

GAMING

Malta



Gaming

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into land-based and remote gambling and quasi-gambling activities, including legal definition; age restrictions; penalties; social and non-profit gambling; regulatory authorities; anti-money-laundering regulations; establishment, director, officer and owner licensing; casino development; passive/institutional ownership; responsible gambling; taxes; cross-border and internet gambling; patents; trademarks; advertising; supplier licensing and registration; wage and hour and collective labour issues; change of control and bankruptcy considerations; recent litigation; and recent trends.

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GENERAL LEGAL FRAMEWORK

Legal definition of 'gambling'

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 latter more commonly used in connection with problem gambling matters. For consistency with the Act, this publication uses the term 'gaming'.

Gaming activities are considered to comprise:

- participating in gaming;
- offering a gaming service; and
- making a gaming supply.

On the other hand, a 'gaming supply' activity is an activity that supplies a good or service in relation to a gaming service. The supply may be 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 the absence of the above, the activity would generally fall under one of the exemptions provided for in 'exempt games' under Schedule 2 of the Gaming Authorisations Regulations (SL 583.05 of the Laws of Malta).

Games of chance and games of skill are captured by the 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 by skill alone or predominantly by skill.

Skill games are generally exempt from regulation under the 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 skill game type as amounting to a controlled skill game was a ruling issued in respect of fantasy sports games.

Law stated - 27 March 2023

Remote activity

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 the context of a remote activity, and the Maltese courts have not made any determinations on this matter to date.

Law stated - 27 March 2023

Age restrictions

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.

Law stated - 27 March 2023

Penalties

What are the penalties for offering unlawful gambling?

Penalties vary according to the type of infringement, the counts of infringements and the regulatory history involved. Generally, penalties comprise an administrative fine ranging between €10,000 and €500,000 for each infringement (double in the case of recidivism) or imprisonment, which is generally for 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 empowers the MGA to reach a settlement agreement with the offender, which extinguishes the offender's criminal liability. In 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 both, or any other administrative sanction it deems fit.

Law stated - 27 March 2023

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 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.

Law stated - 27 March 2023

Social and non-profit gambling

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

Although 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 the game 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); and
- de minimis games, namely a game that satisfies the following criteria:
 - the game is 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.

Law stated - 27 March 2023

Regulatory authorities

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. Its 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 the minister responsible for gaming, including making proposals for new gaming laws that may be deemed necessary;
- establishing the minimum requirements for 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 the issuance of enforcement measures and of penalties and administrative actions; and
- collecting gaming licence fees, gaming taxes and gaming levies.

Law stated - 27 March 2023

Anti-money-laundering regulations

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

LAND-BASED GAMBLING

Types

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 Gaming Act regulates gaming activities in a horizontal manner, irrespective of whether the activity is land-based or remote; therefore, in principle, any type of gaming activity 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.

For licensing and certain regulatory purposes, games are classified into four categories as follows:

- Type 1: games of chance played against the house, the outcome of which is determined by random number generation (RNG), such as 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 their own risk by managing the odds offered to the player, such as 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, such as player versus player games, including poker, bingo, betting exchange and other commission-based games, which can also include e-sports player-to-player bets; and
- Type 4: skill games with a prize, deemed to be controlled skill games, such as fantasy sports betting.

Law stated - 27 March 2023

Establishment licensing

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.

The licensing criteria and procedures to operate land-based gaming products can be subdivided into four broad main areas:

- a fitness and properness test, including financial and anti-money laundering (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 the 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 are 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, the MGA proceeds with the issuance of a licence, provided that all relevant fees are paid and the MGA's probity checks do not result in any negative findings about the applicant company, its shareholders and key people.

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 business-to-consumer gaming service or a business-to-business gaming supply.

Only legal entities established in Malta or the European Economic Area may apply for a gaming authorisation from the MGA. That said, 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.

Law stated - 27 March 2023

Director, officer and owner licensing

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

Yes, they 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, the applicable threshold triggering the 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 must also have various key officials, each holding a key function holder licence. The amount and type of key functions that need to be held by a licensee varies according to the type of licence. Furthermore, those persons must fulfil certain experience, competence and qualifications criteria to be able to hold the relevant role and, thereafter, are subject to continuous professional development requirements.

Law stated - 27 March 2023

Location

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.

Law stated - 27 March 2023

Casino development

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 is first required. A concession is only issued following a public call for tenders. Furthermore, the respective financing attracts regulatory scrutiny.

Law stated - 27 March 2023

Passive/institutional ownership

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.

Law stated - 27 March 2023

Responsible gambling

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.

In 2023, the MGA issued an updated Player Protection Directive (Directive 2 of 2018). The Directive provides for new responsible gaming obligations, including:

- obligations on licensees regarding responsible gaming policies and procedures;
- the introduction of markers of harm that must be considered by licensees when determining effective measures and processes to detect and address problem gambling; and
- provisions relating to real-money reinforcement and staff training.

Law stated - 27 March 2023

Taxes

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, which comprises two components:

- a 5 per cent gaming tax on gaming revenue, payable annually and applicable irrespective of the game types offered; and
- 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; and
- Type 3 and Type 4: 12.5 per cent of gaming revenue.

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 the game type. Further, gaming service operators must pay an annual 'compliance contribution', based on gaming revenue and game type as follows:

Type 1

Revenue	Compliance contribution rate
For every euro of the first €3 million	1.25 per cent
For every euro of the next €4.5 million	1 per cent
For every euro of the next €5 million	0.85 per cent
For every euro of the next €7.5 million	0.7 per cent
For every euro of the next €10 million	0.55 per cent
For every euro of the remainder	0.4 per cent

Type 2

Revenue	Compliance contribution rate
For every euro of the first €3 million	4 per cent
For every euro of the next €4.5 million	3 per cent
For every euro of the next €5 million	2 per cent
For every euro of the next €7.5 million	1 per cent
For every euro of the next €10 million	0.8 per cent
For every euro of the next €10 million	0.6 per cent
For every euro of the remainder	0.4 per cent

Type 3

Revenue	Compliance contribution rate
For every euro of the first €2 million	4 per cent
For every euro of the next €3 million	3 per cent
For every euro of the next €5 million	2 per cent
For every euro of the next €5 million	1 per cent
For every euro of the next €5 million	0.8 per cent
For every euro of the next €10 million	0.6 per cent
For every euro of the remainder	0.4 per cent

Type 4

Revenue	Compliance contribution rate
For every euro of the first €2 million	0.5 per cent
For every euro of the next €3 million	0.75 per cent
For every euro of the next €5 million	1 per cent
For every euro of the next €5 million	1.25 per cent
For every euro of the next €5 million	1.5 per cent
For every euro of the next €10 million	1.75 per cent
For every euro of the remainder	2 per cent

The following minimum and maximum annual compliance contributions also apply:

- minimum compliance contributions:
 - Type 1: €15,000;
 - Type 2: €25,000;
 - Type 3: €25,000; and
 - Type 4: €5,000; and
- maximum compliance contributions:
 - Type 1: €375,000;
 - Type 2: €600,000;
 - Type 3: €500,000; and
 - Type 4: €500,000.

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

Law stated - 27 March 2023

REMOTE GAMBLING

Types

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 is allowed or regulated irrespective of the delivery channel, vertical or game type. In principle, any gaming activity type could be lawfully possible as long as the right gaming authorisation is held (where applicable), irrespective of whether the activity is remote.

For licensing and certain regulatory purposes, games are classified into four categories as follows:

- Type 1: games of chance played against the house, the outcome of which is determined by random number generation (RNG), such as casino games, including slots, roulette, blackjack, baccarat, lotteries and virtual

games:



LEXOLOGY

Getting The Deal Through

- 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 their own risk by managing the odds offered to the player, such as 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, such as player versus player games, including poker, bingo, betting exchange and other commission-based games, which can also include e-sports player-to-player bets; and
- Type 4: skill games with a prize, deemed to be controlled skill games, such as fantasy sports betting.

Law stated - 27 March 2023

Licensing

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

The licensing criteria and procedures to operate remote gaming products can be subdivided into four main broad areas:

- a fitness and properness test, including financial and anti-money laundering 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 are 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, the MGA proceeds with the issuance of a licence, provided that all relevant fees are paid and the MGA's probity checks do not result in any negative findings about the applicant company, its shareholders and key people.

The details regarding the applicable licensing procedures vary depending on whether the gaming activity is a business-to-consumer gaming service or a business-to-business gaming supply.

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

Law stated - 27 March 2023

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

The licensing criteria for remote and land-based operators are mostly 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 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.

Law stated - 27 March 2023

Cross-border gambling

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, the operators must hold a gaming licence that has been recognised by the MGA under a recognition notice authorisation.

Law stated - 27 March 2023

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 have additional requirements, such as requiring a local licence.

Law stated - 27 March 2023

Taxes

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. Taxability is determined according to whether the player is established, has his or her permanent address or usually resides in Malta.

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

Type 1

Revenue	Compliance contribution rate
For every euro of the first €3 million	1.25 per cent
For every euro of the next €4.5 million	1 per cent
For every euro of the next €5 million	0.85 per cent
For every euro of the next €7.5 million	0.7 per cent
For every euro of the next €10 million	0.55 per cent
For every euro of the remainder	0.4 per cent

Type 2

Revenue	Compliance contribution rate
For every euro of the first €3 million	4 per cent
For every euro of the next €4.5 million	3 per cent
For every euro of the next €5 million	2 per cent
For every euro of the next €7.5 million	1 per cent
For every euro of the next €10 million	0.8 per cent
For every euro of the next €10 million	0.6 per cent
For every euro of the remainder	0.4 per cent

Type 3

Revenue	Compliance contribution rate
For every euro of the first €2 million	4 per cent
For every euro of the next €3 million	3 per cent
For every euro of the next €5 million	2 per cent
For every euro of the next €5 million	1 per cent
For every euro of the next €5 million	0.8 per cent
For every euro of the next €10 million	0.6 per cent
For every euro of the remainder	0.4 per cent

Type 4

Revenue	Compliance contribution rate
For every euro of the first €2 million	0.5 per cent
For every euro of the next €3 million	0.75 per cent
For every euro of the next €5 million	1 per cent
For every euro of the next €5 million	1.25 per cent
For every euro of the next €5 million	1.5 per cent
For every euro of the next €10 million	1.75 per cent
For every euro of the remainder	2 per cent

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

The following minimum and maximum annual compliance contributions also apply:

- minimum compliance contributions:
 - Type 1: €15,000;
 - Type 2: €25,000;
 - Type 3: €25,000; and

- Type 4: €5,000; and
- maximum compliance contributions:
 - Type 1: €375,000;
 - Type 2: €600,000;
 - Type 3: €500,000; and
 - Type 4: €500,000.

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

Law stated - 27 March 2023

INTELLECTUAL PROPERTY

Patents

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. Under Maltese patent law, software is not patentable.

Law stated - 27 March 2023

Trademarks

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

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

Law stated - 27 March 2023

ADVERTISING

Restrictions

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, gaming advertisements cannot:

- be based on the gain of personal prestige or on the (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 the 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 MGA's application of advertising restrictions was particularly pertinent during the covid-19 pandemic: the MGA took various enforcement actions against licensees that were running covid-19 related advertisements on the basis that the MGA deemed covid-19-related advertisements as socially irresponsible.

All key regulatory matters relating to promotions and advertising restrictions are contained in the Gaming Commercial Communications Regulations (SL 583.09 of the Laws of Malta), including matters relating to:

- general obligations and limitations;
- responsible gaming;
- the protection of minors and vulnerable persons;
- sponsorships; and
- misleading and unfair promotional schemes.

Law stated - 27 March 2023

SUPPLIERS

Licensing

What types of suppliers to gambling operators require licences?

Business-to business (B2B) critical gaming suppliers require a licence from the Malta Gaming Authority (MGA) or another gaming authorisation such as a recognition notice.

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

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

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

- a fitness and properness test, including financial and anti-money laundering 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 MGA, the applicant is invited to hold a systems audit in a staged environment, whereby the actual games, devices and technical set-up are 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, the MGA proceeds with the issuance of a licence, provided that all relevant fees are paid and the MGA's probity checks do not result in any negative findings about the applicant company, its shareholders and key people.

Suppliers of material gaming supplies (eg, risk management services; event, content or odds providers; fraud management services; colocation 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.

Law stated - 27 March 2023

Registration

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.

Law stated - 27 March 2023

LABOUR AND EMPLOYMENT

Wage and hour rules

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.

The time spent changing into or out of casino-required clothing is not considered working time, but pre- and post-shift meetings is considered working time if the meetings are obligatory. Obligatory training is also considered working time.

Whether security screening is considered working time 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 an employee's working time.

Law stated - 27 March 2023

Collective labour

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.

Law stated - 27 March 2023

ACQUISITIONS AND CHANGES OF CONTROL

Change of control

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 under the Gaming Authorisations and Compliance Directive (Directive 3 of 2018 (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 of 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 cancel the change in the shareholding structure.

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

With regard to publicly listed companies, the relative process specific to listing on an exchange is not explicitly established 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 those instances, the MGA's own fit and properness assessment typically, for the most part, focuses on the licensee's board of directors.

Law stated - 27 March 2023

Bankruptcy

How are gambling licences treated in bankruptcy?

In terms of the Authorisations and Compliance Directive, licensees must notify the MGA within 30 days of becoming aware of any matter that significantly affects the financial standing of the licensee in an adverse manner, including bankruptcy or a winding-up petition, placement in administration or receivership, or a proposal by the directors to the creditors of a composition to satisfy its debts or a scheme of arrangement of its affairs.

Further, if a licensee is declared bankrupt or insolvent, this 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 assets of the licensee does not necessarily require the MGA's prior approval.

An insolvency or bankruptcy court order does not remove the need for MGA approval in instances where the approval 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; however, 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 makes them validly enforceable under their terms without the need of any formal act (such as a judicial act), irrespective of any winding-up or reorganisation measures by the collateral provider.

MGA approval would still apply, even for enforcement of collateral under the FCA Regulations. Further, 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 a player's funds held by a licensee.

Law stated - 27 March 2023

QUASI-GAMBLING

Regulation

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 activity.

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 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 the game 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); and
- de minimis games, namely a game that satisfies all the following criteria:
 - the game is 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.

Law stated - 27 March 2023

Licensing

Does your jurisdiction license quasi-gambling operators?

The licensing of controlled skill games operators falls within the scope of the Gaming Act, as Type 4 gaming service licensees. 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.

The concept of a low-risk games permit also exists for:

- non-profit games wherein the value of the stakes does not exceed €5 per player;
- commercial communication games, namely games that are organised with the purpose of promoting or encouraging the sale of a good or service and do not constitute an economic activity in their own right, and where any payment required 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 must 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; and

- limited commercial communication games, namely games organised with the purpose of promoting or encouraging the sale of goods or services and that include a stake limited in value to up to €2 per player, and of which the value of the prize is limited to up to €250. An organiser of a series of limited commercial communication 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.

Law stated - 27 March 2023

Other restrictions

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 the restrictions under the Gaming Act apply to that 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 apply to operators of quasi-gambling products that are not deemed licensable games in Malta, such as (pure) skill games operators; however, the generic restrictions applicable under Maltese laws still apply to those activities, including 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 communication 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; and
- 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 communication games cannot cumulatively exceed €5,000 in prizes during any calendar month or €50,000 in prizes during any calendar year.

Law stated - 27 March 2023

LITIGATION

Recent cases

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

Several cases are currently being heard before the Maltese courts regarding the enforcement and recognition of civil player claims instituted against Malta Gaming Authority (MGA) licensees in Germany and Austria. In those cases, the legal validity of the MGA licence, the contractual relationship between a player and the licensee, and the lawfulness of

the gaming service provided are being challenged through the enforcement and recognition of foreign civil judgments. The outcomes of those cases are expected to impact gambling law on an EU-wide basis and will arguably create the most significant gaming-related pieces of legislation in recent history.

Law stated - 27 March 2023

UPDATE AND TRENDS

Key developments of the past year

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

Several noteworthy developments occurred over the past year, including:

- the issuance by the Malta Gaming Authority (MGA) of a new Policy on the Use of Distributed Ledger Technology by Authorised Persons, and the acceptance of cryptocurrencies by MGA licensees, updating the previous Sandbox Regulatory Framework in a way that makes it more streamlined for an MGA licensee to accept cryptocurrencies;
- the issuance of an updated system documentation checklist, which sets out a list of the documentation and information required for submission by an applicant to apply for an MGA licence;
- the issuance of new rules regarding gambling audit service providers;
- the issuance of new checklists by the MGA regarding systems auditing and systems review; and
- the issuance of an updated Player Protection Directive, which introduced new responsible gaming obligations on MGA licensees.

Furthermore, the MGA issued a consultation regarding the introduction of a new licensable activity, namely the 'application manager' licence, which will be a licence for service providers that submit gaming-related licences to the MGA. New subsidiary legislation and MGA policy in this regard have also been issued for consultation.


The MGA also announced that it is developing a voluntary environmental, social and corporate governance code of good practice for the remote gaming sector.

In terms of trends, a noticeable increase in player claims from Austria and Germany can be observed, in which the legal validity of the MGA licence, the contractual relationship between a player and the licensee, and the lawfulness of the gaming service provided, are being challenged through the enforcement and recognition of foreign civil judgments.

Further, there continues to be increased enforcement measures, particularly in the field of anti-money laundering and compliance.

Law stated - 27 March 2023

Jurisdictions

	Australia	Addisons
	Belgium	Vlaemminck.law
	Brazil	Maia Yoshiyasu Advogados
	Colombia	Asensi Abogados
	Finland	Legal Gaming Attorneys at Law
	Germany	SKW Schwarz
	Gibraltar	ISOLAS
	Hong Kong	Mayer Brown
	Japan	Anderson Mōri & Tomotsune
	Macau	Rato, Ling, Lei & Cortés Advogados
	Malta	GTG Advocates
	Nigeria	Law Allianz
	Norway	Brækhus Advokatfirma
	Portugal	Rato, Ling, Lei & Cortés Advogados
	South Africa	Herbert Smith Freehills LLP
	United Kingdom	Harris Hagan
	USA	Orrick, Herrington & Sutcliffe LLP