

Gibraltar Regulatory Authority Gambling Commissioner

Consultation Document (2) on a Proposed Code of Practice for the Gambling Industry on:

Anti Money Laundering and Counter Terrorist Financing Guidance

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

24 August 2009

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1. Introduction – Our proposed approach

1.1 For the purposes of this document ‘anti money laundering’ (AML) should be read as ‘anti money laundering and counter terrorist financing’, unless otherwise stated.

1.2 Internationally there is a historic and generally misplaced association between gambling and money laundering. This misconception is widely held by the public, and amplified by some media and politicians, particularly those indisposed to gambling in general or online gambling in particular. The Gambling Commissioner is of the view, and international evidence indicates, that the properly regulated gambling industry is less susceptible to money laundering practices than many other ‘cash’ based or high value industries. Nevertheless, the Commissioner believes that the gambling industry in Gibraltar should meet its legal obligations in this area in full, and develop AML processes that are visible, credible and resilient, and will assist in overcoming these misconceptions.

1.3 AML arrangements are prescribed by the European Commission by way of Directives transposed into domestic legislation. The Government has transposed the most recent Third AML Directive into the Crime (Money Laundering and Proceeds) Act 2007 (CMLP). These are the source documents for this guidance and are accessible from the GRA Gambling Division website. The implementation of AML law is overseen by the IMF/FATF who recommended certain enhancements to the arrangements as they affected the gambling industry in their 2007 inspection report. This Code meets those recommendations. Further legislative change is anticipated to meet all the IMF recommendations.

1.4 The Third Directive, the CMLP Act and the Gambling Act effectively 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 is in respect of gambling licence holders’ regulatory liabilities, and only extends into any criminal liability in so far as the Commissioner may provide formal guidance (including this Code) to the industry.

1.5 This guidance does not seek to explain or set out the criminal law as it may be applied in Gibraltar or elsewhere in the world. Its intention is to establish a framework of actions and activities based on the Commissioner’s understanding of many of the industry’s existing customer management practices that, if applied by the industry, should prevent money laundering involving Gibraltar licence holders from taking place, or if it does take place despite the code being followed, provide a level of defence to the licence holder (CMLP S.20A(2)).

1.6 The Commissioner is mindful that licence holders are, effectively, exposed to the anti money laundering arrangements of every country they accept customers from. Notwithstanding the complexities of investigation and prosecution across international boundaries, we would expect external jurisdictions to look to the Commissioner and/or Gibraltar’s law enforcement arrangements were it to be discovered or alleged that a customer had laundered funds from another state through a Gibraltar licence holder.

1.7 Article 2 of the Third Directive specifically includes all businesses engaged in ‘casino activities’ as a ‘relevant financial business’ subject to AML due diligence procedures. It goes on to refer to casino customers/casinos and their licensing

arrangements in Articles 10, 36 and 37, and makes separate references to casinos and the internet in the Preamble (paras 14 and 39). The CMLP Act carries these principles forward in S.8 and 10.

1.8 The Directive separately, at Article 13(2), and the CMLP Act at S10I define all non face to face transactions as ‘Higher Risk’, thereby automatically triggering an ‘Enhanced Due Diligence’ process for all remote casino depositing customers.

1.9 The Gambling Commissioner is proposing this separate code of practice in respect of AML. The final code will be ‘interpretive guidance’ to the Gibraltar gambling industry in respect of the requirements of the Third Directive, Gambling Act 2005 and the CMLP Act. A Code may only be issued with the consent (approval) of the Minister for Gambling and subsequently may be taken into account in any proceedings before a court or in any matter to be determined by the Licensing Authority.

1.10 The Code would apply to all financial transactions associated with relevant gambling activities undertaken under the authority of a Gibraltar gambling licence. It should build on the existing good practice of the Gibraltar gambling industry, and be consistent with the anti money laundering guidance notes issued by the Financial Services Commission, the Gambling Act, the CMLP Act, recommendations from the Financial Action Task Force (FATF) and the International Monetary Fund (IMF), and the risk based approach these bodies recommend. It would be subject to revision based on any comments received and any changes in legislation or regulations.

1.11 The Commissioner is proposing that gambling licence holders take reasonable and proportionate steps, consistent with the risk based approach, to manage their AML responsibilities consistently with the intentions of the Third Money Laundering Directive and CMLP Act. Consequently, the Commissioner would propose that any examination of reported events alleging money laundering would be from the perspective of – “was what the licence holder did, reasonable in the circumstances?” This approach is not intended as a concession, but to put the responsibility for developing and applying adequate and effective AML procedures on the licence holder.

1.12 This is a consultation document. The final Code will contain fewer explanatory comments and be more directive.

Question 1: The Gambling Commissioner would welcome views on guidance being issued in the terms set out above and in the following sections.

Question 2: The Commissioner is recommending that ‘gambling activities’ for the purposes of this code should include all remote gambling activities as defined by the Gambling Act, including remote betting, and all gambling in casino premises, unless specifically excluded.

Comment: The Directive and the CMLP Act identify ‘casino activities’ as being the activities that are subject to its detailed provisions and all ‘non face to face’ financial transactions as ‘higher risk’. The Commissioner is aware that:

the principal criminal offences in the CMLP Act do, in any event, apply to betting operations,

betting is increasingly a ‘casino activity’;

in the remote sector betting money flows between the customer and the operator appear or are identical to casino money flows;

there is a widespread and growing interest in betting being specifically included in AML law; and

Articles 4, 5 and 13 of the Directive and S.10H(b) of the CMLP Act create the capability for governments to extend their local AML provisions into areas where a higher AML risk is present.

The IMF recommendations do not distinguish between the online betting and gaming industries.

Therefore, as a financial business activity that takes place in parallel to or in conjunction with mainstream ‘casino activities’, as with poker, backgammon, rummy or any other gambling not traditionally occurring in all casinos, the Commissioner is recommending that all remote gambling transactions are captured by this Code.

The Commissioner does not believe there is a case to extend the provisions into conventional bingo games or betting shops, where the facilities and arrangements are of a different nature than casinos, electronic and remote gambling.

The Commissioner also believes there are significant benefits in this approach and would welcome views from licence holders.

2. Methods of Money Laundering.

2.1 The Directive and CMLP Act are aimed at ensuring that in addition to the general AML liabilities applied to all companies, organisations and individuals, those sectors undertaking any of the defined ‘relevant financial business’ activities should also follow, on a risk based approach, measures designed to deter, prevent and avoid facilitating money laundering; but, where money laundering occurs or is suspected, it is appropriately reported, and a substantive audit trail is available that will allow the relevant authorities to investigate and where appropriate use the evidence to prosecute those involved.

2.2 For criminal purposes S.2 CMLP Act creates the primary money laundering offences in respect of all Gibraltar based companies and staff. Not every country in the world has equivalent legislation. For regulatory purposes this Code recognises that acts of money laundering may be initiated in any part of the world where a customer is based at the time of deposit, gambling, withdrawal or money transfer. Consequently, the Commissioner proposes that the general principles of anti money laundering activities, as set out by the IMF/FATF/OECD/MONEYVAL, and recognised by bodies such as the European Commission, are used as the framework for the advice and requirements of this Code. Any regulatory action in respect of licence holders or staff will be based on 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.

2.3 In the context of remote and non remote gambling, money laundering includes three methodologies each based on those initiating the actual money laundering (the customers) ‘knowing’ the funds are illegitimate. From a customer’s perspective, these are:

1. The ‘conversion’ of illegally obtained funds into funds whose source appears legitimate, i.e conventional ‘washing of dirty money’;
2. the ‘disguise’ of illegally obtained funds, i.e. ‘misrepresenting dirty money to a recipient’;
3. the ‘disposal’ of illegally obtained funds, i.e ‘spending or receiving dirty money’.

2.4 These are broad descriptions of the money laundering offences. The Commissioner suggests they include, as examples:

1. customers who recycle or attempt to recycle illegitimate money or a proportion of such money, even at a substantial loss; or
2. customers who mislead a licence holder as to the source of their deposits, where the source is illegitimate, whether or not they claim it is legitimate;
3. customers who deposit, lose or win money where the source of their gambling funds is illegitimate.

2.5 The Gambling Commissioner has found that it needs to be emphasised that the simple spending of ‘dirty money’, including the depositing, wagering, winning or losing arising from that money, is likely to amount to money laundering by the customer and may, therefore, create a criminal or regulatory liability for the licence holder.

2.6 From the licence holder's perspective, the Directive, the CMLP Act and the Criminal Offences Act 1960 (dealing with aiding, abetting etc) create a fourth liability for those who have knowledge, or suspicion, of money laundering and who are concerned in those arrangements. This is a critical element for licence holders as it may create a personal and corporate, criminal and regulatory liability for anyone involved in any aspect of known or suspected money laundering.

2.7 'Knowingly', 'suspect' and 'reasonable grounds to suspect' are established legal principles not defined in the Directive or CMLP Act, but for any criminal purposes the law enforcement agencies are likely to apply the established understanding of these terms in the circumstances. For regulatory purposes the Commissioner would propose to apply the civil 'balance of probabilities' test and seek to establish whether those involved in allowing alleged money laundering to take place should have known or suspected so in the circumstances. This would include considering any persistent over liberal interpretation of events, any unreasonable delay or any failure to apply recognised safeguards, and any unjustified deferral or ignoring of suspicious circumstances by staff or management.

2.8 Consistent with international practice, licence holders would be required to report to the Gibraltar Financial Intelligence Unit (GFIU) and the Gambling Commissioner all circumstances where they know, suspect or have reasonable grounds to suspect that money laundering is being or has been committed or attempted. The format for such reporting will be developed in parallel to this consultation to ensure that reporting is proportionate and commensurate to the seriousness and significance of the circumstances.

Questions: 1. Are licence holders aware of the three different types of money laundering and aware of the need to take steps to develop policies and train all relevant staff on the methods and their implications?

2. Are licence holders aware of the fourth element of money laundering, ie the actions of their own staff and systems?

3. Are licence holders aware of their obligations to report actual and suspected money laundering?

4. The reporting form will be an enhanced and structured version of the current form, see annex A and B.

5. Are there any other aspects of AML that licence holders wish to see elaborated on in this guidance?

3. Key provisions for non remote casino licence holders and all remote gambling licence holders:

3.1 **Nominated Officers.** The Commissioner proposes that licence holders identify and appoint a nominated individual to take responsibility for developing, implementing and overseeing all anti money laundering arrangements for the financial elements of their Gibraltar licensed operations. This would include the development and supervision of internal AML methodologies and policies, liaison with third party suppliers, staff training, the receiving and evaluation of any relevant suspicious activity reports and liaison with the Commissioner and Gibraltar Financial Intelligence Unit (GFIU) as appropriate. This role is widely known as the ‘Nominated Officer’ and supersedes that of Money Laundering Reporting Officer (MLRO). In respect of ‘third party suppliers’, it will also include oversight of any financial management activities outsourced to parties which undertake those activities on behalf of the licence holder (as opposed to in their own right).

3.2 **Personal responsibility.** The Nominated Officer is likely to be a significant and senior management role and will carry with it considerable personal responsibility. This is most relevant in respect of the effectiveness of AML activities and if any events or substantive suspicious activity reports are carelessly misjudged and/or not appropriately actioned, or if money laundering is found to have taken place due to systemic or obvious failures in the licence holders’ policies and processes. This individual will need to be appropriately located for management, access and control purposes, have access to all relevant data held or managed by or on behalf of the licence holder, and the direct support of the most senior management of the licence holder (Board/Directors) who will hold ultimate responsibility for AML procedures. In the larger, diverse and ‘24/7’ operations a tier of nominated managers may be required to provide the necessary decision making support on behalf of the nominated officer.

3.3 **Undertake formal risk assessment of the business.** The Nominated Officer will be required to ensure that the licence holder undertakes (or reviews) formal risk assessments in respect of their relevant gambling activities, customers, areas of operation and transaction methods, and their susceptibility to the differing types of money laundering, and review, develop or implement corresponding AML methodologies and policies. The Commissioner is aware that whereas some games, bets, states and transaction methods have already established a reputation as being susceptible to certain lower level money laundering typologies, other elements of gambling have proved unproblematic, and licence holders’ policies and systems should reflect these differences. The formal risk assessment and risk reporting process is likely to be a substantial and ongoing responsibility for operators and should include an annual report to the Board/Directors.

3.4 **Applying due diligence.** The Commissioner proposes that all new depositing remote gambling customers should be subject to an Enhanced Due Diligence process and record keeping consistent with the CMLP Act and the Directive. Non remote gambling customers may be subject to ‘basic’ customer due diligence based on the ‘threshold approach’ to their spending levels. The threshold approach is not directly applicable to the remote sector. All licence holders should be able to demonstrate that they are identifying and differentiating between higher and lower risk customers, transactions and activities, i.e. the minimum measures may be applied in non-problematic areas, proportionately more measures and responses should be applied in recognised problematic areas.

3.5 **‘Basic’ customer due diligence (BDD).** Without excluding other considerations addressed in this document, the Commissioner believes that ‘basic’ customer due diligence consistent with S.10A CMLP Act is a two stage process of first obtaining the required personal identification details through an effective and reliable process, and then verifying that identity using reliable and independent means, including databases, documents or other supplementary methods of confirming/assuring identity. Article 13 of the 3MLD and S.10 CMLP Act indicate that basic customer due diligence is the start of the due diligence process. It is required for all remote gambling customers but it may be sufficient only for non remote gambling customers (See 3.7).

3.6 **Enhanced customer due diligence (EDD).** The Commissioner is of the view that the Directive and S.10H CMLP Act require all remote gambling customers to be subject to EDD if they make a deposit. The Directive and S10I of the CMLP Act indicate that EDD is Basic Due Diligence, plus an additional stage , that includes:

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

3.7 Whilst the first and third of these provisions are self evident, the Commissioner proposes to interpret the second to include the technical measures operators take, often without the customer being aware, to establish and record the electronic footprint and audit trail of the customer; any data held by other parties to the transactions such as payment processors, or any historic data held by the operator. To qualify as sufficient to conclude EDD, these measures should be in addition to any other arrangement to establish identity or age.

3.8 The Commissioner expects that remote licence holders will develop a range of methodologies for establishing and confirming the identification (and age) of customers to satisfy their AML obligations. These are likely to be determined by the information available in a customer’s country of residence or origin or other demographic detail as well as technical and other developments. The measures applied and proposed by licence holders will be considered by the Commissioner in terms of their sufficiency and effectiveness in the formal engagement processes between operators and the Commissioner’s staff.

3.9 The Commissioner is proposing that BDD and EDD are the respective baselines for customer due diligence for the non remote and remote industries, upon which an escalating scale of additional activities may need to be applied on a risk sensitive basis. The risk based approach does not allow licence holders to avoid BDD/EDD activities outside any exceptions created by statute or regulation, it requires them to apply BDD/EDD plus additional measures if the apparent risk escalates.

3.10 Any additional measures are expected to proportionately reflect the value and speed of deposits and the nature of the gambling and the apparent antecedents or developing knowledge of the customer. These are the equivalent to responsible gambling, security or customer service measures taken in respect of high value and VIP customers and may include bespoke or directed public source or more discrete or intensive enquiries into the background of a customer.

3.11 Retrospective examination of customers. The Commissioner does not propose that all existing customer accounts should be reviewed and subject to BDD/EDD, but that active accounts should be subject to a risk based review process over a planned timeframe consistent with the requirements of Articles 8 and 13 of the Directive and S.10(B), (C) and (H) CMLP Act in respect of the 'Ongoing Monitoring' of 'Business Relationships' (see below).

3.12 Reviews of such accounts should take into consideration the known reputation and standing of an existing customer when assessing their AML risk and any further measures to be applied. This means that whilst identified customers with consistent and established accounts are not exempt from due diligence procedures, resources should be focussed on those who are less well established, or whose pattern of gambling or spending profile has been outside the expected parameters.

3.13 The Commissioner is of the view that basic customer due diligence (Stages 1 and 2) may include an identified manager, on a risk sensitive basis, appropriately designating a well known customer's account as properly identified, consistent and established. This is likely to occur where the customer account has been active, transparent and non problematic for an extended period.

3.14 Ongoing due diligence (Ongoing Monitoring). Licence holders should be alert to significant changes, differences or methodologies in the status or practices around customers, games, states or transaction methods. Typically, these alerts are consistent with security, responsible gambling and marketing alerts, but should also be viewed from an AML perspective. Consequently, due diligence should be recognised by licence holders as a dynamic process, meaning any customer may be subject to periodic but proportionate and documented reviews (including negative checks) based on the conventional, expected or developing gambling profile of customers, especially where that profile changes substantially or appears unconventional. All information arising from this process should be recorded and retained as set out below.

3.15 Analysing games and players. The known history of games, states or transaction methods should also be taken into account when applying due diligence. For example, the 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 Commissioner would support licence holders developing criteria, matrices or programs to evaluate which groups of their existing customers and areas of activity should be reviewed and to what degree.

3.16 Training of staff. As a consequence of these responsibilities, licence holders will be expected to take steps to develop adequate and proportionate automated or manual systems of risk assessing customers and applying due diligence techniques. Operators should also train all relevant staff to monitor reports on 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 money laundering activities may be taking place.

3.17 Record keeping. Consistent with data protection legislation and AML requirements, licence holders will be 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. The detail and retention

of such records would be commensurate with the nature of the apparent risk and sufficient to support any subsequent investigation or court proceedings; i.e. high spending customers with no history with the licence holder or whose source of funds is uncertain would be subject to more substantive enquiries and record keeping than those who were occasional but sufficient gamblers to trigger examination. The Commissioner would support systems that ‘step down’ the amount of data retained after say, 1, 3 and 5 years.

3.18 Third Party due diligence. Whilst licence holders may use third parties to provide the information that they use for due diligence purposes, eg 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, they cannot ‘rely’ on third parties to have concluded basic or enhanced customer due diligence on their behalf and for the purposes of gambling activities unless they satisfy the following condition: Under S.10P(6) CMLP Act and Articles 14 and 15 of the Directive, 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. The 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. For remote licence holders the information held/provided would have to pass the ‘three stage’ process (See S.4).

3.19 By contrast, a customer using a payment method that is known to incorporate recognised due diligence arrangements around identity or age verification (ideally 3MLD or FATF consistent) can be inferred to have been subject to and have satisfied these criteria within the context of that entity’s business activities and knowledge of the customer’s transactions. This inference can be taken into account by the licence holder together with the other information the licence holder has obtained. The Commissioner proposes that this would allow licence holders to take into account as an element of their own EDD process the method of deposit used by a customer. Conversely, licence holders should take into account the means of deposit as not supporting identity verification where that means is known to involve no due diligence procedures.

3.20 Where third parties undertake due diligence activities on behalf of a licence holder, or where licence holders use third party information and processes, overall responsibility for effective due diligence still resides with the licence holder and not with the third party.

3.21 Anonymous Accounts. Licence holders will not be 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.

3.22 Duplicate Accounts. 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 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 or be under the control of the same person. The concept of KYC is

compromised by a customer who is able to open a second or further account without the licence holder being able to detect this.

3.23 Submission of SARs. Whether or not due diligence has been satisfactorily completed, where the conduct or activities of a customer gives rise to the knowledge or suspicion that the customer is or is attempting money laundering, an internal suspicious activity report should be made by the relevant staff member to a nominated manager or the nominated officer at the earliest opportunity. This will usually be after the event and in the format to be concluded in the consultation process (Annex A). SARs should be provided directly to the GFIU (by hand) and copied in parallel to the Commissioner, who may liaise with the GFIU on any technical aspects of the SAR.

3.24 Urgent Cases. There may, however, be cases of significant events occurring or internal reports being made orally or technically whilst gambling is taking place or bets are pending, and approval is being sought to continue the transactions. In these circumstances the nominated manager should consider whether to allow the gambling to continue or intervene pending any advice on the SAR, or in extremis, an oral report to GFIU/GRA. Whilst different considerations will apply in respect of land based and remote facilities (where any winnings or losses are generally frozen for a predetermined 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 nominated manager to apply experience and judgement in these circumstances with a view to protecting the licence holder by not allowing the situation to escalate and knowingly facilitate or permit money laundering either through the movements of illegitimate funds into the gambling process or the movement of potentially laundered funds out of the operator's control.

3.25 Tipping off. Where any report is made internally, or to the GFIU or the Commissioner, this should not be disclosed to any third party where disclosure might reveal that the report has been made and jeopardise any ensuing investigation. This does not prevent a licence holder from declining to allow any further gambling to take place in a way that does not obviously alert the individual to the initiation of the report, as opposed to general security measures having been initiated etc.

3.26 Politically Exposed Persons. Licence holders are required make provision, on a risk sensitive basis, to respond to any attempt to gamble by any qualifying Politically Exposed Persons, i.e. any person holding significant public office, having access to public funds or in a position of influence (see Schedule 1 of CMLP Act for full definition of PEP's). This is particularly relevant for persons associated with those states with a history of systemic corruption, but is not limited to those states. PEPs include the readily identifiable family and associates of such persons.

3.27 PEP Databases. A number of commercial databases and public search facilities are accessible to assist in establishing whether an individual may be a PEP. Where a person appears to be a PEP, on a risk sensitive basis, a senior manager (the nominated officer or a designated representative) must approve the deposit/gambling arrangements having taken adequate measures to establish the legitimacy of the source of funds used by the individual concerned, and such measures must be maintained throughout the relationship. In exercising these responsibilities the Commissioner would not expect every customer to be 'PEP checked'. As elsewhere, a risk based approach should be applied based on the value and scale of gambling and the location of the customer.

3.28 **Sanctions Lists.** Similar provisions to PEPs should be applied in respect of persons who may be included on any relevant international ‘sanctions list’ of the persons and institutions Gibraltar businesses are precluded from engaging in any form of business with. ie the sanctions list does not provide for a monetary threshold or ‘risk based’ approach. The Government of Gibraltar publishes a sanctions list consistent with the EU Common Foreign and Security Policy at:

http://ec.europa.eu/external_relations/cfsp/sanctions/list/version4/global/e_ctlview.html which is known as the Consolidated List of persons, groups and entities subject to EU financial sanctions.

3.29 The Commissioner proposes that licence holders will be expected to take steps to access this list, or an equivalent list provided by a commercial database, as part of their enhanced due diligence checks. 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 GFU for advice. It may prove necessary to freeze, seize or surrender funds under the control of a person or institution on the sanctions list.

3.30 **Repatriation of ‘suspicious’ funds.** The law in respect of the possession, retention and recovery of criminal proceeds under the control of a gambling 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 CMLP effectively states that it is an offence to possess stolen funds unless they have been obtained for ‘adequate consideration’. ‘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’.

3.31 S.23 and 24 CMLP indicate that it would be necessary for a licence holder to be prosecuted and convicted in Gibraltar in order for a confiscation order to be made under that Act.

3.32 S.42 CMLP indicates that a confiscation order made in another country, may be enforced in Gibraltar by Ministerial Order. The IMF have recommended that this area should be subject to new legislation better facilitating the enforcement of such orders. The reciprocal enforcement of confiscation/recovery orders may also be determined by the courts.

3.33 There may also be opportunities for those suffering losses ultimately controlled by licence holders to recover funds through civil procedures. Additionally, operators with functions and assets in other states may be subject to local criminal or civil asset recovery arrangements.

3.34 The Gambling Commissioner is mindful of the reputational risk around money laundering and the gambling industry, and that the intention of the Directive and associated legislation is to minimize the likelihood, benefits and impact of money laundering. Consequently it is the Commissioner’s the view that where funds are substantial, demonstrated as stolen by a reliable criminal conviction and sentence, that there is an identifiable 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 operator that the deposits/losses were suspicious, then their continued retention by the operator cannot be supported.

Comment: The Commissioner recognises that it is not possible to prescribe every circumstance or issue around potential money laundering and offer solutions. The principles of the risk based approach may be summarised as: ‘low value is probably low risk, whereas high value may create high risk’, and this principle should be applied by licence holders and the Commissioner.

Operators will have the opportunity to elaborate on these guidelines in their own internal control and operating procedures for staff and management.

4. Additional considerations for remote gambling licence holders –

4.1 The Directive and the CMLP Act require remote ('non face to face') operators to apply enhanced customer due diligence (EDD) procedures in respect of all depositing customers, irrespective of deposit level. EDD should be applied 'as soon as practicable' (S.10D) and 'on a risk sensitive basis' (S.10H/I) in accordance with the general principles of the Directive and the CMLP Act. The Commissioner proposes that the timeframe for EDD should be derived from the facilities available in the customer's place of residence and the typical EDD processing time for that place, but, other than in exceptional and transparent circumstances, be a maximum of 28 days from first deposit, and that risk sensitivity is derived from the account value, gambling method and customer location.

4.2 For the purposes of this document the Commissioner interprets EDD as a three stage process arising from S.10A(a), S.10H and S.10I of the CMLP Act. Stage 1 is that of obtaining sufficient identification, Stage 2 is the verification of that identity against 'reliable and independent' means, and Stage 3 is further identity verification by way of additional database checks, 'supplementary measures', or a bank process in the name of the customer (as examples in S10I). These stages are not proposed as separate or consecutive process, but this model is helpful in considering options.

4.3 The Commissioner proposes that registration details required under the Gambling Act of the name, residential address and date of birth of the customer, obtained through an effective registration scheme, will amount to Stage 1 of obtaining sufficient identification. Existing identity and age verification, security and certain payment processing procedures, other checks and electronic monitoring can satisfy the Stage 2 and Stage 3 requirements of EDD, where the results are provided and recorded in a coherent format:

For example:

4.4 Following or during an effective registration process, the licence holder uses an electronic database to verify the age and/or identity of customers. Such databases are usually composed of multiple data sources, e.g. credit checks, driving licence records, utility bill payees, voter list entries etc. Where a customer has more than one entry item ('hit') on such a database or databases (which may include two credit checks or two different utility references), then this is likely to amount to more than one source of identity verification. A customer with more than one source of identity verification has completed EDD.

4.5 In the case of database searches that do not verify (no hits) or fully verify (single hit) customer identity, then a combination of database, bank and credit card processes may also satisfy stages 2 and 3. i.e. bank identity verification may be 'reliable and independent' (stage 2) and S.10I(c) CMLP Act provides for a 'first payment' through a bank or credit card (i.e. an account with a designated credit institution subject to AML requirements) to amount to 'further identity verification' (Stage 3). Such a deposit method, of even a nominal amount, in conjunction with other bank security processes to establish identity, may conclude EDD.

4.6 Where identity cannot be verified (Stage 2) using database or bank/credit card processes then the licence holder is likely to resort to obtaining copies of or extracts from 'official' documents and/or other reliable and independent means of confirming identity, and using a combination of sources to complete Stage 2 and 3.

4.7 Whilst S.10A CMLP requires Stage 2 to be undertaken using 'reliable and independent' source(s), S10I (a) permits Stage 3 to be concluded by the use of 'additional documents, data or information' (See 3.6 above). On a risk sensitive basis, the Commissioner is prepared to accept that reliable, suitably structured and supported, 'Intelligent Registration Systems' that direct customers to accurately and consistently provide personal data, deny obviously inaccurate data, and include automated or manual real time search and alert and follow up procedures where inaccurate or incomplete data is provided, may amount to 'additional data or information' that can meet the requirements of Stage 3 and possibly Stage 2. 'Intelligent Registration Systems' are addressed in more detail in the RTOS.

4.8 The Commissioner interprets the Directive and CMLP Act as meaning that whilst a database(s) with different sources of verification can be used for Stages 2 and 3, a single document cannot. Voice/video contact or e-mail contact can contribute to confirming identity (and age) when used in conjunction with other material (e.g. document checks, other personal information.) but are not sufficient for AML purposes.

4.9 It is not feasible for the Commissioner to detail the various permutations of identity verification a customer may provide or a licence holder may draw on, such matrices are for licence holders to develop in accordance with the markets they operate in. The Commissioner recognises that licence holders will have to use different verification and further verification arrangements in respect of the residents of different states. The Commissioner expects licence holders to use the most reasonable and efficient methods available in each state, proportionate to the scale of the proposed gambling and consistent with the principles of the Directive and CMLP Act.

4.10 The Commissioner is prepared to consider other proposals that may meet these principles as a means of accommodating the range of customers using remote gambling facilities, and consider these on a case by case basis and during formal engagements with licence holders.

4.11 As a risk based procedure that may often take time to complete, the Commissioner proposes that EDD should be initiated in a reasonable and justifiable timeframe soon after the first deposit. It should always be initiated when a customer deposits the Sterling equivalent of E2000, and should be concluded as soon as practicable and before any withdrawals are permitted.

4.12 Where a customer deposits over E2000 and the EDD process has not been concluded the account should be subject to additional and proportionate supervision, consistent with the value and risk profile of the account. An ongoing assessment should be made at an appropriate management level with a view to expediting the pending verification or other intervention. Where the verification process fails or is declined then no further gambling transactions should take place, including transfers or cash out/withdrawals. In such circumstances, deposits should be retained until identification is resolved.

4.13 For the avoidance of doubt, the Commissioner recognises that EDD is likely to be a series of measures applied over a managed but varied timescale, which may be delayed or protracted due to the use of postal services or technical issues, may eventually fail for reasons of innocent non co-operation or absence of data, or may involve suspicious or criminal attempts to deceive. In parallel, where significant sums

are involved, licence holders are in the practice of making direct contact with customers for marketing, responsible gambling or security purposes, and should be equally able to do so for AML purposes.

4.14 Where EDD procedures fail in suspicious circumstances, consideration should also be given to reporting these events to GFIU or the Commissioner in the agreed format.

4.15 The Commissioner believes the arrangements set out above will permit remote licence holders to accept deposits and permit gambling subject to:

- 1) customers providing sufficient information at the point of registration in respect of their name, residential address and date of birth, and
- 2) licence holders verifying that identification using a 'reliable and independent' source, and:
- 3) obtaining further verification of that identification from additional documents, data or information, or
- 4) from supplementary measures, or certified confirmation from a recognised credit or finance institution, of the documents/data supplied, or
- 5) processing the customer's first payment (in or out or both) through a bank account in their gambling account name, and
- 6) the above processes being undertaken reasonably and expeditiously for all depositing customers, in all cases when the customer deposits the equivalent of E2000, completed before any withdrawals are permitted, and in generally within 28 days of making a deposit.

The Commissioner recognises that some customers will clear EDD simply, quickly and by a significant margin, whereas others, for legitimate reasons, will not clear it as simply and therefore enter the system much closer to the operator's risk threshold. Licence holders should have arrangements in place to ensure that complementary measures are applied to the accounts of slow and marginal clearances in order to ensure that EDD is escalated on a risk sensitive basis should the scale of gambling increase to a level that is not commensurate with the risk profile of the customer.

4.16 Customers who engage in high deposit gambling should be known to licence holders' security and compliance staff in parallel to any arrangements for VIP management. In terms of what amounts to high deposit gambling, the Commissioner proposes that any customer who deposits and gambles more than the equivalent of E15000 in any one day should be defined as a high deposit customer subject to additional monitoring (eg a supervisor's review). In a different context than gambling, the Directive and the CMLP Act identify the Sterling equivalent of E15000 as 'high value' in one off transactions. The Commissioner seeks views on the value and practicality of establishing deposits over E15000 in 24 hours as amounting to 'high deposit' gambling triggering further due diligence measures. This would be the maximum trigger point (say for UK and similar economies), with lower triggers established according to the relevant state and/or nature of the gambling. The measures would be escalated proportionate to the value and speed of deposits to the account.

Question 1: Views are sought on the practicality of these measures, in particular, the viability of a 'high deposit' threshold and escalating due diligence checks against increased deposit levels.

Comment: Proportionate measures should be interpreted literally. If an account holder 'edges' past E2000 following a conventional playing pattern, then the measures can be routine and applied in real time. If, on the contrary, a player adopts a sudden, unanticipated, suspicious or unusually high betting pattern, then the measures should reflect the degree of risk reasonably associated with that pattern.

5. Additional considerations for non-remote casino licence holders –

5.1 Land based casinos are increasingly designed and recognised as mainstream leisure venues providing a range of entertainment facilities, including various forms of gambling. Internationally the conventional entry controls have been adjusted to reflect the changing commercial offer and customer demand. The arrangements in Gibraltar are intended to reflect this developing position.

5.2 The Commissioner proposes that casino licence holders will be required to exercise dedicated supervision at the entry points to all gambling facilities to ensure that no under age, vulnerable or otherwise excluded persons access the gambling facilities. This is likely to be a combination of personnel and electronic measures.

5.3 Unless the identity of all casino customers is established and verified on entry, casino licence holders must identify and verify the identity of any casino customer who,

- 1) in any period of 24 hours purchases or exchanges chips in with a value in excess of the UK Sterling equivalent of E2000; or,
- 2) irrespective of the amount gambled, frequents the licence holder's premises over such a period of time and/or frequency that they are recognised as established casino customers and have entered a business relationship with the casino, which the licence holder has reason to believe will have some duration.

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

5.5 Identity is obtaining and recording the name, residential address and date of birth of the customer. Verification is the satisfactory checking of these details, in whole or in part, against an independent source. These two steps amount to the exercise of basic customer due diligence procedures.

5.6 Initial identification can be provided by the customer by any credible means, including a personal declaration. Verification of identity by way of a product from a credit institution (a mainstream bank) in the name of the customer, an electronic address or identity check, or a positive examination of statutory or other credible documents will be sufficient to verify identification and complete basic customer due diligence procedures.

5.7 Other means of verification, such as confirmation by a party known to the licence holder, the production of other credible documents or any other means may also be acceptable if appropriately assessed on a risk sensitive basis and subject to approval and recording by a nominated manager.

5.8 If the licence holder is unable to obtain satisfactorily identification and conclude verification of identity, on a risk sensitive basis, no further gambling transactions may take place, including cash out. In such circumstances,

consideration should also be given to reporting the events to GFIU or the Commissioner.

5.9 The Commissioner believes these arrangements will permit non-remote casino licence holders to allow customers direct access to casino facilities subject to:

- 1) Operators supervising entry to the premises in respect of age and vulnerable customers; and
- 2) Operators having floor systems in place to effectively monitor and respond to customer spend that may reach the threshold in a 24 hour period; and
- 3) Operators having entry and floor systems that can effectively identify and respond to customers who attend the premises to use the casino facilities on a regular basis over an extended period (suggest 4/7 or 8 /28 days)

5.10 Where a casino does not have these arrangements in place then it is required to revert to the provision of identifying and verifying the identity of all customers on or before entry, regardless of the value of gambling chips purchased through means set out above at 5.4 to 5.8.

5.11 The Commissioner does not regard traditional bingo games, or cash played into ‘conventional slot machines’, as the equivalent of purchasing or exchanging gambling chips, and at this stage does not intend to include either category of gambling in calculating the identification/verification threshold. High value (stake or prize) machines based on real or virtual casino games (roulette, poker, blackjack, etc.) such as Touch Bet Roulette or Virtual Event betting terminals (FOBT’s) are not regarded as ‘conventional slot machines’. This arrangement will be kept under review as ‘slot machine’ technology is developed.

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

5.13 In terms of what amounts to high deposit gambling, the Directive and the CMLP Act identify the Sterling equivalent of E15000 as ‘high value’ in one off transactions. The Commissioner seeks views on the value and practicality of establishing this as the 24 hour threshold for ‘high deposit’ gambling, triggering additional due diligence measures, consistent with additional security, VIP contact and facilities or problem gambling monitoring, escalated proportionately to the value of deposits to the account.

Comment: Proportionate measures should be interpreted literally. If an account holder ‘edges’ past E2000 following a conventional playing pattern, then the measures can be routine and applied in real time. If, on the contrary a player adopts a sudden, unanticipated, or unusually high betting pattern, then the measures should reflect the degree of risk reasonably associated with that pattern.

Question 1: For the purposes of determining when a ‘business relationship’ is established and ‘ongoing monitoring’ triggered, ‘element of duration’ is not defined in the Directive or CMLP Act.

The Commissioner takes the view that ‘duration’ means ‘substantive’ as opposed to ‘transitory’. Given the short duration and low value/frequency of many casino visitors, the Commissioner would welcome observations from the industry on whether it is possible to establish through customer or market analysis a value or point in time when a customer should be regarded as moving between these two phases, possibly when a new or very occasional customer and potential ‘churn’ ceases to be so.

The transitory period is likely to be relatively short, and may vary between markets, and a period in excess of 28 days has been suggested. This would preclude the occasional visitor on a short term visit to Gibraltar, unless he reached the E2000 threshold, but would include the ‘weekly’ visitor who continued beyond 28 days.

6. Contact

The various documents referred to in this text will be made available on the GRA, Gambling Division, website.

The Gambling Commissioner
Gibraltar Regulatory Authority
Suite 603
Europort
Gibraltar

T: 00350 20074636
F: 00350 20072166
E-mail: gambling@gra.gi

Proposed time frame:
AML Code second consultation
commences on 24 August 2009 and
concludes on 19 October with a co-
ordination meeting w/c 7 September or later
as required. Responses reviewed in
October. Final draft for circulation and
Ministerial during November for release in
January 2010.

Annex A

This is the proposed format for SAR’s submitted by gambling licence holders. It is based on existing documents used by licence holders and is designed to address the problem of incomplete or over technical reports of events. It would be relevant for suspicious transactions valued over E2000, PEPs or Sanctions List cases of any value.

To: (By hand, not email or fax) Gibraltar Financial Intelligence Unit Suite 832, Europort, Gibraltar. Tel: 20070211/20070295 gibintel@gibraltar.gi	From: Date Submitted:
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PRIVATE AND CONFIDENTIAL

GFIU Ref. DIS:GEN

Suspicious Activity Report: Disclosure under the Crime(Money Laundering and Proceeds Act) 2007.

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

Proposed Code of Practice – Anti Money Laundering and Counter Terrorist Financing Guidance
NOT FOR PUBLICATION

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

Annex B

This is the proposed format for Fraud Reports submitted by gambling licence holders. It is based on a document piloted with one licence holder and is designed to address the problem of high volume, low value incidents that may be replicated across operators or overtime and otherwise escape being identified as repeat sources/beneficiaries of corrupted account details. It would be relevant for occurrences of any value not subject to a SAR and would be sorted and searched by the GRA for any linkages.

Consolidated Fraud Report for2010. Submitted by(operator)..... Contact Person..... email.....

SENDER/SOURCE/COMPROMISEDACCOUNT						RECEIVER/BENEFICIARY						
Ref No	Amount	Place	Card No	User name	IP	IP	Card No	User name	Email prefix @	Place	Known since	Comments
Sequential and date numbering of date of occurrence	Sum involved in rounded Euros	Eg: UK	Last 8 digits of deposit card or account	User name	IP	IP	Last 8 digits of deposit card or account	User name	Prefix only	Eg: UK	Date this or any account opened	Fraud method (chip dumping) and any short observations.
Eg:												
1/12/09/09	125	SWE	2345 6789	flunkyd	81.52.612.1	81.52.211.0	1234 5678	mycash	Bloggs55	UK	10/09/09	Chipdumping, chargebacks to source
2/12/09/09	400	UK	Various	Redspin	192.4 6.22.1	192.4 6.22.1	34567890	Redspin	R_spinner	UK	6/05/08	20 'anoncard' deposits, minimal play, then withdrawal

This form is relatively light touch in terms of its content. It provides for operators to meet their obligation to 'report all occurrences of money laundering' and suspected money laundering in appropriate cases.

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