

# International **Comparative** Legal Guides



## Gambling 2021

A practical cross-border insight into gambling law

**Seventh Edition**

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Ballard Spahr LLP  
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DLA Piper Hungary  
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# Malta



Reuben Portanier



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GTG Advocates in collaboration with Afilexion Alliance

## 1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Malta Gaming Authority ("MGA").	
	Poker	MGA.	
	Bingo	MGA.	
Betting	Betting	MGA.	
	Sports/horse race betting (if regulated separately to other forms of betting)	MGA.	
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	MGA.	
Lotteries	Lotteries	MGA.	
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	MGA.	
	Skill games and competitions with no element of chance	MGA.	

## 1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

Relevant Products are regulated in Malta under the Gaming Act (Cap 583 of the Laws of Malta) and by the Subsidiary Legislation issued thereunder as well as by the instruments issued by the MGA. The Gaming Act came into force in August 2018 as a result of a legislative and regulatory overhaul of the previous Maltese gaming regime, namely the former Gaming Act which regulated land-based casinos and casinos on cruise ships within Maltese territorial waters, whilst the Lotteries and Other Games Act regulated all other forms of gaming, including remote gaming and skill games with prizes, together with other land-based Relevant Products being (amongst others) the National Lottery, Bingo Halls and Gaming Parlours. The new Gaming Act thus saw the consolidation of all relevant gaming activities falling under one singular act. The Gaming Act also determines the functions of the single regulatory body, being the MGA.

In broad terms, the offer of Relevant Products to persons in Malta is permitted insofar as the Relevant Products are being provided under the required licence/authorisation. The licensing requirements are addressed more specifically through subsidiary legislation in the form of regulations that fall under the said Act. There are 12 subsidiary legislations falling under the Act, namely the:

- Responsible Gaming Fund Regulations (SL 583.01 of the Laws of Malta) – this law is not yet in force.
- GamingMalta Fund Regulations (SL 583.02 of the Laws of Malta).
- Gaming License Fees Regulations (SL 583.03 of the Laws of Malta).
- Gaming Definitions Regulations (SL 583.04 of the Laws of Malta).
- Gaming Authorisations Regulations (SL 583.05 of the Laws of Malta).
- Gaming Compliance and Enforcement Regulations (SL 583.06 of the Laws of Malta).
- Gaming Premises Regulations (SL 583.07 of the Laws of Malta).
- Gaming Player Protection Regulations (SL 583.08 of the Laws of Malta).
- Gaming Commercial Communications Regulations (SL 583.09 of the Laws of Malta).
- Gaming Tax Regulations (SL 583.10 of the Laws of Malta).
- Social Causes Fund Regulations (SL 583.11 of the Laws of Malta).

■ Retention of Data (Malta Gaming Authority) Regulations (SL 583.12 of the Laws of Malta).

The MGA has the power at law to issue directives, whereby the Authority utilises this legal instrument to provide directives to the industry which have the characteristic of being adaptable to industry developments. Examples of such directives include the Player Protection Directive.

**2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, "Licences") are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?**

The promulgation of the new Gaming Act in 2018 saw the inclusion of 'licensable' activities to be all governed under one umbrella Act, and thus both land-based and remote gaming are licensable by the MGA through the Gaming Act and the Regulations that fall thereunder.

Malta's Licensing Framework is predominantly based on an *open window* concept, whereby there is no *numerus clausus* on the number of licences that can be granted by the MGA and no restrictions on when an operator can apply for a licence. The only exception relates to the National Lottery licence which is limited to one licence and subject to a concession tendering process on the temporary use of intellectual property rights pertaining to the National Lottery Games. On paper, the Gaming Act does not stipulate any limitations on the number of land-based casinos; however, a land-based casino licence is dependent on a licence applicant holding a government casino concession, whereby the number of concessions available are limited according to government policy. Presently, there are four licensed land-based casinos in Malta.

In the case of remote gaming, the Gaming Act 2018 saw a complete overhaul in the licensing categories, thus departing from a multi-licence system that was in force from 2004 to 2018 to a streamlined licence system, based on simply having a distinction between a B2C and a B2B licence. The structure of the remote gaming licence is based on an *umbrella* concept, whereby under a B2C or B2B licence, the licensee can add or remove different gaming activities with ease, provided regulatory approval is provided by the MGA.

**2.2 Where Licences are available, please outline the structure of the relevant licensing regime.**

As elaborated in question 2.1 above, gaming licences are granted as either a B2C or a B2B gaming licence.

In the case of remote gaming, B2C licences cover the activities of making a game for participation by players as an economic activity, thus having an operator which offers gaming services for consumption by an individual. B2B licences cover 'critical gaming supplies', namely B2B supplies which are indispensable in determining the outcome of games forming part of a gaming service or an indispensable component in the processing of essential regulatory data. An example of a B2B operator would be, for instance, a games platform, whereby such games are made available to B2C licensed operators.

Four different types of game types are recognised in Malta. Each game type is further split into different 'Game Verticals' which dictate which kind of games would be approved under the licence. The structure for remote gaming B2C and B2B licences is as follows:

- Type 1: Games of chance played against the house with the outcome determined by a random number generator ("RNG"). This includes the following verticals: casinos; slots; scratch cards; lotteries; secondary lotteries; and virtual games.
- Type 2: Games of chance played against the house through a Matchbook. This includes the vertical of fixed odds betting.
- Type 3: Gaming services played in a Peer-to-Peer manner (Player versus Player), which would include the verticals of poker, betting exchanges and bingo.
- Type 4: Controlled skill games – at present this type only covers one vertical, which is fantasy sports betting, although the law allows the MGA to include further verticals of the same/similar nature under this category.

One particular element, which was newly introduced under the Gaming Act, and which merits a specific mention, is the inclusion of a voluntary certification of certain gaming supplies which are provided as a B2B supply, and which are deemed to be 'material' yet not critical gaming supplies. Such 'material' gaming supplies which would fall under the voluntary B2B authorisation would include disaster recovery services, data centres, content and odds provision, and risk management services.

The Gaming Act 2018 also provides for what is termed as a 'Recognition Notice', which is not a licence *per se*, but which is an authorisation from the MGA to allow legal persons holding a gaming licence from another EU/EEA Member State, or from another State which is deemed by the MGA to offer largely equivalent safeguards to those offered by the MGA, to allow such legal persons to provide their gaming services and/or supplies in or from Malta based on their foreign licence.

Any gaming licensee (both land-based or remote gaming) are required to have a number of key persons holding a personal licence, termed as a 'Key Function Holder License'. A licensed gaming operator cannot operate unless it has all the Key Functions defined at law held by Key Function Holder Licensees. The amount and type of Key Functions that need to be held by the Licensees varies according to the type of licence.

**2.3 What is the process of applying for a Licence for a Relevant Product?**

The licence application process is a very rigorous and detailed one. The licence application process may be subdivided into four main areas, which are: (1) the fitness and properness test (including financial and anti-money laundering due diligence); (2) technical (including the submission of all relevant technical documentation on the games, RNG, hardware architecture, software architecture, information security measures, disaster recovery and business continuity measures); (3) administrative (including the submission of the business plan, human resources plan, marketing plan, advertising plan, and outsourcing procedures); and (4) regulatory, including but not limited to anti-money laundering procedures and set-up, data protection procedures, commercial agreements, terms and conditions for players, and responsible gaming measures.

The submission of licence applications can only be done through the MGA eServices portal, where the documentation mentioned above needs to be uploaded, and statutory forms and declarations need to be filled in.

Following provision of 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 that would be on offer and the 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 probity checks do not result in anything negative about the applicant company, its shareholders and key people, the MGA can proceed with the issuance of a licence provided that all the relevant fees have been paid.

In the case of land-based casino applicants, the applicant is first required to hold a valid concession issued by the Government.

In the case of land-based bingo halls and gaming parlours, additional requirements are imposed as part of the application, mainly relating to the location and type of the gaming premises.

#### 2.4 Are any restrictions placed upon licensees in your jurisdiction?

There are various restrictions placed on licensees, which may vary according to the type of licence held. Some restrictions are a result of conditions dictated by law, whilst other restrictions may be part of a licence conditions document issued by the MGA. The main restrictions worth mentioning include:

- (a) Only legal persons established in the EU/EEA may apply and hold a gaming licence granted by the MGA.
- (b) Minimum share capital requirements are imposed on applicants and licence holders, with the amount of share capital varying according to the gaming licence held. The minimum paid-up share capital for a remote gaming licence varies from €40,000 to €100,000 depending on whether the licence is B2B or B2C and depending on the game type.
- (c) Financial statements need to be reported according to the International Financial Reporting Standards ("IFRS").
- (d) Although a Key Function Holder Licensee may hold more than one Key Function, certain functions which present conflicting interests may not be held by the same person; for example, the Key Function Holder on data protection cannot be the same Key Function Holder on information security.
- (e) B2C licensees are subject persons as per the Anti-Money Laundering and Prevention of Funding of Terrorism Act, and consequently the licensee is required to have an appointed Anti-Money Laundering Officer who is approved by the MGA through the holding of a Key Function Holder (AML) licence, and is also approved and registered with the Financial Intelligence Analysis Unit.
- (f) Remote gaming operators need to have an appointed alternative dispute resolution entity.
- (g) Whereas remote gaming operators may have their gaming equipment and servers located anywhere in the EU/EEA, a forensic live copy of the players' database, financial transactions database and gaming transactions log database need to be located in Malta.
- (h) B2C remote gaming licensees need to hold a segregated players' account with an EEA licensed credit or financial institution.

Since 2004, Malta has pioneered the notion of responsible gaming, and has thus developed a whole array of reasoned restrictions which are a result of responsible gaming measures and which each licensee needs to follow and abide by religiously. Such responsible gaming measures include, but are not limited to, for instance: age restrictions (only persons over the age of 18 are allowed to bet); certain advertising restrictions; and the availability of self-exclusion.

#### 2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.

B2B and B2C gaming licences are valid for a term of 10 years and are renewable subject to ongoing compliance and a renewal process. The concept of a licence for an occasional gaming event is also possible, and such licences are by their very nature temporary and limited to the said occasional event.

The MGA has the authority to continuously review and monitor licensees' activities and could at any point in time suspend, revoke or penalise a licensee. The MGA's standard monitoring processes include subjecting licensees to regular compliance audits, together with any other compliance audit which may be deemed necessary by the MGA on an *ad hoc* basis. Enforcement measures are mainly contained in the Gaming Compliance and Enforcement Regulations. Depending on the nature of the breach, the enforcement ramifications may either be of a criminal or administrative nature (or both).

Administrative enforcement measures may be appealed in front of the Gaming Administrative Tribunal.

#### 2.6 By Relevant Product, what are the key limits on providing services to customers? Please include in this answer any material promotion and advertising restrictions.

The MGA imposes strong restrictions and limitations on different forms of advertising such as sponsorships, social media, and bonuses and promotions. In particular, it should be noted that advertisements cannot be based on the gaining of personal prestige or on (alleged) success stories of players, and cannot be used to exploit the vulnerable or a vulnerable situation. The application of advertising restrictions of a responsible gaming nature was clearly manifested in 2020 during the COVID-19 pandemic, whereby the MGA took enforcement actions against licensees which 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 material 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.

#### 2.7 What are the tax and other compulsory levies?

The Gaming License Fees Regulations (SL 583.03 of the Laws of Malta) provide that B2C operators shall pay a variable licence fee, termed as a compliance contribution, which is calculated on the gaming revenue generated. This fee varies according to which type of gaming services the operator is licensed to offer, as well as the revenue generated through that game type.

The variable component of a licence fee includes a minimum payable fee of €5,000 with a maximum cap of €500,000 or €600,000, depending on the licence type. The variable licence fee is payable monthly and is calculated throughout the financial year of the operator. Furthermore, start-ups fulfilling the criteria considered in the Gaming Licence Fees Regulations and the Directive on Start-Up Undertakings are exempted from paying Compliance Contribution fees for the first year of operations.

B2C companies must also pay an annual licence fee of €25,000 for those holding licence Types 1 to 3 whilst a licence fee of €10,000 is due for Type 4 operators, payable in advance.

B2B operators are also subject to a licence fee, varying according to the type of service provided and ranging from €25,000 to €35,000 depending on the revenue generated, whilst providers of back-end services, or a control system whereby essential regulatory data is processed, are subject to a yearly fee ranging between €3,000 and €5,000, again depending on the revenue generated.

## 2.8 What are the broad social responsibility requirements?

A social causes fund is in place in terms of the Social Causes Fund Regulations (SL 583.11 of the Laws of Malta) and various responsible gaming obligations are also in place. Such responsible gaming obligations include that players must have the ability to set deposit limits, play-time limits or exclude themselves from playing for a specific amount of time or indefinitely.

## 2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

All MGA-licensed B2C operators are classified as subject persons under the AML laws of Malta, irrespective of the type of game on offer, with the only exception being B2C licensees licensed as Type 4 only (controlled skill games). AML laws and Implementing Procedures impose that a customer due diligence (“CDD”) check on players is carried out for account opening, whilst an enhanced due diligence check is required to be conducted by no later than the request of first withdrawal, or when reaching a cumulative deposit, amounting to €2,000. B2C licensed operators are required to follow the detailed AML Implementing Procedures (Part II) for the gaming sector, which were amended in July 2020. The amendments include, amongst others:

- (a) clarifications on CDD obligations especially in connection with timing, PEPs, Source of Wealth, incomplete documentation and ongoing monitoring;
- (b) sanctions screening shall be concluded regardless of the customer reaching the threshold of the obligatory CDD;
- (c) subject persons are obliged to follow the guidance of the Sanctions Monitoring Board;
- (d) updates on the role and employment conditions of the MLRO and the Compliance Officer;
- (e) the provision of more detailed risk factors; and
- (f) the extension of the AML obligations to physical establishments used, to extend subject persons’ customer reach.

B2B MGA licence holders and holders of a Recognition Notice are not classified as ‘subject persons’ and thus do not fall under Maltese AML laws.

With respect to virtual currencies, a sandbox framework allowing the acceptance of virtual currencies by gaming operators for the placement of bets, in accordance with certain parameters set by the MGA, which include being accepted as part of a regulatory sandbox framework, is in place and guidelines in this regard were updated in June 2020 through the document “Guidance on the use of Innovative Technology Arrangements and the acceptance of Virtual Financial Assets and Virtual Tokens through the implementation of a Sandbox Environment”.

Subject to the various sandbox framework conditions, gaming licensees can accept for bet placement both “virtual financial assets” and “virtual tokens”, as long as the nature thereof is deemed as such in terms of the Virtual Financial Assets Act, Cap 590 of the Laws of Malta (“VFA Act”). Virtual financial assets can be described in laymen terms as traditional tradable/exchangeable cryptocurrencies, while virtual tokens can be described as virtual currencies which can only be used in-game, and cannot be exchanged outside of the platform on which they have been issued. Confirmation of the legal nature of the virtual currency prior to acceptance is required through a Financial Instrument Test carried out by a VFA Agent licensed in terms of the VFA Act. Various other requirements are in place in the sandbox framework, including on AML, on virtual currency exchange value, and on virtual currency wallet regulatory requirements and wallet address verification.

Apart from acceptance of virtual currencies, gaming licensees can also use DLT platforms and smart contracts as part of their key equipment within the sandbox framework, subject to MGA approval and an audit thereof carried out by an auditor registered with the Malta Digital Innovation Authority in terms of the Innovative Technology Arrangements and Services Act (Cap 592 of the Laws of Malta).

## 3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?

Malta’s gaming regime applies in a horizontal and technology-neutral manner and, thus, there is no particular distinction in terms of whether the gaming services are provided through online, mobile, digital or electronic forms.

As per question 2.2, operators located outside of Malta, but holding a licence from an EEA jurisdiction, require a Recognition Notice in order to be able to provide their gaming services or supplies in or from Malta. The Recognition Notice is valid for one year and may be renewed.

## 3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?

None that are specific to the Maltese framework.

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

See question 2.2 regarding which type of machine-based gaming is permitted in Malta. In general, terminal/machine-based gaming is permitted by the Licensed National Lottery operator and their retail outlets, casinos, bingo halls and gaming parlours.

Regarding where machine-based gaming is permitted, it should be noted that in terms of the Gaming Premises Regulations (SL 583.07 of the Laws of Malta), gaming premises need to be approved for such purpose. There are also rules in place on the minimum radial distance of premises at least 75 metres from educational establishments, senior citizens care facilities, places of worship, playgrounds, playing fields and certain other general venues and infrastructure.

#### 4.1 Who is liable under local law/regulation?

Any legal entity registered in Malta, conducting or participating in a gaming operation without an authorisation, is subject to enforcement and may be found to be aiding or abetting illegal gaming.

Authorised gaming operators on the other hand are required to abide by the Gaming Act, its subsidiary legislation, the MGA Directive and licence conditions. A licensed gaming operator found to be in breach of any of the above would be subject to enforcement action, as explained in question 2.5.

Typically, it is the legal entity which is liable under Maltese law; however, in certain instances, including when the breach may be of a criminal nature, directors, managers and other officials exercising certain functions could also be found personally liable.

January 2020 saw a landmark ruling in Malta, whereby Black Rock Media Ltd was found to be operating a gaming service through a Maltese legal entity without being in possession of the necessary authorisation, by processing betting payments for unlicensed gaming operations together with other breaches. The case was settled via a Settlement Agreement with the MGA, whereby Black Rock Media Ltd agreed to pay a financial penalty of €2.34 million covering a number of breaches.

In September 2020, a record €733,160 administrative penalty was imposed by the Financial Intelligence Analysis Unit on a remote gaming operator, regarding the latter's failures to adopt proper AML procedures and risk mitigation measures.

#### 4.2 What form does enforcement action take in your jurisdiction?

The type of enforcement depends on whether the breach or breaches are of a criminal or an administrative nature. Enforcement action in Malta typically takes the form of administrative penalties, which generally consist of a fine of not less than €10,000 and not more than €500,000 (doubled in case of recidivism), imprisonment, which generally consists of a term of not more than five years, both fines and imprisonment, or licence suspension and revocation, depending on the infringement and counts of infringement. Enforcement action can also be reached via a Settlement Agreement with the person in breach, whereby if such person agrees, a Settlement Agreement can sometimes be made to extinguish the offender's criminal liability. In such settlement scenario, the MGA may impose a fine of €500,000 for each infringement, or a sum of €5,000 for each day of infringement and/or any other administrative sanction deemed fit by the MGA.

#### 4.3 Do other non-national laws impact upon liability and enforcement?

Yes. Malta is an EU Member State and as such, relevant laws in this sphere have an impact locally; including, for example, the recognition and enforcement of foreign judgments and the

General Data Protection Regulation, just to mention a few. According to the MGA's latest published statistics, in 2019, 69 international cooperation requests were sent by the MGA, predominantly as part of the criminal probity assessments, with the Authority receiving 58 international cooperation requests.

#### 4.4 Are gambling debts enforceable in your jurisdiction?

Gaming debts arising from gaming activities that are permitted under the Gaming Act are enforceable in Malta. However, gaming debts arising from any other type of game are not enforceable under Maltese law, specifically the Civil Code (Cap 16 of the Laws of Malta), except for gaming debts relating to certain games of a physical nature. It should be noted, however, that a B2C gaming licensee is not allowed to offer its games on credit to players.

#### 4.5 What appetite for and track record of enforcement does your local regulatory authority have? Have fines, licence revocations or other sanctions been enforced in your jurisdiction?

Malta's appetite and track record for enforcement is generally on the rise, with an enforcement trend which has evidently increased year on year. The MGA has, since 2004, published on its website public notices in relation to major enforcement action taken, whereas the MGA has a public register of enforcement action taken against licensees on its website. MGA's annual reports typically have a whole chapter on enforcement, which explain in detail the Authority's enforcement actions performed during the year. The latest annual reports show a trend of over 30% of the licence applications being refused, mainly due to the applicants not being successful in the due diligence process, and that the record financial penalty of €2.34 million was issued in 2020. The annual reports since 2004 can be downloaded from [www.mga.org.mt](http://www.mga.org.mt).

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

There are ongoing discussions on the regulation or otherwise of loot boxes. Moreover, a series of minor amendments to the legal framework are anticipated to take place in 2021, amongst which are the declared intentions of the MGA to implement a set of Suspicious Betting Reporting Requirements, which will oblige B2C licensees offering betting on sporting events to inform the Authority of any instance of suspicious betting, and amendments to the Player Protection Directive which will be the result of a public consultation process with stakeholders.





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URL: [www.gtgadvocates.com](http://www.gtgadvocates.com)

**GTG Advocates** was one of the first Maltese law firms involved in the provision of legal services to the gaming industry, and distinguishes itself from other local peers as one of the few firms with in-house expertise in multiple European regulatory frameworks.

In conjunction with its sister advisory and licensed CSP company **Afilexion Alliance**, the firm assisted various clients in obtaining remote gaming licences in Malta, the UK, Ireland, Sweden, Spain, Portugal and Denmark, and provides ongoing legal and regulatory support on any gaming matter. The firm has, throughout the past years, been involved in a number of high-profile M&A transactions in this industry. Furthermore, the firm's expertise in other areas which are relevant to gaming businesses, such

as technology, e-commerce, broadcasting, hosting, payments, ISPs, advertising, sponsorships, privacy, and blockchain, enables the firm to provide added value to any deal in which clients participate.

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