



COUNTERING MONEY LAUNDERING AND TERRORIST FINANCING IN GAMBLING – A MISSED OPPORTUNITY FOR IRELAND?

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INTRODUCTION

With the increased, Europe-wide focus on countering money laundering and terrorist financing in recent years, it is an anomaly that Irish anti-money laundering and anti-terrorist financing laws have not to date been extended to cover land-based or online bookmakers

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or gaming operators. This is particularly notable in circumstances where new betting legislation, in the form of the Betting (Amendment) Act, 2015, was enacted in Ireland this year to amend and update the Betting Act, 1931. This new legislation has, among other things, brought remote bookmakers and betting intermediaries within the Irish licensing and taxation regime for the first time. The Irish legislature did not, however, take this opportunity to introduce anti-money laundering and counter-terrorist financing requirements for either land-based or remote betting operators. Any such requirements are now unlikely to be introduced for Irish land-based and remote bookmakers until after the transposition into Irish law of the Fourth Money-Laundering Directive.

THE REGULATION OF GAMBLING IN IRELAND

Irish law distinguishes between three main forms of gambling:

- betting (which is regulated);

- gaming (which is regulated only in limited circumstances); and
- lotteries (which are regulated).

Betting, which involves the placing of a wager (normally money) on the outcome of a race, competition or other event, is regulated by the Betting Act, 1931 (as

amended). This Act applies to land-based and remote betting operators.

Gaming and lotteries, which are regulated by the Gaming and Lotteries Act, 1956, are subject to more restrictive regulation than betting. “Gaming” is defined as playing a game (whether of skill or chance, or partly of skill and partly of chance) for stakes hazarded by the players. This definition captures all traditional casino games, as well as card games. The provision of gaming services, and by extension casinos, is effectively prohibited in Ireland, with a limited exception in relation to gaming that takes place in private members’ clubs. Lotteries are also generally prohibited unless they are operated under a permit from the police or a licence from the Court and in other limited circumstances.

APPLICABILITY OF THE CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING) ACT 2010 (AS AMENDED) TO GAMBLING OPERATORS

Anti-money laundering and anti-terrorist

financing is governed in Ireland by the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended by Part 2 of the Criminal Justice Act 2013 (the Act). This legislation places certain requirements on “designated persons” covered by the Act to: identify customers; report suspicious transactions to the Irish police and the Revenue Commissioners; and have specific procedures in place to provide, to the fullest extent possible, for the prevention of money laundering and terrorist financing.

“Designated persons” for the purposes of the Act include, amongst other categories of persons/institutions, a “casino”; and “a person who effectively directs a private members’ club at which gambling activities are carried on, but only in respect of those activities”.

In circumstances where no casino licences exist in Ireland and casinos only exist in the form of private members’ clubs (casino clubs), it is ironic that the Act includes casinos within the anti-money laundering regime but does not include bookmakers who are subject to Irish licensing requirements.

Therefore, as things currently stand in Ireland, the requirements in the Act only apply to land-based private members’ clubs operating as casinos and there are no similar anti-money laundering requirements for land-based or online bookmakers or lottery operators.

THE BETTING (AMENDMENT) ACT, 2015 – A MISSED OPPORTUNITY?

The Betting (Amendment) Act, 2015, which was signed into law by the president of Ireland on 15 March 2015, updated and extended the regulatory regime in Ireland to include, for the first time, all remote betting operators who accept (or in the case of betting exchanges, facilitate) bets from customers in Ireland.

Remote betting operators are now required, regardless of whether or not they have a physical presence in Ireland, to apply for and to obtain an Irish licence in respect of bets which they accept, or facilitate, from customers in Ireland and to pay tax on betting transactions with Irish customers. Another change introduced by the Act is that it is now possible for a corporate entity, as well as an individual, to apply for and to hold a licence.

anti-money laundering and anti-terrorist financing regime which is contained in the Betting Act, 1931 (as amended). The Act does not impose any anti-money laundering and anti-terrorist financing obligations on operators.

THE FOURTH MONEY LAUNDERING DIRECTIVE (MLD4)

The Directive on the prevention of the use of the financial system for the

for facilitating communication, and at the individual request of a recipient of services”.

The Directive requires providers of gambling services, upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to €2,000 or more (whether the transaction is carried out in a single operation or in several operations which appear to be linked), to apply customer due diligence measures.

The Directive does, however, provide that, with the exception of casinos, member states may decide to exempt certain gambling services from some or all of the requirements laid down in the Directive in proven, low-risk circumstances. Recital 21 of the Directive states that the use of such an exemption should be considered only in strictly limited and justified circumstances and where the risks of money laundering or terrorist financing are low. Such exemptions should be subject to a specific risk assessment that also considers the degree of vulnerability of the applicable transactions (including with respect to the payment methods used) and must be notified to the Commission, together with a justification based on the specific risk assessment.

CONCLUSION

Having regard to the fact that the Betting (Amendment) Act, 2015 was primarily introduced to modernise Ireland’s outdated betting legislation and to bring online betting operators within the scope of the licensing regime in Ireland, it is surprising that the legislature did not use this opportunity to introduce certain anti-money laundering and anti-terrorist financing requirements for land-based and remote betting operators.

While it remains to be seen how Ireland will transpose MLD4 into Irish law, the inclusion of “providers of gambling services” as obliged entities in the Directive, is to be welcomed as providing an opportunity for Ireland to extend its anti-money laundering and anti-terrorist financing laws to land-based and remote bookmakers and lottery operators.

MLD4 has a wider scope than the current Third Money Laundering Directive (MLD3) and the categories of persons/entities to which the Directive applies (obliged entities) have been extended to include “providers of gambling services” and not just casinos as provided for in MLD3

As part of the new licence application process, individual applicants (or in the case of corporate entities, the “relevant officers” of the corporate entity), must apply for a certificate of personal fitness (COPF) that they are a fit and proper person to hold a licence. When applying for a COPF, an applicant is required to disclose if they have previously been convicted of an offence under certain specific statutes including the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. A COPF can be refused or revoked on the grounds that an applicant for, or the holder of, a COPF has been convicted of an offence under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 or the applicant is not a fit and proper person for the purposes of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 – for example, if they have previously been convicted of a money-laundering or terrorist-financing offence or an offence involving fraud, dishonesty or breach of trust.

This is, however, the only nod to the

purposes of money laundering and terrorist financing, the Fourth Money Laundering Directive (MLD4), was published in the Official Journal of the European Union on 5 June 2015 and EU member states must transpose the Directive into national law by 26 June 2017. The European Commission has stated that one of the aims of the Fourth Money Laundering Directive is to increase coverage of the gambling sector.

MLD4 has a wider scope than the current Third Money Laundering Directive (MLD3) and the categories of persons/entities to which the Directive applies (obliged entities) have been extended to include “providers of gambling services” and not just casinos as provided for in MLD3. A “gambling service” is defined as “a service which involves wagering a stake with monetary value in games of chance, including those with an element of skill such as lotteries, casino games, poker games and betting transactions that are provided at a physical location, or by any means at a distance, by electronic means or any other technology