Amendments to Act No. 186/2016 Coll., On Gambling, and to Act No. 253/2008 Coll., On Certain Measures against the Legalization of Proceeds from Crime and Terrorist Financing - as of 14 August 2020

1. Self-Restricting Measures

The provisions in question: Section 14, Section 15 of the GA, Transitional provisions

Proposed change: Only a formal clarification (word "lottery" replaced by word "gambling games") of a general provision stipulating the obligation to set self-restricting measures.

A new definition of net loss is introduced, which is set out:

- for the live land-based game with respect to its specific operation as the difference between a player's money used to purchase value tokens (IN) and money paid to him against the value tokens (OUT) submitted.
- for all other types of gambling games, this is the difference between the total bet and the total winnings of the player.

and this is for a period of one day or one calendar month within the type of gambling for which a self-restrictive measure is set.

The current supplement stating that only those bets in which a decision of a win or lose is made within a period of one day or one calendar month are included in the net loss is cancelled without substitution.

Rationale of the Ministry of Finance from the Explanatory Memorandum: The above step was taken mainly with the intention of simplifying the calculation of net loss for a gambler, as net loss is one of the basic indicators within self-restricting measures and therefore the self-regulation of gambling behaviour. Due to the differences in the operation of the live land-based game, in which it is difficult to monitor the movement of individual game indicators (such as the amount of deposits or bets) with respect to an individual gambler, the net loss for this type of gambling game was set differently following the exchange of chips at the cash desk of a casino or gaming table. As used, term "*funds*" includes both cash and non-cash transactions.

Due to the fact that the implementation of such a newly calculated net loss into the operator's gaming systems takes some time, a 10-month period is set for this implementation, new certification and the related application issuance for a change of licence.

A completely new paragraph five is added, which stipulates an operator's obligation to set players with one SRMs for one type of gambling game, and not for individual games of a specific type of gambling game. So, one SRMs = one type of gambling game.

Example: It is not possible for a player to set one SRMs for the land-based technical game and another SRMs for the Internet technical game. This is one type of gambling game, so one SRMs must be set in total. However, it is possible to have one SRMs for the Internet technical game, the second SRMs for the Internet fixed-odds betting and the third for the Internet live game. In this case, there are three types of gambling game.

Impacts: The new definition of net loss shall, for gaming systems for all gambling games except live land-based game, mean their modifications and the related new certification and change of the basic licence. **Following a comment of the Institute, the point in question of the Transitional Provisions has been modified to exclude live land-based games from this certification**, which are not even subject to the normal certification.

Setting the restriction that one SRMs are for one type of gambling game and it is not possible to set them for individual games (e.g. Magic Fruit) within the type of gambling game is a reflection of the long-term interpretation of the Ministry of Finance on this issue in legal provisions. It will also be possible by law to have one common SRMs for several types of gambling game.

2. Register of Excluded Persons (REP)

The provisions in question: Section 16 et seq. ZHH and Effect

Proposed change: REP will be extended to include persons who do not fulfil their maintenance obligation to a dependent child, who is therefore awarded an alternative maintenance in accordance with a special act on the alternative maintenance. Such an extension will not take effect until one year after the entry into force of the said act. On the other hand, there are no previously announced persons subjected to execution by seizure in the REP.

Furthermore, the procedure of the Ministry of Finance when registering/deleting persons from the REP or providing data from the REP, when the Ministry issues a statement of their participation in such a register to a player at their request, is specified.

The obligation of the Ministry of Finance to ensure continuous remote access of operators to the REP is also stipulated, that is similarly to the current simultaneous verification of identity and age via SDSL.

Impacts: Verification of all players in the Register will provide the MoF with information on all players of an operator. The fact that the Ministry has been assuring the gambling market for a long time that the REP will operate in the so-called 24/7 regime does not regulate the procedure of operators if the Register does not work. If the failure of the REP does occur, it will be necessary to bridge the missing legal regulation with an interpretation, as is currently the case with the unavailability of the SDSL authentication service.

3. Authorized Persons

The provisions in question: Section 110, Section 110a, Section 110b, Section 111, Section 112a, Section 123a, Section 133 of the GA and the Transitional provision
Proposed change: The MoF's authority to determine the scope of the authorization and the conditions of testing in the decision on authorization is amended.

A new obligation is laid down for Authorized Persons: they will have to inform the MoF, without undue delay, about any changes in the facts, based on which a licence was issued and to submit documents about them within 30 days of the made change. Examples include personnel changes in company bodies, to which the proof of clean record can be related. This obligation does not apply to cases that the MoF is able to find out itself by accessing public registers – e.g. the Commercial Register. The MoF will publish the range of such information on its website.

The possibility of changing licences, at the request of both the authorized person as well as the Ministry of Finance, is newly introduced. The Ministry may only initiate the change of a licence for two reasons: the change of other data specified in a licence (e.g. the name or the registered office of the company) and, in justified cases, the change or the supplement of the conditions of proper performance of the assessment. The next two paragraphs state the conditions for such a change - the changed licence will only be issued for the duration of the original licence and the change can only be made if the conditions for its issuing continue to be met.

In addition, the reason for the cancellation of licences by the MoF is supplemented: it is the violation of terms stated in a licence.

The requirements for the performance of expert assessment and certification for Authorized Persons are newly stipulated and include the performance of expert assessment and certification with professional care and in accordance with the authorization, the issuance of output documents in accordance with the implementing decree and the provision of the documents to state administration bodies. The change of these obligations for Authorized Persons is then followed by possible sanctions for non-compliance.

Completely newly introduced are misdemeanours of Authorized Persons, for which it is possible to impose a fine of up to CZK 1 million. The Ministry of Finance is competent to discuss them. This is the violation of the obligation to inform about the changed facts and the violation of the terms and conditions set out in licences or of other obligations under the expert assessment according to the law.

The transitional provision, in connection with the need for a new certification of Section 15 par. 4 of the GA (the new definition of net loss), allows an Authorized Person to certify the net loss in the "old" way within max. 3 months of the effective date of this amendment.

The MoF's authorization to issue the decree for requirements for the necessities of output documents as well as the newly issued Report on Changes Assessment is specified.

Impacts: the MoF, but also an Authorized Person, get authority to change licences. The MoF then also gets the authority to initiate administrative proceedings on the cancellation of licences even due to violations of the terms of the licences.

4. Operator's Procedure in Case of Technical Changes to The Gaming System

The provisions in question: ~~Section 112a to Section 112c~~, Section 123 of the GA

Proposed change: This is a completely redesigned procedure for an operator and an Authorized Person in cases of changes to the gambling software or to the whole gaming system.

There is an obligation to keep a record of all corrections and other changes to the gambling software or to the whole gaming system, through which a gambling game is operated. A similar obligation is currently imposed in the basic licence - to keep the book of corrections. The minimum requirements for such record, its form (paper/electronic), the method of recording individual records and the period of their retention are laid down. Newly, only the person responsible for carrying out the correction must be listed in the record of correction, instead of more specific term "service technician". This record must be provided by an operator to an Authorized Person, who will use it to prepare the Report on Changes Assessment.

There is an authority laid down for an operator to take immediate action in the gaming system in order to correct an error when complying with the conditions in question, and to make a change to the system that will not be certified in advance. **Based on the IFGR's comment, the Ministry of Finance now allows such an action to be notified retrospectively. Also, according to the comment of the Institute, the deadline for submitting a new expert assessment and an application for a change of the basic licence was extended from 2 to 3 months.** The Ministry also accepted another of **the IFGR's comments**. **The statement of the Authorized Person must be issued on the immediate action**, and it shall be **sufficient for such a statement to be part of the expert assessment.** No additional document is required. The assessment must be attached to the application itself, otherwise no proceedings will be initiated, and the application will be postponed.

The Act also provides for a simpler procedure for cases of making small-scale changes, which, by definition, are such changes not affecting technical parameters set out in the Act or in the Decree on Technical Parameters (e.g. the change of the background colour of the game window). These small changes can be reported together once a month. In case that no such change is made within a period of 12 months, an operator is obliged to report this, too.

For the sake of completeness, we state that major changes (such as adding a new server, adding a new subsystem) must always be certified in advance and cannot be operated until a change to a licence is made.

In addition, the obligation to audit these small changes every 12 months is stipulated, resulting in the Report on Changes Assessment to be issued by an Authorized Person. **The Ministry accepted the IFGR's comment that the 14-day deadline should be set for submitting an application for assessment to an Authorized Person, and the way it was set originally, i.e. that this report would have to be submitted directly to the MoF within this deadline**. The moments, from which the reported 12-month period are counted, are adjusted. It is also stated that, if the Report on Changes Assessment shows that these minor changes are, in summary, a major change or that they are not small-scale changes, an application for a change of the basic licence must be submitted, that is within **3 months, which were proposed by the Institute, instead of the original** 2 months, of the date of the report handover.

The introduction of the new obligations also corresponds to the introduction of new offenses and sanctions ranging from CZK 500,000 to 50 million.

Impacts: Given the current state, the MoF should be, according to the obligation to report any changes to facts, any even smallest change to the gambling software or to the gaming system. **The new regulation provides exceptions to this basic obligation.**

5. New Identification Data

The provisions in question: Section 130, point a) of the GA and Transitional Provisions

Proposed change: A player's identification data scope is extended to include the address of permanent residence or other similar residence, as well as the data on the place of birth, which must always be provided. The transitional provisions then stipulate the obligation to obtain the new data from registered players within 60 days of the entry into force of this amendment. If they do not do so, the player's user account will expire after 60 days.

Impacts: The operator must obtain the identification data from players within the set deadline. In the case of new players, this data should be requested directly from the player since the effectiveness of the amendment. The proposed change may cause the game plan to change if the identification data is listed individually in it. Alternatively, recertification of the gaming system may be required by the MoF. Obtaining this data should not be problematic, as operators usually have it at their disposal due to a similar obligation under the AML Act.

Amendments to Act No. 253/2008 Coll., On Certain Measures against the Legalization of Proceeds from Crime and Terrorist Financing

1. Use of Means for Electronic Identification Within the Client Identification

The provision in question: Section 8a of the AML Act

Proposed change: The operator may identify the client by means for the electronic identification that meets the technical specifications, standards as well as procedures set out directly in the applicable EU regulation governing these procedures, in accordance with the Electronic Identification Act.

Impacts: If the assumed conditions are met, it will be possible to identify the client without their physical presence.

2. Enhanced Client Identification and Control

The provision in question: Section 9a of the AML Act

Proposed change: The obligation of enhanced identification both in exhaustively defined situations and in cases specified in the own risk assessment. In the case of a gambling operator – always in the case of a person located in a high-risk third country, in the case of a politically exposed person.

Impacts: The need for more intense and frequent checks of business relationships assessed in this way (more intense checks of documents, checks of the origin of funds, property of the client, etc., needed)

IFGR's opinion: the need to consider an operator's procedures and internal rules for these persons from high-risk countries and politically exposed persons.

3. Cancellation of The Limit of EUR 2,000 For the Obligation of Continuous Control of The Client

The provision in question: Section 8 par. 1, point d) of the AML Act is repealed

Proposed change: The draft of the new act has a fixed setting of limit of the client's check during a business relationship in the case of reaching the amount of EUR 2,000; no other fixed amount for carrying out the client check is stipulated in the act in this way.

Impacts: The need to set the limit of ongoing checks, or otherwise specified criteria through the wording of the SIP, while the opinion of the FAO, as the approval body, on the determination of the methods of ongoing checks will be important.

IFGR's opinion: It is possible to imagine the possibility of increasing the amount of the obligation to carry out a check within specific transactions or setting other criteria for assessing the obligation to check a client within the business relationship.

4. Change of Conditions for the Client Identification "Remotely"

The provision in question: Section 11 of the AML Act and Section 12 of the AML Act

Proposed change: The provision of Section 11 par. 7 of the draft amended wording of the AML Act probably allows the identification of the client without their physical presence for all types of obliged persons (not only for financial institutions), provided that the stated conditions are met.

Impacts: It may be possible to identify all clients based on the conditions below without their physical presence, but it will no longer be possible to take over an identification that was made remotely, only over identifications that were made in the physical presence of the client.

"The obliged person may replace the procedure pursuant to Section 8, par. 1 to 4 by carrying out the identification of a natural person who is a client, or a natural person, if

(a) a client who is

> a natural person sends **copies of the relevant parts of their identity card** and at least **one other supporting document**, from which the data specified in Section 8 par. 2, point a), acquired in the manner specified in Section 10 par. 4, to the obligated person,

(b) **the obliged person records and verifies the data** sent in accordance with point (a),

(c) the obliged person enters a **contract** with the client on this business trade or business relationship, **the content of which shall be recorded in text form**,

(d) the client **proves** in a credible manner **the existence of their payment account** in their name with a credit institution or a foreign credit institution operating in the territory of a Member State of the European Union or a state forming the European Economic Area,

(f) **the first payment** under this contract will be made by the client via the account referred to in point (e),

and

(g) where the payment system so allows, **the payment shall include information on the purpose of identification and the name of the obliged person, together with the name and surname of the natural person who gave the payment order to make the payment** referred to in point (f); if the client is a natural person on whose behalf no other person is acting, and if this is accounted for by the risk assessment according to Section 21a, it is not necessary to send a copy of the supporting document according to letter a) point 1, if the payment is accompanied by this information.".

The takeover of identification according to Section 11 par. 1, 2 and 6 of the AML Act is possible only from the person who identified the client according to Section 8 or 8a of the AML Act, i.e. in the physical presence of the client or using means of electronic identification that meets the requirements of the Act on Electronic Identification.

IFGR's opinion: The legislator decided that the possibility of remote identification can also be used by entities that are not financial institutions within the meaning of the AML Act, but in this context, the legislator also eliminated the possibility of taking over certain remotely carried out client identifications by another obliged person (however, it should not apply, for example, to identifications carried out by banks that meet the requirements of identification according to the Act on Banks, allegedly about 5 million people).