



Ms J. Fubbs

Chairperson: Portfolio Committee on Trade and Industry

Attention: Mr A. Hermans

PO Box 15

Parliament

Cape Town

8000.

Tel: 021 403 3776

Fax: 086 652 7753

E-mail: ahermans@parliament.gov.za

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Dear Mr A Hermans

REVIEW OF THE SOUTH AFRICAN GAMBLING LEGISLATION AND ITS REGULATION: COMMENT ON THE REPORT OF THE GAMBLING REVIEW COMMISSION

1. INTRODUCTION

- 1.1 The Payments Association of South Africa (PASA) is the payment system management body recognised by the South African Reserve Bank (SARB) in terms of the National Payment System Act, 78 of 1998, (the NPS Act). PASA has the responsibility to organise, manage and regulate the participation of its member banks in the NPS (National Payment System).
- 1.2 The participation of banks and non-banks in the NPS is thus governed by the NPS Act, which essentially aims at promoting an efficient and safe payment, clearing and settlement environment.
- 1.3 An impact on the payment system may result in an impact on the economy as a whole.
- 1.4 Although PASA and its member banks are in support of any legislation that promotes revenue maximisation, consumer welfare and which is beneficial to the country as a whole, such legislation often has unintended consequences.
- 1.5 Unintended consequences would for instance include scenarios where legislation impacts on entities or organisations that are not directly involved or even mentioned in such legislation.

PAYMENTS ASSOCIATION OF SOUTH AFRICA

2nd Floor, 32 Princess of Wales Terrace, Sunnyside Office Park, Parktown
PO Box 61380, Marshalltown 2107
Tel (011) 645 6766 Fax (011) 645 6866



- 1.6 PASA and its members have in the past been affected by legislation governing terrorist activities, pornography, money laundering and also gambling without having had an opportunity to comment on or to make proposals to legislation to ensure such legislation is reasonable and enforceable, without having any absurd consequences.

2. UNINTENDED CONSEQUENCES

- 2.1 We have considered the Report by the Gambling Review Commission and have noted that future legislation will probably make provision for effective enforcement mechanisms, which would include a bigger role for banks.
- 2.2 This may introduce unintended consequences if proper consultation with PASA and its members are not included in the process.
- 2.3 Unintended consequences to PASA and/or its members may for instance involve an obligation on member banks to stop certain payment transactions. It is without question that banks will do the necessary to comply with such legislation. However the requirement to stop/prohibit certain transactions might be difficult and/or onerous and in certain circumstances even impossible for banks to implement. It is therefore suggested that when legislation is drafted/amended an organisation like PASA and its member banks be consulted to ensure that the provisions of the legislation do not introduce certain obligations and responsibilities to banks that might be difficult or impossible to implement.

3 SPECIFIC COMMENTS

3.1 Gambling Legislation and Regulatory Framework

PASA supports the common theme proposed throughout the Report for all the applicable legislation governing the Gambling Industry to be harmonized, consistent and uniform. It is proposed that all the applicable legislation become uniformed and governed from a National level. As such, for banks to ensure compliance and to assist the National Gambling Board (NGB) in various activities, instructions should be issued on a National level only, which will enable the banks to recognise one central department that has the applicable Government support and will ensure compliance at the highest level. This is standard across the banking industry for example the National Credit Regulator or the Financial Services Board. By reporting to one main overseeing body, it allows for greater efficiency, transparency and accountability. Furthermore, we are of the opinion this will help remove inconsistencies that occur across South Africa.

We therefore support the notion of a consolidation of all the Gambling Legislation to govern the Gambling Industry from a national level.



3.2 Definitions

We believe that the various activities in the gaming and gambling environments need to be identified and clearly defined.

Without clear definitions and a framework, the task of building processes and systems to cater for the different types of Gambling, become untenable. Without clarity in this regard it becomes extremely difficult to identify transactions and assist the NGB in preventing any type of illegal gambling transactions from being processed.

It must be noted, that PASA and its member banks will to our best endeavors try and prevent illegal transactions from being processed, however, it must be made clear that the payment system and the banks need to remain neutral at all times. The bank's first and primary obligation is to ensure an effective, efficient and safe payment system. The national and international payments systems are designed to facilitate and process transactions "end to end" and were not designed to "pro-actively" combat crime. However, there is a wealth of "after-the-event" information that can be gleaned from such payments systems for the purposes of reporting. The banks and the payment system should under no circumstances be used as a method to "police" Gambling Activities or other activities within South Africa.

Legislation should clarify technological, jurisdictional, legal and practical issues around implementation and enforcement. It needs to be clearly articulated what is meant in respect of "... a bigger role for banks" – will this purely be a "reactive" monitoring role, with subsequent reporting to the SARB and NGB, or does it include "pro-active" direct account intervention (account blocks, closing of accounts, etc.)?

3.3 Consumer

The confusion created by various Gambling Legislation needs to be removed, so consumers have a clear understanding of what is legal and illegal gambling. Once this has been established consumers need to be held accountable for their actions by the NGB. This is the NGB's obligation and is not a role the payment system or the banks participating in it can and should fulfill. We propose that Government, the DTI and / or the NGB run ongoing consumer education campaigns to inform residents what constitutes legal and illegal gambling activities.

Clarity needs to be obtained as to whether the consumer is allowed to gamble domestically and internationally if the consumer is located outside the borders of South Africa. Further clarity needs to be obtained as to whether gambling online with international gambling merchants will be allowed? Cross border transactions need to be clearly defined. It is impossible to determine whether the customer is physically gambling outside the borders of



South Africa (legal) versus gambling online within the borders of South Africa (illegal), further clarification needs to be obtained in this regard, as systems cannot be developed to only block the latter as we are unable to systematically differentiate between these two types of transactions. The banking industry is however willing to assist the regulatory authorities in freezing / blocking accounts upon valid instruction by the NGB, however this requires the Act to be aligned in terms of the Financial Intelligence Centre Act where the authority to instruct a block or freeze is governed.

3.4 Merchants

When a bank acquires any Gambling Merchant currently, the merchant needs to supply such bank with a copy of its Licence as well as a domicilium address within South Africa, and proof thereof. Unless these two documents can be supplied then banks will not provide the merchant with the acquiring services and this is viewed as a control to manage the activities of merchant operators, banks provide a service to. However clarity needs to be provided on what the banks' obligations are in terms of verification of merchants that banks acquire or bank, versus where the bank processes payouts. Clarity is also required as to the banks' obligations as it relates to identifying foreign inflows (winnings as a result of foreign merchants) and subsequent payouts of these inflows to the NGB. We support the proposal by the Commission to ensure that there is a review system in place to review gambling licences as well as to issue new licences to Gambling merchants. We therefore propose an applicable database whereby the banks and other Companies can validate their applicable documentation they require in order to enter into agreements with Gambling merchants against, to ensure that only legal, valid Gambling Merchants are able to do business in South Africa. A similar system like CIPC (Companies and Intellectual Properties Commission) for companies should be introduced to ensure that there is strict compliance and governance with the applicable legislation and a secure and reliable database to validate Gambling Operators.

Will the Commission be able to advise whether Gambling Operators will be allowed to establish their applicable company in South Africa, with providing services only to international consumers and not to consumers domestically within South Africa?

Unfortunately acquiring banks cannot be placed in the untenable position whereby they are utilised as the main compliance to try and prevent illegal gambling operators from entering into acquiring agreements and thereby preventing them from making use of the banking infrastructure.

3.5 Enforcement Mechanisms

The Report clearly highlights the Commission's view that the banks need to play a greater role especially with regards to enforcing Gambling Legislation. From the outset it has to be



made very clear that the banks are first and foremost financial service and credit providers and therefore need to ensure that the relevant banking infrastructure including the payment systems is effective, efficient, safe, reliable and neutral. As stated above, enforcing the Gambling Legislation first and foremost needs to be the NGB's responsibility. The banks will to their best endeavours assist the NGB by, inter alia, implementing systems and/or controls, which from a payment system perspective may include enforcing FICA requirements to know clients, assessing such clients against a database implemented by the NGB, blocking certain clearly defined transactions, monitoring account activities, reporting suspicious transactions, freezing certain accounts based on predefined rules, etc.

Sanctions, penalties or liability of any kind cannot be imposed on PASA, the payment system and/or the banking industry should any illegal gambling transactions be processed. It is impossible to ensure that all gambling transactions are prohibited and to penalize the banking industry is untenable. The banking and payment system is neutral and cannot be influenced in such a manner by a third party.

Since the commission's recommendations that there should be no distinction between interactive gambling and online betting and that a holistic view of online gambling be taken, the impacts on the payments system and banks extends beyond credit card and its channels to include all appropriate payment mechanisms and channels (e.g. online banking, telephone etc.), hence a responsible and proactive manner should be adopted in engaging the banking industry in terms of feasibility of enforcement mechanisms prior to publishing their requirements.

It also extends beyond banks and the payment system, and includes any party or person, such as internet providers, telecoms, the card schemes/associations (MasterCard, VISA, Diners Club, Amex, etc.), electricity providers, etc, involved in the facilitation of legal or illegal gambling transactions. Gambling Legislation should thus in principle equally apply to such other parties, and not only to banks. However, this could result in an untenable and absurd situation clearly impacting on any economic activity in South Africa.

3.6 Regulatory Overlap

As a payment, financial service and credit provider banks are currently governed by numerous pieces of legislation that already place an onus on banks. It is important to ensure that all pieces of legislation are in harmony with each other and that they do not create a mine field for banks, making it impossible to provide efficient and safe payment services, which may have a disastrous impact on the economy of the country.



4. Proposed Way Forward

We respectfully propose the following:

- 4.1 That all parties involved in the processing or facilitation of payments and/or gambling transactions in South Africa be involved in the development of enabling legislation, and that a structured and consultative approach is adopted in developing such legislation.
- 4.2 That Government, the DTI and / or the NGB run ongoing consumer education campaigns to inform residents what constitutes legal and illegal gambling activities.
- 4.3 That consultations be held with the South African Reserve Bank as this issue could affect the efficiency of the payment system and have implications for cross-border flows.

Your consideration of the above comments would be appreciated.

Yours sincerely,

A handwritten signature in black ink that reads 'Coetzee'.

Pierre Coetzee

Executive: Payments Regulation

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Cc: Mr Dave Mitchell: Head of National Payment System Department: South African Reserve Bank