

Anti-Money Laundering Webinar Presentation

2019 Amendments to the:
Proceeds of Crime Act Terrorism Prevention Act (UNSCRIA)

Overview

- The revised Financial Action Task Force (FATF) Forty (40) Recommendations are the universally accepted international standard for the AML/CFT framework which governs all industries.
- The Betting, Gaming and Lotteries Commission (BGLC) as the Competent Authority for the gaming industry has the responsibility for ensuring that its licensees are compliant with respect to their AML/CFT and counter proliferation financing (CPF) requirements under FATF Guidelines and the prescribed legislation.

Overview

Legislation & Regulations governing the AML/CFT framework of the gaming industry are the:

1. Proceeds of Crime Act (POCA)
2. Terrorism Prevention Act (TPA) and
3. United Nations Security Resolutions Implementation Act (UNSCRIA)

Overview

In 2019 amendments were made to all 3 Acts. This presentation will highlight the relevant amendments to the legislation & regulations and the impact on the gaming industry:

- i. The Risk Based Framework
- ii. Know Your Customer (KYC) & Customer Due Diligence (CDD) requirements
- iii. Record keeping requirements
- iv. Reporting requirements
- v. All other AML and CFT obligations of Gaming Machine Operators/licensees.

The Risk Based Framework

- The POC and TP Regulations require that businesses within the regulated sector establish a risk profile concerning its general operations with regard to its business products and services, distribution channels, the geographic environment in which it operates and the size and nature of its operations.

The size and complexity of the operator's business will impact and ultimately determine the detail and complexity of the systems used to manage and mitigate the risks identified.

The Risk Based Framework

Under Section 91A of POCA, Section 18A of the TPA, and Section 9 of the UNSCRIA, a Competent Authority (BGLC):

- a. shall establish such measures as it thinks fit, including carrying out, or directing a third party to carry out, such inspections or such verification procedures as may be necessary;
- b. may issue directions to any of the businesses concerned; and the directions may require the business to take measures for the prevention or detection of, or reducing the risk of, money laundering or terrorist financing;

The Risk Based Framework: POCA 2019 Amendments

Section 91A is amended to:

- i. Require BGLC as the competent authority to continually assess the risks of ML and TF relating to businesses in the gaming industry it is responsible for monitoring and to tailor its activities accordingly.
- ii. increase the maximum fine on summary conviction for a regulated business which fails to comply with directions issued by BGLC pursuant to this section from \$250,000 to \$3,000,000

The Risk Based Framework: POC Regulation 7A

Regulation 7A is amended to:

- i. require a regulated business to establish a risk profile for its operations and its customers and employ measures commensurate with the risks identified to mitigate them
- ii. allow a regulated business to use simplified due diligence procedures where the transaction or relationship is low risk where conditions of risk evaluation and mitigation are met
- iii. define simplified due diligence procedures
- iv. add to the list of high risk persons, a person who is not the ultimate beneficial owner of the assets involved in the business or transaction;

POC Regulation 7A

High Risk Relationships/Transactions

Politically Exposed Persons ('PEPs');

A company having nominee shareholders, or shares held in bearer form;

A person who is not ordinarily resident in Jamaica;

A person who is not the ultimate beneficial owner of the assets involved in the business or transaction; and

A member of such other class or category of persons as the supervisory authority may specify by notice published in the gazette

Trustees

KYC and CDD Requirements

- i. occupation and economic activity;
- ii. personal financial and business track record;
- iii. source of wealth/funds;
- iv. contact information;
- v. capacity in which the business is being transacted and details of representation relationship, authorities established to act for persons benefiting from the transaction or relationship with the gaming machine operator.

The requirement to '**know your customer**' involves satisfactorily identifying the customer and establishing details pertaining to the customer's:

KYC and CDD Requirements



Customer Due Diligence involves identifying the customer and verifying that customer's identity. In the case of customers that are legal persons or established by some other form of legal arrangement, identification of the customer includes identification of the beneficial owner(s) and verifying that identification.



The CDD must enable a gaming machine operator to know its customer by obtaining information on what the customer does.

KYC and CDD Requirements

KYC details must be retained for electronic funds transfers throughout the payment process and chain.

KYC details must include for all the persons involved in the transaction:

- Name; Address; Account number (where applicable);
- National identification number, the customer identification number or
- the date and place of birth of the person who places the order for the transfer and the holder of the account, that is, the source from which the funds are transferred, and every recipient of the funds transferred

KYC and CDD Requirements

Periodic updates of customer information must be carried out at least once every seven (7) years or at more frequent intervals as warranted by the risk profile of the business relationship. This is applicable to existing and new customers. (POC Regulation 7)

Updates to customers information, where accounts were opened prior to March 29, 2007 are restricted to identification information

KYC and CDD Requirements

Transaction verification procedures must be applied particularly in the circumstances specified in POC regulation 7(3) which include:

- cases where the transaction involves cash at or above the prescribed amount (\$1 million);
- transactions that appear to be linked;
- wire transfer transactions are being conducted;
- there is doubt about the accuracy of any previously obtained evidence of identity; or
- a required disclosure (STR) is to be made;

KYC and CDD Requirements

Gaming machine operators are mandated by POC Regulation 7A(3) to carry out reasonable due diligence in the conduct of every transaction to ensure the transaction is consistent with an institution's knowledge of the transacting Party's:

- business,
- trade or profession,
- risk profile, and
- stated source of funds involved in the transaction.

KYC and CDD Requirements: identity verification

POC Regulations 11, 12 and 13

- Procedures must be in place to ensure that the identities of the beneficiaries and ultimate beneficial owner of the property or funds which are the subject of the transaction and/or business relationship, are obtained

KYC and CDD Requirements

TPA S.16A

- A reporting entity shall apply enhanced due diligence measures in respect of transactions with customers domiciled, resident or incorporated in specified territories. Specified territories are those published by the designated authority as having a greater risk of association with ML and TF.

KYC and CDD Requirements

POC Regulation 14

- Gaming machine operators must ensure the retention of identification and transaction records. Such records should be retained for a period of seven (7) years or for such other period as may be specified by the designated authority

KYC and CDD Requirements

POC Regulation 16

Gaming machine operators are prohibited from maintaining anonymous, fictitious or numbered accounts

POC Regulation 19

- Gaming machine operators must ensure that the CDD update requirements are applied to existing customers. Gaming machine operators are not required to obtain information or evidence in respect of any transaction conducted prior to the relevant date, which is March 29, 2007

Reporting Requirements

- Under the TPA, each entity is required to report to the Designated Authority, all transactions, whether completed or not, which the entity suspects, or has reasonable cause to suspect, involves property connected with or intended to be used with the commission of a terrorism offence or involve, or are for the benefit of, any listed entity or terrorist group.

Reporting Requirements

- Section 94 of POCA makes it an obligation for a person to make a required disclosure where the circumstances described therein exist or arise. There is knowledge or belief that another person has engaged in a transaction that could constitute or be related to money laundering. The information which gave rise to this belief was obtained during the course of business. The licensee is required to make the disclosure to the nominated officer within 15 days of this information coming to him.

Reporting Requirements

- With regards to the suspicious transaction report (STR) obligations, gaming machine operators should note: There is a maximum 30-day period to file a report with the Designated Authority.
- The law requires that a suspicious transaction report under the POCA or the TPA is one that should be made either to the Nominated Officer or the designated officer. In practice and for good order, reports of regulated businesses should be made to the Nominated Officer who will thereafter be required to make a disclosure to the Designated Authority

Reporting Requirements

A gaming machine operator:

- Is under strict obligations not to disclose, disclosures made pursuant to:
 - POCA s 94/95 – Suspected ML Transactions
 - POCA s100 – Authorized Disclosures
 - TPA section 16(3) of the TPA,
- must comply with all directions given to it by the relevant authorities (POCA S.97, TPA S.17)

Record Keeping Requirements

On the inception of a business relationship, the gaming machine operator is required to maintain the following records:

- Customer information collected during the KYC/CDD process;
- Customer transactions;
- Business correspondence with the customer;
- Account Files;
- Any analysis conducted on the account (including enquiries to establish purpose of a particular transaction).

Record Keeping Requirements

POCA S.94 and TPA S.16 have been amended to now require records to be kept for not less than 7 years

- all complex unusual or large business transactions carried out with a customer and
- all unusual transaction patterns which appear inconsistent with normal transactions carried out by the customer with the business.

Record Keeping Requirements

- Transaction records must be maintained in such a form that allows for reconstruction of each transaction.
- POC Regulation 14 Reconstruction of each transaction and the provision of information to the Designated Authority or Competent Authority upon request should be no later than seven (7) days after the request or as may otherwise be required. (POC Regulation 14)
- A gaming machine operator should note that regardless of the level of risks involved, there is no exemption from record keeping requirements.

- A gaming machine operator must designate an officer of the institution who performs management functions as its “Nominated Officer”.
- This Officer is responsible for ensuring the effective implementation of the established policies, programmes, procedures and controls to prevent and detect ML/TF/CFP activities in accordance with the relevant statutes, the Guidelines and the licensee’s own policies and procedures. [POC regulation 5(3); TPA section 18(3)]

Other requirements for Gaming machine owners

- Gaming machine operators should proactively assess the various risks posed by emerging technologies in the use of new payment products and services (POC Regulation 6) (2013 amendment)

Other
requirements
for Gaming
machine
owners

TPA Section14

A listed entity is one which the court so designates upon an application by the DPP in respect of:

- i. an entity designated as a terrorist entity by the UNSC;
- ii. or an entity which the DPP on the basis of there being reasonable grounds to believe the entity has knowingly committed or participated in the commission of a terrorism offence or is knowingly acting on behalf of, at the direction of or in association with such an entity

Other
requirements
for Gaming
machine
owners

TPA Section14

- Determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of a listed entity; and report to the Designated Authority at least once in every four (4) calendar months or in response to a request made by the Designated Authority, whether or not they are in possession or control of such property

Other
requirements
for Gaming
machine
owners

TPA Section 16

- Report all suspicious transactions to the Designated Authority [Complex, unusual, or large transactions]

TPA Section 18

- Ensure that high standards of employee integrity are maintained, and that employees are trained on an on-going basis regarding their responsibilities under the Act

Other
requirements
for Gaming
machine
owners

TPA Section18

- Establish and implement programmes, policies, procedures and controls, establish programmes for training of employees on a continuous basis, for enabling them to fulfil their duties under the TPA.
- Designate a Nominated Officer at management level who should arrange for independent audits to ensure that AML and CFT compliance programmes are effectively implemented

Other
requirements
for Gaming
machine
owners

Typologies Gaming Establishment: Employee Complicity



Failing to file STRs and take customer identification;



Destroying customer records;



Breaching cash out and other procedures;



Tampering with gaming machines;



Tipping off

Provision	POCA/Regs	TPA/Regs	UNSCRIA/Regs
Requirement for Customer Risk Profile	R.7A	R.6A	
AML Guidance and implementation of AML measures	S.91 & S.91A		S.9(1)
Implementation of controls to prevent TF		S.16 & R.4	S.9(1)
Identity verification procedures	R.11-13	R.5	R.5
Duty to file STRs	S.94 & S.95	S.16(3A)	
Tipping Off	S.97	S.17	S.5(6)
Records of large transactions	S.94	R.16	
Records to be maintained for 7 years	R.14	R.14(5)	

Summary

End of Presentation