



# Anti-money laundering and counter-terrorist financing measures

## Gibraltar

**1<sup>st</sup> Enhanced Follow-up Report &  
Technical Compliance Re-Rating**

**November 2021**

**Follow-up report**



**The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL** is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

The 1st Enhanced Follow-up Report and Compliance Re-Rating on Gibraltar was adopted by the MONEYVAL Committee at its 4th Intersessional Consultation (Strasbourg, 8 October – 15 November 2021).

All rights reserved. Reproduction is authorised, provided the source is acknowledged, save where otherwise stated. For any use for commercial purposes, no part of this publication may be translated, reproduced or transmitted, in any form or by any means, electronic (CD-Rom, Internet, etc.) or mechanical, including photocopying, recording or any information storage or retrieval system without prior permission in writing from the MONEYVAL Secretariat, Directorate General of Human Rights and Rule of Law, Council of Europe (F-67075 Strasbourg or [moneyval@coe.int](mailto:moneyval@coe.int))

## *Gibraltar: 1<sup>st</sup> Enhanced Follow-up Report*

### I. INTRODUCTION

1. The mutual evaluation report (MER) of Gibraltar was adopted on 14 December 2019. The report analyses the progress of Gibraltar in addressing the technical compliance (TC) deficiencies identified in its MER, as well as the implementation of new requirements relating to FATF Recommendations which have changed since the MER was adopted (Recommendations 15). The expectation is that countries will have addressed most if not all TC deficiencies by the end of the third year from the adoption of their MER.

### II. FINDINGS OF THE MUTUAL EVALUATION REPORT

2. The MER rated Gibraltar as follows:

**Table 1. Technical compliance ratings, December 2019**

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
PC	LC	C	LC	C	LC	LC	LC	C	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
PC	PC	PC	LC	C	C	LC	LC	LC	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	PC	LC	PC	PC	PC	C	PC	C	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
LC	LC	C	C	LC	PC	C	C	C	LC

*Note:* There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

*Source:* Gibraltar Mutual Evaluation Report, December 2019, <https://rm.coe.int/anti-money-laundering-and-counter-terrorist-financing-measures-british/16809c3c45>

3. Given these results of MER, Gibraltar was placed in enhanced follow-up.<sup>1</sup>
4. The assessment of Gibraltar's request for TC re-ratings and the preparation of this report were undertaken by the following Rapporteur teams (together with the MONEYVAL Secretariat and Scientific Expert Ms Lia Umans):
  - Isle of Man
  - Estonia
5. Section III of this report summarises the progress made to improve TC. Section IV sets out the conclusion and a table showing which Recommendations have been re-rated.

### III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

6. This section summarises the progress made by Gibraltar to improve its technical compliance by:
  - a) Addressing the TC deficiencies identified in the MER, and
  - b) Implementing new requirements where the FATF Recommendations have changed since the MER was adopted (Recommendation 15);
7. For the remaining Recommendation rated PC (R.36) Gibraltar did not request a re-rating.

---

<sup>1</sup> Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up involves a more intensive process of follow-up.

8. This report takes into consideration only relevant laws, regulations or other AML/CFT measures that are in force and effect at the time that Gibraltar submitted its country update report – at least six months before the FUR is due to be considered by MONEYVAL<sup>2</sup>.

### 3.1. Progress to address technical compliance deficiencies identified in the MER

9. Gibraltar has made progress to address the TC deficiencies identified in the MER. As a result of this progress, Gibraltar has been re-rated on Recommendations 1, 11, 12, 13, 22, 24, 25, 26 and 28. Recommendation 15 is re-rated from C to LC.

#### *Recommendation 1 (Originally rated PC – re-rated to C)*

10. In its 2019 MER, Gibraltar was rated PC with Recommendation (R.)1. The deficiencies included: (i) improper identification of money laundering (ML) of financing of terrorism (FT) risks since the analysis of the threat, particularly cross border, and of the vulnerabilities was not comprehensive; (ii) no measures were foreseen for the new risks identified in the 2018 NRA and there was no risk-based allocation of resources for the supervision of lawyers and notaries; (iii) exemptions from the application of the FATF Standards and the application of simplified and enhanced customer due diligence (CDD) requirements were not based on verified risks; (iv) information on higher risks identified by the country was not explicitly requested to be incorporated in the firms' risk assessments; (v) simplified due diligence was allowed when the financial business identifies areas of lower risk - it was left to the discretion of financial businesses to determine when and based on their' assessment of risk, which did not necessarily need to take into account information on risks identified at national level; and (vi) sub-criterion 1.11(b) has not been adequately addressed in Gibraltar's legislation.
11. Gibraltar conducted a wholesale review of its National Risk Assessment (NRA) process and in August 2020 published the revised NRA (2020 NRA). The NRA was conducted with inputs from both the public and private sectors and took into account relevant elements of the previous NRA processes, the European Union Supra National Risk Assessment (EUSNRA) and data collected by the public sector stakeholders. For the purpose of the ML component of the NRA, the analysis has two 'construction pillars' - geographical factors (e.g. proximity of Spain and Morocco; high risk jurisdictions and conflict zones) and transnational organised crime and threats it poses, including different predicates that are generated through this framework (drug trafficking, tobacco smuggling, fraud, corruption, tax crimes, illegal wildlife trade, etc.). In addition, detailed sectorial assessment on different products and services offered by Gibraltar financial institutions (FIs) and designated non-financial business or professions (DNFBPs) has also been carried out and is very detailed. FT assessment has been drawn up using the FATF's most recent FT risk assessment guidelines of July 2019 and is also a comprehensive document targeting the key FT risk factors the jurisdiction faces. Overall, the updated NRA seems to be broad enough to encompass the elements which were not in place when the 5th round evaluation was carried out. The 2020 NRA has also been followed by Action Plans (APs) put into place by each of the stakeholder authorities. APs set targets in line with the risks identified by the NRA. Whilst for some of the competent authorities increase of human resources is foreseen (such as Royal Gibraltar Police), areas of higher risks as per 2020 NRA (such as e-money and deposit banking) are discussed in the Gibraltar's Financial Services Commission (GFSC) Financial Crime

---

<sup>2</sup> This rule may be relaxed in the exceptional case where legislation is not yet in force at the six-month deadline, but the text will not change and will be in force by the time that written comments are due. In other words, the legislation has been enacted, but it is awaiting the expiry of an implementation or transitional period before it is enforceable. In all other cases the procedural deadlines should be strictly followed to ensure that experts have sufficient time to do their analysis.

Methodology which states that *'the supervisory attention and hence the resources allocated to the supervision of reporting entities is determined by the overall risk score of the entity and the sector'* meaning that the higher risk sectors are afforded proactive and enhanced attention.

12. Other deficiencies in relation to R.1 were rectified through the amendments made to the Proceeds of Crime Act (POCA). These are the amendments to Section 16(3); Section 17 (1, c(iii)); and the new Section 26 (1ZB). The revised POCA now considers the NRA at all levels: (i) at the level of reporting entities' risk assessments (POCA 25A(1)), (ii) on the application of internal procedures (POCA 26(1ZB) and (iii) when applying enhanced customer due diligence (ECDD) (POCA 17(1)c(iii)).
13. Consequently, it could be concluded that the afore-mentioned actions and legal reforms undertaken by the jurisdiction after adoption of the MER fully addressed the deficiencies identified under R.1.

**14. On that basis, R.1 is re-rated as C.**

#### ***Recommendation 11 (Originally rated PC – re-rated to C)***

15. In its 2019 MER, Gibraltar was rated PC with R.11. The deficiencies included: (i) not all types of transactions were covered by record-keeping requirements in POCA and this shortcoming is only broadly covered by accounting regulations; (ii) records that need to be kept relate only to the customer's identity and are not explicit on other CDD information; (iii) there was no direct requirement to keep records on account files, but only accounts details when those are used for payments, and this was not set in the law; (iv) Relevant financial business (RFBs) had to keep supporting evidence and records of transactions (original documents or copies) necessary to identify transactions, rather than to allow transactions to be reconstructed; and (v) obligation to maintain records (so that an enquiry or court order from the authorities can be responded swiftly and which includes all CDD information and transaction records), was not set out in law.
16. These deficiencies were all rectified through the amendments to POCA, more precisely through amendments to Section 25 (2)(b) which now extends the record keeping requirements to 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. In addition, Section 25 (2) (a) POCA defines what is meant by 'records', which now includes all elements required by the standard. The revised Section 10(l) POCA which establishes relevant CDD measures now includes record keeping of all the actions taken under this section, as well as any difficulties encountered during the process. These are now a part of CDD measures. Overall, the revised POCA now rectifies the deficiencies identified in the 2019 MER.

**17. On that basis, Gibraltar is re-rated as C for R.11.**

#### ***Recommendation 12 (Originally rated PC – re-rated to C)***

18. In its 2019 MER, Gibraltar was rated PC with R.12. The following deficiencies were identified: (i) determining whether a client is a politically exposed person (PEP) was not mandatory for all customers but could be interpreted as based on a risk sensitive approach; (ii) there was no specific provision for obtaining senior management approval if the BO of the customer is a PEP; (iii) the requirement to establish the source of wealth and source of funds did not cover customers already on-boarded at the time of the adoption of POCA; and (iv) the obligation to



have policies and procedures to determine if a customer/BO is a PEP did not extend to family members or persons known to be close associates of PEPs.

19. Likewise for R.11, the deficiencies in relation to R.12 were all addressed through the amendment to POCA, mostly through the revised Sections 10 and 20. Section 10, which regulates the CDD measures, now includes a direct requirement (that the CDD measure should comprise) to determine whether the customer, or its beneficial owner (BO), is a PEP. Section 20 POCA establishes that where a relevant financial business has, or proposes to have, a business relationship or carry out an occasional transaction with a PEP (including a customer whose BO is a PEP) must, in addition to the CDD requirements, have approval from senior management for establishing or continuing the business relationship with that person. Finally, the obligation to have measures in place with regard to family members and close associates, is now provided in Section 26 of the POCA.
20. On the basis that the deficiencies noted in the 2019 MER are addressed, **Gibraltar is re-rated as C for R.12.**

#### *Recommendation 13 (Originally rated PC – re-rated to C)*

21. In its 2019 MER, Gibraltar was rated PC with R.13. The identified shortcomings were the following: (i) the legal provisions regarding correspondent banking relationships only applied if the respondent institution was from a non-EEA State or Territory (or outside the EU); (ii) the provisions related to c.13.2 applied when the respondent was not based in an EEA State or Territory; and (iii) a credit institution or financial institution (FI) had an obligation not to enter into or continue a correspondent banking relationship with a shell bank and take appropriate measures not to enter into or continue a correspondent banking relationship with a bank “*which is known*” to permit its accounts to be used by a shell bank (rather than “*satisfy itself*” that the accounts of the respondent are not used by shell banks).
22. Gibraltar has addressed these deficiencies. Amendments made to the POCA have removed distinction for non-EEA and EEA State or Territory (Section 17A has been deleted and Section 19 was amended). In addition, the other deficiency was rectified by means of amendments made where the wording “*is known to permit*” was replaced with “*permits*” (Section 22 of the POCA). A new requirement has been introduced in POCA (Section 19(1)(ea)) that requires FIs to be satisfied that the respondent does not permit its accounts to be used by shell banks.
23. **On that basis, Gibraltar is re-rated as C for R.13.**

#### *Recommendation 22 (Originally rated PC – re-rated to C)*

24. In its 5th round MER, Gibraltar was rated PC with R.22. The deficiencies identified were the following: (i) apart from Trust and Company Service Providers (TCSPs), for other DNFBPs not all shortcomings in the POCA were covered with sectoral Guidelines - in case of casinos and legal professions, exemption from CDD requirements were provided by guidelines, not based on a proven low risk and the Registrar of the Supreme Court (RSC) Guidance provided that a legal professional is not required to obtain information on the nature and purpose of the business relationship or on BOs and on-going monitoring was not required, if simplified customer due diligence (SCDD) is applied; (ii) the deficiencies identified under R.11, mainly not requiring record keeping for all CDD information were in part covered by some of the sectoral Guidelines; (iii) guidance notes for legal profession did not include explicit requirement to gather records in the way that they would enable the reconstruction of the transactions; (iv) there was no requirement that records must be made available swiftly to competent authorities; (v) as noted

in R.11, the principle for CDD record-keeping was not mentioned in law; (vi) in addition to deficiencies noted under R.12 it was identified that PEPs are identified on a risk sensitive basis by casinos as the authorities do not expect every customer to be '*PEP checked*'; (vii) requirement in the Anti-Money Laundering Guidance Notes (AMLGN) to undergo ML/FT assessment prior to the launch of a new product only applied to TCSPs and not to other DNFBPs; (viii) remote gambling providers were only required to consider the development of new products and business practices as well as the use of new or developing technologies, including giving due attention to the ML/FT risks that may arise before their launch; (ix) RSC Guidance did not provide explicit requirements regarding new technologies, due to the specificity of legal profession; (x) dealers in precious metals and stones (DPMSs) were covered by the FATF Recommendations only when they engage in cash transactions while real estate agents (REAs) do not participate in the actual financial transactions and this combined with the distinctive activity *per se*, limited the possibility for developing new products, technologies or practices as referred to in R.15; and (xi) the provisions of POCA that cover reliance on third parties applied to DNFBPs accordingly, as they were listed as RFBs under POCA, therefore the deficiencies identified under R.17 applied. There were no specific provisions in the sectoral guidelines to address these deficiencies.

25. All deficiencies noted above have been addressed as follows: the deficiency under (i) was addressed through the amendments to AML Codes for the Gambling Sector, The RSC/Legal Services Regulatory Authority (LSRA)<sup>3</sup> Guidance Notes and POCA (Section 16(1)(c)); (ii) - (v) amended legislation requires now all relevant financial business to keep the records (including on transactions, files and business correspondence and results of any analysis conducted) for all CDD information transactions with sufficient information so to allow for these to be reconstructed in a way that allows swift responses to competent authorities (POCA, Section 10(l) and Section 25(2A)) and Guidance Note (GN) paragraph 3.8)); (vi) relevant amendments to legislation (POCA, Sections 10, 20(1 b) and 26 (2 c); AML Remote Code, paragraph 8.2 and AML Non-Remote Code, paragraph 9.2 ensure that every customer is now "*PEP checked*"; (vii) - (x) expanded Section 25A(1) of the POCA requires now that all RFBs (including DNFBPs) undergo ML/TF assessment prior to launching of a new product. In addition, the amendments to Gibraltar Gambling Commissioner Code (GCC) require, in accordance with the revised POCA, that licence holders must take appropriate steps to identify and assess the potential ML, FT or proliferation financing (PF) risks that may arise in respect of delivery mechanisms and developing technologies (for both new and existing products) before their launch or implementation (AML Non-Remote Code, paragraph 5.6 and AML Remote Code, paragraph 5.5 2021); (xi) the shortcomings identified in 2019 MER under R.17 have been addressed through amendments to the POCA (POCA, Section 23, 25(5) and 26(6A)).

**26. On that basis, Gibraltar is re-rated as C for R.22.**

#### ***Recommendation 24 (Originally rated PC - re-rated as LC)***

27. In its 5th round MER, Gibraltar was rated PC with R.24 on the basis of numerous deficiencies identified: (i) the 2018 NRA did not analyse the inherent vulnerabilities of the specific types of legal persons that can be created in Gibraltar or their activities; (ii) foundation charter for overseas foundations was not publicly available; (iii) sanctions for late filing of changes of the basic information were very low; (iv) the form for submission of information to the Register of

---

<sup>3</sup> The RSC currently remains the supervisory authority of legal professionals and notaries under the POCA. The LSRA will replace the RSC.

Ultimate Beneficial Owners (RUBO) contemplated the option to consider a “relevant legal entity” as an ultimate BO, which was not in line with the FATF definition of BO; (v) there were no sanctions for non-compliance with the requirement to provide the information within 30 days of change (for corporate or LEs incorporated prior to the commencement of the RUBOR) or with the requirement to provide the information within 30 days of its incorporation; (vi) there were no specific requirements for persons involved in the dissolution of a company to maintain records referred to in criterion 24.9; (vii) whilst corporates and legal entities incorporated in Gibraltar were required to obtain and hold adequate, accurate and current information on BO of the corporate or legal entity, there were no sanctions for non-compliance with this requirement; (viii) there was no requirement for licensed nominee shareholders or directors to maintain information identifying their nominator; (ix) there was no requirement for nominee shareholders and directors to disclose the identity of the nominator to the company or to the register maintained by the Companies House Registry (CHG); (x) certain limitations were noted with regard to the BO requirements for express trusts; (xi) the Companies Act provided sanctions (which did not appear proportionate and dissuasive) for non-compliance with the information filing requirements, but only in the case of late submissions.

28. As a response to these shortcomings, Gibraltar, as already noted under IO1, adopted the new NRA in 2020. The NRA includes ML/FT risks and vulnerabilities of legal persons and legal arrangements, a component which was not available in the previous (2018) NRA. Whilst activities of different types of legal persons and their respective risk levels were duly considered, details on inherent vulnerabilities that were considered to determine the level of ML and TF risks cannot be clearly established when reading the NRA.
29. Section 12(2) of the Private Foundations Act now specifically requires that the Register of Foundations shall contain a record of all foundations and of all overseas foundations registered as Gibraltar Foundations. The definition of BO in Section 7(1A) of the POCA has been amended and mirrors the details on the identification of the BO, including for legal persons and legal arrangements, as set out in para 5 of IN to R.10. Regulations 42 and 45 of RUBOR have been amended to ensure adequate civil and criminal sanctions for specified persons who fail to comply with the requirements of the Regulations, including failure to provide the registrar within 30 days with any changes in BOs. The Insolvency Practitioners Regulations 2020 have been completed through the addition of Regulation 9(2A) to specifically require insolvency practitioners to obtain and maintain basic and BO information on the legal person and to keep this information for at least six years. The Companies Act and RUBOR have been amended to address the deficiencies in relation to the lack of sanctions for non-compliance with the requirement that corporates and legal entities incorporated in Gibraltar are required to obtain and hold adequate, accurate and current information on BO. Multiple amendments to the RUBOR have been made to ensure that licensed nominee shareholders and directors should maintain information identifying their nominator.
30. In short, the afore-mentioned reforms addressed the deficiencies in relation to Rec.24, with some minor remarks with regard to the assessment of risks posed by legal persons. **On that basis, Gibraltar is re-rated as LC for R.24.**

#### ***Recommendation 25 (Originally rated PC – re-rated as C)***

31. In its 5th round MER, Gibraltar was rated PC with R.25. The deficiencies were as follows: (i) relevant requirement of c.25.1 (a) did not apply to express trusts “governed under their law”, as per the FATF definition, but only to a trust (or similar legal arrangement) that “generates tax consequences in Gibraltar” and only a corporate or legal entity incorporated in Gibraltar had to



keep records of the actions taken in order to identify the BOs - this requirement did not apply to trusts; (ii) there was no requirement for trustees of any trust governed under their law to hold basic information on other regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants, and tax advisors; (iii) professional trustees were subject to the record keeping requirements but these requirements applied only to customer's information, and not explicitly BOs; (iv) there were no requirement for trustees to disclose their status to financial institutions (FIs) and DNFBPs; (v) issues noted in regard to the lack of sanctions of certain requirements of the RUBOR, as well as the deficiencies identified regarding the record keeping requirements (R.11) might affect the accuracy and relevance of the information that could be obtained and could have had a negative impact on the rapidity required for the exchange of information; (vi) There were no sanctions in the case of non-professional trustees and in the case of non-compliance with the requirement to provide the BO information within 30 days of the change (for trusts created prior to the commencement of the RUBOR) or with the requirement to provide the information within 30 days of its incorporation; (vii) some of the sanctions were not proportionate or dissuasive; and (viii) flee clauses, without safeguards to prevent their misuse, were still in place.

32. To rectify these deficiencies, Gibraltar authorities carried out the following actions: a) Trustees Act, which applies to all types of trusts has been amended and now imposes a requirement on trustees to obtain and hold adequate, accurate and current information on the identity of the parties to the trust; b) Regulation 12(1A) RUBOR has been amended and are now applicable to express trusts as well as to corporate and legal entities; c) new section 61(2) was added to the Trustees Act, which creates an obligation for trustees of Gibraltar trusts to hold basic information and beneficial ownership information on all entities providing a service to the trust; d) new section 61B has been inserted into the Trustees Act, which requires trustees to disclose their trustee status to relevant financial businesses; e) Regulations 42 and 45 of RUBOR have been amended to ensure adequate civil and criminal sanctions for *specified persons* who fail to comply with the requirements of the Regulations, including failure to provide the registrar within 30 days with any changes in BOs. These Regulations were further amended and now provide proportionate and dissuasive civil and criminal sanctions for specified persons who fail to comply with the requirements of the Regulations; and f) the Trustees Act has been completed with a new section 62A which now provides safeguards that prevent misuse of flee clauses.
33. The afore-mentioned amendments took into account deficiencies identified in the 2019 MER. In other words, all these deficiencies were addressed. **On that basis, Gibraltar is re-rated as C for R.25.**

#### **Recommendation 26 (Originally rated PC – re-rated as C)**

34. In its 5th round MER, Gibraltar was rated PC with R.26. The report distinguished three key deficiencies in relation to this Recommendation: (i) existing legal and regulatory measures were not sufficiently capable to prevent both criminals and their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a management function, in a financial institution as, inter alia, they applied only to new and not to already licensed FIs and they did not extend to beneficial owners of a significant or controlling interest; (ii) assessment of the suitability of core principles FIs did not extend to their beneficial owners and others that might exerts significant influence; and (iii) criterion 25.5 a) is covered only in the context of the assessment of the residual risk, with impact on the intensity, but not always on the frequency of the inspections for all supervised institutions.
35. Gibraltar has taken steps to address these deficiencies through the new Financial Services Act

(FSA 19) which consolidates Gibraltar's former financial services framework into a single act together with accompanying regulations, which also provide sector-specific regulations. The Act consolidates EU and local legislations in relation to financial services. The Regulated Individuals Regime set out in Part 8 of FSA 19 requires pre-appointment approval from the Gibraltar Financial Services Commission (GFSC) for individuals responsible for certain functions within a firm who are referred to as Regulated Individuals. Section 131 of the FSA Act specifically targets controllers - those holding a significant or controlling interest (through shares and voting powers) and their BOs (with cross-reference to the definition of BO in section 7(1A) of the POCA). Part 10 of the FSA 19 contains various information gathering and investigatory powers that the GFSC can use in relation to such relevant persons, including powers to require documents and information from them. In addition, amendments to Regulation 5(2)(c) of the Supervisory Bodies (Powers etc.) specifically provides that supervisory bodies must ensure that when applying a risk based approach (RBA) to supervision, they decide on frequency and intensity of on-site and off-site supervision based on: 1) ML/FT/PF risks, and policies, internal controls and procedures associated with the relevant financial business (...); and 2) on ML/FT/PF risks in Gibraltar as identified within any information that is made available to the relevant financial business pursuant to the National Coordinator for AML/CFT Regulations 2016.

36. The aforementioned actions by the authorities of Gibraltar addressed the deficiencies as identified in the 2019 MER. **Consequently, Gibraltar is re-rated as C for R.26.**

#### **Recommendation 28 (Originally rated PC – re-rated as C)**

37. In its 5th round MER, Gibraltar was rated PC with R.28. The deficiencies identified were the following: (i) for casinos, existing measures were not sufficiently capable to prevent both criminals and their associates from holding or being the BO of a significant or controlling interest, or holding a management function, in a casino; (ii) there were no legally enforceable or other measures in place to prevent criminals or their associates from being professionally accredited or holding (or being the BO of) a significant or controlling interest, or holding a management function, in a DNFBPs (except, but only partially, for REAs and DPMS); (iii) external accountants and tax advisors were not subject to systems for monitoring and ensuring compliance with AML/CFT requirements; (iv) except for real estate agents and DPMS, there were no legally enforceable or other measures in place. The Office of Fair Trade (OFT) manual for licensing, which applied to real estate agents and DPMS required, as part of the process to ask for criminal records but only for the *“legal and BO of the business”*. This process applied to new licensees and not to existing ones.; and (v) supervision on a risk sensitive basis was not performed for all types of DNFBPs.
38. To rectify these deficiencies, Gibraltar authorities carried out the following actions: (i) the Gambling Act (GA) was amended so as to provide that the licensing authority *“shall”* rather than *“may”* take into account the various matters listed in the Act in respect of determining whether an applicant for a licence is a *fit and proper* person and shall refuse to renew a licence if it is no longer satisfied that a licence holder is no longer *fit and proper* person to hold the licence (GA, Schedule 1, paragraphs 3(4) and 7(a)); (ii) and (iv) legally enforceable measures have been introduced for all DNFBPs to prevent criminals or their associates from being professionally accredited or holding (or being the BO of) a significant or controlling interest, or holding a management function (GA, Schedule 1, paragraphs 3(4) and 7(a); POCA (Section 30(3)); (iii) external accountants and tax advisors are now subjects to monitoring and ensuring compliance with AML/CFT requirements and relevant supervisory powers are granted to the GFSC through POCA (Relevant Financial Business (Registration) Regulations 2021 (RFBR Regulations) and

Supervisory Bodies (Powers Etc) Regulations 2017 (SBPR)); (v) supervision on a risk sensitive basis is now performed for all types of DNFBPs based on amended SBPR (Regulation 5(2)(c)).

**39.** All deficiencies identified in 2019 MER under R.28 have been addressed. **On that basis, Gibraltar is re-rated as C for R.28.**

### **3.2 Progress on Recommendations which have changed since the last report**

**40.** Since the adoption of Gibraltar's MER the FATF has amended Recommendation 15. This section considers Gibraltar's compliance with the new requirements in relation to this Recommendation.

#### ***Recommendation 15 (Originally rated C – re-rating as LC)***

41. In its 2019 MER, Gibraltar was rated C with R.15.

42. In June 2019, Recommendation 15 was revised to include obligations related to virtual assets (VA) and virtual asset service providers (VASPs). These new requirements include: (i) requirements on identifying, assessing and understanding ML/FT risk associated with VA activities or operations of VASPs; (ii) requirements for VASPs to be licensed or registered; (iii) requirements for countries to apply adequate risk-based AML/CFT supervision (including sanctions) to VASPs and that such supervision should be conducted by a competent authority; (iv) as well as requirements to apply preventive measures in relation to VASPs and provide international cooperation. Taking into account that R.15 was rated as C in the 2019 MER, the current report further considers the progress made by Gibraltar to comply with R.15 and assesses the compliance with the revised and new elements of R.15.

43. Gibraltar has taken the following steps to comply with the new requirements of R.15: (i) the jurisdiction has identified and assessed, in its 2020 nation risk assessment of ML/FT risks (2020 NRA), the inherent products/services risks emerging from the activities or operations of VASPs operating in Gibraltar. However, the 2020 NRA lacks the assessment of ML/TF risks emerging from VAs activities in general; (ii) requirements are in place for VASPs to be licensed or registered for the purposes of AML/CFT supervision (FSA19 Section 139; POCA, Sections 9(1)(j),(p) and the new Section 9(1)(q)); (iii) Gibraltar applies adequate risk-based AML/CFT supervision and the authorities can apply appropriate sanctions to VASPs. VASPs supervision is carried out by the GFSC (POCA, section 9, SUPR, Section 5.(1)); (iv) all preventive measures and provision of international cooperation apply also to VASPs with some minor shortcomings emerging from the 2019 MER.

**44. On that basis, Gibraltar is re-rated as LC for R.15.**

### **IV. CONCLUSION**

**45.** Overall, Gibraltar has made progress in addressing the TC deficiencies identified in its 5<sup>th</sup> Round MER for R. 1, 11, 12, 13, 22, 25, 26 and 28 initially rated as PC, are re-rated as C. Recommendation 24 has been re-rated as LC. Recommendation 15, which was initially rated as C, is re-rated as LC.

**46.** Overall, in light of the progress made by Gibraltar since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

**Table 2. Technical compliance with re-ratings, October 2021**

<b>R 1</b>	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
<b>C</b>	LC	C	LC	C	LC	LC	LC	C	LC
<b>R 11</b>	<b>R 12</b>	<b>R 13</b>	R 14	<b>R 15</b>	R 16	R 17	R 18	R 19	R 20
<b>C</b>	<b>C</b>	<b>C</b>	LC	<b>LC</b>	C	LC	LC	LC	C
R 21	<b>R 22</b>	R 23	<b>R 24</b>	<b>R 25</b>	<b>R 26</b>	R 27	<b>R 28</b>	R 29	R 30
C	<b>C</b>	LC	<b>LC</b>	<b>C</b>	<b>C</b>	C	<b>C</b>	C	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
LC	LC	C	C	LC	PC	C	C	C	LC

**47.** Gibraltar will remain in enhanced follow-up, and will continue to report back to MONEYVAL on progress to strengthen its implementation of AML/CFT measures. Gibraltar is expected to report back within three years.

[www.coe.int/MONEYVAL](http://www.coe.int/MONEYVAL)

November 2021

Anti-money laundering and counter-terrorist financing measures -  
**British Overseas Territory of Gibraltar**  
**1st Enhanced Follow-up Report &**  
**Technical Compliance Re-Rating**

This report analyses Gibraltar's progress in addressing the technical compliance deficiencies identified in the FSRB assessment of their measures to combat money laundering and terrorist financing of September 2019.

The report also looks at whether Gibraltar has implemented new measures to meet the requirements of FATF Recommendations that changed since the 2019 assessment.

Follow-up report