



ICLG

The International Comparative Legal Guide to:

Gambling 2015

1st Edition

A practical cross-border insight into gambling law

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The International Comparative Legal Guide to: Gambling 2015

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Malta

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in Malta?

The Lotteries and Gaming Authority (“LGA”) is the single regulatory body responsible for the licensing, regulation and supervision of entities involved in the business of gaming and gambling activity, in or from Malta.

1.2 Specify all legislation which impacts upon any gambling activity (including skill and social games), and specify in broad terms whether it permits or prohibits gambling.

Maltese gaming legislation is based on a three-tier framework.

The first tier is primarily constituted of the Lotteries and Other Games Act 2001 (Chapter 438 of the Laws of Malta) (“LOGA”). This applies to games of chance, skill games, games of mixed chance and skill, amusement gaming, betting, commercial communication games, broadcasting media games, sweepstakes and bingo.

The second tier comprises a compendium of regulations covering various branches of gambling in more detail: the National Lottery Regulations (Chapter 438.01 of the Laws of Malta); the National Lottery Gaming Devices Regulations (Chapter 438.02 of the Laws of Malta); the Commercial Tombola (Bingo) Regulations (Chapter 438.05 of the Laws of Malta); and the Gaming Devices Regulations (Chapter 438.07 of the Laws of Malta). The Remote Gaming Regulations (Chapter 438.04 of the Laws of Malta) (“RGR”) provide the main legislative framework for online gambling. The Amusement Machines Regulations (Chapter 438.06 of the Laws of Malta) also merit a mention. These regulate the exercise of playing for amusement purposes and not for gambling purposes.

The Gaming Act (Chapter 400 of the Laws of Malta) and the Gaming Act Regulations (Chapter 400.01 of the Laws of Malta) regulate land-based casino gaming in Malta.

The third tier is made up of technical specifications, updated from time to time by the LGA in the form of directives. The Self-Barring Directive (2011) regulates a person’s right to self-bar himself from entering premises whereby licensed gaming is being hosted; the LGA has also issued the Locations for Gaming Parlours Directive (2011), the Gaming Parlours No Objection Certificate (2011), the Registration of Players Directive (2011), the Other Amusement Machines Directive (2011) and the Players’ Liability Reporting Directive (2012).

The Data Protection Act (Chapter 440 of the Laws of Malta), and the Prevention of Money Laundering Act (Chapter 373 of the Laws

of Malta) (“PMLA”), also apply to the gaming sector in certain respects. The Prevention of Money Laundering and Funding of Terrorism Regulations (Chapter 373.01 of the Laws of Malta) (“PMLFTR”) likewise find their applicability.

The Requirements as to Advertisements, Methods of Advertising and Directions Applicable to Gambling Advertisements (Chapter 350.25 of the Laws of Malta) seek to ensure that gambling advertisements are socially responsible. Moreover, in tandem with the LOGA, the Prevention of Corruption (Players) Act (Chapter 263 of the Laws of Malta) applies to certain aspects of gaming in Malta. The Electronic Commerce Act (Chapter 426 of the Laws of Malta) governs the obligations of providers of information society services in connection with games as defined in the LOGA.

Notably, social games are not regulated in Malta. However, plans are in the pipeline for the regulation of digital skill games with a prize. For more information, see section 5 below.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

With regard to remote gaming, the RGR state that no person shall operate or promote or sell or abet remote gaming in or from Malta, unless such person is in possession of a valid licence issued by the LGA, or an equivalent authorisation by the competent authority of an EEA Member State, or an LGA-approved jurisdiction.

An applicant wishing to obtain a remote gaming licence must be a body corporate established in terms of the Companies Act (Chapter 386 of the Laws of Malta). The applicant is required to appoint a Key Official approved by the LGA, who must be a director of the company and resident in Malta. Furthermore and generally, the gaming equipment, all the servers on which the gaming transactions take place, players’ data and any ancillary information stored or processed must be located in Malta.

The land-based sector must also be taken into account:

- Casinos are licensed by the LGA; however the licence is based upon a concession that can only be granted by the Government. The applicant must be a company registered in Malta. The LGA must be satisfied that the relevant voting share capital of the proposed casino licensee is owned by persons of integrity. The directors must also be considered persons of integrity. Moreover, the applicant’s financial means and expertise will be evaluated.
- The Gaming Devices Regulations permit the LGA to license gaming devices within Maltese gaming parlours. There are

no nationality restrictions *vis-à-vis* applicants. The main constraint is that the LGA will not grant any such licence unless it is satisfied that the applicant fulfils the requirements of what is considered to be 'fit and proper'. Additionally, a Key Official is to be appointed, who must be resident of a Member State or the EEA, or any other jurisdiction approved by the LGA.

- Separately, anyone can apply for a licence to operate amusement machines in Malta. Prospective licensees are required to be fit and proper persons.
- A person may only operate commercial bingo games if that person is in possession of a valid licence of the relevant class. There are no nationality restrictions as to who may apply for the licence. The applicant, however, must be a company registered in Malta.
- The National Lottery licence is also generally to be granted to a Maltese registered company, the main object of which being the operation of the National Lottery. The company, all persons holding or owning a qualifying shareholding in the company and all directors, must be fit and proper. The applicant must also have the necessary financial and technical means and expertise. The Minister responsible for the LGA may operate the National Lottery or may decide to concede its operation to another person. Via concession, only one person may be licensed to operate the National Lottery at a time, following a competitive tendering process.

Certain restrictions also apply *vis-à-vis* a category which the LOGA labels, 'Other Games'. This includes commercial communication games, broadcasting media games, and racecourse betting. For instance, a commercial communication games licensee may be an individual or a company, but must have a Maltese address where any documents may be served.

2.2 Who or what entity must apply for a licence and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

There are various classes of remote gaming licences, as posited by the RGR. Class 1, 2 and 3 licences apply to operators. A Class 4 licence is required to host and manage remote gaming operators, excluding the licensee itself, whereby software vendors provide management and hosting facilities on their platform. In essence this is a business-to-business gaming licence. Additionally, a Key Official must be licensed by the LGA. No premises licence is required.

Turning to the land-based sector, any person who aspires to work as a casino employee, manager or junket leader requires a licence from the LGA, wherever such is required by the Gaming Act.

In the amusement machine segment, manufacturers, distributors, suppliers and sellers of amusement machines, and those leasing, transferring or operating an amusement machine all require a licence from the LGA. While managers of amusement arcades or bars will require a Class 2 licence, suppliers, for instance, must apply for a Class 1 licence.

With regard to gaming devices, manufacturers will require a Class 1 licence. Distributors and suppliers will require a Class 2 licence, while a Class 3 licence is required for operators. Moreover, a Class 4 licence is required for a person to be able to operate a central system and connect such system to a gaming device. A licensee must also appoint a Key Official, which person must be approved by the LGA. Notably, a Class 3 licensee may only make available for use, host or operate a gaming device in an LGA-approved premises. The Gaming Devices Regulations provide certain conditions for the eligibility of such premises. Certain LGA

directives apply in this regard: the Locations for Gaming Parlours Directive defines the parameters with which gaming parlours must comply; and the Gaming Parlours 'No Objection' Certificate Directive provides that an applicant is to obtain a 'No Objection' Certificate from the LGA for such applicant to apply for a Malta Environmental Planning Authority ("MEPA") permit and hence satisfy the requirements established therein. Hence, gaming parlours must be LGA-licensed and MEPA-approved.

With regard to commercial bingo halls, the main licence is that of the operator, issued by the LGA. However, further LGA approval is required, for instance, in relation to any potential employees to be engaged by the licensee, and certain machines found in the bingo hall.

2.3 What restrictions are placed upon any licensee?

The principal restrictions applicable to licensees are considered to be the following:

- licences may not be assigned or transferred without the prior written consent of the LGA;
- a licensee will be required to notify the LGA of any change in its Board of Directors, of any resolution or intended resolution, or any application or intended application to the Court, or any other action for the dissolution and winding up of the licensee, as soon as they become aware of such; and
- the LGA's written approval is also required in certain cases, for instance, before any person lawfully transfers a qualifying shareholding in the licensee, should the latter be a company; or the merger of a corporate licensee with another company.

Within the online gaming sphere, there are no particular jurisdictional restrictions. Because the remote gaming licence is to be operated in cyberspace, neither the LGA nor the RGR mandate any restrictions for betting services or the acceptance of wagers from any particular jurisdictions.

With land-based gaming, a major restriction in Malta is that a land-based casino licensee may not automatically operate online, and must therefore obtain a separate remote gaming licence in order to be able to do so.

With regard to the National Lottery licensee, if such licensee does not operate any one of the games prescribed to form part of the National Lottery, for a period as prescribed in the licence, the Minister responsible for the LGA shall have the right to concede the operation of such game to another person. Also, a National Lottery licence shall include a condition requiring the licensee to pay to the LGA such sums out of the proceeds of sale of any games forming part of the National Lottery licence, and, or any additional fees or taxes as may be determined.

It is to be noted that the above constitutes a summing up of various restrictions placed upon licensees in different sectors of gaming. The LGA will normally include case-specific conditions or restrictions in a given licence that may be amended from time to time.

2.4 What is the process of applying for a gambling licence?

The Maltese remote gaming licence is the most popular. In order to apply for such licence, an application form and ancillary documentation must be submitted to the LGA. The *Personal Declaration Form* is to be filled in by each person acquiring more than 5% controlling interest in the licensee, directors thereof, and its key operating officers. The Key Official must fill in the *Personal Declaration Form* (Key Official). Certain documents must also be

attached, if applicable, for each qualifying shareholder and key management personnel, such as credit or financial references. A three-year business plan must also be submitted. The LGA will also examine the instruments required to conduct the applicant's business such as the system architecture of the gaming and control systems. It will carry out a 'fit and proper' exercise of the applicant, and simultaneously, a business viability forecast.

At this stage, certain information, *inter alia*: the Memorandum and Articles of Association; and the Maltese Company Registration Certificate, must be submitted. Upon successful completion of the application process, the LGA will inform the applicant and will invite it to implement onto a technical environment in preparation for going live.

A non-refundable application fee is to be submitted with the application. The application fee for a new licence of any class is €2,330. The annual licence fee, for any class of licence, is €8,500. Notably, an applicant may apply for more than one class of licence.

With regard to land-based casinos, as stated previously, concessions may be granted to persons to operate casinos. A competitive tendering process will follow once prospective licensees have registered their interest. A concession shall be granted for the consideration, for such period and upon such terms as the Minister responsible for Finance thinks fit.

Both Class 1 and Class 2 gaming devices licences shall be subject to the payment of one-time non-refundable application fee of €2,000. Applications shall be accompanied by various documents, such as a *Personal Declaration Form* for each associated person, and a recent Police Conduct Certificate for each associated person. A Class 3 operator's licence admits of a one-time non-refundable application fee of €500. Successful applicants shall have to pay within 20 days: a monthly licence fee; a monthly relevant gaming device placement tax; and, where required, certain actual costs incurred by the LGA. A Class 3 application must also be accompanied by various documents as per above, including a declaration by an architect that the proposed premises are in compliance with the Gaming Devices Regulations and LGA policies. Moreover, an application for premises approval must also be made, which shall include, *inter alia*: a description and plan to scale of the premises; and the development permit issued by the MEPA. Class 4 applications shall be accompanied with certain information, such as a technical description of the central system specifications as may be required by the LGA, and details of the proposed location of the central system in Malta.

Gaming parlours must also comply with the directives issued by the LGA, being, as mentioned previously, the Locations for Gaming Parlours Directive and the Gaming Parlours No Objective Certificate Directive.

The Amusement Machines Regulations provide for Class 1 licences and Class 2 licences. Class 1 applications, pertinent to manufacturers or distributors, shall be accompanied with, *inter alia*: personal background information as required; a passport-size photo of the applicant if it is an individual; or the Memorandum and Articles of Association if it is a company. Moreover, a non-refundable application fee of €2,000 is payable to the LGA. The annual fee payable by a Class 1 licensee shall be €500 per amusement machine registered in his name. Those hosting amusement machines in public premises will submit a Class 2 application, which shall be accompanied with, *inter alia*: proof of title on, or permit to set up the premises; and a description of the nature, location and dimensions of the premises in question. A non-refundable application fee of €1,000 is payable to the LGA. The annual fee payable by a Class 2 licensee shall be €300 per premises managed, run or otherwise controlled by him.

The amusement machines are to be approved and registered by the LGA. Such applications shall be accompanied with, *inter alia*: a manufacturer's certificate for the amusement machine in conformity with EU law and standards; and proof of legal title of the applicant over the amusement machine. A one-time non-refundable fee of €80 per amusement machine is payable to the LGA with every application for such registration.

A person wishing to obtain a commercial bingo hall licence may apply in writing to the LGA for the Class 1 licence, catering for a bingo hall with a seating capacity of not less than 150 for a period of one year, or a seasonal Class 2 licence, catering for a bingo hall with a seating capacity of not less than 150 for a period of 6 months. Such application shall include the following information, *inter alia*: personal background information of Key Officials; the name, registered office and registration number of the applicant company; and the address in Malta for the service of documents. The granting of such licences shall be subject to a one-time application fee of €1,164.69. A licence fee for each licence shall be charged by the LGA as follows; for a Class 1 licence, €27,952.48 per annum, and for a Class 2 licence, €16,305.61 for every 6 months.

On the other hand, the granting of a National Lottery licence via concession will involve a competitive tendering process for which interested applicants must submit their application. Generally, the LGA will, before the issue of such licence, cause a notice to be published in the Gazette of the intended issue, calling upon any interested party to make representations, if any, objecting to the issue of the licence to such company.

2.5 Please give a summary of applicable time limits and revocation.

The granting of a gambling licence is a revocable privilege. The LGA may thus cancel or suspend a certain licence in accordance with the applicable regulations.

With regard to the cancellation or suspension of a remote gaming licence, grounds thereof may be, *inter alia*: if any person who has an interest in the licensee, or any Key Official is convicted in any country of an offence punishable in that country by imprisonment; or if the licence holder is insolvent or is being wound up.

As a form of review procedure, the LGA shall, by written notice, request the licensee to show cause, within 21 days after the issue of the notice, why the licence should not be so cancelled or suspended. Where the LGA believes that further action is warranted, it may by notice in writing give such direction to the licensee it considers appropriate, or suspend the licence for such period as it deems fit, or cancel such licence.

Moreover, the various licences admit of different time limits. While the remote gaming licence is issued for a period of five years, renewable for a further five-year period, a casino licence remains in force for up to 10 years. Subject to the Gaming Act, the licence, unless it is sooner surrendered or cancelled, may be renewed by the LGA.

A gaming devices licence and an amusement machines licence, of any class, shall be for a term not exceeding one year, renewable for further periods of one year each. *Vis-à-vis* commercial bingo halls, a Class 1 licence shall be for a one-year period, renewable for further one-year periods at a time. A Class 2 licence shall be for a 6-month period, renewable for further 6-month periods at a time. The National Lottery licence is granted for such term as the LGA after consultation with the Minister responsible for the LGA may specify therein. Unless a National Lottery licence is previously cancelled, it may be renewed by the LGA for a further period as the LGA after consultation with the said Minister may determine.

Importantly, a licence is generally only renewed subject to the licensee's payment of the respective fees and continued compliance with any applicable laws, regulations, directives and licence conditions.

Lastly, the Amusement Machines Regulations expressly refer to an appeals procedure before the Administrative Review Tribunal, for any person aggrieved by a decision taken by the LGA. With regard to other matters, it may be possible to challenge the LGA's decision on the basis of Article 469A of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) before the Maltese courts, should that decision have been *ultra vires*.

2.6 By product, what are the key limits on providing services to customers?

Primarily, viewing the sector as a whole, and excluding any such general antitrust constraints that must be adhered to, there are no other specific rules that act as impediments to gaining market share. Moreover, as a rule, the LGA does not set limits to the number of licences granted at a time. An exception to the general rule arises in respect of the National Lottery, for which only one person may be licensed to operate same at any one time. A limitation is also found *vis-à-vis* casino licences, which are granted via concession after a competitive process.

Marketing and advertising restrictions may also limit the means by which one may provide services to customers. Casinos, for instance, may only advertise in certain locations frequented by tourists, including airports. Newspapers may not feature items that could promote gambling inside a casino.

Further limitations exist that are tied to the concept of player protection. A player may ask for a ban or restriction on his own admission. In such case, the casino may not allow him to enter. Online, the RGR hold that a licensee shall display at all times, in a prominent place, on the entry screen of the website, a warning of the addiction possibilities of gaming and links to other websites assisting compulsive gamblers.

In dealing with game, stake and jackpot limits, the RGR state that a licensee shall not make a payment in excess of €2,329.37 out of a player's account to a player until the player's identity, age and place of residence have been verified. Separately, a casino licensee will normally specify any applicable stake limits. A casino licensee may, after obtaining approval of the Gaming Board, offer a wider variety of winning options, and alter the amount of the progressive jackpot and increment percentage. Furthermore, the Gaming Board may, by written notice to the casino licensee, determine the minimum stakes applicable to authorised games conducted in the casino. The casino licensee shall obtain the approval of the Gaming Board to establish the maximum stakes applicable to authorised games.

A restriction also exists in relation to junkets. The casino may enter into a service agreement with a junket leader, who shall organise visits by a person or group of persons to the casino for the purpose of junket gaming; provided however, that they be domiciled and resident outside Malta.

Particular to the land-based sector, opening hours are also imperative. With casinos, opening hours would largely depend on the casino licence itself, wherein the LGA would have established a schedule. Gaming parlours must close at 11pm.

In conclusion, the LOGA provides that any game which is unauthorised as per Maltese law, or the law of a Member State of the EU or the EEA, or of any LGA-approved jurisdiction, which originates from Malta or which is offered from Malta, or which involves a transaction concluded in Malta, is prohibited from being

played by any person in Malta. This effectively means that an obvious restriction exists with regard to unauthorised operators that seek to offer their services in Malta or to Maltese persons, and with regard to Maltese persons who seek to play illegal games.

2.7 What are the tax and other compulsory levies?

Gaming tax may be said to be sector-specific.

With regard to remote gaming, a Class 1 licensee shall pay a sum of €4,660 for the first 6 months and subsequently €7,000 per month for the entire duration of the licence period. A Class 1 licence operating on a hosting platform in possession of a Class 4 licence (Class 1 on 4) shall pay €1,200 per month for the entire duration of the licence.

A Class 2 licensee, including a Class 2 licensee operating on a hosting platform in possession of a Class 4 licence, shall pay a sum equivalent to 0.5% of the gross amount of bets accepted in remote betting operations. On the other hand, a Class 3 licensee, including a Class 3 licensee operating on a hosting platform in possession of a Class 4 remote gaming licence, shall pay a sum equivalent to 5% of real income.

Lastly, a Class 4 licensee, hosting and managing other remote gaming operators, shall pay no tax for the first 6 months; €2,330 per month for the subsequent 6 months; and €4,660 per month thereafter for the entire duration of the licence. A Class 4 licensee shall also pay a monthly tax of €1,165 for every operator which is not in possession of the relevant Class 1, Class 2 or Class 3 licence, being hosted and managed by the Class 4 licensee on its platform.

Primarily, the maximum tax payable by one licensee in respect of any one remote gaming licence per annum, shall not exceed €466,000.

It is noteworthy, within the remote gaming ambit, that the application of a Maltese corporate structure attracts what is generally considered a tax-efficient treatment for the shareholders. The full imputation system, with the refund mechanism available under Malta's tax regime, sees shareholders of a Malta-licensed gaming company being able to recover significant refunds of tax paid at corporate level.

The land-based sector also admits of its own compulsory levies. For instance, subject to certain provisions in the law, a casino licensee shall pay to the LGA on behalf of the Government the rate of tax based on the total gross takings of all games played at the casino specified in the Schedule of the Gaming Act, without the deduction of any expenses of any kind whatsoever.

2.8 What are the broad social responsibility requirements?

Stakeholders in the gambling industry, particularly operators, must comply with any imposed obligations centred on the protection of its customers and society in general.

The protection of vulnerable persons is a prime commitment. In Malta, any person who sells any game to a person under the age of 18, shall be guilty of an offence. Moreover, Maltese residents cannot enter a Maltese casino unless they are above the age of 25.

The LGA's Code of Conduct on Advertising, Promotions and Inducements, applies to all licensees under the LOGA and the RGR. A licensee shall not publish in any manner, advertising that features minors gambling or encourages them to gamble. Advertising restrictions are also present in specific laws, such as the RGR and the Gaming Act, which target remote gaming advertisements and casino advertising, respectively.

Vulnerable persons do not only include minors. Addiction is a significant concern across all generations. The RGR hold that a remote gaming licensee shall display at all times, in a prominent

place, on the entry screen of the website, a warning of the addiction possibilities of gaming and information and links to other websites assisting compulsive gamblers. A similar requirement is also found in other specific laws relating to different forms of gambling.

Moreover, operators should ensure that the confidentiality of all customer information submitted at any point in time is protected from unauthorised or unnecessary disclosure in compliance with data protection laws.

Malta is also a member of the European Committee for Standardisation, which has recently published a document entitled 'Responsible Remote Gambling Measures'. Lastly, it is to be noted that Malta has earlier this year launched the Responsible Gaming Foundation, which promotes socially responsible gaming through various initiatives and projects.

2.9 How do any AML financial services regulations or payment restrictions restrict or impact on entities supplying gambling?

The PMLA and the PMLFTR constitute the main anti-money laundering legislation in Malta. The latter implements the provisions of the Third Money Laundering Directive. There also exist certain obligations imposed by gaming-specific legislation that require various components of the gaming industry to adopt related measures.

While cyberspace presents a fertile target for money laundering and terrorist financing, it is held that the land-based sector also possesses various vulnerabilities. Since 1989, Maltese casinos applied specific anti-money laundering procedures. Casino licensees are the only persons involved in the gaming industry that are considered subject persons under Maltese anti-money laundering laws. The obligations thereof are laid down in the PMLFTR. These mainly consist of customer due diligence, record-keeping, internal and external reporting, and training of employees.

On the other hand, online-specific rules are found within the RGR. Remote gaming is a non-cash-based environment. Funds may only be received from the player by way of any of the following methods: credit cards; debit cards; electronic transfer; wire transfer; cheques; or other LGA-approved methods. Moreover, the RGR prohibit the setting up of multiple accounts with the same operator by the same player. Additionally, a bank account must always be specified at the start of the relationship between the operator and the player. This will be used for transactions undertaken through the online gaming operation. Lastly, it is to be noted that a remote gaming licence may impose standard conditions relating to the prevention of money laundering.

It is the duty of the LGA to issue or renew a remote gaming licence only after it has ascertained that the applicant has followed policies and will take affirmative steps to prevent money laundering and other suspicious transactions.

In conclusion it is pertinent to point out that by virtue of the PMLFTR, the LGA is itself a supervisory authority that is bound to monitor the operation of all its licensees and report to the Financial Intelligence Analysis Unit any suspected money-laundering or terrorist funding activity. Malta actively participates in initiatives adopted at international levels such as by the EU Committee on the Prevention of Money Laundering and Terrorist Financing, the MONEYVAL Committee of the Council of Europe, the Financial Action Task Force against money laundering, and the OECD.

3 The Restrictions on Online Supply/Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

From a strictly gaming-related perspective, the main restriction is the prohibition of the provision of unauthorised services. In order to be able to operate in or from Malta, one must obtain a licence.

Interestingly, the RGR state that, 'remote betting' means the negotiation or receiving of any bet by a means of distance communications, and 'remote gaming' means any form of gaming by means of distance communications. The RGR also define 'gaming', as an agreement, scheme, or arrangement between two or more parties to play together at a game of chance in which a prize or reward consisting of money or some other item of value, worth, advantage, or opportunity is offered or can be won and become the property of the winner under defined conditions established for the purpose of the game. Such activities are therefore what constitute online activity *vis-à-vis* remote gaming, being operated in or from Malta.

The word 'game', as per the LOGA, means and includes, except for the purposes of the definitions of 'amusement machine' and 'amusement game', a game of chance and a game of chance and skill, but does not include (i) a sport event, although it includes a sport bet and any other game of chance and game of chance and skill the operation or playing of which depends on a sport event or a set of sport events or the result or outcome thereof, and (ii) an amusement game.

Apart from the main restriction mentioned above, there are no prohibitions related to online activity in the gaming sphere. Nevertheless, certain conditions may however be imposed, on a case-by-case basis, upon a remote gaming licensee.

3.2 What other restrictions have an impact on online supplies?

It is important to note that Malta does not admit of an automatic ISP blocking system. Moreover, and generally, any form of territory-blacklisting by the LGA will be policy-driven and may vary from time to time.

One may also put forward that with regard to the processing of payments, for instance, the LGA has taken the approach of declining to accept inter-jurisdiction transactions if the other state is not a Member State of the EU, the EEA, or an approved jurisdiction, unless the said state has a form of Memorandum of Understanding in place with Malta.

3.3 What terminal/machine-based gaming is permitted and where?

In a nutshell, the Gaming Devices Regulations provide that each establishment cannot host more than 10 gaming devices per premises. Moreover, gaming halls cannot be licensed if they are within 75 metres' radial distance from places of worship, schools, senior citizens' care facilities, and playgrounds. Each gaming parlour must also be 50 metres' walking distance away from another.

As indicated earlier, an applicant wishing to have gaming premises approved for eventual use shall be required to be compliant with the Locations for Gaming Parlours Directive and must obtain a 'No

Objection Certificate' from the LGA, prior to submitting an application with MEPA. Indeed, the latter may only be issued in respect of premises compliant with the Locations for Gaming Parlours Directive.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

The breach of any provision within gambling legislation giving rise to an offence in terms thereof would render the offender liable. The degree of liability, and the attribution of fault, would depend on the breach. Pressure is most definitely placed on an operator, in any given gaming sector, to comply with the relevant laws. As maintained previously, certain acts may lead to the revocation or suspension of a licence.

Generally, any person guilty of an offence against the LOGA shall, on conviction, be liable to a fine of not less than €7,000 and not more than €235,000, or to imprisonment for a term of not more than five years, or to both such fine and imprisonment.

Notably, where the person so found guilty is the president, director, manager, secretary or other similar officer of a company or undertaking, such person shall be deemed to be vested with the legal representation of the same company or undertaking, organisation, or other association or body of persons, which shall be liable *in solidum* with the person found guilty for the payment of the said fine.

Moreover, a Key Official may also be susceptible to liability under the RGR. The LGA shall cancel a Key Official's licence if such, *inter alia*, ceases to be a resident in Malta, ceases to be, in the LGA's discretion, a fit and proper person, or is convicted in any territory of an offence punishable by imprisonment.

As with online gaming, the land-based sector admits of various instances where liability is placed upon certain persons who do not comply with the applicable legislation. Generally, any person guilty of an offence against the Gaming Act, which, as previously stated, targets casinos, shall on conviction be liable to a fine of not less than €6,988.12 and not more than €232,937.34, or to imprisonment of not more than two years, or to both such fine and imprisonment.

Separately, a person who has acquired a permit to sell games forming part of the National Lottery licence, who contravenes a provision of his permit, or any directive issued by the LGA, where such contravention amounts to an offence under the LOGA, may be exposed to administrative fines or sanctions as an alternative to proceedings in court.

4.2 What is the approach of authorities to unregulated supplies?

When dealing with unregulated supplies in the gambling sector, administrative fines are the most likely method of enforcement. While criminal proceedings may be taken in certain circumstances, these would not be considered to constitute the norm.

Prosecution by the local police force in this area has been relatively scarce. One of the most memorable enforcements took place in 2009, when the Maltese government had clamped down on gaming outlets that had mushroomed all over Malta and were operating abusively. Soon after, the Gaming Devices Regulations and Amusement Machines Regulations were introduced, on the back of the Government's insistence that all gaming operators seeking to

open gaming parlours had to be compliant with certain specified standards and terms.

The LGA is constantly on the lookout for any potential breach or abuse of national gambling laws.

4.3 Do other non-national laws impact upon enforcement?

Yes, certain non-national laws may have an impact. While national jurisdictional rules established in the Code of Organisation and Civil Procedure must be considered, particularly in relation to disputes involving a third country domiciliary, the rules that determine jurisdiction, relating to online transactions or disputes relating to remote gaming, for instance, mainly emanate from the Brussels I Regulation on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Regulation EC 44/2001) ("Brussels I"), and the Rome II Regulation regarding the conflict of laws on the law applicable to non-contractual obligations (Regulation EC 864/2007) ("Rome II").

The scope of Brussels I is limited to cross-border disputes concerning civil and commercial matters, including e-commerce transactions. Disputes concerning revenue, customs and administrative matters fall outside the scope of Brussels I. In the case of business-to-consumer contracts, the consumer generally has the right to sue the seller established in another Member State in the country where the consumer is resident. Business-to-business transactions admit of the central principle that, unless the parties have agreed differently, a plaintiff should follow the defendant and institute an action in the defendant's forum.

With respect to non-contractual obligations and disputes arising in civil and commercial matters, Rome II's main rule is that jurisdiction will be based where the damage occurred.

The above constitutes a general explanation. Any given scenario would largely depend on the facts of the case.

4.4 Are gambling debts enforceable in Malta?

The general consensus *ex lege* is that where the gambling transaction was an unauthorised one, such can never be enforceable in Malta.

A gaming or betting transaction which is considered illegal by the law will not only expose the parties to criminal action, but will also quite naturally have no binding force at law as the basis for a contractual obligation.

One must firstly note the general wording of Article 1713 of the Civil Code. This holds that the law grants no action for a gaming debt, or for the payment of a bet. Nor does it grant any action for the recovery of any sum lent by any person who knew that such sum was intended for gaming, or for the recovery of any sum lent by any person interested in the game, for the payment of money lost at such game.

Yet, this provision cannot be read in isolation. Briefly, Article 49 of the LOGA maintains that Article 1713 of the Civil Code shall not prejudice the right of an operator to recover a debt arising from the acceptance of payment of a stake in respect of an authorised game. The same Article 1713 of the Civil Code shall also not prejudice the right of a winner of a monetary prize under an authorised game to recover any debt arising from acceptance of payment of such prize.

Attention should also be drawn to Article 338(ii) of the Criminal Code (Chapter 9 of the Laws of Malta), which provides that every person is guilty of a contravention against public order, who except as is allowed by law, and unless any other law provides for a higher punishment for the offence, makes or attempts to make or is in any way concerned in the making of a bet or wager including a bet or

wager connected with any game, sport or event occurring in Malta or elsewhere, or who is present in any place while such betting or wagering is taking place.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling legislation/regulations are being discussed currently?

Malta has always kept abreast of ongoing developments in the gaming world, ensuring that its legislative framework remains an attractive and innovative one. The LGA is constantly looking into ways to enhance Malta's reputation as a gaming jurisdiction.

The LGA has stressed that it shall be focusing more on consumer protection. The recent setting up of a Responsible Gaming Foundation earlier this year also marked a positive step in the right direction *vis-à-vis* player protection.

Importantly, the LGA has recognised the importance of regulating a certain genre of social game: digital skill games played for a prize. In July 2014, the LGA filed a draft legal notice with the Maltese Parliament to this effect. These new regulations will entertain the opening of a new market, permitting the monetisation of games

commonly categorised as free-to-play or else making revenue from downloadable content, adverts, or in-game purchases. The law is expected to be introduced in the coming months.

The LGA shall also be proposing a regulatory regime for cruise ship casinos which will enable them to operate within Maltese territorial waters subject to an approval and a number of conditions. Another forthcoming development includes the setting up of a foundation termed 'GamingMalta' with a mandate to promote Malta as a gaming jurisdiction while attracting quality investment. It is noteworthy that the foundation and the LGA will have separate, non-conflicting roles. Furthermore, the LGA is set to publish a consultation document dealing with cloud solutions.

Importantly for prospective operators and existing operators seeking to add to their profile of licensed activities, the LGA has embarked on an overhaul, in line with a strategic plan that shall also be shortly published, together with a three-year business plan, with the aim of consolidating and revamping the Maltese gaming regulatory framework, striving for more efficient and timely licensing processes, cutting-edge regulations and a technology-neutral framework.

Malta's future as a jurisdiction of choice at the forefront of innovation in regulation and pragmatism in approach certainly looks promising.



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Camilleri Preziosi is a leading Maltese law firm with a commitment to deliver an efficient service to clients by combining technical excellence with a solution-driven approach to the practice of law. Camilleri Preziosi is a specialised practice, advising on domestic and international transactions with a focus on corporate and commercial law. The firm commands an outstanding reputation amongst clients and peers, and is regularly ranked as a top-tier firm by Chambers, IFLR1000 and Legal 500. The firm provides both transactional and regulatory advice and assistance to clients.

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