

POLICY PAPER (Anti-money laundering)

CASINO GAMING COMMISSION

Background

The Casino Gaming Act was introduced in 2010, by which prospective casino operators may be licensed to operate in Jamaica subsequent to receiving an approval as an integrated resort developer (IRD). A prospective IRD makes an application to the Minister of Finance for an order declaring a proposed integrated resort development to be an approved integrated resort development.¹ The decision to permit casino gaming is linked with the Government's plan to improve and expand the tourism industry by developing a number of large integrated resorts of which casinos would be a part.

Performance of casinos in reputable gaming jurisdictions indicate that a successful casino gaming industry depends on a sound, strong and stringent regulatory regime and practice. This is important for a jurisdiction such as Jamaica to enable it to attract internationally accredited operators who are important to the development of the kind of operation that would be of optimal usefulness to the country. It is Jamaica's firm commitment to develop the industry in accordance with the industry best practices.

The Commission's aim is to establish appropriate and effective working relationships with other licensing authorities in the wider gambling industry. In addition, the Commission will work closely with other regulators and Government bodies to share information and, where appropriate, to take coordinated regulatory action.

Casino gaming in Jamaica will be regulated in accordance with the functions of the Commission, its regulatory powers and the international industry standards. It is intended that the industry in Jamaica will be regulated to guard against the industry being manipulated by criminal elements. Consequently those international standards for anti -money laundering which apply generally will also be applied to casinos.

¹ Section 9

FUNCTIONS OF THE COMMISSION

The Casino Gaming Commission (the Commission) was established by the Casino Gaming, Act 2010², as the body charged with the power to grant casino licences as well as to be the regulatory body for casino gaming. Its functions³ are to:

- (a) regulate and control casino gaming in Jamaica;
- (b) approve systems of controls for, and administrative and accounting procedures in, casinos in order to ensure integrity and fairness in casino gaming;
- (c) conduct investigations into the operation of casinos and the holders of specified offices;
- (d) institute measures and controls to—
 - (i) protect the vulnerable, including children, from any harm or exploitation arising from casino gaming;
 - (ii) limit opportunities for crime or any disorder associated with casinos; and
 - (iii) facilitate responsible casino gaming; and
 - (iv) prevent money laundering and the financing of terrorist activities in relation to casino gaming;
- (e) advise the Minister on matters of general policy relating to casino gaming in Jamaica; and
- (f) carry out such other functions pertaining to casino gaming as may be assigned to it by or under this Act or any other enactment.

In exercising its functions the Commission must ensure delivery of the licensing objectives and be guided by such principles as:

- regulating casino gambling in the public interest;
- regulating in a transparent, accountable, consistent and targeted manner;
- assessing risk led by the evidence, relevant information and best regulatory practice in the light of international experience;
- consulting widely and effective use of resources.

POWERS OF THE COMMISSION

The Act provides the Commission with powers to investigate the suitability of applicants and to maintain a rigorous licensing application procedure.⁴ In particular the Commission will take a

² Section 5

³ Section 6

⁴ Section 14

serious view of all relevant offences committed by all applicants for licences. Applicants must prove themselves fit and proper persons to be concerned or associated with the management or operation of a casino. In addition an applicant is disqualified from being granted a licence if it or any of its associates has been convicted of a specified offence.⁵ A specified offence is defined in the Act to include offences including money laundering.

Further, the Commission is authorized to review licences⁶ where it suspects that a breach of any licensing condition or any regulations made thereunder, or any other enactment, has been committed by the casino operator. Breach of the conditions includes, but is not limited to, the conviction of the casino operator or any of its associates of specified offences in any jurisdiction as well as the suspension, revocation or surrender in any other jurisdiction of any licence or authorization granted to the casino operator or any of its associates to conduct gaming activities in that jurisdiction which is equivalent or similar to casino gaming under the Act.⁷

Breach of licensing conditions may result in regulatory or criminal sanctions.

Disciplinary actions against a casino operator can take the form of: (a) issuing a letter of warning, admonishment, censure or reprimand; (b) revocation or suspension of a casino gaming licence; or (c) variation of the terms of a casino gaming licence⁸. Disciplinary action can arise where a casino operator, a person in charge of the casino, an agent of the casino operator or a casino employee has contravened any Act or any regulations relating to money laundering or the financing of terrorist activities.⁹

The Commission is also authorized to give to a casino operator written directions relating to the conduct, supervision or control of operations in the casino and the casino operator shall comply with such directions.¹⁰ The direction may require the casino operator to adopt, vary, cease or refrain from any practice in respect of the conduct of casino operations.¹¹ Where a casino operator fails to comply with a direction given he shall be liable on summary conviction in a Resident Magistrates' Court.¹²

⁵ Section 15 (1)©

⁶ Section 20

⁷ Third Schedule © and (e)

⁸ Section 27

⁹ Section 27 (1)(b)(ii)

¹⁰ Section 38 (1)

¹¹ Section 38 (3)

¹² Section 38 (5)

RISKS:

A person is restricted from operating a casino, except in accordance with the provisions of the Act and hence mitigates the operational risk of engaging criminal licensee.¹³ The powers of the Commission enable it to refuse consideration of any application which does not comply with the requirements of the Act¹⁴ or where prospective casino operators fail to meet the “fit and proper” criteria.¹⁵ The due diligence process is exhaustive¹⁶ and where there is non-compliance with any discovery requirements the Commission may refuse to consider the application.¹⁷

The Commission controls the manner in which casinos are operated. To mitigate the possibility of money laundering, inspectors or authorized persons can enter any premises at all reasonable times in order to: (a) ensure compliance with the Act and any regulations; (b) inspect any accounts, book, document, records, articles or (c) require the production of records and accounts which the casino operator is required to keep.¹⁸

Risks will be regularly reviewed to determine any increase in the overall risks and the appropriate mitigation measures to be applied.

INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING & THE FINANCING OF TERRORISM & PROLIFERATION

The laws concerning money laundering are based on the international standards in this area namely the FATF 40 Recommendations on Combating Money laundering and the Financing of Terrorism. The FATF recommendations that set the global standards single out those business sectors believed to be the highest risks of money laundering to include casinos. Casinos are therefore subject to similar, but not identical, international standards established for financial institutions. To properly guard against money laundering and financing of terrorism it is critical that any regulatory regime takes into account these requirements.

For ease of reference any consideration of the best regime for casinos to guard against Money Laundering should take into account the two main issues for casinos. These relate to:

¹³ Section 13

¹⁴ Section 14 (3)

¹⁵ Section 15 (1)(a)

¹⁶ Sections 15 (2); 16(2); 17

¹⁷ Section 17(2)

¹⁸ Section 46 (1)(a)(i); (b) and (c)

- (a) The AML measures that casinos are required to put in place to prevent money laundering;
- (b) The regulatory regime that national governments are expected to put in place to deal with money laundering as it relates to the casino industry.

To guard against money laundering and financing of terrorist activities, the FATF Recommendations require casinos to put in place the following measures to prevent money laundering and the financing of terrorism:

- (a) Customer due diligence¹⁹ measures where transactions with the customer exceed specified thresholds;
- (b) Perform record-keeping requirements²⁰ as set out in the FATF recommendations on both customer identification as well as transactions which exceed particular thresholds;
- (c) Have measures in place to identify “Politically Exposed Persons” (PEPs). These are persons that hold high political or governmental office. Persons who hold high office within international organizations are also considered to be PEPs. These persons are essentially treated as prima facie “high risk.” Institutions that have this obligation are required to have measures in place to identify such customers, obtain senior management approval prior to entering into these business relationships, take reasonable measures to establish source of wealth and source of funds as well as to conduct enhanced monitoring of the business relationship.
- (d) Have measures in place to deal with the money laundering risks presented from products that utilize new technologies²¹ capable of being used to launder funds. Before using or developing these products, casinos should carry out a risk assessment exercise in order to implement measures to minimize or eliminate these risks.
- (e) Have measures in place to mitigate the money laundering risks that arise in dealing with introducers and intermediaries.²² In such cases a casino may be introduced to new clients, placing reliance on the due diligence of the party who is introducing the client and thereby reducing the level of customer due diligence that would normally be undertaken by the casino. The FATF Recommendations outline the preconditions to be undertaken when relying on such introductions in order to mitigate the risks. These include ensuring that the casino can obtain the relevant due diligence information from the third party upon request. The party being relied upon should also be regulated for

¹⁹ FATF Recommendation 10

²⁰ FATF Recommendation 11

²¹ FATF Recommendation 15

²² FATF Recommendation 17

anti-money laundering and be from a country that has an acceptable level of country risk. A casino should be wary of relying on an introducer or intermediary if that third party is from a country with weak AML /CFT regulatory regimes.

- (f) Implement measures for internal controls to protect against the risk of money laundering. Where the entity is part of a group of entities, a group wide policy should be implemented to deal with protecting the group against money laundering.²³
- (g) Casinos (like other gatekeeper professions and financial institutions) should also have measures to deal with parties or transactions emanating from high risk countries. These are countries with weak anti-money laundering regimes and in such cases additional due diligence measures should be exercised.²⁴
- (h) The reporting of suspicious transactions is a fundamental plank in a country's anti-money laundering policies. Casinos should be obliged to report transactions to the designated authority where there is a reasonable suspicion that the transaction involves proceeds of crime.²⁵
- (i) The law should also provide protections for the entities (and their directors/officers) that make the reports referred to at (h). In addition there should be sanctions for "tipping off" suspects to the fact that such a report has been made or that an investigation is underway.

In addition to the anti-money laundering obligations that FATF expects that countries will ensure that their casinos comply with, the FATF also requires that casinos (and other designated non-financial businesses and professions) will be subject to a comprehensive regime for regulation for anti-money laundering measures. In particular FATF requires that casinos be licensed. Consequently, competent authorities should put in place measures to ensure that casinos are not owned, managed or otherwise controlled, either directly or indirectly, by criminals or their associates. They should also be effectively supervised to ensure that casinos comply with anti-money laundering requirements.

AML measures that are instituted in well regarded gaming jurisdiction such as Great Britain include but are not limited to: (a) Statement of Principles for Licensing and Regulations.²⁶ This Statement compliments their Gaming Act and provides a strong framework for

²³ FATF Recommendation 18

²⁴ FATF Recommendation 19

²⁵ FATF Recommendation 20

²⁶ Gambling Commission -Statement of Principles for Licensing and Regulation 2006

regulation. (b) Guidance notes provided for remote and non-remote casinos.²⁷ These guidance notes detail inter alia, the principles to be followed, risk assessment, senior management responsibility, customer due diligence and record keeping. (c) Policies and procedures relating to issues of enforcement and sanctions, to include investigatory sanctions for parties breaching the requirements of POCA have been developed. (d) Establishing required protocols and relationships with local and overseas law enforcement agencies that can inform issues of licensing. These measures allow the regulatory body to maintain rigorous licence application and monitoring systems and demand high standards of probity from licensees.

In Singapore where organizing excursions are important to a casino's viability, measures taken include the regulation of promoters of such excursions to ensure that they are not a cover for crime syndicates to engage in criminal activities, such as money laundering.²⁸ AML measures also include, inter alia, know-your-customer due-diligence, mandatory reporting of transactions above the established amount, mandatory reporting of suspicious transactions and AML training for casino employees. These measures are in line with the international AML standards set by the FATF and other leading gaming jurisdictions.

The Casino Gaming Commission will need to build capacity and expertise in the area of monitoring for AML /CFT compliance by licensees, including the employment and training of persons to examine the operations of licensees to test for compliance. It is therefore giving due consideration to the measures instituted by other jurisdictions with a view to adapting same for Jamaica.

The Jamaican Context

Under the Jamaican legislative framework, the mechanism for imposing anti-money laundering obligations on non-financial firms lies with the Minister power under the Fourth Schedule to the Proceeds of Crimes Act to designate a profession or industry as a Designated Non-Financial Institution. Such businesses then become a part of the "regulated sector", a term used throughout the law. Upon designation, the obligations that apply to businesses in the regulated sector will apply to casinos. These are contained in both the law and the regulations. Others are the subject of proposed amendments as follows:

Customer Due Diligence:

These Customer Due Diligence obligations are Contained in the Proceeds of Crimes (Money

²⁷ Gambling Commission: Money laundering: the prevention of money laundering and combating the financing of terrorism (Guidance Notes Second Edition December 2011)

²⁸ Business Law Review May 2009

Laundering) Regulations (7-12). These Amendments are being further amended to deal with additional aspects of customer due diligence. There is also proposal by the Ministry of National Security to amend regulation 7(3) to allow the Minister to specify by Order, the minimum amounts involved in a transaction which will not require customer identification. This will be critical to take into account the nature of casino operations.

Record –keeping

This is dealt with under POC (ML)R regulation 14

Politically exposed persons

The MNS is proposing amendments to the Regulations to deal with this issue

New Technologies

The MNS is proposing amendments to the Regulations to deal with this issue

Introducers and Intermediaries

The MNS is proposing amendments to the Regulations to deal with this issue

Internal Controls and application to branches and subsidiaries

This is dealt with under POC (ML)R regulation 15 and 18. There will be amendments to the POCA to deal with the sharing of AML information between companies within a group for the purpose of a group AML policy.

Suspicious transaction reporting

This is proposed to be dealt with by amendments to POCA section 94. POCA section 94 deals with this issue. However amendments are being proposed to ensure that the obligations are in keeping with FATF requirements.

Statutory protections and Tipping off Provisions

These are dealt with at POCA sections 97 and 100.

Regulation of the business requires that casino premises have appropriate systems and processes to forestall and prevent money laundering and terrorist financing.

As Regulator, the Commission must provide guidance to licensees on the need to develop systems and controls that are appropriate to the business; regular assessment of the adequacy of their systems and controls; have full commitment from, and responsibility resting with, senior management; maintain where necessary, records of customers and transactions that meet the needs of law enforcement investigations and provide initial and ongoing training for all relevant employees.