

Alderney Gambling Control Commission

The Alderney eGambling (Amendment) (No.2) Regulations, 2010

<i>Made</i>	<i>1st July, 2010</i>
<i>Coming into operation</i>	<i>2nd July, 2010</i>
<i>Laid before the States</i>	<i>19th July 2010</i>

THE ALDERNEY GAMBLING CONTROL COMMISSION, in exercise of the powers conferred on it by sections 22 and 27 of the Alderney eGambling Ordinance, 2009^a, hereby makes the following Regulations:-

Amendment to the 2009 Regulations.

1. The Alderney eGambling 2009 Regulations^b are amended as follows.
2. In regulation 3(2)(c) of the 2009 Regulations immediately before the word "management" insert "engaging in financial transactions with the customer and the".
3. In regulation 4(a) of the 2009 Regulations delete "transfer a customer to, or".
4. In regulation 4(1) of the 2009 Regulations immediately after "anti-

^a Ordinance No. X of 2009.

^b Statutory Instrument 1/2010, as amended by the Alderney eGambling (Amendment) Regulations, 2010

money laundering" insert "and counter terrorist financing".

5. In regulation 5(2) of the 2009 Regulations –

- (a) for "includes, but is not limited to," substitute "means",
- (b) immediately after the semi-colon in sub-paragraph (b) insert "or",
- (c) delete sub-paragraph (d), and
- (d) immediately after sub-paragraph (c) insert –

"and for the avoidance of doubt, "effecting a gambling transaction" does not include engaging in a financial transaction with the customer."

6. In regulation 6 of the 2009 Regulations –

- (a) delete sub-paragraph (a),
- (b) in sub-paragraph (j) after the semi-colon delete the word "and",
- (c) in sub-paragraph (k)(iii) for "." substitute ";", and
- (d) immediately after sub-paragraph (k) insert the following sub-paragraphs -

- "(l) the Category 2 eGambling licensee must take note and meet the requirements (if any) of all relevant notices, instructions, and counter-measures (whether described as “Business from Sensitive Sources Notices” or otherwise) issued by the Commission and designed to alert and advise it of weaknesses in the anti-money laundering and counter terrorist financing systems in other countries or territories where the Category 2 eGambling licensee may operate; and

- (m) the Category 2 eGambling licensee shall not effect gambling transactions on behalf of an operator who is not a Category 1 eGambling licensee unless that operator –
 - (i) has been approved by the Commission as a business associate that is a fit and proper person to be associated with the Category 2 eGambling licensee in accordance with regulation 22; and

 - (ii) complies with all of the requirements set out in paragraph 11(2) of Schedule 16."

7. For regulation 59 of the 2009 Regulations substitute –

"59. (1) A foreign gambling associate is an entity (other than a Category 2 eGambling licensee) that effects gambling transactions on behalf of a Category 1 eGambling licensee.

(2) Effecting a gambling transaction means one or more of the following activities —

- (a) striking a bet;
- (b) housing and recording the random element or gambling transaction outcome; or
- (c) operating a system of hardware and software upon which the gambling transaction is conducted;

and for the avoidance of doubt, "effecting a gambling transaction" does not include engaging in a financial transaction with the customer."

8. In regulation 60 of the 2009 Regulations -

- (a) in sub-paragraph (h) after the semi-colon delete the word "and",
- (b) in sub-paragraph (i)(iii) for "." substitute ";and", and
- (c) immediately after sub-paragraph (i) insert the following sub-paragraph –

"(j) the foreign gambling associate certificate holder must take note and meet the requirements (if any) of all relevant notices, instructions, and counter-measures (whether described as "Business from Sensitive Sources Notices" or otherwise) issued by the Commission and designed to alert and advise it of weaknesses in the anti-money laundering and counter terrorist financing systems in other countries or territories where the foreign gambling associate certificate holder may operate."

9. In regulation 175 of the 2009 Regulations –

(a) in paragraph (2)(g) –

(i) for "procedures for" substitute "procedures for registering customers (in relation to a Category 1 eGambling licensee only)", and

(ii) immediately after "winnings to customers" insert "(in relation to a Category 1 eGambling licensee only)",

(b) in paragraph (3) –

(i) in sub-paragraph (e) delete the word "and",

(ii) in sub-paragraph (f) for "." substitute ";;",

(iii) immediately after sub-paragraph (f) insert the following sub-paragraphs –

"(g) customer identification and verification systems (in relation to a Category 1 eGambling licensee only); and

(h) ongoing due diligence of the customer relationship (in relation to a Category 1 eGambling licensee only).",

(c) for paragraph (4) substitute –

"(4) For the purposes of paragraph (3)(a) –

(a) in considering what is an appropriate interval, the eGambling licensee or foreign gambling associate certificate holder shall have regard to the risk taking into account —

(i) the size, nature and complexity of the eGambling it conducts;

(ii) its registered customers (in relation to a Category 1 eGambling licensee only) and services; and

- (iii) the ways in which it provides those services; and
- (b) its policy, for reviewing the requirements of Schedule 16 and the regulations in Chapter V of Part V associated therewith, shall include the requirement to maintain an adequately resourced independent audit function to test compliance with such requirements.", and
- (d) immediately after paragraph (4) insert the following paragraph –

"(5) For the purposes of paragraph (3)(g), the Category 1 eGambling licensee's customer identification and verification systems shall –

- (a) incorporate robust client identification methods and measures in order to manage and mitigate the specific risks of non face-to-face transactions inherent in the eGambling industry; and
- (b) refer only to identification verification software and additional or alternative identification methods that have been approved by the Commission."

10. In regulation 265(1) of the 2009 Regulations immediately after the

definition of "**equipment condition notice**" insert –

"**financial transaction**" includes the purchase or cashing in of casinos chips or tokens or the opening of an account or any money or other value transfer or exchange;".

11. In paragraph 3(1) of Schedule 16 of the 2009 Regulations for "Category 1 eGambling eGambling licensee" substitute "Category 1 eGambling licensee".

12. In paragraph 4(c) of Schedule 16 of the 2009 Regulations immediately after the word "the" insert "Category 1 eGambling".

13. In paragraph 6 of Schedule 16 of the 2009 Regulations –

(a) in sub-paragraph (1)(c) immediately after the words "consistent with the" insert "Category 1 eGambling",

(b) in sub-paragraph (1)(c)(ii) immediately after the comma delete the word "and",

(c) in sub-paragraph (1)(c)(iii) immediately after the comma insert the word "and",

(d) immediately after sub-paragraph (1)(c)(iii) insert the following sub-item –

"(iv) transactions arising from a country or territory that does not apply or insufficiently applies the FATF

Recommendations,"

- (e) immediately after sub-paragraph (1) insert the following sub-paragraph –

"(1A) A Category 2 eGambling licensee or, as the case may be, a foreign gambling associate certificate holder shall perform ongoing and effective monitoring of all gambling transactions, paying particular attention to all –

- (a) complex transactions,
- (b) transactions which are both large and unusual, and
- (c) unusual patterns of transactions,

which have no apparent economic purpose or no apparent lawful purpose and recording its findings thereon in writing,"

- (f) in sub-paragraph (2) –
 - (i) immediately after "A Category 1 eGambling licensee" insert ",a Category 2 eGambling licensee and a foreign gambling associate certificate holder", and
 - (ii) for "paragraph 1(c)" substitute "sub-paragraphs (1)(c) and (1A)",

(g) in sub-paragraph (3) for "this paragraph" substitute "sub-paragraph (1)", and

(h) immediately after sub-paragraph (3) insert the following sub-paragraph –

"(4) Where a Category 2 eGambling licensee or foreign gambling associate certificate holder sets out its findings in writing in accordance with sub-paragraph (2) it shall as soon as reasonably practicable communicate such findings to the MLRO of the Category 1 eGambling licensee who had allowed its customer to gamble with or through it in order to effect a gambling transaction.".

14. In paragraph 7(2) of Schedule 16 of the 2009 Regulations for "it shall notify the Commission of the date of the disclosure and the number of suspicious transaction reports made in relation to that disclosure" substitute "a copy of that disclosure shall be provided to the Commission".

15. In paragraph 8(1)(b) of Schedule 16 of the 2009 Regulations –

(a) in sub-item (iii) delete the word "and", and

(b) immediately after sub-item (iv) insert the following sub-items –

"(v) the identity and responsibilities of the MLRO;

(vi) the detection of unusual or suspicious transactions;

- (vii) the principal vulnerabilities of the services offered by the eGambling licensee or the associate certificate holder; and
- (viii) new developments, including information on current money laundering and terrorist financing techniques, methods, trends and typologies; and".

16. In paragraph 8(1)(c) of Schedule 16 of the 2009 Regulations for "clause" substitute "item".

17. Immediately after paragraph 8(1) of Schedule 16 of the 2009 Regulations insert the following sub-paragraph –

"(2) A Category 1 eGambling licensee shall ensure that relevant employees receive comprehensive ongoing training in customer due diligence requirements."

18. In paragraph 9(3)(a) of Schedule 16 of the 2009 Regulations for "paragraph 6(1)(c)" substitute "paragraphs 6(1)(c) and 6(1A)".

19. For paragraph 9(4)(b)(i) of Schedule 16 of the 2009 Regulations substitute –

- "(i) in respect of customer due diligence, transaction documents and records relating to sub-paragraphs (3)(a), (3)(c), (3)(d) and (3)(e), -

- (A) to any auditor, and
- (B) to the Financial Intelligence Service, an officer of police, the Commission, the MLRO, nominated officer or any other person where such documents or customer due diligence information are requested pursuant to these Regulations or any relevant enactment, and".

20. In paragraph 9(4)(b)(ii) of Schedule 16 of the 2009 Regulations immediately after the words "prescribed police officer," insert "the Commission,".

21. In paragraph 10 of Schedule 16 of the 2009 Regulations in sub-paragraph (1), in item (b) of the definition of "**customer due diligence measures**", immediately after the words "identity so that the" insert "Category 1".

22. In paragraph 11 of Schedule 16 of the 2009 Regulations –

- (a) in sub-paragraph (1)(b) after the semi-colon delete the word "and",
- (b) in sub-paragraph (1)(c) for "." substitute ";and",
- (c) immediately after sub-paragraph (1)(c) insert the

following item -

"(d) a business associate which contracts with a Category 2 eGambling licensee in an arrangement whereby the Category 2 eGambling licensee effects gambling transactions on behalf of that business associate.",

(d) in sub-paragraph (2) for "An eGambling licensee" substitute "Subject to sub-paragraph (3) an eGambling licensee",

(e) for sub-paragraph (2)(a) substitute -

"(a) the applicable requirements of this Schedule, regulations 4(b), 4(d), 4(e), 4(f), and 4(l) and the regulations in Chapter V of Part V associated therewith; and",

(f) in sub-paragraph (2) for "to the extent that the law of that country or territory allows" substitute "provided that, where requirements under items (a) and (b) differ, the licensee or certificate holder must ensure that the requirement which provides the highest standard of compliance, by reference to the FATF Recommendations is complied with.", and

(g) for sub-paragraph (3) substitute -

"(3) The obligation under sub-paragraph (2) applies to the extent that the law of the relevant country or territory allows and if the law of that country or territory does not so allow in relation to any requirement of these Regulations, the licensee or certificate holder shall notify the Commission accordingly."

Interpretation.

23. (1) In these Regulations, "**the 2009 Regulations**" means the Alderney eGambling Regulations, 2009, as amended^c.

(2) Words defined in the Gambling (Alderney) Law, 1999, as amended^d, the Alderney eGambling Ordinance, 2009^e and the Alderney eGambling Regulations, 2009^f have the same meaning when used in these Regulations, unless the context otherwise requires or the contrary intention is expressed.

(3) The Interpretation (Guernsey) Law, 1948^g applies to the interpretation of these Regulations as it applies to the interpretation of an enactment in force in the Island of Guernsey.

(4) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without

^c Statutory Instrument 1/2010, as amended by the Alderney eGambling (Amendment) Regulations, 2010

^d Order in Council No. XIV of 1999; No. XXVII of 2001; Ordinance No. VII of 2006.

^e Ordinance No. X of 2009.

^f Statutory Instrument 1/2010, as amended by the Alderney eGambling (Amendment) Regulations, 2010

^g Ordres en Conseil Vol. XIII, p. 355.

modification), extended or applied.

Citation and commencement.

24. These Regulations may be cited as the Alderney eGambling (Amendment) (No.2) Regulations, 2010 and shall come into force on the 2nd July 2010.

Dated this 1st day of July, 2010.

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ISABEL PICORNELL
Member of the Alderney Gambling Control Commission
for and on behalf of the Commission.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made by the Alderney Gambling Control Commission under the Alderney eGambling Ordinance, 2009 and amend the Alderney eGambling Regulations, 2009 ("the 2009 Regulations").

Regulations 2 to 6 make amendments to regulations 3, 4, 5 and 6 respectively of the 2009 Regulations. The principal purpose of these amendments is to clarify the fact

that Category 2 eGambling licensees do not engage in financial transactions with customers. Further, the insertion of paragraph 6(l) requires Category 2 eGambling licensees to take note and meet the requirements of relevant notices, instructions and counter-measures issued by the Commission. The insertion of paragraph 6(m) clarifies the fact that a Category 2 eGambling licensee shall not effect gambling transactions on behalf of an operator who is not a Category 1 eGambling licensee unless that operator has been approved by the Commission as a business associate that is a fit and proper person and complies with additional requirements prescribed in the Regulations.

Regulations 7 and 8 amend regulations 59 and 60 respectively of the 2009 Regulations. The principal purpose of these amendments is to clarify the fact that foreign gambling associate certificate holders do not engage in financial transactions with customers and that foreign gambling associate certificate holders must take note and meet the requirements of relevant notices, instructions and counter-measures issued by the Commission.

Regulation 9 amends regulation 175 of the 2009 Regulations. The principal purpose of this amendment is to impose a requirement on eGambling licensees and foreign gambling associate certificate holders to maintain an independent audit function to test its compliance with the requirements of Schedule 16 and the regulations in Chapter V of Part V. Further, this amendment refines the Category's 1 eGambling licensee's obligations in relation to its customer identification and verification systems.

Regulation 10 amends regulation 265 of the 2009 Regulations by inserting a definition of "financial transaction".

Regulations 11 to 22 amend paragraphs 3, 4, 6, 7, 8, 9, 10 and 11 of Schedule 16 of the 2009 Regulations. The amendments refine obligations upon eGambling licensees

and associate certificate holders concerning the measures they must put in place and the actions they must take for the purposes of forestalling, preventing or detecting money laundering and terrorist financing.

These Regulations come into force on the 2nd July 2010.