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# ADVISORY

JUNE 2020

## ***ADVISORY ON 2019 AMENDMENT OF THE PROCEEDS OF CRIME ACT & THE PROCEEDS OF CRIME (MONEY LAUNDERING PREVENTION) REGULATION***

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This Advisory is directed to:

- ✓ Gaming Lounge Operators
- ✓ Nominated Employees & Other Compliance Officers
- ✓ Chief Executive Officers
- ✓ Senior Managers
- ✓ Frontline Personnel
- ✓ Other Relevant Staff

The Betting, Gaming & Lotteries Commission (BGLC), in an effort to ensure all licensees are provided with the most current information, has compiled all amendments that were passed in 2019 regarding the Proceeds of Crime Act (POCA) and the Proceeds of Crime (Money Laundering Prevention) Regulations. These amendments in the AML/CFT framework will be reflected in the revised BGLC Guidance Notes that are currently being updated.

### **The Proceeds of Crime (Amendment) Act, 2019**

#### *Enhanced measures in respect of transactions with customers domiciled, resident or incorporated in specified territories - Section 94A*

Regulated entities shall ensure that the following procedures are observed, in respect of all its business relationships and transactions with any customer resident or domiciled, or in the case of a body corporate, incorporated, in specified territory:

- a) Apply enhanced due diligence procedures;
- b) Ensure that the background and purpose of all such relationships and transactions are examined;

- c) Ensure that the findings under (a) and (b) are set out in writing and made available, upon request, to the Designated Authority, the supervisory authority or the Competent Authority concerned, as the case may require; and
- d) Limit those business relationships or one-off transactions.

The above must be done in accordance with enhanced money laundering counter measures set out in regulation 7B.

Statistical Information - Section 137A

The Act empowers the Competent Authority to keep such statistical records as it considers appropriate for the purpose of measuring the overall effectiveness of measures taken, with respect to the prevention of money laundering and terrorist financing in the gaming sector. Additionally, the Minister may, by order published in the Gazette specify entities, other than those specified in the Act, that are required to keep statistics.

The Commission may disclose statistical information to the following entities:

- the DPP
- the Commissioner of Police
- the Commissioner of Customs
- the Attorney-General
- Director General of MOCA
- CTD of FID
- any other entity designated by the Minister by order for the purposes of this section.

**Proceeds of Crime (Money Laundering Prevention (Amendment) Regulation, 2019**

Regulatory Controls – Regulation 5

Under Regulation 5(3), the Act now provides for the term ‘nominated employee’ and has therefore omitted the use of the term ‘nominated officer’.

Identification procedures, business relationships and transactions – Regulation 7

Where the regulated business is unable to verify the applicant’s identity within **14 days** after contact is first made paragraphs (a) and (b), outlined below should apply. Also, where a regulated business is not satisfied, on the outcome of any of the due diligence procedures required to be conducted under these Regulations in respect of any business relationship or one

off transaction, that there are no reasonable grounds to suspect that the business relationship or one-off transaction constitutes or could be related to money laundering –

- a) The business relationship or one-off transaction shall not proceed any further, unless conducted with the permission of, and in accordance with the guidelines issued by, the Competent Authority; and
- b) The regulated business shall make and an assessment as the whether any disclosure is required under section 94 of the Act (disclosure as to transactions that constitutes or are related to money laundering).

In any case where the regulated business has reasonable grounds to –

- a) Suspect that a business relationship or one-off transaction constitutes or could be related to money laundering; and
- b) Believe that carrying out due diligence procedures as required, might have the effect of alerting any person that a suspicion has been formed as described.

The regulated business shall, instead of performing the due diligence procedures, make the required report under section 94 or 95 of the Act.

### Risk Profiling - Regulation 7A

Regulated businesses shall establish:

- a) a risk profile regarding its operations generally, having regard, for example, to its business products offered, its distribution channels, the national, and regional and international environment in which the regulated business operates and the size and nature of its operations; and
- b) a risk profile regarding all its business relationships and one-off transactions, with a view to determining the level of risk for each,
- c) and shall employ measures commensurate with the risks identified to effectively mitigate those risks, but shall not apply simplified due diligence procedures in respect of a business relationship or one-off transaction which the regulated business determines to be high risk

## Simplified Due Diligence - Regulation 7(5A)

Simplified due diligence procedures may be applied by a business in the regulated sector where a business relationship or one-off transaction is determined to be low-risk. However, this can only be done, with respect thereto if the conditions set out below are met.

The conditions are that:

- a) risks identified, and the controls and systems to reduce or mitigate those risks, on an ongoing basis, and to ensure the employment of enhanced due diligence procedures should there be any change in circumstances which renders the business relationship or a proper evaluation of the risk was conducted by the regulated business, which justifies the adoption of the simplified due diligence procedures;
- b) the regulated business has identified and documented the risks of money laundering involved and –
  - (i) implements appropriate controls and systems to reduce or mitigate those risks; and
  - (ii) reviews the one-off transaction high-risk; and
- c) having regard to guidance given by the Competent Authority concerned, the matter is an appropriate one for the application of simplified due diligence procedures after taking into account the product features of the relevant business, such as –
  - (i) threshold limits for the value of transactions;
  - (ii) whether or not cross-border transactions are permitted;
  - (iii) the existence of features that do not permit or facilitate anonymous use of the product;
  - (iv) whether or not face-to-face transactions are permissible
  - (v) and any other factors that the competent authority and the designated authority consider relevant.

Simplified due diligence procedures include any one or more of the following –

- a) requiring only one form of Government-issued identification from the applicant for business concerned, or accepting forms of identification other than government issued identification;
- b) accepting identification verification from third parties who are under analogous obligations with respect to customer identification and transaction verification procedures as concerns the prevention of money laundering.
- c) Collecting only basic identification information, such as names, addresses and dates of birth or, in the case of bodies corporate, dates and places of incorporation;

- d) Reliance on publicly available documents or such other documents as the Competent Authority may specify; or
- e) Such other procedures as the competent authority may specify.

Record Keeping - Regulation 14

The Regulation outlines that all relevant financial business shall—

- a) Maintain a record of –
  - i. each transaction; and
  - ii. all correspondence, and analysis undertaken, in relation to each transaction and business relationship,

in such manner and form as shall facilitate the reconstruction of transactions and the provision of information to the Designated Authority or Competent Authority upon request no later than **seven days** after the request or as may otherwise be required under the Act, the Regulation or any other enactment; and account files shall be kept, in relation to each customer, containing all pertinent information in respect of each of the customer's accounts with the regulated business (including customer information, types of accounts held and a summary of the activities in respect of each accounts).

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