

Gaming 2021

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Gaming 2021

Contributing editor**Behnam Dayanim**

Paul Hastings LLP

Lexology Getting The Deal Through is delighted to publish the fourth edition of *Gaming*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Belgium, China, Macao and Portugal.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Behnam Dayanim of Paul Hastings LLP, for his continued assistance with this volume.



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Malta

Reuben Portanier and Terence Cassar

GTG Advocates

GENERAL LEGAL FRAMEWORK

Legal definition of 'gambling'

- 1 | What are the legal elements required for an activity to be regarded as gambling?

The Gaming Act (Chapter 583 of the Laws of Malta, the Act) generally uses the term 'gaming' instead of 'gambling', with the term 'gambling' more commonly used in connection with 'problem gambling' matters. Thus, for consistency with the Gaming Act, this publication uses the term 'gaming'.

Gaming activities are considered to consist in participating in gaming, offering a gaming service and making a gaming supply.

activity. On the other hand, a 'gaming supply' activity consists in making a supply of a good or service in relation to a gaming service, which supply may amount to a material gaming supply or an ancillary gaming supply. However, only material gaming supplies that amount to 'critical gaming supplies' are considered to be gaming supplies that trigger mandatory gaming-related authorisations and regulation.

A 'critical gaming supply' is any material gaming supply that (1) is indispensable in determining the outcome of a game forming part of a gaming service or (2) is an indispensable component in the processing or management of essential regulatory data.

Some form of wager in money or money's worth is required for an activity to be captured as a regulated gaming service activity and similarly, some form of prize award in money or money's worth is also generally required. In absence of the above, the activity would generally fall under one of the exemptions provided for 'exempt games' under Schedule 2 of the Gaming Authorisations Regulations (SL 583.05 of the Laws of Malta, the 'Authorisations Regulations').

Both games of chance and games of skill are captured by the Gaming Act.

A 'game of chance' is any game the outcome of which is determined by chance alone or predominantly by chance, while a 'game of skill' is any game the outcome of which is determined using skill alone or predominantly using skill.

Skill games are generally exempt from regulation under the Gaming Act, unless the Malta Gaming Authority (MGA) deems a skill game to amount to a 'controlled skill game', namely a skill game that requires a stake to enable participation or offers the possibility of winning a prize, and that is deemed to be a licensable game by the MGA. To date, the only MGA public ruling deeming a particular skills game type as amounting to a controlled skill game, was a ruling issued in respect of fantasy sports games.

Remote activity

- 2 | With respect to remote or other cross-border activity, where is the wager deemed to take place?

The Act is silent on where a wager is deemed to take place in a remote activity context, and to date, this matter has not been determined by Maltese courts.

Age restrictions

- 3 | What is the minimum age for participating in lawful gambling?

The minimum age is generally 18 years. However, Maltese citizens are permitted to play at a land-based casino if they are 25 years or older.

Penalties

- 4 | What are the penalties for offering unlawful gambling?

Penalties vary according to the type of specific infringement, counts of infringements and regulatory history involved. Generally, penalties consist in an administrative fine ranging between €10,000 and €500,000 for each infringement (double in the case of recidivism), or imprisonment, which generally consists of a term of not more than five years. Other enforcement measures and penalties, including licence suspension or revocation may also be imposed.

In certain instances, the Act also empowers the MGA to reach a Settlement Agreement with the offender, which extinguishes the offender's criminal liability. In such settlement scenarios, the MGA may impose a fine of €500,000 for each infringement, or a sum of €5,000 for each day of infringement or any other administrative sanction deemed fit by the MGA, or both.

- 5 | Does the law penalise the gambler directly for participating in unlawful gambling?

Yes, a gambler may be directly penalised for participating in unlawful gaming activities as such participation also amounts to a criminal contravention under the Criminal Code (Chapter 9 of the Laws of Malta). Forfeiture of the moneys involved in the unlawful gaming activity is also envisaged under the Criminal Code.

Social and non-profit gambling

- 6 | Are there exceptions for social gambling, or charitable or non-profit gambling?

While there are no specific exceptions for social gaming per se, there are various exemptions that are relevant including exemptions in relation to:

- games of skill that do not require a stake to enable participation or do not envisage the possibility of a prize reward;

- games of skill that require a stake to enable participation and offer the possibility of a prize unless the MGA determines such to be a controlled skill game;
- games of chance that do not require a stake to enable participation or do not envisage the possibility of a prize reward (unless the MGA determines otherwise in a binding instrument);
- a 'de minimis game', namely a game that satisfies all the following cumulative criteria:
 - the game consists solely in a lottery or raffle-type game;
 - the value of the stake does not exceed €1;
 - the value of the prize does not exceed €100; and
 - the result of the game cannot be based on the outcome of another game.

A 'low-risk games permit' is required for non-profit gaming activities, namely any gaming activity in which over 90 per cent of the net proceeds are to be forwarded to an entity with a charitable, sporting, religious, philanthropic, cultural, educational, social or civic purpose. Although non-profit gaming activities require a low-risk games permit, the associated requirements are less onerous than those typically applicable to other types of gaming authorisations under the Act. For a non-profit game to qualify for a low-risk games permit, the value of the stake cannot exceed €5 per player.

Regulatory authorities

7 | What entity regulates land-based and remote gambling, and what are the regulator's powers?

The MGA is the entity that regulates all gaming activities in Malta. The MGA's powers mainly derive from article 7 of the Act, which can be summarised as follows:

- regulating and supervising any activities relating to any matter under the Act;
- promoting the protection of players and providing relevant information to the public;
- ensuring that gaming advertisements are fair and responsible in accordance with applicable law;
- investigating player complaints and promoting a fair resolution of player disputes;
- monitoring the gaming sector and undertaking any research that the MGA deems necessary;
- issuing guidelines on the interpretation of matters regulated under the Act;
- developing the necessary strategy and action plans to achieve the objectives set by the government and the MGA, including the power to issue Directives under the Act;
- advising the government and respective minister responsible for gaming, including making proposals for new gaming laws that may be deemed necessary;
- establishing the minimum requirements to be satisfied by any person to become engaged in a gaming activity;
- inquiring on the suitability and fitness and properness of any person engaged or employed in the gaming industry;
- granting gaming licences, approvals, recognition notices and other authorisations related to gaming;
- preventing, detecting and ensuring the prosecution of offences against the act (together with the police in certain criminal instances) and issuance of enforcement measures and of penalties and administrative actions; and
- collecting gaming licence fees, gaming taxes and gaming levies.

Anti-money-laundering regulations

8 | Are gambling licensees considered financial institutions for purposes of anti-money-laundering and similar financial services regulatory requirements or are they otherwise subject to such requirements?

Only B2C gaming service licensees are deemed 'subject persons' for the purposes of anti-money laundering (AML) regulations and are thus required to comply with applicable AML obligations. Among other applicable AML obligations, such B2C licensees must carry out customer due diligence measures when a transaction of €2,000 or more is made. The same requirement is also triggered if multiple transactions cumulatively amount to the above-mentioned figure.

LAND-BASED GAMBLING

Types

9 | What types of land-based gambling are permitted in your jurisdiction, and is gambling regulated at a national or subnational level?

Gaming in Malta is regulated at a national level by the Malta Gaming Authority (MGA).

The Act regulates gaming activities in a horizontal manner, irrespective of whether the activity is land-based or remote. Therefore, in principle, any gaming activity type could be lawfully possible as long as the right gaming authorisation is held (where applicable).

Specifically for land-based gaming, the operation of Malta's national lottery games and of land-based casinos is subject to a concession from the government of Malta.

For licensing and certain regulatory purposes, it should be noted that game types in Malta are classified into four categories as follows:

- Type 1: Games of chance played against the house the outcome of which is determined by a random number generation (RNG). For example, casino games including slots, roulette, blackjack, baccarat, lotteries and virtual games.
- Type 2: Games of chance played against the house, the outcome of which is determined by the result of an event or competition extraneous to the game of chance itself and whereby the operator manages own risk by managing odds offered to the player. For example, fixed odds betting, including e-sports betting.
- Type 3: Games of chance not played against the house, and wherein the operator is not exposed to gaming risk, but instead generates revenue by taking a commission or other charge based on the stakes or the prize. For example, player versus player games such as poker, bingo, betting exchange and other commission-based games, which can also include e-Sports player to player bets.
- Type 4: Skill games with a prize, deemed to be controlled skill games. For example, fantasy sports betting.

Establishment licensing

10 | Please describe the licensing criteria and procedures to operate land-based gambling of each type or classification. Does your jurisdiction limit the number of available licences?

Apart from the obtainment of a licence from the MGA, Malta's national lottery games and land-based casinos require a concession from the government of Malta.

Licensing criteria and procedures to operate land-based gaming products may be subdivided into four main broad areas:

- a fitness and properness test, including financial and aml due diligence;

- technical, including the submission of all relevant technical documentation on the games, gaming devices, RNG, hardware and software architecture, information security measures, disaster and business continuity measures;
- business and administrative, including submission of a business plan, financial forecasts, human resources plan, marketing and advertising plan and outsourcing procedures; and
- regulatory, including AML procedures, internal gaming policies, player terms and conditions, data protection, commercial agreements and responsible gaming measures.

Following the provision of all required documentation and information to the satisfaction of the MGA, the applicant is invited to hold a systems audit in a staged environment, whereby the actual games, devices and technical set-up would be audited by an independent auditor, approved by the MGA but selected and appointed by the applicant.

Once a positive audit report is submitted to the MGA by the systems auditor and provided that the MGA's probity checks do not result in any negative finding about the applicant company, its shareholders and key people, the MGA proceeds with the issuance of a licence provided that all relevant fees are paid.

With respect to land-based bingo halls and gaming parlours, other requirements are also imposed as part of the application process, mainly relating to the location and type of gaming premises.

The detail of the applicable licensing procedures varies depending on whether the gaming activity is a B2C gaming service or a B2B gaming supply.

Only legal entities established in Malta or the EEA may apply for a gaming authorisation from the MGA.

That said, it should be noted that Malta's gaming authorisation framework is generally based on an 'open-window' concept, whereby there is no *numerus clausus* on the number of licences, game types or operators that can be authorised by the MGA.

Director, officer and owner licensing

11 | Must individual directors, officers or owners of licensees also be licensed or reviewed for suitability?

Yes, such persons are subject to a fitness and properness test by the MGA. This is carried out based on due diligence information and documentation and probity assessments that the MGA carries out with other national and international regulatory bodies and enforcement agencies.

With respect to direct and indirect owners of a licensee, it should be noted that the applicable threshold triggering the applicable fitness and properness assessment is set at a qualifying ownership interest equivalent to 10 per cent direct or indirect ownership of the licensee (or any lower percentage as may be determined by the MGA).

Gaming licensees are also required to have various key officials holding a personal licence, termed as a 'Key Function Holder License'. The amount and type of Key Functions that need to be held by a licensee varies according to the type of licence.

Location

12 | May a gambling location be part of a resort, restaurant or other multi-purpose location? What limitations apply?

A gaming location may be part of a resort, restaurant or other multi-purpose location. However, gaming premises must be at least 75 metres away from certain types of locations such as schools and playgrounds. Additionally, a requirement of a minimum walking distance of at least 50 metres from other controlled gaming premises also typically applies.

Casino development

13 | What considerations arise in developing a casino resort project that are not typical to other resort development?

The main consideration that is unique to a casino resort project in Malta is that a concession from the government of Malta is first required, which concession is only issued following a public call for tenders.

Furthermore, the respective financing may also require regulatory scrutiny, as the taking of any loan by a licensee needs to be notified to the MGA, where such loan is not from a credit institution licensing in the EU/EEA.

Passive/institutional ownership

14 | Are there provisions for passive or institutional ownership that allow for exemption or modification of licensing requirements?

No, however, depending on the qualifying ownership structure (such as shares listed on a stock exchange), there can be practical differences in how the MGA's due diligence measures are applied.

Responsible gambling

15 | What responsible gambling obligations apply to licensees?

Malta pioneered the notion of responsible gaming and developed a whole array of responsible gaming measures that every licensee must follow including age restrictions, advertising restrictions, self-exclusion availability (both for a specific amount of time and indefinitely), deposit limits and play-time limits.

A unified self-exclusion system is also available and required for land-based operators.

Taxes

16 | What type of tax and what tax rate applies to each form of lawful land-based gambling activity?

Land-based gaming operators are required to pay gaming tax, composed of two components:

- A 5 per cent gaming tax on gaming revenue, payable annually and applicable irrespective of game types offered.
- A levy on gaming devices, payable annually and which varies depending on the applicable game type offered by the gaming device as follows:
 - Type 1 and Type 2: 30 per cent of gaming revenue.
 - Type 3 and Type 4: 12.5per cent of gaming revenue.

It should also be noted that the levy due for junkets (who need to qualify as such and be recognised in terms of an applicable instrument), is 2.5 per cent of the gaming revenue generated, irrespective of game type.

Further, gaming service operators also need to pay an annual 'compliance contribution', based on gaming revenue and game type as follows:

Game Type 1	
Revenue	Compliance contribution rate
For every euro of the first €3,000,000	1.25%
For every euro of the next €4,500,000	1%
For every euro of the next €5,000,000	0.85%
For every euro of the next €7,500,000	0.7%
For every euro of the next €10,000,000	0.55%
For every euro of the remainder	0.4%

Game Type 2

Revenue	Compliance contribution rate
For every euro of the first €3,000,000	4%
For every euro of the next €4,500,000	3%
For every euro of the next €5,000,000	2%
For every euro of the next €7,500,000	1%
For every euro of the next €10,000,000	0.8%
For every euro of the next €10,000,000	0.6%
For every euro of the remainder	0.4%

Game Type 3

Revenue	Compliance contribution rate
For every euro of the first €2,000,000	4%
For every euro of the next €3,000,000	3%
For every euro of the next €5,000,000	2%
For every euro of the next €5,000,000	1%
For every euro of the next €5,000,000	0.8%
For every euro of the next €10,000,000	0.6%
For every euro of the remainder	0.4%

Game Type 3

Revenue	Compliance contribution rate
For every euro of the first €2,000,000	0.5%
For every euro of the next €3,000,000	0.75%
For every euro of the next €5,000,000	1%
For every euro of the next €5,000,000	1.25%
For every euro of the next €5,000,000	1.5%
For every euro of the next €10,000,000	1.75%
For every euro of the remainder	2%

Further, the following minimum and maximum annual compliance contributions apply, per game type:

- Minimum compliance contribution:
 - Game type 1: €15,000;
 - Game type 2: €25,000;
 - Game type 3: €25,000; and
 - Game type 4: €5,000.
- Maximum compliance contribution
 - Game type 1: €375,000;
 - Game type 2: €600,000;
 - Game type 3: €500,000; and
 - Game type 4: €500,000.

If an entity qualifies as a 'start-up' under the MGA's Directive on Start-Up Undertakings, then the licensed entity would benefit from a moratorium period of 12 months during which it will be exempt from paying gaming tax and compliance contribution fees.

REMOTE GAMBLING

Types

17 | Is remote gambling permitted and, if so, what types?

Yes, remote gaming is permitted subject to holding the required gaming authorisation.

Gaming in Malta is regulated in a horizontal fashion and allowed or regulated irrespective of the delivery channel, vertical or game type and

thus, in principle, any gaming activity type could be lawfully possible, as long as the right gaming authorisation is held (where applicable), and this irrespective that the activity is remote.

For licensing procedures and certain regulatory purposes, game types in Malta are classified into 4 categories as follows:

- Type 1: Games of chance played against the house the outcome of which is determined by a random number generator (RNG). For example, casino games including slots, roulette, blackjack, baccarat, lotteries and virtual games.
- Type 2: Games of change played against the house, the outcome of which is determined by the result of an event or competition extraneous to the game of change itself and whereby the operator manages own risk by managing odds offered to the player. For example, fixed odds betting, including e-sports betting.
- Type 3: Games of chance not played against the house, and wherein the operator is not exposed to gaming risk, but instead generates revenue by taking a commission or other charge based on the stakes or the prize. For example, player versus player games such as poker, bingo, betting exchange and other commission-based games, which can also include e-Sports player to player bets.
- Type 4: Skill games with a prize, deemed to be controlled skill games. For example, fantasy sports betting.

Licensing

18 | What are the criteria for obtaining a licence to operate remote gambling?

Licensing criteria and procedures to operate remote gaming products may be subdivided into four main broad areas:

- a fitness and properness test, including financial and AML due diligence;
- technical, including the submission of all relevant technical documentation on the games, RNG, hardware and software architecture, information security measures, disaster and business continuity measures;
- business and administrative, including submission of a business plan, financial forecasts, human resources plan, marketing and advertising plan, and outsourcing procedures; and
- regulatory, including anti-money laundering procedures, internal gaming policies, player terms and conditions, data protection, commercial agreements and responsible gaming measures.

Following the provision of all required documentation and information to the satisfaction of the Malta Gaming Authority (MGA), the applicant is invited to hold a systems audit in a staged environment, whereby the actual games, devices and technical set-up would be audited by an independent auditor, approved by the MGA but selected and appointed by the applicant.

Once a positive audit report is submitted to the MGA by the systems auditor and provided that the MGA's probity checks do not result in any negative finding about the applicant company, its shareholders and key people, the MGA proceeds with the issuance of a licence provided that all relevant fees are paid.

It should also be noted that the detail of the applicable licensing procedures varies depending on whether the gaming activity is a B2C gaming service or a B2B gaming supply.

Only legal entities established in Malta or the EEA may apply for a gaming authorisation from the MGA.

19 | How do the licensing criteria for remote gambling operators differ from those applicable to land-based operators?

Mainly, the licensing criteria for remote and land-based operators are the same, with the main differences arising from matters that are only applicable to land-based gaming, such as dedicated regulation of gaming premises and the requirement of a concession from the government of Malta for the operation of Malta’s national lottery games and land-based casinos.

Malta’s remote gaming authorisation framework is based on an ‘open-window’ concept, whereby there is no ‘*numerus clausus*’ on the number of licences, game types or operators that can be authorised by the MGA.

Cross-border gambling

20 | May operators located in other countries offer internet gambling to consumers in your jurisdiction without obtaining a licence there?

Yes, but to do so lawfully, such operators need to hold a gaming licence and in turn, such gaming licence needs to be recognised by the MGA under a recognition notice authorisation.

21 | May operators licensed in your jurisdiction offer internet gambling to consumers in other countries?

Yes, operators licensed by the MGA may offer internet gambling to consumers in other countries from a Maltese law perspective. Local laws and regulations in the consumer’s country may, however, prevent this or require additional requirements such as a local licence.

Taxes

22 | What tax rate applies to each form of remote gambling?

A 5 per cent gaming tax applies on gaming revenue generated from players resident in Malta. Determination of taxability is whether the player is established, has his permanent address or usually resides in Malta.

Further, gaming service operators also need to pay an annual ‘compliance contribution’, based on gaming revenue and game type as follows:

Game Type 1

Revenue	Compliance contribution rate
For every euro of the first €3,000,000	1.25%
For every euro of the next €4,500,000	1%
For every euro of the next €5,000,000	0.85%
For every euro of the next €7,500,000	0.7%
For every euro of the next €10,000,000	0.55%
For every euro of the remainder	0.4%

Game type 2

Revenue	Compliance contribution rate
For every euro of the first €3,000,000	4%
For every euro of the next €4,500,000	3%
For every euro of the next €5,000,000	2%
For every euro of the next €7,500,000	1%
For every euro of the next €10,000,000	0.8%

Revenue	Compliance contribution rate
For every euro of the next €10,000,000	0.6%
For every euro of the remainder	0.4%

Game type 3

Revenue	Compliance contribution rate
For every euro of the first €2,000,000	4%
For every euro of the next €3,000,000	3%
For every euro of the next €5,000,000	2%
For every euro of the next €5,000,000	1%
For every euro of the next €5,000,000	0.8%
For every euro of the next €10,000,000	0.6%
For every euro of the remainder	0.4%

Game type 4

Revenue	Compliance contribution rate
For every euro of the first €2,000,000	0.5%
For every euro of the next €3,000,000	0.75%
For every euro of the next €5,000,000	1%
For every euro of the next €5,000,000	1.25%
For every euro of the next €5,000,000	1.5%
For every euro of the next €10,000,000	1.75%
For every euro of the remainder	2%

Further, the following minimum and maximum annual compliance contributions apply, per game type.

Minimum compliance contribution:

- Game type 1: €15,000;
- Game type 2: €25,000;
- Game type 3: €25,000;
- Game type 4: €5,000.

Maximum compliance contribution

- Game type 1: €375,000;
- Game type 2: €600,000;
- Game type 3: €500,000;
- Game type 4: €500,000.

If an entity qualifies as a ‘start-up’ under the MGA’s Directive on Start-Up Undertakings, then the licensed entity would benefit from a moratorium period of 12 months during which it will be exempt from paying gaming tax and compliance contribution fees.

INTELLECTUAL PROPERTY

Patents

23 | Are gambling games – land-based or remote – patentable in your jurisdiction?

The patentability of games in Malta is subject to the same requirements applicable to patentable inventions generally under the Patents and Designs Act (Chapter 417 of the Laws of Malta). The main factors to be considered are novelty, inventive step and industrial applicability. It should, however, be noted that under Maltese Patent Law, software as such is not patentable.

Trademarks

24 | Are there limitations on how brands, logos or other types of marks may be used in promoting gambling games?

There are no direct limitations. That said, the use of brands, logos or other types of marks would still be subject to the generic trademark restrictions arising under the Trademarks Act (Chapter 597 of the Laws of Malta) and the advertising restrictions under the Gaming Act.

ADVERTISING

Restrictions

25 | What types of restrictions apply to advertising gambling games?

The Malta Gaming Authority (MGA) imposes various restrictions and limitations on different forms of advertising such as sponsorships, social media, bonuses and promotions. In particular, it should be noted that gaming advertisements cannot:

- be based on the gaining of personal prestige or on (alleged) success stories of players;
- be used to exploit the vulnerable or a vulnerable situation;
- feature minors;
- portray gaming as a way of resolving problems;
- condone or encourage behaviour that is criminal or socially irresponsible;
- suggest gaming as an alternative to employment;
- suggest that gaming can enhance personal or professional qualities;
- suggest that solitary gaming is preferable to social gaming;
- suggest peer pressure to gamble;
- suggest that skill can influence the outcome of games of chance;
- provide false information about chances of winning or expected return;
- refer to instantly available consumer credit services; and
- target players who are undergoing a period of self-exclusion.

The application of advertising restrictions was particularly manifested by the MGA during the covid-19 pandemic, whereby the MGA took various enforcement actions against licensees that were running covid-19 related advertisements on the basis that the MGA deemed any such covid-19-related advertisements as socially irresponsible.

All key regulatory matters in relation to promotions and advertising restrictions are contained within the Gaming Commercial Communications Regulations (SL 583.09 of the Laws of Malta), including matters relating to: (1) general obligations and limitations; (2) responsible gaming; (3) protection of minors and vulnerable persons; (4) sponsorships; and (5) misleading and unfair promotional schemes.

SUPPLIERS

Licensing

26 | What types of suppliers to gambling operators require licences?

B2B critical gaming suppliers require a licence from the MGA (or other gaming authorisation such as a Recognition Notice).

A B2B critical gaming supplier is any type of supplier that provides a material gaming supply to a gaming services operator, which (1) is indispensable in determining the outcome of a game forming part of a gaming service or (2) is an indispensable component in the processing or management of essential regulatory data.

While there are some licensing procedure differences, the licensing procedure does not materially differ from the licensing procedure for other licence types.

The licensing process and respective criteria may be subdivided into four main broad areas:

- a fitness and properness test, including financial and AML due diligence;
- technical, including the submission of all relevant technical documentation on the games, random number generator, hardware and software architecture, information security measures, disaster and business continuity measures;
- business and administrative, including submission of a business plan, financial forecasts, human resources plan, marketing and advertising plan, and outsourcing procedures; and
- regulatory, including internal policies, commercial agreements and responsible gaming measures.

Following the provision of all required documentation and information to the satisfaction of the Malta Gaming Authority (MGA), the applicant is invited to hold a systems audit in a staged environment, whereby the actual games or platform, and technical set-up would be audited by an independent auditor, approved by the MGA but selected and appointed by the applicant.

Once a positive audit report is submitted to the MGA by the systems auditor and provided that the MGA's probity checks do not result in any negative finding about the applicant company, its shareholders and key people, the MGA proceeds with the issuance of a licence provided that all relevant fees are paid.

Further, suppliers of material gaming supplies, such as risk management services, event, content or odds providers, fraud management services, co-location service providers, back-up and disaster recovery services, customer due diligence services or player funds holding or management, may voluntarily apply for a material supplies certificate from the MGA.

Registration

27 | If licensing is not required, is there a registration or other process suppliers are subject to, and what triggers that process?

A B2B gaming authorisation is required for critical gaming supplies.

LABOUR AND EMPLOYMENT

Wage and hour rules

28 | Are there particular rules governing hours and wage treatment for casino employees?

No specific employment rules apply for employees working at a casino.

Employees in Malta are entitled to overtime compensation for those hours worked exceeding 40 hours per week. Overtime compensation is set at 1.5 times the rate applicable for normal working hours.

Time spent in changing into or out of casino-required clothing is not included as working time, but pre and post-shift meetings are included as part of working hours if such meetings are obligatory. Obligatory training is also considered as working hours.

Security screening depends on the nature and time spent in the screening: the longer and more exhaustive the screening is, the more likely that the screening is considered as part of the employee's working time.

Collective labour

29 | Must casino employees be members of labour unions or similar organisations?

There is no requirement for casino employees to become members of labour unions or similar organisations.

ACQUISITIONS AND CHANGES OF CONTROL

Change of control

30 | How are licensee changes of control, and substantial changes in shareholdings of licensees, addressed?

Any direct or indirect change in a licensee's qualifying shareholding must be notified to the Malta Gaming Authority (MGA) within three working days in terms of Directive 3 of 2018, the Gaming Authorisations and Compliance Directive (the Authorisations and Compliance Directive). All documentation required by the MGA as part of the notification process must be submitted to the MGA within 30 days after the change. If the change in shareholding affects the licensees' fitness and propriety, or otherwise hinders the licensee's licence suitability, the MGA may order the licensee to revert to the previous shareholding status quo and thus to cancel such change in shareholding structure.

Qualifying shareholding is deemed to amount to a direct or indirect shareholding interest of 10 per cent in the licensee.

With regards to publicly listed companies, the relative process specific to listing on an exchange is not established directly in the law or applicable MGA directives. However, by way of practice, the MGA typically rests on the checks carried out by the respective regulated market and in such instances, the MGA's own fit and properness assessment typically mainly focuses on the licensee's board of directors.

Bankruptcy

31 | How are gambling licences treated in bankruptcy?

In terms of the Authorisations and Compliance Directive, licensees must notify the MGA within 30 days after any matter that significantly affects the financial standing of the licensee in an adverse manner, including but not limited to bankruptcy or petitions for winding up, or being placed in administration or receivership, or their directors proposing to creditors a composition in satisfaction of its debts or a scheme of arrangement of its affairs.

Further, if a licensee is declared as bankrupt or insolvent, such would lead to the revocation of its gaming licence.

Creditors who seek to recover their debt through the enforcement of collateral by taking possession of qualifying shareholding (or other gaming assets) are subject to the MGA's regulatory remit and require approval from the MGA before being allowed to enforce their rights. A creditor's enforcement against other licensee's assets does not necessarily require the MGA's prior approval.

An insolvency or bankruptcy court order would not remove the need of MGA approval in instances where the same is required.

With respect to the options available for a creditor to enforce a debt secured against a licensee's assets, generally court proceedings are required. That said, under the Financial Collateral Arrangements Regulations (SL 459.01 of the Laws of Malta, the FCA Regulations), it may be possible to structure certain loan transactions in a way that they are validly enforceable under their terms without the need of any formal act (such as a judicial act) and this, irrespective of any winding-up or reorganisation measures by the collateral provider.

The previously mentioned MGA approval would still apply, even for enforcement of collateral under the FCA Regulations. Further, it should be noted that the FCA Regulations are limited in scope to financial collateral consisting of cash, instruments or credit claims that can be evidenced in writing.

Under no situation may a creditor enforce his or her rights against player's funds held by a licensee.

QUASI-GAMBLING

Regulation

32 | How are forms of 'quasi-gambling' regulated? Are any treated as 'gambling', and what triggers such treatment?

Quasi-gambling is regulated or otherwise depending on the form of quasi-gambling activity.

Skill games are generally exempt from regulation under the Gaming Act, that is unless the Malta Gaming Authority (MGA) deems a skill game to amount to a 'controlled skill game', namely a skill game that requires a stake to enable participation or offers the possibility of winning a prize, and that is deemed to be a licensable game by the MGA.

To date, the only MGA public ruling deeming a particular skill game type as amounting to a controlled skill game, was a ruling issued in respect of fantasy sports games.

With respect to social gaming, there are various exemptions from gaming regulation that are relevant, such as exemptions in relation to:

- Games of skill that do not require a stake to enable participation or do not envisage the possibility of a prize reward.
- Games of skill that require a stake to enable participation and offer the possibility of a prize unless the MGA determines such to be a controlled skill game.
- Games of chance that do not require a stake to enable participation or do not envisage the possibility of a prize reward (unless the MGA determines otherwise in a binding instrument).
- A '*de minimis game*', namely a game that satisfies all the following cumulative criteria:
 - the game consists solely in a lottery or raffle-type game;
 - the value of the stake does not exceed €1;
 - the value of the prize does not exceed €100; and
 - the result of the game cannot be based on the outcome of another game.

If a social gaming product does not fall within one of the specific exemptions, it would be regulated like any other form of gaming service, dependent on the game type's classification.

Licensing

33 | Does your jurisdiction license quasi-gambling operators?

Licensing of controlled skill games operators is envisaged under the Gaming Act, as a Type 4 gaming service licensee. The licensing process in this regard is not materially different from other licensing processes.

Skill games that are not deemed to amount to controlled skill games are, to date, not licensable in Malta.

A 'low-risk games permit' concept also exists for:

- Non-profit games wherein the value of the stakes does not exceed €5 per player;
- Commercial communications games, namely games organised with the purpose of promoting or encouraging the sale of a good or service, and which do not constitute an economic activity in their own right, and where any payment required to be made by a participant serves only to acquire the good or service, and not to participate in the game. For a commercial communications game to qualify for a low-risk games permit, the person organising a series of commercial communication games shall not cumulatively exceed €100,000 in prizes during any calendar month and not more than €500,000 during any calendar year, provided that a single event cannot award a prize exceeding €50,000.
- Limited commercial communication games, namely games organised with the purpose of promoting or encouraging the sale of goods or services, and which includes a stake limited in value to up

to €2 per player and the value of the prize is limited to up to €250. An organiser of a series of limited commercial communications games cannot qualify for a low-risk games permit; if the series cumulatively exceeds €5,000 in prizes during any calendar month or €50,000 in prizes during any calendar year.

Other restrictions

34 | Does your jurisdiction impose other restrictions on the conduct of quasi-gambling activity, including restrictions on advertising, age of participation, limitations on prizes, etc?

If a quasi-gambling activity amounts to a licensable activity under the Gaming Act, all of the restrictions under the Gaming Act would apply to such gaming activity, including but not limited to the restrictions, obligations and limitations envisaged under the Gaming Commercial Communications Regulations (SL 583.09 of the Laws of Malta, the 'Commercial Communications Regulations').

The restrictions envisaged under the Commercial Communications Regulations do not however apply to operators of quasi-gambling products that are not deemed licensable games in Malta, such as (pure) skill games operators. That said, the generic restrictions applicable under the laws of Malta would still apply to such activities, including, for example, the restrictions on misleading advertising under the Commercial Code (Chapter 13 of the Laws of Malta).

Further, operators of certain quasi-gambling products requiring a low-risk games permit are subject to restrictions on the stakes and prizes as follows:

- The value of the stake of non-profit games cannot exceed €5 per player.
- Commercial communications games operators cannot cumulatively exceed €100,000 in prizes during any calendar month and cannot exceed €500,000 in prizes during any calendar year. A single event cannot award a prize exceeding €50,000.
- Limited commercial communication games operators cannot have stakes exceeding €2 per player, and the value of the available prize cannot exceed €250. Organisers of a series of limited commercial communications games cannot cumulatively exceed €5,000 in prizes during any calendar month or €50,000 in prizes during any calendar year.

LITIGATION

Recent cases

35 | What, if any, significant litigation involving the gambling or quasi-gambling sectors has your jurisdiction seen in recent years?

The most significant gaming-related litigation matter during the last year revolved around a financial penalty of €2.34 million imposed on Black Rock Media Limited or operating a gaming service through a Maltese legal entity without being in possession of the necessary authorisation, as the company was processing payments to and from players as part of a gaming service that was not duly authorised.

Most significant gaming litigation during the recent few years revolved around anti-money laundering (AML) breaches, with Vivaro Ltd being fined a record AML breach-related fine by the Financial Intelligence Analysis Unit, a fine that exceeded €700,000.

UPDATE AND TRENDS

Key developments of the past year

36 | Highlight any noteworthy developments or trends in the gambling or quasi-gambling sectors (legal or business) and their potential implications.

In terms of noteworthy developments, it should be noted that a concession for operating a land-based casino was recently issued for a public call for tenders. Other recent noteworthy developments include the publication of updated Gaming AML Implementation Procedures as well as a number of Malta Gaming Authority (MGA) directives, including Directive 3 of 2020 on the Key Function of the Prevention of Money Laundering and the Financing of Terrorism.

The MGA also issued the Guidance Paper on Suspicious Betting Reporting Requirements and Integrity Matters, and set up the new MGA's Sports Integrity Unit. The MGA's Guidelines on the use of Innovative Technology Arrangements and the acceptance of virtual financial assets and virtual tokens through the implementation of a sandbox environment were also recently updated.

In terms of trends, an increase of enforcement measures was particularly noticeable, particularly in the field of AML compliance. Other significant trends consisted in the MGA's increased application of advertising restrictions that was particularly manifested by the MGA during the covid-19 pandemic, whereby the MGA took various enforcement actions against licensees that were running covid-19 related advertisements on the basis that the MGA deemed any such covid-19-related advertisements as socially irresponsible.

Coronavirus

37 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Remote working measures were implemented by the MGA to address the covid-19 pandemic together with submission or issuance of documentation solely in soft-copy form. Further, while no laws or regulations were specifically amended in view of the pandemic, certain regulatory requirements were postponed such as the deadline within which licensees were bound to submit their audited financial statements to the MGA.

Other pandemic-related notable initiatives included the MGA's increased application of advertising restrictions, whereby the MGA took various enforcement actions against licensees that were running covid-19 related advertisements on the basis that the MGA deemed any such covid-19-related advertisements as socially irresponsible.

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