

Gaming Law

The gaming industry is a multi-faceted sector in constant evolution and expansion which is also highly regulated, fast-moving and subject to innovative pieces of legislation and interesting jurisprudence. Malta was the first EU Member State to have created a robust and highly regulated legal framework for remote gaming. To discuss gaming laws in Malta further, *Lawyer Monthly* speaks to Malcolm Falzon, Partner at Camilleri Preziosi.

Can you give me an overview of the legalities of the online gaming industry in your country at the moment?

When a decade ago the Maltese legislator sought to create the right platform for a transparent online gaming industry that would be the first of its kind in Europe, the establishment of a securely regulated market was a key objective. With the Remote Gaming Regulations (the 'RG Regulations'), Malta pioneered an unprecedented legal framework for online gambling.

Encouraging mutual recognition, the RG Regulations stipulate that an entity seeking to operate, promote, sell or abet remote gaming in or from Malta requires a licence that need not necessarily be issued by the Lotteries and Gaming Authority (the 'LGA'), but could be an equivalent authorisation issued by the competent authority of an EEA member state or any other jurisdiction approved by the LGA. The LGA is the independent regulatory body responsible for the supervision of all gaming activities in Malta, including remote gaming.

Licensees must be Malta-based companies and are subject to gaming tax, calculated depending on the licence class held (there are four classes of licenses) subject a maximum cap payable per annum on each gaming licence held. All licences are issued for a five-year period, renewable subject to the licensee's continuous compliance with relevant LGA requirements.

Although the global nature of the online market has created vast opportunities, it raises even more challenges for companies. What are the main challenges?

The ever-expanding nature of the online gaming market of course means that stakeholders are required to navigate through more varied and complex challenges. Gaming operators are faced with the more onerous task of running smooth operations across countries that have adopted diverse local regulatory regimes. They must also ensure continuous observance of consumer protection and data protection laws, with online platforms having the potential to reach anyone, anywhere. The larger the market, the more technologically diverse it is, and in turn, the larger the costs incurred in improving one's product range, quality of service and reach in the market.

Market players must stay up-to-date with all jurisdictional developments. For instance, debates have emerged in relation to remote social games and skill games, with many jurisdictions taking their own view and no general consensus being reached – a common trend

in the remote gaming industry as is evidenced by the fragmentation of the regulatory framework across the EU, undoubtedly the key challenge faced by operators.

What are the key challenges operators are facing in Europe relating to discrepancies in legal frameworks?

In light of the significant differences in regulation and compliance requirements from one European jurisdiction to another, prospective operators must dwell carefully on the optimal jurisdiction in which to set up shop, also considering the limitations on cross-border gambling posed and uninhibited access to other markets caused by the fragmentation of the entire legal framework. The key considerations may be said to be the viability and demand of their business and gaming product, the regulatory system of a jurisdiction, considerations relating to licensing and taxation, together with the reputability of a particular jurisdiction.

As the gambling industry grows and evolves, Member States' laws develop to control the market further. With more jurisdictions requiring national authorisation, gaming operators not having a multi-jurisdictional network of licensed operating companies in place are bound to find running their operations across member states particularly challenging. A harmonised European remote gaming law would go far in addressing the challenging reality posed by being subjected to a multitude of different national regulatory regimes which, in certain cases, have the protection of state-owned monopolies as their actual primary concern. The question is whether member states will be prepared to take the plunge to liberalise their markets, taking heed of decisions such as the OPAP judgment by the ECJ or views such as those expressed in the Fox report, and move towards a more uniform legal framework and the goal – often derided as unrealistic and unachievable – of harmonisation.

What do you think the future holds for the gambling industry in your country?

As at the time of writing, two unprecedented pieces of legislation are in the course of being drawn up. The first will regulate 'digital games' played for a real prize. The primary motivation behind these regulations is the concern that 'digital games' may still be exposed to risks faced by gambling games. This also ties in with the introduction of the Malta Digital Gaming Fund as part of the local multi-faceted strategy for building a games industry in Malta that can both attract inward investment and nurture an indigenous games sector. Coming in

second are the Cruise Casino Regulations, these would allow licensed cruise ships to open their casinos in Maltese territorial waters against the payment of a concession fee and an annual license fee.

In addition to the above various studies on social casino games and social gaming have been commissioned, and a "cloud computing architectural review" by the LGA reportedly aimed at providing clarity on the parameters within which cloud technology may be used and regulated for remote gaming purposes is also underway. With respect to player protection measure, they key development relates to the creation of a central online player self-exclusion system which is to be linked across all the licensees duly authorized by the LGA.

A highly discussed regulatory initiative by the LGA is its aim to become the first jurisdiction to regulate, license and supervise digital online skill or social games which allow the participant to win a prize. Addressing the complexity inherent in this particular type of game will be crucial for the creation of a suitable legal framework capable of finding the correct balance between player protection and leaving sufficient leeway to operators to get on with creating the next record-breaking game.

Our success ascribes to our will to stay in touch with the needs of the market and its stakeholders. The Maltese gaming landscape is ready to embrace a very exciting 2014. **LM**

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