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Coming Shifts in AML Practice
In the Casino Sector

On June 9, 2018, the federal government published notice of proposed changes to the regulations made under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the Act). The amendments appear to be driven at least in part by outcomes from the most recent Financial Action Task Force mutual evaluation of Canada's anti-money laundering / anti- terrorist financing regime (AML/ATF). Stated objectives of the amendments include: operationalizing changes to the Act (enacted in 2014) and closing gaps in Canada's AML/ATF regime; improving reporting entities' compliance; improving the monitoring and enforcement efforts of FINTRAC; and improving Canada's compliance with international standards. While the amendments, if enacted as proposed, do not make major substantive changes to the overall legal framework, the changes laid out are likely to have important and substantial procedural impacts on the casino sector. What follows is a brief summary of some of those changes.

In the proposed amendments, the first thing one will notice is that the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, sometimes referred to as the "general regulation", have been substantially restructured and renumbered. Effort has been taken to make the regulation easier to use and there appears to have been an attempt to reduce the number of instances where provisions start off with reference to multiple sections from elsewhere in the legislation. That drafting convention makes the current regulation exceedingly complex to work with and understand. Effort to increase the usability and readability of the legislation can only help with understanding and compliance.

In terms of the actual provisions, to the positive, the amendments would release casinos from some of the requirements related to reasonable measures. Currently, in certain circumstances casinos are required to take reasonable measures to comply with obligations and make a record of those measures. For example, casinos are required to take reasonable measures to determine if a customer is conducting a reportable transaction on behalf of a third party. If the reasonable measures taken to make the determination fail, the casino is required to record why the reasonable measures failed – something that in many cases would not be readily apparent to or knowable by the casino. The requirement to document unsuccessful reasonable measures is repealed by the amendments.

Also helpful is clarification around the 24 hour rule. Currently casinos are required to treat multiple transactions performed by an individual as a single transaction for reporting purposes where those transaction total $10,000 or more in a 24 hour period. A report is required as soon as the aggregate of the transactions reaches $10,000. This can result in multiple reports within a 24 hour period where the individual makes further transactions after the initial $10,000 threshold is met. The amendments clarify that only one report that captures all transactions within the 24 hour period that collectively meet or exceed the threshold is required.

A proposed amendment to the rules governing the ascertaining of identity, particularly as those rules relate to the dual method (usually non face-to-face transactions) may be helpful. Currently, to rely upon a document to verify identity it must be original, valid and current. The amendments will change this to "authentic, valid and current." Additionally, under current rules for the dual method, reliance on an electronic image of a document (for example a pdf from a scanned credit card statement) is not permitted. The prohibition on electronic images of otherwise valid documents will be removed under the amendments. These changes will bring identification verification methods more in line with the evolving use and reliance on electronic records in commerce. The extent of the helpfulness of these changes may rely somewhat on guidance that is anticipated FINTRAC will issue in regard to what casinos must do to satisfy the "authentic" requirement.

Substantial changes have been made in regard to electronic funds transfers (EFTs), with respect to reporting and record keeping. Under the amendments, for outgoing EFTs, reporting obligations will now fall to the reporting entity initiating the transaction. "Initiation" is defined as "…. the

first transmission of the instructions for the transfer of funds." Accordingly, if an EFT goes from a casino to a bank before being transmitted to the ultimate beneficiary the casino will have reporting requirements. For incoming EFTs, where the casino is the reporting entity that is the final recipient of the funds prior to being made available to the customer, again the casino will bear reporting obligations. "Final recipient" is defined as "… the receipt of the instructions by the person or entity that is to make the remittance to a beneficiary."

In regard to the collection of information and reporting for EFTs, the schedules have been changed substantially and will involve much more detailed information. Under the current rules casinos are required to collect and transmit with the EFT the name, address and account number of the customer who requested the transfer, but only for cross border EFTs. Under the proposed amendments, casinos will now be required to collect additional customer information such as citizenship, email address, name of the customer's employer, the employer's business address, the employer's telephone number as well as other detailed information. Further, the exemption for EFTs that occur solely within Canada is removed under the amendments.

In addition to the above, EFTs that involve virtual currencies will be captured under the amended regulations.

The proposed regulations make a major change to the reporting of suspicious transactions. At present, a casino is required to report a suspicious transaction within 30 days from when it first detects a fact that constitutes reasonable grounds to suspect that the transaction in question is related to the commission of a money laundering or terrorist financing offence. The amended regulations will require casinos to report a suspicious transaction within three days after the day on which the casino took measures to establish that there are reasonable grounds to suspect that a transaction or attempted transaction is related to the commission of a money laundering or terrorist financing offence. The description accompanying the proposed regulations states that after taking certain measures such as conducting an assessment of the transaction to establish there are reasonable grounds to suspect, the casino would then have three days to file the report. Further, the description offers "… this means that the report would be filed three days after completion of the analysis that establishes reasonable grounds for suspicion. The challenge is, the proposed wording requires the report to be filed three days after the casino takes measures to establish reasonable grounds to suspect, and makes no reference with respect to the measures being completed. As currently written, it remains unclear as to when the trigger for the three days commences. It could be interpreted such that the clock starts running as soon as the casino undertakes any action to establish reasonable grounds to suspect. Casinos would no doubt find the logistical and practical implications of meeting the reporting requirement in that timeframe daunting.

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Changes to schedules related to EFTs were noted above. The amendments go much further. Major changes have been made to all the schedules to both the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations and the Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations. Casinos are being required to collect much more information. For example, the Casino Disbursement Report (proposed Schedule 7) will require the casino to include on the report: the casino's email address, URL, and a contact person's email address. In regard to customers, in addition to the current information that must be collected and reported, the casino will have to collect the customer's alias, citizenship, email address, employer, employer's business address, and employer's business telephone number. Where the disbursement is requested online the casino must also capture, record and report the type of device used by the customer, the number that identifies the device, the internet protocol address used by the device at the time, the customer's username, and the date and time of the customer's online session when the disbursement is requested. Similar changes are made to the other schedules. It is anticipated that these amendments may require major systems changes for casinos and vendors supplying automated software solutions to casinos.

A number of the proposed amendments that may affect the casino sector most directly have been set out here. The proposed regulatory changes are extensive and a fulsome overview of all changes is beyond the scope of this article. The complete proposal can be found in the Canada Gazette here: http://www.gazette.gc.ca/rp-pr/p1/2018/2018-06-09/html/reg1-eng.html

Interested parties had until September 7, 2018, to submit questions or comments to the Federal Department of Finance on the proposed amendments. The publication gives no indication of the date when the regulations will ultimately come into effect, however it is stated that the amendments will come into force 12 months after the date of registration. CGL

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