Update: *UK's AML national risk assessment and its effects on the gambling industry*

By Andrew Tait, 20 June 2017

UK Government Treasury published its draft Money Laundering Regulations 2017 on 15 March 2017. This draft factored in the outcome of a National AML Risk Assessment which sought to identify areas of high risk across the multitude of Regulated Industries subject to the 4AMLD. This determination between high and low risk is key as it allows national regulators to exempt low risk elements from the ambit of the 4AMLD. The draft was open to further consultation and comments with a deadline of 12 April 2017. The results of this consultation have not yet been published as of the 20 June, just a week before the 4AMLD is supposed to be transposed into UK law.

The 4AMLD dictates that providers of high risk products and services must adhere to minimum standards of customer and third party due diligence, ongoing monitoring, record keeping and otherwise ensure that they have systems and processes in place to detect, report and mitigate against instances of potential money laundering and terrorist financing. This ecosystem of detection and reporting must be based upon their own unique assessment of the risks in their particular business taking into account, their customer base, type of transactions they take part in, their geographical spread and other such relevant factors.

As a consequence of their own AML Risk Assessment, providers will be able to identify potential AML risk in their business based on their risk appetite, and then build appropriate controls and measures to detect and mitigate against the same. Compliance with this regulation will take a significant toll on both a provider's resources and operating costs. It is also likely to hamper a provider's ability to handle certain types of high risk customers and transactions, thereby hitting revenue streams as well.

So on the face of it it's good news that the Treasury held that only providers of casinos services were deemed to be high risk, as already mandated under the 4AMLD. Retail sportsbooks in particular will be relieved given the logistical nightmare of potentially having to conduct customer due diligence and tracking, a huge obstacle for pure land based businesses.

It is also somewhat of a surprise, given that this goes against the Gambling Commission's own AML Risk Assessment where land based casino and betting and remote casino, betting and bingo were all assessed as high risk. (Click here for further details).

In addition the majority of other EU states, such as Germany who have completed their national risk assessments, have deemed all gambling sectors except Slot halls, lotteries and on-course tote betting, to be included in the high risk category. This is in line with European Commission guidance which view lotteries, bingo and some slot machines as low risk. For instance Gibraltar has treated all forms of remote gambling as being subject to enhanced due diligence and monitoring since 2010. Their proposed new AML code strengthens this even further by extending due diligence and monitoring obligations to B2B suppliers (via contracts with their B2C customers) involved in the user experience (e.g. Poker Network platforms).

Another 'offshore' gambling jurisdiction, the Isle of Man, is bringing into place stricter AML regulations to address the main gaps in its current regime following a Moneyval inspection in 2016. Specifically addressing Financial Intelligence, Money Laundering Investigation, Prosecution and Confiscation. The focus on investigation and enforcement powers is a warning to complacent operators waiting to see what happens before taking pre-emptive action to improve their controls. Gibraltar's Moneyval investigation is due in 2018 and will no doubt act as a catalyst, spurring others to get their house into order before the onerous inspection begins.

There is no time for complacency, as the UK Gambling Commission (UKGC) can of course exceed the minimum requirements of current and future money laundering regulations based upon its own assessment of risk. Indeed, virtually all forms of gambling are subject to strict AML rules under their Licensing Conditions and Codes of Practice ('LCCP'), which aims to enforce one of the three licensing objectives and pillars of the Gambling Commission, namely to keep crime out of gambling.

In particular the UKGC's November 2016 advice to operators (excluding casinos) on their AML and prevention of terrorism financing responsibilities under the under the Proceeds of Crime Act 2002 ('POCA'), sets out in detail the expected level of compliance in this area. Both will need to carry out comprehensive AML Risk Assessments, appoint a suitably qualified and senior nominated officer, carry out due diligence on new customers and ongoing monitoring using a risk based approach, etc. In fact some of the main differences centre around the requirement for casinos to ensure that all new customers give their name, address and date of birth details before they proceed to deposit and gamble, where the same will need to be verified against official documentation or reliable (mainly electronic) data sources on or soon after they hit €2000 in stakes (remote) or purchased casino chips (land based) in any 24 hour period or in linked transactions (N.B. in the draft 2017 AML Regulations this is amended to "net deposits", taking into account recycled winnings). These same customers will then need to be monitored against perceived AML risk indicators, whereas non-casino operators' obligation to monitor is only triggered once customers appear to pose an AML risk.

The requirement for carrying out an AML Risk Assessment has been a compulsory requirement under the LCCP since 31 October 2016 across all gambling sectors. Specific guidance has been given by the UKGC which if followed properly will involve a major review of an operator's customers base, risk platform and escalation procedures, reliance on third party verification systems and a myriad of other factors. Once completed the AML Risk Assessment will give risk profile for a multitude of scenarios against which the operator will need to match a corresponding and appropriate level of control.

The fact that the UKGC has such stringent existing AML measures was instrumental in the decision to exclude other gambling sectors from the high risk category. Indeed, pre-April the UKGC stated that they would have been happy to exclude all forms of gambling from the money laundering regulations due to their own strict requirements more than covering this area. This is coupled with the active enforcement measures taken by the UKGC against operators who exhibit AML failings, where their enforcement strategy consultation document dated January 2017, makes it clear that even stronger measures would be taken against breaches of LCCP, using license reviews and high fines rather than the more conciliatory voluntary settlements of the past involving 9 operators including Ladbrokes, Paddy Power, Betfred, Rank Group, Caesers UK and Gala Coral.

In their Consultation response document, HM Treasury referred to the stringent requirements set down by the UKGC as being sufficient to mitigate AML risk across most of the gambling sectors subject to supervision and enforcement by the Gambling Commission. Click here to see the section on Gambling Providers for more information.

During an industry workshop in Birmingham on 9 June, the UKGC announced their intention to carry out a thematic review of AML controls in Q2 2017, which may involve the examination of a sample set of operators' AML Risk Assessments and corresponding controls. The requirement to have a documented AML Risk Assessment dating back to 31 October 2016 was referred to and will no doubt form the starting point for any such review.

If as a result of this thematic review, operators are shown to have largely ignored the LCCP requirements and have not followed the UKGC's AML guidelines, then it's likely that this will result in defaulting gambling sectors being brought within the AML regulatory fold. To quote the concluding lines of the HMT consultation on Gambling Providers:

> "If a gambling sector can no longer be deemed low risk (including where the sector fails to adequately manage the ML/TF risks) then the exemption could not be maintained. It is therefore imperative that gambling providers comply with the requirements of the Gambling Act and the strengthened LCCP to ensure that they have effective policies, procedures and controls in place to mitigate ML/TF risks, and continue to raise standards. The Gambling Commission will continue to monitor compliance and where operators fail to meet their obligations they will act accordingly."

To conclude the seemingly favourable treatment of the UK Treasury to the gambling sector is not all it seems. Many in the industry feel that there was no real need to increase AML measures in this industry over and beyond what is already there. It is now only a matter of time before the UKGC will be reviewing operators' AML Risk Assessments, starting with casinos and working downwards.

Gordon Dadds is uniquely set up to assist in 4AMLD compliance by:

- Completing your AML Risk Assessment using our own industry proven methodology
- Update all your AML policies & procedures to tie into your risk assessment
- Due diligence of 3rd parties involved in the AML flow
- AML training Program
- Auditing system & annual review of risk assessment

We can also work with best-of-breed third party providers who provide AML complimentary solutions including automated AML verification services and ad-hoc in-depth monitoring, with the overall aim of keeping costs and internal resources low whilst meeting all regulatory requirements.

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