



HM Government of Gibraltar

3 September 2013

Gibraltar's Action Plan to prevent the misuse of legal persons and legal arrangements

Gibraltar is unique amongst the Overseas Territories and Crown Dependencies in so much as Gibraltar forms part of the European Union, with only very limited exceptions applying (relating to VAT, the Common Customs Union and the Common Agricultural Policy). As such all EU measures relating to, inter alia, beneficial ownership, anti-money laundering and countering the financing of terrorism apply to Gibraltar. The Gibraltar Parliament is obliged to ensure that such legislation is transposed in full. HM Government of Gibraltar is responsible for ensuring that all EU requirements are enforced. In addition, Gibraltar has long been committed to meeting the Financial Action Task Force (FATF) standards on Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT). Gibraltar has been endorsed successively by independent assessments carried out by international bodies such as the FATF and the IMF.

Gibraltar within the European Union

Gibraltar is completely up to date with its obligations to transpose EU obligations within its internal legal order. It has therefore transposed the EU's 3rd Anti-Money Laundering Directive and is laying the groundwork for the transposition of the 4th Anti-Money Laundering Directive, which implements the revised FATF Recommendations. Noteworthy elements include the extended scope by including providers of gambling services and dealers in goods with a threshold of €7,500 and the provisions on sanctions. The EU's 3rd Anti-Money Laundering Directive already goes well beyond financial services institutions and providers and includes wide range of designated non-financial businesses and professions.

Gibraltar at forefront of anti-money laundering practices

By every reasonable measure, Gibraltar has long been at the forefront of anti-money laundering practices. It was among the first jurisdictions worldwide to criminalise money laundering from all types of criminal activity, not just drugs related offences, and this was subsequently extended to cover the financing of terrorism. Tax evasion and corruption are also predicate offences for the purposes of money laundering.

Gibraltar was among the first jurisdictions, as from 1989, to regulate the providers of fiduciary services i.e. company management and, subsequently, formation agents, as well as professional trustees and to apply the provisions of the anti-money laundering regime to this sector. Company management and formation services firms are subject to, inter alia, onsite inspections by the financial services regulator, the Financial Services Commission.





Beneficial ownership information

Ownership and identity information on legal persons and legal arrangements in Gibraltar is made available through the requirements imposed on the entities to maintain information in compliance with FATF and EU requirements and to submit information to the authorities when requested. This is supported by obligations on service providers to maintain information in accordance with anti-money laundering legislation. These requirements have associated enforcement provisions. Gibraltar therefore complies with FATF Recommendation 33 'Transparency of legal persons and arrangements', which requires countries to *"ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities"*.

For the avoidance of doubt, trustees are additionally bound to hold information on the settlors and beneficiaries of trusts under the provisions of common law, supported by case law.

Summary of the anti-money laundering legislative provisions

Gibraltar has given full effect to the EU 3rd Anti-Money Laundering Directive as well other international obligations in relation to the Combating of Terrorist Financing. These are contained within the following statutes:

- Drug Trafficking Offences Act;
- Crime (Money Laundering and Proceeds) Act (as amended by the Criminal Justice (Amendment) Act 2007)
- Terrorism Act





ACTION PLAN

Gibraltar is committed to taking the following action:

- Update Gibraltar's existing risk assessment of money laundering and terrorist financing risks as part of its preparations for implementing the 2012 FATF Recommendations. This process is already under way and, where necessary, legislation will be amended to ensure compliance with the revised Recommendations. It also serves as an assessment of the effectiveness of our beneficial ownership regime;
- Transpose the EU's 4th Anti-Money Laundering Directive, when it is adopted, which will fully implement the revised FATF Recommendations;
- Ensure successful implementation of the Companies, Partnerships and Trusts (Miscellaneous Amendments) Act 2012, which came into force on 21 March 2013, and amended Gibraltar's Companies Act, Trustees Act and Partnership Act to make provision for the maintenance of records identifying settlors, trustees and beneficiaries of all trusts without exception, the abolition of share warrants to bearer, and the enhanced keeping of full books of accounts including underlying documents such as invoices and contracts for a minimum of five years. These provisions also strengthen the accounting and record-keeping requirements for partnerships and companies as well as trusts.
- Having passed the Phase I Peer Review by the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes and proceeded to Phase II, undergo the Phase II Review in 2014 which will demonstrate that Gibraltar has been able to provide beneficial ownership information each time this has been requested by a TIEA partner and is actively providing the information requested in a timely fashion (Gibraltar has signed 26 TIEAs, with 20 being in force, and in addition has TIEA-equivalent arrangements in place with all 28 EU Member States under Directive 2011/16/EU on Administrative Cooperation in the Field of Taxation, which came into force on 1 January 2013). We shall continue to improve international co-operation, including the timely and effective exchange of basic and beneficial ownership information;
- Consider the benefits of setting up a central register of beneficial ownership to be made available to law enforcement and competent authorities and commit to delivering if deemed to be more effective than the current regime; assuming that this would also be implemented by G8 members, Crown Dependencies and fellow British Overseas Territories;
- Continue to ensure that Gibraltar's AML/CFT legal framework reflects EU legislation in this area on a timely basis;





- Notwithstanding directors' existing fiduciary responsibilities, ensure that the Companies Act and Gibraltar's AML/CFT legislation oblige all companies (specifically, the small number that are not already captured by existing AML/CFT and regulatory requirements) to explicitly know who owns and controls them by requiring that companies obtain and hold adequate, accurate and current information on beneficial ownership.

