

THE GAMBLING LAW
REVIEW

THIRD EDITION

Editor
Carl Rohsler

THE LAWREVIEWS

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PREFACE

Welcome to the third edition of *The Gambling Law Review*.

I was very pleased last year that we managed to increase the coverage of the guide from 16 chapters to 25. This year I am pleased again to say that we have increased coverage to 29 chapters, including new contributions from four important jurisdictions – Bulgaria, France, Macao and the Netherlands. I am delighted to welcome the new authors and thank them for their contribution, as I am also very pleased to thank those who have found the time and resources to continue to make a contribution to this work. We are getting fatter!

What are the aims of this book? There are several. First and foremost, to provide a short summary of the gambling law of the jurisdictions in question. Second, to achieve that in a format that is uniform enough to allow comparison between the different legal systems but also flexible enough to recognise that gambling law springs from different sources in different jurisdictions – in some countries it is founded in the criminal law, in other places it forms part of civil or administrative law and, of course, it is sometimes rooted in a common law and sometimes in a civil code tradition. The third aim is to allow practitioners in the field to be updated on developments over the course of the year – with a section in each chapter dealing both with the main milestones of the past 12 months and the likely developments to come. Have we achieved that end? Of course, it is for others to judge – but I was heartened to meet a fellow professional at this year's International Casino Exhibition in London who congratulated me for 'that little grey book', which he said he frequently consulted and found 'immensely useful'. And not only useful, but up to date and freely available online, as a resource for everyone.

Which brings me to the fourth (and normally unspoken) aim of this book, which is to showcase the work of some of the leading gambling lawyers across the world, without whom this book would not exist. Each has given their time and considerable experience to produce something comprehensive and digestible – and as a summary of their own thoughts and work in the field. And so, may I make this suggestion to readers from the gambling world on behalf of my co-authors? If you find this Review useful, then please give them a call, safe in the knowledge that you will get more of the same quality.

The gambling world has been a busy place again in the past 12 months. What are the key themes? Let me pick three.

New jurisdictions

More and more governments are turning their minds to the regulation of gambling. The most obvious shift is in the United States, where the Supreme Court has just been considering the constitutional implications of a ban on gambling. During the preparation of this Preface, we have heard that the US Supreme Court has ruled 6:3 that the Professional and Amateur

Sports Protection Act of 1992 violates the 10th Amendment to the US Constitution, and therefore should be struck down. The 10th Amendment protects the power of individual states to make their own laws, in all circumstances where the Constitution does not explicitly give power to the federal government. It is therefore anticipated that the Supreme Court decision will mark a new turning point in the United States' relationship with gambling, more than a decade after UIGEA caused tremors across the world. There are plenty of states with draft legislation awaiting such a decision, and we will have to see the reaction of sports bodies seeking to find a way to tap into their share of a rich new market. The US is surely one of the most lucrative potential markets for sports betting – not only because it is a wealthy nation, but because it is one in which sport is marketed and televised more than in perhaps any other country in the world. With baseball, American football, basketball and ice hockey, there are four incredibly well-followed and, above all, data-rich sports that would be the subject of a very substantial betting market. Interesting times.

The US is not the only place where change is coming. We have seen new laws progressing in many countries, including Ireland, Sweden and Switzerland, and a host of significant shifts in legislation in countries as far apart as Australia and Slovenia. Further, there has been a continuing flow of decisions from the Court of Justice of the European Union in relation to the gambling regimes across Europe, and let us not forget the Asian markets, including India, where the pace of change has been somewhat slower (but the potential prize is very substantial indeed).

Regulators keep getting tougher

It feels as though regulators and governments are becoming better organised and tougher on operators. Although there are still places where 'soft touch' regulatory regimes persist, more regulators are making life harder for operators, with new rules and higher penalties for non-compliance. There is an increasing focus on financial crime, money laundering and social responsibility. Industry has reacted by improving its standards, but still feels embattled against waves of criticism, which in some cases seem to impose a higher threshold than for other adult industries. Indeed, I would argue that the increased levels of regulation are more the product of an increased ability to regulate, rather than an increased need. For one thing, although the amount of regulated gambling going on in the world is certainly increasing, that may reflect the fact that regulation is more effective, and that gambling that had previously operated on a black market basis is now being brought within the fold. And even if the amount of gambling going on in the world is increasing, there is no substantial evidence that the amount of problem gambling or underage gambling is on the rise.

Traditional barriers are dissolving (again)

One of the most interesting features of the international gambling industry over the past two decades is the way that it has continued to engage in paradigm shifts. After many centuries of a land-based tradition, the internet and mobile communication created an international betting market for the first time. And now, just as we are getting used to that, new developments are changing that model again. For example, bitcoin and cryptocurrency technology, which was in its infancy only a couple of years ago, is now becoming mainstream – already being used by some operators and requiring serious consideration by regulators. Many still hold the view that there are hidden dangers with such cryptocurrencies – and of course they are not without risk. However, they also provide some interesting possibilities in

terms of ensuring provenance and traceability of funds and even that the tokens can only be used by those over the age of 18.

We have also witnessed a growing convergence of gambling and game playing, a development that throws up both paradoxes and new challenges. Studies show that for many the entertainment experienced by playing games is not lessened if there are no monetary stakes, and so one must ask whether social gaming represents a fundamentally new chapter in gambling psychology and practice. Equally, the rise of social gaming models blurs the barrier between what is regulated and what is not – with e-sports, and in game rewards ('loot boxes') also confusing the picture. Traditional models and expectations of what gambling is and how that form of entertainment is monetised are radically changing – and that leads to very important questions about whether the limits of regulation need to be redefined.

In the context of these changes, an annual review of the world of gambling law surely has an important place. I close by thanking my co-authors and the editorial team at The Law Reviews for their organisation and encouragement.

Carl Rohsler

Memery Crystal

London

May 2018

GIBRALTAR

Andrew Montegriffo and Louise Lugaro¹

I OVERVIEW

i Definitions

The Gibraltar Gambling Act 2005 (the Gambling Act) is the principal legislative instrument regulating gambling activity in Gibraltar. The statute not only makes provision for the licensing and regulation of land-based gambling, but also gambling services through remote means (such as the telephone and internet). This legislation is partly modelled on the UK Gambling Act 2005.

The legal definition of ‘gambling’ is contained in Section 2(1) of the Gambling Act to include:

- a* betting (including pool betting) and bookmaking;
- b* gaming; and
- c* promoting or entering a lottery.

Furthermore, ‘betting’ is defined as:

...making or accepting a bet on –

- a* the outcome of a race, competition or other event of any description;
- b* the likelihood of anything occurring or not occurring; or
- c* whether anything is or is not true.

However, this does not include any bet made or stake hazarded in the course of, or incidental to, any gaming, and the expressions bet, betting and bookmaking shall be construed accordingly.

‘Gaming’ is defined in the Gambling Act as: ‘the playing of a game of chance for a prize’ and a ‘game of chance’ includes:

- a* a game that involves both an element of chance and an element of skill;
- b* a game that involves an element of chance that can be eliminated by superlative skill;
- c* a game that is presented as involving an element of chance; or
- d* a game where a computer generates images or data taken to represent the actions of another participant or participants in the game.

¹ Andrew Montegriffo and Louise Lugaro are associates at Hassans International Law Firm.

Finally, a 'lottery' is defined as:

any scheme for the distribution of prizes by chance or lot in which the participants or a substantial number of them make a contribution for the purposes of participation in the chances of the lottery and includes tombola, but does not include any gaming.

With regard to free prize draws, the proposed offering will need to be considered carefully to determine whether it is licensable or not. In gaming it is possible that a player playing a game for a prize does not necessarily (unlike in lotteries) make a bet or stake on the game. This analysis becomes important when looking at social gaming or free play games that might still be regarded as requiring a licence. Such offerings would definitely not require a licence if there is no prize.

ii Gambling policy

Gibraltar's first gambling statute was enacted in the 1950s and covered the provision of land-based gambling services. The legislation did not envisage the provision of gambling services through remote means.

However, in the 1990s, Gibraltar saw the first remote providers of gambling in the jurisdiction, most notably Victor Chandler and Ladbrokes, which commenced their telephone betting operations from here. The jurisdiction's reputation as a centre for remote operator business was consolidated in the early 2000s when the first internet gambling service providers were established in Gibraltar. These initial licence arrangements were extended under the terms of the old legislation, which did not provide for gambling through remote means. Therefore, specific and bespoke arrangements were granted pursuant to individual licence agreements on terms contractually agreed between the operators and the Gibraltar government as the Licensing Authority.

The increasing numbers of internet gambling providers relocating and establishing their business in Gibraltar, and the commercial pressures of some of the larger businesses who wished to list their shares on the stock exchange, gave rise to the enactment of the current Gibraltar Gambling Act 2005. This legislation is significantly modelled on the UK Gambling Act 2005. The statute not only makes provision for the licensing and regulation of land-based gambling, but also gambling services through remote means (such as the telephone and internet).

The Gibraltar government has therefore, for a number of decades, supported and encouraged the industry, in particular the remote gambling industry, in a regulated environment with reputation being of paramount importance to the jurisdiction.

iii State control and private enterprise

All types of gambling products can be commercially offered in Gibraltar with the exception of lotteries. In relation to the latter, the only lottery permitted under the Gambling Act is the Gibraltar government lottery and small bazaars, fetes and fairground-style lotteries (of the types identified in Schedule 2 of the Gambling Act). The Gibraltar government lottery is a small lottery not offered remotely, and is based on printed tickets.

iv Territorial issues

Gibraltar as a geographical jurisdiction is very small, and there is a common licensing and regulatory framework for the entire jurisdiction. There is no sub-delegation of authority to

other municipalities as there are none, and the administration of these matters are handled by the relevant authority, being the Gibraltar Licensing Authority, for the jurisdiction as a whole.

v Offshore gambling

The government of Gibraltar has a permissive attitude in respect of the provision of gambling matters, and there is no general restriction in relation to foreign operators providing gambling products to citizens of the jurisdiction. However, this is in the context of remote gambling. Any foreign operator who wants to provide land-based gambling would need to apply and obtain the relevant licences locally.

There is a general provision on control of advertising in the Gambling Act, which empowers the Minister for Gambling to prescribe rules governing the advertising of gambling activities authorised under a remote gambling licence after due consultation with the Gambling Commissioner, the Licensing Authority and individual remote gambling licence holders. Although to date no such rules have been published, these may prohibit under penalty advertisements that are:

- a* indecent, pornographic or offensive;
- b* false, deceptive or misleading;
- c* intended to appeal specifically to persons under the minimum permitted age, currently 18 years of age; or
- d* in breach of copyright laws.

However, it should be noted that copyright and intellectual property rights are specifically safeguarded by other legislative instruments. It should also be noted that these advertising rules are also applicable in respect of licensees in Gibraltar. It is difficult to prohibit advertising from foreign operators through the various media. Enforcement will necessarily have to go through the appropriate legal channels in the jurisdictions involved and, depending on the treaty arrangements between Gibraltar and those jurisdictions and the nature of the infringement, the process of enforcement will be different (either through police cooperation or court process).

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

As highlighted in Section I.ii, above, the principal legislation governing gambling activities in Gibraltar is the Gambling Act. The Gambling Act sets out a licensing and regulatory framework for both land-based gambling and remote gambling. The definitions of gambling and gaming are set out in Section I.i, above. The different categories of gambling include betting (such as pool betting) and bookmaking, gaming and lottery. The 'gaming' element includes all types of casino games, poker, slots, machine gaming, bingo and all other number games without limitation.

Competitions based purely on skill are not subject to any licensing or regulatory framework in Gibraltar, but the Gambling Act does cover games of chance that can be eliminated by superlative skill (the most obvious of these being poker).

Financial spread-betting offerings are required to operate under a dual-licensing system pursuant to both the Gambling Act and the Financial Services (Markets in Financial

Instruments) Act 2006. While primarily regarded as an offering that is regulated by the Financial Services Commission (the Gibraltar financial services regulator), the Gambling Commissioner acts as a secondary regulator.

ii The regulator

All licensing and regulatory matters are determined by the Licensing Authority. The Licensing Authority, pursuant to the Gambling Act, is the Minister for Gambling. All regulatory aspects (post-licensing) are within the remit of responsibility of the Gambling Commissioner and his or her regulatory team. Although the roles are distinct and separate, the personnel and infrastructure organisations of both departments are merged into one. This ensures a more streamlined approach whereby the licensing and regulatory teams work closely to complement each other. This results in a more efficient exercise of their duties, which benefits licence holders.

Part VIII of the Gambling Act contains the enforcement provisions in relation to compliance by licence holders to the terms of their licences. Section 42 of the Gambling Act grants extensive powers of investigation, reporting and powers of entry where a licence holder is suspected of carrying on activity contrary to the provisions and terms of their licence, the Act or in a manner which is otherwise prejudicial to the public interest, the interest of any customer or potential customer or to the reputation of Gibraltar. This part of the Gambling Act also sets out the powers of the Licensing Authority to suspend or revoke a licence and enables a Justice of the Peace, if satisfied with the information laid before him or her, to grant the Gambling Commissioner or the police with a warrant to search premises.

iii Remote and land-based gambling

The Gambling Act provides for both land-based and remote gambling. While both are catered for in the legislation, the respective licensing regimes and requirements are different, as set out in subsections iv and v, below.

Each licence holder, whether offering remote or non-remote gambling services, is, however, obliged to:

- a* publicise its rules so that persons entering premises or accessing a website, as the case may be, can readily see them;
- b* establish and at all times maintain in operation an effective system of internal controls and procedures to monitor the activities authorised under its licence and for it to comply with its obligations under the Criminal Justice Act in respect of any transactions that may give rise to suspicions of money laundering on the part of the participants;
- c* take all reasonable steps to prevent an underage person from participating in the gambling activities offered;
- d* nominate a place for the safekeeping of transaction records, and keep true and fair annual financial records, which have to be audited (these are to be kept for at least five years) and that are to be provided annually to the Gambling Commissioner;
- e* maintain approved banking and payment processing arrangements;
- f* promptly inquire into complaints; and
- g* pay all such charges, fees and gaming taxes as are prescribed by the Licensing Authority.

iv Land-based gambling

The Gambling Act carefully prescribes the licensing regime applicable to land-based operators.

Essentially, five different licence categories are available to those seeking to provide land-based, bricks-and-mortar services within Gibraltar. The following is a brief overview of the form of activity that an operator may seek to provide under each licence:

- a* Bookmaker's licence: this allows the holder to undertake, either on his or her own account or as agent, the business of receiving or negotiating bets. Furthermore, it should be noted that it shall be an offence for any person to keep or use any premises, or cause, or knowingly permit any premises to be used as a place where persons resorting thereto may effect any betting transactions without having previously obtained a bookmaker's licence.
- b* Pool promoter's licence: this allows the holder to run pool betting operations. Strict restrictions are imposed on the use of premises for the provision of pool betting services where the owner of such premises does not hold a pool promoter's licence.
- c* Gaming operator's licence: this allows the holder to conduct or provide gaming facilities (this includes the provision of games of chance for a prize, such as casino games). Restrictions are also imposed on the use of premises to conduct gaming operations.
- d* Lottery promoter's licence: this allows the holder to promote or operate lotteries.
- e* Gaming machine licence: this allows the holder to keep on his or her premises gaming machines for the purpose of land-based gaming services.

Land-based gambling in Gibraltar occurs primarily in casinos (of which there are currently two licensed). Certain bars and restaurants also have single, stand-alone machines under gaming machine licences. Non-remote gambling licensees must conduct their business from approved premises and must maintain their licence in accordance with the conditions upon which it is issued.

The Gibraltar government conducts a lottery. The Gambling Act prohibits land-based lotteries operating in Gibraltar other than the Gibraltar government lottery and other small bazaars, fete and fairground style lotteries (of the types identified in Schedule 2 of the Gambling Act). No similar restrictions apply when conducting online lotteries from Gibraltar targeted at end users located outside Gibraltar.

v Remote gambling

Under the Gambling Act 'remote gambling' is defined as:

gambling in which persons participate by means of remote communication, that is to say, communication using –

- a* the internet;
- b* telephone;
- c* television;
- d* radio; or
- e* any other electronic or other technology for facilitating communication.

The Gambling Act establishes a licensing and regulatory framework for the provision of gambling services through remote means.

However, the first 'remote gambling' licences issued in Gibraltar predate the enactment of the 2005 legislation. There are currently only 34 licensed remote gambling operators in

the jurisdiction given that the government has applied a very restrictive and selective policy towards the licensing of operators in the jurisdiction by requiring a substantive presence resulting in real accountability to the regulator, constant monitoring of operations and ensuring that gambling services are provided responsibly with appropriate measures to protect the young and problem gamblers.

Although there is no limit to the number of licences that may be issued in Gibraltar, given the current licensing policy, which requires a bricks-and-mortar operation with key equipment in the jurisdiction (including servers), the number of licensees is selectively kept low and the increase in licences will be steady and controlled. There should nonetheless be a steady rise of licensees in Gibraltar as opportunities develop for medium-sized businesses with niche markets and products that have not partnered with other complementary operations or otherwise merged.

While the legislation envisages that anyone can apply, there are various criteria applied by the authorities in determining whether to license an operator. The principal criterion is that described above: real presence with senior individuals managing the business and with key technical equipment in the jurisdiction.

Business-to-business and business-to-consumer

The Gambling Act only envisages one type of remote gambling licence: the operator licence. There are, however, subcategories of this licence depending on the nature of the services provided, which are ‘casino’ (including poker, bingo, slots), ‘betting’ and ‘lottery’.

Notwithstanding the single type of licence, the Licensing Authority recognises the business-to-business (B2B) model and will extend a licence for such operations pursuant to the current Gambling Act and contractual arrangements agreed between the parties. There are numerous B2B operators in the jurisdiction who provide hardware, software and operational or platform support and solutions to business-to-consumer (B2C) gambling operators. We are seeing a very steady increase in the number of B2B providers applying for and obtaining Gibraltar licences who recognise opportunities for their business in the local market and in using Gibraltar as hub for provision to operators in other regulated jurisdictions.

Most of the larger B2C operators also provide, as a significant element of their business, B2B services. The majority of these are white label services pursuant to which the operator provides the core gambling services, as well as customer services, registration and account handling, to a third party that owns a brand and websites. All white labels entered into by Gibraltar operators require prior Licensing Authority approval, which in most cases is a relatively straightforward procedure involving the submission of due diligence documentation on the white label partner.

vi Ancillary matters

The government of Gibraltar announced a general review of the gambling licensing and regulatory framework, given that the principal legislation was passed in 2005 and the online gambling industry and third-party suppliers have developed significantly since.

A draft report has been prepared for the Gibraltar government’s consideration by a working group established for such purposes. A paper was circulated within the industry and given to interested stakeholders, and the anticipated responses will feed into the analysis of the changes proposed. This envisages building on the strong regulatory licensing and tax regime already in place. The less prescriptive environment into which Gibraltar and the United Kingdom may be moving may indeed provide space for further reforms and adjustments.

Gibraltar has built up a critical mass of knowledge, personnel, regulatory experience and political support for the online gaming industry. These features and the jurisdiction's broader attractions remain in place. Gibraltar is determined to ensure that its economy remains highly competitive and very attractive as a base from which to operate international business.

III THE LICENSING PROCESS

i Application and renewal

See Section II.ii, above.

Licensing application and processing will depend on the type of licence being sought (non-remote or remote). In general terms, the applicant will need to prove their reputation, provide a business plan and demonstrate their skills in the sector. The investment in the jurisdiction and local plans will be very relevant in the assessment to be made by the Licensing Authority.

Given the territorial limits of the jurisdiction, there is little movement on land-based gambling operations. There are currently two licensed casinos locally and a number of betting shops. Most applications therefore arise in the context of remote gambling operators.

Although there is no limit to the number of remote gambling licences that may be issued in Gibraltar, given the current licensing policy, which requires a bricks-and-mortar operation with key equipment in the jurisdiction, the numbers of licensees are selectively kept low and it is not anticipated that there will be a sharp increase in licences.

While the legislation envisages that anyone can apply, there are various criteria applied by the authorities in determining whether to license an operator. The principal criterion is that described above: real presence with senior individuals managing the business and with key technical equipment and infrastructure in the jurisdiction. Paragraph (4) of Schedule 1 to the Gambling Act provides that in determining whether the applicant for a licence is a 'fit and proper person', the Licensing Authority shall take into account, to the extent appropriate:

- a* the person's character, honesty and integrity;
- b* his or her business reputation, current financial position and financial background;
- c* the business plan in respect of the activities;
- d* his or her experience of conducting the gambling activity to which the proposed licence would relate;
- e* his or her conduct, or that of any person associated with him or her, under any similar licence granted by the appropriate authorities in any comparable jurisdiction outside Gibraltar;
- f* the actual or proposed ownership and the structure of the business;
- g* the ability to maintain a minimum required reserve so as to ensure that all winnings or prizes, as the case may be, are paid;
- h* the technical infrastructure and ability to conduct the gambling that would be authorised under the proposed licence;
- i* the proposed control measures to ensure that any internet website proposed to be operated by the licence holder contains no obscene or indecent content, or any links to such content;

- j* the proposed control measures to ensure that, so far as is reasonably practicable, compulsive gamblers and persons under the minimum permitted age are not able to gain access to any of the gambling facilities that would be authorised under the proposed licence; and
- k* the proposed control measures and procedures to seek to identify money laundering and other suspicious transactions.

The application for an online gambling licence is a two-stage process. It involves an initial approach to the Licensing Authority for an in-principle response on whether an application would be favourably considered before progressing to the second, formal application stage. Once an in-principle favourable approval is received, the formal licence application is prepared and submitted and includes, *inter alia*, an application form, business plan and due diligence of the group and its partners and core gaming suppliers.

There is a £10,000 fee payable on application and a £2,000 annual renewal fee. Quite separately, there are gaming charges applicable (see Section V, below).

ii Sanctions for non-compliance

With regard to non-remote betting and betting offices and gaming and gaming establishments, the licensee must conduct its business from approved premises and must maintain its licence in accordance with the conditions upon which it is issued. In the case of remote gambling, the licensee must ensure it complies with the provisions of the Act, its licence terms and the Codes of Conduct issued by the Licensing Authority, in particular the Remote Technical and Operating Standards for the Gibraltar Gaming Industry.

Quite apart from the specific obligations and conditions that a licence holder needs to comply with depending on whether it is offering remote or non-remote gambling services, each licence holder is obliged to follow the same rules (a–g) as provided in Section II.iii, above.

Part VIII of the Gambling Act contains all the enforcement provisions in relation to the compliance by licence holders to the terms of their licences. Section 42 of the Gambling Act grants extensive powers of investigation, reporting and powers of entry when a licence holder is suspected of carrying on activities contrary to the provisions of his or her licence, the Act or in a manner which is otherwise prejudicial to the public interest, the interest of any customer or potential customer or to the reputation of Gibraltar. This part of the Gambling Act also sets out the powers of the Licensing Authority to suspend or revoke a licence and enables a Justice of the Peace to grant the Gambling Commissioner and or the police with a warrant to search the premises.

The Gambling Act imposes significant penalties on those persons providing remote gambling services without having previously sought and obtained the relevant approvals and licences (these penalties apply equally to B2B and B2C operators). On summary conviction, the penalty may include a fine of up to £5,000 or a maximum of three months in prison, or both. On conviction or indictment, there may be a fine or imprisonment for a term not exceeding one year, or both.

IV WRONGDOING

See Section III.ii, above, regarding enforcement provisions in Part VIII of the Gambling Act.

i Consequences for unlicensed operators

The Act imposes significant penalties on those persons providing remote gambling services without having previously sought and obtained the relevant approvals and licences – see Section III.ii, above.

ii Anti-money laundering

Gibraltar has enacted legislation to comply with the EU's Fourth Money Laundering Directive (the Directive). The primary piece of legislation in this area is the Proceeds of Crime Act (POCA). The Act contains a number of sections relating to anti-money laundering (AML), and the Terrorist Asset-Freezing Regulations 2011 are also applicable in the jurisdiction.

In particular, Section 33 of the Gambling Act 2005 stipulates that all remote and non-remote gambling licensees must comply with the provisions of the POCA. In addition, the licence conditions for remote gambling operators provide that remote gambling licensees need to ensure compliance with the Financial Service Commission (FSC) Guidance Notes on AML and related matters (in addition to the separate Codes of Practice issued by the Gambling Commissioner).

Under Section 36 of the Act, which is applicable to all licence holders in Gibraltar, all licensees need to establish and maintain an effective system of internal controls and procedures in respect of any transactions that may give rise to a suspicion of money laundering. Gibraltar's Financial Intelligence Unit (GFIU), which, together with the FSC ensures money laundering compliance and vigilance within the financial services industry, has recourse against relevant financial businesses, which includes casinos and other online operators. They require that systems and training are in place to prevent money laundering, including know-your-client procedures, record-keeping and internal reporting procedures.

Under the POCA, the Licensing Authority is designated as the supervisory body for AML in the gambling industry. The Gambling Commissioner is empowered to issue guidance notes and to monitor the gambling industry's compliance regarding anti-money laundering and terrorist financing.

The Gambling Commissioner has also issued a comprehensive Anti-Money Laundering Code of Practice (the Code) for the gambling industry. This is a detailed document that sets out the standards and thresholds required by the Gambling Commissioner from all Gibraltar remote gambling licensees.

Broadly, the Code provides:

- a* guidance on the identification of the methods used to launder money, including conversion, disguising or disposing of illegally obtained funds;
- b* key provisions for operators to adhere to the different types of due diligence, training, record-keeping, anonymous and multiple accounts, politically exposed persons and suspicious activity; and
- c* additional considerations for both remote and non-remote gambling operators.

iii Suspicious transaction reporting

Pursuant to the Gambling Act, a licence holder is required to give written notification to the Licensing Authority of all the facts known in relation to a suspicious transaction within 24 hours or as soon as is practical. The licence holder may take all reasonable and proportionate steps in closing or suspending the account of the suspicious registered participant.

The Anti-Money Laundering Code of Practice provides a detailed procedure relating to making and submitting suspicious activity reports (SARs). Section 3.23 states that where the

conduct or activities of a customer gives rise to the knowledge or suspicion that the customer is or is attempting money laundering, an internal suspicious activity report should be made by the relevant staff member to a nominated manager or officer at the earliest opportunity. These SARs will then be provided directly to the Licensing Authority and the GFIU (by hand). The Commissioner will also liaise directly with the GFIU on any technical aspects relating to the SAR.

V TAXATION

The taxation of companies and individuals in Gibraltar is governed by one piece of primary legislation, the Income Tax Act. This is supported by subsidiary legislation enabled by the provisions of the Income Tax Act.

The corporate tax system was introduced on 1 January 2011 and established a 10 per cent rate, though it may be possible to mitigate this in the appropriate circumstances.

In this regard, Gibraltar also transposed the EU Parent Subsidiary Directive under the Parent Subsidiary Company Rules 1991. Under these provisions, a parent company is not liable in certain circumstances to tax in respect of dividend income paid by a subsidiary to its parent. Likewise, a Gibraltar company making a dividend payment out would not have to withhold tax.

Separately, gambling operators in Gibraltar are also subject to certain duty charges. This is levied at a rate of 1 per cent of turnover in respect of betting services and 1 per cent of gaming yield in relation to gaming services (casino and poker), but is subject to a minimum of £85,000 a year and a maximum of £425,000 a year. It is likely these arrangements will change as part of the review of the gambling legislation that is under way.

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