HM Government of Gibraltar

Explanatory Memorandum

Amendments to various pieces of legislation required as a result of the Moneyval Report

October 2020

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Purpose

As readers will be aware the Moneyval report of earlier this year made a number of recommendations regarding our effectiveness and technical compliance which we have to address and report back on early next year.

Gibraltar's technical deficiencies mean that we are currently in MoneyVal's Enhanced Compliance Monitoring programme which requires us to continually report on our progress to report these deficiencies. Failure to do so will lead to an escalation of action to be taken by Moneyval and/or Financial Action Task Force.

As a jurisdiction we have always prided ourselves on maintaining the highest standards in financial services and AML/CFT. This process is a continuous one as international standards evolve and independent reviews examine our legislative provisions and find that these can be improved further. In some cases, EU driven requirements exceed those of the FATF whilst the reverse is also true. We have followed the FATF standards as these are what we are evaluated against.

HM Government of Gibraltar embarked on a comprehensive review of all the Moneyval Recommendations in their report and has drafted amending legislation to separate instruments so that early in 2021 we can demonstrate our commitment to these international standards.

Due to time constraints, in order for the Bill to obtain assent in time for our report to be made, HMGoG is pursuing a parallel discussion with industry and stakeholders at the same time as the Bill is published for consideration by Parliament, hopefully no later than the first sitting in 2021.

Many of the changes are minor and may not alter requirements themselves, merely provide clarity to the reader of the original intent of the provisions. In other cases, more substantive additions and amendments have been made giving authorities greater powers, amending definitions as well as changing the processes of regulated firms and how some information is recorded in public registers.

The analysis that follows in this paper shows where in the Moneyval report the requirement for legislative change was made, where the change is reflected in the Bill and the effect of this amendment. Where this is industry specific, we have highlighted this too. Most changes, however, affect all sectors and public sector bodies.

A copy of the Moneyval report can be downloaded from https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Moneyval-Mutual-Evaluation-Report-Gibraltar.pdf

Abbreviations used in this document;

AML	Anti-Money Laundering
AMLGN	Anti-Money Laundering Guidance Notes
AT	Assessment Team
BO	Beneficial Owner
CDD	Customer Due Diligence
CFT	Combatting the financing of Terrorism
CI	Credit Institution
CompA	Companies Act
DNFBP	Designated Non Financial Business or Profession
DPRK	Democratic People's Republic of Korea (North Korea)
EDD	Enhanced Due Diligence
EEA	European Economic Area
FATF	Financial Action Task Force
FI	Financial Institution
FSA	Financial Services Act
GC	Gambling Commission
GFIU	Gibraltar Financial Intelligence Unit
GFSC	Gibraltar Financial Services Commission
HMC	HM Customs Gibraltar
HMGoG	HM Government of Gibraltar
HVD	High Value Dealer
IPR	Insolvency Practitioners Act
LSRA	Legal Services Regulatory Authority
MER	Mutual Evaluation Report (Moneyval Report)
ML	Money Laundering
MVTS	Money Value Transfer Systems
NCO	National Coordinator for AML/CFT
NCOR	National Coordinator Regulations
NRA	National Risk Assessment
OCP&L	Office of Criminal Prosecutions and Litigation
OFT	Office of Fair Trading
PEP	Politically Exposed Person
PF	Proliferation Financing
POCA	Proceeds of Crime
REA	Real Estate Agents
RFB	Relevant Financial Business
RGP	Royal Gibraltar Police
RUBOR	Register of Ultimate Beneficial Owner Regulations
SBPR	Supervisory Bodies and Powers Regulations
SDD	Simplified Due Diligence
TA	Terrorism Act
TAFT	Terrorist Asset Freezing Act
TCSP	Trust and Corporate Service Providers
TF	Terrorist Financing
UNSCRs	United Nations Security Council Regulations

Table of proposed legislative changes

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
1.7	Where countries identify higher risks, they should ensure that their AML/CFT regime addresses such risks, including through: (a) requiring financial institutions and DNFBPs to take enhanced measures to manage and mitigate the risks; or (b) requiring financial institutions and DNFBPs to ensure that this information is incorporated into their risk assessments.	Information on higher risks identified by the country is not explicitly requested to be incorporated in the firms' risk assessments	**New subparagraph under Section 17(1)(c) POCA** subparagraph (c) under section 17(1) has been added which now refers to the NRA. Firms must now incorporate higher risks identified in the NRA into their risk assessments.	All RFBs
1.8	Countries may allow simplified measures for some of the FATF Recommendations requiring financial institutions or DNFBPs to take certain actions, provided that a lower risk has been identified, and this is consistent with the country's assessment of its ML/TF risks.	SDD is left to the discretion of financial businesses to determine the circumstances under which simplified CDD can be applied. Although these should be underpinned by the firms' assessment of risk, there is no requirement that such assessment needs to be consistent with the country's assessment of the ML/FT risks.	**Amended Section 16(3) of POCA** has been amended to require firms to take into consideration the lower risk factors identified by the country (within its NRA) as part of their risk assessments	All RFBs
1.11	Financial institutions and DNFBPs should be required to: (a) have policies, controls and procedures, which are approved by senior management, to enable them to manage and mitigate the risks that have been identified (either by the country or by the financial institution or DNFBP);	Except for TCSPs (and the DNFBPs under the FSC), the other DNFBPs are not required to monitor implementation of their risk management systems and enhance them if necessary.	**New section 26(1ZB) POCA** has been added to include a reference to monitoring implementation of policies and "enhancing" these where necessary. (note: s.26 POCA has had a number of changes due to various MER requirements/ shortcomings/ findings)	All RFBs

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	(b) monitor the implementation of those controls and to enhance them if necessary; and (c) take enhanced measures to manage and mitigate the risks where higher risks are identified.			
1.12	Countries may only permit financial institutions and DNFBPs to take simplified measures to manage and mitigate risks, if lower risks have been identified, and criteria 1.9 to 1.11 are met. Simplified measures should not be permitted whenever there is a suspicion of ML/TF.	There is no specific provision prohibiting simplified due diligence whenever there is a suspicion of ML	**A new subsection under Section 16(1)(c) POCA has been added.** Which now specifically prohibits SDD where it has identified a suspicion or knowledge" of ML/TF. Relevant Financial Businesses are now only allowed to apply Simplified Due Diligence measures under POCA where no suspicion has been identified of Money Laundering or Terrorist Financing. Therefore, this remediates the deficiency highlighted by the Assessment Team.	All RFBs
2.2	Countries should designate an authority or have a co-ordination or other mechanism that is responsible for national AML/CFT policies.	Strategy envisaged that HMGoG would have established a formal Steering Committee structure. However, the Steering Committee was not in place at the time of the onsite visit	A Steering Committee has now been established where matters concerning AML/CFT and PF are discussed and agreed on. **Regulation 5(5) NCOR amended** to include policy and effectively expand the tasks of the National Coordinator.	NCO
2.2	Countries should designate an authority or have a co-ordination or other mechanism that is responsible for national AML/CFT policies.	Regulation 4 of the NCOR provides that the national coordinator responsibility is in charge of giving advice on 'policy and operational matters designed to mitigate the risks, identified in producing the risk assessment.' The advice on the risks identified must be provided in the form of policy and guidance notes and must be based on current information and be kept up to	As above, **Regulation 5(5) NCOR amended** to effectively expand the tasks of the National Coordinator. The NCO's role is no longer limited to (i) undertaking a risk assessment; and (ii) provide advice on policy and operational matters designed to mitigate the risks.	NCO

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		date (NCOR Regulation 5(3). In other words, his/her role is limited to risk assessment only and does not concern overall national. The 2017 Strategy acknowledges the NCO's role to ensure a strategic and proactive approach to the development of policy, legislative as well as workflows to improve the AML/CFT regime.		
2.4	Competent authorities should have similar co-operation and, where appropriate, co-ordination mechanisms to combat the financing of proliferation of weapons of mass destruction.	There exists no separate coordination mechanism for PF. Authorities stated that the same mechanism as for AML/CFT would apply, as a result of October 2018 meeting in which proliferation financing has been added as a standing agenda item for the inter-agency working group	The GFIU is now the leading authority on coordination of PF issues. Proliferation financing has also been defined in the Terrorism Act 2018 and corresponding references are made throughout POCA, ensuring that the legal mechanisms address AML/CFT and PF. **Section 38A Terrorism Act 2018 (definition of proliferation financing)** (cross-reference) **new section 1ZB POCA**. **Various sections of POCA**, its subsidiary legislation and also the Gambling Act all now include "proliferation" financing, with an appropriate cross-reference to the new definition contained in a **new section 38A Terrorism Act 2018**. **Money Laundering, within the meaning of Part III POCA and Part I POCA now also includes proliferation financing** (it was already included terrorist financing)	GFIU
6.5	Countries should have the legal authority and identify domestic competent authorities responsible for implementing and enforcing targeted financial sanctions, in accordance with the following standards and procedures: (a) Countries should require all natural and legal persons within the country to	The requirement to freeze assets that are jointly owned is not expressly stated in legislation	**Sanctions Act 2019** amended as follows: • **Section 4(1) amended** • **new Section 8(3A) inserted into Terrorist Asset-Freezing Regulations 2011** • **new regulation 16(2A) inserted**	LEAs

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	freeze, without delay and without prior notice, the funds or other assets of designated persons and entities. (b) The obligation to freeze should extend to: (i) all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular terrorist act, plot or threat; (ii) those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and (iii) the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities, as well as (iv) funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities. (c) Countries should prohibit their nationals, or any persons and entities within their jurisdiction, from making any funds or other assets, economic resources, or financial or other related services, available, directly or indirectly, wholly or jointly, for the benefit of designated persons and entities; entities owned or controlled, directly or indirectly, by designated persons or entities; and persons and entities acting on behalf of, or at the direction of, designated persons or entities, unless licensed, authorised or otherwise notified in accordance with the relevant UNSCRs.		The amendments widen or supplement pre-existing definitions in order to expressly include reference to assets held jointly.	

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	(d) Countries should have mechanisms for communicating designations to the financial sector and the DNFBPs immediately upon taking such action, and providing clear guidance to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations in taking action under freezing mechanisms. (e) Countries should require financial institutions and DNFBPs to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant UNSCRs, including attempted transactions. (f) Countries should adopt measures which protect the rights of *bona fide* third parties acting in good faith when implementing the obligations under Recommendation 6.			
7.2	Countries should establish the necessary legal authority and identify competent authorities responsible for implementing and enforcing targeted financial sanctions, and should do so in accordance with the following standards and procedures. (a) Countries should require all natural and legal persons within the country to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities. (b) The freezing obligation should extend to: (i) all funds or other assets that are	The requirement to freeze assets that are jointly owned is not expressly stated in legislation	**The Chemical Weapons (Sanctions) Order 2019 amended** as follows: • **new paragraph 4(2A) inserted** **The DPRK Sanctions Order 2019 amended** as follows: • **new paragraph 4(2A) inserted** The amendments widen or supplement pre-existing definitions in order to expressly include reference to assets held jointly.	LEAs

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	owned or controlled by the designated person or entity, and not just those that can be tied to a particular act, plot or threat of proliferation; (ii) those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and (iii) the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities, as well as (iv) funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities. (c) Countries should ensure that any funds or other assets are prevented from being made available by their nationals or by any persons or entities within their territories, to or for the benefit of designated persons or entities unless licensed, authorised or otherwise notified in accordance with the relevant United Nations Security Council Resolutions. (d) Countries should have mechanisms for communicating designations to financial institutions and DNFBPs immediately upon taking such action, and providing clear guidance to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations in taking action under freezing mechanisms. (e) Countries should require financial institutions and DNFBPs to report to			

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	competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant UNSCRs, including attempted transactions. (f) Countries should adopt measures which protect the rights of *bona fide* third parties acting in good faith when implementing the obligations under Recommendation 7.			
7.3	Countries should adopt measures for monitoring and ensuring compliance by financial institutions and DNFBPs with the relevant laws or enforceable means governing the obligations under Recommendation 7. Failure to comply with such laws or enforceable means should be subject to civil, administrative or criminal sanctions.	No provision specifically requires supervisors to monitor and ensure compliance on PF matters by FIs and DNFBPs	**Section 30(1) POCA has been amended** so that measures to be implemented by supervisory authorities include any which are necessary to prevent ML/TF including PF. Further, under consequential amendments to s.30A POCA, "proliferation finance" has been added there also. Supervisory authorities were already required under s.30(1) to monitor and ensure compliance with POCA in its entirety. Nevertheless, wording has been added to ensure compliance on ML/TF and PI matters is specifically mentioned.	All Supervisory Bodies
8.2	Countries should: (a) have clear policies to promote accountability, integrity, and public confidence in the administration and management of NPOs; (b) encourage and undertake outreach and educational programmes to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse;	There is no specific policy document on the promotion of transparency	**Friendly Societies Act amended** as follows: • **Section 4 amended** • **New Schedule 1A inserted** The amendments to Section 4 extend the Registrar's functions, and introduce an obligation for the Registrar, in the discharge of his functions, to adhere to principles surrounding the reduction of crime, with reference to a new Schedule 1A. Schedule 1A in turn transposes recommendations stipulated by FATF under Criterion 8.2, in relation to CFT. **Charities Act** is amended as follows. • **Section 4 amended** • **New Schedule 3 inserted**	Registrar of Friendly Societies and Board of Charities Commissioners

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	(c) work with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse; and (d) encourage NPOs to conduct transactions via regulated financial channels, wherever feasible, keeping in mind the varying capacities of financial sectors in different countries and in different areas of urgent charitable and humanitarian concerns.		The amendments to Section 4 extend the Commissioners' functions, and introduce an obligation for the Commissioners, in the discharge of their functions, to adhere to principles surrounding the reduction of crime, with reference to a new Schedule 3. Schedule 3 in turn transposes recommendations stipulated by FATF under Criterion 8.2, in relation to CFT.	
8.5	Countries should: (a) ensure effective co-operation, co-ordination and information-sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs; (b) have investigative expertise and capability to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations; (c) ensure that full access to information on the administration and management of particular NPOs (including financial and programmatic information) may be obtained during the course of an investigation; and (d) establish appropriate mechanisms to ensure that, when there is suspicion or reasonable grounds to suspect that a particular NPO: (1) is involved in terrorist financing abuse and/or is a front for fundraising by a terrorist	The effective co-operation, co-ordination among all levels of appropriate authorities or organisations that hold relevant information on NPOs is not guaranteed	Financial Services Act 2019 amended as follows: • Schedule 9 amended to add the Registrar of Friendly Societies and the Board Charity Commissioners to the list of "Domestic Authorities" for the purposes of information sharing and cooperation. Friendly Societies Act amended as follows: • new Part 15 inserted • new Part 16 inserted • new Schedule 6 inserted **Friendly Societies Act** New Part 15 introduces a framework for information sharing with domestic authorities, foreign authorities and the Registrar's equivalent in other jurisdictions. The New Part 16 confers new Information gathering and investigatory powers) on the Registrar. The new Schedule 6 sets out the list of domestic authorities for information gathering and sharing purposes. **Charities Act**	Registrar of Friendly Societies, Board of Charities Commissioners and Supervisory Bodies

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	organisation; (2) is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures, or other forms of terrorist support; or (3) is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations, that this information is promptly shared with competent authorities, in order to take preventive or investigative action.		The new Part VI introduces a framework for information sharing with domestic authorities, foreign authorities and the Commissioners' equivalent in other jurisdictions. The new Schedule 4 sets out the list of domestic authorities for information gathering and sharing purposes.	
10.7	Financial institutions should be required to conduct ongoing due diligence on the business relationship, including: (a) scrutinising transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the financial institution's knowledge of the customer, their business and risk profile, including where necessary, the source of funds; and (b) ensuring that documents, data or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of existing records, particularly for higher risk categories of customers.	There is no explicit requirement to undertake reviews of existing records to ensure documents, data or information obtain for CDD purposes is kept up-to-date and relevant.	**Amended Section 12(2) POCA.** Reviews as part of "ongoing monitoring" also now include an obligation to update records where necessary, in order to ensure all information obtained to for the purpose of applying customer due diligence measures is kept up-to-date and relevant.	All RFBs
10.8	For customers that are legal persons or legal arrangements, the financial institution should be required to understand the nature of the customer's business and its ownership and control structure.	There is no explicit requirement relating to understanding the nature of the business	**Section 10 has been significantly amended** in order to essentially split out the individual requirements of CDD , making the section more comprehensible and user-friendly. The word "understanding" of the nature of the business was inserted to address the MER shortcoming, but on instructions	All RFBs

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			of the National Coordinator Representative, section 10 POCA has been further amended to refer to the risk based approach. s.10 also now splits out the CDD requirements into 9 separate requirements which essentially require RFBs to (a) identifying the customer, (b) identifying all beneficial owners (c) understanding the ownership and control structure of customer (d) taking a risk based approach to understanding the nature of the customer's business or occasional transaction (e) taking a risk-based approach to the verification of source of funds and wealth of customers and beneficial owners (f) verifying identity of customer and beneficial owners in line with a risk-based approach (g&h) seek additional information for corporates, trusts and similar legal arrangements (i) conduct ongoing monitoring; and (j) keeping records of the above as well of any difficulties encountered during the process.	
10.9	For customers that are legal persons or legal arrangements, the financial institution should be required to identify the customer and verify its identity through the following information: (a) name, legal form and proof of existence; (b) the powers that regulate and bind the legal person or arrangement, as well as the names of the relevant persons having a senior management position	The legal requirement to verify the identity of the customer does not include for legal arrangements the obligation to obtain the name of the relevant persons having a senior management position	**Amended Section 10(d) POCA** See above comments in relation to changes made to s.10 POCA. It is now an obligation to obtain the name of relevant persons in a senior management position for legal arrangements.	All RFBs

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	in the legal person or arrangement; and (c) the address of the registered office and, if different, a principal place of business.			
10.10	For customers that are legal persons, the financial institution should be required to identify and take reasonable measures to verify the identity of beneficial owners through the following information: (a) the identity of the natural person(s) (if any) who ultimately has a controlling ownership interest in a legal person; and (b) to the extent that there is doubt under (a) as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural person(s) (if any) exercising control of the legal person or arrangement through other means; and (c) where no natural person is identified under (a) or (b) above, the identity of the relevant natural person who holds the position of senior managing official.	The requirements of identification of the BO do not follow the hierarchy of provisions of identifying the BO in the standards	**Amended Section 7(1A) POCA** The definition of "beneficial owner" has been amended under Section 7(1A) of POCA and under Regulation 3(1) RUBOR. The beneficial ownership definition is now practically identical in POCA and RUBOR. The amendment has ensured that this is now aligned with the FATF Recommendation Criterion and follows the recommended hierarchy.	All RFBs and Supervisory Bodies
10.11	For customers that are legal arrangements, the financial institution should be required to identify and take reasonable measures to verify the identity of beneficial owners through the following information: (a) for trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries,	In case of trusts, only beneficiaries that hold more than 25% of the property are required to be identified (and not on all beneficiaries)	**Section 7(1B) POCA and Regulation 3(2)** RUBOR have been amended to clarify that the 25% threshold applies only to corporate and legal entities and not to trusts. The GFSC's AMLGN have also been amended to clarify that the 25% threshold applies only to corporate legal entities and not to trusts.	All RFBs

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	and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership); (b) for other types of legal arrangements, the identity of persons in equivalent or similar positions.			
10.13	Financial institutions should be required to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable. If the financial institution determines that a beneficiary who is a legal person or a legal arrangement presents a higher risk, it should be required to take enhanced measures which should include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of payout	There is no explicit provision for the beneficiary of a life insurance product to be considered as a risk factor when determining whether EDD is applicable	**New section 17(4A) POCA** Under a new subsection (4A) in Section 17 POCA, the beneficiary of a life insurance product must now be considered as a risk factor when determining whether Enhanced Due Diligence is applicable	All RFBs
10.16	Financial institutions should be required to apply CDD requirements to existing customers on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained.	There is no explicit requirement to consider the materiality when applying CDD requirements	**Amended Section 11(2) POCA** Section 11(2) now requires CDD measures to be applied "on the basis of materiality" as well as on a risk sensitive basis. The legislative wording has been amended to reflect the materiality of a risk posed by the customer when applying CDD requirements. This change is not considered to cause a major impact as firms are already required to consider CDD measures or customers on a risk-sensitive basis, which would, by default, include a consideration of the materiality involved The point about adequacy of data obtained was already covered in s.11(1)(d)	All RFBs

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10.18	Financial institutions should be required to perform enhanced due diligence where the ML/TF risks are higher	Guidance on lower risks in relation to EU members is not based on an assessment of risk	**New Section 16(5) POCA** This new subsection (5) in Section 16 POCA now requires that a risk assessment including geographical risk factors relevant to simplified due diligence (Schedule 6 POCA read with Section 16 POCA), takes into account any additional geographical risk factors including those identified within the NRA. The changes made to POCA now require Relevant Financial Businesses to risk assess all geographical risk factors, including whether these are highlighted in the NRA or not, and it does not rule out EU member states. This means that customers/UBOs present in the EU are not necessarily considered as low risk if the NRA has additional information that would suggest otherwise	All RFBs
10.19	Where a financial institution is unable to comply with relevant CDD measures: (a) it should be required not to open the account, commence business relations or perform the transaction; or should be required to terminate the business relationship; and (b) it should be required to consider making a suspicious transaction report (STR) in relation to the customer.	There are no explicit provisions that prohibit the opening of accounts for which CDD has not been performed	**Amended Section 15(1)(b) POCA** 15(1)(b) POCA has been amended and now includes the prohibition to open an account for a customer where appropriate due diligence has not been performed.	All RFBs
10.20	In cases where financial institutions form a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer, they should be permitted not to pursue the CDD process, and instead should be required to file an STR	There is no explicit permission not to pursue the CDD process if it is believed this might tip-off the customer	**New section 11(5A) POCA** A new subsection (5A) has been added after Section 11(5) of POCA (Customer Due Diligence). There is now an obligation in POCA to not pursue the Customer Due Diligence process if a firm believes this might tip-off the customer. Therefore, the shortcoming has been resolved.	All RFBs

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11.1	Financial institutions should be required to maintain all necessary records on transactions, both domestic and international, for at least five years following completion of the transaction.	Not all types of transactions are covered by record-keeping requirements in POCA and this shortcoming is only broadly covered by accounting regulations	**Amended Section 25(2)(b) POCA** Amendments under section 25(2)(b) POCA now ensure that all types of transactions are caught by the record keeping requirements under POCA. Transactions now include both domestic and international, and those beyond transactions in respect of a business relationship or occasional transaction which are subject of CDD measures or ongoing monitoring. We consider that the changes we have made to s.10 already clearly outline that CDD measures comprise UBO identification, and further clarify how this is done for all types of entity. This was also dealt with this issue at s.25: “including documents and information obtained to identify the customer and beneficial owner and verify the customer and beneficial owner’s identities, and such other documents obtained in respect of each of the customer due diligence measures identified in section 10” s.25 was further amended to ensure that it refers to the UBO identification information more expressly. The new words “including documents and information obtained in respect of each of the customer due diligence measures identified in section 10,” should address the MER requirements that POCA extend record keeping requirements to “all CDD Measures”. The use of the new words “to identify the customer and beneficial owner and verify the customer and beneficial owner’s identities, and such other documents obtained” should ensure that POCA extends the record keeping requirements to [records of] BOs.	All RFBs
11.2	Financial institutions should be required to keep all records obtained through CDD measures, account files and business correspondence, and results of any	The records that need to be kept relate only to the customer’s identity and are not	**Section 25(2)(a) POCA amended.** Section 25(a) POCA is now more explicit in ensuring that records kept relate not only to customer’s identity but also to	All RFBs

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	analysis undertaken, for at least five years following the termination of the business relationship or after the date of the occasional transaction	explicit on other CDD information.	other CDD information as identified in revised section 10 POCA. Removing the word “identity” and not limiting this to the customer and beneficial ownership, therefore, encompasses all types of Customer Due Diligence information (as now noted in s.10 POCA, as amended) by default and resolves the issues highlighted by the Assessment Team.	
11.2	Financial institutions should be required to keep all records obtained through CDD measures, account files and business correspondence, and results of any analysis undertaken, for at least five years following the termination of the business relationship or after the date of the occasional transaction	There is no direct requirement to keep records on account files but only accounts details when those are used for payments, and this is also not set out in law	**Section 25(2)(b) POCA amended** The rewording of the subsection 25(2)(b) has ensured that account files are caught by the record keeping requirements under POCA. See comments in 11.1 – this is the same point.	All RFBs
11.3	Transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.	RFBs must keep supporting evidence and records of transactions and records of transactions (original documents or copies) necessary to identify transactions, rather than to allow transactions to be reconstructed. This provision is covered through enforceable means and not by law	**New subsection 25(2A) POCA** A new subsection 25(2A) POCA now requires transactions to be recorded with sufficient information so to allow for these to be reconstructed.	All RFBs
11.4	Financial institutions should be required to ensure that all CDD information and transaction records are available swiftly to domestic competent authorities upon appropriate authority.	Obligation to maintain records so that an enquiry or court order from the authorities can be responded to swiftly, which includes all CDD information and transaction records, is not set out in law	**New subsection 26(2)(e) POCA** A subsection has been added under Section 26(2)(e) POCA which ensures that the requirement to maintain records so that an enquiry or court order from the authorities can be responded to swiftly, now specifically makes reference to all records specified in section 25(2), which consists of (a) CDD information and (b) transactional information.	All RFBs

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
			New subsection 26(2)(e) now mentions "full and speedy responses"	
12.1	In relation to foreign PEPs, in addition to performing the CDD measures required under Recommendation 10, financial institutions should be required to: (a) put in place risk management systems to determine whether a customer or the beneficial owner is a PEP; (b) obtain senior management approval before establishing (or continuing, for existing customers) such business relationships; (c) take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs; and (d) conduct enhanced ongoing monitoring on that relationship	The requirement to establish a PEP's source of funds/wealth does not cover customers already on-boarded at the time of the adoption of POCA (Section 20(1)(b)).	**New subsection 11(5)(d) POCA** **Amended section 20(1)(b) POCA** A new provision under Section 11(5)(d) POCA, as read with amended Section 20(1)(b) POCA now requires, in more express terms, that firms should establish the source of funds/wealth involved in that business relationship even for clients already on-boarded, and not just for new customers. This also includes PEPs. By adding the expression "existing or proposed" business relationship to cover customers already onboarded. The ongoing monitoring of all PEP customers will cover those already on-boarded by the firm. s.11(5)(d) now captures the source of funds for PEPs also. We made a change to the wording to include "has" a business relationship, and also refer to "existing".	All RFBs
12.1	As above	There is no specific provision for obtaining senior management approval if the BO of a customer is a PEP (b)	**Section 20(1) POCA** The measures listed under Section 20(1) of POCA relating to PEPs now relate to customers whose beneficial owner is also a PEP. As above, we also included "has, or" to cover existing relationships.	
12.1	As above (a)	Determining whether a client is a PEP is not mandatory for all customers but can be	**A new subsection 11(5)(d) POCA** has been inserted so that the requiring to determining whether a client is a PEP cannot	All RFBs

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
		interpreted as based on a risk sensitive approach	be interpreted as being on a risk sensitive approach, but rather is now expressly covered as mandatory. The amendments now require all RFBs to take into account certain risk variables, including whether the client is a PEP.	
12.3	Financial institutions should be required to apply the relevant requirements of criteria 12.1 and 12.2 to family members or close associates of all types of PEP	The obligation to have policies and procedures to determine if a customer/BO is a PEP does not extend to family members or persons known to be close associates of PEPs	**Section 26(2)(c) POCA + Section 20A of POCA**. The requirement to determine whether a customer or BO is a PEP now extends to family members and/or close associates of that PEP under changes in section 26(2)(c)POCA and Section 20A POCA.	All RFBs
13.1	In relation to cross-border correspondent banking and other similar relationships, financial institutions should be required to: (a) gather sufficient information about a respondent institution to understand fully the nature of the respondent's business, and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a ML/TF investigation or regulatory action; (b) assess the respondent institution's AML/CFT controls; (c) obtain approval from senior management before establishing new correspondent relationships; and (d) clearly understand the respective AML/CFT responsibilities of each institution	While most criteria are met, they apply only to non-EEA countries and territories, which is not in line with the FATF Standards	**Section 17A POCA has been deleted.** **Changes made to section 19 POCA** to remove distinction for non-EEA and EEA. The power under s.17A(2) POCA has been moved to a new section 19(2) POCA also. Removing the references to non-EEA and 3rd Country makes the requirements for correspondent relationships under POCA to be applicable to all countries, regardless of whether it is an EU Member State or not. s.19 POCA now removes the reference to "from a non-EEA State or Territory" and applies to a relationship with any respondent institution in the same manner, wherever located.	Banks
13.2	With respect to "payable-through accounts", financial institutions should be required to	The provisions apply only to non-EEA countries and	**Section 17APOCA has been deleted** in its entirety, with the content of section 17A(2) POCA now appearing under a new section 17(9) POCA.	Banks

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
	satisfy themselves that the respondent bank: (a) has performed CDD obligations on its customers that have direct access to the accounts of the correspondent bank; and (b) is able to provide relevant CDD information upon request to the correspondent bank	territories, which is not in line with FATF Standards	**Section 19 POCA also amended** The definition of correspondent relationship in s.7 POCA includes "payable-through accounts"	
14.5	MVTS providers that use agents should be required to include them in their AML/CFT programmes and monitor them for compliance with these programmes	There is no explicit requirement for MVTS to include agents in their AML/CFT programs or monitor them	**Section 26(5C) and Section 26(6)(b) POCA** The changes to Section 26(5C) and Section 26(6)(b) include a specific requirement for "payment service providers" (MVTS) providers to include its agents within its AML/CFT programs and to monitor them accordingly. Section 26(6)(b) POCA provides a definition of payment service provider that aligns with the Financial Services Act 2019. As stated in the MER, currency exchange offices and money transmission offices (or remittance offices) are not permitted to have agents. We therefore removed this reference to currency exchange providers. The AT was concerned with PIs (payment institutions) only.	MVTS
17.1	If financial institutions are permitted to rely on third-party financial institutions and DNFBPs to perform elements (a)-(c) of the CDD measures set out in Recommendation 10 (identification of the customer; identification of the beneficial owner; and understanding the nature of the business) or to introduce business, the ultimate responsibility for CDD measures should remain with the financial institution relying	Regarding the timing, information and documentation must be made available by the third party "as soon as reasonably practicable" rather than immediately and without delay	**Amended Section 25(5) POCA.** **Amended Section 23 POCA** **New s.26(6A)POCA** References to "as soon as reasonably practicable" in the section 25 POCA have been removed and additions have been made to ensure these are carried out "without delay" in line with the FATF Recommendation Criterion.	All RFBs that rely on third parties for CDD measures

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
	on the third party, which should be required to: (a) obtain immediately the necessary information concerning elements (a)-(c) of the CDD measures set out in Recommendation 10; (b) take steps to satisfy itself that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay; (c) satisfy itself that the third party is regulated, and supervised or monitored for, and has measures in place for compliance with, CDD and record-keeping requirements in line with Recommendations 10 and 11.		s.25(6) POCA addresses requirement (b), but we added a new s.26(6A)POCA in order to provide additional clarity and bring clarity to firms on the steps they can take in order to satisfy themselves that information and documents will be made available.	
17.1	As above	Ultimate responsibility of the functions carried out by the third party remains with the RFB. Nevertheless, RFBs are permitted to rely on third parties by simply having "reasonable grounds to believe" that the third party is regulated and supervised accordingly	With regards to (c) **Amended Section 23(1) POCA** Under changes to section 23 POCA, firms are now required to satisfy themselves that the person relied on is regulated and supervised and not just have "reasonable grounds to believe". This change has resolved the concern highlighted in the MER.	All RFBs that rely on third parties for CDD measures
17.2	When determining in which countries the third party that meets the conditions can be based, countries should have regard to information available on the level of country risk.	Although reliance on third parties established in high risk third countries is not permitted, for all other situations there is no requirement to take into consideration information available on the country risk,	**Section 23(1C) POCA** The change to Section 23(1C) POCA now includes the requirement to take into consideration information available on the country risk when the third party relied on is in another country. The available information may be from the NRA for example, which takes precedence to any other sources of geographical risk factor information.	All RFBs that rely on third parties for CDD measures

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
		apart from membership to the EEA		
18.1	Financial institutions should be required to implement programmes against ML/TF, which have regard to the ML/TF risks and the size of the business, and which include the following internal policies, procedures and controls: (a) compliance management arrangements (including the appointment of a compliance officer at the management level); (b) screening procedures to ensure high standards when hiring employees; (c) an ongoing employee training programme; and (d) an independent audit function to test the system.	Some requirements of C18.1 are only applied by FIs "where appropriate" rather than always. In addition, they do not extend to group level (C18.1 and C18.2) Section 26(1) includes the policy on compliance management to be "where appropriate" and not always. AND RFBs should, where applicable (rather than always), appoint a director, senior manager or partner in line with Section 9B of POCA.	**Sections 26(1), 26(1A) and 9B of POCA have been amended** The measures set out in criterion 18.1 were in POCA s.26(1)(a) to (f) + 26(1A). However, the deficiency highlighted that the requirements did not always apply. The references to "where appropriate" or "where applicable" have been removed from these provisions. The words "*including monitoring their implementation and enhancing them where necessary,* " have been included as an action point arising from observations of the AT in relation to criterion 1.11 Therefore, any doubts raised by the Assessment Team have been settled and remediated. It is now a requirement, in every case, and without exception, for RFBs to • appoint a director, senior manager or partner in line with Section 9B of POCA. • prepare policies listed in s.26, which include policy on compliance management • extend policies to group level • ensure an independent audit function is set up. Slightly revised the wording to account for a partnership which is not a legal person but would still be subject to the requirement.	All RFBs
18.2	Financial groups should be required to implement group-wide programmes against ML/TF, which should be applicable, and appropriate to, all branches and majority-owned subsidiaries of the financial group. These should include the measures set out in criterion 18.1 and also:	In addition, they do not extend to group level (C18.1 and C18.2) There is no direct provision in POCA that employee screening, compliance management arrangements or	**Section 26(5B) POCA was amended** **Sections 26(1B) and (1C) POCA** **Deleted 25(5A) POCA as redundant** The changes made to POCA as a result of the deficiencies raised, now ensure that the legislation requires:	All RFBs

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
	(a) policies and procedures for sharing information required for the purposes of CDD and ML/TF risk management; (b) the provision, at group-level compliance, audit, and/or AML/CFT functions, of customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes; and (c) adequate safeguards on the confidentiality and use of information exchanged.	independent audit function, should be applied group wide. Any such information shared can only be used for the general purpose of AML/CFT, which includes CDD and ML/TF risk management, although not explicitly mentioned as in C.18.2(a). A general provision for sharing information for the purpose of AML/CFT, could include, but does not explicitly mention, customer, account and transaction.	• employee screening, compliance management arrangements and the independent audit function to be applied group wide within the firm; and • the sharing of information now specifically includes for the purposes of Customer Due Diligence and ML/TF risk management including customer, account and transaction information • customer, account and transaction information are now expressly provided for within information that can be exchanged. • group wide policies include controls and procedures in subsection (1) as well as further policies concerning the exchange of information at group-level, and adequate safeguards against tipping-off Significant amendments to s.26(1B) POCA have been made to bring in the concept of group-level functions mentioned at criterion 18.2, as well as allow the exchange of information. Also expanded is the type of information that can be exchanged, whilst ensuring every exchange remains subject to Data Protection Act 2004, and further subject to the purpose of AML/CFT. The references to group and group-wide are consistent with rest of POCA and POCA has a defined term for “group” in s.7	
18.3	Financial institutions should be required to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the home country requirements, where the minimum AML/CFT requirements of the host country are less strict than those of the home country, to the extent that host country laws and regulations permit. If the host country does not permit the proper implementation of AML/CFT measures consistent with the home country requirements, financial groups should be	Requirements relating to foreign branches and subsidiaries are largely covered by POCA and AMLGN, but they only apply in case of non EEA States and territories, as there is a presumption in legislation that all EEA countries have similar AML/CFT requirements (C18.3)	**Amended Section 21(1) and (2) POCA** **Consequential amendment to Section 26(3) POCA** Changes made under legislation now ensure that the relevant requirements apply to any country which has measures which are not equivalent to Gibraltar’s, not only those outside the EEA and the firm will need to ensure that the local requirements apply accordingly. The changes made to section 21 POCA in inserting AML/CFT and removing the reference to “*customer due diligence measures, ongoing monitoring and record-keeping*” also ensures that the requirements applied to branches and subsidiaries extend to all AML/CFT requirements, and also in	All RFBs

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
	required to apply appropriate additional measures to manage the ML/TF risks, and inform their home supervisors		respect of reporting to GFSC and taking of additional measures. These changes should therefore address the deficiencies identified by the AT. Section 21(2)(c) has now also been added to ensure that the requirements expected in Gibraltar are applied to the extent permitted by territory outside Gibraltar.	
18.3	As above	FIs are required to inform the GFSC and take additional mitigating measures when it cannot apply the same standard as in Gibraltar, but this is restricted only to standards relating to CDD, ongoing monitoring and record keeping, and not to all AML/CFT measures	**Section 21(1) of POCA** FIs are required to inform its Supervisory Authority and take additional mitigating measures when it cannot apply the same standard as in Gibraltar, and this is no longer restricted only to standards relating to CDD, ongoing monitoring and record keeping. Instead, FIs will need to inform its Supervisory Authority and take additional mitigating measures in relation all AML/CFT measures The presumption in legislation that all EEA countries have similar AML/CFT requirements has also been removed. This has been achieved by removal of references to "non-EEA state or Territory" and replacing these with "[any] country or territory outside Gibraltar"	All RFBs
19.2	Countries should be able to apply countermeasures proportionate to the risks: (a) when called upon to do so by the FATF; and (b) independently of any call by the FATF to do so	The provisions under Criterion 19.2 apply only to non-EEA countries and territories	**Section 24(1) POCA** Section 24(1) POCA has also been amended so that the Minister may direct an RFB to apply counter-measures with any person that the FATF calls for, regardless of whether they are based within the EU or not. The legislative change under POCA has remediated the deficiency as now all countries are caught and not just non-EEA. We achieved this by deleting "who is situated or incorporated in a non-EEA State or Territory".	All RFBs, Supervisory Authorities and LEAs

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
23.2	In the situations set out in criterion 23.1, DNFBPs should be required to comply with the internal controls requirements set out in Recommendation 18.	Deficiencies identified under R18 and R19 have an impact on R23. Affected by the shortcomings under Rec 18. DNFBPs under the FSC are supervised in the same way as FIs.	**Refer to Rec 18**. DNFBPs are already required to comply with the internal controls requirements set out in Recommendation 18, so no further amendment to legislation is necessary to make provision for it to apply to DNFBPs; however, the deficiencies identified at R18 take into account impact on FI, Cis and DNFBPs. Therefore, it is considered that by addressing the deficiencies under R18, R23.2 has been addressed.	All DNFBPs
23.3	In the situations set out in criterion 23.1, DNFBPs should be required to comply with the higher-risk countries requirements set out in Recommendation 19.	Deficiencies identified under R18 and R19 have an impact on R23. Affected by the shortcomings under Rec 19. DNFBPs under the FSC are supervised in the same way as FIs.	**Refer to Actions taken under R19.** DNFBPs are already required to comply with the higher-risk countries requirements set out in Recommendation 19, so no further amendment to legislation is necessary to make provision for it to apply to DNFBPs; however, the deficiencies identified at R19 take into account impact on FI, Cis and DNFBPs. Therefore, it is considered that by addressing the deficiencies under R19, R23.3 has been addressed.	All DNFBPs
24.12	Countries that have legal persons able to have nominee shares and nominee directors should apply one or more of the following mechanisms to ensure they are not misused: (a) requiring nominee shareholders and directors to disclose the identity of their nominator to the company and to any relevant registry, and for this information to be included in the relevant register; (b) requiring nominee shareholders and directors to be licensed, for their nominee status to be recorded in company registries, and for them to maintain information identifying their	There is no requirement for licensed nominee shareholders or directors to maintain information identifying their nominator	**NOMINEE SHAREHOLDERS** **RUBOR has been amended** as follows: • **new definition of *"nominee"*** added in Regulation 3(1) • **new Regulation 6A** inserted • Breaches of obligations under new Regulation 6A(2) have been made subject **to civil sanctions under Regulation 42** and **criminal sanctions under Regulation 45** • **Breaches of new Regulation 6A(3) has been made subject to civil sanctions under Regulation 42**. **Companies Act 2014** has been amended as follows: • **section 154(1) has been amended** • **new subsection 182(1)(ba)** inserted • **new subsection 182(1A)** inserted	TCSPs

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
	nominator, and make this information available to the competent authorities upon request; or (c) using other mechanisms identified by the country		• **subsection 188(4)(a) amended** • **new section 188(4A)** inserted • **Schedule 5 has been amended** The amendments now ensure that nominee shareholders must notify the company secretary of the nominee arrangement (regulation 6A(2) RUBOR) and of its termination (regulation 6A(3) RUBOR). A breach of regulation 6A(2) is subject to both a civil penalty and a criminal sanction. A breach of regulation 6A(3) is subject only to a civil penalty. The company must then, on receiving such notification, include the nominee status of the shareholder in the Register of Members (new section 182(1)(ba) Companies Act 2014). Details of the nominee status of members must be included in the annual return (new section 188(4)(a), with reference to new section 188(4A). Any changes to the particulars of a member, including changes to his nominee status, must be notified to the Registrar under section 154(1) as amended. NB. The changes to section 154 require consequential changes to the following Companies House form: “Return of any Change in any Particulars of the Member(s)”. The amended Schedule 5 includes details of nominee status to be included in the annual returns. NB. The changes to section 188 and Schedule 5 require consequential changes to the following Companies House form: “Form of Annual Return for a company having a share capital”. **“NOMINEE” DIRECTORS** **New subsections (8) to (10) have been inserted into section 222 Companies Act 2014**. These include a new criminal offence for default of obligations. Gibraltar law does	

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
			not recognise the concept of nominee directors, but does allow for shadow directors. **Subsections (8) of Section 222 Companies Act 2014** now imposes an obligation on a director acting on the directions or instructions of a shadow director to notify the company that he is acting on the directions or instructions of a shadow director and provide particulars of the shadow director. Default is a criminal offence. On receipt of a notification under section 222(8), the company must include the details of the shadow director in the register of directors on the basis that, under pre-existing subsection (7), a shadow director is a director.	
24.12	As above	There is no requirement for nominee shareholders and directors to disclose the identity of the nominator to the company or to the register maintained by the CHG	See 24.12 above.	TCSPS
24.13	There should be liability and proportionate and dissuasive sanctions, as appropriate for any legal or natural person that fails to comply with the requirements	The Companies Act provides sanctions for non-compliance with the information filing requirements but only in the case of late submissions. These sanctions are neither dissuasive nor proportionate	**Companies Act 2014 has been amended** as follows: • Section 182(3) (increase in penalty for default in upkeep of register of members); • Section 222(5) (increase in penalty for default in upkeep of register of directors, failing to deliver information on the register of directors to the Registrar or refusing an inspection of the register of directors); • Section 191(3)(a) (increase in penalty for failure to file annual returns on time). These changes now provide dissuasive sanctions.	TCSPS
24.14	Countries should rapidly provide international co-operation in relation to basic and beneficial ownership information, on the basis set out in Recommendations 37 and 40. This should include:	Affected by deficiencies highlighted under C24.7 and C24.13	Addressed via measures taken under other criteria See C24.7 and C24.13	All RFBs

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
	(a) facilitating access by foreign competent authorities to basic information held by company registries; (b) exchanging information on shareholders; and (c) using their competent authorities' investigative powers, in accordance with their domestic law, to obtain beneficial ownership information on behalf of foreign counterparts			
24.3	Countries should require that all companies created in a country are registered in a company registry, which should record the company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers, and a list of directors. This information should be publicly available.	This information is publicly available, upon request and payment of a fee, except for the foundation charter for overseas foundations (foundations established abroad that re-domicile and register in Gibraltar), where this information is not publicly available	**Section 12(2) of the Private Foundations Act has been amended.** The amendment now ensures that the foundation charter of an overseas foundation is publicly available.	TCSPs
24.5	Countries should have mechanisms that ensure that the information referred to in criteria 24.3 and 24.4 is accurate and updated on a timely basis.	Issue is with sanctions as covered by C24.13	See C24.13	TCSPs
24.6	Countries should use one or more of the following mechanisms to ensure that information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or can be otherwise determined in a timely manner by a competent authority: (a) requiring companies or company registries to obtain and hold up-to-date information on the companies' beneficial ownership;	The form for the submission of information to the RUBO contemplates also the option to consider a "relevant legal entity" as an ultimate BO, which is not in line with the FATF definition of BO	RUBOR has been amended as follows: • **Regulation 3(1) has been amended** to insert a new definition: "Listed Entity" • **The definition of "beneficial owner" has been amended** in Regulation 3(1) • **Regulation 11C RUBOR has been amended** • **Schedule 3 has been deleted**. POCA has been amended as follows:	All RFBs

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
	(b) requiring companies to take reasonable measures to obtain and hold up-to-date information on the companies' beneficial ownership; (c) using existing information, including: (i) information obtained by financial institutions and/or DNFBPs, in accordance with Recommendations 10 and 22; (ii) information held by other competent authorities on the legal and beneficial ownership of companies; (iii) information held by the company as required in criterion 24.3 above; and (iv) available information on companies listed on a stock exchange, where disclosure requirements ensure adequate transparency of beneficial ownership		• **New definition inserted in section 7(1): "Listed Entity**" • **Definition of "beneficial owner amended** in 7(1A) • **New Schedule 9** inserted. "Listed Entity" has been inserted as a new definition in section 7(1) POCA / Schedule 9. A Listed Entity means, broadly, a company listed on a recognised stock exchange. RUBOR defines "Listed Entity" by reference to section 7(1) POCA. Definition of "Beneficial owner" has now been amended in both POCA and RUBOR to clarify that where a corporate or legal entity is owned directly or indirectly by a Listed Entity, the beneficial owner for the purposes of that corporate or legal entity is the Listed Entity.	
24.6	As above	There are no sanctions for non-compliance with the requirement to provide the information within 30 days of the change (for corporate or LEs incorporated prior to the commencement of the RUBOR) or with the requirement to provide the information within 30 days of its incorporation.	**Regulations 42 and 45 RUBOR expanded**. **Breaches of regulations 6(5), 6A(2), 6A(3), 8(2), 8(3), 8A(1), 8A(2), 9(5), 11(2), 11(3) (not previously caught) now caught by Regulation 42.** **Breaches of regulations 6A(2), 8(2), 8(3), 8A(1), 8A(2), 11(2) and 11(3) (not previously caught) now caught by Regulation 45.** The scope of both the civil penalty and criminal sanction regimes have been increased. Non-compliance with the requirement to provide information within 30 days of any change to the beneficial ownership position or to beneficial ownership information previously disclosed, is now subject to	TCSPs

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
			both a civil penalty and a criminal sanction. This addresses the requirement.	
24.7	Countries should require that the beneficial ownership information is accurate and as up-to-date as possible	Whilst corporates and LEs incorporated in Gibraltar are required to obtain and hold adequate, accurate and current information on the BO of the corporate or legal entity, there are no sanctions for non-compliance with this requirement	Breach of regulation **8A(1) and 8A(2) now caught under civil penalty regime** under regulation 42 **as well as the criminal sanction regime under regulation 45.** This means that a default by the beneficial owner to notify the company of his existence is now subject to a civil penalty and a criminal sanction.	TCSPs
24.9	All the persons, authorities and entities mentioned above, and the company itself (or its administrators, liquidators or other persons involved in the dissolution of the company), should beEarly required to maintain the information and records referred to for at least five years after the date on which the company is dissolved or otherwise ceases to exist, or five years after the date on which the company ceases to be a customer of the professional intermediary or the financial institution.	There are no specific requirements for persons involved in the dissolution of a company to maintain and records referred to in this criterion, but only a requirement to maintain records and information related to the insolvency of the company and the insolvency work	**Insolvency Practitioners Regulations 2020** have been amended as follows: • **New definitions inserted in Regulation 3**; • **New Regulation 9(2A)** inserted The Insolvency Practitioner Regulations now require Insolvency Practitioners to obtain and maintain information on the company/legal entity/arrangement to which the appointment relates including the details of the beneficial owner, which is defined by reference to the POCA definition of “beneficial owner”.	Insolvency Practitioners
Recommendation 25	As above	Existence of flee clauses without safeguards to prevent their misuse	**A new section 62A has been inserted in the Trustees Act**. This new section provides that after the date of commencement all fee clauses included in a trust instrument will be void. In respect of pre-existing fee clauses, these are deemed void, subject to an application to the Minister to exempt them from the effect of the section.	All Trustees not just regulated trustees

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
25.1	Countries should require: (a) trustees of any express trust governed under their law to obtain and hold adequate, accurate, and current information on the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust; (b) trustees of any trust governed under ~~their~~ law to hold basic information on other regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants, and tax advisors; and (c) professional trustees to maintain this information for at least five years after their involvement with the trust ceases	The relevant requirement does not apply to express trusts "governed under their law", as per the FATF definition, but only to a trust (or similar legal arrangements) that "generates tax consequences in Gibraltar"	**Section 61 Trustees Act has been amended**. The amendments now require trustees to maintain up to date information in line with FATF requirements. Trustees Act applies to all Gibraltar trusts.	All Trustees not just regulated trustees
25.1	As above	Only a corporate or legal entity incorporated in Gibraltar must keep records of the actions taken in order to identify the BOs – the requirement does not apply to trusts	A **new section 61(4) has been inserted into the Trustees Act**. Regulation 12(1A) RUBOR has been amended to apply to express trusts as well as to corporate and legal entities. The amendments create an obligation for trustees to record the actions taken to identify the beneficial owner. This applies to trustees of express trusts (via RUBOR) and trustees of all Gibraltar trusts (via Trustees Act).	All Trustees not just regulated trustees
25.1	As above	There is no requirement for trustees of any trust governed under their law to hold basic information on other regulated agents of, and service providers to, the trust including	**New sections 61(2) to (4) have been inserted into the Trustees Act.** The amendments create an obligation for trustees of Gibraltar trusts to hold basic information and beneficial ownership information on all entities providing a service to the trust, where	All Trustees not just regulated trustees

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
		investment advisors or managers, accountants and tax advisors	provision of that service constitutes "relevant financial business" for the purposes of section 9(1) POCA.	
25.2	Countries should require that any information held pursuant to this Recommendation is kept accurate and as up to date as possible, and is updated on a timely basis.	Professional trustees are subject to CDD and record keeping requirements, and, as noted in the analysis of 25.1 trustees of an express trust must obtain and hold adequate accurate and up-to-date information. See the shortcomings noted under C. 25.1	**Section 61(1) of the Trustees Act has been amended**. The amendments now ensure that trustees are required to hold *adequate, accurate and current* beneficial ownership information (see C25.1 above).	All Trustees not just regulated trustees
25.3	All countries should take measures to ensure that trustees disclose their status to financial institutions and DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold	No requirement for trustees to disclose their status to FIs and DNFBPs	**A new section 61B has been inserted into the Trustees Act**. The amendments now require trustees to disclose their trustee status to relevant financial businesses, as defined in section 9(1) POCA. Trustees will be required to update the information provided when it changes (subsection (2)).	
25.6	Countries should rapidly provide international co-operation in relation to information, including beneficial ownership information, on trusts and other legal arrangements, on the basis set out in Recommendations 37 and 40. This should include: (a) facilitating access by foreign competent authorities to basic information held by registries or other domestic authorities;	The issues noted in regard to the lack of sanctions of certain requirements of the RUBOR, as well as the deficiencies identified regarding the record keeping requirements (R.11) may affect the accuracy and relevance of the information that can be obtained and could have a negative impact on the rapidity required by this	These are addressed under C25.2 and C25.8 See action taken under C24.7, C25.1, C25.2, and C25.7	All Trustees not just regulated trustees

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
	(b) exchanging domestically available information on the trusts or other legal arrangement; and (c) using their competent authorities' investigative powers, in accordance with domestic law, in order to obtain beneficial ownership information on behalf of foreign counterparts.	criterion for the exchange of the information		
25.7	Countries should ensure that trustees are either (a) legally liable for any failure to perform the duties relevant to meeting their obligations; or (b) that there are proportionate and dissuasive sanctions, whether criminal, civil or administrative, for failing to comply	There are no sanctions in the case of non-professional trustees and in the case of non-compliance with the requirement to provide the information within 30 days of the change (for trusts created prior to the commencement of the RUBOR) or with the requirement to provide the information within 30 days of its incorporation	**Regulations 42 and 45 of RUBOR have been amended**. Breaches of regulations 6(5), 6A(2), 6A(3), 8(2), 8(3), 8A(1), 8A(2), 9(5), 11(2), 11(3) (not previously caught) are now caught by Regulation 42. Breaches of regulations 6A(2), 8(2), 8(3), 8A(1), 8A(2), 11(2) and 11(3) (not previously caught) are now caught by Regulation 45. Section 63 Trustees Act has also been amended. Both the civil penalty and criminal sanction regimes in RUBOR have been expanded, which now ensures that non-compliance with the requirement to provide information within 30 days of incorporation, among other things, is caught. Section 63 of the Trustees Act has also been amended to provide for a more dissuasive sanction.	All trustees of trusts to which RUBOR applies
25.7	As above	Some of the sanctions mentioned above are not proportionate or dissuasive	See C25.7 above and C25.8. **Regulations 42 and 45 of RUBOR have been amended**. **Section 63 Trustees Act has also been amended**. The scope of Regulation 45 RUBOR has been extended to create more criminal offences i.e. more breaches now constitute a criminal offence, all of which are punishable by a maximum of 2 years imprisonment.	All trustees of trusts to which RUBOR applies

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
			Section 63 Trustees Act has also been amended to increase the maximum sanction to two years' imprisonment This is now in alignment with the maximum sanction for criminal offences in RUBOR.	
25.8	Countries should ensure that there are proportionate and dissuasive sanctions, whether criminal, civil or administrative, for failing to grant to competent authorities timely access to information regarding the trust referred to in criterion 25.1.	Trustees of an express trust are also subject to a fine for not complying with a request of information pursuant to the RUBOR (S63 of the Trustees Act, this is a fine up to level 5 on the standard scale – that is GBP 10,000, which is not proportionate or dissuasive)"	**Section 63 Trustees Act has been amended.** This amendment increases the maximum sanction under section 63 (for breaches under sections 61, 61A, 61B, 62 or 62A) to two years' imprisonment This is now in alignment with the maximum sanction for criminal offences in RUBOR.	All trustees of trusts to which RUBOR applies
26.5	The frequency and intensity of on-site and off-site AML/CFT supervision of financial institutions or groups should be determined on the basis of: (a) the ML/TF risks and the policies, internal controls and procedures associated with the institution or group, as identified by the supervisor's assessment of the institution's or group's risk profile; (b) the ML/TF risks present in the country; and (c) the characteristics of the financial institutions or groups, in particular the diversity and number of financial institutions and the degree of discretion	The AT states that (a) is not within the SBPR; (b) and (c) are covered.	**Regulation 5(2)(c) SBPR** The changes made under Regulation 5(2)(c) SBPR now ensure that the frequency and intensity of on-site and off-site AML/CFT supervision of all relevant financial businesses is determined of the supervisor's risk assessment (based on consideration of ML/TF risks, policies controls etc.), and the risk profile.	Supervisory Bodies

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
	allowed to them under the risk-based approach.			
28.1	Countries should ensure that casinos are subject to AML/CFT regulation and supervision. At a minimum: (a) Countries should require casinos to be licensed. (b) Competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, or being an operator of a casino. (c) Casinos should be supervised for compliance with AML/CFT requirements.	For casinos, existing measures are not sufficiently capable to prevent both criminals and their associates from holding or being the BO of a significant or controlling interest, or holding a management function, in a casino	The use of the word "shall" in place of "may" in **paragraph 3(4) of Schedule 1** GA now makes it compulsory for the Licensing Authority to consider all the factors in (a) to (k) of that paragraph in determining fitness and propriety. This addresses the shortcoming as a measure to prevent the licensing of a casino managed/controlled/owned by a criminal or their associate. Further, paragraph 7 now establishes discretionary and mandatory circumstances where a licence will not be renewed, and any matter relating to fitness and propriety concerns will remove the discretion so that the Licensing Authority cannot renew the licence. These changes should therefore address the deficiencies identified by the AT, whilst also bringing GA in line with the amendments made to POCA and related legislation in response to other shortcomings identified by the AT. Requirement (a) is met as casinos are required to be licensed. Requirement (c) is met as casinos are supervised for compliance with AML/CFT requirements "money laundering" under the GA referred to repealed legislation, so we took opportunity to update in line with new definition in POCA. At the same time, we inserted terrorist financing, as well as "anti-money laundering and combatting terrorist financing" which, all have cross references to POCA. "proliferation financing" is also addressed, with a corresponding definition in the Terrorism Act 2018, which now defines this term. GFIU has also been defined as "Financial Intelligence Unit" was used in the Act, which was inconsistent with the revised legislation	Gambling Commission

FTAF Criterion	FATF Requirement	Shortcoming identified in the MoneyVal report as it relates to Gibraltar	Legislative Amendments to correct the identified deficiency	Sector(s) affected by change
35.1	Countries should ensure that there is a range of proportionate and dissuasive sanctions, whether criminal, civil or administrative, available to deal with natural or legal persons that fail to comply with the AML/CFT requirements of Recommendations 6, and 8 to 23.	There are few instances where certain requirements, created solely by the AMLGN, are not enforceable. The most significant concern: • the requirement for firms to undertake the risk assessment for new products, business practices, delivery mechanisms and developing technologies (for both new and existing products) prior to the launch of these (R21); • the requirement to "understand" the purpose and intended nature of the business relationship (R60); • the requirement to take into consideration whether the respondent institution had been subject to any ML/TF investigation or regulatory action	**Section 25A(1) POCA** **Section 33 POCA** The first point has been addressed under Section 25A(1) of POCA, which now requires firms to consider, delivery mechanisms and developing technologies (for both new and existing products) prior to the launch of these. A breach of section 25A is already offence by virtue of the inclusion of a cross-reference to section 25A in section 33 POCA. This did not require amendment. Expanding s.25A POCA now ensures that requirements that were previously only contained in the AMLGN are now legally enforceable and expressly set out in statute. When being added to POCA, these would then be enforceable by the SBPR. The second point, concerning "understanding" has already been addressed under changes to section 10(1)(c) POCA. See changes made under C10.8 above The third point has been addressed by changes made to section 19 of POCA.	Supervisory Authorities and all RFBs

DRAFT BILL

NOTE : Highlighted references in the attached Bill refer back to the FATF Recommendation in the Moneyval Report.

Please see Technical Compliance Annex of the report on Pages 159 to 246 for a full description of the issues which have led to the legislative drafting.

02.11.20

B. xx/20

BILL

FOR

AN ACT to amend the Proceeds of Crime Act 2015

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Proceeds of Crime (Amendment) Act 2020.

Commencement.

2. This Act shall come into operation on the day of publication.

PART 1

AMENDMENT OF THE PROCEEDS OF CRIME ACT 2015

3. The Proceeds of Crime Act 2015 is amended in accordance with this Part.

4. (2.4) For section 1ZA, substitute–

"Terrorist financing: interpretation.

1ZA. (1) In this Act "terrorist financing" means–

(a) the use of funds or other assets, or the making available of funds or assets, by any means, directly or indirectly for the purposes of terrorism or offences listed in Schedule 1 of the Terrorism Act 2018;

(b) the acquisition, possession, concealment, conversion or transfer of funds that are (directly or indirectly) to be used or made available for those purposes;

(c) any act which constitutes an offence under section 35, 36, 37 or 39 of the Terrorism Act 2018; or

(d) any act which constitutes an offence under any other enactment that applies in Gibraltar and that offence relates to terrorism or the financing terrorism,

and cognate expressions shall be construed accordingly.

(2) In this section, "terrorism" has the same meaning as in section 4 of the Terrorism Act 2018.".

5. (2.4) After section 1ZA, insert the following–

"**Proliferation financing: interpretation.**

1ZC.(1) In this Act "proliferation financing" has the same meaning as in section 38A of the Terrorism Act 2018.".

6. (2.4) In section 1A, for the definition of "FIU", substitute–

""FIU" means a foreign body responsible for receiving (and to the extent permitted, requesting), analysing and disseminating to the competent authorities, disclosures of information which concern potential money laundering, potential terrorist financing, potential proliferation financing or are otherwise required by its national legislation;".

7. (2.2) For section 1C(a), substitute–

"(a) to gather, store, analyse and disseminate intelligence related to criminal conduct, (including but not limited to money laundering, terrorist financing and proliferation financing), transacted or attempted to be transacted through relevant financial businesses.".

8. (2.4) In section 1D(b), for "money laundering and terrorist financing", substitute "money laundering, terrorist financing and proliferation financing".

9. (2.4) In section 1DB(2)(e), after "predicate offence,", insert "proliferation financing,".

10. (2.4) In section 1JA, for "money laundering or terrorist financing", substitute "money laundering, terrorist financing or proliferation financing".

11. (2.4) Section 1K is amended as follows–

(a) in subsection (1)(a), for "money laundering and terrorist financing", substitute "money laundering, terrorist financing and proliferation financing"; and

(b) in subsection (5), for "money laundering and terrorist financing", substitute "money laundering, terrorist financing and proliferation financing".

12. (2.4) In section 1N(1), for "money laundering or terrorist financing", substitute "money laundering, terrorist financing or proliferation financing".

13. (2.4) In section 4F–

(a) in subsection (1), for "money laundering or terrorist financing", substitute "money laundering, terrorist financing or proliferation financing"; and

(b) in subsection (3)(a), for "money laundering or terrorist financing", substitute "money laundering, terrorist financing or proliferation financing".

14. (2.4) In section 5(9)(b), after "37", insert ", 38A".

15. (DP request + reporting when conducting CDD) In section 6B, after "employment" insert ", or during the application of customer due diligence measures pursuant to section 11".

16. (2.4) For the words appearing below the heading entitled "PART III", substitute–

"MEASURES TO PREVENT THE USE OF THE FINANCIAL SYSTEM FOR PURPOSES OF MONEY LAUNDERING, TERRORIST FINANCING AND PROLIFERATION FINANCING".

17. Section 7 is amended as follows–

(a) (2.4 + OFT Request) in subsection (1)–

(i) for the definition of "art market participant", substitute–

""art market participant" means a person who by way of business trades in, or acts as an intermediary in the sale or purchase of, artistic works and the value of the transaction, or a series of linked transactions, amounts to 10,000 euro or more;";

(ii) after the definition of "art market participant", insert–

""art storage freeport operator" means a person who operates a freeport when it, or any other person, by way of business stores artistic works in the freeport and the value of the artistic works so stored for a person, or a series or linked persons, amounts to 10,000 euro more;";

(ii) after the definition of "letting agent", insert–

""Listed Entity" means a company or other body corporate with shares admitted to trading on a regulated market situated in the European Economic Area or a regulated market outside the European Economic Area that is subject to disclosure requirements consistent with European Union law or subject to equivalent international standards which ensure adequate transparency of ownership information and which is set out in Schedule 9;"; and

(iii) for the definition of "senior management", substitute–

""senior management" means an officer or employee with sufficient knowledge of the institution's money laundering, terrorist financing and proliferation financing risk exposure and sufficient seniority to take decisions affecting its risk exposure, and need not, in all cases, be a member of the board of directors;";

(b) (cosmetic)After subsection (1)insert–

"(1ZA) The Minister may by Notice in the Gazette amend Schedule 9 by adding, deleting or otherwise altering any entry therein.";

(c) (10.10)For subsection (1A)(a) substitute–

"(1A) In this Act, "beneficial owner" means;

(a) in the case of a natural person-

(i) where a person is conducting a transaction or activity on his own behalf, that natural person; or

(ii) where a transaction or activity is being conducted on behalf of another person, the person on whose behalf the transaction or activity is being conducted;

(b) in the case of a Listed Entity, or a majority owned subsidiary of such a Listed Entity, the Listed Entity;

(c) in the case of a corporate or legal entity, other than a Listed Entity or a majority owned subsidiary of a Listed Entity-

(i) the natural person who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings;

(ii) if, after having exhausted all possible means,

(a) there is doubt as to whether the person identified under subparagraph (i) is the beneficial owner; or

(b) no person under subparagraph (i) is identified,

the natural person exercising control via other means;

(iii) if, after having exhausted all possible means-

(a) there is doubt as to whether the person identified under subparagraph (ii) is the beneficial owner, or

(b) no person under subparagraph (ii) is identified,

the person specified in subparagraph (iv);

(iv) for the purposes of subparagraph (iii) the specified person is-

(a) if the company or legal entity is ultimately owned or controlled through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, by a Listed Entity, or a majority owned subsidiary of a Listed Entity, the Listed Entity, and

(b) in all other cases, the natural person who holds the position of senior managing official;

(d) in the case of trusts–

(i) the settlor or settlors;

(ii) the trustee or trustees;

(iii) the protector or protectors, if any;

(iv) the beneficiaries, or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest trust is set up or operates;

(v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

(e) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person holding equivalent or similar positions to those referred to in paragraph (d),

and "beneficial owners" shall be construed accordingly.";

(d) (10.11)in subsection (1B), for "In the meaning of "beneficial owner" in subsection (1A)", substitute "In paragraph (c) of the meaning of "beneficial owner" in subsection (1A)"; and

(e) (2.4) in subsection (2)(b), after "37", insert ", 38A".

18. (OFT request) In section 9(1), after the paragraph (ha), insert–

"(hb) art storage freeport operators;".

19. (2.4) In section 9A, for "money laundering or terrorist financing", substitute "money laundering, terrorist financing or proliferation financing".

20. (18.1) In section 9B for "A relevant financial business, must, where applicable", substitute "A relevant financial business which is a legal person or a legal arrangement (other than a trust) must".

21. For Section 10, substitute–

"10. "Customer due diligence measures" shall comprise–

(a) identifying the customer, and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source including, where available, electronic identification means or relevant trust services as set out in the Electronic Identification Regulation or any other secure, remote or electronic identification process regulated, recognised, approved or accepted by the EIR supervisory body;

(b) identifying all beneficial owners;

(c) understanding the ownership and control structure of the customer;

(d) understanding and, as appropriate, obtaining information on, the purpose and intended nature of the business relationship or occasional transaction;

(e) taking a risk-based approach to the verification of the identity of the customer and all beneficial owners, so that the relevant financial business is satisfied that it knows who the customer and beneficial owners are;

(f) taking a risk-based approach to the verification of the source of funds and wealth of the customer and beneficial owners;

(g) in the case of a corporate or legal entity, obtaining, at least, the following information on the corporate or legal entity-

(i) its name, legal form and proof of existence;

(ii) the powers that regulate and bind the corporate or legal entity;

(iii) the names of the relevant persons having a senior management position in the corporate or legal entity;

(iv) the address of its registered office and, if different, its principal place of business;

(h) in the case of trusts, obtaining, at least, the following information on the trust-

(i) its name, legal form and proof of existence;

(ii) the powers that regulate and bind the trust;

(iii) the principal place of business of the trustees;

(i) in the case of legal entities such as foundations, and legal arrangements similar to trusts, obtaining, at least, the following information on the entity or similar legal arrangement-

(i) its name, legal form and proof of existence;

(ii) the powers that regulate and bind the entity or legal arrangement;

(iii) the names of the relevant persons having a senior management position in the entity or legal arrangement, if any;

(iv) the address of its registered office and, if different, its principal place of business;

(j) conducting ongoing monitoring in accordance with section 12; and

(k) subject to section 25, keeping records of all the actions taken under this section, as well as any difficulties encountered during the process.".

22. Section 11 is amended as follows–

(a) (2.4) in subsection (1)(c) for "money laundering or terrorist financing", substitute "money laundering, terrorist financing or proliferation financing";

(b) (10.16) in subsection (2) for "on a risk-sensitive basis", substitute "on the basis of materiality and on a risk-sensitive basis";

(c) (2.4) in subsection (3)(b) for "money laundering and terrorist financing", substitute "money laundering, terrorist financing and proliferation financing";

(d) (10.10) after subsection (4A), insert the following subsection–

"(4B). Where a relevant financial business is required to apply customer due diligence measures to a Listed Entity, or a majority owned subsidiary of a Listed Entity, it shall not be necessary to identify and verify the identity of any shareholder or beneficial owner of the Listed Entity, and it shall be necessary only for the relevant financial business to record the Listed Entity's entry in the public register of the regulated market in which the Listed Entity's shares are trading, and to retain a copy of such entry subject to section 25.";

(e) (12.1) in subsection (5)–

(i) in paragraph (c), for ".", substitute "; and"; and

(ii) after paragraph (c), insert–

"(d) whether the customer or beneficial owner is a politically exposed person."; and

(f) (10.20) after subsection (5), insert the following subsection–

"(5A) Where, during the course of applying customer due diligence measures, a relevant financial business knows, suspects or has reasonable grounds to suspect that the person subject to such measures or another person is engaged in money laundering, terrorist financing or proliferation financing, or is attempting any one or more of those acts, the relevant financial business must, where it is of the opinion that to continue would result in the tipping-off of the person, cease applying customer due diligence measures, and shall make a relevant disclosure to the GFIU without delay.".

23. (10.7) For section 12(2), substitute–

"(2) "Ongoing monitoring" of a business relationship means–

(a) scrutinising of transactions undertaken throughout the course of the relationship to ensure that the transactions are consistent with the relevant financial business's or person's knowledge of the customer, his business and risk profile, including where necessary the source of funds; and

(b) undertaking reviews of existing records (and updating these where necessary) to ensure that the documents, data or information obtained for the purpose of applying customer due diligence measures is kept up-to-date and relevant.".

24. (2.4) In section 13(3)(b), for "money laundering or terrorist financing", substitute "money laundering, terrorist financing or proliferation financing".

25. (10.19) In section 15(1)(b), after "a business relationship", insert ", open an account".

26. Section 16 is amended as follows–

(a) (1.12) in subsection (1)–

(i) in paragraph (a), delete "and";

(ii) in paragraph (b), for "," substitute "; and";

(iii) after paragraph (b), insert–

"(c) has not identified a suspicion or knowledge of money laundering, terrorist financing, or proliferation financing,".

(b) (1.8) for subsection (3), substitute–

"(3) When assessing the risks of money laundering and terrorist financing relating to types of customers, geographic areas, and particular products, services, transactions or delivery channels, a relevant financial business must take into account at least–

(a) the factors of potentially lower risk situations set out in Schedule 6; and

(b) the risks identified within any information that is made available to the relevant financial business pursuant to the National Coordinator for Anti-Money Laundering and Combatting Terrorist Financing Regulations 2016.".

(c) (10.18) after subsection (4), insert the following subsection–

"(5) When taking account of the factors of potentially lower risk situations set out in paragraphs (1)(c) and (3) of Schedule 6, a relevant financial business must ensure that a risk assessment including geographical risk factors, takes into account any additional geographical risk factors including those identified within any information that is made available to the relevant financial business pursuant to the National Coordinator for Anti-Money Laundering and Combatting Terrorist Financing Regulations 2016 and that any geographical risk factors contained in such information take precedence.".

27. Section 17 is amended as follows–

(a) (1.7) in subsection (1)(c)–

(i) in subparagraph (i), delete "or";

(ii) in subparagraph (ii), substitute "." with "; or"; and

(iii) after subparagraph (ii), insert–

"(iii) within any information that is made available to the relevant financial business pursuant to the National Coordinator for Anti-Money Laundering and Combatting Terrorist Financing Regulations 2016.";

(b) (cosmetic) in subsection (2) for "risk sensitive", substitute "risk-sensitive";

(c) (2.4) in subsection (4) for "money laundering and terrorist financing" substitute "money laundering, terrorist financing and proliferation financing"; and

(d) (10.13) after subsection (4), insert the following subsection–

"(4A) In addition to the factors set out in Schedule 7, when assessing the risks of money laundering, terrorist financing and proliferation financing, credit institutions and financial institutions shall include the beneficiary of any life insurance policy as a relevant risk factor in determining whether to apply enhanced due diligence measures under subsection (1), and in particular whether such beneficiary, being a legal person or legal arrangement, presents a higher risk, in which case the relevant financial business shall apply enhanced due diligence measures to appropriately manage and mitigate the risk, including identifying and verifying the identity of the beneficial owner of the beneficiary at the time of payout.".

28. (13.1) Delete section 17A–

29. (13.2) Section 19 is amended as follows–

(a) the content of section 19 shall be renumbered as subsection (1);

(b) in the new subsection (1)–

(i) after "banking relationship", insert "involving the execution of payments";

(ii) for "from a non-EEA State or Territory", substitute "outside Gibraltar";

(iii) (13.1 + 35.1)after paragraph (b), insert–

"(ba) determine from publicly available information whether the respondent has been subject to any money laundering, terrorist financing or proliferation financing investigation or regulatory action.";

(iv) (2.4) in paragraph (c) for "anti-money laundering and anti-terrorist financing controls", substitute "anti-money laundering, combatting terrorist financing and proliferation financing controls"; and

(v) in paragraph (e), for "document", substitute "understand and document"; and

(c) (13.1 and 13.2) after subsection (1), insert the following subsection–

"(2) A supervisory authority may direct a relevant financial business which is a credit institution or a financial institution and which is in a correspondent relationship with a respondent institution in a high risk country identified pursuant to section 17(1)(b) to review, amend, or terminate the correspondent relationship with that respondent institution.".

30. (12.1) Section 20(1) is amended as follows–

(a) for "that proposes to have", substitute "that has, or proposes to have,";

(b) after "politically exposed person", insert "(including a customer whose beneficial owner is a politically exposed person)"; and

(c) in paragraph (b) after "involved in the", insert "existing or".

31. (18.3) Section 21 is amended as follows–

(a) for subsection (1), substitute–

"(1) A relevant financial business must require its branches and subsidiary undertakings which are located in a country or territory outside Gibraltar to apply, to the extent permitted by the law of that country or territory, measures at least equivalent to those set out in this Act with regard to regard to customer due diligence measures, ongoing monitoring and record-keeping."; and

(b) for subsection (2), substitute–

"Where the law of a country or territory outside Gibraltar does not permit the application of such equivalent measures in subsection (1) by the branch or subsidiary undertaking located in that country or territory, the relevant financial business must–

(a) inform its supervisory authority accordingly;

(b) take additional measures to handle effectively the risks of money laundering, terrorist financing and proliferation financing; and

(c) ensure that the level of requirements expected in Gibraltar is applied, to the extent that the country's or territory's law so allows".

32. Section 23 is amended as follows–

(a) (17.1) in subsection (1) for "(or who the relevant financial business has reasonable grounds to believe falls within subsection (2)) to apply any customer due diligence measures and record keeping requirements", substitute "where it has satisfied itself that the person being relied on is regulated and supervised, and has measures in place for compliance with customer due diligence and record–keeping requirements in line with this Part,";

(b) in subsection (1B) after "high risk country", insert "identified pursuant to section 17(1)(b)"; and

(c) (17.2) after subsection (1B), insert–

"(1C) When considering reliance on a person in accordance with subsection (1), the relevant financial business must have regard to the level of country risk posed by the country in which that person is established, and in determining the level of country risk account must be taken of geographical risk factors including those identified within any information that is made available to the relevant financial business pursuant to the National Coordinator

for Anti-Money Laundering and Combatting Terrorist Financing Regulations 2016, and any geographical risk factors contained in such information take precedence.".

33. (2.4) In section 23A(b), for "money laundering and terrorist financing", substitute "money laundering, terrorist financing and proliferation financing".

34. (19.2) In section 24(1), delete "who is situated or incorporated in a non-EEA State or Territory".

35. Section 25 is amended as follows–

(a) (11.2) In subsection (2)(a) for "a copy of, the documents and information which are necessary, the evidence of the customer's identity obtained pursuant to sections 10A, 11, 12, 13, 14, 16, 17, 17A, 18, 19, 20, 20B or 22(3) including", substitute "a copy of the documents and information obtained pursuant to sections 10, 10A, 11, 12, 13, 14, 16, 17, 17A, 18, 19, 20, 20B or 22(3), and";

(b) (11.1 and second 11.2) For subsection (2)(b), substitute–

"(b) the supporting evidence and records of all transactions, both domestic and international, including account files and business correspondence, and results of any analysis undertaken, as well as any other information that may reasonably be necessary to identify such transactions (consisting of the original documents or copies).";

(c) (11.3) after subsection (2), insert–

"(2A) Evidence and records collected in accordance with subsection (2) must be sufficient so as to permit the reconstruction of individual transactions so as to provide, if necessary, evidence for the prosecution of criminal activity.";

(d) in subsection (3), for "the", substitute "an";

(e) (17.1) subsection (5) is amended as follows–

(i) after "a relevant financial business must,", insert "without delay";

(ii) in subparagraph (a), delete "as soon as reasonably practicable"; and

(iii) in subparagraph (b), delete "as soon as reasonably practicable";

(f) (17.1) subsection (6) is amended as follows–

(i) after "the third party will,", insert "without delay";

(ii) in subparagraph (a), delete "as soon as reasonably practicable"; and

(iii) in subparagraph (b), delete "as soon as reasonably practicable";

(g) (17.1) after subsection (6), insert–

"(6A) Steps taken under subsection (6) may include conducting such tests in such manner and at such intervals as the relevant financial business considers appropriate in all the circumstances in order to establish whether–

(a) the person being relied on has appropriate and consistent policies and procedures in place to allow the relevant financial business to rely on that person;

(b) if the person being relied on has not already provided to the relevant financial business the information and relevant documents referred to in subsection (5), the person being relied on-

(i) keeps the information and relevant documents referred to in subsection (5), obtained when applying customer due diligence measures; and

(ii) if requested by the relevant financial business, provides the relevant financial business with that the information and relevant documents referred to in subsection (5) without delay

(c) the person being relied on may be prevented, under the provisions of this or any other enactment, from providing the required information and relevant documents referred to in subsection (5).''; and

(h) (2.4) in subsection (11), for "money laundering or terrorist financing", substitute "money laundering, terrorist financing or proliferation financing.".

36. (2.4) In section 25ZA(3), for "money laundering or terrorist financing", substitute "money laundering, terrorist financing or proliferation financing".

37. (35.1 and 2.4) In section 25A(1)–

(a) for "money laundering and terrorist financing", substitute "money laundering, terrorist financing and proliferation financing"; and

(b) after "delivery channels,", insert "delivery mechanisms and developing technologies (for both new and existing products) prior to the launch of these,".

38. Section 26 is amended as follows–

(a) (1.11) in subsection (1)–

(i) delete ", proportionate to its nature and size"; and

(ii) (18.1) for paragraph (f), substitute–

"compliance management including the allocation of overall responsibility for the establishment and maintenance of effective systems of control to a compliance officer at management level (being a director, senior manager, or partner); and";

(b) (1.11) after subsection (1), insert–

"(1ZA) The policies, controls and procedures referred to in subsection (1) shall be proportionate to the nature and size of the relevant financial business.

(1ZB) A relevant financial business shall monitor the implementation of the policies, controls and procedures referred to in subsection (1), including enhancing these where higher risks are identified.";

(c) (1.11) for subsection (1A), substitute–

"A relevant financial business must undertake an independent audit function for the purposes of testing the policies, controls and procedures referred to in subsection (1), and such function shall have regard to the size and nature of the business.";

(d) (18.2) for subsection (1B), substitute–

"(1B) A relevant financial business that has branches or subsidiaries must implement group-wide policies and procedures applicable to all branches and majority-owned subsidiaries within the relevant financial business's group, which should at least include–

(a) policies, controls and procedures referred to in subsection (1);

(b) policies and procedures for sharing information required for the purposes of satisfying the customer due diligence requirements of this Part, within the group;

(c) the provision, at group-level functions, of customer, account and transaction information from branches and subsidiaries where necessary for the purposes of anti-money laundering and combatting terrorist financing and proliferation financing, which shall include, to the extent permitted under the Data Protection Act 2004–.

(i) information about transactions or activities which appear unusual; and

(ii) any analysis undertaken in respect of sub-paragraph (i), including the content of any report made to the GFIU or its underlying information where such disclosure is made

in confidence and would not cause tipping-off of the customer;

(c) adequate safeguards on the confidentiality and use of information exchanged under paragraph (b), including safeguards to prevent tipping-off; and

(d) the provision of information from group–level functions to branches and subsidiaries where relevant and appropriate to the management of the risks of money laundering, terrorist financing and proliferation financing.";

(e) after subsection (1B), insert–

"(1BB) In subsection (1B), "group-level functions" comprise any functions related to compliance, audit or anti-money laundering and combatting terrorist financing and proliferation financing.";

(f) in subsection (1C) after "section (1B),", insert "shall be to the extent permitted under the Data Protection Act 2004, and";

(g) (cosmetic) in subsection (2)–

(i) after "The policies", insert ", controls";

(ii) after "include policies", insert ", controls"

(iii) in subparagraph (a)(iii), for "money laundering or terrorist financing" substitute "money laundering, terrorist financing or proliferation financing";

(iv) in paragraph (b), for "money laundering or terrorist financing" substitute "money laundering, terrorist financing or proliferation financing";

(v) (12.3) for paragraph (c), substitute–

"(c) which provide a risk-based procedure to determine whether a customer or a beneficial owner of a customer is a politically exposed person, or whether such persons are family members or persons known to be close associates of politically exposed persons.";

(vi) in subparagraph (d)(ii), for "money laundering or terrorist financing" substitute "money laundering, terrorist financing or proliferation financing";

(vii) in paragraph (d)(iii), for "money laundering or terrorist financing" substitute "money laundering, terrorist financing or proliferation financing"; and

(viii) (11.4) after paragraph (d), insert–

"(e) which allow for full and speedy responses to requests from the GFIU, a law enforcement authority or a supervisory authority, including requests referred to in section 30B and the information and records referred to in section 25.";

(h) (cosmetic) in subsection (2A)–

(i) for "2(c)", substitute "(2)";

(ii) for "determination whether", substitute "determination of whether";

(iii) for "insurance policy or, if appropriate, the beneficial owner of the beneficiary, is", substitute "insurance policy (or, if appropriate, the beneficial owner of the beneficiary) is"

(iv) for "a politically exposed person, then the policies and procedures" substitute "a politically exposed person,";

(i) (18.3) for subsection (3), substitute–

"(3) Subsections (1)(g) and (2)(d) do not apply where the relevant financial business is an individual who neither employs nor acts in association with any other person.";

(j) (18.2) delete subsection (5A);

(k) (18.2 + 14.5) after the deleted subsection (5A), insert the following–

" (5B) The requirements referred to in subsection (5A) include, but are not limited to, those relating to compliance management and employee screening under subsection (1) and the independent audit function under subsection (1A).".

(5C) A payment service provider which uses agents must–

(a) include such agents within the policies and procedures which it establishes and maintains in accordance with this section;

(b) communicate the policies and procedures to the agents; and

(c) monitor the agent's compliance with such policies and procedures."; and

(l) for subsection (6), substitute–

"(6) In this section–

(a) "subsidiary undertaking" has the same meaning as in section 21; and

(b) "payment service provider" has the same meaning as in paragraph 15 of Schedule 4 to the Financial Services Act 2019."

39. (2.4) Section 27 is amended as follows–

(a) in subsection (1)(a)(i), for "money laundering and terrorist financing", substitute "money laundering, terrorist financing and proliferation financing"; and

(b) in subsection (1)(b), for "money laundering or terrorist financing", substitute "money laundering, terrorist financing and proliferation financing"; and

(c) in subsection (3), after the word "terrorism", insert ", on the practices of proliferation financing".

40. (2.4) Section 28 is amended as follows–

(a) in subsection (1), for "money laundering or terrorist financing", substitute "money laundering, terrorist financing or proliferation financing"; and

(b) in subsection (3), for "money laundering and terrorist financing", substitute "money laundering, terrorist financing and proliferation financing".

41. (7.3) In section 30(1), after "Act", insert ", which shall include those necessary to prevent such relevant persons from engaging or otherwise being concerned in (directly or indirectly) money laundering, terrorist financing or proliferation financing, or otherwise knowingly or recklessly assisting or facilitating such conduct by any other person".

42. (2.4) In section 30A, for "money laundering or to terrorist financing", substitute–

"money laundering, to terrorist financing, or to proliferation financing".

43. (2.4) In section 30C(3), for the text appearing within quotation marks, substitute–

"(2) The Commissioner may, subject to any provision made in any other enactment, make a request for information on a person's criminal record under subregulation (1) if he receives a request for information from a supervisory authority in relation to a national of a Member State suspected or accused of money laundering, terrorist financing or proliferation financing."

44. (2.4) In section 33, for "19", substitute "19(1) or (2)".

45. (2.4) Section 34A is amended as follows–

(a) in subsection (2), after "Money Laundering Directive", insert ", and the prevention of proliferation financing";

(b) in subsection (4), after "Money Laundering Directive", insert ", and the prevention of proliferation financing"; and

(c) in subsection (5)–

(i) for "tipping off", substitute "tipping-off"; and

(ii) in paragraph (b) for "money laundering and terrorist financing", substitute "money laundering, terrorist financing and proliferation financing".

46. (OFT request) Part I of Schedule 2 is amended as follows–

(a) in paragraph (g), for "the Proceeds of Crime Act 2015", substitute "this Act"; and

(b) after paragraph (g), insert–

"(ga) HM Customs (in relation to businesses engaging in relevant financial business in accordance with section 9(1)(hb) (art storage freeport operators) of this Act)".

47. (cosmetic + UBO definition) After Schedule 8, insert the following Schedule–

"**SCHEDULE 9**

Section 7(1ZA)

LIST OF NON-EEA MARKETS

In Israel—
— Tel Aviv Stock Exchange

In Japan—
— Fukuoka Stock Exchange
— Nagoya Stock Exchange
— Osaka Securities Exchange
— Sapporo Securities Exchange
— Tokyo Stock Exchange

In Switzerland—
— BX Berne Exchange
— SIX Swiss Exchange

In the United States of America—
— BATS Exchange, Inc.

— BATS Y-Exchange, Inc.
— BOX Options Exchange LLC
— C2 Options Exchange, Incorporated
— Chicago Board Options Exchange, Incorporated
— Chicago Stock Exchange, Inc.
— EDGA Exchange, Inc.
— EDGX Exchange, Inc.
— International Securities Exchange, LLC
— ISE Gemini LLC
— Miami International Securities Exchange LLC
— NASDAQ OMX BX, Inc.
— NASDAQ OMX PHLX LLC
— The NASDAQ Stock Market LLC
— National Stock Exchange, Inc.
— New York Stock Exchange LLC
— NYSE Arca, Inc.
— NYSE MKT LLC.".

PART 2

AMENDMENTS TO THE FINANCIAL SERVICES ACT 2019

48. The Financial Services Act 2019 is amended in accordance with this Part.

49. (26.3) In section 131, for subsection (3), substitute–

"(3) "Controller" ("A"), in relation to an undertaking ("B"), means–

(a) a person who falls within any of the cases in subsection (4); and

(b) a beneficial owner of a person referred to in paragraph (a),

and for the purposes of paragraph (b), "beneficial owner" has the meaning given to it in section 7(1A) to (1C) of the Proceeds of Crime Act 2015.".

50. (8.5) In Schedule 9–

(a) immediately below "DOMESTIC AUTHORITIES", insert–

"Board of Charity Commissioners"; and

(b) immediately below "Office of Criminal Prosecutions & Litigation;", insert–

"Registrar of Friendly Societies".

PART 3

AMENDMENTS TO THE SUPERVISORY BODIES (POWERS ETC.) REGULATIONS 2017

51. The Supervisory Bodies (Powers etc.) Regulations 2017 are amended in accordance with this Part.

52. (26.5) Regulation 3 is amended as follows–

(a) after the definition of "applicable law", insert–

""beneficial owner" has the meaning given to it in section 7 of the Act;"; and

(b) in paragraph (e) of the definition of "relevant person", for the word "mention" substitute "mentioned"

53. (26.5) Regulation 5 is amended as follows–

(a) in subregulation (2)(a) for "money laundering and terrorist financing", substitute "money laundering, terrorist financing and proliferation financing"; and

(b) for subregulation (2)(c), substitute–

"(c) base the frequency and intensity of on-site and off-site supervision on–

(i) the money laundering, terrorist financing and proliferation financing risks, and the policies internal controls and procedures associated with the relevant financial business, as identified by the supervisory body's assessment of the risk profile of the relevant financial business; and

(ii) on the risks of money laundering, terrorist financing and proliferation financing in Gibraltar as identified within any information that is made available to the relevant financial business pursuant to the National Coordinator for Anti-Money Laundering and Combatting Terrorist Financing Regulations 2016.".

54. (2.4) In regulation 6, for "money laundering and terrorist financing", substitute "money laundering, terrorist financing and proliferation financing".

55. (2.4) Regulation 9A(1) is amended as follows–

(a) in paragraph (a), for "money laundering and terrorist financing", substitute "money laundering, terrorist financing and proliferation financing"; and

(b) in paragraph (b), for "money laundering and terrorist financing", substitute "money laundering, terrorist financing and proliferation financing".

56. (2.4) In regulation 10A(3)(a)(i), for "money laundering or terrorist financing", substitute "money laundering, terrorist financing or proliferation financing".

57. (2.4) In regulation 11(1)(a), after "terrorist financing", insert "or proliferation financing".

PART 4

AMENDMENTS TO THE GAMBLING ACT 2005

58. The Gambling Act 2005 is amended in accordance with this Part.

59. (28.1) In section 2(1) –

(a) after the definition of "gaming machine", insert–

""Gibraltar Financial Intelligence Unit" and "GFIU" mean the financial intelligence unit established under section 1B of the Proceeds of Crime Act 2015;";

(b) for the definition of "money laundering", substitute–

""money laundering" has the same meaning as it has for the purposes of Part III of the Proceeds of Crime Act 2015, that is to say, the meaning given in section 7(2) of that Act;";

(c) after the definition of "prescribe", insert–

""proliferation financing" has the meaning given to it in section 38A of the Terrorism Act 2018"; and

(d) after the definition of "term", insert–

"terrorist financing" has the meaning given to it in section 1ZA of the Proceeds of Crime Act 2015;".

60. (28.1&cosmetic) Section 33 is amended as follows–

(a) in subsection (2), for every reference to "money laundering", substitute "money laundering, terrorist financing, proliferation financing";

(b) in subsection (3), for "Financial Intelligence Unit", substitute "Gibraltar Financial Intelligence Unit"; and

(c) in subsection (4)–

(i) for every reference to "money laundering", substitute "money laundering, terrorist financing, proliferation financing"; and

(ii) for "Financial Intelligence Unit", substitute "Gibraltar Financial Intelligence Unit".

61. (28.1&cosmetic) In section 36, for "money laundering", substitute "money laundering, terrorist financing, or proliferation financing".

62. (28.1) Schedule 1 is amended as follows–

(a) in paragraph 3(4)–

(i) for "may take into account", substitute "shall take into account"; and

(ii) for "money laundering", substitute "money laundering, terrorist financing, proliferation financing";

(b) the content of paragraph 7 shall be renumbered as subparagraph (1);

(c) delete the renumbered paragraph (1)(a); and

(d) insert the following after the renumbered paragraph (1)–

"(2) The Licensing Authority shall refuse to renew a licence if it is no longer satisfied either that the licence holder or any shareholder, director, executive manager or interested person is a fit and proper person to hold the licence, and in determining whether a person is fit and proper under this paragraph, the Licensing Authority shall have regard to at least the matters specified in paragraph 3(4).".

PART 5

AMENDMENTS TO THE NATIONAL COORDINATOR FOR ANTI-MONEY LAUNDERING AND COMBATTING TERRORIST FINANCING REGULATIONS 2016

63. The National Coordinator For Anti-Money Laundering And Combatting Terrorist Financing Regulations 2016 are amended in accordance with this Part.

64. (2.4) Regulation 3 is amended as follows–

(a) above the definition of "Directive", insert the following definition–

""Act" means the Proceeds of Crime Act 2015;".

(b) after the definition of "Minister", insert the following definition–

""money laundering" has the meaning attributed to it by section 7(2) of the Act;".

(c) after the definition of "National Coordinator"–

(i) delete "and"; and

(ii) insert the following definition–

""proliferation financing" has the meaning attributed to it by section 38A of the Terrorism Act 2018;".

(d) in the definition of "Supervisory Authority", for "Proceeds of Crime Act 2015.", substitute "the Act; and"; and

(e) after the definition of "Supervisory Authority", insert the following definition–

""terrorist financing" has the meaning attributed to it by section 1ZA of the Act.".

65. (2.2) Regulation 5 is amended as follows –

(a) in subregulation (2), for "money laundering and terrorist financing", substitute "money laundering, terrorist financing, and proliferation financing"; and

(b) after subregulation (4), insert–

"(5) The National Coordinator shall ensure that policy and operational decisions taken as a result of advice or a report provided under these Regulations are reflected in any relevant strategies implemented to mitigate the risks of money laundering, terrorist financing, and proliferation financing affecting Gibraltar.".

66. (2.4) Regulation 7 is amended as follows–

(a) in subregulation (1), for "money laundering and terrorist financing", substitute "money laundering, terrorist financing, and proliferation financing"; and

(b) in subregulation (2), for "money laundering and terrorist financing", substitute "money laundering, terrorist financing, and proliferation financing".

67. (2.4) Regulation 8 is amended as follows–

(a) in paragraph (a), for "money laundering and terrorist financing", substitute "money laundering, terrorist financing, and proliferation financing";

(b) in paragraph (b)–

(i) for "risk", substitute "risks"; and

(ii) for "money laundering or terrorist financing", substitute "money laundering, terrorist financing, or proliferation financing";

(c) in paragraph (c), for "money laundering and terrorist financing", substitute "money laundering, terrorist financing, and proliferation financing";

(d) in paragraph (d) for "money laundering and terrorist financing", substitute "money laundering, terrorist financing, and proliferation financing";

(e) in paragraph (e), for "money laundering and terrorist financing", substitute "money laundering, terrorist financing, and proliferation financing"; and

(f) in paragraph (g) for "money laundering and terrorist financing", substitute "money laundering, terrorist financing, and proliferation financing".

68. (2.4) In regulation 11, for "Proceeds of Crime Act 2015", substitute "the Act".

69. (2.4) Regulation 12 is amended as follows–

(a) in subregulation (1), for "money laundering or terrorist financing", substitute "money laundering, terrorist financing, or proliferation financing"; and

(b) in subregulation (2)(b), for "money laundering or terrorist financing", substitute "money laundering, terrorist financing, and proliferation financing";

PART 6

AMENDMENT OF THE TERRORISM ACT 2018

70. The Terrorism Act 2018 is amended in accordance with this Part.

71. (2.4) After section 38 insert the following section–

"**Offence of Proliferation Financing**

38A. (1) A person must not engage in conduct specified in subsection (4) knowing that, or reckless as to whether, the conduct relates to an activity specified in subsection (6).

(2) A person who contravenes subsection (1) is guilty of an offence.

(3) A person commits an offence under subsection (2) even if an activity specified in subsection (6) does not occur or is not attempted.

(4) The following conduct is specified for the purpose of subsection (1)–

(a) collecting, providing or managing an asset;

(b) providing advice related to the activities in paragraph (a);

(c) providing a financial service; or

(d) conducting a financial transaction.

(5) For the purpose of subsection 4(d)–

(a) a person conducts a financial transaction if the person is a party to the transaction or procures or facilitates the transaction; and

(b) a transaction can be made by any means, including electronic or physical transfer of an asset.

(6) For the purpose of subsection (1), the activities specified are–

(a) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer, export, transhipment or use of–

(i) nuclear weapons;

(ii) chemical weapons;

(iii) biological weapons; or

(iv) materials related to nuclear weapons, chemical weapons or biological weapons; or

(v) such other items or materials as may be prescribed by the Minister by notice in the Gazette; or

(b) the provision of technical training, advice, services, brokering or assistance related to any of the activities in paragraph (a).".

72. In paragraph 8 of Schedule 1, after subparagraph (c), insert–

"(ca) section 38A (proliferation financing);".

PART 7

AMENDMENT OF THE INSOLVENCY PRACTITIONERS REGULATIONS 2020

73. The Insolvency Practitioners Regulations 2020 are amended in accordance with this Part.

74. (24.9) In regulation 3, before the definition of "licence", insert–

""basic information" means–

(a) in relation to a company–

(i) its name;

(ii) proof of its incorporation;

(iii) its legal form and status;

(iv) the address of its registered office;

(v) basic regulating powers such as its Memorandum of Association and its Articles of Association;

(vi) a list of its directors;

(vii) a list of its shareholders;

(viii) the number and category of shares held by each of its shareholders including the voting rights associated with each category of shares; and

(b) in relation to a legal entity or a legal arrangement other than a company, the nearest equivalent of the matters set out in (a);

"beneficial owner" has the meaning given to it in section 7(1A) to (1C) of the Proceeds of Crime Act 2015;

"beneficial ownership information" means information identifying the beneficial owner;".

75. (24.9) After regulation 9(2), insert–

"(2A) A licensed insolvency practitioner must, in respect of each appointment referred to in sub–regulation (1)(a)(i) which relates to a corporate or legal entity or a legal arrangement–

(a) obtain adequate, accurate and current–

(i) basic information; and

(ii) beneficial ownership information

in respect of that corporate or legal entity or legal arrangement; and

(b) record and keep the information in paragraph (a) in any form he thinks fit, provided that it is possible to inspect the information and to produce a copy of it in printed or electronic form, for at least six years after the appointment has ceased to have effect.".

PART 8

AMENDMENT OF THE REGISTER OF ULTIMATE BENEFICIAL OWNERSHIP REGULATIONS 2017

76. The Register Of Ultimate Beneficial Ownership Regulations 2017 are amended in accordance with this Part.

77. (24.12) Regulation 3 is amended as follows–

(a) in subregulation (1)–

(i) after the definition of "Act", insert–

(ii) for the definition of "beneficial owner", substitute–

""beneficial owner" means;

(a) in the case of a Listed Entity, or a majority owned subsidiary of such a Listed Entity, the Listed Entity;

(b) in the case of a corporate or legal entity, other than a Listed Entity or a majority owned subsidiary of a Listed Entity-

(i) the natural person who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings;

(ii) if, after having exhausted all possible means,

(a) there is doubt as to whether the person identified under subparagraph (i) is the beneficial owner; or

(b) no person under subparagraph (i) is identified,

the natural person exercising control via other means;

(iii) if, after having exhausted all possible means-

(a) there is doubt as to whether the person identified under subparagraph (ii) is the beneficial owner, or

(b) no person under subparagraph (ii) is identified,

the person specified in subparagraph (iv);

(iv) for the purposes of subparagraph (iii) the specified person is-

(a) if the company or legal entity is ultimately owned or controlled through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, by a Listed Entity, or a majority owned subsidiary of a Listed Entity, the Listed Entity, and

(b) in all other cases, the natural person who holds the position of senior managing official;

(c) in the case of trusts–

(i) the settlor or settlors;

(ii) the trustee or trustees;

(iii) the protector or protectors, if any;

(iv) the beneficiaries, or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest trust is set up or operates;

(v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

(d) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person holding equivalent or similar positions to those referred to in paragraph (c),

and "beneficial owners" shall be construed accordingly.";

(iii) after the definition of "legal personality", insert–

""Listed Entity" has the meaning given to it in section 7(1) of the Act;"; and

(iv) after the definition of "Minister", insert–

""nominee" has the meaning given to it in regulation 6A;"; and

(b) in subregulation (2) for "In the meaning", substitute "In paragraph (b) of the meaning".

78. (24.12) After regulation 6, insert–

"**Nominee shareholders services.**

6A.(1) For the purposes of this regulation, a person ("the nominee") holds shares ("shares") in a corporate or legal entity for another person ("the nominator") in a nominee capacity if–

(a) The nominee is registered on the register of members of the corporate entity as the holder of the shares pursuant to section 182 of the Companies Act 2014;

(b) The nominee cannot transfer, dispose of or otherwise deal with the shares save as the nominator directs; and

(c) The rights conferred by the shares on the nominee can only be exercised by the nominee as the nominator directs.

(2) A nominee holding shares in a nominee capacity for a nominator must notify the secretary (or equivalent officer) of the corporate or legal entity of the nominee arrangement–

(a) within 30 days of entering into the nominee arrangement; or

(b) where the nominee arrangement was entered into before the commencement of this regulation, within 90 days of the commencement of this regulation.

(3) When a nominee arrangement comes to an end the nominee shall notify the secretary (or equivalent officer) of the corporate or legal entity within 30 days of the termination of the nominee arrangement.

(4) The notifications referred to in subregulation (2) and subregulation (3) shall contain the date on which the nominee arrangement was first entered into or the date on which the nominee arrangement was terminated, as the case may be.".

79. (24.7) Delete regulation 8A(3).

80. (24.6) Following regulation 11B, for the title "Relevant Legal Entity", substitute "Listed Entity".

81. (24.6) For regulation 11C, substitute–

"11C. In a case where either regulation 6(4) or 9(4) applies and the beneficial owner is a Listed Entity, the requirements of those provisions are satisfied by the provision of information identifying the Listed Entity.".

82. (25.1) In regulation 12(1A), for "A corporate", substitute "An express trust, corporate".

83. (second 24.6) Regulation 42 is amended as follows–

(a) for subregulation (1), substitute–

"(1) The Registrar may impose a penalty of such amount as he considers appropriate, not exceeding £10,000.00, on any person specified in subregulation (7) ("specified person") who fails to comply with any requirement in regulations 6(1), 6(2), 6(5), 6A(2), 6A(3), 8(1), 8(2), 8(3), 8(4), 8A(1), 8A(2), 9(1), 9(2), 9(5), 11(1), 11(2), 11(3), 11(4), 11A(1), 12(1), 12(2), 13(2), 15, 18(2),20(2), 21(2), 22(2), 23(2), 23(3) or 23(4).";

(b) for subregulation (2), substitute–

"(2) The Registrar must not impose a penalty on a specified person under subregulation (1) where there are reasonable grounds for him to be satisfied that the specified person took all reasonable steps to ensure the requirement would be complied with.";

(c) for subregulation (3), substitute–

"(3) Where the Registrar proposes to impose a penalty under this regulation, he must give the specified person written notice of–

(a) his proposal to impose the penalty and the proposed amount;

(b) the reasons for imposing the penalty; and

(c) the right to make representations to him within a specified period (which may not be less than 28 days).";

(d) in subregulation (4), for "express trust, corporate or legal entity incorporated in Gibraltar", substitute "specified person"; and

(e) after subregulation (6), insert–

"(7) For the purposes of subregulation (1) and this regulation more generally the "specified persons" are–

(a) an express trust;

(b) a corporate or legal entity incorporated in Gibraltar;

(c) a beneficial owner; and

(d) a nominee.".

84. (25.7) Regulation 45 is amended as follows–

(a) for subregulation (1), substitute–

"(1) Any person specified in subregulation (5) ("specified person") who fails to comply with any requirement in under regulations 6(1), 6(2), 6(5), 6A(2), 8(1), 8(2), 8(3), 8(4), 8A(1), 8A(2), 9(1), 9(2), 11(1), 11(2), 11(3), 11(4), 11A, 12(1), 12(2), 13(2), 15, 18(2), 20(2), 21(2), 22(2), 23(2), 23(3), 23(4), 41C(1) and 41C(2) is guilty of an offence and is liable–

(a) on summary conviction, to a fine not exceeding level 5 on the standard scale;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both.";

(b) for subregulation (3), substitute–

"(3) A specified person is not guilty of an offence under this regulation if he took all reasonable steps to avoid committing the offence.";

(c) for subregulation (4), substitute–

"(4) Where a specified person is convicted of an offence under this regulation, the specified person shall not also be liable to a penalty under regulation 42."; and

(d) for subregulation (5), substitute–

"(5) For the purposes of subregulation (1) and this regulation more generally the "specified persons" are–

(a) an express trust;

(b) a credit institution;

(c) a provider of safe custody services;

(d) a corporate or legal entity incorporated in Gibraltar;

(e) a beneficial owner; and

(f) a nominee.".

85. Delete Schedule 3.

PART 9

AMENDMENT OF THE TRUSTEES ACT.

86. The Trustees Act is amended in accordance with this Part.

87. (25.1 + 25.2) For section 61 substitute–

"**Identity and ownership information**.

61.(1) A trustee must obtain adequate, accurate and current information on the identity of–

(a) the settlor or settlors of;

(b) the trustees of;

(c) the beneficiaries or class of beneficiaries of;

(d) the protector, if any of; and

(e) any natural person exercising effective control over,

the trust.

(2) A trustee must obtain adequate, accurate and current information on any person who provides a service to or in connection with the trust, where the provision of that service constitutes a relevant financial business for the purposes of section 9(1) of the Proceeds of Crime Act 2015, including the information specified in subsection (3).

(3) For the purposes of subsection (2), the specified information means–

(a) in relation to a company–

(i) its name;

(ii) proof of its incorporation;

(iii) its legal form and status;

(iv) the address of its registered office;

(v) basic regulating powers such as its Memorandum of Association and its Articles of Association;

(vi) a list of its directors;

(vii) a list of its shareholders; and

(viii) the number and category of shares held by each of its shareholders including the voting rights associated with each category of shares, and

(b) in relation to a legal entity or a legal arrangement other than a company, the nearest equivalent of the matters set out in (a).

(4) A trustee must record and keep–

(a) the information referred to in subsections (1) and (2); and

(b) the actions he took to obtain the information referred to in subsections (1) and (2), in any form he thinks fit, provided that it is possible to inspect the information and to produce a copy of it in printed or electronic form, for a period of at least five years.".

88. (25.3) After section 61A insert–

"**Transacting as trustee**.

61B. (1) Where a trustee enters into a relevant transaction with a relevant financial business entity, the trustee must-

(a) inform the relevant financial business entity that he is acting as trustee; and

(b) on request from the relevant financial business entity, provide it with the information specified in subsection (4).

(2) If, during the course of a business relationship, there is any change in the information provided under subsection (1), the trustee must notify the relevant financial business entity of the change and the date on which it occurred within 30 days from the date on which the trustee became aware of the change.

(3) For the purposes of this section–

(a) a "relevant financial business entity" means an entity carrying on "relevant financial business" as defined in section 9(1) of the Proceeds of Crime Act 2015;

(b) a "relevant transaction" means a transaction in respect of which relevant financial business entity is required to apply customer due diligence measures under section 11(1) of the Proceeds of Crime Act 2015; and

(c) "business relationship" has the meaning given to it in section 8 of the Proceeds of Crime Act 2015.

(4) For the purposes subsection (1)(b), the specified information means the identity of-

(a) the settlor or settlors of;

(b) the trustees of;

(c) the beneficiaries or class of beneficiaries of;

(d) the protector, if any, of; and

(e) any natural persons exercising effective control over, the trust.".

89. (25) After section 62, insert–

"**Effect of flight Clauses.**

62A. (1) This section applies to a provision, contained in a deed or instrument creating or amending a trust, which purports, on the occurrence of a specified event or specified events, automatically to–

(a) transfer the trusteeship of the trust;

(b) change the forum for the administration of the trust;

(c) transfer the trust assets; or

(d) change the governing law of the trust,

to another jurisdiction or other jurisdictions or, in the case of (a), to trustees resident in another jurisdiction or other jurisdictions.

(2) Where a deed or instrument made on or after the commencement of this section contains a provision to which this section relates, that provision shall have no effect.

(3) Subject to subsections (4) and (5), where a deed or instrument made before the commencement of this section contains a provision to which this section relates, that provision shall have no effect.

(4) Where a deed or instrument made before the commencement of this section contains a provision to which this section relates, the trustees may apply to the Minister for a written declaration confirming that subsection (3) shall not apply to that provision ("an exemption declaration").

(5) On receipt of an application pursuant to subsection (4), the Minister must provide the trustees with an exemption declaration within 30 days of receipt, unless the Minister considers that to do so would be, or would be likely to be, detrimental to the public interest.

(6) The Minister may, be legal notice in the Gazette, appoint a person to discharge his functions under this section.

(7) The Minister may by regulations make such further provisions as he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision made by or under this section.

(8) In this section–

"instrument" shall not include an enactment; and

"Minister" means the Minister responsible for financial services.".

90. (25.8) For section 63, substitute–

"**Offences.**

63. A person who fails to comply with an obligation under section 61, 61A, 61B, 62 or 62A commits an offence and is liable–

(a) on summary conviction to a fine not exceeding level 5 on the standard scale;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both.".

PART 10

AMENDMENT OF THE PRIVATE FOUNDATIONS ACT 2017.

91. The Private Foundations Act 2017 is amended in accordance with this Part.

92. (24.3) For section 12(2), substitute–

"(2) The Register shall contain a record of all Foundations registered under section 13 and all overseas foundations registered as Gibraltar Foundations under section 65 and shall, in respect thereof, contain–

(a) the name and registered number of the Foundation;

(b) the date of registration;

(c) the name and address of the councillors;

(d) the name and address of the Guardian, if any;

(e) the details of the registered office; and

(f) any and all other documents filed with the Registrar under or for the purposes of this Act.".

PART 11

AMENDMENT OF THE TERRORIST ASSET–FREEZING REGULATIONS 2011.

93. The Terrorist Asset–Freezing Regulations 2011 are amended in accordance with this Part.

94. (24.13) In Regulation 16, after subregulation (2), insert–

"(2A) In subregulation (1) "owned, held or controlled by a designated person" includes jointly with another person, whether or not that other person is also a designated person.".

PART 12

AMENDMENT OF THE SANCTIONS ACT 2019.

95. The Sanctions Act 2019 is amended in accordance with this Part.

96. (24.12 and 6.5) In section 4(1), after "benefits of every kind,", insert "(whether owned or held solely or jointly with another)".

97. (24.12 and 6.5) In section 8, after the subsection (3), insert–

"(3A) The obligation to freeze relevant assets under subsection (3)(c) applies whether the relevant assets are owned or held solely by the person to whom the international sanctions apply or jointly with another person.".

PART 13

AMENDMENT OF THE CHEMICAL WEAPONS SANCTIONS ORDER 2019.

98. The Chemical Weapons Sanctions Order 2019 is amended in accordance with this Part.

99. (24.13 + 7.2) In paragraph 4, after subparagraph (2), insert–

"(2A) In subparagraph (1), "belonging to, or owned, held or controlled by, a designated person " includes jointly with another person, whether or not that other person is also a designated person.".

PART 14

AMENDMENT OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA SANCTIONS ORDER 2019.

100. The Democratic People's Republic of Korea Sanctions Order 2019 is amended in accordance with this Part.

101. (24.13 + 7.2) In paragraph 4, after subparagraph (2), insert–

"(2A) In subparagraph (1), "belonging to, or owned, held or controlled by, a designated person " includes jointly with another person, whether or not that other person is also a designated person.".

PART 15

AMENDMENT OF THE FRIENDLY SOCIETIES ACT.

102. The Friendly Societies is amended in accordance with this Part.

103. (cosmetic) Below the introductory text, insert–

"PART 1

Preliminary".

104. (8.5) In section 2(1),

(a) after the definition of "collector", insert-

"confidential information" means information in any form which–

(a) has been obtained by or on behalf of the Registrar in the course of carrying out his functions under this Act and from which a person can be identified; or

(b) the Government has provided in confidence to the Registrar;

"domestic authority" means a person listed in Schedule 6;

"foreign authority" means a person performing functions similar to those of a domestic authority, under the law of a country or territory outside Gibraltar;

"foreign registrar" means a person performing functions similar to those of the Registrar, under the law of a country or territory outside Gibraltar;"; and

(b) after the definition of "Registrar"–

(i) replace "." with ";";

(ii) insert–

""relevant person" means–

(a) a society registered under this Act or applying to be registered under this Act;

(b) any officer of a society falling within paragraph (a);

(c) any person who is or at any time was directly or indirectly employed (whether or not under a contract of service) by a society falling within paragraph (a) or a person falling within paragraph (b);

(d) any person who is seeking to obtain, has or at any time had any direct or indirect proprietary, financial or other interest in or connection with a society falling within paragraph (a) or a person falling within paragraph (b); or

(e) any person who is, or has been, directly or indirectly involved in a transaction which the Registrar considers to be relevant to the discharge of its functions under this Act.

"society" means any society described in section 3 of this Act, whether registered or otherwise, and "societies" shall be construed accordingly.".

105. Following section 3, insert "PART 2" above "Registration of Societies".

106. (24.13) Section 4 is amended as follows–

(a) in subsection (1) for "and powers which", substitute "set out in subsection (3), in addition to the functions and powers which".

(b) after subsection (2), insert–

"(3) The Registrar has the following functions under this Act in relation to societies–

(a) to secure that the purposes of each society are in conformity with this Act and any other enactment regulating the purposes of societies;

(b) to administer the system of regulation of the activities of societies provided for by or under this Act;

(c) to advise and make recommendations to Government on any matter relating to societies.

(4) In discharging its functions under this Act, the Registrar must, so far as is reasonably possible, adhere to the principles set out in Schedule 1A regarding the reduction of financial crime."

107. (cosmetic)Following section 8, insert "PART 3" above "Duties and Obligations of Societies".

108. (cosmetic)Following section 26, insert "PART 4" above "Collecting Societies".

109. (cosmetic)Following section 41, insert "PART 5" above "Privileges of Societies".

110. (cosmetic)Following section 49, insert "PART 6" above "Property and Funds of Societies".

111. (cosmetic)Following section 60, insert "PART 7" above "Legal Proceedings".

112. (cosmetic)Following section 63, insert "PART 8" above "Disputes".

113. (cosmetic)Following section 64, insert "PART 9" above "Exercise of Powers by Special Resolutions"

114. (cosmetic)Following section 67E, insert "PART 10" above "Dissolution of Societies".

115. (cosmetic)Following section 77, insert "PART 11" above "Benefits"

116. (cosmetic)Following section 78, insert "PART 12" above "Payments on Death of Young Children".

117. (cosmetic)Following section 84, insert "PART 13" above "Regulation of Affairs of Societies".

118. (cosmetic)Following section 96, insert "PART 14" above "Penalties and Appeals, etc.".

119. (8.5) Following section 99, insert–

"PART 15

Confidentiality and cooperation

Use of confidential information.

100.(1) The Registrar may disclose confidential information only to the extent that doing so appears to the Registrar to be necessary–

(a) for the purpose of facilitating the carrying out of a function conferred on him by or under–

(i) this Act or any other enactment; or

(ii) an EU instrument or the EU Treaties;

(b) for the purpose of facilitating the carrying out of a similar function by a foreign registrar;

(c) for the prevention or detection of crime or the prosecution of offenders

(d) for the purpose of assisting a domestic authority in carrying out its functions;

(e) with the consent of the Minister responsible for financial services, for the purpose of assisting a foreign authority in carrying out its functions;

(f) in connection with the discharge of any international obligation to which Gibraltar is subject.

(2) The restriction imposed by subsection (1) also applies to the disclosure of any confidential information by–

(a) any person who is or has been–

(i) employed by the Registrar; or

(ii) engaged to provide services to the Registrar; or

(b) any auditor, actuary or expert who is or has been instructed by the Registrar; or

(c) any Assistant Registrar of Friendly Societies.

(3) Subsections (1) and (2) do not prevent confidential information from being disclosed–

(a) with the consent of the person to whom it relates;

(b) in summary or aggregate form, from which information relating to any particular person cannot be ascertained;

(c) for the purpose of any proceedings under this Part;

(d) by direction of the Supreme Court; or

(e) if it is a matter of public knowledge and was made available to the public in circumstances or for purposes which are not precluded by this Act.

Cooperation agreements.

101. The Registrar may conclude cooperation agreements with domestic authorities and foreign registrars, establishing procedures for the exchange of information in accordance with this Part.

Cooperation with other authorities.

102.(1) Subject to section 100, the Registrar may assist, exchange information or cooperate with–

(a) a domestic authority;

(b) a foreign registrar; or

(c) with the consent of the Minister, a foreign authority,

for the purposes of any investigation being undertaken by the Registrar in execution of its functions under this Act or similar activity being undertaken by the domestic or foreign authority or the foreign registrar.

(2) The Registrar, when it provides information to an authority or registrar under subsection (1), may require it–

(a) to use the information only for the purposes for which the Registrar has provided it; and

(b) not to disclose the information without the Registrar's express agreement.

(3) The Registrar−

(a) must not disclose information which it has received under subsection (1) to any other person without the express agreement of the authority or registrar that provided it; and

(b) must use the information only for the purposes for which it was provided, other than in justified circumstances (of which it must immediately inform the disclosing authority or registrar).

(4) Where the Registrar reasonably suspects that this Act or any provision made under it has been contravened by a person who is not subject to supervision by the Registrar under this Act, but is subject to supervision by a foreign registrar, the Registrar must inform the foreign registrar without delay, in as specific a manner as possible.

(5) Where a foreign registrar informs the Registrar of a suspected contravention of this Act or any provision made under it, the Registrar must take appropriate action and inform the foreign registrar of the outcome of the action, including (to the extent possible) any significant interim developments.

(6) The Registrar may cooperate with a domestic authority, foreign registrar or foreign authority under this section even in cases where the conduct under investigation would not constitute a contravention of this Act or any provision made under it.

Refusing to share information.

103. The Registrar may refuse to exchange information under section 102 if it is not satisfied that the person or body requesting the information is subject to confidentiality provisions which are at least equivalent to those in section 100.

Providing assistance to other registrars.

104.(1) At the request of a foreign registrar who is responsible for supervising or regulating a relevant person or any part of a group to which a relevant person belongs, the Registrar for the purpose of assisting the foreign registrar to discharge a relevant function, may–

(a) exercise its powers under this Part; or

(b) with the prior written consent of the Minister responsible for financial services, arrange for those powers to be exercised by–

(i) a person authorised by the Registrar for that purpose; or

(ii) subject to any conditions the Registrar considers appropriate, a person acting on behalf of the requesting foreign registrar.

(2) For the purposes of subsection (1), a "relevant function" means a function of the requesting foreign registrar–

(a) which is similar to a function of the Registrar; or

(b) in respect of which the requesting foreign registrar may require the Registrar to provide assistance by virtue of an obligation under European Union law.

Refusing to provide assistance.

105.(1) The Registrar may refuse to act on a request for assistance from a foreign registrar–

(a) where the request is not made in accordance with any cooperation agreement or similar arrangement between the Registrar and the requesting foreign registrar;

(b) where, in Gibraltar, in respect of the same person and the same action proceedings have been initiated or a criminal penalty has been imposed; or

(c) on grounds of public interest or essential national interest.

(2) Where the Registrar refuses to provide the assistance requested or is unable to do so, it must inform the requesting foreign registrar and provide it with the reasons for the decision.

(3) For the purpose of subsection (1)(c) it is for the Minister responsible for financial services to determine the public interest or essential national interest, and the Registrar must refuse to act on a request for assistance from a foreign registrar when the Minister so determines.

PART 16

Information gathering and investigatory powers

Power to require documents and information.

106.(1) The Registrar may by notice require a relevant person–

(a) to provide the Registrar with specified information or information of a specified description;

(b) to produce to the Registrar specified documents or documents of a specified description; or

(c) to attend before the Registrar, at a specified time and place, to–

(i) answer questions appearing to the Registrar to be relevant in connection with the exercise of his functions; and

(ii) provide any information that the Registrar may require.

(2) Subsection (1) only applies to information and documents that the Registrar reasonably requires in connection with the exercise of functions conferred on him by or under this Act.

(3) A notice under subsection (1)(a) or (b) may require–

(a) a relevant person to provide information or produce documents–

(i) before the end of a specified period;

(ii) at specified intervals; or

(iii) at a specified time or place;

(b) any information which a relevant person is required to provide to be verified in a specified manner; or

(c) any document which a relevant person is required to produce to be authenticated in a specified manner.

(4) In this section "specified" means specified in a notice given under subsection (1).

(5) Where any information or document is not recorded in legible form, a requirement to provide or produce it includes the requirement to supply a copy of it in legible form.

(6) The Registrar may–

(a) take copies of or extracts from any document produced;

(b) require the person who has provided information or produced a document to provide an explanation of that information or document; and

(c) require a person to state, to the best of the person's knowledge and belief, where any information or document might be found.

(7) The Registrar may require any person who appears to the Registrar to be in possession of any information or document specified in a notice under subsection (1) to provide that information or produce that document.

(8) In respect of a person who is a barrister or solicitor acting in their professional capacity–

(a) this section applies subject to section 110(2); and

(b) nothing in this section requires a barrister or solicitor to disclose any information or document which is subject to legal professional privilege.

(9) The powers of the Registrar under this section are independent of and without prejudice to his powers under section 19.

Power to carry out on-site inspection.

107.(1) The Registrar may carry out on–site inspections of any premises of a relevant person (other than a dwelling) in connection with the exercise of functions conferred on the Registrar by or under this Act.

(2) The power in subsection (1) may be exercised by the Registrar, at reasonable times and on reasonable notice, with the consent of the relevant person and, in the case of the business premises of a barrister or solicitor, only in accordance with a court order under section 110(2).

(3) In conducting an on-site inspection (and subject to the terms of any order under section 110(2)), the Registrar may–

(a) inspect any part of the premises;

(b) question any person on the premises; and

(c) require access to and a copy of any document or information which is kept on the premises.

(4) Nothing in this section requires a barrister or solicitor to disclose any information or document which is subject to legal professional privilege.

(5) The powers of the Registrar under this section are independent of and without prejudice to his powers under section 19.

Entry of premises under warrant.

108.(1) A magistrate may issue a warrant under this section if the magistrate is satisfied, on information on oath, that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

(2) The first set of conditions is–

(a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it; and

(b) that on the premises specified in the warrant–

(i) there are documents which have been required; or

(ii) there is information which has been required.

(3) The second set of conditions is–

(a) that the premises specified in the warrant are premises of a relevant person;

(b) that there are on the premises documents or information in relation to which an information requirement could be imposed; and

(c) that if an information requirement was imposed–

(i) it would not be complied with; or

(ii) the documents or information would be removed, tampered with or destroyed.

(4) The third set of conditions is–

(a) that a relevant offence has been (or is being) committed by any person;

(b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed;

(c) that an information requirement could be imposed in relation to those documents or information; and

(d) that if an information requirement was imposed–

(i) it would not be complied with; or

(ii) the documents or information would be removed, tampered with or destroyed.

(5) An application for a warrant under this section may be made by a constable or the Registrar.

(6) A warrant under this section–

(a) authorises any constable–

(i) to enter the premises specified in the warrant;

(ii) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which the warrant was issued ("the relevant kind") or take any other steps which may appear to be necessary for preserving or preventing interference with any documents or information appearing to be of the relevant kind;

(iii) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;

(iv) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and

(v) to use any force that may be reasonably necessary; and

(b) may authorise a person acting under the authority of the Registrar–

(i) to accompany any constable who is executing the warrant; and

(ii) to exercise any powers under subsection (a) in the company and under the supervision of a constable.

(7) In this section–

"information requirement" means any requirement imposed by the Registrar under section 106; and

"relevant offence" means–

(a) an offence under Part III of the Proceeds of Crime Act 2015 (money laundering offences); or

(b) an offence under Part 4 of the Terrorism Act 2018 (terrorism financing offences).

(8) A person who wilfully obstructs another person in the exercise of any power under subsection (6) commits an offence and is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine, or both.

(9) A warrant under subsection (1) may only be issued in respect of the business premises of a barrister or solicitor if the Supreme Court has made an order under section 110(2).".

Self-incrimination.

109. A statement made by a person in compliance with any requirement imposed under this Part may be used in evidence in criminal proceedings against that person only if–

(a) the person has introduced the statement in evidence; or

(b) the proceedings concern the prosecution of the person for–

(i) failing or refusing to provide information, produce documents or give assistance in accordance with this Part;

(ii) omitting to disclose information which should have been disclosed; or

(iii) providing an untruthful statement.

Legal privilege.

110.(1) A person is not required to produce a document or disclose information under this Act if the person would be entitled to refuse to produce or disclose it on grounds of legal privilege in proceedings in the Supreme Court.

(2) In respect of a person who is a barrister or solicitor acting in their professional capacity–

(a) the Registrar may only–

(i) issue a notice to the person under 106(1); or

(ii) inspect the person's premises under section 107,

in accordance with the terms of an order of the Supreme Court authorising the Registrar or inspector to do so.

(3) An application for an order under subsection (2) must be made by the Registrar and a copy of the application notice must be served on the solicitor or barrister concerned.

Liens on documents.

111. The production of a document under this Act does not affect any lien which a person may have in respect of the document and the existence of such a lien is not a valid reason for refusing to produce that document.

Appeals.

112.(1) A person aggrieved by any of the decisions specified in subsection (2) may appeal to the Supreme Court.

(2) For the purposes of subsection (1) the specified decisions are-

(a) a decision by the Registrar under section 106(1)(a) or (b) to require a person to provide specified information or information of a specified description, or produce specified documents or documents of a specified description; or

(b) a decision by the Registrar under section 106(1)(c) to require a person, other than the persons specified in subsection (3), to attend before the Registrar to answer questions or provide information.

(3) For the purposes of subsection (2)(b) the specified persons are–

(a) a society registered under this Act or applying to be registered under this Act;

(b) any officer of a society falling within paragraph (a);

(c) any person who is or at any time was directly or indirectly employed (whether or not under a contract of service) by a society falling within paragraph (a) or a person falling within paragraph (b).

(4) An appeal must be made within 28 days of the date on which the notice is served on the recipient by the Registrar, pursuant to section 106.

(5) The court may allow an appeal to be made outside the time set out in subsection (4) in exceptional circumstances, if the court considers that it would be unjust not to do so.

(6) The court may–

(a) dismiss the appeal;

(b) allow the appeal and quash the decision appealed against; or

(c) remit the matter to the Registrar for further consideration, in accordance with any directions of the court.

(7) The court may make any order as to the costs of an appeal as it considers appropriate.

Offences

113.(1) A person ("P") commits an offence if–

(a) P, without reasonable excuse–

(i) fails or refuses to comply with a requirement imposed under this Part; or

(ii) omits to disclose material which P should have disclosed in accordance with this Part;

(b) P, in purported compliance with a requirement imposed under this Part–

(i) gives information or makes a statement which P knows to be false or misleading; or

(ii) recklessly gives information or makes a statement which is false or misleading; or

(c) P knows or suspects that an investigation under this Part is being or is likely to be conducted and–

(i) P falsifies, conceals, destroys or otherwise disposes of a document which P knows or suspects is or would be relevant to such an investigation; or

(ii) P causes or permits the falsification, concealment, destruction or disposal of such a document.

(2) P does not commit an offence under subsection (1)(a) if the reason for P's failure or refusal to comply with a requirement or to disclose material is that–

(a) P is prevented from doing so by an order of the court under this Part; or

(b) P's obligation to do so is the subject of an appeal or other legal challenge before the courts.

(3) In any proceedings for an offence under subsection (1)(c), it is a defence for P to prove that P had no intention of concealing from the person conducting the investigation facts disclosed by the documents.

(4) A person who commits an offence under subsection (1) is liable–

(a) on summary conviction, to imprisonment for six months, to the statutory maximum fine, or both;

(b) on conviction on indictment, to imprisonment for two years or a fine, or both.".

120. (8.2)After Schedule 1, insert–

"**SCHEDULE 1A**

Section 4

THE REDUCTION OF FINANCIAL CRIME

The Registrar should use his best endeavours to reduce the scope for an activity to be carried on by a society for a purpose connected with financial crime, in particular by–

(a) developing policies to promote accountability, integrity, and public confidence in the administration and management of societies;

(b) encouraging and undertaking outreach and educational programmes to raise and deepen awareness among societies as well as the donor community about the potential vulnerabilities of societies to financial crime, including terrorist financing abuse and terrorist financing risks, and the measures that societies can take to protect themselves against such abuse;

(c) working with societies to develop and refine best practices to address the potential vulnerabilities of societies to financial crime, including terrorist financing risk and vulnerabilities and thus protect them from abuse; and

(d) encouraging societies to conduct transactions via regulated financial channels, wherever feasible.".

121. (8.5)After Schedule 5, insert–

SCHEDULE 6

Sections 100 – 102

DOMESTIC AUTHORITIES

1. Gibraltar Financial Services Commission;
2. Financial Services Resolution and Compensation Committee;
3. Gambling Commissioner;
4. Gibraltar Co-ordinating Centre for Criminal Intelligence & Drugs;
5. Gibraltar Financial Intelligence Unit;
6. Gibraltar Investor Compensation Board;
7. Gibraltar Regulatory Authority;
8. Gibraltar Resolution Authority;
9. HM Customs;
10. Liquidators or administrators of former "regulated persons" as defined in section 2 of the Financial Services Act 2019;
11. Minister with responsibility for finance;
12. Minister with responsibility for financial services;
13. National Coordinator for anti-money laundering and combating terrorist financing;
14. Office of Criminal Prosecutions & Litigation;
15. Royal Gibraltar Police;
16. The Board of Charity Commissioners;
17. The Office of Fair Trading.".

PART 16

AMENDMENT OF THE CHARITIES ACT.

122. The Charities Act is amended in accordance with this Part.

123. (8.2)For section 4(3), substitute–

"(3) The Commissioners shall, without prejudice to their specific powers and duties under any other law, have the general function of promoting the effective use of charitable resources by encouraging the development of better methods of administration, by giving charity trustees information or advice on any matter affecting the charity and by investigating and checking abuses-

124. (8.2)After section 4(3), insert–

"(3A) In discharging their function under this Act, the Commissioners must, so far as is reasonably possible, adhere to the principles set out in Schedule 3 regarding the reduction of financial crime".

125. (8.2)In section 8(1), for "either generally or for particular purposes", substitute "either generally, pursuant to their functions under this Act, or for particular purposes".

126. (8.5)After section 41 insert–

"**PART VI.**
CONFIDENTIALITY AND COOPERATION.

Use of confidential information.

42.(1) The Commissioners may disclose confidential information only to the extent that doing so appears to the Commissioners to be necessary–

(a) for the purpose of facilitating the carrying out of a function conferred on them by or under–

(i) this Act or any other enactment; or

(ii) an EU instrument or the EU Treaties;

(b) for the purpose of facilitating the carrying out of a similar function by a foreign commissioner;

(c) for the prevention or detection of crime or the prosecution of offenders;

(d) for the purpose of assisting a domestic authority in carrying out of its functions;

(e) with the consent of the Minister responsible for finance, for the purpose of assisting a foreign authority in carrying out its functions;

(f) in connection with the discharge of any international obligation to which Gibraltar is subject.

(2) The restriction imposed by subsection (1) also applies to the disclosure of any confidential information by–

(a) any person who is or has been–

(i) employed by the Commissioners; or

(ii) engaged to provide services to the Commissioners; or

(b) any auditor or expert who is or has been instructed by the Commissioners.

(3) Subsections (1) and (2) do not prevent confidential information from being disclosed–

(a) with the consent of the person to whom it relates;

(b) in summary or aggregate form, from which information relating to any particular person cannot be ascertained;

(c) for the purpose of any proceedings under this Act;

(d) by direction of the Supreme Court; or

(e) if it is a matter of public knowledge and was made available to the public in circumstances or for purposes which are not precluded by this Act.

Cooperation agreements.

43. The Commissioners may conclude cooperation agreements with domestic authorities and foreign commissioners, establishing procedures for the exchange of information in accordance with this Part.

Cooperation with other authorities.

44.(1) Subject to section 42, the Commissioners may assist, exchange information or cooperate with–

(a) a domestic authority;

(b) a foreign commissioner; or

(c) with the consent of the Minister responsible for finance, a foreign authority,

for the purposes of any investigation being undertaken by the Commissioners in execution of their functions under this Act or similar activity being undertaken by the domestic or foreign authority or the foreign commissioner.

(2) The Commissioners, when they provide information to an authority or commissioner under subsection (1), may require it–

(a) to use the information only for the purposes for which the Commissioners have provided it; and

(b) not to disclose the information without the Commissioners' express agreement.

(3) The Commissioners −

(a) must not disclose information which they have received under subsection (1) to any other person without the express agreement of the authority or commissioner that provided it; and

(b) must use the information only for the purposes for which it was provided, other than in justified circumstances (of which it must immediately inform the disclosing authority or commissioner).

(4) Where the Commissioners reasonably suspect that this Act or any provision made under it has been contravened by a person who is not subject to supervision by the Commissioners, but is subject to supervision by a foreign commissioner, the Commissioners must inform the foreign commissioner without delay, in as specific a manner as possible.

(5) Where a foreign commissioner informs the Commissioners of a suspected contravention of this Act or any provision made under it, the Commissioners must take appropriate action and inform the foreign commissioner of the outcome of the action, including (to the extent possible) any significant interim developments.

(6) The Commissioners may cooperate with a domestic authority, foreign commissioner or foreign authority under this section even in cases where the conduct under investigation would not constitute a contravention of this Act or any provision made under it.

Refusing to share information.

45. The Commissioners may refuse to exchange information under section 44 if they are not satisfied that the person or body requesting the information is subject to confidentiality provisions which are at least equivalent to those in section 42.

Providing assistance to other commissioners.

46.(1) At the request of a foreign commissioner who is responsible for supervising a relevant person or any part of a group to which a relevant person belongs, the Commissioners for the purpose of assisting the foreign commissioner to discharge a relevant function, may–

(a) exercise their powers under this Part; or

(b) with the prior written consent of the Minister responsible for finance, arrange for those powers to be exercised by–

(i) a person authorised by the Commissioners for that purpose; or

(ii) subject to any conditions the Commissioners consider appropriate, a person acting on behalf of the requesting foreign commissioner.

(2) For the purposes of subsection (1), a "relevant function" means a function of the requesting foreign commissioner –

(a) which is similar to a function of the Commissioners; or

(b) in respect of which the requesting foreign commissioner may require the Commissioners to provide assistance by virtue of an obligation under European Union law.

Refusing to provide assistance.

47.(1) The Commissioners may refuse to act on a request for assistance from a foreign commissioner –

(a) where the request is not made in accordance with any cooperation agreement or similar arrangement between the Commissioners and the requesting foreign commissioner;

(b) where, in Gibraltar, in respect of the same person and the same action proceedings have been initiated or a criminal penalty has been imposed; or

(c) on grounds of public interest or essential national interest.

(2) Where the Commissioners refuse to provide the assistance requested or are unable to do so, they must inform the requesting foreign commissioner and provide him with the reasons for the decision.

(3) For the purpose of subsection (1)(c) it is for the Minister responsible for finance to determine the public interest or essential national interest, and the Commissioners must refuse to act on a request for assistance from a foreign commissioner when the Minister so determines.

Interpretation: Part VI.

48. In this Part–

"confidential information" means information in any form which–

(a) has been obtained by or on behalf of the Commissioners in the course of carrying out their functions under this Act and from which a person can be identified; or

(b) the Government has provided in confidence to the Commissioners;

"domestic authority" means a person listed in Schedule 4;

"foreign authority" means a person performing functions similar to those of a domestic authority, under the law of a country or territory outside Gibraltar;

"foreign commissioner" means a person performing functions similar to those of the Commissioners, under the law of a country or territory outside Gibraltar.

"relevant person" means–

(a) a charity registered under this Act or applying to be registered under this Act;

(b) any trustee, charity trustee, officer, agent or servant of the charity falling within paragraph (a);

(c) any person who is or at any time was directly or indirectly employed (whether or not under a contract of service) by a charity falling within paragraph (a) or a person falling within paragraph (b);

(d) any person who is seeking to obtain, has or at any time had any direct or indirect proprietary, financial or other interest in or connection with a charity falling within paragraph (a) or a person falling within paragraph (b); or

(e) any person who is, or has been, directly or indirectly involved in a transaction which the Commissioners consider to be relevant to the discharge of their functions under this Act.".

127. (8.2) After Schedule 2, insert–

"SCHEDULE 3

Section 4

THE REDUCTION OF FINANCIAL CRIME

The Commissioners should use their best endeavours to reduce the scope for an activity to be carried on by a charity for a purpose connected with financial crime, in particular by–

(a) developing policies to promote accountability, integrity, and public confidence in the administration and management of charities;

(b) encouraging and undertaking outreach and educational programmes to raise and deepen awareness among charities as well as the donor community about the potential vulnerabilities of charities to financial crime, including terrorist financing abuse and terrorist financing risks, and the measures that charities can take to protect themselves against such abuse;

(c) working with charities to develop and refine best practices to address the potential vulnerabilities of charities to financial crime, including terrorist financing risk and vulnerabilities and thus protect them from abuse; and

(d) encouraging charities to conduct transactions via regulated financial channels, wherever feasible, keeping in mind the varying capacities of financial sectors in different areas of urgent charitable and humanitarian concerns.

SCHEDULE 4

Sections 42–48

DOMESTIC AUTHORITIES

1. Gibraltar Financial Services Commission;
2. Financial Services Resolution and Compensation Committee;
3. Gambling Commissioner;
4. Gibraltar Co-ordinating Centre for Criminal Intelligence & Drugs;
5. Gibraltar Financial Intelligence Unit;
6. Gibraltar Investor Compensation Board;
7. Gibraltar Regulatory Authority;
8. Gibraltar Resolution Authority;
9. HM Customs;
10. Liquidators or administrators of former "regulated persons" as defined in section 2 of the Financial Services Act 2019;
11. Minister with responsibility for finance;
12. Minister with responsibility for financial services;
13. National Coordinator for anti-money laundering and combating terrorist financing;
14. Office of Criminal Prosecutions & Litigation;
15. Royal Gibraltar Police;
16. The Registrar of Friendly Societies;
17. The Office of Fair Trading.".

PART 17

AMENDMENT OF THE COMPANIES ACT 2014.

128. The Companies Act 2014 is amended in accordance with this Part.

129. (24.12) In section 154(1), after "register of members," insert "including any change to the nominee status of a member entered on the register of members pursuant to subsection 182(1)(ba),".

130. (24.12 and 24.13) Section 182 is amended as follows–

(a) in subsection (1)(b), substitute "; and" with ";";

(b) after subsection (1)(b), insert–

"(ba) subject to subsection (1A), where the member has notified the company, pursuant to regulation 6A(2) of the Register of Ultimate Beneficial Ownership Regulations 2017, that he holds his shares , or any of them, in a nominee capacity, the nominee status of the member in respect of those shares; and";

(c) after subsection (1), insert-

"(1A) Where a member who has notified the company pursuant to regulation 6A(2) of the Register of Ultimate Beneficial Ownership Regulations 2017, that he holds his shares, or any of them, in a nominee capacity, subsequently notifies

the company, pursuant to regulation 6A(3) of the Register of Ultimate Beneficial Ownership Regulations 2017, that he no longer holds those shares, or any of them, in a nominee capacity, the company shall remove the reference in the register of members to the nominee status of the member in respect of those shares, and shall make such other amendments to the register of members as it considers necessary to comply with the requirements of paragraph (ba) of subsection (1) and this subsection."; and

(d) in subsection (3), for "default fine", substitute "fine not exceeding level 3 on the standard scale and for continued contravention, to a daily fine not exceeding level 2 on the standard scale.".

131. (24.13) In section 186, for "No notice", substitute "Subject to section 182(1)(ba) and section 188(4)(a), no notice".

132. Section 188 is amended as follows–

(a) in subsection (4)(a), after "mentioned", insert "as well as, where applicable, their nominee status"; and

(b) after subsection (4), insert–

"(4A) For the purposes of subsection 4(a), the list specified in Schedule 5 must state the "nominee status" of a member where the member's nominee status has been entered on the register of members pursuant to section 182(1)(ba).".

133. (24.13) For section 191(3)(a), substitute–

"(a) the company and every officer of the company who is in default shall be guilty of an offence and liable on summary conviction to a fine at level 4 on the standard scale and for continued contravention, to a daily fine at level 3 on the standard scale;"

134. (24.12 + 24.13) Section 222 is amended as follows–

(a) in subsection (5), for "default fine", substitute "fine not exceeding level 3 on the standard scale and for continued contravention, to a daily fine not exceeding level 2 on the standard scale"; and

(b) after subsection (7), insert–

"(8) A director who acts on the directions or instructions of a shadow director must, as soon as reasonably practicable–

(a) notify the company that he has acted on the directions or instructions of a shadow director; and

(b) provide the company with the particulars set out in paragraphs (a) or (b) of subsection (1), as the case may be, of the shadow director.

(9) A director who is in default of subsection (8) shall be guilty of an offence and shall be liable–

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding he statutory maximum.

(10) For the purposes of subsection (8), a "shadow director" means any person who is deemed to be a director and officer of the company pursuant to subsection (7).".

135. (24.12) In the table appearing after "Incorporation of the Company, showing their" in Schedule 5-

(a) for "NAMES, ADDRESSES, AND OCCUPATIONS" substitute "NAMES, ADDRESSES, OCCUPATIONS AND NOMINEE STATUS"; and

(b) to the right of the column headed "Occupation", insert a new column headed "Nominee Status".

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Printed by the Gibraltar Chronicle Printing Limited
Unit 3, New Harbours
Government Printers for Gibraltar,
Copies may be purchased at 6, Convent Place, Price. £0.40.