Code of Practice for the Remote Gambling Industry:

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

- v.1.0.2026

Issued by the

Gambling Commissioner

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

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1. Introduction

1.1 This version of the Gibraltar Code of Practice for the Remote Gambling Industry has been issued consequent upon changes to the Proceeds of Crimes Act 2015 (POCA) and supersedes and replaces all previous versions and associated correspondence. It will be reviewed periodically and updated as required.

1.2 The Gambling Commissioner is the regulator for the gambling industry in Gibraltar and is a supervisory body listed under Part 1 of Schedule 2 of POCA for the purposes of supervising licensed gambling operators' (**Licence Holders**) compliance with relevant Gibraltar laws and regulations for anti-money laundering and countering the financing of terrorism.

1.3 This Code applies to all transactions and processes undertaken by Licence Holders in Gibraltar or any other place under the authority of a Gibraltar gambling licence, including those transactions and processes that are additionally licensed by another regulatory authority as well as those associated with places which have no relevant gambling or AML/CFT regulation.

1.4 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.

Operators who conduct business on a multi-jurisdictional basis should keep themselves fully apprised of differences between jurisdictions and particularly any legislation passed in Gibraltar in these areas.

POCA (and the legislation listed at paragraph 2.9) below contain the principal legislative requirements for Gibraltar based firms, but cross-jurisdictional business will also need to be mindful of the AML requirements of jurisdictions in which the customers are based, but must ensure that Gibraltar standards are adhered to as a minimum. For further information, see paragraph 5.6 below.

1.5 This Code is 'interpretive guidance' to the Gibraltar remote gambling sector in respect of the statutory and other requirements referenced in the document. The Code is issued under S.6 of the Gambling Act with the consent of the Minister responsible for gambling and may be taken into account in any proceedings before a court or in any matter to be determined by the Licensing Authority (S.6(7)).

1.6 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 and the provisions of POCA as the framework for the advice and requirements of this Code. Any regulatory action in respect of Licence Holders, employees or agents (including a range of sanctions) will be based on the statutory provisions contained in POCA and the content and principles of this Code, not on the absence or existence of equivalent legislation in the originating state. Criminal prosecution rests with other authorities.

2. General Considerations on Our Approach

2.1 Consistent with international guidelines and relevant legislation, for the purposes of this document, 'anti money laundering' (**AML**) should be read as 'anti money laundering, countering the financing of terrorism and counter proliferation financing' (**AML/CFT/CPF**), unless otherwise stated.

2.2 POCA carries these principles forward and does not provide for any exemptions in the remote sector in respect of gambling services. Separate guidance will be issued for the non-remote sector in Gibraltar.

2.3 The Gambling Commissioner is aware, and international evidence indicates, that a properly regulated gambling industry's security and recording processes can be highly effective in deterring conventional money laundering. The Gambling Commissioner broadly concurs with the 2013 MONEYVAL report which makes reference to various researchers into remote gambling which conclude that the money laundering and terrorist financing (**ML/TF/PF**) risks linked to regulated online gambling are relatively low and the sector is not likely to be the preferred option for money launderers or terrorist/proliferation financiers

2.4 This revised Code is designed to help ensure the remote gambling sector in Gibraltar continues to meet the expected international standards.

2.5 The Gambling Commissioner is mindful that the very large economic scale of remote gambling operations licensed and located in Gibraltar means that the significance of even lower level risks and impact may be heightened, particularly in terms of reputational damage to the sector and the jurisdiction.

2.6 Consequently, the regulated industry must be committed to maintaining high standards and take appropriate and proportionate steps to address any indications its systems are being or may be used for the purposes of ML/TF/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.

2.7 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.

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

2.9 The following documents are also relevant to licence holders:

i) GFIU AML/CFT/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 and the Regulations can be located on a search of the index of the laws of Gibraltar webpage on: https://www.gibraltarlaws.gov.gi/

2.10 All Licence Holders should also be familiar with Gibraltar's latest (2025) published National Risk Assessment (**NRA**) for ML/TF/PF, which confirms the use of remote gambling facilities as one of the risks facing the jurisdiction. 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. These risk assessments must be factored into each Licence Holder's own assessment of the ML/TF/PF risks they face.

2.11 The European Commission, as part of its Supranational Risk Assessment (**EUSNRA**), has also published a report assessing the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities in which gambling sector products are evaluated and assessed. There are various risks identified in the gambling sector, not all of which are present in Gibraltar.

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

2.13 The Gambling Commissioner is mindful that Licence Holders have obligations and liabilities arising from the anti-money laundering arrangements of every country in which they are licensed or where their customers are located. Licence Holders should have systems in place that bring to the attention of the Gambling Commissioner all external enquiries, including those from other gambling regulators and law enforcement, into ML/TF suspicions involving their Gibraltar infrastructure or

licensed activities.

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

2.15 Licence Holders will therefore have to establish the means for demonstrating the effectiveness of their AML procedures. Such means will include properly documented AML/CFT/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.

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

2.17 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 Remote Gambling Sector

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

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

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

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

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

4. Methods of Money Laundering/Terrorist Financing/Proliferation Financing

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

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

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

4.3 This three-stage interpretation is now generally recognised to be somewhat limited and may give the mistaken impression that for money laundering to occur, all three stages must be involved. This is not the case. Involvement by a Licence Holder in any one of the three stages may constitute a money laundering offence, even where this occurs inadvertently.

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

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

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

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

I. Where a customer deposits, loses or wins money where the source of their gambling funds is a criminal activity;

II. Where a customer misleads a Licence Holder as to the source of their deposits, which is a criminal activity, whether or not they claim it is legitimate, and whether or not the money is ultimately gambled;

III. Where a player transfers criminal funds to another player by play or other means, whether or not that player is colluding with that customer.

IV. Where a customer recycles or attempts to recycle criminal funds or a proportion of such funds through gambling facilities either through engaging in minimal or very low risk activity.

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

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

I. High losses inconsistent with the readily apparent means and earlier profile of the customer;
II. Sudden or gradual but significant increase or 'spike/spikes' in the activity of a customer, at odds with the previously established customer profile;
III. A customer attempting to avoid or delay personal contact by the Licence Holder;
IV. Discovery of inconsistent personal data/financial standing/previous convictions/adverse media reports.

V. A customer found to have provided false, implausible or deceptive information or documentation;

VI. Withdrawals not commensurate with the gambling activity on the account, i.e. minimal play/spend;

VII. Customer depositing cash in betting shops for the purposes of funding their online gambling account;

VIII. Use of corporate cards or accounts to make deposits.

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

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

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

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

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

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

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

Suspicious Activity Reports.

4.16 Licence Holders are required to submit a suspicious activity report (SAR) directly to 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, including investigations by external gambling regulators. 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/PF cases with the Commissioner do not constitute "tipping off" as the Gambling Commissioner is a designated supervisor under POCA.

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

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

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

5. Key provisions for all Remote Gambling Licence Holders

5.1 **Board Level Accountability.** Licence Holders must clearly identify a board member with strategic responsibility for AML/CFT issues. 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.

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

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

5.4 **Risk Management Committee (or other appropriate title).** B2C operators must have clear and accountable processes to review customer accounts which raise AML concerns. This might be a risk management or "steering" group consisting of relevant senior managers, or a specialist individual or individuals with autonomy to make key decisions, independent of commercial considerations. Such bodies should be properly constituted and minutes of meetings kept, 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

5.4 **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.

5.5 **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 and the Gambling Commissioner's Sectoral Risk Assessment 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).

Where a Licence Holder has branches or subsidiaries, it must implement group-wide policies and procedures applicable to all branches and majority-owned subsidiaries (S.26(1B) POCA). These group-wide policies, controls and procedures should be maintained and undertaken to the standards required by POCA and this AML Code or, if the standards in the host country are more rigorous, to those higher standards.

Furthermore, in accordance with S.21(1) POCA, Licence Holders must require their branches and subsidiaries which are located outside Gibraltar to apply, to the extent permitted by the law of that

jurisdiction, measures at least equivalent to those set out in POCA as regards CDD measures, ongoing monitoring and record-keeping. Where this is not permitted by the law of that jurisdiction, Licence Holders must inform the Gambling Commissioner, take additional measures to effectively handle the ML/TF/PF risks and ensure that the level of requirements expected in Gibraltar are applied to the fullest extent possible.

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 to undertake an independent audit function for the purposes of testing their AML/CFT policies, controls and procedures with such function having regard to the nature and size of the Licence Holder. The Gambling Commissioner considers that all B2C Licence Holders, given the scale and customer facing nature of their business, must undertake a comprehensive independent audit function (internal and/or external) while for B2B Licence Holders the audit function is still necessary but is likely to be smaller in scope. 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/PF 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.** Both B2B and B2C Licence Holders must apply internal due diligence measures to establish and be satisfied with the ultimate beneficial ownership and control of their commercial suppliers or commercial users of their gambling services. The meaning of "beneficial owner" is elaborated upon in Section 7(1A). In respect of gambling services, this is most typically the suppliers/distributors of games software, but could be applicable to other elements of the customer facing gambling services supply chain. The Gibraltar Licensing Authority requires that all customer facing 'joint venture' B2B relationships are submitted for approval and are subject to ongoing monitoring by the Licence Holder to ensure the service is used as envisaged at approval. Any significant management or control changes or incidents arising from such arrangements should be reported to the Gibraltar Licensing Authority. Internal due diligence should not be limited to this category of business partners.

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

5.9 **Staff vetting.** Licence Holders should be mindful of the inherent risk that their own employees may present and should ensure that controls are in place to mitigate this. Proportionate pre-

employment vetting of all applicants is one such measure but is no substitute for adequate supervision and cross checking of working practices and outcomes. Licence Holders must adopt recognised pre-employment screening measures (compliant with data protection laws), at all levels of employment (proportionate to the seniority and responsibility of the role, in order to ensure that no persons actively or recently involved in criminal activities are inadvertently employed or engaged (e.g. contractors) in the delivery of gambling services (S.26(1)(g)).

5.10 **Training of staff.** Licence Holders are expected to take steps to develop adequate and proportionate automated and manual systems of risk assessing customers and applying Due Diligence techniques. Operators must also regularly train all relevant staff to assess reports regarding customer registration, deposit patterns, gambling activities and personal information for indications of money laundering, and how to respond to alerts or when they suspect or believe that ML/TF activities may be taking place. S.27 POCA provides that training in respect of AML/CFT issues must also include making staff aware of the law relating to money laundering, 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 **B2B Games suppliers.** In most technical arrangements of B2B 'table game' supply, the B2C operator does not have access to real time game play or game performance statistics. The requirement for the monitoring of table games for potential money laundering or terrorist financing methods applies equally to B2B games suppliers as it does to B2C operators' in- house table games, otherwise suspicious gameplay on B2B servers may be concealed from the B2C operator. The parties should therefore, when negotiating their commercial arrangements, agree the method by which table games will be monitored in real time for recognised money laundering or terrorist financing 'gameplay' methodologies and reported to the B2C operator in a timely and proportionate way should they occur, allowing for possible interventions in funds transfers or withdrawals. Given the evolving nature of ML/TF methodologies it is expected that the details of the monitoring which will be carried out will be agreed between the parties from time to time and need not be set out in precise detail at the outset. Once agreed, however, these should be documented and made available to the Gambling Commissioner as and when required. While some methodologies are transparent and easy to identify (e.g. repeated low risk bets in roulette), P2P transfers can be highly sophisticated, shielded and complex.

5.13 **Record keeping.** Licence Holders are required to keep records of the measures they have applied to establish the identity of customers, and records of the value of their transactions, for at least 5 years after the relationship ends or an occasional transaction is completed (S.25 POCA). The same principles should be applied with regard to the financial standing of customers. The detail and retention of such records should be commensurate with the nature of the apparent risk and sufficient to support any subsequent investigation or court proceedings 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.

5.14 **Data Protection.** Record keeping should be consistent with Licence Holders' obligations under data protection law and the Gambling Commissioner therefore supports systems that 'step down' the amount of data retained (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 **Applying due diligence.** Sections 17 & 18 POCA require that all new depositing remote gambling customers are subject to an Enhanced Due Diligence (EDD) process "as soon as practicable" taking a "risk-based approach" (S.13, S.17 & S.18 POCA). EDD is Customer Due Diligence (CDD – see below) plus at least one additional due diligence measure. EDD must be initiated at the point of registration, or deposit following registration, usually by way of background electronic identification methods and may be completed as part of or subsequent to registration by electronic or customer facing 'manual' methods. S.18 deals specifically with the EDD requirements for non-face-to-face customers.

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

6.3 **Customer Due Diligence (CDD).** Without excluding other considerations addressed in this document, 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. S.10 and S.11 POCA indicate that this level of customer due diligence is the start of the due diligence process. Completing CDD is necessary but not sufficient 'clearance' for remote gambling customers. CDD actions must be recorded and retained beyond the lifetime of the account in accordance with the provisions of POCA. The relevant period is five years beginning on the date an occasional transaction is completed or the business relationship ends.

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

i. undertaking additional identification checks; or

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

This requirement continues for non-face-to-face customers under S.18 POCA.

6.5 EDD principles of obtaining more and better information about customers can be essentially distilled to the three generic methods listed above as sufficient for providing the confirmation needed for EDD to be completed. Licence Holders may use broad and developing digital 'footprinting' of customers to complete EDD as an alternative to directly obtaining personal data or documentation from the customer, however, personal contact and documentation is the most reliable means of concluding EDD or FDD (see below). EDD actions must be recorded and retained beyond the lifetime of the account in accordance with the provisions of POCA (s.25 POCA).

6.6 **Ongoing Monitoring (Further Due Diligence (FDD)).** The longer a customer is registered and the more they deposit or gamble, the greater the need for additional, further due diligence will be. Enhanced Due Diligence is a continuing process. For convenience, we refer to this next layer of due diligence as FDD. FDD consists of due diligence activities subsequent to early Enhanced Due Diligence and may be triggered by value or time based considerations or specific events or incidents which may include a particular transaction or bet. This is the case in particular where transactions are unusually large or are conducted in an unusual pattern (see S.17(3) POCA).

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

6.8 **EDD/FDD methodologies.** The Gambling Commissioner expects that Licence Holders will develop a range of different methodologies for establishing and confirming the identification (and age) of customers and to satisfy their AML/CFT obligations both at initial CDD, EDD and in any subsequent FDD searches as risk (spend or suspicion) escalates. The measures are likely to be determined by the information accessible in a customer's country of residence or location, or other demographic detail, as well as technical and other developments. The almost universal availability of 'camera smartphones' now means that personal and financial documents can be quickly copied by customers and sent to operators, along with 'selfie' type photographs to confirm photographs embedded in official documents. This means the timeframe and methods for completing EDD and FDD enquiries, assuming the customer continues to use an account, can be substantially shortened. The overriding consideration for Licence Holders is whether the information obtained or provided is adequate to justify the nature and value of the customer's gambling.

6.9 **Retrospective examination of customers.** The Gambling Commissioner does not expect all historic and inactive customer accounts to be reviewed and subject to CDD/EDD/FDD, but all active accounts should be subject to a risk based review process over a planned timeframe, consistent with the requirements of SS. 11, 12 and 17 POCA in respect of the 'Ongoing Monitoring' of 'Business Relationships' (as above). Reviews of such accounts should take into consideration the known and continued reputation and standing of an existing customer when assessing their AML/CFT risk and any further measures to be applied 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). For the avoidance of doubt, all Licence Holders should have systems which alert them to the reactivation of dormant accounts and put processes in place to ensure such accounts are monitored to identify unusual or suspicious activity and conduct further due diligence where necessary.

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

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

6.12 **Due Diligence – A Continuing Obligation.** It is emphasised that it is the Gambling Commissioner's view that CDD and EDD processes are the respective baselines for customer due diligence for the remote gambling industry, to be applied on a risk sensitive basis, but which will need to be escalated if the apparent risk increases. The risk based approach does not allow Licence Holders to avoid 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.

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

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

standards where they have foreign branches or wholly owned subsidiaries outside the jurisdiction.

6.15 **Payment methods – positive information.** 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.

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

6.17 **Proxy/Beneficial Ownership of accounts**. The use of third party identities by the true beneficial owner or controller of account(s) to mislead a Licence Holder as to the ownership or control of the account, the source of funds, or into accepting business that the Licence Holder might otherwise have monitored or rejected, compromises the principles of KYC/CDD and is a direct threat to AML/CFT procedures, as well as security and responsible gambling measures. The use of 'proxy accounts' should be prohibited as any other attempt to commit fraud against a Licence Holder. Proxy accounts are regularly associated with betting frauds, cheating, organised P2P collusion/cheating and systemic 'multi-accounting' or other systemic abuses of terms and conditions, requiring the true identity of the customer to be concealed from the Licence Holder if an account is to be operated without additional supervision, or at all.

In respect of gambling accounts, the beneficial owner may be considered the natural person who ultimately controls an account which is held in someone else's name and on whose behalf the individual named on the gambling account is conducting the gambling activity.

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

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

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

7. Reporting Requirements

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

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

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

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

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

7.3 In suspected money laundering cases, this will usually be after the event, as directed by GFIU.

7.4 SARs should be provided directly to the GFIU electronically 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.

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

explanatory report to the Gambling Commissioner.

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

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

7.8 **'Consent' or 'Defence' SARs (UK).** The issue of establishing a defence under various jurisdictional regimes for money laundering and terrorist financing offences is more complex. As the operation and particularly payment authorisation takes place in Gibraltar, then consent will need to be obtained from GFIU, in order to obtain a defence under Gibraltar law. However, as the payment flows across jurisdictional boundaries (e.g. withdrawal received by UK customer into a UK bank account) then in order to establish a defence in that jurisdiction a request will need to be made to the UK FIU. Licence Holders will therefore need to request a defence from both the GFIU and the UK FIU in order to ensure that they have a defence under both Gibraltar and UK law.

In order to simplify this process, and help improve the reporting system, the GFIU has agreed that the following procedure should be followed when dealing with consent/defence against money laundering SARs:

Consent SARs will be dually reported but will **first** be sent to the UKFIU and then to the GFIU once it has been notified that consent has been granted or not (including when no response is received after the 7th day –i.e. implied consent).

Consent matters will be actioned by Licence Holders accordingly as directed by the UKFIU.

When reporting to the GFIU, operators will be asked to provide the UKFIU's URN and the UKFIU's response if available.

Licence Holders should note that all non-consent SARs concerning British customers will continue to be submitted to the UKFIU with the dual report to the GFIU as required by POCA.

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

7.10 **Consent ('Defence') Process under POCA.** Where a Licence Holder suspects that processing a

transaction will entail dealing with criminal property, it may make a disclosure to GFIU through the SAR process and seek consent to undertake further steps in respect of the transaction which could constitute a money laundering offence if consent has not been sought or granted. The consent process is governed by S.4A POCA.

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

7.11 **Urgent Cases.** There may be cases of significant ML/TF/PF events occurring or internal reports being generated whilst gambling is taking place or bets or transfers are pending, and consent or advice is being sought to continue the transactions. In these circumstances the MLRO should consider whether to allow the gambling to continue or intervene pending any advice on the SAR, or in exceptional circumstances, provide an oral report to GFIU/Gambling Division.

As any winnings or losses may be frozen for an indeterminate period, unless highly unusual and excessive gambling is taking place it will not, normally, be necessary to suspend the gambling. It will, however, be for the relevant manager or MLRO to apply experience and judgement in these circumstances with a view to ensuring that the Licence Holder does not become liable to a money laundering offence by preventing the escalation of the situation. This will allow the Licence Holder to avoid knowingly facilitating or permitting possible ML/TF either through the movements of illegitimate funds into the gambling process or the movement of potentially laundered or terrorist funds out of the Licence Holder's control. Such a decision process should be formally recorded.

7.12 **Tipping off.** Where any suspicious activity report is made internally, or to the GFIU, 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.

8. Higher Risk Situations

8.1 **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. The PEP provisions are particularly relevant for persons associated with states with a history of systemic corruption, but are not limited to those states**.**

8.2 **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.

8.3 **High Risk Jurisdictions.** The FATF publishes a list of *high-risk jurisdictions subject to a call for action* (the so-called "black list") where the AML/CFT/CPF controls have significant strategic deficiencies and countries are called upon to apply enhanced due diligence and counter-measures in respect of these countries. For the avoidance of doubt, the Gambling Commissioner expects licence holders not to do business with the limited number of countries belonging on this list: https://www.fatf-gafi.org/en/topics/high-risk-and-other-monitored-jurisdictions.html

The FATF also publishes a list of *jurisdictions under increased monitoring* (the so-called "grey list") due to identified strategic deficiencies in their AML/CFT/CPF regime. In respect of customers from these countries, licence holders should take into account the information provided and factor it into their overall risk analysis and consider whether enhanced due diligence measures should be applied. This list and the status of countries on it are subject to regular revision by FATF and can be found here: https://www.fatf-gafi.org/en/topics/high-

risk-and-other-monitored-jurisdictions.html

Licence Holders should have arrangements in place to ensure they are regularly updated on FATF changes to these lists.

In relation to high-risk third countries as may be identified by Gibraltar (S.17(1)(b) POCA), 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).

9. Targeted Financial Sanctions

9.1 Licence Holders are prohibited from engaging in any form of business with persons who are included on relevant international 'sanctions lists' including those relating to terrorist financing and proliferation financing.

S.8 (3) of the Sanctions Act 2019 provides that persons carrying out relevant financial business (as defined under POCA and which includes those offering gambling services) must have policies, controls and procedures which ensure that they are aware of the lists of persons to whom international sanctions apply; they undertake appropriate checks of the lists in relation to new and existing customers and that, where a sanctioned individual is found to exist in the customer database, their assets are frozen without delay and a disclosure is made to the GFIU.

There are a variety of sanctions lists which Licence Holders must be mindful of pursuant to S.8 of the Sanctions Act. These include lists published by the United Nations Security Council, the European Union and the United Kingdom. A number of commercial companies provide automatic screening solutions against the relevant lists; in the event that a Licence Holder does not subscribe to a database of this nature, they must have a system in place to ensure that checks are made in respect of new registrations and also of the existing database whenever there has been a new designation.

The UK Government publishes its consolidated sanctions list at:
https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets

The EU's consolidated list can be found here:
https://webgate.ec.europa.eu/europeaid/fsd/fsf/public/files/pdfFullSanctionsList/content?token=dG9rZW4tMjAxNw

The UN Security Council sanctions consolidated list can be found here:
https://www.un.org/securitycouncil/content/un-sc-consolidated-list#composition%20list

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 mind-set should not be allowed to develop that assumes sanctions cases to be unlikely.

9.2 The approach to targeted financial sanctions does not provide for a monetary threshold or a 'risk based' approach. The Gambling Commissioner requires Licence Holders to take steps to access the consolidated 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" logic 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 and it will be necessary to freeze, seize or surrender funds under the control of a person or institution on the sanctions list without delay.

9.3 Licence Holders should ensure they have arrangements in place to ensure they are regularly updated on changes to the relevant sanctions lists in order to ensure that freezing and disclosure requirements are implemented without delay. 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/PF and the gambling industry, and that the intention of POCA, the 4MLD and associated legislation in other jurisdictions is to minimise the likelihood, benefits and impact of money laundering. Consequently it is the Gambling Commissioner's view that where the funds in question are substantial, can be demonstrated as criminally acquired by a reliable and recognised criminal or administrative process, that there is an identifiable and unambiguous loser of the funds, and the funds have been deposited/lost in a pattern that should have given, or did give rise to suspicion by the Licence Holder that the deposits/losses were suspicious, then their continued retention by the Licence Holder cannot be supported by the Gambling Commissioner. Furthermore, where there is an identifiable victim of acquisitive crime and clear evidence of fraudulent and dishonest activity, Licence Holders may wish, absent legal risk, to consider discretionary and early victim compensation on an *ex gratia* basis. Therefore, there is no obligation to divest relatively modest or *de minimis* sums commensurate with normal patterns of leisure gambling for value which subsequently turn out to be the proceeds of crime. However, Licence Holders should consider the wider reputational issues associated with retaining later

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

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

12. Contact

The various documents referred to in this text are available on the Gambling Division website, the GFIU website and the Gibraltar Laws website.

https://www.gibraltar.gov.gi/remote-gambling
https://www.gfiu.gov.gi/
https://www.gibraltarlaws.gov.gi/

The Gambling Commissioner

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