



Code of Practice for the Non-Remote Gambling Industry:

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

- v.1.0.2021

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 Non-Remote Gambling Industry has been issued consequent upon changes to 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 'land-based' 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.
- 1.4 Up until Gibraltar left the EU, Gibraltar law in this area gave effect to incremental EU directives and regulations on AML/CFT. Whilst broad principles are still likely to be followed, there may be some divergence from EU law without any weakening of requirements or any departure from international standards.
- 1.5 This Code is 'interpretive guidance' to the Gibraltar non-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)).
- 1.6 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.
- 1.7 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. 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 and counter proliferation financing’ (**AML/CFT/CPF**), unless otherwise stated.
- 2.2 The provisions of POCA make clear that all types of gambling are to be included in AML/CFT Customer Due Diligence provisions unless exempted due to low risk. At present there are no exemptions.
- 2.3 This revised Code is designed to help ensure the non-remote gambling sector in Gibraltar continues to meet the expected international standards.
- 2.4 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/PF. 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/CPF processes that are visible, credible and resilient, and will assist in overcoming any misconceptions. POCA, the money laundering directives, the Financial Action Task Force’s (**FATF**) 40 Recommendations and the various regulations published pursuant to POCA are the source documents for this Code.
- 2.5 This Code and POCA are aimed at ensuring that in addition to the general AML/CFT responsibilities applicable to all persons, those business sectors determined by S.9 POCA to be a ‘relevant financial business’ i.e. “providers of gambling services”, should also apply, on a risk based approach, Customer Due Diligence measures designed to deter, prevent and avoid facilitating ML/TF/PF through those gambling services.
- 2.6 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.
- 2.7 The following documents are also relevant to Licence Holders:
- i) GFIU AML/CFT/CPF 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;
 - iv) Sanctions Act 2019
 - v) Terrorism Act 2018

POCA, the Regulations and other legislation can be located on a search of the index of the laws of Gibraltar webpage on: <http://www.gibraltarlaws.gov.gi>

2.8 All Licence Holders should also be familiar with Gibraltar’s published [National Risk Assessment \(NRA\)](#) for AML/CFT, which confirms the use of non-remote gambling facilities as one of the risks facing the jurisdiction. It should be noted that the land-based sector is not considered to be a high risk area, however, Licence Holders must remain vigilant to the possible risks. In addition to the NRA, Licence Holders should consider and take into account the [Gambling Commissioner’s Assessment of the Money Laundering and Terrorist Financing Risks](#) within the Gambling Industry in Gibraltar.

2.9 Licence Holders should be aware, in particular, of the risk identified in the NRA 2020, of organised crime groups operating in Spain’s ‘Campo de Gibraltar’ which smuggle drugs into Europe and which may seek to establish business or economic activity in Gibraltar in order to use the proceeds of crime originating in Spain. Licence Holders should therefore be mindful of these risks and ensure that their systems and controls take this into account in order to mitigate any possible exposure to illicit funds.

2.10 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 assessed. There are various risks identified in the gambling sector, not all of which are present in Gibraltar.

Lottery betting in Gibraltar is tightly controlled with the Government operating the Gibraltar lottery (not regulated by the Gambling Division) and the requirement being in place to control smaller charitable or “incidental lotteries” through Schedule 2 of the Gibraltar Gambling Act 2005. Consents are required to operate charitable lotteries to ensure no abuse of the system for personal gain. Poker or infrequent poker tournaments are regulated within the casino environment (or by casino staff) with applications for poker to be played in other leisure establishments generally denied. “Poker in pubs” is generally not allowed; even for limited stakes and prize pots.

A limited number of gaming machines (c.200) are allowed in public houses or cafes/bars across approximately 100 premises in Gibraltar , but these are slot machines with a limited stake value and they are considered low risk within this jurisdiction for AML purposes. A licensing system operates for the supply and presentation of the machines. The main risks here are social responsibility risks such as access by children and young persons and excessive play.

Bingo is allowed as a leisure pursuit in local residential and care home environments with commercial bingo only being allowed within the casino environment. Bingo is considered a low risk activity within the casino environment, but there is a correlation between bingo and slots play (see para 6.12).

2.11 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)).

2.12 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.

2.13 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/CPF 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.

2.14 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/CPF issues in order to better determine where the primary risks lie and ensure supervision and systems are consistent with a risk based approach.

2.15 The Risk Based Approach

The Gambling Commissioner supports a risk based approach which incorporates operators carrying out their own risk assessment of AML/CFT 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. ML/TF/PF Risks in the Non-Remote Gambling Sector

3.1 The ML risks in the non-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.

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 non-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 bets, 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 non-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 such as 'chip dumping' during poker events, is the most likely way the financing of terrorism or proliferation financing could be facilitated through the non-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. Cashing in of chips not commensurate with the gambling activity on the account, i.e. minimal play/spend.

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 exchange of chips, 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 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. Licence Holders 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 non-remote 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 Gibraltar Financial Intelligence Unit (GFIU). 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. The Gambling Commissioner has authority and a legal gateway to access SARs submitted to and held by GFIU, 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 ML/TF cases with the Commissioner do not constitute “tipping off” as the Gambling Commissioner is a designated supervisor under POCA.

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 Non-Remote Gambling Licence Holders

5.1 **Board Level Accountability.** Licence Holders must clearly identify a board member or someone in a senior management with strategic responsibility for AML/CFT issues. S.9B POCA requires that Licence Holders must appoint a director or senior manager to ensure compliance with the requirements found in Part II of POCA (CDD/EDD, PEPs, record keeping and so forth). 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 manager to assist in emphasising the importance of understanding the various provisions of POCA and this Code and helping to foster a culture of compliance

Where a senior manager is identified as the person with responsibility for ensuring overall compliance with the provisions of POCA and this Code, Licence Holders should ensure that they have clear reporting lines to the Board.

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).

5.4 **Risk Management Committee (or other appropriate title).** Licence Holders 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 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 and maintain appropriate Policies and Procedures. S.25A POCA creates a statutory obligation for Licence Holders to undertake (or review) dedicated ML/TF/PF 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/CPF 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, the Gambling Commissioner's Sectoral 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 Licence Holders must take appropriate steps to identify and assess the potential ML/TF/PF risks that may arise in respect of delivery mechanisms and developing technologies (for both new and existing products) before their launch or implementation.

S.26(1) POCA requires Licence Holders to establish and maintain appropriate and risk-sensitive policies, controls and procedures in respect of CDD, suspicious activity reporting, record keeping, internal controls, risk assessment and management, provisions in respect of the allocation of overall responsibility for the effective systems of control to an individual at management level (a director, senior manager, or partner), and employee screening. These policies, controls and procedures should be proportionate to the nature and size of the Licence Holder (S.26(1ZA) POCA) and the implementation and maintenance of same is a further requirement of Licence Holders, in particular where higher risks are identified and policies, controls and procedures need to be enhanced (S.26(1ZB) POCA).

Reviews of these policies and procedures will underpin the desk-based reviews carried out by the Commissioner as part of its supervisory activity to ensure compliance and the effective

implementation of them will inform the Commissioner's approach to onsite visits and assessments of a Licence Holder's compliance with its AML/CFT/CPF obligations.

5.7 Independent Audit Function. S.26(1A) POCA also requires Licence Holders where appropriate, to undertake an independent audit for the purposes of testing their AML/CFT/CPF policies, controls and procedures. The Gambling Commissioner considers that non-remote Licence Holders given the scale and customer facing nature of their business, must undertake such an independent audit function (internal and/or external). 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.

The audit function must be independent of the AML/CFT/CPF compliance team in order to be able to objectively assess the adequacy of policies, controls and procedures but it may be internal or external. Some Licence Holders may have the capacity and resources for an in-house audit function, whereas others may wish to outsource this function to a reputable firm familiar with undertaking audits of this nature. An external audit may prove to be a useful tool irrespective of whether a Licence Holder has an in-house audit team as an additional check on the effective operation of a Licence Holder's compliance programme, however, there is no requirement to engage the services of an outside firm in order to carry out this function.

5.8 Commercial Relationships. Licence Holders must apply internal due diligence measures to establish and be satisfied with the ultimate beneficial ownership and control of their commercial suppliers. The meaning of "beneficial owner" is elaborated upon in Section 7(1A). These will most typically be the suppliers of gambling equipment 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 partner.

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. Licence Holders must also regularly train all relevant staff to assess

reports regarding customer registration, purchasing of chips, 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, terrorist financing and proliferation financing and on the relevant data protection requirements as well as how to recognise and deal with transactions and other activities which may be related to ML/TF/PF.

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 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 and to provide, if necessary, evidence for the prosecution of criminal activity; 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. Nevertheless, Licence Holders must ensure that they retain records in accordance with S.25 POCA. Licence Holders also 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.

5.13 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 (where this is over and above that required by POCA) 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 Land based casinos are increasingly designed and recognised as mainstream leisure venues providing a range of entertainment facilities, including various forms of gambling. Internationally the conventional entry controls have been adjusted to reflect the changing commercial offer and customer demand. The arrangements in Gibraltar are intended to reflect this developing position and to mitigate the risks of any money laundering activity taking place in a casino due to the cash intensive nature of a casino business.

6.2 Licence Holders will be required to exercise dedicated supervision at the entry points to all gambling facilities to ensure that no underage, vulnerable or otherwise excluded persons access the gambling facilities. This is likely to be a combination of personnel and electronic measures.

6.3 **Threshold Approach.** Unless the identity of all casino customers is established and verified on entry, Licence Holders must apply CDD measures in the following circumstances (S.11(1) POCA):

- 1) if they establish a business relationship (irrespective of the amount gambled, if a customer frequents the Licence Holder's premises over such a period of time and/or frequency that they are recognised as established casino customers, they can be deemed to have entered a business relationship with the casino; this will also be the case where a customer opens an account or becomes a member with the casino and may occur where a casino starts to track a customer's drop/win figures);
- 2) if they suspect money laundering or terrorist financing;
- 3) if they doubt the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification; and/or
- 4) upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amount to 2,000 EUR or more, whether this is a single transaction or several transactions which appear to be linked.

Furthermore, a casino must also establish and verify the identity of all customers who purchase or exchange gambling chips with a value of 2,000 EUR or more (S.14 POCA).

A casino must link CDD information obtained for a particular customer to the transactions that the customer makes in order to track that customer's spend.

6.4 **On Entry Approach.** Licence Holders may, on the other hand, opt to identify and verify customers on entry to the casino. This would entail refusing access to the casino until identification and verification has taken place. Alternatively, a 'hybrid' approach may be adopted by Licence Holders in which identification takes place on entry but verification is not carried out until the threshold is met.

6.5 Where a person is purporting to act on behalf of a customer, Licence Holders must verify that said person is authorised to do so and identify and verify the identity of that person. (S.10A POCA)

6.6 In the above circumstances the Gambling Commissioner requires that Licence Holders undertake reasonable steps commensurate with the information available from the customer, the physical presence of the customer in the casino, the overt use of effective CCTV recording, and proportionate to scale of their evident casino gambling, to identify and verify the identity of the customer.

6.7 Identity is obtaining and recording the name, residential address and date of birth of the customer. Verification is the satisfactory checking of these details, in whole or in part, against an independent source. These two steps amount to the exercise of customer due diligence procedures. Without excluding other considerations addressed in this document, the level of initial Customer Due Diligence as described in S.10 POCA is an initial step in customer due diligence (CDD) and not Enhanced customer due diligence. CDD is initially comprised of 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 and electronic identification as set out in the Electronic Identification Regulation.

6.8 Initial identification can be provided by the customer by any credible means, including a credible personal declaration. Verification of identity by way of a product from a credit institution (a mainstream bank) in the name of the customer, an electronic address or identity check, or a positive examination of statutory or other credible documents will be sufficient to verify identification and complete the initiation of customer due diligence procedures. CDD actions must be recorded and retained beyond the lifetime of the account. The relevant period is five years beginning on the date an occasional transaction is completed or the business relationship ends.

6.9 If Licence Holders are unable to obtain satisfactory identification and conclude verification of identity, on a risk sensitive basis, no further gambling transactions may take place, including cash out. In such circumstances, consideration should also be given to reporting the events to GFIU or the Gambling Commissioner.

6.10 The Gambling Commissioner believes these arrangements will permit Licence Holders to allow customers direct access to casino facilities subject to:

- 1) Licence Holders supervising entry to the premises in respect of age and vulnerable customers; and
- 2) Licence Holders having floor systems in place to effectively monitor and respond to customer spend that may reach the threshold in a 24 hour period; and

- 3) Licence Holders having entry and floor systems that can effectively identify and respond to customers who attend the premises to use the casino facilities on a regular basis over an extended period.

6.11 Where a casino does not have these arrangements in place then it is required to revert to the provision of identifying and verifying the identity of all customers on or before entry, regardless of the value of gambling chips purchased, through means set out above at 6.6 to 6.9.

6.12 The Commissioner does not regard traditional bingo games, or cash played into 'conventional slot machines', as the equivalent of purchasing or exchanging gambling chips. However there is a requirement to (a) have risk based systems in place to identify customers who exchange foreign currency in order to play in the casino (all products); and (b) monitoring systems should be in place to identify customers who are engaged in and incur escalating losses on slots. It is a risk that such play could be funded by those exhibiting problematic gambling behaviour and funding the activity with the proceeds of crime e.g. theft from employer or fraudulent activity. High value (stake or prize) machines based on real or virtual casino games (roulette, poker, blackjack, etc.) such as Touch Bet Roulette or Virtual Event betting terminals are not regarded as 'conventional slot machines' and the same approach to risk should be taken with automated casino games as those presented as traditional table games.

In the case of betting activity through terminals (or across the counter), the operators own trading risk management systems can be utilised to manage ML/TF/PF risk. However those placing significant wagers, incurring significant cumulative losses or starting to gamble at a level significantly above their normal profile, may also pose an increased risk of the proceeds being utilised. In such cases, there should be established process to identify and monitor such customer activity. Wagering significant amounts at short odds (particularly in sporting markets that do not normally show such activity) may also indicate heightened risk.

6.13 Where a customer engages in high deposit casino gambling (see below), or establishes a long term, business relationship with the casino, the Licence Holder will be expected to undertake further due diligence to establish and record the bona fides of the customer, including taking further steps to develop knowledge of the antecedents of the customer and the source of the customer's funds.

6.14 In terms of what amounts to high deposit gambling, the Commissioner requires licence holders to take in to account the value and speed of deposits as well as the apparent antecedents and identity of the customer. 'High deposit' gambling should trigger further due diligence considerations consistent with additional security, VIP contact and facilities, or problem gambling monitoring, escalated proportionately to the value of deposits.

6.15 **Ongoing Monitoring (Further Due Diligence (FDD)).** The longer a customer frequents the casino 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. This is the case in particular where transactions are unusually large or are conducted in an unusual pattern (see S.17(3) POCA).

6.16 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 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 in accordance with the provisions of POCA (S.25 POCA).

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). Regular higher risk customers should be monitored to ensure that the level of deposits and losses remains consistent with their profile and cumulative deposits/losses for higher spending players should be periodically reviewed including where the customers are well known to Licence Holder staff.

Reviews of existing 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 on the basis of materiality and on a risk sensitive basis (see S.11(2) POCA). This means that whilst identified customers with consistent and established accounts are not exempt from due diligence procedures, resources should be focussed on those which are less well established, or those where changes in the pattern of gambling or spending profile has brought them under examination or where other relevant circumstances of a customer change (S.11(2)(a) POCA).

6.17 **Data Accuracy.** Licence Holders are required to undertake reviews of existing records 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.

6.18 **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.

6.19 **Due Diligence – A Continuing Obligation.** It is emphasised that it is the Gambling Commissioner's view that CDD and EDD processes are the respective baselines for customer due diligence for the non-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 CDD/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.

6.20 **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 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.

6.21 **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.

6.22 **Payment methods – positive information.** 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. Such an inference is merely one aspect of building up a customer profile and not a substitute for effective CDD measures.

6.23 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.

6.24 Anonymous Accounts. Licence Holders must, where casino customers fall into business relationship definition, subject such customers to identification and verification procedures.

7. Note on Betting Shops

7.1 Land based betting activity normally takes place through the use of self- service betting terminals and although betting slips can be completed for counter submission, the details are then translated by staff via a terminal.

7.2 Individuals have to attend the premises to bet and thus betting shop premises should have CCTV facilities installed and there should also be active staff supervision. Betting market risk management can be controlled centrally with the size of markets with maximum stakes being controlled by the operator.

7.3 The Gambling Commissioner recognises that the majority of activity is low risk leisure betting and that Licence Holders are able to manage any potential significant trading risks or commercial exposure.

7.4 Nevertheless, Licence Holders should ensure that they are able to prevent, limit, or control pay-outs through the backend technology and that general betting activity is subject to centralised monitoring for unusual and/or suspicious activity. There are also a limited number of gaming (primarily slots) machines within each premises.

7.5 As with casino premises the main risk exposure is that related to proceeds of crime (customers betting with and losing illegally obtained funds), as opposed to 'classic' money laundering risk. Licence Holders should, however, ensure that Internal processes are in place which enable them to identify indicators of laundering activity such as continuous betting on short priced favourites or failure to turnover and withdraw cash inserted into terminals.

8. Reporting Requirements

8.1 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 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 2018, 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.

8.2 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.

8.3 SARs should be provided directly to the GFIU via the online Themis portal. Individual ML/TF/PF 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, and not the SAR itself, by emailing GCreports@gibraltar.gov.gi.

In line with the POCA requirements under Section 6A, employees and persons acting within a comparable position should disclose to the Gambling Commissioner any non-compliance by a Licence Holder with any of the requirements under POCA. Any such reports will be treated in strict confidence and stored in a secured database. The Gambling Commissioner will inform the person reporting as to whether any further action will be taken.

8.4 In any case of suspected or confirmed terrorist financing 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.

8.5 **Consent ('Defence') Process.** 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 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.

8.6 **Urgent Cases.** There may be cases of significant ML/TF 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.

8.7 **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, during the course of applying CDD measures, a Licence Holder knows, suspects, or has reasonable grounds to suspect that the individual in question is engaged in, or attempting, any acts involving ML/TF/PF, and that performing or completing the CDD process will result in tipping off the customer, then they should cease to apply CDD measures, submit a SAR and

explain why they have been unable to complete CDD (S.11(5A) POCA). 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.

9. **Higher Risk Situations**

9.1 **Politically Exposed Persons.**

A PEP is defined in S.20A of POCA as:

“a natural person who is or who has been entrusted with prominent public functions and includes the following-

- (a) heads of State, heads of government, ministers and deputy or assistant ministers;
- (b) members of parliament or of similar legislative bodies;
- (c) members of the governing bodies of political parties;
- (d) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;
- (e) members of courts of auditors or of the boards of central banks;
- (f) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
- (g) members of the administrative, management or supervisory bodies of State-owned enterprises;
- (h) directors, deputy directors and members of the board or equivalent function of an international organisation”.

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) and includes family members and persons known to be close associates (see S.20A POCA). 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. Licence Holders are reminded that being a PEP does not automatically mean that such an individual is under automatic suspicion, merely that enhanced checks need to be made in respect of them.

9.2 PEP Databases. S.20 POCA requires that Licence Holders evaluate all PEP accounts in terms of specific approval for the account to continue, the source of funds and the source of 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. As elsewhere, a risk based approach should be applied based on the value and scale of gambling and the location of the customer. Under S.11(5)(d) POCA, when determining to what extent to apply CDD measures, Licence Holders should take into account whether a customer or beneficial owner is a PEP.

9.3 High Risk Jurisdictions. The PEP 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 CFT 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.

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 (See S.17(6) POCA). The Gambling Commissioner expects such EDD measures also to be considered in respect of customers from jurisdictions on the FATF higher risk jurisdictions list.

9.4 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.

9.5 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/CPF 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.

10. **Repatriation and Confiscation of Funds**

10.1 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'.

10.2 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.

10.3 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.

10.4 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.

10.5 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 lost in a pattern that should have given, or did give rise to suspicion by the Licence Holder that the 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.

10.6 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/CPF obligations.

11. Enforcement and Sanctions

11.1 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.

11.2 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).

11.3 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.

11.4 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.

11.5 Further information on the approach to be taken by the Gambling Commissioner when considering enforcement action against Licence Holders in respect of AML failings can be found in the [Enforcement and Sanctions Policy](#).

12. Contact

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

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

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