



HM Government
of Gibraltar

Gambling Division

**Outreach on Politically Exposed Persons, Source of Wealth
and Source of Funds, Beneficial Ownership, Targeted
Financial Sanctions and Proliferation Financing**

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1. Introduction

- The purpose of this document is to provide some further outreach and advice on several aspects of AML/CFT compliance which may be of assistance to Licence Holders in complying with their obligations under the Proceeds of Crime Act and the AML Code. While this document does not have the standing of a Code issued under the Gambling Act, the Gambling Commissioner considers that it is useful guidance for Licence Holders to consider when designing and implementing their AML/CFT systems and controls.

2. Politically Exposed Persons (PEPs)

- Dealing with Politically Exposed Persons (PEPs) is a vital part of AML compliance within a regulated business, and the gambling industry is no exception. The below material is designed to discuss and provide some further guidance on the subject of PEPs, particularly in relation to the gambling industry.

What is a PEP?

A politically exposed person (PEP) is defined by the Financial Action Task Force (FATF) as an individual **who is or has been entrusted with a prominent public function.**

- Due to their position and influence, it is recognised that many PEPs are in positions that can potentially be abused for the purpose of committing money laundering offences and related predicate offences, including corruption and bribery, as well as conducting activity related to terrorist financing.
- There are various different categories of PEPs that have been defined by the FATF as follows:
 - Foreign PEPs: individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.
 - Domestic PEPs: individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.
 - International organisation PEPs: persons who are or have been entrusted with a prominent function by an international organisation, refers to members of senior management or individuals who have been entrusted with equivalent functions, i.e. directors, deputy directors and members of the board or equivalent functions.
 - Family members: persons who are related to a PEP either directly (consanguinity) or through marriage or similar (civil) forms of partnership.
 - Close associates: individuals who are closely connected to a PEP, either socially or professionally.

Distinguishing PEPs

S.20 POCA

PEPs – “Natural persons who are or have been entrusted with prominent public functions”.

This includes the following:

1. heads of State, heads of government, ministers and deputy or assistant ministers;
 2. members of parliaments or similar legislative bodies;
 3. members of governing bodies of political parties;
 4. members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
 5. members of courts of auditors or of the boards of central banks;
 6. ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
 7. members of the administrative, management or supervisory bodies of State-owned enterprises;
 8. directors, deputy directors and members of the board or equivalent function of an international organization.
- Although PEPs are considered a significantly higher risk, this by no means suggests that gambling operators should refuse the on boarding of PEPs as customers. The requirements relating to PEPs are of a preventive and not criminal nature, and should not be interpreted as stigmatising PEPs as being involved in criminal activity.

Additional Requirements for PEPs

- Licence Holders are therefore required to apply enhanced due diligence measures to such individuals and to have stringent procedures in place on how to deal with them.

S.20 (1) POCA also stipulates the following measures are required:

1. Approval from senior management for establishing or continuing the business relationship with that person;
2. Taking adequate measures to establish the source of wealth and source of funds;
3. Enhanced ongoing monitoring of the relationship;
4. Establish and document a clear policy and internal guidelines, procedures and controls for such business relationships; and
5. Maintain appropriate procedures to determine whether a potential customer or an existing customer is a PEP.

The Gibraltar AML code reiterates these requirements under the ‘Higher risk situations’ section:

“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.”

One factor which must be emphasised is that where an individual has been identified as a PEP then establishing the source of wealth **and** the source of funds in respect of that customer is a specific requirement which must be followed.

*EDD measures must also continue to be applied for at least **12 months** after the cessation of the prominent public functions.*

In relation to high-risk third countries as identified by the European Commission, Licence Holders must apply various EDD measures including obtaining additional information on the customer, source of funds and source of wealth, must obtain approval of senior management for establishing or continuing the business relationship and must conduct enhanced monitoring of the relationship. The Gambling Commissioner expects such EDD measures also to be considered in respect of customers from jurisdictions on the FATF higher risk jurisdictions list.

3. Beneficial Ownership

“Either or both a natural person who ultimately controls the customer and a natural person on whose behalf a transaction or activity is being conducted” - POCA

- The issue of beneficial ownership may not appear to be as immediately relevant in respect of the the gambling sector as it is in, e.g. the financial services sectors, however, there is still a requirement to take into account beneficial ownership considerations in a number of situations, including:
 - Business-to-business relationships including third parties a Licence Holder contracts with. Licence Holders should satisfy themselves that they have adequately assessed the risks which may be presented by such relationships including the beneficial ownership and source of funds of these businesses and third parties;
 - In respect of gambling accounts, the beneficial owner may be considered the natural person who ultimately controls an account which is held in someone else’s name and on

whose behalf the individual named on the gambling account is conducting the gambling activity;

- In certain cases, such as where corporate accounts are permitted by a Licence Holder, the beneficial owner of the account will be the natural person who exercises ultimate control over the legal entity in whose name the account is registered.

When conducting CDD, Licence Holders are required to identify the beneficial owner, and take reasonable measures, on a risk-sensitive basis, to verify that person's identity so that the Licence Holder is satisfied that it knows who the beneficial owner is.

- If there are objective grounds to believe that a beneficial owner is a PEP, complete verification is mandatory in any case.
- Where a person is purporting to act on behalf of a beneficial owner (or is acting on behalf of a natural person), it is best practice to inquire the reason for doing so and to verify that any such person is so authorised to act and identify and verify the identity of that person.
- It is not uncommon for gambling operators (B2C) and gambling B2B suppliers to have complex multi-jurisdictional corporate structures. The reasons for such structures may be perfectly legitimate, but as this is a regulated sector, complexity should not be a barrier to identifying the natural persons with real control of the business (either direct control or indirect control through other parties). A level of transparency concerning trust structures and nominee arrangements has to be provided as part of any due diligence and certainly if approval is sought from the regulator in connection with a particular supply relationship (incoming and outgoing).
- Resistance in providing this level of detail from potential business partners should raise a red flag. Most jurisdictions have now established or committed to establishing UBO registers, but where the trail finishes with identifying shareholders, one should always ask if the shares are held on the individual's or entities' own behalf or a nominee for another party. A shareholder cannot be automatically assumed to be the controller or UBO.

4. Source of Wealth/Source of Funds

- The distinction between determining a customer's source of funds (SoF) and their source of wealth (SoW) is an important one and some guidance is provided below on what the distinction entails and the sort of due diligence that should be carried out in relation to them.

SoW checks are designed to identify how a customer has accumulated their wealth, while SoF information provides a Licence Holder with an understanding of how and for what purpose an account will be funded. With this in mind, SoW checks are of particular importance in respect of AML/CFT issues and will tie into responsible gambling concerns as well.

- SoW checks assist in establishing the various activities which have generated and/or contributed to the customer's overall net worth and help a Licence Holder to assess whether the gambling activity of a customer (in respect of deposits, net spend, etc) appears to be in line with their overall wealth.

Examples of sources which contribute to a customer's SoW are:

- Family wealth and personal background – this could include inherited wealth, various legal settlements, pensions and benefits, sale of properties and indeed gambling winnings from other operators *although Licence Holders such be mindful of the need to not simply accept, at face value, claims from customers that their wealth is the result of winnings with other operators.*
- Income & Revenue – including salary from employment, bonuses, business ownership and activity.
- Investment activity – real estate rentals, securities, royalties, franchises, etc.

- In contrast to SoW, SoF relates to the origin and means of transfer of the customer's deposits for gambling activity – it refers specifically to the funds transferred by customers to their accounts and there should be a focus on the amounts and the origin of the funds. SoF should be considered in the wider context of the customer's profile.
- SoW and SoF information should be collected either directly or indirectly and on a risk based approach in line with Licence Holders' AML/CFT policies and procedures. It is mandatory in respect of PEPs and is likely to prove necessary in respect of high value customers and customers who might be deemed to be in a higher risk category such as those employed in positions where they have access to employer funds.

5. Targeted Financial Sanctions (TFS)

- Sanctions are measures designed to restrict dealings with certain countries, persons, legal entities and organisations. There are different sanctions regimes in place, e.g. the United Nations, the EU and the USA, all of them responsible for making and implementing sanctions. Gibraltar may impose its own TFS in certain circumstances. and Licence Holders should be mindful of these to the extent that their business may be touched by one or more of them.
- Sanctions risk may be lower than that of money laundering in general, however, it must still form an important part of any Licence Holder's compliance programme and sanctions lists will include alleged money launderers and terrorists amongst others.
- Particular caution has to be applied in relation to TFS. As stated in the AML Code, Licence Holders 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, all of them responsible for making and implementing sanctions. Gibraltar may impose its own TFS in certain circumstances.

Although it is a relatively lower risk, there is a possibility that Licence Holders could fall foul of one or more of the sanctions regimes by, e.g.

1. allowing users from a sanctioned country (e.g. North Korea or Iran) to access their services;
2. receiving funds from a sanctioned country, targeted entity or bank;

3. entering into a commercial arrangement with a company whose beneficial owner is a sanctioned person.

- The Gibraltar Financial Intelligence Unit (GFIU) has issued a guidance document on Sanctions which can be accessed here: <https://www.gfiu.gov.gi/sanctions>.
- As per the guidance, TFS can limit the provision of certain financial services, as well as, restrict access to financial markets, funds and economic resources. Licence Holders are obliged, under the provisions of POCA and the AML Code, to implement systems and controls to ensure that they do not accept custom from individuals who appear on any sanctions lists.
- The UK's list of asset freeze targets includes UN, EU and UK sanctions and is thus a useful consolidated database against which Licence Holders can screen their customers: <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>
- With further reference to the AML Code, *"the Gambling Commissioner requires Licence Holders to take steps to access these sanctions lists, 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. They 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."

- Reports of frozen funds and economic resources, information regarding a designated person, and notifications of credits to frozen accounts should be emailed to: admin@gfiu.gov.gi.

Data received by the Gambling Division from Licence Holders pertaining to the number of "hits" Licence Holders get when screening customers would suggest that there is a relatively lower risk of gambling operators breaching sanctions obligations, however, given the gravity of the issue it is imperative that Licence Holders remain mindful of the risk, and implement sanctions screening measures as part of their compliance programme. Licence Holders should also ensure that staff are aware of internal procedures for what actions to take in the event that a sanctions risk materialises. Screening can be considered to form part of a Licence Holder's due diligence procedures, in a manner akin to PEP screening.

- In practice, Licence Holders must comply with Schedule 4 of the Sanctions Act 2019 and the CDD sections under POCA 2015.

In order to do so the following considerations should be taken into account:

- Sanctions screening
- Adequate ongoing and transaction monitoring
- Awareness of red flag indicators
- Training of staff
- Suspicious activity reporting

6. Proliferation Financing (PF)

Proliferation financing refers to the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations.

- As with terrorist financing, the evidence does not suggest that the gambling sector is at high risk of being used for these purposes. Nevertheless, it is still important to understand what PF is and to note that those involved in PF are constantly looking for new avenues in which to engage in this activity and Licence Holders should therefore be mindful of the potential threat, in particular where they allow for peer-to-peer transfers such as in poker. Licence Holders should also consider the risk of PF in the context of their overall risk based approach and when carrying out CDD and take into account factors such as a customer's jurisdiction.
- The GFIU has issued a guidance document on PF which can be accessed here: (https://www.gfiu.gov.gi/uploads/X86Ru_CPF_Guidance_Notes_v1.1.pdf).
- As the guidance note highlights, one of the great challenges in respect of PF is the difficulty in identifying this illicit activity. The GFIU guidance notes detail some of these challenges, as follows:
 - The networks through which proliferation-sensitive goods may be obtained tend to be complex. Front companies, agents and other intermediaries are often used to cover up the ultimate end-user. The lack of transparency and opaque processes allow for proliferation sensitive goods, the entities involved, the linked transactions and the ultimate end-user to avoid detection, significantly increasing the risk of proliferation financing.
 - This subject has not yet been much elaborated on or researched by other jurisdictions making it challenging to assess and identify through relevant experience, the risks and typologies associated with proliferation financing.
- Although these challenges are noted there are still many red flag indicators to look out for. The GFIU guidance lists several of these indicators split into three different categories of risk, customer, product, and geographical location.

- There are obligations to report suspicious activity or report the assets of a designated person or entity. Gibraltar has a comprehensive legal framework governing PF covered by a number of pieces of legislation. Under POCA, a person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person. Where a person believes or suspects that another person has committed an offence under any of sections 35 to 39 of the Terrorism Act 2018, or when there is a suspicion or belief that any money or other property is terrorist property or is derived from terrorist property may disclose that information as soon as reasonably practicable. Reports of frozen funds and economic resources, information regarding a designated person, and notifications of credits to frozen accounts should be emailed to: admin@gfiu.gov.gi.

- The Gambling Division has not seen evidence that suggests the gambling sector is a vehicle likely to be used for the purposes of PF. Other sectors may present themselves as more attractive targets for the facilitating of PF where individuals could, e.g. register a company with a very complex business structure to disguise identities. Nevertheless, it is important to remain aware of the potential risks, and Licence Holders should have effective measures in place to identify this type of activity, if it were to present itself.