

Award in Gaming Law

Lecture Title: Introduction to Maltese Gaming Law

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Diploma in Law (Malta)



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Agenda

- (1) The history and development of gaming in Malta;
- (2) The distinction between 'gaming' and 'gambling';
- (3) Introduction to landbased gaming and online gaming;
- (4) Malta's gaming legislative and regulatory framework;
- (5) The regulatory / governmental authorities responsible for supervising gaming activities in Malta;
- (6) The role and powers of the Malta Gaming Authority; and
- (7) Malta as a leading jurisdiction in the online gaming industry.



The History and Development of Gaming in Malta



The History and Development of Gaming in Malta

- **Late 1990s:** first online gaming businesses arrived on the island.
- **2001:** the Malta Gaming Authority was created (then known as the Lotteries and Gaming Authority).
- **2004:** Remote Gaming Regulations were enacted by the Government of Malta making Malta the first EU Member State to regulate remote gaming.
- **2015:** the Lotteries and Gaming Authority (LGA) changed its name to the Malta Gaming Authority (MGA).
- **2018:** Maltese legislative gaming framework underwent an overhaul.



The Distinction between 'Gaming' and 'Gambling'



The Distinction between 'Gaming' and 'Gambling'

- Under the Maltese legislative and regulatory gaming framework, the activity of gambling is regulated by the term '*gaming*' as opposed to 'gambling'.
- The Gaming Definitions Regulations, 2018 define '*gaming*' as an activity consisting of participating in a game, offering a gaming service or making a gaming supply.



The Distinction between 'Gaming' and 'Gambling'

- To note the definitions under the Gaming Definitions Regulations:

“pathological gambler” means a person who is certified by a competent professional as unable to resist impulses to gamble;

“vulnerable person” means any person who is known to have a gambling problem, any person whose social circumstances may make him or her more susceptible to problem gambling, or any person who, by virtue of a defect in the capacity of will and understanding, is rendered more susceptible to problem gambling, and this shall include players who are undergoing a period of self-exclusion, persons who have been diagnosed by medical professionals as being pathological or otherwise problem gamblers, persons who are currently seeking treatment for problem gambling and persons under the influence of alcohol or drugs;

The Distinction between 'Gaming' and 'Gambling'

Responsible Gaming

- Measures and tools which gaming operators are required to have in place in order to prevent gaming by minors, protect vulnerable persons, and generally, to ensure that players can safeguard themselves against the effects of problem gambling.

Introduction to Landbased Gaming and Online Gaming



Online Gaming vs Landbased Gaming

Online Gaming

Gaming activities by means of distance communications including, but not limited to, the internet, telephone, radio and television.

Landbased Gaming

Gaming activities take place in physical premises.



Remote and Landbased Gaming in Malta

- Both remote and land-based gaming are permitted in Malta.
- There are some differences in the regulations that apply to each.
- Applicants for a land-based gaming licence are required to seek and obtain approval not only for the gaming devices used, but also the premises from which the licensed gaming devices are operated.
- The Gaming Authorisations Regulations provide that operators in both sectors require a licence, unless exempt.



Brief overview of Gaming Licences under Maltese Law

- Two categories of licences:
 - (a) a gaming service licence (B2C); and
 - (b) a critical gaming supply licence (B2B).
- Both types of licences are issued for a period of 10 years and may be renewed for further periods of 10 years.



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 - controlled skill games.



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.



Landbased Gaming in Malta

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;

*Gaming Definitions Regulation
(Subsidiary Legislation 583.04)*



Landbased Gaming in Malta

1. Casinos
2. Controlled Gaming Premises
3. Commercial Bingo Halls
4. National Lottery



Landbased Gaming in Malta

Casinos

In order to open and operate a casino in *Malta*:

- conditional upon a concession which can only be granted by the Government of *Malta*;
- a gaming service licence issued by the *Malta Gaming Authority*;
- a gaming premises approval certificate issued by the *Malta Gaming Authority*; and
- gaming device approvals issued by the *Malta Gaming Authority*.



Landbased Gaming in Malta

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;

Gaming Definitions Regulation (Subsidiary Legislation 583.04)



Landbased Gaming in Malta

Commercial Bingo Halls

Premises in which the only gaming which is carried out consists in tombola games.



Landbased Gaming in Malta

National Lottery

- Set up as a government monopoly in 1934.
- Prior to 2004, the National Lottery Games fell under the responsibility of the Public Lotto Department.
- Today, the operation of the National Lottery is supervised and regulated by the Malta Gaming Authority.
- The operation of the National Lottery games is subject to a concession being granted by the Government of Malta, and this is without prejudice to the requirement of the concessionaire to obtain a licence from the Malta Gaming Authority.
- A valid permit is required from the Malta Gaming Authority in order to sell tickets for the National Lottery (also known as points of sale).



Other forms of Landbased Gaming in Malta

Casino Cruise

- Any person wishing to operate a cruise casino on board cruise ships berthed in Malta or within Maltese territorial waters require what is known as a 'cruise casino permit'.

Malta's Gaming Legislative and Regulatory Framework



Malta's Gaming Legislative and Regulatory Framework

- In 2004, Malta was the first EU Member State to regulate remote gaming through the enactment, by Parliament, of the Remote Gaming Regulations.

Malta's Gaming Legislative and Regulatory Framework

- On 1 August 2018, the Gaming Act (Chapter 583 of the Laws of Malta), came into force. The Gaming Act, together with the regulations falling under it, repealed the Lotteries and Other Games Act 2001 (Chapter 438 of the Laws of Malta) and the Remote Gaming Regulations (Subsidiary Legislation 438.04).



Malta's Gaming Legislative and Regulatory Framework

- The main changes brought about by the current framework (include but are not limited to):
 - simplification of licensing system;
 - extends the licence term;
 - strengthens player protection framework;
 - segments the key official role;
 - exempts B2B operators from gaming tax; and
 - expands MGA's supervisory and enforcement functions.



Malta's Gaming Legislative and Regulatory Framework

Currently, gaming legislation in Malta is based on a three-tier framework:

1. the Parent or 'enabling' act: The Gaming Act (Chapter 583 of the laws of Malta):
2. the second-tier regulations; and
3. the third-tier directives and other binding and non-binding instruments published by the Malta Gaming Authority from time to time.



Gaming Regulations

- a) Gaming Licence Fees Regulations (Subsidiary Legislation 583.03)
- b) Gaming Definitions Regulations (Subsidiary Legislation 583.04)
- c) Gaming Authorisations Regulations (Subsidiary Legislation 583.05)
- d) Gaming Compliance and Enforcement Regulations (Subsidiary Legislation 583.06)
- e) Gaming Premises Regulations (Subsidiary Legislation 583.07)
- f) Gaming Player Protection Regulations (Subsidiary Legislation 583.08)
- g) Gaming Commercial Communications Regulations (Subsidiary Legislation 583.09)
- h) Gaming Tax Regulations (Subsidiary Legislation 583.10)
- i) Social Causes Fund Regulations (Subsidiary Legislation 583.11)
- j) Retention of Data (MGA) Regulations (Subsidiary Legislation 583.12)



Gaming Directives

- a) Start-Up Undertakings Directive (Directive 1 of 2018)
- b) Player Protection Directive (Directive 2 of 2018)
- c) Gaming Authorisations and Compliance Directive (Directive 3 of 2018)
- d) Directive on the Calculation of Compliance Contribution (Directive 4 of 2018)
- e) Alternative Dispute Resolution Directive (Directive 5 of 2018)
- f) National Lottery (Continuation of Concession Licence Terms) Ruling (Directive 1 of 2019)
- g) Gaming Premises Directive (Directive 2 of 2019)
- h) De Minimis Games Directive (Directive 3 of 2019)
- i) Gaming Devices Ruling Directive (Directive 4 of 2019)
- j) Amusement Machines Directive (Directive 5 of 2019)
- k) Enhanced Automated Reporting Platform (Land-Based) Directive (Directive 6 of 2019)
- l) Directive on the rules applicable to Amusement Machines and Low Risk Games (Directive 7 of 2019)
- m) VAT Fiscal Receipt Lottery Directive (Directive 1 of 2020)
- n) Low Risk Games in Care and Nursing Homes Ruling (Directive 2 of 2020)
- o) Directive on the Key Function of the Prevention of Money laundering and the Financing of Terrorism (Directive 3 of 2020)
- p) The Non-Profit Games during Political Events Ruling (Directive 1 of 2021)
- q) National Lottery Rule (Directive 1 of 2022)



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The Regulatory / Governmental Authorities responsible for supervising gaming activities in Malta



The Regulatory / Governmental Authorities responsible for supervising gaming activities in Malta

- The Malta Gaming Authority is the primary regulatory body responsible for the governance of all gaming activities in Malta.
- However, there are 2 other authorities which also have a specific supervisory role in relation to gaming operators:
 - (a) the Financial Intelligence Analysis Unit (FIAU);
 - (b) the Office of the Information and Data Protection Commissioner (IDPC).



The Regulatory / Governmental Authorities responsible for supervising gaming activities in Malta

- MGA is bound to monitor the operations of all its licensees and report to the FIAU any suspected money laundering or terrorist funding activity.
- MGA will only issue or renew a licence after it is reasonably satisfied that all persons involved in the applicant company are fit and proper persons and must ascertain that the applicant has followed policies.
- Will collect due diligence documents for key function roles, directors and shareholders.



The Role and Powers of the Malta Gaming Authority



The Role and Powers of the MGA

- The Malta Gaming Authority is established by the Gaming Act (Chapter 583 of the laws of Malta) and is the single regulatory body responsible for the governance and supervision of all gaming activities in and from Malta.
- Article 7 of the Gaming Act lays down an extensive list of powers and functions of the MGA.



The Role and Powers of the MGA

- Regulating, supervising and reviewing all practices, operations and activities relating to the gaming sector;
- Assessing licence applications and issuing authorisations that are in line with the MGA's requirements;
- Supervising licensees and overseeing their gaming operations;
- Ensuring the fitness and properness of individuals and companies in possession of a gaming license issued by the MGA;



The Role and Powers of the MGA

- Submitting legislative proposals to address changes within the sector;
- Advising the Government on new developments and risks in the sector;
- Ongoing monitoring and ensuring that licensees are in compliance with the laws and regulations;
- Preventing, detecting and ensuring the prosecution of any offence against gaming laws;
- Acts as a supervisory authority in accordance with the Prevention of Money Laundering and Funding of Terrorism Regulations.



The Role and Powers of the MGA

- ensuring that the advertisement of gaming services is fair and responsible;
- collaborating with other local and foreign bodies, government departments, international organisations and other entities which exercise regulatory, supervisory or licensing powers or which are otherwise engaged in overseeing or monitoring areas or activities in the gaming sector and arranging for the mutual exchange of information and other forms of assistance or collaboration in regulatory or supervisory matters, as well as ensuring that all international obligations entered into by Malta in the gaming sphere are complied with; and
- fostering advancements in the educational sector for matters relating to the gaming sector.
- monitoring the Maltese gaming sector and undertaking studies, research and investigations.



Malta as a Leading Jurisdiction in the Online Gaming Industry



Malta as a leading jurisdiction in the online gaming industry

- Serious regulation
- Holistic and streamlined regime
- EU Membership
- Professional, efficient and responsive regulator
- Player first regulatory approach
- Tried and tested jurisdiction



Serious Regulation

- Strict approach to licensing.
- Ongoing monitoring to ensure gaming operations are in line with the law and licence conditions.
- Ensures compliance with international obligations such as anti-money laundering legislation and data protection legislation amongst others.
- Enhanced user confidence.



Holistic and Streamlined Regime

The relatively new Maltese legislative gaming framework has broadened the regulatory scope to increase the MGA's oversight and aims at establishing a technology and game neutral regime, allowing itself the possibility of extending its reach to the offering of any kind of gaming activity.



Holistic and Streamlined Regime

The Maltese gaming legislative and regulatory framework:

- is based on a 3-tier structure with the Parent act (the Gaming Act) supplemented by subsidiary legislation and binding instruments issued by the Malta Gaming Authority; and
- establishes a game and technology neutral regime.



EU Membership

- EU Member States are free to create their own regulatory framework, provided that they comply with the fundamental freedoms established under the Treaty on the Functioning of the European Union (“TFEU”), particularly, the freedom to provide services (Article 56).
- Judgments delivered by the Courts of Justice of the European Union (CJEU) have confirmed that blanket national concession regimes based on traditional monopolies are unlawful unless such restrictions are justified on the basis of a genuine reduction of gaming opportunities and are applied consistently.



EU Membership

MGA Stance:

- Operators are responsible for ensuring that, when targeting games to players based in any jurisdiction outside Malta, they do so in full compliance with the laws and regulations of that foreign jurisdiction. The national legislation of these jurisdictions may prohibit online operators from targeting players in such jurisdictions or may require the operator to be in possession of a local licence.
- It is not within the regulatory scope of the MGA to determine those jurisdictions which its licensed entities may target and thus, it for said entities to determine whether and, if so, how, to target foreign jurisdictions based on the local laws and reputation thereof and whether they implement the same or similar safeguards as those imposed under the Maltese framework.



Professional, Efficient and Responsive Regulator

- The MGA is fully equipped to deal with licensing applications and with ongoing monitoring.
- Its role is not limited to policing activities.
- ‘Open door’ policy whereby prospective and licensed operators may discuss issues /queries upfront with the responsible officials.



Player First Regulatory Approach

- **MGA mission statement:** to ensure that licensed gaming operations are fair and transparent to all players, prevent crime, corruption and money laundering, whilst protecting minors and vulnerable persons.



Tried and Tested Jurisdiction

- A number of the industry's major players have set up their operations in Malta.
- Over 20 years experience and know-how.
- Malta is home to an array of support services.





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