

Award in Gaming Law

Lecture Title: An Overview of the Maltese Gaming Legislative and Regulatory Framework (Part 1)

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Diploma in Law (Malta)



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Agenda

- (1) The definition of “*gaming*” under Maltese law;
- (2) The difference between a game of chance and a game of skill;
- (3) The difference between a gaming service and a gaming supply;
- (4) The requirement for obtaining a licence from the Malta Gaming Authority;
- (5) The different types of authorisations under Maltese law;
- (6) Eligibility for obtaining a licence from the Malta Gaming Authority;
and
- (7) The application process.



The definition of “*gaming*” under Maltese law



The definition of “*gaming*” under Maltese law

“*gaming*” means an activity consisting in participating in a game, offering a gaming service or making a gaming supply.

“*game*” means a game of chance and a game of skill.

Gaming Definitions Regulations



The difference between a game of chance and a game of skill



The difference between a game of chance and a game of skill

“game of chance” means an activity the outcome of which is **determined by chance alone or predominantly by chance**, and includes activities the outcome of which is determined depending on the occurrence or outcome of one or more future events;

“game of skill” or *“skill game”* means an activity the outcome of which is **determined by the use of skill alone or predominantly by the use of skill**, but excludes a sport event, unless otherwise established by or under the Act;

Gaming Definitions Regulations



The difference between a game of chance and a game of skill

The MGA is vested with the sole discretion to classify an activity as a game of chance, a game of skill or otherwise, provided that such a decision shall be made on the basis of the considerations listed in the Sixth Schedule of the Gaming Authorisations Regulations, and after taking into consideration any submissions made by any person operating or promoting such activity, and any research or publication issued by any other authoritative source.

Provided that the burden of proving that an activity is a skill game shall rest at all times on the party operating or promoting such an activity.

Regulation 7, Gaming Authorisations Regulations



Skill Games

1. The presence of random draws and their effect on the outcome;
2. Whether the game is played for money and, or prizes with a monetary value;
3. Whether participation in a game involves any form of monetary commitment, or commitment of a monetary value;
4. The possibility of any negative social impact of the game;
5. Whether the activity is closely associated with games of chance and, or gambling;
6. The duration of each event, competition or match;
7. Whether, on the face of it, a skilled player is able to win more than an unskilled player;



Skill Games

8. Whether a player's chance of winning is significantly increased by experience in playing the game;
9. Whether skill can be acquired through training, experience, reading literature or other educational material;
10. Whether a rule-set or format that is used further nullifies the effect of any element of chance;
11. Whether the game is played against other human players, or otherwise;
12. The level of interaction between the players, the level of interaction between the operator and the players, and the level of intervention by the operator during the event, competition or match; and
13. The complexity of the game, including the amount of player choices and their potential effect on the outcome, and the strategies involved.

Sixth Schedule, Gaming Authorisations Regulations



The difference between a gaming service and a gaming supply



Gaming Service

“gaming service” as the making of a game available for participation by players, whether directly or indirectly, and whether alone or with others, as an economic activity (*Gaming Definitions Regulation*).

According to the First Schedule to the Gaming Authorisations Regulations, the following services shall each constitute a gaming service:

- (a) the offering, provision, or operation of a gaming service;
- (b) the hosting by a person in his premises accessible to the public or in premises accessible to the public that are in his possession or under his control, the operation or in any other manner the making available for use of a gaming device or gaming system.



Critical Gaming Supply

“critical gaming supply” or “critical supply” means a material supply which is: (a) indispensable in determining the outcome of game or games forming part of the gaming service; and, or (b) an indispensable component in the processing and, or management of essential regulatory data.

Gaming Definitions Regulation



Material Gaming Supply

A “*material supply*” or a “*material gaming supply*” is defined as a gaming supply of such importance that any weakness or failure in its provision could have a significant impact on the operator’s ability:

- a) to meet its obligations under the Gaming Act and all applicable regulatory instruments; or
- b) to manage risks; or
- c) to continue business.

Gaming Definitions Regulations



Material Gaming Supply

The following constitute material gaming supplies:

1. Manufacturing, assembling, placing on the market, distributing, supplying, selling, leasing or transferring a gaming device;
2. Providing risk management services for the operation of a licensable game;
3. Providing event, content and, or odds;
4. Providing fraud management services for the operation of a licensable game;
5. Holding and, or managing player funds;
6. Providing services relating to customer due diligence;
7. Providing services relating to player identity verification;
8. Providing co-location services and other managed information services, including cloud computing services and, or decentralised hosting protocols where the latter do not amount to a critical gaming supply; and
9. Providing back-up and disaster recovery services.

Third Schedule, Gaming Authorisations Regulations



Critical Gaming Supply

- “*critical gaming supply*” or “*critical supply*” means a material supply which is: (a) indispensable in determining the outcome of game or games forming part of the gaming service; and, or (b) an indispensable component in the processing and, or management of essential regulatory data; (*Gaming Definitions Regulation*).
- According to the First Schedule to the Gaming Authorisations Regulations, the following supplies shall each constitute a critical gaming supply: (a) **supply and management** of material elements of a game; and (b) **supply and management** of software, whether as a stand-alone or as part of a system, to generate, capture, control or otherwise process any essential regulatory record and, or the supply and management of the control system itself on which such software resides.



The requirement for obtaining a licence from the Malta Gaming Authority



When is a licence required from the Malta Gaming Authority?

- Regulation 3 of the Gaming Authorisations Regulations, speaks of the requirement of a licence:

*“(1) No person shall provide or carry out a **gaming service** or a **critical gaming supply from Malta** or to any person in Malta, **or through a legal entity**, except when in **possession of a valid licence**, or when such person is **exempt from the requirement of a licence** under the Act or any other regulatory instrument.*

*(2) No person shall offer a licensable game, whether as part of a **gaming service**, **critical gaming supply** or otherwise, unless such game is approved or otherwise recognised by the Authority.”*



Exempt Games

- According to Regulation 5 of the Gaming Authorisations Regulations, no licence or other authorisation shall be required for the **provision of a gaming service or a critical gaming supply** where such service or supply is **carried out solely in relation to exempt games**, provided that the Authority may, where and to the extent it deems fit and appropriate, nevertheless establish appropriate regulatory conditions and measures for exempt games or any type thereof and require and enforce compliance therewith.
- In case of doubt as to whether a game shall be classified within an exempt category of games, the Authority shall have sole discretion to conclusively determine the matter.



Exempt Games

According to the Second Schedule to the Gaming Authorisations Regulations, the following games shall each be deemed an exempt game:

1. a game of skill which does not require a stake to enable participation, and, or does not envisage the possibility of a prize;
2. a game of skill which requires a stake to enable participation and offers the possibility of a prize, unless the Authority issues a ruling determining that such a game of skill is a controlled skill game;
3. a game of chance which does not require a stake to enable participation, and, or does not envisage the possibility of a prize, unless otherwise determined by the Authority in a binding instrument;
4. a de minimis game, as may be defined by the Authority in a binding instrument after consulting with the Minister;
5. a licensable game organised on board any vessel **flying or entitled to fly the flag of Malta**, or registered in Malta, whilst said vessel is navigating **outside the territorial waters of Malta**.



Exempt Games - De Minimis Games

- A de minimis game shall be a game that satisfies all of the following criteria cumulatively:
 - a) a lottery or raffle-type game;
 - b) the value of the stake to participate in the game is not more than €1;
 - c) the value of the prize is not more than €100; and
 - d) the result of the game is not based on the outcome of another game.
- Each person or organisation cannot organise more than 10 de minimis games in any calendar year, and that no more than two de minimis games may be organised in any calendar month.

De Minimis Games Directive (Directive 3 of 2019)



Licensable Game

- The term “*licensable game*” means a game which is not an exempt game (*Gaming Definitions Regulations*).
- Thus, by default as long as the game is not deemed to be an exempt game, it is a licensable game and therefore, said game requires approval or recognition by the MGA.



Criminal Offence

Article 13 of the Gaming Act provides as follows:

“Where this Act or any other regulatory instrument prescribe that an activity, of whatsoever nature, requires an authorisation in order to be performed, it shall be an offence against this Act to perform such activity, or to promote, aid, abet or otherwise facilitate such activity unless it is duly authorised.”

This is considered to be a criminal offence and any person found guilty of a breach of this article shall, on conviction, be liable to a fine (*multa*) of not less than €10,000 and not more than €500,000 or to imprisonment for a term of not more than 5 years, or to both such fine and imprisonment.



The different types of authorisations under Maltese law

1. *Licences*
2. *Approvals*
3. *Permits*
4. *Certificates*
5. *Recognition Notice*



Licences



Gaming Licences under Maltese law

- The MGA has the power to issue licences of the categories set forth in the First Schedule to the Gaming Authorisations Regulations provided that where Government policy requires that certain gaming services may only be provided when in possession of a concession, the MGA will not issue a licence for the carrying out of such gaming service unless the applicant is in possession of a relevant and valid Government concession (*Regulation 4, Gaming Authorisations Regulations*).
- Two main categories of licences envisaged under the Maltese gaming legislative and regulatory framework are as follows:
 - (a) **a gaming service licence**: a business-to-consumer licence to offer or carry out a gaming service;
 - (b) **a critical gaming supply licence**: a business-to-business licence to provide or carry out a critical gaming supply.



Licence Term

- Both types of licences are issued for a period of 10 years and may be renewed for further periods of 10 years.
- If, in the case where a concession is required, the concession is for a shorter term, the licence shall be granted for such shorter term.



Limited Duration Licence

- Where a gaming service or a gaming supply is by its very nature **temporary**, consists of a **singular event or a number of game instances linked to the same event**, such services shall be eligible for a limited duration licence.



Limited Duration Licence

- Lotteries and lottery-style games.
- The MGA will not issue a limited duration licence to any one person, whether the person is the operator, organiser or the person or entity on behalf of whom such gaming activity has been organised, or is being organised:
 - which exceeds 2 months in duration;
 - which, in aggregate, exceed 6 months in a single calendar year; and
 - more than 4 licences in any calendar year.



Corporate Group Licence

- Where an applicant for a licence is a body corporate, such applicant may apply for a licence either for itself only or for its corporate group.
- According to the Gaming Definitions Regulations, the term “*corporate group*” means a group of bodies corporate **all established in the European Economic Area**, or otherwise structured in a manner which provides equivalent safeguards, in which a parent entity exercises control to the extent of **over 90% over other bodies corporate in the same group**, whether by way of shareholding or voting rights.



Game Types

Type 1 – games of chance played against the house, the outcome of which is determined by a **random** generator, and shall include casino type games, including roulette, blackjack, baccarat, poker played against the house, lotteries, secondary lotteries and virtual sports games;

Type 2 – games of chance played against the house, the outcome of which is **not generated randomly**, but is **determined by the result of an event or competition** extraneous to a game of chance, and whereby the operator manages his or her own risk by managing the odds offered to the player (for instance, sportsbook);

Type 3 – games of chance not played against the house and wherein the operator is not exposed to gaming risk, but generates revenue by **taking a commission** or other charge based on the stakes or the prize, and shall include player versus player games such as poker, bingo, betting exchange, and other commission-based games;

Type 4 - this game type refers to **controlled skill games** in accordance with regulation 8 of the Authorisations Regulations. It is to be noted that the only type of game which is currently licensable as a type 4 'controlled skill game' is fantasy sports.



Game Verticals

- casino, including live casino;
- lotteries;
- secondary lotteries;
- fixed odds betting including live betting;
- pool betting, including betting exchange;
- peer-to-peer poker;
- peer-to-peer bingo and other peer-to-peer games, but excluding pool betting, betting exchange, and poker;
- lottery messenger services;
- controlled skill games; and
- any other gaming vertical which is not comprised with the above.



Approvals



Gaming Premises Approval

“gaming premises” means any premises accessible to the public, which is used or intended to be used for players to participate in a gaming service;

“controlled gaming premises” means any premises intended to make available for use, to host or operate one or more gaming devices, but shall not include premises in which gaming is carried out in virtue of a concession by Government, or premises in which the only gaming which is carried out consists in tombola games;

“bingo hall” means gaming premises in which the only gaming which is carried out consists in tombola games.

Gaming Definitions Regulations



Gaming Premises Approval

No person shall use, or knowingly or negligently allow the use of, whether actively or passively, premises in Malta to be used as gaming premises unless such person is in possession of a valid approval of such gaming premises in accordance with such procedure as may be prescribed by the MGA in a binding instrument and the gaming service provided therein is authorised.

Provided that the MGA may, by way of a binding instrument, exempt certain types or categories of gaming premises from the requirement of approval.

Regulation 4, Gaming Premises Regulations



Gaming Premises Approval

- Controlled gaming premises must in order to be eligible for approval by the MGA comply with the requirements as set out under the Gaming Premises Regulations, and the Gaming Premises Directive.



Gaming Premises Approval

- Controlled gaming premises must be at least 75m from certain locations, such as educational establishments (except for language schools), senior citizens' care facilities, places of worship covering all religions, playgrounds and playing fields, and other venues such as SEDQA, Appogg, Caritas;
- Controlled gaming premises must be a minimum walking distance of at least 50m from any other controlled gaming premises;
- No more than one controlled gaming premises within any single venue (i.e. residential, retail, entertainment complex);
- Controlled gaming premises shall not contain more than 1 gaming device per 2sqm, and not more than 10 gaming devices in total;
- Controlled gaming premises shall be open for business solely between 11 am and 11 pm;
- Applications for approval shall be accompanied by the relevant Planning Authority Permit.



Gaming Device Approval

“gaming device” means any device or object, including any electrical, electronic, or mechanical device, any gaming table, ticket or any other thing, that is used or is by its nature intended for use as part of a gaming service or in connection therewith in order to allow a player to place a wager, and, or to obtain the outcome of a game in a gaming premises;

Gaming Definitions Regulations



Gaming Device Approval

“gaming table” means a gaming device which is:

- (a) designed or adapted in such a way that requires it to be controlled or operated by an individual employed or otherwise engaged for that purpose by the gaming premises operator; and, or
- (b) designed or adapted for use in connection with a game the arrangements for which are controlled or operated by an individual;

Gaming Definitions Regulations



Gaming Device Approval

- No person shall service, place on the market, distribute, supply, sell, lease, transfer, host, operate or in any other manner make available for use any gaming device or gaming system in the territory of Malta, unless such gaming device or system, as the case may be, has been approved or exempted from approval by the Authority.

Regulation 19, Gaming Authorisations Regulations



Permits



Cruise Casino Permit

- An operator of a cruise casino berthed in Malta or within Maltese territorial waters must acquire a cruise casino permit from the MGA and must adhere to all conditions contained therein.
- A cruise casino permit shall:
 - be valid for a term not exceeding the time during which the cruise ship is moored at or within Maltese territory;
 - be valid only in regard to registered passengers of the cruise ship;
 - not be transferrable; and
 - be limited to passenger ships used for pleasure voyage with a minimum of three (3) ports of call in three (3) different jurisdictions which may or may not include Malta, having its own amenities that include lodging facilities for all passengers and a minimum capacity of 150 passengers.

Regulation 30, Gaming Authorisations Regulations



Cruise Casino Permit

- Applications for a cruise casino permit shall be made not less than 20 working days prior to the call.
- The MGA will not issue the permit unless it is satisfied that the following conditions are met:
 - (i) the non-refundable permit fee is paid;
 - (ii) confirmation that the cruise casino will be operated solely at any time between 6:00pm and 6:00am of the following day; and
 - (iii) the operation of the cruise casino within the Maltese territory is only done on a temporary and occasional basis.
- The MGA may impose other conditions as it thinks fit which relate to the proper operation of the casino games, the protection of players, the prevention of money laundering; and exigencies of public interest.

Part VI of the Gaming Premises Directive (Directive 2 of 2019)



Low Risk Games Permit

- Low risk games are licensable games listed in the Fifth Schedule of the Gaming Authorisations Regulations.
- The following shall be deemed to be low risk games:
 - (a) non-profit games wherein the value of the stake does not exceed €5 per player;
 - (b) commercial communication games;
 - (c) limited commercial communication games.



Low Risk Games Permit

- An operator of low risk games must acquire a low risk games permit from the MGA. A low risk games permit shall:
 1. be valid for a singular event/s for which it is granted;
 2. expire once the event is concluded;
 3. not be renewable;
 4. not be transferrable without the MGA's prior approval; and
 5. be subject to certain limitations as stipulated under the applicable gaming regulation (those under the Fifth Schedule to the Gaming Authorisations Regulations).

(Regulation 29, Gaming Authorisations Regulations)

- The holder of a low risk game permit is expected to adhere to the certain reporting requirements in favour of the MGA.



Low Risk Games – Non-Profit Game

- A game wherein over 90% of the net proceeds are forwarded to an entity with a charitable, sporting, religious, philanthropic, cultural, educational, social or civic purpose.
- After every singular event, the holder of the permit shall be obliged to report the following to the MGA:
 - (i) the total number of participants;
 - (ii) the gross amount of stakes wagered or otherwise contributed by the players;
 - (iii) the value in monetary terms of the prize/s paid out, if any;
 - (iv) proof that no less than 90% of the net proceeds were paid out to the non-profit entity;
 - (v) proof that any other requirements established by any other law have also been adhered to; and
 - (vi) the measures which were taken to ensure that no minors participated in the game or were otherwise exposed thereto.



Low Risk Games – Commercial Communication Game

- “commercial communication game” means a licensable game organised with the purpose to promote or encourage the sale of goods or services, and which does not constitute an economic activity in its own right, and where any payments required to be made by the participant serve only to acquire the promoted goods or services and not to participate in the game, although it may be a condition that a person purchases the promoted goods or services in order to participate in the game (*Gaming Definitions Regulation*).
- One person or entity 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 in prizes during any calendar year. Provided that any single event shall not award a prize exceeding €50,000.



Low Risk Games – Commercial Communication Game

- After every singular event, the holder of the permit shall be obliged to report the following to the MGA:
 - (i) the total number of participants;
 - (ii) the value in monetary terms of the total prize/s paid out, if any;
 - (iii) proof that the game was conducted in a fair and honest manner;
 - (iv) proof that any other requirements established by any other law have also been adhered to; and
 - (v) the measures which were taken to ensure that no minors participated in the game or were otherwise exposed thereto.



Low Risk Games – Limited Commercial Communication Game

- A limited commercial communication game is a licensable game organised with the purpose to promote or encourage the sale of goods or services and the value of the stake doesn't exceed €2 per player and the value of the prize doesn't exceed €250. Provided that one person or entity organising a series of limited commercial communication games shall not cumulatively exceed €5,000 in prizes during any calendar month and not more than €50,000 during any calendar year.

Gaming Definitions Regulations, and the Fifth Schedule to the Gaming Authorisations Regulations



Low Risk Games – Limited Commercial Communication Game

- After every singular event, the holder of the permit shall be obliged to report the following to the MGA:
 - (i) the total number of participants;
 - (ii) the gross amount of stakes wagered or otherwise contributed by the players;
 - (iii) the value in monetary terms of the total prize/s paid out, if any;
 - (iv) proof that the game was conducted in a fair and honest manner;
 - (v) proof that any other requirements established by any other law have also been adhered to; and
 - (vi) the measures which were taken to ensure that no minors participated in the game or were otherwise exposed thereto.



Low Risk Games – Exemptions

- Any care and nursing home that wishes to organise a low risk game shall be exempted from obtaining the relevant approval from the MGA, provided that the game satisfies the following criteria cumulatively:
 - (a) the low risk game is organised by the care and nursing home;
 - (b) the low risk game may consist solely of a bingo- type game;
 - (c) the value of the stake to participate in the game shall not exceed €1;
 - (d) the value pf the prize shall not exceed €100; and
 - (e) the low risk game shall only be made available to elderly persons who are living at, or in any way benefitting from or making use of services offered by the care and nursing home.

Low Risk Games in Care and Nursing Homes Ruling, Directive 2 of 2020





Diploma in Law (Malta)



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Certificates



Material Gaming Supply

The following constitute material gaming supplies:

1. Manufacturing, assembling, placing on the market, distributing, supplying, selling, leasing or transferring a gaming device;
2. Providing risk management services for the operation of a licensable game;
3. Providing event, content and, or odds;
4. Providing fraud management services for the operation of a licensable game;
5. Holding and, or managing player funds;
6. Providing services relating to CDD;
7. Providing services relating to player identity verification;
8. Providing co-location services and other managed information services, including cloud computing services and, or decentralised hosting protocols where the latter do not amount to a critical gaming supply; and
9. Providing back-up and disaster recovery services.

Third Schedule, Gaming Authorisations Regulations



Material Gaming Supply Certificate

- Any person offering one or more material gaming supplies to an authorised person may request a material gaming supply certificate from the MGA.
- Any B2C licensed operator making use of or seeking to make use of a material gaming supply provided by a third party, shall ensure either that such a material supplier is in possession of a certificate or the material supply is otherwise approved on a case-by-case basis by the MGA.
- Where said third party is not in possession of the certificate, the B2C licensees shall assume full regulatory responsibility for such supplies.



Key Functions

- Every person authorised by the MGA to provide a gaming service and/or a gaming supply is required to appoint a number of persons to be responsible for carrying out important functions, roles or tasks in connection with the provision of said gaming service and gaming supplies.



Key Functions - B2C Licensees

For B2C licensees that provide remote gaming services and/or B2C licensees that operate controlled gaming premises:

- 1) The **chief executive role**, or equivalent;
- 2) **Management of the day-to-day gaming operations of the licensee**, including but not limited to, the management of the financial obligations of the licensee, such as the payment of tax and fees due to the MGA, the processes of making payments to, and receiving payments from, players, the management of the risk strategies for the operation of the licensee, and the prevention of fraud to the detriment of the licensee;
- 3) **Compliance with the obligations of the licensee** as may be applicable by virtue of the Act and any binding instrument issued thereunder, including but not limited to, obligations relating to responsible gaming, player support, the rules relating to marketing and advertising, and promotional schemes, and where applicable, obligations relating to sports integrity;
- 4) The **legal affairs of the licensee**, including but not limited to matters relating to contractual arrangements and dispute resolution;
- 5) Adherence to applicable legislation relating to **data protection and privacy**;
- 6) The prevention of **money laundering and the financing of terrorism**;
- 7) The **technological affairs** of the licensee, including but not limited to the management of the back-end and control system holding essential regulatory data, and the **network and information security** of the licensee; and
- 8) Internal audit.



Key Functions - B2C Licensees

- B2C licensees that operate a controlled gaming premises shall also be required to appoint the person responsible for the **management of the surveillance systems of the gaming premises.**



Key Functions - B2C Licensees

For a B2C licensee that operates a gaming premises which is not a controlled gaming premises, in addition to the ones listed under the previous slide (to the exclusion of Key Technology & Information Security), the key functions shall also include:

- 1) The operation of urn or any other gaming device which requires human intervention used to generate the result of the game in bingo halls;
- 2) Management of the pit, including the supervision of the croupiers and assistants and the management of their work, where applicable;
- 3) Management of the gaming area, including the supervision thereof to preclude fraud by customers, and the resolution of customer disputes; and
- 4) Management of the surveillance systems of the gaming premises.



Key Functions - B2B Licensees

- 1) The **chief executive role**, or equivalent;
- 2) **Management of the day-to-day gaming operations** of the licensee, including but not limited to, the management of the financial obligations of the licensee, such as the payment of tax and fees due to the MGA, and the management of the risk strategies for the operation of the licensee;
- 3) **Compliance with the obligations of the licensee** as may be applicable by virtue of the Act and any binding instrument issued thereunder, including but not limited to obligations relating to sports integrity where these are applicable;
- 4) The **legal affairs** of the licensee, including but not limited to matters relating to contractual arrangements and dispute resolution;
- 5) Adherence to applicable legislation **relating to data protection and privacy**;
- 6) The **technological affairs** of the licensee, including but not limited to the management of the back-end and control system holding essential regulatory data, and the **network and information security** of the licensee; and
- 7) Internal audit.



Key Functions - National Lottery Licensee

- 1) The **chief executive role**, or equivalent;
- 2) **Management of the day-to-day gaming operations** of the licensee, including but not limited to, the management of the financial obligations of the licensee, such as the payment of tax and fees due to the MGA, the processes of making payments to, and receiving payments from, players, the management of the risk strategies for the operation of the licensee, and the prevention of fraud to the detriment of the licensee;
- 3) **Compliance with the obligations** of the licensee as may be applicable by virtue of the Act and any binding instrument issued thereunder, including but not limited to, obligations relating to responsible gaming, player support, the rules relating to marketing and advertising, and promotional schemes, and where applicable, obligations relating to sports integrity;
- 4) The **legal affairs of the licensee**, including but not limited to matters relating to contractual arrangements and dispute resolution;
- 5) Adherence to applicable legislation relating to **data protection and privacy**;
- 6) The **prevention of money laundering and the financing of terrorism**;
- 7) The **persons who hold a permit to sell national lottery games**.



Key Function Certificate

- No person shall provide a key function listed in the Fourth Schedule to the Gaming Authorisations Regulation, unless such person is in possession of a key function certificate issued by the MGA, to provide such function.

Regulation 23, Gaming Authorisations Regulations



Key Function Certificate

- Key functions may only be provided by natural persons.
- Such persons are not required to be employees of the licensee but they are required to have full knowledge, understanding and access to the licensees' practice, procedures and systems.



Key Function Certificate

- According to article 7 of the Authorisations and Compliance Directive, the performance of any one key function in the absence of a certificate of approval issued by the MGA would constitute an offence against the Act.
- Article 13 of the Act provides as follows:

“Where this Act or any other regulatory instrument prescribe that an activity, of whatsoever nature, requires an authorisation in order to be performed, it shall be an offence against this Act to perform such activity, or to promote, aid, abet or otherwise facilitate such activity unless it is duly authorised.”



Key Function Certificate

- In terms of this article, both the licensed operator and the individual would be considered to be in breach where said individual performs a key function for said licensed operator without the requisite certificate of approval. They shall, on conviction, be liable to a fine (*multa*) of not less than €10,000 and not more than €500,000 or to imprisonment for a term of not more than 5 years, or to both such fine and imprisonment.



Key Function Certificate

- Moreover, article 5A of the Gaming Authorisations and Compliance Directive provides that, without prejudice to the requirement for licensees to designate the persons responsible for carrying out key functions in accordance with said Directive, where no person is approved by the MGA to fulfil a key function, whether temporarily or otherwise, the responsibility for such key function shall vest in the directors of the licensee.



Key Function Certificate

- At application stage, each applicant shall notify the MGA of the following key functions: (a) the chief executive role, or equivalent; (b) compliance with obligations of the licensee; and (where applicable) (c) prevention of money laundering and the financing of terrorism.
- Within 6 months of the licence being issued, each licensee shall notify the MGA of the remainder of the key functions applicable in terms of the Gaming Authorisations and Compliance Directive.
- Thereafter, the licensee must notify the MGA within 3 working days of a key persons' resignation or dismissal and again must notify the MGA of the appointment of a replacement within 15 working days after such resignation and/or dismissal.



Key Function Certificate

- A certificate of approval is valid for a period of 3 years unless this is surrendered or revoked. Moreover, certificates of approval may be renewed if the person holding such approval applies to the MGA not less than 60 days before the expiry of said certificate.



Key Function Certificate

- A person may be granted a certificate of approval to perform one or more key functions, and the same key function may be provided by more than one person.
- However, no person may exercise key functions which are, in the MGA's sole discretion, deemed to be in conflict with each other.



Conflict of Interest and Compatibility of Roles

	CEO	Gaming Operations	Legal Affairs	Data Protection	Compliance	Technology	AML & CFT	Internal Audit
CEO		✓	✓			✓		
Gaming Operations	✓		✓	✓	✓	✓	✓	
Legal Affairs	✓	✓		✓	✓	✓	✓	
Data Protection		✓	✓		✓	✓		
Compliance		✓	✓	✓		✓	✓	
Technology	✓	✓	✓	✓	✓		✓	
AML & CFT		✓	✓		✓	✓		
Internal Audit								

Obligations of Key Functions

- A key person is to notify the MGA, not later than 3 working days if any circumstance arises:
 1. which renders him not fit and proper to carry out such key function (ex. conviction of an offence);
 2. in relation to licensee, which the licensee is bound to report and relates to his function;
 3. in relation to licensee which may render licensee incapable of meeting one/more of its obligations in relation to his function;
 4. resignation/dismissal from exercising a key function for a licensee;
 5. any other circumstances which the key person, in good faith, believes the MGA should be aware of.

The failure to notify the MGA of the above will lead to the suspension and/or revocation of the Key Function Certificate.



Recognition Notice



Recognition Notice

- “*recognition notice*” means a notice issued by the Authority whereby an authorisation issued by another Member of the European Union or the European Economic Area, or a State which is deemed by the MGA to offer safeguards and levels of player protection largely equivalent to those offered under Maltese law, is recognised as having the same effect as an authorisation issued by the MGA.
- A recognition notice may be obtained for the purpose of providing a (i) gaming service; (ii) gaming supply; and (iii) key function or any other authorisation which the MGA may issue.

Gaming Definitions Regulations, and Regulation 22 of the Gaming Authorisations Regulations



Recognition Notice

- Recognition notices are valid for a period of 1 year, and require annual maintenance reviews.
- The purpose of a recognition notice is for the MGA to:
 1. recognise and rely on the license issued to the operator by the EU or EEA Member State;
 2. to ensure that by operating from Malta, there would be no regulatory gaps and the operations in or from Malta would be covered by the EU or EEA licence and overseen by the relevant regulator; and
 3. to impose any additional measures as may be necessary to entities operating in Malta.



Recognition Notice

The requirements for obtaining a recognition notice are as follows:

- a) a copy of the licence issued by the competent authority in the EU/EEA Member State, and a translation thereof;
- b) a list of games clearly showing the corresponding MT game type and MT vertical to which they relate;
- c) a legal opinion provided by a warranted professional proficient in the relevant jurisdiction and the applicant's operations, identifying the type of games that can be offered in line with the licence;
- d) a letter of good standing from the relevant authority;
- e) operational documentation (i.e. declaration to ascertain that all operations are covered by a valid licence).



Eligibility for obtaining a licence from the Malta Gaming Authority



Established within the EEA

Any person, be it a natural person or a body corporate may obtain a licence from the MGA. In the latter case, it is important that the body corporate is established in the European Economic Area (EEA).

Regulation 10, Gaming Authorisations Regulations



Minimum Share Capital Requirement

- A licensee is subject to minimum issued and paid-up share capital requirements as follows:

Gaming Service Licence (B2C)

Type 1 – Minimum €100,000

Type 2 – Minimum €100,000

Type 3 – Minimum €40,000

Type 4 – Minimum €40,000

Critical Gaming Supply Licence – Minimum €40,000



Minimum Share Capital Requirement

- Companies with multiple type approvals are required to meet the above share capital requirements cumulatively up to a minimum capping of €240,000.
- Companies having or applying for a corporate group licence are required to have the minimum share capital in any one of the entities forming part of the corporate licence.



The Application Process



The Licence Application Stages

- The Malta Gaming Authority is the authority in Malta responsible for issuing licences for both land-based and remote gaming operations.
- Applicants are required to submit all the necessary information at the same time, which will then be analysed and determined on 4 different bases by the MGA – whether the applicant:
 - (i) and its key personnel are fit and proper to conduct the gaming business in accordance with Maltese law and regulations;
 - (ii) is a viable business strategy;
 - (iii) satisfies statutory requirements and has the operational capacity needed to fulfil the obligations prescribed by law and policy;
and
 - (iv) has correctly implemented what has been applied for on a technical environment before going live.



Fit and Proper Review

- The first area of analysis by the MGA focuses on the conducting of a **'fit and proper' exercise** in order to establish whether all of the persons involved in the financing and management of the proposed operation and persons who are otherwise involved in the business viability of the venture are competent to perform the functions allocated to them and also to provide assurances in the context of the prevention of money laundering and terrorist financing.
- This exercise is conducted on the applicant, its directors, persons performing key functions and shareholders (including voting rights) (holding 10% or more in the company) and any entities in the corporate structure. Private financiers are also vetted when the financing which they provide is deemed sufficiently significant.
- All such persons must satisfy a number of criteria, mainly **honesty, integrity, reputation, competence, capability and good financial repute**.



Funding Review

- The MGA assesses the source of funds of the applicant and the source and extent of the wealth of its Ultimate Beneficial Owners (UBOs).
- This includes:
 - confirming that UBOs are fiscally stable to sustain the licence during its life cycle; and
 - verifying that the sources are legitimate.



Business Plan Review

- The MGA conducts a detailed analysis of the proposed business operations, their viability, funding, and an in-depth financial analysis of the applicant's forecast financials. The applicant's business plan is expected to have a detailed forecast of the operation, inclusive of marketing and distribution strategies and growth targets.



Operating Policies & Procedures Review

- The MGA would then assess the applicant's instruments which are required to conduct the business (i.e. the statutory and operational documents) to ensure that they are in line with the requirements at law and that the applicant is equipped to conduct the proposed operations in a compliant manner.



Technical Set-up Review and System Audit

- Once the review is successfully completed, the MGA will inform the applicant to implement the systems onto a technical environment in preparation to going live.
- The applicant is then provided with a 60-day time window to complete the implementation, where failure to implement onto a technical environment shall result in the suspension of the application, making it subject to re-application provided there are justified reasons for the delay, in which case the MGA may extend the 60-day time period.
- Within the time period provided, the applicant shall appoint a service provider that holds the requisite approval from the MGA to carry out a system review. The service provider will then audit and verify the live environment against the proposed application.
- If there is major deviation from the proposals of the application at this stage, the MGA may request the applicant to re-submit the application with the revised proposals.
- Once the licensing process is completed to the satisfaction of the MGA, the MGA shall issue a licence.



Post-Acquisition - Compliance Review

- Every licensee is required to undergo a number of compliance audits of their operations as follows:
 - (a) after the first year of operation after being licensed by the MGA; and
 - (b) at any other time at the request of the MGA.
- The compliance audits are to be performed by an approved service provider appointed by the licensee and completed within 90 days from the MGA's notice.
- Failing a compliance audit may lead to the suspension or termination of a licence.
- The MGA also carries out constant physical inspections at the premises of licensed land-based gaming establishments, ensuring that such operators are complying with their pertinent rules and regulations.



The Malta Gaming Authority's powers to refuse to grant a licence

- The MGA may refuse to grant a licence if:
 - (a) the application is not submitted in accordance with the established form or in accordance with applicable procedure;
 - (b) the applicable fees have not been paid;
 - (c) the MGA if, in its reasonable discretion, is not satisfied that the applicant and all relevant persons, including but not limited to all persons having qualified interest (at least 10%) in the applicant, are fit and proper;
 - (d) where applicable and in the reasonable opinion of the MGA, it appears on the basis of the assessment, evidence or certification carried as may be prescribed by the MGA for any type of game, that the games the applicant intends to offer do not satisfy the minimum requirements of fairness for their respective game types;



The Malta Gaming Authority's powers to refuse to grant a licence

- e) it transpires that any information or submission made to the MGA is false, misleading, inaccurate or incomplete in material respect;
- f) if the MGA, in its reasonable discretion, is not satisfied that:
 - (i) the applicant is capable of sustainably financing the gaming service or supply; or
 - (ii) the applicant has the necessary competence, technical know-how and resources to carry out the gaming offering; or
 - (iii) the applicant has a business model to carry the gaming offering in a viable way and in a way that is compliant with the applicable regulatory instruments in force; or
 - (iv) the applicant will comply with all regulatory requirements applicable to licensees of the relevant category and with any additional requirements that the MGA considers, on the basis of a risk-based approach, necessary to impose on the applicant, which requirements may include but are not limited to financial safeguards, protection of players and, or the implementation of any policies and procedures.



The Malta Gaming Authority's powers to refuse to grant an authorisation

- (a) If the MGA believes that the gaming offering being proposed is not compliant with the regulatory instruments in force; or
- (b) if the MGA believes that granting an authorisation to the applicant may pose a risk to the reputation of Malta or be otherwise not in the public interest or contrary to regulatory objectives established by the Act; or
- (c) if no sufficient information as requested by the MGA has been provided.

Regulation 12, Gaming Authorisations Regulations



Additional Powers of the Malta Gaming Authority

- The MGA shall have the power to issue conditions to authorisations which are granted in terms of the MT gaming legislative and regulatory framework.
- Compliance with the MT gaming legislative and regulatory framework shall automatically be construed as conditions to authorisations.





Diploma in Law (Malta)



CAMILLERI PREZIOSI
ADVOCATES