company, employee or agent. Licence Holders must be aware of their potential criminal liability in respect of the substantive money laundering offences. Not every country in the world has equivalent legislation. For regulatory purposes this Code recognises that acts of ML/TF may be initiated in any part of the world where a customer registered with a Licence Holder is based at the time of deposit, gambling, withdrawal or money transfer.

4.2 Money laundering has traditionally been described as a three-stage process consisting of:

- I. Placement i.e. the introduction of illicit funds into the financial system;
- II. Layering i.e. a series of simple or complex transactions designed to obscure the source and ownership of the funds; and
- III. Integration i.e. the funds, now laundered, being presented as apparently legitimate funds.

4.3 This three-stage interpretation is now generally recognised to be somewhat limited and may give the mistaken impression that for money laundering to occur, all three stages

must be involved. This is not the case. Involvement by a Licence Holder in any one of the three stages may constitute a money laundering offence, even where this occurs inadvertently.

4.4 In the context of remote gambling specifically, money laundering is likely to arise from three particular methodologies, each based on the customer 'knowing' the funds are illegitimate. From a customer's perspective, these are:

- I. The 'disguise' of illegally obtained funds as funds whose source is legitimate, i.e. misrepresenting illicit funds to the operator, irrespective of whether the money is held on account, gambled or withdrawn; or
- II. the 'conversion' of illegally obtained funds into funds whose source appears legitimate (balances/winnings/withdrawals), i.e. conventional money laundering; or
- III. the 'disposal' of illicit funds by way of lost deposits or the settling of debts (credit betting), i.e. 'spending or receiving illicit funds'.

4.5 In all cases – summarised here as the introduction, the use, or the loss, of illicit funds - there is a potential liability resting with the Licence Holder processing the funds if this arises due to inadequate safeguards being applied to the customer and/or the account or transaction. This is in addition to any liability of an employee or agent facilitating the transactions, knowing or suspecting ML/TF was taking place, or 'turning a blind eye' to such information.

4.6 These are broad descriptions of how customers may launder money. In respect of more specific examples that have been encountered in the remote gambling sector, the Gambling Commissioner suggests the following should be considered as prominent examples (this is a non-exhaustive list):

- I. Where a customer deposits, loses or wins money where the source of their gambling funds is a criminal activity;
- II. Where a customer misleads a Licence Holder as to the source of their deposits, which is a criminal activity, whether or not they claim it is legitimate, and whether or not the money is ultimately gambled;
- III. Where a player transfers criminal funds to another player by play or other means, whether or not that player is colluding with that customer.
- IV. Where a customer recycles or attempts to recycle criminal funds or a proportion of such funds through gambling facilities either through engaging in minimal or very low risk activity.

4.7 Licence Holders should be mindful that the purposeful transfer of funds between players, including players in different countries or continents, such as 'chip dumping', and other contrived peer-to-peer (**P2P**) outcomes or P2P transfers, are the most likely way the financing of terrorism could be facilitated through the remote gambling industry, as well as being a form of potential money laundering.

4.8 Licence Holders should be aware of various ‘warning signals’ which have indicated in other cases that a customer is laundering funds through ‘criminal spend’:

- I. High losses inconsistent with the readily apparent means and earlier profile of the customer;
- II. Sudden or gradual but significant increase or ‘spike/spikes’ in the activity of a customer, at odds with the previously established customer profile;
- III. A customer attempting to avoid or delay personal contact by the Licence Holder;
- IV. Discovery of inconsistent personal data/financial standing/previous convictions/adverse media reports.
- V. A customer found to have provided false, implausible or deceptive information or documentation;
- VI. Withdrawals not commensurate with the gambling activity on the account, i.e. minimal play/spend;
- VII. Customer depositing cash in betting shops for the purposes of funding their online gambling account;
- VIII. Use of corporate cards or accounts to make deposits.

4.9 The Gambling Commissioner has found that it needs to be emphasised that the simple spending of funds representing the proceeds of crime, including the depositing, wagering, winning or losing arising from that money, is likely to amount to money laundering by the customer and may, depending on the circumstances, also involve the Licence Holder or employees in a money laundering offence. The discovery of such actions is likely to focus attention on the effectiveness of Licence Holders’ Customer Due Diligence procedures.

4.10 From a Licence Holder’s perspective, POCA, 4MLD and the Crimes Act 2011 (dealing with aiding, abetting criminal offences etc.) may create a further liability for those who have knowledge, or suspicion of money laundering, and who oversee those arrangements. ‘Knowing or suspecting’ is a critical element for licence holders as passing this threshold may create a liability for anyone involved in any aspect of known or suspected money laundering.

4.11 ‘Knowingly’, ‘suspect’ and ‘reasonable grounds to suspect’ are established legal principles not defined in POCA or 4MLD, but for any criminal purposes the law enforcement agencies are likely to apply the established understanding of these terms in the circumstances.

4.12 Knowledge: this requires a person actually knowing something to be true.

4.13 Suspicion: This is a subjective test. Suspicion falls short of proof based on firm evidence. The UK Courts have provided some guidance in respect of a definition of suspicion, namely that *“the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice.”* (R v Da Silva). Suspicion thus differs from mere speculation and it is expected that the formation of a suspicion will be a gradual process. Forming suspicion should be a rational and informed process by the licensee and not a mechanised ‘tick box’ process. Where pre-set criteria or processes indicating suspicion are met, these indicators must be collectively evaluated to

ensure they are genuine indicators of underlying dishonesty and cannot be explained by other apparent facts.

4.14 **Reasonable grounds to suspect:** This is an objective test and for regulatory purposes the Gambling Commissioner will apply the civil ‘balance of probabilities’ test in respect of this Code and seek to establish whether those involved in allowing alleged money laundering to take place should have known or suspected so in the circumstances.

4.15 This will include considering any persistent overly liberal interpretation of events, any unreasonable delay or any failure to apply recognised safeguards or processes to obtain information about the customer, and any unjustified deferral or ignoring of suspicious circumstances by staff or management. Operators will be assessed on whether factual circumstances or reliable information about the customer were reasonably accessible, from which an honest and reasonable person working in the gambling sector should have known or suspected that a person was engaged in money laundering.

Suspicious Activity Reports.

4.16 Licence Holders are required to submit a suspicious activity report (SAR) directly to GFU. Licence Holders are not required to copy the SAR to the Gambling Commissioner, but they should be mindful of their obligations to separately notify the Gambling Commissioner, as soon as reasonably practicable, of any third party law enforcement or administrative investigation, including investigations by external gambling regulators. The Gambling Commissioner has authority and a legal gateway to access SARs submitted to and held by GFU, but where, following an internal or external review, a Licence Holder has reasonable grounds to believe that there has been a failure in systems and controls which has resulted in suspected money laundering, then this should be reported separately without delay to the Gambling Commissioner. For the avoidance of doubt, discussions regarding specific AML/CTF cases with the Commissioner do not constitute “tipping off” as the Gambling Commissioner is a designated supervisor under POCA.

4.17 As the designated sectoral supervisor, the Gambling Commissioner needs to obtain a “360 degree” view of each operator’s approach to risk and the effectiveness and proportionality of its controls for each jurisdiction in which it does business. This will facilitate an accurate assessment of the global exposure of the jurisdiction to AML/CFT risk. Individual AML/CFT cases and subsequent reports often provide a good indicator as to the effectiveness of current risk controls and on occasions the need for incremental improvement in both policies and process.

4.18 There should be no circumstances under which a Licence Holder is aware that its processes in Gibraltar form part of a criminal or regulatory investigation (here or outside Gibraltar), but the Gambling Commissioner has not been informed by the Licence Holder.

4.19 Further information on SARs is provided in Section 7 below.

5. Key provisions for all Remote Gambling Licence Holders

5.1 **Board Level Accountability.** Licence Holders must clearly identify a board member with strategic responsibility for AML/CFT issues. The ability of this post holder to oversee AML/CFT obligations must not be compromised by commercial responsibilities or conflicts of interest. Licence holders should consider overt ‘launch’ or ‘introduction’ of AML/CFT policy by the board member or a senior executive.

5.2 **Annual AML/CFT Reports.** The board should receive at least an annual report on AML/CFT activities and issues affecting the company from the MLRO, including an annual ‘refresh’ of the corporate Risk Assessment (see below) and the work of the Risk Management Committee (see below). Where circumstances so require, more regular reports to the board should be made. Risk Assessments and annual board reports are areas that the Gambling Commissioner’s AML/CFT inspection process is likely to focus on. S.26A POCA creates a statutory responsibility for Licence Holder’s AML/CFT policies and procedures to be implemented only with the prior approval of “senior management”.

5.3 **Nominated Officer/Money Laundering Reporting Officer.** Licence Holders must also identify and appoint a specific post-holder at an appropriate senior management level to take responsibility for developing, implementing and overseeing all anti money laundering arrangements for their operations and for the purposes of complying with this Code. This will include the development and supervision of internal AML/CFT methodologies and policies, liaison with third party suppliers, staff training, the receiving and evaluation of any relevant suspicious activity reports and liaison with the Gambling Commissioner and GFIU as appropriate. This role is occasionally described as the ‘Nominated Officer’ but more generally as the Money Laundering Reporting Officer (MLRO). In the larger, diverse and ‘24/7’ B2C operations a tier of supporting AML/CFT managers may be required to provide the necessary analysis and advice for the MLRO. In smaller companies senior compliance staff may undertake this role, with proper recognition of the scale of responsibility it imposes on that individual.

5.4 **Risk Management Committee (or other appropriate title).** B2C operators must have clear and accountable processes to review customer accounts which raise AML concerns. This might be a risk management or “steering” group consisting of relevant senior managers, or a specialist individual or individuals with autonomy to make key decisions, independent of commercial considerations. Such bodies should be properly constituted and meetings minuted, using formal reports and assessment tools for identified cases. The MLRO must be a member of any such committee. The criteria for customer referral and processing must be transparent, including which post holder has made critical decisions to continue operating an account or refer it to the committee. Any such committee may be combined with, or separate from, any similar group established to examine customers raising responsible gambling concerns. Licence Holders should ensure that those appointed to such a committee will not be affected by commercial interests and that no conflict of interest arises. Where they are separate then a mechanism for cross referencing each committee should be in place and to assist in co-ordinating decisions to continue, further monitor/research or suspend accounts.

5.5 **Personal responsibility.** The role of the MLRO is likely to be a significant and senior management role. The person appointed to the position should therefore be able to engage with senior staff, access all required information and take on considerable personal responsibility. The personal responsibility of the MLRO is most relevant in respect of the effectiveness of AML/CFT activities and where any events or substantive suspicious activity reports are found to have been carelessly misjudged and/or not appropriately actioned, or if money laundering is found to have taken place due to systemic or obvious failures in a Licence Holder's policies and processes. The MLRO should therefore be someone with access to all relevant staff, managers and executives, and data, in order to exercise these responsibilities. The existence of MLRO and dedicated staff does not exonerate other senior executives from personal or corporate liability for allowing money laundering to occur.

5.6 **Undertake a formal risk assessment of the business.** S.25A POCA creates a statutory obligation for Licence Holders to undertake (or review) dedicated AML/CFT risk assessments in respect of their relevant gambling activities, customers, areas of operation, products and transaction methods, and their susceptibility to the differing types of money laundering/terrorist financing risks. Licence Holders should review, develop or implement corresponding AML/CFT methodologies and policies. The Gambling Commissioner is aware that whereas some games, bets, stakes and transaction methods have already established a reputation as being susceptible to certain money laundering typologies, other elements of gambling have proved less problematic, and Licence Holders' policies and systems should reflect these differences. The Gibraltar National Risk Assessment and EUSNRA should be taken into account when conducting a risk assessment. The risk assessment should be kept up to date and in particular should take into account the development of new products and business practices as well as the use of new or developing technologies and due attention should be given to the potential ML/TF risks that may arise in respect of these new products, practices and technologies before their launch or implementation.

5.7 **Independent Audit.** S.26(1A) POCA also requires Licence Holders where appropriate, to undertake an independent audit for the purposes of testing their AML/CFT policies, controls and procedures. The Gambling Commissioner considers that all B2C Licence Holders, given the scale and customer facing nature of their business, must undertake such an independent audit function (internal and/or external) and B2B Licence Holders should consider it. The frequency and scale of the audit shall be proportionate to the size and nature of the business as well as findings and recommendations from previous audits and identified trends in the area of AML policy outcomes and changes to business models and so forth.

5.8 **Commercial Relationships.** Both B2B and B2C Licence Holders must apply internal due diligence measures to establish and be satisfied with the ultimate beneficial ownership and control of their commercial suppliers or commercial users of their gambling services. This is most typically the suppliers/distributors of games software, but could be applicable to other elements of the customer facing gambling services supply chain. The Gibraltar Licensing Authority requires that all customer facing 'joint venture' B2B relationships are submitted for approval and are subject to ongoing monitoring by the Licence Holder to ensure the service is used as envisaged at approval. Any significant management or control changes or incidents

arising from such arrangements should be reported to the Gibraltar Licensing Authority. Internal due diligence should not be limited to this category of business partners.

Licence Holders which accept business from corporate accounts (e.g. 'hedging accounts') must conduct due diligence measure as appropriate on such accounts. CDD should be conducted on corporate accounts before the business relationship commences (including understanding the beneficial ownership structure) and Licence Holders should understand the nature of the corporate account holder's business model and likely economic activity (this may be higher than for individual customers).

5.9 **Staff vetting.** Licence Holders should be mindful of the inherent risk that their own employees may present and should ensure that controls are in place to mitigate this. Proportionate pre-employment vetting of all applicants is one such measure but is no substitute for adequate supervision and cross checking of working practices and outcomes. Licence Holders must adopt recognised pre-employment screening measures (compliant with data protection laws), at all levels of employment (proportionate to the seniority and responsibility of the role, in order to ensure that no persons actively or recently involved in criminal activities are inadvertently employed or engaged (e.g. contractors) in the delivery of gambling services (S.26(1)(g)).

5.10 **Training of staff.** Licence Holders are expected to take steps to develop adequate and proportionate automated and manual systems of risk assessing customers and applying Due Diligence techniques. Operators must also regularly train all relevant staff to assess reports regarding customer registration, deposit patterns, gambling activities and personal information for indications of money laundering, and how to respond to alerts or when they suspect or believe that ML/TF activities may be taking place. S.27 POCA provides that training in respect of AML/CFT issues must also include making staff aware of the law relating to money laundering and terrorist financing and on the relevant data protection requirements.

5.11 **Analysing games and players.** The known history of games, stakes or transaction methods should also be taken into account when applying due diligence. For example, the Gambling Commissioner recognises that the majority of games, bets and spending profiles are largely unproblematic, whereas certain games and markets have proven to be more problematic. This is invariably reflected in general security arrangements. The Gambling Commissioner supports Licence Holders developing a coherent series of 'trigger points', criteria, matrices or programs to evaluate which customers, groups of customers and areas of activity should be reviewed and to what degree.

5.12 **B2B Games suppliers.** In most technical arrangements of B2B 'table game' supply, the B2C operator does not have access to real time game play or game performance statistics. The requirement for the monitoring of table games for potential money laundering or terrorist financing methods applies equally to B2B games suppliers as it does to B2C operators' in-house table games, otherwise suspicious gameplay on B2B servers may be concealed from the B2C operator. The parties should therefore, when negotiating their commercial arrangements, agree the method by which table games will be monitored in real time for recognised money laundering or terrorist financing 'gameplay' methodologies and reported

to the B2C operator in a timely and proportionate way should they occur, allowing for possible interventions in funds transfers or withdrawals. Given the evolving nature of ML/TF methodologies it is expected that the details of the monitoring which will be carried out will be agreed between the parties from time to time and need not be set out in precise detail at the outset. Once agreed, however, these should be documented and made available to the Gambling Commissioner as and when required. While some methodologies are transparent and easy to identify (e.g. repeated low risk bets in roulette), P2P transfers can be highly sophisticated, shielded and complex.

5.13 **Record keeping.** Licence Holders are required to keep records of the measures they have applied to establish the identity of customers, and records of the value of their transactions, for at least 5 years after the relationship ends or an occasional transaction is completed (S.25 POCA). The same principles should be applied with regard to the financial standing of customers. The detail and retention of such records should be commensurate with the nature of the apparent risk and sufficient to support any subsequent investigation or court proceedings; i.e. high spending customers with no established history with a Licence Holder or whose source of funds is uncertain should be subject to more substantive enquiries and record keeping than those who were occasional but sufficient gamblers to trigger examination. Operators need to be alive to the risk of dishonest customers providing forged or fraudulent documents in connection with verification and should view evidence provided with a critical eye as opposed to mere acceptance where the need for further enquiry is obvious.

5.14 **Data Protection.** Record keeping should be consistent with Licence Holders' obligations under data protection law and the Gambling Commissioner therefore supports systems that 'step down' the amount of data retained after say, 1, 3 and 5 years after account closure provided that this remains consistent with record keeping obligations under POCA or any other enactment. Upon expiry of the relevant retention period personal data must be deleted unless its retention is required by another enactment or where an Order is made providing for the retention of records.

6. Principles of Customer Due Diligence

6.1 **Applying due diligence.** Sections 17 & 18 POCA and the 4MLD require that all new depositing remote gambling customers are subject to an Enhanced Due Diligence (EDD) process “as soon as practicable” and “on a risk sensitive basis” (A.14(1) 4MLD/S.13, S.17 & S.18 POCA). EDD is ‘Basic’ Customer Due Diligence (BDD – see below) plus at least one additional due diligence measure. EDD must be initiated at the point of registration, or deposit following registration, usually by way of background electronic identification methods and may be completed as part of or subsequent to registration by electronic or customer facing ‘manual’ methods. S.18 deals specifically with the EDD requirements for non-face-to-face customers.

6.2 **Customer differentiation.** All Licence Holders should be able to demonstrate that they are able to identify and differentiate between higher and lower risk customers following registration, by both ‘value’ and ‘velocity’ of transactions and activities. This means that the minimum EDD measures may be applied in non-problematic areas, but proportionately more EDD measures and responses should be applied in recognised problematic areas or when intervention triggers are reached. In this context, minimum measures must be taken to mean the minimum required to meet EDD standards.

6.3 **‘Basic’ Customer Due Diligence (BDD).** Without excluding other considerations addressed in this document, the level of initial Customer Due Diligence described in the 4MLD and S.10 POCA is ‘Basic’ customer due diligence (BDD) and not Enhanced customer due diligence. BDD is the two stage process of first obtaining the required personal identification details of the prospective customer (name, address, date of birth) using an effective and reliable customer registration process, and then verifying that identity using ‘reliable and independent’ means, including databases, documents or other supplementary methods of confirming/assuring identity. S.10 and S.11 POCA and Article 13 of the 4MLD indicate that this level of customer due diligence is the start of the due diligence process. Completing BDD is necessary but not sufficient ‘clearance’ for remote gambling customers. BDD actions must be recorded and retained beyond the lifetime of the account.

6.4 **‘Enhanced’ Customer Due Diligence (EDD).** S.17 & 18 POCA and the 4MLD require all remote gambling customers to be subject to an EDD process if they make a deposit. Historically, (S.18 of POCA and the 3MLD) indicated that EDD is Basic Due Diligence, plus an additional third stage, that includes:

- i. undertaking additional identification checks; or
- ii. supplementary measures to verify or certify documents; or
- iii. ensuring that payments from or to the customer are from/to a bank account in his name.

This requirement continues for non-face-to-face customers under S.18 POCA. The Joint Committee of the three EU supervisory authorities for financial services published guidance in 2018 for that sector which provides extensive commentary on EDD practices (cf. paragraphs 60 and 75 to end in particular):

https://esas-joint-committee.europa.eu/Publications/Guidelines/Guidelines%20on%20Risk%20Factors_EN_04-01-2018.pdf

6.5 Operators will see there are many differences between the remote gambling sector and these (remote) financial services, but the EDD ‘principles’ of obtaining more and better information about customers have many similarities and effectively confirm the three generic methods as sufficient for providing the confirmation needed for EDD to be completed. Few, if any, relevant methods outside these general descriptions are identified. The guidance confirms that operators may use broad and developing digital ‘footprinting’ of customers to complete EDD as an alternative to directly obtaining personal data or documentation from the customer, however, personal contact and documentation is the most reliable means of concluding EDD or FDD (see below). EDD actions must be recorded and retained beyond the lifetime of the account (s.25 POCA).

6.6 **Ongoing Monitoring (Further Due Diligence (FDD)).** The longer a customer is registered and the more they deposit or gamble, the greater the need for additional, further due diligence will be. Enhanced Due Diligence is a continuing process. For convenience, we refer to this next layer of due diligence as FDD. FDD consists of due diligence activities subsequent to early Enhanced Due Diligence and may be triggered by value or time based considerations or specific events or incidents which may include a particular transaction or bet.

6.7 Licence Holders’ customer monitoring systems must be alert to significant changes, differences or methodologies in the status or practices around all customers, games, stakes or transaction methods. Typically, these alerts are triggered by the scale of deposit or loss over specified periods, in parallel to security, responsible gambling and marketing alerts, and must be analysed from an AML/CFT perspective. FDD should be applied by Licence Holders as a dynamic process, meaning any customer may be subject to repeated but proportionate and documented FDD reviews (including negative checks). FDD will usually arise when customers reach defined profiles, especially where that profile changes substantially or reaches certain ‘trigger points’. FDD will include, where necessary, using different methods to determine to a proportionate level of confidence in respect of a customer’s source of funds and/or source of wealth and that the customer’s losses are consistent with that source or apparent financial standing. FDD actions must be recorded and retained beyond the lifetime of the account (s.25 POCA).

6.8 **EDD/FDD methodologies.** The Gambling Commissioner expects that Licence Holders will develop a range of different methodologies for establishing and confirming the identification (and age) of customers and to satisfy their AML/CFT obligations both at initial BDD, EDD and in any subsequent FDD searches as risk (spend or suspicion) escalates. The measures are likely to be determined by the information accessible in a customer’s country of residence or location, or other demographic detail, as well as technical and other developments. The almost universal availability of ‘camera smartphones’ now means that personal and financial documents can be quickly copied by customers and sent to operators, along with ‘selfie’ type photographs to confirm photographs embedded in official documents.

This means the timeframe and methods for completing EDD and FDD enquiries, assuming the customer continues to use an account, can be substantially shortened. The overriding consideration for Licence Holders is whether the information obtained or provided is adequate to justify the nature and value of the customer's gambling.

6.9 Retrospective examination of customers. The Gambling Commissioner does not expect all historic and inactive customer accounts to be reviewed and subject to BDD/EDD/FDD, but all active accounts should be subject to a risk based review process over a planned timeframe, consistent with the requirements of SS. 11, 12 and 17 POCA and Articles 8 and 13 of 4MLD in respect of the 'Ongoing Monitoring' of 'Business Relationships' (as above). Reviews of such accounts should take into consideration the known and continued reputation and standing of an existing customer when assessing their AML/CFT risk and any further measures to be applied. This means that whilst identified customers with consistent and established accounts are not exempt from due diligence procedures, resources should be focussed on those who are less well established, or those whose pattern of gambling or spending profile has brought them under examination. For the avoidance of doubt, all Licence Holders should have systems which alert them to the reactivation of dormant accounts and processes are in place to ensure such accounts are monitored to identify unusual or suspicious activity.

6.10 Data Accuracy. All active accounts should be subject to a structured 'refresh' in terms of the accuracy and completeness of customer identification data, both for AML/CFT purposes and data protection purposes. The time frame will depend on the frequency with which an account is used, but should not exceed two years. All information arising from this process should be recorded and retained as set out below. An example of how this can be achieved is by implementing a 'pop up' requiring a customer to verify that their details remain the same and to amend them if they have changed.

6.11 Inspection Process. All due diligence measures applied and proposed by Licence Holders will be considered by the Gambling Commissioner in terms of their sufficiency and effectiveness in the AML/CFT inspection process between operators and the Gambling Commissioner's staff and in any examination of cases of concern.

6.12 Due Diligence – A Continuing Obligation. It is emphasised that it is the Gambling Commissioner's view that BDD and EDD processes are the respective baselines for customer due diligence for the remote gambling industry, to be applied on a risk sensitive basis, but which will need to be escalated if the apparent risk increases. The risk based approach does not allow Licence Holders to avoid BDD/EDD processes outside any exceptions created by statute or regulation. FDD measures are expected to proportionately reflect the value and speed of deposits, the nature of the gambling and the apparent antecedents or developing knowledge of the customer. These are closely aligned, and can work in conjunction with, responsible gambling, security or customer service triggers in respect of high value and VIP customer interventions and may include bespoke public source or more discrete or directed enquiries into the background of a customer arising from certain thresholds being reached. Transactional monitoring is an important part of the process (particularly in the case of customers who increase their rate of spend) and, on the basis of past cases, an area of

historical weakness for some gambling operators. Even where deposits are received through the retail banking system, no positive assumptions can be made about the adequacy of transactional monitoring in that sector where controls cannot be assumed to be effective.

6.13 Third Party ‘reliance’. Licence Holders may use third parties to provide the information that they use for due diligence purposes, i.e. they may use third party databases or information services, or make reasonable inferences regarding the identity of a customer from their particular deposit method etc. Where this is done, the Licence Holder remains responsible for the outcome of the process and it remains the case that they cannot ‘rely’ on third parties to have concluded CDD on their behalf. The exception to this is if they satisfy the following condition: Under S.25(6) POCA and Articles 25 and 27 of 4MLD, the third party provider must undertake to make available immediately to the Licence Holder copies of the relevant information it holds and has used to establish CDD.

6.14 Third Party information. The Gambling Commissioner is of the view that the restrictions around this provision make third party reliance viable only if the third party is contracted to obtain and provide such information to the Licence Holder immediately on request, and/or is part of the same corporate group. Where a Licence Holder has branches or subsidiaries in other jurisdictions, group-wide policies and procedures for sharing information must be put in place to the extent permitted by the GDPR and internal reporting procedures must also be implemented to allow for the disclosure of knowledge or suspicions of AML/CFT that may be occurring in relation to the group. Licence Holders are required to ensure consistency of AML/CFT standards where they have foreign branches or wholly owned subsidiaries outside the jurisdiction.

6.15 Payment methods – positive information. By contrast, a customer using a payment method that is known to incorporate recognised due diligence arrangements around identity or age verification, such as a regulated bank or other regulated finance institution, can be inferred to have been subject to and have satisfied these criteria within the context of that other entity’s business activities and knowledge of the customer’s transactions. This inference can be taken into account by the Licence Holder but must be set against any other information the Licence Holder has obtained and cannot be relied on to validate a source of funds/wealth.

6.16 Payment methods – negative information. As some payment methods may provide assurances as to customers’ identity and source of funds, Licence Holders must recognise that other payment methods provide much less assurance and may be used to circumvent identity or security controls. Some payment methods are known to not use identity verification or due diligence procedures in their issue, e.g. e-money vouchers or virtual currencies. Likewise, any method of deposit whose use is disproportionately associated with irregular transactions in gambling or other sectors must be treated with proportionate caution.

6.17 Proxy/Beneficial Ownership of accounts. The use of third party identities by the true beneficial owner or controller of account(s) to mislead a Licence Holder as to the ownership or control of the account, the source of funds, or into accepting business that the Licence Holder might otherwise have monitored or rejected, compromises the principles of KYC/CDD and is a direct threat to AML/CFT procedures, as well as security and responsible gambling

measures. The use of 'proxy accounts' should be prohibited as any other attempt to commit fraud against a Licence Holder. Proxy accounts are regularly associated with betting frauds, cheating, organised P2P collusion/cheating and systemic 'multi-accounting' or other systemic abuses of terms and conditions, requiring the true identity of the customer to be concealed from the Licence Holder if an account is to be operated without additional supervision, or at all.

6.18 Anonymous Accounts. Licence Holders are not permitted to host anonymous or 'nominal' account records. Any existing anonymous accounts or accounts believed to be 'nom de plume' or that have inconsistent identification should be subject to appropriate due diligence to establish the identity and *bona fides* of the account holder at an early opportunity.

6.19 Duplicate/Multiple Accounts. Notwithstanding the above, many customers wish to operate parallel accounts in order to segregate their gambling spend. Others choose to open a series of accounts for various reasons, including forgetfulness or a desire for a change in luck. The Gambling Commissioner recognises that there are innocent and legitimate reasons for customers to open more than one account with a Licence Holder. Notwithstanding this activity, Licence Holders must be able to identify and associate 'linked' accounts that may belong to or be under the control of the same person. The principles of CDD are compromised by a customer who is able to open a second or further account without the Licence Holder being able to detect this. Licence Holders should have systems in place which identify and notify the Licence Holder of 'linked' accounts and proportionate caution exercised where identified.

7. Reporting Requirements

7.1 General Introduction. Under Section 33 of the Gambling Act 2005, Licence Holders are charged with a duty to report knowledge or suspicions of money laundering or other illegal activity to the Gambling Commissioner within twenty-four hours, or as soon as is reasonably practicable. They also have a duty to cooperate with money laundering investigations. Licence Holders should also be aware of the requirements to report certain matters to GFIU (see below).

The Gibraltar Financial Intelligence Unit (GFIU) is a statutory body with defined responsibilities and functions under the Proceeds of Crime Act 2015 (POCA). These include the responsibility for the receipt, analysis and dissemination of suspicious transaction reports or suspicious activity reports (referred to here as “STRs” or “SARs”) made by financial and other institutions in accordance with the Drug Trafficking Act 1995, Terrorism Act 2005, Gambling Act 2005 and Proceeds of Crime Act 2015.

GFIU also has a statutory duty to ensure the security and confidentiality of information, including procedures for handling, storage, dissemination, and protection of, and access to the information it holds.

This dual reporting obligation, which is an historical anomaly, can be confusing for Licence Holders and lead to duplication of effort. The primary recipient of SARs should be the GFIU; with separate intelligence and information sharing arrangements existing between GFIU and the Gambling Commissioner.

7.2 Submission of SARs. Whether or not due diligence has been satisfactorily completed, where the conduct or activities of an account/customer give rise to the knowledge or suspicion that the account controller/customer is, or is attempting, any acts that may involve ML/TF, an internal suspicious or unusual activity report should be made by the relevant staff member to the Licence Holder’s MLRO/MLRO support team at the earliest opportunity.

7.3 In suspected money laundering cases, this will usually be after the event, where the sum involved exceeds E2000 and in the format at Annex A or as directed by GFIU. On the basis of a risk based approach, for lesser amounts, unless there are particular circumstances (for example ‘smurfing’) justifying a SAR, then the event can be reported to the Gambling Commissioner only on the CFR (Annex B).

7.4 SARs should be provided directly to the GFIU electronically via email. This procedure will remain in place until such time as the GFIU online reporting tool is fully implemented. Individual AML/CFT cases and subsequent reports often provide a good indicator as to the effectiveness of current risk controls and on occasions the need for incremental improvement in both policies and process. Therefore, any third party engagement on AML/CFT matters (including responses to international letters of request, criminal and/or regulatory proceedings or enquiries regarding potential criminal or regulatory offences etc.) which a Licence Holder on balance would consider a matter of which the Gambling Commissioner

would reasonably expect notice should also be raised with the Gambling Commissioner without delay by way of an explanatory report, by emailing GCreports@gibraltar.gov.gi.

7.5 In any case of suspected or confirmed terrorist financing then, regardless of the amount, the case should be reported to the GFIU at the very earliest opportunity by SAR and notified separately by way of an explanatory report to the Gambling Commissioner.

7.6 **Reporting in Respect of UK Customers.** Any disclosures relating to UK customers should be reported to both the GFIU and the UK Financial Intelligence Unit, the National Crime Agency. This has been agreed following discussions between the parties involved. All UK SARs will still be triaged by the GFIU (who reserve the right to act on information received in specific cases which impact on the jurisdiction), but as these reports are more likely to be of value to UK law enforcement and capable of linkage with other UK law enforcement intelligence then it will be the UK FIU which will be responsible for any further action and for making the data available for end use by UK local area law enforcement authorities. These reports will not be transferred under the Egmont process as they will be directly available to the UKFIU. These reports should be submitted 'simultaneously' with no undue delay in respect of making a disclosure to either FIU. The UK FIU's website is: <http://www.nationalcrimeagency.gov.uk/>.

7.7 **Reporting to Other FIUs (not including UK).** For all other jurisdictions, reports should be made to the GFIU, with the GFIU developing the intelligence and using the Egmont system to transfer the intelligence/detail to the other relevant jurisdiction. The Gambling Commissioner nevertheless recognises that there may be a need for Licence Holders to take a view in respect of direct submissions to another FIU where this is requested or required by said FIU. This does not, however, abrogate the requirement to submit reports to the GFIU.

7.8 **'Consent' or 'Defence' SARs (UK).** The issue of establishing a defence under various jurisdictional regimes for money laundering and terrorist financing offences is more complex. Firstly, as the operation and particularly payment authorisation takes place in Gibraltar, then consent will need to be obtained from GFIU, in order to obtain a defence under Gibraltar law. However as the payment flows across jurisdictional boundaries (e.g. withdrawal received by UK customer into a UK bank account) then in order to establish a defence in that jurisdiction a parallel request will need to be made to the UK FIU. Licence Holders will therefore need to request a defence from both the GFIU and the UK FIU in order to ensure that they have a defence under both Gibraltar and UK law. These requests should be made simultaneously and Licence Holders are reminded of the different time limits in respect of the moratorium period after which consent can be deemed to have been given. The respective FIUs are aware of this issue and will endeavour to liaise together and respond to the reporting entity as soon as possible.

7.9 **'Consent' or 'Defence' SARs (Other Jurisdictions).** In respect of 'consent' or 'defence' disclosures relating to customers in jurisdictions other than the UK, the request for a defence should be submitted to the GFIU. Licence Holders should nevertheless discuss with the GFIU, and take into account relevant advice and guidance given by other FIUs and/or regulatory authorities in jurisdictions where they hold a licence, about whether a parallel request should be made to the FIU in the relevant jurisdiction.

7.10 Consent ('Defence') Process under POCA. Where a Licence Holder suspects that processing a transaction will entail dealing with criminal property, it may make a disclosure to GFIU through the SAR process and seek consent to undertake further steps in respect of the transaction which could constitute a money laundering offence if consent has not been sought or granted. The consent process is governed by S.4A POCA.

Such SARs must be submitted expeditiously. GFIU may liaise with another FIU and either consent or refuse consent to the doing of a prohibited act and must do so before the end of 14 working days (starting with the first working day after a disclosure is made and consent is sought). Where GFIU has not refused consent and 14 working days have elapsed, a Licence Holder may proceed with the transaction. Where GFIU has refused consent, there follows a 60 working day "moratorium period", after which a Licence Holder may proceed with the transaction provided GFIU has not applied to court to seek an extension of the moratorium period.

7.11 Urgent Cases. There may be cases of significant AML/CFT events occurring or internal reports being generated whilst gambling is taking place or bets or transfers are pending, and consent or advice is being sought to continue the transactions. In these circumstances the MLRO should consider whether to allow the gambling to continue or intervene pending any advice on the SAR, or in exceptional circumstances, provide an oral report to GFIU/Gambling Division. As any winnings or losses may be frozen for an indeterminate period, unless highly unusual and excessive gambling is taking place it will not, normally, be necessary to suspend the gambling. It will, however, be for the relevant manager or MLRO to apply experience and judgement in these circumstances with a view to ensuring that the Licence Holder does not become liable to a money laundering offence by preventing the escalation of the situation. This will allow the Licence Holder to avoid knowingly facilitating or permitting possible ML/TF either through the movements of illegitimate funds into the gambling process or the movement of potentially laundered or terrorist funds out of the Licence Holder's control. Such a decision process should be formally recorded.

7.12 Tipping off. Where any suspicious activity report is made internally, or to the GFIU and the Gambling Commissioner, this should not be disclosed to any third party where disclosure might reveal that the report has been made and jeopardise any ensuing investigation. This does not prevent a Licence Holder from declining to allow any further gambling to take place in a way that does not obviously alert the individual to the initiation of the report, as opposed to indicating that general security measures have been initiated etc. Where a Licence Holder reasonably believes that performing or completing the CDD process will result in tipping off the customer, then they should submit a SAR and explain why they have been unable to complete CDD. In cases of concern the Licence Holder may choose to liaise directly with the GFIU and/or refer the customer to the Gambling Commissioner's office so that the case can be supported.

7.13 Consolidated Fraud list. 4MLD (A.33(1)(a) and the preamble paragraph 37) require obliged entities, and, where applicable, their directors and employees to cooperate fully and to report all events to the FIU where there is knowledge or suspicion that funds "are the

proceeds of criminality” or terrorist financing “regardless of the amount”. This is an onerous and impractical requirement with regard to suspected card fraud, chargebacks and chip-dumping activities that has to be balanced against the more general ‘risk based approach’. Therefore, the Gambling Commissioner requires that AML events below E2000 are reported on the CFR (Annex B) unless the circumstances warrant a SAR, but all CFT events are reported without delay to GFIU. GFIU has agreed to this approach.

8. Higher Risk Situations

8.1 **Politically Exposed Persons.** 4MLD revised the provisions for PEP's and provides a different definition at Article 3(9)-(11) than hitherto, including immediate family and "known close associates" of PEPs in the provisions. The 4MLD preamble emphasises that persons identified as PEP's or family/associates are not automatically suspicious nor should they be stigmatised. The revised definition has been incorporated into POCA in SS. 20 and 20A. The definition of PEPs in POCA includes domestic PEPs as well as foreign PEPs. The revised definition is multi-factored and includes any person holding a "prominent public function" (or who has held such a post at any time in the preceding year). Examples of "prominent public function" are provided but the list is not exhaustive and responsible judgements must be made and recorded by senior managers when PEPs are assessed. For at least 12 months after a PEP is no longer entrusted with a prominent public function, Licence Holders should take into account the continuing risk posed by that person and apply appropriate measures until such time as that person is deemed to no longer pose a further risk specific to PEPs.

8.2 **PEP Databases.** Article 20 4MLD and S.20 POCA go on to require that Licence Holders evaluate all PEP accounts in terms of specific approval for the account to continue, the source of funds/wealth to be established and enhanced ongoing monitoring to be applied to the account. A number of commercial databases and public search facilities are available to assist in establishing whether an individual may be a PEP or family/associate. Where a person appears to be a PEP, a senior manager (the MLRO or a designated representative) must, on a risk sensitive basis, approve the deposit/gambling arrangements having taken adequate measures to establish the legitimacy of the source of funds used by the individual concerned. Such measures must be maintained throughout the relationship. In exercising these responsibilities, the Gambling Commissioner does not expect every customer to be 'PEP checked'. As elsewhere, a risk based approach should be applied based on the value and scale of gambling and the location of the customer.

8.3 **High Risk Jurisdictions.** The PEP's provisions are particularly relevant for persons associated with states with a history of systemic corruption, but are not limited to those states. FATF publishes a list of jurisdictions where the AML or CTF controls and commitment to FATF principles are so weak that licence holders should either not take business with persons resident or associated with those states, or apply higher levels of due diligence to all relationships. These limitations on business apply to persons from these states who may be resident in other states. This list and the status of countries on it are subject to regular revision by FATF and can be found here: <http://www.fatf-gafi.org/countries/#high-risk>
Licence Holders should have arrangements in place to ensure they are regularly updated on FATF publications of this nature.

8.4 **Sanctions Lists.** Gibraltar businesses are precluded from engaging in any form of business with persons who are included on relevant international 'sanctions lists'. There are a variety of sanctions lists from the United Nations, the EU and the USA. There is substantial overlap in these lists and a number of commercial companies include one or more of these lists in their enhanced search facilities. The UK Treasury publishes a Consolidated Sanctions list derived from the above sources at:

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

Data examined shows sanctions list monitoring provides a high rate of false positives. Nevertheless, whilst operators need to make further enquiries to confirm identification, they should not readily dismiss the possibility of a match (for example on the basis of inconsistent address details). Due to the seriousness of the issue, a mindset should not be allowed to develop that assumes sanctions cases to be unlikely.

8.5 The sanctions list does not provide for a monetary threshold or a ‘risk based’ approach. The Gambling Commissioner requires Licence Holders to take steps to access this list, or an equivalent list provided by a commercial database, as part of their Further Due Diligence process. Licence Holders should also ensure that where automated systems are used, these are capable of making “fuzzy” matches in order to identify variant spellings of names. Where there is reason to believe a person appearing on a sanctions list is or has been engaged with a Licence Holder then the matter should be subject to immediate disclosure to the GFIU for advice. It may prove necessary to freeze, seize or surrender funds under the control of a person or institution on the sanctions list. Licence Holders should ensure they have arrangements in place to ensure they are regularly updated on sanctions list publications of this nature. Licence Holders should also include a consideration of the likelihood of dealing with a person on a sanctions list as part of their risk assessment and also ensure that employees with AML/CFT responsibilities are aware of financial sanctions and receive appropriate training. A positive link to an individual subject to sanctions should be reported without delay on a SAR, but GFIU should also be contacted immediately to ensure the issue is flagged and dealt with expeditiously.

9. Repatriation and Confiscation of Funds

9.1 The law in respect of the possession, retention and recovery of criminal proceeds under the control of a Licence Holder is complex and fluid, reliant on both the civil and criminal laws of Gibraltar and the civil and criminal laws of other states, and the location of a Licence Holder's assets and activities. S.3 POCA effectively states that it is an offence to acquire, use or possess stolen funds unless they have been obtained, *inter alia*, for 'adequate consideration' or subject to a disclosure in respect of the funds made to GFIU as soon as reasonably practicable. 'Inadequate consideration' is defined as consideration that is significantly less than the value of the property. There is no provision for the valuation of 'services'.

9.2 S.35 POCA allows for a confiscation order to be made by the Gibraltar courts where a person has benefited from criminal conduct and appears before the court to be sentenced in respect of one or more indictable offences. The amount to be recovered under a confiscation order is determined as per S.38 POCA.

9.3 The European Freezing and Confiscation Orders Regulations 2014 allow for the mutual recognition of criminal freezing orders and confiscation orders and the Supreme Court must consider giving effect to an overseas confiscation order provided the order meets the relevant requirements. The reciprocal enforcement of confiscation orders may also be determined by the courts.

9.4 Part V of POCA details the regime for the civil recovery of the proceeds of unlawful conduct, thus allowing the seizure and confiscation of assets arising from unlawful conduct even in the event that no criminal proceedings have been brought against anyone based on the civil 'balance of probabilities' standard of proof. Additionally, Licence Holders with functions and assets in other states may be subject to local criminal or civil asset recovery arrangements.

9.5 The Gambling Commissioner is mindful of the reputational risk around ML/TF and the gambling industry, and that the intention of POCA, the 4MLD and associated legislation in other jurisdictions is to minimize the likelihood, benefits and impact of money laundering. Consequently it is the Gambling Commissioner's view that where the funds in question are substantial, can be demonstrated as criminally acquired by a reliable and recognised criminal or administrative process, that there is an identifiable and unambiguous loser of the funds, and the funds have been deposited/lost in a pattern that should have given, or did give rise to suspicion by the Licence Holder that the deposits/losses were suspicious, then their continued retention by the Licence Holder cannot be supported by the Gambling Commissioner. Furthermore, where there is an identifiable victim of acquisitive crime and clear evidence of fraudulent and dishonest activity, Licence Holders may wish, absent legal risk, to consider discretionary and early victim compensation on an *ex gratia* basis. Therefore, there is no obligation to divest relatively modest or *de minimis* sums commensurate with normal patterns of leisure gambling for value which subsequently turn out to be the proceeds of crime. However, Licence Holders should consider the wider reputational issues associated

with retaining later identified criminal funds as business profit and each case should be considered carefully by senior management on its merits.

9.6 The Gambling Commissioner and Licensing Authority will give due consideration to the use of various and appropriate means to ensure Licence Holders do not benefit from the proceeds of crime and effectively meet their AML/CFT obligations.

10. **Enforcement and Sanctions**

10.1 The Supervisory Bodies (Powers, etc.) Regulations 2017 (the **Regulations**) provide for various sanctions which may be imposed on Licence Holders by the Gambling Commissioner where it is found that they have failed to implement adequate systems and controls to mitigate the threat of ML/TF or to prevent dealings with persons named on relevant sanctions lists.

10.2 The Regulations apply to all “relevant persons”. The terms “relevant person” is widely defined and includes individuals employed by the Licence Holder. The Regulations require the Gambling Commissioner to adopt a risk based approach. The Regulations grant the Commissioner various enforcement and sanctioning powers including financial penalties, the suspension or withdrawal of a licence, the giving of directions and temporary bans from managerial positions. Prior to any of these sanctions being imposed, the Gambling Commissioner must issue a warning notice (regulation 26) of its intention to do so and Licence Holders are to be given 14 days in which to make representations. Following this a decision notice will be given (regulation 27). Licence Holders may appeal any such decision notices (regulation 30).

10.3 Where any decision notice has been issued, the Gambling Commissioner is obliged by the Regulations to make a public statement on the Gambling Division website although the decision to do so must be based on the principle of proportionality and, where appropriate, a statement may be delayed or an anonymised statement made. A public statement may not be published in certain exceptional circumstances where the stability of financial markets may be put in jeopardy or where it would be disproportionate in respect of minor breaches or defaults. The Gambling Commissioner will give consideration to the use of these powers where significant or systemic failings in the adoption and application of this Code and relevant legislation are apparent.

10.4 The Regulations allow for the imposition of financial penalties up to the level of twice the benefit derived from the default or breach or EUR 1 million. The Gambling Commissioner will be issuing a document which sets out the fining policy, including the aggravating and mitigating circumstances which would have an impact on any fine imposed (between 0 and 100%).

11. Contact

The various documents referred to in this text are available on the Gambling Division website.

<https://www.gibraltar.gov.gi/new/remote-gambling>

The Gambling Commissioner
Gambling Division
Suite 812/813
Europort
Gibraltar

T: 00350 20064145

F: 00350 20064150

E-mail: gcreports@gibraltar.gov.gi

Annex A

Overleaf is the preferred format for SARs submitted by Licence Holders. It is based on documents used by Licence Holders and is designed to address the problem of incomplete or over technical reports of events. It should be used for suspicious transactions valued at over EUR 2000 and PEPs or Sanctions List cases of any value.

To: Gibraltar Financial Intelligence Unit Suite 832, Europort, Gibraltar. Tel: 20070211/20070295 gfiu@gcid.gov.gi	From: (Operator) Date Submitted:
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PRIVATE AND CONFIDENTIAL

GFIU Ref. DIS:GEN_____

Suspicious Activity Report: Disclosure under the Proceeds of Crime Act 2015.

1. Customer name, address, date of birth, email and telephone number(s).		Registration details.
2. Any other personal information provided or obtained.		Please state nature and source of any other personal information.
3. Account username/ number(s)		Include all account usernames/numbers registered by the customer
4. IP or other technical identification material.		IP and CIN as available.
5. Registration date		Date account registered
6. Products used		State nature of gambling facilities used (Poker, slots, roulette, sportsbook etc) and typical pattern of play/bets or unusual features.
7. Amount deposited - dates and method (card or account numbers).		Enter cumulative deposit values to-date and principal deposit methods.
8. Amount withdrawn – dates and method (card or account numbers).		Enter cumulative withdrawal values to-date
9. Current balance		Total current balance for all products.

**Gibraltar Gambling Commissioner
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10. Operator Profit/Loss to-date		Enter cumulative P/L to-date (customer profit as a minus)
11. Reasons for suspicion		Please detail in full the reasons you have for suspicion.
12. ID and age verification -		What level of verification checks have been carried out? What documentation has the customer provided? Provide details/copies as appropriate.
13. Other checks (PEP, Sanctions, Guardian etc)		Results of any other database check or enquiry; if no check has been performed then carry one out and detail results here. Do not delay submission of the report.
14. Background checks		Detail any further background checks on the customer, What is their occupation? What is their home value? Directorships held, Detail any other useful information gained from wider searches.
15. Associated persons or accounts		Any other parties not already listed.
16. Action taken or other comments including whether consent has been sought.		
17. Completed by:		Contact Person for any enquiries.
18. Date		
19. Supervisor (Nominated)		Sign off by N/O

Officer/Manager for AML)		
20. Date		

This report will be evaluated by GFIU prior to a decision being made as to which agency it may be forwarded for intelligence purposes. Intelligence it is treated as confidential material.

Annex B: Consolidated Fraud Report

This is the preferred format for Fraud Reports to be submitted by Licence Holders. It is based on a document piloted with one licence holder and is designed to address the problem of high volume, lower value incidents that may be replicated across operators or over time and otherwise escape being identified as repeat sources/beneficiaries of corrupted account details. The contents will be reviewed and searched by staff for any linkages.

.....**2018. Operator** **Contact Person..... email.....**.....

SENDER/SOURCE/COMPROMISEDACCOUNT						RECEIVER/BENEFICIARY OF FUNDS (If any)						
Ref No	Amount	Place	Card No	User name	User IP	Rec'rIP	Rec'r User name	Email prefix @	Current/main card or bank a/c number	Given place of abode	Known to us since	Comments on method or activities.
Sequential and date numbering of date of event(s)	Sum involved: rounded £	Eg: UK	Last 4(min) digits of deposit card or account.	User name	IP and Place	IP and Place	User name	Prefix only	Last 4(min) digits of receiving card or account	Eg: UK	Date this or any other account opened by the receiver	Fraud method (eg chip dumping) and any short observations.
Eg:												
1/12/09/09	125	SWE	2345 6789	flunkyd	81.52. 612.1 (SWE)	81.52. 211.0 (SWE)	mycash	Bloggs55	1234 5678	UK	10/09/09	Chipdumping, chargebacks to source
2/12/09/09	400	UK	Various	Redspin	192.46. 22.1 (UK)	192.46. 22.1 (UK)	Redspin	R_spinner	34567890	UK	6/05/08	20 £20 'anoncard' deposits, minimal play, then attempted cash-in.
3/6/10/09	850	FR	Vouchers	Francon	82.252. 11.4 (NL)	56.213. 42.12 (US)	Mondu e	d.asser	01383678	FR	2/7/2007	Xcash vouchers obtained by fraud.

This format is relatively light touch in terms of its content. It provides for Licence Holders to meet their obligation to 'report all occurrences of money laundering' and suspected money laundering in appropriate cases. Events involving less than EUR 2000 should be reported on this form unless a SAR was submitted due to the circumstances.

We believe the above arrangements, supplied to the Gambling Commissioner, are comfortably within data protection rules in terms of what we are sent, keep and use the information for. We propose to undertake a regular scan of the information to identify any common senders or receivers where their activities are spread across operators, and where justified co-ordinate the release of that information to either relevant operators or authorities. The form and its utility will be kept under review.