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GAMBLING (ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM) CODE 2019

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Statutory Document No. 2019/XXXX

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Proceeds of Crime Act 2008, and
Terrorism and Other Crime (Financial Restrictions) Act 2014

GAMBLING (ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM) CODE 2019

Laid before Tynwald: *xx May 2019*
Coming into Operation: *1 June 2019*

The Department of Home Affairs makes the following Code under section 157of the Proceeds of Crime Act 2008 and section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014, after consulting such persons and bodies that appeared to it to be appropriate.[1]

PART 1 - INTRODUCTORY

1 Title

This Code is the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Code 2019.

2 Commencement

This Code comes into operation on 1 June 2019.[2]

3 Interpretation

(1) In this Code –

[1] Section 157(4) of the Proceeds of Crime Act 2008 and section 68(4) of the Terrorism and Other Crime (Financial Restrictions) Act 2014 require the Department of Home Affairs to consult any body or person that appears to it to be appropriate, before making a Code under those sections.

[2] Section 223(5) of the Proceeds of Crime Act 2008 and section 68(5) of the Terrorism and Other Crime (Financial Restrictions) Act 2014 require a Code to be made under section 157 of the Proceeds of Crime Act 2008 or section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014 to be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the codes are laid or at the next following sitting so resolves, the codes cease to have effect.

"AML/CFT" means anti-money laundering and countering the financing of terrorism;

"AML/CFT legislation" means the requirements of the following enactments –

(a) sections 7 to 11 and 14 of the Anti-Terrorism and Crime Act 2003;

(b) Part 3 of the Proceeds of Crime Act 2008;

(c) Parts 2 to 4 of the Terrorism and Other Crime (Financial Restrictions) Act 2014; and

(d) this Code;

"beneficial owner" means a natural person who ultimately owns or controls the customer or the natural person on whose behalf a transaction is being conducted and includes—

(a) in the case of a legal person other than a company whose securities are listed on a recognised stock exchange, a natural person who ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) 25% or more of the shares or voting rights in the legal person;

(b) in the case of any legal person, a natural person who otherwise exercises ultimate effective control or significant influence over the management of the legal person;

(c) in the case of a legal arrangement, the trustee or other person who exercises ultimate effective control or significant influence over the legal arrangement; and

(d) in the case of a foundation, a natural person who otherwise exercises ultimate effective control or significant influence over the foundation;

"business risk assessment" has the meaning given in paragraph 6 (business risk assessment);

"Commission" means the Isle of Man Gambling Supervision Commission;

"competent authority" means all Isle of Man administrative and law enforcement authorities concerned with AML/CFT, including the Isle of Man Gambling Supervision Commission, the Isle of Man Financial Services Authority, the Department of Home Affairs, the Isle of Man Constabulary, the Financial Intelligence Unit, the Attorney General and the Customs and Excise and Income Tax Divisions of the Treasury;

"customer" of an operator means a person -

(a) seeking to form an ongoing customer relationship or to carry out an occasional transaction; or

(b) carrying on an ongoing customer relationship or carrying out an occasional transaction,

with an operator who is carrying on gambling business in the regulated sector;

"customer due diligence" (except in the expression "**enhanced customer due diligence**") means the measures specified in Part 4 (Customer Due Diligence);

"customer risk assessment" has the meaning given in paragraph 8 (customer risk assessment);

"director" and "officer" include —

(a) for a limited liability company to which the Limited Liability Companies Act 1996 applies, a member, manager or registered agent of such a company;

(b) for a company to which the Companies Act 2006 applies, a member, manager or registered agent of such a company;

(c) for a limited partnership with legal personality to which sections 48B to 48D of the Partnership Act 1909 apply —

(i) if a general partner is a natural person, that person;

(ii) if a general partner is a body corporate, the directors and officers of that body corporate;

(iii) if a general partner is a foundation, the council members (or equivalent) of that foundation; and

(d) for a foundation, a member of the council (or equivalent) of the foundation;

"employee" and **"worker"** of an operator have the same meanings as in section 173 of the Employment Act 2006 and include an individual who -

(a) works under a contract of employment or any other contract of service for an operator;

(b) practises alone or with others under the terms of a partnership agreement for an operator;

(c) is otherwise engaged within the business of an operator, in all cases where the individual undertakes to do or perform, directly or indirectly, any work or service for an operator, whether or not engaged directly by the operator or through another entity forming part of the group of entities of which the operator is a part, and the operator is not by virtue of the contract a customer of the individual; or

(d) is a director or officer of an operator;

"enhanced customer due diligence" means steps, additional to the measures specified in paragraphs 10 to 13 and 15, as described in sub-paragraph 14(2);

"external disclosure" means a disclosure made under paragraph 24 (external disclosures);

"FATF Recommendations" means the Recommendations made by the Financial Action Task Force ("**FATF**") which are recognised as the global standards in relation to AML/CFT;

"financing of terrorism" includes the financing of proliferation and is to be construed in accordance with the definitions of "**financing**", "**terrorism**" and "**proliferation**" in section 3 of the Terrorism and Other Crime (Financial Restrictions) Act 2014;

"foundation" means a foundation established under the Foundations Act 2011 or a foundation or similar entity established under the law of another jurisdiction;

"gambling business in the regulated sector" means any business or activity to which paragraph 2(7) of Schedule 4 to the Proceeds of Crime Act 2008 applies (casinos, bookmakers, online gambling, etc.) which is conducted by way of business[3];

"information" includes data;

"internal disclosure" means a disclosure made under paragraph 23 (internal disclosures);

"legal arrangement" includes —

(a) an express trust; or

(b) any other arrangement that has a similar legal effect (including a *fiducie*, *treuhand* or *fideicomiso*),

and includes a person acting for, or on behalf of, a legal arrangement referred to in paragraph (a) or (b), such as a trustee;

"legal person" includes any body corporate or unincorporate capable of establishing a business relationship with a financial institution or of owning property;

"List A" is a list maintained by the Department of Home Affairs on its website specifying jurisdictions regarding which the FATF (or a FATF-style regional body) has made a call on its members and other jurisdictions to apply countermeasures to protect the international financial system from the ongoing and substantial risks of ML/FT emanating from the jurisdiction;

"List B" is a list maintained by the Department of Home Affairs on its website specifying jurisdictions with strategic AML/CFT deficiencies or those considered to pose a higher risk of ML/FT;

"List C" is a list maintained by the Department of Home Affairs on its website specifying jurisdictions which are considered to have an

[3] Paragraph 2(7) of Schedule 4 to the Proceeds of Crime Act 2008 applies to conducting online gambling within the meaning of the Online Gambling Regulation Act 2001 (see paragraph 2(7)(c) of that Schedule). But paragraph 2(7)(c) of that Schedule does not apply where the business is being carried out by means of a software supplier licence or a token-based software supplier licence (see paragraph 2(14) of that Schedule.

AML/CFT regime of equivalent standard to that of the Island in relation to key areas of the FATF Recommendations**;**

"ML/FT" means money laundering and the financing of terrorism, or both and includes attempted money laundering and the financing of terrorism;

"money laundering" means an act that falls within section 158(11) of the Proceeds of Crime Act 2008;

"Money Laundering Reporting Officer" or **"MLRO"** means an individual appointed under paragraph 21 (Money Laundering Reporting Officer) and includes a Deputy MLRO appointed under sub-paragraph 21(3);

"National Risk Assessment" is a jurisdiction's evaluation of a its ML/FT risks which aims to ensure that actions are co-ordinated domestically to combat ML/FT and proliferation, as required under the FATF recommendations;

"occasional transaction" means a transaction (whether the transaction is carried out in a single transaction or in several transactions that appear to be linked) conducted outside of an ongoing customer relationship and consists of –

(a) the wagering of a stake, including –

(i) the purchase from, or exchange with, the casino of tokens for use in gambling at the casino; and

(ii) payment for use of gaming machines;

(b) the collection of winnings,

and need not take account of winnings from a previous transaction which had not been collected from the operator but are being re-used in the transaction in question;

"occasional transaction threshold" refers to an occasional transaction which exceeds €3,000;

"ongoing customer relationship" means a relationship between an operator and a customer where an account is opened for a customer;

"online gambling operator" means the holder of an online gambling licence issued under the Online Gambling Regulation Act 2001;

"operator" means -

(a) the holder of an online gambling licence issued under the Online Gambling Regulation Act 2001;

(b) the holder of a casino licence issued under the Casino Act 1986;

(c) the holder of a temporary premises certificate, issued under the Casino Act 1986;

(d) the holder of a bookmaker's permit, issued under the Gaming, Betting and Lotteries Act 1988;

(e) the holder of a betting office licence, issued under the Gaming, Betting and Lotteries Act 1988;

(f) the holder of a racecourse licence or a totalisator licence, issued under the Gaming, Betting and Lotteries Act 1988; or

(g) the holder of a temporary exemption, issued under the Gaming, Betting and Lotteries Act 1988;

"politically exposed person" or "**PEP**" means any of the following –

(a) a natural person who is or has been entrusted with prominent public functions ("P"), including-

(i) a head of state, head of government, minister or deputy or assistant minister;

(ii) a senior government official;

(iii) a member of parliament;

(iv) a senior politician;

(v) an important political party official;

(vi) a senior judicial official;

(vii) a member of a court of auditors or the board of a central bank;

(viii) an ambassador, *chargé d'affaires* or other high-ranking officer in a diplomatic service;

(ix) a high-ranking officer in an armed force;

(x) a senior member of an administrative, management or supervisory body of a state-owned enterprise;

(xi) a senior member of management of, or a member of, the governing body of an international entity or organisation;

(b) any of the following family members of P-

(i) a spouse;

(ii) a partner considered by national law as equivalent to a spouse;

(iii) other known close personal relationships not covered by sub-paragraphs (i) or (ii) such as a partner, boyfriend or girlfriend;

(iv) a child or the spouse or partner of a child;

(v) a brother or sister (including a half-brother or half-sister);

(vi) a parent;

(vii) a parent-in-law;

(viii) a grandparent; or

(ix) a grandchild;

(c) any natural person known to be a close associate of P, including -

(i) a joint beneficial owner of a legal entity or legal arrangement, or any other close business relationship, with P;

(ii) the sole beneficial owner of a legal entity or legal arrangement known to have been set up for the benefit of P;

(iii) a beneficiary of a legal arrangement of which P is a beneficial owner or beneficiary; or

(iv) a person in a position to conduct substantial financial transactions on behalf of P;

"qualifying transaction" means a deposit or withdrawal (in either case whether conducted in a single transaction or series of linked transactions) between an operator and a customer which exceeds the qualifying transaction threshold and to which customer due diligence requirements of paragraph 11 (verification of identity of customers) apply;

"qualifying transaction threshold" refers to a qualifying transaction which exceeds €3,000;

"sanctions list" means the list of persons who are subject to international sanctions which apply in the Island which is maintained by the Customs and Excise Division of the Treasury of the Isle of Man;

"senior management" means the directors or persons who are nominated to ensure that the operator is effectively controlled on a day-to-day basis and who have responsibility for overseeing the operator's proper conduct;

"suspicious activity" means any activity, including the receipt of information, which in the course of an ongoing customer relationship, occasional transaction or attempted transaction that causes the operator to —

(a) know or suspect; or

(b) have reasonable grounds for knowing or suspecting,

that the activity or information is related to ML/FT;

"technology risk assessment" has the meaning given in paragraph 7 (technology risk assessment) and includes both new and developing technologies;

"terrestrial gambling operators" means—

(a) the holder of a casino licence issued under the Casino Act 1986;

(b) the holder of a temporary premises certificate, issued under the Casino Act 1986;

(c) the holder of a bookmaker's permit, issued under the Gaming, Betting and Lotteries Act 1988;

(d) the holder of a betting office licence, issued under the Gaming, Betting and Lotteries Act 1988;

(e) the holder of a racecourse licence or a totalisator licence, issued under the Gaming, Betting and Lotteries Act 1988; or

(f) the holder of a temporary exemption, issued under *the Gaming, Betting and Lotteries Act 1988;*

"transaction" includes attempted transactions;

"unusual activity" means any activity or information received in the course of an ongoing customer relationship, occasional transaction or attempted transaction where —

(a) a transaction has no apparent economic or lawful purpose, including a transaction which is —

(i) complex;

(ii) both large and unusual; or

(iii) of an unusual pattern;

(b) the operator becomes aware of anything that causes the operator to doubt the identity of a person it is obliged to identify;

(c) the operator becomes aware of anything that causes the operator to doubt the good faith of a customer or beneficial owner of a customer.

(2) In this Code, a reference to an amount of currency expressed in Euros is to be construed as meaning that amount converted into, and expressed as, an amount of any other currency, including fiat or virtual currency.

PART 2 - GENERAL REQUIREMENTS

4 Procedures and controls

(1) An operator must not enter into or carry on an ongoing customer relationship or carry out an occasional transaction with or for a customer unless the operator establishes, records, maintains and operates –

(a) risk assessment procedures and controls in accordance with Part 3 (Risk-based Approach);

(b) customer due diligence procedures and controls in accordance with Part 4 (Customer Due Diligence);

(c) record keeping and reporting procedures and controls in accordance with Part 5 (Record-keeping and Reporting);

(d) staffing, training and monitoring compliance procedures and controls in accordance with Part 6 (Staffing, Training and Monitoring Compliance);

(e) miscellaneous procedures and controls in accordance with Part 7 (Miscellaneous).

(2) The procedures and controls referred to in sub-paragraph (1) must –

(a) have regard to the size and risks of the operator;

(b) be group-wide (in accordance with paragraph 31 (gambling groups, foreign branches and subsidiaries);

(c) be approved by the senior management of the operator.

(3) An operator must register on the designated reporting platform as provided by the Financial Intelligence Unit.[4]

(4) The ultimate responsibility for ensuring that customer due diligence complies with this Code is that of the operator, regardless of any outsourcing.

5 Prohibitions

(1) Terrestrial gambling operators must not enter into an ongoing customer relationship with, or carry out an occasional transaction for, a customer that is conducting gambling by way of business.

(2) An online gambling operator may enter into an ongoing customer relationship with a customer that is conducting gambling by way of business subject to the requirements of sub-paragraph 10(3)(c) (customers acting by way of business).

(3) An online gambling operator must not carry out occasional transactions.

PART 3 - RISK-BASED APPROACH

6 Business risk assessment

(1) An operator must carry out an assessment that estimates the risk of ML/FT posed by the operator's business and customers.

(2) The business risk assessment must be –

(a) undertaken as soon as reasonably practicable after the operator commences business;

(b) recorded in order to be able to demonstrate its basis; and

(c) regularly reviewed (details of any review must be recorded) and, if appropriate, amended so as to keep the assessment up-to-date.

(3) The business risk assessment must have regard to all relevant risk factors including –

(a) the nature, scale and complexity of the operator's activities;

[4] As required by sections 142 to 144 of the Proceeds of Crime Act 2008 and sections 11, 12 and 14 of the Anti-Terrorism and Crime Act 2003.

(b) the findings of the most recent National Risk Assessment relating to the Island and, if appropriate, the National Risk Assessment of other jurisdictions with which the operator has significant connections;

(c) the products and services provided by the operator;

(d) the manner in which the products and services are provided including whether the operator meets its customers;

(e) the involvement of any third parties for elements of the customer due diligence process;

(f) technology risk assessments carried out under paragraph 7 (technology risk assessment); and

(g) customer risk assessments carried out under paragraph 8 (customer risk assessment).

7 Technology risk assessment

(1) An operator must carry out an assessment that estimates the risk of ML/FT posed by any technology to the operator's business.

(2) The technology risk assessment must be -

(a) undertaken as soon as reasonably practicable after the operator commences business;

(b) undertaken prior to the launch or implementation of new products, new business practices and delivery methods using new delivery systems;

(c) undertaken prior to the use of new or developing technologies for both new and pre-existing products;

(d) recorded in order to demonstrate its basis; and

(e) regularly reviewed (details of any review must be recorded) and, if appropriate, amended so as to keep it up to date.

(3) The technology risk assessment must have regard to all relevant risk factors including —

(a) technology used by the operator to comply with AML/CFT legislation;

(b) the business risk assessment carried out under paragraph 6;

(c) the products and services provided by the operator;

(d) the manner in which the products and services are provided by the operator with consideration given to delivery channels and payment mechanisms;

(e) digital information and document storage;

(f) electronic verification of documents; and

(g) data and transaction screening systems.

8 Customer risk assessment

(1) This paragraph applies to ongoing customer relationships and customers that have exceeded the occasional transaction threshold.

(2) An operator must carry out an assessment that estimates the risk of ML/FT posed by a customer.

(3) A customer risk assessment must be-

(a) undertaken as soon as reasonably practicable after entering into an ongoing customer relationship or carrying out an occasional transaction;

(b) recorded in order to be able to demonstrate its basis; and

(c) regularly reviewed (details of any review must be recorded) and, if appropriate, amended so as to keep the assessment up-to-date.

(4) The customer risk assessment must have regard to all relevant risk factors including –

(a) the business risk assessment carried out under paragraph 6 (business risk assessment);

(b) the nature, scale, complexity and location of the customer's activities;

(c) the manner in which the products and services are provided to the customer;

(d) the involvement of any third parties for elements of the customer due diligence process;

(e) whether the operator and the customer met during an ongoing customer relationship or during its formation or in the course of an occasional transaction; and

(f) the risk factors included in sub-paragraphs (5) and (7).

(5) Matters that pose a higher risk of ML/FT -

(a) an ongoing customer relationship or occasional transaction with a customer that is resident or located in a jurisdiction in List A;

(b) a customer that is the subject of a warning in relation to AML/CFT matters issued by a competent authority or equivalent authority in another jurisdiction.

(6) If sub-paragraph 5(a) or (b) applies, the operator's senior management must approve the establishment or continuation of the ongoing customer relationship or occasional transaction.

(7) Matters that may pose a higher risk of ML/FT include –

(a) activity in a jurisdiction the operator deems to be higher risk of ML/FT;

(b) an ongoing customer relationship or occasional transaction with a customer that is resident or located in a jurisdiction in List B;

(c) activity in a jurisdiction in List A or B;

(d) a situation that by its nature presents an increased risk of ML/FT;

(e) an ongoing business relationship or occasional transaction with a customer that is a PEP;

(f) a company that has nominee shareholders or shares in bearer form;

(g) the provision of high risk products;

(h) the provision of services to high-net-worth individuals;

(i) a legal arrangement;

(j) persons performing prominent functions for international organisations;

(k) customers that are sporting professionals betting on sports; and

(l) customers that use multiple sources to fund their gambling activities.

(8) Any customer identified as high risk must be subject to enhanced customer due diligence.

PART 4 - CUSTOMER DUE DILIGENCE

9 Application of customer due diligence

This Part applies to ongoing customer relationships and customers that have exceeded the occasional transaction threshold.

10 Occasional transactions and new customer relationships

(1) An operator must in relation to each new ongoing customer relationship or transaction which exceeds the occasional transaction threshold, establish, record, maintain and operate appropriate procedures and controls in accordance with sub-paragraph (3) and (4).

(2) Those procedures and controls must be undertaken –

(a) before an ongoing customer relationship is entered into or during the formation of that relationship; or

(b) before or as soon as reasonably practicable after an occasional transaction that exceeds the occasional transaction threshold is conducted.

(3) The procedures and controls referred to in sub-paragraph (1) are –

(a) identifying the customer;

(b) the taking of reasonable measures to establish the source of funds;

(c) the taking of reasonable measures to establish whether the customer is acting by way of business and, if so –

(i) the verification verifying the identity of the customer using reliable, independent source documents, data or information; and

(ii) the obtaining of information on the nature and intended purpose of the ongoing customer relationship.

(4) Without limiting sub-paragraph (3), an operator must –

(a) in the case of a customer that is a legal person or legal arrangement –

(i) verify that any person purporting to act on behalf of the customer is authorised to do so;

(ii) identify that person and verify the identity of that person using reliable, independent source documents, data or information;

(iii) obtain information concerning the person by whom and the method by which, binding obligations may be imposed on the customer; and

(iv) obtain information to understand the ownership and control structure of the customer;

(b) in the case of a legal arrangement, identify –

(i) the trustees or any other controlling party;

(ii) any known beneficiaries; and

(iii) the settlor or other person by whom the legal arrangement is made or on whose instructions the legal arrangement is made or on whose instructions the legal arrangement is formed;

(c) in the case of a foundation, identify –

(i) the council members (or equivalent);

(ii) any known beneficiaries; and

(iii) the founder and any other dedicator.

(5) Where the requirements of this paragraph are not met, the procedures and controls must provide that –

(a) the ongoing customer relationship or transaction must proceed no further;

(b) the operator must terminate any ongoing customer relationship; and

(c) the operator must consider making an internal disclosure.

11 Verification of identity of customers

(1) This paragraph applies –

(a) in respect of occasional transactions, on the first occasion on which an operator identifies that a customer has, or will, exceed the occasional transaction threshold; or

(b) when a customer has reached the qualifying transaction threshold.

(2) An operator must establish, record, maintain and operate appropriate procedures and controls which require verification of the identity of the customer using reliable, independent source documents, data or information before carrying out any further occasional transactions or making a qualifying transaction.

(3) Where the requirements of this paragraph are not met, the procedure must provide that –

(a) the ongoing customer relationship or transaction must proceed no further;

(b) the operator must consider terminating any ongoing customer relationship; and

(c) the operator must consider making an internal disclosure.

12 Ongoing customer relationships

(1) This paragraph applies in respect of ongoing customer relationships.

(2) An operator must, in relation to each ongoing customer relationship, establish, record, maintain and operate the procedures and controls specified in sub-paragraph (4).

(3) The procedures and controls must be undertaken during an ongoing customer relationship as soon as reasonably practicable.

(4) Those procedures and controls referred to are –

(a) an examination of the background and purpose of the ongoing customer relationship; and

(b) if satisfactory verification of the customer's identity was not obtained or produced, requiring such verification to be obtained or produced in accordance with paragraphs10(3)(c)(customers acting by way of business) and 11 (verification of identity of customers).

(5) An operator must record any examination, steps, measures or determination made or taken under this paragraph.

(6) Where the requirements this paragraph are not met within a reasonable timeframe –

(a) the ongoing customer relationship or transaction must proceed no further;

(b) the operator must consider terminating any ongoing customer relationship; and

(c) the operator must consider making an internal disclosure.

13 Politically exposed persons

(1) This paragraph applies to ongoing customer relationships and customers that have exceeded the occasional transaction threshold.

(2) An operator must establish, record, maintain and operate appropriate procedures and controls for the purpose of determining whether any of the following is, or subsequently becomes, a PEP –

(a) any customer;

(b) any natural person having the power to direct the activities of a customer; and

(c) any known beneficial owner of a customer.

(3) An operator must establish, record, maintain and operate appropriate procedures and controls for requiring the approval of its senior management –

(a) before any ongoing customer relationship is established with or for;

(b) before any occasional transactions is carried out with; or

(c) before any ongoing customer relationship is continued with,

a domestic PEP who has been identified as posing a higher risk of ML/FT or any foreign PEP.

(4) An operator must take reasonable measures to establish the source of wealth of –

(a) a domestic PEP who has been identified as posing a higher risk of ML/FT; and

(b) any foreign PEP.

(5) An operator must perform ongoing and effective enhanced monitoring of any ongoing customer relationship with -

(a) a domestic PEP who has been identified as posing a higher risk of ML/FT; and

(b) any foreign PEP.

(6) To avoid doubt, this paragraph does not remove the requirement for the operator to meet the requirements of paragraph 14 (enhanced due diligence) where a PEP has been identified as posing a higher risk of ML/FT.

(7) Where the requirements of this paragraph are not met within a reasonable timeframe, the procedures and controls must require that -

(a) the ongoing customer relationship or occasional transaction must proceed no further;

(b) the operator must consider terminating any ongoing customer relationship; and

(c) the operator must consider making an internal disclosure.

(8) In this paragraph –

"domestic PEP" means a PEP who is or has been entrusted with prominent public functions in the Island and any family members or close associates of the PEP, regardless of the location of that natural person, those family members or close associates; and

"foreign PEP" means a natural person in (a) who is or has been entrusted with prominent public functions outside of the Island and any family members or close associates of the PEP, regardless of the location of that natural person, those family members or close associates.

14 Enhanced customer due diligence

(1) An operator must establish, record, maintain and operate appropriate procedures and controls in relation to undertaking enhanced customer due diligence.

(2) Enhanced due diligence includes –

(a) considering whether additional identification information needs to be obtained and, where it is considered necessary, obtaining such additional information;

(b) considering whether additional aspects of the identity of the customer and any beneficial owner need to be verified by reliable independent source documents, data or information, and, where it is considered necessary, the taking of reasonable measures to obtain such additional verification;

(c) the taking of reasonable measures to establish the source of wealth of a customer and any beneficial owner;

(d) the undertaking of further research, where considered necessary, in order to understand the background of a customer and the customer's business; and

(e) considering what additional ongoing monitoring should be carried on in accordance with paragraph 15 (ongoing monitoring) and the undertaking of that additional ongoing monitoring.

(3) An operator must conduct enhanced customer due diligence –

(a) where a customer poses a higher risk of ML/FT as assessed by the customer risk assessment;

(b) in the event of any unusual activity; and

(c) in the event of any suspicious activity, unless the operator reasonably believes conducting enhanced customer due diligence will tip-off the customer.

(4) Where the requirements of this paragraph are not met within a reasonable timeframe, the procedures and controls must provide that -

(a) the ongoing customer relationship or occasional transaction must proceed no further;

(b) the operator must consider terminating any ongoing customer relationship; and

(c) the operator must consider making an internal disclosure.

15 Ongoing monitoring

(1) An operator must take reasonable measures to identify a customer involved in an occasional transaction that exceeds the occasional transaction threshold.

(2) An operator must perform ongoing and effective monitoring, including -

(a) a review of information and documents held for the purpose of customer due diligence to ensure that they are up-to-date, accurate and appropriate ,in particular where that transaction or relationship poses a higher risk of ML/FT;

(b) appropriate scrutiny of transactions and other activities to ensure that they are consistent with –

(i) the operator's knowledge of the customer, the customer's business and risk profile and source of funds for the transaction;

(ii) the business risk assessment carried out under paragraph 6 (business risk assessment);

(iii) any relevant technology risk assessment carried out under paragraph 7 (technology risk assessment); and

(iv) the customer risk assessment carried out under paragraph 8 (customer risk assessment);

(c) monitoring whether the customer or any known beneficial owner is listed on the sanctions list.

(3) Where an operator identifies any unusual activity in the course of an ongoing customer relationship or occasional transaction, the operator must, within a reasonable timeframe –

(a) perform appropriate scrutiny of the activity;

(b) conduct enhanced customer due diligence; and

(c) consider whether to make an internal disclosure.

(4) Where an operator identifies any suspicious activity in the course of an ongoing customer relationship or occasional transaction, an internal disclosure must be made in accordance with paragraph 23 (internal disclosures).

(5) The extent and frequency of any monitoring under this paragraph must be determined –

(a) on the basis of materiality and risk of ML/FT;

(b) in accordance with the risk assessments carried out under Part 3 (Risk-based Approach); and

(c) having particular regard to whether a customer poses a higher risk of ML/FT.

(6) An operator must record any examination, steps, measures or determination made or taken under this paragraph.

PART 5 - RECORD KEEPING AND REPORTING

16 Record keeping

An operator must keep –

(a) a copy of the documents obtained or produced under Part 3 (Risk-based Approach) and Part 4 (Customer Due Diligence) (including identification information, account files, business correspondence records and the results of any analysis undertaken) or information that enables a copy of such documents to be obtained;

(b) a record of all transactions carried out in the course of gambling business in the regulated sector, including identification information, account files, business correspondence records and the result of any analysis undertaken; and

(c) all such other records as are sufficient to permit reconstruction of individual transactions and compliance with this Code.

17 Record retention

(1) In this paragraph an "**operator**" includes a former operator.

(2) An operator must keep the records required by this Code for at least the period specified in sub-paragraph (3) or (4).

(3) In the case of records required by sub-paragraph 16(b), the records must be kept for a period of 5 years from the date of completion of the transaction.

(4) In the case of records to which sub-paragraph (3) does not apply, the records must be kept for a period of 5 years beginning on the date which–

(a) all activities in relation to an occasional transaction were completed; or

(b) in respect of other activities –

(i) the ongoing customer relationship was formally ended; or

(ii) if the ongoing customer relationship was not formally ended, when all activities relating to the relationship were completed.

(5) Without limiting sub-paragraph (1), if –

(a) an external disclosure has been made to the Financial Intelligence Unit under paragraphs 22(f) and paragraph 24 (external disclosures);

(b) the operator knows of believes that a matter is under investigation by a competent authority; or

(c) the operator becomes aware that a request for information or an enquiry is underway by a competent authority,

the operator must maintain all relevant records for as long as required by the competent authority.

18 Format and retrieval of records

(1) In this paragraph an "**operator**" includes a former operator.

(2) In the case of any records that are required to be established and maintained by this Code –

(a) if the records are in the form of hard copies kept on the Island, the operator must ensure that they are capable of retrieval without undue delay;

(b) if the records are in the form of hard copies kept outside the Island, the operator must ensure that the copies can be sent to the Island and made available within 7 days; and

(c) if the records are not in the form of hard copies (such as copies kept on a computer system), the operator must ensure that they are readily accessible in or from the Island and that they are capable of retrieval without undue delay.

(3) An operator may rely on the records of a third party in respect of the details of transactions, if satisfied that the third party will –

(a) produce copes of the records on request; and

(b) notify the operator if the third party is no longer able to produce copies of the records on request.

19 Registers of disclosures

(1) An operator must establish and maintain separate registers of —

(a) all internal disclosures;

(b) all external disclosures; and

(c) any other disclosures to the Financial Intelligence Unit.

(2) The registers must include details of —

(a) the date on which the disclosure is made;

(b) the person who made the disclosure;

(c) for internal disclosures, whether it is made to the MLRO or deputy MLRO;

(d) for external disclosures, the reference number supplied by the Financial Intelligence Unit; and

(e) information sufficient to identify any relevant papers or records.

(3) The registers of disclosures required by sub-paragraph (1) may be contained in a single document if the details required to be included in those registers can be presented separately for each type of disclosure on request by a competent authority.

20 Register of money laundering and financing of terrorism enquiries

(1) An operator must establish and maintain a register of all ML/FT enquiries received by it from competent authorities.

(2) The register must be kept separate from other records and include —

(a) the date of the enquiry;

(b) the nature of the enquiry;

(c) the name and agency of the enquiring officer;

(d) the powers being exercised; and

(e) details of the accounts or transactions involved.

21 Money Laundering Reporting Officer

(1) An operator must appoint a Money Laundering Reporting Officer ("**MLRO**") to exercise the functions conferred by paragraphs 22 (reporting procedures) and 24 (external disclosures).

(2) To be effective in their functions an MLRO must –

(a) be sufficiently senior in the organisation of the operator or have sufficient expertise and authority;

(b) have a right of direct access to the directors of the operator; and

(c) have sufficient time and resources to properly discharge the responsibilities of the position.

(3) An operator may appoint a Deputy Money Laundering Reporting Officer ("**Deputy MLRO**") in order to exercise the functions specified in paragraphs 22 (reporting procedures) and 24 (external disclosures) in the MLRO's absence.

22 Reporting procedures

An operator must establish, record, maintain and operate reporting procedures and controls that –

(a) enable all its directors, all other persons involved in its management, and all appropriate employees and workers to know whom they should report any suspicious activity;

(b) ensure that there is a clear reporting chain to the MLRO;

(c) require an internal disclosure to be made to the MLRO if any information or other matters that come to the attention of the person handling that business are, in that person's opinion, suspicious activity;

(d) ensure that the MLRO has full access to any other information that may be of assistance and that is available to the operator;

(e) require the MLRO to consider internal disclosures in the light of all other relevant information available to the MLRO for the purpose of determining whether the activity is, in the MLRO's opinion, suspicious activity; and

(f) enable the information to be provided as soon as is practicable to the Financial Intelligence Unit if the MLRO knows or suspects, or has reasonable grounds to suspect, that the activity is ML/FT.

23 Internal disclosures

(1) Where an operator identifies any suspicious activity in the course of an ongoing customer relationship or in relation to an occasional transaction, the operator must –

(a) conduct enhanced customer due diligence in accordance with paragraph 14 (enhanced customer due diligence) unless the operator reasonably believes conducting enhanced customer due diligence will tip-off the customer; and

(b) make an internal disclosure.

(2) Where an operator identifies any unusual activity in the course of an ongoing customer relationship or in relation to an occasional transaction, the operator must –

(a) perform appropriate scrutiny of the activity;

(b) obtain enhanced customer due diligence in accordance with paragraph 14 (enhanced customer due diligence); and

(c) consider whether to make an internal disclosure.

24 External disclosures

(1) Where an internal disclosure has been made, the MLRO must assess the information contained within the disclosure to determine whether there

are reasonable grounds for knowing or suspecting that the activity is related to ML/FT.

(2) The MLRO must make an external disclosure in accordance with the reporting procedures and controls established under paragraph 24 (external disclosures) as soon as practicable to the Financial Intelligence Unit if the MLRO –

(a) knows or suspects; or

(b) has reasonable grounds for knowing or suspecting,

that the activity is related to ML/FT.

(3) If the MLRO is of the view that there are not reasonable grounds for knowing or suspecting that the activity is related to ML/FT, but the MLRO believes that it would assist the Financial Intelligence Unit in the exercise of any of its functions, the MLRO may make a disclosure to the Financial Intelligence Unit under section 24 of the Financial Intelligence Unit Act 2016.

(4) A disclosure under subparagraph (3) does not breach –

(a) any obligation of confidence owed by the MLRO; or

(b) any other restriction on the disclosure of information (however imposed).

PART 6 – STAFFING, TRAINING AND MONITORING COMPLIANCE

25 Monitoring and testing compliance

(1) An operator must establish, record, maintain and operate appropriate procedures and controls for monitoring and testing compliance with the AML/CFT legislation, so as to ensure that –

(a) the operator has robust and documented arrangements for managing the risks identified by the business risk assessment conducted in accordance with paragraph 6 (business risk assessment);

(b) the operational performance of those arrangements is suitably monitored; and

(c) prompt action is taken to remedy any deficiencies in arrangements.

(2) A report to the board of directors of the operator must be submitted, at least annually, describing –

(a) the business' AML/CFT environment including any developments in relation to AML/CFT legislation;

(b) progress on internal developments in relation to the operator's policies, procedures and controls for AML/CFT;

(c) activities undertaken by the operator during the period covered by the report; and

(d) the results of any testing undertaken in sub-paragraph (1) .

(3) An operator must ensure there is a suitable person (the "AML/CFT Compliance Officer") to exercise the functions specified in this paragraph.

(4) To be effective in the exercise of their functions the suitable person (the "AML/CFT Compliance Officer") must –

(a) be sufficiently senior in the organisation of the operator or have sufficient experience or authority;

(b) have a right of direct access to the directors of the operator; and

(c) have sufficient time and resources to properly discharge the responsibilities of the position.

26 New staff appointments

An operator must establish, record, maintain and operate procedures and controls to enable to operator to satisfy itself of the integrity of new directors and officers and of all new appropriate employees and workers.

27 Staff training

(1) An operator must provide or arrange education and training, including refresher training, at least annually, for–

(a) all directors and officers;

(b) any other persons involved in its senior management; and

(c) appropriate employees and workers.

(2) The training referred to in sub-paragraph (1) must make those persons aware of –

(a) the provisions of the AML/CFT legislation;

(b) any personal obligations in relation to the AML/CFT legislation;

(c) the reporting procedures and controls established under paragraph 22 (reporting procedures);

(d) the operator's policies and procedures and controls for AML/CFT as required by paragraph 4 (procedures and controls);

(e) the recognition and handling of unusual activity and suspicious activity;

(f) their personal liability for failure to report information or suspicions in accordance with internal procedures and controls, including the offence of tipping off; and

(g) new developments, including information on current techniques, methods and trends in ML/FT.

(3) Where there have been significant changes to AML/CFT legislation or the operator's policies and procedures, the operator must provide appropriate education and training to those persons included in sub-paragraph (1) within a reasonable timeframe.

(4) The operator must maintain records which demonstrate compliance with sub-paragraph (1).

PART 7 – MISCELLANEOUS

28 Fictitious, anonymous and numbered accounts

(1) An operator must not set up or maintain an anonymous account, a numbered account or an account in a name that it knows, or has reasonable grounds to suspect, is fictitious for any new or existing customer.

(2) To avoid doubt sub-paragraph (1) does not apply to occasional transactions that have not been identified as exceeding the occasional transaction threshold.

29 Deposits and withdrawals

(1) An operator must not accept, or permit any third party to accept on its behalf, cash from, or on behalf of, a customer in relation to online gambling.

(2) Any winnings from online gambling due to a customer may be paid only -

(a) to a card account or other financial facility from which a deposit has previously been made by the customer and which the customer is satisfied stills belongs exclusively to the customer; or

(b) to a card account or other financial facility that the operator is satisfied will result in the customer exclusively receiving the withdrawal,

in accordance with the Online Gambling (Registration and Accounts) (Amendment) Regulations 2014[5].

[5] SD 227/14

30 Transfer of a block of business

(1) This paragraph applies where the operator ("the **purchaser**" acquires a customer or group of customers from another entity (the "**vendor**").

(2) The acquired customer or group of customers constitutes new ongoing customer relationship for the purchaser and customer due diligence in respect of that new ongoing customer relationship may be provided to the purchaser by the vendor, if each of the conditions in sub-paragraph (3) are met.

(3) The conditions referred to in sub-paragraph (2) are –

(a) the vendor is, or was –

(i) the holder of an online gambling licence issued under section 4 of the Online Gambling Regulation Act 2001; or

(ii) a gambling business–

(A) regulated under the law of a jurisdiction in List C; and

(B) subject to AML/CFT legislation and has procedures and controls that are at least equivalent to the Code; and

(b) the purchaser —

(i) has identified the customer and the beneficial owner of the customer (if any) and has no reason to doubt those identities;

(ii) undertakes a risk assessment of the customer and has not identified the customer as posing a higher risk of ML/FT;

(iii) knows the nature and intended purpose of the ongoing customer relationship;

(iv) has taken reasonable measures to identify the source of funds;

(v) has not identified any suspicious activity; and

(vi) has put in place appropriate measures to remedy, in a timely manner, any deficiencies in the customer due diligence of the acquired customer or group of customers.

(4) Where a customer has been identified by the vendor or purchaser as posing a higher risk of ML/FT the purchaser must undertake its own enhanced customer due diligence in respect of that customer in accordance with paragraph 14 (enhanced customer due diligence).

31 Gambling groups, foreign branches and subsidiaries

(1) Where an operator is the head office of a gambling group it must ensure that the group has group wide programmes in respect of ML/FT which are applicable to all branches and subsidiaries of the group.

(2) An operator must ensure that any branch or subsidiary in a jurisdiction outside the Island takes measures consistent with this Code and guidance issued by the Commission for AML/CFT, to the extent permitted by that jurisdiction's laws.

(3) If the minimum measures for AML/CFT in such a jurisdiction differ from those required by the law of the Island, the operator must apply appropriate additional measures to manage the ML/FT risk and ensure that any branch or subsidiary in that jurisdiction applies the higher standard, to the extent permitted by that jurisdiction's laws.

(4) An operator must inform the Commission within a reasonable timeframe when a branch or subsidiary is unable to take any of the measures referred to in sub-paragraphs (2) or (3) because it is prohibited by the laws of the jurisdiction concerned.

(5) In this paragraph, "gambling group" in relation to a body corporate (B) means;

(a) B;

(b) any other body corporate that is B's holding company (H) or B's subsidiary; and

(c) any other body corporate that is a subsidiary of H and "subsidiary" and "holding company" shall be construed in accordance with section 1 of the Companies Act 1974 or section 220 of the Companies Act 2006 (as applicable).

(6) To avoid doubt, the requirements of this paragraph apply only in respect of gambling groups undertaking activities that are, or if carried on in the Island would be regulated under –

(a) the Online Gambling Regulation Act 2001*;*

(b) the Casino Act 1986; or

(c) the Gaming, Betting and Lotteries Act 1998.

PART 8 – OFFENCES AND REVOCATIONS

32 Offences

(1) Any person who contravenes this Code is guilty of an offence and liable-

(a) on summary conviction to custody for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale, or to both; or

(b) on conviction on information to custody not exceeding 2 years or to a fine, or to both.

(2) In determining whether a person has complied with any of the requirements of any part of this Code a court may take account of any

relevant supervisory or regulatory guidance given by the Commission which applies to that person.

(3) In proceedings against a person for an offence under this paragraph, it is a defence for the person to show that it took all reasonable measures to avoid committing the offence.

(4) If an offence under this paragraph is committed by a body corporate and it is proved that the offence –

(a) was committed with the consent or connivance of an officer of the body; or

(b) was attributable to neglect of the part of an officer of the body,

the officer, as well as the body, is guilty of the offence and liable to the penalty provided for it.

(5) In this paragraph, "officer" includes –

(a) a director, manager or secretary;

(b) a person purporting to act as director, manager or secretary;

(c) a member, if the affairs of the body are managed by its members;

(d) in relation to a limited liability company constituted under the Limited Liability Companies Act 1996, a member, the company's manager, or registered agent;

(e) the MLRO or deputy appointed under paragraph 21 (Money Laundering Reporting Officer);

(f) a designated official appointed under section 10 of the Online Gambling Regulation Act 2001;

(g) an operations manager appointed under section 10A(2) of the Online Gambling Regulation Act 2001.

33 Revocations

The Money Laundering and Terrorist Financing (Online Gambling) Code 2013 is revoked.[6]

MADE XXXX

BILL MALARKEY
Minister for the Home Affairs

[6] SD 0096/13

EXPLANATORY NOTE
(This note is not part of the Code)

This Code revokes and replaces the Money Laundering and Terrorist Financing (Online Gambling) Code 2013.

This Code is made jointly under section 157 of the Proceeds of Crime Act 2008 and section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014. It contains provisions in line with the Financial Action Task Force's Recommendations on preventing money laundering and the financing of terrorism.

Failure to comply with the requirements of this Code is an offence for which this Code specifies the penalties. In addition, section 22 of the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Act 2018 enables the Isle of Man Gambling Supervision Commission to impose a civil penalty in respect of a contravention of this Code.