

FIC AMENDMENT BILL 2015 MEETING
BETWEEN
FIC, TREASURY & THE CASINO ASSOCIATION OF SOUTH AFRICA

1. Introduction

Following a presentation by the Casino Association of South Africa (“**CASA**”) to the Parliamentary Standing Committee on Finance on 02 February 2016 in respect of the FIC Amendment Bill, 2015 (“**the Bill**”), a meeting between the FIC, Treasury and **CASA** (“**the Parties**”) was convened at the FIC’s offices in Centurion on 04 February 2016. This meeting proved to be very fruitful to the extent that the majority of the **CASA**’s concerns were addressed in principle (“**Addressed Matters**”) as indicated below.

The FIC and Treasury put various questions and scenarios to **CASA** regarding counter-money laundering measures in casinos. **CASA** provided detailed explanations of how money laundering is prevented in the various scenarios. Further to this, **CASA** gave its own examples of how casinos’ internal and prescribed controls are able to prevent money laundering from occurring.

The FIC indicated that it would like the opportunity to apply its mind as to how to amend legislation in a manner that would be practical for all Parties as it impacted on other AI’s as well. A further meeting will be convened between the Parties during March 2016 to discuss and finalize **CASA**’s concerns and review the exemptions granted to the industry (“**Matters to be Finalized**”).

2. Summary of the discussions between the Parties

2.1 Addressed Matters

a. Clause 5:

The FIC undertook to include provisions in the Bill for a peremptory consultation process to take place between the FIC, Supervisory Bodies and Accountable Institutions prior to any amendments or repealing of counter-money laundering legislation, including exemptions granted to Accountable Institutions. **CASA** was satisfied with this undertaking.

b. Clause 10: (21F; 21G; 21H)

The FIC agreed that casinos can take only reasonable steps to identify the influential and prominent persons, and the close family and associates. In such instances, casinos would be permitted, among others, to utilize the available databases offered by third party suppliers to achieve the taking of reasonable steps to identify the individuals concerned as per their risk assessment programmes. In addition, the FIC confirmed that its interpretation of source of funds and source of wealth is for casinos to record the occupation of the respective clients in order to comply with this requirement. Furthermore, the FIC confirmed that the verification of source of funds and source of wealth is not required. CASA was satisfied with the FIC's interpretation and views expressed in this regard.

c. Clause 14

The FIC undertook to propose an amendment in the Bill for electronic records to be maintained in a manner which ensures that records are readily accessible in terms of South African laws and that the confidentiality of the records are protected. CASA was satisfied with this undertaking.

d. Clause 27

The FIC confirmed that its interpretation of the Risk Management and Compliance Programme is that it is definitely risk-based as opposed to rule-based and that the Bill sets minimum standards for the matters that must be covered in such a programme. This will become clearer when the guidance and regulations under the FIC Act are revised.

Accountable Institutions will be able to determine the level of risk posed by the client before determining what controls it will take to identify and record information for clients of the various risk levels (i.e. low risk, medium risk and high risk). CASA was satisfied with this clarity.

e. Clause 58

The FIC undertook to make provision in the Bill for the various Supervisory Bodies to determine the transitional period(s) for the Accountable Institutions they supervise. CASA expressed concern with this as the casino industry has several Supervisory Bodies, one in each province, which could lead to inconsistency. The FIC further undertook to engage with the casino industry's Supervisory Bodies to ensure that casinos will be given sufficient time to allow for the implementation of the amended legislation.

Further to the above, the FIC confirmed that it does not expect full implementation of the amended FIC Act immediately after it has been promulgated into law.

2.2 **Matters to be Finalised**

a. Clauses 8 & 12:

CASA expressed concern that it would not be able to perform high frequency low value transactions with its clients who could not be identified in certain instances. For example, the most frequent occurrence that would be affected is the cashing out of gaming chips or exchange of bank notes for change by day-visitors, tourists, and walk-in trade. The FIC was amenable to determining a low-value threshold for which casino clients would not be required to be identified. In addition, the FIC agreed that a risk-based approach will nevertheless apply in respect of the identification requirements for low-value transactions.

b. Clause 10: (21F; 21G; 21H)

CASA mentioned that although casinos would be enabled to take reasonable measures to identify the influential and prominent persons, and family and close associates concerned, in the context of a casino, these reasonable steps could only be performed after the fact.

The fundamental reasons for CASA's concerns are (1) the limited resources over busy periods, (2) casinos operate on a 24-hour basis and senior management are not usually available during early hours of the morning, late nights or weekends; (3) during the periods mentioned in (2) above limited senior management are usually responsible for more than one gambling area/department and in some instances may be responsible for the casino complex; and (4) due to the onerous corresponding obligations and risks associated with the individuals concerned, CASA was of the view that senior management for casinos should be at an appropriate level.

In view of the above, senior management will not always be available to immediately approve the on-boarding of the individuals concerned to enable them to conduct transactions immediately, failing which custom will be lost.

The FIC understood CASA's concerns and will apply its mind on how to frame the legislation to accommodate the impracticalities, if not, an exemption could remedy this to the extent that the verifications could be made after the fact.

c. Clause 27

The Parties will discuss during their meeting in March 2016 the necessity for the implementation of the Risk Management and Compliance Programme in the casino's foreign operations if client funds are transferred between the local and foreign entities.

d. Clause 58

The transitional periods are still to be determined by the casino industry Supervisory Bodies. The FIC will engage with casino industry Supervisory Bodies to provide the necessary guidance to ensure that the implementation periods are consistent across all provinces for casinos and that casinos are given adequate time to implement.

2.3 **Other Matters**

a. Guidance Notes

The FIC undertook to issue detailed Guidance Notes to assist Accountable Institutions to implement the amended FIC Act.

b. GoAML

The FIC confirmed that the goAML system for reporting transactions to the FIC does not prescribe any legal requirements for obtaining client information which goes beyond the counter-money laundering legislation. Accordingly, the FIC stated that if casinos did not have any of the relevant information to populate the goAML fields, the corresponding fields could be updated with the words such as "Unknown". In addition, it was mentioned to CASA that the goAML system cannot not fail reports if fields were populated with the words such as "Unknown". The FIC went on to say that casinos must not leave fields blank, in which case, the reports will fail.

CASA undertook to nevertheless take reasonable measures to populate as much of the fields as possible based on their Risk Management and Compliance Programmes.

c. Definition of Transaction

The FIC expressed that its interpretation of the definition of the term "Transaction" in the context of casinos was the transactions concluded at the cash desks. CASA agreed with the FIC's interpretation which in fact accorded with the interpretation by CASA.

d. Proof of residential address for casino loyalty programmes

The FIC confirmed that verification of residential addresses in respect of casinos' loyalty programmes, which the FIC views to be a business relationship, will not be a prescribed requirement when the FIC Regulations are amended so as to be aligned with a risk-based approach. CASA was pleased to receive this confirmation as the repeal of this requirement would resolve various onerous and impractical obligations.