

# **The Alderney eGambling (Amendment) Ordinance, 2020**

THE STATES OF ALDERNEY, in pursuance of their Resolution of the 9<sup>th</sup> September 2020 and in exercise of the powers conferred on them by sections 6 and 16 of the Gambling (Alderney) Law, 1999<sup>a</sup>, hereby order:-

## **Amendment of the eGambling Ordinance.**

1. (1) The Alderney eGambling Ordinance, 2009<sup>b</sup> is amended as follows.

(2) Immediately after section 22 (General compliance matters) insert –

### **"Customers, money laundering and terrorist financing.**

22A. Schedule 4 (Money laundering and terrorist financing) has effect".

(3) Immediately after Schedule 3, insert the Schedule to this Ordinance as Schedule 4.

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<sup>a</sup> Ordres en Conseil Vol. XXXIX, p. 374; amended by Order in Council No. I of 2000; No. XXVII of 2001; Nos. IX and X of 2018; Ordinance No. XVI of 2003; No. VII of 2006; and No. I of 2018.

<sup>b</sup> Ordinance No. X of 2009; amended by Ordinance No. XIII of 2010; No. IX of 2013; No. XV of 2014; No. I of 2015; and Nos. I and XI of 2018.

**Amendment of the eGambling Regulations.**

2. (1) The Alderney eGambling Regulations, 2009<sup>c</sup> are amended as follows.

(2) In regulations 4, 8, 60, 175, 228, 230 and 233, wherever it appears for "Schedule 16" substitute "Schedule 4 to the Ordinance".

(3) In regulation 6(e) and (p), for "Schedule 16" substitute "Schedule 4 to the Ordinance", and in regulation 6(m)(ii) for "paragraph 11(2) of Schedule 16" substitute "paragraph 14(2) of Schedule 4 to the Ordinance".

(4) In the Chapter heading after Regulation 58, for -

"CHAPTER III  
CATEGORY 1 ASSOCIATE CERTIFICATES",

substitute –

"CHAPTER IIA  
CATEGORY 1 ASSOCIATE CERTIFICATES".

(5) In regulation 127(1)(d), for "eGambling licensee's or a Category 2 associate certificate holder's" substitute "eGambling licensee's, Category 1 associate certificate holder's or a Category 2 associate certificate holder's".

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<sup>c</sup> A.S.I. No. 1 of 2010; as amended by Ordinance No. III of 2017; A.S.I. No 5 of 2010; A.S.I. No 6 of 2010; A.S.I. No. 3 of 2011; A.S.I. No. 4 of 2012; A.S.I. Nos. 2, 3 and 5 of 2013;; A.S.I. No. 4 of 2014; A.S.I. Nos. 1 and 3 of 2015; and A.S.I. No. II of 2018.

(6) In regulation 176(1), for "eGambling licence or Category 2 associate certificate" substitute "eGambling licence, Category 1 associate certificate or Category 2 associate certificate".

(7) In regulation 188(1), for "eGambling licence or Category 2 associate certificate" substitute "eGambling licence, Category 1 associate certificate or Category 2 associate certificate".

(8) In regulation 192(3), for "eGambling licensee or Category 2 associate certificate holder" substitute "eGambling licensee, Category 1 associate certificate holder or Category 2 associate certificate holder".

(9) In regulation 200(2), for "eGambling licence or Category 2 associate certificate" substitute "eGambling licence, Category 1 associate certificate or Category 2 associate certificate".

(10) In regulation 210(3), for "licensee's or Category 2 associate certificate holder's" substitute "licensee's, Category 1 or Category 2 associate certificate holder's".

(11) In regulation 227(4), for "paragraph 4 of Schedule 16" substitute "paragraph 5 of Schedule 4 to the Ordinance".

(12) In regulation 265(1), in the definition of "associated regulations", for "Schedule 16" substitute "Schedule 4 to the Ordinance", delete the definition of "beneficial owner", and immediately after regulation 265(1) insert –

"(1A) Subject to paragraphs (1B) and (1C), in this Schedule

"**beneficial owner**", in relation to a legal person, has the meaning given in the Beneficial Ownership (Definition) (Alderney) Regulations, 2017 (or any successor regulations made under section 25 of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017) for the purposes of that Law; and, in relation to a trust or other legal arrangement, includes –

- (a) any beneficiary who is a natural person, whether his interest under the trust is vested, contingent or discretionary,
- (b) any other natural person who benefits from that trust or other legal arrangement, and
- (c) any natural person not within (a) or (b) above who exercises ultimate effective control over the trust or other legal arrangement.

(1B) In circumstances where a legal person is ultimately controlled by a trust, "**beneficial owner**" in relation to that legal person includes any person falling within paragraph (1A)(a), (b) or (c) in relation to that trust.

(1C) In circumstances where a legal person is ultimately controlled by a legal arrangement other than a trust, "**beneficial owner**" in relation to that legal person includes any person falling within paragraph (1A)(b) or (c) in relation to that legal arrangement."

(13) Schedule 16 (Money laundering and terrorist financing provisions) is revoked.

**Citation and commencement.**

3. This Ordinance may be cited as the Alderney eGambling (Amendment) Ordinance, 2020, and shall come into force on being made.

SCHEDULE

Section 1

"SCHEDULE 4

MONEY LAUNDERING AND TERRORIST FINANCING

Section 22A

PART 1

RISK ASSESSMENT

**General duty to understand, and assess and mitigate, risks.**

1. (1) In this Schedule, a "**relevant person**" means an eGambling licensee, a Category 1 associate certificate holder or a Category 2 associate certificate holder, as the case may be.

(2) A relevant person must –

(a) understand its money laundering and terrorist financing risks, and

(b) have in place effective policies, procedures and controls to -

(i) identify,

(ii) assess,

(iii) mitigate,

(iv) manage, and

(v) review and monitor,

those risks in a way that is consistent with the requirements of this Schedule, the relevant enactments, the Regulations, guidance published by the Commission, and the NRA; and this Schedule shall be construed consistently with this duty.

**Duty to carry out business risk assessments.**

2. (1) Without prejudice to the generality of the duty under paragraph 1, a relevant person must –

- (a) carry out and document a suitable and sufficient money laundering business risk assessment and a suitable and sufficient terrorist financing business risk assessment, which are specific to the relevant person, before submitting its application for approval of its internal control system in accordance with regulation 176, and
- (b) regularly review its business risk assessments so as to keep them up to date and, where, as a result of that review, changes to the business risk assessments are required, it must make those changes and seek approval to make any corresponding changes to its approved internal control system in accordance with regulations 191 and 192.

(2) Without prejudice to the generality of the duty under

paragraph 1, and to the duties set out in subparagraph (1), when this Schedule comes into force a relevant person which has already commenced operation under its eGambling licence, Category 1 associate certificate or Category 2 associate certificate (as the case may be) must carry out and document a suitable and sufficient money laundering business risk assessment and a suitable and sufficient terrorist financing business risk assessment, which are specific to the relevant person, as soon as reasonably practicable.

(3) In carrying out its business risk assessments under subparagraphs (1) or (2) the business must consider all relevant risk factors before determining –

- (a) the level of overall risk of the business, and
- (b) the appropriate level and type of mitigation to be applied.

(4) The business risk assessments must be appropriate to the nature and size of the business, and be in respect of –

- (a) customers, and the beneficial owners of customers,
- (b) countries and geographic areas, and
- (c) products, services, transactions and delivery channels (as appropriate), and in particular in respect of the money laundering or terrorist financing risks that may arise in relation to –

- (i) the development of new products and new business practices, before such products are made available and such practices adopted, and
- (ii) the use of new or developing technologies for both new and pre-existing products, before such technologies are used and adopted.

(5) A relevant person must -

- (a) prior to the establishment of a business relationship, undertake a risk assessment of that proposed business relationship,
- (b) regularly review any risk assessment carried out under subparagraph (a) so as to keep it up to date and, where changes to that risk assessment are required, it must make those changes, and
- (c) ensure that its policies, procedures and controls on forestalling, preventing and detecting money laundering and terrorist financing are appropriate and effective, having regard to the assessed risk.

(6) When undertaking a risk assessment under sub-paragraph (5)(a) or reviewing a risk assessment under sub-paragraph (5)(b), a relevant person must –

- (a) take into account risk variables relating to the type or

types of customer, country or geographic area, and product, service, transaction or delivery channel that are relevant to the business relationship in question, and

- (b) understand that such risk variables, and any other risk variables, either singly or in combination, may increase or decrease the potential risk posed by the business relationship.

(7) A relevant person must –

- (a) have in place policies, procedures and controls approved by its board to enable it to manage and mitigate –

- (i) risks identified in the business risk assessments and in risk assessments undertaken under subparagraph 5(a), and

- (ii) risks relevant, or potentially relevant, to the business identified in the NRA (which risks must be incorporated into the business risk assessments),

- (b) regularly review and monitor the implementation of those policies, controls and procedures, and enhance them if such enhancement is necessary or desirable for the proper management and mitigation of those risks, and

- (c) take enhanced measures to manage and mitigate higher risks identified in the business risk assessments and in risk assessments undertaken under sub-paragraph 5(a).
- (8) A relevant person must have regard to -
- (a) any relevant notice, instruction or guidance issued by the Commission,
  - (b) the NRA,

in determining, for the purposes of this Schedule, what constitutes appropriate measures to manage and mitigate risks.

## PART II CUSTOMER DUE DILIGENCE ETC.

### **Customer due diligence.**

3. (1) A Category 1 eGambling licensee or Category 1 associate certificate holder shall ensure that the steps in sub-paragraph (2) are carried out –
- (a) subject to paragraph 5, before registering a customer in accordance with regulation 227,
  - (b) immediately after a registered customer, in accordance with regulation 230, makes a deposit –
    - (i) of €3,000 or more, or

- (ii) that results in the total value of his deposits in the course of any period of 24 hours reaching or exceeding €3,000,
  - (c) when it knows or suspects or has reasonable grounds for knowing or suspecting -
    - (i) that, notwithstanding any exemptions or thresholds pursuant to this Schedule, any party to a customer relationship is engaged in money laundering or terrorist financing, or
    - (ii) that it is carrying out a transaction on behalf of a person, including a beneficial owner or underlying principal, who is engaged in money laundering or terrorist financing, and
  - (d) when it has doubts about the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification of a registered customer.
- (2) The steps referred to in sub-paragraph (1) are that -
- (a) the customer shall be identified and his identity verified using identification data,
  - (b) any person purporting to act on behalf of the customer

shall be identified and his identity and his authority to so act shall be verified,

- (c) the beneficial owner and underlying principal shall be identified and reasonable measures shall be taken, on a risk sensitive basis, to verify such identity using identification data and such measures shall include, in the case of a legal person or legal arrangement, measures to understand the ownership and control structure of the customer,
- (d) a determination shall be made as to whether the customer is acting on behalf of another person and, if the customer is so acting, reasonable measures shall be taken to obtain sufficient identification data to identify and verify the identity of that other person,
- (e) information shall be obtained and understood on the purpose and intended nature of each customer relationship, and
- (f) a determination shall be made as to whether the customer, beneficial owner and any underlying principal is a person who is or has been entrusted with a prominent function by an international organisation or a politically exposed person, and, if he is a politically exposed person, whether he is a foreign politically exposed person or a domestic politically exposed person.

(3) In respect of the beneficial owner, the identification data referred to at sub-paragraph (2)(a) shall include (without limitation) identification data verifying –

- (a) in the case of a legal person, the identity of any natural persons who exercise control of that person through a controlling ownership interest or by other means, or where no such natural persons have been identified, the identity of the natural person who is the senior managing official, and
- (b) in the case of a trust, the identity of the settlor, the trustees, the beneficiaries, and any natural persons otherwise exercising control of the trust, and
- (c) in the case of a legal arrangement other than a trust, the identity of persons in positions equivalent to those described in subparagraph (b).

(4) A Category 1 eGambling licensee or Category 1 associate certificate holder is not required to identify any shareholder or beneficial owner of –

- (a) a customer, and
- (b) a person which ultimately controls a customer,

that is –

- (i) a company listed on a recognised stock exchange prescribed by regulations made by the Committee for the purposes of this paragraph and subject to disclosure requirements which enable its beneficial owners to be identified, or
- (ii) a majority owned subsidiary of such a company.

(5) Where a Category 1 eGambling licensee or Category 1 associate certificate holder -

- (a) forms a suspicion of money laundering or terrorist financing by a customer or other person, and
- (b) reasonably believes that carrying out the steps in subparagraph (2), paragraph 4(2) or paragraph 9 would tip off that customer or person,

it shall not carry out those steps, but shall instead make a disclosure pursuant to Part I of the Disclosure Law, or section 15 or 15A, or section 12 (as appropriate) of the Terrorism Law.

(6) A Category 1 eGambling licensee or Category 1 associate certificate holder must have regard to any relevant instructions, notices or guidance issued by the Commission in determining, for the purposes of sub-paragraphs (2)(c) and (2)(d), and paragraph 4(2)(c), what constitutes taking reasonable measures.

**Enhanced customer due diligence.**

4. (1) Where a Category 1 eGambling licensee or Category 1 associate

certificate holder is required to carry out customer due diligence in accordance with paragraph 3, it shall also carry out enhanced customer due diligence in relation to higher risk customer relationships, including, without limitation, the following customer relationships -

- (a) a relationship in which the customer or any beneficial owner or underlying principal is a foreign politically exposed person,
- (b) a relationship where the customer is established or situated in a country or territory -
  - (i) that provides funding or support for terrorist activities, or does not apply (or insufficiently applies) the FATF Recommendations, or
  - (ii) is a country otherwise identified by the FATF Recommendations as a country for which such measures are appropriate,
- (c) a relationship which has been assessed as a high risk relationship pursuant to regulation 227(2) or 229, and
- (d) a relationship which the Category 1 eGambling licensee or Category 1 associate certificate holder considers to be a high risk relationship, taking into account any notices or warnings issued from time to time by the Commission pursuant to regulation 4(1) and having regard to the NRA.

(2) In sub-paragraph (1), "**enhanced customer due diligence**" means-

- (a) obtaining senior management approval for establishing a customer relationship,
- (b) obtaining senior management approval for, in the case of an existing customer relationship with a foreign politically exposed person, continuing that relationship,
- (c) taking reasonable measures to establish and understand the source of any funds and of the wealth of –
  - (A) the customer, and
  - (B) the beneficial owner, where the beneficial owner is a politically exposed person,
- (d) carrying out more frequent and more extensive ongoing monitoring, including increasing the number and timing of controls applied and selecting patterns of activity or transactions that need further examination, in accordance with paragraph 9, and
- (e) taking one or more of the following steps as would be appropriate to the particular customer relationship –

- (i) obtaining additional identification data such as the customer's occupation, the volume of the customer's assets, and publicly available information about the customer,
- (ii) verifying additional aspects of the customer's identity, and
- (iii) obtaining additional information to understand the purpose and intended nature of each customer relationship.

(3) In paragraph 3(2)(f) and sub-paragraph (1), "**politically exposed person**" means –

- (a) a natural person who has, or has had at any time, a prominent public function, or who has been elected or appointed to such a function, including, without limitation -
  - (i) heads of state or heads of government,
  - (ii) senior politicians and other important officials of political parties,
  - (iii) senior government officials,
  - (iv) senior members of the judiciary,

(v) senior military officers, and

(vi) senior executives of state owned body corporates,

(and such a person shall be referred to as a "**foreign politically exposed person**" unless he holds or has held or has been elected or appointed to the prominent public function in question in respect of the Bailiwick, in which case he shall be referred to as a "**domestic politically exposed person**"),

(b) a person who is, or who has been at any time, entrusted with a prominent function by an international organisation,

(c) an immediate family member of such a person including, without limitation, a spouse, partner, parent, child, sibling, parent-in-law or grandchild of such a person and in this subparagraph "**partner**" means a person who is considered by the law of the country or territory in which the relevant public function is held as being equivalent to a spouse, or

(d) a close associate of a person referred to in (a) or (b), including, without limitation -

(i) a person who is widely known to maintain a close business relationship with such a person, or

- (ii) a person who is in a position to conduct substantial financial transactions on behalf of such a person.

(4) A person is not a domestic politically exposed person for the purposes of this Schedule if he was not a politically exposed person within the meaning of Schedule 16 to the Alderney eGambling Regulations, 2009 when that Schedule was in force, and ceased to be entrusted with a prominent public function in respect of the Bailiwick before the coming into force of this Schedule.

(5) A Category 1 eGambling licensee or Category 1 associate certificate holder may treat a domestic politically exposed person as not being a politically exposed person five years after the person ceased to be entrusted with a public function if the senior management of the licensee has documented that the business is satisfied that –

- (a) it understands the source of the funds within the business relationship, and
- (b) there is no reason to continue to treat the person as a politically exposed person.

(6) Subject to subparagraph (9), a Category 1 eGambling licensee or Category 1 associate certificate holder may treat a person falling within subparagraph (3)(b) as not being a politically exposed person seven years after the person ceased to be entrusted with a prominent function by an international organisation if the senior management of the licensee or certificate holder has documented that the business is satisfied that –

- (a) it understands the source of the funds within the business relationship, and
- (b) there is no reason to continue to treat the person as a politically exposed person.

(7) Subject to subparagraph (9), a Category 1 eGambling licensee or Category 1 associate certificate holder may treat any other politically exposed person as not being a politically exposed person for the purposes of this Schedule seven years after the person ceased to be entrusted with a public function if the senior management of the licensee or certificate holder has documented that the business is satisfied that–

- (a) it has established and understands the source of the person's wealth, and that of the funds within the business relationship, and
- (b) there is no reason to continue to treat the person as a politically exposed person.

(8) Subparagraphs (5) to (7) apply in respect of persons falling within subparagraphs (3)(c) and (d) (immediate family members and close associates) in respect of the person in question as they do in respect of that person.

(9) Subparagraphs (6) and (7) do not apply in respect of a head of state or a head of government, a head of an international organisation, a person with the power to direct the spending of significant sums, or persons falling within subparagraphs (3)(c) and (d) in respect of such persons.

**Timing of identification and verification.**

5. Verification of the identity of the customer and of any beneficial owners and underlying principals may be completed following the registration of the customer, provided that to do so would be consistent with the business risk assessment of the business relationship conducted pursuant to paragraph 2(5)(a) and-

- (a) the verification is completed as soon as reasonably practicable thereafter,
- (b) the need to do so is essential not to interrupt the normal conduct of the Category 1 eGambling licensee's or Category 1 associate certificate holder's business, and
- (c) appropriate and effective policies, procedures and controls are set out in the Category 1 eGambling licensee's or Category 1 associate certificate holder's approved internal control system which operate so as to manage money laundering and terrorist financing risks, including, without limitation, a set of measures, such as a limitation of the number, types and/or amount of transactions that can be performed or the monitoring of large or complex transactions being carried outside the expected norms for that customer relationship.

**Non-compliance with customer due diligence measures, etc.**

6. Where a Category 1 eGambling licensee or Category 1 associate certificate holder is unable to comply with paragraph 3 and, where applicable,

paragraph 4, or paragraph 9(1)(a) to (c), it shall–

- (a) in the case of a person wishing to become a registered customer, not register that person as a customer,
- (b) in the case of an existing registered customer, terminate that customer relationship, and
- (c) consider whether making a disclosure is required pursuant to Part I of the Disclosure Law or or section 15 or 15A, or section 12 (as appropriate) of the Terrorism Law.

**Customer Identification and Verification Systems.**

7. The Category 1 eGambling licensee's or Category 1 associate certificate holder'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 sub-paragraph (a) and forestalling, preventing and detecting money

laundering and terrorist financing, including, without limitation, where a Category 1 eGambling licensee or Category 1 associate certificate holder 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.

**Accounts.**

8. A Category 1 eGambling licensee or Category 1 associate certificate holder must, in relation to all customers –

- (a) not set up or keep anonymous accounts or accounts in fictitious names, and
- (b) maintain accounts in a manner which facilitates the meeting of the requirements of this Schedule.

PART III

ENSURING COMPLIANCE AND RECORD KEEPING

**Monitoring transactions and other activity.**

9. (1) A Category 1 eGambling licensee or Category 1 associate certificate holder shall perform ongoing and effective monitoring of any customer relationship, which shall include -

- (a) reviewing identification data and records to ensure they

are kept up to date, accurate and relevant, in particular as regards any beneficial owner, or registered customers in respect of whom there is a high risk,

(b) updating identification data and records on a timely basis,

(c) without prejudice to the Category 1 eGambling licensee's or Category 1 associate certificate holder's obligations under regulation 236, scrutinising any transactions or other activity to ensure that the transactions are consistent with the Category 1 eGambling licensee's or Category 1 associate certificate holder's knowledge of the registered customer and his risk profile (including, where necessary, the sources of funds) and paying particular attention to all -

(i) complex transactions,

(ii) transactions which are both large and unusual,

(iii) unusual patterns of activity or transactions, and

(iv) transactions arising from a country or territory that does not apply or insufficiently applies the FATF Recommendations,

which have no apparent economic purpose or no apparent lawful purpose and recording its findings

thereon in writing, and

- (d) ensuring that the way in which identification data are recorded and stored is such as to facilitate the ongoing monitoring of each customer relationship.

(2) A Category 2 eGambling licensee or, as the case may be, a Category 2 associate certificate holder shall perform ongoing and effective monitoring of all gambling transactions, paying particular attention to all –

- (a) complex transactions,
- (b) transactions which are both large and unusual, and
- (c) unusual patterns of activity or transactions, which have no apparent economic purpose or no apparent lawful purpose and recording its findings thereon in writing.

(3) An eGambling licensee, a Category 1 associate certificate holder and a Category 2 associate certificate holder shall examine as far as reasonably possible, the background and purpose of the transactions described in sub-paragraphs (1)(c) and (2) and shall set forth its findings in writing.

(4) The extent of any monitoring carried out under sub-paragraph (1) and the frequency at which it is carried out shall be determined on the basis of materiality and risk including, without limitation, whether or not the customer relationship is a high risk relationship.

(5) Where a Category 2 eGambling licensee or Category 2 associate

certificate holder sets out its findings in writing in accordance with sub-paragraphs (2) and (3) it shall as soon as reasonably practicable communicate such findings to the Money Laundering Reporting Officer of the Category 1 eGambling licensee or Category 1 associate certificate holder who had allowed its customer to gamble with or through it in order to effect a gambling transaction.

(6) Without prejudice to the generality of this paragraph where within an existing business relationship there are complex and unusually large transactions, or unusual patterns of activity or transactions, which have no apparent economic or lawful purpose, an eGambling licensee or certificate holder shall –

- (a) examine the background and purpose of those transactions, and
- (b) increase the degree and nature of monitoring of the business relationship.

**Reporting suspicion.**

10. (1) An eGambling licensee, a Category 1 associate certificate holder, a Category 2 associate certificate holder and a Temporary eGambling licensee (in respect of its activities under its Temporary eGambling licence) shall -

- (a) appoint an executive officer as the Money Laundering Reporting Officer and provide the name, title and email address of that person 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, and ensure that all employees are aware of the name of that

person,

- (b) nominate another person (a "**nominated officer**") to carry out the functions of the Money Laundering Reporting Officer in his absence, and provide the name, title and email address of that person 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, and ensure that any relevant employee is aware of the name of that nominated officer,
- (c) ensure that where a relevant employee, other than the Money Laundering Reporting Officer, is required to make a disclosure under Part I of the Disclosure Law, or section 12 of the Terrorism Law, that this is done by way of a report to the Money Laundering Reporting Officer, or, in his absence, to a nominated officer,
- (d) ensure that the Money Laundering Reporting Officer, or in his absence a nominated officer, in determining whether or not he is required to make a disclosure under Part I of the Disclosure Law, or section 15A or section 12 (as appropriate) of the Terrorism Law, takes into account all relevant information,
- (e) ensure that the Money Laundering Reporting Officer, or, in his absence, a nominated officer, is given prompt access to any other information which may be of

assistance to him in considering any report, and

- (f) ensure that it establishes and maintains such other appropriate and effective procedures and controls as are necessary to ensure compliance with requirements to make disclosures under Part I of the Disclosure Law, and section 12 of the Terrorism Law.

(2) Where an eGambling licensee, a Category 1 associate certificate holder, a Category 2 associate certificate holder and a Temporary eGambling licensee (in respect of its activities under its Temporary eGambling licence) makes a disclosure under Part 1 of the Disclosure Law or section 12 of the Terrorism Law, a copy of that disclosure shall be provided to the Commission at the same time or as soon as practicable thereafter.

(3) A person who, immediately prior to the coming into force of this Schedule ("**Commencement**"), was a money laundering reporting officer or nominated officer of an eGambling licensee, a Category 1 associate certificate holder, a Category 2 associate certificate holder or a Temporary eGambling licensee (in respect of its activities under its Temporary eGambling licence), having been appointed as such under paragraph 7 of Schedule 16 to the Alderney eGambling Regulations 2009, shall be deemed to have been appointed as that licensee's or certificate holder's Money Laundering Reporting Officer or nominated officer under subparagraph (1)(a) on Commencement, for the purposes of this Schedule.

(4) The requirement at subparagraph (1)(a) and (b) to provide the name, title and email address of the Money Laundering Reporting Officer or nominated officer to the Commission and Financial Intelligence Service, and the requirements at subparagraph (1)(d), do not apply in respect of a person deemed to

have be appointed or nominated under subparagraph (3).

**Employee screening and training.**

11. (1) An eGambling licensee, a Category 1 associate certificate holder, a Category 2 associate certificate holder and a Temporary eGambling licensee (in respect of its activities under its Temporary eGambling licence) shall –

- (a) maintain appropriate and effective procedures, when hiring employees, for the purpose of ensuring high standards of employee probity and competence,
- (b) ensure that relevant employees receive comprehensive ongoing training in –
  - (i) the relevant enactments, the Law, this Ordinance, the Regulations, and any relevant guidance issued by the Commission which relates to anti-money laundering and counter terrorist financing,
  - (ii) the personal obligations of employees and their potential criminal liability under the relevant enactments and this Ordinance,
  - (iii) the implications of non-compliance by employees with any guidance issued by the Commission in accordance with section 22(3)(b) of this Ordinance,

- (iv) its policies, procedures and controls for the purposes of forestalling, preventing and detecting money laundering and terrorist financing,
  - (v) the identity and responsibilities of the Money Laundering Reporting Officer,
  - (vi) the detection of unusual or suspicious activity or transactions,
  - (vii) the principal vulnerabilities of the products and services offered by the eGambling licensee or the associate certificate holder, and
  - (viii) new developments, including information on current money laundering and terrorist financing techniques, methods, trends and typologies, and
- (c) identify relevant employees who, in view of their particular responsibilities, should receive additional and ongoing training, appropriate to their roles, in the matters set out in subparagraph (b) and shall provide such training.

(2) A Category 1 eGambling licensee, Category 1 associate certificate holder or Temporary eGambling licensee as the case may be shall ensure

that relevant employees receive comprehensive ongoing training in customer due diligence requirements.

**Record-keeping.**

12. (1) Subject to the provisions of this regulation, a relevant person must keep a comprehensive record of each transaction with a registered customer, including (other than in the case of a Category 2 licensee or Category 2 certificate holder) the identity of the customer, the nature and date of the transaction and amounts and types of currency involved in the transaction; and such a record shall be referred to as a "**transaction document**".

(2) An eGambling licensee, a Category 1 associate certificate holder, a Category 2 associate certificate holder and a Temporary eGambling licensee (in respect of its activities under its Temporary eGambling licence) shall keep such of the following as is appropriate to their licence or certificate –

- (a) all transaction documents or copies thereof for five years starting from the date that both the transaction and any related transaction were completed, and
- (b) any customer due diligence information or a copy thereof for five years starting from the date the person concerned ceased to be a registered customer,

or, in either case, for such longer period as the Commission, the Financial Intelligence Service, or an officer of police may direct.

(3) Where an eGambling licensee or an associate certificate holder is required by any enactment, rule of law or court order to provide a transaction document or any customer due diligence information to any person before the end of the period set out in sub-paragraph (1), the licensee or certificate holder shall –

(a) keep a copy of the transaction document or customer due diligence information until the period has ended or the original is returned, whichever occurs first, and

(b) maintain a register of transaction documents and customer due diligence information so provided.

(4) An eGambling licensee and an associate certificate holder shall (if applicable) also keep records of –

(a) any findings made under paragraphs 9(1)(c), 9(2) and/or 9(3) for five years from the date the record was created,

(b) any reports made to its Money Laundering Reporting Officer as referred to in paragraph 10 and of any disclosure made under Part I of the Disclosure Law or section 12 of the Terrorism Law made other than by way of a report to the Money Laundering Reporting Officer for five years starting from the date the person concerned ceased to be a registered customer,

(c) any training carried out under paragraph 8 for five years starting from the date the training was carried out,

- (d) any minutes or other documents prepared pursuant to paragraphs 2(1)(b) and 13(f) until –
    - (i) the expiry of five years starting from the date that they were finalised, or
    - (ii) they are superseded by later minutes or other documents prepared under those provisions, whichever occurs later, and
  - (e) its policies, procedures and controls which it is required to establish and maintain pursuant to this Schedule, including previous iterations of the relevant sections of its approved internal control system, for five years starting from the date that they ceased to be operative.
- (5) Documents and customer due diligence information, including any copies thereof, kept under this paragraph –
- (a) may be kept in any manner or form, provided that they are readily retrievable, and
  - (b) shall be made available promptly –
    - (i) in respect of customer due diligence information, transaction documents and records relating to subparagraphs (4)(a), (4)(c), (4)(d) and (4)(e), -
      - (A) to any auditor, and

- (B) to the Financial Intelligence Service, an officer of police, the Commission, the Money Laundering Reporting Officer, nominated officer or any other person where such documents or customer due diligence information are requested pursuant to these Regulations or any relevant enactment, and
    - (ii) in respect of records relating to sub-paragraph (3)(b), to the Financial Intelligence Service, a prescribed police officer, the Commission, the Money Laundering Reporting Officer or the nominated officer.
- (b) shall be made available on a timely basis to the Financial Intelligence Service, an officer of police, the Commission, the Money Laundering Reporting Officer, nominated officer or any other person where such documents or customer due diligence information are requested pursuant to these Regulations or any relevant enactment.

**Ensuring compliance, corporate responsibility and related requirements.**

13. An eGambling licensee, category 1 associate certificate holder or Category 2 associate certificate holder must, in addition to complying with the preceding requirements in this Schedule –

- (a) appoint an executive officer as the Money Laundering Compliance Officer and provide the name, title and email of that person 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,
- (b) establish and maintain such other internal policies, procedures and controls as are appropriate and effective (having regard to the risk of money laundering and terrorist financing and the size of the business) for the purposes of forestalling, preventing and detecting money laundering and terrorist financing,
- (c) 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,
- (d) 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 9,
- (e) establish and maintain an effective policy, for which responsibility must be taken by the board, for the review of its compliance with the requirements of this Schedule, the associated regulations and any guidance issued by the Commission, 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,
- (f) ensure that a review of its compliance with this Schedule, the associated regulations and guidance issued by the Commission is discussed and minuted at a meeting of its board at appropriate intervals, and in considering what is an appropriate interval, the eGambling licensee, Category 1 associate certificate holder or Category 2 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 or Category 1 association certificate holder only), products and services, and
  - (iii) the ways in which it provides those products and services, and
- (g) 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, Category 1 associate certificate holder or Category 2 associate certificate holder may operate.

**Application to associates, foreign branches and subsidiaries.**

14. (1) A reference to an eGambling licensee, Category 1 associate certificate holder or a Category 2 associate certificate holder in this Schedule shall include a reference to the following–

- (a) an associate which an eGambling licensee, Category 1 associate certificate holder or a Category 2 associate certificate holder has arranged to perform on its behalf any activity required to be carried out in accordance with this Schedule,
- (b) any other associate which the Commission requires by written notice to comply with this Schedule,
- (c) branches and subsidiaries of the eGambling licensee, Category 1 associate certificate holder or Category 2 associate certificate holder dealing with eGambling which are situated in a foreign country or territory, to the extent that the laws of that foreign country or territory allow, provided that, where requirements under

subparagraphs (i) and (ii) differ, an eGambling licensee, Category 1 associate certificate holder or Category 2 associate certificate holder must ensure that the requirement which provides the highest standard of compliance, by reference to the Financial Action Task Force Recommendations on Money Laundering, is complied with, and

- (d) a business associate which contracts with a Category 2 eGambling licensee or Category 2 associate certificate holder in an arrangement whereby the Category 2 eGambling licensee or Category 2 associate certificate holder effects gambling transactions on behalf of that business associate.

(2) Subject to sub-paragraph (4) an eGambling licensee, category 1 associate certificate holder or a Category 2 associate certificate holder shall ensure that an associate, foreign branch or subsidiary in a country or territory outside the Island of Alderney to which sub-paragraph (1) applies complies with –

- (a) the applicable requirements of this Schedule, regulations 4(d), 4(f), 6(d), 6(f), 8(d), 8(l), 60(c), 60(e) and the associated regulations, and
- (b) the requirements under the law in that country or territory which are consistent with the FATF Recommendations,

provided that, where requirements under items (a) and (b) differ, the licensee or

certificate holder must ensure that the requirement which provides the highest standard of compliance, by reference to the FATF Recommendations is complied with.

(3) Subject to sub-paragraph (4), an eGambling licensee, Category 1 associate certificate holder or a Category 2 associate certificate holder shall ensure that it and its subsidiaries effectively implement policies, procedures and controls in respect of the sharing of information (including but not limited to customer, account and transaction information) between themselves for the purposes of carrying out customer due diligence and otherwise forestalling, preventing and detecting money laundering and terrorist financing, including (but not limited to) policies, procedures and controls governing the protection of the confidentiality of such information.

(4) The obligations under sub-paragraphs (2) and (3) apply to the extent that the law of the relevant country or territory allows and if the law of that country or territory does not so allow in relation to any requirement of these Regulations, the licensee or certificate holder shall notify the Commission accordingly.

## PART V INTERPRETATION

### **Interpretation.**

15. (1) For the avoidance of doubt, in this Schedule, unless the context otherwise requires, expressions have the meaning they bear in the Law and in this Ordinance; and in addition –

"**associated regulations**" means regulations 175(2)(j), 175(3), 226 – 230, 233 and any other provision in the Regulations associated the money laundering and terrorist financing requirements under this Schedule,

"**the Committee**" means the Policy and Finance Committee of the States of Alderney,

"**customer due diligence**" means steps which a Category 1 eGambling licensee or Category 1 associate certificate holder is required to carry out pursuant to paragraph 3(2),

"**customer due diligence information**" means -

- (a) identification data,
- (b) any files and correspondence relating to the customer relationship, and
- (c) all records obtained through customer due diligence, including the results of any analysis undertaken,

"**Disclosure Law**" means the Disclosure (Bailiwick of Guernsey) Law, 2007,

"**document**" includes information recorded in any form (including, without limitation, in electronic form),

"**Economic Crime Division**" means that branch of the Customs and Immigration Service responsible for the investigation of financial and economic crime,

"**employee**" means an individual working, including on a temporary basis, for an eGambling licensee, Category 1 associate certificate holder or

Category 2 associate certificate holder whether under a contract of employment, a contract for services or otherwise,

**"enhanced customer due diligence"**: see paragraph 4,

**"FATF Recommendations"** means the Financial Action Task Force Recommendations on Money Laundering and the Financial Action Task Force Special Recommendations on Terrorist Financing as revised or reissued from time to time,

**"Financial Intelligence Service"** means the division of the Economic Crime Division comprising those officers of police and other persons assigned to the division for the purpose of the receipt, analysis and dissemination within the Bailiwick of Guernsey, and elsewhere, of disclosures under Part I of the Disclosure Law or section 12 of the Terrorism Law, which are more commonly known or referred to as suspicious transaction reports or suspicious activity reports,

**"high risk relationship"** means a customer relationship which has a high risk of involving money laundering or terrorist financing and related terms shall be construed accordingly,

**"identification data"** means documents, data or information relating to identification which are from a reliable and independent source,

**"international organisation"** means an entity –

- (a) which was established by a formal political agreement between its member states that has the status of an

international treaty,

- (b) the existence of which is recognized by law in its member states, and
- (c) which is not treated as a resident institutional unit of the country in which it is located,

**"legal arrangement"** means an express trust or any other vehicle whatsoever which has a similar legal effect,

**"Money Laundering Compliance Officer"** means a person of at least manager level appointed by an eGambling licensee, Category 1 associate certificate holder or Category 2 associate certificate holder to monitor compliance with policies, procedures and controls to forestall, prevent and detect money laundering and terrorist financing,

**"Money Laundering Reporting Officer"** means a person of at least manager level appointed by an eGambling licensee, Category 1 associate certificate holder or Category 2 associate certificate holder to receive disclosures under Part I of the Disclosure Law and sections 12, 12A and 15 of the Terrorism Law,

**"NRA"** means the National Risk Assessment published by the States of Guernsey Policy & Resources Committee as amended from time to time,

**"nominated officer"**: see paragraph 10(1)(b),

**"prescribed police officer"** means an officer of police who is a member

of the Financial Intelligence Service,

**"registered customer"** means a customer who has been registered in accordance with regulation 227,

**"the Regulations"** means the Alderney eGambling Regulations, 2009, and a reference to a regulation is a reference to that regulation of the Regulations, and related expressions shall be construed accordingly,

**"relevant employee"** includes any –

- (a) member of the relevant person's board of directors,
- (b) member of the management of the relevant person, and
- (c) employees whose duties relate to eGambling,

**"relevant person"**: see paragraph 1(1);

**"risk"** means a risk of money laundering or terrorist financing occurring and **"risk assessment"** shall be construed accordingly,

**"relevant enactments"** means –

- (a) the Afghanistan (Restrictive Measures) (Alderney) Ordinance, 2011,
- (b) the Afghanistan (Restrictive Measures) (Guernsey) Ordinance, 2011,

- (c) the Afghanistan (Restrictive Measures) (Sark) Ordinance, 2011,
- (d) the Al-Qaida (Restrictive Measures) (Alderney) Ordinance, 2013,
- (e) the Al-Qaida (Restrictive Measures) (Guernsey) Ordinance, 2013,
- (f) the Al-Qaida (Restrictive Measures) (Sark) Ordinance, 2013,
- (g) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
- (h) the Disclosure Law,
- (i) the Disclosure (Bailiwick of Guernsey) Regulations, 2007,
- (j) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
- (k) the Terrorism Law,
- (l) the Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007,
- (m) the Terrorist Asset-Freezing (Bailiwick of Guernsey)

Law, 2011, and

(n) the Transfer of Funds (Alderney) Ordinance, 2007,

"**subsidiary**" has the meaning given to it by paragraph 1 of Schedule 4 of the Companies (Alderney) Law, 1994, as amended,

"**Terrorism Law**" means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002<sup>d</sup>, and

"**terrorist financing**" has the meaning given in the Terrorism Law,

(2) Subject to subparagraphs (4) to (6), in this Schedule "**beneficial owner**", in relation to a legal person, has the meaning given in the Beneficial Ownership (Definition) (Alderney) Regulations, 2017 (or any successor regulations made under section 25 of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017) for the purposes of that Law; and, in relation to a trust or other legal arrangement, includes –

(a) any beneficiary who is a natural person, whether his interest under the trust is vested, contingent or discretionary,

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<sup>d</sup> Order in Council No. XVI of 2002; as amended by Order in Council No. I of 2000; No. VII of 2005; No. XIII of 2006; No. XIII of 2010; No. XI of 2011; No. XIV of 2012; Ordinance No. XXXIII of 2003, No. XLVI of 2007; No. XIII of 2010; No. XX of 2010; No. XXXVII of 2010; No. XXIX of 2014; No. LIV of 2014; No. IX of 2016; G.S.I. No. 16 of 2003; G.S.I. No. 41 of 2005; and G.S.I. No. 5 of 2017.

- (b) any other natural person who benefits from that trust or other legal arrangement, and
- (c) any natural person not within (a) or (b) above who exercises ultimate effective control over the trust or other legal arrangement.

(3) Subject to subparagraphs (4) to (6), in this Schedule the **"underlying principal"** of a customer means -

- (a) where the customer is a trust, any natural person who is –
  - (i) a settlor, trustee, protector or enforcer of the trust, or
  - (ii) the beneficial owner or underlying principal of a legal person or legal arrangement who is a settlor, trustee, protector or enforcer of the trust,

and for these purposes, "protector" means a person other than a trustee who, as the holder of an office created by the terms of the trust, is authorized to or required to participate in the administration of the trust.

- (b) where the customer is a foundation, any natural person who is –
  - (i) a founder or foundation official of the

foundation, or

(ii) the beneficial owner or underlying principal of a legal person or legal arrangement who is a founder or foundation official of the foundation, and

(c) where the customer is any other legal arrangement, any person who is in a position equivalent to those set out in (a) and (b).

(4) In circumstances where a legal person is ultimately controlled by a trust -

(a) "**beneficial owner**" in relation to that legal person includes any person falling within subparagraph (2)(a), (b) or (c) in relation to that trust, and

(b) "**underlying principal**" in relation to that legal person means any person falling within subparagraph (3)(a) in relation to that trust.

(5) In circumstances where a legal person is ultimately controlled by a foundation, "**underlying principal**" in relation to that legal person means any person falling within subparagraph (3)(b) in relation to that foundation.

(6) In circumstances where a legal person is ultimately controlled by a legal arrangement other than a trust -

- (a) "**beneficial owner**" in relation to that legal person includes any person falling within subparagraph (2)(b) or (c) in relation to that legal arrangement, and
- (b) "**underlying principal**" in relation to that legal person means any person falling with subparagraph 3(c) in relation to that legal arrangement.

(7) In this Schedule the "**board**" of a relevant person means -

- (a) the board of directors of that relevant person, where it is a body corporate, or
- (b) the senior management of a relevant person, where it is not a body corporate.

(7) A reference in this Schedule to an enactment is to that enactment as from time to time amended, repealed and replaced, extended or applied by or under any other enactment."