

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 4327 of 22 December, 2016**

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LEGAL NOTICE NO. 256 OF 2016.

**INTERPRETATION AND GENERAL CLAUSES ACT**

**PROCEEDS OF CRIME ACT 2015 (AMENDMENT)  
REGULATIONS 2016**

In exercise of the powers conferred upon it by 23(g)(ii) of the Interpretation and General Clauses Act and for the purposes of transposing into the law of Gibraltar Articles 32 to 38, 41 to 43 and 52 to 57 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, the Government has made the following Regulations-

**Title.**

1. These Regulations may be cited as the Proceeds of Crime Act 2015 (Amendment) Regulations 2016.

**Commencement.**

2. These Regulations come into operation on the day of publication in the Gazette.

**Amendment to Act.**

3.(1) The Proceeds of Crime Act 2015 (“the Act”) is amended in accordance with the provisions of this section.

(2) Immediately preceding Part II of the Act insert the following Part-

**“PART IA  
GIBRALTAR FINANCIAL INTELLIGENCE UNIT**

**Interpretation of Part.**

1A. In this Part, unless the context indicates otherwise–

“criminal conduct” has the meaning given to it in section 182;

“Directive” means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as it may be amended from time to time;

“Egmont FIU” means an FIU which is a member of the Egmont Group of Financial Intelligence Units;

“EU FIU” means an FIU established by a Member State of the European Union;

“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 or are otherwise required by its national legislation;

“Gibraltar Financial Intelligence Unit” and “GFIU” mean the financial intelligence unit established under section 1B;

“Head” means the Head of the Gibraltar Financial Intelligence Unit as provided for in section 1B(2);

“Minister” means the Minister responsible for Justice;

“regulatory standards” includes any rules, codes or guidance issued or promulgated by a supervisory body listed in Part I of Schedule 2;

“relevant financial business” has the meaning given to it in section 9;

“transaction” means a transaction concluded between a client and a relevant financial business in accordance with the type of business carried on by that institution.



**Establishment of GFIU.**

- 1B.(1) There is established the Gibraltar Financial Intelligence Unit.
- (2) The GFIU shall consist of-
- (a) a Head, who shall be either a senior police officer or senior customs officer;
  - (b) such other police officers, customs officers or other personnel as may be made available to it.
- (3) The Head of the GFIU is responsible for the attainment of the objectives set out in section 1C.
- (4) The GFIU is operationally independent and autonomous, and has the authority and capacity to carry out its functions freely, including the ability to take autonomous decisions to analyse, request and disseminate specific information independently of the Royal Gibraltar Police and HM Customs in the discharge of its duties for the attainment of its objectives under section 1C.

**Objectives.**

- 1C. The main objectives of the GFIU are-
- (a) to gather, store, analyse and disseminate intelligence related to the criminal activity of relevant financial businesses that are situated in or connected to Gibraltar;
  - (b) to act as the recipient for disclosures of suspicious transactions under the relevant applicable legislation;
  - (c) to exchange information regarding criminal conduct with FIUs and other similar bodies and law enforcement agencies within and outside of Gibraltar;

- (d) to consent or deny consent to suspicious transactions of which it has been notified, in accordance with section 3A.

**Analysis Function.**

1D. The GFIU's analysis function shall consist principally of the following—

- (a) an operational analysis which focuses on individual cases and specific targets or on appropriate selected information, depending on the type and volume of the disclosures received and the expected use of the information after dissemination; and
- (b) a strategic analysis addressing money laundering and terrorist financing trends and patterns.

*Information gathering powers*

**Information gathering.**

1DA.(1) This section applies where—

- (a) the GFIU receives a report (including, but not limited to, a disclosure or suspicious activity report in accordance with this or any other enactment) from a person listed in subsection (2)(a) the “reporter”); and
- (b) the GFIU reasonably considers that, for the proper fulfilment of any of its functions, it is necessary or expedient to seek additional information from any relevant person (“A”) who is not the reporter but who—
  - (i) is mentioned in or otherwise identifiable from the report, or
  - (ii) to the reasonable knowledge or belief of the GFIU, holds information that is relevant to analysis of the report.

- (2) The persons mentioned in subsection (1)(a) are—
- (a) a relevant person;
  - (b) the Financial Services Commission;
  - (c) a financial intelligence unit outside Gibraltar;
  - (d) the Commissioner for Income Tax;
  - (e) a police officer; and
  - (f) a customs officer.
- (3) Where this section applies the GFIU may make a request to A, in accordance with the criteria in section 1DB, for the provision of additional information.
- (4) Upon receipt of a request duly made, A must provide the additional information in such form and by such date or within such reasonable period as the GFIU may require.
- (5) In this section a “relevant person” means a person carrying on a relevant financial business within the meaning given by section 9.

**Criteria for making request.**

- 1DB.(1) A request is duly made for the purposes of section 1DA if—
- (a) it is made reasonably;
  - (b) it relates to information falling within a category described in subsection (2);
  - (c) it specifies the nature of the information sought;
  - (d) it specifies a reasonable date by which, or period within which, the information must be provided; and
  - (e) it is made in writing.

- (2) The categories of information which may lawfully be sought are–
- (a) information which may be obtained as a result of the application of customer due diligence measures, as defined section 10, by a relevant person;
  - (b) information in relation to which record-keeping requirements, or reporting and disclosure requirements under Part III, are imposed on a relevant person;
  - (c) any other information which is necessary to determine whether a person is a holder or beneficial owner of one or more accounts of whatever nature;
  - (d) the particulars of specified accounts, or of operations which have been carried out during a specified period.

**Offence and penalty etc.**

- 1DC.(1) A person failing to comply with the obligation imposed by section 1DA(4) is guilty of an offence.
- (2) It is a defence for a person who is charged with an offence under subsection (1) to prove–
- (a) that the information requested was not within the person's possession; or
  - (b) that it was not reasonably practicable for the person to comply with the request.
- (3) A person guilty of an offence under subsection (1) shall be liable–
- (a) on summary conviction to a term of imprisonment not exceeding 1 year, to a fine up to level 5 on the standard scale, or to both;

- (b) on conviction on indictment to a term of imprisonment not exceeding 2 years, to a fine or to both.
- (4) Where an offence committed by a corporate body is proved to have been committed with the consent or connivance of-
  - (a) any director, manager, secretary or other similar officer of the body corporate; or
  - (b) a person who was purporting to act in any such capacity,that person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.
- (5) Where the affairs of a body corporate are managed by its members, subsection (4) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (6) Information provided by A under this Part shall not be admissible in evidence in criminal proceedings against A or any of A's employees, except in proceedings in relation to an offence under this Part.

*Cooperation*

**Cooperation with other FIUs.**

- 1E.(1) The GFIU shall exchange with other EU FIUs and Egmont Group FIUs, spontaneously or upon request, any information that may be relevant for the processing or analysis of information related to money laundering or terrorist financing.
- (2) The information referred to in subsection (1) shall-
  - (a) include, where available, the name of the natural or legal person involved;



- (b) be exchanged even if the type of predicate offence that may be involved is not identified at the time of the exchange.

**Contents of requests and mechanisms of exchange.**

1F.(1) A request shall contain the—

- (a) relevant facts;
  - (b) relevant background information;
  - (c) reasons for the request; and
  - (d) an explanation of how the information sought will be used.
- (2) Different exchange mechanisms may apply if so agreed between the GFIU and EU FIUs or Egmont Group FIUs, in particular as regards any exchanges through the FIU.net or its successor.

**Forwarding of disclosures.**

1G. When the GFIU receives a disclosure pursuant to section 2 of this or any other Act, which concerns a Member State, it shall promptly forward it to the FIU of that Member State.

**Obtaining additional information from Member States.**

1H. When the GFIU seeks to obtain additional information from an entity established in a Member State which operates on that Member State's territory, the request shall be addressed to the FIU of the Member State in whose territory the entity is established.

**Refusals.**

1I.(1) The GFIU may refuse to exchange information only in exceptional circumstances in order to prevent misuse of, and undue limitations on, the free exchange of information for analytical purposes.

- (2) A refusal under subsection (1) must be recorded in the GFIU's records and include the reasons for the refusal.

**Internal cooperation.**

- 1J. Nothing in this Part shall preclude or prevent the exchange of intelligence between the GFIU and the Royal Gibraltar Police and HM Customs or with the supervisory bodies listed in Part 1 of Schedule 2.

*Access to information*

**Access to information held by GFIU.**

- 1K.(1) No person is entitled to information held by the GFIU, except—
- (a) the Collector of Customs, the Commissioner of Police, the authority designated by the Government to coordinate Gibraltar's response to the risks of money laundering and terrorist financing pursuant to Article 7(2) of the Directive, or a supervisory body listed in Part I of Schedule 2, and, in each case, only if the Head reasonably believes such information is required to investigate suspected criminal activity;
  - (b) an entity outside Gibraltar performing similar functions to those of the GFIU, which may, at the initiative of the GFIU or on written request, obtain information which the Head reasonably believes is relevant to the identification of the proceeds of criminal activities or the combating of money laundering activities or similar offences in the country in which that entity is established;
  - (c) any person who may, at the initiative of the GFIU or on written request, be provided with information regarding the steps taken by the GFIU in connection with transactions reported by such person, unless the Head reasonably believes that disclosure to such person of the information requested could—
    - (i) inhibit the achievement of the GFIU's objectives, the performance of its functions, or

the achievement of the objectives or the performance of the functions of a law enforcement or Government body; or

- (ii) prejudice the rights of any person;
  - (d) in terms of an order of a court; or
  - (e) in terms of other legislation.
- (2) A request for information contemplated in subsection (1) shall be in writing and shall specify the desired information and the purpose for which the information is required.
- (3) The Head may make such reasonable procedural arrangements and impose such reasonable safeguards regarding the furnishing of information referred to in subsection (1) as the Head considers appropriate to maintain the confidentiality of that information.
- (4) A person who obtains information from the GFIU may use that information only within the scope of that person's powers and duties and only for the purpose specified in subsection (2).
- (5) The processing of personal data on the basis of this Part for the purposes of the prevention of money laundering and terrorist financing shall be considered to be a matter of public interest under the Data Protection Act 2004.

**Protection of confidential information.**

- 1L. No person may disclose confidential information held by or obtained from the GFIU except—
- (a) for the purpose of carrying out the provisions of this Part;
  - (b) with the permission of the GFIU; or
  - (c) under compulsion of a court order.

**Referral of suspected offences.**

- 1M. If the GFIU in the performance of its functions has reasonable grounds to suspect that a relevant financial business, or any other person, has engaged in conduct which is prohibited by law or contravenes any regulatory standards, the GFIU, if it considers it appropriate to do so, may refer the matter to the Royal Gibraltar Police, HM Customs, the Income Tax Office or a supervisory body listed in Part I of Schedule 2, as appropriate.

**Duty to inform.**

- 1N.(1) If the Commissioner of Police, the Collector of Customs, the Commissioner for the Income Tax or a supervisory body listed in Part I of Schedule 2 in the performance of its functions has reasonable grounds to suspect that a relevant financial business, or any other person, has engaged in money laundering or terrorist financing, it shall inform the GFIU promptly.
- (2) Subsection (1) applies to any person working for or under the supervision or direction of a person or body referred to in that subsection.

*Miscellaneous*

**Reports.**

- 1O. The Chief Minister or the Minister for Justice may require the Head to submit a report on such matters—
- (a) connected with the exercise of the GFIU's functions, or
  - (b) otherwise connected with any of the GFIU's activities,

as may be specified in the requirement.

**Terms and conditions of employment unaffected.**

- 1P. Nothing in this Part shall be construed as altering the terms and conditions of employment of a police or customs officer whilst that officer is seconded to the GFIU, and for the avoidance of doubt, the period of that officer's service with the GFIU shall be calculated as part of and continuous with that officer's employment with the Crown, for purposes of leave, pension and any other condition of service.

**Preservation of powers.**

- 1Q. Nothing in this Part shall act as a limitation of any powers, duties or responsibilities vested in an officer of the Royal Gibraltar Police or HM Customs under any other enactment.

**Personal liability.**

- 1R. No personal liability shall attach to the Head or such other person seconded to the GFIU in respect of anything done or omitted to be done, in good faith, under the provisions of this Part.

**References in enactments.**

- 1S. In this and any other enactment the words "Gibraltar Financial Intelligence Unit" and "GFIU" are to be construed in accordance with this Part."

(3) In section 2(10) of the Act, the definition "Gibraltar Financial Intelligence Unit" and "GFIU" is omitted.

(4) Immediately preceding section 4 of the Act insert the following section—

**"Deemed consent of the GFIU to do a prohibited act.**

3A.(1) Consent in section 2(5)(b)(i) and section 3(5)(b)(i) is the consent of the GFIU to do a prohibited act.

(2) The GFIU must notify its consent or refusal of consent to the doing of a prospective prohibited act before the end of 14

working days (starting with the first working day after the person makes the disclosure).

- (3) A person must be treated as having acted with consent to do the prospective prohibited act if that person makes a disclosure to the GFIU and the condition in subsection (4) or the condition in subsection (5) is satisfied.
- (4) The condition is that the GFIU does not respond to a disclosure before the end of 14 working days (starting with the first working day after the person makes the disclosure).
- (5) The condition is that the GFIU refused consent to do the prospective prohibited act pursuant to subsection (2) and 60 working days have expired (starting with the first working day after the GFIU notifies its refusal of consent).
- (6) A working day is a day other than a Saturday, a Sunday, or a day which is a bank or public holiday pursuant to an order made under the Banking and Financial Dealings Act or the Interpretation and General Clauses Act.
- (7) References to a prohibited act are to an act mentioned in section 2(1) or 2(3)."

**Savings and transitional provisions.**

4.(1) Any act, consent or permission done, given or issued by the GFIU capable of being done, given or issued under the Act, as amended by these Regulations, is deemed to have been done under the Act.

(2) Where, before the commencement of these Regulations, no consent has been given by GFIU in respect of a prohibited act, or the GFIU has refused consent to a prohibited act, time shall begin to run in accordance with the conditions in subsections 3A(3) and (4) as of the date of commencement of these Regulations.

Dated 22nd of December, 2016.

A J ISOLA,  
For the Government.

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**EXPLANATORY MEMORANDUM**

These regulations amend the Proceeds of Crime Act 2015 in order to partly transpose into the law of Gibraltar of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

