From: [redacted]@skycity.co.nz>
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Attachments: AML_CFT Statutory Review _ SkyCity Submission.pdf

Attached please find a submission from SkyCity Casino Management Limited in response to the Consultation Document

Kind Regards

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3 December 2021

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Review of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009

1. SkyCity Casino Management Limited (**SCML**) welcomes the opportunity to respond to the Ministry of Justice's '*Review of the AML/CFT Act Consultation Document - October 2021*' (**Consultation Document**) which identifies a comprehensive range of issues to inform a review of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**Act**) and provides an opportunity for private and public sector agencies to review the AML/CFT regime after eight years of operation to determine whether it is effectively achieving its purpose in the most cost-effective way.

2. SCML is grateful to have been given the opportunity to contribute to the review process with SkyCity's AML Compliance and Intelligence Manager having been invited to participate in the Industry Advisory Group that has provided guidance and support to the review.

3. SCML is licensed to operate casino venues in Auckland, Hamilton and Queenstown. As a licensed casino operator, SCML is a reporting entity pursuant to section 5 of the Act and has been operating in accordance with an AML/CFT Programme since the Act commenced in 2013.

4. There are inevitable complexities in the application of the current AML/CFT regime given the diverse range of reporting entities and operating models the Act applies to. As a hospitality business with a significant number of casual customers that operate outside a business relationship, SCML's experience of the AML/CFT regime is unlike many other reporting entities. However, broadly speaking, SCML has adapted to the AML/CFT regime by maintaining an ongoing and constructive dialogue with its AML Supervisor (the Department of Internal Affairs) and the Police Financial Intelligence Unit. SCML continues to evolve its thinking and practices to discharge its obligations as effectively and efficiently as possible.

5. SCML understands that many of the issues identified in the Consultation Document relate to the findings of the 2021 Financial Action Task Force (**FATF**) Mutual Evaluation Report where New Zealand rated only partly compliant with some of FATF's recommended standards.

6. SCML is broadly supportive of proposals designed to ensure that the AML/CFT regime is fit for purpose and meets New Zealand's international obligations and, in particular, create greater clarity to ensure consistent outcomes – noting that those ideals need to be appropriately balanced to ensure a cost-efficient regime that aligns to New Zealand's wider laws and circumstances.

7. SCML's comments in response to a selection of issues highlighted in the Consultation Document are set out below.

AML/CFT Exemptions

8. SCML is of the view that an exemption regime is necessary to ensure a cost-effective regime that does not unnecessarily impose obligations on reporting entities whose products and services present a low ML/TF risk.

9. Casino loyalty schemes are currently subject to a class exemption from certain provisions of the AML/CFT regime based on the low ML/TF risk those schemes present and the disproportionate compliance burden casinos would otherwise be subject to in the absence of an exemption, which remains the case today.

10. To the extent that the exemption regime may be more efficient if it was administered by an operational decision maker (such as the Secretary for Justice) rather than the Minister of Justice, SCML would be supportive of such a change.

AML/CFT Rules

11. SCML notes that New Zealand's AML/CFT regime does not currently provide for Rules to be issued as a form of secondary legislation which could be used to provide further clarity on reporting entities' obligations. While some jurisdictions have made use of AML/CFT Rules for this purpose, SCML does not believe that the development of Rules would offer any material advantages to New Zealand's existing regulatory instruments (which include supervisory guidelines and Codes of Practice).

12. Rules in themselves (which SCML expects would be tailored to different sector groups) would not address the underlying challenges of achieving greater consistency or regulatory outcomes and, consequently, SCML does not believe any further prescription is necessary.

Licensing Registration and Fees

13. SCML notes that most, but not all, businesses that have AML/CFT obligations have additional registration and/or licensing requirements imposed under other legislative regimes – such as in the case of SCML. SCML holds a casino operator's licence that was granted pursuant to the Gambling Act 2003 following a comprehensive fit and proper suitability assessment.

14. The Consultation Document highlights that there are a number of large gaps in terms of which businesses are required to register meaning that Supervisors are unable to easily identify which businesses they supervise.

15. While there may be merit in developing a registration/licensing system that is specific to the AML/CFT regime for specific high risk sectors that are not otherwise subject to registration or existing fit and proper tests to undertake their businesses, the cost of any such system should be borne by those who would require registration/licensing. In SCML's view, any initiatives in this area should be targeted at those sectors which are not currently subject to fit and proper tests rather than being extended to all reporting entities thereby creating unnecessary duplication and compliance costs.

16. More generally, the Consultation Document questions whether there should be a levy to pay for some or all of the operating costs of the AML/CFT regime. Reporting entities are already subject to significant compliance costs to meet their AML/CFT obligations and play a critical role in assisting public agencies to combat financial crime. In these circumstances, SCML believes that AML/CFT operating costs should properly be met out of the consolidated fund rather than directly by those entities who actively contribute to the Act's objectives.

Agency Supervisory Model

17. The objectives of supervision are to ensure that businesses understand their obligations, maintain appropriate AML/CFT internal controls, and that non-compliant businesses are subject to effective, proportionate and dissuasive sanctions.

18. SCML understands that different supervisory models were considered when developing the Act and that there is no "right" model - as evidenced by the variety of regulatory models adopted by other jurisdictions. The challenges in ensuring a consistent approach to regulation has long been recognised as a potential flaw associated with the use of a multi-supervisory model although SCML notes that there are mechanisms in place to mitigate that risk.

19. While there may be some criticism of the existing supervisory model, SCML understands that the existing supervisory model did not attract any adverse findings in the FATF Report.

20. SCML does not believe that the past eight years have highlighted any material deficiencies with the current supervisory model to justify revisiting existing arrangements and establishing alternative mechanisms for supervising reporting entities. SCML suggests that a more cost-efficient and effective practice would be to continue to promote mechanisms to ensure as much consistency as possible in terms of the interpretation and application of the law rather than moving to a new supervisory model.

Independent Audits

21. A reporting entity must audit its risk assessment and AML/CFT Programme at least every three years to ensure those documents are up to date and identify any deficiencies in their effectiveness. These audits must be carried out by an appropriately qualified and independent person appointed by the reporting entity.

22. The Consultation Document notes that there have been ongoing issues with the quality of audits notwithstanding the publication of supervisory guidelines to address such issues. SCML believes that this is an area that requires particular attention given independent audits represent a critical part of the AML/CFT governance framework and ensure the overall wellbeing of New Zealand's AML/CFT regime.

23. In SCML's view, there is merit in developing explicit regulatory standards that auditors and audits would need to satisfy to provide reporting entities with more comfort and protection in relying on independent audit findings to drive the ongoing development of their AML/CFT Programmes.

Offences and Penalties

24. The Act currently provides for a range of penalties for non-compliance, including formal warnings and applications to the Court for civil penalties.

25. SCML acknowledges that there may be merit in adopting intermediary enforcement options to respond to moderately serious incidents of non-compliance. Allowing Supervisors to issue infringement notices and fines for straightforward misconduct that does not involve serious harm and may not warrant a court imposed pecuniary penalty would allow monetary penalties to be imposed proportionate to the breach where a warning may not be considered sufficient redress.

26. In terms of the pecuniary penalties available for serious AML/CFT non-compliance, SCML considers them to be significant and clearly developed within a New Zealand context thereby striking the necessary balance that must be applied to the country's judicial penalty system more generally. International comparisons provide more limited relevance in this regard. In terms of whether the existing top-end penalties

would be dissuasive for large businesses, SCML notes that the reputational damage associated with Court imposed penalties represents a significant penalty in its own right. SCML believes that the current top-end penalties continue to be appropriate and sufficiently dissuasive and that no change in this area is required.

27. SCML does not believe that broadening the scope of civil sanctions to include directors (who are subject to fiduciary duties) and senior managers (who are likely to be subject to internal accountabilities) would make any material difference to compliance outcomes and sees no justification to move in this direction.

Customer Due Diligence

28. SCML acknowledges the importance of customer due diligence (**CDD**) in underpinning an effective AML/CFT regime. However, the need to develop an understanding of why a customer is forming a relationship in a recreational entertainment business like a casino does present practical challenges as a basis for identifying suspicious or unusual activity.

Enhanced Customer Due Diligence – Complex, Unusually Large Transactions

29. SCML does not believe that the trigger for undertaking enhanced due diligence (**EDD**) in respect of complex, unusually large transactions is sufficiently clear. As section 22(c) of the Act is currently worded, it is open to interpretation whether a transaction must be both complex *and* unusually large (emphasis added) before it requires a reporting entity to conduct EDD, or whether a transaction that is either complex *or* unusually large requires EDD (emphasis added). SCML notes that the EDD Guidance produced by the sector Supervisors appears to favour (but does not explicitly state) the position that EDD is required for either an unusually large or a complex transaction. The review presents an opportunity to clarify the statutory intent of section 22(c) of the Act.

30. Further, it is not clear whether section 22(c) of the Act is intended to enable each reporting entity to determine what is complex and/or unusually large based on an understanding of its business or whether that interpretation is subject to external assessment and, if so, on what basis. For instance, section 22(c) of the Act does not stipulate whether complex and/or unusually large transactions are relative to the individual customer and their history with the reporting entity, or to the reporting entity's total customer base. Many reporting entities will have diverse customer bases with equally diverse transaction patterns and identifying what is complex and/or unusually large transaction activity will be determined by the methodology adopted. SCML believes that greater clarity is needed in this area to ensure reporting entities give effect to these provisions in the manner intended and are not exposed to the potential for different views to emerge in the course of a supervisory audit or ultimately a Court where a civil penalty may be sought.

31. A further challenge relating to this area involves the timing of EDD. Undertaking EDD in real-time is particularly challenging for front-line staff in circumstances where customers rarely carry the documentation necessary to satisfy such a request on the spot. Often these enquiries and verification processes may take place over many days if not weeks. As a consequence, SCML has elected to refuse transactions in these circumstances.

32. The refusal of transactions in real-time is more of a preventative measure which the Act's purposes do not currently address. In fact, the Consultation Paper questions whether businesses should be expected to actively stop transactions going through when there is a suspicion of ML/TF rather than just reporting those transactions. That suggests that there is no current requirement to stop transactions or at best an inconsistent approach has been adopted by supervisory agencies in this area.

33. To the extent that some inconsistency has arisen in the interpretation of the statutory provisions in this area, that should be addressed as part of this review.

Conducting CDD in All Suspicious Circumstances

34. SCML understands that the absence of a requirement for reporting entities to conduct CDD if suspicious transactions occur outside of a business relationship and the amounts involved do not meet the threshold for an occasional transaction is not in line with FATF standards. However, those standards are subject to an exception relating to the risk of tipping off.

35. To some extent, CDD and tipping off issues need to be looked at in tandem, but there are also wider more pragmatic matters to consider here. For instance, suspicious activity reports (**SARs**) may have their genesis in front-line observations or back of house transaction monitoring processes. Many customers who do not have a business relationship with the reporting entity or who transact below the occasional transaction threshold will be individuals who a reporting entity will have no knowledge of. Unless the suspicious activity is identified in real-time there would be no way for the reporting entity to contact the customer to gather the information required - an obligation to do so could not be satisfied in those circumstances.

Source of Wealth/Source of Funds

36. SCML acknowledges that the wording of the Act leaves it open to reporting entities whether to pursue source of funds or source of wealth information in particular circumstances and this requires the application of some judgement.

37. However, SCML believes that this issue is adequately addressed by way of supervisory guidance and a more prescriptive approach in this area is likely to be very difficult

without offering any added value. Notwithstanding the existing challenges, SCML does not believe changes are required in this area.

Identity Verification Code of Practice

38. The Identity Verification Code of Practice (**IVCOP**) issued by AML/CFT Supervisors to provide suggested best practice (and a safe harbour) for businesses undertaking CDD has provided reporting entities with a valuable reference in the design of their verification processes. SCML supports any initiatives to ensure this document is as comprehensive as possible, including an expansion to capture high risk customer verification processes.

39. In SCML's view, some aspects of the IVCOP would benefit from revision. For example, a reporting entity may currently accept a New Zealand Driver's Licence from a customer accompanied by a bank statement or credit card, but an Australian Driver's Licence must be accompanied by a birth or citizenship certificate. There appears to be no obvious justification for the apparent risk posed by a Australian Driver's Licence that requires the holder to verify their identity with a birth or citizenship certificate rather than a bank statement or credit card. Given the number of Australians who frequent New Zealand as tourists (and who undertake occasional transactions or establish business relationships with reporting entities), this requirement appears to be an unnecessary compliance burden and contrary to the general desire to simplify commerce between New Zealand and Australia.

40. In relation to item 10(c) of the IVCOP, SCML favours a practical approach whereby if a person connected to the reporting entity requiring the certification, such as a staff member or contractor, is legally permitted to certify documents in that country then they should not be prohibited from certifying documents for customers of the reporting entity they are associated with.

41. SCML views the requirement that a passport contain the signature of the customer to be an excessively onerous requirement on the basis that the signature is often on separate page of the passport to the primary biographical data page. This presents logistical challenges for reporting entities who must scan or otherwise record two pages of passport data to demonstrate to Supervisors/auditors that the passport contained a signature. Given the increasing use of biometric passports, whereby holders enter New Zealand via SmartGate/eGate technology that does not involve the physical inspection of passports by border officials, the requirement that reporting entities maintain records of passport signatures appears somewhat redundant.

Verifying the Address of Customers

42. The requirement to verify a customer's address can present challenges and SCML questions the value such a process lends to the investigation of ML/TF offences

relative to the compliance burden it places on reporting entities. SCML has assisted law enforcement agencies with numerous investigations since the Act took effect in 2013 and few, if any, of those investigations involved law enforcement agencies seeking from SCML a verified address for the relevant persons. Beyond the questionable value it offers the investigation of ML/TF offences, the increasing mobility of people points to the verification of address as being valid simply at a "point in time". While that risk can be mitigated to some extent through periodic ongoing customer due diligence, a reporting entity would still be offering products and services to a customer relying on the last address provided and verified up until the further due diligence is applied.

43. SCML notes that most countries do not require address information to be verified and the current requirement goes beyond the FATF standards. SCML favours a change to the existing requirement to enable reporting entities to apply a risk-based approach to address verification – such that address verification is applicable only to elevated risk customers or those customers using high-risk products and services and removed for low-risk customers.

Avoiding Tipping off

44. The FATF standards permit reporting entities to decline to conduct CDD/EDD where a suspicion is formed but there is a risk that the process will tip the customer off. However, the Act does not provide reporting entities with the same discretion.

45. The rationale for the original decision to adopt an alternative approach in the Act to the FATF standards is not clear and, in the absence of compelling reasons to continue with the current approach, SCML favours the availability of a discretion for reporting entities to decline to conduct CDD/EDD where there is an unacceptable risk of tipping off a customer that they will be (or have been) subject to a SAR. To the extent that a reporting entity was to misuse this discretion, the matter could be dealt with via an appropriate supervisory response.

46. SCML acknowledges that conducting CDD/EDD will not always tip off a customer that they will be (or have been) be subject to a SAR. For example, a regular customer may not be unduly concerned at a request from a reporting entity for source of funds/wealth information, however an individual who has conducted a low value transaction or a single occasional transaction may anticipate the reporting entity's intentions if they are asked to undertake CDD/EDD (as the case may be).

Politically Exposed Persons

47. The current settings for politically exposed persons (**PEPs**) focus on addressing the risks of foreign PEPs rather than domestic PEPs, which reflects New Zealand's reputation as a country with lower levels of corruption across both central and local government.

48. Whilst SCML has seen no evidence or indication which might justify a need to extend the current PEP provisions to include domestic-based PEPs, the current PEP screening arrangements and risk mitigation processes could be extended to domestic PEPs if need be. However, given the AML/CFT regime is founded on a risk-based approach, the inclusion of domestic based PEPs for now would seem to be an unnecessary overreach.

49. In terms of the time limitation applicable to the PEP definition, SCML acknowledges that this may not always reflect the informal influence a former PEP may maintain even when they no longer hold a public function. That does not suggest that the time limitation needs to be removed – rather reporting entities should simply factor that into ongoing risk management practices associated with ex PEP customers.

50. Finally, SCML is of the view that the use of an "as soon as practicable" timeframe for determining whether a customer is a PEP is commensurate with the risk and the relatively few PEPs that the screening process has identified in the casino sector. It would be challenging and costly to revise the current screening system to undertake these checks prior to the conduct of an occasional transaction or establishment of a business relationship.

Further Information

51. SCML would be happy to provide further detail in relation to any of the matters discussed above.

52. Thank you for the opportunity to comment.

Yours sincerely

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Group General Manager, Regulatory Affairs and AML