



MONEY LAUNDERING AND TERRORIST FINANCING (ONLINE GAMBLING) CODE 2013

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Statutory Document No. 0096/13



Proceeds of Crime Act 2008

Terrorism (Finance) Act 2009

MONEY LAUNDERING AND TERRORIST FINANCING (ONLINE GAMBLING) CODE 2013

Approved by Tynwald: 16 April 2013
Coming into Operation: 1 May 2013

The Department of Home Affairs makes the following Code under section 157(1) of the Proceeds of Crime Act 2008 and section 27A(1) of the Terrorism (Finance) Act 2009, after consulting such persons and bodies that appeared to it to be appropriate¹.

PART 1 – INTRODUCTORY

1 Title

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

2 Commencement

If approved by Tynwald², this Code comes into operation on 1 May 2013.

3 Interpretation

(1) In this Code -

“**authorised person**” means a person who –

- (a) carries on deposit taking under the Financial Services Act 2008 or is regulated to carry on deposit taking in any of the jurisdictions listed in Schedule 1;
- (b) holds a licence from the Financial Supervision Commission to carry out regulated activities listed under Class 8 (money

¹ As required by section 157(4) of the Proceeds of Crime Act 2008 and section 27A(4) of the Terrorism (Finance) Act 2009

² As required by section 223(3) of the Proceeds of Crime Act 2009 and section 27A(5) of the Terrorism (Finance) Act 2009

transmission services) in Schedule 1 to the Regulated Activities Order 2011³; or

- (c) is on the list of persons in Schedule 2 deemed to be authorised persons for the purposes of this Code;

“beneficial owner” means the natural person who ultimately owns or controls a business participant;

“business participant” means a person participating, in the course of business, in online gambling other than as a licence holder;

“constable” includes an officer under section 1(2) of the Customs and Excise Management Act 1986;

“employee” and **“worker”** have the same meanings as in section 173 of the Employment Act 2006;

“external disclosure” means a report under paragraph 17(3)(f);

“internal disclosure” means a report under paragraph 17(3)(c);

“licence holder” means a person conducting online gambling in accordance with a licence granted under the Online Gambling Regulation Act 2001;

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

“money laundering and terrorist financing requirements” means the requirements of the following enactments—

- (a) section 9 of the Prevention of Terrorism Act 1990⁴;
- (b) sections 7 to 11 and section 14 of the Anti-Terrorism and Crime Act 2003;
- (c) Part 3 of the Proceeds of Crime Act 2008;
- (d) Part 2 of the Terrorism (Finance) Act 2009;
- (e) Part 1 of the Terrorist Asset-Freezing Etc Act 2010 (an Act of Parliament (c.38)) as it has effect in the Island⁵; and
- (f) this Code,

and includes, in the case of anything done otherwise than in the Island, anything that would constitute an offence under the provisions specified in paragraphs (a) to (d) if done in the Island;

“Money Laundering Reporting Officer” (“**MLRO**”) means an individual appointed under paragraph 17 of this Code and, except in paragraph 16(2)(b), a reference to a “Money Laundering Reporting Officer” or

³ SD 0884/11

⁴ Although this Act has been repealed it is possible for proceedings to be taken in respect of acts which took place when it was in force

⁵ This Act of Parliament was extended to the Island, with modifications, by UK S.I. 749/2011

“MLRO” may be construed as including an individual appointed in the same way to act as a deputy to the principal MLRO;

“**online gambling**” has the meaning assigned by section 1(1) of the Online Gambling Regulation Act 2001;

“**participant**” means a person (other than a business participant) participating as a player in online gambling other than as a licence holder;

“**payment**” means a payment in money or money’s worth, but does not include the credit of winnings to an account operated by the licence holder for the benefit of the participant or business participant to whom the winnings are payable;

“**terrorist financing**” has the same meaning as in section 3 of the Terrorism (Finance) Act 2009 (and “**financing of terrorism**” is to be construed accordingly);

“**transaction**” includes—

- (a) payments made by a participant or business participant to a licence holder;
 - (b) payments made by a licence holder to a participant or business participant; and
 - (c) participation in online gambling.
- (2) In this Code, any reference to an amount of currency expressed in Euros is to be construed as also meaning that amount converted into, and expressed as, an amount of pounds sterling or any other currency.

4 General requirements

- (1) In conducting online gambling a licence holder must—
 - (a) establish, maintain and operate—
 - (i) identification procedures in accordance with paragraphs 5 to 11;
 - (ii) record keeping procedures in accordance with paragraphs 12 to 16;
 - (iii) internal reporting procedures in accordance with paragraph 17;
 - (iv) staff screening and training procedures in accordance with paragraphs 18 to 19;
 - (v) internal controls and communication procedures that are appropriate for the purposes of forestalling and preventing money laundering and the financing of terrorism;
 - (vi) procedures and controls in accordance with paragraphs 20 to 21; and

- (b) take appropriate measures from time to time for the purpose of making employees and workers aware of —
 - (i) the procedures established, maintained and operated under sub-paragraph (a); and
 - (ii) the provisions of the money laundering and terrorist financing requirements.
- (2) A licence holder must not accept, or permit any third party to accept on its behalf, cash from, or on behalf of, a participant or business participant in relation to online gambling.
- (3) Any winnings from online gambling due to a participant or business participant from a licence holder may be paid only to the account held with the licence holder in the name of the relevant participant or business participant as required by the Online Gambling (Registration and Accounts) Regulations 2008⁶.

PART 2 – DUE DILIGENCE

5 Anonymous accounts

A licence holder must not in relation to online gambling maintain—

- (a) an anonymous account; or
- (b) an account in a fictitious name.

6 Risk assessment

- (1) For the purpose of determining the measures necessary to comply with paragraphs 7 to 9, a licence holder must carry out a risk assessment in accordance with this paragraph as soon as reasonably practicable.
- (2) The risk assessment must estimate the risk of money laundering and the financing of terrorism on the part of the participant or business participant having regard to—
 - (a) the value of funds deposited with the licence holder;
 - (b) the jurisdiction of participant or business participant;
 - (c) the source of funds deposited;
 - (d) any other relevant matter brought to the attention of the licence holder during the account opening process for the participant or the business participant;
 - (e) any relevant supervisory or regulatory guidance given by the Isle of Man Gambling Supervision Commission;
 - (f) the legal nature of the business participant.

⁶ SD 283/08

- (3) If in accordance with the risk assessment, a licence holder determines that a participant or business participant poses a higher risk, the licence holder must comply with paragraph 10 (enhanced due diligence).
- (4) Matters that pose a higher risk include but are not restricted to a participant or business participant who is or has a substantial connection with –
 - (a) a politically exposed person;
 - (b) a person, legal person or legal arrangement resident or located in a country that the licence holder has reason to believe does not apply, or insufficiently applies, the FATF Recommendations; or
 - (c) a person, legal person or legal arrangement that is the subject of any notices or warnings issued from time to time by the Isle of Man Gambling Supervision Commission.
- (5) In this paragraph –

“FATF Recommendations” means the 40 Recommendations set out in the Financial Action Task Force (“FATF”) document ‘International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation’, adopted by the FATF in February 2012;

“politically exposed person” means any of the following resident in a country or territory outside the Island –

 - (a) a natural person who is or has been entrusted with prominent public functions, including –
 - (i) a head of state, head of government, minister or deputy or assistant minister;
 - (ii) a senior government official;
 - (iii) a member of parliament;
 - (iv) a senior politician;
 - (v) an important political party official;
 - (vi) a senior judicial official;
 - (vii) a member of a court of auditors or the board of a central bank;
 - (viii) an ambassador, *chargé d'affaires* or other high-ranking officer in a diplomatic service;
 - (ix) a high-ranking officer in an armed force;
 - (x) a senior member of an administrative, management or supervisory body of a State-owned enterprise;
 - (xi) a senior official of an international entity or organisation; and
 - (xii) an honorary consul;

- (b) any of the following family members of a person mentioned in sub-paragraph (a) —
 - (i) a spouse;
 - (ii) a partner considered by national law as equivalent to a spouse;
 - (iii) a child;
 - (iv) the spouse or partner of a child;
 - (v) a sibling;
 - (vi) a parent;
 - (vii) a parent-in-law;
 - (viii) a grandparent; or
 - (ix) a grandchild;
- (c) any close associate of a person mentioned in sub-paragraph (a), including —
 - (i) any natural person who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with such a person;
 - (ii) any natural person who has sole beneficial ownership of a legal entity or legal arrangement that is known to have been set up for the benefit of such a person;
 - (iii) any natural person who is in a position to conduct substantial financial transactions on behalf of such a person.

7 Identity of prospective participants

- (1) A licence holder must establish maintain and operate procedures that require the prospective participant to provide satisfactory information as to his or her identity (either online or in writing) as soon as reasonably practicable after contact is first made between them.
- (2) Procedures comply with this paragraph and paragraph 6 if they require that unless satisfactory information as to the prospective participant's identity is provided—
 - (a) no account will be opened for him or her;
 - (b) no money will be accepted from or on behalf of him or her; and
 - (c) no participation in online gambling by him or her will be permitted.

8 Evidence of identity for participants

- (1) This paragraph applies in respect of the first occasion on which a qualifying payment is to be made to a participant in relation to online gambling.
- (2) A licence holder must establish, maintain and operate procedures that require the participant to produce satisfactory evidence of his or her identity before making the qualifying payment.
- (3) In relation to online gambling, a payment is a qualifying payment if—
 - (a) the payment exceeds €3,000; or
 - (b) when taken with all other payments made to the participant within the 30 days immediately preceding the date on which the payment is to be made, the aggregate amount exceeds €3,000.
- (4) Procedures comply with this paragraph if they require that if satisfactory evidence is not produced—
 - (a) the qualifying payment will not be made unless or until it is produced;
 - (b) no further participation in online gambling by the participant will be permitted; and
 - (c) a licence holder must consider whether an internal disclosure should be made.
- (5) However, in relation to peer to peer gambling, a licence holder is not required to comply with sub-paragraphs (1) to (4) if the licence holder –
 - (a) complies with paragraph 4(2);
 - (b) accepts only payments from an authorised person; and
 - (c) makes payments to an authorised person on behalf of a participant.
- (6) In this paragraph “peer to peer gambling” means online gambling between 2 or more participants or online gambling where participants are not hazarding payments against the bank facilitated (in both cases) by a licence holder.

9 Evidence of identity for business participants

- (1) A licence holder must establish, maintain and operate procedures that require the business participant to produce satisfactory evidence of its identity before a business relationship is entered into.
- (2) A licence holder must, in the case of all business participants—
 - (a) understand the ownership and control structure of the business participant;
 - (b) determine the legal status of the business participant and who is the beneficial owner;

- (c) verify that any person purporting to act on behalf of the business participant is authorised to do so;
- (d) obtain satisfactory evidence to identify and take reasonable steps to verify the identity of those persons or any natural persons having power to direct the business participant's activities, using relevant information or data obtained from a reliable source; and
- (e) obtain satisfactory evidence to identify and take reasonable steps to verify the identity of the beneficial owner, using relevant information or data obtained from a reliable source.

10 Enhanced due diligence

If this paragraph applies a licence holder must —

- (a) consider whether additional identification data needs to be obtained;
- (b) consider whether additional aspects of the participant's identity or the identity of the business participant need to be verified;
- (c) take reasonable measures to establish the source of any funds and of the wealth of the participant and any beneficial owner and underlying principal; and
- (d) consider what on-going monitoring should be carried on in accordance with Paragraph 11.

11 Ongoing monitoring

- (1) A licence holder must establish, maintain and operate procedures that require the ongoing and effective monitoring of any transactions undertaken by a participant or business participant, including—
 - (a) review of the information provided as to the participant's identity under paragraph 7(1);
 - (b) review of the evidence of identity provided under paragraphs 8 to 10.
- (2) Sub-paragraph (3) applies if transactions are undertaken by a participant or business participant that are —
 - (a) significantly different (in number or value) to the normal pattern of previous transactions undertaken;
 - (b) appear complex, or
 - (c) have no apparent economic or lawful purpose.
- (3) A licence holder must establish and maintain procedures that, as soon as reasonably practicable after any variation in the pattern of transactions—
 - (a) require satisfactory confirmation of the information as to identity provided under paragraph 7(1); and

- (b) in cases in which evidence of identity has been produced under paragraphs 8, 9 or 10, require satisfactory verification of the evidence of identity produced under those paragraphs.
- (4) Procedures comply with this paragraph if they require that –
 - (a) when satisfactory confirmation of the information as to the participant's identity is not provided; or
 - (b) when satisfactory verification of the evidence of the participant's or business participant's identity is not provided,no further participation in online gambling by such will be permitted; and the licence holder considers whether an internal disclosure should be made.

PART 3 – RECORD KEEPING AND REPORTING

12 Identity records

- (1) Sub-paragraph (2) applies if a licence holder is required under this Code –
 - (a) to obtain or confirm information as to the identity of a person; or
 - (b) to verify the identity of a person.
- (2) The licence holder must establish and maintain a record in the Island that –
 - (a) indicates the nature of the information obtained; and
 - (b) comprises either a copy of the information or, where this is not reasonably practicable, contains such information as would enable a copy of the information to be obtained in accordance with paragraph 15.

13 Records of transactions

The licence holder must establish and maintain a record of all relevant transactions carried out by or on behalf of participants or business participants (such as records sufficient to identify the source and recipient of payments from which investigating authorities will be able to compile an audit trail for suspected money laundering or the financing of terrorism) and such other records as are sufficient to demonstrate that the money laundering and terrorist financing requirements have been complied with.

14 Retention of records

- (1) A licence holder must keep the records required by paragraph 13 for at least 6 years from the date when –

- (a) the person concerned formally ceases to be a participant or business participant; or
 - (b) if sub-paragraph (1)(a) does not apply, when the last transaction was carried out by the former participant or business participant.
- (2) If a report has been made to a constable under paragraph 17(3)(f), or the licence holder knows or believes that a matter is under investigation, the licence holder must, without limiting sub-paragraph (1), retain all relevant records for as long as required by the constable.

15 Format and retrieval of records

- (1) In the case of any records that are required to be established and maintained under this Code —
- (a) if the records are in the form of hard copies kept on the Island, the licence holder must ensure that they are capable of retrieval without undue delay;
 - (b) if the records are in the form of hard copies kept outside the Island, the licence holder must ensure that the copies can be sent to the Island and made available within 7 days; and
 - (c) if the records are not in the form of hard copies (such as. copies kept on a computer system), the licence holder must ensure that they are readily accessible in or from the Island and that they are capable of retrieval without undue delay.
- (2) A licence holder may rely on the records of a third party in respect of the details of transactions, if satisfied that the third party is willing and able to retain (in accordance with paragraph 14) the records and, if asked, to produce copies of the records required.

16 Register of money laundering and financing of terrorism enquiries and reports

- (1) A licence holder must establish and maintain, in the Island —
- (a) a register of all money laundering and financing of terrorism enquiries made of it by law enforcement or other competent authorities;
 - (b) A register of all internal disclosures made to the MLRO under paragraph 17(3)(c); and
 - (c) a register of all external disclosures made to a constable under paragraph 17(3)(f).
- (2) The registers maintained under sub-paragraph (1) must be kept separate from other records and —
- (a) the register maintained under sub-paragraph (1)(a) must include the date and nature of the enquiry, the name and agency of the

- inquiring officer, the powers being exercised, and details of the participants, business participants and transactions involved;
- (b) the register maintained under sub-paragraph (1)(b) must include details of the date on which the report is made, the person who makes the report, whether it is made to the MLRO or deputy MLRO and information sufficient to identify the relevant papers; and
 - (c) the register maintained under sub-paragraph (1)(c) must include details of the date on which the report is made, the person who makes the report, the constable to whom it is made and information sufficient to identify the relevant papers, along with details of acknowledgement of receipt of report from the Financial Crime Unit.
- (3) In this paragraph “competent authority” means all Isle of Man administrative and law enforcement authorities concerned with combating money laundering and the financing of terrorism, including in particular the Financial Supervision Commission, the Insurance and Pensions Authority, the Isle of Man Gambling Supervision Commission, the Department of Home Affairs, the Financial Crime Unit of the Isle of Man Constabulary, the Office of Fair Trading, and Customs and Excise Division of Treasury.

17 Recognition and reporting of suspicious transactions and suspicious attempted transactions

- (1) A licence holder must appoint a Money Laundering Reporting Officer (“MLRO”) to exercise the functions conferred on him or her by this paragraph.
- (2) The MLRO must—
 - (a) be sufficiently senior in the organisation of the licence holder or have sufficient experience and authority; and
 - (b) have a right of direct access to the directors or the managing board (as the case may be) of the licence holder,to be effective in the exercise of his or her functions.
- (3) A licence holder must establish, maintain and operate written internal reporting procedures that, in relation to the licence holder’s online gambling business, will—
 - (a) enable all its directors, or all other persons involved in its management, and all appropriate employees and workers to know to whom they should report any knowledge or suspicions of money laundering or financing of terrorism or attempted money laundering or attempted financing of terrorism;

- (b) ensure that there is a clear reporting chain under which those suspicions will be passed to the MLRO;
- (c) require reports to be made to the MLRO (“internal disclosures”) of any information or other matter that comes to the attention of the person handling that business and that in that person’s opinion gives rise to a suspicion or knowledge that another person is engaged in money laundering or financing of terrorism or attempted money laundering or attempted financing of terrorism;
- (d) require the MLRO to consider any report in the light of all other relevant information available to him or her for the purpose of determining whether or not it gives rise to a knowledge or suspicion of money laundering or financing of terrorism or attempted money laundering or attempted financing of terrorism;
- (e) ensure that the MLRO has reasonable access to any other information which may be of assistance to him or her and which is available to the licence holder; and
- (f) enable the information or other matter contained in a report (“external disclosure”) to be made as soon as is practicable to a constable who is for the time being serving with the Financial Crime Unit on the Island if the MLRO knows or suspects that another is engaged in money laundering or financing of terrorism or attempted money laundering or attempted financing of terrorism.

PART 4 – STAFFING, TRAINING AND MONITORING

18 New appointments

A licence holder must establish, maintain and operate appropriate procedures to enable the licence holder to satisfy itself of the integrity of new directors and new appropriate employees and workers of the licence holder.

19 Staff training

A licence holder must provide or cause to be provided, education and training including refresher training (not less than annually) for all directors, or all other persons involved in its management, all key staff and all appropriate employees and workers to ensure that they are aware of—

- (a) the provisions of the money laundering and terrorist financing requirements;
- (b) their personal obligations under the money laundering and terrorist financing requirements;
- (c) the internal reporting procedures established under paragraph 17;

- (d) the licence holder's policies and procedures to prevent money laundering and the financing of terrorism;
- (e) the licence holder's participant and business participant identification, verification, record-keeping and other procedures to prevent money laundering and the financing of terrorism;
- (f) the recognition and handling of suspicious transactions;
- (g) their personal liability for failure to report information or suspicions in accordance with the money laundering and terrorist financing requirements and the licence holder's internal procedures; and
- (h) new developments, including information on current techniques, methods and trends in money laundering and the financing of terrorism.

20 Technological developments

A licence holder must maintain appropriate procedures and controls for the preventing the misuse of technological developments for the purpose of money laundering or the financing of terrorism.

21 Monitoring and testing compliance

A licence holder must maintain adequate procedures for monitoring and testing compliance with the money laundering and terrorist financing requirements, having regard to—

- (a) the risk of money laundering and financing of terrorism; and
- (b) the nature and size of the organisation of the licence holder.

PART 5 – OFFENCES AND REVOCATIONS

22 Offences

- (1) Any person who contravenes this Code is guilty of an offence and liable—
 - (a) on summary conviction—
 - (i) in a case relating to the financing of terrorism, to custody for a term not exceeding 12 months or to a fine not exceeding £5,000, or to both; or
 - (ii) in any other case, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both;
 - (b) on conviction on information to custody not exceeding 2 years or to a fine, or to both.
- (2) In determining whether a person has complied with any of the requirements of any part of this Code a court may take account of—

- (a) any relevant supervisory or regulatory guidance which applies to that person given by the Isle of Man Gambling Supervision Commission; or
 - (b) in a case where no guidance falling within sub-paragraph (a) applies, any other relevant guidance issued by a body that regulates, or is representative of, any trade, business, profession or employment carried on by that person.
- (3) In proceedings against a person for an offence under this Code, it is a defence for that person to show that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (4) If an offence under this Code is committed by a body corporate and it is proved that the offence—
- (a) was committed with the consent or connivance of an officer of the body, or
 - (b) was attributable to neglect on the part of an officer of the body;
- the officer, as well as the body, is be guilty of the offence and liable to the penalty provided for it.
- (5) In this paragraph, “officer” includes —
- (a) a director, manager or secretary;
 - (b) a person purporting to act as a director, manager or secretary;
 - (c) if the affairs of the body are managed by its members, a member;
 - (d) in relation to a limited liability company constituted under the Limited Liability Companies Act 1996, a member, the company’s manager, or registered agent;
 - (e) an operations manager appointed under section 10A(2) of the Online Gambling Regulation Act 2001.

23 Revocations

The following are revoked—

- (a) Proceeds of Crime (Money Laundering – Online Gambling) Code 2010⁷
- (b) Proceeds of Crime (Money Laundering – Online Gambling) (Amendment) Code 2010⁸; and
- (c) Prevention of Terrorist Financing (Online Gambling) Code 2011⁹.

⁷ SD 509/10

⁸ SD 1035/10

⁹ SD 492/11

MADE 13TH MARCH 2013

J P WATTERSON
Minister for Home Affairs

SCHEDULE 1

[Paragraph 3]

LIST OF COUNTRIES

Australia	Japan
Austria	Jersey
Belgium	Liechtenstein
Bermuda	Luxembourg
British Virgin Islands	Malta
Brazil	Mauritius
Canada	Monaco
Cayman Islands	Netherlands [#]
Cyprus	New Zealand
Denmark	Norway
Finland	Portugal
France	Singapore
Germany	South Africa
Gibraltar	Spain
Guernsey	Sweden
Hong Kong	Switzerland
Iceland	Taiwan
Ireland	United Kingdom
Italy	United States of America

For the avoidance of doubt, Netherlands refers only to the part of the Kingdom of the Netherlands in Europe.

SCHEDULE 2

[Paragraph 3]

AUTHORISED PERSONS

[Intentionally left blank]

EXPLANATORY NOTE

(This note is not part of the Code)

This Code replaces and consolidates, with some minor updates and drafting amendments, the Proceeds of Crime (Money Laundering – Online Gambling) Code 2010, the Proceeds of Crime (Money Laundering – Online Gambling) (Amendment) Code 2010 and the Prevention of Terrorist Financing (Online Gambling) Code 2011 which are revoked. This Code is made jointly under section 157 of the Proceeds of Crime Act 2008 and section 27A of the Terrorism (Finance) Act 2009. The Code imposes requirements on online gambling businesses to establish procedures on combating money laundering and financing of terrorism, training and record keeping. Failure to comply with the requirement of this Code is a criminal offence.