

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4812 GIBRALTAR Wednesday 20th January 2021

B. 01/21

BILL

FOR

AN ACT to amend the Proceeds of Crime Act 2015; to amend the Financial Services Act 2019; to amend the Supervisory Bodies (Powers etc.) Regulations 2017; to amend the Gambling Act 2005; to amend the National Coordinator For Anti-Money Laundering And Combatting Terrorist Financing Regulations 2016; to amend the Terrorism Act 2018; to amend The Insolvency Practitioners Regulations 2020; to amend the Register Of Ultimate Beneficial Ownership Regulations 2017; to amend the Trustees Act; to amend the Private Foundations Act 2017; to amend the Terrorist Asset-Freezing Regulations 2011; to amend the Sanctions Act 2019; to amend the Chemical Weapons Sanctions Order 2019; to amend the Democratic People’s Republic Of Korea Sanctions Order 2018; to amend the Friendly Societies Act; to amend the Charities Act; and to amend the Companies Act 2014.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Proceeds of Crime (Miscellaneous Amendments) Act 2021.

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. 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. After section 1ZA, insert the following–

“Proliferation financing: interpretation.

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

6. 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. 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. In section 1D(b), for “money laundering and terrorist financing”, substitute “money laundering, terrorist financing and proliferation financing”.

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

10. In Section 1E(1), for “money laundering or terrorist financing”, substitute “money laundering, terrorist financing, proliferation financing or other criminal conduct”.

11. In section 1JA, for “money laundering or terrorist financing”, substitute “money laundering, terrorist financing or proliferation financing”.

12. 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”.

13. In section 1N(1), for “money laundering or terrorist financing”, substitute “money laundering, terrorist financing or proliferation financing”.

14. 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”.

15. In section 5(9)(b), after “37”, insert “, 38A”.

16. In section 6B, after “employment” insert “, or during the application of customer due diligence measures pursuant to section 11”.

17. 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”.

18. Section 7 is amended as follows—

(a) 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;”;

(iii) 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

(iv) 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) 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) For subsection (1A), 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) 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) in subsection (2)(b), after “37”, insert “, 38A”.

19. In section 9(1), after the paragraph (ha), insert–

“(hb) art storage freeport operators;”.

20. In section 9A, for “money laundering or terrorist financing”, substitute “money laundering, terrorist financing or proliferation financing”.

21. 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”.

22. For Section 10, substitute–

“10. “Customer due diligence measures” shall comprise–

- (a) identifying the customer;
- (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, 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, 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) determining whether the customer, or its beneficial owner, is a politically exposed person;

- (k) conducting ongoing monitoring in accordance with section 12; and
- (l) subject to section 25, keeping records of all the actions taken under this section, as well as any difficulties encountered during the process.”.

23. Section 11 is amended as follows—

- (a) in subsection (1)(c), for “money laundering or terrorist financing”, substitute “money laundering, terrorist financing or proliferation financing”;
- (b) in subsection (2), for “on a risk-sensitive basis”, substitute “on the basis of materiality and on a risk-sensitive basis”;
- (c) in subsection (3)(b), for “money laundering and terrorist financing”, substitute “money laundering, terrorist financing and proliferation financing”;

(d) 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) in subsection (5)(b), for “;”, substitute “; and”; and

(f) 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.”.

24. 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.”.

25. In section 13(3)(b), for “money laundering or terrorist financing”, substitute “money laundering, terrorist financing or proliferation financing”.

26. In section 15(1)(b), after “a business relationship”, insert “, open an account”.

27. Section 16 is amended as follows—

(a) 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) 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) 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.”.

28. Section 17 is amended as follows—

(a) 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) in subsection (2) for “risk sensitive”, substitute “risk-sensitive”;

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

(d) 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.”.

29. Delete section 17A.

30. 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) 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) 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)—
 - (i) for “document”, substitute “understand and document”; and
 - (ii) for “; and”, substitute “;”;
 - (vi) after paragraph (e), insert—
 - “(ea) be satisfied that the respondent does not permit its accounts to be used by shell banks; and”;
- (c) 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.”.

31. 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”.

32. 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–

“(2) 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”.

33. In section 22(2), for “is known to permit”, substitute “permits”.

34. Section 23 is amended as follows–

- (a) 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)”;
- (c) 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.”.

35. In section 23A(b), for “money laundering and terrorist financing”, substitute “money laundering, terrorist financing and proliferation financing”.

36. In section 24(1), delete “who is situated or incorporated in a non-EEA State or Territory”.

37. Section 25 is amended as follows—

(a) 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) 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) 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) subsection (5) is amended as follows—

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

(ii) in paragraph (a), delete “as soon as reasonably practicable”; and

(iii) in paragraph (b), delete “as soon as reasonably practicable”;

(f) subsection (6) is amended as follows—

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

(ii) in paragraph (a), delete “as soon as reasonably practicable”; and

(iii) in paragraph (b), delete “as soon as reasonably practicable”;

(g) 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) in subsection (11), for “money laundering or terrorist financing”, substitute “money laundering, terrorist financing or proliferation financing.”.
38. In section 25ZA(3), for “money laundering or terrorist financing”, substitute “money laundering, terrorist financing or proliferation financing”.
39. 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,”.
40. Section 26 is amended as follows–
- (a) in subsection (1)–
 - (i) delete “, proportionate to its nature and size”; and
 - (ii) 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) 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) for subsection (1A), substitute—

“(1A) 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) 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;
- (d) adequate safeguards on the confidentiality and use of information exchanged under paragraph (b), including safeguards to prevent tipping-off; and
- (e) 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) in subsection (2)—

(i) after “The policies”, insert “, controls”;

(ii) after “include policies”, insert “, controls”

(iii) in paragraph (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) for paragraph (c), substitute—

“(c) which provide a 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 paragraph (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) 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) 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) 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) delete subsection (5A);
- (k) after the deleted subsection (5A), insert the following—
 - “(5B) 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.”.

41. 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”.
42. 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”.
43. 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”.
44. In section 30A, for “money laundering or to terrorist financing”, substitute—
- “money laundering, to terrorist financing, or to proliferation financing”.
45. 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.”
46. In section 33, for “19”, substitute “19(1) or (2)”.
47. 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”.

48. After section 184, insert—

“Power to amend the Act, and to make subordinate legislation, to implement conventions and international agreement.

184ZA.(1) The Government may by regulations amend this Act for the purpose of implementing in Gibraltar—

- (a) an international agreement or convention connected with or relating to the prevention of abuse of financial systems or the prevention of money laundering, terrorist financing or proliferation financing, whether or not Gibraltar is a signatory;
 - (b) any international obligation or standard connected with or relating to the prevention of abuse of financial systems or the prevention of money laundering, terrorist financing or proliferation financing; or
 - (c) the recommendations (in any form and however described) of an international body established for the purposes of, or concerned with, the promotion, adoption, supervision or enforcement of the obligations or standards described in paragraph (b).
- (2) The Government may make such rules, regulations or orders, or provide for such other statutory instruments as it considers necessary or useful to fulfil the purposes and objects described in subsection (1).
- (3) The limitation in section 23(b) of the Interpretation and General Clauses Act shall not apply to any regulations made under this section.”.

49. 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)”.

50. 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 Kingdom—
— London Stock 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

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

52. 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.”.

53. 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

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

55. 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”.

56. 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.”.

57. In regulation 6, for “money laundering and terrorist financing”, substitute “money laundering, terrorist financing and proliferation financing”.

58. Regulation 9A is amended as follows—

- (a) in subregulation (1)(a), for “money laundering and terrorist financing; and”, substitute “money laundering, terrorist financing and proliferation financing;”;and
- (b) in subregulation (1)(b)—
 - (i) for “money laundering and terrorist financing”, substitute “money laundering, terrorist financing and proliferation financing”; and
 - (ii) after “;”, insert “and”.

59. In regulation 10A(3)(a)(i), for “money laundering or terrorist financing”, substitute “money laundering, terrorist financing or proliferation financing”.

60. In regulation 11(1)(a), after “terrorist financing”, insert “or proliferation financing”.

PART 4

AMENDMENTS TO THE GAMBLING ACT 2005

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

62. 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;”;

(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;”.

63. 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”.

64. In section 36, for “money laundering”, substitute “money laundering, terrorist financing, or proliferation financing”.

65. 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

66. The National Coordinator For Anti-Money Laundering And Combatting Terrorist Financing Regulations 2016 are amended in accordance with this Part.
67. 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.”.
68. 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.”.

69. 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”.

70. 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”.

71. In regulation 11, for “Proceeds of Crime Act 2015”, substitute “the Act”.

72. 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

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

74. 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, transshipment 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).”.

75. In paragraph 8 of Schedule 1, after subparagraph (c), insert—

“(ca) section 38A (proliferation financing);”.

PART 7

AMENDMENT OF THE INSOLVENCY PRACTITIONERS REGULATIONS 2020

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

77. 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;”.

78. 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

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

80. In Regulation 1, for “Register of Ultimate Beneficial Owners Regulations 2017”, substitute “Register of Ultimate Beneficial Owners, Nominators and Appointors Regulations 2017”.

81. Regulation 3 is amended as follows—

(a) in subregulation (1)–

(i) after the definition of “Act”, insert–

““appointor” and “appointors” have the respective meanings given to them in regulation 6B;”;

(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–

““nominator”, “nominee” and “nominee arrangement” have the respective meanings given to them in regulation 6A;”; and

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

82. After regulation 6, insert–

“Nominee shareholders.

6A.(1) For the purposes of this regulation, a person (“nominee”) holds shares in a corporate or legal entity (“shares”) for another person (“nominator”) in a nominee arrangement (“nominee arrangement”) 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 must obtain and hold adequate, accurate and current information on his nominator or nominators, including-

- (a) where the nominator is a natural person, his-
 - (i) full name;
 - (ii) previous names or alias;
 - (iii) date of birth;
 - (iv) gender;
 - (v) place of birth;
 - (vi) nationality;
 - (vii) country or state of usual residence;
 - (viii) usual residential address;
 - (ix) service address;
 - (x) occupation;

(b) save where paragraph (d) applies, where the nominator is a company-

- (i) its name;
- (ii) proof of its existence;

- (iii) its legal form and status;
 - (iv) the address of its registered office;
 - (c) save where paragraph (d) applies, where the nominator is a legal entity or a legal arrangement other than a company, the nearest equivalent of the matters set out in paragraph(b);
 - (d) where the nominator is either a Listed Entity or a regulated firm with permission to carry out a regulated activity pursuant to Part 7 of the Financial Services Act 2019-
 - (i) its name;
 - (ii) the address of its registered office;
 - (iii) confirmation, in any form that the Registrar may reasonably require, that it is a Listed Entity or a regulated firm with permission to carry out a regulated activity pursuant to Part 7 of the Financial Services Act 2019, as the case may be; and
 - (e) the date on which the nominee and the nominator entered into the nominee arrangement.
- (3) A nominee must-
 - (a) notify the corporate or legal entity of the nominee arrangement; and;
 - (b) provide the information referred to in subregulation (2) to the corporate or legal entity, and such other information as the corporate or legal entity may reasonably require for the purposes of satisfying its obligations under regulation 8B.
- (4) A nominee must comply with subregulation (3)-
 - (a) within 15 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.
- (5) If at any time after the nominee has provided the corporate or legal entity with the information referred to in subregulations (2) or (3)-
 - (a) there is a material change affecting any matter contained in the information; or

- (b) it becomes apparent to the nominee that the information contains a significant inaccuracy,

it must provide the corporate or legal entity with details of the change or, as the case may be, a correction of the inaccuracy within 15 days beginning with the date of the occurrence of the change, or the discovery of inaccuracy, or within such later time as may be agreed with the corporate or legal entity and the details provided to the corporate or legal entity must state the date on which the change occurred or the significant inaccuracy was noticed.

- (6) A nominee shall notify the corporate or legal entity within 15 days of the termination of the nominee arrangement, and the notification shall include the date of termination.

Director services.

6B.(1) A person appointed to act as director of a corporate or legal entity incorporated in Gibraltar must obtain and hold adequate and accurate information on his appointor or appointors, including-

- (a) where the appointor is a natural person, his-
- (i) full name;
 - (ii) previous names or alias;
 - (iii) date of birth;
 - (iv) gender;
 - (v) place of birth;
 - (vi) nationality;
 - (vii) country or state of usual residence;
 - (viii) usual residential address;
 - (ix) service address;
 - (x) occupation;
- (b) save where paragraph (d) applies, where the appointor is a company-
- (i) its name;
 - (ii) proof of its incorporation;

- (iii) its legal form and status;
 - (iv) the address of its registered office;
 - (c) save where paragraph (d) applies, where the appointor is a legal entity or a legal arrangement other than a company, the nearest equivalent of the matters set out in paragraph(b);
 - (d) where the appointor is either a Listed Entity or a regulated firm with permission to carry out a regulated activity pursuant to Part 7 of the Financial Services Act 2019-
 - (i) its name;
 - (ii) the address of its registered office;
 - (iii) confirmation, in any form that the Registrar may reasonably require, that it is a Listed Entity or a regulated firm with permission to carry out a regulated activity pursuant to Part 7 of the Financial Services Act 2019, as the case may be; and
 - (e) the date of the director’s appointment.
- (2) For the purposes of this regulation-
 - (a) where a director is named in a statement of proposed officers pursuant to section 9(4)(c) of the Companies Act 2014, “the appointors” shall mean the subscribers;
 - (b) where a director has been appointed by the board of directors of the corporate or legal entity, “the appointors” shall mean the directors of the corporate or legal entity at the time of his appointment, and whether a director voted in favour of the appointment or was present at the meeting at which the appointment was made shall be immaterial;
 - (c) where a director has been appointed by ordinary resolution extraordinary resolution or special resolution, as defined in sections 200 and 201 the Companies Act 2014 respectively, “the appointors” shall mean all the members who were entitled to vote in respect of his appointment, and whether a member voted in favour of his appointment or was present at the meeting at which the appointment was made shall be immaterial;
 - (d) where the articles of association, or equivalent constitutional document of a corporate or legal entity, make provision for a director or directors to be appointed by the holders of the majority of a particular class of share, and a director is appointed pursuant to that provision, “the appointors” shall mean all of the holders of that class of share at the time of his appointment, and whether a holder of that class of share voted in favour of his

- appointment or was present at the meeting at which the appointment was made shall be immaterial;
- (e) where a director has been appointed by a person in the exercise of a right arising under the articles of association, or equivalent constitutional document of a corporate or legal entity, and paragraphs (b) to (d) do not apply, “the appointors” shall mean that person or, where more than one, persons;
 - (f) where a director has been appointed by a person in the exercise of a contractual right arising under an agreement, and paragraphs (b) to (e) do not apply, “the appointors” shall mean that person or, where more than one, persons;
 - (g) where a person engages the services of a director to represent his interests on the board of a corporate or legal entity, and that person has neither a contractual right nor a right under the articles of association, or equivalent constitutional document of the corporate or legal entity, to appoint a director, that person shall be “the appointor” in addition to any other person who may be deemed an appointor pursuant to paragraphs (a) to (f).
- (3) A person appointed to act as director of a corporate or legal entity incorporated in Gibraltar must submit the information referred to in subregulation (1) to the corporate or legal entity, and provide such other information as the corporate or legal entity may reasonably require for the purposes of satisfying its obligations under regulation 8C.
 - (4) A director of a corporate or legal entity must comply with subregulation (3) within 15 days of his appointment.
 - (5) If at any time after a director has complied with subregulation (3) it becomes apparent to him that the information provided pursuant to that subregulation contains a significant inaccuracy, he must provide the corporate or legal entity with a correction of the inaccuracy within 15 days beginning with the date of the occurrence of the discovery of the inaccuracy, or within such later time as may be agreed with the corporate or legal entity, and the details provided to the corporate or legal entity must state the date on which the significant inaccuracy was noticed.
 - (6) In this regulation, references to “appointed” shall include “re-appointed” and references to “appointment” shall include “re-appointment”.
 - (7) This regulation shall not apply to a director of a corporate or legal entity who was appointed prior to the date of commencement of this regulation.
 - (8) Nothing in this regulation shall be construed as attributing to an appointor any measure of control or influence over-

- (a) the director whom he has appointed; or
- (b) the affairs of the corporate or legal entity.”.

83. In regulation 8, for the heading, substitute “**Requirement to supply Registrar with information on ultimate beneficial owner.**”.
84. Delete regulation 8A(3).
85. After regulation 8A, insert–

“Requirement to supply Registrar with information on nominators.

8B.(1) A corporate or legal entity incorporated in Gibraltar must provide to the Registrar such details regarding nominees, nominators and nominee arrangements relating to the shareholding of the corporate or legal entity as the Registrar may reasonably require (“the information”), in accordance with this regulation.

- (2) A corporate or legal entity incorporated in Gibraltar prior to the commencement of this regulation shall comply with subregulation (1) within 180 days of the commencement of this regulation.
- (3) A corporate or legal entity incorporated in Gibraltar after the commencement of this regulation shall comply with subregulation (1) within 30 days of its incorporation.
- (4) If at any time after the corporate or legal entity has provided the Registrar with the information referred to in subregulation (1)-
 - (a) there is a material change affecting any matter contained in the information; or
 - (b) it becomes apparent to the corporate or legal entity that the information contains a significant inaccuracy,

it must provide the Registrar with details of the change or, as the case may be, a correction of the inaccuracy within 30 days beginning with the date of the occurrence of the change, or discovery of the inaccuracy, or within such later time as may be agreed with the Registrar and the details provided to the Registrar must state the date on which the change occurred or the significant inaccuracy was noticed.

- (5) Any information to be provided to the Registrar under this regulation must be in such form or verified in such manner as the Registrar may specify.

Requirement to supply Registrar with information on appointors.

- 8C.(1) A corporate or legal entity incorporated in Gibraltar must provide to the Registrar such details regarding the appointors of the directors of the corporate or legal entity as the Registrar may reasonably require (“the information”), in accordance with this regulation.
- (2) A corporate or legal entity incorporated in Gibraltar prior to the commencement of this regulation shall supply the information referred to in subregulation (1) within 180 days of the commencement of this regulation.
- (3) A corporate or legal entity incorporated in Gibraltar created after the commencement of this regulation shall comply with subregulation (1) within 30 days of its incorporation.
- (4) If at any time after the corporate or legal entity has provided the Registrar with the information referred to in subregulation (1)-
- (a) there is a material change affecting any matter contained in the information; or
- (b) it becomes apparent to the corporate or legal entity that the information contains a significant inaccuracy,
- it must provide the Registrar with details of the change or, as the case may be, a correction of the inaccuracy within 30 days beginning with the date of the occurrence of the change, or discovery of the inaccuracy, or within such later time as may be agreed with the Registrar and the details provided to the Registrar must state the date on which the change occurred or the significant inaccuracy was noticed.
- (5) Any information to be provided to the Registrar under this regulation must be in such form or verified in such manner as the Registrar may specify.
- (6) Where, pursuant to regulation 6B(7), regulation 6B does not apply to a director of a corporate or legal entity, subregulation (1) shall not apply to the corporate or legal entity in respect of that director or his appointor.”.

86. Following regulation 11B, for the title “Relevant Legal Entity”, substitute “Listed Entity”.

87. For regulation 11C, substitute–

“Listed Entity.

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.”.

88. In regulation 12(1A), for “A corporate”, substitute “An express trust, corporate”.

89. Regulation 26 is amended as follows–

- (a) in subregulation (1), for “subject to the conditions in subregulations (2) to (7)”, substitute “subject to the conditions in subregulations (2) to (8)”; and
- (b) after subregulation (1), insert–
 - “(1A) The Registrar must ensure that the GFIU has, at all times, direct and immediate access to the information on the Register.”.

90. After regulation 26, insert–

“Inspection of documents kept by Registrar – nominators.

26ZA .(1) The following persons may make a request to the Registrar to inspect the information on the Register, relating to nominators-

- (a) a competent authority; and
 - (b) a financial intelligence unit.
- (2) The Registrar must ensure that the GFIU has, at all times, direct and immediate access to the information on the Register.
- (3) On receiving a request under subregulation (1), the Registrar must ensure that the persons referred to in subregulation (1) have access to the information in a timely manner, without restriction and without alerting the nominator whose information is requested, his nominee or the relevant corporate or legal entity.
- (4) The persons referred to in subregulation (1) may request-
- (a) a copy, in such form as the Registrar considers appropriate, of any information or document; or
 - (b) a certified copy of, or extract from, any document,
- which they are entitled to inspect under this regulation.
- (5) No information shall be made available under this regulation any later than 10 years from the date of termination of the nominee arrangement.

Inspection of documents kept by Registrar – appointors.

26ZB.(1) The following persons may make a request to the Registrar to inspect the information on the Register, relating to appointors-

- (a) a competent authority; and

- (b) a financial intelligence unit.
 - (2) The Registrar must ensure that the GFIU has, at all times, direct and immediate access to the information on the Register.
 - (3) On receiving a request under subregulation (1), the Registrar must ensure that the persons referred to in subregulation (1) have access to the information in a timely manner, without restriction and without alerting the appointor whose information is requested, the relevant director or the relevant corporate or legal entity.
 - (4) The persons referred to in subregulation (1) may request-
 - (a) a copy, in such form as the Registrar considers appropriate, of any information or document; or
 - (b) a certified copy of, or extract from, any document,which they are entitled to inspect under this regulation.
 - (5) No information shall be made available under this regulation any later than 10 years from the date on which the appointor ceases to be an appointor for the purposes of regulation 6B.”
91. In regulation 27(a), for “an inspection under regulation 26”, substitute “an inspection under regulation 26, 26ZA or 26ZB”.
92. In regulation 28, for “information under regulations 26 and 27”, substitute “information under regulations 26, 26ZA, 26ZB and 27”.
93. 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), 6A(4), 6A(5), 6A(6), 6B(1), 6B(2), 6B(4), 6B(5), 8(1), 8(2), 8(3), 8(4), 8A(1), 8A(2), 8B(1), 8B(2), 8B(3), 8B(4), 8C(1), 8C(2), 8C(3), 8C(4), 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 director of a corporate or legal entity incorporated in Gibraltar;

(d) a beneficial owner; and

(e) a nominee.”.

94. 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 a requirement under regulations 6(1), 6(2), 6(5), 6A(2), 6A(3), 6A(5), 6B(1), 6B(2), 6B(5), 8(1), 8(2), 8(3), 8(4), 8A(1), 8A(2), 8B(1), 8B(2), 8B(3), 8B(4), 8C(1), 8C(2), 8C(3), 8C(4), 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 corporate or legal entity incorporated in Gibraltar;
- (f) a beneficial owner; and
- (g) a nominee.”.

95. Delete Schedule 3.

PART 9

AMENDMENT OF THE TRUSTEES ACT.

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

97. 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) Where a trustee engages the services of a service provider, and the provision of those services constitutes a relevant financial business for the purposes of section 9(1) of the Proceeds of Crime Act 2015, or the equivalent in another jurisdiction, the trustees must—
- (a) verify the service provider’s name;
 - (b) where the service provider is a legal person, verify its legal form and valid existence;
 - (c) where the service provider is required to register with a supervisory authority in order to provide the service, verify that the service provider is registered with the relevant supervisory authority; and
 - (d) where the service provider is not registered, or required to register, with a supervisory authority to provide the service—
 - (i) take reasonable steps to satisfy themselves that the service provider has the ability, capacity, fitness and propriety to perform its activities reliably, professionally and effectively; and
 - (ii) where the service provider is a legal person, obtain the following information—
 - (A) the address of its registered office;
 - (B) basic regulating powers such as its Memorandum of Association and its Articles of Association;
 - (C) a list of its directors; and
 - (D) a list of its shareholders,

or the nearest equivalent of the matters set out in 1 to 4.

- (3) A trustee must record and keep-
- (a) the information referred to in subsections (1);
 - (b) the actions he took to obtain the information referred to in subsection (1); and
 - (c) the actions he took to comply with subsection (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.”.

98. 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.”.

99. After section 62, insert—

“Flee Clauses.

62A.(1) Where a flee clause may operate to-

- (a) facilitate a criminal offence;
- (b) frustrate an ongoing criminal investigation by a law enforcement authority;
- (c) avoid, defeat or frustrate any right or power of a law enforcement authority to enforce, invoke or apply any provision of Gibraltar law, which aims to prevent or combat money laundering, terrorist financing, proliferation financing or tax evasion,

it shall have no effect.

(2) 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, this section.

(3) In this section-

- (a) “flee clause” means 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-
 - (i) transfer the trusteeship of the trust;
 - (ii) change the forum for the administration of the trust;
 - (iii) transfer the trust assets; or
 - (iv) change the governing law of the trust,

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

- (b) “instrument” shall not include an enactment;
- (c) “law enforcement authority” means the GFIU, the Royal Gibraltar Police, HM Customs, the Financial Services Commission, the Commissioner of Income Tax or their equivalents in another jurisdiction.
- (d) “Minister” means the Minister responsible for financial services.”.

100. For section 63, substitute—

“Offences.

63. A person who fails to comply with an obligation under section 61, 61A, 61B or 62 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.

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

102. 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.

103. The Terrorist Asset-Freezing Regulations 2011 are amended in accordance with this Part.

104. 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.

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

106. In section 4(1), after “benefits of every kind,”, insert “(whether owned or held solely or jointly with another)”.

107. 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.

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

109. 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 2018.**

110. The Democratic People’s Republic of Korea Sanctions Order 2018 is amended in accordance with this Part.

111. 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.

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

113. After the long title, insert–

“PART 1

Preliminary”.

114. 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.”.

115. Following section 3, insert “PART 2” above “Registration of Societies”.

116. 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.”.

117. Following section 8, insert “PART 3” above “Duties and Obligations of Societies”.
118. Following section 26, insert “PART 4” above “Collecting Societies”.
119. Following section 41, insert “PART 5” above “Privileges of Societies”.
120. Following section 49, insert “PART 6” above “Property and Funds of Societies”.
121. Following section 60, insert “PART 7” above “Legal Proceedings”.
122. Following section 63, insert “PART 8” above “Disputes”.
123. Following section 64, insert “PART 9” above “Exercise of Powers by Special Resolutions”
124. Following section 67E, insert “PART 10” above “Dissolution of Societies”.
125. Following section 77, insert “PART 11” above “Benefits”
126. Following section 78, insert “PART 12” above “Payments on Death of Young Children”.
127. Following section 84, insert “PART 13” above “Regulation of Affairs of Societies”.
128. Following section 96, insert “PART 14” above “Penalties and Appeals, etc.”.
129. 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 this Act or any other enactment;
 - (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 which is similar to a function of the Registrar.

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.”.

130. 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.”.

131. After Schedule 5, insert—

“SCHEDULE

6

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.

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

133. 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.”.

134. 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.”.

135. 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”.

136. 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 this Act or any other enactment;
 - (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 which is similar to a function of the Commissioners.

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.”.

137. 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.

138. The Companies Act 2014 is amended in accordance with this Part.
139. In Section 182(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.”.
140. 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;”.
141. In Section 222(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”

EXPLANATORY MEMORANDUM

This Bill amends the Proceeds of Crime Act 2015 as well as other legislation for the purposes of implementing, in part, the Financial Action Task Force's (FATF) Recommendations, and addressing deficiencies identified in the Mutual Evaluation Report for Gibraltar published by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) during December 2019, following Gibraltar's participation in FATF's mutual evaluation reporting framework.

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