

# Information Note

## Guidance Note for the Legal Profession on AML/CFT Systems of Control

### Background

The Legal Profession (Lawyers and Notaries) have been defined as relevant financial business under Proceeds of Crime Act (POCA), previously the Crime (Money Laundering and Proceeds) Act, since 2004. This has meant that those professionals conducting certain ancillary legal services have had to comply with the provisions of POCA particularly in Customer Due Diligence, Staff Training and Reporting of suspicious transactions.

The National Co-ordinator for AML/CFT (NCO) is keen to ensure that the Legal Profession operates under POCA to the same standard as any other regulated entity in Gibraltar and has therefore considered it appropriate to ask the Registrar of the Supreme Court to publish a sectoral specific set of guidance notes for this sector.

The Guidance Notes (GN) have been drawn up with extensive drafting input from the Bar Council which has been supportive of these efforts and have used both the UK Solicitors Practice Note on the subject matter as well as the FSC's Anti-Money Laundering Guidance Notes (AMLGNs) as a guide to produce a very Gibraltar specific set of GNs which will be useful in guiding professionals through the requirements in POCA.

### Status of the GNs

The Guidance Notes are issued by the Registrar of the Supreme Court. The Registrar is being appointed as a Supervisory Authority under POCA and has assumed formal responsibilities for ensuring compliance by the Legal Profession to the POCA requirements, and subsequently, the GNs.

This will be an interim measure as HMGoG and the Bar Council are working hard to bring into effect the Legal Services Regulatory Authority (LSRA) under the recently published Legal Services Act. Once the LSRA is established and operational that responsibility will be transferred to it.

The GNs are expected to continue to evolve. As relevant international standards emerge, some emanating from the EU and others from the Financial Action Task Force, there will be a need to amend and update the GNs to ensure that the applicable standards are met.

### Effect of the GN

Whilst the GNs mirror provisions of POCA, they provide greater clarity as to how to satisfy its provisions. There may therefore be a need to amend existing systems of controls or in some cases introduce new controls.

The Registrar will make the GNs applicable to any new relationship entered into on or after the 1<sup>st</sup> February 2018 to allow professionals adequate time to introduce whatever amendments may be necessary with ample time.

Relationships which have existed prior to this date will only be expected to comply with the provisions of POCA. Professionals may wish to bring existing relationships into line with the new standards at appropriate times or on the occurrence of specific trigger events.

### Do the GNs apply to all legal services?

No, only certain activities are covered by these arrangements and GNs, namely;

- Notaries and other independent legal professionals, when they participate whether–
- (i) by assisting in the planning or execution of transactions for their client concerning the-
    - (A) buying and selling of real property or business entities;
    - (B) managing of client money, securities or other assets;
    - (C) opening or management of bank, savings or securities accounts; or
  - (ii) by acting on behalf of and for their client in any financial or real estate transaction;

If professionals are, for example, only representing clients for litigation purposes, the whole regime does not apply.

### The Supervisory Framework

As part of the enhancement of the existing arrangements the Registrar has employed an individual to conduct a Risk Based Supervision programme that will look at assessing how professionals are complying with POCA and the GNs. These functions will transfer to LSRA once this is operational.

As this is a new approach there will be some lead-up time before a supervisory framework is designed and rolled out to professionals hence why the NCO would like this commenced at the earliest possible opportunity. Initial work will concentrate on designing the risk-based approach that will be used and determining the risk factors that will drive the work going forward.

It is the intention that initial contact with professionals will be desk-based followed by discussion with both individual professionals and the Bar Council to ensure a fit-for-purpose solution is designed.

The NCO hopes, however, that formal enforcement powers under POCA should not need be exercised with respect to AML/CFT systems of control and that professionals continue to co-operate in the fight against money laundering and terrorist financing as they have so adequately done to date.

### Outreach Programmes

It is the NCO's intention to hold a series of outreach programmes with the industry in early 2018 so that the GN provisions and supervisory framework can be explained.

It is hoped that these outreach programmes will be tailored not only to senior management of professional firms but also those who may be involved in undertaking compliance or money laundering reporting officer duties at a practice.

### Download of the Guidance Notes

The full text of the Guidance Notes can be downloaded from;

<http://www.gcs.gov.gi/index.php/aml-cft>

**National Coordinator for Money Laundering and Terrorist Financing  
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