diligence work being more manageable. A key consideration is to ensure the whole process is well defined and has ownership. Good practice here would be to assign ownership to the business unit responsible for the working relationship with the TPI with guidance and oversight from Compliance or Legal.

Risk scoring process

The risk scoring process should (apart from being aligned with the organisation’s risk appetite and ABC policy) consider a broad spectrum of risk characteristics based upon information collated from the business unit responsible for the relationship, the TPI itself and any internal and external watchlists.

The organisation can use a risk-ranking approach to assign third parties to categories (e.g. “high”, “medium” and “low”) using any number of preliminary factors, such as the geographic location of the third party’s business, the industry or sector they operate in, and whether the work involved will involve contact with government officials. Similarly, the nature of the proposed transaction, its size, or the related potential profit are also crucial elements that can all help to assess the level of risk and corresponding verification needs.

Everything must of course be risk-based, allowing the organisation to use its time and budget wisely to address its most salient risks. As with most other anti-corruption measures, due diligence must be proportionate to the risks posed by the third party, its location or the type of transaction/business contemplated.

Evaluation and review

In terms of approach, due diligence efforts should focus on two key elements: information regarding the TPI and any potential transactions. Ultimately, the purpose of any due diligence efforts is to allow the organisation to make a judgement call about the quality, qualifications and reputation of its TPI.

Transaction-related due diligence is focused on the type of service being provided, the qualifications and business justification for the TPI, the price evaluation and payment structure, the use of any fourth parties, and how effective implementation of the TPI contract is to be monitored.

Since due diligence must be risk-based, the sources of information about the TPI will vary according to its risk classification. Naturally, there is no “one size fits all” approach to due diligence but, generally speaking, a low-risk TPI will require less due diligence effort. For this type of TPI, a review of its proposed transaction, its size, or the related potential profit are the principal elements that can all help to assess the level of risk and corresponding verification needs.

High-risk TPs should also be required to complete a questionnaire and sign a certification form. Any self-certifications will have to, as expected, be validated by Compliance to a degree suitable and proportionate to the risk level of that TPI.

In addition to the steps noted above, the organisation may also consider a more detailed questionnaire, including follow-up on whether the TPI has been involved in any corruption-related investigations, or has been subject to sanctions or debarment and whether it appears on any watch lists.

Higher risk TPs will require a more extensive process, including on-site inspections of the TPI and a review of the third party’s code of conduct and other business processes, and interviews of employees and past business partners. At this point, the organisation may want to consider hiring an external consultant to manage the process. External consultants are often asked to prepare integrity reports or investigate specific issues. Consulates, Embassies, chambers of commerce, business associations and government departments are sometimes consulted.

When due diligence concerns are identified, it should be reviewed by Compliance or Legal. Most reports invariably raise some issues that will need to be addressed in some form prior to the approval of the TPI. Should these “red flags” (a fact or circumstance that serves as a warning signal that the TPI may act corruptly or other concerns arise) be confirmed, it is critical that further investigations are undertaken. Red flags do not necessarily end the possibility of a business relationship, but may require additional investigation and resolution.

In some cases, a decision to do business with the TPI can be justified and the risks mitigated through controls such as frequent monitoring and auditing, anti-corruption training, appropriate certifications, and so forth. In other cases, the red flags may be so serious the organisation may decide to avoid the relationship altogether. Regardless, the decision whether to proceed or avoid a business relationship should be thoroughly documented. Keeping records of the work carried out through the due diligence process is evidence of the organisation’s “adequate procedures” should anything go wrong. Moreover, records of due diligence that led to the rejection of the third party also help to highlight and demonstrate the effectiveness of the due diligence process.

Ongoing monitoring

Of course, pre-contract TPI due diligence is not the end of the line in terms of ensuring compliance by business partners. It must be complemented by ongoing updating, monitoring and formal auditing as part of a larger risk management process.

For high-risk TPs, it is important to ensure that someone senior within the organisation actively manages the relationship. This may include periodic meetings to ensure that the TPI is kept informed of company policy and to review the work or services undertaken. The TPI should be trained (on a risk-based basis) on the organisation’s corruption and other relevant policies, both upon appointment and periodically thereafter.

Due diligence on the TPI should be repeated periodically so that the organisation can be confident that it is aware of any significant changes which could give rise to compliance concerns. The organisation should also engage either internal or external audit to review its TPI due diligence procedures, examining the process for selecting and appointing TPIs, contracts, and payments to TPIs, as well as the ongoing management, oversight, and training of TPIs.

As most corruption enforcement action has centred on bribes made by third parties, the organisation’s ability to readily identify which of its TPIs represent heightened risk is critically important. This is certainly an area of focus for regulators and one that companies should be paying greater attention to as part of their overall anti-corruption compliance programmes.

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Extension

In the coming weeks the EU will adopt the Fourth Money Laundering Directive (4MLD). Readers may be familiar with its provisions, and the impact on domestically exposed persons (PEPs); beneficial ownership, simplified due diligence and tax crime. They may not be aware, however, of one aspect that will profoundly impact the gambling industry. It moves into the regulated sector in its entirety, joining casinos that have been regulated in this way since 2007.

I should add that EU legislators have included a potential exemption from this requirement where member states can demonstrate “proven low risk”. It is possible, then, that some elements of the industry will avoid regulation if they can show a very limited money laundering footprint in their business together with effective controls to ensure it stays that way. The fact remains, however, that two years from now, large swathes of bookmakers and other gambling operators will most likely move to the regulated sector with all this entails.

The state of play

Where, then, is the industry in preparation for this change?

Casinos have been regulated for some years and have had the opportunity to take the hill and control in place. This isn’t to say that they are perfect. The Gambling Commission (“the Commission”) continues to see weaknesses in policy, training and compliance within casino operations. At times an over-confidence in systems has been rudely awakened. We hold those operators to account when we uncover failings, and continue to work with the entire sector to drive up standards.

It isn’t just the casinos that must take steps to prevent money laundering. The Gambling Act 2005 requires all gambling operators to keep crime out – including money laundering. The Commission has published advice that sets out the kind of outcomes we expect operators to strive for, and routinely tests operator compliance against the standards this describes. The picture we see is mixed, with evidence of good practice, as well as many stubborn challenges. It is clear that more needs to be done before the wider industry is ready to join casinos in the regulated sector.

That industry contains many different parts including bingo, lotteries, arcades as well as casinos and betting. In this article I confine my attention to the betting sector, reflecting the Commission’s current understanding of the money laundering threat as particularly focused in this area. It isn’t difficult to find reasons for the level of money laundering risk within betting. Large operators will need to invest the required time, funds and energy to understand and apply the provisions. For some this will entail significant cultural change, demanding a shift in attitudes and priorities in order to become compliant with the demands of the ML Regulations.

Turning the corner

Can we expect to see other occasions when individuals known to have been recently released from prison and smoking of cannabis are able to bet many thousands of pounds without challenge? I would be surprised and disappointed if this were to happen again. The industry is turning a corner in responding to the money laundering threat but there is still plenty to be done. The more extreme cases may not be repeated, but the challenge to prise money laundering from all parts of the gambling industry is significant. It needs sustained investment, effort and focus by operators, their suppliers and trade associations. This is already a legal, ethical and regulatory imperative. The adoption of the 4MLD will throw a spotlight on the work of the industry to meet these requirements, raising the bar still higher as it at the same time sets out a framework to support, encouraging dialogue and sharing best practice and learning from our casework and compliance activity.

The industry is turning a corner in responding to the money laundering threat but there is still plenty to be done. The industry is turning a corner in responding to the money laundering threat but there is still plenty to be done.

Cultural change

The gambling industry and the betting sector in particular faces significant challenges in meeting the current obligation to keep crime out of its business. As we look ahead to the adoption and implementation of the 4MLD, this challenge is brought into sharper focus. Large operators will need to invest the required time, funds and energy to understand and apply the provisions. For some this will entail significant cultural change, demanding a shift in attitudes and priorities in order to become compliant with the demands of the ML Regulations.

Trade bodies like the Association of British Bookmakers have indicated an interest in developing training to support smaller operators, helping them to meet new AML obligations given the scale of the business. The Commission has published advice that sets out the kind of outcomes we expect operators to strive for, and routinely tests operator compliance against the standards this describes. The picture we see is mixed, with evidence of good practice, as well as many stubborn challenges. It is clear that more needs to be done before the wider industry is ready to join casinos in the regulated sector.

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Tim Tyler is Senior Manager, AML Lead at the Gambling Commission

A changing space

David Symes describes the changing shape of the Gulf region from a financial services and regulatory perspective

Before the millennium the financial services sector in the Gulf was very localised. Bahrain was the only international financial centre of any note, focused on merchant banking and insurance, although the sovereign wealth funds based on the profits from the oil sector were powerful players outside the region, notably the Kuwait Investment Office (although the Abu Dhabi Investment Authority was always bigger). At that time Dubai (alongside Abu Dhabi) one of the two largest of the seven Emirates that make up the sovereign nation of the UAE) foresaw that the oil reserves were depleting faster than its larger neighbour, and not only began developing its transport infrastructure and tourism, but also set up the Dubai International Financial Centre (DIFC) as an “offshore” special free zone (i.e. tax free with its own laws and regulation; unlike the Caribbean, Channel Islands, or Isle of Man; “offshore” doesn’t have physical connections, only fiscal). For years the DIFC was based in the famous Gate building. However, there was initially very little room for member firms to be based there so they were spread around the Emirate, although they are now all within one large office complex.

This normal banks in Abu Dhabi and Dubai were regulated by the Central Bank of the UAE, whereas investment and security firms by the Financial Services Authority (CFSA). The UAE also had its own laws and regulation; unlike the Caribbean, Channel Islands, or Isle of Man, “offshore” doesn’t have physical connections, only fiscal. For years the DIFC was based in the famous Gate building. However, there was initially very little room for member firms to be based there so they were spread around the Emirate, although they are now all within one large office complex.