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## ALDERNEY GAMBLING CONTROL COMMISSION

### DETERMINATION NOTICE

pursuant to regulation 50(2) of  
the Alderney eGambling Regulations, 2009

### IN RELATION TO VANTAGE LIMITED, FILCO LIMITED, OXALIC LIMITED AND ORINIC LIMITED

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#### INTRODUCTION

1. The Commissioners of the Alderney Gambling Control Commission (Isabel Picornell, and Jeremy Thompson) ("**Commissioners**") convened on 19<sup>th</sup> September 2011 at the Riverbank Park Plaza Hotel, 18 Albert Embankment, London, SE1 7TJ for the purposes of holding a regulatory hearing pursuant to a Hearing Notice dated 19<sup>th</sup> June 2011, as amended on 13<sup>th</sup> July 2011, 16<sup>th</sup> July 2011 and 2<sup>nd</sup> September 2011 ("**Hearing Notice**") given to Vantage Limited, Oxalic Limited and Orinic Limited (each Category 1 eGambling licensees) and Filco Limited (a Category 1 and Category 2 eGambling licensee) (together "**FTP**") each with registered office of Inchalla, Le Val, Alderney, GY9 3UL.
2. The regulatory hearing was called because the Executive Director of the Alderney Gambling Control Commission ("**the Executive**") considered that grounds set out in sections 12(1)(a), 12(1)(b) and/or 12(1)(c) of the Alderney eGambling Ordinance, 2009 ("**the Ordinance**") existed in respect of 8 alleged breaches of the Ordinance by Vantage Limited, 6 alleged breaches of the Ordinance by Filco Limited, 6 alleged breaches of the Ordinance by Oxalic Limited, and 5 alleged breaches of the Ordinance by Orinic Limited.

3. Two pre-hearing applications were heard on the 19<sup>th</sup> and 20<sup>th</sup> September 2011. At the pre-hearing applications, FTP was represented by Craig Ferguson of the Chambers of 2 Hare Court, and Tony Coles and Nick Nocton of Jeffrey Green Russell. FTP elected not to be present at the regulatory hearing and its legal representatives were therefore instructed not to be present at the regulatory hearing. The substance of the regulatory hearing commenced on the 21<sup>st</sup> September 2011. The Commissioners adjourned on the 23<sup>rd</sup> September 2011 to determine whether the existence of a ground referred to in section 12(1) of the Ordinance had been established against FTP. The Commissioners notified both parties of their decision on the 26<sup>th</sup> September 2011, and reconvened on the 27<sup>th</sup> September 2011 in order to invite FTP to offer any explanation or make any other such comment as FTP wished in relation to the determination and to hear representations in relation to sanctions. FTP's legal representatives (Craig Ferguson and Nick Nocton) were present and made representations to the Commissioners in relation to sanctions. Throughout the proceedings the Executive was represented by Advocate Hill from the Chambers of the Law Officers of the Crown, Guernsey and Philip Taylor in house legal counsel for the Executive, and the Commissioners were independently advised by Advocate de Lisle from the Chambers of the Law Officers of the Crown, Guernsey.
4. This is the Determination Notice pursuant to regulation 50(2) of the Alderney eGambling Regulations, 2009. This decision records the Commissioners main findings but does not purport to refer to every piece of evidence that the Commissioners have relied upon or every matter that the Commissioners have taken into account in making their decision.

**THE COMMISSIONERS UNANIMOUSLY DETERMINE** as follows:

5. Having taken into account everything said before and lodged with the Commissioners, the Commissioners have determined that –

**Determination as to whether the existence of a ground referred to in section 12(1) of the Ordinance has been established against Vantage Limited, Filco Limited, Oxalic Limited or Orinic Limited**

6. The Commissioners note that the burden of proof is on the Executive and the standard of proof is the balance of probabilities.
7. Upon hearing that FTP's application for a further adjournment had been rejected by the Commissioners, FTP notified the Commissioners on the 21<sup>st</sup> September 2011 that neither it nor its legal advisors would take part in the regulatory hearing. In the absence of FTP's presence at the regulatory hearing, the Commissioners have treated each of the allegations as being challenged by FTP and have therefore proceeded on the basis of a contested regulatory hearing. The Commissioners have taken all such reasonable steps to ensure that the regulatory hearing is as fair as the circumstances permit. The Commissioners have taken reasonable steps to expose weaknesses in the Executive's case and to make such points on behalf of FTP as the evidence permits.
8. The Commissioners would like to notify both parties that they have discounted the developments, made by the United States of America's Department of Justice in relation to the civil complaint referred to in Document ME10, who were alerted to it by FTP's legal representatives on late Tuesday afternoon 20<sup>th</sup> September 2011 and Wednesday morning 21<sup>st</sup> September 2011, as they accept the Executive's submissions that such developments are irrelevant.

## **Ground 1**

### **In relation to Vantage Limited, Filco Limited, Oxalic Limited and Orinic Limited:**

9. *"That pursuant to section 12(1)(a) of the Alderney eGambling Ordinance, 2009 and regulation 41(1)(c) of the Alderney eGambling Regulations, 2009, having regard to the eGambling licensee's current financial position and financial background, are no longer a fit and proper person to hold an eGambling licence."*

### Vantage Limited, Filco Limited and Oxalic Limited

10. The Commissioners have considered the report of chartered accountants Dixon Wilson dated 28<sup>th</sup> June 2011 and addendum dated 11<sup>th</sup> July 2011 at Tabs JS22 and ME7 of the Executive's Bundle ("**Accountant's Report**"). Paragraph 2.3 of the Accountant's Report concludes that Vantage Limited, Filco Limited and Oxalic Limited are insolvent. It follows that Vantage Limited, Filco Limited and Oxalic Limited are in a troubled financial position. When considering whether an eGambling licensee continues to be a fit and proper person, the Commission shall, pursuant to regulation 41(1) of the Alderney eGambling Regulations 2009, as amended, ("**the Regulations**"), have regard to the matters set out in that paragraph. The Commissioners have had particular regard to the licensee's current financial position and financial background under regulation 41(1)(c) of the Regulations. The Commissioners have determined that on the balance of probabilities and for the purposes of section 12(1)(a) of the Ordinance, Vantage Limited, Filco Limited and Oxalic Limited are no longer fit and proper persons due to their insolvency.
11. The Commissioners therefore find that Ground 1 has been proven in relation to Filco Limited, Vantage Limited and Oxalic Limited.

#### Orinic Limited

12. The Accountant's Report highlights that Orinic Limited has not commenced trading and that although there is a small surplus of liabilities over assets, this is representative of set up costs and therefore should be of no concern to the Alderney Gambling Control Commission ("**AGCC**").
13. The Commissioners therefore find that Ground 1 has not been proven in relation to Orinic Limited.

#### **Ground 2**

**In relation to Vantage Limited, Filco Limited, Oxalic Limited and Orinic Limited:**

14. *"That pursuant to section 12(1)(b) of the Alderney eGambling Ordinance, 2009 and regulation 41(1)(g) of the Alderney eGambling Regulations, 2009, having regard to whether an associate of Vantage Limited, Filco Limited, Oxalic Limited or Orinic Limited satisfies Regulation 42 of the Alderney eGambling Regulations, 2009, Kolyma Corporation AVV is no longer a fit and proper person to be associated with the operations of an eGambling licensee having regard to the current financial position and financial background of Kolyma Corporation AVV pursuant to Regulation 42(1)(b)(iii) of the Alderney eGambling Regulations, 2009."*

Vantage Limited, Filco Limited, Oxalic Limited and Orinic Limited

15. Paragraph 2.5(ii) and Appendix C of the Accountant's Report together with paragraph 10 of the witness statement of James Kidgell of Dixon Wilson demonstrate that Kolyma Corporation AVV is insolvent.
16. Kolyma Corporation AVV is an associate of Vantage Limited, Filco Limited, Oxalic Limited and Orinic Limited.
17. When considering whether an associate of an eGambling licensee continues to be a fit and proper person to be associated with the operations conducted by an eGambling licensee, the Commission shall, pursuant to regulation 42(1)(b) of the Regulations have regard to the matters set out in that paragraph. The Commissioners have had particular regard to the associate's current financial position and financial background under regulation 42(1)(b)(iii) of the Regulations. Due to the insolvency of Kolyma Corporation AVV, the Commissioners have determined that on the balance of probabilities and for the purposes of section 12(1)(b) of the Ordinance, Kolyma Corporation AVV is no longer a fit and proper person to be associated with the operations of Vantage Limited, Filco Limited, Oxalic Limited and Orinic Limited.

18. The Commissioners therefore find that Ground 2 has been proven in relation to Filco Limited, Vantage Limited, Oxalic Limited and Orinic Limited.

### **Ground 3**

#### **In relation to Vantage Limited, Filco Limited, Oxalic Limited and Orinic Limited:**

19. *"That pursuant to Section 12(1)(b) of the Alderney eGambling Ordinance, 2009 and Regulation 41(1)(g) of the Alderney eGambling Regulations, 2009, having regard to whether an associate of Vantage Limited, Filco Limited, Oxalic Limited or Orinic Limited satisfies Regulation 42 of the Alderney eGambling Regulations, 2009, Pocket Kings Limited is no longer a fit and proper person to be associated with the operations of an eGambling licensee having regard to the current financial position and financial background of Pocket Kings Limited pursuant to Regulation 42(1)(b)(iii) of the Alderney eGambling Regulations, 2009."*

#### Vantage Limited, Filco Limited, Oxalic Limited and Orinic Limited

20. There is insufficient evidence in relation to Pocket Kings Limited's current financial position and financial background. The Commissioners therefore find that Ground 3 has not been proven in relation to Filco Limited, Vantage Limited, Oxalic Limited and Orinic Limited.

### **Ground 4**

#### **In relation to Vantage Limited, Filco Limited, Oxalic Limited and Orinic Limited:**

21. *"That pursuant to section 12(1)(c) of the Alderney eGambling Ordinance, 2009 and regulation 4(g) of the Alderney eGambling Regulations 2009 failed to notify the Commission in writing within 48 hours of serious incidents negatively affecting the operations of the eGambling licensee."*

22. Regulation 4(g) of the Regulations states that -

*"the Category 1 eGambling licensee must within 48 hours of any serious incident negatively affecting the operation of the eGambling licence notify the Commission in writing of the details and consequences of the incident and of the remedial steps, if any, taken".*

Vantage Limited

23. Document JS21(I) illustrates the individual seizures made by the Department of Justice during the period 28<sup>th</sup> June 2007 to 20<sup>th</sup> June 2011, which amount to a cumulative total of approximately \$331 million US Dollars. According to the evidence before it, document JS21(I) was produced by the Executive from information supplied by FTP during the course of the examination of their financial position by Dixon Wilson.
24. The Accountant's Report also refers to the fact that all such frozen funds were represented and treated as cash in the accounts of Vantage Limited. The Accountant's Report discusses the fact that FTP may argue that there may have been an expectation that the frozen cash balances would become available to the group. However, the Accountant's Report concludes that due to the fundamental uncertainty over their recoverability the situation should have been reported to AGCC as it arose.
25. The Executive allege that each seizure comprised a *"serious incident negatively affecting the operation of the eGambling licence"* under regulation 4(g) of the Regulations. The Commissioners accept that the seizure of funds by the Department of Justice constitutes a "serious incident" pursuant to 4(g) of the Regulations.
26. The Executive further allege that Vantage Limited failed to report each seizure from 2007 onward to the AGCC within 48 hours of its occurrence pursuant to 4(g) of the Regulations.

27. The Commissioners note that FTP have separate licences for various geographical markets. The Commissioners understand that Vantage Limited is FTP's Category 1 eGambling licence dedicated to the North American market.
28. The Commissioners find that Vantage Limited failed to notify the AGCC of the seizures being undertaken by the Department of Justice in the United States of America in accordance with regulation 4(g) of the Regulations. It follows that Vantage Limited has contravened a provision of the Regulations pursuant to section 12(1)(c) of the Ordinance.
29. The Commissioners therefore find that Ground 4 has been proven in relation to Vantage Limited.

#### Filco Limited

30. The Accountant' Report refers to the fact that as at the 17<sup>th</sup> June 2011, Filco Limited had approximately \$15 million US Dollars unavailable as they were the subject of an internal bank compliance review. In evidence given by Mr Timothy Harris of Dixon Wilson on the 21<sup>st</sup> September 2011, the explanation given to Dixon Wilson by FTP for such a review was that certain funds in Swiss accounts had been frozen by the banks themselves whilst they carried out investigations to see if those funds had been received by American players, and therefore been obtained illegally.
31. The Accountant's Report discusses the fact that FTP may argue that there may have been an expectation that such frozen cash balances would become available to the group. However, the Accountant's Report concludes that due to the fundamental uncertainty over their recoverability the situation should have been reported to AGCC as it arose.
32. The Commissioners accept that the internal bank compliance review (and therefore the fact that funds in Filco's accounts were unavailable) comprised a "*serious incident negatively affecting the operation of the eGambling licence*" under regulation 4(g) of the

Regulations. The Executive allege that Filco Limited failed to report the existence of this review to the AGCC within 48 hours of its occurrence pursuant to 4(g) of the Regulations.

33. The Commissioners find that Filco Limited failed to notify the ACGG of the internal compliance review, and therefore that funds in their bank accounts were unavailable, in accordance with regulation 4(g) of the Regulations. It follows that Filco Limited has contravened a provision of the Regulations pursuant to section 12(1)(c) of the Ordinance.
34. The Commissioners therefore find that Ground 4 has been proven in relation to Filco Limited.

#### Oxalic Limited and Orinic Limited

35. It has not been established on the balance of probabilities that Oxalic Limited or Orinic Limited failed to notify the Commission within 48 hours of a serious incident in accordance with regulation 4(g) of the Regulations. The Commissioners find that Ground 4 has not been proven in relation to Oxalic Limited or Orinic Limited.

#### **Ground 5**

##### **In relation to Vantage Limited:**

36. *"That pursuant to Section 12(1)(c) of the Alderney eGambling Ordinance, 2009 have contravened Regulation 231(3) of the Alderney eGambling Regulations, 2009 the particulars being that you have failed to repay, at the request of registered customers, funds standing to the credit of that customer as directed by the customer."*

#### Vantage Limited

37. Regulation 231(3) states that –

*"Subject to compliance with any lawful requirement to do otherwise, the Category 1 eGambling licensee shall, at the request of a registered customer, remit funds standing to the credit of that customer as directed by the customer —*

*(a) to an account with a financial institution in his name;*

*(b) to an account with an associate of the Category 1 eGambling licensee in his name; or*

*(c) by providing a non-negotiable instrument marked "account payee" made out in his name and forwarded to his address as recorded in accordance with regulation 227,*

*pursuant to the terms and conditions governing the customer relationship and as set out in the Category 1 eGambling licensee's approved internal control system."*

38. Regulation 231(3) of the Regulations requires a Category 1 eGambling licensee to remit funds standing to the credit of a customer at the request of a customer. The Commissioners note from the evidence in Document JS16 (which was supplied by FTP to the Executive) and JS10 (which is a file note approved by FTP) that players have requested the remittance of their funds, yet FTP has not executed such requests.
39. The Commissioners find that Vantage Limited failed to remit funds standing to the credit of a customer at the request of a customer in accordance with regulation 231(3) of the Regulations. It follows that Vantage Limited has contravened a provision of the Regulations pursuant to section 12(1)(c) of the Ordinance.
40. The Commissioners therefore find that Ground 5 has been proven in relation to Vantage Limited.

## Ground 6

### **In relation to Vantage Limited, Filco Limited, Oxalic Limited and Orinic Limited:**

41. *"That pursuant to Section 14(1)(b) of the Alderney eGambling Ordinance, 2009 have operated otherwise than in accordance with your approved internal control system namely a failure to ensure sufficient funds are held in the company's account to cover all balances held by the Company on behalf of its customers as specified in Section 2.9.2 of Vantage Limited's, Filco Limited's, Oxalic Limited's and Orinic Limited's approved internal control system."*
42. Documents JS23 and JS24 demonstrate that section 2.9.2 of the internal control system of Vantage Limited, Filco Limited, Oxalic Limited and Orinic Limited states that –

*"The Company will ensure that, at all times, there are sufficient funds in this account to cover all balances held by the company on behalf of its customers. The Company confirms that this account is not used as a security for any other operational liability".*

### Vantage Limited, Filco Limited and Oxalic Limited

43. Appendix C (Scenario 1) of the Accountant's Report demonstrates that the player liabilities exceed the assets in relation to Vantage Limited, Filco Limited and Oxalic Limited. This is also highlighted in the graph detailed in Document ME13. On the balance of probabilities, the aforementioned companies have therefore failed to ensure that there are sufficient funds in their accounts to cover their customers' balances in accordance with section 2.9.2 of each of their respective internal control systems.
44. As a consequence, the aforementioned companies have failed to exercise their respective eGambling licences and conduct their respective businesses of organizing, promoting or effecting gambling transactions in accordance with their internal control system as required by section 14(1)(b) of the Ordinance. It follows that Vantage Limited, Filco

Limited and Oxalic Limited have contravened a provision of the Ordinance pursuant to section 12(1)(c) of the Ordinance.

45. The Commissioners therefore find that Ground 6 been proven in relation to Vantage Limited, Filco Limited and Oxalic Limited.

#### Orinic Limited

46. According to the Accountant's Report, Orinic Limited is not currently trading. It follows that it has not been demonstrated that section 2.9.2 of its internal control system has been breached as Orinic Limited does not, from the evidence, appear to be collecting funds from customers.
47. The Commissioners therefore find that Ground 6 has not been proven in relation to Orinic Limited.

#### **Ground 7**

##### **In relation to Vantage Limited:**

48. *"That pursuant to Section 14(1)(b) of the Alderney eGambling Ordinance, 2009 have operated otherwise than in accordance your approved internal control system namely by offering credit to customers in contravention of Section 2.10 of your approved internal control system by virtue of permitting customers to effect gambling transactions when you were not in possession of the money deposited by those customers who had utilised the ACH electronic bank transfer facility and you were aware that no payment processor had been able to collect the funds."*

#### Vantage Limited

49. Documents JS23 demonstrates that section 2.10 of Vantage Limited's internal control system states that –

*"The Company does not offer credit to its customers, therefore no bad debts due to a default on credit should be incurred".*

50. Paragraph 2.3 of the Accountant's Report explains that Vantage Limited had not been able to identify payment processors who could collect deposits from players. The Accountant's Report explains that this resulted in customers receiving credit in relation to their deposits. It is alleged that such credit could then be used for gambling transactions. However, due to the fact that Vantage Limited had not found any payment processors who were able to collect the funds, Vantage Limited were unable to collect the payments made by their customers.
51. Jorn Stark's evidence supports the Accountant's Report on this point (see paragraphs 48 and 49 of Jorn Stark's witness statement dated 28<sup>th</sup> June 2011 and Jorn Stark's oral evidence given on the 23<sup>rd</sup> September 2011).
52. Having considered all of the evidence, the Commissioners are of the opinion that the acceptance of deposits from customers without any means to collect such payments constitutes an offer of credit.
53. Document JS21(H) demonstrates the accumulation of such uncollected payments, and that the offer of such credit, had amounted to approximately \$128 million US Dollars (as termed the "ACH backlog"). The Commissioners understand from the evidence that this document was provided to the Executive by FTP.
54. The Commissioners on the balance of probabilities find that Vantage Limited has offered credit to its customers in contravention of section 2.10 of its internal control system.

55. As a consequence, Vantage Limited has failed to exercise its eGambling licence and conduct its business of organizing, promoting or effecting gambling transactions in accordance with its internal control system as required by section 14(1)(b) of the Ordinance. It follows that Vantage Limited has contravened a provision of the Ordinance pursuant to section 12(1)(c) of the Ordinance.
56. The Commissioners therefore find that Ground 7 has been proven in relation to Vantage Limited.

## **Ground 8**

### **In relation to Vantage Limited, Filco Limited, Oxalic Limited:**

57. *"In respect of the requirements of Section 12(1)(c) of the Alderney eGambling Ordinance, 2009 and Regulation 243 of the Alderney eGambling Regulations, 2009 requiring you to submit to the Commission reports in the format set out in Schedule 20 of the Alderney eGambling Regulations, 2009 detailing your financial position during the preceding calendar month you submitted reports that failed to detail the said financial position in that they wrongly asserted compliance with the required financial ratios pursuant to Schedule 20 of the Alderney eGambling Regulations, 2009."*

### Vantage Limited, Filco Limited and Oxalic Limited

58. Regulation 243 states (in relation to a Category 1 eGambling licensee) that –

*"(1) A Category 1 eGambling licensee shall at all times satisfy such financial ratios as are established by the Commission in respect of its operations from time to time and notified to it in writing.*

*(2) A Category 1 eGambling licensee shall by no later than the 20th day of the month submit to the Commission a report in the format set out in Schedule 20 detailing its*

*financial position during the preceding calendar month by reference to the ratios required of it in accordance with paragraph (1)."*

59. Paragraph 2.3 of the Accountant's Report states that the financial reports submitted in March and April 2011 in respect of Vantage Limited, Oxalic Limited and Filco Limited (and as set out in Document ME12) were inaccurate. The Accountant's Report explains that this inaccuracy is caused by the aforementioned companies treatment of unprocessed funds (due to the inability to identify payment processors) and frozen funds as cash.
60. According to Document ME5, the aforementioned licensees had indicated in their respective internal control systems that they would adopt the Irish GAAP which states that "*a balance can only be included as cash if it is available within a period of notice of not more than 24 hours*". The Accountant's Report states that unprocessed funds and frozen funds do not fall within the Irish GAAP definition of cash. From the Executive's submissions received during the regulatory hearing, the Commissioners understand that the Irish GAAP follows the UK GAAP and that Dixon Wilson are therefore competent to advise on the definition of cash which should have been adopted by FTP.
61. The Commissioners accept that on the balance of probabilities the financial reports submitted were inaccurate.
62. Further, Appendix C (Scenario 1) of the Accountant's Report demonstrates that the liabilities of each of the aforementioned companies exceeded its assets, and therefore did not satisfy the financial ratios required by regulation 243(1) of the Regulations.
63. It follows that Vantage Limited, Filco Limited and Oxalic Limited have contravened a provision of the Regulations pursuant to section 12(1)(c) of the Ordinance.
64. The Commissioners therefore find that Ground 8 has been proven in relation to Vantage Limited, Filco Limited and Oxalic Limited.

65. In summary therefore –

- Ground 1:
  - Vantage Limited – Proven
  - Filco Limited – Proven
  - Oxalic Limited – Proven
  - Orinic Limited – Not Proven
  
- Ground 2:
  - Vantage Limited – Proven
  - Filco Limited – Proven
  - Oxalic Limited – Proven
  - Orinic Limited – Proven
  
- Ground 3:
  - Vantage Limited – Not Proven
  - Filco Limited – Not Proven
  - Oxalic Limited – Not Proven
  - Orinic Limited – Not Proven
  
- Ground 4:
  - Vantage Limited – Proven
  - Filco Limited – Proven
  - Oxalic Limited – Not Proven
  - Orinic Limited – Not Proven
  
- Ground 5:
  - Vantage Limited – Proven
  
- Ground 6
  - Vantage Limited – Proven

- Filco Limited – Proven
- Oxalic Limited – Proven
- Orinic Limited – Not Proven
  
- Ground 7:
  - Vantage Limited – Proven
  
- Ground 8
  - Vantage Limited – Proven
  - Filco Limited – Proven
  - Oxalic Limited – Proven

**Opportunity for representations by FTP in order to offer any explanation**

66. Further to the Commissioners’ determination upon the existence of grounds under section 12(1) of the Ordinance, FTP were given the opportunity by the Commissioners on the 27<sup>th</sup> September 2011, pursuant to regulation 49(3) of the Regulations, to offer any explanation and make any such other comment as FTP wished in relation to the determination. FTP’s representatives were present at the regulatory hearing but elected to offer no explanation or comment.

**Determination as to which of the actions specified in section 12(3) of the Ordinance, if any, to take in respect of Vantage Limited, Filco Limited, Oxalic Limited or Orinic Limited, or as the case may be, their licences**

67. Both FTP’s and the Executive’s legal representatives were present in order to make representations in relation to which of the actions specified in section 12(3) of the Ordinance, if any, to take in respect of Vantage Limited, Filco Limited, Oxalic Limited, or Orinic Limited, or as the case may be, their licences.

68. FTP's representatives submitted that the Commissioners should adjourn their determination of sanctions in order to permit commercial negotiations to develop further. The Commissioners have considered the submissions and witness evidence put before them by FTP, and the submissions made to them by the Executive. The Commissioners have conducted a balancing exercise of the various interests at issue, including, the players (past, present and future), the eGambling industry generally, the public interest and the character of eGambling in the Island of Alderney. Due to the seriousness of the grounds established against FTP, the Commissioners are of the opinion, that it is in the public and player interest for the Commissioners to discharge their duties without unnecessary delay. The Commissioners therefore reject FTP's application for the Commissioners to adjourn their determination in relation to sanctions.
69. In making their determination upon sanctions, the Commissioners have considered each licensee separately and the totality of the grounds established against each licensee.
70. There were no mitigating factors put forward to the Commissioners. The sole aggravating factor which the Commissioners have taken into account in their determination, is the existence of previous sanctions (i.e. written cautions) imposed against Vantage Limited, Filco Limited and Oxalic Limited in June 2010.
71. FTP's representative submitted that the Commissioners should defer the announcement of their determination in relation to sanction due to the existence of commercial negotiations and/or delay the implementation of any sanction.
72. The Commissioners have considered the submissions made by FTP and the Executive in relation to both applications. The Commissioners are of the opinion that it is in the public interest that the announcement and the implementation of its determination is not delayed and that there is clarity over the status of Vantage Limited, Filco Limited, Oxalic Limited and Orinic Limited as eGambling licensees. The Commissioners therefore reject these applications as they do not believe that there are sufficient grounds, nor do they believe it

to be in the public interest, to defer the announcement of the decision nor delay the implementation of any sanction.

### **Vantage Limited**

73. The Commissioners have considered each of the grounds proven against Vantage Limited (Grounds 1, 2, 4, 5, 6, 7 and 8). The Commissioners find that independently each ground is serious. Of particular concern is the fact that Vantage Limited has been found to no longer be a fit and proper person due to its insolvency and Vantage Limited's failure to remit funds to players and to ensure that sufficient funds were held in the company's accounts to cover customer balances. In addition, full disclosure and forthrightness are fundamental to the relationship between licence holders and the AGCC, and so Vantage Limited's failure to notify the AGCC of the seizures being undertaken by the Department of Justice since 2007 and its failure to submit accurate financial reports are viewed gravely by the Commissioners.
74. The Commissioners are of the opinion that the totality of the grounds established against Vantage Limited are of such an extremely serious nature that they justify revocation of its Category 1 eGambling licence under section 12(3)(e) of the Ordinance.
75. Under regulation 54(1) of the Regulations, in order to revoke a licence the Commissioners must be satisfied (in addition to a ground under section 12(1) being established) that –
- "(a) the integrity of the conduct of eGambling by the eGambling licensee may be jeopardised in a material way; or*
  - (b) the public interest or the integrity and reputation of eGambling in Alderney may be affected in an adverse way."*
76. The Commissioners find that the integrity of the conduct of eGambling by Vantage Limited has been jeopardized in a material way due to the existence of such serious

breaches which demonstrate a failure to adequately protect player interests. In addition due to the serious nature of the grounds proven against Vantage Limited, the Commissioners find that the public interest and/or the integrity and reputation of eGambling in Alderney is likely to be adversely affected in the event that Vantage Limited was permitted to retain its licence. The Commissioners therefore find that the conditions set out under regulation 54(1) of the Regulations are satisfied. It follows that the Commissioners have determined that revocation is the appropriate sanction.

77. The Commissioners revoke Vantage Limited's Category 1 eGambling licence. The revocation of the Vantage Limited's Category 1 eGambling licence is to take effect upon the date of this Determination Notice.

### **Filco Limited**

78. The Commissioners have considered each of the grounds proven against Filco Limited (Grounds 1, 2, 4, 6 and 8). The Commissioners find that independently each ground is serious. Of particular concern is the fact that Filco Limited has been found to no longer be a fit and proper person due to its insolvency and Filco Limited's failure to ensure that sufficient funds were held in the company's accounts to cover customer balances. In addition, full disclosure and forthrightness are fundamental to the relationship between licence holders and the AGCC, and so Filco Limited's failure to submit accurate financial reports and its failure to notify the AGCC of the internal bank compliance review, and therefore that funds in their bank accounts were unavailable, are viewed gravely by the Commissioners.
79. The Commissioners are of the opinion that the totality of the grounds established against Filco Limited are of such an extremely serious nature that they justify revocation of its Category 1 eGambling licence and Category 2 eGambling licence under section 12(3)(e) of the Ordinance.

80. Under regulation 54(1) of the Regulations, in order to revoke a licence the Commissioners must be satisfied (in addition to a ground under section 12(1) being established) that –

*"(a) the integrity of the conduct of eGambling by the eGambling licensee may be jeopardised in a material way; or*

*(b) the public interest or the integrity and reputation of eGambling in Alderney may be affected in an adverse way."*

81. The Commissioners find that the integrity of the conduct of eGambling by Filco Limited has been jeopardized in a material way due to the existence of such serious breaches which demonstrate a failure to adequately protect player interests. In addition due to the serious nature of the grounds proven against Filco Limited, the Commissioners find that the public interest and/or the integrity and reputation of eGambling in Alderney is likely to be adversely affected in the event that Filco Limited was permitted to retain its licence. The Commissioners therefore find that the conditions set out under regulation 54(1) of the Regulations are satisfied. It follows that the Commissioners have determined that revocation is the appropriate sanction.

82. The Commissioners revoke Filco Limited's Category 1 eGambling licence and Category 2 eGambling licence. The revocation of both Filco Limited's eGambling licences is to take effect upon the date of this Determination Notice.

### **Oxalic Limited**

83. The Commissioners have considered each of the grounds proven against Oxalic Limited (Grounds 1, 2, 6 and 8). The Commissioners find that independently each ground is serious. Of particular concern is the fact that Oxalic Limited has been found to no longer be a fit and proper person due to its insolvency and Oxalic Limited's failure to ensure that sufficient funds were held in the company's accounts to cover customer balances. In addition, full disclosure and forthrightness are fundamental to the relationship between

licence holders and the AGCC, and so Oxalic Limited's failure to submit accurate financial reports is viewed gravely by the Commissioners.

84. The Commissioners are of the opinion that the totality of the grounds established against Oxalic Limited are of such an extremely serious nature that they justify revocation of its Category 1 eGambling licence under section 12(3)(e) of the Ordinance.

85. Under regulation 54(1) of the Regulations, in order to revoke a licence the Commissioners must be satisfied (in addition to a ground under section 12(1) being established) that –

*"(a) the integrity of the conduct of eGambling by the eGambling licensee may be jeopardised in a material way; or*

*(b) the public interest or the integrity and reputation of eGambling in Alderney may be affected in an adverse way."*

86. The Commissioners find that the integrity of the conduct of eGambling by Oxalic Limited has been jeopardized in a material way due to the existence of such serious breaches which demonstrate a failure to adequately protect player interests. In addition due to the serious nature of the grounds proven against Oxalic Limited, the Commissioners find that the public interest and/or the integrity and reputation of eGambling in Alderney is likely to be adversely affected in the event that Oxalic Limited was permitted to retain its licence. The Commissioners therefore find that the conditions set out under regulation 54(1) of the Regulations are satisfied. It follows that the Commissioners have determined that revocation is the appropriate sanction.

87. The Commissioners revoke Oxalic Limited's Category 1 eGambling licence. The revocation of Oxalic Limited's Category 1 eGambling licence is to take effect upon the date of this Determination Notice.

## **Orinic Limited**

88. The Commissioners have considered the grounds proven against Orinic Limited (Ground 2). It has been established that an associate of Orinic Limited, Kolyma Corporation AVV, is no longer a fit and proper person to be associated with the operations of Orinic Limited.
89. This in itself is a serious ground, particularly due to the fact that Kolyma Corporation AVV is responsible for the treasury functions in relation to the collection of payments on behalf of Orinic Limited.
90. When making their determination, the Commissioners have considered Orinic Limited as a separate legal entity. The Commissioners have taken into account the fact that Orinic Limited is part of the same group of companies and is under the same management and control as Vantage Limited, Filco Limited and Oxalic Limited, who have each committed serious regulatory breaches.
91. The Commissioners note that Orinic Limited's licence is currently suspended further to a suspension notice dated 29<sup>th</sup> June 2011. The Commissioners consider that the fact that an associate of Orinic Limited is not a fit and proper person is of such a serious nature to justify the continuation of the suspension.
92. The Commissioners have therefore, pursuant to section 12(3)(d) of the Ordinance, decided to suspend the validity of Orinic Limited's Category 1 eGambling licence. The suspension shall take effect from the date of this Determination Notice and shall be effective for the period of six months or until each of the conditions set out in the Condition Notice pursuant to regulation 36 of the Regulations are satisfied (whichever is the earlier). The Commissioners will review the suspension, if and when, the conditions are satisfied or upon the expiration of the suspension.

93. The Commissioners have the power under regulation 36 of the Regulations to attach a condition to an eGambling licence where the Commission considers it "*necessary, expedient or desirable*". According to the evidence put before the Commissioners, Orinic Limited is not currently trading. Due to the seriousness of the ground found against it, before it conducts trading, the Commissioners are of the opinion that it is essential that Orinic Limited satisfies the Executive that it complies with all of the requirements set out in the Ordinance and the Regulations, and that its internal control system and gambling equipment are satisfactory. The Commissioners therefore believe it is necessary and desirable for the following conditions to be attached to its licence -

**Conditions**

- (a) Orinic Limited submits evidence from independent chartered accountants (approved by the Executive) to the Executive which demonstrates –
  - (i) the licensee's solvency,
  - (ii) the accuracy of the licensee's financial reports and accounts, and
  - (iii) that sufficient funds are held in Orinic Limited's accounts to cover all balances held by it on behalf of customers,
- (b) Further to the submission of the evidence required under condition (a) to the Executive, the Commissioners are satisfied that Orinic Limited satisfies the requirements set out in condition (a)(i) to (a)(iii) inclusive,
- (c) Orinic Limited fully reviews (and where necessary revises) and submits its internal control system to the Executive for a complete re-evaluation by the Executive,

- (d) Further to the completion of the re-evaluation of the internal control system by the Executive referred to in condition (c), the Commissioners are satisfied that Orinic Limited's internal control system –
- (i) satisfies the requirements of the Ordinance and the Regulations,
  - (ii) is capable of providing satisfactory and effective control over the conduct of any form of eGambling that Orinic Limited proposes to operate, and
  - (iii) provides a safe and secure system for the conduct of eGambling,
- (e) Orinic Limited submits evidence to the Executive that gambling equipment used by it or any of its associates is technically and operationally capable of being –
- (i) utilised safely, securely and fairly, when taken both individually and collectively, in the conduct of any form of eGambling that Orinic Limited proposes to operate, and
  - (ii) interrogated, and subjected to audit, by, or on behalf of, the AGCC, whether in accordance with monitoring conducted under regulation 249 of the Regulations or otherwise,
- (f) Further to the submission of the evidence required under condition (e) to the Executive, the Commissioners are satisfied that the gambling equipment satisfies the requirements set out in condition (e)(i) and (e)(ii),
- (g) Orinic Limited submits evidence to the Executive which demonstrates that it –
- (i) has a satisfactory ownership and corporate structure, and

- (ii) complies with all of the requirements set out in the Regulations and the Ordinance, and
  - (h) Further to the submission of the evidence required under condition (g), the Commissioners are satisfied that Orinic Limited satisfies the requirements set out in condition g(i) and g(ii).
94. These conditions shall be issued to Orinic Limited in a condition notice pursuant to regulation 36 of the Regulations.
95. In addition, in light of the seriousness of the ground found against it, the Commissioners will issue a written caution to Orinic Limited pursuant to section 12(3)(b) of the Ordinance.

**Isabel Picornell, Jeremy Thompson**

**Commissioners of the Alderney Gambling Control Commission**

**29 September 2011**