

18 February 2019

Honourable Mr Eddie R Makue, MP
Chairperson:
Select Committee on Trade and International Relations
National Council of Provinces
Parliament of the Republic of South Africa
P.O. Box 15
Cape Town
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Attention: Mr Hlupheka Mtileni
Committee Secretary: Select Committee on Trade and
International Relations
National Council of Provinces
3rd Floor, W/S 3/083,
90 Plein Street
Parliament of the Republic of South Africa
P.O. Box 15
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**RE: The Banking Association South Africa (BASA) comments on the National Gambling
Amendment Bill [B27 B-2018]**

Dear Hon. Makue,

The Banking Association South Africa (BASA) wishes to thank you for the opportunity to submit comments on the latest Draft National Gambling Amendment Bill. We participated in the shaping of the Amendment Bill over a period of time, and our last submission was put forward in November 2016 to the Department of Trade and Industry (dti).

There are however three remaining critical issues that need discussion, and these are:

- 1) The processing of payment transactions for unlicensed gambling activities (new S8(3)).
- 2) Provision of internet services and technological support for unlicensed gambling activities (new S8(4)).
- 3) Location of ATMs on the gambling floor (new S17A(3))

We respectfully urge the Committee to consider our input on these matters that, if left unaddressed may lead to unintended consequences and the unfortunate risk that banks will be non-compliant with some of the requirements, purely since it will be impossible to comply. The continued inclusion of the sections below will result in legal obligations being created, with the full knowledge that the banks cannot comply with it.

1. The processing of payment transactions for unlicensed gambling activities (amendment of Section 8 of Act 7 of 2004)

2. Section 8 of the principal Act is hereby amended by the addition of the following subsections, the existing section becoming subsection (1):

“(2)A person must not engage in, conduct or make available betting on a lottery, lottery results or sports pools, except in terms of a license issued by the Board of the National Lotteries Commission in terms of section 44C.

(3) A financial institution must not process payment transactions for any gambling activities that are not licensed in terms of this Act.

All payment activities in South Africa are part of the National Payment System, the stability of which is regarded as critical to the economy and the country, which is consequently specifically monitored, regulated and supervised by the South African Reserve Bank (SARB).

All payments are managed through payment clearing houses. These are high velocity and complex operational environments that ensure all payments are processed accurately and with minimal error, as the consequences of even the smallest delay can affect millions of people. In these payment-clearing houses payment participants are contracted to one another act as both senders and recipients of transactions. Transaction volumes happen in the millions and over critical periods of time, necessitating high transaction processing rates and a minimal margin of error.

These payment-clearing houses give people and businesses the means to transfer money between one another. Some payment clearing houses are better suited for certain tasks, e.g. EFT Credits are a very efficient method for paying accounts remotely and when you know the beneficiary details, or card payments by debit or credit cards, these are useful in making retail payments for products and services and, importantly, are able to access the global card networks. We also thus assume many of the payment activities contemplated by the NGA would be card type payments.

These card payments clearing houses, consisting of acquiring banks (the bank used by the merchant), operator (such as Visa, Mastercard, or BankServ Africa) adopts a strict set of entry and participation criteria, designed to ensure efficiency and safety. The relationships between bank and cardholding customer as well as between the bank and merchant are individually managed, subject to the participation criteria of the operator and the payment-clearing house.

Against this background, it is important to recognise the challenge for individual banks to comply with the proposed amendments for monitoring and acting in the NGA in the short-term, both on an individual basis and collectively. The reasons are as follows: -

1. There is no provision for recording and analysing the product being purchased. The card operators provide for the categorisation of the merchant, via a Merchant Category Code, but not of the individual items sold. Thus whilst it is possible this will change in the future, it is currently not viable due to the large range of products and high rate of change.
2. Large corporations may register a merchant category code, for example, of Travel and Entertainment and then later expand their business to include gambling activities. The acquiring bank would not be aware of this.
3. Even if a bank was able to assign product codes, the classification of such goods and services sold would still be the responsibility of the merchant to classify.
4. Banks and other payment service providers would be at risk should they misclassify a product as illegal when it is not. Only a regulator can make that distinction and determination. In fact, this is part of the reason why *suspicious transactions* are reported but not acted on by banks.

5. Finally, the system is placed at risk due to the disproportionate allocation of efforts, specifically the number of incidents of illegal gambling is small, and within the province of the NGA to know, rather than to use the payment system and banks to do this, at a cost to the entire system.

A useful analogy would be to consider a large retailer, who expands his product lines. For any number of reasons, the retailer begins to sell illegal products. Therefore it must be considered whether it is practical to expect the payment system participant to identify the product as illegal and to act with some degree of authority and prevent the payment.

It is therefore recommended that the NGA advise acquiring banks, as and when they discover an illegal gambling institution. An efficient system of reporting may be established fairly quickly with the banks and other payment participants to achieve this. Banks and payment participants would thus be acting on the instruction of a regulator.

Compliance with the intended S8(3) poses a challenge for the sector, because it is generally impossible to identify *"payment transactions for any gambling activities that are not licensed in terms of this Act"* for a number of reasons.

The following are illustrative and practical examples of the impact of implementation on a daily basis:

EXAMPLE 1

Made to Eat is a restaurant (merchant), which entered into a merchant agreement with BankZ to enable it to receive card payments and establish banking facilities. When it entered into this agreement Made to Eat met all the merchant acquiring criteria and requirements and BankZ had no problems signing them up as a merchant. But Made to Eat restaurant started running an illegal gambling operation in the back room which is not registered and licensed. It puts all the proceeds of the gambling operation through the restaurant merchant account as normal restaurant purchases.

BankZ is not aware that the gambling transactions are mixed with the normal restaurant transactions and is not able to identify them as such.

BankZ, as a financial institution is not able to meet the requirements of the proposed section 8(3) and will be non-compliant.

EXAMPLE 2

John banks with BankZ and has a Visa credit card account. John gambles online and uses his credit card account to fund the gambling transactions. When John deposits R1 000 into the account of the online gambling facility, the following happens:

- a) *John uses his Master or Visa credit card and the funds are processed to the online gambling facility's bank, which is BankY (there is a merchant agreement between BankY and the gambling facility).*
- b) *Through the payments process, which involves a few other role players, the transaction is eventually processed back to John's account at BankZ and his account is debited with R1 000.*
- c) *All these transactions occur electronically via straight-through processes. This means, there isn't a "stop and look at the nature of the transaction" anywhere and no screening of who John is paying R1 000 to, is done whilst the payment process runs.*
- d) *Master and Visa cards, for example, are totally geared to facilitate seamless and fast (often real time) transactions, with no interruptions or interrogation of transactions.*

Neither Bank Y nor BankZ, as financial institutions are able to meet the requirements of the proposed section 8(3) and will be non-compliant.

EXAMPLE 3

John is using an internet café to do illegal online gambling. The internet café's acquiring bank, BankY facilitates the selling of internet time and has no knowledge of what is being done with the internet time being sold.

John's bank, BankZ, facilitates transactions on his credit card which all look legitimate as he is buying airline at an internet café.

Neither Bank Y nor BankZ, as financial institutions are able to meet the requirements of the proposed section 8(3) and will be non-compliant.

If it is found a merchant is acting illegally, the respective monitoring and enforcement bodies should contact the acquiring bank to take the matter further.

It is quite likely that the illegal activities as described above and unlicensed gambling in general will be picked up through other means such as the obligations in the FIC Act on Accountable Institutions (like banks) to apply risk management principles and continued due diligence measures in respect of all clients. The necessary actions will follow through the law enforcement channels and we suggest that the same principles should apply to unlicensed gambling activities – as we said above, banks and other payment service providers would be at risk should they misclassify a product/service as illegal when it is not.

2. Provision of internet services and technological support for unlicensed gambling activities (amendment of section 8 of Act 7 of 2004)

2. Section 8 of the principal Act is hereby amended by the addition of the following subsections, the existing section becoming subsection (1):

“(2)A person must not engage in, conduct or make available betting on a lottery, lottery results or sports pools, except in terms of a license issued by the Board of the National Lotteries Commission in terms of section 44C.

(3) A financial institution must not process payment transactions for any gambling activities that are not licensed in terms of this Act.

(4) A person must not provide Internet services or other technological support for any gambling activities that are not licensed in terms of this Act.”

There remains a need to understand and qualify what is meant by “technological support” as it may include a variety of payment components, which will make it impossible to comply with this Section, as the mechanics of the payment system cannot detect activities relating to unlicensed gambling activities.

In Examples 2 and 3 above, all the role players in the transactions may well be lending technological support and the nature of the transactions in the examples will be concealed from and unknown to all.

3. Location of ATMs on the gambling floor (amendment to section 17 of Act 7 of 2004)

“9. The following section is hereby inserted in the principal Act after section 17:

“Restrictions on gambling premises and location of automated teller machines

17A. (1) Gambling premises located inside general public places such as shopping malls, arcades, complexes or centres must be accessed through entrances which are separate from such public places and which must—

(a) not be visible from the general floor; and

(b) be hidden from the surroundings.

(2)A gambling venue located in a multi-storey business building must be on a separate floor from the general shopping floors.

(3) Cash automated teller machines must not be located where they are visible from the gambling floor."

Whilst a bank can ensure that initial placement of an ATM should adhere to the requirements of S17A(3), the visibility requirement cannot be controlled by any bank, as any changes to the gambling floor plan/layout of the premises is under control of the gambling institution/premises landlord. Banks (and their service providers) cannot be held accountable to adhere to this requirement except in respect of initial placement in relation to layout/floor plan of the gambling institution at the time. This remains an on-going implementation challenge that should be discussed in detail and addressed accordingly to align expectations and arrive at practical solutions.

We look forward to engaging with the Committee as well as the Regulator on these implementation challenges and welcome the opportunity to discuss our submission in detail.

Thanking you in advance and with appreciation.

Kind regards

A handwritten signature in black ink, appearing to read 'Adri Grobler', with a stylized flourish at the end.

Adri Grobler
Senior Specialist
Market Conduct Division

