

COMMENTS ON THE REMOTE GAMBLING BILL [PMB3 - 2015]

PRESENTED TO THE PORTFOLIO COMMITTEE
ON TRADE AND INDUSTRY

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casa

Casino Association
of South Africa



COMMENTS ON REMOTE GAMBLING BILL

ISSUES OF PRINCIPLE (1/2)

- We are neither for nor against the legalisation of remote/online gambling - a decision that must be made by the SA government.
- Illegal online gambling is currently a threat to the industry.
- We submit that government has two options, namely –
 - Maintain the status quo with respect to online gambling being illegal but then to take stern action against it; or
 - Legalise online gambling subject to strict and proper regulation.

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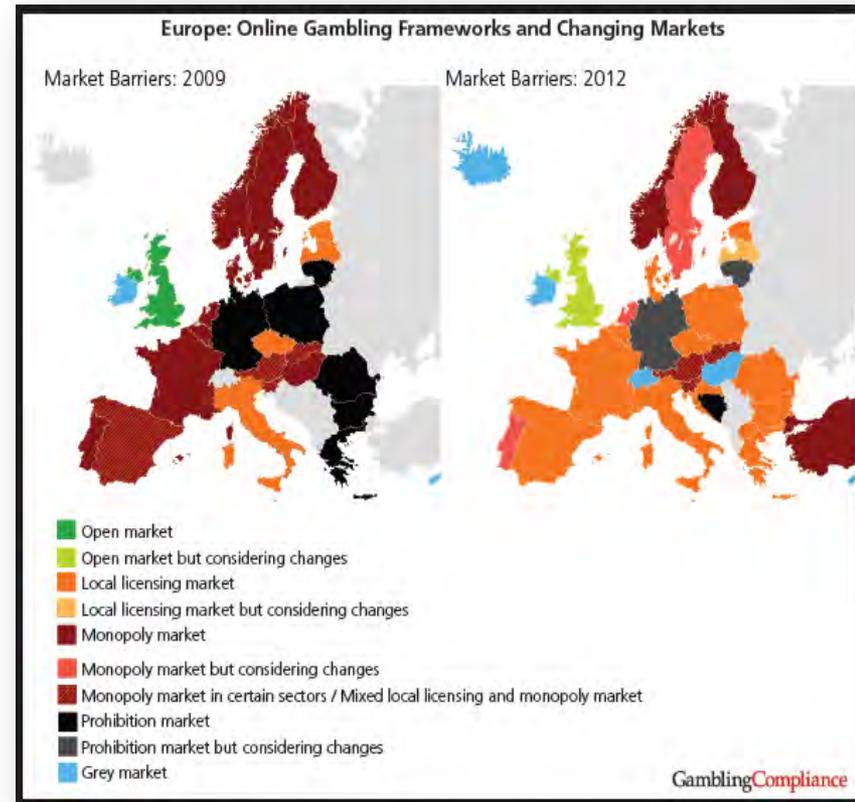
ISSUES OF PRINCIPLE (2/2)

- Should it be legalised, it is important to ensure that legislation on it will –
 - Provide for a practical and effective legislative and regulatory dispensation
 - Avoid the potential hazards of regulation of this sector, particularly in relation to participation in remote gambling by offshore players and minors
 - Put in place appropriate compensatory measures to ensure that the laws of other countries are respected
 - Preserve the image of South Africa as a responsible global citizen
- The Bill fails to achieve these objectives in a number of significant respects.

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CURRENT INTERNATIONAL TRENDS

- Demand for remote gambling is growing with increased technological advancements
- Increasing levels of regulation globally
- Protection of domestic revenues by governments throughout the world
- Point-of-consumption approach
- Extra-territoriality of laws inevitable
- Increasingly countries are ring-fencing their incomes and prohibiting their citizens from engaging in offshore remote gambling
- These laws must be respected and taken into account in remote gambling legislation
- Consequences of non-compliance with international standards



COMMENTS ON REMOTE GAMBLING BILL

LACK OF COMPLIANCE WITH INTERNATIONAL STANDARDS

- Absence of proper/meaningful controls to prevent prohibited persons from engaging in RG with SA operators
- Clause 16(3) – no assurances that player is participating legally prior to registration & reckless to rely on contentions made by the player regarding his/her “primary residence” and the laws of his/her country
- Onus should be on operator to verify the following prior to registration:
 - The identity of the patron
 - Age verification
 - Verification that the patron is a citizen of a “permitted foreign jurisdiction”
 - That the patron is acting as a principal and not restricted in his/her legal capacity
 - That the provisions of all legislation pertaining to financial intelligence have been complied with.
- Clause 45(3)(b) – require licence holder to “*request any person suspected of being a minor to produce identification and proof of age*”. This should be verified as a matter of course prior to the registration of players.

COMMENTS ON REMOTE GAMBLING BILL

NORMS AND STANDARDS

- Bill requires the NGB to develop a swathe of norms and standards for the industry in general, player accounts, websites and technical specifications/equipment
- Abdication of legislative power
- NGB has no regulatory experience
- Development of technical norms is a highly specialised task – existing approach regarding national standards, testing & certification should apply
- No mention of internal control standards – blueprint for operational practices submitted by licence holder to ensure compliance with all applicable legislative and regulatory requirements and approved by regulator
- Each licence holder develops its own ICS – different controls and procedures
- Single, uniform standards therefore undesirable in the context of operational procedures and controls

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ROLES OF NGB AND PLA'S

- Regulatory framework is not cohesive – policy is fractured
- Body which licenses should also regulate – PLA's act as go-betweens

FUNCTION PERFORMED AS PER BILL	FUNTIONARY	CLAUSE NO
Accept & investigate application and make recommendations to NGB re award of licence and conditions to be imposed	PLA	10(a) – (d) & 12
Adjudication & award of licence	NGB	13(2)(a) – (b) & 16
Day-to-day regulation	PLA	10(e) – (h) & 11
Suspension, cancellation & transfer of licence	NGB	30, 31 & 33
Enquiries into contraventions & action thereon	PLA & NGB	10(f) & 13(2)(e)

- Artificial distance between licence holder and ultimate regulator
- Second-hand decision-making
- Duplication of effort and resources

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OTHER ISSUES

- Definition of “remote” gambling too wide – should be governed by the nature of the event on which wagering takes place
- “Equal chance gambling” and “person-to-person gambling” of little relevance
- Parallel powers to enact regulations (Minister nationally & MECs provincially) will lead to disparate standards, as is the case with land-based operations
- Forum shopping and disproportionate concentration of operators
- Differences in costs, fees and tax rates will exacerbate the problem
- Impractical provisions (Clause 45(8))
- Clause 21(4) inconsistent with POPI Act
- Clause 30(2)- summary suspension of licences – constitutional issues

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OBSERVATIONS ON POLICY ISSUES IDENTIFIED

ISSUE	OBSERVATION
Demand	Well established and growing. As to harm, the nature of the market and the product offering should be considered (i.e. patrons' level of access to internet, designated banking accounts, no retail footprint).
Proliferation	Proliferation is only really a meaningful consideration in the context of land-based operations.
Geographic location	Despite the borderless nature of the internet, most RG legislation now uses a point-of-consumption approach. Potential client bases are generally effectively restricted to the jurisdiction within which the operator is licensed.
Economic viability	Capital investment significantly less than land-based operations and borne by licence holders. No evidence to suggest that operations will not be viable – also additional income for the fiscus.
Socio-economic impact	See “Problem Gambling” below. Extremely effective mitigatory measures are available to problem gamblers in the online environment, and can be built into RG software.
Enforcement	Minimal enforcement problems are expected if the industry is effectively regulated. Far greater enforcement issues arise where RG is prohibited.
Revenue	Revenue from RG operations will remain in the country, as opposed to being diverted offshore.
Problem Gambling	Problem gamblers will typically engage in RG with offshore operators even if it is prohibited. The licensing and regulation of RG will however provide for effective mitigation measures and the opportunity to seek help in the SA context.



Thank you for your attention.

Questions?

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