

Alderney Gambling Control Commission

The Alderney eGambling (Amendment) Regulations, 2013

<i>Made</i>	<i>1st May, 2013</i>
<i>Coming into operation</i>	<i>15th May, 2013</i>
<i>Laid before the States</i>	<i>, 2013</i>

THE ALDERNEY GAMBLING CONTROL COMMISSION, in exercise of the powers conferred on it by sections 7(2), 10, 14(3), 18(1), 20, 22, 24(5) and 27 of the Alderney eGambling Ordinance, 2009^a, hereby makes the following Regulations:-

Amendment to the 2009 Regulations.

1. The 2009 Regulations are amended as follows.
2. In regulation 4 of the 2009 Regulations –

(a) for subparagraph (e) substitute –

"(e) the Category 1 eGambling licensee must appoint a money laundering reporting officer in accordance with Schedule 16, who may, but need not be, the compliance officer;"

^a Alderney Ordinance No. X of 2009, as amended by Alderney Ordinance No. XIII of 2010.

(b) for subparagraph (l) substitute –

"(l) the Category 1 eGambling licensee must have regard to, and meet the requirements of, any relevant guidance, notice, instruction and counter-measure issued by the Commission which is necessary or expedient for the regulation, good conduct and control of eGambling, including, without limitation, any such guidance, notice, instruction or counter-measure which relates to anti-money laundering and counter terrorist financing;"

(c) omit "and" at the end of subparagraph (m),

(d) for the full-stop at the end of the regulation, substitute "; and", and

(e) immediately after subparagraph (n) insert –

"(o) the Category 1 eGambling licensee must at all times comply with the money laundering and terrorist financing provisions under Schedule 16 and the associated regulations to the extent that such provisions are therein stated to apply to the licensee."

3. In regulation 6 of the 2009 Regulations -

(a) for subparagraph (e) substitute –

"(e) the Category 2 eGambling licensee must appoint a money laundering reporting officer in accordance with Schedule 16, who may, but need not be, the compliance officer;"

(b) for subparagraph (l) substitute –

"(l) the Category 2 eGambling licensee must have regard to, and meet the requirements of, any relevant guidance, notice, instruction and counter-measure issued by the Commission which is necessary or expedient for the regulation, good conduct and control of eGambling, including, without limitation, any such guidance, notice, instruction or counter-measure which relates to anti-money laundering and counter terrorist financing;"

(c) omit "and" at the end of subparagraph (n),

(d) for the full-stop at the end of the regulation, substitute
"; and", and

(e) immediately after subparagraph (o) insert –

"(p) the Category 2 eGambling licensee must at all times comply with the money laundering and

terrorist financing provisions under Schedule 16 and the associated regulations to the extent that such provisions are therein stated to apply to the licensee."

4. In regulation 8 of the 2009 Regulations –

- (a) omit "and" at the end of paragraph (1)(j),
- (b) for the full-stop at the end of paragraph (1), substitute "; and",
- (c) immediately after paragraph (1)(k) insert –
 - "(l) the Temporary eGambling licensee must appoint an executive officer to fulfil the duties of compliance officer, who will report to the Commission on all compliance matters;
 - (m) the Temporary eGambling licensee must appoint a money laundering reporting officer in accordance with Schedule 16, who may, but need not be, the compliance officer;
 - (n) the Temporary eGambling licensee must within 48 hours of any serious incident negatively affecting the operation of its eGambling licence notify the Commission in writing of the details and consequences of the incident and of the remedial steps, if any, taken;

- (o) the Temporary eGambling licensee must have regard to, and meet the requirements of, any relevant guidance, notice, instruction and counter-measure issued by the Commission which is necessary or expedient for the regulation, good conduct and control of eGambling, including, without limitation, any such guidance, notice, instruction or counter-measure which relates to anti-money laundering and counter terrorist financing; and
- (p) the Temporary eGambling licensee must at all times comply with the money laundering and terrorist financing provisions under Schedule 16 and the associated regulations to the extent that such provisions apply to a Temporary eGambling licensee.", and

(d) immediately after paragraph (1) insert –

"(1A) A Temporary eGambling licensee is also subject to the conditions which apply to a Category 1 eGambling licensee under regulation 4(a) and/or a Category 2 eGambling licensee under regulation 6(m), as the case may be, unless a contrary intention is expressed or required by the circumstances or context."

5. In regulation 60 of the 2009 Regulations -

(a) for subparagraph (d) substitute –

"(d) the foreign gambling associate certificate holder must appoint a money laundering reporting officer in accordance with Schedule 16, who may, but need not be, the compliance officer;"

(b) for subparagraph (j) substitute –

"(j) the foreign gambling associate certificate holder must have regard to, and meet the requirements of, any relevant guidance, notice, instruction and counter-measure issued by the Commission which is necessary or expedient for the regulation, good conduct and control of eGambling, including, without limitation, any such guidance, notice, instruction or counter-measure which relates to anti-money laundering and counter terrorist financing;"

(c) omit "and" at the end of subparagraph (k),

(d) for the full-stop at the end of the regulation, substitute
"; and", and

(e) immediately after subparagraph (l) insert –

"(m) the foreign gambling associate certificate holder must at all times comply with the money laundering and terrorist financing provisions under Schedule 16 and the associated regulations to the extent that such provisions are therein stated to apply to the certificate holder."

6. In regulation 175 of the 2009 Regulations -

(a) in paragraph (1)(a) -

(i) after "administrative" insert ", operational", and

(ii) after "accounting" insert "policies and",

(b) in paragraph (2) -

(i) after "information about" insert "and describe, having regard to its business risk assessment,",

(ii) in subparagraph (g), after "registering" insert ", identifying and verifying",

(iii) omit "and" at the end of subparagraph (h),

(iv) in subparagraph (i), for the full stop substitute "; and", and

(v) immediately after subparagraph (i), insert –

"(j) the policies, procedures and controls as are appropriate and effective for the purposes of forestalling, preventing and detecting money laundering and terrorist financing, and necessary in order to comply with the money laundering and terrorist financing provisions under Schedule 16 and the associated regulations.", and

(c) for paragraphs (3), (4) and (5) substitute -

"(3) Without prejudice to the generality of the foregoing, the policies, procedures and controls referred to in paragraph 2(j) shall include the eGambling licensee's or foreign gambling associate certificate holder's –

- (a) policy for reviewing at appropriate intervals its compliance with the money laundering and terrorist financing provisions;
- (b) arrangements to manage compliance;
- (c) screening practices when recruiting relevant employees;
- (d) ongoing employee training programme;
- (e) audit function to test its systems;

- (f) measures taken to keep abreast of and guard against the use of technological developments and new methodologies in money laundering and terrorist financing schemes;
- (g) customer identification and verification systems (in relation to a Category 1 eGambling licensee only); and
- (h) procedures relating to ongoing customer due diligence and monitoring of the customer relationship (in relation to a Category 1 eGambling licensee only).".

7. In regulation 188 of the 2009 Regulations delete paragraph (2).

8. In regulation 227(4) of the 2009 Regulations –

- (a) for "The registration" substitute "Subject to paragraph 4 of Schedule 16, the registration",
- (b) omit "and" at the end of subparagraph (c),
- (c) in subparagraph (d)(ii) for the comma substitute ";and", and
- (d) immediately after subparagraph (d), insert –
 - "(e) the customer due diligence measures (as defined in Schedule 16) have been

undertaken,".

9. In regulation 228 of the 2009 Regulations delete paragraph (3).

10. For regulation 230 of the 2009 Regulations substitute –

"**230.** (1) The funds with which a customer pays for gambling transactions with a Category 1 eGambling licensee may be deposited –

(a) directly with the Category 1 eGambling licensee, or

(b) with an associate of the Category 1 eGambling licensee,

in the manner set out in the Category 1 eGambling licensee's approved internal control system and in accordance with the money laundering and terrorist financing provisions set out in Schedule 16.

(2) For the purposes of paragraph (1), in no circumstances may cash be accepted as funds from a customer by, or on behalf of, the Category 1 eGambling licensee."

11. In regulation 233 of the 2009 Regulations, for paragraph (2) substitute –

"(2) For the purposes of section 24(5) of the Ordinance –

- (a) each requirement set out in Schedule 16, and
- (b) each requirement under regulations 175(2)(j), 175(3), 226, 227, 228, 229 and 230,

is specified as a "money laundering offence".

12. In regulation 265(1) of the 2009 Regulations –

- (a) after the definition of "**appropriate services**" insert –

"**associated regulations**" means regulations 175(2)(j), 175(3), 226, 227, 228, 229, 230, 233 and any other provision in these Regulations associated with the money laundering and terrorist financing requirements under Schedule 16;"

- (b) in the definition of "**business risk assessment**" after "customers" insert ", products", and

- (c) in the definition of "**relevant employee**" –

- (i) delete the word "means",

- (ii) for subparagraph (c) substitute –

"(c) employees whose duties relate to eGambling,"

and

- (iii) after "key individual certificate" insert "or are directly employed by the eGambling licensee or foreign gambling associate certificate holder".

13. For paragraph 1 of Schedule 16 to the 2009 Regulations substitute –

"1. (1) An eGambling licensee or, as the case may be, a foreign gambling associate certificate holder, shall carry out a suitable and sufficient business risk assessment before submitting its application for approval of its internal control system in accordance with regulation 176.

(2) An eGambling licensee or, as the case may be, a foreign gambling associate certificate holder, shall regularly review its business risk assessment so as to keep it up to date and where, as a result of that review, any change to the business risk assessment is required, it shall seek approval to make any corresponding change to its approved internal control system in accordance with regulations 191 and 192."

14. Immediately after paragraph 5 of Schedule 16 to the 2009 Regulations, insert –

"Customer Identification and Verification Systems.5A. The Category 1 eGambling licensee's customer identification and verification systems shall –

- (a) incorporate robust and effective client identification methods and measures in order to

adequately manage and mitigate the specific risks of non face-to-face customer relationships or transactions inherent in the eGambling industry;

- (b) supplement identification verification software with additional forms of customer due diligence and identity verification procedures in circumstances which are appropriate and effective for the purposes of managing and mitigating the risks referred to in item (a) and forestalling, preventing and detecting money laundering and terrorist financing, including, without limitation, where a Category 1 eGambling licensee is required to carry out enhanced customer due diligence under this Schedule; and
- (c) refer only to identification verification software and additional or alternative identification methods that have been approved by the Commission."

15. In paragraph 6(4) of Schedule 16 to the 2009 Regulations for "sub-paragraph (2)" substitute "sub-paragraphs (1A) and (2)".

16. For paragraph 7(1)(a) of Schedule 16 to the 2009 Regulations substitute –

- "(a) appoint an executive officer as the money

laundering reporting officer ("**MLRO**") and provide the name and title of that officer to the Commission and the Financial Intelligence Service as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person' s appointment;".

17. In paragraph 8(1)(b)(vii) of Schedule 16 to the 2009 Regulations, after "of the" insert "products and".

18. In paragraph 9 of Schedule 16 to the 2009 Regulations –

- (a) in subparagraph (1), after "the Commission", insert ", the Financial Intelligence Service, or an officer of police",
- (b) in subparagraph (3)(a), for "paragraphs 6(1)(c) and 6(1A)" substitute "paragraphs 6(1)(c), 6(1A) and/or 6(2)",
- (c) in subparagraph (3)(d) –
 - (i) for "regulation 188(2)" substitute "paragraphs 1(2) and 9A(1)(e)", and
 - (ii) for "that regulation" substitute "those provisions", and
- (d) in subparagraph (4)(b)(i), after "customer due

diligence", insert "information".

19. Immediately after paragraph 9 of Schedule 16 to the 2009 Regulations insert the following paragraph –

"Ensuring compliance, corporate responsibility and related requirements.

9A. (1) An eGambling licensee or foreign gambling associate certificate holder must, in addition to complying with the preceding requirements in this Schedule,

- (a) establish and maintain such other internal policies, procedures and controls as are appropriate and effective for the purposes of forestalling, preventing and detecting money laundering and terrorist financing;
- (b) take appropriate measures to keep abreast of and guard against the use of technological developments and new methodologies in money laundering and terrorist financing schemes;
- (c) establish and maintain policies and procedures to address any specific risks associated with non face to face customer relationships or transactions, in particular before registering a customer in accordance with regulation 227, and when performing its ongoing monitoring of any customer relationship in accordance with paragraph 6;

- (d) establish and maintain an effective policy, for which responsibility must be taken by the board of directors, for the review of its compliance with the requirements of this Schedule and the associated regulations, and such policy shall include –
 - (i) provision as to the extent and frequency of such reviews; and
 - (ii) the requirement to maintain an adequately resourced and independent audit function to test compliance with such requirements;

- (e) ensure that a review of its compliance with this Schedule and the associated regulations is discussed and minuted at a meeting of its board of directors at appropriate intervals, and in considering what is an appropriate interval, the eGambling licensee or foreign gambling associate certificate holder shall have regard to the risk taking into account —
 - (i) the size, nature and complexity of the eGambling it conducts;

- (ii) its registered customers (in relation to a Category 1 eGambling licensee only), products and services; and
 - (iii) the ways in which it provides those products and services; and
- (f) must have regard to, and meet the requirements of any relevant guidance, notice, instruction and counter-measure issued by the Commission which relates to anti-money laundering and counter terrorist financing, including, without limitation, any such guidance, notice, instruction or counter-measure (whether described as “ Business from Sensitive Sources Notices” or otherwise) designed to alert and advise it of weaknesses in the anti-money laundering and counter terrorist financing systems in other countries or territories where the eGambling licensee or foreign gambling associate certificate holder may operate.".

20. In paragraph 11 of Schedule 16 to the 2009 Regulations –

- (a) for each reference to "Part" substitute "Schedule", and
- (b) in subparagraph (2)(a) for "4(b), 4(d), 4(e), 4(f) and 4(l) and the regulations in Chapter V of Part V associated therewith" substitute "4(d), 4(f), 6(d), 6(f),

8(d), 8(l), 60(c), 60(e) and the associated regulations".

21. In the headings of Schedules 20 and 22, after "1" insert "eGAMBLING".

Interpretation.

22. (1) In these Regulations –

"**relevant enactment**" means the Gambling (Alderney) Law, 1999^b, the Alderney eGambling Ordinance, 2009 and the 2009 Regulations, and

"**the 2009 Regulations**" means the Alderney eGambling Regulations, 2009^c.

(2) Words defined in a relevant enactment have the same meaning when used in these Regulations, unless the context requires otherwise or the contrary intention is expressed.

(3) The Interpretation (Guernsey) Law, 1948^d applies to the interpretation of these Regulations as it applies to the interpretation of an enactment in force in the Island of Guernsey.

^b Ordres en Conseil Vol. XXXIX, p. 374, Vol. XL, p.15, Vol. XLI, p.769 and Alderney Ordinance No. XVI of 2003 and VII of 2006.

^c Alderney Statutory Instrument 1/2010, as amended by Alderney Statutory Instrument 5/2010, 6/2010, 3/2011 and 4/2012.

^d Ordres en Conseil Vol. XIII, p. 355.

(4) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation and commencement.

23. These Regulations may be cited as the Alderney eGambling (Amendment) Regulations, 2013 and shall come into force on the 15th May 2013.

Dated this 1st day of May, 2013.

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ISABEL PICORNELL

Member of the Alderney Gambling Control Commission

for and on behalf of the Commission.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made by the Alderney Gambling Control Commission under the Alderney eGambling Ordinance, 2009 and amend the Alderney eGambling Regulations, 2009, as amended ("**2009 Regulations**").

The principal purpose of these Amendment Regulations is to clarify and further strengthen existing, as well as introduce a small number of additional, anti money laundering and counter terrorist financing ("**AML/CFT**") requirements, and centralise and consolidate the majority of the AML/CFT regulatory framework in one location within the 2009 Regulations (i.e. Schedule 16) for ease of reference.

Regulations 2 to 5 make amendments to regulations 4, 6, 8 and 60 of the 2009 Regulations which relate to the general conditions attaching to eGambling licenses and foreign gambling associate certificates.

Regulation 6 amends regulation 175 of the 2009 Regulations in order to clarify the obligations relating to an eGambling licensee's or a foreign gambling associate certificate holder's internal control system.

Regulation 7 deletes regulation 188(2) of the 2009 Regulations in light of the amendments to Schedule 16 (which incorporate the obligations which were previously set out in regulation 188(2)).

Regulation 8 amends regulation 227(4) of the 2009 Regulations to clarify this regulation's existing relationship with paragraphs 2 and 4 of Schedule 16 to the 2009 Regulations.

Regulations 9 and 11 amend regulations 228 and 233 of the 2009 Regulations in order to specify money laundering offences for the purposes of section 24(5) of the Alderney eGambling Ordinance, 2009.

Regulation 10 amends regulation 230 in order to clarify that cash may not be accepted as funds for the purposes of that regulation.

Regulation 12 amends regulation 265(1) of the 2009 Regulations. A definition of "associated regulations" is added and the definition of "relevant employee" set out in is amended so that it includes any employees whose duties relate to eGambling whether or not they are directly employed by the eGambling licensee or foreign gambling associate certificate holder. Regulation 12 also amends the definition of "business risk assessment" so as to include products as well as services within the

ambit of any such assessment.

Regulation 13 amends paragraph 1 of Schedule 16 to the 2009 Regulations so that it includes the obligation to review business risk assessments (which was previously set out in regulation 188(2)).

Regulation 14 introduces a new paragraph 5A in Schedule 16 to the 2009 Regulations. Paragraph 5A sets out the requirements relating to a Category 1 eGambling licensee's customer identification and verification systems.

Regulation 15 amends paragraph 6(4) of Schedule 16 to the 2009 Regulations so as to further clarify the requirements regarding the communication of findings by a Category 2 eGambling licensee or foreign gambling associate certificate holder to the MLRO of a Category 1 eGambling licensee.

Regulation 16 amends paragraph 7(1)(a) of Schedule 16 to the 2009 Regulations so as to include the obligation to appoint a money laundering reporting officer (which is also a pre-existing licence condition).

Regulation 17 amends paragraph 8(1)(b)(vii) by clarifying that employees should receive comprehensive ongoing training in relation to the principal vulnerabilities of the products as well as the services offered by the eGambling licensee or the associate certificate holder.

Regulation 18 amends paragraph 9 of Schedule 16 to the 2009 Regulations. Paragraph 9(1) is amended so that the Financial Intelligence Service or an officer of police may, in addition to the Alderney Gambling Control Commission, extend the document retention period. Paragraph 9(3) is amended to clarify that an eGambling licensee or associate certificate holder must keep records of any findings which relate to the background and purpose of certain transactions set out in the 2009 Regulations.

Regulation 19 introduces a new paragraph 9A to Schedule 16 to the 2009 Regulations. Paragraph 9A sets out numerous anti money laundering and counter terrorist financing requirements which focus upon ensuring compliance, corporate responsibility and related requirements (the majority of which were previously set out in regulations 175 and 188(2)).

Regulations 20 and 21 correct some minor typographical errors in paragraph 11 of Schedule 16, and Schedules 20 and 22, to the 2009 Regulations. In addition regulation 20 amends paragraph 11(2) to clarify those provisions which an associate, foreign branch or subsidiary in a country or territory outside of Alderney must comply with.

These Regulations come into force on the 15th day of May, 2013.