



**HM Government
of Gibraltar**

Gambling Division

Enforcement and Sanctions Policy in respect of AML/CFT Failings

- v.1.0.2022

Issued by the

Gambling Commissioner

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1. Introduction

- 1.1 This Enforcement and Sanctions Policy in respect of anti-money laundering and countering the financing of terrorism failings has been issued by the Gambling Commissioner (“GC”) in order to explain the approach the GC will take when taking enforcement action against Licence Holders for breaches of the Gambling Act¹, Proceeds of Crime Act² or the Anti-Money Laundering Code of Practice³ in accordance with the Supervisory Bodies (Powers etc.) Regulations 2017⁴ (the “Regulations”).
- 1.2 It is generally the preferred policy of the GC to resolve matters at a compliance level using proportionate and collaborative measures to achieve the desired regulatory outcome (including approved time scales for effective action plans). However, where there are egregious breaches, breaches by operators that are a clear departure from advice issued by the GC, failures in governance, reporting, failures in senior management responsibility or breaches of process constituting wider systemic failure, then formal enforcement action will be considered. This includes cases where wider learnings need to be communicated to other operators with a view to improving general regulatory compliance and quickly improving regulatory standards.
- 1.3 This Policy will cover various aspects including, the powers of the GC, the general approach the GC will take to enforcement action and sanctioning, the process by which this will be handled, the GC’s approach to publication and regulatory settlements and the manner in which the quantum for fines will be determined.
- 1.4 This Policy should not be considered a substitute for legal advice and Licence Holders should consult the relevant legislation themselves.

2. Legislation

Gambling Act

2.1 The Gambling Act provides that the Licensing Authority may suspend or revoke a licence on giving the licensee notice and “such opportunity as is reasonable in all the circumstances to make representations”. Instead of revoking or suspending the licence the Licensing Authority may alter its terms. The grounds for suspension or revocation of a licence are set out in paragraph 7 of Schedule 1 to the Gambling Act and include a determination that the licence holder is no longer a fit and proper person to hold a licence and that a licence holder has failed to comply with any provision made by or under the Gambling Act

Supervisory Bodies (Powers Etc.) Regulations

2.2 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

¹ <https://www.gibraltarlaws.gov.gi/uploads/legislations/gambling/2005-72o.pdf#viewer.action=download>

² <https://www.gibraltarlaws.gov.gi/legislations/proceeds-of-crime-act-2015-2348>

³ <https://www.gibraltar.gov.gi/finance-gaming-and-regulations/remote-gambling#ancla11>

⁴ <https://www.gibraltarlaws.gov.gi/legislations/supervisory-bodies-powers-etc-regulations-2017-4134>

and controls to mitigate the threat of ML/TF or to prevent dealings with persons named on relevant sanctions lists.

- 2.3 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 GC to adopt a risk based approach. The Regulations grant the GC 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.
- 2.4 Where any decision notice has been issued, the GC 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 GC will give consideration to the use of these powers where significant or systemic failings in the adoption and application of the AML Code and relevant legislation are apparent. We do not consider that “stability of financial markets” means damage to the reputation of an individual operator, its share price or its prospects of entering new gambling markets. Senior management should have taken such considerations into account before the relevant acts of omission or commission.
- 2.5 The Regulations allow for the imposition of financial penalties up to the level of twice the benefit derived from the default or breach where it is possible to determine this, or EUR 1 million.

3. Approach to Enforcement

3.1 The GC will evaluate Licence Holders’ compliance with AML/CFT laws and regulations through its supervisory activity including desk-based reviews, on-site visits and consideration of relevant reports and information obtained, whether self-reported by a Licence Holder or otherwise.

3.2 The GC will consider a Licence Holders’ AML/CFT compliance arrangements and determine the extent to which they meet the expected standards and requirements under the Gambling Act, POCA and the AML Code. The framework under which assessments will be conducted will be as follows:

Unsatisfactory

An evaluation of unsatisfactory indicates that there is significant non-compliance with the requirements of POCA and the AML Code and there exists a substantial risk that ML/TF could be taking place given the inadequate nature of the AML/CFT systems and controls in place. It is likely that a finding that a Licence Holder’s arrangements are unsatisfactory will lead to some level of enforcement action although extenuating circumstances will be taken into account and remedial actions may be considered where this is deemed proportionate. Fundamental improvements will be required.

Moderately Satisfactory

An evaluation of moderately satisfactory indicates that while the Licence Holder is generally meeting the requirements of POCA and the AML Code, and the risk that ML/TF could be taking place through the use of its services is thereby reduced, there nevertheless remain some weaknesses and deficiencies in respect of the adequate implementation of AML/CFT systems and controls. It is likely

that remedial action would be implemented on a compliance basis. Some relatively significant improvements are likely to be needed.

Satisfactory

An evaluation of satisfactory indicates that the Licence Holder meets the requirements of POCA and the AML code and that the Licence Holder's compliance arrangements are unlikely to pose a risk in respect of ML/TF. Some moderate improvements may still be needed.

Highly satisfactory

An evaluation of highly satisfactory indicates that the Licence Holder is able to clearly demonstrate that its AML/CFT systems and controls are in compliance with the requirements of POCA and the AML Code and demonstrates elements of best practice in the conduct of its AML/CFT operations. Some minor improvements may still be needed.

3.3 In coming to an overall assessment, a risk based approach will be employed to determine the potential nature and impact of the process failings and the extent of the breach or breaches disclosed. Where an assessment has been made that an operator's compliance arrangements are "unsatisfactory" then we will examine the surrounding circumstances leading to any failings including failings in governance or senior management responsibility (such as the allocation of resources, how apparent the compliance failings were using an objective test, and the adequacy of training provided). The GC may still use its discretion to settle "unsatisfactory" cases without enforcement action, where there are extenuating circumstances and a clear commitment to immediate and effective improvement. This will be decided on a case by case basis.

3.4 The GC may still consider the imposition of sanctions where a Licence Holder's arrangements have generally been found to be satisfactory but there have been isolated breaches of such seriousness that enforcement is deemed to be an appropriate response.

3.5 Furthermore, the GC would like to make clear that, in addition to the consideration of a Licence Holder's overall compliance with required AML/CFT/ CPF standards, in the interests of improving record keeping and due diligence standards across the board, the GC will also be prepared to sanction operators for isolated failings and deficiencies where individual cases may not significantly impact on the general satisfactoriness of a Licence Holder's overall systems and controls.

The GC considers that where failings are found in relation to individual customer case files (e.g. insufficient due diligence), where identified via a referral by the Gibraltar Financial Intelligence Unit or in respect of the Licence Holder's policies and procedures, even in the event that a Licence Holder's AML systems and controls have been found to be broadly compliant with expected standards, the imposition of sanctions will be considered, including financial penalties (via regulatory settlements if considered appropriate), in respect of these individual failings even where they do not rise to the level of systemic deficiencies or weaknesses in the Licence Holder's AML controls as a whole.

Any financial penalties would, in cases such as these, be expected to be smaller 'administrative' sanctions to encourage increased compliance and not on the scale of financial penalties which may be levied for systemic failings and deficiencies. This approach is in accordance with AML/CFT supervisory best international practice. Where there are deficiencies in a material number of files, sufficient to suggest systemic failings, then operators might expect more substantive action.

4. Formal Enforcement

4.1 The GC's powers of enforcement under the Regulations will be used where it is deemed necessary in light of the desired regulatory outcomes. These are:

- Credible deterrence of unacceptable behaviours and failings in respect of AML/CFT obligations;
- Achieving the required level of control, and potential removal, of operators and individuals that pose an unacceptable risk to the jurisdiction's AML/CFT framework;
- Raising awareness of the required standards;
- Effective action in order to safeguard the integrity of the jurisdiction's AML/CFT regime and its wider reputation; and
- Prevention of financial gain from non-compliance with legislative and regulatory obligations.

4.2 Prior to any sanctions being imposed, the GC 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).

5. Financial Penalties

5.1 Under the Regulations, the appropriate maximum penalty which can be imposed on a Licence Holder is the higher of:

- (a) Twice the amount of benefit derived from the default or breach (where that benefit can be determined); or
- (b) €1 million.

5.2 When assessing whether to impose a financial sanction and the scale of any sanction, the GC will base its decision on its assessment of the Licence Holder's failings (see framework above) and all the relevant circumstances as provided for in S.24 of the Regulations:

- (a) The gravity and duration of the default or breach;
- (b) The degree of responsibility of the responsible person;
- (c) The financial strength of the responsible person (as indicated by its turnover);
- (d) The benefit derived from the default or breach by the responsible person to the extent this can be determined;

(e) The losses to third parties caused by the default or breach insofar as they can be determined;

(f) The level of cooperation of the responsible person with the GC;

(g) Any previous defaults or breaches by the responsible person.

5.3 The GC will also take into account any other relevant circumstances, whether there are any aggravating or mitigating factors, whether a sanction will have a dissuasive effect and whether there is a need for a penal element for the wrongdoing. The nature of the misconduct including whether it was careless, reckless or deliberate will also be examined.

5.4 Consideration will be given to reducing the amount of any financial sanction in view of a Licence Holder's early settlement of same.

5.5 Licence Holders can expect various factors to be weighed In determining the amount of any financial sanction. These include:

- The amount of the benefit or loss involved;
- Whether victim compensation is possible and the Licence Holder has, or is in the process of, giving up its profits from the wrongdoing;
- The extent and severity of the wrongdoing or failure;
- Whether the matter in question was self-reported by the Licence Holder or individual;
- The Licence Holder or individual's level of co-operation with the GC;
- The level of risk to the jurisdiction's reputation;
- The level of risk to consumers;
- The level of risk that financial crime has occurred;
- The Licence Holder or individual's history of compliance.

6. Other Measures

6.1 Under the Gambling Act and the Regulations, the GC may also take other enforcement action such as:

- The suspension or revocation of a licence;
- A temporary ban for an individual from managerial positions;
- Directions which the Licence Holder must comply with or an alteration of the terms of a licence.

7. Regulatory Settlement

7.1 The GC may consider achieving its objectives by way of regulatory settlement where it is deemed that formal action taken under the Supervisory Bodies (Powers etc.) Regulations is not required or would be disproportionate and where a regulatory settlement would assist the GC in achieving a regulatory outcome that is proportionate and effective in the wider public interest. The GC will consider various aspects when deliberating on whether a regulatory settlement is the most appropriate way to proceed and will include the following (non-exhaustive) factors:

- The nature, severity and impact of the relevant breach or failings;
- The extent to which the Licence Holder has been upfront and forthcoming with the GC;
- The timeliness of a Licence Holder's communications with the GC;
- Whether a Licence Holder can demonstrate that it fully understands its failings and has a clear action plan in place to remedy them;
- The regulatory history of the Licence Holder or individual;
- The level of cooperation of the Licence Holder in the course of the GC's investigation of the matter and during settlement discussions;
- Whether a Licence Holder is prepared to divest itself of any funds which accrued as a result of manifest AML/CFT failings;
- The willingness of a Licence Holder to take advice into account and implement the necessary processes and procedures to ensure there are no repeat failings;
- Whether a Licence Holder is prepared to volunteer a payment in lieu of a financial penalty that could otherwise be imposed by the GGC pursuant to the Supervisory Bodies (Powers etc) Regulations.

7.2 Where formal enforcement action is not taken, the GC expects Licence Holders to promptly remedy the relevant failings. Where this does not happen the GC reserves the right to commence formal enforcement proceedings against a Licence Holder.

8. Publication

8.1 Publication of a given enforcement action will be determined by the nature of the action taken, in particular whether it arises from a formal sanction under the Regulations or whether a regulatory settlement has been agreed.

- 8.2 Publication under the Regulations is required where enforcement action has been taken in the form of a financial penalty, the suspension or withdrawal of a licence, a temporary ban from managerial positions or directions have been given.
- 8.3 There is a requirement to consider the proportionality of publication on a case by case basis and publication may be delayed, published on an anonymous basis to ensure effective protection of personal data, or not published where it is considered that either delaying or publishing on an anonymous basis.
- 8.4 In respect of a Regulatory Settlement, the GC retains a discretion in respect of whether or not to publish. Similar considerations in respect of proportionality will be considered as well as the appropriateness of making any settlement public and whether it will achieve the intended outcome.
- 8.5 It is unlikely that a decision would be made not to publish solely on the basis that it would adversely affect the reputation of a Licence Holder or an individual.

End.