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The International Comparative Legal Guide to:

Gambling 2018

4th Edition

A practical cross-border insight into gambling law

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Shaping the Future of Gaming Law

Michael Zatezalo

Jamie Nettleton

International Masters of Gaming Law

IMGL is once again honoured to write the opening chapter of *The International Comparative Legal Guide to: Gambling*. The guide is a complement to IMGL's goal of "Shaping the Future of Gaming Law" through publications and high-quality conferences and IMGL's Masterclasses. This year, it gives me pleasure to write the opening chapter with Jamie Nettleton, a noted gambling law practitioner and the First Vice-President of IMGL, who will become the IMGL President in 2018.

The International Comparative Legal Guide to: Gambling brings together the knowledge and expertise of leading gaming lawyers from jurisdictions all over the world. It is a useful guide and introduction to gambling regulation in these jurisdictions and is useful as a directory of trusted law firms that specialise in the field of gaming. As President and First Vice-President of IMGL, we are proud that many of the authors who have contributed to this Guide are IMGL members. IMGL is committed to being the pre-eminent global gaming law networking and educational organisation. Its members dedicate a lot of time and energy to maintaining, encouraging and participating in an open international dialogue between regulators, attorneys who practise gaming law, compliance officers, accountants, educators, gaming executives and other representatives of the industry. This is particularly relevant in the context of the rapid development in gambling regulation globally to address emerging technologies and the changing approaches to harm minimisation. These issues are addressed at IMGL conferences which are held twice a year; at IMGL Masterclasses, which take place at major gaming events; and they are also addressed through our members' contributions to high-quality publications, such as *The International Comparative Legal Guide to: Gambling* and IMGL's own publications. The conferences, publications and IMGL Masterclasses play an important role in furthering IMGL's goal of education in the gaming industry.

IMGL currently has members from over 43 countries and 35 states in the United States and is continuously expanding. IMGL is constantly recruiting new members to widen its global presence, including experts from emerging gaming jurisdictions. (Membership is by invitation) IMGL now has six (6) publications including: *American Gaming Lawyer*; *European Gaming Lawyer*; *Canadian Gaming Lawyer*; *Asian Gaming Lawyer*; and *La Ley del Juego* (our publication for South and Central America, Mexico and Spain). In addition, the *Gaming Law Review and Economics* is an IMGL publication. IMGL Masterclasses have been so well received that IMGL has now presented IMGL Masterclasses at more than 10 gaming conferences around the world, including the International Casino Exposition (ICE) in London, EIG in Berlin, the eGaming Summit in the Isle of Man, IAGR (International Association of Gaming Regulations) conferences and the IGaming Supershow in Amsterdam. Much like the IMGL, *The International Comparative Legal Guide to: Gambling* has been successful in being truly international and of high quality. We hope this fourth edition of the Guide will continue this tradition as a comprehensive multi-jurisdictional overview of gambling-related laws and regulations. This fourth edition should continue to encourage the international exchange of knowledge and expertise about gaming law matters by gaming law experts and industry members.

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The International Masters of Gaming Law is the pre-eminent global gambling law networking and educational organisation shaping the future of Gaming Law. Our members are specialists in many gambling sectors: Compliance; Cross Border Regulation; iGaming; Legislative Affairs; Education; Lotteries; Taxation; Terrestrial Gambling; and Wagering. IMGL is at the forefront of the latest developments in international gambling law.

The International Masters of Gaming Law is a non-profit association of gaming attorneys, regulators, educators, executives and consultants from around the world who are dedicated to education and the exchange of professional information and advice. The open networking and collective experience of its members makes the IMGL an integral and effective tool for the dissemination of gaming law developments worldwide. IMGL members practise independently and not in a relationship for the joint practice of law.

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UK Gambling Market: Brexit Economic and Political Challenges and the High Cost of Meeting Enhanced Social Responsibility and Regulatory Requirements

DLA Piper UK LLP

Hilary Stewart-Jones

The UK Gambling market is a vibrant and lucrative one. Estimated gross gambling yield is likely to not be significantly less in 2017 compared to 2016, despite the increasing cost of compliance, the challenges to marketing and the changed tax position for online gaming. The Gambling Commission (the UK regulator, "**the Commission**") published statistics for the industry which state that the gross gambling yield for the sector was £13.8 billion from October 2015 to September 2016. The remote industry comprised just under a quarter of that figure.

However, in an environment where the sterling exchange rates remain challenging off the back of the depressing political stagnation following the Brexit vote in 2016, then the continued negative press, governmental and regulatory assaults on certain elements of the industry will combine to thwart or ultimately redistribute the profits generated. The effect is also exacerbated where some operators may be listed such that any trading challenges can also reduce value by share price depreciation.

The market nonetheless remains a liberal one in which to supply gambling services. There are no restrictions on products, statutory caps on deposits, a benign(ish) tax system, a large population and the ninth largest average income in Europe. Retail opportunities are numerous. When the UK laws relating to remote gambling changed in 2014 to require operators/suppliers wishing to target the UK market to obtain a licence, it was a foregone conclusion that most would apply. This was borne out by the glut of subsequent licence applications. A licence from the Commission retains a degree of kudos and the potential market warrants the effort of maintaining it, but 2017 has been more negative than positive for the UK industry. Wider challenges are also imminent; until the British government can replace its European legal infrastructure it will replicate its existing one, meaning that the General Data Protection Regulations (the "**GDPR**") will come into force in May 2018. The compliance audit gap that will be required to be conducted prior to that date may well highlight issues around digital and affiliate marketing which have been a mainstay of the online gambling industry. Whilst the wider gambling sector was able to duck being part of the wider AML obligations under the Fourth Anti-Money Laundering Directive (the "**4AMLD**") which was implemented in June 2017 (it is confined to casinos (remote and non-remote) only on the basis that the UK government deems the rest of the industry low risk), the previous trend had been for the Commission to impose the licensing conditions and codes of practice (the "**LCCP**") in order to require enhanced standards from other non-casino licence holders, despite the fact they are not part of the regulated sector. These benchmarks are likely to remain whatever occurs in connection with Brexit. On many levels 2017 has proven a highly volatile and unpredictable one for the gambling industry.

One big change has been the re-alignment of the Commission's stated approach to enforcement; it announced in July 2017 that its approach would change and that whilst one the main tenets of the Gambling Act 2005 ("**the GA 2005**") was to keep gambling "fair and open" (as well as ensuring criminal acts were not associated with its provision and that the vulnerable were protected), there would be a re-focus on putting consumers first. This would manifest in a drive to impose higher penalties where there were systemic and repeated failings by operators and, in addition, a move away from a bias to resolve issues by voluntary settlement rather than a formal licence review under s116 of the GA 2005. The former have become a slightly tortuous alternative. The "lessons shared" formal announcements have provided little more than a sense of schadenfreude for other licence holders and the lack of a formal contentious structure a challenge for operators going through the process; how can licence holders be expected to be benefited by earlier disclosure and voluntary fact sharing if the data provided gives the Commission the "rope" to hang them. There have been some swingeing fines since that announcement, most notably the *888* fine of £7.8 million imposed in August 2017 by the Commission. The alleged damage (as described in the statement), permitting excluded players to play and one vulnerable person to lose money, does not properly explain the clear issues that were regarded to be so contentious in the case and which inflated the sum extracted beyond those sums required as clear recompense. Without this there are limited lessons for the industry to learn, save to approach settlements with caution.

This is not ideal in an environment where the Commission still relies very heavily on the industry for basic data about how the businesses are run; until the GA 2005 and its creation under its auspices there had not been one regulator responsible for all gambling sectors (and even then the National Lottery oversight was not merged until 2010). The recent changes to the LCCP in 2016 in connection with operators and affiliates being required not to place adverts on sites with unauthorised access to copyrighted content (for example, to unauthorised music and entertainment downloads) is a clear indication as to how poorly anyone really understood affiliate digital marketing which was a mainstay of the online industry long before 2016. The Commission has clearly sensed that wider criticism with two open letters to *The Times* this year alone explaining and justifying its position given the paper's very open editorial on what it regards to be the weaknesses in connection with the regulation of gambling and in particular the B2 machines in betting shops. However, the key to good regulation cannot be headline-inducing fines alone, nor the ultimate scalp of a licence forfeit.

This having been emphasised, the industry undoubtedly has to become smarter about obvious regulatory and compliance headwinds (the heavy reliance on affiliate advertising and the lack of control and the B2 machine debate – see below – are two obvious examples) and

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start to invest in higher standards of compliance including creating internal structures where compliance heads are amongst the most senior executives. The 4AMLD whilst only extending to the casino industry still highlights some enhanced due diligence processes which have formed the basis of several of the Commission's settlements recently. Going forward it will not be sufficient to know your customer and source of wealth but to properly understand the sustainability of spend. The GDPR, with the enhanced enforcements powers that go with it (up to a EUR 20 million fine or four per cent of global turnover for some breaches), will also be a headache for numerous digital businesses; the number of consumers who actually understand their data rights are few and far between and many operators just stonewall requests for data subject access. This attitude can only prevail where the only breaches previously taken seriously have been large-scale leaks and security violations. However, whilst none of these changes to compliance practices can work at a flick of a switch, the industry cannot afford to be complacent. Likewise, the Commission can little afford to make the industry cease its previous frank and open co-operation either as ultimately it will be the Commission which will be lambasted for poor judgment calls or oversights. Whilst it may not be a preferred practice, it is worth noting that, in common with other regulators, having so few of its personnel with any business or operational experience can also make interactions with the industry challenging.

The Competition and Markets Authority (the "**CMA**") has also had gambling companies within its sights in 2017. Its powers extend to the review of the adequacy of consumer protections. It took over the remit of the powers previously extended to the Office of Fair Trading in 2014. In October 2016, it made a press statement to the effect that the Commission had asked it to review the fairness of UK-licensed operators' terms and conditions. Against a backdrop of 800 customer complaints it announced in 2017 that it would be taking enforcement action against a number of gambling operators. The CMA's powers under the Enterprise Act 2002 are extensive. It can bring civil proceedings against the company or the executing mind of management, and a court can require compensation to be repaid to consumers impacted by the poor business practices. In extreme cases such findings may also impact upon an entity's fitness and propriety to hold a gambling licence, although the Commission would be hard pressed to complain too vociferously; it reviews operators' terms and conditions as part of the licence application.

The Advertising Standards Authority ("**the ASA**") has been active in its review of gambling advertising too. Prior to 2017 its focus had been the misleading nature of some free bets and bouncing offers, albeit this year the Commission fined an operator a large sum too on the basis of its non-conformity to the tenets of the CAP code (the advertising standards created by the Committee of Advertising Practice or CAP). Licence holders need to adhere to the code as a part of its LCCP obligations. This October (2017) the ASA together with the Commission and Remote Gambling Association – a trade body – wrote to a large number of operators requiring them to remove or amend any advertisements on their or third-party website which are liable to appeal to minors. In particular, they highlighted the use of cartoon imagery and names that are apt to appeal to children such as "Fluffy Favourites" and "Piggy Payout". This does not amount to the ban of all uses of cartoon characters, just those freely available to view. The ASA has required for some time that such content be embedded on operators' websites. However, clearly those who do not conduct an appropriate audit after reviving such a letter (some 450 operators were sent letters) and make suitable revisions will be storing up trouble with the Commission in future licence reviews.

However, it is the debate in connection with the B2 machines that has garnered most attention in 2017. These are machines in betting shops which are prevalent on high streets in the UK. They have been the subject of intense criticism due to the fact that one can stake up to £100 per bet (which means every 20 seconds on the roulette games), meaning the customer can lose very quickly. There have widespread calls by lobbying groups, the press, local authorities and certain MPs to reduce the stake to £2 which would undoubtedly impact upon the sustained financial viability of numerous shops and hence lead to unemployment (the betting industry employs some 53,000 individuals). The DCMS (the governmental ministry with responsibility for gambling) published its consultation document in October 2017. (This was against a backdrop of a review in 2016, so a further consultation process with no "minded to" flags is disappointing for many.) The proposals will mean a reduction from £50 to £2 (or with various variable options in connection with £20 and £30). A determination of £2 will be a very bleak outcome for the bookmakers, although they have been criticised for primarily focusing their lobbying attentions on job losses. The DCMS can be roundly criticised as well though, as the problems have festered for some time and snagged on the pursuit of evidence based on whether play was harmful by comparison to some other forms of gambling, whereas it could just have said it did not want, as a point of principle, to have machines where large sums of money could be so quickly lost across numerous retail outlets (there are around 8,800 in the UK). At the time B2s were permitted (and their predecessor, the FOBT), the rest of the machine industry was aghast; most similarly located retail units were confined to a £2 stake. Complaints of unfair completion and loss of business followed. So if the stake is reduced will large swathes of gamblers drift to other locations such as the arcades or revert to a higher degree of online play? The B2 play lost may well redistribute to other bits of the industry.

The remote casino industry has also come under pressure from the changes to tax treatment to free bets and bonuses to close the loophole, which allowed gaming operators to deduct these from the calculation of its net retention because they could be treated as winnings; at the time, Her Majesty's Revenue and Customs ("**HMRC**") said to do otherwise would distort duty calculations – possibly unaware how heavily the industry replied on bonuses and other incentives. HMRC did say it would challenge any obvious abuses. However, this never seemed to occur. The new provisions were meant to be implemented on 1 August 2017, despite the delays to actually passing the Finance Act which was delayed due to the election. Most operators have made provision from August.

Finally, there is a new horse racing levy, after much debate and hand wringing, which had allowed non-UK-based operators to avoid paying any sums for betting on British horse racing; from this year, all operators must pay 10 per cent for sums above a gross gambling yield of £500,000. Some operators believe that this again will make a serious dent to their sports betting profits.

In short, 2017 has been quite a beleaguering one for the UK-facing gambling industry. Inevitably there will be another round of consolidation and it will be interesting if the US sports betting market opens up as predicted whether, as a consequence, some of the UK-facing operators and suppliers could present acquisition fodder. Moreover, despite the above, the industry is above all resilient. Digital entertainment is a merging and overlapping marketplace where legal constructs and definitions collide (esports being an obvious example). Technology and content will continue to drive consumer appetite even if operating margins are squeezed. In addition, retail still has a place in those overall product offerings even if, unlike 20 years ago, all customers will also be carrying a mobile or tablet. The UK is still a fundamentally liberal and secular jurisdiction so something has gone fundamentally awry for the gambling industry to be in such poor odour with the public and government at the same time. If the industry was a brand it needs a makeover and a relaunch in 2018.

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Having spent five years working in-house in the gambling sector (and three as head of the gambling division at Ladbrokes), Hilary returned to private practice in 2000. She recognised the need to create a legal service to support all the needs of gambling clients on a multi-jurisdictional basis, including regulatory issues, general commercial and corporate support (including fund raising) and structural and tax planning.

Hilary has played a role in most of the online sector floats/acquisitions since 2000, but continues to advise bricks and mortar businesses from tracks to casinos. She has written legislation and regulations for offshore governments and has drawn up industry codes of practice.

She joined DLA Piper LLP in September 2011 as a Partner, becoming a Consultant in 2013 in order to take up the role of deputy chairman of Playtech PLC which she left at the end of 2015.

Overview

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The U.S. Supreme Court Could Open the Door to Bricks-and-Mortar Sports Betting in the United States

Hinckley Allen

Mark Hichar

I. Introduction

The potential market for sports gambling in the United States is huge and largely untapped. In 2016, legal sports wagers in Nevada totalled approximately $4.5 billion (http://gaming.unlv.edu/reports/NV_sportsbetting.pdf). However, this is a small fraction of the estimated illegal sports gambling market in the United States. In March 2017, the American Gaming Association ("AGA") estimated that Americans' illegal sports wagers totalled between $149 billion and $500 billion per year. Using the $149 billion amount as a conservative estimate, the market for illegal sports gambling in the United States last year was more than double the combined total annual sales for all U.S. lotteries (44 states, D.C., and two U.S. territories), which were $73.8 billion in 2015 (http://www.naspl.org/faq), greater than the revenue of 491 of the Fortune 500 companies, and roughly equal to the combined revenues of Microsoft, Goldman Sachs, and Bristol-Myers Squibb. (AGA Brief as *Amicus Curiae* in Support of Petitioners in *Christie v. NCAA, et al.* (U.S. Sup. Ct. 16-476 & 16-477), the "AGA *Amicus* Brief".)

Sports betting is the form of illegal gambling most aggressively targeted for enforcement in the United States, largely on account of its association with organised crime. In the early 1960s, Attorney General Robert F. Kennedy waged a much publicised war against organised crime in the United States. Among the "anti-mob" laws passed during this time was the Wire Act (18 U.S.C. §§ 1081, 1084), which expressly targeted sports betting utilising a "wire, cable or other like connection".

After the 1960s, and as the popularity of sports increased in the United States, betting on sports events became a significant concern of the United States' professional and amateur sports leagues, particularly after a few well-publicised scandals involving players paid to "fix" games. (In one well-publicised scandal in 1978–79, organised crime figures bribed Boston College basketball players to ensure that the team would not "cover" the point spread.) Because the successful operation of the professional and amateur leagues in the United States depend, in large part, on the perception that they are true competitions – i.e., "clean" – the professional and amateur sports leagues in the United States lobbied for and obtained a federal law that, with some exceptions, prohibited states from enacting laws authorising or licensing sports gambling, and prohibited private operators from operating sports gambling businesses pursuant to state law. This law is known as the Professional and Amateur Sports Protection Act of 1992 (the "PASPA", codified at 28 U.S.C. §§ 3701–3704).

Since the 1992 enactment of the PASPA, lawful sports betting has occurred in the United States (as of this writing) in only four states – Delaware, Montana, Oregon and Nevada – with single-game betting only in Nevada. However, this may soon change. As discussed below, in June 2017, the U.S. Supreme Court announced it would consider New Jersey's appeal of the U.S. Third Circuit Court of Appeals' decision in *Christie v. NCAA, et al.* (*Christie v. NCAA, et al.*, 832 F.3d 389, 396–397 (3rd Cir. 2016), cert. granted, 2017 U.S. LEXIS 4279 (2017) and consolidated with *New Jersey Thoroughbred Horsemen's Association, Inc. v. NCAA, et al.*, U.S. Sup. Ct. Nos. 16-476 and 16-477.) In that case, the Third Circuit Court upheld the PASPA as constitutional and affirmed the lower court's order enjoining the implementation of New Jersey's 2014 law that partially repealed New Jersey's sports betting prohibitions. The respondents in the case are the National Collegiate Athletic Association, the National Basketball Association, the National Football League, the National Hockey League and Major League Baseball.

The Supreme Court's action was a surprise to many in the gaming legal community, because the Supreme Court accepts less than 1% of petitions seeking review, and the question to be decided is not the subject of a dispute between federal circuit courts. Moreover, the acting U.S. Solicitor General had formally recommended that the Supreme Court decline to hear the case. (Brief for the United States as *Amicus Curiae* opposing *certiorari* in *Christie v. NCAA, et al.*) The Supreme Court's decision in the case is expected by the end of June 2018 and has the potential to dramatically change the gaming environment in the United States.

This article explains the PASPA and the Wire Act, and discusses how the gaming landscape in the United States could change as a result of the Supreme Court's decision in *Christie v. NCAA et al.*

II. The Professional and Amateur Sports Protection Act (the "PASPA")

A. The PASPA Prohibitions

Enacted in 1992 to "stop the spread of State-sponsored sports gambling and to maintain the integrity" of sports competitions in the United States, the PASPA provides (at § 3702) that it shall be unlawful for:

(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorise by law or compact; or

(2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity,

a lottery, sweepstakes, or other betting, gambling, or wagering scheme based . . . on one or more competitive games in which

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> amateur or professional athletes participate . . . or on one or more performances of such athletes in such games.

"Government entity" is defined to include a state and its subdivisions, and self-governing Indian tribes recognised by the U.S. Secretary of the Interior. The terms "lottery", "sweepstakes", and "other betting, gambling, or wagering scheme" are not defined. However, the PASPA's legislative history states:

> The prohibition of section 3702 applies ***regardless of whether the scheme is based on chance or skill, or on a combination thereof***. Moreover, the prohibition is intended to be broad enough to include all schemes involving an actual game or games, or an actual performance or performances therein, . . .

(S. Rep. 102-248, 102nd Cong., 1st Sess. (1991) (emphasis added).) The last clause of § 3702 – "one or more performances of such athletes in such games" – covers multiple individual performances, such as those that are used to determine the outcomes of fantasy sports contests. Thus, states may violate the PASPA when they pass laws authorising and/or licensing pay-to-play fantasy sports contests with prizes. Regardless whether skill or chance governs the outcome of such contests, the PASPA would apply if such contests constitute "a lottery, sweepstakes, or other betting, gambling, or wagering scheme". In an effort to avoid risk under the PASPA, most recently-enacted state laws legalising fantasy sports contests expressly state that such contests shall not be considered "gambling" within the meaning of that term under state law. However, such a conclusion would not be dispositive for purposes of enforcement of the PASPA, a federal law. To date, however, the sports leagues and the U.S. Department of Justice (the "DoJ") – each of which, independently, has the power to enforce the PASPA – have shown no interest in challenging state fantasy sports laws under the PASPA.

B. The PASPA Exceptions

The PASPA excepts from its prohibitions pari-mutuel wagering on animal racing or jai-alai games. It also excepts (and thus "grandfathers") sports betting schemes conducted during certain periods prior to the PASPA's enactment, subject to the satisfaction of certain conditions. One exception applies to government-operated lotteries, sweepstakes and other betting, gambling and wagering schemes "***to the extent*** that the scheme was conducted by that State or other government entity at any time during the period beginning January 1, 1976 and ending August 31, 1990". (28 U.S.C. § 3704(1) (emphasis added).) This exception applies only to government-operated sports betting schemes, and only to the extent such schemes actually were conducted by the government during the applicable time period, regardless whether more expansive gambling was authorised. Expansion of the conducted scheme into other sports is permitted, but this exception does not allow governments to "effectuate a substantive change [to] the scheme that was conducted during the exception period". (*Commissioner of Baseball v. Markell*, 579 F.3d 293, 303 (3rd Cir. 2009).) Certain sports-related games operated by the state lotteries in Delaware, Montana and Oregon fall within this exception.

A second exception applies to lotteries, sweepstakes and other betting, gambling and wagering schemes where both: (1) the scheme was authorised by a statute as in effect on October 2, 1991; and (2) the scheme "actually was conducted in that State or other governmental entity at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity". (28 U.S.C. § 3704(2).) This exception applies to the sports wagering conducted in Nevada, which is the only state currently allowed under the PASPA exceptions to conduct single-game, head-to-head betting. In addition, this exception allows for expansion. "[S]ports gambling covered by [this exception] can be conducted in any part of the state in any facility in that state, whether such facility is currently in existence." (S. Rep. 102-248, 102nd Cong., 1st Sess. (1991).)

Finally, the PASPA includes a third exception specific to New Jersey, which prohibited sports gambling at the time the PASPA was enacted, but had several authorised and licensed casinos operating in Atlantic City. Under this third exception, New Jersey was given until "one year after the effective date of [the PASPA]" to authorise sports gambling to be conducted in Atlantic City. (28 U.S.C. § 3704(3).) New Jersey did not act to authorise sports gambling within that one-year period.

C. Enforcement of the PASPA

The PASPA is a civil, not criminal statute. The sole remedy for violation is injunctive relief. A PASPA violation may be enjoined by a civil action brought by the U.S. Attorney General or by a professional or amateur sports organisation whose games are alleged to be the basis of such violation. (28 U.S.C. § 3703.)

D. Federalism Concerns Relating to the PASPA

The PASPA does not prohibit sports gambling itself. Rather, it prohibits the states from carrying out certain acts to further sports gambling, such as "licensing" or "authorising" sports gambling by law. In addition, the PASPA prohibits private operators from operating or promoting sports gambling only if those acts are done "pursuant to the law or compact" of a state or other governmental entity. As stated by the AGA in the AGA *Amicus* Brief:

> While Congress could have regulated or prohibited sports betting as a matter of federal law [pursuant to its "Commerce Clause" powers under Article 1, Section 8, Clause 3 of the U.S. Constitution], it chose not to. Instead PASPA in effect ensures that sports betting continues to violate ***state law***.

Finally, the PASPA's grant of enforcement authority to private sports leagues is arguably an unconstitutional delegation of Congress' lawmaking power. (Brief of Professor Ryan M. Rodenberg as *Amicus Curiae* in Support of Petitioners in *Christie v. NCAA, et al.*) As the Supreme Court has stated, a delegation of regulatory power to a private, non-governmental entity "is legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interest may be and often are adverse to the interests of others in the same business". (*Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936).) As stated in 1991 by the DoJ, which opposed the enactment of the PASPA:

> The Department is concerned that, to the extent the [PASPA] can be read as anything more than a clarification of current law, it raises federalism issues. It is particularly troubling that [the PASPA] would permit enforcement of its provisions by sports leagues.

(S. Rep. 102-248, 102nd Cong., 1st Sess. (1991).)

The above points are keys to understanding New Jersey's PASPA challenge now pending before the Supreme Court.

III. New Jersey's PASPA Challenge

In 2014, New Jersey enacted a law that repealed the state's sports betting prohibitions, but only (1) to the extent applicable to Atlantic City casinos and New Jersey horse racing tracks, (2) with respect to sports gambling by persons 21 years old and older, and (3) to the

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extent that the wagering is not on a collegiate sports event taking place in New Jersey or in which a New Jersey college team is participating (regardless where the event takes place). (N.J. 2014 P.L. c. 62, § 1.) By structuring the law as a "repeal", New Jersey believed that it was not "authorising" sports gambling and thus was not in violation of the PASPA. Indeed, New Jersey followed guidance provided by the sports leagues, the DoJ and the U.S. Third Circuit Court of Appeals in a 2013 case. In that case, the Third Circuit Court upheld the sports leagues' PASPA challenge to a 2012 New Jersey law which would have established a sports wagering licensing and regulatory scheme in New Jersey. (*NCAA v. Christie et al.*, 730 F.3d 208 (3rd Cir. 2013), cert. denied 134 S.Ct. 2866 (2014).) The Court construed the PASPA to prohibit only the "affirmative 'authorization by law' of gambling schemes", and not repeals of states' existing sports betting prohibitions. Moreover, in its brief opposing New Jersey's effort to have the Supreme Court hear that earlier case (the Supreme Court eventually declined), the sports leagues argued that "[n]othing in [the] unambiguous language [of the PASPA] compels [S]tates to prohibit or maintain ***any*** existing prohibition on sports gambling" (emphasis added). Still further, in its brief opposing New Jersey's appeal to the Supreme Court, the DoJ argued that the PASPA did not "obligate New Jersey to leave in place the state law prohibitions against sports gambling that it had chosen to adopt prior to PASPA's enactment", and New Jersey was "free to repeal those prohibitions ***in whole or in part***" (emphasis added).

However, after New Jersey enacted the 2014 law partially repealing its sports betting prohibitions (and repealing the 2012 law), the sports leagues, the DoJ and the Third Circuit Court changed their minds and interpreted the PASPA as making it unlawful for New Jersey to repeal its sports betting prohibitions when limited to specific geographic venues. In a nine to three decision rendered by the full 12-member Court, the Third Circuit Court enjoined implementation of the New Jersey partial-repeal law, holding that it "authorize[d] sports gambling by selectively dictating where sports gambling may occur, who may place bets in such gambling, and which athletic contests are permissible subjects for such gambling". According to the majority, "[t]hat selectiveness constitute[d] specific permission and empowerment" and thus violated the PASPA. Further, the Third Circuit Court concluded that the PASPA does not unconstitutionally commandeer state legislatures, because it does not "require or coerce the states to lift a finger" or "take affirmative action" to enact any particular state law.

New Jersey sought an appeal before the U.S. Supreme Court, arguing that the PASPA "commandeers" the regulatory power of the states in violation of the 10th Amendment to the U.S. Constitution (which reserves to the states or the people the powers not expressly granted to the federal government), because it requires New Jersey to enforce through its laws a federal regulatory policy banning sports gambling, even though a majority of New Jersey citizens and legislators voted to permit sports gambling in the state.

Arguing in support of New Jersey's appeal, the AGA argued in the AGA *Amicus* Brief as follows:

> A State's ability to decide what its law is (and is not) is a "quintessential attribute of sovereignty" and precisely what gives the State its sovereign nature. Indeed, protecting a State's autonomy to enact, enforce, and repeal its own laws as it sees fit protects individual rights and promotes democratic accountability. By adopting a system of dual sovereignty, our Constitution embraces these principles and rejects a central government that would act upon and through the States' in favor of a system in which the State and Federal Governments would exercise *concurrent* authority over the people.
>
> For these reasons, this Court has always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel ***the States*** to require or prohibit those acts. Thus, for well over a century, it has been a central tenet of this Court's so-called anti-commandeering jurisprudence that Congress cannot compel the States to enact and enforce a federal regulatory program, or require the States to govern according to Congress' instructions. . . .
>
> [The PASPA] enshrines a federal policy that, with a few grandfathered exceptions, makes sports betting illegal nationwide. . . . As interpreted by the Third Circuit, PASPA not only prohibits States from enacting laws that ***authorize*** sports gambling; it forces States to maintain laws (and accompanying enforcement apparatuses) that ***prohibit*** the practice.
>
> . . .
>
> There is no dispute that Congress cannot directly compel New Jersey to enact a prohibition on sports betting. It should follow, then, that Congress may not prevent New Jersey from repealing its sports-betting prohibition. After all, preventing the state from repealing an existing law is no different from forcing it to pass a new one; in either case, the state is being forced to regulate conduct that it prefers to leave unregulated.

(Emphasis in original, quotations and citations omitted.)

Thus, the legal question to be decided by the Supreme Court is whether the PASPA "commandeers" states to maintain state-law prohibitions on sports betting in violation of the 10th Amendment to the U.S. Constitution and the Supreme Court's fundamental related decision in *New York v. United States*, 505 U.S. 144 (1992). (That decision stated that it is unconstitutional for Congress to "directly . . . compel the States to require or prohibit [certain] acts".)

Briefs in the case are expected to be submitted by the end of 2017, and a decision is anticipated by the end of June 2018.

IV. Possible Effects of the U.S. Supreme Court's Decision in *Christie v. NCAA et al.*

The Supreme Court's decision has the potential to change the gaming landscape in the United States. A decision favouring New Jersey could (1) provide a road-map for other states to follow in order to permit bricks-and-mortar sports betting, or (2) remove entirely the federal prohibition on state-authorised bricks-and-mortar sports betting. Either result would allow states to decide for themselves whether bricks-and-mortar sports betting should be allowed within their boundaries. Of course, a third possible result exists which is unfavourable to New Jersey: the Court could hold the PASPA is constitutional and does not violate the 10th Amendment's anti-commandeering principle as applied to New Jersey's 2014 law.

Thus, if the Supreme Court upholds the PASPA, and also holds that New Jersey's repeal of its sports gambling prohibitions does not constitute an "authorisation" of sports gambling (and thus does not violate the PASPA), other states could follow New Jersey's example and repeal their sports betting laws to the extent applicable at certain venues – e.g., otherwise regulated gaming venues. This would not be optimal for states, however, because states likely would want to impose at least some general regulation (e.g., regulation ensuring the games are honest and fair, and otherwise protecting consumers), and it would be unclear how much general regulation could be made applicable and not run afoul of the PASPA. Many of those watching this case believe that Congress will intervene to repeal or amend the PASPA if the Supreme Court renders this narrow decision.

Alternatively, if the Supreme Court strikes down the PASPA entirely, this will open the door for states – if they so choose – to pass laws authorising and regulating sports betting, although

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some state constitutions may first need to be amended on account of constitutional restrictions limiting their legislatures' power to enact laws authorising certain forms of gambling. In addition to New Jersey, Connecticut, Delaware and Mississippi have already enacted laws authorising sports betting in anticipation of a Supreme Court decision striking down the PASPA or a federal law repealing it. Other states have introduced laws that would authorise sports betting (subject to a change in federal law) or provide for it to be studied. As of this writing, such states include California, Hawaii, Maryland, Michigan, New York, Oklahoma, Pennsylvania, South Carolina and West Virginia.

Finally, U.S. Congressman Frank Pallone, Jr., of New Jersey, has issued a discussion draft of a bill that would repeal the PASPA and allow states to legalise sports betting and online gambling if appropriate consumer protections were in place. As of this writing, the bill – the Gaming Accountability and Modernization Enhancement Act (the "GAME Act") – has not been introduced.

V. The Wire Act

The Wire Act prohibits those "in the business of betting or wagering" from using "a wire communication facility" for the transmission:

- "in interstate or foreign commerce of bets or wagers or information assisting . . . bets or wagers on any sporting event or contest"; or
- "of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting . . . bets or wagers, . . . "

(18 U.S.C. § 1084(a).)

The Wire Act excepts information assisting bets transmitted between states in which betting on such particular sporting event is lawful. However, this exception does not apply to the bets themselves, it applies only to information assisting in sports bets.

In 2011, the DoJ issued an opinion declaring the Wire Act applicable only to betting and wagering on sporting events, changing its earlier interpretation (or arguably re-adopting its original interpretation) that the Wire Act applied to all gambling involving a wire. This DoJ opinion opened the door to internet (online) betting in the United States on lotteries, poker and other games of chance and/or mixed skill and chance, subject to approval of the applicable states. ("Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processers to Sell Lottery Tickets to In-State Adults Violate the Wire Act", September 20, 2011.) As a result of the DoJ's interpretation of the Wire Act, no federal law currently prohibits state-authorised non-sports online gambling conducted on an intrastate basis. However, the DoJ left no doubt that the Wire Act applies to online sports betting where the bets or wagers are sent in interstate or foreign commerce by a means involving a wire.

The Wire Act is not at issue in *Christie v. NCAA et al.* and, therefore, its prohibitions on the use of the internet (and other systems using wires) for the transmission in interstate or foreign commerce of sports wagers, or information assisting in sports wagers, will not be affected by the Supreme Court's decision. Accordingly, even if the Supreme Court strikes down the PASPA in its entirety, the federal ban on the interstate transmission of sports bets will remain intact. Accordingly, while states could implement ***intrastate*** mobile wagering if the PASPA is struck down (such intrastate mobile wagering is currently conducted in Nevada), states could not implement online sports betting that processed sports bets from out-of-state bettors or where the bets were processed out-of-state.

VI. Opinions Regarding Sports Gambling Have Changed Since the PAPSA's Enactment

In the United States, public opinions towards sports gambling have changed dramatically since the PASPA was enacted in 1992. "A 1989 Gallup Survey found that a majority of Americans opposed allowing the States to legalize sports betting". (AGA *Amicus* Brief.) However, according to a 2017 poll by Public Opinion Strategies and Greenberg Quinlan Rosner Research cited by the AGA on its website, 57% of Independents, 58% of Republicans and 50% of Democrats support ending the federal ban on state-authorised sports gambling. In addition, according to the same poll, "[n]early 7 in 10 Americans (69%) agree that 'allowing sports betting is something for the people of each state to decide, not the federal government'".

States too want the freedom to decide whether or not sports betting should be allowed within their boundaries. As mentioned above, four states have passed laws authorising sports betting, and nine others have proposed that it be authorised or studied.

Finally, the opinions of the sports leagues have softened towards sports betting. In November 2014, National Basketball Association Commissioner Adam Silver penned an opinion piece in the *New York Times*, in which he stated: "Times have changed…I believe sports betting should be brought out of the underground and into the sunlight where it can be appropriately monitored and regulated". In October 2015, Major League Baseball Commissioner Rob Manfred stated on ESPN Radio: "[T]he landscape is changing and . . . baseball, during this offseason, principally will take a look at its relationships with legalized gambling – whether it's sponsorship, whatever – and re-evaluate given that the country has changed in terms of its approach to legalized gambling". Major League Soccer Commissioner Don Garber, in a March 2017 interview with *Sports Illustrated*, stated:

> I'm very open to understanding how we can get more engaged in this market [i.e., legalized sports betting] in a way that I think if done properly, can be regulated and managed and controlled. I'll join the chorus of saying it's time to bring it out of the dark ages. We're doing what we can to figure out how to manage that effectively.

The National Football League ("NFL"), however, remains opposed to legalised sports betting. In an April 2017 interview with ESPN Radio, NFL Commissioner Roger Goodell stated:

> [T]here clearly is a change I think in society with respect to gambling in general. Where we draw the line is when anything can impact the integrity of the game. And legalized sports betting is something that we're concerned about on that level. So we'll remain opposed to that. But we're obviously recognizing what's going on in society and we're going to have to adapt policies from time to time. But we think this is something – protecting that integrity of the game is critical.

Notwithstanding this stance, in 2017, the NFL owners voted 31-1 to approve moving the Oakland Raiders to Las Vegas, where they will play starting as early as 2019. Moreover, to date, the NFL has not taken action to prohibit betting on Raiders' games when they play in Las Vegas.

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VII. Conclusion

Currently in the United States, the amount of money wagered on sports events illegally is at least 30 times greater than the amount wagered legally. Illegal sports bets may total as much as $500 billion annually. This represents wagering that is untaxed, unregulated and "[m]uch of this revenue generated by illegal sports gambling is used to fund organized crime and other illicit activity, such as drug and human trafficking, money laundering, and racketeering". (AGA *Amicus* Brief.) Although the PASPA was intended to reduce sports gambling, it "has simply allowed [sports gambling] to flourish underground, benefitting criminal elements and creating a thriving black market". (*Id.*)

At the same time, opinions of United States voters and state legislatures have changed. Almost 70% of Americans now agree that whether to allow sports betting should be decided by the people of each state, not the federal government.

In 2018, the Supreme Court in *Christie v. NCAA et al.* may overturn the PASPA, allowing states to once again decide for themselves whether to allow bricks-and-mortar sports gambling within their boundaries. The Nevada monopoly on single-game sports betting may finally end.

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Blockchain: Revolutionising iGaming As We Know It

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I. Blockchain: What's All the Rage About?

The term 'blockchain' has of late pervaded everyday discourse, becoming quasi-ubiquitous in talks on the future of technologies lying at the foundation of countless business sectors. It is perhaps not surprising that a golden opportunity has arisen for developers, economists, marketers and entrepreneurs to spot innovative applications of this technology. Online gaming and gambling sectors have historically demonstrated themselves to be quickly adaptable to developments that either improve player experience, or aid in the achievement of business or compliance goals. Given the sheer size of the gaming industry, which according to recent reports will generate total revenues of more than $108 billion worldwide in 2017, successful applications of blockchain technologies to this sector could generate a whole host of possibilities for this mushrooming industry.

What, then, is blockchain, and how might it soon revolutionise a sector some thought had reached saturation point? Dismantling the term 'blockchain' and understanding its components is the first step to grasping this phenomenon. Once *blocks* are conceptualised as records of multiple transactions, and *chains* are the links between these blocks, then it becomes elementary to visualise blockchain as a special type of database. Each of the blocks contains a small piece of data that permits the verification of the next block in the chain, so that if an attempt is made to modify an earlier block in the chain, all later blocks will cease to match up, in a manner not unlike a real-world stack of poorly-balanced toy-game blocks. It is then not difficult to begin to imagine a multitude of possible applications of such tamper-proof databases to the iGaming sector.

Blockchain technologies are perhaps best known for underpinning the digital currency Bitcoin. Cryptocurrencies of this kind are almost certainly one of the greatest blockchain technology applications, and have undoubtedly paved the way for the next evolution of money. With the financial system rapidly moving towards digitalisation, the idea of a paperless economy is becoming closer to reality. Blockchain technologies have, however, developed exponentially because they have been successfully implemented in contexts far wider than cryptocurrencies, including, for example, in smart contracts, intellectual property, commodities trading exchanges, and company registries.

Nascent blockchain and related cryptocurrency technologies have triggered numerous projects in a variety of sectors, including the iGaming field. Owing to Malta's highly developed regulatory regime for online gaming businesses, the adjacent development of blockchain-based technology enterprises has encouraged widespread consent that this technology could be a useful tool to herald a new age of efficiency to the industry. The combination of technologies that together constitute blockchain technology present significant benefits, such as transparency, unbreakable security, and high accuracy: a potential coup for the iGaming industry that many crypto-pioneers and adopters are claiming could be a game-changer.

II. Unlocking the Chains: Blockchain's Elements

The elements that are typically present in blockchain-based software lend themselves to creating the myriad of advantages which a blockchain promises to bring to the sectors that adopt it. For instance, a key component of a blockchain data structure is public key cryptography. Although public key cryptography is not unique to blockchain, it is one of its paramount elements, functioning to ensure that each participant in the blockchain system is uniquely identified, and only authorised participants can modify the blockchain in question. Public key cryptography can also be used to encrypt data stored on the blockchain, so that only those possessing the encryption key can then access and decrypt it.

Since the ledgers that constitute blockchain are 'distributed' or 'decentralised', there is no one single central database: every single participant authorised by the public cryptography keys on the block (sometimes referred to as 'nodes') can have a copy of the entire ledger. Whereas traditional ledger systems require each participant to maintain their own decentralised ledger, or to near-blindly trust a centralised ledger, every node in a blockchain maintains a complete version of every transaction on the ledger. Once each proposal to modify the ledger is transmitted to each node on the chain, critical vulnerabilities related to having one centralised ledger (what if the central ledger is hacked, or maliciously altered or deleted?) are alleviated.

Blocks are only added to a blockchain by means of consensus mechanisms, which function as proofs of validity of the individual blocks or records. These pre-set rules determine whether consensus will be reached on proposed changes to the blockchain that must be reached by the nodes. In practice, this means that nodes on a blockchain-based asset title registry could run a check on the records related to the asset title in question, so that a particular transaction can then only be carried out if the person purporting to own a title really does hold the title to the asset. Once the nodes have reached consensus as to the validity of the transaction, then a block representing the new transaction will be added to the blockchain, a record of which will be near-instantly known throughout the entire distributed ledger. This complex consensus-based gate-keeping mechanism means that only valid data can be appended to the blockchain, thus eliminating the risk of fraud, corruption or mistakes typically inherent to centralised authorities.

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III. Advantageous Application of Blockchain in iGaming

The versatile characteristics of blockchain technology address a number of requirements that iGaming operators are usually required to comply with as part of their licence conditions. These conditions usually span the various stages of the gaming experience, from ensuring the fairness of the result or draw, to guaranteeing transparency in the processing of payouts and withdrawals. By virtue of its decentralisation, blockchain cannot ever be owned and controlled by a single user, rendering it impossible for anyone to change the underlying data, in turn making it more resilient against fraud threats and record manipulation.

Another potentially revolutionary aspect of blockchain *vis-à-vis* iGaming is that by maintaining transparent records of transactions on the blockchain, verifiability becomes far simpler. Ease of verifiability is key to lottery engines and other games based on the generation of random numbers, which at times must verify thousands or millions of entries; the verification of bets, stakes and the corresponding payouts of winnings similarly would usually require exertion of significant human and computer power, but bringing a blockchain network into the picture would present the concept of 'provable fairness'.

The combination of innovative technologies together forming the blockchain has also triggered the ability to run apps or execute code often referred to as 'smart contracts'. Smart contracts have of late gained traction in the iGaming sector, especially in relation to player funds. Smart contracts run on coded logic that will only trigger an action if a pre-determined external event occurs, without then requiring additional human intervention upon completion. A classic example of the use of smart contracts is the holding on escrow of player funds. Smart contracts are a transparent, conflict-free way of exchanging money by simply drafting a digital, binding and self-executing multi-party agreement. This agreement is then compiled into a smart contract code, which is digitally signed and stored on the blockchain.

The swiftness through which smart contracts can be entered into could also soon be revolutionising player behaviour. Such fast, cheap and reliable contracts allow players to place bets on a multitude of games with bets ranging from less than a cent to thousands of Euros without having to trust a third party. Smart contracts could also be utilised in the context of randomised games such as roulette wheel or dice games, which have to date been required to implement provably fair algorithms. By being coded on the blockchain, smart contracts could be used to enable random number generation to take place in an entirely decentralised and openly verifiable manner.

The transparency guaranteed by blockchain technology can also be beneficial in the context of betting exchange activities, where each and every transaction or bet is conducted on a person-to-person basis. Since smart contracts can be coded to record bets placed and to automatically pay out winnings, blockchain technology could do away with requiring an intermediary operator to have access to the participants' money and activity. In effect, smart contracts would enrich player experience: near-instant payout of winnings without expensive human intervention; and a substantial deduction of third-party fees would become the norm.

IV. A Thorn in Blockchain's Side? Legal Challenges and Opportunities

Although much attention has been paid to the advantages to be gained from mass adoption of blockchain and associated technologies, the use of decentralised blockchain technologies will pose a number of regulatory challenges, both for operators and for regulators. These considerations are certainly important; however, it is essential to expend efforts to carefully assess these challenges and fit them into the existing regulatory framework, in particular by enacting technologically neutral regulations. Once a fluid approach to the nature and status of new technologies is set out, regulatory positions will deftly adapt to new and innovative platforms. Malta's gaming regulator, the Malta Gaming Authority ("MGA"), will begin a trial in the coming months that has been designed to determine how a cryptocurrency might affect Malta's domestic economy. The concept being explored is the introduction of a cryptocurrency within a 'controlled framework', which would enable regulators to test possible controls and legislation for the technology. The sandbox test was proposed in an extensive report on the potential introduction of virtual currency commissioned by the MGA, which outlines the strengths and weaknesses of cryptocurrencies in conjunction with the threats and opportunities it poses to the island's economy.

The same speed with which smart contracts can be executed, and for which they hold their claim to fame, could also herald problems for their legal enforceability down the line. The promise of fast and cheap quasi-instant contracting could foreseeably be called into question in some jurisdictions, as traditional elements of consent of parties to a contract might be deemed to be absent. It is for this reason that smart contracts have thus far been cautiously adopted in well-defined and largely automated contexts, and it will be a while yet before lawyers and paper-based contracts as we know them start to resemble a bygone era.

Another challenge posed by blockchain technology could affect not only regulators but also third-party testing businesses, which will likely need to establish new protocols and standards for testing blockchain-based gaming activities.

Anonymity is another feature which will likely not immediately sit well within many gambling regulatory regimes. For instance, although Bitcoin is recognised in many locations worldwide as a means of payment, it remains a relatively new product which is not universally understood and which is not commonly used, especially because of a lack of corresponding regulation and adjacent security concerns. However, one must keep in mind that Bitcoin transactions are highly secured by way of cryptography and every detail emanating therefrom is encrypted. Therefore, the nodes in the Bitcoin blockchain are all anonymous, and it is this same anonymity which helps prevent attacks and attempts to disturb or manipulate transactions on the Bitcoin blockchain.

The blockchain's extreme traceability could also compromise end-user privacy, as it relies on keeping an indelible record of every transaction placed on every node. However, permanent records themselves enhance the reliability of data, and aside from being incorruptible, transparent records allow users within the blockchain community to check other people's transactions.

V. Initial Coin Offerings: Gambling on Capital-Raising?

Initial coin offerings ("ICOs") are quite possibly the blockchain innovation that has garnered greatest media attention in recent months. Like other applications of blockchain technologies, they have in no time gone from the realm of mystical tech to entering the layman's everyday vocabulary after the statements made by the Chief Executive Officer of the US's banking stalwart, J.P. Morgan Chase, and the actions taken by major global securities regulators in China and the US amongst others. An ICO is a fund-raising event

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that bears a slight similarity to its mature, regulated fund-raising cousin, the initial public offering or IPO. ICOs typically raise much-needed capital for blockchain-based start-ups over a period of one week or more following publication of detailed business and token specifications in a white paper. During the ICO, start-ups sell their own cryptocurrency tokens to members of the public in exchange for vital injections of cryptocurrency or fiat cash, before the launch of their newly-minted cryptocurrency onto the token exchange market.

Gaming and gambling start-ups did not lag behind when it comes to acting upon their enthusiasm for ICOs. One notable gaming ICO that has captured the industry's attention is Funfair.io, which successfully raised $26m in mere hours for the sale of tokens running on the decentralised gaming platform powered by Ethereum smart contracts which help solve problems typical to consumers in online casinos. The transparent smart contract coding and its associated tokens powering the Funfair.io system offer instant gaming, transparent code, lower operating costs and consequently higher payouts.

Funfair.io's platform is complemented by many other examples of blockchain-based ICOs that promise to launch potentially disruptive tech in the online gaming world. Unikrn is one such ICO, domiciled in Gibraltar and which has designed its Unicoin Gold suite of services for both full-service and limited-service jurisdictions. Unicoin Gold can then be used in full-service jurisdictions for the exchange and interchange of a virtual point-based reward system for the purpose of legal and licensed betting on eSports matches, tournaments and other engagement around gaming. In limited-service jurisdictions, Unicoin Gold can still be used to purchase jackpot tickets involving eSports and for accessing exclusive rooms. Unicoin Gold has collected over ETH 110,000 to date, and its white paper says the new coin will serve as a 'decentralised proxy of value' that will create a decentralised-community-driven virtual economy that is based on the skills platform, live-betting experience, and global expansion of an exclusive token betting eSports platform.

A number of gaming ICOs have also featured prominently in the eSports segment. Chief among these is the Gimli Project, a Malta-based ICO which has developed a decentralised, interactive platform for video game streamers and viewers and which has captured attention of keen gamers and budding crypto-investors in the eSports world. Another eSports segment ICO is the upcoming, eponymous Esports.com token sale, which has premised its ICO on building an innovative digital platform that combines education, statistics and betting, and which plans to enrich the interdisciplinary experience through a real-life eSports gaming university based in Germany as well as an internationally accessible online university.

Needless to say, ICOs have also attracted considerable criticism because of the undeniable presence of scams and fraudulent token offerings, launched to the public with the accompanying promise of sky-rocketing returns akin to dividends paid on securities in publicly-traded stocks and bonds. However, most ICOs are more likely to be considered to be akin to the sale of a future money supply, rather than a sale of securities. This is because the vast majority of ICOs offer no equity in the start-up venture, but rather offer discounts on the cryptocurrencies that power the platform itself. Furthermore, ICOs are neither regulated nor registered with any government organisation, unlike IPOs, and there are usually none of the investor protection fallbacks typically guaranteed by securities regulation and regulatory approval, other than what is built into the platform itself. Token supply is static in that every token which is issued will have a pre-designated price that will not change during the ICO period.

VI. Conclusion: Where Will the Next Game Round Take the Blockchain?

It is beyond doubt that the sheer speed with which blockchain technologies have developed have rendered it dangerous to sit for any extended period on the side-lines. Blockchain technology has gone from start-up niche idea to widespread establishment in multiple sectors in a far shorter time than it ever took for the worldwide web or mobile computing to reach mainstream acceptance as a standard tool. The online gaming and gambling industry is visibly on its toes in the face of blockchain technology, and the consequences for any iGaming operator that ignores the potential benefits to be gained by implementing distributed ledger technologies in the aspects of the online gaming experience that are best suited to it could be tumultuous. Coupled with developments in fund-raising facilitated by ICOs and the rapidity which start-ups can now bring their ideas to market ensure that iGaming is presently more exciting than ever before as new developments brew on the horizon and transform this regulated industry.

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WH Partners was formed over 10 years ago and has established itself as a leading Malta-based business law firm best known for its strong understanding of the digital economy as well as for advising stakeholders in the fields of education, financial services, gaming & gambling, leisure & hospitality, real estate, taxation and wealth management. The firm's corporate, M&A, tax, IP, employment and regulatory lawyers are very active advising businesses across a raft of these areas. The firm's private client practice deals on an ongoing basis with high- to very-high-net-worth individuals and with family offices on matters ranging from succession planning and residence to yacht and aircraft registration. The firm's lawyers are among the strongest in Malta in their respective practice areas and are well regarded by regulators and clients for their thoroughness, efficiency and knowledge of their clients' business, as well as their versatility.

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Australia

HWL Ebsworth Lawyers

Anthony Seyfort

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Australia has a federal legal system with six states and two mainland territory governments (**regional governments**) and a national government (**Federal Government**).

Primary regulation of gambling is a matter for regional governments, because the basic prohibitions on most forms of gambling, and the exemption or licensing of recognised forms of gambling, occurs under state and territory legislation.

Each regional government has a minister responsible for gambling legislation, policy and to some extent administration and enforcement. Most regional governments have "independent" regulation of gambling by non-ministerial regulators that typically take the form of a government authority established and guided by statute. Apart from major policy decisions and the grant of major provider licences, such regulators usually work at arm's-length from ministers to promote the integrity of supervision and enforcement.

The principal regulators are (with capital cities indicated for convenience):

- The Victorian Commission for Liquor and Gambling Regulation [Melbourne].
- Independent Liquor and Gaming Authority (New South Wales) [Sydney].
- ACT Gambling and Racing Commission [Canberra].
- Independent Gaming Authority (South Australia) [Adelaide].
- Tasmanian Liquor and Gaming Commission [Hobart].
- Queensland Office of Liquor and Gaming Regulation [Brisbane].
- Department of Racing Gaming and Liquor (Western Australia) [Perth].
- Racing Commission & Department of Justice (Northern Territory) [Darwin].

The first five are independent regulators; the next two are departments of government ultimately directed by a minister responsible for gambling. In the last case (NT), there is one of each type of regulator, issuing different types of licences.

In some cases there are associated separate entities, such as inspectorates or police units that work with a principal body or a board that works with a government department.

The Federal Government also has a number of agencies that are partly concerned with the regulation of gambling activity:

- The Australian Communications and Media Authority has an enforcement role under federal legislation that constitutes a second layer of regulation of online and telephone gambling (interactive gambling).
- The Australian Transaction Reports and Analysis Centre (AUSTRAC) is the anti-money laundering regulator.
- The Australian Federal Police have a role in relation to enforcement of both interactive gambling and financial crime legislation.

For completeness, federal regulators concerned with securities regulation, competition law and consumer protection can have a role in relation to some types of gambling products or industry dynamics.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Each state and territory has two or more pieces of legislation that imposes prohibitions on unlicensed gambling activity, establishes schemes for the grant of licences, provides for limited exemptions and gives regulatory and enforcement powers to regulators and the jurisdiction's police.

At the 'large scale' end of the gambling spectrum, each jurisdiction has a Casino Control Act under which Australia's current 14 casino licences have been granted. (The 14 will soon rise to 15 and possibly up to 18 in the foreseeable future.)

Enabling and licensing legislation (of a variety of names) deal with an array of types of lotteries, wagering and electronic gaming machines – and online delivery methods – sometimes in a large single Act (as in Victoria) but often across multiple Acts which require careful scrutiny for complex interrelationships. Each jurisdiction has conditional exemptions for charitable lotteries, trade promotion lotteries and certain games of skill.

There are very limited cross-jurisdictional rights that arise from regional authorisations; however, the regional laws on trade promotion lotteries are harmonised and a licence in one region for the conduct of fixed odds wagering is generally effective for the efficient conduct of business in the other regions.

The most notable federal legislation is the Interactive Gambling Act 2001 that imposes a general prohibition on interactive gambling, with broad exemptions for technology-enabled venue-based gambling, most telephone betting and most interactive wagering by Australian licensed operators. The Anti-Money Laundering and

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Counter-Terrorism Financing Act 2006 and the Commonwealth Criminal Code also influence the conduct of gambling activities.

Foreign product offerors (such as offshore lottery and sports-betting businesses) need to contend with both regional and federal laws.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

As a matter of law, any person (usually a corporate entity) who is fit and proper and, for many types of gambling, sufficiently capable, can apply for a licence. The more pertinent question is whether a licence could be available.

Casino licences are only issued as a result of a process that follows a policy decision to have another licence. Such processes are currently under way over 2017–18 in the states of Queensland and Tasmania. Similarly, major commercial lotteries and totalisator betting licences are not frequently available for application. Some regions have statutory limits on the number of licences that can be issued. Incumbents are generally not legally preferred in future licensing processes (but there are long licence terms in some cases).

Licences for the operation of gaming venues (in hotels and clubs), fixed odds betting (bookmaking) and betting exchanges are reasonably available and licences for social, charitable and trade promotion lotteries are readily available.

Suppliers of inputs into gambling activities, such as equipment, software and technical services are usually directly or indirectly regulated (by licensing or approval), and suitable and capable persons can apply for those authorities.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Licensing applies to both operators and dedicated venues. In some cases (casinos and gaming venues in most regions), one licence deals with both aspects. In some cases (wagering and commercial lotteries), the concept of venue is irrelevant because the gambling product can be a retail product at third party premises or in public spaces.

Separation of ownership and operation usually gives rise to additional licensing or regulatory approval (such as a casino management company contracted by the casino licence-holder). Suppliers of inputs, such as equipment, software and technical services are usually directly or indirectly regulated (by licensing or approval). Some regions have formal transparent "rolls of suppliers" for gaming machines, components and testing; others have a process of tailored approval. Generally accreditation in one region will expedite accreditation in the others, but separate approvals must be obtained. Lastly, senior executives and also less senior personnel in casinos and gaming venues usually need employee licences.

2.3 What restrictions are placed upon any licensee?

Every licence has restrictions. Major restrictions involve product definition, in part to minimise overlap between types of licences and to preserve "exclusivity" or quantitative restriction rights of other licensees where they exist – in totalisator betting and most venue-based gambling. Licences often have conditions that supplement the legislated regulatory regime, particularly where tailored restrictions will apply only to an individual licensee or a class of licensees. They often include conditions that back-up contractual commitments to governments or that create co-ordinated regulation where there are related licensees or licensees who intend to operate in conjunction with one another.

2.4 What is the process of applying for any gambling licence or regulatory approval?

For infrequently issued 'major' licences – such as casino, totalisator betting and commercial lottery licences – a proponent would need to approach the regulator (or the government if a legislated limit on the number of licences that can be issued has been already reached). Almost invariably, the issue of a major licence involves a policy decision made at a higher level than the regulator – by the government or by the passage of legislation.

For gaming machine, betting exchange and bookmaker licences, the process will require following the procedure specified by the applicable legislation and further requirements published or made known on request to the regulator. Smaller lottery (including bingo) licences and supplier licences involve following an administrative process that is published by the regulator.

Other regulatory approvals often require an approach to the regulator by the primary licensee to initiate the approval process, such as for a contracted manager or an associate. Similarly, employee licensing often commences with the proposed employment offer.

In each case, applications involve the typical information needed across most jurisdictions, including applicant details, information about directors and associates, other information needed for the level of probity assessment undertaken by the regulator and indicative product information. Detail and further requirements vary between types of gambling activity.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Some casino licences in Australia are perpetual; all other have reasonably long terms (at least several decades from issue). Other major licences have long terms. Bookmaking and employee licences are usually 'virtually' perpetual – if not ongoing, the periodic renewal is usually an administrative process if the licence-holder remains in good regulatory standing. Gaming machine venue licences vary between the regions, but are readily renewed and are also mostly tradeable. Small lottery licences are for short terms.

Revocation of licences (for all but small lottery licences) are rare and require formal processes in which holders have legal risks to fair hearing and due process. In each case revocation requires cause, such as material breaches of regulation or the holder ceasing to be a fit and proper person.

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

Casinos can only offer approved casino games and the playing of gaming machines to customers physically present in the casino.

Wagering operators and bookmakers can offer approved fixed odds products to persons proximate and remotely, and a sub-set of wagering businesses can likewise offer totalisator betting.

Commercial lottery operators can offer approved lotteries with tickets sold in venues and online.

Hotels and clubs, if licensed, can provide approved gaming machines and keno games for play in the venue.

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Advertising of authorised gambling services is not heavily regulated compared with many other countries. Laws and codes of practice, which differ slightly by product and jurisdiction, are mostly concerned with advertising carrying consumer warnings and not being misleading. There are varying degrees of regulation of inducements and intermediaries involved in the promotion process.

2.7 What are the tax and other compulsory levies?

All gambling products have product-specific tailored taxes, in addition to federal Goods and Services Tax. The taxes can take the form of taxes (often quite substantial, such as in the case of casinos) on turnover or gross or net profit, and often as 'licence fees' or premium payments for certain exclusivity rights. In addition, wagering product providers generally pay 'product fees' to the controlling bodies for racing and sports on which their betting product is based. Such fees are functionally equivalent to hypothecated taxes to fund those underlying activities, and can take a turnover or profit form. Most jurisdictions add other smaller levies to major licensees, labelled as community benefit, health or other levies, but functionally they operate as taxes.

2.8 What are the broad social responsibility requirements?

Other than some levies, detailed product regulation and obligations to offer support services for problem gamblers, gambling providers in Australia are in a similar position to other businesses. Much of gambling product regulation is inspired by social policy concerns about consumer protection and harm minimisation, so there is an array of regulatory measures such as limits on credit, advertising codes of conduct, consumer warnings, participant exclusion schemes and micro-regulation of product features.

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

All gambling transactions other than lotteries (which include keno and bingo) are 'designated services' under federal AML law, although non-account transactions below a $10,000 threshold are generally exempt. Account providing, foreign exchange and some associated financial transactions are also designated services. Designated services trigger obligations on the service provider to undertake KYC processes, possibly lodge reports and possibly engage in greater than usual monitoring and analysis. AML laws are shaping Australia's gambling offerings and can inhibit marketing processes that might otherwise occur. Gambling (rather than AML) regulation mostly rules out the extending of credit, other than for premium players at casinos. Virtual currencies and other payment innovations face hurdles with gambling regulators, more so than the AML regulator, but the overall regulatory system is sufficiently adaptable for a process that is robust and about the integrity of which regulators can be satisfied.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Yes, the Interactive Gambling Act 2001, a federal law, prohibits online gambling activity and the advertising of such activity unless it falls within an exemption. Much of wagering and lotteries by Australian licensed operators is exempt, but in-play betting is prohibited. Online casino gaming and online poker is prohibited. Some regional laws also contain prohibitions (some tighter than the federal law). Legal enforcement requires prosecution, which is both difficult and without precedent for offshore suppliers to Australian customers.

3.2 What other restrictions have an impact on online supplies?

Some regional tax laws (such as point of consumption gambling tax) render some online offerings impractical or uneconomic.

Australian banks and internet service providers, in effect, assist the prohibition by not conducting business with prohibited services for concern about complicity in infringing the prohibitions. AML law is not a barrier.

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

Electronic gaming machines, including modern technology-enabled and (for casinos) multi-terminal forms, can operate in all but one of Australia's casinos and in hotels and clubs in all but one (a different one) of Australia's states and mainland territories.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Legislation imposes an array of direct specific obligations on licensees, associates, operators, individual staff, certain suppliers and on customers. Who is directly liable is specified by the applicable regulatory instrument. Some specific statutory provisions can make directors of companies also liable for offences by corporations. Broader principles of Australian law can also confer liability for complicity in primary offences on persons who are sufficiently involved in conduct that is an offence. As a general rule, a customer is not liable for an offence by a provider unless a statute explicitly provides for that. In addition, employers generally have shared liability for breaches by employees. Licensees are expected to have systems of governance, control, supervision and risk management that reduce the prospect of breaches by others, so generally can also be liable for breaches by other persons, particularly where those breaches are systemic.

4.2 What is the approach of authorities to unregulated supplies?

Unauthorised gambling providers are liable to prosecution in Australia, including offshore providers who do not meet domestic requirements. Authorities tend to pursue higher-profile infringers and those that generate material public detriment. Authorities face the obvious problems in prosecuting or taking enforcement action against offshore parties. Some commentators claim that insufficient efforts are made against offshore infringers, but an opportunity to put to the test a grave infringement that involves material public detriment has arguably not yet arisen.

Licensed businesses are expected to have systems of governance, control, supervision and risk management that ensure integrity in operations and freedom from improper influence. Accordingly, licensees are generally expected to mitigate and manage risks associated with unregulated suppliers.

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

No international law has domestic operation to limit the activities of licensees or regulators within Australia.

Regulators do take note of the compliance performance outside Australia of gambling licensees and operators who operate in multiple jurisdictions. Infringements of other laws can be seen as attributes of lack of fitness. Initial and ongoing probity assessments are also very concerned with the compliance of a licensee or its associates with foreign laws, including laws about securities regulation, investor protection and criminal activity.

4.4 Are gambling debts enforceable in your jurisdiction?

Yes, if the creditor has acted lawfully.

5 Anticipated Reforms

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

2018 is likely to see some further adjustment of the federal legislation regulating interactive gambling. Building on changes in 2017 to outlaw in-play betting and tighten the sanctions against illegal offshore betting services, the attention is likely to turn to 'harm minimisation'.

A working party of federal and state officials is examining a possible 'national consumer protection framework' for online betting, and a nationally consistent approach for 'point of consumption' taxes on wagering activity.

At the time of writing, there was also growing momentum for co-ordinated regulatory activity to inhibit betting on lottery outcomes (secondary lotteries), in part because of the market impact on licensed lottery operators and their future contributions to tax revenue.

There is continued regulatory 'creep' in the electronic gaming machine (EGM) sector, mostly affecting hotels and clubs, but to a lesser extent casinos, with further restrictions on machine activity and increased fees or taxes. Against that trend, the Australian Capital Territory will permit the introduction of EGMs into Casino Canberra.

At the time of writing, the states of Queensland and Tasmania each had policy or assessment/negotiation processes still under way that could lead to decisions to licence one or two new casinos in each of those states within a few years and could see changes in the structure of the EGM sector.

More up-to-date information is available on request from the author.

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In 1993, Anthony worked full time on the successful bidding process for the new Melbourne Casino licence and then spent five years as the inaugural company secretary of Crown, now a world-leading casino business. Building on that intense regulatory and senior management experience, he has worked with most of Australia's major gambling industry participants while back in private practice over the 19 years since then. Focusing on major projects including privatisation of a government-owned totalisator business, major licence renewals and the introduction of Australia and New Zealand's AML regimes, he has become a trusted adviser to each of the industry associations and was recently inaugural secretary of the Australian Wagering Council. His experience covers all gambling products and all aspects of regulation and regulatory reform. He is currently working on major licensing projects in two Australian states and periodically deals with Northern Territory licensing issues.

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Among the firm's full service offering, the commercial practice has a strong focus on regulated industries and dealings with governments and regulators. Our partners include:

- one of very few currently practising professionals with in-house gambling industry experience (Anthony Seyfort);
- a former casino and gaming regulator;
- other experts in regulation and AML; and
- transactional lawyers who have worked on recent major gambling industry projects.

While our clients include a large number of new and long-standing market participants, we can undertake project work for others because we have an uncompromised commitment to client confidentiality. We have good relationships with regulators and can add value to government relations strategies.

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Chapter 6

Austria

Thomas Talos

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The competence for regulating gaming and betting activities in Austria is split between the federal level and the nine Austrian federal states (*Bundesländer*). While sports betting is not considered as a game of chance but rather as a game of skill, its regulation is within the competence of the *Bundesländer*.

In general, games of chance are subject to a federal monopoly (*Glücksspielmonopol des Bundes*). The competent regulatory authority for games of chance is the Austrian Ministry of Finance (*Bundesministerium für Finanzen*, "**BMF**"). As the federal Gambling Act (*Glücksspielgesetz*, "**GSpG**") has transferred the competence for licensing the operation of slot machines operated outside land-based casinos, the government authorities in the *Bundesländer* are competent to regulate this activity. The GSpG allows the *Bundesländer* to grant up to three licences for the operation of slot machines outside land-based casinos. It is, however, within the discretion of each of the *Bundesländer* whether or not to grant licences for such activity at all. In Vienna, for example, gambling machines outside casinos are prohibited. For more information on this topic, please see question 1.2 below.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

The most important set of Austrian laws applicable to all types of gaming and betting activities is the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*). The E-Commerce Act (*E-Commerce Gesetz*) is relevant for the provision of online gambling and betting.

The Unfair Competition Act (*Bundesgesetz gegen den unlauteren Wettbewerb*, "**UWG**"), which is based on the EU Unfair Commercial Practices Directive, contains a blacklist of trade practices that are prohibited in all circumstances *per se*, including in the gambling sector. The UWG prohibits operators from, for example, directing advertising at minors or establishing promotional pyramid games where a consumer pays a consideration for the opportunity of receiving compensation that is derived from the introduction of new consumers into the gaming scheme. In addition to those activities that are considered unfair in all circumstances *per se*, certain trade practices, such as advertising campaigns, can also be prohibited under the UWG if they are considered unfair due to, for example, their aggressive nature. It must be noted, though, that Section 56 para 1 GSpG excludes any proceedings under the UWG being initiated against the holders of licences and concessions under the GSpG as regards their compliance with the requirement to advertise their products in a responsible manner.

While the GSpG prohibits minors entering land-based casinos and slot machine arcades as well as using slot machines outside arcades, minor protection is, in principle, regulated by the *Bundesländer* in local minor protection laws (*Jugendschutzgesetze*) and local betting acts. According to these laws, in general, minors are banned from entering betting premises. It should be noted that many local laws, however, do not restrict minors from participating in lotteries or exempt lotteries offered by the lottery monopoly from age restrictions. In Upper Austria, the legal age for gambling is 18, save for lotteries offered by the lottery monopoly (16 years).

The GSpG regulates games of chance and in particular refers to lotteries, land-based casinos, online gambling ("electronic lotteries") and poker (which, despite the ongoing international debate on whether this is a game of skill or a game of chance, is expressly defined as a game of chance in the GSpG), and sets the framework for the regulation of slot machines at the level of the *Bundesländer*.

According to Section 1 GSpG, a game of chance is a game "*in which the decision on the outcome of the game depends* ***solely or predominantly*** *on chance*". In order to trigger the licensing requirements under the GSpG, the game must further be played against monetary consideration (pay in) in order to acquire the chance of winning money or money's worth (pay out) and be organised by an entrepreneur.

Section 168 of the Austrian Criminal Code (*Strafgesetzbuch*, "**StGB**") includes a prohibition of organising and/or promoting gambling without a licence according to the GSpG. Section 52 GSpG also contains a catalogue of administrative criminal offences subject to fines up to EUR 22,000 or even EUR 60,000 in case of the provision of illegal gambling.

Skill games: Skill games do not fall under the definition of games of chance and as such are not subject to the GSpG. While there is no sector-specific regulation of skill games, general customer protection laws, e-commerce provisions and the Austrian Civil Code apply to skill games, social games and E-Sports, save for when such games consist of elements subjecting them to the legal regime of the GSpG (an element of chance, an element of consideration and a prize of money or money's worth). Traditional games of skill are considered as "permitted games" under the federal Austrian Trade Act.

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As regards prize draws/prize competitions, besides the applicable UWG, it must be noted that taxes apply and are regulated within the GSpG.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Games of chance are subject to a federal gambling monopoly stipulated in Section 3 GSpG. The operation of (i) lotteries, and (ii) land-based casinos can be licensed according to Sections 14 and 21 GSpG respectively.

Lottery games, online gambling and VLTs: Lotteries are subject to a single licence pursuant to Section 14 GSpG – *de facto* constituting a monopoly. This licence may be granted to corporations established in the EU or EEA with a minimum share capital of EUR 109 million. A corporate seat in Austria is required unless the company has a comparable lotteries licence in its state of incorporation, is subject to a comparable gambling supervision and such supervisory authority cooperates with the BMF. If the applicant provides evidence for these criteria, it is sufficient to have a mere local presence.

In October 2012, the single licence, which is valid for the maximum statutory duration of 15 years, was again granted to *Österreichische Lotterien GmbH*, the only company ever to be licensed in Austria.

According to Section 12a GSpG, "electronic lotteries" are covered by the lotteries licence. Electronic lotteries cover all types of games of chance offered by electronic means, including casino-style games. As such, the scope of Section 12a GSpG is considered to cover all types of online gambling save for online betting and exceeds the scope of lottery-style games the single licensee (monopolist) may operate offline. The licence also covers operating VLT outlets.

Casino games and poker: According to Section 21 GSpG, a casino applicant must be a corporation established within the EU or EEA under the same circumstances and applying the same restrictions applicable to the lottery licence. The minimum share capital is EUR 22 million. In 2010, the total amount of land-based casino licences to be granted for a maximum duration of 15 years was increased from 12 licences to 15. Following the expiry of the 12 "old" licences that had all been held by *de facto* monopolist *Casinos Austria AG*, these licences were again granted to the same company in two "packages", one including the "city" locations and one including the "rural" locations of the existing land-based casinos.

The three new licences were individually granted by the BMF in a separate licence tender in 2014. The licence decisions were cancelled by the Federal Administrative Court (*Bundesverwaltungsgericht*) in 2015, which found the licence tender to be in violation of the principle of transparency under EU law. The Supreme Administrative Court (*Verwaltungsgerichtshof*) confirmed this decision in 2016. It is currently unlikely that the BMF will start a new licensing procedure for these three licences. The 12 licences which were granted to Casinos Austria remain valid.

Art 1 GSpG expressly defines poker as a game of chance. Poker is generally permitted only in casinos with an exemption granted to poker casinos that are operated under licences issued on the basis of the Austrian Trade Act. Holders of such permissions may operate poker casinos until 31 December 2019 (transitional period).

Betting and slot machines outside land-based casinos: As previously stated, betting and slot machines are regulated at *Bundesländer* level. Due to the different age (some dating back to as early to 1919, others set to newly enter into force in 2017) and quality of the local laws, licensing requirements as well as the exact product scope and licence term differ significantly. **Betting licences** are generally available without quantitative restrictions. In general, applicants have a **right to being granted a betting licence** after having fulfilled all legal requirements. Betting licences may be granted to natural persons as well as to companies. As for slot machines outside casinos, an applicant must be based in the EU or EEA. Further, the applicant must be a company with a supervisory board and a registered office in Austria and it needs to fulfil certain stock capital requirements.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Austrian law requires only the operator to hold a licence. Advertising is considered a licensee's accessory right.

In addition to the requirements described in question 2.1 above, the applicant (and/or its directors, if applicable) has to be considered reliable by the authority.

There are no licence requirements for B2B activities in Austria.

As regards betting and slot machines outside land-based casinos, some *Bundesländer* require premises licences under betting legislation and/or trade law.

2.3 What restrictions are placed upon any licensee?

Restrictions are generally product-specific (please refer to question 2.6 below).

2.4 What is the process of applying for any gambling licence or regulatory approval?

As regards lotteries and casinos, the BMF is required to grant licences based on a transparent tender procedure. Applicants have to prove that they fulfil the licensing criteria mentioned in Sections 14 and 21 GSpG respectively. There is an application fee of EUR 10,000 and a fee of EUR 100,000 payable when receiving a licence.

Licensing procedures and requirements for the operation of slot machines outside casinos and betting depend on *Bundesländer* laws.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Lottery games: The lotteries licence was granted in 2012 and is valid until 2027.

Casino games: There are, in principle, up to 15 licences available, each of which has a maximum duration of 15 years. Six licences were granted to Casinos Austria in December 2012 and another six licences in September 2013.

Slot machines outside casinos: Maximum duration of 15 years.

Betting: Varies according to local laws at *Bundesländer* level.

A lottery or casino licence can be withdrawn by the BMF, if the licensee violates provisions of the GSpG or decisions by administrative authorities. The violation of licensing obligations can be sanctioned with fines up to EUR 22,000. Withdrawing the licence is applied only as *ultima ratio*, if all other means (e.g.

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administrative penalties) fail. Essentially, the same applies for sports betting licences under *Bundesländer* laws. According to Section 53 GSpG, the authorities have the right to confiscate slot machines operated in violation of applicable legislation.

Decisions of the BMF to withdraw a licence can be appealed before the Federal Administrative Court (*Bundesverwaltungsgericht*); the withdrawal of a sports betting licence can be appealed before the relevant Regional Administrative Court (*Landesverwaltungsgericht*).

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

Betting: The product scope varies according to local laws: while some *Bundesländer* allow only sports betting, others (e.g. Vorarlberg, Salzburg) also allow social bets (e.g. on political events). Most *Bundesländer* have introduced restrictions on betting on certain events and live betting or certain maximum opening hours for betting shops or plan to do so. For instance, Vienna allows live betting only on end results and parts of the end results.

Slot machines outside casinos: Subject to Section 5 GSpG, the maximum stake per game is EUR 1 (EUR 10 in case the operator holds a casino licence). Winnings per game are limited to EUR 1,000 (EUR 10,000 for casino licensees). Players must not be able to play games simultaneously. After two hours of playing, the machine has to shut down automatically. There are also requirements on minimum distances between gaming halls and provisions on how many machines may be installed in one location (10 to 50 machines in gaming halls, one to three machines outside gaming halls, e.g. in restaurants). According to the GSpG, the number of slot machines outside casinos is limited to a maximum of three licences per *Bundesland*. Further, there is a restriction of a maximum of one machine per 1,200 inhabitants. A number of further restrictions include, e.g., minimum distance requirements between gaming machines.

VLTs: The operation of VLTs is subject to the lottery monopoly. The main legal restrictions regarding licensees are stipulated in the GSpG. According to the GSpG, in municipalities of more than 500,000 inhabitants, there must be at least two kilometres between a VLT outlet with more than 15 machines and a casino. Otherwise, the distance between venues with more than 15 machines must be 15 km.

Casinos and lotteries: There are no restrictions on maximum stakes or pay-outs. Section 56 GSpG obliges casino and lotteries licensees to restrict their advertising to a "responsible scale" (*verantwortungsvoller Maßstab*); however, non-compliance with this provision effectively remains unsanctioned, in particular as the UWG does not apply. Advertising illegal gambling carries an administrative penalty of up to EUR 22,000.

2.7 What are the tax and other compulsory levies?

Gaming and betting taxes are levied at the point of consumption and apply irrespectively of whether or not the operator holds a licence in Austria. Further, according to Section 6 para 9 of the Austrian VAT Law *(Umsatzsteuergesetz*), betting and games of chance are exempt from 20% VAT, save for draws placed on slot machines outside casinos and VLTs under the lotteries licence. Operators have to pay the following taxes:

Product	Tax rate
Betting (offline and online)	2% tax on stakes
Online gambling ("electronic lotteries")	40% on GGR (stakes minus winnings)
Lottery games	2–27.5% on stakes
Slot machines outside casinos and VLTs under the lotteries licence	10% on NGR + municipal fees
Land-based casinos	30% GGR (stakes minus winnings minus bonuses); slot machines in casinos: 30% on NGR (stakes minus winnings minus VAT)
Other slot machines and VLTs	30% on NGR
Other offline games of chance	16% on stakes

2.8 What are the broad social responsibility requirements?

Social responsibility measures mainly include providing staff with responsible gaming training.

The GSpG provides for a number of player protection regulations, most of which have to be fulfilled by an operator in order to receive a licence. The Austrian Gambling Act regulates, for instance, the access to casinos (see question 2.6 above). Some of the *Bundesländer* betting acts provide that players must be able to self-exclude. Further, operators are obliged to observe new AML rules provided by the FM-GWG (see question 2.9 below).

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

The GSpG also contains provisions regarding the protection of minors. The AML provisions in the GSpG largely refer to the new Capital Markets Anti-Money Laundering Act (*Finanzmarkt-Geldwäschegesetz*, "**FM-GWG**") that entered into force on 1 January 2017. The amendments – enacted to implement the EU's 4th AML Directive – increased the AML-related obligations of gambling operators licensed under the GSpG. According to the new AML provisions, gambling providers are subject to enhanced due diligence obligations, e.g. regarding suspicious financial transactions or customers living in high-risk countries. All suspicious activities must be reported to the Financial Intelligence Unit (*Geldwäschemeldestelle*). Moreover, licensees must nominate an AML-officer and train their employees regarding AML-risks and AML-risk avoidance. Special provisions apply to dealing with politically exposed persons. Land-based casinos and slot machine operators are obliged to check identity documents of all customers.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Online gambling: The GSpG mentions online activity in Section 12a, defining so-called "electronic lotteries" as games "*in which the player participates directly using electronic media and the outcome is decided centrally and provided on electronic media*". The operation of "electronic lotteries" is subject to the single lottery licence, thereby

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constituting a *de facto* monopoly for online gambling. Section 12a GSpG does not further describe the product scope. The BMF (and the current *de facto* monopoly holder, *Österreichische Lotterien GmbH*) consider the licence to cover all games of chance offered online, including online casino games, which are outside the scope of the products that *Österreichische Lotterien GmbH* may offer offline. As regards compliance of the Austrian (online) gambling monopoly with EU law, please see question 4.3 below.

Online betting: Licences for (in general: land-based) sports betting are granted by the *Bundesländer*, which apply if sports betting is offered in the territory of a certain province (e.g. in a betting shop). Some Austrian provinces have extended the applicability of their legislation to online operators having their servers located in the respective province (e.g. Salzburg).

3.2 What other restrictions have an impact on online supplies?

Sanctions provided for the illegal offer of land-based gambling also apply to online gambling. This applies in particular to administrative fines described in question 1.2 above.

Blacklisting websites, ISP and financial blocking are not part of the sanctioning measures of Austrian law. Despite doubts as regards compliance of the (online) gambling monopoly with EU law, the BMF firmly considers it illegal to offer online gambling without an Austrian licence.

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

The GSpG provides basic provisions regarding the operation of slot machines and VLTs. Further details are provided in the laws of the *Bundesländer*. There are several technical requirements concerning slot machines, including adequate warning and data protection systems in case of technical failures. Further, there is a minimum duration for certain games and players are only allowed to play for a certain maximum amount of time, after which the slot machine must automatically switch off for a cool-off period. Further, certain pay-out ratios must be applied. The technical requirements must be evidenced by a technical expert opinion. Slot machines must be connected to the Federal Computing Centre (*Bundesrechenzentrum*).

Some *Bundesländer* have added technical requirements for betting terminals to their laws, including that terminals must not enable placement of bets by more than one person (including by connecting terminals with other terminals or gadgets via Bluetooth or WiFi). Betting terminals must have a serial number that needs to be submitted to the authorities. In some *Bundesländer*, betting terminals may only be operated if a specifically trained responsible person is present and the terminal must be able to store all data on placed bets in a so-called "electronic betting book" or database. In some *Bundesländer*, stake limits for betting terminals apply.

The main legal and technical requirements for operating VLTs are stipulated in the GSpG. VLT outlets require a location permit issued by the BMF. Further, VLTs must be connected to a central server operated by the Federal Computing Centre.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

In the first place, the operators are held liable for violations of the GSpG. However, directors and other legal or natural persons supporting illegal activities carried out by the entity in connection with gambling (e.g. advertising illegal gambling) can also be subject to sanctions under the GSpG and/or Section 168 StGB.

Further, participation in illegal gambling as a regular source of income may be sanctioned under Section 168 StGB. A similar provision is also included in the GSpG, sanctioning the participation in unlicensed "electronic lotteries" by means of administrative fines.

4.2 What is the approach of authorities to unregulated supplies?

Recently, enforcement measures were heavily concentrated on the allegedly illegal provision of slot machines. Besides fines, sanctions include the confiscation of slot machines.

Given remaining doubts on the compliance of the gambling monopoly with EU law (see question 4.3 below), Austrian authorities currently still seem reluctant to take enforcement measures against online gambling operators offering their products under the EU market freedoms. Due to the point of consumption taxation, the tax authorities enforce tax provisions also against operators not holding an Austrian licence.

In particular, criminal sanctions according to Section 168 StGB are being applied only very rarely, which is due to the administrative sanctions stipulated in the GSpG taking precedence over Section 168 StGB in case an offence could be sanctioned under both provisions.

There is no case law on authorities applying sanctions against players taking part in unlicensed gambling or betting offers.

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

As Austria is a Member State of the EU, Austrian law is heavily influenced by EU law, including CJEU case law. According to the CJEU, any national measure hindering the exercise of the EU market freedoms or rendering the exercise of these rights less attractive must be justified by overriding public interest objectives, suitable for securing the attainment of these objectives, not go beyond what is necessary to achieve these objectives and be applied in a non-discriminatory manner.

Conformity of Austrian gaming legislation with EU law has often been tested in national court proceedings, with several cases having been referred to the CJEU (*Engelmann*, *Dickinger and Ömer*, *HIT and HIT Larix*, *Pfleger*, *Admiral Casinos* and *Online Games*). These rulings led to various reforms of the GSpG (including the introduction of the requirement for transparent licensing procedures). The CJEU concluded that the Austrian *de facto* monopoly "*appears to be disproportionate*". The Austrian case law is currently not consistent as regards the compatibility of the Austrian *de facto* monopoly with EU law. In August 2016, the Austrian Constitutional Court was dealing with a request put forward by the Supreme Court (*Oberster Gerichtshof*) to rule on the compatibility of the Austrian gambling monopoly with the Austrian Constitution, given that the Supreme Court's 4th Chamber had held the gambling monopoly to be contrary to EU law. The Constitutional Court (*Verfasungsgerichtshof*) rejected the Supreme Court's referral for formal reasons, but ruled on a number of administrative complaints filed by slot machine operators, which were based on the same arguments as the referral of the Austrian Supreme Court, confirming the compliance of the GSpG with EU law and the Austrian Constitution. In November 2016, the Supreme Court issued its final decision on the case it had referred to the Constitutional Court, stating that the questions

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regarding the monopoly's compliance with EU law have been sufficiently clarified. In May 2017, the Supreme Court's 4th Chamber again issued a decision reiterating its view that the GSpG is in line with EU law. However, a further case is currently pending with another Chamber of the Supreme Court. The rulings of the Supreme Court's Chambers do not take precedence over each other. Although the three Austrian high courts appear to take a similar approach as regards the compatibility of the GSpG with EU law, the Regional Administrative Court of Upper Austria (*Landesverwaltungsgericht Oberösterreich*) has issued several contrary decisions and submitted cases regarding the compatibility of the Austrian gambling regime for preliminary ruling to the CJEU (*Filippi*, C-589/16 and *Gmalieva*, C-79/17), as each national court is called upon to apply EU law on its own and is not bound to national higher courts' rulings in that regard.

4.4 Are gambling debts enforceable in your jurisdiction?

Section 1271 of the Austrian Civil Code provides that, in general, gambling debts are unenforceable. A gambling debt is considered as *obligatio naturalis* and cannot be enforced before court. However, Section 1274 of the Austrian Civil Code provides an exception for operators licensed in Austria.

5 Anticipated Reforms

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

The *Bundesländer* are currently amending their betting acts to implement AML provisions as required by the EU's 4th AML Directive.

In general, the *Bundesländer* are in the process of updating their betting laws (with some still dating back to 1919), e.g. the new Salzburg betting act entered into force on 1 June 2017. The new Styrian draft betting law was notified with the European Commission in July 2017.

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Brandl & Talos is one of Austria's leading law firms in the areas of capital markets law, banking, corporate/M&A as well as white-collar crime and the **"to-go" firm in all questions of national and international gaming and entertainment law**.

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Today, we advise numerous **major players** in the gaming and betting industry, including GVC Holdings PLC, Sportradar, Century Casinos and the EGBA – European Betting and Gaming Association.

We have a **consistent track record** of advising on international transactions in the gaming and entertainment sector, providing our clients with transactional, strategic and regulatory advice that puts us in an ideal position to cover the transactional as well as specific regulatory aspects of gaming and betting law in this industry sector.

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Belgium

Sirius Legal

Bart Van den Brande

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

All matters that are subject to the Law of May 7, 1999 (*Wet van 7 mei 1999 op de kansspelen, de weddenschappen, de kansspelinrichtingen en de bescherming van de spelers*, as amended by the two laws of January 10, 2010) are regulated by the Gaming Commission. This includes all gambling and betting activities.

Matters that fall outside the scope of this law, due to the fact that they are not considered games of chance, are: promotional contests that do not include an element of chance (this excludes sweepstakes); sporting activities; games that offer no financial gain and only allow the player to continue playing for a maximum of five consecutive times; card games or parlour games that do not offer any financial gain and are played outside gaming establishments; and games exploited by amusement parks or fairs and occasional games organised by local associations no more than four times a year on account of a special event or by an unincorporated association with a social or charitable cause or a non-profit organisation for a social or charitable cause, that require only a very limited bet and can only muster a material advantage of limited value to the gamblers.

The Gaming Commission is a commission composed of a president and two representatives from each of the six competent Ministries (Ministry of Justice, Ministry of Finance, Ministry of Economic Affairs, Ministry of Internal Affairs and Ministry of Public Health).

Local authorities in turn regulate building and exploitation permits for casinos and gambling or betting halls. Permits do not necessarily have the same conditions or the same duration as gambling licences, which has led, in 2017, to the difficult situation whereby certain casinos must renew their exploitation permits for 30 years, even though it is uncertain that they will retain their gambling licence when this comes up for renewal in one or more years' time.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

The Law of May 7, 1999 on games of chance, bets, gaming establishments and the protection of players, as amended by the law of 10 January, 2010 (*Wet van 7 mei 1999 op de kansspelen, de weddenschappen, de kansspelinrichtingen en de bescherming van de spelers*, as amended by the two laws of January 10, 2010), explicitly states that all games of chance and bets and the exploitation of gaming establishments are prohibited unless they are licensed by the *Kansspelcommissie*. Offering these unlicensed games is prohibited, but it is also prohibited to promote them, and to participate in them, if you are aware of their unlicensed nature.

Games of chance are all activities that combine a direct or indirect payment by the player with the chance to win or lose something insofar that this chance depends, even partially, on coincidence.

The consequence of this is that commercial contests, sweepstakes, lotteries organised by advertisers, private poker games and bingo games are restricted or even forbidden.

Other applicable legislation includes Book VI of the Belgian Commercial Code concerning Consumer Protection and Market Practices (*Boek VI van het Wetboek Economisch Recht betreffende Consumentenbescherming en Marktpraktijken*), which contains a series of rules that also apply to gambling providers (information to the consumer, fair trade practices, distance sales for online gambling, etc.).

The Law of December 31, 1851 (*Wet van 31 december 1851 op de loterijen*) gives the Belgian National Lottery a monopoly on all lottery games, scratchcard games with money prizes and tombola games with very strict and limited exceptions for tombola games organised for a good cause.

Several articles in the Belgian Penal Code sanction illegal gambling activities (articles 301, 302, 303 and 304 of the Belgian Penal Code – *Strafwetboek*).

Local building and exploitation regulations are relevant as far as permits for physical offline casinos and gambling halls are concerned.

Also relevant is the recently adopted (October 2016) self-regulating Sector Code on Advertising for Gambling activities.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

The law distinguishes nine types of licences.

Gaming industry providers must, depending on the nature of their activities, obtain one or more of the following licences:

- Class 1 activities (casinos) require a licence A. If activities include the offering of games or bets over the internet, an additional licence A+ is required.
- Class 2 activities (amusement arcades) require a licence B and, if the activities take place over the internet, an additional licence B+.

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- Class 3 activities (establishments that sell alcohol, and cafés) require a licence C, for the permission to exploit a maximum of two games (bingo and/or one-ball).
- Class 4 activities (bookmakers) require a licence F. To organise bets, a licence F1 is required. Bookmakers that take bets on the account of licence F1 holders (gaming establishments) require a licence F2. For betting over the internet, an additional licence F+ is required.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

All employees of Class 1, 2 or 4 establishments need a separate licence D.

A licence E is required for the sale, rental, lease, delivery, making available, import, export, production and services of the maintenance, reparation and equipment of games of chance.

For betting outside of Class 4 establishments of (e.g. news agents) a licence F2 is also needed. Bets under a licence F2 can only be placed on Belgian horse racing and sporting events. The turnover from betting activities within these establishments has to be limited to no more than 49% of the total turnover. The acceptance of bets is only possible through a betting terminal that is connected directly with the server of the bet organiser (licence F1 holder).

Providers of games and bets through the media require a separate licence. Bets and games of chance on television require a licence G1; and for games that use different media, such as written press and radio, a licence G2 is required.

2.3 What restrictions are placed upon any licensee?

Every licence held by a natural person requires that the person is in full possession of their civil and political rights and behaves in a manner which fulfils the requirements of their position. If the licensee is a legal entity, its directors and managers need to meet those same requirements. (Articles 31, 36, 41, 43/5, 43/10, 45, 50.)

Holders of licences A, B, C, E, F1, F2, G1 or G2 need to obtain a statement from the FOD of Finance, which states that all fixed and undisputed tax liabilities are satisfied.

If the holder of licence A, B, E, F1, F2, G1 or G2 is a natural person, they need to be a subject of an EU Member State. Legal entities (which cannot be a non-profit organisation) should be incorporated in compliance with Belgian law, or the law of an EU Member State.

A holder of licence A, B, E, F1 or F2 needs to present proof of their credibility and financial capacity and must at all times give the Commission meticulous intelligence which offers transparency, the operations and the identity of the shareholders, and it must monitor all future alterations in these matters.

All holders of licences A or B have to be registered in the *Kruispuntbank van Ondernemingen* (companies register) as a commercial company.

There are only nine A licences available in Belgium (article 29), which means that there are only nine casinos within the entire country. They are only allowed on the territory of the municipalities of Blankenberge, Chaudfontaine, Dinant, Knokke-Heist, Middelkerke, Namen, Oostende, Spa and one of the 19 municipalities of the Brussels Capitol Region. In each of these municipalities, only one casino is allowed, and only after the municipality enters into a concession agreement with the applicant. Both table games and automatic games are allowed; the average hourly loss for each game is set at 70 EUR.

A licence A can only be granted to applicants in possession of a valid concession delivered by the municipality in which the Class 1 gaming establishment is to be located.

At present, there are 180 licence Bs, of which 179 are actually in use by a licence holder. A 2015 law change decided to bring this number down to 150 by the end of 2017. A licence B establishment cannot be established in close proximity to schools, hospitals, places frequently visited by youths, places of worship or prisons. The average hourly loss is set at 25 EUR.

To be granted a licence B, the licensee needs to present an agreement, as delivered by the municipality in which the Class 2 gaming establishment would be located, which is concluded on the condition of the granting of the licence.

The number of F1 licensees is limited to 34 on Belgian territory. Mobile betting offices are limited to a total of 60 licence F2 holders. Fixed offices are limited to 1,000 licence holders. Following a 2015 law change, this number will be brought down to 600 by the end of 2017.

2.4 What is the process of applying for any gambling licence or regulatory approval?

Applications should be filed with the Gaming Commission by registered letter containing the form that can be found in Annex 1 of several Royal Decrees:

- For Class A: *Koninklijk besluit van 19/07/2001 betreffende de werking en het beheer van de kansspelinrichtingen klasse I, de wijze van aanvraag en de vorm van de vergunning klasse A*.
- For Class B: *Koninklijk besluit van 22/12/2000 betreffende de werking en het beheer van de kansspelinrichtingen klasse II, de wijze van aanvraag en de vorm van de vergunning klasse B*.
- For Class C: *Koninklijk besluit van 22/12/2000 betreffende de werking en het beheer van de kansspelinrichtingen klasse III, de wijze van aanvraag en de vorm van de vergunning klasse C*.
- For Class D: *Koninklijk Besluit van 20/06/2002 betreffende de modaliteiten van de aanvraag, de vorm van de vergunning klasse D en de vereiste bekwaamheden en getuigschriften voor het uitoefenen van een beroepsactiviteit in een kansspelinrichting klasse I of II*.
- For Class E: *Koninklijk besluit van 22/12/2000 betreffende de modaliteiten van de aanvraag, de vorm van de vergunning klasse E*.
- For Class F1: *Koninklijk besluit van 22/12/2010 betreffende de vorm van de vergunning klasse F1, de wijze waarop de aanvragen voor een vergunning klasse F1 moeten worden ingediend en onderzocht en de verplichtingen waaraan vergunninghouders F1 moeten voldoen inzake beheer en boekhouding*.
- For Class F2: *Koninklijk besluit van 22/12/2010 betreffende de vorm van de vergunning klasse F2, de wijze waarop de aanvragen voor een vergunning klasse F2 moeten worden ingediend en onderzocht en de verplichtingen waaraan vergunninghouders F2 moeten voldoen inzake beheer en boekhouding*.
- For Class G1: *Koninklijk besluit van 21/06/2011 betreffende de vorm van de vergunning klasse G1, de wijze waarop de aanvragen van een vergunning klasse G1 moeten worden ingediend en onderzocht en de verplichtingen waaraan de houders van deze vergunning moeten voldoen.*

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This form will be sent to the applicant by the Commission at the applicant's request. For Class G and F licences, an electronic procedure is also possible.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

- Class A licences are valid for 15 years.
- Class B licences are valid for nine years.
- Class C licences are valid for five years.
- Class E licences are valid for 10 years.
- Class F licences are valid for nine years.
- Class G1 licences are valid for five years.
- Class G2 licences are valid for one year.

Licences can be revoked or suspended if licence conditions are no longer met.

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

The key limit for licence As is the minimum age of customers for entering a casino, set at 21.

For licence B establishments, the minimum age for entry is 18. It is forbidden to place a restaurant or bar in the area where gambling activities take place.

For licence Cs, the minimum age for customers is 18, but contrary to licence As and Bs, the law does not make age verification at the doors obligatory.

For licence F2s, the minimum age for customers is 18 years old.

For licence G2s, customers must also be 18 years old.

2.7 What are the tax and other compulsory levies?

The taxation of games of chance is regulated by the "code of taxes equal to the income tax" (*Wetboek van de met de inkomstenbelastingen gelijkgestelde belastingen van 23 november 1965*), articles 43 through 93.

The taxation of games of chance is a regional competence, so each of the three regions has separate tax rates. At present, taxes are collected by the Federal Government, but as of 1 January 2017, the Flemisch Region will take responsibility for tax collection on its territory.

A general tax of 15% (11% in the Walloon area) is levied on the gross amounts of wagers. There are exclusions from this tax, including: national lotteries; pigeon races, if the participant is the one wagering; and games of chance organised by non-profit organisations.

A tax of 15% is levied on all horse and dog races. This amount is levied on the gross margin. A 2015 decree of the Flemish Government (*decreet van 3 juli 2015 houdende bepalingen tot begeleiding van de begroting 2015*) extends the 15% flat tax to horse and dog races and sporting events outside the EU, whereas before, these were not subject to taxation.

If the wagers are organised online, 11% is levied on the gross margin, being the result of the total amount wagered minus the amount paid to the people betting.

Taxable persons are those placing bets.

Besides this general taxation system, casinos are also taxed on the gross margin, depending on the type of game played.

A fixed tax is levied on the gaming machines themselves, which is applicable to machines in Class A, B and C establishments.

2.8 What are the broad social responsibility requirements?

The game room has to be kept strictly separated from spaces in the gaming establishment that serve a different purpose, and also from spaces outside the gaming establishment that are accessible to the public, so that the gambling games cannot be followed from outside the game room.

A draft of a Code of Ethics has been on the table for over three years now, but has yet to be approved. This Code will most likely include the following subjects:

- privacy of the game players;
- a prohibition on the exploitation of unapproved games;
- the obligation to inform the Commission when organising demonstration games;
- a prohibition on focusing publicity on vulnerable persons;
- the prohibition of certain content in publicity campaigns;
- the obligation to inform game players and the staff;
- a guarantee of payment upon winning; and
- a prohibition for staff on accepting gifts from game players.

In October 2016, the sector has agreed upon a self-regulation Sector Code on Advertising for Gambling Activities, including, among others, the obligation to refrain from advertising towards minors and to incorporate warning messages in all advertising materials.

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

Suppliers of Class 1 gaming establishments (casinos) have to inform the Belgian Financial Intelligence Processing Unit (CTIF-CFI) if they notice that:

- a client sells or buys counters using a false identity, an alias, or any other way that makes identification of that person more difficult;
- a client sells or trades counters for an amount of 1,000 EUR or more, coming from other casinos;
- a client purchases counters for an amount of 10,000 EUR or more, paid with cash or with a bank or credit card;
- a client purchases counters for an amount of 2,500 EUR or more using foreign currency;
- a client sells counters for an amount of 2,500 EUR or more for one or more cheques or bank transfers;
- a client purchases counters for an amount that is not proportionate with his financial situation;
- a client sells counters when his game play is not proportionate with a normal game pattern and the profit is absent or subordinate;
- a client deposits cash, cheques or others for an amount of 2,500 EUR or more;
- there is a payment of counters to a third party on the request of the client;
- there is a payment of counters and the client asks for a proof of payment; or
- there is a regular purchase or selling of counters by a client under the abovementioned thresholds, supposedly to avoid a declaration to the CTIF-CFI.

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3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Online activity is restricted, in the sense that a licence is required, and the required licences can only be acquired if the applicant can link his online activities to a 'real life' establishment that has the appropriate licence.

Only licence A holders can acquire a licence A+, which is the licence required to exploit online casino games in Belgium and to Belgian consumers. This also implies that the duration of the licence A+ is directly linked to the licence A that accompanies it. Furthermore, if the licence A is revoked, so is the A+.

For licence B holders, an additional licence B+ makes it possible to offer online games. This licence B+ is in its duration also linked to the licence B.

Licence F1 holders can apply for the additional F+ licence, which gives them permission to offer their online services. This licence is also linked in its duration to the licence F1.

3.2 What other restrictions have an impact on online supplies?

As mentioned above, the main restriction lies in minimum age limits to enter premises or to participate in gambling activities.

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

- Class 1 establishments (casinos): all games. (Last changes available in *Koninklijk besluit van 17 september 2005 tot wijziging van het koninklijk besluit van 19 juli 2001 tot vaststelling van de lijst van de kansspelen waarvan de exploitatie is toegelaten in de kansspelinrichtingen klasse I.*)
- Class 2 establishments (amusement arcades): all games with a limited amount of money per hour. (Last changes available in *Koninklijk besluit van 11 juni 2009 tot wijziging van verscheidene bepalingen betreffende kansspelen waarvan de exploitatie is toegelaten in de kansspelinrichtingen klasse II.*)
- Class 3 establishments (establishments that sell alcohol and cafés): strict limits described in *Koninklijk besluit van 11 juli 2003 betreffende de werking van de kansspelen waarvan de exploitatie is toegelaten in de kansspelinrichtingen klasse III.*

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Natural persons, chairmen, managers and representatives shall bear civil liability. The same rule is applicable to shareholders of corporations that are not legal entities if the shareholders, managers or representatives have breached the relevant legislation.

4.2 What is the approach of authorities to unregulated supplies?

Unregulated supplies are strictly forbidden. Only supplies that are regulated and approved are legal. The gaming commission updates its "blacklist" on a regular basis. It currently contains around 100 providers. This blacklist contains the websites that are blocked in Belgium because they do not have the necessary licence.

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

The four freedoms of the Treaty on the Functioning of the European Union must be respected at all times.

4.4 Are gambling debts enforceable in your jurisdiction?

Gambling debts are by nature unenforceable obligations, but gambling debts towards licensed operators are considered enforceable.

5 Anticipated Reforms

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

The gambling regulations were completely reformed in 2010. There are a number of executive acts that have yet to be approved.

Apart from this, several small reforms were introduced in 2015, as described in the answers above (restricted number of licences, tax changes, etc.).

The most relevant recent change is the self-regulating advertising code discussed above.

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Sirius Legal is a Brussels-based Belgian boutique law firm, specialising in internet law, advertisement law, media and entertainment law, IP/IT, consumer protection and gambling. The Sirius Legal team is a small and young but experienced team of law professionals that try to offer tailor-made solutions to a wide range of clients, ranging from multinationals to individual players.

Sirius Legal has offices in Brussels, Antwerp and Mechelen.

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Brazil

Neil Montgomery

Montgomery & Associados

Helena Penteado Moraes Calderano

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Gambling and betting activities are generally prohibited in Brazil (with some exceptions as provided by law, namely the state-run lottery and horse races conducted at duly authorised racecourses).

The Federal Union is exclusively competent to legislate on bingos and lotteries.

Gambling is a criminal contravention (i.e., a criminal offence, but less serious than a crime) under the terms of Decree-Law No. 3,688/1941, as subsequently amended (the "Criminal Contraventions Law"), and is defined as a game where the result depends exclusively or mainly on chance, or any betting on horse races outside authorised racecourses, or betting on any sporting competition.

There are many bills of law aiming to either create additional restrictions or legalise gambling in Brazil. Among such proposals there are two bills of law, namely Bill 186/2014 and Bill 442/1991, which are currently under discussion at the Brazilian Senate and the House of Representatives, respectively, aiming to legalise gambling in Brazil, with reasonable prospects of being passed into law.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

The Criminal Contraventions Law (Decree-Law No. 3,688/1941) defines gaming and betting and classifies such activities, along with unauthorised lotteries (and the promotion thereof) as criminal contraventions. It was amended in 2015 by Law No. 13,155/2015, mentioned below, to include express mention of the illegality of online gaming and betting, subjecting players/wagers/punters to fines ranging from R$2,000 to R$20,000 (currently equivalent to approximately £500 to £50,000, respectively).

The Federal Constitution provides that the Federal Union has the exclusive authority to legislate about consortia and draws. This has been confirmed by the Brazilian Supreme Court's binding precedent No. 2, which expressly mentions draws, bingos and lotteries.

Law No. 5,768/1971 and Decree No. 70,951/1972 govern draws.

Decree-Law No. 6,259/1944, Decree-Law No. 204/1967 and Law No. 6,717/1979 govern the lottery.

Decree No. 99,268/1990 governs instant lotteries.

Law No. 11,345/2006 and Decree No. 6,187/2007 govern the football-related lottery *Timemania*.

Law No. 13,155/2015 amended the Criminal Contraventions Law and created the instant lottery scratch card LOTEX – *Loteria Instântanea Exclusiva* for football-related themes. This law was further amended by Provisional Measure No. 695/2015 which was converted into Law No. 13,262/2016, expanding the reach of the instant lottery scratch card LOTEX to large events with popular appeal.

Law No. 7,291/1984 and Decree No. 96,993/1988 govern horse races.

The Anti-Money Laundering Law (Law No. 12,683/2012) defines the crime of money laundering and includes in such concept funds originating from criminal contraventions, such as gambling.

The Brazilian Civil Code (Law No. 10,406/2002) provides that a debt resulting from gaming or betting is not enforceable, except if resulting from an authorised gambling or betting activity.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Racecourses may apply for a licence to accept bets on horse races.

Lottery and scratch cards may only be supplied by the State-Run Federal Savings Bank (*Caixa Econômica Federal*), except for the instant lottery LOTEX, which is planned to be privatised by the end of 2017 under a tender process.

All other forms of gambling are currently prohibited in Brazil, and hence there is no possibility of applying for licences at this time.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Given the general prohibition on gambling, no licences are currently available to private operators. However, both Bill 186/2014 and Bill 442/1991, aiming to legalise gaming and betting activities in Brazil, provide that licences will only be granted to companies duly established in Brazil satisfying several requirements concerning, *inter alia*, the size of the premises, limitation on the number of casinos/machines per territory, infrastructure, technical expertise, etc.

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The proposed privatisation of the instant lottery LOTEX will allow foreign entities to participate in the bid, either individually or as part of a consortium.

2.3 What restrictions are placed upon any licensee?

This is not applicable in our jurisdiction. Please refer to the response to question 2.2 above.

2.4 What is the process of applying for any gambling licence or regulatory approval?

As set out above, this is not applicable at the moment, since a licensing process does not currently exist. Under Bill 186/2014 and Bill 442/1991, the Federal Government will regulate and grant licences to provide gaming and betting activities, with the corresponding state authority being responsible for monitoring the provision of such activities within their territories.

The privatisation of the instant lottery LOTEX will be granted under a tender process.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

This is not applicable at the moment, it being noted that whilst the current wording of Bill 186/2014 provides for a maximum licence term of up to 25 years, extendable for one additional term of the same length, the current wording of Bill 442/1991 provides for different terms depending on the type of game up to a maximum of 30 years.

The privatisation of the instant lottery LOTEX will be implemented by means of a 25-year concession.

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

Children (those under 18 years old) may not buy lottery tickets or scratch cards, nor wager on horse races.

According to the current understanding of CONAR (the self-regulating non-governmental organisation to which all Brazilian advertising agencies and vehicles have agreed to be subject), advertising other gambling activities is prohibited. This approach has been tested and upheld by the courts of the State of São Paulo.

2.7 What are the tax and other compulsory levies?

Prizes won on the lottery, scratch cards and horse races are subject to income tax, subject to the general rules thereof.

Whilst the current wording of Bill 442/1991 provides for the creation of a new type of tax (social contribution) on activities in connection with the exploitation of gaming and betting, Bill 186/2014 provides that entities exploiting gaming and betting activities will be subject to the payment of social contribution on net profits at the rate of 20%, establishing also an Inspection Fee, which will vary in accordance with the prizes being awarded each month.

2.8 What are the broad social responsibility requirements?

The current wording of both Bill 186/2014 and Bill 442/1991 broadly provides that the exploitation of gaming and betting activities will be governed by principles of social corporate responsibility, social role of property, consumers' rights, reduction of regional inequalities, and privacy, among others.

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

Whilst we are unaware of any actions having been taken by Brazilian authorities to block transactions or impose penalties on banks and credit and debit card companies processing payment transactions involving offshore online betting providers and their customers in Brazil, the legislation currently in force does permit them to act accordingly.

Further, there are bills of law, including Bill 121/2008 and Bill 213/2017, providing additional barriers for such entities to process such transactions.

Currently, Brazil has no specific regulations regarding virtual currency, and the current wording of both Bill 186/2014 and Bill 442/1991 makes no reference to the possibility of using virtual currencies for gambling and betting.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Whereas prior to the most recent amendment to the Criminal Contraventions Law (as provided by Law No. 13,155/2015), there were some who would argue that online gaming and betting were outside the scope of the Criminal Contraventions Law, with the new wording provided by Law No. 13,155/2015 explicitly including online gaming and betting in the definition of the prohibited activities, it is now even clearer and unambiguous that online gaming and betting are currently prohibited in Brazil.

Certain legal scholars and members of the public attorneys' office are of the opinion that if a website is hosted outside Brazil, any gambling conducted on such website would not be subject to Brazilian legal restrictions. However, this position is still very controversial and is legally questionable.

The current wording of both Bill 186/2014 and Bill 442/1991 encompasses online gaming and betting with some limitations on territory, prizes, and other general requirements being applicable.

3.2 What other restrictions have an impact on online supplies?

Please refer to the answer to question 3.1 above.

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

Currently, terminal/machine-based gaming is not permitted.

The current wording of both Bill 186/2014 and Bill 442/1991 does contemplate terminal/machine-based gaming. Further, Bill 442/1991 provides for specific requirements relating to such machine-based gaming such as the obligation of slot machines to be located in the

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physical premises of casinos, and bingo machines within the physical premises of bingo parlours, racecourses or football stadiums. BR1 machines (electronic game where figures, numbers or symbols are displayed on a monitor and a winning combination is electronically drawn, and statistically independent by means of a random number generator) may be installed in separate premises at least 500 metres from a bingo parlour and two kilometres away from a casino.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Since gaming and betting are currently broadly prohibited, anyone caught involved in gaming and betting activities either as players/wagers/punters or providers is subject to the sanctions provided under the Criminal Contraventions Law and, potentially, also under applicable anti-money laundering legislation.

4.2 What is the approach of authorities to unregulated supplies?

Although the activities of gaming and betting are currently broadly prohibited and considered a criminal contravention, it is not rare to see people involved with and playing such prohibited games, especially "*Jogo do Bicho*" (which translates into English as "Animal Game", and is a numbers and animal lottery, which originated in the 19th century at a zoo in Rio de Janeiro).

Authorities have started to clamp down on illegal casinos and bingos.

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

Generally speaking, Brazilian law applies in Brazilian territory, and, specifically with regard to criminal law, Brazilian law will apply whenever a crime may be deemed to have occurred (i.e., taking place physically or having effects) in Brazil. However, as mentioned in the answer to question 3.1 above, despite the fact that there are questionable legal arguments to support this point of view, there are those who are of the opinion that when a website is hosted outside Brazil, Brazilian law will not apply.

Notwithstanding Brazilian sovereignty, foreign law may have an impact in Brazil – lately the recognition and enforcement of foreign judgments awarded to overseas casinos seeking to collect outstanding debts from Brazilian players, as more fully set out in our response to question 4.4 below.

4.4 Are gambling debts enforceable in your jurisdiction?

Pursuant to Articles 814 to 817 of the Brazilian Civil Code (Law No. 10,406/2002), gambling debts are unenforceable. However, it is important to mention the change in the position of the Brazilian Judiciary in recognising and enforcing foreign awards to overseas casinos seeking to collect outstanding debts from Brazilian domiciled players. Therefore, it is possible to recover in Brazil debts relating to gaming and betting debts incurred overseas (provided that such activities are legal in the jurisdiction where they were conducted, and the governing law would be the law of the jurisdiction in which the gaming activity was conducted).

5 Anticipated Reforms

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

As previously mentioned, the two main pieces of legislation currently under discussion aiming to change the legal framework, legalising and regulating gambling and betting activities, are Bill 186/2014 and Bill 442/1991.

The Brazilian Supreme Court is trying a case which deals with the legality of gaming and betting activities in Brazil. This case originated in the State of Rio Grande do Sul, where the courts have consistently ruled that there is no legal restriction on gambling since the Federal Constitution, which was enacted after the Criminal Contraventions Law and ranks above the same, purportedly revoked the legal restrictions on gambling contained therein. Such case has been recognised as being of "public general interest", which means its decision will be binding on all other Brazilian courts.

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Canada

Miller Thomson LLP

Danielle Bush

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The overarching statute that governs gambling activity in Canada is the federal *Criminal Code* (the "Code"). Sections 201 through to and including section 206 make all types of gambling, betting and lotteries illegal throughout Canada, with very limited exemptions such as pari-mutuel betting on horse races (provided for in section 204). In 1985, the federal government agreed with the provinces that gambling would be provided exclusively by the provincial governments. The Code was amended to reflect this structure by amendments to section 207 which today permits all provincial and territorial governments to provide lottery schemes to their respective residents, to join forces with each other to provide lottery schemes in common to their collective residents, and to grant licences to charities to provide gambling activities for charitable purposes. Each provincial government has the exclusive right to decide what types of gambling activities, if any, it will provide (or permit to be provided by charities) within its jurisdiction. Such decisions are generally policy-driven and so subject to change from time to time and particularly upon a change in the party forming the government of the applicable province.

As a result of these changes to the Code, Canada now has a prohibitory statute which is federal whereas all of the regulatory statutes are provincial. It follows that all gambling regulators are provincial. The one exception in this landscape is pari-mutuel betting on horse races. According to section 204 of the Code, pari-mutuel betting does not constitute illegal betting under section 201 or section 202. The pari-mutuel betting system therefore continues to be governed by a federal agency, the Canadian Pari-Mutuel Agency.

The operation or provision of casinos, bingo, ticket lotteries, betting (other than pari-mutuel betting), poker and other card games, electronic games such as slot machines and video lottery terminals ("VLTs") are activities that constitute gambling unless they fall within one of the few exceptions in the Code. This is true whether the activities are provided in brick-and-mortar facilities or virtually (including online).

Set out below are the entities that regulate gambling activity in each Canadian province and territory (territories also referred to henceforth as "provinces" for ease of reference). Unless otherwise noted, the named entity regulates all forms of gambling in the province other than pari-mutuel betting.

1. Alberta

   Alberta Gaming and Liquor Commission ("AGLC").

2. British Columbia

   Gaming Policy and Enforcement Branch of the Ministry of Finance.

3. Manitoba

   Liquor and Gaming Authority of Manitoba.

4. New Brunswick

   Gaming Control Branch of the Department of Public Safety.

5. Newfoundland and Labrador

   Consumer Affairs Division, Consumer and Commercial Affairs Branch of Service NL.

6. Northwest Territories (Territory)

   Department of Municipal and Community Affairs.

7. Nova Scotia

   Alcohol, Gaming, Fuel and Tobacco Division of Service Nova Scotia.

8. Nunavut (Territory)

   Consumer Affairs, Department of Community and Government Services.

9. Ontario

   Alcohol and Gaming Commission of Ontario ("AGCO").

10. Prince Edward Island

    a. Prince Edward Island Lotteries Commission.

    b. Consumer Services section of the Department of Environment, Labour and Justice (regulates bingo, raffles, casino nights, and charitable gaming).

11. Quebec

    Régie des alcools, des courses et des jeux (authority over, amongst other things, the operation of casinos as well as contests, certain types of lotteries, and VLTs other than those in casinos).

    Société des loteries du Québec ("Loto-Québec"), a provincial government agent (i) operates the casinos located in Quebec, and (ii) regulates traditional lotteries and bingo as well as gaming machines located inside casinos.

12. Saskatchewan

    a. Saskatchewan Liquor and Gaming Authority ("SLGA"). SLGA has purview over the following:

       i. conducts and manages the majority of the province's electronic gaming machines including the province's network of VLTs and slot machines at First Nations casinos;

       ii. regulates the province's casinos;

       iii. licenses and regulates most other forms of gaming including charitable bingo, raffles, break open tickets, and poker tournaments; and

       iv. regulates the province's horse-racing industry.

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b. Indigenous Gaming Regulators ("IGR"). Effective April 2007, IGR was delegated the responsibility for licensing and regulating charitable gaming on most First Nations reserves in Saskatchewan (i.e., bingo, break open tickets, raffles, poker tournaments, and table games at casinos operated by the Saskatchewan Indian Gaming Authority). IGR's activities are conducted in accordance with a Licensing Agreement signed with SLGA that ensures charitable gaming is regulated on- and off-reserve in essentially the same manner.

13. Yukon Territory

Professional Licensing & Regulatory Affairs Branch of the Department of Community Services.

The majority of provincial governments have established a separate body, typically a corporation, to provide gambling services in the jurisdiction. Less populous provinces and territories have joined together to create one entity to provide those services for the member provinces and territories. Set out below are the government-controlled entities that provide gambling services in Canada:

1. Alberta: In Alberta, the regulator (AGLC as referenced above) fulfils the same functions as the lottery corporations in the other provinces. It therefore conducts and manages gaming in Alberta as well as regulating the activity.
2. British Columbia: The British Columbia Lottery Corporation conducts and manages gaming in British Columbia.
3. Saskatchewan:
   a. Saskatchewan Gaming Corporation. Conducts, manages, and operates two non-First Nations casinos (Casinos Regina and Moose Jaw), as well as operating the slots at all Saskatchewan casinos including SIGA casinos (see below).
   b. Saskatchewan Indian Gaming Authority ("SIGA"). The Federation of Saskatchewan Indian Nations created SIGA as a non-profit corporation in order to carry out its casino gaming operation interests. Pursuant to a casino operating agreement with SLGA, SIGA operates all of the First Nations casinos in the province.
4. Manitoba: Manitoba Liquor & Lotteries manages and conducts gaming activities, including commercial casinos and casinos operated by First Nations groups, VLTs, and the sales/distribution of lotteries by the WCLC.
5. New Brunswick: The New Brunswick Lotteries and Gaming Corporation conducts and manages provincial gaming in New Brunswick.
6. Nova Scotia: The Nova Scotia Provincial Lotteries and Casinos Corporation conducts and manages gaming in Nova Scotia.
7. Ontario: The Ontario Lottery and Gaming Corporation ("OLG") conducts and manages all non-charitable gaming in the province as well as certain charitable gaming operations.
8. Quebec: Loto-Québec is the Quebec government's lottery corporation. Loto-Québec and its subsidiaries provide the following services:
   a. Loto-Québec is responsible for the sale and marketing of instant and terminal-based lotteries, as well as sports pools.
   b. The *Société des casinos du Québec* builds and operates all of the casinos in Quebec.
   c. The *Société des bingos du Québec* markets network bingo products in bingo halls.
   d. The *Société des loteries vidéo du Québec* markets and manages a network of VLTs operated in licensed bars and pubs.
9. Western Canada Lottery Corporation ("WCLC"). Manages, conducts and operates lottery and gaming-related activities on behalf of its members (namely, the governments of the provinces of Alberta, Saskatchewan and Manitoba) and the three Canadian territories (Nunavut, Northwest Territories and Yukon). In Saskatchewan, the WCLC acts as an agent for the provincial government in the operation of the SLGA's provincial network of VLTs as well as the slot machines at SIGA casinos. WCLC conducts and manages ticket lotteries as a joint enterprise with Alberta, Saskatchewan and Manitoba.
10. Atlantic Lottery Corporation ("ALC"). Its shareholders are New Brunswick Lotteries and Gaming Corporation, Nova Scotia Provincial Lotteries and Casino Corporation, Prince Edward Island Lotteries Commission and the Province of Newfoundland and Labrador. ALC is the operator of land-based and online lotteries, sportsbooks, bingo, and VLTs in New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

In Canada there is no statutory definition of "gambling". Rather, the debate revolves around what activities are contrary to the Code. There are a number of activities that are prohibited by the Code but may not be thought of as "gambling" in the colloquial sense of the word. For example, a competition or draw for a prize may fall into any one of a number of baskets depending on its structure. If, for example, no consideration is payable in order to enter the competition, Canadian case law has made it clear that any person hosting or offering such a competition is not illegally operating a common gaming or betting house. Furthermore, the Code, and the little case law there is on the subject, draw fine distinctions between games of pure skill, games of pure chance, and games of mixed chance and skill. As a result of the archaic language in the Code, a number of idiosyncratic "rules" have evolved, the best example being the "mathematical skill-testing question" which is added to contest rules in order to transform a competition from an illegal contest of pure chance to a legal contest of mixed chance and skill. In sum, any competition for a prize must be examined through the lens of section 206 of the Code in order to determine whether it might constitute an illegal lottery.

Games of pure skill do not fall within the definition of an illegal lottery in section 206(1) of the Code and so can be legally provided without the consent of a regulator or any other government body. It is important to note that Canada's highest court, the Supreme Court of Canada, has made it quite clear that if there is any element of chance built into the structure of a game, it will be considered a game of mixed chance and skill and not a game of pure skill. The concept of a "dominant factor" is not recognised by the courts in this country. Poker, for example, is considered to be a game of mixed chance and skill as there is an element of chance in the game flowing from the dealing of cards. Games of chance, and games of mixed chance and skill are considered illegal lotteries unless no consideration is paid to enter, play or win a prize. Based on generally accepted interpretations of section 206, it is possible nonetheless to structure a game of either nature so as to render it legal.

The conduct of daily fantasy sports (i.e., "DFS") competitions is not currently addressed by any federal or provincial statutes or regulations. There is presently an active debate amongst gaming regulators and Canadian lawyers about the legality of DFS, some taking the position that it is merely a form of sports betting and therefore illegal, while others take the position that it is a game of

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pure skill and therefore a legal competition. The same is true for egaming (now referred to as "eSports"), which has only recently come to the attention of Canadian regulators. It is unlikely that we will see any regulations specifically addressing eSports in the foreseeable future; regulators and law enforcement are far more likely to analyse DFS and eSports using the existing paradigm provided in the Code (i.e., is it a game of pure chance, does it constitute illegal betting, is consideration payable in order to play or win a prize?).

Social games (as traditionally defined, e.g. Angry Birds and Candy Crush Saga) are not regulated *per se* by any government body although, like any other consumer product, they are subject to review and regulation by provincial consumer protection ministries and the federal Competition Bureau.

Set out below are the national and provincial statutes that apply to activities that are generally agreed to constitute gambling.

National:

At the federal level, the Code is the primary legislation that impacts gambling in Canada, as it contains both the primary prohibitions and exceptions respecting gambling and the federal penal law concerning proceeds of crime including money laundering (Part XII.2) and the financing of terrorism (sections 83.02, 83.03, and 83.04).

The Code's provisions regarding proceeds of crime and financing of terrorism synchronise with the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("PCTFA"). The PCTFA was enacted (and has been subsequently amended) to implement measures to detect and deter money laundering and the financing of terrorist activities, to facilitate the investigation or prosecution of money laundering and terrorist financing offences (including establishing record-keeping and client identification requirements for financial services providers and other persons that engage in businesses, professions or activities that are susceptible to being used for money laundering, and the financing of terrorist activities), and to respond to the threat posed by organised crime by providing law enforcement officials with the information they need to investigate and prosecute money laundering or terrorist financing offences. Section 5(k) specifically identifies casinos as a type of organisation that must comply with all requirements in Part 1 (Record Keeping, Verifying Identity, Reporting Of Suspicious Transactions And Registration) of the Act. The Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") was established in 2000 by the federal government to act as Canada's financial intelligence unit. FINTRAC is the regulatory body overseeing compliance with the PCTFA and its regulations.

The Competition Act is the only federal statute that is applicable to contests and competitions. Section 74.06 of the Competition Act prohibits any promotional contest that does not disclose the number and approximate value of prizes, the area or areas to which they relate, and any important information relating to the chances of winning such as the odds of winning. Any person who is found to have contravened this section is liable to a fine. While this provision is rarely enforced and the levying of fines is even rarer, that is likely due to the fact that most people are aware of these requirements and structure contests accordingly. Interestingly, section 74.06 applies to games of pure skill even though they do not constitute illegal gaming under the Code.

Provincial:

In most provinces, the structure of legislation governing gambling consists of a statute that sets out the regulatory framework (typically a "gaming control act") and another statute that establishes the provincial government's lottery corporation. The regulations under each statute contain most of the operational and regulatory details. Set out below are the primary gambling statutes in each province.

1. Alberta
   Gaming and Liquor Act.
2. British Columbia:
   Gaming Control Act.
3. Manitoba
   a. The Liquor and Gaming Control Act.
   b. The Manitoba Liquor and Lotteries Corporation Act.
   c. Orders in Council (designating municipalities to license raffles with prizes under $3,000 and First Nations Gaming Commissions to license on-reserve charitable gaming).
4. New Brunswick
   Gaming Control Act.
5. Northwest Territories
   Lotteries Act.
6. Nova Scotia
   Gaming Control Act.
7. Saskatchewan
   a. The Alcohol and Gaming Regulation Act, 1997.
   b. The Saskatchewan Gaming Corporation Act.
8. Ontario
   a. Gaming Control Act, 1992.
   b. Ontario Lottery and Gaming Corporation Act, 1999.
9. Quebec
   a. Act respecting the *Société des Loteries du Québec*.
   b. Act respecting Lotteries, Publicity Contests, and Amusement Machines (N.B. Quebec is the only province that has legislation addressing the operation of competitions and contests, including a competition of pure skill if it is "carried on for the object of promoting the commercial interests of the person for whom it is carried on").
10. Yukon:
    Lottery Licensing Act.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

As noted above, gambling in Canada is a provincial Crown monopoly pursuant to section 207 of the Code. With a very few exceptions, no person other than a provincial government is legally permitted to supply gambling facilities or services in Canada.

The primary exception, which is found in section 207(1)(b), permits provincial governments to issue licences to charitable and religious organisations (henceforth, "charities") to conduct and manage lottery schemes in that province, provided that the proceeds from the lottery scheme are used for charitable or religious objects or purposes. The other exceptions set out in section 207(1) permit the provinces to issue licences to the boards of fairs and exhibitions, and to any person who will conduct a lottery scheme in a public place of amusement where the cost to participate is no more than $2 and the value of any one prize does not exceed $500. One important restriction on any such licence is found in section 207(4)(c) which prohibits provinces from granting licences for any lottery scheme that would be "operated on or through a computer, video device or slot machine". Dice games are also prohibited to licensees under the same subsection.

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Notwithstanding the foregoing, all provinces do require registration of any person supplying goods and services for use in the operation of gambling facilities and the provision of gaming services by the province. As the provincial governments, out of necessity, must contract out the vast majority of such services, in reality this is the "licensing" scheme in Canada. Theoretically, any company that wishes to supply gambling facilities may approach a provincial government with a proposal for a gambling facility which the government would, by law, be required to conduct and manage, with the proponent of the plan acting as the operator under contract with the government. Practically speaking, however, provincial governments decide on the number, nature and location of gambling facilities that they wish to have in their province from time to time, and then tender out the construction and operation of those facilities to the private sector.

As an example of the tender process, the Province of Ontario recently decided to permit a number of new casinos to be built and operated in the province. A number of geographic sectors were identified and then the province, through the OLG, put in motion a full tender process, beginning with a Request for Information, followed by a Request for Pre-Qualification and finally by a Request for Proposals. In order to submit a Request for Pre-Qualification, it was necessary for the applicant to have first obtained registration as an Operator and to have paid all of the expenses related to the risk assessment and security clearances conducted by the AGCO. While the process started in early 2012, the primary geographic areas only saw casino operators selected in 2017. An applicant tendering for a contract to build and operate a provincial government monopoly project such as a casino should assume that it will take at least two to three years before they are advised whether their tender has been successful.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

The persons who are required to be registered as gaming suppliers differ from province to province, but only to a minor extent. An overview of the system of registration in the Province of Ontario is therefore sufficient to provide a sense of what will be required in other provinces. Ontario has the following classes of registration for gaming suppliers:

1. Operator (person who operates a gaming site (that is, either a casino or a slot machine facility)).
2. Gaming-Related Supplier (person who manufactures, provides, installs, tests, maintains or repairs gaming equipment or who provides consulting or similar services directly related to the playing of a lottery scheme or the operation of a gaming site).
3. Non-Gaming-Related Supplier (person who provides goods or services that relate to the construction, furnishing, repair, maintenance or business of a gaming site or a related business but who is not directly related to the playing of a lottery scheme or the operation of a gaming site).
4. Trade Union (a trade union that represents registered gaming assistants employed in or at a gaming site).
5. Category 1 Gaming Assistant (individual who is employed in the conduct, management or operation of a lottery scheme or in the operation of a gaming site and who exercises a significant level of decision-making authority or has significant supervisory or training responsibilities with respect to the lottery scheme or the site).
6. Category 2 Gaming Assistant (individual who is employed in the conduct, management or operation of a lottery scheme or in the operation of a gaming site but who does not exercise a significant level of decision-making authority or have significant supervisory or training responsibilities with respect to the lottery scheme or the site).

2.3 What restrictions are placed upon any licensee?

As persons are registered within a particular class of gaming suppliers, they are by definition restricted with respect to the activities in which they can legally engage. They are then restricted by the terms of the contract entered into with the provincial lottery corporation or other agent of the Crown to whom they will be supplying goods or services.

There are no firm residency requirements or restrictions on persons applying for registration. Each applicant will, however, be required to pass the risk assessment outlined in question 2.4 below and provincial regulators could take a position on what constitutes "honesty and integrity" that would preclude the registration of a company that, in the regulator's view, had not complied with Canadian law (for example, by providing offshore online gaming services to Canadian residents).

2.4 What is the process of applying for any gambling licence or regulatory approval?

Each province has its own process for applying for gaming supplier registrations but, again, they are relatively similar, and Ontario provides a good example of what is required in most provinces. In order to be registered as an operator or supplier, a company must complete three forms: (i) an application for registration; (ii) an enterprise disclosure form; and (iii) a personal disclosure form.

The initial risk assessment involves the review of an applicant's completed application materials as well as information obtained based on a standard background check. This information is evaluated based on five criteria which are considered key indicators of an individual's or business's appropriateness to be registered. The five criteria related to businesses (e.g., suppliers) applying for a gaming registration are: (i) honesty and integrity; (ii) financial responsibility; (iii) compliance with the law; (iv) registration type; and (v) financial gain from registration.

A business may be exempt from the requirement to register as a non-gaming-related supplier if: (i) the value of the goods or services to be supplied in the following 12-month period will be less than $750,000; and (ii) the OLG has carried out a due diligence investigation of the business that satisfies the AGCO that the person would meet the standards and requirements that would apply to the provision of goods and services if the business were registered.

2.5 Please give a summary of applicable time limits and potential for expiry, review, revocation and nullification.

Each province differs in this regard but as the organisational structures are similar, Ontario will be used as an example. The AGCO issues registrations with expiry dates. Prior to expiry, the registrant must complete and submit the same form as used for the initial application for registration. Each registrant must also pay an annual fee (e.g., $100,000 for casino operators) in order to maintain their registration.

Registrations may be revoked for any number of reasons but only after disciplinary action short of revocation. In Ontario, registrants who are not in compliance with the law usually receive a warning first, followed by a monetary penalty if still non-compliant. If the

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registrant continues to be non-compliant, the AGCO will issue a notice advising the registrant that they have 15 days in which to appeal the decision to a separate government appeal tribunal that is not associated with the AGCO. If the registrant does not appeal or loses on appeal, the registration will be revoked.

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

The key limitation arises from the fact that all gambling products and services must be provided exclusively by (or through a licence from) a provincial government. The lottery corporations in each province will decide which types of products they wish to carry from time to time and are able to change those policy decisions at will. As the provider of the products and services, they will exercise significant control over the performance of the products, the locations in which they are placed, and the marketing that is permitted.

While no product or service is fixed and the situation is fluid from province to province, there are general broad trends that provide some guidance with respect to the provision of gambling products and services. Ticket lotteries tend to be provided exclusively by provincial lottery corporations and licensed charities (albeit using private product and service providers). Casinos are operated both by private operators (e.g., Caesars Windsor Hotel and Casino in Ontario) and by lottery corporations using private suppliers and service subcontractors (e.g., Quebec's Casino Charlevoix). Bingo and raffles are generally left to charities. Betting other than pari-mutuel betting is provided by provincial lottery corporations through their websites. See question 3.3 below for information concerning machine-based gaming.

Unlike in the United States, there are no rights specifically granted to aboriginal bands to provide gambling services in Canada. Any band or other aboriginal group that provides legal gambling services does so as a service supplier to the applicable provincial government. In some provinces such as Saskatchewan, the government has made a policy decision to contract out the provision of a significant portion of gambling services to aboriginal groups but this is a purely contractual relationship. The bands in question have no independent right to provide gambling services, nor could Saskatchewan or any other province purport to grant them that right, given the underlying federal gaming prohibition in the Code.

2.7 What are the tax and other compulsory levies?

As the majority of private corporations operating in the gambling industry in Canada are, of necessity, merely registered suppliers of gambling products and services to the provincial governments, there are no industry-specific taxes or levies. Such companies are required to comply with generally applicable federal and provincial income tax laws but there is no separate regime of taxes within the industry.

2.8 What are the broad social responsibility requirements?

As the providers of gambling services in their respective jurisdictions, the provincial lottery corporations have all addressed social responsibility in their regulations and policies, if not in their statutes. Any private companies that provide services to the public on behalf of the lottery corporations are required to conform with those policies and regulations. Those policies generally include training programmes for employees regarding responsible gaming, advising and informing all players concerning responsible gaming and how to make informed choices about products and play in general, and the operation of voluntary exclusion programmes. Once again, using Ontario as an example, the OLG has a Responsible Gambling Centre at all sites, with staff from the Responsible Gambling Council at eight locations; there is mandatory training for all front-line and management staff; and they run a self-exclusion programme that uses technology such as facial recognition. It is a given that minors are excluded from all forms of gambling activity including the purchase of lottery tickets.

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

As noted above, the only entities that can legally supply gambling in Canada are provincial governments (either directly through their respective lottery corporations or through service suppliers to those lottery corporations) and charitable organisations licensed by provincial governments. In all cases, those entities are subject to Canada's anti-money laundering ("AML") legislation (namely (i) the PCTFA, and (ii) Part XII.2 (Proceeds of Crime) of the Code and, in particular, section 462.31 which outlines the offence of laundering the proceeds of crime). At present, section 5(k) of the PCTFA states that the record-keeping, identity verification and reporting requirements apply to "casinos, as defined in the regulations, including those owned or controlled by Her Majesty". The relevant regulations then define "casino" as a person or entity that is licensed, registered, permitted or otherwise authorised to do business pursuant to the Code.

In 2014, the PCTFA was amended to clarify the application of the statute to casinos. The amendments clearly identify the "government of a province" as the organisation to which the statute applies in the case of both land-based and online casinos. These amendments were likely made as a result of the confusion arising in cases involving lottery corporations fined by FINTRAC for failure to comply with reporting requirements concerning activities occurring at casinos operated by private companies (albeit under contract with the lottery corporation). Until these amendments were introduced, many commentators took the position that the statute would, in those cases, apply to the operators rather than the provincial lottery corporation.

At present, virtual currencies are not recognised by any level of government in Canada. They are regulated but only to the extent that virtual currency dealers are required to comply with Canada's anti-money laundering laws. Having said that, the Canadian Securities Administrators (an umbrella organisation of Canada's provincial and territorial securities regulators) recently issued a guidance document on cryptocurrency offerings which included advice on the application of Canadian securities law to certain types of those offerings.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

There is no accepted legal definition of online gambling in Canada. For the purposes of this section, we use the term "online gambling" to refer to any form of gambling that is virtual rather than tangible, including any gambling activity that is mediated through a computerised system (including applications, software and websites).

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Provincial governments, alone or in concert, are permitted to provide any online gambling activity that they desire, subject only to the restrictions in section 207(4). That section provides that permitted lottery schemes (that is, those that a provincial government may offer) do not include the activities of "bookmaking, pool selling or the making or recording of bets ... on any race or fight, or on a single sport event or athletic contest". Most provinces have read this to prohibit any type of sports betting other than parlay betting. Legal online sports betting therefore does not permit betting on single games or other types of sporting events.

While there is no legislation or case law that specifically criminalises or otherwise prohibits the provision of online gambling by private companies, it is generally accepted by the industry that private online gambling operated from within Canada for Canadian players will be caught by the prohibitions found in the Code. There is less certainty around the issue of online gaming provided by persons whose operations are located entirely outside of Canada. To date, there have been no charges laid against any such offshore operator, and so the law in that regard remains untested. Having said that, all levels of government and all of the provincial regulators have taken the position that such operations are illegal and should be closed down.

Only one province has addressed the advertisement of online gaming. In 2006, Ontario amended its *Consumer Protection Act* to add section 13.1 which prohibits the advertisement of an "internet gaming site" in the province if it is operated contrary to the Code. To date, there are no reported cases that consider this section or the prohibition.

3.2 What other restrictions have an impact on online supplies?

There are no material restrictions on legal (that is, government-run) online gambling in Canada. With respect to offshore online gambling, neither the provincial governments nor the federal government have taken steps to limit access to such sites. While there are presently no statutory or regulatory restrictions on payment processing by such operators, or that constitute ISP blocking, blacklisting or currency restrictions, the Province of Quebec passed legislation that would, when in force, require internet service providers to block Quebec residents from accessing private online gaming sites. The Quebec legislation is suspended pending review by the courts. See question 5.1 below for further details.

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

Provincial governments are allowed to provide any form of terminal or machine-based gaming that they choose. Therefore, all such gaming is "permitted" by law. For policy reasons, there are varying restrictions from province to province with respect to the nature of the games and their locations within the applicable jurisdiction. For example, VLTs are provided to the public by provincial lottery corporations in all provinces other than British Columbia and Ontario. Similarly, provincial lottery corporations provide slot machines in casinos and/or at race-tracks in all provinces other than Newfoundland and Labrador. There are no slot machines available in two of the three territories (Nunavut and Northwest Territories), while they are available in Yukon. Fixed-odds betting terminals ("FOBTs") have not appeared in Canada, although it would be legal for a provincial lottery corporation to provide FOBTs to residents of their jurisdiction. Private companies are prohibited from operating any type of gambling machine anywhere in Canada except pursuant to a registration issued by a provincial regulator.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Breaches of the federal Code are a matter of criminal rather than civil law and thus the ambit of liability is, in practice, quite narrow. While the Code is drafted broadly, Canadian courts have exercised their discretion under the principles of statutory interpretation to ensure that such sections are read narrowly, given that they are penal in nature. For example, while section 201 of the Code states that everyone who "keeps a common gaming house or a common betting house" is guilty of an indictable offence and liable to imprisonment for up to two years, in practice, courts (particularly in the last few decades) have gone to some pains to parse this section and the underlying definitions to preclude conviction in all but the clearest of cases. On the other hand, the courts do not appear to be as concerned by a broad application of section 201(2) which provides that every person found without lawful excuse in a common gaming house or common betting house is guilty of a summary conviction offence. As summary conviction offences are the most minor offences in the Code and typically result in a small fine, courts are willing to convict individuals who are caught in sweeps of illegal sports betting events and large poker operations. The Code makes it possible for directors, officers and senior management to be charged and convicted of a criminal offence with respect to the activities of their corporation pursuant to the sections of the Code concerning aiding and abetting and parties to an offence (sections 21, 22, 22.1, and 22.2).

Breaches of provincial gambling legislation involve, almost by definition, breaches of the requirement to obtain a registration for the supply of gaming services and to comply with the regulations concerning such activity. The service supplier (registered or unregistered, as the case may be) is liable, as well as the directors and officers in some cases. For example, section 46(3) of the Ontario *Gaming Control Act* makes it an offence for any director or officer of a corporation to cause, authorise, permit, or participate or acquiesce in the commission by the corporation of a wide range of offences under the Act. In practice, culpability does not typically flow to individuals if the service was being supplied by a corporation unless there is egregious conduct involved.

4.2 What is the approach of authorities to unregulated supplies?

Prosecution of gaming offences is not common, primarily because of the monopolistic nature of the industry and the resulting lack of private operators. As the legislation governing gaming at the top level is criminal, most prosecutions will be criminal. Provincially, prosecutions are administrative for the most part.

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

While there are no reported cases in which Canada has attempted to extradite an individual from another country in order to face gambling charges in Canada, Canada has agreed to extradite Canadians to the U.S. to stand trial for gambling offences. There are no reported cases in which a Canadian court has chosen to take jurisdiction over a case involving gambling activities that took place outside of Canada, or over cases involving gambling services provided to Canadians by persons located outside of Canada.

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4.4 Are gambling debts enforceable in your jurisdiction?

If the debt is incurred in a legally operated gambling facility, such debts are considered a form of consumer debt and are treated accordingly. However, if the gambling debt is incurred in the course of illegal or private gambling, provincial gaming laws prohibit the use of civil proceedings to collect such debts. As an example, section 47.1 of Ontario's *Gaming Control Act* states that "no person may use civil proceedings to recover money owing to the person resulting from the [sic] participating in or betting on a lottery scheme .... unless the lottery scheme is authorized under subsection 207 (1) of the Code".

5 Anticipated Reforms

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

On May 18, 2016, the National Assembly of Quebec passed its budget into law pursuant to an omnibus act (*Loi concernant principalement la mise en oeuvre de certaines dispositions du discours du budget du 26 mars 2015*, L.Q. 2016, ch. 7 and hereinafter the "Budget Act"). Section 12 of the Budget Act amended Quebec's consumer protection act (namely *La Loi sur la protection du consommateur*) to put into place a regime whereby internet service providers ("ISPs") would be required to block Quebec residents from accessing illegal internet gaming sites. While the consumer protection statute has been amended, the amendment itself is not yet in force. On July 8, 2016, the Public Interest Advocacy Centre (on behalf of itself and all Canadian ISPs) brought an application before the regulator of telecommunications in Canada (the Canadian Radio-television and Telecommunications Commission, hereinafter the "CRTC"), requesting that the CRTC declare the Budget Act unconstitutional, *ultra vires* the Province of Québec and a violation of Canada's Charter of Rights and Freedoms. On July 27, 2016, the Canadian Wireless Telecommunications Association (on behalf of its ISP members) filed a motion in the Quebec Superior Court requesting that the court find the ISP-blocking provisions to be invalid, primarily on the basis that they are unconstitutional. On September 1, 2016, the CRTC issued an open letter to Canada's Attorney General stating that in the CRTC's preliminary view, the ISP-blocking provisions were very likely unlawful. The matter is now in front of the Quebec Superior Court with a court date scheduled for March 2018. It is expected that it will be appealed to the Federal Court of Appeal and then, given the significant constitutional issues raised, it will end up in front of the Supreme Court of Canada. The conclusion of most legal commentators is that the provisions are certainly unconstitutional and will be struck down, likely on appeal.

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Cyprus

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Articles 3 to 11 of the Betting Law (106(I)/2012) establish a central National Betting Authority (NBA), which prepares regulations concerned with any aspect of premises sports betting and online sports betting.

Articles 5 to 7 of the Gambling Law (124(I)/2015) establish a National Authority of Play and Casino Supervision (NAPCS), which supervises the main casino (opening in 2020) and four other smaller satellite casinos operating with the same licence.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

The relevant legislation includes the following:

(a) Betting Act of 2012 – Law 106(I)/2012 (as amended).

(b) Several Regulations and Directives issued by the NBA.

(c) The Prevention of Counterfeiting and Money Laundering Activities Law of 2007 – 188 (I) 2007 to 2016.

(d) EU Directive 2015/849.

(e) The 2003 bilateral agreement between Greece and Cyprus regarding OPAP.

(f) Gambling Act of 2015 – Law 124(I)/2015.

(g) Regulatory Administrative Act 4936/31.3.2016.

Online gambling is prohibited; however, online sports betting and land gambling is permitted.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

A request for a Class A or B licence can now be submitted by a company with shares registered in Cyprus or abroad (i.e. if a company has an overseas company in Cyprus), provided the principal activity is the carrying out of bets. See the answer to question 2.2 for more details.

With regard to casinos, only one licence has been issued under article 15 of the Gambling Law. Under this law, on Monday June 26th 2017 at the Filoxenia Conference Centre, the NAPCS signed with a consortium of Melco International Development Ltd, Hard Rock and Phassouri (Zakaki) Limited ("CPZL"), a Member of the CNS Group, a contract for a casino resort. A few hours after the agreement, Melco International Development Ltd, assumed the majority stake of 70.74% shareholding of the integrated casino resort project in Cyprus, although it initially held 35.37%, with the agreement to purchase Hard Rock's shares. The remaining 29.26% belongs to CPZL. This change was approved by the NAPCS.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

The Betting Law sets, as general rule, the authorisation of all activities regarding the provision of betting services. The NBA will check the financial condition of the applicants (article 15(1)(b)) and their criminal record (article 15(1)(a)). Class A and B applicants must be a company with shares, established in Cyprus or abroad with a branch in Cyprus, and its main activity must be to carry out bets. Its issued and paid-up share capital must be at least EUR 500,000 (article 28(1)).

The premises must also be licensed (article 35).

The Gambling Law provides the selection of one licence holder. Under article 26 of the Regulatory Administrative Act 4936/31.3.2016 (RAA), gaming equipment used or intended to be used by the licensee must be approved by the NAPCS and used in accordance with that approval. The NAPCS may waive the requirement for approval if such equipment is licensed and/or licensed for use by a gaming regulator in another EU Member State or legally manufactured in a state of the EFTA or in a state with which the EU has signed an agreement on the customs union and mutual recognition of conformity assessment of products. In such cases the NAPCS shall not require the authorisation of gaming equipment again, on the basis of mutual recognition if such authorisation has been secured, unless the technical standards and requirements of the gaming equipment significantly deviate from its own standards.

2.3 What restrictions are placed upon any licensee?

Betting licences are not transferrable or assignable to another person.

No person holding a Class A licence can offer online services unless it also holds a Class B licence and *vice versa*. The same is valid for a land casino with regard to the provision of online betting services.

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2.4 What is the process of applying for any gambling licence or regulatory approval?

There are mainly two classes of betting licences, i.e. Class A licence (land betting) and Class B licence (online betting). A third class is the Authorized Representative of Recipient of a Class A Licence where services are provided for the performance of bets on behalf of the recipient of a Class A licence within licensed premises.

The NBA requires the applicant to demonstrate the possession of resources securing the payment of players' winnings, adequacy of systems of accounting and internal control and compliance with regulations for the protection of players promulgated by the Board.

The application for a Recipient of Class A or B licences must be accompanied by a bank guarantee from a bank in Cyprus or from an EU Member State bank for the amount of EUR 550,000, which expires six months following the receipt of the requested licence.

With regard to the Gambling Law, licensees have been examined by the NAPCS (articles 21 and 22) and no other such licences can be issued.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Pursuant to article 24 of the Betting Law, betting licences are issued for one year or two years, and may be renewed on application, subject to the approval of the NBA. The NBA can suspend or revoke a licence in the event of failure to comply with the required standards.

Under article 21 of the Gambling Law, the licensee has an exclusive licence for 15 years; however, under article 24, the licence lasts for 30 years.

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

Sports bets are allowed in the form of a betting slip, for Class A bets, or electronically, for Class B bets.

Pursuant to part V of the Betting Law, the conduct and performance of bets with a betting slip are regulated. The carrying out or acceptance of Class A bets can be performed with an approved computer betting slip marking system approved by the NBA, issued and administered by a licensed Class A Recipient. The Recipient must keep betting slips and any other relevant information for five years and their destruction after the five-year period is carried out after approval from the NBA.

There are seemingly no limitations with regard to the permission of local resident play, or specific game and stake limits, or any progressive jackpot and rollover limits.

Under article 85 of the Betting Law, no advertisement can imply that betting is socially acceptable, personally or financially acceptable or may resolve any personal, financial or social problems, it may also not include the support of personalities in such a way so as to imply that this is related to their success; advertisements are also prohibited from influencing children in any manner to participate, and in doing so exceeding the boundaries of honesty and dignity, in the promotion of betting services provided by non-licensees.

Casinos can offer gambling games that must be approved by the NAPCS under articles 46 and 47 of the Gambling Law. Under article 65, any advertising concerning casinos must be true, tasteful, informative and not offensive in any way, it must not promote casino games as an economic alternative, promote such games as not only a gaming activity, or not consider the need to protect minors and other vulnerable persons.

2.7 What are the tax and other compulsory levies?

Pursuant to article 12 of the Betting Law, every licensee in Cyprus will pay betting tax up to 10% of its net revenue and 3% tax to the State Gaming Board. Pursuant to article 71 of the Betting Law, the State Gaming Board will distribute the proceeds between Cyprus' Sports Federation, Cyprus' Football Federation and gambling addiction programmes.

For Class A or B licences, the licensee has to pay a fee of EUR 30,000 for one year and EUR 45,000 for two years, whereas an authorised representative pays the amount of EUR 2,000 for one year or the amount of EUR 3,000 for two years. The fee is payable with the initial application or application for renewal and if rejected it is returned reduced by 25%.

Licensees submit to the NBA annual accounts for the previous year audited by a certified accountant and prepared in accordance with international and European standards no later than June 30th.

Casinos are taxed on a monthly basis and pay a gambling tax of 15% of the gross income. The amount of a casino's annual fee, which is due for the first four years following the licensing of the casino, amounts to EUR 2,500,000 for each year and for the subsequent four years amounts to EUR 5,000,000 for each year.

2.8 What are the broad social responsibility requirements?

Under the Betting Act, the licensee can register as a player a person submitting an application for registration electronically including various personal information of the player. Processing or accepting Class A bets can only be carried out with an approved computerised card-marking system and a card. The player must be over 18 years old and informed of the conditions and procedure for carrying out bets, including the fee payable to the Recipient. The licensee maintains in electronic form a secure list of all players registered with their details. The account is maintained for five years after the last transaction and closes with the approval of the NBA.

Under article 63(1), the Class B licensee must maintain a website's homepage containing the company's registered name, its registered address, the official number and date of issue of the licence, a statement that the Class B licensed bookmaker's activities are regulated by the Authority, internet links of websites specialising in assisting persons addicted to gambling, that the use of the betting services by children is prohibited, information to the player that he may electronically notify the licensee to determine the limit he may bet on for a specific period of time, the limit he may lose for a specific time, the limit of time within which he may bet and be exempt from betting for a specific or indefinite time, etc.

Class B services may be provided only through a website using a "com.cy" domain name (article 64). Internet service providers in Cyprus must control all operating websites offering such services and block access to any unlicensed provider of services.

With regard to casinos, all players must be over 21 years old and no person unable to properly identify him/herself can remain in the premises. The Gambling Law prohibits the licensee from operating any other casinos other than the main casino and the four satellite casinos.

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

Pursuant to article 54 of the Betting Law, players must be registered and maintain an account with the gambling service provider, and pursuant to article 58(2), betting transactions for Class B licences can only be executed by means of credit cards, debit cards, electric transfer and electronic money, whilst cash transactions are prohibited.

A Class B licensed bookmaker is obliged to maintain the player's amounts separate from his own amounts, in a special client's account, with a commercial bank or cooperative bank that carries on activities within Cyprus (article 61(1)). This means that EU banks or banks of third states may be included in this definition. However, in the EU not all Member States use the euro currency; therefore, no restriction seemingly exists in practice with regard to currency, however all transactions are conducted in euros as this becomes evident under the Betting Law.

Moreover, under article 58(3), a Class B licensee is prohibited from providing credit to a player or player portion or to act as a representative of a person providing credit, in a manner facilitating credit to a player.

No virtual currencies are allowed.

See the answers to questions 2.6 and 2.8 for more details.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Online gambling games are prohibited under article 79 of the Betting Law. The law does not define the term "online" or "internet", however it defines the term "telecommunications" as meaning communications, through the internet, etc.

See the answers to questions 2.6 and 2.8 for further restrictions.

3.2 What other restrictions have an impact on online supplies?

The providers cannot accept bets unless satisfied that the player has sufficient funds in his account to cover the stake, the player must also maintain a bank account in a bank or institution providing services in Cyprus. See the answers to questions 2.8 and 2.9 for further details (payment processing, marketing, currency restrictions, and ISP blocking-blacklisting).

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

As referred to in the answers to questions 2.2 and 2.6, casinos can offer gambling games that must be approved by the NAPCS. It is expected that cash will also be required to play. With regard to the cards that can be used, see the answers to questions 2.8 and 2.9.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Pursuant to article 74 of the Betting Law, the provision of services without a licence is a criminal offence punishable on conviction by imprisonment for up to five years, a fine of up to EUR 300,000, or both. Pursuant to article 78 of the Betting Law, any person holding or operating a limited benefit game machine (slot machine) or providing services in Cyprus for the operation of such machines is guilty of a felony punishable on conviction by imprisonment for up to five years, a fine of up to EUR 300,000, or both. The same penalties apply for the unlicensed provision of online casino services pursuant to article 79.

The Betting Law criminalises online gambling where a customer plays an active role. Online poker and casino games are prohibited pursuant to article 79, slot machine services, betting exchanges, dog-racing betting and spread-betting services are prohibited pursuant to articles 78, 80, 82 and 83.

Under the Gambling Law, subject to a prison sentence not exceeding five years or to a fine not exceeding EUR 1,000,000, or both, are persons acting in violation of the provisions of article 18 (and article 89), persons providing gambling services to the casino resort in violation of the provisions of the Gambling Law, the Regulations issued thereunder or the resort permit (including casino games not authorised by the Authority or gambling rules not duly authorised by the Authority) (article 90), persons convicted for acts of fraud, for the use or possession of a device, software or machine for the purpose of gaining an advantage in playing casino games, for the possession, use and construction of unauthorised gaming equipment and devices, for illegal interference with gaming equipment, for anyone using methods of deception, or for entering a casino with false representations (article 92).

Casino customers knowingly participating in an illegal casino game in violation of the provisions of the Gambling Law (article 91) and anyone involved in illegal advertising (article 93) is, under the Gambling Law, subject to a prison sentence not exceeding six months or to a fine not exceeding EUR 100,000, or both.

Persons knowingly providing the Authority with false or misleading information (article 94) and persons knowingly encouraging or allowing a minor to participate in casino games, use gaming machines, or enter a casino game (article 95) are, under the Gambling Law, subject to a prison sentence not exceeding one year or to a fine not exceeding EUR 200,000, or both.

Under article 96(1), a casino administrator or other legal person found guilty of an offence for which, in accordance with the provisions of the Gambling Law, no penalty is expressly provided, in the event of his conviction, shall be liable to a fine not exceeding EUR 1,000,000. Moreover, under article 96(2), any person found guilty of an offence for which no penalty is expressly provided in accordance with the provisions of the Gambling Law shall be punished by imprisonment of not more than three years or by a pecuniary penalty not exceeding EUR 600,000, or both.

4.2 What is the approach of authorities to unregulated supplies?

Cypriot authorities pursue a policy of zero tolerance towards gambling. Civil and criminal penalties are enforced and police raids are conducted. See the answer to question 4.1 for more details.

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

All EU legislation is applicable, as Cyprus is an EU Member State.

4.4 Are gambling debts enforceable in your jurisdiction?

Gambling debts may not be enforceable and the same is valid for betting debts.

5 Anticipated Reforms

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

For the time being, no further significant changes are being discussed with regard to the gambling law; however, with regard to online betting, until September 2017, no detailed opinions from other Member States or from the EU have been received on an accompanying law to the Betting Law, or to the Code of Practice for the advertising of betting in Cyprus, including specific restrictions on broadcasting betting advertisements and direct marketing measures relating to betting, clearing the way for these to be adopted.

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Czech Republic

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Under the Gambling Act, the Ministry of Finance of the Czech Republic (hereinafter referred to as the "Ministry") is the main regulatory authority for gambling services.

Besides the Ministry, some other defined powers are entrusted to Municipal authorities and Customs offices.

The Ministry is mainly responsible for granting "basic licences" (i.e. decides on the issuance, change or withdrawal of the basic licence for a gambling operation) and for supervision of compliance with the Gambling Act and the terms and conditions set down in the basic licence.

Moreover, the Ministry deals with administrative offences relevant to online games and decides on authorisation of test labs for professional assessment and certification (i.e. authorised testing labs).

Municipal authorities' main power is to decide on the issuance, change or withdrawal of the gambling "premises location licence", which is necessary in order to operate land-based technical games, live games and bingos.

Customs administration executes together with the Ministry the supervision of compliance with the Gambling Act and the terms and conditions set down in the basic licence and gambling premises location licence, and deals with administrative offences relevant to gambling, except for online games.

Gambling (or games of chance) means, according to the definition of the Gambling Act, "a game of chance; betting; or, a lottery in which the participant wagers a bet, while no return on such bet is guaranteed, and, the winning or loss on which is entirely or partly subject to chance or unknown circumstance".

Currently, the Gambling Act specifies and regulates the following gambling products:

a) lotteries (including a special kind of "shared lottery");
b) odds bets (the Gambling Act does not explicitly regulate betting on virtual events, fantasy and betting exchanges);
c) totalisator games;
d) bingos;
e) technical games;
f) live games;
g) raffles; and
h) small-size tournaments.

Only games of chance that fit into the definition of one of the gambling categories listed above can be licensed and legally provided by operators. All products, except for a raffle and a small-size tournament, can be operated in both land-based and online form.

There are no clear rules on international liquidity.

According to the Ministry, the main difference between technical games and live games is the number of players participating in a game at the same time. Live games must allow multiple players at the same time (within a single random process). Technical games allow the participation of only one player who plays against the house (the operator).

The Gambling Act does not regulate consumer competition. According to previous law, consumer competitions were considered a game of chance and must be announced to the competent authorities, but since the new Gambling Act came into effect, this kind of competition must be in line with only the Consumer Protection Law.

Fantasy sports are not explicitly regulated by the Gambling Act; based on a selected gaming mechanism, it can be considered an odds bet or a totalisator game.

Social games are also not explicitly regulated.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

The main legislation regulating the gambling industry is Act No. 186/2016 Coll., on Gambling, and Act No. 187/2016 Coll., on Gambling Tax.

Act No. 186/2016 Coll., on the Gambling Act, became effective on 1 January 2017 and replaced Act No. 202/1990 Coll., on Lotteries and Other Similar Games.

Besides these acts, the following legislation also impacts on gambling activities:

- Act No. 634/1992 Coll., on the Consumer Protection Law.
- Act No. 500/2004 Coll., on the Code on Administrative Procedure.
- Act No. 89/2012 Coll., on the Civil Code.
- Act No. 40/2009 Coll., on the Criminal Code.
- Act No. 40/1995 Coll., on Advertising Regulation.
- Act No. 253/2008 Coll., on the AML Law.
- Act No. 101/2000 Coll., on Personal Data Protection.
- Act No. 112/2016 Coll., on Electronic Evidence of Sale.
- GDPR regulations.

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Other technical aspects of gambling are regulated by secondary legislation in the form of decrees issued by the Czech Ministry of Finance:

- Ministry Decree No. 439/2016 Coll. – to set up the requirement for the minimum prerequisites for the expert evaluation and certification of output documents and their provision to the authorities performing state administration in the field of games of chance.
- Ministry Decree No. 208/2017 Coll. – to define the scope of technical parameters for the devices through which games of chance are operated, requirements for game data and financial data protection and saving, and their technical parameters.

The Ministry is still in the process of preparing other secondary technical regulations, so a new gambling framework is still not complete.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

The new Gambling Act opens the market for foreign operators from EU and EEA Member States.

According to the Gambling Act, any entity which has fulfilled the following requirements can ask for a licence (i.e. there is open competition, no monopoly, no limited number of licences when the following requirements are met):

1. the entity has a registered office in the Czech Republic or in another EU Member State, or in a state that is a party to the Agreement on the European Economic Area;
2. the entity has an organisational chart which sets clear and comprehensive definitions of its realms and decision-making powers;
3. the entity has an established board of directors, management board or a similar control body;
4. the entity has equity totalling at least EUR 2,000,000;
5. the entity has a transparent and unobjectionable origin of its resources;
6. the entity has a transparent ownership structure, clearly identifying its beneficial owner according to the law regulating measures against the legitimisation of proceeds of crime and financing of terrorism (the "beneficial owner"); and
7. the entity has substantive organisational capacity and the personnel required to carry out its activity to the extent to which it foresees for its gambling operation.

The Ministry has issued a methodology, which is publicly available on the Ministry websites, which describes in more detail all of the licensing conditions.

There are two kind of licences. A basic licence issued by the Ministry for a maximum of six years (upon the lapse of which the operator needs to ask for a new licence). A gambling premises location licence, issued by Municipal authorities for a maximum of three years, for operating land-based technical games, live games and bingos.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Only entities responsible for operating games of chance are required to obtain a licence.

Neither suppliers (i.e. B2B operators) nor affiliates need a licence in the Czech Republic.

A premises licence is needed in the form of a gambling premises location licence, issued by Municipal authorities for a maximum of three years, in case of operating land-based technical games, live games and bingos.

2.3 What restrictions are placed upon any licensee?

Operators have a special obligation to report all gambling and financial data through passive access in a prescribed structure and for a prescribed timeline to the Ministry.

This obligation is now a compulsory part of an issued basic licence (i.e. the licence contains detailed rules for passive access).

Currently, the Ministry is in the process of preparing a decree on a method of notifying and sending information and data transmission to the authorities responsible for state administration in the field of operations of games of chance.

2.4 What is the process of applying for any gambling licence or regulatory approval?

There are two kinds of licences. Basis licence, issued by the Ministry, which is necessary for each category of games of chance. Gambling premises location licence, issued by Municipal authorities, which is necessary only in case of land-based technical games, live games and bingos. Gambling premises location licences are issued for a maximum of three years.

The licensing procedure is regulated by the Gambling Act and also by the Code on Administrative Procedure. The application form is available on the Ministry websites.

Anybody who fulfils the requirements obtains from the Ministry the basic licence, which can be issued for a maximum of six years.

The basic requirements are the following:

1. A guarantee – from Kč 5,000,000 to 50,000,000:

   Kč 5,000,000 – bingos and horse betting.

   Kč 30,000,000 – betting and casino games.

   Kč 50,000,000 – lotteries, gaming machines and internet games.

   A guarantee can be realised in the form of a bank guarantee (from a bank established within the EEA) or in the form of a payment of the set amount to the account of the Ministry.
2. No debts.
3. Absence of a criminal record.
4. Preparation of a detailed game plan for any games of chance.
5. Technical certification from an authorised testing lab.
6. Server documentation (servers are required to be located in EU and EEA Member States).

Preparing a game plan is the most important part of the Czech licensing process. The game plan is a very detailed document, which must be approved by the Ministry, describing at least the following requisites:

a) the game rules, including the whole process of player registration;

b) a procedure for drawing or for identification of the facts that determine a win;

c) the amount of winnings or the method by which it is determined;

d) the payment method and terms of winning; and

e) if so enabled by gambling features, the amount of the maximum bet, the maximum winnings and maximum hourly

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loss, the minimum payout percentage, and the probability of winning.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

From the submission of an application to the Ministry, the issuing of a licence should normally take 30 to 60 days.

A basic licence can be issued for a maximum duration of six years. The operator is obliged to notify the Ministry of any changes to the facts based on which the basic licence had been issued.

The Ministry will replace the existing basic licence for a new one, especially if the operator submits an application proposing to change certain data which would only be possible if the basic licence was changed.

When it comes to withdrawal of the basic licence, the Ministry will do so if:

a) the operator, while called upon by the Ministry, fails to comply with the terms and conditions set by the issuance of the basic licence;

b) facts come to light subsequently which would have made the issuance of the basic licence impossible;

c) the operator breaches, repeatedly or grossly, the obligations laid down by the Gambling Act, by the act regulating tax on gambling, or by the basic licence; or

d) the operator ceases to comply with the terms and conditions set by the issuance of the basic licence, as laid down by the Gambling Act, and if the procedure under Section 1 of the Gambling Act cannot be applied.

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

The Ministry has published on their websites a detailed "Methodology on bonus programs". From the methodology it is clear that it is not possible to provide free spins or discounts from the bet to the player, because it is considered a game voucher. On the other hand, the operator can basically give the money to the player, but without any provided purpose (i.e. the participant in the betting game may freely use them without having to put them into play).

When it comes to land-based operations of technical games, live games and bingos, a municipality may issue a generally applicable decree: laying down that technical games, live games or bingos can be operated only at the places and times specified by the generally applicable decree; laying down the places and times at which operation of the above games is prohibited; or laying down that the operation of such games is completely prohibited throughout the municipality's territory.

A bet in an online technical game shall not exceed CZK 1,000 on one spin, while a win on one spin shall not exceed CZK 500,000.

The Act on Advertising Regulation stipulates for gambling the following rules:

- Advertisements encouraging persons to participate in gambling must not contain a message evoking an impression that participation in gambling can be a source of financial funds similar to earning income from employment, self-employment or other similar activity.
- Advertisements for gambling must not be aimed at persons under 18 years of age; in particular, showing these persons or using elements, means or events mostly addressing such persons.
- Advertisement for gambling must contain a message of prohibition of participation of persons under 18 years of age in gambling and a visible and clear warning of the following wording: "The Ministry of Finance is warning: Participation in gambling can cause addiction!"

2.7 What are the tax and other compulsory levies?

According to the Gambling Tax Act, there is a 23% tax on gross gaming revenue, with the exception of technical games, which are taxed at 35% of gross gaming revenue.

There is no taxation on players' winnings and no licensing fee.

Gambling services are also excluded from VAT.

Depending on concrete circumstances and the concrete double taxation treaty, gambling operators can be also be obliged to pay Company Income Tax (19%). In general, if a gambling operator is not incorporated in the Czech Republic, it is not obliged to pay Company Income Tax.

2.8 What are the broad social responsibility requirements?

The Czech gambling framework is based on principles such as protection of minorities, prevention of their participation in gambling, consumer protection and prevention of money laundering.

The operator shall not enable gambling participation for individuals aged under 18.

Operators can only provide games falling within one of the gambling categories. The following games are prohibited:

- Games that fail to ensure fair conditions and a fair chance to win for all.
- Games that contravene moral standards or public order.
- Games where the win or loss is determined fully or partially by events that can be influenced by the players or operators.
- Games for which the outcome is known in advance.

The Gambling Act presumes the existence of a "register of individuals barred from the participation in gambling" (those in receipt of material destitution assistance benefits, those who has been conclusively found bankrupt, etc.).

The Gambling Act also stipulates strict measures for responsible gambling (i.e. self-limiting measures). Regarding online games, the operator must enable players to be able to set the following measures:

a) the maximum amount of bets per day;

b) the maximum amount of bets per calendar month;

c) the maximum amount of net loss per day;

d) the maximum amount of net loss per calendar month;

e) the number of logins to the user account per calendar month;

f) the daily login time spent on the user account until its automatic logout; and

g) the time during which the gambling participant will be disabled from taking part in a game provided by the operator, counted from the time of the participant's logout from the user account.

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

Registered payment methods for user accounts can only be provided

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by a person who is authorised to provide payment services in an European Union Member State or a state party to the Agreement on the European Economic Area.

A player is obliged to prove, during the registration process, that he/she is the owner or holder of a registered payment method. Only one payment method can be effective at one moment.

Cash deposits or cash payouts may also be made from the user account; however, only up to CZK 5,000 in 24 hours.

Gambling operators, except for operators of lotteries, bingos or raffles, are obliged to fulfil the obligations stated in the AML Law (i.e. clients identification and control).

There are no special rules for regulating virtual currencies.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

All regulated gambling products can also be offered online, except for tombolas and small card tournaments.

In an online game, the gambling participant plays against the software-based gambling system of the operator, or against another individual mediated by that system. An online game enables participation in gambling to multiple individuals whose number has not been predetermined.

3.2 What other restrictions have an impact on online supplies?

Online games may be operated only via a webpage available in the Czech language.

Online game servers and devices used to operate an online game must be located in an EU Member State, or in a state that is a party to the Agreement on the European Economic Area.

Cash deposits or cash payouts may also be made from the user account; however, only up to CZK 5,000 in 24 hours.

There are no currency restrictions.

The Gambling Act states the rules for IP blocking and payment blocking. The Ministry maintains a "blacklist" of illegal operators.

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

Machine-based gaming is permitted in both land-based and online forms.

A technical game means a game operated through a technical device directly handled by the bettor. Technical games include, without limitation, reel slot machines, electromechanical roulette and electromechanical dice.

Land-based technical games may be operated only in the gambling premises – casinos and the gambling room.

A minimum of 15 licensed game points of a technical game must be available for operation in the gambling room.

In a casino, there must be, throughout the casino's entire opening hours, at least three live game tables, and where a technical game is operated, there must be at least 30 technical-game-licensed game points. For each additional live game table above the minimum number of 30 technical-game-licensed game points, there can be another maximum of 10 technical-game-licensed game points in operation.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Operating games of chance without a licence is prohibited. This activity shall be considered an administrative offence and moreover a criminal offence.

Under Article 2 of Act No. 40/1995 Coll., on Advertising Regulation, advertising unlicensed gambling is prohibited.

The person operating games of chance is primarily responsible.

An administrative offence is also committed by those who enable access to a game that has not been licensed, or facilitates a meeting for the purpose of organising such a game, with the aim to gain enrichment either for himself or for another from such organisation or meeting.

There are no penalties for players.

4.2 What is the approach of authorities to unregulated supplies?

The new Gambling Act contains measures against illegal operators, such as IP blocking and payment blocking.

IP providers have 15 days from the publication of the website on the blacklist to restrict access to these websites, and payment service providers have 15 days from the publication of the unique identifier of the payment account on the blacklist to not carry out transactions related to illegal online gambling.

The Ministry has published on their websites a "Methodology on duties related to illegal online gambling".

Operating a game of chance without a licence is an administrative offence under the Gambling Act, punishable with a fine of up to CZK 50,000,000.

According to Article 252 of the Criminal Code, anyone operating unlicensed gambling can be punished with up to 10 years' imprisonment.

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

Yes; the principles of European law and case law of the Court of Justice of the European Union.

4.4 Are gambling debts enforceable in your jurisdiction?

Debts arising from licensed games of chance are enforceable.

5 Anticipated Reforms

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

The most significant pending issue is the preparation of still absent secondary technical regulations and effective application of new measures against illegal operators (IP blocking, payment blocking, administrative fees against illegal operators and its enforcement).

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Another important development is the building up of a central monitoring information system which should contain all data concerning operators, games of chance, bettors and technical facilities. The Ministry was forced to cancel an open public tender for the building up of such a system and publicly declared that during this year a new public tender shall be opened. The system, managed by the Ministry, should also contain a register of individuals barred from participating in gambling activities. The Ministry should state the scope, method and conditions by a Ministry decree.

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PETROŠ SEDLÁČKOVÁ LEGAL
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Petroš Sedláčková Legal is a Prague-based law firm specialised in providing legal services to all sectors of the gaming industry.

Petroš Sedláčková Legal has rich experience in the gambling field and provides professional and high-quality legal and compliance consultancy to key players in the Czech gambling market.

Besides the gambling industry, Petroš Sedláčková Legal provides a wide range of legal services, and the firm is thus able to guarantee its clients the highest level of experience and professionalism in the legal services it provides.

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Denmark

Horten

Nina Henningsen

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The regulation of all gambling activities in Denmark is the responsibility of the Danish Gambling Authority ("the DGA"), which is an entity under the Danish Ministry of Taxation. The collection of gambling duties is the responsibility of another entity under the Danish Ministry of Taxation called the Danish Tax Authority ("SKAT").

Legislative issues, including European regulation, are handled by a department in the Danish Ministry of Taxation.

Depending on the circumstances, the provision of gambling in Denmark is also regulated by the Danish regulation on marketing and consumer protection, which is the responsibility of the Danish Consumer Ombudsman, and by the Danish regulation on payment services, which is the responsibility of the Danish Financial Services Authority.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

The primary legislation for gambling activities in Denmark is the Danish Act on Gambling ("the Gambling Act").

The Gambling Act divides a "game" into three overall categories:

1) lotteries, where the chance of winning is solely based on chance;
2) combination games, where the chance of winning is based on a combination of chance and skills; and
3) betting, i.e. betting on the outcome of an event.

Any game which falls within one of these three categories and the activities pertaining to it will be covered by the Gambling Act. Subsequently, if a skill game, fantasy game, e-sport game or social game falls within one of these three categories, they will also be covered by the Gambling Act.

Supplementing the Gambling Act is a series of specific Executive Orders:

- Executive Order no. 1301 of 15 December 2011 on non-profit lotteries.
- Executive Order no. 1302 of 15 December 2011 on gaming machines in arcades and restaurants (as amended with Executive Order no. 1562 of 11 December 2015 and Executive Order no. 690 of 8 June 2016).
- Executive Order no. 1304 of 15 December 2011 on reimbursement rates for certain games.
- Executive Order no. 65 of 25 January 2012 on land-based betting.
- Executive Order no. 66 of 25 January 2012 on the provision of online betting.
- Executive Order no. 180 of 22 February 2016 on the filing of notifications to the Danish State Prosecutor for Serious Financial and International Crime by land-based and online casinos.
- Executive Order no. 772 of 9 June 2017 on land-based casinos.
- Executive Order no. 773 of 9 June 2017 on online casinos.

The provision of gambling in Denmark can also be subject to the general rules on marketing in the Danish Marketing Practices Act, which supplements the marketing provisions in the Gambling Act. Furthermore, financial regulation is relevant in relation to the supply of payment services, e-money, etc., as well as regulation on consumer protection in relation to information requirements towards players, and can be applicable. Finally, there are rules on the players' right to withdraw from a transaction and European regulation concerning anti-money laundering.

At the time of writing, there is no specific regulation of fantasy- and e-gaming in Denmark.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

If a game, which is subject to the payment of a stake to participate and which falls within one of the three categories mentioned above, is to be offered to the Danish market, a licence from the DGA is required.

However, the Danish gambling market is only partly liberalised, and thus the provision of lotteries is kept under a monopoly. The provision hereof is thus reserved for the Danish state-owned entity Danske Spil. Subsequently, it is not possible for anyone else to obtain a licence to provide lotteries.

Please note that the Gambling Act has recently been amended, with effect as of 1 January 2018, where betting on horse, dog and pigeon racing, in addition to online bingo, has been liberalised.

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A licence to provide and organise the games which have been liberalised may be granted to persons and legal entities (companies, etc.).

If the applicant is a physical person or a legal entity, they will have to reside within the EU/EEA in order to obtain a licence. If not, they must appoint a representative, who lives or has its place of business in Denmark.

There are no limits on the number of licences to provide online gambling or on having gaming machines in arcades or restaurants. There is a restriction on the numbers of land-based casino licences.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Only the entity responsible for the provision of gambling is required to hold a gambling licence. Subsequently, key suppliers, including platform providers, do not need to obtain a gambling licence.

It is possible to use sub-contractors and white labels to a wide extent. However, some parts of the provision of gambling cannot be outsourced. These include the responsibility, risk and managerial prerogative relating to the operation of games and the ownership of player data, including registration of players.

Even though a Danish licence-holder outsources parts of its operations to sub-contractors, it is still the licence-holder who is responsible towards the DGA.

Land-based gambling is subject to requirements for persons working with the gambling provider, without this being a personal licence or permission.

2.3 What restrictions are placed upon any licensee?

When a licence to provide gambling to the Danish market is issued, specific conditions are set forth in the licence. These usually relate to technical requirements and the games covered by the licence.

Subsequently, a licence to provide gambling will only cover the games which have been applied for, and if the licence-holder wishes to supply new games, approval from the DGA will have to be obtained.

Furthermore, the Gambling Act imposes a general requirement that the licence-holder must be able to provide gambling in a sound financial and professional manner, and although a licence has been granted, the DGA will continue to monitor the licence-holder to ensure the requirement continues to be fulfilled.

2.4 What is the process of applying for any gambling licence or regulatory approval?

In general, Danish gambling licences can be divided into two main categories: online gambling licences; and land-based gambling licences.

Online gambling

There are two different types of online gambling licences available in Denmark: a betting licence; and an online casino licence. The betting licence also covers the provision of land-based betting.

The application fee is DKK 267,500 (approximately EUR 35,900) for a betting licence or an online casino licence (2017 level); however, if the party applies for both a betting and an online casino licence, the combined fee is DKK 374,500 (approximately EUR 50,300) (2017 level). For applicants with annual gross gambling revenue of less than DKK 1,000,000 (approximately EUR 134,300), a 'revenue-restricted' licence may be issued, and the fee is DKK 53,500 (approximately EUR 7,200) per licence (2017 level).

Online gambling operators have to pay an annual fee for holding the licence. The fee is based on their gross gambling revenue. Additionally, the licence-holders have to pay gambling duty based on their gross gambling revenue; see question 2.7 below.

Any person wishing to provide online gambling to the Danish market must (i) be at least 21 years old, (ii) not have a legal guardian, (iii) not be subject to insolvency proceedings, (iv) not have been convicted of criminal offences, which render it probable that the person will abuse the access to gambling, and (v) not have any due debt to public authorities.

If the person does not live in Denmark or in another EU/EEA country, the person must have appointed a representative living in Denmark or – if the appointed representative is a legal entity – established in Denmark.

Any company that wishes to provide online gambling to the Danish market must be established within the EU/EEA or have an appointed representative in Denmark. Furthermore, the members of the board and the directors must meet the requirements for physical persons mentioned above.

When appointing a representative, the representative must be approved by the DGA and, in order to obtain this approval, the representative must meet requirements similar to the ones being imposed on physical persons mentioned above.

If these minimum requirements are met, the applicant must further prove that it will be able to provide online gambling in a sound financial and professional manner.

The assessment is made by the DGA based on a large number of financial and technical documents, which the applicant is required to submit.

The DGA may either choose to grant a full licence, grant a conditional licence or reject the application. An applicant failing to submit sufficient documentation or failing to live up to the requirements set forth by the DGA will normally be given a chance to take remedial action by providing the missing information before the application is rejected.

The DGA will consider the overall picture, and if they find that the necessary requirements are met, they will issue a licence.

As a main rule, there is no refund of the application fee, which will be forfeited if the application is rejected. If the applicant applies again, a new fee must be paid.

Land-based gambling

As for land-based gambling, there are two main types of land-based licences available in Denmark: a casino licence; and a limited licence covering only gaming machines.

The process when applying for a land-based casino licence and a licence to set up gaming machines is similar to the one described above and supplemented by the Executive Orders on land-based casinos and gaming machines in arcades and restaurants. Accordingly, there are, e.g., requirements for the persons working within a land-based casino.

Currently, there are seven land-based casino licences, and the DGA has issued a statement saying that it is currently not possible to apply for a land-based casino licence.

Applying for a licence to set up gaming machines is subject to a fee of DKK 614 (approximately EUR 82) (2017 level) per gaming machine.

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2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

From the handing in of an application to the DGA, the issuing of a licence will normally take between three and six months.

The different licences are issued for different periods of time: the 'revenue-restricted' licence to provide online gambling is limited to one year; whereas a normal licence to provide online gambling (betting and/or online casino) can be issued for up to five years.

The land-based casino licence is issued for a period of up to 10 years, while the limited land-based gaming machine licence is issued on an individual basis and may be granted for an unlimited period of time.

The DGA monitors the gambling market and can at any time open a procedure for revocation of a licence if it finds that the licence-holder can no longer supply games in a sound financial and professional manner. Such a procedure has to our knowledge not yet been opened.

Decisions made by the DGA may be appealed to the National Tax Tribunal, and such an appeal is free. The decision made by the National Tax Tribunal must be brought before the Danish courts within three months of the decision. Otherwise, the decision from the National Tax Tribunal will be final.

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

Only players above the age of 18 are allowed to participate in the online games that have been liberalised. Further, before participating in online gambling, the player must also be registered with the gambling provider. The registration process involves providing the online gambling provider with extensive information, including personal information.

All marketing of gambling must (i) present the odds of winning in a correct and balanced way so that it does not give the impression that the chance of winning is greater than it actually is, (ii) present gambling as entertainment, (iii) not be targeted at children or persons under 18 in relation to the design of the communication or the choice of media used, (iv) not use well-known persons to suggest, contrary to the truth, that participation in gambling has contributed to the person's success when that is not true, and (v) not have any content that gives the impression that participation in gambling offers a solution to financial problems or gives the player social acceptance.

When marketing a bonus offer, all conditions must be disclosed in a clear and unambiguous manner within the immediate context of the bonus offer. However, depending on the media type, a referral to another medium for additional information concerning the offer can generally be accepted in the form of 'one click away'.

There is no ban on international liquidity in betting pools and casino games.

Land-based licences have specific requirements regarding opening hours, etc. Land-based providers must give full access to the public (except for persons under the age of 18), regardless of nationality.

2.7 What are the tax and other compulsory levies?

The provision of games covered by the Gambling Act is subject to duty under the Danish Gambling Duties Act. The calculation of the duty varies depending on the type of game. For an overview, see the below schedule.

Type of game	Duty percentage payable	Duty period
Betting (both online and land-based)	20% of the gross gambling revenue, defined as received stakes minus paid out winnings ("GGR")	One calendar month
For betting exchanges (both online and land-based)	20% of the amount charged in commission	
Online casinos	20% of the GGR	One calendar month
For poker and other cases where the gambling operator's profit is the commission charged	20% of the amount charged in commission	
Land-based casinos	45% of the GGR minus the amount of special tipping chips plus an additional 30% on the part of the GGR that exceeds DKK 4.0 million (approximately EUR 538,000)	One calendar month
Physical gaming machines in restaurants or gaming arcades	41% of the GGR For gaming machines in restaurants an additional 30% on the part of the GGR that exceeds DKK 30,000 (approximately EUR 4,025) is added For gaming machines in gaming arcades, an additional 30% on the part of the GGR that exceeds DKK 250,000 (approximately EUR 33,600) is added plus DKK 3,000 (approximately EUR 400) per machine until 50 machines and DKK 1,500 (approximately EUR 200) per machine exceeding 50	One calendar month
Non-profit lottery:		
Cash prizes	15% of the amount that exceeds DKK 200 (approximately EUR 27)	15 days after the result of the lottery has been decided
Prizes consisting of goods or services (market value)	17.5% of the amount that exceeds DKK 200 (approximately EUR 27)	

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Type of game	Duty percentage payable	Duty period
Prizes in connection with free games (i.e. games where no stake is paid):		
Cash prizes	15% of the amount that exceeds DKK 200 (approximately EUR 27)	15 days after the result of the game has been decided
Prizes consisting of goods or services (market value)	17.5% of the amount that exceeds DKK 200 (approximately EUR 27)	

A negative GGR in one duty period cannot be carried forward for set-off against the positive GGR in the subsequent periods. Subsequently, if there is a negative GGR for one period, the duty must be declared at DKK 0.

Marketing costs that are not actual winnings for the players (e.g. bonuses, free spins, etc.) cannot be deducted when calculating the GGR.

In addition to these duties, a licensed online gambling operator must also pay an annual fee for the licence. The annual fee is fixed in classes varying from DKK 53,500 (approximately EUR 7,200) (2017 level) to DKK 4,815,000 (approximately EUR 647,000) (2017 level). The annual fee is due one month after the effective date of the licence and then on an annual basis.

Having a gaming machine is subject to an annual fee of DKK 614 (approximately EUR 82) per gaming machine.

With the liberalisation of betting on horse racing, betting providers that provide gambling on horse racing will be charged 8% of the gross gambling revenue of betting on horse races on Danish horse racing tracks. The fee will be calculated on a three-month period.

Depending on the circumstances, the gambling operator may also be obligated to pay regular Danish company tax (particularly if the gambling operator is established/incorporated in Denmark).

2.8 What are the broad social responsibility requirements?

The purpose of the Gambling Act is (i) to maintain the consumption of gambling services at a moderate level, (ii) to protect young people and other vulnerable people from being exploited through gambling or developing a gambling addiction, (iii) to protect players by ensuring that gambling is provided in a fair, responsible and transparent manner, and (iv) to ensure public order and to prevent gambling as a means to support crime.

This results in several obligations being imposed on Danish licence-holders and especially on holders of a Danish licence to provide online gambling.

Such obligations include the obligation for online gambling providers to monitor the players' consumption of gambling, providing the players with the possibility of 'cooling off periods' and providing access to a state-controlled Register of Voluntarily Excluded Players ("ROFUS"), as well as having their gambling system set up so that every time a player attempts to log in, the system automatically checks whether the player has registered himself with ROFUS, and if so, the system denies him access to his account.

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

Danish licence-holders may only receive payments into a gambling account from a payment services provider that provides these services legally in Denmark pursuant to the Danish Payment Services and Electronic Money Act.

According to this Act, payment services may only be provided in Denmark by certain types of providers which have been granted authorisation in Denmark, in the European Union or in a country with which the European Union has entered into an agreement for the financial area.

If the service provider does not hold a Danish authorisation, it cannot begin its operation in Denmark before it has obtained a cross-border authorisation, *cf.* the Danish Financial Business Act. The authorisation is granted when the Danish Financial Services Authority has received notification from the supervisory authorities in the service provider's home country.

Furthermore, gambling operators are not allowed to provide credit facilities to the players.

The 4th AML Directive was implemented as of 26 June 2017 via the new Danish AML Act. This had the effect that the AML regulation now covers both online and offline casinos and betting; thus, as of 26 June 2017, all gambling providers are required to identify and assess the risk of money-laundering and financing of terrorism within their business on the basis of their business model. In regards to that risk assessment, they are required to have sufficient written policies, procedures and controls that can effectively limit the risk of money-laundering and financing of terrorism. Additionally, the gambling providers are required to commence a customer due diligence with their customers. In certain situations, customer due diligence may require enhancement, while in other situations a simplified due diligence is sufficient. The new AML Act is very comprehensive and the above is not exhaustive. At present, it is not known if the DGA will make a specific guideline for gambling or if gambling will be included in the general guideline from the FSA.

Gambling providers are also obligated to inform the Danish State Prosecutor for Serious Economic and International Crime of any suspicious transactions.

There is no specific regulation concerning gambling with virtual currencies and, thus, the Gambling Act will apply if such activity can be characterised as "gambling" pursuant to Section 5(1)(i) of the Gambling Act, the most central condition being whether there is a chance of winning a prize.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Online gambling is defined as gambling activities between a player and a gambling provider through the use of remote communication.

It is prohibited to offer online lotteries, including bingo, as well as betting on horse or dog racing and betting on carrier pigeons. As mentioned above, these activities are reserved exclusively for the state-owned company Danske Spil.

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Any gambling provider violating this prohibition risks losing its licence and/or being prosecuted by the DGA, which can lead to fines being imposed.

Similarly, if a gambling provider provides games which are not covered by the licence, the gambling provider risks losing the licence and/or being imposed with a fine.

If a gambling provider who directs its provision of gambling to the Danish market does not have a licence, the DGA can further ask the Bailiff's Court to issue an ISP block of the website.

3.2 What other restrictions have an impact on online supplies?

The DGA has the legal grounds in the Gambling Act for asking the Bailiff's Court to ISP block an unlicensed website, which they have used on several occasions. Every time ISP blocking is granted, the relevant websites are listed on the DGA's website.

The DGA also has the legal grounds for asking the Bailiff's Court to order the payment services providers to block payments to unlicensed operators. However, at the time of writing (October 2017), the payment services providers do not have the technical measures needed.

It is a requirement under the Danish regulation that the website (and all communication with the players) is available in Danish and the gambling duty is calculated and payable in Danish Kroner. However, the website can also be available in other languages and use other currencies.

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

It is possible to obtain a licence to set up and operate slot machines in (i) restaurants with a licence to serve alcoholic beverages (maximum three gaming machines), and (ii) slot machine arcades (premises without a licence to serve alcoholic beverages, but where the place is staffed during business hours).

The slot machines must be separate and identifiable units. Furthermore, they must be approved by an accredited testing institute and connected to a central monitoring system at the DGA. This approval is generally valid for five years.

The slot machines must be arranged in a way that only coins or vouchers that can be exchanged for money can be used for payment of the game. However, the DGA can accept other forms of payment.

The stake per game is limited to DKK 1 (approximately EUR 0.13) and the maximum winnings per game to DKK 600 (approximately EUR 80).

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

It is the entity which provides gambling to the Danish market which will be held liable for breaches of the Danish gambling legislation. The customer will not be held liable.

Anyone assisting the gambling provider can in theory be considered complicit and thus also be held liable.

4.2 What is the approach of authorities to unregulated supplies?

The Danish gambling market was changed significantly on 1 January 2012 with the partial liberalisation of online gambling. Since 1 January 2012, there have been ISP blocking cases, which have been handled in the Bailiff's Court. To our knowledge, no fines have been issued nor have any other enforcement attempts been made against gambling providers carrying out illegal activities.

Once the DGA has established that a gambling provider aims its gambling activities towards the Danish market without a Danish licence, the DGA's first step is to contact the gambling provider to see if it will stop the activities on the basis of the DGA's request. If it does not, the DGA will proceed with asking the Bailiff's Court to grant an injunction ordering the Danish Internet providers to block the websites.

As mentioned above, the DGA also has the legal grounds for asking the Bailiff's Court to order the payment services providers to stop financial transactions. However, at the time of writing (October 2017), the technical measures have yet to be made available.

Land-based casinos or gaming arcades can also be shut down by the DGA through the use of the Bailiff's Court and be imposed with fines if they provide such services without the necessary licences.

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

The European Court of Justice has established through its practice that gambling for money is covered by Articles 49 and 56 of the TFEU.

The European Court of Justice has also ruled that national measures which are able to hinder the exercise of these freedoms or make the exercise of those rights less attractive must be justified by overriding public interest, be suitable for securing the attainment of the objective they pursue and not go beyond what is necessary in order to attain it. According to the European Commission, the Gambling Act fulfils these requirements, as the Gambling Act was notified to the Commission in accordance with the Information Procedure Directive.

4.4 Are gambling debts enforceable in your jurisdiction?

It is necessary to differentiate between legal gambling and illegal gambling.

As for legal gambling, any debt is in theory enforceable, but there should be no indebtedness, as the provision of gambling using a credit facility is not allowed. Subsequently, participants must deposit the amount of money they intend to play for, before being able to play.

Illegal gambling debts are generally not enforceable, as they will most likely be considered contrary to the general Danish principle of law and decency.

5 Anticipated Reforms

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

An amendment of the distribution funds from Danske Spil A/S is pending.

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Nina Henningsen has been involved in several high-profile cases relating to the media and entertainment industry. Nina thus advises many national and international media clients in matters regarding clearance of copyrights and related rights in connection with the numerous new ways of distribution of radio, TV and music on all platforms, including "start-over" and "catch-up" TV, "TV-Everywhere" SVOD, TVOD, EST and APPs.

Nina is also head of Horten's Gambling Law team, which is Denmark's largest and most experienced. She thus has thorough experience in advising major international online gambling providers and platform providers on all aspects of Danish gambling legislation, including the complex licensing process.

Nina Henningsen is ranked in the following legal directories:

- *The Legal 500* – Leading Individual – Media & Entertainment.
- *Chambers* – Gaming & Gambling (worldwide) and TMT.
- *Best Lawyers* – Media Law.

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Dutch Caribbean

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The Dutch Caribbean is a grouping of six island territories of the Kingdom of the Netherlands, regardless of their legal status in Dutch law, that are located in the Caribbean: (1) Curaçao (including the islet of Klein Curaçao, "**Little Curaçao**"); (2) Aruba; (3) Sint Maarten (comprising only the southern half of the island of Saint Martin); (4) Bonaire (including the islet of Klein Bonaire, "**Little Bonaire**"); (5) Sint Eustatius; and (6) Saba. Together, Aruba, Bonaire and Curaçao form a group referred to as the "**ABC Islands**". Collectively, Aruba and the other Dutch islands in the Caribbean are often called the (formerly) "***Netherlands Antilles***" or the "**Dutch Caribbean**".

Together with the Netherlands, the islands of Aruba, Curaçao and Sint Maarten – which have country status – form the "**Kingdom of the Netherlands**". The islands of Bonaire, Sint Eustatius and Saba do not have country status and are special municipalities of the country of the Netherlands. All of the islands in the Dutch Caribbean were, at some point in their history, part of the constituent country of the *Netherlands Antilles* and its predecessor, the colony of Curaçao and its dependencies. By contrast, the former Dutch colony of Suriname was not considered to be part of the Dutch Caribbean, although it is relatively close by, on the continent of South America. For the purposes of this chapter, we will provide an introductory description of the development of the various gaming regimes in this promising region.

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

As already mentioned, together with the Netherlands, these islands form the Kingdom of the Netherlands. The citizens of these countries all share a single nationality: Dutch. Aruba has no administrative subdivisions but, for census purposes, is divided into eight regions.

Aruba has a population of over 150,000 within an area of 179 square kilometres, and is located 29 kilometres north of the coast of Venezuela. Its capital is "**Oranjestad**". In March 1983, Aruba reached an official agreement within the Kingdom for its independence, to be developed in a series of steps as the Crown granted increasing autonomy. In August 1985, Aruba drafted a constitution that was unanimously approved. On 1 January 1986, after elections were held for its first parliament, Aruba seceded from the Netherlands Antilles; it officially became a country of the Kingdom of the Netherlands. Full independence was projected in 1996.

Curaçao (*Papiamentu*: "**Kòrsou**") is located approximately 65 kilometres north of the Venezuelan coast. Curaçao includes the main island and the uninhabited island of Klein Curaçao ("**Little Curaçao**"). It has a population of over 150,000 within an area of 444 square kilometres and its capital is Willemstad. Curaçao was part of the *Netherlands Antilles* until its dissolution in 2010.

Sint Maarten encompasses the southern 40% of the Caribbean island of "**Saint Martin**", while the northern 60% of the island constitutes the French overseas collectivity of Saint Martin. Its capital is "**Philipsburg**", and it has a population of 37,000 within an area of 34 square kilometres.

The authority to grant a casino licence on Aruba is based on article 1, LHZ, which states that the "*Departamento di Asuntonan di Casino*" ("**DAC**") of the Ministry of Justice is authorised to grant licences, under conditions and guarantees to be set by this ministry, for the operation of hazard games in specifically designated and equipped hotels. Granted activities are described in the licence and include classic Las Vegas-style casino games, such as blackjack, baccarat, American roulette, poker and slot machines. Online gambling is legal on Aruba. The government issues licences to online gaming providers. Operators may legally serve both local and foreign gamblers. Often called the "*Las Vegas of the Caribbean*", Aruba boasts 12 casinos, sparking the island's nightlife. As the originator and home of Caribbean stud poker, Aruba is the host of professional poker tournaments and many different types of slot machine, from progressive jackpots to nickel machines. Casinos in Aruba are located at most large resorts in Palm Beach and in downtown Oranjestad. In general, opening hours of casinos in Aruba are 11am for slots and 1pm through early morning for table games; however, hours may vary seasonally.

The "*Curaçao Gaming Control Board*" ("**CGCB**", www.gamingcontrolcuracao.org), advisor to the Curaçao Minister of Justice, is the gaming regulator for the land-based casino industry of Curaçao. It was formed in 1999. Its mission statement is to assert an effective and efficient control of the gaming industry of Curaçao, with the specific aim of preventing fraud and money laundering and ensuring collection of tax income from the casino industry. Curaçao created legislation for regulating online gambling in 1993. The CGCB regulated online gambling during the early years, but this responsibility was redirected by the Curaçao Ministry of Justice to the "*Curaçao eGaming Licensing Authority*" ("**CIGA**") following regulation decentralisation in 2002. Decisions on the outcome of a master licence application are at the sole discretion of the Minister of Justice. Master licence holders are allowed to grant sub licences via an "**IP agreement**". Compliance requirements for sub-licence holders are regulated under the responsibility of the contracted master licence holder.

In Sint Maarten, gambling operations are substantial, with a total of 13 (official) casinos and five cities with gambling facilities. However, 12 (!) of those casinos are yet to be licensed and more than half of these ventures are not connected to a hotel, as should usually be the case

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in competitive responsible gaming regimes. No regulatory authority exists at this time on Sint Maarten. As a result, many illegal gambling venues exist on the island, many of which offer poker games, and there are sports book facilities available as well. Currently, the Department of Economic Licences ("**DEL**") has placed a moratorium on all gambling licences. The 'official' ventures that do exist at the time of the introduction of the moratorium are being tolerated. The moratorium includes licensing for remote gambling, although, as already mentioned, illegal ventures are hardly meeting any opposition from the government of Sint Maarten. In September 2017, the island was hit hard by hurricane *Irma*. This has had a devastating effect on the island's economy. The island is no longer considered to be economically and independently viable for years to come.

Bonaire, Sint Eustatius and Saba (BES Islands)

The islands of Bonaire (www.bonairegov.nl), Sint Eustatius (www.statiagovernment.com) and Saba (no official website) became special municipalities of the Netherlands on 10 October 2010, when the *Netherlands Antilles,* until that moment a constituent country of the Kingdom of the Netherlands, ceased to exist. These islands are referred to as the "**BES Islands**" or "**Caribbean Netherlands**", not to be mistaken with the "*Dutch Caribbean*".

Bonaire (Papiamentu: "**Boneiru**") is located off the north coast of South America, near the western part of Venezuela. The island has a permanent population of 17,400 and an area of 294 square kilometres (together with the nearby uninhabited Klein Bonaire). Sint Eustatius, also known affectionately to the locals as "**Statia**", lies southeast of the British Virgin Islands. The island has an area of 21 square kilometres and has approximately 4,000 inhabitants. The name of the island, "Sint Eustatius", is the Dutch name for Saint Eustace's, a legendary Christian Martyr. Saba is the smallest of the BES Islands. It consists largely of the (potentially active) volcano "*Mount Scenery*". Saba has a land area of 13 square kilometres, with a population of 2,000 inhabitants.

The BES Islands are (since the dissolution of the *Netherlands Antilles* on 10 October 2010, "***10/10/10***") governed as separate "*public bodies*" of the country of the Netherlands.

The term public body is a literal translation from the Dutch term "*openbaar lichaam*". It is a general denomination for administrative divisions within the Dutch state, such as the central government, a province, a municipality or a water board. These types of political entities are defined by the Dutch constitution. Article 134 of the constitution provides for the definition of other public bodies by law. In the case of the BES Islands, a public body has been designated to govern each region, although the islands do not constitute provinces. The BES Islands have a joint "**Kingdom Representative**" (Dutch: "*Rijksvertegenwoordiger voor de openbare lichamen Bonaire, Sint Eustatius en Saba*", or: "*Rijksdienst Carabisch Nederland*", in short: "***RCN***", www.rijksdienstcn.com). The Kingdom Representative holds office on each of the BES Islands. The Kingdom Representative is commissioned by the Dutch government and holds office for six years. Daily administrative authority is granted to the "**Executive Council**" (Dutch: "*Bestuurscollege*"), while the "**Island Council**" (Dutch: "*Eilandsraad*") advises the Executive Council as a democratic body of representatives.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Each country within the Kingdom of the Netherlands is responsible for its own regulation, with the exception of Kingdom relations and defence. For this purpose, every country within the Kingdom has its own laws and regulations, including the regulation of gambling activities. As a result, the authority of the Dutch Gambling Authority ("**DGA**") is limited to the country of the Netherlands only. On the other hand, gambling licences that have been granted in other countries within the Kingdom than the Netherlands are not valid within the country of the Netherlands. Furthermore, the "**Priority Criteria**" as formulated by the DGA do not allow operators from these (or other) countries to actively target Dutch residents of the country of the Netherlands. As a result, when engaging in this form of activity, these operators may receive a fine. The DGA has been known to fine operators as well as affiliated suppliers, although these actions should be seen as symbolic rather than effective, since the ability of the DGA to collect these fines is limited.

Aruba's first casino opened in 1959. Since then, it has been a popular tourist destination for gamblers. Casinos are open to both locals and foreigners; however, locals are prohibited from visiting casinos more than eight times per month. Although the island is famous for land-based casinos, most other forms of gambling are also legal in Aruba. The relevant laws applying to the supervision of gambling on Aruba are the "**State Ordinance for Hazard Games**" (AB 1990 GT 44, Dutch: "*Landsverordening Hazardspelen*", or: "**LHS**"), the "**State Ordinance for Licensing Hazard Games**" (AB 1990 GT 45, Dutch: "*Landsverordening Speelvergunningsrecht Hazardspelen*", or: "**LSH**"), the "**Regulations on Taxation of Hazard Games**" (AB 1990 GT 8, Dutch: "*Besluit ter uitvoering van artikel 3 van de Landsverordening Speelvergunningsrecht Hazardspelen*", or: "**BLSH**"), the "**Ordinance on Lotteries**" (AB 1988 GT 25, Dutch: "*Loterijverordening*", or: "**LVO**"), the "**Lottery Decree**" (AB 1988 GT 26, Dutch: "*Loterijbesluit*", or: "**LB**"), the "**State Ordinance for the State Lottery**" (AB 1992 GT 115, Dutch: "*Landsverordening Landsloterij Aruba*", or: "**LLA**"), the "**State Ordinance on Airport Gaming Devices**" (AB 2006 GT 13, Dutch: "*Landsverordening Speelautomaten Luchthaven*", or: "**LSL**"), the "**Ordinance on Licences**" (AB 2002 GT 1, Dutch: "*Vergunningsverordening*", or: "**VV**"), the "**Aruban Criminal Code**" (AB 1991 GT 50, Dutch: "*Wetboek van Strafrecht van Aruba*", or "**WvS**"), the "**Civil Code of Aruba**" (AB 1989 GT 100, Dutch: "*Burgerlijk Wetboek van Aruba*", or: "**BW**"), and the "**State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing**" (AB 2011 no. 28, Dutch: "*Landsverordening voorkoming en bestrijding witwassen en terrorismefinanciering*", or: "**LWTF**"). The relevant laws applying to the supervision of gambling on Curaçao are the "**State Ordinance Casino Industry Curaçao**" (AB 1999, no. 97, Dutch: "*Landsverordening Casinowezen Curaçao*", or: "**VCC**"), the "**State Decree Casino Industry Curaçao**" (Dutch: "*Landsbesluit Casinowezen Curaçao*", or: "**BCC**"), the "**State Ordinance regarding Labour in Hotels, Restaurants, and Casinos**" (PB 2000, no. 67, Dutch: "*Arbeidsbesluit hotels, restaurants en casinos*", or: "**BHRC**"), the "**State Ordinance concerning the Exploitation of Hazard Games on the International Market by Means of Service Lines**" (PB 1993 no. 63, Dutch: "*Landsverordening buitengaatse hazardspelen*", or: "**LBH**"), the "**National Ordinance Penalization of Money Laundering**" (PB 1993, no. 52, Dutch: "*Landsverordening strafbaarstelling witwassen van geld*", or: "**LSWG**"), the "**National Ordinance Identification when Rendering Financial Services**" (O.G. 1996 no. 23, Dutch: "*Landsverordening identificatie bij financiële dienstverlening*", or: "**LIF**"), the "**National Ordinance Reporting of Unusual Transactions O.G.**" (PB 1996, no. 21, Dutch: "*Landsverordening melding ongebruikelijke transacties*", or: "**MOT**"), and the "**Penal Law of Curaçao**" (Dutch: "*Strafwet van Curaçao*", or: "**SvC**"). As per January 2014, the CGCB has issued licence regulations for sports betting. Land-based casino licence holders, who wish to offer sports betting in their casino, may apply for the required CGCB written approval. Upon approval, the regulations will be attached to the casino licence, and the licensee's sports betting must be conducted in accordance with all of these regulations.

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On Sint Maarten, no regulatory framework is currently in force. Sint Maarten did 'inherit' the former Dutch Antilles' State Ordinance for Hazard Games (PB 1993, no. 63) which, in principle, offers the possibility to grant licences that allow remote gambling operations. However, the DEL has placed a moratorium on all gambling licences. The moratorium includes licensing for remote gambling.

Bonaire, Sint Eustatius and Saba (BES Islands)

On each of the BES Islands, article 1 of the "**Hazard Games BES I Act**" (Dutch: "*Wet hazardspelen BES I*", or: "**HGBES I**") allows the granting of a licence to operate a land-based casino by each Executive Council. The "**Hazard Games BES II Act**" (Dutch: "*Wet hazardspelen BES II*", or: "**HGBES II**") regulates games of chance that are deemed to have a social or cultural purpose. Lottery operations are regulated by the "**Lottery Act BES**" (Dutch: "*Loterijwet BES*", or: "**LWBES**"). Taxation of games of chance is regulated in the "**BES Gaming License Tax Act**" (Dutch: "*Wet speelvergunningsrecht hazardspelen BES*", or: "**WSHBES**"). The "**Gaming Tax Act**" (Dutch: "*Wet op de kansspelen*", or: "**WOK**") does not allow remote gambling activities on the BES Islands.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

On Aruba, in order to operate a land-based casino, an entity does not necessarily have to be of Aruban origin. However, a casino licence shall only be granted if the operator operates a hotel on the Island of Aruba. On Curaçao, the applicant of a casino licence (online as well as land-based) needs to be a locally formed legal entity, with a local managing director, as certified by the "**Curaçao Chamber of Commerce & Industry**" ("**CCC**"). Furthermore, the applicant should hold a business permit, but it is allowed to delegate these responsibilities to a management services company. Moreover, a land-based casino licence shall only be granted if the operator operates a hotel on Curaçao. A separate (cumulative) licence exists, as already mentioned, for sports betting operations.

On Sint Maarten, there is currently no regulatory framework in place. The DEL has placed a moratorium on all gambling licences. The moratorium includes licensing for remote gambling.

Bonaire, Sint Eustatius and Saba (BES Islands, special municipalities of the Netherlands)

On the BES Islands, the operation of a land-based casino needs to be connected with a hotel venture (HGBES I). No separate casino ventures are allowed. Remote gambling operations are not allowed. Furthermore, those who wish to organise a *bingo* or "***Bon kun'e***" may apply for a licence, as regulated by HGBES II. Legal entities may be granted a lottery licence, as regulated by LWBES. Small promotional lotteries shall be tolerated, if compliant with local regulations. On Bonaire, licences have been granted to only two small boutique casinos. The other BES Islands do not host land-based casinos at this time.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

On Aruba, as already mentioned, the operation of a land-based casino needs to be connected with a hotel venture. No separate casino ventures are allowed, with the exception of a special licence that may be granted to a supplier of gaming devices that are placed at the airport. Furthermore, other than the casino licence, no special licences apply in the field of gaming as most requirements have been included in the casino licence, such as a required certificate of good standing for all casino employees. Casino employees, however, are subject to prior written approval by the DAC.

Furthermore, participants in the supplier chain need to comply with the general VV that introduces rules and regulations regarding the distribution of alcohol, opening hours and related topics. Interestingly enough, the operator of the casino is not required to hold a casino licence in person, as long as the operator has engaged in a "*casino contract*" with the licence holder.

On Curaçao, as already mentioned, the operation of a casino needs to be connected to a hotel venture as well. The hotel is required to operate a minimum of 150 hotel rooms, although some exceptions have been made to this rule in the past regarding already existing ventures. The CGCB also accepts personal applications by legal individuals, as long as a local entity is still in the process of formation. In 2015, the application of the Curaçao establishment *Campo Alegre* for a land-based casino licence was denied by the CGCB. The applicant operated the required minimum of 150 rooms; however, the application was nevertheless denied, since a substantial number of the guests of the applicant, interestingly enough, appeared to generate income, providing "*exotic*" services to other guests of local origin when staying on the premises. Claims by the applicant that these guests should be seen as only "exotic tourists" having a good time (as it appears with other tourists) were denied by the courts.

Some specific rules and regulations regarding personnel working in casinos are specified in the BHRC. As a general rule, casino staff need to be of good standing and aspect and without criminal record. Curaçao offers two types of licences for remote gaming: a master licence; and a sub-licence. Whereas both licences fully cover gaming operations, the distinction is that a master licence holder may license third parties. Sub-licence holders, however, do not have the ability to sub-license. The sub-licence has the same rights as a full licence.

Bonaire, Sint Eustatius and Saba (BES Islands)

On the BES Islands, as already mentioned, the operation of a casino needs to be connected with a hotel venture. Since only the BES Island of Bonaire hosts two small boutique casinos, specific details concerning the operation of these casinos have been arranged in the licence itself.

2.3 What restrictions are placed upon any licensee?

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

The licence holder of a casino on Aruba remains liable and responsible at all times for all casino operations, even though he is allowed to delegate casino operations to another operator, as long as these parties have engaged in a "*casino contract*". This contract may not be changed without prior DAC approval. The licence holder shall make sure that there shall be no abuse of alcohol on the premises. Daily supervision shall be delegated to a casino supervisor. Furthermore, the operator is required to allow state casino inspectors on the premises at any time. The licensee is not allowed to provide any form of credit to Aruban residents.

A Curaçao licence holder operating a land-based casino remains – similar to rules and regulations on Aruba – liable and responsible at all times for all casino operations, even though he is allowed to delegate casino operations to another operator, as long as these

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parties have engaged in a "*casino contract*". This contract may not be changed without prior CGCB approval. Furthermore, the CGCB needs to approve the game rules and all slot machines, as well as opening hours. In general, the applicant should prove to the satisfaction of the CGCB that the casino business meets the minimum internal control standards ("**MICS**"). In general, a holder of a licence for remote operations, interestingly enough, shall not be able to receive cash flow on the island of Curaçao if this cash flow is related to gambling activities. Therefore, online licence holders need to resort to an offshore bank account, e.g. on the island of Malta.

On Sint Maarten, there is currently no regulatory framework in place. The DEL has placed a moratorium on all gambling licences. The moratorium includes licensing for remote gambling.

Bonaire, Sint Eustatius and Saba (BES Islands)

On the BES Islands, as already mentioned, the operation of a casino needs to be connected with a hotel venture. Since only the BES Island of Bonaire hosts two small boutique casinos, specific details concerning the operation of these casinos have been arranged in the licence itself.

2.4 What is the process of applying for any gambling licence or regulatory approval?

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

The application of a casino licence (including online licences) on Aruba should be filed with the DAC. The applicant shall have to comply with several requirements and provide all the required documentation, including, but not limited to: (1) the Articles of Incorporation and Rules and Regulations; (2) disclosure of all directors as well as (if applicable) the Board of Commissioners; (3) disclosure of all beneficial owners; (4) disclosure of affiliated ventures; (5) detailed description of operations; (6) disclosure of the organisational structure; (7) information on company solvability; (8) a detailed floor plan of the casino; (9) an excerpt from the CCC; (10) business establishment permit; (11) information on business hours; (12) a Certificate of Good Standing; (13) a Certificate of Incorporation; (14) a Casino Operating Agreement; (15) a list of all personnel employed, combined with a certificate of good conduct of all employees; and (16) rules of all games that are being offered by the operator.

According to article 2, LHS, the licence is personal and non-transferable. Only a person of good standing may be allowed to operate gambling activities. Operations must, at all times, be in compliance with any and all conditions and rules and regulations set forth by the Minister of Justice, otherwise there may be a penalty of closure and/or withdrawal of the permit by the DAC. The granting of a casino licence is subject to ministerial discretion and is granted via ministerial decree. Based on article 4, LHS, the licence shall be subject to renewal every five years.

The application form for a licence to operate a land-based casino on Curaçao should be filed with the CGCB, together with a model business plan. Furthermore, the applicant should provide proof of the fact that: (1) his hotel project and, consequently, the casino are primarily aimed at the international market; (2) the casino is viable within the hotel project; (3) that a minimum paid-up capital is available for the casino, equal to the amount invested for the casino, increased by Nafl. 100,000; and (4) all VCC requirements have been met. As a first step in obtaining a licence to supply remote gaming facilities on Curaçao, an applicant needs to register with the CCC as a local legal entity. This will trigger a mandatory investigation by the Ministry of Justice, which may take approximately six weeks to complete.

If the applicant has not been rejected at this time, he may be granted a provisional licence. The applicant needs to provide information including, but not limited to: (1) declarations of good standing for all ultimate beneficial owners involved; (2) copies of the passports of the ultimate beneficial owners; (3) bank references of the ultimate beneficial owners; (4) copies of the utility bills of the ultimate beneficial owners, no older than three months; (5) proof of the fact that minors shall effectively be denied access to the online casino; (6) proof of sufficient information on the website for the prevention of gambling addiction; (7) details on the location of the customer and transaction database, which needs to located on Curaçao; (8) information on the primary market the website shall be targeting; (9) details concerning the online software that shall be used; (10) third-party certification of the random generator software; and (11) a financial feasibility study for the first three years.

Bonaire, Sint Eustatius and Saba (BES Islands)

Licence applications need to be filed with the Executive Council of the desired island.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

On Aruba, based on article 4, LHS, a land-based casino licence shall be subject to renewal every five years, although the DAC may also revoke the licence at any time, giving three months' notice. The casino licence shall be revoked if the hotel operations are not consistent.

On Curaçao, a land-based casino licence is issued for a term of three years. Renewal of the licence is subject to the discretion of the CGCB. A Curaçao master licence for the operation of remote gaming is issued for a term of five years. In principle, it shall be renewed automatically, subject to compliance with regulations. The sub-licence is valid for an indefinite period, depending on the validity and general terms and conditions of the master licence, in accordance with the *IP agreement*. However, the Minister of Justice shall retain the discretionary authority to revoke a master licence if and whenever he sees fit. By IP agreement, the master licence holder also tends to retain the authority to revoke a sub-licence if circumstances so dictate.

Bonaire, Sint Eustatius and Saba (BES Islands)

Since only the BES Island of Bonaire hosts two small boutique casinos, specific details concerning the operation of these casinos have been arranged in the licence itself.

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

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

On Aruba, in addition to licence requirements, the licence holder needs to comply with VV regulations, which include rules and regulations regarding the usage of alcohol on the premises. No visitors under the age of 18 are allowed. The licence holder is not allowed to provide Aruban residents with any form of credit.

On Curaçao, in addition to licence requirements, the licence holder is responsible for maintaining a policy that shall prevent gambling addiction. Also for this purpose, the "*150 rooms rule*" was introduced, safeguarding that a majority of the income of the licence holder would derive from hotel operations and not gambling operations.

In addition to licence requirements regarding remote gambling, sub-licence holders need to comply with all specific instructions of the master licence holder, in compliance with the IP agreement. General

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regulations require that the operator shall at all times display a specific logo, which certifies that the licence holder is operating under a valid master licence or sub-licence. Furthermore, the website needs to display information on the prevention of gambling addiction.

Bonaire, Sint Eustatius and Saba (BES Islands)

Since only the BES Island of Bonaire hosts two small boutique casinos, specific details concerning the operation of these casinos have been arranged in the licence itself.

2.7 What are the tax and other compulsory levies?

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

On Aruba, article 1, BLHS imposes a monthly 4% levy on gross casino proceeds plus a fixed fee of AFL 5,000 (Aruban Florins).

Article 1, LB requires an Aruban lottery licence holder to distribute 80% of all lottery proceeds after taxes: (a) 40% of the proceeds are to be distributed to lottery winners; and (b) 40% of the proceeds are to be distributed to sports organisations.

Curaçao has introduced several Economic Zones ("**E-Zones**") with a reduced corporate income tax rate of 2% on net profits, which is expected to be maintained until 2026, provided companies remain in annual compliance. The turnover generated through local business may not exceed 25% of the total turnover. This rate is not applicable on the profit of an E-Zone company if it is generated by the sale of goods or services to companies located in the former *Netherlands Antilles* or generated through the rendering of services to affiliated companies located in the country. In addition, there is no import duty or turnover tax charged on goods entering the E-Zones. The fees for a remote master licence on Curaçao include a Nafl. 60,000 setup fee, plus a subsequent monthly Nafl. 10,000 for the first two years. After that, the operator can negotiate with the government of Curaçao. Sub-licence fees are set by master licence holders and may vary.

Bonaire, Sint Eustatius and Saba (BES Islands)

Gaming tax imposition is arranged in the WSHBES.

2.8 What are the broad social responsibility requirements?

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

On Aruba as well as Curaçao – with the exception of general regulations imposing the responsibility to safeguard visitors against the potential hazards of repetitive gambling and abuse of alcohol – no specific rules and regulations exist regarding limitations on advertising casino ventures to the general public. Minors are not allowed to visit an Aruban or Curaçao casino. Furthermore, the number of visits to a casino by an Aruban resident has, by law, been limited to eight per year.

Bonaire, Sint Eustatius and Saba (BES Islands)

As part of the country of the Netherlands, the BES Islands need to comply with Dutch law. For this, we would like to refer you to our Netherlands chapter within this guide.

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

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

Based on article 9, LWTF, a service provider is forbidden to enter into a business relationship or to carry out a transaction, if: (1) it has not performed customer due diligence; (2) it is not able to carry out the customer due diligence; or (3) the results of the customer due diligence do not comply with LWTF requirements. On Aruba, article 6, paragraph 1, subsection e. of the LWTF states that a financial service provider shall perform customer due diligence if it performs casino cash transactions with a value of AFL 5,000 or more. Furthermore, article 1, subsection 5 defines the operator of a casino as a designated non-financial service provider, extending the due diligence obligations of the service provider to the casino operator as well. All unusual transactions need to be reported without any delay to the "**Reporting Center Unusual Transactions**" (article 20, LWTF, Dutch: "*Meldpunt Ongebruikelijke Transacties*", or: "**MOT**"). The following information needs to be provided: (1) the identity of the client; (2) the nature and number of the identity document of the client; (3) the nature, time, and place of the transaction; (4) the amount and designated use and origin of the money, securities, precious metals, or other values involved in a transaction; (5) the circumstances based on which the transaction is considered unusual; (6) if it concerns a transaction regarding a high-value object, a description of the object in question; and (7) the indicator or indicators pursuant to which the transaction has been designated as unusual.

AML regulations of Curaçao are generally comparable with those of Aruba, with the difference that there has been a more extensive implementation of FATF regulations. As a result, regulations on combating the financing of terrorism have also been introduced. Curaçao has also instituted a *Reporting Center Unusual Transactions* ("**MOT**", www.mot.cw). Rules and regulations are generally comparable to those of Aruba, with the exception that rules and regulations are a little more advanced than those of Aruba.

Bonaire, Sint Eustatius and Saba (BES Islands)

As part of the country of the Netherlands, the BES Islands need to comply with Dutch law. For this, we would like to refer you to our Netherlands chapter within this guide.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

Online gambling is legal on Aruba and Curaçao. The government issues licences to online gaming providers. Remote operators may legally serve both local and foreign gamblers. On Sint Maarten, there is currently no regulatory framework in place. The DEL has placed a moratorium on all gambling licences. The moratorium includes licensing for remote gambling.

Bonaire, Sint Eustatius and Saba (BES Islands)

As part of the country of the Netherlands, the BES Islands need to comply with Dutch law. Remote gambling is currently not allowed. For this, we would like to refer you to our Netherlands chapter within this guide.

3.2 What other restrictions have an impact on online supplies?

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

Although the Netherlands-based gambling regulator DGA has no authority on Aruba, the DGA "*Priority Criteria*" do not allow operators from these countries to actively target Dutch residents of the Netherlands. As a result, if an operator engages in this form of activity, the DGA may impose fines: the DGA has been known to fine foreign operators as well as affiliated suppliers. This is worth

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mentioning regarding all operators who use Dutch language on their websites, since the Dutch language is only spoken in a limited number of regions. The DGA has been known to be indiscriminate against all operators, using the Dutch language, easily assuming that websites are targeting the country of the Netherlands.

As already mentioned, cash flow derived from remote gambling activities may, in general, not be received on any onshore bank account on Curaçao. Online licence holders need to therefore resort to an offshore bank account, e.g. on the island of Malta.

Bonaire, Sint Eustatius and Saba (BES Islands)

As part of the country of the Netherlands, the BES Islands need to comply with Dutch law. For this, we would like to refer you to our Netherlands chapter within this guide.

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

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

A casino licence on Aruba and Curaçao includes the possibility of installing gaming devices, as long as they shall be located on casino premises. As mentioned earlier, no separate gambling facilities are allowed if they are not connected to hotel operations, binding these operations to hotel premises, with the exception (on Aruba) of gaming devices that may be placed on airport premises, under a special licence.

Bonaire, Sint Eustatius and Saba (BES Islands)

Since only the BES Island of Bonaire hosts two small boutique casinos, specific details concerning the operation of these casinos have been arranged in the licence itself.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

On Aruba, article 8, LSH makes casino board members and representatives personally liable for imposed taxes regarding casino operations. Furthermore, the licence holder cannot limit any form of responsibility in connection with casino operations, even though he is allowed to provide a mandate to another party. On Aruba, the offering of games of chance is punishable by a maximum fine of AFL 25,000 or imprisonment of up to two years (article 266, WvS), with the exception of the organisation of a cock fight, punishable only with a fine of AFL 50 (article 477a, WvS). On Curaçao, the intentional offering or facilitation of hazard games is punishable by a maximum fine of Nafl. 25,000 or imprisonment of up to two years (article 2:215, section 1, SvC). The facilitation of *Ponzi schemes* is punishable by a maximum fine of Nafl. 100,000 or up to four year's imprisonment (article 2:215, section 2, SvC). On Sint Maarten, illegal facilitation of gambling is hardly counteracted.

Bonaire, Sint Eustatius and Saba (BES Islands)

As part of the country of the Netherlands, the BES Islands need to comply with Dutch law. For this, we would like to refer you to our Netherlands chapter within this guide.

4.2 What is the approach of authorities to unregulated supplies?

When dealing with unregulated supplies in the gambling sector in this region, administrative fines are the most likely method of enforcement. However, in addition to any monetary sanction, the authorities have the authority to impose various sanctions including the sanction of imprisonment.

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

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

Aruba, as Curaçao, is in the process of implementing international AML standards, as provided by the "**Financial Action Task Force**" ("**FATF**"). Consequently, those international standards for anti-money laundering which apply generally also apply to, e.g., Aruban and Curaçao casinos. In general, it can be observed that legislation of Aruba and Curaçao is highly comparable, since they were both members of the former *Netherlands Antilles*.

Bonaire, Sint Eustatius and Saba (BES Islands)

As part of the country of the Netherlands, the BES Islands need to comply with Dutch law. For this, we would like to refer you to our Netherlands chapter within this guide.

4.4 Are gambling debts enforceable in your jurisdiction?

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

On Aruba, article 4a, LHS excludes games of chance of article 7A:1807, BW as long as they have been offered on a legitimate basis, in the possession of a valid permit. As a result, gambling debts are indeed enforceable on Aruba. A similar provision has been included in the civil code of Curaçao. On Sint Maarten, all forms of gambling are illegal. As a result, we feel that gambling debts that were made on Sint Maarten shall not be enforceable. A great number of jurisdictions have banned residents from Sint Maarten from gambling online.

Bonaire, Sint Eustatius and Saba (BES Islands)

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5 Anticipated Reforms

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

Aruba, Curaçao and Sint Maarten (overseas Kingdom of the Netherlands)

Although gambling is legal and regulated, Aruba has in the past been (heavily) criticised for lax enforcement of (amongst others) gambling laws by the Caribbean Financial Action Task Force ("**CFATF**", "*Mutual Evaluation Report on Anti Money Laundering and Combating the Financing of Terrorism*").

Aruba has actively sought to diversify its economy, in particular by developing its offshore activities, through the licensing of offshore banks and the development of offshore companies. However, the measures in laws and regulations that should ensure transparency and integrity of these vehicles are still inadequate. The level of criminality on Aruba has increased considerably over the last years. Due to its geographical location and travel facilities, money laundering is primarily linked to drug trafficking, and risks have been identified for cross-border movement of cash in the real estate and jewellery sectors and through the misuse of exempt companies. Some online casinos have also been accused of being involved in money laundering.

The Aruba legislative requirements have many gaps relative to the FATF standards, and this is exacerbated by a lack of clarity

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and consistency in the scope and the extent of the obligations. Combating the Financing of Terrorism ("**CFT**") has never been seen by the government as a major risk, nor have FATF regulations been implemented in this field. As a result, in general, Aruba's system of AML/CFT preventive measures is incomplete and lacks coherence and effectiveness. Aruba has been advised by the CFATF to urgently review the structure of the regime, including the legislation, and dedicate more resources to the agencies in charge of AML/CFT. Aruba should also give clearly defined tasks and priorities to each of those agencies. Not being subject to AML/CFT requirements creates potential opportunities that could be misused by money launderers and other criminals. Consideration should be given to reviewing and updating the legislation.

Unlike Aruba, Curaçao has adopted the eight FATF Special Recommendations on Combating Terrorist Financing. The Central Bank of Curaçao underscores the importance of having all measures in place and keeping up with new developments to maintain the name and reputation of its financial sector. Therefore, from its inception, the Bank has invested much time and human resources in the Committee against Money Laundering ("**CIWG**"). With the recent demands of EU Member States (UK leading) to hold a costly licence, not only in the operator's jurisdiction but also in the country in which a player is based, combined with covenants of regulators in player jurisdictions and cutting of payment provider services, the gaming regime of Curaçao has suffered some setbacks, with many operators leaving for EU white-listed Member States such as Malta. Also, some incidents in 2015 have questioned the capacity of the regulator in taking swift action against certification impersonators, claiming to be regulated under the Curaçao gaming regime, while they in fact were not. An infamous case is that of the *Grand Parker Casino scam*, in which the Israel authorities detained two men of Israeli origin, accusing them of posing as 12 Curaçao regulated online (for the layman, unrelated) casino ventures, in which they interestingly enough succeeded for years, as early as 2012, without being uninterrupted until the summer of 2015, when the online casino was finally shut down by, as it appears, the *US Federal Bureau of Investigation*. A positive outcome of all this is that the incident has sparked renewed dialogue between market representatives and the Curaçao government on how to prevent such scams ever happening again in the future.

Nevertheless, Curaçao was white-listed by the "**Organization for Economic Co-operation and Development**" ("**OECD**") and has fully adopted FATF standards. Combined with a favourable tax regime and the low cost ability to develop new technology, Curaçao still represents one of the more favourable gaming regimes to set up shop, although it might be favourable to combine the '*best of both worlds*' of Curaçao and Malta.

In 2016, the CGCB has issued AML/CFT Guidelines Complementing the "AML/CFT Regulation" adapted to the local "land-based" casino industry to further combat money laundering and terrorist financing. These guidelines contain a practical and pragmatic sectoral implementation of the AML/CFT rules, promoting the compliance of casinos with the legal obligations. During various information sessions, the casino industry has been updated on the new regulations.

Notable are the remarks of *Gino Campbell*, Managing Director of the CGB during a local convention that was held from 14 to 16 of August 2017 in the *Renaissance Hotel & Casino*, inviting market participants to work together with the CGB in strengthening the regulatory framework. Although there is "*still a long way to go*", Mr. Campbell is confident that Curaçao shall continue to see a positive trend in the development of its economy and investment climate while at the same time improving matters of compliance.

Turning to Sint Maarten, in 2011, the government of Sint Maarten introduced some gambling policies in the field of gaming, a brief entitled: "*Rules of the Game*". The policy does not include regulations for a financial oversight mechanism, but it does state that the government intends to establish such a function. However, it appears that no such controls have been implemented to date. This lack of financial oversight presents a high risk of money laundering and organised crime. The casinos do not appear to comply with the current MOT regulations. In 2013, the CFATF noted:

> "*There is no comprehensive regulatory and supervisory AML regime in Sint Maarten for casinos; however, the Examiners were advised that within the Government there has been discussion regarding the creation of a Gaming Control Board. There are no AML/CFT requirements for internet casinos. It is to be noted that [the] threshold for casinos do[es] not comply with the threshold set by FATF.*"

It is noted that the government has previously hired outside consultants to evaluate the casino industry and assess different regulatory options in detail; this has resulted in detailed reports on the functioning of the government, such as the report as issued in 2014, entitled: "*Integrity Inquiry into the functioning of the Government of Sint Maarten*" by *PricewaterhouseCoopers*. However, it is not expected that the regulatory situation in Sint Maarten will improve any time soon.

Bonaire, Sint Eustatius and Saba (BES Islands)

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Bas has produced various scientific publications within various areas of expertise, which may be found at www.gaminglegal.com. Being a former web designer, Bas is able to value client products from a technical perspective as well.

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Gaming Legal Group is a combination of independent companies spread out across the globe, each specialising in a specific trade. Its mission statement is to cater to the legal needs of the global gaming industry, discrete and with diligence.

NEXT GENERATION KYC POLICIES

Gaming Legal Compliance is the "watchdog" of the Gaming Legal Group. Its mission is to, as always, in a discrete and diligent fashion, find patterns in connections between entities and legal individuals and report on their individual level of compliance. This information can be used in a wide variety of ways. Research may benefit preparations for a due diligence, a law suit, or player/customer/client identification. Gaming Legal Compliance is located in a colonial villa in Emmastad, the former Shell directors' quarters.

The local team is multilingual and speaks Spanish, English, Dutch and Papiamentu.

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Germany

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

In Germany, gambling law is traditionally considered to be part of the law of public order and is therefore regulated at state level, i.e. by each of the federal states ('*Laender*') of Germany. Generally, gambling is therefore a matter of state law and executed by the respective authorities in each of the 16 German federal states. As an example, land-based casinos in many states are licensed and supervised by the respective Ministries of the Interior, whereas slot machine gambling in local gaming halls is supervised by the municipal offices.

Some other competences have been assigned to specific regulators, pursuant to the Interstate Treaty on Gambling (the 'Interstate Treaty'), in order to create uniformity among the states regarding these issues. Among the competent bodies – as per the current Interstate Treaty – are the Hessian Ministry of the Interior and Sports (responsible for issuing the sports betting licences), the authorities of North Rhine Westphalia (responsible for granting permissions to operators of lotteries and sports betting for advertising on TV and on the internet) and the authorities of Lower Saxony (responsible for payment blocking against unlawful gambling on the internet).

Licences for online gambling and sports betting issued under the Gaming Act of Schleswig-Holstein are supervised by the Ministry of the Interior in Schleswig-Holstein.

Other states have been assigned to regulate specific types of lotteries, e.g. the Free and Hanseatic City of Hamburg regulates so-called class lotteries and the state of Rhineland Palatine regulates other national lotteries operated across all German states.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Games of chance are defined as games where payment of consideration is required in order to acquire a chance to win and the determination of winnings is entirely or predominantly a matter of chance. Any gambling activity falling within this definition is subject to specific gambling legislation.

The Interstate Treaty, originally concluded by the federal states with effect as of July 2012, sets out the main objectives of gambling regulation and provides for a state monopoly on the organisation of lotteries, the licensure of sports betting (including non-tote fantasy sports bets) up to a maximum of 20 licences and the prohibition of online casino gaming. The Interstate Treaty is implemented by specific state legislation; in particular, the Gaming Acts of the individual states.

Between January 2012 and February 2013, the state of Schleswig-Holstein pursued its own gambling regulation. The Gaming Act of Schleswig-Holstein, contrary to the Interstate Treaty, allowed for the issuance of licences for private sports betting and online casino operators. Due to a change in government, Schleswig-Holstein, however, ultimately acceded to the Interstate Treaty. During the time the Gambling Act of Schleswig-Holstein was in force, a total of 48 licences for the operation of sports betting and/or online casino gaming were issued.

Casino gambling is considered a matter of state law, not federal law, and primarily regulated by the various Casino Acts and the Gaming/Casino Ordinances of the respective states. The Casino Acts usually distinguish between table games (e.g. roulette, card games) and slot machine gaming. Although subject to controversy, the majority of German courts have so far regarded poker as a game of chance and not a game of skill. Therefore, poker is only permitted in state-owned casinos and may not be offered online. The latter does not apply to online casino licensees of Schleswig-Holstein.

Slot machine (amusement machines with prizes – 'AWPs') gaming is regulated under federal law, as is betting on horse races. The Trade Regulation Act and the Gaming Ordinance provide the framework regulation and set out the requirements applicable to AWPs; the Interstate Treaty and gaming legislation of the individual states include further restrictions to gaming hall premises such as minimum distance requirements to be maintained between such premises. The Race Betting and Lottery Act contains provisions on the organisation of bets on horses and taxation rules for lotteries and sports betting in general.

The German Criminal Code prohibits the organisation or advertising of games of chance without an official permit.

Social games – if understood as play-for-free games – generally do not fall under the definition of games of chance and hence lack specific regulation. They may be operated without a licence, yet restrictions may apply resulting from general consumer or minor protection laws.

Similarly, games will not be subject to gambling regulation if they qualify as a skill game, which is often the case in relation to egaming/esports offerings, but the character of the game will always have to be assessed on a case-by-case basis.

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Prize competitions and draws, i.e. games where, instead of money, prizes or advantages of money's worth can be won, again, may/may not fall under specific gambling regulation, depending on how they are set up in the individual circumstances. Generally, the provisions on lotteries apply. The Sweepstakes Ordinance created by the State Media Authorities and/or the Interstate Treaty on Broadcasting as well as associated provisions, however, may also be of relevance in certain scenarios.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

It will depend on the gambling product if licensure is possible. By product, the following licences are generally available to private operators:

Casino gaming (including poker): Licence for the operation of land-based casinos (yet the majority of casinos are state-operated).

Sports betting: Licence for the operation and brokerage of online sports betting, and for land-based sports betting in betting shops.

Horse race betting: Bookmaker licence under the Race Betting and Lottery Act, as well as online horse betting licence pursuant to sec. 27 (2) of the Interstate Treaty.

Slot machine gaming: Licence for land-based slot machine gaming (AWPs) in gaming halls or restaurants and bars.

Lotteries: Licence for the brokering and sale of traditional state lottery products (land-based and online); licence for the operation of small or charitable lotteries which have their draw results published less than twice a week, have a top prize worth less than EUR 2 million and do not have a scheduled jackpot.

The operation of traditional lottery products, such as the national lottery or other large-scale lotteries, as well as pool-betting, is subject to the state monopoly. Private operators may not apply for such licences. They may only apply for a licence allowing brokerage of the state lottery products.

The former regulation in Schleswig-Holstein further enabled private operators to obtain licences for online casino gaming, with the exception of bank-holder games such as blackjack, baccarat and roulette. In total, 23 such licences were issued. The Gaming Act of Schleswig-Holstein continues to apply in relation to these licensees.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

The German system only distinguishes between the operation and brokerage of gaming activities. Therefore, only operators or brokers need to apply for licences but not B2B suppliers. Key suppliers do not need any specific form of authorisation. However, the gaming machines or software supplied needs to comply with certain standards and regulations, such as the ISO27001 series in case of core elements of gambling software.

Sometimes additional premises licences are required for land-based gambling activities such as the operation of gaming halls. Gambling halls, for example, need to fulfil certain requirements regarding size and layout.

2.3 What restrictions are placed upon any licensee?

Any licence is restricted with regard to its duration and requires the licensee to be and remain "reliable", i.e. business conduct complying with local laws and tax obligations as well as personal reliability of staff. The Interstate Treaty restricts the application of the licence to the territory of the Federal Republic of Germany and countries that recognise the German permit for their sovereign territories.

2.4 What is the process of applying for any gambling licence or regulatory approval?

There is no general process of applying for a gambling licence because the process very much depends on which kind of licence an operator applies for. Any application process will, however, set out certain requirements that the applicant or the business corporation needs to fulfil in order to qualify for a licence. These will mainly concern the applicant's character and expertise and will include examining the applicant's financial capability. Applicants will also need to demonstrate that they are willing to provide safe and transparent services and wish to comply with the gaming regulation. It is a characteristic of German licensing processes that applicants will be required to prove their qualifications by submitting so-called "concepts", i.e. detailed descriptions of their business (including, e.g., responsible gaming, IT security, AML, business and marketing concepts).

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Comparing the Casino Acts of the individual states, licences for the operation of land-based casinos usually have a licence term of about 15 years. Licences issued under the Gaming Act of Schleswig-Holstein last for at least six years, possibly 10 years, but likely will be positively affected by the recent developments in Schleswig-Holstein which suggest that a new licensing regime might be introduced in the foreseeable future. Sports betting licences, once issued pursuant to the Interstate Treaty, are supposed to be valid until the seven-year experimental period ends. According to a planned amendment of the Interstate Treaty in form of the so-called Second Treaty Amending the Interstate Treaty (the 'Amendment Treaty') which, at the time of writing, is yet to be ratified by some German states who have not done so yet and is limited to changes attempting to fix the sports betting dilemma caused as a result of the failure of the sports betting licensing process which was initiated in 2012, the experimental period, originally to end 30 June 2019, is to be extended until 30 June 2021–30 June 2024 if the amended Interstate Treaty is extended anew. Recent developments in Schleswig-Holstein, which could have a wider impact on multiple German states and the entire discussion of German regulation, will likely be of relevance and determine new time limits for future licences.

Any licence may be revoked if an operator fails to comply with the licence conditions. Licences, however, will not be revoked immediately and without prior notice. Operators will usually be contacted by the regulators and will be given a chance to comment on and review the alleged violations of the licence conditions and to resolve the issues within a certain time frame.

Under administrative law, the requirements for nullification are extremely high. We are not aware of a case where nullification has occurred.

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

Casino gaming (including poker): Some federal states limit the number of tables and slots allowed in casinos. However, there are no restrictions on pay-outs, maximum wins/losses or the duration of games. Barred players may not enter the gaming area or play in casinos. Strict entrance controls need to be established in order to ensure that this is the case. These controls include matching the players with a nationwide player-barring database.

Sports betting: Fantasy betting is allowed, whereas bets on anything other than sports are prohibited, e.g. financial or social betting. Such bets may therefore not be offered. Regarding in-play betting, the situation is unclear. The Interstate Treaty prohibits some forms of in-play betting, but fails to provide a definition of these prohibited in-play bets. Also, the competent authority, the Hessian Ministry of the Interior, has so far not provided any clear guidance as to what exactly it considers prohibited in-play betting. Further, only 20 sports betting licences are to be granted and land-based sports betting is only allowed in a restricted number of betting shops. The number of permissible land-based betting shops varies quite considerably between the states, e.g. Saxony-Anhalt only allows for three betting shops per licensee, whereas Lower Saxony allows for a total of 2,400 betting shops.

Horse race betting: Operators of horse race betting have to comply with certain stake limitations, e.g. bookmakers operating on racecourses may not accept stakes less than EUR 15 and regarding online horse race betting, a monthly stake limitation of EUR 1,000 needs to be adhered to.

Slot machine gaming: Other than slot machine gaming in casinos, slot machine gaming offered on other premises, such as gaming halls, restaurants or bars is subject to multiple restrictions. These restrictions predominantly deal with the number of machines allowed (gaming halls: maximum 12, restaurants/bars: maximum three), minimum distances between gaming halls ranging from 250m to 500m and game restrictions (minimum/maximum stakes, pay-out ratios and duration of games).

Lotteries (including tote): Lotteries may not be operated by private operators. They are subject to the state monopoly, i.e. the 16 lottery companies that together form the State Lottery and Tote Association (Deutscher Lotto und Totoblock).

Material promotion and advertising restrictions in relation to the above: Advertising of games of chance is subject to a very restrictive regime in Germany and is affected by an abundance of laws and regulations, including the Interstate Treaty, the Gaming Acts of the individual states, the Advertising Guidelines, the Code of Practice of the German Advertising Council, the Act Against Unfair Competition and specific minor protection legislation, such as, e.g., the Act for the Protection of Minors or the Interstate Treaty on Broadcasting and the Interstate Treaty on the Protection of Minors in the Media. Operators will typically be required to submit a marketing concept as part of their licence application, which sets out how they intend to advertise their products whilst sufficiently ensuring player protection at the same time. Often, in particular, in the land-based casino sector, the licences issued will specify further advertising restrictions. Any advertising of unauthorised games of chance, misleading advertising or advertising directed at minors or other risk groups is prohibited, as is most online and TV advertising. Exceptions to the prohibition on online and TV advertising apply in relation to sports betting, horse race betting and lotteries where operators can apply for specific advertising permits. However, since no sports betting licences have been issued so far and the constitutionality of the Advertising Guidelines has been called into question, these are of limited practical relevance.

2.7 What are the tax and other compulsory levies?

A characteristic of the taxation of gambling products is that it largely depends on the product type and the regulations in the respective federal state. Accordingly, tax rates vary considerably throughout Germany.

Land-based casino operators are exempt from corporate taxation but must generally pay taxes on gross gaming revenue (i.e. the amount by which the total of all stakes exceeds the total of all winnings paid out) or are subject to a combination of gross gaming revenue and profit taxation. Tax rates range between 20% and 80% per state. Some states impose additional levies or apply progressive tax rates depending on the economic capability of the casino operator.

Throughout Germany, any operator offering licensed or unlicensed sports or horse race betting is subject to a 5% federal tax on stakes.

In addition to regular corporate taxes, slot machine operators have to pay municipal amusement tax. Depending on the law of the respective municipality, slot machine operators are subject to a 12%–20% amusement tax which is based on the gross income generated from the slot machines.

Since 1 January 2015, all online casino operators, not only the non-EU-based online casino operators, have been subject to VAT. It was recently confirmed by the Federal Ministry of Finance that GGR (and not stakes) is the tax base for German VAT on online casino revenues. A significant fiscal risk for online casino operations in Germany was thereby removed. The confirmation was the achievement of considerable lobbying efforts headed by the German Online Casino Association (the 'DOCV').

2.8 What are the broad social responsibility requirements?

Some of the main objectives of the Interstate Treaty are the prevention of addiction and criminal acts, channelling the market away from the black market and to ensure the integrity of sports. Starting with the qualification and reliability of the operators being prerequisites for acquiring a licence, there are many other requirements linked to social responsibility. In essence, these concern the protection of players and minors and the safety of the gambling operations. Safety, in this context, especially means safe payment and transaction methods, adhering to youth, customer and data protection laws, keeping AML and IT standards and being reliable in paying taxes and levies.

Gambling operators are required to provide a so-called "social concept" to demonstrate their approach towards the protection of players and minors and intended measures in order to reach these goals. Operators need to be familiar with the impact of games of chance and the inherent risk of addiction and show this in their social concepts. They have to train their staff on detecting problematic players and gambling behaviour and on the responsible operation, execution and commercial brokerage of public games of chance.

Players should be encouraged to assess their own gambling activities by reality checks and self-tests, need to be able to set their own deposit or loss limits and need to be made aware of the risk of addiction through brochures or responsible gaming websites. Gambling operators are required to offer information on where players may seek help such as contact details of support services (counselling and therapy). Players need to be informed about self- and third-party barring and made aware of the possibility of taking gaming breaks. Sec. 8 of the Licensing Ordinance of Schleswig-Holstein, e.g., provides for "cool down-periods" (24 hours) and temporary (minimum one month) gaming breaks.

Social responsibility also means ensuring that minors and barred players do not participate in gaming activities. Therefore, ID checks

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need to be in place and the players' identities have to be matched with central barring databases.

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

Implementing the Fourth Anti-Money-Laundering Directive ('4AMLD'), Germany introduced a new German AML Act which entered into force on 26 June 2017. German regulators have made it very clear that they intend to apply the standards and requirements regarding AML to online gaming operators if these target German customers. Consequently, online gaming operators serving German customers are advised to adopt appropriate and extensive risk management systems and to familiarise themselves with the extensive requirements, e.g. in the context of the identification and verification of players and gambling-related payments transactions in order to quickly find viable ways to implement the appropriate AML measures within their business.

As expected in the course of the implementation of the 4AMLD, AML obligations have also been extended to more land-based operations which primarily affect sport betting retail outlets. Before the new AML Act entered into force, only land-based casinos were subject to certain AML obligations if transactions exceed a threshold of EUR 2,000. Virtual currencies, understood as a type of digital money/eMoney, are not regulated under gambling law in Germany but subject to financial/banking regulation. Unless virtual currencies are incorporated into a game as 'closed virtual currency', i.e. cannot be exchanged for real money or something of money's worth in the real world, operators may be required to obtain a banking licence to allow the use of such currencies. Taxation will play a role in the assessment of whether the incorporation of virtual currencies makes sense from an economic perspective. Bitcoins act as a good example. Although the German Federal Financial Supervisory Authority ('BaFin') provided guidance on the legal assessment and taxation of bitcoins in 2013 and 2015, it is yet to be determined conclusively whether bitcoin transactions are to be considered VAT exempt or not.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

The written law of the Interstate Treaty generally prohibits the operation and brokerage of online games of chance.

The only exceptions provided by the Interstate Treaty in this context regard sports betting, horse race betting and lotteries.

According to the Interstate Treaty, online sports betting is to be permitted for 20 licensees during a seven-year "experimental period". Yet, the licensing process for these sports betting licences, which was initiated in 2012, failed and has been held to be incompatible with EU law. The 20 licences provided for by the Interstate Treaty, as a result, cannot be issued lawfully under the current legal framework. The German states have therefore entered into reform discussions which resulted in the German states agreeing on the Amendment Treaty in March 2017. The Amendment Treaty was to enter into force on 1 January 2018 following ratification in each of the 16 state parliaments. Schleswig-Holstein – following a change in government – has now, however, on various occasions announced that it does not intend to ratify the Amendment Treaty which would make it obsolete. Interestingly, Schleswig-Holstein seeks to introduce a viable and EU-law-compliant gambling regulation on the basis of its former Gambling Act, potentially with other German states, namely Hesse, North Rhine Westphalia and Rhineland Palatine, so interesting times lie ahead for online gambling operators in this regard. On 26 October 2017, however, the Federal Administrative Court, i.e. the court of last resort in administrative matters, handed down a judgment which can be expected to considerably harm the legal position of online casino operators and to a certain extent potentially also sports betting operators who did not partake in the sports betting licensing process of 2012. At the time of writing, the full written judgment has not been published yet. According to an official press release published by the Federal Administrative Court a day after the hearing and from what is known about the hearing, however, the Federal Administrative Court confirmed the legality of the online casino ban in light of national and EU law. It also seems to have indicated that operations of sports betting operators who did not participate in the 2012 sports betting licensing process could be unlawful and that – contrary to what had been confirmed by the CJEU in *Ince* and *Unibet* – the sports betting licensing process may have been lawfully conducted after all. This seems legally questionable. Still, there is a realistic risk that regulators will take the Federal Administrative Court's judgment as an invitation to intensify enforcement efforts against the unregulated online gambling market and that lower courts when dealing with online gaming related matters will simply apply the judgment of the Federal Administrative Court, making the legal defence a lot more difficult.

The operation of traditional lotteries via the internet is reserved for the state-controlled lottery operators, but private operators may engage in brokerage of lottery products via the internet, subject to a brokering licence. Operating and brokering licences for horse race betting are available pursuant to sec. 27 (2) of the Interstate Treaty.

According to the Interstate Treaty provisions, all online operators have to ensure that minors and barred players are excluded by applying identification and verification methods and that some kind of stake limit (the Interstate Treaty suggests a limit of EUR 1,000 for online betting) is in place. Players must have the possibility of self-limitation and must be prohibited from taking loans from the gambling operators. The Interstate Treaty further requires there to be no specific addiction stimuli through fast repetition, a social concept taking the online-specific circumstances into account (including a scientific evaluation of the effectiveness of the social concept) and demands that betting and lottery products be offered from separate internet domains and that the separate sites may not be linked to each other.

3.2 What other restrictions have an impact on online supplies?

The Interstate Treaty not only prohibits the operation and brokerage of online gambling, but also advertising for games of chance on the internet. Certain licensed operators (sports betting, horse race betting, lotteries) may, however, apply for individual or general permits with the Regional Government of Duesseldorf in the state North-Rhine Westphalia. As per the Interstate Treaty, any advertising of gambling products needs to comply with the conditions set out in sec. 5 of the Interstate Treaty and the Advertising Guidelines, which are generally concerned with the content of advertising and its publication means, but were held to be unconstitutional by the Bavarian Constitutional Court in a decision of 25 September 2015 and arguably currently do not apply as a result.

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

Machine-based gaming is only permitted in land-based casinos, restaurants, bars and gaming halls, and only subject to a licence. Online slots are, at the moment, not permitted outside of (a) Schleswig-Holstein (licence).

The law is governed by federal law – the Trade Regulation Act and the Gaming Ordinance. The Gaming Ordinance allows for a maximum of three machines to be operated in restaurants and bars and a maximum of 12 machines per gaming hall. It further imposes gaming limits (maximum stakes, maximum losses, etc.). Machine gaming is also subject to the Interstate Treaty and the respective state laws. The Interstate Treaty allows the states to define a minimum distance that needs to be maintained between other gaming halls and/or between gaming halls and youth facilities/addiction centres. None of the above restrictions, however, apply to machine gaming in state-owned casinos.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

In general, the operator is held liable for breaches of gambling regulations.

4.2 What is the approach of authorities to unregulated supplies?

Organising games of chance without an official licence or permit may be regarded as a criminal offence as per sec. 284 of the German Criminal Code, as may the participation in such unlawful gaming (sec. 285 of the German Criminal Code). Criminal proceedings have, however, so far rarely been initiated. More commonly, interdiction orders based on sec. 9 of the Interstate Treaty are filed against illegal operators. These usually include penalty payments of approximately EUR 10,000 to EUR 50,000 per violation. Also, authorities may ban banks and other financial institutions from processing payments relating to the offering of unauthorised gambling ('payment blocking').

Licence holders have to fear the revocation of their licences if they turn out to be unreliable or breach certain licence conditions, etc. Milder forms of punishment are the suspension of the licence for three months or a reduction of the overall duration of the licence.

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

First and foremost, liability and enforcement are clearly subject to German law and the German authorities.

However, being part of the European Union, German law is, of course, influenced by European law and European case-law. This impacts on the understanding and interpretation of the law – and thereby may also affect enforcement or at least the authorities' attitude towards liability and enforcement. In recent years, German enforcement authorities, in particular German prosecutors, have been reluctant to enforce gambling law violations, one explanation for this likely being that German gambling regulation has been characterised by legal uncertainty due to it facing severe criticism in light of EU law for years now. In relation to sports betting, the CJEU on 4 February 2016 confirmed that any enforcement action brought against sports betting operators in a situation where an unlawful *de facto* monopoly persists (as held to be the case in Germany) is incompatible with EU law (*cf.* C-366/14, *Ince*). It will have to be assessed whether and to which extent the recent judgment of the Federal Administrative Court which was handed down on 26 October 2017 impacts on these findings and the approach so far taken by German prosecutors.

4.4 Are gambling debts enforceable in your jurisdiction?

Sec. 762 (1) 1 of the German Civil Code does not provide for gambling debts to be enforceable. They are regarded "debts of honour". However, due to sec. 762 (1) 2 of the German Civil Code, gambling debts that are settled cannot be reclaimed once paid. A further exception applies due to sec. 763 of the German Civil Code as it provides for contracts made in connection with state-approved lotteries or raffles to be binding, and hence enforceable. The same arguably applies to sports betting debts from a licensed operation, once the sports betting licences will be granted.

5 Anticipated Reforms

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

Following the wave of national court decisions confirming the unlawfulness of the sports betting licensing process and its incompatibility with EU law between 2014 and 2016 and the clear decision of the CJEU in the *Ince* case (C-336/14) in February 2016, it became unavoidable for the German states to react to the criticism and consider reforms of the Interstate Treaty. A first attempt at such reforms lead to the German states agreeing on the Amendment Treaty, which was intended to enter into force following ratification of the Amendment Treaty in each of the 16 state parliaments. However, it has to be noted that the reforms covered by the Amendment Treaty would have been rather limited as they only intended to seek solutions to potentially solve the sports betting licensing dilemma, but ignored the fact that Germany's online casino regulation is equally in need of substantial reform.

It is possible that the Amendment Treaty could become obsolete and that the German states will have to go back to the drawing board as a result of the decisions agreed by the newly elected Schleswig-Holstein government consisting of Conservatives, Liberals and Greens, which were confirmed in a parliamentary vote in the Schleswig-Holstein parliament at the end of September 2017. Schleswig-Holstein has, meanwhile, on multiple occasions, announced that it intends to not ratify the Amendment Treaty, to opt out of the Interstate Treaty and to, instead, potentially with other German states, seek a viable and EU law-compliant sports betting and online casino regulation. Interestingly, the (also newly elected) North Rhine Westphalian government has stopped all ratification efforts in relation to the Amendment Treaty for the time being to monitor the developments. North Rhine Westphalia would assume Hesse's responsibility for the issuance of sports betting licences under the Amendment Treaty. For the Amendment Treaty to enter into force as planned, it would have to be ratified by all German states by the end of December 2017.

We consider these developments to provide an unparalleled opportunity to change Germany's regulatory landscape on a wider scale and that they could act as a wake-up call also for other German states in that they may ultimately lead to a viable gaming regulation being introduced throughout Germany. Still, German states which

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have been known to be reluctant to embrace change can, in the meantime, be expected to attempt stabilising the old regulation and initiating enforcement for alleged violations of Interstate Treaty restrictions. The judgment of the Federal Administrative Court of 26 October 2017, in which the compatibility of the total ban with national and EU law seems to have been confirmed, will certainly encourage these states to continue or increase their enforcement attempts. It is yet to be seen to which extent the judgment will also impact on other states and the developments at political level including the reform endeavours. In light of the potential increase of risks associated with operating in the unregulated German market as a consequence of the new judgment, it will be vital for the industry to promote a broader reform of the Interstate Treaty and increase lobbying efforts.

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For more than 30 years, attorneys of Melchers have been advising leading companies in the gaming and betting industry. Gaming and betting law has therefore been established as one of the core competences of the firm.

Melchers, in general, is a commercial law firm with offices in Heidelberg, Frankfurt/Main and Berlin. Our specialised lawyers provide advice in all areas of commercial law. As a full-service law firm, our advice in gambling-related matters includes all corresponding areas of law, such as competition, company and administrative law. The firm's professional expertise in the area of gaming and betting law makes it one of the prime addresses in Germany for national and international clients in the gaming sector seeking forward-thinking and customised legal strategies. We are committed to substantial client relationships and support our clients in successfully introducing and sustaining gaming and betting products on the highly regulated German market. In the event of regulatory measures, we ensure adequate legal reaction. Melchers' attorneys are well-experienced in lobbying and pay attention to elaborate communication with regulators, which in many cases may be helpful in avoiding litigation.

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Gibraltar

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The licensing authority for Gibraltar is the Minister responsible for gambling (the "Licensing Authority"). Under Gibraltar's Gambling Act 2005 (the "Act"), it is the statutory responsibility of the Minister to deal with all licensing matters such as the granting, varying and renewal of licences in respect of gambling services. The Minister shall have regard to the general policy of the Government of Gibraltar and shall comply with any general directions given by the Government pursuant to that policy.

The regulation of all licensed gambling activity falls within the remit of the Gambling Commissioner and his regulatory team. The Gambling Commissioner is appointed by the Minister for Gambling and is required to ensure that operators holding licences act within the terms of their licence agreements and the Act, and in a way that maintains the good reputation of the jurisdiction.

The Act provides for the licensing and regulation of both land-based gambling and remote gambling; the definition of 'gambling' in the Act includes:

- betting (including pool betting) and bookmaking;
- gaming; and
- promoting or entering a lottery.

Furthermore, 'betting' is defined as "*making or accepting a bet on:*

- *the outcome of a race, competition or other event of any description;*
- *the likelihood of anything occurring or not occurring; or*
- *whether anything is or is not true – but does not include any bet made or stake hazarded in the course of, or incidental to, any gaming and the expressions bet, betting and booking shall be construed accordingly*".

'Gaming' includes all types of casino games, poker slots, machine gaming, bingo and all other number games without limitation. It is defined as "*the playing of a game of chance for a prize*" and a 'game of chance' includes:

"*(a) a game that involves an element of chance and an element of skill;*

(b) a game that involves an element of chance that can be eliminated by superlative skill;

(c) a game that is presented as involving an element of chance; and

(d) a game where a computer generates images or data taken to represent the actions of another participant or participants in the game."

Finally, a 'lottery' is defined as "*any scheme for the distribution of prizes by chance or lot in which the participants or a substantial number of them make a contribution for the purposes of participation in the chances of the lottery and includes tombola, but does not include any gaming*".

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

The Act represents the main piece of legislation in connection with gambling activity in Gibraltar. The Act is significantly modelled on the UK Gambling Act 2005 and, as set out in question 1.1 above, covers the licensing and regulation of land-based and remote gambling. It sets out the guidelines to be followed, makes provision for the form of application for a gaming licence and establishes the standards with which existing and prospective operators are expected to comply.

The Companies Act 2014, which came into effect in November 2014, impacts upon companies carrying out gambling activities in Gibraltar. The Act is modelled on various aspects of UK legislation and also incorporates EU obligations. It sets out the regime of company procedures and basic requirements to which companies providing gambling services must adhere.

In connection with the Act, the Gambling Commissioner has issued various Codes of Practice for the Gambling Industry which specify detailed requirements to be met by remote and non-remote licence holders in Gibraltar; these Codes can be found at the Government of Gibraltar website at www.gibraltar.gov.gi/remotegambling. The Gambling Commissioner's guidance in the 'Generic Code' expands upon a range of requirements found in the Act, such as the duty for operators to publicise rules, and the procedures relating to complaints, responsible gambling, operating procedures and internal controls. With regard to remote gambling licence holders, the 'Generic Code' also goes into detail in respect of, *inter alia*, the relevant information to be included on websites, the integrity of equipment and customer registration. In addition, a further Code of Practice published by the Gambling Commissioner is dedicated to anti-money laundering arrangements (see question 2.9 below).

Further, with regard to online operators, the Gambling Commissioner has published guidelines on the 'Remote Technical and Operating Standards for the Gibraltar Gambling Industry'. These guidelines elaborate upon the principles established in the Codes and provide clear and comprehensive assistance on how to meet the broader policy requirements of Gibraltar's regulatory framework.

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The Gambling Act covers all types of gambling products and offerings as described in question 1.1 above. In Gibraltar, there is no legislation which specifically or implicitly addresses the concept of social gaming within the parameters of the above definition. The Gambling Act is clear and unambiguous in that, to fall within the definition of 'gaming' (and thus fall within the gambling legislative and regulatory framework), the activity in question must involve a prize. As such, we take the view that if a game does not involve a prize element, it falls outside the regulatory regime and can generally operate from Gibraltar without obtaining a licence. The activity will not be treated as 'gambling' or 'gaming' and thus any operator or provider of such games would not require any specific licence in Gibraltar.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

The Act envisages that anyone can apply for a licence in Gibraltar. The Government of Gibraltar has, however, applied a selective policy towards the licensing of operators in the jurisdiction. In all cases, the authorities will require a substantive presence locally, designed to ensure accountability to the regulator and allow for effective monitoring of operations. The online gaming operators set up and licensed in Gibraltar represent some of the most successful and reputable in the industry; these include companies such as bet365, Ladbrokes Coral, bwin.party, William Hill, 888, BetVictor, Stan James, 32 Red, Mansion Online, Scientific Games, Playtech, NYX Gaming and Microgaming.

Further, under the provisions of the Act, licence applications can be refused by the Licensing Authority if it (i) considers that it would be in the public interest to do so, or (ii) is not satisfied that the applicant and, where applicable, each shareholder, director, executive manager or interested person is a 'fit and proper person'. For the purposes of the Act, the following factors are taken into account when deciding whether an applicant is a fit and proper person:

(a) the person's character, honesty and integrity;

(b) his business reputation, current financial position and financial background;

(c) the business plan in respect of the activities;

(d) his experience of conducting the gambling activity to which the proposed licence would relate;

(e) his conduct, or that of any person associated with him, under any similar licence granted by the appropriate authorities in any comparable jurisdiction outside Gibraltar;

(f) the actual or proposed ownership and the structure of the business;

(g) the ability to maintain a minimum required reserve so as to ensure that all winnings or prizes, as the case may be, are paid;

(h) the technical infrastructure and ability to conduct the gambling which would be authorised under the proposed licence;

(i) the proposed control measures to ensure that any website proposed to be operated by the licence holder contains no obscene or indecent content nor any links to such content;

(j) the proposed control measures to ensure that, so far as is reasonably practicable, compulsive gamblers and persons under the minimum permitted age are not able to gain access to any of the gambling facilities which would be authorised under the proposed licence; and

(k) the proposed control measures and procedures to seek to identify money laundering and other suspicious transactions.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Any gambling operation in Gibraltar requires licensing under the Act; it is the responsibility of the Licensing Authority to issue all remote gambling licences, including telephone and online betting. As set out above, licences are only granted where the applicant establishes a real presence with senior individuals managing the business and with key technical equipment in the jurisdiction. The Licensing Authority may grant licences of the following descriptions which are personal to the licence holder and are non-transferable:

(a) a bookmaker's licence;

(b) a betting intermediary's licence;

(c) a gaming operator's licence;

(d) a gaming machine licence;

(e) a lottery promoter's licence;

(f) a pools promoter's licence; and

(g) a remote gambling licence.

Licences for land-based operators, such as (a) to (f) above, are specific to a designated premises. Any bookmaking activity, pool betting, provision of gaming facilities or holding of gaming machines on any premises is prohibited unless the operator is the holder of a relevant licence which explicitly covers those premises and activities; any person who contravenes the above is guilty of an offence under the Act. Notwithstanding the above, in some cases, the Act allows for exceptions for either (i) social occasions in residential hostels or private dwelling where the gaming is not carried out as a business, or (ii) cruise ships remaining overnight within the port of Gibraltar.

With regard to remote operators, the provision of facilities for remote gambling without a valid licence is prohibited (see question 3.1 below). Licences will specify approved premises in which the operator may hold "remote gambling equipment" in Gibraltar; this term is defined in the Act as "*electronic or other equipment used by or on behalf of a person providing facilities for remote gambling* –

(a) to register a person's participation in the gambling and to store information relating thereto;

(b) to present, to persons who are participating or may participate in the gambling, a virtual game, virtual race or other virtual event or process by reference to which the gambling is conducted;

(c) to determine all or part of, or the effect of, a result relevant to the gambling and to store information relating thereto;

(d) to accept payment in respect of the gambling; or

(e) to authorise payment of any winnings in respect of the gambling".

For the avoidance of doubt, "remote gambling equipment" does not include a computer which is used to participate in remote gambling or equipment operated in the ordinary course of providing banking, telecommunications and payment processing services.

There is no form of individual personal licences. However, key individuals involved in any licence application must undergo comprehensive due diligence investigations prior to the granting of a licence by the Licensing Authority.

Key suppliers such as technical platform and game providers whose equipment facilitates the registration of participation in gambling require licences too.

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2.3 What restrictions are placed upon any licensee?

With regard to the licences set out at (a) to (f) in question 2.2 above, the Licensing Authority, at its sole discretion, may attach specific conditions on any type of licence depending on the particular circumstances and the nature of the business of a licence holder. It is evident that none of these licences authorise any form of remote gambling (except insofar as the Licensing Authority may specifically extend the scope of a bookmaker's licence or a lottery promoter's licence to authorise taking bets or selling tickets over the telephone).

Similarly, a remote gambling licence does not authorise any form of gambling other than remote gambling. As noted earlier, all licences are personal to the licence holder and are non-transferable.

Online gaming operators are required to enter into a licence agreement with the Licensing Authority which further defines the limits placed upon individual licensees. The approved premises, licence period and type of activity (B2C, B2B or both) is clearly identified. The licence agreement will also specify the authorised games which a licensee is permitted to operate, such as blackjack, roulette, poker and slot games. There is a limit placed on the number of generic games which may be offered and any change to this list of authorised generic games requires the prior approval of the Licensing Authority.

A licence agreement may attach further conditions in order to ensure that regulatory and good governance requirements are met; licensees agree that they will be bound by the Codes of Practice and advertising guidelines and agree to adhere to audit and AML requirements. It is also provided that the ownership and corporate structures of online operators will not be altered without the consent of the Licensing Authority. Further conditions also ensure that the effective management and control of the licensee always remains in Gibraltar, and that licensees maintain adequate financing available to pay all current and reasonably estimated prospective obligations in respect of prize pay-outs.

2.4 What is the process of applying for any gambling licence or regulatory approval?

An application for a gambling licence usually involves the submission of a preliminary synopsis of a proposal to the Licensing Authority setting out the background to the applicant, its promoters and the nature of its business. Detailed information should also be given on the activities that the company proposes to undertake from Gibraltar, the operational presence that it will establish and the reasons the company wishes to be based in Gibraltar. Consideration will also be given to the economic benefits the proposal will bring to Gibraltar. The Act grants the Licensing Authority the discretion to grant or refuse any application.

An initial proposal may take any time between two to four weeks to be considered, after which the Licensing Authority may communicate an in principle indication to grant a licence subject to satisfaction of all due diligence and other statutory requirements. Once the applicant has received an in principle steer, the full application process, including due diligence, may take between three to six months.

The formal application should be made to the Licensing Authority in the form and manner as it may prescribe from time to time and accompanied by individual questionnaires and such documents as it may require.

Regulatory approvals, such as those required for white label services, are also directed to the Licensing Authority, Gambling Division, with an explanation of the nature of the arrangements between the parties and due diligence documentation on the partner/provider.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Remote gambling licences are issued for a period of five years, but must be renewed annually upon payment of a nominal licence fee (£2,000). The licence can be renewed upon expiry of the principal five-year term.

The Act provides that the Licensing Authority may suspend or revoke a licence by way of providing the licence holder with notice in writing. A licence holder will be able to make representations to the Licensing Authority which will be considered before any final decisions on suspension or revocation are made; instead of revoking or suspending a licence, it is also possible for the Licensing Authority to add, remove or amend a term of the licence. However, if at any time the Licensing Authority considers that a licence holder is carrying on their activities in a manner which is prejudicial to the public interest, it shall have power to immediately and without prior notice suspend that licence on such terms as it considers appropriate.

Further, the Licensing Authority may revoke, suspend or may refuse to renew a licence if:

(a) the Licensing Authority is no longer satisfied that the licence holder is a fit and proper person to hold the licence;

(b) the licence holder or any shareholder, director, executive manager or interested person has been convicted of an offence which, in the opinion of the Licensing Authority, affects the fitness of the licence holder to hold the licence;

(c) the licence holder is or has been concerned in any transaction which, in the opinion of the Licensing Authority, is either illegal or improper or has been guilty of any other conduct which, in the opinion of the Licensing Authority, is liable to bring Gibraltar into disrepute;

(d) the licence holder has contravened any term relating to the licence;

(e) the licence holder has failed to discharge financial commitments relevant to its gambling activities including commitments to participants or the Licensing Authority has reasonable grounds to believe that such a failure is imminent;

(f) the licence holder has become or is about to become insolvent, has been or is about to be petitioned into bankruptcy or insolvency or has applied to take advantage of the protection of any bankruptcy or insolvency law;

(g) a trustee, receiver, liquidator or administrator has been appointed in respect of the licence holder under the provisions of the laws of any jurisdiction;

(h) the licence holder has applied for a winding-up order, or is compelled by any means or for any reason either to discontinue or to wind up his operations;

(i) the licence was directly or indirectly obtained by a materially false or misleading representation or in some other improper way;

(j) the licence holder has failed to maintain a physical presence in Gibraltar;

(k) the licence holder has failed to make timely payment of any fees, duties or levies payable pursuant to the Act;

(l) the licence holder has failed to comply with any provision made by or under this Act or any regulation as may be prescribed; or

(m) there is, in the opinion of the Licensing Authority, some other relevant and sufficient reason in the public interest for not renewing the licence.

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

The Act, the terms of the licences issued and the Gambling Commissioner's Codes of Practice set out the general parameters on the provision of various gambling services in Gibraltar. The Gibraltar Government has always reflected a permissive attitude when it comes to the provision of gambling services and therefore, so long as the services are covered by a licence and the licensee complies with the usual obligations on internal monitoring, anti-money laundering and compliance with the regulatory obligations for the provision of services in other jurisdictions, there are no substantive limits imposed. All products, except for lotteries, are capable of being offered to customers. In relation to the advertising of products, the legislation, however, does explicitly require that these are not: (a) indecent, pornographic or offensive; (b) false, deceptive or misleading; (c) intended to appeal specifically to persons under the minimum permitted age; or (d) in breach of copyright laws.

2.7 What are the tax and other compulsory levies?

With regard to non-remote licence holders, each operator shall pay such charges, fees and gaming taxes as may be prescribed by the Licensing Authority in connection with the carrying on of activities authorised by the particular licence and business.

With regard to remote gambling, licence holders are subject to gaming duty at the rate of 1% of the gaming yield for income generated through poker and casino games, and 1% of the turnover for revenue obtained through sports betting. The total amount of gaming duty payable in both cases is subject to an annual minimum amount of £85,000 and an annual maximum amount of £425,000. A licence fee of £2,000 will also be required by the licensing authority upon the granting of the gaming licence and is payable annually thereafter.

With regard to Gibraltar's corporate tax rate, all companies in Gibraltar are subject to a standard tax rate of 10%. Further, despite its position as part of the EU, Gibraltar does not levy any value added tax on any services rendered.

It should be noted that Gibraltar offers tax incentives to certain individuals wishing to relocate to Gibraltar which cap the amount of liability to local income tax; these incentives are available to those undertaking specialised employment in Gibraltar and high-net-worth individuals. There are two main schemes available. Of more immediate relevance, the HEPSS system (high executives possessing specialist skills) is specifically targeted towards attracting senior executives. Individuals wishing to apply will need to possess special skills and experience that are of benefit to Gibraltar. A second system, Category 2 Individual Status, exists to encourage the relocation of high-net-worth individuals to Gibraltar; only the first £80,000 of their assessable income is taxable in Gibraltar subject to a minimum tax payable of £22,000 and a maximum of £29,080. It is common for gaming companies and other international businesses seeking to relocate to Gibraltar to make use of such schemes in structuring the presence of the owners or senior management locally.

2.8 What are the broad social responsibility requirements?

The Licensing Authority and Gambling Commissioner impose firm rules relating to both responsible gambling and the prohibition of underage gambling. The Codes of Practice state that licence holders must provide self-exclusion facilities for their customers. Customer requests for self-exclusion should be implemented by the licence holder as soon as practicable and, once the ban is implemented, the operator should prevent the customer from using all known existing accounts under its control. Further, the customer will be prevented from opening new accounts using the same or similar registration details.

In the case of remote licence holders, there is a requirement that operators make information available online to customers in respect of responsible gambling practices, usually by way of a clear link on their website to responsible gambling information, including details of organisations committed to tackling problem gambling; this should be provided in the language of the predominant users or intended users of the websites. Further, with regard to non-remote licence holders, there should be pamphlets offered at the premises promoting responsible gambling.

In addition, operators are obliged to take reasonable steps to prevent minors from engaging in gambling activities; the minimum age for gambling in Gibraltar is 18. In cases where a substantive reason to believe a customer is underage arises, the operator must ensure that gambling is suspended and no winnings are paid out.

Further information in respect of the Gibraltar online gambling industry's commitment to promoting responsible gambling can also be found on HM Government of Gibraltar's website at www.gibraltar.gov.gi/new/remote-gambling which contains links to the various codes of conduct and on the Gibraltar Betting and Gaming Association ("GBGA") website at www.gbga.gi; the GBGA is a trade association representing online gaming operators in Gibraltar.

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

The European Commission's Anti Money Laundering arrangements (including counter-terrorist financing) in the Fourth Money Laundering Directive have been transposed into Gibraltar law. The overarching legislation in relation to AML requirements is as set out in the Proceeds of Crime Act 2015 (the "2015 Act") which consolidates established and new obligations. The Codes of Practice issued by the Gambling Commissioner relating to anti-money laundering inputs the requirements of the 2015 Act and other international obligations. These requirements apply to all financial transactions associated with defined gambling activities carried out by licence holders. Detailed guidance is also provided in respect of considerations specific to both remote licence holders and non-remote casino licence holders.

With regard to remote gambling, the Act and the Code specify that a licence holder may take all reasonable and proportionate steps in relation to a customer's account should it become aware, or have reason to suspect, that the customer has obtained a benefit by any illegal conduct, including the immediate suspension or closure of that account. Licence holders must notify the Gambling Commissioner in writing within 24 hours or as soon as reasonably practicable of any alleged money laundering; any resulting investigation carried out by the Gambling Commissioner, Financial Intelligence Unit or any other law enforcement body requires the co-operation of the licence holder.

In addition, the licence agreements entered into by online operators and the Licensing Authority require a licence holder to confirm that they fully understands and will comply with the anti-money

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laundering obligations under Gibraltar law and the guidelines published by the Gambling Commissioner.

At present, Gibraltar does not allow licensees to use virtual currencies for gambling. Whilst the Gibraltar Government has announced its intention to license and regulate distributed ledger technology in early 2018, there is currently no indication that the use of cryptocurrencies will be adopted and accepted by the Licensing Authority in the context of gambling.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Gibraltar law prohibits the provision of any facilities for remote gambling without a valid licence. For the purposes of the Act, a person is viewed as providing such facilities if even one piece of remote gambling equipment is situated in Gibraltar. Further, the Act creates a requirement for licence holders to safeguard the integrity of equipment and allows the Gambling Commissioner to impose restrictions upon licence holders in respect of their software suppliers. The Act also creates obligations in respect of ensuring that there are systems in place to promote responsible gambling and ensure the registration of all participants. The Act's restrictions are explored in greater detail in the Codes of Practice issued by the Gambling Commissioner.

As set out under question 2.8 above, Gibraltar law prohibits the supply of any form of online gambling services to users under the age of 18. These age restrictions require online operators to ensure that the registration requirements for applicants include a positive action on behalf of the applicant to acknowledge the age limit as well as providing their date of birth and the relevant registration details.

3.2 What other restrictions have an impact on online supplies?

The Act creates a duty for licence holders to ensure that rules are publicised and readily accessible. The Code of Practice issued by the Gambling Commissioner states that online operators must provide a live link from their home page, an 'about us' page and the customer registration pages on their website to a dedicated presentation of the relevant rules. With regard to gambling through mobile phones and similar devices, the Gambling Commissioner recognises that it will be more problematic for licence holders to meet the obligation to publicise rules given the limited display capabilities of mobile devices. Upon logging into their account, licence holders must take reasonable steps to provide all mobile customers with a summary of the information required on the website, including a reference that the information provided is only a summary and that full details are set out on a nominated website. In cases where new customers register with operators by way of a mobile device, the information on rules should be accompanied by e-mail, SMS or written advice at the time of registration in respect of where the full information can be accessed.

The Gambling Commissioner's Guidelines on Remote Technical and Operating Standards for the Gibraltar Gambling Industry (the "Guidelines") detail the equipment, software and services which are required to be used by remote licence holders. Licence holders' computer equipment is required to meet the standard set out in the Guidelines in respect of system security and product reliability, including proof of software testing.

With regard to customer registration, operators must ensure that all players are registered in the form specified in the Act which includes collecting the player's full name, residential address and age. The information collected should be accurate and kept up to date; it must also be kept in accordance with data protection principles.

The Act also empowers the Licensing Authority to prescribe certain restrictions in respect of the advertising of a licence holder's gambling facilities (as described above). Although to date no rules have been published, these may prohibit under penalty advertisements that are:

- indecent, pornographic or offensive;
- false, deceptive or misleading;
- intended to appeal specifically to persons under the minimum permitted age; or
- in breach of copyright laws.

Online operators will also be bound by the terms of their licence agreement (see question 2.3 above).

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

Machine-based gaming in Gibraltar is only allowed on the premises of the holder of a gaming machine licence; anybody in breach of this requirement is guilty of an offence. Under the Act, the term 'gaming machine' is defined as "*a machine constructed or adapted for playing a game of chance ... which:*

(a) has a slot or other aperture for the insertion of money or money's worth in the form of cash or tokens; and

(b) requires no action by the player other than the actuation or manipulation of the machine or apparatus in order to play the game of chance;

and, for this purpose, "machine" includes any apparatus".

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

The Act creates various offences in respect of those who are in breach of its provisions. As set out under question 2.2 above, anybody providing any form of gaming facilities or acting as a betting intermediary without being the holder of a relevant licence is guilty of an offence under the Act (subject to certain exceptions).

Further, any person playing in a gaming establishment which does not hold a relevant licence is also guilty of an offence; this offence extends to anybody who is present and is found escaping from an unlicensed gaming establishment who shall be presumed to have been playing illegally.

Where an offence under the Act has been committed by a body corporate, it is possible for any director, secretary or other officer of the body corporate (or any such person purporting to act in such capacity) to be found to be liable for such a breach. This may be the case if an offence is proved to have been committed with the consent or connivance of, or be attributable to any neglect on the part of, any director, secretary or other officer.

4.2 What is the approach of authorities to unregulated supplies?

Gibraltar is a small jurisdiction and this assists in allowing the

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authorities to closely monitor any unlicensed supplies. A key theme of the approach to gambling regulation in Gibraltar is maintaining the highest regulatory standards achievable through direct and ongoing engagement with licence holders and suppliers. The authorities impose significant penalties on those persons providing gambling services without having previously sought and obtained the relevant approvals and licences. On summary conviction, the penalty will include: (i) a fine of up to £5,000; and/or (ii) a maximum of three months in prison. On conviction on indictment, the penalty will include (i) a fine, and/or (ii) a maximum of one year in prison.

Under Part VIII of the Act, the Licensing Authority is granted extensive powers of investigation, reporting and powers of entry where a licence holder is suspected of carrying on activities contrary to the Act, the provisions of a licence, or in a manner which is otherwise prejudicial to the public interest, the interest of any customer or potential customer or to the reputation of Gibraltar. This part of the Act also enables a Justice of the Peace to grant the Gambling Commissioner and/or the police a warrant to search premises.

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

No, there are no non-national laws that impact upon enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

Yes, in Gibraltar, gambling debts are enforceable. Although traditionally under common law, these debts have not been enforceable; the position under Gibraltar law has been clarified in section 50 of the Act (validity of gaming contracts and security for winnings) so that a gambling debt in Gibraltar is enforceable.

5 Anticipated Reforms

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

The process of review of the Act and Codes of Practice announced by the Government of Gibraltar continues.

A draft report has been prepared for the Gibraltar Government's consideration by the working group established for such purposes and a consultation paper has been circulated amongst the industry. The aim of the review is to strengthen and build on Gibraltar's strong licensing and regulatory reputation in this area and modernise various aspects of the licensing and enforcement provisions.

At the time of writing, the UK Government is still very much involved in negotiations with the EU following the Brexit vote. The Gibraltar legislative review will need to necessarily weave into the assessment the outcome of any negotiations between London and Brussels and how Gibraltar fits into this dynamic by virtue of being part of the EU through the UK's accession. The Gibraltar Government has been assured that Gibraltar will be fully involved in this process.

Operators will be required to remain very focused on managing the challenges and positive benefits of a new environment. Despite the impact of any Brexit negotiations, Gibraltar has built up a critical mass of knowledge, personnel, regulatory experience and political support for the online gambling industry. These features and the jurisdiction's broader attractions are, and will, remain in place. Gibraltar is determined to ensure that its economy will remain highly competitive and very attractive as a base from which to operate international business.

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Andrew has been heavily involved in advising remote gambling operators on a full range of regulatory, tax, corporate and employment matters including advising in relation to data protection and intellectual property. He regularly advises operators on licensing and regulatory matters and has been involved with the successful establishment of numerous operators in Gibraltar.

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Louise graduated from the University of Leeds with a 2.1 LL.B. (Hons) degree in Law and Accounting. She completed her LPC at the University of Law, London and attained the Professional Certificate of Competence in Gibraltar Law from the University of Gibraltar in 2016. She qualified as a Solicitor in March 2017 and is a member of both the Law Society of England and Wales and the Gibraltar Bar.

Hassans
International Law Firm

Hassans International Law Firm was founded in 1939 and is the largest firm in Gibraltar. It is one of the world's foremost offshore law firms which offers an old world approach to client service combined with a new world approach to business and technology.

We are consistently ranked by *Chambers & Partners* as the leading firm in the jurisdiction, have been voted Offshore Law Firm of the Year by Citywealth IFC Awards for the last three years, and were shortlisted for Offshore Law Firm of the Year by The Lawyer Awards last year.

Our lawyers are trusted advisers to clients, both locally and overseas, who seek legal guidance in a fast-moving, multi-jurisdictional world. Though rooted in Gibraltar, the firm has an international clientele in key jurisdictions around the world, including the US, UK, Israel and Europe, with many assignments involving cross-border advice.

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Greater Antilles

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The Greater Antilles is a grouping of the larger islands in the Caribbean region, comprising: Hispaniola (containing Haiti and the Dominican Republic); Cuba; Puerto Rico; Jamaica; and the Cayman Islands. For the purposes of this chapter, we will provide an introductory description of the development of the various gaming regimes in this promising region.

Hispaniola: Dominican Republic & Haiti

The Dominican Republic (Spanish: *República Dominicana*) is a country on the island of Hispaniola, in the Greater Antilles archipelago in the Caribbean region. The western three-eighths of the island is occupied by the nation of Haiti. Both by area and population, the Dominican Republic is the second-largest Caribbean nation (after Cuba), with the capital city Santo Domingo having a population of 2.9 million. The Dominican Republic has the ninth-largest economy in Latin America and has the largest economy in the Caribbean and Central American region. The Dominican Republic is the most-visited destination in the Caribbean. The year-round golf courses are among the top attractions on the island.

The Casino Department of the Dominican Ministry of Finance (Spanish: *Dirección de Casinos y Juegos de Azar*, or "**DCJA**", http://www.casinos.gov.do) regulates all operations of gambling operators, including the distribution of casino, slot machine and online gambling licences. Slot machines that are operated by sports betting agencies are jointly regulated by the Ministry of Finance as well as the Ministry of Sports, Physical Education and Recreation. Furthermore, the DCJA advises the Minister of Finance on matters related to the authorisation, operation and supervision of the other games.

Lottery operations are regulated by the Lotería Nacional, a regulatory body that is also in charge of issuing special licences for interactive lotteries.

Haiti is situated on the west side of the Island of Hispaniola, with the capital city Port-au-Prince having a population of 2.6 million. Casino operations in Haiti are, at this time, not regulated at a national level. Currently, there are only two legal casinos in operation within the borders of Haiti. Online gambling is also not regulated at this time in Haiti, which means that if Haitian players want to play online, they need to visit an offshore online casino.

Puerto Rico

Puerto Rico, officially the Commonwealth of Puerto Rico (Spanish: *Estado Libre Asociado de Puerto Rico*), is a United States territory located in the north-eastern Caribbean, with the capital city San Juan having a population of 0.4 million. Puerto Rico is an archipelago that includes the main island of Puerto Rico and a number of smaller islands. Inhabited United States territories, such as Puerto Rico, have democratic self-government split into three local Governments. Inhabitants furthermore enjoy protection under the United States courts. The Puerto Rico Tourism Company ("**PRTC**"), created by Act No. 10 of June 18, 1970, as amended, regulates all administrative processes regarding licensing, franchise concession, supervision, and management of gaming operations in Puerto Rico. The PRTC engages in stimulating, promoting and regulating the development of the tourism industry. The company markets Puerto Rico as a tourism destination through advertising, public relations and promotional activities, and promotes tourism among local residents. Furthermore, the PRTC provides visitor orientation and technical assistance to investors, evaluates tourism facilities and regulates oversees gaming operations. The PRTC is based in Old San Juan, Puerto Rico, and it has offices in the United States, Canada, Europe and Latin America.

Horse race wagering is regulated by the *Administración de la Industria y el Deporte Hipico* ("**AIDH**"). The agency allows on-track betting and oversees off-track betting in approved parlours. There is one horse track in the country, the Camarero Racetrack, formerly known as El Comandante Racetrack. The facility hosts Sunday horse races and the annual "*Clásico del Caribe*".

Video lottery terminals ("**VLTs**") are also controlled by the AIDH, although VLTs are not permitted to operate at the racetracks. Puerto Rico's video lottery terminals are networked through 700 off-track betting agencies in what is known as the El Camarero Off-Track Betting Agency system.

Jamaica

Jamaica is an island country situated in the Caribbean region and is the third-largest island of the Greater Antilles. The island, at 10,990 square kilometres, lies about 145 kilometres south of Cuba, and 191 kilometres west of Hispaniola. Jamaica is the fifth-largest island in the Caribbean, with the capital city, Kingston, having a population of 0.9 million. Jamaica has a parliamentary democracy and constitutional monarchy, with Queen Elizabeth II serving as the Jamaican monarch. Jamaica is divided into 14 parishes, which are grouped into three historic counties that have no administrative relevance.

The Betting, Gaming, and Lotteries Commission ("**BGLC**", http://www.bglc.gov.jm) is a statutory body of the Ministry of Finance & Planning, established in 1975 under the provisions of the Betting Gaming & Lotteries Act ("**BGLA**"). The BGLC regulates and controls the operations of betting, gaming and the conduct

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of lotteries in Jamaica, and its responsibilities include issuing licences and collecting related fees, taxes and contributions to the Government of Jamaica. Residents of Jamaica are not permitted to gamble online.

Horseracing is regulated by the Jamaica Racing Commission ("**JRC**", http://www.jrc.gov.jm). The Jamaica Racing Commission was established in 1972 by an Act of Parliament (The Jamaica Racing Commission Act, "**JRCA**") to regulate and control horse racing and the operation of racecourses on the island. The BGLC comprises seven Commissioners appointed by the Minister of Finance, who are supported by a staff complement of 35 full-time employees. Since its inception, the BGLC has established welfare programmes and insurance schemes for the racing industry, educated and trained key racing personnel, and modernised the drug-testing programme.

The Jamaican horse racing industry comprises three main elements: (i) agriculture (through breeding farms); (ii) race meets and programmes, promoted by Caymanas Track Limited; and (iii) gaming, regulated by the BGLC.

The Casino Gaming Commission ("**CGC**", http://www.cgc.gov.jm), established by the Casino Gaming Act 2010 ("**CGA**"), has the power to grant casino licences as well as being the regulatory body for casino gaming in Jamaica.

Cuba

Cuba, officially the Republic of Cuba (Spanish: *República de Cuba*), is a country in the Caribbean comprising the main island of Cuba, the Isla de la Juventud and several archipelagos. Havana is Cuba's capital and its largest city, having a population of 2.1 million. The United States is 150 kilometres north of Cuba, the Bahamas and the Turks and Caicos Islands to the northeast, Mexico 210 kilometres to the west, the Cayman Islands and Jamaica to the south, and Haiti to the southeast. The country is subdivided into 15 provinces and one special municipality (Isla de la Juventud). These were formerly part of six larger historical provinces: Pinar del Río; Habana; Matanzas; Las Villas; Camagüey; and Oriente. The present subdivisions closely resemble those of the Spanish military provinces during the Cuban War of Independence, when the most troublesome areas were subdivided. The provinces are divided into municipalities. In Cuba, since 1959, no legal framework has been in place that allows any legal forms of gambling. All law enforcement agencies are maintained under Cuba's Ministry of the Interior, which is supervised by the Revolutionary Armed Forces. The Cuban Government also has an agency called the Intelligence Directorate, which conducts intelligence operations and maintains close ties with the Russian Federal Security Service.

Experts say there might be a chance of the situation changing, and of casinos returning to Cuba. Diplomatic relations between the US and Cuba were restored in 2015, which means that American tourists are once again free to visit the country. With the huge potential revenue, American casino giants will definitely try everything to make Havana the casino gambling hub it once was (the "Las Vegas of the Caribbean"). How successful these efforts will be remains to be seen.

Cayman Islands

The Cayman Islands are a British Overseas Territory in the western Caribbean Sea. The territory comprises the three islands of Grand Cayman, Cayman Brac and Little Cayman, located south of Cuba and northwest of Jamaica, with the capital of Georgetown having a population of 30,000. The Cayman Islands are considered to be part of the geographic Western Caribbean Zone, as well as the Greater Antilles. The territory is a major offshore financial centre. The Cayman Islands are listed by the UN Special Committee of 24 as one of the last non-self-governing territories. A 20-seat Legislative Assembly is elected by the people every four years to handle domestic affairs. The executive authority of the Cayman Islands is vested in the Queen and is exercised by the Government, consisting of the Governor and the Cabinet. Gambling is prohibited by law in the Cayman Islands, and in conjunction with this law, casinos have been outlawed.

In response to developments on the island of Bermuda, the responsible regulator, the Cayman Islands Tourism Association ("**CITA**"), noted in 2014 that the Cayman Government should, despite the fact it could make the tourist industry of Cayman Islands more competitive, not rush into legalising gambling. The CITA believes that the issue of gambling should be decided only after a public education campaign and a referendum.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Hispaniola: Dominican Republic & Haiti

The primary source for regulating gambling in the Dominican Republic is Ley 351-64, which dates back to 1964. Under this law, casino gaming was deemed as the source for attracting tourists to the country. Further essential amendments were introduced to Ley 351 in 1965, 1998 and 2006 (as amended by Ley 24-98 and Ley 29-06). Originally the Dominican Republic authorities were entitled to license online sports betting services (only). However, no new licences of this kind were issued to sports book companies operating from outside the country since 1996. Following the latest trend of liberalising the attitude to online gambling legalisation in 2006, the Ministry of Finance of the Dominican Republic was granted the right to issue licences for games of chance, including electronic games of chance, pursuant to paragraph 29 of Article 3 of Ley 494-06. However, until February 2011, there were no announcements regarding any iGaming operator that was actually granted such gambling licence. This might have been caused by a time-consuming procedure for the Ministry of Finance to determine the qualification requirements for the licensees. Nevertheless, as for the date of passing the law, there were no vivid impediments for the international iGaming companies to become eligible for the online gambling licence in the Dominican Republic. In fact, the laws known as Ley 139-11 and Ley 494-06 laid the basis for attracting multinational iGaming operators to the Dominican Republic. Ley 139-11 involves the amendments in terms of the general fiscal system and, in particular, it deals with: (i) the increase in the corporate annual income tax; and (ii) changes in the fiscal system which apply to casinos and other establishments offering gambling services. The most significant impact on the development of gaming in the Dominican Republic could very well entail an increase in the tax rate from 25% to 29% for all companies in all industries generating a national source of income. This also impacts casinos operating in the country, based on the tables in operation, combined with a tax on the gross sales of slot machines, including telephone and online gaming operations.

Puerto Rico

The primary source for regulating gambling in Puerto Rico is the Puerto Rico Games of Chance Act and its (extensive) Regulations of 1948 ("**PRGCA**"). Via amendments, regulation has also been introduced to regulate VLTs in off-track betting parlours.

Chapter I of the PRGCA institutes the regulating authority, PRTC. According to Section 2.1, chapter II, PRGCA, no person may own or operate a casino unless a franchise licence has first been issued to

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each and every person who is entitled to qualify or who is obligated therefor, pursuant to Section 2.1, PRGCA. Players can only bet on horse races taking place at the "*Camarero Racetrack*", and the state also offers traditional and electronic lottery games. According to Puerto Rico law, all casinos must be maintained on the property of a hotel or resort. Slot machines may only operate within those licensed casinos. Separate slot halls are prohibited.

The PRGCA legalises certain forms of casino gambling in licensed establishments in order to promote the development of tourism; however, it also provides that no casino shall be permitted to advertise or otherwise offer their facilities to the public of Puerto Rico. However, certain regulations permit restricted advertising through media outside Puerto Rico.

The current law does not cover Adult Entertainment Machines and this has led to the uncontrolled spread of illegal slot machine parlours, which take a bite out of casino profits. Several legal gambling venues have closed and total revenues have dropped significantly. Casino owners have complained about these problems and have asked the Puerto Rican regulator to make current laws clear and more flexible.

Jamaica

The Jamaican Gambling Law of 1899 defined "*unlawful gambling*" to include cock-fighting, and the act of betting or of playing a game for a stake when practised in or upon any path, street, road or place to which the public have access, in any spirit-licensed premises except in certain clubs approved by the Governor, or in a common gaming house as defined under the law. During the 1950s and 1960s, two major developments occurred in relation to gambling in Jamaica. Firstly, bookmakers expanded their business and, secondly, there was a significant increase in the amount of money being spent on football pools and similar gambling promotions overseas. Technological advances in radio and telephone brought the gambling activities of Great Britain and the United States closer to Jamaica. The norms and attitudes of the early 1900s could no longer be expected to remain unchanged in the face of these exposures. Nowadays, all forms of gambling are regulated under the BGLA. Several amendments to the BGLA came into effect on June 22, 2010. In May 2014, another package of amendments came into effect, expanding Jamaica's current gambling offering. As a result of the amended Act, between 20 and 40 new licensed sports betting shops were allowed to open. Licensed operators would also get the right to offer sports wagers and lottery sales via telephone and text.

The amended BGLA also gives the BGLC some regulatory teeth, allowing it to fine unlicensed sports betting operators between USD 150k and USD 500k. It was estimated that before these amendments came into force, between 30% and 40% of the gambling taking place on Jamaica was not sanctioned by the BGLC.

Regarding the regulation of land-based casinos, the Casino Gaming Act 2010 ("**CGA**") Part iv, Section 13 (1) provides that a person shall not operate a land-based casino, except in accordance with the provisions of the CGA, any regulations made thereunder and a casino gaming licence. The CGC is the body authorised to issue casino gaming licences to entities wishing to operate as a casino gaming facility and persons wishing to work in the casino gaming industry. The decision to permit casino gaming is linked with the Government's plan to improve and expand the tourism industry by developing a number of large integrated resorts, of which casinos would be a part.

The BGLC has stated that Jamaica is not yet equipped to regulate remote gambling. It is, however, expected that the market will open up for remote gambling somewhere in the near future.

Cuba & Cayman Islands

In these regions, there is currently no legal framework in place that allows any legal forms of gambling.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Hispaniola: Dominican Republic & Haiti

Currently, the procedure of obtaining a Dominican gambling licence only refers to land-based casinos. Potential operators need to be owners, lessees or licensees of a first-class hotel. However, licensees can delegate the management of the casino to a third party. In that case, the manager will be responsible for complying with the casino legislation and the payment of gaming taxes.

In February 2011, the first and, at time of publication of this chapter, only online gambling licence in the Dominican Republic was issued to the "*Amaya Gaming Group Inc.*", an entertainment solutions provider for the gaming industry.

As already mentioned above, Haiti currently offers no legal framework to apply for (any) gaming licence.

Puerto Rico

Any person who is interested in operating a casino can apply for a franchise licence in Puerto Rico, which allows the licensee to operate a casino granted in accordance with the provisions of Chapter 2, PRGCA. Also, non-corporate applicants may apply if they are able to provide sufficient information on each person who, directly or indirectly, holds any beneficial interest or ownership in the applicant, or who, in the opinion of the Commissioner, has the ability to control the applicant. In accordance with Section 2.6, Chapter 2, PRGCA, the franchise applicant is required to own, manage and/or operate a hotel that meets certain minimum requirements for any of the designated zones. Puerto Rico has three designated zones:

"*Zone Number 1*" includes the municipality of San Juan (excluding the historical zone defined by the Planning Board) and the municipalities of Carolina, Loíza and Río Grande. A Zone Number 1 hotel is required to operate a minimum of 300 hotel rooms against a minimum annual turnover of USD 15 million.

"*Zone Number 3*" comprises the portion of the historical city of San Juan that is described in Resolution No. Z-7 of March 28, 1951, issued by the Planning Board of Puerto Rico, and the international airports in Puerto Rico. A Zone Number 3 hotel is required to operate a minimum of 125 hotel rooms against a minimum annual turnover of USD 5 million.

"*Zone Number 2*" includes the rest of the geographical and territorial space of Puerto Rico, not included in Zone Number 1 or in Zone Number 3. A Zone Number 2 hotel is required to operate a minimum of 150 hotel rooms against a minimum annual turnover of USD 10,000,000.

The PRGCA currently includes no provisions that allow for a remote gambling licence.

Jamaica

Any person may apply for a land-based casino licence if he provides proof that he is a company, duly incorporated under the laws of Jamaica. Furthermore, the applicant and his associates must have arranged a satisfactory ownership structure. Only residents of Jamaica may apply for a licence to conduct a bingo/raffle under the provisions of Section 51 (1) of the BGLA. Gaming machine operators must apply to the BGLC for licences to operate any such machines via the appropriate application form.

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Cuba & Cayman Islands

In these regions, there is no legal framework in place that allows any legal forms of gambling.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Hispaniola: Dominican Republic & Haiti

Article 2, Ley 96-88 states that the importation of slot machines, parts, spare parts and auxiliary equipment and its installation, operation and replacement must be approved by the Commission of Casinos in the same way as the licence for the operation of casinos is obtained.

Article 29, Ley 96-88 states that casino operators must request the corresponding authorisation before contracting their employees. The request can be made by filling in an application form with a certificate of no criminal record of the employee attached to the form.

Puerto Rico

According to Chapter 6, PRGCA, any person who intends to be employed by a casino franchise licensee is required to obtain an Employee Licence, a Casino Supervisory Licence and/or a Key Employee Licence. The specific licences are issued depending on the position of the employee, e.g. a Casino Supervisory Licence is required for the following positions: casino shift manager; poker shift supervisor; security investigations supervisor; controller; credit manager; chief financial officer; or hotel marketing executive.

Sections 6.4–6.9, PRGCA provide the general (extensive) criteria for staff to obtain an Employee Licence. Section 6.19, PRGCA obliges licensees to disclose any changes in function or position within 15 days following the change in position.

According to Chapter 7, PRGCA, any person who intends to do business in the Commonwealth of Puerto Rico is required to apply for a Casino Service Industry Licence if they: (1) manufacture, supply or distribute devices, machines, equipment and items or articles which (a) are specifically designed for use in a casino, (b) are needed to conduct an authorised game of chance in Puerto Rico, (c) have the capacity to affect the outcome of the play of an authorised game of chance in Puerto Rico, or (d) have the capacity to affect the calculation, storage, collection, or control of revenue generated by a casino licensee from gaming operations, including those from slot machine operations; (2) are a gaming equipment servicer or repairer; (3) provide services directly related to the operation, regulation or management of a casino; (4) are schools that teach games of chance and gaming techniques in Puerto Rico; (5) are credit reports service providers for casinos and suppliers of security services for casinos; (6) are individual junket operators and respective companies; and (7) provide such other goods or services determined by the PRTC to be so utilised in, or incidental to, gaming or casino activity as to require licensing in order to contribute to the public confidence and trust in the credibility and integrity of the gaming industry in the Commonwealth of Puerto Rico.

Since casino operations are allowed only in designated areas, no separate premises licence is required.

Jamaica

Part iv, Section 14 (1) of the CGA provides that every approved developer who, or a company nominated by the developer that, is desirous of operating a casino in an integrated resort development may apply in the prescribed form and manner to the BGLC for a casino operator gaming licence or temporary casino gaming licence. No person shall be employed in a specified office in a casino unless he is the holder of a personal Employee Licence. Vendors of casino equipment and their employees need to apply for a Casino Equipment Vendor Licence and a Casino Equipment Employee Licence, respectively.

Cuba & Cayman Islands

In these regions, there is currently no legal framework in place that allows any legal forms of gambling.

2.3 What restrictions are placed upon any licensee?

Hispaniola: Dominican Republic & Haiti

Applicants who wish to apply for a land-based casino licence have to meet the following requirements: (1) potential operators need to be owners, lessees or licensees of a first-class hotel; however, licensees can delegate the management of the casino to a third party, and in that case, the manager will be responsible for complying with the casino legislation and the payment of gaming taxes; (2) the gambling facilities must be located in an area considered of interest to tourists; and (3) the operator should be solvent and its shareholders or partners should have a good reputation.

Puerto Rico

Section 2.14, PRGCA contains "Disqualification Criteria" on which basis a franchise licence shall be denied in the following events: (1) failure to provide evidence that the applicant is qualified to operate a casino; (2) conviction of a felony offence; or (3) failure to provide sufficient credentials. Section 2.15, PRGCA provides additional relevant criteria: (1) involvement in litigation over business practices; (2) failure in complying with court rulings; (3) financial ability to develop and operate a facility; and (4) capacity and aptitude of the managers, consultants, and other contractors to develop and carry out the operations of a casino franchise. Furthermore, employees of the franchise licence-holder are bound to an extensive number of behavioural rules and regulations, with failure to comply resulting in the penalty of immediate suspension or revocation. For example, Section 3.7, PRGCA states: (1) treat the public with politeness and courtesy; (2) refrain from making comments with respect to wagers or advising the players; (3) refrain from requesting tips from players and from acts or gestures that may lead to obtainment of such tips; (4) no casino employee shall play and/or bet directly or indirectly, or in any other manner, play in the casino where he works or in any other authorised casino in Puerto Rico, even after working hours. Any person who has ceased to work and still holds a valid licence must surrender the same before betting and/or playing in a casino; and (5) every casino employee shall observe the strictest and utmost honesty in the performance of his work in the casino.

Jamaica

In relation to a land-based casino licence, the CGC expects the operator and his associates to be fit and proper persons to be associated with the management or operation of the casino. The operator and his associates are required to be of a sound and stable financial background and need to have a satisfactory ownership structure in place. Furthermore, they need to have obtained the funding and staffing necessary to operate and ensure the financial viability of a casino.

Cuba & Cayman Islands

In these regions, there is currently no legal framework in place that allows any legal forms of gambling.

2.4 What is the process of applying for any gambling licence or regulatory approval?

Hispaniola: Dominican Republic & Haiti

Applications for casino licences are submitted to the Ministry

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of Tourism and evaluated by the DCJA, which functions under the responsibility of the Secretary of Finance and forwards its recommendations to the Executive Branch. Casinos must operate in connection with a hotel categorised as "first class". Applications must include a description of the games of chance to be offered and how each one will function, as well as a description of how the gambling halls will be managed, including the maximum bets that will be accepted and the hours that related tourist attractions and hotel accommodations will operate. Furthermore, the following information needs to be included in the application: (1) the nature of the games that would be installed and a description of how they work; (2) admission conditions to the gaming venues; (3) maximum limits on the accepted bets; (4) operating hours; (5) attractions and bonuses offered to players; (6) a receipt demonstrating the payment of the application fee; (7) a feasibility study which provides an outline of the project, including details on investment, infrastructure (drawings, photos, etc.), installation of the tables and machinery, and tourism projection; (8) a copy of all documents related to the incorporation of the corporation that will operate the casino; (9) certification stating that the operating company has no outstanding debts with the Department of Project Development and Finance Project of the Central Bank ("*Dept. de Desarrollo y Financiero de Proyectos del Banco Central*"); (10) a certificate of no criminal record of the shareholders; (11) the operator should be solvent; and (12) operators need to submit a letter to the Minister of Finance, requesting a licence to install a casino. After the application is evaluated by the National Casino Commission, they submit a report establishing their conclusions. On the basis of these conclusions, the Executive Branch of the Government will make the decision on whether the licence can be granted to the operator. If the casino is deemed as eligible, the licence is issued by the Casino Department of the Finance Secretariat. Article 10, Ley 351 states that a copy of the licence, once granted, shall be published in a daily newspaper of Santo Domingo, and a copy of the licence shall furthermore be fixed in a visible and prominent place within the gambling establishment. No licence can be transferred without the previous authorisation granted by the DCJA.

Puerto Rico

Section 2.2, PRGCA states that any person interested in obtaining or renewing a franchise licence to operate a new casino must request an endorsement letter from the PRTC, certifying that the project of the applicant meets the minimum requisites of the PRTC as to the location and physical facilities of the casino and the hotel. This endorsement needs to be filed with a sworn application with the Commissioner of Puerto Rico. Upon receipt, the Commissioner shall forward a copy of the application to the PRTC in order for the PRTC to evaluate the application and make the appropriate final recommendation to the Commissioner. An adverse recommendation from the PRTC shall carry an automatic denial of the application for a franchise by the Commissioner. The licence shall be issued after the PRTC imparts the final favourable recommendation, the Commissioner concurs with the same and the Commissioner receives payment of the licence fees for the first quarter of operation.

Jamaica

An application, pursuant to Section 1, GCA, for a casino licence needs to disclose the following information: (a) a copy of the articles of incorporation or Memorandum of Association of the applicant; (b) a copy of the certificate of incorporation of the applicant; and (c) a letter of good standing of recent date. Furthermore, the applicant needs to provide information on the integrated resort development in which the permanent casino facilities will be sited, as well as site plans, floor plans and drawings referred to in the description of the casino facilities.

If the applicant is the nominee of an approved developer, the nomination document whereby the approved developer has nominated the applicant for purposes of an application for a casino gaming licence or, as the case may be, a temporary casino gaming licence, should be provided. Furthermore, résumés need to be provided for each of the directors, the chief executive officer, the corporate secretary and any other officer and employee reporting directly to the chief executive officer. The applicant needs to provide a business plan for the casino gaming enterprise, which, in the case of an application for a casino gaming licence, shall be for at least five years from commencement of casino gaming operations or, in the case of an application for a temporary casino gaming licence, shall be for the proposed duration of the licence. Subsequently, a *Personal History Disclosure Form* needs to be filed, as well as a *Jamaican Supplemental (Personal) Form* or a *Multi-Jurisdictional Personal History Disclosure Form* to be completed by each director, officer and employee of the applicant named in the application, and by each individual who holds, directly or indirectly, 5% or more of the voting shares of the applicant. A *Jamaican Supplemental Business Entity Form* needs to be completed by each business entity (other than an individual) which, directly or indirectly, holds 5% or more of the voting shares of the applicant, except if the applicant is a subsidiary, when a *Business Entity Disclosure Form* is to be completed only by the ultimate parent company and each business entity that indirectly holds, through the ultimate parent company, 5% or more of the voting shares of the applicant.

All of this information needs to be delivered to the Secretary of the BGLC, accompanied by a letter which shall be signed on behalf of the applicant and which shall conform to the Third Schedule. Where an applicant fails to comply with any requirement under Section 17 of the Act for the provision of information or the furnishing of records or other documents to the BGLC, thus entitling the BGLC to refuse to consider the application, the BGLC shall notify the applicant of such refusal in writing.

An application for a land-based casino gaming licence shall be accompanied by a non-refundable application fee of USD 50,000. In addition to the application fee, an applicant shall, pursuant to Section 16 (3) of the GCA, make a deposit of USD 100,000, to be used by the BGLC for expenses reasonably undertaken by the BGLC in connection with investigations and enquiries conducted by the BGLC with respect to the applicant. Within 30 days after receiving an application, the BGLC shall provide the applicant with an estimate of the total reimbursable expenditure anticipated to be incurred by the BGLC to complete the investigations and enquiries pursuant to Section 1, GCA. During the course of the investigations and enquiries, the BGLC shall, on a monthly basis, provide to the applicant a statement with detailed accounting of all reimbursable expenditure incurred during the investigations and enquiries period. Within 30 days after the conclusion of the investigations and enquiries, the BGLC shall apply the deposit paid to any reimbursable expenditure then outstanding and return any monies remaining from the deposit to the applicant. The BGLC may refuse to consider an application where the applicant fails to make the deposit, or replenish the deposit as the case may be, and the BGLC is therefore unable to carry out or cause to be carried out investigations and enquiries it considers to be necessary. The BGLC may waive the payment of the application.

Cuba & Cayman Islands

Currently, in these regions, no legal framework is in place that allows any legal forms of gambling.

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2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Hispaniola: Dominican Republic & Haiti

Casino licences in the Dominican Republic can be modified or cancelled by the DCJA for reasons of public order or a grave breach of the requirements or obligations established by Ley 351.

Puerto Rico

Section 2.20, PRGCA states that the licence period for a (renewed) franchise licence shall be three years. After the initial two licence terms, the renewal periods shall be four years. A granted licence is, at all times, subject to the authority of the Commissioner and the PRTC to deny, revoke or suspend. Furthermore, applicants are required to pay the application fees and investigative costs. Upon renewal of any licence, the Commissioner shall issue an appropriate certificate and validating device or sticker that shall be placed in a visible and accessible place within the casino.

Section 6.9, PRGCA states that all *Casino Employee Licences* and *Casino Supervisory Licences* shall be issued by the PRTC for a period of two years, and all *Casino Key Employee Licences* shall be issued by the PRTC for a period of three years. However, any licence may be suspended or revoked at the discretion of the PRTC.

Jamaica

A casino licence in Jamaica shall remain valid for an indefinite period. However, a land-based casino licence shall expire when: the applicant/operator fails to pay the initial licensing fee within 30 days following the granting of the licence; the applicant/operator fails to commence operations within the time specified in the licence; or the applicant/operator suspends operations for more than 90 days other than by reason of *force majeure* or a suspension order from the BGLC.

Every *Gaming Machine Licence* granted by the BGLC shall be valid for a period of 12 months from the date of issue and may be renewed no fewer than 45 days before expiration.

Cuba & Cayman Islands

In these regions, there is currently no legal framework in place that allows any legal forms of gambling.

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

Hispaniola: Dominican Republic & Haiti

All casinos in the Dominican Republic need to have a responsible administration. The names, profession, address and identification documentation of officers and managers must be declared and added to the register of the DCJA. Any changes in the administration must be communicated to the DCJA. Members of the responsible administration cannot be substituted by other persons (individuals or companies) without the previous authorisation of the DCJA. Underage gambling in the Dominican Republic is strictly prohibited. Operators who allow minors to gamble commit a punishable offence. Land-based casinos are allowed to offer their services to customers from 4:00pm to 6:00am. According to Ley 308-06, providing alcohol to players is only allowed from 12:00pm until 2:00am on Fridays and Saturdays. Article 8, Ley 308-06 states that the Ministry of the Interior and the police shall enforce this law, its regulations and other legal provisions which in effect dictate, for which it will have a Department of Alcoholic Beverage Control (Spanish: "*Departamento de Control Bebidas Alcohólicas*", or: "**COBA**") with trained civil personnel equipped with public faith, assisted by police and, if necessary, the military. The COBA is empowered to investigate, inspect establishments, raise tax assessments and recognise and control all types of premises and facilities in order to verify compliance with this Act. The owners or managers, or others responsible, shall be obliged to lend the necessary support and assistance for carrying out checks relating to the verification of compliance with the provisions of this law, and must not, through active opposition or simple omission, obstruct, hinder or impede the development of this work. Casinos in the Dominican Republic are now allowed to conduct their operations in any currency.

Puerto Rico

Section 7.2, PRGCA states a general requirement that all provided services should not harm the trust, credibility and integrity of Puerto Rico's gaming industry. Chapter 12, PRGCA prescribes general obligations regarding the prevention of compulsive gambling and regulations that will allow self-exclusion.

Each franchise licensee is obligated to establish a training programme and identify a person to be responsible for training, or coordination of training, to ensure that regulatory requirements are implemented, administered and monitored to maintain the minimum standards. The franchise licensee is furthermore required to implement an employee training plan which includes training manuals and other materials necessary to educate employees about compulsive gambling issues, such as the psychology of the compulsive gambler, methods of recognising compulsive gambling behaviour, and intervention techniques.

Jamaica

The Responsible Gaming Code of Conduct ("**RGCC**") states that all operators should be committed to promoting high standards of responsible gaming at their businesses. The RGCC demonstrates a commitment to four significant groups; these are: (1) employees; (2) customers; (3) public; and (4) minors. All operators must recognise the importance of having employees who are able to recognise the signs of a potential gambling disorder in a patron, and who will commit to promoting principles of responsible gaming. To accomplish this, operators will: (a) organise and conduct professional development training and educational workshops on responsible gaming which must be attended by all relevant employees at least twice per year – these workshops will be geared towards helping employees identify and intervene when they recognise that a customer is a minor or displaying signs of a gambling disorder; (b) educate new employees on the business' policies on practices relating to responsible gaming as a part of their induction/orientation process; (c) make information/materials promoting responsible gaming, including the RGCC and the code of ethics, available to all employees; (d) make information on how to access help regarding treatment for gambling disorders readily available – this must include the *RISE Life Management Services* toll-free help line and treatment initiatives; (e) establish a clearly delineated staff gaming policy which must address whether or not gaming is strictly prohibited among staff – if staff members are permitted to gamble, the policy must specify under what conditions they are permitted, for example, whether in uniform or not, or whether there will be limits as to the amount to be spent on a given gaming occasion; and (f) recognise employees who diligently work at incorporating the practices of the Code of Conduct and responsible gaming through an employee award system.

Cuba & Cayman Islands

In these regions, there is currently no legal framework in place that allows any legal forms of gambling.

2.7 What are the tax and other compulsory levies?

Hispaniola: Dominican Republic & Haiti

Article 14, Ley 351-67 states that establishments which operate

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games of chance are subject to a monthly tax, which may not be less than RD$ 2,000 nor more than 6% of the gross income for each establishment, according to the Executive Power after recommendation of the DCJA. This tax shall replace the Income Tax and must be paid in advance to the "*Colectarías Revenue Internal*" within the first five days of each month. The failure to pay any fixed monthly tax will result in the immediate cancellation of the licence granted. No other communication is required apart from that from the Ministry of Finance via letters certified, which leaves the "*General Internal Revenue Direccion*" able to receive owed securities, whose collection will be subject to coercive measures regulating the collection of taxes. Article 15, Ley 351-67 states that before a concession in accordance with this law enters into force, the licensee shall give security in the form of a deposit, which shall not exceed RD$ 20,000. This deposit is primarily that of any other obligations and penalties that the licensee might incur, including taxes. Article 16, Ley 351-67 states that 10% of the revenue collected by virtue of the provisions of Article 14, Ley 351-67 should benefit the municipality or municipal district where the establishment is based. Ninety per cent of the revenue collected shall benefit general health care and the development of tourism.

An outline of several levies in RD$:

- Casino licence application fee: RD$ 10,000,000.
- Transfer of the casino licence to a third party: RD$ 4,000,000.
- Transferring shares of a company that owns a casino licence: RD$ 4,000,000.
- Publication costs on behalf of a casino licence: RD$ 50,000.
- Applying for registration of the responsible administration: RD$ 1,000,000.
- Slot machines licence application fee: RD$ 500,000.
- Change of casino name-holder: RD$ 50,000.
- Slot machines establishments application fee: RD$ 5,000,000.
- Import/export of slot machines: RD$ 10,000.
- Moving slot machines to another establishment: RD$ 10,000.
- Requesting a casino inspection regarding opening or reopening: RD$ 50,000.
- Request to modify a casino licence to add a quantity of table games, request to certificate an administration procedure: RD$ 1,000.
- Closure (land-based) and miscellaneous: RD$ 25,000.
- Online gambling licence application fee: RD$ 10,000,000.
- Transfer of an online gambling licence to a third party: RD$ 4,000,000.
- Applying for registration of the responsible administration: RD$ 1,000,000.
- Request to certify an administration procedure: RD$ 1,000.
- A 10% tax is levied over the gross revenue of all online gambling operations.

Puerto Rico

The provisions of Subtitle C of the Puerto Rico Internal Revenue Code of 2011 ("**PRIRC**") govern the imposition and administration of the excise tax regime in Puerto Rico, which also includes certain taxes on gambling and the levying of licence fees on certain wholesalers and retailers. Subtitle C, PRIRC, Section 3040.02 levies a tax of 10% on certain gambling winnings obtained in banks and 20% on all winnings from pools, betting against the bank, daily doubles, and subscription funds or from any other betting transactions legally authorised on the racetracks of Puerto Rico.

According to Section 2.21, PRGCA, each applicant for a franchise licence or an applicant to renew a franchise licence shall pay a non-refundable application fee of USD 25,000 upon the filing of the application. In addition, a franchise licensee applicant is required to pay an initial fee of USD 15,000 to defray investigation costs. The Commissioner shall have the authority to request additional investigative fees as necessary to conduct the investigations contemplated by this Section. Failure by an applicant or franchise licensee to pay the application fee or investigative costs shall be cause to deny the application or revoke a franchise licence. According to Section 6.15, PRGCA, fees payable for the initial, or renewal of an, application for an *Employee Licence* shall be determined by the PRTC based on the position occupied by the employee; provided that said fees shall be USD 100 for an *Employee Licence*, USD 250 for a *Supervisory Licence*, and USD 500 for a *Key Employee Licence*.

All licences shall be subject to an annual payment by the franchise licensee to the Commissioner, which shall be payable quarterly in advance. Overall revenues are subject to a yearly fee: (a) less than USD 25 million: USD 50,000; (b) in excess of USD 25 million and up to USD 50 million: USD 100,000; (c) in excess of USD 50 million and up to USD 100 million: USD 150,000; and (d) in excess of USD 100 million: USD 200,000.

Jamaica

An application for a casino gaming licence shall be accompanied by a non-refundable application fee of USD 50,000 and a deposit of USD 100,000 for investigative expenses. Owners of locally manufactured gaming devices (also referred to as "ten cents" machines licensees) pay an annual levy of USD 5,000 in respect of each machine. Each owner or operator of the prescribed premises shall pay an annual levy of USD 2,500. Additionally, the payment of the following fees by the licensees must be made to the Commission: (a) a licence fee of USD 4,000 in respect of each gaming machine specified on the application; (b) a fee of USD 1,000 to cover the provision by the Commission of an identification disc in respect of each gaming machine specified on the application; and (c) a premises fee of USD 1,000. Levies are due annually on April 1. If paid after the April 1, fines shall apply. All taxes are to be paid directly to the *Inland Revenue Department*. Tax receipts are to be kept as proof of payment and submitted during licensing and registration. BGLC Licensing and Registration fees are to be paid directly in cash to the BGLC Office or deposited into the BGLC's BNS Account.

With the planned roll-out of the Tax Administration ("**TAJ**") Revenue Administration System ("**RAIS**") on September 5, 2016, there will be changes to the filing of Returns and Payment of levies and taxes associated with Betting, Gaming and Lottery activities, to ensure that all gaming machine operators with imported slot machines have a full understanding of the requirements.

The BGLC has an extensive overview of all taxes, (application) fees and levies available. For more information, visit http://www.bglc.gov.jm/node/305.

Cuba & Cayman Islands

In these regions, there is currently no legal framework in place that allows any legal forms of gambling.

2.8 What are the broad social responsibility requirements?

Hispaniola: Dominican Republic & Haiti

Article 8, Ley 351 states that, once in operation, a gambling establishment will not be allowed to direct advertisements in any form to residents of the Dominican Republic.

Puerto Rico

Chapter 12, PRGCA includes strict regulations regarding self-exclusion. Once a patron has been admitted to the self-exclusion list,

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the franchise licence-holder needs to ensure that self-excluded persons do not receive, either from the franchise licensee or any agent thereof, junket solicitations, targeted mailings, telemarketing promotions, player club materials or other promotional materials relating to gaming activities. Patrons placed on the voluntary exclusion list may not return to the casino until their written request for the exclusion to be rescinded is made to the PRTC and the PRTC has provided that person with written permission to return; the excluded person's name will then be removed from the exclusion list and his privileges will be restored. After the first request to be voluntarily excluded, the patron shall wait a minimum of one year before requesting removal from the exclusion list; a second request leads to a minimum exclusion of two years, and a third request shall lead to an exclusion for life. Section 3.1, PRGCA states that any franchise licensee may advertise or promote itself within the jurisdiction of Puerto Rico, only and exclusively when its advertisements or promotions: (1) are directed at foreign tourists, even though said advertisements incidentally may reach the residents of Puerto Rico; and (2) do not invite residents of Puerto Rico to visit the casinos. Licensees are furthermore allowed to distribute and place advertisements or promotions of its casinos in: (i) airplanes that have landed in Puerto Rico; (ii) cruise ships that are in Puerto Rico territorial waters; (iii) areas restricted to passengers in Puerto Rico airports; and (iv) tourist piers in Puerto Rico. Licensees may furthermore publish advertisements or promotions in magazines, newspapers, film, television, radio, or other publications that are locally distributed, provided that they are mainly directed or oriented to informing foreign tourists of the tourist attractions and facilities. Licensees are invited to use the word "*casino*" in their hotel name. However, this word may never be used separately from the hotel name.

Jamaica

The Responsible Gaming Code of Conduct ("**RGCC**") states that advertising of the gaming product must be done in a responsible manner and include responsible gaming messages in advertisements. The RGCC also stipulates: (a) advertisements must not be offensive or indecent in nature, false or misleading in any way about odds, prizes and chances of winning, and must comply with advertising laws of Jamaica; (b) advertisements must not be designed to appeal specifically to minors; (c) advertisements must not feature anyone who appears to be below the legal age to participate in gambling activity; (d) licensees must get written permission from the customer to send (via email, text message, or any other means) messages or advertising to such customer; and (e) customers must be able to opt out of receiving direct messages (via email, text message, or any other means) or advertising.

Cuba & Cayman Islands

In these regions, there is currently no legal framework in place that allows any legal forms of gambling.

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

Hispaniola: Dominican Republic & Haiti

Ley 494-06, on the Organisation of the Treasury Department ("**MHA**"), eliminated regulatory dispersal with respect to games of chance. The Ministry of Finance was awarded exclusive authority for granting licences and for inspecting the operators of that sector, which include lottery games, draws, charity raffles, casinos and gaming establishments, slot machines and other electronic games, bingos and any other manifestation of the same. From June 2011, absolute regulatory authority took effect, conferred by Ley 494-06 on the MHA; as a result Ley 139-11 entered into force, which, in the area of taxes, charged the General Directorate of Internal Taxes with the responsibility of collecting and overseeing taxes related to casinos, lottery outlets, sports betting outlets, slot machines, telephone games and online games. Said concentration of regulatory and tax functions has promoted a process for drafting rules, designing information systems and creating databases, which must formalise the monitoring of the activities of the sector and the implementation of policies and procedures geared toward mitigating risks in the area of money laundering. The laws concerning money laundering are based on the international standards in this area, namely those of the "*Financial Action Task Force*" ("**FATF**").

Puerto Rico

The United States, responsible for monitoring and regulating Anti Money Laundering ("**AML**") activities in Puerto Rico, has recently begun to focus more on the money laundering threats posed by the commonwealth to the U.S. The Financial Crimes Enforcement Network ("**FinCEN**") serves as the U.S. Financial Intelligence Unit ("**FIU**") and subsequently acts as the FIU for Puerto Rico. Recently, FinCEN designated Puerto Rico as a High Intensity Financial Crime Area ("**HIFCA**"). The designation of HIFCAs was outlined in the Money Laundering and Financial Crimes Act of 1998 and put into effect as an addition to the Bank Secrecy Act. The HIFCA programme was created to concentrate federal and local law enforcement in specific areas most prone to money laundering activities. Currently, all areas of Puerto Rico are listed as HIFCAs. However, the United States has been cracking down on enforcement, including holding banks and other financial institutions responsible for failing to report suspicious activity.

Jamaica

Casino gaming in Jamaica is regulated in accordance with the functions of the CGC, its regulatory powers and the international industry standards. The CGC has taken the responsibility of preventing money laundering and the financing of terrorist activities in relation to casino gaming. It is intended that the gaming industry in Jamaica will be regulated to guard against the industry being manipulated by criminal elements. Consequently, those international standards for anti-money laundering generally also apply to casinos. To mitigate the possibility of money laundering, inspectors or authorised persons can enter any premises at any reasonable time in order to: (a) ensure compliance with any regulations; (b) inspect any accounts, book, document, records or articles; or (c) require the production of records and accounts which the casino operator is required to keep. Risks are regularly being reviewed to determine any increase in the overall risks and the appropriate mitigation measures to be applied.

The FATF recommendations that set the global standards single out those business sectors believed to be at highest risk of money laundering; this list includes casinos. Casinos are therefore subject to similar, but not identical, international standards established for financial institutions. To properly guard against money laundering and financing of terrorism, it is critical that any regulatory regime takes into account these requirements. For ease of reference, any consideration of the best regime for casinos to guard against money laundering should take into account the two main issues for casinos. These relate to: (a) the AML measures that casinos are required to put in place to prevent money laundering; and (b) the regulatory regime that national governments are expected to put in place to deal with money laundering as it relates to the casino industry.

The laws concerning money laundering are based on the international FATF standards in this area. Upon designation, the obligations that apply to businesses in the regulated sector also apply to casinos in Jamaica.

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To guard against money laundering and financing of terrorist activities, the FATF recommendations require casinos to put in place the following measures to prevent money laundering and the financing of terrorism:

(a) Customer due diligence measures where transactions with the customer exceed specified thresholds.

(b) Perform record-keeping requirements as set out in the FATF recommendations on both customer identification as well as transactions which exceed particular thresholds.

(c) Have measures in place to identify "*Politically Exposed Persons*" ("**PEPs**"). These are persons that hold high political or governmental office, as well as persons who hold high office within international organisations. These persons are essentially treated as *prima facie* "high risk". Institutions that have this obligation are required to have measures in place to identify such customers, obtain senior management approval prior to entering into these business relationships, take reasonable measures to establish source of wealth and source of funds as well as to conduct enhanced monitoring of the business relationship.

(d) Have measures in place to deal with the money laundering risks presented from products that utilise new technologies capable of being used to launder funds. Before using or developing these products, casinos should carry out a risk assessment exercise in order to implement measures to minimise or eliminate these risks.

(e) Have measures in place to mitigate the money laundering risks that arise in dealing with introducers and intermediaries. In such cases, a casino may be introduced to new clients, placing reliance on the due diligence of the party who is introducing the client and thereby reducing the level of customer due diligence that would normally be undertaken by the casino. The FATF recommendations outline the preconditions to be undertaken when relying on such introductions in order to mitigate the risks. These include ensuring that the casino can obtain the relevant due diligence information from the third party upon request. The party being relied upon should also be regulated for anti-money laundering and be from a country that has an acceptable level of country risk. A casino should be wary of relying on an introducer or intermediary if that third party is from a country with weak AML regulatory regimes.

(f) Implement measures for internal controls to protect against the risk of money laundering. Where the entity is part of a group of entities, a group-wide policy should be implemented to deal with protecting the group against money laundering.

(g) Casinos (like other gatekeeper professions and financial institutions) should also have measures to deal with parties or transactions emanating from high-risk countries. These are countries with weak anti-money laundering regimes, and in such cases additional due diligence measures should be exercised.

(h) The reporting of suspicious transactions is a fundamental plank in a country's anti-money laundering policies. Casinos should be obliged to report transactions to the designated authority where there is a reasonable suspicion that the transaction involves proceeds of crime.

(i) The law should also provide protections for entities (and their directors/officers) that make the reports referred to in investigations.

(j) In addition, there should be sanctions for "tipping off" suspects to the fact that such a report has been made or that an investigation is under way.

Cuba & Cayman Islands

In these regions, there is currently no legal framework in place that allows any legal forms of gambling.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Hispaniola: Dominican Republic & Haiti

In order to hold an online gambling operation licence, the operator has to comply with the following restrictions: (1) homologation of the technical systems; (2) identification of the participants; (3) redirection to the specific website with domain name (.do); (4) security requirements of the technical systems of the game; (5) implementation of a control system that captures and registers all game operations and economic transactions; and (6) the operator is required to allow inspections of the DJCA and connection to the system if necessary.

Puerto Rico

At this time, the PRGCA has no framework in place that allows remote gambling.

Section 3.31.11, PRGCA stipulates the minimum requirements for management information systems and application software controls for gaming devices. Adequate business continuity procedures include: (1) daily backup of data files; (2) backup of all programs; (3) secured off-site storage of all backup data files and programs, or other adequate protection; and (4) written recovery procedures, which are tested on a sample basis at least annually, with documentation of results. For each computerised gaming application that may be accessed remotely, the written system of internal control shall specifically address remote access procedures including, at a minimum: (a) the type of gaming application, version number, the vendor's name and business address, if applicable; (b) the procedures used in establishing and using passwords to allow authorised vendor personnel to access the system through remote means; (c) the personnel involved and the procedures performed to enable the physical connection to the system when the vendor requires access through remote means; (d) the personnel involved and the procedures performed to ensure the physical connection is disabled when the remote access is not in use; and (e) any additional requirements relating to remote access specified by the PRTC or Commissioner. In the event of remote access, the franchise licensee is required to prepare a record of the access to include: (i) the name of the employee authorising access; (ii) the name of the authorised programmer or manufacturer representative; (iii) the reason for remote access; (iv) a description of work performed; and (v) the date, time and duration of access.

Documents may be scanned or directly stored to an unalterable storage medium under the following conditions: (1) the storage medium shall contain the exact duplicate of the original document; and (2) all documents stored on the storage medium shall be maintained with a detailed index containing the gaming operation department and date. This index shall be available to the PRTC and Commissioner upon request. Upon request and adequate notice by the PRTC or Commissioner, hardware, software, terminals, printers or other equipment necessary shall be made available to the PRTC or Commissioner so that they can conduct their auditing procedures. Controls shall exist to ensure the accurate reproduction of records, up to and including, the printing of stored documents used for auditing purposes. The storage medium shall be retained for a minimum of five years; and original documents must be retained in accordance with records retention requirements as set forth in Section 3A.4, PRGCA.

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Jamaica

Auditors, under the direction of the Director of Enforcement and Investigations, will conduct audits on the casino's system of internal control. The functions of the auditor also extend to ensuring compliance with approved games and their rules.

Cuba & Cayman Islands

In these regions, there is currently no legal framework in place that allows any legal forms of gambling.

3.2 What other restrictions have an impact on online supplies?

Hispaniola: Dominican Republic & Haiti

Operators are required to submit a description of the technical devices installed, a description of the measures that guarantee the quality and security of said devices, a description of the structure of the technical staff, and a description of the technical systems to develop the game activities concerning the licence.

Puerto Rico

At this time, the PRGCA has no framework in place that allows remote gambling.

Jamaica

At this time, the BGLC/CGA has no framework in place that allows remote gambling.

Cuba & Cayman Islands

At this time, this region has no framework in place that allows remote gambling.

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

Hispaniola: Dominican Republic & Haiti

Article 4, Ley 96-88 states that the authorisation granted to a casino for the installation and operation of slot machines will be done in the way that Law No. 351 provides for the licensing of gaming casinos. This authorisation may not be transferred without the consent of the DCJA.

Puerto Rico

Section 4.22, PRGCA states that it is illegal for any person to have in his possession any slot machine in Puerto Rico, except when the slot machine is in the possession of authorised persons, or any employee or agent who acts on their behalf, and exclusively for the purpose of maintaining for its (licensed) use, or using said slot machines in the operation of its authorised casino. A detailed floor plan needs to be submitted, prior to placements of the gaming devices. Before transporting or moving any slot machine into Puerto Rico, or within Puerto Rico from an authorised location to another authorised location in or outside of Puerto Rico, the manufacturer, distributor, seller or any other person who causes such slot machine to be transported or moved shall, at least 15 days prior to any movement or transportation of any slot machine, notify the PRTC in writing and submit: (1) the full name and address of the person transporting or moving said slot machine; (2) the full name and address of the person who owns said slot machine, including the name of any new owner in the event that title is being transferred in conjunction with its transportation or movement; (3) the method of shipment or movement and the name of the carrier or carriers; (4) the full name and address of the person to whom the slot machine is being sent and the destination of said slot machine, if different from said address; (5) the quantity of slot machines being transported or moved and the serial number, denomination and description of each slot machine; (6) the date and hour of delivery to or removal from any authorised location in Puerto Rico; (7) the port of entry or exit; and (8) the reason for transporting the slot machine.

Jamaica

Gaming machine operators must apply to the BGLC for licences to operate any such machines using the application forms provided by the BGLC. These forms include declaration of designated premises. Completed application forms must be submitted to the BGLC along with receipts evidencing payments of the annual levy required by the BGLC.

Cuba & Cayman Islands

In these regions, there is currently no legal framework in place that allows any legal forms of gambling.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Hispaniola: Dominican Republic & Haiti

Article 11, Ley 351-67 states that operators, managers and/or shareholders of an authorised casino are required to present responsible stewardship. The names, profession, address and personal identity cards should be registered and known to the executive authorities at all times.

Puerto Rico

Section 13.4, PRGCA regulates sanctioning violations of the PRGCA and the regulations. The Commissioner and PRTC may initiate criminal and or regulatory enforcement actions against any person licensed under the PRGCA and regulations. Any person who wilfully fails to report, pay or truthfully account for and pay any licence application, investigative or franchise fees imposed by the provisions of the PRGCA and regulations, or wilfully attempts in any manner to evade or defeat any such fee or payment thereof, shall be subject to regulatory sanctions and shall be liable for the imposition of a sanction of three times the amount of the licence fee evaded and not paid, collected by or paid over to the Commissioner or PRTC. Any person who, without obtaining the requisite licence as provided for by these regulations, works or is employed in a position whose duties would require licensing under the provision of these regulations, shall be liable for the imposition of sanctions and subject to a fine of not more than USD 1,000 and/or suspension or revocation of licence.

Jamaica

Owners of premises on which gaming machines are operated without a licence, as well as operators who are in default of the provisions of the BGLA, will be liable to punishment by fine and/or imprisonment upon conviction.

Cuba & Cayman Islands

In these regions, there is currently no legal framework in place that allows any legal forms of gambling.

4.2 What is the approach of authorities to unregulated supplies?

Hispaniola: Dominican Republic & Haiti

Article 18, Ley 351-67 states that individuals or directors of the entities that violate regulations or obligations shall be sentenced to a fine or correctional imprisonment for a term of one month to one year, or both penalties combined. Article 19, Ley 351-67 states that

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Article 410 of the Penal Code shall apply in the event of offences that have not been covered by Ley 351-67.

Puerto Rico

When dealing with unregulated supplies in the gambling sector, administrative fines are the most likely method of enforcement. However, in addition to any monetary sanction, the Commissioner and PRTC shall have the authority to impose the following sanctions upon any person licensed pursuant to the Act and regulations: (1) revoke the licence of any person convicted of any criminal offence; (2) suspend the licence of any person pending a hearing and determination in any case in which licence revocation could result; (3) suspend or revoke the ability of any franchise licensee for violation of any provisions of the Act or regulations relating to casino operations; (4) assess civil penalties as may be necessary to punish misconduct and to deter future violations, which such penalties may not exceed USD 10,000 for each violation; and (5) issue warning letters, letters of reprimand or censure, which shall be made a permanent part of the file of each licensee so sanctioned. In considering appropriate sanctions in a particular case, the Commissioner and PRTC shall consider: (1) the risk to the public and to the integrity of gaming operations created by the conduct of the person facing sanctions; (2) the seriousness of the conduct and whether the conduct was purposeful and with knowledge that it was in contravention of the Act and regulations; (3) any justification or excuse for such conduct; (4) the prior history of the licensee with respect to compliance with the Act and regulations; (5) the corrective action taken by the licensee to prevent future misconduct of a similar nature from occurring; and (6) in the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee. The Commissioner and PRTC may impose any schedule or terms of payment of such penalty as they may deem appropriate.

While criminal proceedings may be undertaken in certain circumstances, this is not considered to constitute the norm.

Jamaica

The "**Financial Investigations Division Act**" ("**FIDA**") is aimed at establishing the Government department, the "**Financial Investigations Division**" ("**FID**"), which has sufficient independence and authority to effectively deal with the multidimensional and complex problem of financial crime (Article 3, FIDA). The FID has a broad mandate to confiscate all sorts of information and documentation if it is expected that this information shall benefit an investigation of a financial crime. Based on the "**Proceeds of Crime Act**" ("**POCA**"), the CGC has powers to issue directives to gaming lounge operators. The purpose of this is to provide detailed guidance on the requirements of POCA and practical guidance on how to implement such requirements into their daily operations. The POCA and the "**Proceeds of Crimes Regulations 2007**" (the "**Regulations**") impose duties and responsibilities on businesses in the regulated sector to prevent and detect money laundering. Businesses in the regulated sector fall under two categories, *viz.*, a financial institution ("**FI**") and a designated non-financial institution ("**DNFI**"). Failure to comply with regulations under POCA and the "**Terrorism Prevention Act**" ("**TPA**") will constitute an offence and a court in determining whether a person has complied with any of the requirements of these regulations shall take into account any relevant guidance that was at the time concerned.

The CGC uses a risk-based regulatory regime, which underpins its licensing, compliance and enforcement functions. This ensures that focus is placed on those operators and issues where the impact of failure to deliver the licensing objectives would be highest. Thus, when conducting a compliance examination of policies and procedures, consideration will be given to the size, scope and complexity of the activities of the establishment. The CGC strategy for managing and mitigating identified risks encompasses: (a) prevention, through the provision of guidance, advice and information; (b) detection, through monitoring and assessment; and (c) deterrence, through investigation and enforcement.

Cuba & Cayman Islands

In these regions, there is currently no legal framework in place that allows any legal forms of gambling.

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

Hispaniola: Dominican Republic & Haiti

The Dominican legislative framework has adopted the international AML standards, as provided by the FATF. Consequently, the international standards which apply for anti-money laundering, generally also apply to, e.g., Dominican casinos. Please refer to question 2.9 on AML guidelines.

Puerto Rico

As mentioned above, the Commonwealth of Puerto Rico is a United States territory and residents enjoy protection by the U.S. courts. Furthermore, as mentioned above, the United States is responsible for monitoring and regulating AML activities in Puerto Rico.

Jamaica

The Jamaican legislative framework has adopted the international AML standards, as provided by the FATF. Consequently, the international standards which apply for anti-money laundering generally also apply to, e.g., Jamaican casinos. Please refer to question 2.9 on AML guidelines.

Cuba & Cayman Islands

In these regions, there is currently no legal framework in place that allows any legal forms of gambling.

4.4 Are gambling debts enforceable in your jurisdiction?

Hispaniola: Dominican Republic & Haiti

Gambling debts are considered to be enforceable if the debt originated from a wager on a legitimate basis.

Puerto Rico

In Puerto Rico, the valid obligation to pay gambling debts is legal and enforceable. What is interesting in this respect is the position the Commonwealth of Puerto Rico assumes within the legal system of the United States. Although Puerto Rico is not a State and thus does not come under the constitutional provision of full faith and credit, a federal statute assures enforceability of Puerto Rican judgments. Such acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. The current legal viewpoint seems to recognise that these debts are incurred where they are entirely legal and where the gambling involved is sanctioned by the Government. To allow one to incur such a debt and then, safe in his home jurisdiction, to renege on his validly assumed obligations would be an unjust benefit to the patron. The U.S. courts are reluctant to allow the defendant to assert a violation of public policy to avoid legally incurred debts.

Jamaica

The courts have, over the years, decided that in order for a transaction to constitute a bet or a wagering contract, and thus be

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enforceable, it was essential that each party should either win or lose. A transaction with a bookmaker constituted a bet or a wager, since, depending on the outcome of the events, either the bookmaker would lose or the person effecting the transaction would lose. By contrast, where the transaction took place by means of a totalisator, the courts held that such transaction did not, by law, constitute a bet or a wager because the owner of the totalisator could not win or lose, since his only benefit was his fixed pre-determined percentage derived from the total amounts recorded by sales on the particular race. The transaction did not constitute a bet and, therefore, no act of gaming, unlawful or otherwise, took place.

Cuba & Cayman Islands

In these regions, there is no legal framework in place that allows any legal forms of gambling.

5 Anticipated Reforms

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

Hispaniola: Dominican Republic & Haiti

The expansion of online gambling is, at this time, being welcomed by all, including the national lottery. Members have been asked to join the discussion and make their own recommendations.

Puerto Rico

In July 2015, the "*Hilton Casino*", one of the biggest and most well-known casinos in Puerto Rico, closed after 40 years of operation. Its closure illustrates Puerto Rico's struggling economy. Puerto Rico's Hotel & Tourism Association announced that it is the seventh casino to close in the past five years on the island of 3.5 million people, which is entering its ninth year of recession and is struggling with a 12.6% unemployment rate. Gambling taxes represent the majority of revenue for the PRTC, which is responsible for promoting the island. A portion of that revenue also goes to the University of Puerto Rico, the island's largest public university. Critics in part blame the closures on an estimated 45,000 illegal gambling machines that operate across the island, with the Government seizing hundreds of machines in occasional raids. About 90% of casino clients in Puerto Rico are locals, not tourists, according to the PRTC.

Jamaica

With significant amendments of the BGLC, which aim to shore up the Government's balance sheet via additional gambling tax revenue, Jamaica seems to be preparing to regulate online gaming in the near future. The BGLC has stated that the only way this goal, increase of revenue, can be accomplished is through a significant expansion of the country's current gambling offering.

Cuba

Even though gambling was a significant part of Cuban tradition, casinos are currently blacklisted on the Caribbean island. Formerly, the country was popular for its astounding casino establishments. This all changed in 1959 when then Prime Minister Fidel Castro abolished all legalised gambling and betting activities. Following Castro's restrictions, the city of Havana lost its outstanding rank as a casino destination. The current Cuban gambling laws still prohibit all forms of gambling. Just like land-based gambling, online gambling is also eliminated in Cuba. Those who attempt to bypass the prohibitions are subject to severe punishments. However, now that the United States has moved to normalise relations with Cuba, it can be expected that with the returning tourist industry, gambling might return as well. The initial breakthrough will probably take place on cruise ships, with casinos returning to the Port of Havana. Initially, gaming will only be permitted on the high seas. A free Cuba will quickly allow casinos to reopen, in high-quality hotels designed for, and possibly even limited to, tourists.

Cayman Islands

We do not expect the Cayman Islands to legalise gambling in the near future, since a CITA representative has recently stated that the Caymans have for several years successfully competed against many other Caribbean destinations that already offer gambling. CITA states: "*One needs to consider what type of visitors gambling might attract, and there should also be studies done on whether Cayman's existing visitors would be in favour of or against the introduction of gambling.*"

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Gaming Legal Group is a combination of independent companies spread out across the globe, each specialising in a specific trade. Its mission statement is to cater to the legal needs of the global gaming industry, discreetly and with diligence.

FINDING PATTERNS IN FINANCIAL INFORMATION

Gaming Legal Advisory is the financial "think tank" of the Gaming Legal Group. Its mission is to, as always, in a discreet and diligent fashion, find patterns in financial information. This information can be used in a wide variety of ways. Research may benefit preparations for a law suit, or it functions as preparatory work for company restructuring. Gaming Legal Advisory is located in the Zona Colonial in Santo Domingo.

Although geologically focused on the Greater Antilles and the Americas, the combined Dutch and Dominican team is multilingual and speaks Spanish, French, English and Dutch fluently.

The advisory team is formed by Frederik van Eijk, Josefina Santana and Pedro Batista. Frederik, a former financial controller, emigrated from the Netherlands to the Dominican Republic years ago. Josefina is a junior financial assistant, who has also lived in the Netherlands and studies accounting in Santo Domingo. Pedro is a PR and management assistant, who has lived in France, studies International Management and is also in the process of learning Dutch.

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Greece

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

According to the provisions of Law 4002/2011, an independent administrative authority known as the Hellenic Gaming Commission (HGC) is responsible for the supervision and control of all games provided in Greece. The HGC has been equipped by law with a broad and important role in order to efficiently supervise and regulate all gaming activity in the country.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Gambling activity is currently regulated by Law 4002/2011 as amended and in force; however, further amendments are soon expected. Gambling services can be provided, including technical and entertainment games, under the terms and conditions of that law; otherwise civil, criminal and administrative penalties may be imposed. Under Law 4002/2011, several HGC decisions and regulatory acts have been issued, such as Decision No. 129/2/7.11.2014 (with regard to money laundering and terrorism financing), Decision No. 163/4C/9.7.2015 (with regard to commercial communications) and several others.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

With regard to online gaming, any company fulfilling the terms set in Law 4002/2011 (as it will be amended), and the terms that will be set when a call for an international tender follows, will be able to apply for a licence.

With regard to land gambling (VLTs), the revised bill that will be introduced will exclusively grant licences for VTLs to OPAP SA.

With regard to land casinos, the creation of a new casino will be licensed by the Government.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Any entity fulfilling the obligations of the currently discussed bill and of the regulatory acts accompanying it, issued by the HGC, will be able to apply for a licence if this becomes possible in the future.

2.3 What restrictions are placed upon any licensee?

Limitations that must be observed by any licensee will be issued by the HGC via decisions and regulatory acts.

2.4 What is the process of applying for any gambling licence or regulatory approval?

When a licensing process exists in the future, all the conditions that must be observed will be determined by the interested parties and then these parties will be able to apply for a licence.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

When licences are provided, all these details will be determined. Currently, with regard to land gaming (VLTs), OPAP SA has a monopoly. With regard to online gaming, there are 24 temporary licences and no new licences are yet to be issued until a new bill is voted by the Greek Parliament regarding permanent licences. With regard to land casinos, new licences can only be provided by a decision of the Greek Government. With regard to horseracing, OPAP SA has a monopoly and the same is also valid for scratch cards and lotteries.

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

For any licensee wishing to operate in Greece and be advertised, a licence from the HGC is required under Decision No. 163/4C/9.7.2015 of the HGC.

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2.7 What are the tax and other compulsory levies?

Pursuant to Article 50 par. 5, the participation of the Greek Government, calculated on the turnover of the licence-holder or the operator of the licence, upon the ongoing technical entertainment gaming and games of chance with game machines or via the internet, is calculated at 35% (34.5% is the State's share and 0.5% is attributed to the HGC). Players' winnings are taxed at 15%–20%. This tax is withheld and paid over by companies to the competent tax authority the month after the date of payment of the profit to the players.

2.8 What are the broad social responsibility requirements?

Law 4002/2011 follows, in its Article 33, the principles of responsible gaming and introduces the Individual Player Card which will assist in ascertaining a player's age and tax registration number, cash flows, maximum participation time and guarantees that any additional restrictions imposed by the players themselves are observed. The Individual Player Card may be issued by licence-holders pursuant to the procedure and terms and conditions laid down in a decision of the HGC published in the Government Gazette. Gaming without an Individual Player Card will then be strictly prohibited.

It is worth mentioning that the HGC's Decision No. 129/2/7.11.2014, in line with AML legislation, establishes the operators' obligation to appoint a Compliance Officer in Greece overseeing the observation of relevant legal provisions.

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

Payments of the bet amounts and the payouts resulting from participation in games of chance shall be conducted through financial institutions or payment foundations established and operating legally in Greece or in any other Member State of the EU or the EEA. The account number of every licence-holder shall be notified to the HGC. Every banking transaction concerning online games of chance shall be independently recorded by the related financial institutions. The amount deposited in the players' accounts must, at least, be equal to the total amount credited to the online player accounts. If the amount deposited in the players' accounts is below the total amount credited to the online player accounts held by the licence-holder, the latter will supplement that shortfall within three days. The amount of the bet to enable a player to participate in an online game of chance shall be paid to the authorised licence-holder as a way safeguarding the identity of the player, in the manner specifically laid down in the Gaming Operations and Control Regulation. Financial institutions in accordance with the general provisions of Law 4002/2011, as currently in force, are prohibited from making payments of bets and winnings from participation in games of chance to accounts held at those institutions by illegal online gaming providers named in the relevant blacklist kept by the HGC.

HGC Regulation 129/2/7.11.2014 provides several due diligence measures before verification of the player's identity, which is carried out prior to the completion of the first payment of any winnings to the player and at the latest within one month of the players' registration in exceptional cases, such as no more than EUR 800 in total can be deposited by the player for the period that the account's nature is temporary.

Virtual currencies are not allowed.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

The law does not define the term "online" or "internet".

Law 4002/2011 allows games of chance via the internet; however, the running of betting exchanges is prohibited (Article 48 par. 4).

Moreover, bets on financial instruments traded on a regulated market operating in Greece are prohibited, with certain exceptions provided in Article 5 of Law 3606/2007 (Article 48 par. 1).

3.2 What other restrictions have an impact on online supplies?

The person operating games of chance websites shall necessarily exercise and run those websites as well (Article 48 par. 2).

Non-licence-holders are prohibited from developing and running websites (Article 48 par. 3).

The running of games of chance in Greece via other audio-visual or electromagnetic media is only permitted where a specific licence is first issued by the HGC (Article 48 par. 5).

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

VLT game machines are permitted in gambling venues throughout Greece. To use VLTs, players require a card issued at the venues and they are also required to play with cash.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Customers, suppliers, and gambling services providers can be held liable. Greek law stipulates severe civil, criminal and administrative penalties for companies and individuals gambling illegally.

4.2 What is the approach of authorities to unregulated supplies?

Unregulated supplies are treated by the law as illegal, leading to severe civil, criminal and administrative penalties provided by law.

Unlicensed operators are registered in the HGC's blacklist and under Article 48 par. 8, such registration constitutes sufficient notification and evidence so as to impose any sanctions whatsoever (provided by law) by any competent authority.

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

Law 4002/2011 emerged as a result of instructions and approval by the European Commission and is fully harmonised with EU law; the same is also valid for its amendments. However, any relevant EU legislation (Directives or Regulations) is applicable in Greece as it is an EU Member State.

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4.4 Are gambling debts enforceable in your jurisdiction?

Under Article 844 of the Greek Civil Code, debts from gambling are not enforceable in Greece.

5 Anticipated Reforms

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

Law 4002/2011 will be amended. In the Greek Parliament, it was announced that two draft laws with regard to land casinos and online gaming will be voted on before the end of 2017.

It is also estimated that OPAP's licence will be extended to 18 years (today it is currently 10 years) and the number of VLTs will be reduced from 35,000 to 25,000.

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Chapter 18

India

Ganesh Prasad

Sharad Moudgal

Khaitan & Co

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The Indian Constitution has, in List II (State List), Seventh Schedule, granted the individual state governments the right to enact legislation to govern gambling. However, prior to the enactment of the Indian Constitution in 1950, the central government enacted the *Public Gambling Act* in 1867 which governed gambling across India. Following the enactment of the Indian Constitution, various states including Bihar, Chattisgarh, Madhya Pradesh, Punjab, and Uttar Pradesh adopted the *Public Gambling Act, 1867*. Certain other states have enacted their own gambling laws modelled on the central enactment. These include Andhra Pradesh (*Andhra Pradesh Gaming Act, 1974*), Maharashtra (*Bombay Prevention of Gambling Act, 1867*), Kerala (*Kerala Gaming Act, 1960*) and Tamil Nadu (*Tamil Nadu Gaming Act, 1930*). Karnataka, on the other hand, has enacted the *Karnataka Police Act, 1963*, which relates to the maintenance of public order (including gambling). The several legislations that govern gambling are collectively referred to as "**Gambling Laws**".

Gambling Laws are generally regarded as regulating only "games of chance". "Games of chance" fall under the ambit of the respective finance ministries. "Games of skill" are generally not considered to be gambling.

Most Gambling Laws are archaic and are meant to apply to gambling in physical premises. Absent any re-enactments or substantial amendments to Gambling Laws, the archaic provisions of such legislations would nonetheless have to be extended to the online space. Only the states of Nagaland, Sikkim and Telangana have enacted laws that apply specifically to the online space (see question 1.2 below for further details).

Gambling Laws are enforced by state police departments. Increasingly, the Central Bureau of Investigation (the central government's policing arm) has also been acting against persons who have been involved in betting in popular sports, such as cricket, and who have also been making unauthorised payments to government officials.

Certain states and union territories, such as Goa, Daman & Diu and Sikkim, have enacted laws that specifically allow the functioning of casinos (which include slot machines) under a licence (see question 1.2 below for further details).

In 1996, the Supreme Court of India (the country's highest judicial authority) ruled that horse races are not "games of chance" and fall outside the purview of Gambling Laws. In 2017, the High Court of Punjab and Haryana ruled that fantasy games are not "games of chance", as they involve considerable skill, judgment and discretion. This is a significant development, as there is now judicial sanction to operate fantasy games in India. Additionally, certain state governments have enacted legislation that expressly exempts horse racing from the ambit of gambling.

The Indian Constitution has, in List I (Union List), Seventh Schedule, granted the central government the right to enact legislation to govern lotteries. Lotteries are governed separately by the *Lotteries (Regulation) Act, 1988*, and the central and state rules framed thereunder (collectively, "**Lottery Laws**"). The central government, by way of the *Lotteries (Regulation) Act, 1988*, has authorised states to organise, conduct and promote lotteries. Lotteries are specifically prohibited in certain states, including Himachal Pradesh, Mizoram and Nagaland. However, Lottery Laws allow only certain state governments (such as the Sikkim state government, which specifically allows lotteries to be conducted online) to organise, conduct and promote lotteries.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Gambling Laws distinguish between "games of chance" and "games of skill" in most states and union territories. "Games of skill", even if played for money or money's worth, are excluded from the ambit of Gambling Laws and are generally considered legal. In a "game of skill", the element of skill predominates over the element of chance. Success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player.

Gambling Laws expressly prohibit persons from owning, occupying, using, permitting to use, managing and conducting the business of a "common gaming house" (*i.e.*, premises in which cards, dice, tables or other instruments of gaming are kept or used for profit or gain). The Gambling Laws of most states and union territories prohibit gambling for profit or gain. The Gambling Laws of Assam and Orissa have a blanket prohibition on skill- and chance-based gaming, whether for profit or gain. Telangana recently promulgated two amendments to the Gambling Laws applicable in Telangana, which, amongst others, extended the scope of the Gambling Laws to the online gaming space, and deemed rummy to be a "game of chance" as it partly involved skill and partly luck or chance. These amendments to the Gambling Laws applicable in Telangana are in conflict with the Supreme Court of India's observation that rummy is a "game of skill" and falls outside the purview of the Gambling Laws. Following promulgation of these amendments, rummy now fell squarely within the ambit of the Gambling Laws applicable in Telangana.

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The Gambling Laws of the following states and union territories specifically allow for persons to conduct certain gambling activities in certain places, and under a licence specifically issued for this purpose (see question 2.1 below for further details): (a) Goa, and Daman & Diu under the *Goa, Daman & Diu Public Gambling Act, 1976* and certain notifications issued by the Goa and Daman & Diu state governments ("**GDD Gambling Law**"); (b) Nagaland under the *Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015* and *Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Rules, 2016* (together, "**Nagaland Gambling Laws**"); and (c) Sikkim under the *Sikkim Online Gaming (Regulation) Act, 2008* and *Sikkim Online Gaming (Regulation) Rules, 2009* (together, "**Sikkim Gaming Laws**"). The Nagaland Gambling Laws and Sikkim Gaming Laws allow persons, under licence, to offer gambling services online. Nagaland Gambling Laws expressly allow for offerings of fantasy games.

Prize competitions are regulated by the *Prize Competitions Act, 1955* and *Prize Competitions Rules, 1959* (together, "**Prize Competition Laws**"). Prize Competition Laws regulate only skill-based competitions such as crosswords and missing-word puzzles, etc., where prizes are offered for the solution of any puzzle based upon the building up, arrangement, combination or permutation, of letters, words or figures. Competitions that fall under the purview of Prize Competition Laws do not typically involve wagering or betting of any kind. However, they may involve payment of an entry fee.

Foreign direct investment and foreign technology collaboration in any form in gambling activities is prohibited under the *Foreign Exchange Management Act, 1999* and the rules and regulations made thereunder (collectively, "**Exchange Control Regulations**"). Parties nonetheless implement novel structures to avoid falling under the prohibition.

The *Income Tax Act, 1961*, the *Finance Act, 1994*, the *Central Goods and Services Act, 2017*, the respective *State Goods and Services Act, 2017*, the *Union Territory Goods and Services Tax Act, 2017*, and the *Integrated Goods and Services Act, 2017* (together, "**Tax Laws**") impose certain taxes in relation to gambling services.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

The states and union territories of Goa, Daman & Diu, Nagaland and Sikkim offer licences for offering gambling facilities.

GDD Gambling Laws allow individuals, partnership firms and body corporates to seek a licence for installing and operating games of electronic amusement or slot machines in five-star hotels or on-board offshore vessels. A licence issued under GDD Gambling Laws is typically for a period of five years. Each licensee can operate only a prescribed number of slot machines. GDD Gambling Laws do not expressly prohibit body corporates controlled by non-residents from holding licences. However, the restrictions under Exchange Control Regulations would apply to a licensee irrespective of the foregoing.

Nagaland Gambling Laws allow individuals, partnership firms and other legal entities to seek a licence for offering: (a) chess; (b) sudoku; (c) quizzes; (d) binary options; (e) bridge; (f) poker; (g) rummy; (h) nap; (i) spades; (j) auction; (k) solitaire; (l) virtual golf; (m) virtual racing games (including horse and car racing); (n) virtual sports (including soccer, cricket, archery, snooker, bridge and pool); (o) virtual fighting; (p) virtual wrestling; (q) virtual boxing; (r) virtual combat games; (s) virtual adventure games; (t) virtual mystery and detective games; (u) virtual stock/monopoly games; (v) virtual team selection games; and (w) virtual sport fantasy league games. A licence issued under Nagaland Gambling Laws is for a period of five years, and is deemed to be renewed each year as long as the yearly licence fee is duly paid and the licence is not revoked. A licensee should be established under the laws of India and controlled by resident Indians, but should not be engaged in gambling (defined as "*wagering or betting on games of chance, but does not include betting or wagering on games of skill*").

Sikkim Gaming Laws allow individuals, companies and partnership firms to seek a licence for offering: (a) roulette; (b) black jack; (c) pontoon; (d) punto banco; (e) bingo; (f) casino brag; (g) poker; (h) poker dice; (i) baccarat; (j) chemin-de-for; (k) backgammon; (l) keno; (m) super pan 9; and (n) other sport games which involve prediction of results of sporting events and placing a bet on the outcome, in part or whole, of such sporting event. A licence issued under Sikkim Gaming Laws is valid for a period of five years and can be renewed upon the payment of a renewal fee. Sikkim Gambling Laws do not expressly contain any restrictions on the residential status of licensees. Additionally, the *Sikkim Casino Games (Control and Tax) Rules, 2002* permit the state government to issue licences to persons to operate casinos in five-star hotels.

The *West Bengal Gambling and Prize Competitions Act, 1957* ("**WB Gambling Law**") allows owners, lessees and occupiers of a race course to seek a licence for conducting horse racing and pony racing. The WB Gambling Law does not expressly provide any restrictions on the residential status of licensees.

As discussed previously, lotteries can be conducted only by state governments under Lottery Laws. However, certain persons can apply to the relevant state government to become agents to conduct lotteries or distributors of online and offline lotteries tickets.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

As discussed in question 2.1 above, certain Gambling Laws permit individuals, companies, partnership firms and other body corporates to apply for licences. The licences are personal in nature and are not for specific premises. However, the licences typically mention the premises on which facilities can be provided.

2.3 What restrictions are placed upon any licensee?

GDD Gambling Laws, in addition to restricting the number of slot machines, require licensees to display conspicuously the licence granted and make available appropriate facilities for proper conduct of the games, etc.

Under Nagaland Gambling Laws, in addition to restrictions on ownership discussed in question 2.1 above, the: (a) licensee should not have any criminal history; (b) executive decisions of the licensee should be taken in India; and (c) operations and technology support (platform, software and services, etc.) should be controlled, maintained and operated in India.

Sikkim Gaming Laws require the licensee to: (a) operate only in Sikkim; (b) provide certain details on the website or online portal, including licence details and hyperlinks to websites of the state government and players anonymous; and (c) ensure that only persons above the age of 18 can play on their website or online portal.

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The above Gambling Laws also impose reporting obligations on licensees and typically restrict transfer and assignment of licences.

2.4 What is the process of applying for any gambling licence or regulatory approval?

The process for applying for a gambling licence is detailed under Gambling Laws, including providing *pro forma* applications, licences, licence fees (which may vary depending on the number of games chosen and size of the gambling facility) and strict time periods for processing of applications.

In the application form, an applicant is typically required to give basic personal information, an undertaking that the applicant will comply with the relevant Gambling Law, the games that the applicant proposes to offer (in case of Nagaland Gambling Laws and Sikkim Gambling Laws), and the number of slot machines proposed to be set up (in case of GDD Gambling Laws). Applications are made to the relevant licensing authority, who scrutinises and approves applications. However, under Nagaland Gambling Laws, the licensing authority forwards applications to empanelled firms (lawyers, financial experts and information technology companies). The empanelled firms review the applications and either certify that the licensee has satisfied requirements or make further recommendations to the licensing authority. The licensing authority may refer the recommendations to an *ad hoc* committee for its opinion on the recommendations, and may, on consultation with the *ad hoc* committee, issue a licence.

In Goa, the annual licence fee ranges from INR 35 million to INR 85 million (~GBP 401,000 to ~GBP 975,000). In Daman & Diu, the annual licence fee is INR 2 million (~GBP 23,000) for a set of 20 slot machines on offshore vessels, and an annual licence fee of INR 8,500 (~GBP 100) per mother machine, and INR 6,000 (~GBP 70) per additional slot machine.

In Nagaland, the licence fee is INR 1 million (~GBP 11,500) per game, or INR 2.5 million (~GBP 29,000) for a bouquet of games (three or more games), each year for the first three years, and INR 2 million (~GBP 23,000) per game, or INR 5 million (~GBP 57,500) for a bouquet of games, each year for the next two years. In addition to the annual licence fee, 0.5 per cent of the yearly gross revenue generated (less service tax) is payable as royalty.

In Sikkim, the annual licence fee is INR 10 million (~GBP 115,000). Additionally, a licensee is required to pay 10 per cent of: (a) the yearly gross gaming yield (*i.e.*, the total of (1) all bets or stakes made, and (2) the price of all chances sold, less (3) the value of all winnings and prizes due); or (b) INR 50 million (~GBP 573,000), whichever is higher. Further, the licensee is required to furnish a bank guarantee of INR 50 million (~GBP 573,000) in favour of the state government every year, at the time of issue and renewal of the licence.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

See question 2.1 above for further details on the validity of licences. Licences are usually renewable upon expiry after the payment of renewal fees.

Licence terms are usually not revised. However, Goa and Daman & Diu have recently prescribed increased licence and renewal fees.

Licences are not typically revoked or nullified unless there is a violation of licence terms or a contravention of relevant Gambling Laws.

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

There are no specific advertising laws in India. However, the Advertising Standards Council of India, a self-regulated organisation, prescribes an advertising code. This code does not expressly prohibit gaming-related advertisements. However, certain Gambling Laws, including those applicable in Goa, Daman & Diu, Gujarat, Karnataka, Maharashtra and West Bengal, expressly prohibit the publication of information that facilitates gaming.

Additionally, with respect to online gaming, the *Information Technology Act, 2000* and the *Information Technology (Intermediate Guidelines) Rules, 2011* (together, "**IT Laws**") require an intermediary (*i.e.*, any person who, on behalf of another person, receives, stores or transmits that message or provides any service with respect to that message – typically, an internet service provider) to publish rules and regulations informing users of computer resources not to host, display, upload, modify, publish, transmit, update or share any information that relates to gambling. Notwithstanding the foregoing, gaming advertisements are prevalent online.

Sikkim Gaming Laws specifically permit the advertisement of online games subject to certain restrictions, which, amongst others, require that the advertisement: (a) of an online game must contain a URL or hyperlink (in each case if advertised online) to the website offering such online game; (b) should not be indecent, offensive, false, deceptive or misleading and should be based on facts; (c) should not contain any statement as to the legality or otherwise of online game betting in states and union territories other than Sikkim; and (d) should not be directed at any state other than Sikkim in which online games or any kind of online game is prohibited.

Lottery Laws allow for the promotion and advertisement of lotteries by lottery providers. Indian criminal law prohibits the promotion and advertisement of lotteries. However, Lottery Laws exempt persons who are authorised to promote and advertise lotteries under such laws.

2.7 What are the tax and other compulsory levies?

Tax Laws levy direct tax of 30 per cent (exclusive of surcharge and cess) on income from winnings from lotteries, crossword puzzles, races (including horse races), card games and other games of any sort, or from gambling or betting of any form or nature whatsoever. Service providers making payments to winners are required to withhold tax of 30 per cent (exclusive of surcharge and cess) at the time of making payments to winners if the winnings exceed INR 10,000 (~GBP 115). If the winnings are wholly in kind, or partly in kind and partly in cash and the cash component is insufficient to meet the withholding obligations in respect of the whole winnings, service providers are required to ensure that tax at the above rate has been paid in respect of whole winnings (and not just the cash component) before they are released.

The central and state governments implemented a uniform goods and services tax ("**GST**") with effect from 1 July 2017. GST has subsumed most of the indirect taxes, including service tax, value added tax, luxury tax and entertainment tax (except when imposed by various municipalities). The rate of taxation on casinos, lotteries and betting activities including any admission or access to facilities for the aforesaid activities is up to 28 per cent (exclusive of cess or surcharge). However, online games of skill and other gaming activities could potentially be regarded as other recreational services and be subject to the rate of taxation of up to 18 per cent (exclusive of cess or surcharge). These rates of taxation may vary based on the exact nature of each game offering.

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2.8 What are the broad social responsibility requirements?

Gambling Laws do not expressly place social responsibility requirements on service providers. However, certain Gambling Laws require service providers to ensure that persons below a certain age are not allowed to enter premises (in the case of casinos) or access online games.

Additionally, companies that provide gambling services and have a net worth of INR 5 billion (~GBP 57 million) or more, or turnover of INR 10 billion (~GBP 11.5 million) or more, or net profit of INR 50 million (~GBP 573,000) or more, are required to spend at least 2 per cent of their average net profit for the preceding three years on corporate social responsibility activities, which include eradicating extreme hunger and poverty, promoting education, promoting gender equality and empowering women, reducing child mortality and improving maternal health.

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

India's principal AML regulations, the *Prevention of Money Laundering Act, 2002* and *Prevention of Money Laundering (Maintenance of Records) Rules, 2005* (together, "**PMLA Laws**") do not restrict entities from supplying gambling services. However, PMLA Laws impose certain record keeping, "know your customer", and reporting obligations on gambling service providers. Record-keeping obligations including the maintenance of records of all transactions, the identity of clients, and cash transactions or series of cash transactions exceeding INR 500,000 (~GBP 5,750), for a period of five years. These records, and a report on measures taken under PMLA Laws, have to be reported to the prescribed authority on a monthly basis.

India's central bank, the Reserve Bank of India, has noted the usage of virtual or crypto currencies. While usage of virtual or crypto currencies are presently not regulated, the Ministry of Finance, Government of India, along with the Reserve Bank of India, are presently working on regulating virtual currencies, including bitcoins. We are not aware of existing service providers using virtual currencies in India.

Customers typically use cash or bank transfers to fund gambling activities. Prepaid instruments (or e-wallets) may be used, but are hitherto not offered by Indian gambling service providers. However, prepaid instruments are popular with Indian players gambling on foreign gambling portals. India enacted a legislation in 2015 that seeks to tax undisclosed foreign income and assets. Prepaid instruments are treated as bank accounts under the legislation. Income earned and deposited in foreign prepaid instruments are liable to tax as a result.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Only Nagaland Gambling Laws and Sikkim Gaming Laws discuss issuance of licences for the provision of gambling services online (see question 2.1 above for further details). The Gambling Laws applicable in Telangana prohibit the provision of gambling services online.

Other Gambling Laws were enacted prior to the internet and refer to a physical gaming house. However, like certain other Indian laws, such other Gambling Laws can be and are applied to the online space. Indian courts have on several occasions applied such other Gambling Laws to online gambling and gaming. Consequently, persons contravening these Gambling Laws in the online space can be prosecuted by the appropriate authorities.

Most Lottery Laws do not contemplate online lotteries. However, the Lottery Laws of certain states (such as Sikkim) allow online lotteries and the online sale of lottery tickets.

3.2 What other restrictions have an impact on online supplies?

IT Laws require intermediaries to publish rules and regulations informing users of computer resources not to host, display, upload, modify, publish, transmit, update or share any information that relates to gambling (see question 2.6 above for further details). A service provider offering online gambling and gaming is itself unlikely to suffer any consequences. However, an intermediary who knowingly hosts or publishes information that relates to gambling is liable to a fine. Consequently, an intermediary may, on identifying a service provider who offers online gambling and gaming, and displays and uploads information relating to gambling, take down the relevant website or instruct the service provider to stop displaying and uploading such information.

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

GDD Gambling Laws allow for a certain number of slot-based machines to be provided in five-star hotels and offshore vessels. Sikkim Gaming Laws allow only intranet gaming terminals to be provided. The intranet gaming terminals ensure that games can be played on the premises of the licensee and with persons on the same intranet.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Typically, any person who: (a) owns, occupies, or uses any premises as a "common gaming house"; (b) permits such premises to be used as a "common gaming house"; (c) manages or assists in conducting business of a "common gaming house"; (d) advances or furnishes money for the purpose of gaming; and (e) is found in a "common gaming house" gaming, or present for the purpose of gaming, is liable for prosecution for breaching Gambling Laws. Gambling Laws presume that any person found in a "common gaming house" during any gaming activity is present for the purpose of gaming.

Further, persons who operate lotteries in contravention or outside the purview of Lottery Laws can be prosecuted under Indian criminal law.

Additionally, an intermediary can be prosecuted under IT Laws if it knowingly hosts or publishes information that relates to gambling (see question 3.2 above for further information).

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4.2 What is the approach of authorities to unregulated supplies?

Government data indicates that ~125,494 cases were registered under Gambling Laws across India in 2014. While data on the number of convictions is not available, we estimate that the conviction rate is very low.

Gambling Laws prescribe a fine, imprisonment, or both, for contravention. Fines range between INR 200 (~GBP 2) and INR 5,000 (~GBP 60), and a term of imprisonment between one and three years.

A contravention of the Gambling Laws of Goa, Daman & Diu, Nagaland and Sikkim can lead to suspension or cancellation of licences.

Foreign direct investment and foreign technology collaboration in gambling activities are prohibited under Exchange Control Regulations. A contravention of Exchange Control Regulations entails penalties of: (a) three times the sum involved in such contravention, where such amount is quantifiable; or (b) INR 200,000 (~GBP 2,300), where the amount is not quantifiable; and (c) INR 5,000 (~GBP 60) for every day during which the contravention continues, in case of a continuing default. Additional penalties may be levied upon a failure to pay the penalty in full. In addition to the levy of the above penalties, the relevant authorities may require the foreign investment or foreign technology collaboration to be unwound.

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

No, they do not.

4.4 Are gambling debts enforceable in your jurisdiction?

Wagering contracts (other than in relation to horse racing) are *prima facie* void under Indian contract law. Winners will not be able to approach the appropriate authorities to cause service providers to pay winnings from gambling. However, given the legal sanction under the Gambling Laws of Goa, Daman & Diu, Nagaland and Sikkim, winners should be able approach the appropriate authorities to recover winnings from licensed organisers.

5 Anticipated Reforms

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

In 2016, a committee specially constituted to suggest reforms in the Board of Control for Cricket in India, India's governing body for cricket, suggested legalising and regulating betting in cricket. However, this is subject to confirmation by the Supreme Court of India.

Further, Goa and Daman & Diu are mooting a gaming commission, *i.e.*, an autonomous body to regulate casinos in these states and union territories. We expect the gaming commission to be constituted shortly.

The Law Commission of India ("**LCI**"), which operates under the aegis of the Ministry of Law and Justice, Government of India, is tasked with, amongst other items, "identifying laws which otherwise require changes or amendments and to make suggestions for their amendment". Pursuant to this mandate, the LCI has sought views and suggestions from the general public on streamlining gaming in India by bringing about a comprehensive change in the subsisting archaic gaming legal regime. In this regard, industry representatives and legal professionals have submitted a white paper to the LCI on 30 June 2017. The LCI is expected to provide recommendations shortly.

Acknowledgment

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Ireland

Chris Bollard

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Matheson

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Ireland does not currently have a single gambling regulator and so responsibility for regulating or licensing products is shared between a number of public bodies.

In addition to its function of collecting betting taxes, the Revenue Commissioners (the Irish tax authority) is the body responsible for granting licences to both online and offline bookmakers and remote betting intermediaries.

Before an application for a licence may be made to the Revenue Commissioners, a prospective bookmaker or betting intermediary (or the relevant officers of the applicant in the case of a company) must first obtain and hold certificates of personal fitness. For Irish-based applicants, applications for certificates of personal fitness are made to the Superintendent of An Garda Síochána (the Irish police force). For overseas applicants, such applications are made to the Department of Justice and Equality.

Low-stakes "*gaming machines*" are permitted, provided a licence is held by the operator. This licence may also be obtained from the Revenue Commissioners.

A very limited number of low-stakes games may take place in "*Amusement Halls and Funfairs*" where an appropriate licence is held. This licence may be obtained from a local authority or a local District Court.

The Office of the Regulator of the National Lottery regulates the National Lottery. In addition to this, small-scale or local lotteries carried out primarily for a charitable purpose, may also be allowed to operate, provided they have a permit to do so granted by a Superintendent of An Garda Síochána or a licence granted by a District Court.

The Revenue Commissioners also have the power to grant licences to operate totalisator (or "*pari-mutuel*") betting.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Casino-style games and lotteries (excluding the National Lottery) are regulated (and to a large extent prohibited) by the Gaming and Lotteries Acts 1956 to 2013 (the "**G&L Acts**").

The Betting Acts 1931 to 2015 (the "**Betting Acts**") provides for a licensing scheme for the operation of a bookmaking business, which includes both online/offline bookmakers and betting intermediaries.

The National Lottery Act 2013 regulates the operation of the National Lottery. The National Lottery is operated by a single licence holder.

Section 43 of the Finance Act 1975 (as amended) regulates the operation of gaming machines. Slot and gaming machines also fall within the ambit of the G&L Acts.

Sections 120–129 of the Finance Act 1992 regulate the operation of "*amusement machines*". A permit is required to make these available to the public. Excise duty must be paid on the issue and renewal of a permit and the applicant must also produce a tax clearance certificate in accordance with the Finance Act 2002. "*Amusement Machine*" is defined under section 120 of the Finance Act 1992 as: "[a] *machine which (a) is constructed or adapted for play of a game, and (b) the player pays to play the machine, and (c) the outcome of the game is determined by the action of the machine, and (d) when played successfully, affords the player an opportunity to play again without paying*".

The Totalisator Act 1929 regulates the operation of tote (or "*pari-mutuel*") betting. Historically, only two totalisator licences have been issued (one to Horse Racing Ireland and one to Bord na gCon).

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Retail betting licences, remote betting licences and remote betting intermediary licences are issued by the Revenue Commissioners and may be applied for by any individual or company. In the case of a company, its "*relevant officers*" make the application on its behalf. There is no limit to the number of each of these licences that may be granted.

Before an application for such a licence can be made, applicants must first obtain appropriate certificates of personal fitness and tax clearance certificates.

Totalisators may be operated where a licence has been granted under the Totalisator Act 1929. A totalisator licence is currently held by Tote Ireland Limited (a wholly owned subsidiary of state horse racing body, Horse Racing Ireland). Bord na gCon (the national greyhound board) holds a licence to operate a totalisator at greyhound tracks.

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The National Lottery is operated by way of a 20-year licence that grants a monopoly to the holder. The current licence is held by Premier Lotteries Ireland Limited. In addition, small-scale lotteries carried out primarily for charitable purposes are permitted by a licence that may be awarded by the District Court or a permit which may be granted by a Superintendent of An Garda Síochána. Usually applications for these sorts of licences/permits are applied for by individuals for and on behalf of a charitable organisation.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

"*Key suppliers*" (such as software suppliers) currently do not require a licence or other authorisation.

If a bookmaker wishes to operate from a physical shop, it must first obtain a certificate of registration of premises in addition to the usual licence requirements (which are set out elsewhere in this chapter).

2.3 What restrictions are placed upon any licensee?

The operation of a physical bookmaker's office is subject to a number of requirements contained in the Betting Acts. For example, there is a general prohibition on offering goods and services from a bookmaker's shop aside from bookmaking services and the sale of non-alcoholic drinks, newspapers, confectionary and fruit. The opening hours of bookmakers' shops are also regulated by statute and the licence holder may not permit overcrowding or loitering in the shops.

Accepting bets of less than €0.06 is prohibited for licenced bookmakers. The engagement in a betting transaction with a person under the age of 18 years is also prohibited.

Section 16 of the Betting Acts sets out the circumstances under which a bookmaker's and/or remote betting intermediary licence may be revoked by the District Court (on the application of the Minister for Justice and Equality).

The 20-year National Lottery licence granted by the Irish state to the operator of the National Lottery contains conditions which the operator of that licence is bound to. The licence includes provisions relating to player protection mechanisms and provisions governing unclaimed prizes as well as the terms of the establishment of the National Lottery Fund. The licence itself can be reviewed on the Regulator of the National Lottery's website.

2.4 What is the process of applying for any gambling licence or regulatory approval?

Remote Bookmakers/Remote Betting Intermediaries

The process for applying for a remote bookmaker licence or a remote betting intermediary licence is very similar. At a high level, the application process can be described as follows. An applicant must first place an advertisement (in a prescribed form) in two national newspapers. Not less than 14 days after the advertisement is published, at least two "*relevant officers*" of the applicant must make applications for certificates of personal fitness. The applicant must then submit its licence application within 21 days of the certificates of personal fitness issuing. In addition to and in parallel with this, the applicant must also apply to the Revenue Commissioners for a tax number, obtain a tax clearance certificate and register for the payment of betting duties with the Revenue Online Service.

Casinos

Irish law does not currently provide for the operation of a casino. However, the G&Ls Acts contain an exclusion for private arrangements and some operators have relied on this provision to operate private members' clubs which effectively operate as casinos/card clubs. The operation of such private members' clubs, including opening hours and age restrictions, is unregulated except that most private members clubs require people to join as members before they can participate in any gambling. Anti-money laundering legislation applies to their activities and they are also subject to the usual taxation (including value-added tax).

Lottery Licences

The District Court may issue licences for small lotteries. A licence is normally issued after a short hearing in the District Court. All such small lottery licences must primarily have a charitable purpose.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

The timeline for remote betting/remote betting intermediary licence applications can be seen at question 2.4. For retail bookmakers, online bookmakers and remote betting intermediaries, licences are granted for up to 24 months ending on 30 November the following year (for retail bookmakers) or 30 June (for remote bookmakers and remote betting intermediaries). The amount of the fees payable for the annual renewal of the licences is based on the turnover of the bookmaker/betting intermediary. If a licence is not renewed, it will automatically expire.

The Betting Acts set out the grounds on which a licence can be revoked. By way of example only, a licence may be revoked where the Certificate of Personal Fitness of a relevant officer of the licence-holding entity is revoked.

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

The Advertising Standards Authority for Ireland (the "ASAI"), which is an industry body that promotes and monitors compliance with advertising standards, includes a chapter on the promotion of gambling products in its Code of Standards for Advertising and Marketing Communications in Ireland.

The Broadcasting Commission of Ireland (the "BCI"), is an independent statutory organisation which regulates broadcasting standards via its General Commercial Communications Code (the "Code"). The Code lays down standards with respect to all forms of commercial communication, including advertising and sponsorship. The Code states that it is acceptable to address commercial communications and to seek to promote betting services to those who wish to bet. In addition to this, the Code also provides that the address of the service provider and factual descriptions of the services available should be contained in such communications.

The Code does, however, prohibit a number of activities, including: anything that could be deemed an "*encouragement to bet*"; information detailing discounts, special offers, inducements to visit any betting establishment (including online); and references to betting odds available or any promotional offer intended to encourage the use of services of that nature.

Lotteries: The promotion of unlicensed lotteries is prohibited under the G&L Acts. Licensed lotteries must be carried out for a primarily charitable purpose and are subject to prize limits.

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Gaming: The G&L Acts provide that a gaming activity will be illegal where it promotes or provides facilities for any kind of gaming: a) that by reason of the nature of the game, the chances of all the players, including the banker, are not equal; or b) in which any portion of the stakes is retained by the promoter or is retained by the banker otherwise than as winnings on the result of the play. The type of gaming described here is defined as "*unlawful gaming*" under the G&L Acts. The promotion (or assistance in promotion) of unlawful gaming is a breach of the G&L Acts.

Retail Bookmakers: A number of limits to the provision of betting services are provided in section 20 of the Betting Acts.

For example, section 20(1) provides that a retail bookmaker may not set up or maintain in or around his shop: "*any attraction (other than the mere carrying on of his business of bookmaking) which causes or encourages or is likely to cause or encourage persons to congregate in or outside such premises*". Section 20(3) prohibits a bookmaker from: "*proclaim[ing] or announc[ing] or permit[ting] any other person to proclaim or announce in such premises to the persons there present the terms or odds on or at which he is willing to take bets in relation to any particular race, match, or other contest, or in respect of any competitor in any such contest*".

In addition, section 20(4) prohibits a retail bookmaker from exhibiting (or permitting to be exhibited) in or outside his shop (or which is visible from the street): "*any lists or statements of the terms or odds on or at which he is willing to take bets in relation to any particular race, match, or other contest, or in respect of any competitor in any such contest, or lists or statements of the competitors entered for or withdrawn from or taking or likely to take part in any such contest, or statements of facts, news, or forecasts in respect of any such contest, or any other incitement or inducement to bet*".

2.7 What are the tax and other compulsory levies?

A licence fee of €10,000 is payable on the initial issue of a licence for remote bookmakers and remote betting intermediaries. The fee payable for renewal of these licences is calculated based on annual turnover. This renewal fee ranges from €10,000 to a maximum of €500,000 (where annual turnover exceeds €500,000,000). A fee ranging from €10,000 up to a maximum of €200,000 (where annual turnover exceeds €200 million) is payable for remote betting intermediaries.

Betting duty of 1% is payable by bookmakers (including remote bookmakers).

Betting intermediary duty, which is currently 15% of "*commission charges*", applies to remote betting intermediaries. The Finance Act 2002 (as amended) defines "*commission charges*" as: "*the amounts that parties in the State to bets made using the facilities of a remote betting intermediary are charged, whether by deduction from winnings or otherwise, for using those facilities*".

Value-added tax is applied to supplies of eGaming services in Ireland on a point of consumption basis. Pursuant to the Council Directive 2006/112/EC (VAT Directive) and its implementing regulations (282/2011/EU), value-added tax is also likely to apply to gaming operators who are licensed outside of Ireland but accept Irish customers.

2.8 What are the broad social responsibility requirements?

Question 2.6 details some of the restrictions with respect to advertising and promotion. For the most part, however, Ireland's gambling laws are silent in terms of social responsibility obligations. A notable exception to this is the National Lottery which must be operated in a way that generates money for good causes and small local lotteries (which must have a primarily charitable purpose).

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

Ireland implements European anti-money laundering legislation and is due to shortly transpose the Fourth Anti-Money Laundering Directive.

The Central Bank of Ireland is reviewing the use of virtual currencies across the economy. Aside from e-money, virtual currencies are currently unregulated in Ireland.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

For the most part, Irish law has not generally been updated to take account of the internet. The G&L Acts apply to gambling products in general (i.e. casino or lottery-style games) and therefore applies equally to online gambling, though they have not been updated to take online gambling specifically into account.

Online gambling products are often provided to Irish consumers by operators who are lawfully licensed in other jurisdictions. Taking into account the potential application of Irish consumer protection law, such operators normally seek to ensure that consumer contracts are not governed by Irish law and that such contracts are executed and performed outside of Ireland. In addition, the G&L Acts will apply to those operators and it is important for them to be mindful of the rules surrounding the promotion and advertising of unlawful gambling products.

The Betting Acts have recently been updated in order to regulate and license betting services and betting intermediary services which are delivered remotely. The Betting Acts defines "*remote*" as "*any electronic means*" which includes the internet, telephone and telegraphy (including wireless telegraphy). Therefore a licence is required for all those who wish to provide remote bookmaking or remote betting intermediary services to customers in Ireland.

3.2 What other restrictions have an impact on online supplies?

Under the Betting Acts, it is unlawful to provide a service that would "*enable*" an unlicensed bookmaker or unlicensed betting intermediary to have access to or use any internet address or any internet domain for the purpose of their providing remote bookmaking or betting intermediary services. The scope of this provision is untested in court at the time of writing.

Under the Betting Acts, the Revenue Commissioners are charged with the enforcement of these provisions.

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

The Finance Act 1975 (as amended) governs the provision and licensing of "*gaming machines*". See questions 1.2 and 2.4. Section 4(1) of the 1956 Act prohibits the promotion or provision of facilities for gaming on slot machines.

Fixed-odds betting terminals (FOBTs) are uncommon in Ireland (certainly among the main high-street operators). Although their

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legality has been not been tested in the courts, they are generally regarded as an unlawful form of gaming and there seems to be very little political will to introduce or regulate them.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Under section 32D of the Betting Acts, it is possible for a prosecution to be taken against any person including a "*director, manager, secretary or other officer*" of a company where the company has breached the Betting Acts "*with the consent or connivance*" of the person in question. Section 45 of the G&L Acts contains a similar provision.

The operator of the National Lottery must be a company and this company is primarily responsible for breaches under the National Lottery Act 2013. Under the 2013 Act, the main sanctions are monetary fines, which will be imposed on the operator company.

4.2 What is the approach of authorities to unregulated supplies?

The Irish Revenue Commissioners actively police the market to ensure that the appropriate tax is being remitted and, in the case of bookmakers, that the appropriate licences are in place.

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

The law of the European Union applies in Ireland and is constantly developing. The law on the free movement of services within the EU is particularly important in this context. European consumer protection laws or "*conflict of law*" regulations may also be relevant.

4.4 Are gambling debts enforceable in your jurisdiction?

Gambling debts are not enforceable in Ireland. Per section 36 of the G&L Acts: "*every contract by way of gaming or wagering is void*", and "*no action shall lie for the recovery of any money or thing which is alleged to be won or to have been paid upon a wager or which has been deposited to abide the event on which a wager is made*".

The recent case of *Sporting Index Limited v John O'Shea* [2015] IEHC 407 discussed the enforceability of gambling debts. In the case the Irish High Court found that a UK-based spread betting operator called Sporting Index could not enforce a gambling debt owed to it by an Irish resident, Mr. O'Shea, as to do so would be contrary to the clear intent of the G&L Acts.

The unenforceability of gambling debts is reciprocal as between betting operator and customer, meaning a customer cannot sue an operator who refuses to pay a gambling debt. There is however a deterrent in place for betting operators (including betting intermediaries) who refuse to pay out: when an operator applies for renewal of its licence, it must be certified as being a "*fit and proper person*" by the Minister for Justice and Equality. When considering fitness, one consideration that may be taken into account by the Minister is whether the operator "*unreasonably refuses or refused to pay sums due to persons who won bets made with* [it]". Therefore, should the operator refuse to pay out gambling debts, this could result in the refusal of the Minister to certify fitness and ultimately in the loss of the licence.

A proposal to make gambling contracts enforceable (in most circumstances) is currently contained in the Heads of the Gambling Control Bill (discussed in more detail below).

5 Anticipated Reforms

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

Anticipated Reforms

It is widely acknowledged that Ireland's gambling laws are outdated and overdue for reform. In July 2013, the draft heads of a new bill to reform Ireland's gambling laws was released. The draft heads referred to the bill as the "*Gambling Control Bill*" (the "**Bill**"). The Bill has not made significant progress through the legislative process since its initial publication although at the time of writing, the Bill is on the government's published legislative agenda.

It is difficult to predict with any great certainty what the Bill will look like if and when it is finally passed. Based solely on the draft heads of Bill, we would expect that new legislation in this area would at least cover the following:

- **A New Regulator**

  The Bill proposes to bring all forms of gambling under the supervision of a dedicated gambling regulator – the Office of Gambling Control, Ireland (the "**OGCI**"). This in of itself would be a significant reform of the law as currently, the closest that Ireland has to a gambling regulator is the Revenue Commissioners (which has the authority to issue certain licences, most notably, bookmakers' licences) as well as the District Courts and the Gardaí Síochána (which have the power to issue local lottery licences).

- **New Licensing Regime**

  The OGCI would oversee a new licensing regime incorporating 43 categories of gambling licence or registration. For the first time, it would be possible to apply for a licence to operate a land-based casino (though there is a proposal to cap the number of such licences). It is also proposed to introduce a licensing regime for operators who wish to offer gambling products (such as casino-style games) to Irish customers. The Bill specifically excludes the operation of the Tote from its provisions, but it does provide for the licensing of pool betting products.

- **Player Protection**

  The Bill would introduce player protection measures (a feature which is somewhat lacking from the current Irish law on gambling products). Specifically, there would be an obligation on operators to report suspicious betting patterns, a prohibition on the offering of credit and the introduction of "*player cards*". The precise functionality of the "*player cards*" is unclear at this point. Certain games may be prohibited on public policy grounds and the Bill reiterates the government's intention to retain the ban on fixed online betting terminals.

- **Courts and Civil Law (Miscellaneous Provisions) Bill 2017**

  In advance of any progress being made by the Bill, the government has separately proposed some piecemeal changes to the 1956 Act in the form of the draft Courts and Civil Law (Miscellaneous Provisions) Bill 2017 (the "**Misc Provisions Bill**"). The Misc Provisions Bill seeks to reform and update the regime governing small or local lotteries. In particular, the Misc Provisions Bill would clarify the basis on which a charitable lottery licence may be obtained, increase stake and prize limits and standardise the age limits for entry.

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Deirdre is recognised as one of Ireland's leading IP, technology and data privacy specialists. Many of the commercial contracts that Deirdre has worked on are complex. She has experience with large outsourcing projects, technology supply agreements and patent licences, particularly for clients in the technology, data, life sciences and pharma sectors. Much of her work involves advising businesses how to model and conclude contracts, with IP or business transformation at their heart. She works on international tax projects involving significant IP and technology assets. Deirdre also advises on confidentiality, trade secrets, advertising, ecommerce and consumer protection.

Matheson's Betting and Gaming team is one of the leading specialist practices in this area in Ireland. We offer expert advice to operators in this space in relation to licensing, regulatory advice, taxation, e-commerce, commercial contracts, advertising and IP structures. Our partners have worked with many of the leading names in the gaming and betting sectors. Our betting and gaming clients work with us on transactions, disputes, tax and projects because of our ability to cut through complexity and to mitigate risk.

Our experience ranges from advising traditional retail bookmakers and private members clubs/casinos in relation to their operations in Ireland, to advising large multi-national online gaming operators providing remote and non-traditional online gaming and betting services to Irish consumers.

We also assist businesses in Ireland with using lotteries as a tool in marketing promotions and competitions in a compliant manner.

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Isle of Man

Appleby

Claire Milne

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

In the Isle of Man, the Gambling Supervision Commission (**GSC**) is an independent statutory board. The GSC regulates land-based gambling operations (casino, amusement, slots, betting offices and lotteries) and online gambling services.

The GSC was established in 1962 to protect the interests of gamblers and in 2001, the Isle of Man was one of the first jurisdictions in the world to regulate online gambling.

The status and constitution of the GSC are set out under the Gambling Supervision Act 2010 (**GSA**) and, under that legislation, the regulatory objectives of the GSC are:

a) to ensure that gambling is conducted in a fair and open way;

b) to protect children and other vulnerable persons from being harmed or exploited by gambling; and

c) to prevent gambling from being:

i. a source of crime or disorder;

ii. associated with crime or disorder; or

iii. used to support crime.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Under the GSA, "gambling" means:

a) gaming (within the meaning of the Gaming, Betting and Lotteries Act 1988);

b) making, negotiating and receiving bets and wagers;

c) organising, managing, promoting or participating in a lottery; or

d) supplying or operating controlled machines (within the meaning of the Gaming (Amendment) Act 1984).

The principal legislation regulating the online gambling industry is the Online Gambling Regulation Act 2001 (**OGRA**). All forms of online gambling and gaming are potentially licensable under OGRA with the exception of spread betting, as set out in the Online Gambling (Prescribed Descriptions) Regulations 2007.

"Online gambling" is defined in section 1(1) of OGRA as:

"(a) any gaming, where any player enters or may enter the game, or takes or may take any step in the game, by means of a telecommunication;

(b) the negotiating or receiving of any bet by means of a telecommunication; or

(c) any lottery in which any participant acquires or may acquire a chance by means of a telecommunication."

Under section 1(2) of OGRA, a person "conducts" online gambling where:

"(a) in the case of gaming or a lottery, he takes part in its organisation, management or promotion;

(b) in the case of a bet, he carries on any business involving the negotiating or receiving of the bet; or

(c) he maintains, or permits to be maintained, in the Island any computer or other device on or by means of which the game or lottery is operated, or the bet is received, as the case may be."

Under section 2(1) of OGRA, any person who conducts any online gambling commits an offence unless he does so in accordance with a licence granted to him under OGRA or unless an exception applies. For example, the provision of hosting services for third parties in certain circumstances does not require a licence. Note, however, that on Island providers of disaster recovery services to the online gambling industry require to be on a list held by the GSC under the terms of the Online Gambling (Disaster Recovery) (No.2) Regulations 2007.

The GSC does not grant licences to software providers, provided the software provider does not fall under the definition of "conducting" online gambling as set out under section 1(2) of OGRA. The GSC does however retain a list of approved testing houses to test its operators' software.

The Online Gambling (Exclusions) Regulations 2010 set out activities that do not require an OGRA licence.

Other relevant legislation includes:

- Casino Act 1986 (casino licences);
- Casino (Amendment) Act 2012;
- National Lottery Act 1999 (extends the UK National Lottery to the Isle of Man);
- Pool Betting (Isle of Man) Act 1961;
- Gaming, Betting and Lotteries Act 1988 (land-based betting and bookmaking and amusements with prizes);
- Gaming, Betting and Lotteries (Amendment) Act 2001;
- Gaming (Amendment) Act 1984;
- Gambling (Amendment) Act 2006;
- Gambling Supervision Act 2010; and
- Gambling Duty Act 2012.

Secondary legislation made under the foregoing pieces of legislation can be found on the GSC's website at https://www.gov.im/about-the-

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government/statutory-boards/gambling-supervision-commission/legislation/.

The Money Laundering and Terrorist Financing (Online Gambling) Code 2013 and Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 impose money laundering and anti-terrorism provisions that must be followed by licence holders.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

The terms applying will depend on the type of gambling being offered and the legislation that applies – see question 2.2 below.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Casino

The Casino (Licence Application) Regulations 1986 set out to whom an application for a casino licence should be made and matters that should be included in such an application.

In respect of a casino licence, the licence will specify the premises which the licence covers. Similarly, a betting office licence will authorise the licence holder to effect betting transactions at premises specified in the licence.

Controlled Machines

The keeping for use, sale and supply of controlled (slot) machines are all activities that are covered by the Gaming (Amendment) Act 1984 and the regulations made thereunder.

Land-based Betting

It is an offence to use non-licensed premises for betting or to operate as a bookmaker without a permit under the Gaming, Betting and Lotteries Act 1988 (**GBLA**).

Online Gambling

Operators who intend to establish in the Isle of Man must satisfy the following criteria:

- they must establish a Manx company;
- they must have at least two local directors, who must be individuals and not corporate entities;
- they must appoint at least one resident Designated Official, or where that Designated Official cannot reside in the Isle of Man, an Operations Manager; and
- they must either register players on Isle of Man servers or they must operate under a network services licence which obliges them to establish the network services in the Isle of Man.

Types of Licences under OGRA:

1) The main OGRA Licence:
   - Costs £35,000 *per annum* and runs for an initial period of five years. The initial licence application fee is £5,000.
   - With approval of the GSC, operators with a full licence can offer technology to sub-licensees under the reduced-fee sub-licence scheme (see further below).
2) Sub-Licences under OGRA:
- Can be obtained if the applicant wishes to operate exclusively with a technology provider with a full OGRA licence. Players register with the sub-licensee but may then access games provided by the Isle of Man business partner's game server. The business partner must hold a full OGRA licence. To qualify as a sub-licensee, the operator may only use the services of one Isle of Man-licensed software/platform provider at any given time. The full OGRA licensee, however, can offer its services to as many sub-licensees as it wishes and may register its own players directly as well.
- Operators with a full licence can offer technology to sub-licensees under the reduced-fee sub-licence scheme.
- Any new operator that wants to use the games offered by a network operator can obtain a sub-licence. The condition being that the sub-licence holder is tied exclusively to the network operator for its games.

3) Network Services Licence:
- Must be obtained if the operator wishes to allow one or more players registered with another non-Isle of Man-licensed operator on to its Isle of Man server without re-registering the player details.
- Costs £50,000 per year.

2.3 What restrictions are placed upon any licensee?

The GSC has the power to issue licence conditions that operators must comply with and these can be specific to a particular operator depending on the circumstances. The following are the standard licence conditions for all OGRA licences:

- the operator must ensure that the games, gambling software and financial software offered are demonstrably secure, reliable, and capable of being audited;
- the operator must ensure compliance with all applicable legislation including regulations that are in force from time to time and must seek approval for any changes made to the system;
- the GSC has no black lists where an operator may not offer its gambling services, but the GSC requires the operator to take legal advice regarding any jurisdiction in which it takes players/does business and liaise with the GSC in this regard;
- the operator must protect the players' funds paid to it by either holding those funds in a designated account as specified by the Online Gambling (Participants' Money) Regulations 2010 (as amended) or place those funds in a trust or other mechanism approved by the GSC;
- all players' funds paid to the operator must be held on trust irrespective of the mechanism used to protect them and players must be told and agree to the treatment of any interest and capital that arises as a result of the funds being held by the operator. Before players' funds may be moved from a client account to an alternate protection mechanism, the GSC must approve the mechanism;
- the operator must not operate, or be associated or linked with, online gambling sites not regulated by OGRA except with the consent of the GSC. If the GSC approves the association or link, any reference or linked access to the associated gambling sites must be made through a web page that indicates that the player is leaving the jurisdictional control of the Isle of Man;
- the operator must allow all activities permitted by its licence and any associated transactions to be the subject of random audit by or on behalf of the GSC;
- the operator must, if so requested by the Isle of Man Treasury, take an active part in any forum or consultative body established by the Treasury relating to the operation and regulation of online gambling in the Isle of Man;
- operators are required to make a proportionate contribution, over the course of each year throughout the duration of the licence, to one or more organisations that conducts research into the prevention and treatment of gambling related harm,

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develops harm prevention approaches and/or identifies and funds treatment of those harmed by gambling;

- other than with the consent of the GSC, an operator must commence the online gambling allowed under its licence within nine months of the licence being granted;
- operators must fully comply with any anti-money laundering and countering the financing of terrorism provisions that apply to the business and/or any type of gambling permitted under its licence.
- operators may not exclude residents of the Isle of Man from placing bets or stakes with Isle of Man-licensed online gambling sites except with the agreement of the GSC;
- operators must supply sufficient information from an independent source or sources to demonstrate the probity of suppliers of any gambling or financial software it operates;
- operators must operate through trading accounts in a bank located in the Isle of Man unless agreed otherwise with the Isle of Man Treasury. In addition any bank accounts for trading or gambling purposes should be located in the Isle of Man unless agreed otherwise with the Treasury;
- operators must maintain accounting systems approved by the GSC and conform with such internal and external accounting practices as the GSC may require. Not later than six months after the end of every accounting year, the operator has to deliver to the GSC a copy of its accounts in the form required by the Companies Act 1982 or as defined by United Kingdom G.A.A.P. and certified by a qualified auditor;
- operators are required to demonstrate to the GSC compliance with all Advertising Standards Authority Codes and industry self-regulatory codes or such other codes as may be applicable. All operators are required to provide hyper-links on their websites to any problem gambling organisation that may be specified by the GSC;
- if the operator enters into a business-to-business relationship with an entity that is not licensed by the GSC, the operator is required to use its best endeavours to ensure that those entities adhere to the GSC's core principles as set out above. In addition, there is an obligation on operators not to bring the Isle of Man or its reputation into disrepute either itself or through its relationship with third parties;
- services offered by operators and/or by any part of its group from a jurisdiction other than the Isle of Man shall not make reference either directly or indirectly to the GSC or a licence granted by the GSC; and
- operators must not allow a person (or persons considered by the GSC to be acting in concert) to assume or increase ownership of the operator, directly or via other holdings or arrangements, unless: (a) the ownership of the licensed company is wholly public; (b) the ownership of that person (or those persons acting in concert) afterwards is 5% or less of the operator; (c) the ownership of that person (or those persons acting in concert) has been approved by the GSC and noted in the minutes of a GSC meeting; or (d) the operator has obtained the written permission of the inspectorate for that person (or those persons acting in concert) to assume or change their ownership prior to the GSC's approval. The licence will be suspended if any person has ownership of the licensed operator in contravention of this condition unless the GSC provides confirmation, in writing, that the operator can continue to operate.

In the event that the operator fails to abide by any licence condition, the GSC can terminate the licence in accordance with the terms of section 13(4)(b) of OGRA.

2.4 What is the process of applying for any gambling licence or regulatory approval?

In respect of an application to conduct online gambling activities, the application form, vetting forms, associated paperwork and application fee must be submitted to the inspectorate. Once the application has been accepted, the general time period for a licence to be processed is typically 10 to 12 weeks. The inspectorate may request to meet with the Designated Officials and the Operations Manager (where appointed) to discuss the business model and gain an understanding of the competence the key officials have with regard to the business being proposed.

Assuming there is no delay in the application process, there will be a formal hearing approximately 12 weeks after the application has been formally accepted. Notification will be received as to whether the application was successful shortly after the formal hearing.

An application under the GBLA should be made to the GSC. A copy of the application will be sent to the Chief Constable and to the Collector of Customs and Excise in the Isle of Man. The applicant will be required to publish in a newspaper, published and circulating in the Island, a notice of the application which shall state that any person who desires to object to the grant of the permit or licence should notify the GSC. Where the licence is in respect of any premises, the applicant should also post a notice outside the entrance, or on the site of the proposed entrance. The GSC will hold a meeting to consider such applications.

For an application to hold a casino licence, guidance should be sought from the GSC. There is currently only one holder of a casino licence on the Island.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

OGRA licences last for an initial period of five years but can be renewed thereafter for subsequent five-year periods.

In respect of a casino licence, a licence will remain in force for a period of one year from the date on which it was granted, unless it is cancelled or surrendered. The GSC may renew a licence for successive periods of one year on the application of the holder of the licence, provided that a casino licence shall not be renewed so as to be in force after the expiry of 10 years after the date on which it was originally granted.

Licences issued to those conducting gambling activities under the GBLA will, unless cancelled or surrendered, continue in force for the period stated in the licence.

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

See licence conditions at question 2.3 above.

Advertising is regulated for both land-based and online gambling related activities.

OGRA – The Online Gambling (Advertising) Regulations 2007 (the **Advertising Regulations**) apply to online operators.

The Advertising Regulations contain restrictions regarding the type of advertisements that an operator can produce. "Advertisement" is defined as *"includ[ing] every form of advertising or promotion, whether by means of the Internet, in a radio or television programme or message (whether broadcast or not), in a written or printed publication, by the display of notices, signs, labels or showcards, by means of circulars or other documents, or through any other medium"*. The Advertising Regulations also state certain details that require to be set out on the website of each operator.

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GBLA – under the GBLA, no advertisement may be published:

- indicating that any particular premises are a licensed betting office;
- indicating where any such office may be found; or
- drawing attention to the availability of, or to the facilities afforded to persons resorting to, such offices.

The above restrictions do not apply where the advertisement is: (i) published in a material form; (ii) published inside but not outside a licensed betting office; or (iii) complies with such restrictions as may be prescribed and is, in such manner as may be prescribed, published outside a licensed betting office from a place inside such an office or in premises giving access to such an office.

An advertisement is defined under the GBLA as including every form of advertising, whether in a publication, by the display of notices, by means of circulars or other documents, by an exhibition of photographs or a cinematograph film or by way of sound broadcasting, television or by means of a telecommunication system.

CA1986 – no advertisement of a casino may be published, exhibited or distributed in the Island or elsewhere unless:

- it is not indecent or offensive;
- it is based on fact;
- it is not false, deceptive or misleading in any material particular;
- it has no sexual content;
- it is not directed at persons under 18;
- it does not contain any material in breach of copyright; and
- any claims on payouts are substantiated by the return-to-player performance of the game.

The Consumer Protection Act 1991 also contains provisions regarding misleading advertisements. A complaint can be made to the Office of Fair Trading where a consumer believes an advertisement is misleading.

2.7 What are the tax and other compulsory levies?

Gambling duty is charged on gross gaming yield. The rates of the duty are:

- for gross gaming yield not exceeding £20,000,000 *per annum*, 1.5%;
- for gross gaming yield exceeding £20,000,000 but not exceeding £40,000,000 *per annum*, 0.5%;
- for gross gaming yield exceeding £40,000,000 *per annum*, 0.1%; and
- for gross gaming yield from Pool Betting, 15%.

Companies that are resident in the Isle of Man are taxed on their worldwide income at 0%, 10% or 20%. For individuals resident in the Island, for tax purposes, there is an income tax base rate of 10% with a 20% higher rate.

2.8 What are the broad social responsibility requirements?

In respect of online gambling activities, there is a requirement for operators to contribute a sum to the Isle of Man Government's Problem Gambling Fund.

In addition, a person who conducts online gambling must not allow a minor or those in a country or territory prescribed by regulations to participate. Minors include those persons under the age of 18. There are also restrictions under the GBLA on betting transactions with a minor and inciting a minor to bet and under the Casino Regulations 2011 which provide that no person under the age of 18 can enter a gaming room when a gambling activity is taking place.

There are also the restrictions in relation to advertising as described in question 2.6 above.

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

The current substantial Isle of Man anti-money laundering laws are:

a) the Anti-Terrorism and Crime Act 2003 (**ATCA**); and

b) the Terrorism and Other Crime (Financial Restrictions) Act 2014 and the Proceeds of Crime Act 2008 (**POCA**) (together the **AML/CFT Acts**).

POCA is the Isle of Man's primary money laundering legislation. Under the AML/CFT Acts, the Department of Home Affairs is responsible for making such codes as it considers appropriate for the purposes of preventing and detecting money laundering and the financing of terrorism. The Money Laundering and Terrorist Financing (Online Gambling) Code 2013 (**Code**) is the current code specific to the online gambling sector in the Isle of Man, and all persons licensed by the GSC pursuant to OGRA must comply with the Code, with the GSC responsible for overseeing compliance.

Paragraph 4 of the Code obliges all operators to establish an AML/CFT framework, which can be summarised as follows:

- all players must be identified;
- a risk assessment process must determine if a player poses a higher risk of money laundering or financing terrorism;
- some players are automatically high risk;
- enhanced due diligence must be considered for high risk players – enhanced due diligence may require that identity is evidenced;
- players' transactions must be monitored on an on-going basis;
- some transactions automatically trigger the requirement for identity to be evidenced;
- records must be kept to prove that AML/CFT work has been undertaken and to allow law enforcement to access information and reconstruct transactions;
- under certain circumstances, reports on suspicious transactions must be made to the Financial Intelligence Unit (**FIU**) in the Isle of Man;
- operators may need to make reports to the FIU to obtain a defence against money laundering when handling criminal property;
- staff must be screened and must be properly trained in AML/CFT;
- technological developments must be monitored for any AML/CFT vulnerabilities they create; and
- operators must monitor the fitness of their own AML/CFT compliance.

The GSC does allow virtual currencies to be used for gambling. Changes in 2017 made it possible to open an account with an Isle of Man gambling operator by using anything which has a value in money's worth. This includes convertible and non-convertible virtual currencies. Convertible virtual currencies include crypto-currency (such as bitcoins) which can be bought and sold through independent exchanges for fiat currency. Non-convertible virtual currencies include virtual goods such as digital "skins" for avatars and weapons in video games and other digital objects that have

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functions in video games, in addition to in-game currencies that can be used to buy such objects.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

If an operator performs any of the following functions in the Isle of Man then it will require an OGRA licence:

- registering players – for the purposes of gambling;
- striking a bet; or
- offering the game.

3.2 What other restrictions have an impact on online supplies?

Other domestic legislation will apply to operators including data protection legislation, consumer protection legislation, anti-bribery and corruption legislation and sanctions legislation.

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

Any terminal/machine-based gaming on the Isle of Man is governed by the Gaming (Amendment) Act 1984 (the **GAA**) and associated regulations.

The GAA defines a "controlled machine" as any machine a player pays to play, whether mechanical, electric or electronic, which is designed or adapted for the playing of a game of chance or skill or both.

Any premises that wish to have a controlled machine located in them are required to have a certificate. The GSC may, in accordance with the provisions of the GAA, grant a certificate being:

- a full certificate;
- a restricted certificate; or
- a club certificate.

Examples of premises that can hold a certificate include public houses, betting shops and casinos.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

OGRA – the holder of a licence who fails to comply with any part of OGRA or the operations manager (where appointed) or designated official who fails to comply with a requirement imposed by the GSC. Directors and officers of a body corporate may also be liable in certain circumstances.

GBLA – the licence holder where there is failure to comply with the GBLA, including any breach of the prohibitions contained in the GBLA, or where an advertisement is in breach of the GBLA. Directors and officers of a body corporate may also be liable in certain circumstances.

CA1986 – the sanctions under the CA1986 can be imposed on both the director of the casino and the licence holder. The director of the casino must ensure that the Casino Regulations 2011 are complied with or he will commit an offence under the same. Any breach of the licence terms will be an offence by the licence holder. Directors and officers of a body corporate may also be liable in certain circumstances.

GAA – the occupier of the premises or the person responsible for the management or control of the premises shall be liable if any controlled machine is kept for use on the premises without a certificate and any person selling or supplying controlled machines without a licence. Directors and officers of a body corporate may also be liable in certain circumstances.

4.2 What is the approach of authorities to unregulated supplies?

The GSC is a proactive regulator and in a small jurisdiction it would be hard to provide unregulated services without the same coming to the attention of the regulator.

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

The United Kingdom's Extradition Act 1989 has been repealed in the UK but was extended to the Isle of Man and continues to apply to the Isle of Man.

4.4 Are gambling debts enforceable in your jurisdiction?

Yes, for online gambling debts. Section 23 of OGRA states that no contract entered into in the course of online gambling shall be void or unenforceable.

No, for other gaming or wagering, section 40 of the GBLA states that every contract by way of gaming or wagering is void and no action shall lie for the recovery of any money or thing which is alleged to be won or to have been paid upon a wager or which has been deposited to abide the event on which a wager is made.

5 Anticipated Reforms

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

The Casino (Amendment) Bill 2017

The Casino (Amendment) Bill 2017 introduces amendments to:

1) ensure that casino licences can be revoked in cases of non-compliance with money laundering and financing of terrorism legislation; and
2) permit the premises in which casinos are located and the facilities and amenities provided under casino licences to be varied.

The Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Bill 2017

The purpose of the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Bill 2017 is to provide the GSC with the necessary powers to conduct regulatory oversight of the gambling sector's compliance with Anti-Money Laundering and Countering the Financing of Terrorism legislation.

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Claire Milne is a partner within the Corporate department in the Isle of Man. She is Team Leader for the Intellectual Property and Science & Technology teams in the Isle of Man. Claire has over 20 years' experience (both in-house and in private practice) of all aspects of contentious and non-contentious IP rights across the spectrum and has dealt with all aspects of commercialisation of IP rights for businesses ranging from start-ups and university spin-outs to large multi-national pharmaceutical companies. She has also worked on major bespoke software and hardware development projects, especially for the financial services and gaming sectors. Claire specialises in advising online gaming and gambling operators, e-business companies and telecoms companies and also advises on data protection and outsourcing issues. Claire is a General Member of the International Masters of Gaming Law, and was Chair of the Isle of Man Gambling Supervision Commission from 2007–2012.

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Israel

Herzog Fox & Neeman Law Office

Yehoshua Shohat Gurtler

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Israeli law imposes a general ban on gambling activities, with two exceptions in the form of a national sports betting operator and a national lottery monopoly. These services are regulated as follows:

- *Mifal Hapayis* (the National Lottery) – established in 1951, the Israeli National Lottery offers scratch cards, a weekly subscription lottery, and various other lotteries and raffles. The operations of *Mifal Hapayis* are supervised and regulated by the Ministry of Finance.
- *Israel Sports Betting Board* (*ISBB*) – established in 1967 under the Law for the Regularisation of Sports Betting 5727-1967, the ISBB has the exclusive right to organise and regulate sports betting in Israel.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Other than the exceptions listed in the previous question and a "social gambling" exemption described below, all types of gambling are deemed to be illegal in Israel. The Israeli Penal Law 5737-1977 (the Law) prohibits the organising of lotteries, betting and games of chance, as well as operating venues where such activities take place.

Chapter Twelve of the Law, entitled 'Prohibited Games, Lotteries and Betting', contains several provisions relating to gambling, including a prohibition on organising "*lotteries, betting and prohibited games*" (Section 225), and a prohibition on "*participating in prohibited games*" (Section 226).

The Law defines these terms, as follows:

- '*prohibited game*' – a game at which a person may win money, valuable consideration or a benefit according to the outcome of a game, that outcome depending more on chance than on understanding or ability;
- '*place of prohibited games*' – premises on which prohibited games are regularly conducted, whether open to the public or open only to certain persons, whether or not they are also occupied for some other purpose;
- '*lottery*' – any arrangement under which it is possible – by drawing lots or by some other means – to win money, valuable consideration or a benefit, the outcome depending more on chance than on understanding or ability; and
- '*betting*' – any arrangement under which it is possible to win money, valuable consideration or a benefit, the outcome depending on a guess, including lotteries connected to the outcome of games and sporting competitions.

Thus, the Law defines three categories of gambling. In practice, these have been given broad definitions which, cumulatively, cover practically all forms of gambling. It is worth noting that the definitions of these categories overlap and, consequently, certain types of gambling activity may fit more than one category.

Israeli courts have recognised, *inter alia*, the following as gambling games, under Chapter Twelve of the Law: roulette; other casino games; bingo; slot machines; betting; lotteries; and sports betting.

Israeli courts have established that in order to determine whether a game is 'based on chance more than understanding or ability', the predominance test will be used (i.e. whether the predominant element determining the outcome of the game is chance or skill).

In a March 2011 ruling related to 'betting', the District Court of Tel Aviv determined that in situations where a particular activity combines elements of skill and chance, the '*social interest and utility*' of the game in question should also be taken into account when considering its legality (Class Action (Tel Aviv) 30284-01-10 *Simon Davush v Connective Group Ltd.*).

The only exception to the aforementioned prohibition on gambling is provided for in Section 230 of the Law which states that the Law does not apply "*to a game, lottery or betting that meets the following three conditions:*

(1) its conduct is intended for a certain circle of persons;

(2) it does not exceed the scope of amusement or entertainment; and

(3) it is not held in a place of prohibited games or a place for the conduct of lotteries or betting".

Israeli courts have stated that this exception must be narrowly construed. In connection with online gaming, special emphasis must be placed on the first requirement under Section 230, limiting the game's targeted audience to a certain circle of persons. (See, for example, Criminal Appeal (Supreme Court) 9140/99 *Amos Romano v The State of Israel.*)

Unlike many other jurisdictions, Israeli law does not include consideration in the definition of gambling. The payment of consideration by a participant is not a prerequisite for an activity to be considered illegal. Therefore, a social game – even a game that is free to play – may be considered a 'prohibited game' under Israeli law, if the player stands to gain something of value based on the outcome of the game. Given that the prohibition encompasses any game of chance from which a player may glean a benefit, the legal conclusion is the same in cases where the player is able to win

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virtual currency which is of no monetary value, but may be used as credit to take part in other games. A different legal assessment may only be applicable if a social game does not involve any prizes of real world value, i.e. those games in which the player stands to gain no tangible benefit as a result of the outcome of the game.

In relation to penalties, Section 225 stipulates that a person organising or conducting a prohibited game, lottery or betting is liable to a penalty of up to three years' imprisonment or a fine of up to NIS 452,000. Section 226 provides that a person playing a prohibited game is liable to a penalty of up to one year's imprisonment or a fine of up to NIS 29,200. It should be noted that Section 226 does not refer to betting or lotteries, i.e. the sanctions on participation are triggered only by playing a 'prohibited game'.

See question 3.1 for an analysis of online gambling under Israeli law.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

This is not applicable in our jurisdiction. Gambling facilities may only be supplied by the National Lottery and sports betting monopoly.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

This is not applicable in our jurisdiction.

2.3 What restrictions are placed upon any licensee?

This is not applicable in our jurisdiction.

2.4 What is the process of applying for any gambling licence or regulatory approval?

This is not applicable in our jurisdiction.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

This is not applicable in our jurisdiction.

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

Israeli courts have taken the following approach to specific forms of gambling:

- *Poker* – poker is not defined by Israeli legislation. Nevertheless, in several decisions (a few of them rendered many years ago) Israeli courts have opined that certain forms of poker constitute 'prohibited games' as defined in Section 224 of the Law.
- *Betting* – the Law prohibits the offering of betting in Israel, excluding the sports betting services offered by the ISBB. Originally, the ISBB offered betting on soccer games only. In 1996 its services were expanded to include basketball games and in 2011 a further expansion added additional sporting activities (local and foreign). Finally, in 2013, wagering on foreign (UK and Irish) horseracing events was introduced. In a recent press conference, Israel's Minister of Finance has announced his intention to overturn the ISBB's permit to offer wagering on horseracing events.
- *Casino games* – as with poker, there is no legislation which refers specifically to casino games. Nevertheless, various casino games (including, for example, blackjack and roulette) have been recognised through case law as 'prohibited games' under Section 224 of the Law. (See, Class Action (Tel Aviv) 30284-01-10 *Simon Davush v Connective Group Ltd.*)
- *Slots and other gaming machines* – slot machines are not specifically mentioned in Israeli legislation. However, Israeli courts have considered gaming machines to be illegal as either a form of lottery or as 'prohibited games'. (See, Civil Appeal 813/88 *Astablismant Nahal Ltd. v Saul Barzri.*)
- *Bingo* – bingo is not specifically mentioned in Israeli legislation but Israeli courts have considered bingo to be an illegal form of gambling.
- *Lottery* – lotteries are given a broad definition in the Law (Section 224) and may only be offered by the National Lottery monopoly (*Mifal Hapayis*). The latter may offer traditional lotteries, scratch cards, keno, and similar fixed odds games. The permissible activities are defined in the permit granted to the Lottery by the Minister of Finance.

It is also worth noting that (unlike some other jurisdictions), Israeli law does not view "binary options" (also called "binary bets" in some jurisdictions) as a form of gambling. The Tel Aviv District Court ruled that binary options are governed by Israel's securities laws, not by the laws governing gambling. However, trading in binary options is prohibited for Israeli residents, and a bill presently being debated by the Israeli Parliament would prohibit Israelis from engaging in binary options trading (and ancillary activities) with non-Israeli residents as well.

2.7 What are the tax and other compulsory levies?

Under Israeli law, the winners of prizes (including those who win prizes through the lotteries and betting activities organised by the state-licensed monopolies) may be subject to taxation.

In the event that the value of any prize is more than approximately NIS 50,000, the winner of such prize is subject to taxes in Israel and the organiser of the betting activity is required to withhold tax at source. The rate of tax varies for prizes between NIS 50,000–100,000 and is set at 30% for prizes above NIS 100,000. Furthermore, in the event that the prize is not a monetary prize, it is customary for the prize to be transferred to the winner only after the winner provides the organiser with the required amount of withholding tax.

2.8 What are the broad social responsibility requirements?

A person must be at least 18 years old to participate in gambling. Until 2007, when a statutory ban was imposed, lottery tickets could be sold to minors. Under the current law, any lottery or betting retailer that provides services to a minor could be subject to a fine or imprisonment.

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Furthermore, *Mifal Hapayis*'s permit requires that it maintain a responsible gaming policy. The policy requires, *inter alia*, the national lottery to invest an annual sum in research on problem gaming and on the social impacts of gaming. The lottery is required to invest 3.5% of its annual marketing budget in campaigns related to responsible gaming, and detection, prevention and treatment of problem gaming. In addition, the lottery must invest an annual sum in providing treatment for problem gamblers. The lottery is required to post information on its website and at sale points regarding the risks associated with gambling and the treatment available for problem gamblers. Finally, the lottery must conduct its sales and marketing in accordance with the ethical and responsible gaming principles adopted by the World Lottery Association.

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

In order to foil financial transactions related to online gambling, the Bank of Israel has issued a guidance note placing substantial burdens on financial transactions involving foreign online gambling. *Conduct of Banking Business Procedure No. 411*, issued by the Bank of Israel, imposes stringent restrictions on Israeli banks and financial institutions in relation to transactions related, *inter alia*, to online gambling. Thus, although there are no specific laws regarding payment blocking, secondary legislation exists to enable the Israeli authorities to instruct financial institutions to block the processing of online gambling transactions.

Mifal Hapayis is subject to specific requirements related to AML. These include the obligation to register players purchasing tickets with potential prizes over a specified sum, identification of prize recipients, and restrictions on cash payments over a specified amount.

Virtual currencies may not presently be used for gambling in Israel.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

The provisions of the Law do not explicitly refer to online gambling. Nonetheless, online gambling is considered illegal to the same extent as terrestrial gambling. Recent court decisions and the official opinions of various government agencies, including the Ministry of Justice, the Israel Police, the State Comptroller and others, have clarified that the definitions and prohibitions found in the law regarding gambling apply, *mutatis mutandis*, to online gambling. (See, for example, Special Requests, (Tel Aviv) 908617/07 *Carlton v The National Unit for the Investigation of Fraud*; Special Requests (Jerusalem) 1153/02 *The State of Israel v Aberg'il*; Annual Report 61B for the Year 2010 and the Accounting Year 2009, Jerusalem May 2011, Chapter 3 at p. 357, published by the State Comptroller and Ombudsman of Israel.)

Moreover, the Israeli Supreme Court has ruled that enforcement and punitive measures directed against illegal online gambling should be stricter than those related to terrestrial gambling, as the former poses a greater risk to the social interest. (See, for example, Special Criminal Appeal (Supreme Court) 7064/12 *Or Pando v The State of Israel*; Administrative Appeal (Supreme Court) 3782/12 *The Commander of the Tel Aviv-Jaffa District Israel Police Israel v The Israel Internet Association*; Criminal Appeal (Supreme Court) 6889/11 *The State of Israel v Eliran Oved*.)

The ISBB operates an online betting portal. *Mifal Hapayis* has not been permitted to offer its services online.

3.2 What other restrictions have an impact on online supplies?

See question 4.2 below.

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

Mifal Hapayis operates 500 electronic instant game machines (the maximum number permitted by law), made available to the public through vendors authorised by *Mifal Hapayis*. Other than this exception, gaming machines are prohibited in Israel. Upon renewal of *Mifal Hapayis*'s 10-year concession, in January 2017, its permit to operate instant game machines was revoked. However, the revocation has been judicially challenged and the matter remains pending before the High Court of Justice (as of August 2017), which also issued a stay of the revocation pending the outcome of the case.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Gambling operators active in the Israeli market may be exposed to criminal enforcement by the local authorities.

Section 225 of the Law provides for imprisonment for up to three years or a fine of up to NIS 452,000 for those organising or conducting a prohibited game, a lottery or betting.

In recent years, Israeli law enforcement authorities have conducted a number of efforts aimed at cracking down on online gambling available in Israel. These have included a number of high-profile arrests and subsequent legal proceedings.

The advertising of gambling is also prohibited under the Penal Law and under the Communications Law (Telecommunications and Broadcasting) 5742-1982. Section 227 of the Law provides that a person advertising lotteries or betting is liable to a penalty of up to one year's imprisonment or a fine of up to approximately NIS 150,000.

4.2 What is the approach of authorities to unregulated supplies?

The Israel Police have taken enforcement action against online gambling operators including, *inter alia*, confiscation of gambling equipment and conducting raids on venues related to the operation of online gambling. It should be noted, however, that such enforcement actions have thus far only targeted online gambling websites that explicitly target the Israeli market as well as online gambling companies linked to local criminal organisations. Israeli authorities have never taken enforcement action against foreign operators with no presence in Israel and which have not specifically targeted the Israeli market.

The Police have also attempted to order Israeli ISPs to block access to online gambling sites, however the blocking orders have been struck down by the Israeli Supreme Court for lack of explicit legal authority. (See, Administrative Appeal (Supreme Court)

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3782/12 *The Commander of the Tel Aviv-Jaffa District Israel Police Israel v The Israel Internet Association*.) A Bill entitled "Bill for Restrictions on Usage of Premises in Order to Prevent Offences (2nd Amendment), 5774-2014" is presently before the Israeli legislature. The bill would empower the Israel Police to issue orders aimed at preventing access from Israel to websites offering online gambling services. The Bill is presently in committee.

As noted above, secondary legislation enables the Israeli authorities to instruct financial institutions to block the processing of online gambling transactions.

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

This is not applicable in our jurisdiction.

4.4 Are gambling debts enforceable in your jurisdiction?

Under Israeli law, a contract or debt which is contrary to the public policy and social interest is unenforceable. No binding legal precedent is available with specific regard to gambling contracts, but a ruling by a court of first instance concluded that gambling-related debts are contrary to public policy and therefore unenforceable.

5 Anticipated Reforms

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

Further to the decision by the Ministry of Finance to impose restrictions on *Mifal Hapayis*, the Ministry has also announced that it will be seeking to revoke the ISBB's permit to offer horse-race wagering to Israeli residents.

The Ministry of Finance has also recently announced the establishment of a public committee to review the existing legislation in Israel pertaining to sweepstakes and promotional prize draws, with a view at possibly restricting or re-regulating such activities.

Finally, as noted above, a bill presently before the legislature would prohibit Israelis from trading in binary options and providing various services in connection with binary options trading (both in Israel and outside of Israel).

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Following extensive service in the IDF's Military Advocate General's Corp (MAG), Yehoshua also advises and represents clients on issues pertaining to public international law, and acts for clients in proceedings raising issues of public international law.

HERZOG FOX & NEEMAN
LAW OFFICE

Having advised internet gaming companies since the earliest days of the industry, Herzog Fox & Neeman's e-Commerce and Gaming department has developed a wealth of experience allowing it to keep pace with the evolving regulatory, commercial and corporate challenges unique to the world of online commerce (specifically – online gaming and financial technologies).

HFN's clients operate at all levels of the gaming products and services supply chain, and include: operators and suppliers (whom HFN assists in obtaining and maintaining licences, continuing compliance with laws and regulations, and observing best practices); banks and payment intermediaries (providing analyses of the financial and reputational risks of dealing in the gaming sector); and national governments and regulators.

The Gaming department provides a full range of services to its clients, including licensing, regulatory, tax, commercial and e-payments, as well as coordinating and assisting in the implementation of public offerings and other exit strategies. Day-to-day B2B and B2C commercial work for clients includes:

- Software development, licensing, support and maintenance and white-labelling (procurement and supply).
- Intellectual property (brand protection, rights assertion, etc.).
- Marketing affiliation, advertising arrangements and sponsorship.
- Risk management.
- All types of arrangements with payment processors and financial institutions.

HFN provides a fully integrated, multi-jurisdictional regulatory advisory service to the gaming industry. Complementing the firm's significant UK, European and Asian expertise is a worldwide network of quality local advisers designed to provide clients with a vital understanding of the multitude of laws and regulations that govern their activities; an essential prerequisite in a global market.

Specific regulatory experience includes:

- drafting online gaming statutes and regulations for key gaming jurisdictions;
- advising banks, investors and intermediaries on their participation in the gaming sector;
- providing regular jurisdiction-specific risk analyses (notably in relation to the UK, EU, US and the Far East);
- creating corporate, tax and trust structures and generally advising clients on issues such as funds segregation, financial services, regulatory compliance and taxation; and
- working with clients pursuing gaming licences and undergoing probity and suitability checks in various jurisdictions.

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Italy

Sbordoni & Partners

Stefano Sbordoni

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

In 2001, Law no. 383/01 entrusted *Amministrazione Autonoma dei Monopoli di Stato* (AAMS), now *Agenzia delle dogane e dei Monopoli* (ADM), as the sole regulator of state functions related to gaming.

All land-based licences expired on 30 June 2016. ADM shall issue new tenders for each of the expired licences by September of next year (2018).

There are four casinos in Italy, all covered by specific law. There is only one licence for a Totalisator.

In the absence of gambling regulations at EU level, online gambling will continue to be regulated by each EU Member State, in compliance with the freedom to provide services.

EEA gambling operators can accept wagers from Italian residents, as long as they apply for an Italian gambling licence. The regulatory body awarding gambling licences, as mentioned above, is ADM.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

All activities are legal, as long as the gambling operator holds an Italian gambling licence or has a business arrangement with an Italian licence holder. Without an Italian licence, gambling is deemed illegal with no recourse to or justification under EU law.

Authorised and regulated games in Italy:

- Betting on sporting events (Decree no. 111, March 1, 2006).
- Betting on horse racing events (Law no. 311, December 30, 2004 and Law no. 248, August 4, 2006).
- Betting on simulated events (ADM Director Decree, February 12, 2013).
- Games of skill and games of chance with fixed-odds, and card games, not organised as tournaments (ADM Director Decree, January 10, 2011).
- Remote fixed-odds betting on sporting and non-sporting events with direct interaction between gamblers (ADM Director Decree no. 47, March 18, 2013).
- Lotteries (President Decree no.1677, November 20, 1948 and others for each year).
- Bingo and other bingo formula (ADM Decree no. 29, January 31, 2000).
- Online poker tournaments (ADM Director Decree, January 10, 2011).
- Online casino games (ADM Director Decree, January 10, 2011).
- Gaming machines, including VLT and AWP, (Royal Decree no. 773, June 18, 1931, and President Decree no. 640, October 26, 1972, and Decree March 12, 2004).
- A tender for live poker (live Texas hold'em) licences should have also been launched by November 30, 2011, but it has never been issued, therefore this gaming activity is still not authorised.
- According to Italian law, it is permitted to offer gaming with cash prizes only under an Italian online gaming licence.
- Anti-money laundering (Legislative Decree no. 231, November 21, 2007).
- Data Protection (Legislative Decree no. 196, June 30, 2003).
- Balduzzi Decree no. 158/2012 permits advertising of gambling services, but with some limitations.
- Prize competitions (D.P.R. 430, October 26, 2001).
- New tender for online licences and for terrestrial betting shops, new tender for bingo licences, amnesty for illegal operators, and taxes amendment, and other regulation on advertising and marketing of gambling services: Stability Law no. 208, December 28, 2015.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

In the absence of EU harmonisation, Italy, as in the other Member States, determines what is required to ensure that its interests are protected, provided that any restrictive measures do not go beyond what is necessary and are applied without discrimination. The absence of a competitive gambling licensing procedure does not comply with the EU principles of freedom of establishment and freedom of service. Additionally, the absence of transparency is contrary to the principle of equal treatment and the prohibition of discrimination on grounds of nationality and is therefore prohibited by EU law.

In Italy, companies, as legal entities, can apply for a gaming licence; however, individuals cannot.

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A tender process is the only way to apply for a gaming licence. In some cases, it is possible to transfer the licence to another Italian legal operator, but this is only possible for certain types of licence. There is a restriction on the number of licences that can be granted, which depends from time to time on Government decisions.

There is no requirement for servers to be located in Italy (although they must be located within the territory of a Member State of the EEA).

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

In Italy, only operators (Licensees) need to hold a licence. Other operators (service providers, rating services), do not need, for the time being, to hold a licence. Service providers, as described in the various gaming regulations, should be authorised.

Other operators/key suppliers do not need any gaming licence/authorisation to provide services.

However, it should be noted that all the software provided and the gaming machines have to be certified and have to be compliant with certain standards fixed by ADM.

2.3 What restrictions are placed upon any licensee?

The company has to conduct the licence pursuant to regulation, with particular attention on tax obligations. Furthermore, any Licensee has to be and remain "reliable".

The Licensee has to provide to ADM a guarantee for the commitment of the gaming business that have to be adjusted each year, depending on the turnover of the games.

2.4 What is the process of applying for any gambling licence or regulatory approval?

Public tenders for gaming licences are issued by law. Terms and conditions are established in the law.

Currently, the key requirements are: a) the gaming operator should have a gaming licence issued in any European country (for at least one of the games authorised in Italy) or technical capacity, sufficient infrastructure to offer one authorised game approved by ADM, and a bank/insurance guarantee of EUR 1,500,000; b) capital requirement: minimum EUR 1,500,000 reported in the approved financial statements of the last two years of activity of the company, related to the gaming sector; c) there is no specific requirement for servers to be located in Italy, although they must be located within the territory of a Member State of the EEA; and d) other requirements for the company and for the members of the board and directors (e.g., moral probity).

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Online licences are effective for nine years from the date of their execution.

ADM shall proceed with the revocation of the licence in case the Licensee delays the payment of the amounts which are owed to ADM, as well as in the case that there is a lack of existence, for any reason, of any requirement or element constituting a requirement which is considered essential for the licence. In some cases, measures or proceedings for committal to trial are taken against the Licensee.

ADM will issue a formal notice to the Licensee; sometimes clarifications are requested in a short limit of time. If those are not exhaustive, ADM will block the connection to SOGEI (technical partner of ADM) of the licence. The name of the Licensee is published on the ADM website.

In the case of revocation, it is possible to appeal to the competent Court, civil or criminal, depending on the kind of default that has led to the revocation.

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

It is forbidden to offer gaming to anyone that does not hold an Italian fiscal code. Operators can only offer regulated games. Stake limits are fixed for each kind of game. Gaming Junket is not allowed.

In 2012, the "*Balduzzi*" decree introduced rules governing gaming activities' commercial communications, with the aim of limiting the spread of gambling addiction.

The decree prohibits advertisements of games with cash prizes in television and radio broadcasts, and in theatrical or cinematographic performances, which are mainly directed at young people. The decree also prohibits advertisements of games with money prizes in publications, such as newspapers and magazines, in television and radio broadcasts, in cinematographic and theatrical performances, and on the internet, which encourage children to play.

Paragraph 6 provides, in case of a violation, for an administrative sanction of EUR 100,000 to EUR 500,000 for the advertiser and the same for the owner of the medium in which the advertisement was advertised.

The Stability Law 2016 confirmed the provisions of the "*Balduzzi*" decree, adding other restrictions and banning the advertising of games in radio and television broadcasts from 7 am to 10 pm every day. Excluded from this restriction are specialised media, defined as, by a subsequent decree from the Minister of Economy and Finance in agreement with the Minister for Economic Development, of July 19, 2016, national lotteries and sponsorships in the fields of culture, education and research, sports, health and care.

On September 7, the Italian Government and the representatives of the regions concluded the work of the Unified Conference – initiated by article 1, paragraph 936 of Law no. 208/2015 (i.e. Stability Law 2016) – approving the proposal for reorganising the public gambling offer.

The Government intends to accentuate the law with regards to advertising in order to tackle pathological gambling. The Government pledged to open a European comparison to promote a homogeneous community legislation on advertising.

There are some proposals to place further restrictions on advertising, but they are still not in the draft law.

2.7 What are the tax and other compulsory levies?

In the general application of the Italian gambling tax system, the criteria are the same. For example:

I. For bets on a fixed term (virtual gaming platforms for fixed-odds betting on simulated events), the single tax rate on games is equal to 20% of the total revenues of the sums which are returned in winnings to the consumer.

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II. For sports betting on a fixed term, the single tax rate on games is applied to the difference between turnover and the winnings returned to the consumer at 18% for land-based games and 22% for online gaming.

III. For "skill games", the single tax is set in the terms of article 1, paragraph 945 of Law no. 208/2015, at 20% of the sums which are not returned to the player.

In Parliament there is a proposal to amend article 1, paragraph 945 of Law no. 208/2015 (i.e. the Stability Law 2016) on single tax in sports betting. From January 1, 2018, the single fixed-rate betting tax could be set at 19% on land-based gaming and 23% on online gaming.

2.8 What are the broad social responsibility requirements?

As gaming is a monopoly system of the Italian State, Licensees must abide by important social responsibility requirements, which include: the protection of minors; the protection of players; providing secure payment systems to prevent the abuse of public trust; and training their staff on detecting problematic players and gambling behaviour.

Suppliers' activities are not regulated in the gaming sector by ADM; however, there is a list of service providers that are acknowledged by ADM. As the service providers all fall under Italian law, the civil code and other laws shall be applied. Operators have to safeguard players and the legality of the game. All of the operators must file reports to UIF (Financial Information Unit, at the Italian State Bank) regarding suspicious transactions.

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

Currently, the Government is focusing on implementing a revised standard which will further strengthen the anti-money laundering policy.

In Italy, money laundering is considered a criminal offence – as per article 648 *bis* of the Criminal Code. Gaming operators (as well as banks, financial intermediaries, insurance companies and various categories of professionals) are required to comply with specific provisions for the prevention and detection of money laundering, pursuant to Legislative Decree no. 231/07.

For land-based gaming operators, there is a limit fixed at EUR 3,000 payable directly to the winning player (by cash).

Customers can use bank cards to play on a website that offers licensed gaming. However, only one type of currency can be used (EUR).

Any suspicious transaction has to be reported to the UIF (Financial Information Unit, at the Italian State Bank).

Virtual currencies are not allowed.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Yes, the law restricts certain online activities. According to Italian law, it is permitted to offer gaming with cash prizes only when an Italian online gaming licence is in force. Where an operator offers gaming without a licence, he could face criminal (Law no. 401/89) and civil charges. The website will be banned and added to a blacklist. There is a blacklist published by ADM which is regularly updated. (The latest update was published on October 2016 and shows 6,130 banned websites.)

Online is defined as "operating on a computer network". A Licensee can offer gaming through a website (a certified website, with a certified gaming platform, with certified gaming), and a player can connect his computer to this website and play.

3.2 What other restrictions have an impact on online supplies?

Italian authorities have introduced ISP (internet service provider) blocking and have successfully blocked various unlicensed operators. Although the blocking measures were challenged in court by the ISPs, they were not repealed nor otherwise lifted or frozen by judicial order and therefore still remain fully in force.

There is a blacklist published by ADM of ISPs which is regularly updated.

Furthermore, there is a limit for payment in cash fixed by anti-money laundering law.

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

Only authorised gaming operators can operate gaming through gaming machines. There are only 13 authorised network Licensees, who became operators after completing a tender process. There are two types of gaming machine: AWP (Amusement with Prize); and VLT (Video Lottery Terminal), ex. article 110 TULPS (Royal Decree no. 773/1931) point 6, a) and b).

AWP machines are stand-alone, whereas VLT machines are connected to a central system and to the Licensee.

ADM regulation allows the installation of gaming machines in some determined places (e.g., gaming halls, "corners", sports shops), with specific requirements (number of machines/square metres), as well as in casinos.

The machines are cash-based.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Authorised Gaming Licensees are liable under Italian law for breaches of gambling regulations.

An online operator without a national licence will be prosecuted in case of "passive availability", through the banning of the website and a fine to the related service provider. Even marketing for licensed operators has gone through a process of restrictive provisions. In the past two years, under the so-called Balduzzi Decree (former Ministry of Health), laws have been enacted on advertising for gaming operators. Foreign operators also have to comply with the laws.

ADM (the regulating body) has pursued a campaign to punish content providers that offer their products to unlicensed operators. Interpretation of existing rulings could allow ADM to block content providers' contracts with licensed operators.

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4.2 What is the approach of authorities to unregulated supplies?

The sanctions that could be served on an operator for soliciting the market in the absence of a local licence are provided by Law no. 401/89, and articles 718 and 720 of the Criminal Code. Law no. 401 states that an operator who serves the market in the absence of a national licence could be sentenced to imprisonment of three months to three years. A fine is also applied.

Controls are made by police (three corps: Finance; PS; and Carabinieri) and ADM (State Monopoly). The Government body is the Ministry of Finance through ADM.

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

Italy adopts such legislative and other measures as may be necessary, in compliance with European regulations. The challenges to Italian enforcement rulings at the Court of Justice have confirmed the validity of the Italian licensing system through concessions, and the right to enforce against violations. The proportionality of sanctions with the protected principle has to be respected.

4.4 Are gambling debts enforceable in your jurisdiction?

Due to ADM regulation, in Italy, regulated gambling contracts are valid and enforceable. Licensees have the responsibility to pay the players, if not the licence can be revoked by ADM. There is also a "Paper of Services" published by ADM that any Licensee has to observe in order to protect the integrity of and trust of the players. It is the general principle, under the Civil Code, that gambling debts are not recoverable; however, within licensed gaming they are.

5 Anticipated Reforms

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

Online poker liquidity sharing

On July 6, 2017 the French, Portuguese, Spanish and Italian online gambling regulatory authorities signed an agreement concerning online poker liquidity sharing.

This agreement aims at improving cooperation and exchange of information among the authorities to allow liquidity sharing between licensed online poker operators, fighting the illegal market and fraud, guaranteeing player protection and the respect of the anti-money laundering prescriptions.

The concrete implementation of the information sharing will depend on the regulatory requirements of each jurisdiction.

The authorities have committed to make their best efforts to enable effective implementation by the end of the year.

Unified Conference

On September 7, the Italian Government and the representatives of the regions concluded the work of the Unified Conference – initiated by article 1, paragraph 936 of Law no. 208/2015 (i.e. Stability Law 2016) – approving the proposal for reorganising the public gambling offer.

The most important steps of the agreement are:

- Reducing the gaming offer, both volumes and sales outlets, through the reduction of AWPs.
- The replacement of AWPs remaining (approximately 265,000) with AWPRs, which will take place "by 31/12/2019" (as foreseen by the Stability Law 2016), proportionally, as of January 2018.
- In three years, halving the number of public gambling stores, currently estimated at about 100,000.
- The coordination of regions' and local authorities' laws and regulations with state provisions on the basis of the principles approved in the agreement.
- Lobbying efforts from the association of gaming operators and even individually are ongoing. The upcoming political elections could open some spaces.

Urgent financial provisions

Decree Law no. 148/2017, which contains urgent financial provisions, is being examined by the Senate. Article 20 of the decree provides for the extension of concessions for bingo until December 31, 2018. Within this deadline the tender will be announced.

The tax decree also gives to ADM the power to extend the duration of the 'Scratch and Win' licence for nine years, i.e. until 2028.

Therefore, the concessionaire will remain *Lotterie Nazionali S.r.l.*, a company belonging to the *IGT – Lottomatica* group.

The decree entered into force on October 16, 2017 and will be converted into law by December 15, 2017. The decree, and/or any article that will not be converted, will no longer be valid.

Stability Law 2018

In Parliament there is a proposal to amend article 1, paragraph 945 of Law no. 208/2015 (i.e. the Stability Law 2016) on single tax in sports betting. From January 1, 2018, the single fixed-rate betting tax could be set at 19% on land-based gaming, and 23% on online gaming. At present, the relative amendment has not been approved though.

The Stability Law 2018 should also include the extension of the sporting and horse racing licences with a monthly fee. The amount is still unknown (from unofficial sources it is between EUR 3,500 and EUR 6,000 per month).

The call for tenders for new licences shall be issued by December 31, 2018.

The Stability Law provides for an extension to bingo licences on December 31, 2018, against a monthly fee of EUR 5,000 to EUR 7,500 for each month or fraction of a month longer than 15 days, and EUR 2,500 to EUR 3,500 for each fraction of a month less than 15 days.

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Mr. Stefano Sbordoni has an established reputation and is highly qualified in the Gaming and Betting industry in Italy and internationally.

His practice includes:

- Legal, business affairs, and technical advice and assistance to all major gaming Licensees in Italy.
- Amicable resolution and management of disputes.
- International arbitrations.
- Drafting law proposals on gaming and betting.
- Handling relations between main operators and governmental agencies in introducing and utilising property rights on games and lotteries.
- Studies and research on new games (bets, lotteries, pool games).
- A member of the International Masters of Gaming Law, he is a registered journalist, and cooperates with major specialist publications in the field of gambling in Italy (*TS*, *Jamma*, *Agicos*). He has published with *Atlante* (Economy and Sustainable Development) and with *TechNet* (IT specialist).
- Former Professor at Università di Viterbo, at Italy's School of Economy and Finance (SSEF), Università di Salerno.

SBORDONI
STUDIO LEGALE

Sbordoni & Partners associated studio is a leading firm in the field of gambling and betting at domestic and international level. Thanks to its 20 years of experience, the firm is highly reputed for the quality of its expertise in all facets of gambling laws and regulations. The firm advises both regulatory authorities and private operators in the implementation of new regulations. The firm provides assistance to both Italian and foreign operators to adapt their business strategies to the laws and regulations that govern gaming and betting in Italy, including the new types of gaming introduced by the Law Decree of 4/7/06, no. 223, and more recent regulations. Sbordoni & Partners is studying the theoretical profiles that emerge from the emanation of industry regulations, as well as solving the operational issues of the gaming and gambling industry, in order to also provide the client with the necessary operational guidelines in accordance with the discipline and its institutes.

Recently, Sbordoni & Partners has faced phenomena related to ludopathy, specialising its lawyers in assisting those who are faced with the related legal problems.

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Japan

Nagashima Ohno & Tsunematsu

Masayuki Fukuda

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The prospective regulators of gambling activities are the Minister of Land, Infrastructure, Transport and Tourism, and the Casino Supervisory Commission (the "Commission"), which will be established as the regulatory entity at the national level under the Law on the Execution of Integrated Resort Areas (the "IR Execution Law"). The IR Execution Law is to be approved by the Diet by the end of 2017 pursuant to the Law on Promotion of the Development of Specified Integrated Resort Areas (the "IR Promotion Law").

In Japan, unless specifically permitted by law, gambling and lotteries are criminal activities under chapter 23 (articles 185 to 187) of the Penal Code of Japan (law number 45 of 1907, as amended). As a result, for decades, only horse racing, bicycle racing and certain other forms of racing and lotteries operated by public organisations have been formally permitted in Japan. *Pachinko* and *Pachisuro* are popular amusement games which are operated by the private sector in Japan, but they are not expressly permitted forms of gambling under any specific laws, and some still suspect that they might be illegal forms of gambling since, arguably, ball-/medal-winners may indirectly exchange the balls/medals for cash.

However, on the 15th December 2016, the IR Promotion Law was finally approved by the Diet of Japan and thereunder, for the first time in the modern history of Japan, the private sector will be formally allowed to legally develop and operate gambling facilities. The IR Promotion Headquarters, which was newly established under the IR Promotion Law, is currently discussing licensing and other regulatory matters in relation to casinos. It is currently expected that the grand opening of the first casino facility will take place in the middle of the 2020s.

Under the IR Promotion Law, the Japanese government will establish the Commission as an external bureau of the Cabinet Office, which will conduct the necessary monitoring and supervision of casino operations. The Commission will have quasi-legislative power, will draw up detailed rules in respect of casino operations and will take the measures that are necessary to prevent illegal activities and minimise any harmful effects on society that may arise.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

As stated above in question 1.1, all gambling activities conducted by the private sector are prohibited as criminal offences under the Penal Code unless they are permitted under the IR Promotion Law (enacted in 2016) and the IR Execution Law.

Unfortunately, the Japanese public still have deep-rooted concerns over casino/gambling, including those relating to problem gambling, deterioration of security of society, intervention of anti-social forces and negative influences on minors. The biggest issue is problem gambling. In an aim to mitigate the public's concerns over problem gambling, the ruling parties submitted to the Diet, for its approval, a bill concerning the Basic Law on Measures against Problem Gambling in June 2017, so that it can be approved by the extraordinary session of the Diet to be held in the fall of 2017.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

According to current discussions within the government, a licensee must be an IR operator who will operate a complex mixture of facilities, such as convention centres, recreational facilities, tourist facilities and accommodation as well as a casino, and a stand-alone casino operator will not qualify as a licensee.

A supplemental resolution of the Diet relating to the IR Promotion Law requires that the number of IR areas be strictly limited and that the maximum number will be specified by statute. According to the current prominent view, the initial number of IR/casinos will be just two or three, and such number might be increased later but only up to around 10.

Residency requirements for operators and other casino-related parties have not yet been discussed in detail, but some argue that a casino should be developed and operated by a consortium composed of internationally-recognised casino operators and Japanese listed blue-chip corporations, since such a consortium would be at an advantage in terms of fund-raising and sharing the know-how necessary for the development and operation of casinos. There are views that it would be difficult for 100% of non-resident applicants to be granted a casino licence.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

The IR Promotion Law requires that, in order to secure good order

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and the safety of the development and operation of casino facilities, the Commission will regulate various casino-related parties, such as (a) casino operators who establish and operate casino facilities, (b) casino equipment providers who manufacture, import or sell casino-related equipment, and (c) casino service providers who provide services to customers of casino facilities.

In addition to the above, according to current discussions within the government, any shareholder having 5% or more of the aggregate voting rights of the licensed casino operator must obtain approval from the relevant authority, on the basis that such a shareholder may materially affect the operator's casino business by exercising its shareholders' rights and may receive distributions from the casino's profits.

Similarly, to exclude anti-social forces, etc. from casino operations, all the counterparties of transactions to be made with the casino operator must obtain approval from the relevant authority.

In addition, casino equipment manufacturers, etc. who manufacture, import, sell, lease or repair casino-related equipment ((a) slot machines, roulette tables, cards, dice and other items which affect the results of games; (b) chips, chip-cash-exchange machines and other items which affect money payment based on the results of games; and (c) casino management systems and other matters relating to the management of games) will need to obtain licences from the relevant authority to ensure the sound operation of casino businesses. In addition to licensing, considering that the qualities or functions of casino-related equipment will affect the sound operation of casino businesses, technical standards will be pre-set and casino operators and casino equipment providers will need to comply with such standards.

According to current discussions within the government, if a party other than a casino operator owns the casino facility and leases such facility to the casino operator, then such facility owner will need to obtain approval from the relevant authority.

2.3 What restrictions are placed upon any licensee?

For the duration of their licences (periodical renewals will be required), the licensees will be subject to certain obligations, including making periodical reports to the Commission and allowing onsite inspections by the Commission. In addition, gambling activities may only be conducted within the licensed gambling facility and online gambling may not be conducted inside or outside the casino facilities.

2.4 What is the process of applying for any gambling licence or regulatory approval?

According to current discussions within the government, strict background checks on the operator's officers/directors, employees, subsidiaries, affiliated companies and other relevant persons/entities (including external persons who have controlling power over any casino operation) will be made. Following foreign countries' practices relating to the licensing process, comprehensive information such as: (a) litigation records, educational records, military records, employment records, marital records, criminal records and other non-financial information; and (b) bank accounts, money lending, life insurance, promissory notes, mortgages, debts owed and other financial information will be required to be submitted by each relevant person/entity to check his/her/its integrity or soundness regarding business operations. Out-of-pocket expenses for such background checks will be borne by the relevant applicant.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

As stated in question 2.3 above, the licence period will be limited to a certain number of years (although a specific time period has not yet been proposed) and periodic renewals will be required to ensure the licensees' continuous integrity.

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

According to current discussions within the government, Japanese residents may enter into casino facilities. However, in order to prevent any increase in the number of problem gamblers within members of Japanese society, the maximum number of casino entries by Japanese residents will be limited to a certain frequency per week and per month and an individual number card (the "My Number Card") will be required to be presented to check the identity of resident visitors upon their entry into the casino facilities.

According to current discussions within the government, to protect the people's trust on the sound operation of casino business, the Commission will permit only socially acceptable gaming. In addition, to ensure the fair operation of casino activities, only casino activities that are manageable by the casino operator will be permitted and betting among customers or betting on a competition or match conducted by third parties, such as sports betting or in-running betting, will be prohibited. Taking into consideration that the sale of lottery tickets is currently operated only by municipal bodies, etc. for public interest purposes, the sale of lottery tickets will not be permitted even within casino facilities.

The IR Promotion Law requires that advertisements and publicity conducted by a casino business must be regulated by establishing certain rules. According to current discussions within the government, in order to prevent problem gambling and maintain the sound upbringing of young people, good morals, a clean entertainment environment and the protection of customers, false or over-exaggerated advertisements will be prohibited and the installation of signboards, posters and other advertisements and the distribution of leaflets concerning casinos outside the IR district will be prohibited. In particular, for the sound upbringing of young people, the distribution of leaflets and the solicitation of minors to visit casinos will be prohibited, irrespective of whether it takes place outside or inside the IR district. As for advertisements on television, the internet or on other media, considering the substantial and direct influence on problem gambling or minors, the method of such advertisements will have to be appropriate and comply with the Commission's guidelines on advertisements and solicitation. Further, a display or a note warning against the relationship between the use of casinos and problem gambling, and indicating that minors' entry into casinos is prohibited will be mandatory.

As for regulations on comps, considering their benefits for soliciting foreign tourists and VIP customers, they will not be completely banned; however, the provision of excessive amounts of comps to induce the use of casino facilities or any method of providing comps that are against good morals will be prohibited. In addition, casino operators will be obligated to keep a record of the dates on which comps are offered, the names of the customers who received such offers, and the amounts and types of comps offered. Furthermore, the provision of comps will also be subject to regulations under the Act against Unjustifiable Premiums and Misleading Representations (Law No. 134 of 1962, as amended).

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As for regulations on junket business, a supplemental resolution of the Diet relating to the IR Promotion Law requires that regulations on junket business will need to be discussed with extreme prudence. According to current discussions within the government, since casino operations will be exclusively permitted to be conducted by licensed casino operators, in principle, junket business (including money lending to customers) may not be conducted by any other party, and only certain limited activities, such as making advertisements, the solicitation of customers or the provision of comps entrusted by casino operators may only be conducted by a third party under the approval of the Commission.

2.7 What are the tax and other compulsory levies?

Pursuant to the IR Promotion Law, the Japanese government and the relevant municipal body may levy and collect certain fees from persons developing and operating casino facilities, although the legal nature of those fees or taxes is not clear.

According to current discussions within the government, the casino operator will bear: (a) a floating tax, the amount of which will be determined in proportion to the GGR (gross gaming revenue, which is the aggregate betting amount minus the amount refunded to customers (excluding comps)); the revenue from this tax will be used for various public interest purposes; and (b) a fixed tax which will cover the administrative expenses of the Committee. In addition, (c) out-of-pocket expenses that are incurred for conducting background checks and other processes for the granting of a licence or approval will be borne by the applicant.

Under the IR Promotion Law, the Japanese government and the relevant municipal body may collect entrance fees from visitors to the casino facilities. According to current discussions within the government, an entrance fee of a fixed amount per day will be collected from every customer other than foreign tourists.

2.8 What are the broad social responsibility requirements?

Since the gambling licence is a privilege, the licensed operator will need to have high standards of ethics and integrity, and shall take the measures that are necessary to ensure responsible gambling, the protection of minors, anti-money laundering and certain other public interest purposes.

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

A supplemental resolution of the Diet relating to the IR Promotion Law requires that, in order to appropriately respond to the Recommendations of the Financial Action Task Force (the "FATF"), necessary and stringent measures (including imposing criminal sanctions) will be taken, such as verifying the identity of customers when they conduct casino transactions, creating and maintaining customer identification records and notifying the relevant authorities of any suspicious transactions.

According to current discussions within the government, members of organised crime groups will be statutorily prohibited from entering into casino facilities, and casino operators will be prohibited from having such members enter into casino facilities. Meanwhile, members of anti-social forces other than organised crime groups and other persons who might conduct inappropriate activities and disrupt the good order of casino facilities will be prohibited from entering into casino facilities pursuant to the "terms of use" of the casino facilities. To ensure the accomplishment of such entry prohibitions, visitors will be required to represent that they are not members of organised crime groups or other anti-social forces, and those who make false representations will be forced to leave the casino facilities.

Following the Recommendations of the FATF, the following requirements will be imposed: (a) verifying the identity of customers and creating and maintaining customer identification records upon conducting cash and chip exchanges, receiving 'front money' deposits, money lending, money transfers, currency exchanges or other casino transactions exceeding a certain amount; (b) notifying the Commission of any suspicious transactions when conducting cash and chip exchanges or other casino transactions exceeding a certain amount; and (c) submitting to the Commission a CTR (a cash transaction report) in respect of all cash transactions exceeding a certain amount (this third regulation will be an additional requirement, since it is not required under the Law on the Prevention of Money Laundering (Law No. 22 of 2007, as amended)).

To prevent money laundering and the circumvention of credit regulations for the prevention of problem gambling, transfers of chips, vouchers and other cash equivalents will be regulated. In particular, the transfer of chips, etc. among customers will be prohibited. To prevent money laundering and the forgery of chips, vouchers, etc., the carrying of chips, vouchers, etc. from within the casino facilities to outside will be prohibited. To ensure compliance with the above rules, casino operators will be required to provide in its "terms of use", and to show signs in the entrance/exit gate or other locations of the casino facilities, that the transfer or carrying of chips, vouchers, etc. from within the casino facilities to outside is prohibited; further, casino operators will have to watch using surveillance cameras or through its employees or other security patrols that such transfers or carrying out of chips, vouchers, etc. take place. In addition, chips, vouchers, etc. will have built-in IC tags that can be detected at entry/exit gates and other functional restrictions.

In addition, casino operators will be obligated to have an efficient internal management system, such as: (a) taking measures for updating, from time to time, information in respect of items that are verified when conducting casino transactions (e.g., details of identification documents that are required from customers, etc.); (b) providing education and training to employees; (c) putting in place a system for implementing anti-money laundering measures, such as the appointment of a supervising manager; (d) putting in place a system for auditing anti-money laundering measures, such as the appointment of auditors; (e) conducting self-evaluations and internal audits concerning their anti-money laundering measures and reporting the results of such evaluations and audits to the Commission from time to time; and (f) establishing "internal management rules" in the form of business manuals which set forth clear procedures for the above measures.

As for finance-related businesses, according to current discussions within the government, to enhance customers' convenience, businesses involving money lending to customers, money transfers and receipts, money deposits and currency exchanges will be permitted subject to the prohibition of excessive loan collection measures, the requirement of a deposit for money transfers, etc. and other regulations that are similar to those under the Money Lending Act or the Payment Service Act. In addition, since money lending might accelerate problem gambling, access to loans will be limited to customers who have the financial capability of depositing with the operator an amount of cash exceeding a certain amount or customers who are foreign residents. Also, to prevent excessive

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lending, casino operators will be obliged to check their customers' capabilities to repay their loans and to set a separate maximum loan amount for each customer.

As for money transfer/receiving businesses, to prevent money laundering, all money transfers and receipts carried out by casino operators upon customers' requests will only be carried out via financial institutions, without any exception, and each customer's deposit will only be transferred to that customer's own account.

To prevent problem gambling, the purchase of chips using credit cards will only be permitted to foreign tourists and other non-residents. Due to the same reason, ATMs (automatic teller machines) will not be permitted to be installed within casino facilities, and only ATMs without money-lending functions will be permitted to be installed in areas surrounding casino facilities.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

To strictly manage entry into casino facilities and prevent problem gambling, only casino activities that are to be conducted within the casino facilities will be permitted and casino activities in which players can participate from outside the casino facilities, such as online games, will not be permitted.

It is not clear whether Japanese residents are permitted to use online casino services that are operated outside of Japan. However, in 2016, a number of users of foreign online casino services have been arrested for allegedly committing the crime of gambling.

3.2 What other restrictions have an impact on online supplies?

Online gambling is prohibited. Please see question 3.1 above.

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

Terminal/machine-based gambling is prohibited unless they are conducted by licensed casino operators within the casino facilities.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

In general, the operator of the casino facility will be liable for breaches of the relevant gambling legislation. If such a breach is so material that they constitute illegal gambling, then criminal sanctions might be imposed upon the customer (for the conduct of gambling) as well as the operator of the casino facility (for gaining a profit by operating a place for gambling) under the Penal Code of Japan.

4.2 What is the approach of authorities to unregulated supplies?

The Commission might impose administrative sanctions, such as the issuance of an order requiring the revocation of a licence, the suspension of a business, improvements to be made to a business, etc. If a case involves serious wrongdoing, a prosecutor might investigate the case and bring criminal proceedings for gambling offences.

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

There are no treaties or other international laws which have an impact upon liability or enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

Debts which arise from illegal gambling are not enforceable. However, once such debts are paid, the debtor may not be able to recover them. Meanwhile, debts which arise from legal gambling would be enforceable.

5 Anticipated Reforms

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

As stated above, the IR Execution Law, including detailed regulations relating to casino operations, is expected to become legislation by the end of 2017 and it is anticipated that the grand opening of the first Japanese casino facility will take place in the mid-2020s.

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NAGASHIMA OHNO & TSUNEMATSU

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Macau

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Under Law no. 16/2001 (Macau Gaming Law), which sets the legal framework regulating casino gaming business, the operation of games of fortune and chance is reserved to the Macau Special Administrative Region, despite being effectively conducted by private entities, to which a concession shall be granted by means of execution of an administrative contract known as the concession contract.

As a result, the responsibility for the regulation of all types of gambling lies with the Macau Chief Executive.

Nonetheless, the Gaming Inspection and Coordination Bureau – DICJ by its Portuguese acronym – which is the official regulatory authority, was established to provide guidance and assistance to the Chief Executive on the definition and application of economic policies on gaming activities, as well as to monitor and supervise concessionaires' daily operations, such as: auditing its gross gaming revenues and verifying their compliance with the gaming regulatory legal framework; authorising and certifying all gaming equipment; preventing unlawful gaming, money laundering and the financing of terrorism; and, lastly, enforcing the law and sanctioning any infringement.

In addition, it is also incumbent upon the DICJ to license, supervise and monitor the activities of gaming promoters (a.k.a. junkets), as well as their suitability and financial capacity, as per the requirements set by the applicable legislation.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

The legal framework governing Macau's gaming industry is the following (by sector and in chronological order):

1. Lotteries and Pari-mutuels

Ordinance no. 27/86/M, dated Feb. 1, 1986 and Law no. 12/87/M, dated Aug. 17, 1987 (Instant Lottery).

Concession Contract with Sociedade de Lotarias Wing Hing Limitada, dated Aug. 24, 1990 and extended to Dec. 31, 2017 (Chinese Lotteries).

Ordinance no. 163/90/M, dated Aug. 27, 1990 (Horse Racing).

Ordinance no. 138/98/M, dated Jun. 5, 1998 (Sports Lottery – Football).

Chief Executive Order no. 62/2000, dated Apr. 27, 2000 (Sports Lottery – Basketball).

Concession Contract with Companhia de Galgos Macau (Yat Yuen), dated Jan. 1, 2006 and extended to Jul. 20, 2018 (Greyhound Racing).

2. Games of Chance and Fortune

Decree-Law no. 47/98/M, dated Oct. 26, 1998 (Administrative Licensing Legal Framework).

Decree-Law no. 39/99/M, dated Aug. 3, 1999 (article 1171 Macau Civil Code).

Decree-Law no. 40/99, dated Aug. 3, 1999 (Commercial Code: gaming companies and commercial contracts).

Law no. 16/2001, dated Sep. 19, 2001 ("Macau Gaming Law": setting the general framework for the operation of games of fortune in casinos).

Administrative Regulation no. 26/2001, dated Oct. 29, 2001 (sets the general terms of the public tender required to select the concessions to operate games of fortune in casinos, as well as the suitability and financial capacity requirements of bidders and concessionaires).

Administrative Regulation no. 6/2002, dated Mar. 20, 2002 (sets the rules and requirements for the licensing of gaming promoters' operations), amended by Administrative Regulation no. 27/2009, dated Aug. 10, 2009 (regarding the payment of commissions or other remunerations to be paid by gaming concessionaires to gaming promoters).

Administrative Regulation no. 34/2003, dated Sep. 18, 2003 (setting up of the DICJ).

Law no. 5/2004, dated Jun. 14, 2004 (Gaming Credit Law).

Law no. 10/2012, dated Aug. 27, 2012 (establishes the terms to enter, work and gamble in casinos).

Administrative Regulation no. 26/2012, dated Nov. 26, 2012 (sets the rules applicable to the supply of gaming machines and related gaming equipment).

3. Criminal Penalty Regime

Law no. 8/96/M, dated Jul. 22, 1996 (Unlawful Gaming Act).

Law no. 9/96/M, dated Jul. 22, 1996 (Criminal Offences in Animal Racing Act).

Law no. 6/97/M, dated Jul. 30, 1997 (Organized Crime Act), partially revoked.

Law no. 2/2006, dated Apr. 3, 2006 (Anti-money Laundering Act).

Law no. 3/2006, dated Apr. 3, 2006 (Anti-terrorism Financing Act).

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Administrative Regulation no. 7/2006, dated Apr. 7, 2006 (preventive measures for the crimes of money laundering and financing of terrorism).

Instruction no. 1/2016, dated Apr. 21, 2016 (DICJ Instruction on Anti-money Laundering and Combatting of the Financing of Terrorism for the Gaming Sector).

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Macau follows an administrative concession system, under which the Government and private entities legally incorporated in Macau as a public limited company by shares (S.A. companies) enter into a concession contract for the operation of games of fortune, following a selection made by means of an international bidding process. Therefore, the operation of games of fortune in casinos, pari-mutuels (horse racing and greyhound), lotteries and sports betting can only be legally pursued by means of a concession agreement between Macau SAR and each concessionaire.

According to the law, licence applicants should also have a managing director who shall be a Macau permanent resident owning at least 10% of the applicant company's share capital.

The monopoly of games of fortune and chance in casinos ceased in 2002 after an international bid issued by the local Government. Since then, and pursuant to article 7 of the Macau Gaming Law, three gaming concessionaires (SJM, Galaxy and Wynn) have been granted a licence to operate those games until 2020/2022. Subsequently, after modifications in the concession contracts, the establishment of three sub-concessions has been authorised by the Government (MGM, Venetian and Melco Resort), despite being completely autonomous from the original concessions, except in what concerns their contract terms.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

According to the law, besides casino operators, gaming promoters are also required to apply for a licence in order to be legally allowed to carry out their business activities. Since Administrative Regulation no. 6/2002 (Gaming Promoters Act) was enacted, gaming promoters, regardless of being individuals or companies, must submit an initial application to the DICJ in which their reputation and suitability must be duly evidenced, aside from a declaration letter by which the intention of doing business between the concessionaire and the gaming promoter applicant should be unconditionally declared.

In addition to the above, manufacturers/suppliers of gaming machines and all related equipment engaged in doing business in this jurisdiction must also get proper authorisation from the DICJ, which will conduct suitability assessments under the terms set under Administrative Regulation no. 26/2012.

2.3 What restrictions are placed upon any licensee?

Firstly, suitability requirements are, beyond any doubt, important restrictions for gaming operators, not only at the initial stage of concession, but also for pursuing their activity. Pursuant to articles 14 and 15 of the Macau Gaming Law, experience, repute and probity are absolutely mandatory requirements for all concession holders, as well as financial capacity. Needless to say, the mentioned conditions must be maintained and verified for the entire period of concession (20 years).

Likewise, all directors and shareholders holding at least 5% of the gaming operator's corporate capital, as well as key employees, will be continuously subject to suitability monitoring by the DICJ.

Moreover, according to the same piece of legislation, casino concessionaires and sub-concessionaires are not allowed to operate with a capital below 200 million Patacas.

Competitive restraints are also placed upon gambling operators, namely prohibiting anti-competitive agreements and practices among the concessionaires and sub-concessionaires or companies from the same groups, as well as the abuse of dominant position and the control of shareholdings. As a consequence of the latter, casino operators, and their main shareholders holding at least 5% of the corporate capital, cannot, directly or indirectly, hold 5% or more of the capital of other operators.

Last, but not least, the Macau Gaming Law establishes Macau as a "continuous gaming zone", which means that only in exceptional cases, and upon Government approval, can licence holders suspend casino operations for a limited period of time. Besides, the exploitation of games of fortune and chance should only take place in a previously authorised brick-and-mortar casino, despite it being possible for the Government to authorise the said activity to be carried out on board a ship or an aircraft registered in Macau, as well as in the customs-cleared area of Macau International Airport's international departures.

2.4 What is the process of applying for any gambling licence or regulatory approval?

Under Administrative Regulation no. 26/2001, which was enacted to regulate all aspects regarding the awarding of a temporary gaming concession, Macau follows a concession system by which a licence to operate is granted to the successful applicants, following a public tender.

After a tender committee is set up under the Executive's order, the interested companies/bidders, as well as their directors, key employees and shareholders holding more than 5% of the share capital will be subject to a suitability and financial capacity assessment under the supervision of the DICJ, and prior to the issuing of the authorisation.

Once the public tender is completed, on the assumption that all requirements have been met, a concession agreement must be signed between the concessionaire and the Macau Government, which will further legitimate the activity of the former.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Under article 13 of the Macau Gaming Law, the maximum term of a gaming concession is 20 years, which must be clearly set under the concession contract. However, in case a concession is granted for a shorter period of time, one or two additional extensions are legally permitted, up to the said limit of 20 years. This may be the case for SJM and MGM, which concessions were initially granted for a term of 18 years.

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Despite the above, concession contracts might be exceptionally and extraordinarily extended up to 25 years upon justifiable grounds and duly substantiated by the Chief Executive.

According to article 43 of the Macau Gaming Law, a previously granted concession may be unilaterally terminated by the Government in case there is a breach of the concession agreement, as well as the infringement of any other legal provision governing the underlying activity or even for reasons of public interest.

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

Assuming that a concession has been awarded by means of a public tender, concession holders can only provide the services described by the Macau Gaming Law and stated in the concession agreement. Therefore, table games and game machines (slots) can only be offered inside land-based casinos and other authorised venues, whereas horse racing, greyhound racing and sports betting concessionaires are offered outside casinos.

As a matter of fact, both sports betting and pari-mutuels are not deemed to be games of chance and fortune. According to the Macau Gaming Law, it is not legal to offer pari-mutuels or operations offered to the public (lotteries) in a casino environment, even though the same piece of legislation provides that lotteries might be exploited by casinos after a dispatch of the Secretary for Economy and Finance and assuming that an amendment to the concession contract is made.

In summary, the concessions and sub-concessions of games of fortune and chance cover: all games mentioned in article 3 of the Macau Gaming Law (table games); other games of chance authorised and regulated by the Government after 2001; and authorised electric or mechanic machine games (slot machines). The forms of gaming not covered by casino concessions and sub-concessions are: pari-mutuels (horse racing and greyhound racing); operations offered to the public (sports betting and lotteries); and interactive casino games (understood as online games).

Regarding promotion and advertising restrictions, and according to the Advertisement Act enacted in 1989, games of fortune and chance cannot be advertised if the games are themselves the main focus of the advert. The act thus allows gaming operators to advertise games of fortune and chance whenever the games are not the essential element of the advert. Despite this restriction, the concession and sub-concession contracts executed by the Government since 2002 (when the Advertisement Act was enforced) require operators to conduct advertising and marketing campaigns both in Macau and abroad.

2.7 What are the tax and other compulsory levies?

Under article 27 of the Macau Gaming Law, gaming concessionaires and sub-concessionaires are required to pay a special gaming tax of 35% of the gross gaming revenue, payable until the 10th of each month.

In addition to the mentioned Special Gaming Tax, gaming operators are also subject to a payment of 1.6% of its gross gaming revenue for a public foundation that promotes cultural, scientific, social, economic and educational development (Macau Foundation), as well as 2.4% for funding urban development, tourism promotion and social security.

Moreover, a 5% tax is also levied on the commissions or other compensations paid to gaming promoters.

Despite the abovementioned taxation system, efforts have been made to alleviate the tax burden, provided that all concessionaires and sub-concessionaires have been exempted from the Income Complementary Tax.

Lastly, pursuant to article 20 of the Macau Gaming Law, concession and sub-concession agreements provide for the obligation of payment of an annual premium which is comprised of a fixed amount of 30 million Patacas (approx. USD3.8 million) and by a flexible amount which will mostly vary according to the number of table games and electronic gaming machines operated, including slot machines. That being said, concessionaires and sub-concessionaires are required to pay 300 thousand Patacas (approx. USD37.5 thousand) for each VIP table; 150 thousand Patacas (approx. USD18.8 thousand) for every table game allocated to the mass market, as well as 1 thousand Patacas (approx. USD125) for every gaming machine.

2.8 What are the broad social responsibility requirements?

There is not a high degree of social responsibility and control over harm caused by the Macau gaming industry, although Law no. 10/2012 ("Conditions of Entering, Working and Gaming at Casinos") implemented a voluntary self-exclusion, along with third-party exclusion services, in which patrons or direct family members (article 6), respectively, may apply for exclusion from all or some of the casinos in Macau SAR for a maximum period of two years.

Furthermore, the DICJ has been putting some efforts in order to further enhance public awareness of responsible gaming, although there are no legal impositions for gaming operators.

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

Over the years, continuous efforts have been made to combat money laundering in Macau. Aside from the main AML framework, which consists of Law no. 2/2006 (AML Law) and Administrative Regulation no. 7/2006 ("Preventive Measures for the Crimes of Money Laundering and Financing of Terrorism"), the DICJ, since last May, has set a higher standard for AML compliance by introducing new measures aimed to implement a risk-based approach and enhance customer due diligence procedures, mainly related to the identification of patrons and the reporting of suspicious transactions (Instruction no. 1/2016).

It is widely known that money laundering is a very serious concern within the Macau gaming industry and therefore with the entry into force of new instructions intended to be implemented by casino concessionaires and sub concessionaires, an important step has been taken for a more strict compliance with the Asia Pacific Group's guidelines.

In turn, virtual currencies are not permitted to be used for gaming activities in Macau SAR.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

There are no laws and regulations in Macau SAR that regulate all

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forms of remote gambling, including internet and mobile gaming. The interactive games of fortune and chance cannot be exploited by the gaming concessionaires under Law no. 16/2001; such Law, in its article 4, states that interactive gaming concessions are separate from the concessions for the operation of games of fortune and chance in casinos in Macau. Hence, all forms of online gambling in Macau are considered outlawed.

The only legal options for remote gambling in Macau are limited to horse racing, greyhound racing and sports betting, solely offered by the Macau Jockey Club, Yat Yuen Canidrome Club, and Macau SLOT, respectively.

3.2 What other restrictions have an impact on online supplies?

Considering the lack of legislation on remote gambling, as well as on access, registration and effective bets on overseas online gaming websites, players located in Macau are free to access, on a passive basis, those websites. There are no laws and regulations that prevent Internet Service Providers from blocking consumers from accessing the websites of gambling operators licensed overseas.

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

According to Administrative Regulation no. 26/2012, which provides the rules applicable to the supply of slot machines and related equipment in Macau SAR, only approved gaming machines as well as electronic table games from authorised manufactures can be supplied to gaming operators. The authorisation by the DICJ is subject to a strict suitability assessment of the applicant manufacturer as well as its shareholders and directors, despite the possibility of licensed manufacturers from specific jurisdictions (Nevada, New Jersey, Mississippi, Australia, New Zealand, Great Britain and Singapore) submitting a request for waiving the said procedure.

Table games and gaming machines can only be offered inside brick-and-mortar casinos and other authorised venues, although the Macau Gaming Law provides that the Macau Chief Executive may authorise, for a specified time, the operation of any games of fortune and chance on board a ship or an aircraft registered in Macau when out of Macau SAR and operating on touristic routes, as well as electronic gaming machines, playing directly into tokens or money, in the customs-cleared area of Macau International Airport's international departures.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Gaming operators are subject to the regulatory control of the DICJ, which is responsible for enforcing the legal framework applicable to the gaming industry in Macau. Therefore, under Administrative Regulation no. 34/2003, the DICJ is legally entrusted with the power of monitoring, supervising and thus investigating and sanctioning any administrative infringement committed by gaming concessionaires and sub-concessionaires, gaming promoters, as well as electronic gaming machines manufactures.

Moreover, according to article 43 of the Macau Gaming Law, shareholders with more than 10% of the share capital of any gaming concessionaire or sub-concessionaire will be jointly liable for the payment of any imposed fines, even if the said operator has been dissolved or has ceased activity for any reason.

4.2 What is the approach of authorities to unregulated supplies?

Illegal gaming activities will be subject to Law no. 8/96/M on unlawful gaming, which sanctions all forms of operation, promotion or assistance to gaming outside the authorised areas, as well as any fraudulent or illicit gaming in authorised areas, or any unlicensed granting of loans or gaming credits to patrons.

Hence, any infringement of the provisions regarding the offering of unlawful games of chance and fortune in unauthorised venues will be punished with up to three years of imprisonment or with the imposition of a fine. In turn, participation may be subject to a fine of up to a maximum of 180 days, whereas any individual found in an illegal gaming site may be liable for the payment of a fine of up to 90 days. Fraudulent games are punished with up to five years of imprisonment. On the other hand, the illegal operation of games of fortunes and chance in authorised venues shall be punishable by a maximum imprisonment of three years or a fine. In turn, participation shall be punished with imprisonment up to six months or a fine. Lastly, game usury is subject to a maximum imprisonment of three years.

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

No, there are no international laws with an impact upon liability and enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

According to article 1171 of the Macau Civil Code, gaming and betting may be: a source of standard enforceable civil obligations; a source of natural obligations; or void. Therefore, and in the terms of the said provision, the enforcement of gambling debts is only possible when specific laws so provide, which means whatever the gaming activity is legally regulated, authorised and taxed.

5 Anticipated Reforms

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

The Macau legal framework has been subject to some recent changes. Despite the fact that some of these law amendments are strictly and exclusively related with gaming, considering the importance that the gaming industry has in the local economy, such amendments will definitely have some impact in Macau as a whole.

On May 2017, Macau's Government imposed facial recognition and identification card checks at ATMs (including devices located within casinos) before Chinese UnionPay cardholders can withdraw cash. This is seen a stepped-up measure to curb money laundering in the jurisdiction and, according to a local authorities report, by the end of July the great majority of local ATMs will have been installed with the relevant technical devices.

By the end of July 2017, the Macau Legislative Assembly (AL) passed the Government-initiated Tobacco Prevention and Control Law's amendment bill, which allows casinos to set up smoking lounges in gaming areas in line with the standards set by the

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Government. The bill is slated to take effect on January 1 2018. The major amendments refer to the obligation of setting up smoking lounges to the officially required standards within a year of the law coming into force. Existing smoking lounges and smoking areas (VIP rooms only) can remain during the one-year interim period before the new smoking lounges are fully operational. The new law bans the sale of e-cigarettes in Macau.

It is likely that in the near future the Macau Government may amend Administrative Regulation no. 6/2002, which sets the rules and requirements for the licensing of gaming promoters' operations, with the objective of imposing requirements for casinos and junket operators to assume more due diligence and operational obligations, and to adopt more pre-emptive measures. It is true that the local regulator, DICJ, has implemented, since 2016, some relevant measures concerning the auditing of gaming promoters' operations which culminated in a significant reduction of valid operating licences, but it is likely that the Macau authorities will continue its quest to introduce worldwide standards for this activity.

In perhaps a not-so-near future, some changes on the current gaming activity taxation may occur, as some of the gaming operators' representatives have already publicly admitted that, according to regional and worldwide standards, Macau's gaming taxes are considerably high. However, it is not expected that such changes (reductions) on the current gaming tax may occur before the term of the existing gaming concessions.

Another area in which one may anticipate legal changes is the Corporate Social Responsibility of local concessionaires, but, again, such changes shall not occur before the term of the existing concessions.

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Rato, Ling, Lei & Cortés – Advogados is a Law Office located in the Macau Special Administrative Region of the People's Republic of China with origin in the office of Gonçalves Pereira & Rato. Having begun operations in the 80's, the office has evolved to its present configuration of four Senior Name Partners, Frederico Rato, Paula Ling, Lei Wun Kong and Pedro Cortés, two of them also Private Notaries, and one other Partner, Chang San Si.

It has an office in partnership in Hengqin, People's Republic of China – ZLF Law Office – and, recently, has opened a desk in Lisbon, Portugal – Lektou Portugal.

With more than 25 years of legal practice in Macau, the strong professional and academic profile, together with the long experience and full integration within the Region, is a guarantee of the quality of the services we offer.

Additionally, the permanent update and specialisation, combined with the proven professional practice in the different areas of Law, allow us to offer a prompt, effective and efficient response to our Clients, from the intervention in negotiations, disputes and alternative dispute resolutions hearings to regular and continuous legal advice in the various aspects of Law.

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Malta

Bas Jongmans

Gaming Legal Group

Stephen Dullaghan

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Gaming in Malta is regulated by the "**Malta Gaming Authority**" ("**MGA**", formerly called "**Lotteries and Gaming Authority**", or "**LGA**", its name and appearance were revamped in January 2015). The MGA's responsibilities include regulating Maltese remote gaming operators. The MGA falls under the responsibility of the Maltese Ministry of Economic Affairs. According to its website, the MGA aims to prevent the abuse of gambling and the proliferation of compulsive gambling. It also supports agencies and organisations which engage in research and programmes for prevention and education. Where and whenever possible, the MGA increases awareness on pathological gambling to the general public and it has vowed to ensure adequate protection for minors and vulnerable persons. Furthermore, the MGA aims at making sure that gambling is conducted in accordance with Maltese regulations, in order to prevent crime and prevent players from being exploited.

Although not encompassed with any regulatory authority, it is noteworthy that the Malta Remote Gaming Council ("**MRGC**") – a non-governmental organisation – was specifically created to discuss the main issues that gaming operators face with the MGA and reach solutions that are to the benefit of all stakeholders in the industry. The MRGC is an initiative of the MGA and was launched in March 2005 (http://www.mrgc.org.mt/).

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

The Malta regulatory framework may be subcategorised in a three-tier system.

As the first tier, a 'parent' or 'enabling' act is aimed at establishing the fundamental principles of gaming, and primarily consists of the "**Lotteries and Other Games Act 2001**" (or "**LOGA**"). It applies to games of chance, games of mixed chance and games of skill, amusement gaming, commercial communication games, broadcasting media games, betting, sweepstakes and bingo. Furthermore, this first tier establishes the regulatory authority.

The second tier involves various regulations in more detail and is published by legal notice following assent by the Minister responsible for the MGA. It outlines the detailed requirements for the granting of licences, including the procedures and requirements of technical systems involved. The "**Remote Gaming Regulations**" (or "**RGR**", Chapter 438.04 of the Laws of Malta) provide the main legislative framework for online gambling in Malta. It is interesting to note that in April 2004, by publication of the RGR, Malta was the first EU Member State to regulate remote gaming. The "**Gaming Act**" ("**GA**", Chapter 400 of the Laws of Malta) and the "**Gaming Act Regulations**" ("**GAR**", Chapter 400.01 of the Laws of Malta) regulate land-based casino gaming in Malta. The operation of gaming devices is regulated by the "**Gaming Devices Regulations**" (or: "**GDR**", Chapter 438.07 of the Laws of Malta). Court and Civil procedures have been arranged in the "**Code of Organisation and Civil Procedure**" (or: "**COCP**", Chapter 12 of the Laws of Malta). Legislation on crime is regulated in the "**Criminal Code**" (or: "**CC**", Chapter 9 of the Laws of Malta). Malta's prevention of the money laundering regime is contained in two pieces of legislation, namely the "**Prevention of Money Laundering Act**" (or: "**PMLA**", Act XIX of 1994, as amended; Chapter 373 of the Laws of Malta) and the "**Prevention of Money Laundering and Funding of Terrorism Regulations, 2008**" (or: "**PMLFTR**", Legal Notice 188 of 31st July 2008 of the Laws of Malta).

The third tier is made up of various directives and guidelines. The MGA directives are binding in terms of article 76A, LOGA, whereas guidelines (source: MGA) are intended to serve as a means of assisting licensees in complying with their obligations. These instruments contain various measures which are intended to permit a degree of flexibility to be able to adjust to the ongoing evolution of the gaming sector in a timely manner. The third tier includes some noteworthy directives such as:

- the Self-Barring Directive (2011);
- the Registration of Players Directive (2011);
- the Data Protection Act (Chapter 440 of the Laws of Malta);
- the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta); and
- the Players' Liability Reporting Directive (2012).

Noteworthy is the abovementioned Self-Barring Directive, which regulates a person's right to self-bar himself from entering premises whereby licensed gaming is being hosted. Casinos must offer a self-barring opportunity to players who feel that for a stipulated time (six months to one year) he/she will not be allowed to enter any casino. The Commercial Bingo (Tombola) Regulations and the GDR also contain similar provisions. This helps the gambler to recover from his addiction and recoup his losses. If a player chooses to self-bar himself from any land-based premises, being either Casino, Commercial Bingo Hall or Gaming Parlours, then the player is self-barred from all of them for the stipulated period.

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In order to protect minors, Part III of the LOGA states that any person selling any game to person(s) under the age of 18 shall be guilty of an offence. In the case of the current National Lottery licence, persons under the age of 18 cannot be sold National Lottery Games. Also, according to article 26 of the Gaming Act, 1998, any Maltese citizen under the age of 25 is prohibited to enter a casino. Non-citizens will not be allowed access under the age of 18.

Any person who appears to be under the influence of alcohol, drugs or is acting in a disorderly manner will not be allowed to enter a casino, bingo hall and will be restrained from buying any lottery tickets. Any person who is subject to any means of gaming should be in a good state of mind and mental condition. The MGA gives maximum attention to all advertising of any means of gaming and lotteries. Licensees have to abide by the provisions of the Code of Conduct on Advertising, Promotions and Inducements. Any form of loan or credit to patrons is prohibited in Malta.

As of August 1st, 2016, the MGA issued a legal notice that exempts Fantasy Sports Games (or: "**FSG**") that are offered by means of distance communications (internet), as defined within the LOGA as of August 1st, 2016. (Digital Games of Skill with Prize Position Paper, December 2015, page 1, http://www.mga.org.mt/wp-content/uploads/Digital-Games-of-Skill-with-Prize-Position-Paper-FINAL.pdf.)

The MGA feels that in view of the element of skill and knowledge involved in fantasy sports, these activities should be differentiated from games of chance in terms of licensing and regulation since the risks associated with these games do not warrant such stringent *ex-ante* requirements. This relates, according to the MGA, specifically to fantasy sports where players choose virtual representations of real-life athletes where the value and points attributed to an athlete reflect the athletes' performance in actual sporting events, and where the outcome is determined predominantly by skill and knowledge rather than by chance (http://www.mga.org.mt/skill-games-fantasy-sports-focus). The proposal for the new licence has been sent to the EU Commission for approval, and the MGA should be in a position to issue new licences in early 2017.

In order to qualify for the Malta 'light touch' regime, a game should meet the qualification of a:

1. "*contest played for money or money's worth*"; whereby
2. "*the winning outcome is determined predominantly through the skill or knowledge of the player*"; and
3. "*where the results are determined by the accumulation of statistical results of the performance of a number of individuals in sporting events*"; but

   "*shall not include the forecast of the score, point spread or any other future occurrence of one or multiple events, and for the avoidance of doubt, the definition of a "bet" as defined in the LOGA shall not be applicable.*" (L.N. 271 of 2016).

We would like to refer you to the article on fantasy games exemption by Bas Jongmans, published in *World Online Gambling Report*, October 2016, available for download on www.gaminglegal.com.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Part III of the RGR regulates the application process for licensed gambling operations. To qualify for a licence, an applicant must be a limited liability company registered in Malta. The granting of a licence is revocable; it furthermore cannot be transferred without the written prior consent of the MGA. Under the responsibility of the MGA, a four-stage application process is conducted, beginning with a due diligence of the applicant, finding its completion into certification of the live system. Subsequently, a licence shall be issued by the MGA for a (renewable) period of five years. Due diligence documentation includes information on qualifying shareholders and key management personnel, as well as a detailed business plan of the prospective remote gaming operations. In addition, a "*fit and proper*" test is included. The applicant must demonstrate an ability to carry out the proposed gaming operation and, furthermore, needs to demonstrate that the operation is covered by sufficient reserves to guarantee player winnings and deposit returns. The applicant must also submit specifications of the control system and gaming system for MGA approval.

Applications for a licence must be made on forms provided by the MGA and include information concerning:

(i) personal background information;

(ii) financial information;

(iii) participation in legal activities, including, but not limited to, any interest or equity in any other commercial activity;

(iv) criminal record information;

(v) information concerning all pecuniary, equity and other interests in the applicant; and

(vi) any other information required by the MGA for every director, key official and chief executive officer of the applicant, and for every shareholder with 5% or more ownership of, or controlling interest in, the applicant.

The RGR facilitates the right of the applicant to not disclose requested information. However, this will most certainly lead to denial of a licence.

The "*fit and proper*" test recurs every five years. According to article 8, RGR, a licence shall not be renewed unless the MGA is reasonably satisfied that all persons involved in the applicant company are fit and proper persons. In determining whether the applicant continues to be fit and proper, the MGA shall have regard to the following matters:

(a) the character of the persons vested with executive powers in the applicant, and the business reputation of such persons;

(b) the current financial position, financial background and business reputation of the applicant's promoters, shareholders and directors;

(c) whether the applicant has the appropriate business ability to conduct remote gaming successfully;

(d) whether the applicant has, or is able to obtain, appropriate resources and is able to maintain minimum required reserves as may be established by the MGA in order to ensure that players shall have winnings paid and deposits returned;

(e) the commitment of the applicant to maintain a physical presence in Malta;

(f) whether the applicant is, in the MGA's opinion, untainted with illegality;

(g) whether the applicant has followed policies and will take affirmative steps to prevent money laundering and other suspicious transactions; and

(h) whether the applicant has the capacity and the internal control structures to enable it to comply with the policies and directives which the MGA deems appropriate.

It should be noted that the MGA may order the suspension or cancellation of a licence in a broad variety of scenarios, including the scenario where the MGA is reasonably satisfied that the licensee presents a danger to the reputation of gaming in Malta.

Essential in the licence application process is the obligation to appoint a key official (Part IV, RGR) who is required to be a Maltese

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resident. The key official is required to personally supervise the operations of the licensee and shall furthermore ensure that the licence holder shall comply with all applicable laws and regulations. The "*fit and proper*" test also applies to the key official.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

The GAR specifies the persons who are required to hold a licence in order to participate in the activity of land-based gaming. Article 14, GAR constitutes the obligation of a land-based casino operator to hold a licence. Furthermore, based on article 20, GAR, casino employees, junket leaders and/or managers are also required to hold a specific licence.

The GDR specifies the persons who are required to hold a licence in order to participate in the activity of operating gaming devices. Article 3, GDR specifies that a licence is required for persons who:

(a) manufacture, assemble, repair or service gaming devices (Class I);

(b) place gaming devices on the market, distribute, supply, sell, lease or transfer them (Class II); or

(c) make gaming devices available for use, host them or operate them (Class III); and

(d) undertake the activity under (c), however for central systems (Class IV).

A Class 3 or 4 licensee may only operate a gaming device on a MGA-approved location. The GDR provides certain conditions for the eligibility of such premises.

The RGR specify the persons who are required to hold a licence in order to participate in the activity of remote gaming. The regulations are divided into four classes depending on which type of operation companies fall under, and include a licence for Business to Consumers ("**B2C**") operators as well as Business to Business ("**B2B**") operators. The remote gaming regime applied by the MGA is both technology – and game – neutral, therefore encompassing any type of gaming offered by means of distance communication (including, but not limited to, internet, digital television, mobile phone technology and telephony). Any game offered by means of distance communication, which can be securely managed and is compliant with the regulations, will be reviewed and considered for licensing by the MGA (http://www.mga.org.mt/gaming-sectors/remote-gaming/).

First Schedule, Regulation 3, RGR specifies the various types of remote gaming licences:

- a Class 1 Remote Gaming Licence allows remote gaming operations;
- a Class 2 Remote Gaming Licence allows the operation of a remote betting office;
- a Class 3 Remote Gaming Licence allows the promotion and/or abetting of remote gaming in Malta; and
- a Class 4 Remote Gaming Licence allows the hosting and management of remote gaming operators, excluding the operation itself.

With regard to commercial bingo halls, the main licence is that of the operator, issued by the MGA. However, further MGA approval is required, for instance, in relation to any potential employees to be engaged by the licensee and for certain machines found in the bingo hall.

2.3 What restrictions are placed upon any licensee?

Licences may come with additional rules and limitations attached, which may be amended, supplemented, or revoked by the proper authorities at any time. Depending on the circumstances, additional rules and regulations may be added to the already existing duties of the licence holder regarding methods of player recruitment and solicitation. Furthermore, the licence holder is, by law, at all times required to be fully aware of the signals of gambling addiction, and he or she is required to execute policies aimed at the prevention of risks that are associated with gambling addiction.

With reference to the RGR, a licence granted by the MGA may impose conditions relating to:

(a) the proper operation of interactive games;

(b) the protection of players;

(c) the prevention of money laundering; and

(d) exigencies of public interest.

As already mentioned, the granting of a licence is a revocable privilege. Furthermore, licences may not be assigned or transferred without prior written consent of the MGA on the penalty of the licence to be considered null and void.

Furthermore, the MGA needs to be notified if one or more of the following transpires:

(a) any change in the Board of Directors or management of the licensee, or any material changes in the information and documentation provided;

(b) any resolution or intended resolution, or any application or intended application to the Court, or any other action for the dissolution and winding up of the licensee; and/or

(c) intended material changes in shareholdership, such as, but not limited to, a merger, the intention to transfer a qualifying shareholding in the licensee, and the intention to increase an existing holding which is not a qualifying shareholding, so as to cause it to become a qualifying shareholding in a licensee.

In most of the abovementioned situations, the prior written approval of the MGA is required.

The MGA does not mandate any restrictions for betting services or the acceptance of wagers from any particular jurisdictions. However, a land-based casino licence holder is not allowed to engage in remote operations without a separate remote licence.

2.4 What is the process of applying for any gambling licence or regulatory approval?

With regard to the application of a remote gambling licence, the MGA assesses whether an applicant:

1. is fit and proper to conduct gaming business;
2. is correctly prepared from a business strategy perspective;
3. has the operational and statutory requirements to meet the obligations prescribed by law and policy; and
4. has correctly implemented and tested, in a technical environment, what has been applied for, before going live.

The process of applying for a remote gambling licence is as follows:

Ad 1. The MGA conducts a fit and proper exercise on the applicant by assessing all information related to persons involved in finance and management and on the business viability of the operation. As part of this process, the MGA conducts probity investigations with other national and international regulatory bodies and law enforcement agencies.

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Ad 2. The MGA conducts an in-depth financial analysis of the applicant's business plan. The applicant's business plan is expected to have a detailed forecast of the operation, inclusive of marketing and distribution strategies, HR plan and growth targets.

Ad 3. The applicant is examined on the instruments required to conduct the business. This process includes examining incorporation documents, the games, the business processes related to conducting the remote games, the rules, terms, conditions and procedures of the games, the application architecture and system architecture of the gaming and control systems. Furthermore, a remote gaming licensee is subject to minimum issued and paid-up share capital requirements. Class 1 and Class 2 licence holders are required to retain a minimum share capital of EUR 100,000, while Class 3 and Class 4 licensees are required to retain a minimum share capital of EUR 40,000. Companies with multiple licences are required to meet the above share capital requirements cumulatively up to a minimum capping of EUR 240,000.

The above three components constitute the desk-based audit of the application requirements and are completed within 12 to 16 weeks, assuming all information is complete and correct. Inconsistent and low-quality applications are dropped and the respective applicant will have to re-apply.

Ad 4. Once all three previous stages are successfully completed, the MGA will inform the applicant that the application was successful and will invite the applicant to implement the operation within a technical environment in preparation to go live. The applicant will be allowed 60 days to complete this technical roll-out, after which the application will be considered as suspended and subject to re-application. At any stage within those 60 days, the applicant may request an external systems audit (performed by an independent third party contracted by the MGA against a fixed market price). The systems audit will audit the live environment against the proposed application. At this stage the MGA expects minimal deviation from the application. If there are significant changes to the gaming system, the applicant will have to re-apply by filing a new application.

On successful completion of the certification process, the MGA issues a five-year licence. The MGA mandates that after going live a licensee shall undergo a number of compliance audits of its operation, performed by an independent third party contracted by the MGA against a fixed market price.

The MGA will require the audits to be done in accordance with the following schedule:

1. after the first year of operation after being licensed by the MGA;
2. on the third year of operation after being licensed by the MGA;
3. on the implementation of considerable changes in the gaming system, or after changes to the ownership of the operation; and
4. at the discretion of the MGA normally arising from suspicion of:
   a. deviation from the regulations;
   b. deviation from the operational nature of the licence; or
   c. misconduct.

Failure of a compliance audit could lead to suspension or termination of a licence.

Application fees per Second Schedule of the RGR are as follows:

- the application fee for any new licence is EUR 2,330, payable upon application for a remote gaming licence;
- the fee for a system review is EUR 2,500, payable in advance for the execution of the audit by MGA-approved third-party certifiers and auditors;
- a compliance review fee of EUR 3,500 is payable in advance for the execution by the MGA's approved third-party certifiers/auditors;
- an annual licence fee of EUR 8,500 applies per remote licence;
- a renewal fee of EUR 1,500 is payable upon filing a licence renewal application;
- an approval fee of EUR 1,500 is payable upon filing a licence transfer application;
- an approval fee of EUR 1,500 is payable upon filing a share transfer request;
- an approval fee of EUR 70 applies for simple Contractual Commercial Agreements; and
- an hourly approval fee applies in the case of complex joint venture agreements.

Auditing licence fees are diminished when applying for subsequent licences:

- First licence: 100%.
- Second licence: 75%.
- Third licence: 65%.
- Fourth licence: 60%.

The application process for a land-based casino licence seems a little less transparent than when applying for a remote licence. A competitive bidding process will follow once potential candidates have registered their interest. A concession shall be granted for the consideration, for such period and upon such terms as the Maltese Government thinks fit. Both Class 1 and Class 2 gaming devices licences shall be subject to the payment of a one-time non-refundable application fee of EUR 2,000. A Class 3 operator's licence is subject to a one-time non-refundable application fee of EUR 500.

A person wishing to obtain a commercial bingo hall licence may apply in writing to the MGA for the Class 1 licence, catering for a bingo hall with a seating capacity of not less than 150 for a period of one year, or a seasonal Class 2 licence, catering for a bingo hall with a seating capacity of not less than 150 for a period of six months. The granting of such licences shall be subject to a one-time application fee. For the periodically indexed figures, we refer you to MGA's website: mga.org.mt.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

As already mentioned above, the granting of a gambling licence is a revocable privilege. The MGA may thus cancel or suspend a certain licence in accordance with the applicable regulations.

As already mentioned, the MGA has been entrusted with a broad mandate to revoke gaming licences if and when it sees fit. A grace period of 21 days applies after the issuance of a written notice of the intention to revoke a licence. Within this period, a licensee shall be allowed to explain why the licence should not be cancelled or suspended.

Regarding time limits, these vary per specific licence. While the remote gaming licence is issued for a period of five years, renewable for a further five-year period, a casino licence remains in force for up to 10 years. Subject to the GA, the licence, unless it is sooner surrendered or cancelled, may be renewed by the MGA. A gaming devices licence and an amusement machines licence, of any class, shall be for a term not exceeding one year, renewable for further periods of one year each.

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

As a rule, with the exception of the National Lottery and the issuance of land-based casino licences, the MGA does not set limits to the number of licences granted at a time. Marketing and advertising restrictions may also limit the means by which one may provide services to customers. Casinos, for instance, may only advertise in certain locations frequented by tourists, including airports. Newspapers may not feature items that could promote gambling inside a casino.

As already mentioned, further limitations exist that are tied to the concept of player protection. A player may ask for a ban or restriction on his own admission.

2.7 What are the tax and other compulsory levies?

In the first period of six months, the holder of a remote gaming licence is required to pay EUR 4,660 in gaming tax. Subsequently, EUR 7,000 per month in gaming tax is due for the entire duration of the licence period. A monthly levy of EUR 1,200 for the entire duration of the licence is imposed on a Class 1 licence holder, operating on a hosting platform in possession of a Class 4 licence (Class 1 on 4).

A Class 2 licensee, including a Class 2 licensee operating on a hosting platform in possession of a Class 4 licence, shall pay a sum equivalent to 0.5% of the gross amount of bets accepted in remote betting operations. A Class 3 licence holder, including a Class 3 licensee operating on a hosting platform in possession of a Class 4 remote gaming licence, shall pay a sum equivalent to 5% of real income.

A Class 4 licence holder, hosting and managing other remote gaming operators, is exempt from gaming tax for the first six months. Subsequently, an amount of EUR 2,330 per month for the subsequent six months shall be made payable. After this period, an amount of EUR 4,660 per month shall be due for the entire duration of the licence. A Class 4 licensee is also required to pay a monthly tax of EUR 1,165 for every operator which is not in possession of the relevant Class 1, Class 2 or Class 3 licence, being hosted and managed by the Class 4 licensee on its platform.

However, maximum tax payable by one licensee in respect of any one remote gaming licence *per annum* shall not exceed EUR 466,000.

Malta has adopted a full imputation system that allows shareholders of a gaming company licensed in Malta to recover significant refunds of tax paid at a corporate level.

The land-based sector also admits of its own compulsory levies.

2.8 What are the broad social responsibility requirements?

In Malta, any person who sells any game to a person under the age of 18 shall be guilty of an offence. Moreover, Maltese residents cannot enter a Maltese casino unless they are above the age of 25. The MGA's Code of Conduct on Advertising, Promotions and Inducements applies to all licensees under the LOGA and the RGR. A licensee shall not publish, in any manner, advertising that features minors gambling or encourages them to gamble. Advertising restrictions are also present in specific laws, such as the RGR and the Gaming Act, which target remote gaming advertisements and casino advertising, respectively.

The RGR provides that gaming websites are obligated to display compulsory warnings on the entry screen of the remote gaming website, which warn visitors of the dangers of gambling addiction.

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

As already mentioned, the PMLA as well as the PMLFTR constitute the main anti-money laundering legislation in Malta. There also exist certain obligations imposed by gaming-specific legislation that require various components of the gaming industry to adopt related measures. Casino licensees are the only persons involved in the gaming industry that are considered subject persons under Maltese anti-money laundering laws. The obligations thereof are laid down in the PMLFTR. These mainly consist of customer due diligence, record-keeping, internal and external reporting, and training of employees. Also, online-specific rules are found within the RGR itself. For example, funds may only be received from the player by way of any of the following methods: credit cards; debit cards; electronic transfer; wire transfer; cheques; or other MGA-approved methods. Moreover, the RGR prohibit the setting-up of multiple accounts with the same operator by the same player. Additionally, a bank account must always be specified at the start of the relationship between the operator and the player. This will be used for transactions undertaken through the online gaming operation. A remote gaming licence may impose standard conditions relating to the prevention of money laundering.

Malta actively participates in initiatives adopted at international levels, see question 4.3 of this chapter for details.

Although the MGA tends to keep an open mind to future developments, it has taken a conservative approach towards the use of cryptocurrencies, such as Bitcoin. In August 2016, MGA chairperson, Joseph Cuschieri, stated in **Malta Today**:

> "*Crypto-currencies are an attempt to create a virtual currency, backed up by a technology block-chain that manages its transactions. I still see it as a risk, and the authority's position is that we still do not accept crypto-currencies. The authority has received very few requests to accept crypto-currencies, and we have always refused – we are looking to adopting a national approach and, given it's a financial instrument, we shall be collaborating with the Central Bank, the FIAU and the MFSA.*"

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Part III of the RGR states that no person shall operate, promote, sell or abet remote gaming in or from Malta unless such person is in possession of a valid licence. In the RGR, "*remote betting*" is defined as any form of gaming by means of distance communications. The RGR defines "*gaming*" as an agreement, scheme, or arrangement between two or more parties to play together in a game of chance in which a prize or reward consisting of money or some other item of value, worth, advantage, or opportunity is offered or can be won and become the property of the winner under defined conditions established for the purpose of the game. Such activities are

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therefore what constitute online activity *vis-à-vis* remote gaming being operated in or from Malta.

3.2 What other restrictions have an impact on online supplies?

Malta does not admit an automatic ISP blocking system. Moreover, and generally, any form of territory-blacklisting by the MGA will be policy-driven and may vary from time to time. With regard to the processing of payments, for instance, the MGA has taken the approach of declining to accept inter-jurisdiction transactions if the other state is not a Member State of the EU, the EEA, or an approved jurisdiction, unless the said state has a form of Memorandum of Understanding in place with Malta.

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

The GDR prescribes that each establishment cannot host more than 10 gaming devices per premises. Moreover, gaming halls cannot be licensed if they are within 75 metres' radial distance from places of worship, schools, senior citizens' care facilities, and playgrounds. Each gaming parlour must also be 50 metres' walking distance away from another.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Article 338, Subtitle 1, section (ii), CC makes punishable, the (attempt to) waging of any bets or wagers, on Malta or elsewhere, including those connected with any game, sport or event, with the exception of licensed events. Based on article 344, section (a), CC shall be lawful to seize and confiscate any money found on any person committing the abovementioned offence. Evidently, the offender shall be liable. However, all legal representatives including the key official may be held liable.

4.2 What is the approach of authorities to unregulated supplies?

Offences in connection with gaming and gambling are punishable – in general – with a fine or with imprisonment. However, these types of offences are rarely punished by imprisonment. In July and August of 2015, the MGA suspended several operating licences in the wake of a substantial crackdown against a Malta-based operator of Italian origin, formally including a legal professional in the investigation, who offered fiduciary services to the operator. Following this, the MGA announced upgrades in legislation, which should help prevent comparable incidents in the future.

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

Malta has shown its commitment in the past to the fight against money laundering and the funding of terrorism. Malta has ratified the 1990 Council of Europe Convention on Laundering, the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the 1999 United Nations Convention for the Suppression of Terrorism Financing. Although not a member of the "**Financial Action Task Force**" ("**FATF**"), Malta did embrace and codify FATF standards and has joined the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism ("**MONEYVAL**", *formerly:* "*PC-R-EV*"), this is a monitoring body of the Council of Europe.

4.4 Are gambling debts enforceable in your jurisdiction?

As generally is the case in other respectable nations, also in Malta, illegal gambling transactions shall not be enforceable. Article 1713 of the Civil Code provides:

> "*(1) The law grants no action for a gaming debt, or for the payment of a bet;*
>
> *(2) Nor does it grant any action –*
>
> *(a) for the recovery of any sum lent by any person who knew that such sum was intended for gaming;*
>
> *(b) for the recovery of any sum lent by any person interested in the game, for the payment of money lost at such game.*"

These provisions are of public order and cannot be derogated and need to be applied *ex officio*. It leads to an interesting ruling of the Maltese Court of Appeal, dated March 28th, 2014, in which a local casino in Malta denied winnings to a participant in a lottery event. The casino had "*supervised*" (and not organised, as was decided by the Court) a lottery event and claimed that the authorisation of the department of lotteries did not derogate from article 1713, CC and it was therefore not expressly derogated by law. The debt was therefore – in the opinion of the casino – not legally enforceable, with reference to "*Salvatore Grech v Carmelo sive Charles Bennetti*" (Vol. XLV-11-553, dated January 27th, 1961). However, the Court noted that the relations between the parties did *not* arise from a debt from gambling and in this respect article 1713 of the Civil Code did not apply. As a result, the debt was indeed enforceable and the claims of the casino were dismissed.

5 Anticipated Reforms

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

Malta sought the diversification of its economy about 15 years ago as part of its economic reform and, as a result, decided to increase its focus on the services industry. With over 8,000 people employed against 500 licences, iGaming was Malta's second-biggest source of income in 2014, contributing nearly 12% of the island's Gross Domestic Product ("**GDP**"). In the eyes of the Maltese authorities, this number is projected to grow in the future, as a major EUR 220 million project named *Smart City* aims to attract even more iGaming and tech companies to Malta.

Nevertheless, lately, investigations in the *BetuniQ* affair cast shadows over the efficiency of the Maltese legislation on gambling, and are seen as something that could significantly influence the development of the gambling industry on the island. According to international gaming lawyer and founder of the Gaming Legal Group, Bas Jongmans, an increase in the number of iGaming companies based in Malta could represent a serious threat for the correct functioning of the gambling legislation – posing a concrete risk for players and operators all over Europe.

"*There are problems that need to be addressed, and the amount of gambling companies that trust companies handle is one of those,*" Jongmans told **PokerNews**. "*I see a lot of trust companies that just keep accepting more and more clients, and this needs to be discussed.*"

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Although a higher number of companies based and licensed on the island would help the local economy grow, it would also come with the risk of the gambling authority and trust companies not having the resources needed to perform the correct checks.

"*With regard to fiduciaries, it is quite interesting to compare theory with practice,*" Jongmans continued. "*One of the major issues that we have today, is that the companies that should manage all the information related to those who have a gambling licence or wish to obtain one do not have the means to follow up on everything. They do not have the means to pose all the questions that should be asked, nor to follow up on the answers. Unfortunately, given the amount of money some fiduciary companies make through their services, it is hard to foresee any changes in the near future.*"

According to the MGA, Malta is currently planning to completely review its gaming consumer protection policy to adopt a more evidence-based approach.

"*The aim of the MGA for this policy area is not just to be innovative for the mere sake of it, but rather to take into account the evolving behavioural factors of the gaming consumer within the new societal context which has changed over*."

[…]

"*We recognise that our biggest challenge is to remain efficient and effective as we deal with complexity and new emerging risks. We seek to do that through enhanced transparency, increased stakeholder engagement and ultimately decisions that are truly faithful to our gambling policy: that is to free gambling from perception or actual intrusion of crime, fraud and enhanced consumer protection*." (Joseph Cuschieri, Chairman of the Malta Gaming Authority. Source: EGBA News, Issue 18, September 2015: Consumer protection in online gambling.)

The MGA has envisioned a "total overhaul" of Malta's legal and regulatory gaming framework, proactively looking for and identifying new markets, which should lead to increased quality, integrity, efficiency and consumer protection under a single responsive regulatory framework. (http://www.mga.org.mt/wp-content/ uploads/MGA-Annual-Report-2014- Spreads.pdf.)

Bas Jongmans has stated in his article "*The 'overhaul' of Malta's gambling framework so far*", published in *World Online Gambling Report* in November 2015:

"*Although a total review of the regulatory framework is reported to be underway and timeframes were announced, the MGA's report does not yet appear to provide concrete solutions, nor do the later MGA announcements.* […] *In all fairness, the MGA cannot be blamed for not having yet provided concrete solutions to the challenges that are presented by immense leaps forward in technology. Changes in consumer demands have led to it being necessary to begin regulating various new types of products and services, including social gaming, gold farming and bot farming, and all of the suppliers servicing all of these suppliers. Examples of regulators not being able to cope with these increased challenges are to be found everywhere, not just in Malta.* […] *So what needs to happen here? First off: on 20 May 2015, the Fourth Anti-Money Laundering Directive was adopted; the Directive needs to be implemented within two years. It shall, for the first time, oblige EU Member States to maintain central registers listing information on the ultimate beneficial owners of corporate and other legal entities, as well as trusts. It will be very interesting to see how legal professionals will cope with this new reality. Have those who provided their clients veils of secrecy via fiduciary structures thought of an exit strategy, in case new legislation should require them to register certain information at a central level? Shall this failure to provide clients with an exit strategy become the problem of the MGA? Unlikely.*

In this lies the MGA's solution. It should introduce far more advanced entrance checks at the gate via the certification of supply lines, regardless of what suppliers are supplying (legal services, financial services, software). It should be retrospectively allowed to 'smoke out' all those who cannot be trusted. Only those who have provided proof to the MGA of being regulated and sufficiently certified should be able to supply the gaming industry − certifying the certified. This will effectively redirect the problem to where it belongs: suppliers need to regulate themselves. Only then will the MGA (or any other regulator within Europe, or beyond for that matter) be able to keep up with future developments."

A copy of the complete article is available for download at www.gaminglegal.com.

On July 12th, 2017 the MGA published a White Paper providing more details regarding the intended overhaul of Malta's Gaming Legal Framework. The White Paper describes, amongst a plea to extend the MGA's regulatory powers and enhancing the position of the key official, the intention to replace the current multi-licence system with a two-type Business-to-Consumer (B2C) licence and a (gaming-tax exempted) Business-to-Business (B2B) licence. Furthermore, the MGA announces its desire to move toward an objective-based regulatory approach, rather than an excessively prescriptive one.

The views of Gaming Legal Group on the Malta regime are being debated and discussed all over the world. For a closer view on developments, please contact our team.

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Bas Jongmans, attorney at law, studied tax litigation at Leiden University, specialising in the offset of tax losses. After working for several years within the international and litigation tax practices of *Deloitte* (formerly Andersen) and *Spigthoff* litigators, in 2010 he founded "**Gaming Legal**", which became the "**Gaming Legal Group**" in 2014, a combination of five independent companies. Bas is a member of the "**Dutch Order of Tax Advisors**" (Dutch: "*Nederlandse Orde van Belastingadviseurs*", or: "**NOB**"), the "**Dutch Bar Association**" (Dutch: "*Nederlandse Orde van Advocaten*", or: "**NOVA**"), the "**Dutch Order of Mediators**" (Dutch: "*Nederlands Mediation Instituut*", or: "**NMI**") and the "**Dutch Association of Attorneys and Tax Litigators**" (Dutch: "*Nederlandse Vereniging van Advocaten-Belastingkundigen*", or: "**NVAB**"). Bas has earned his international reputation by winning several spectacular cases, such as the case of Optieclub (in joint effort with Dutch attorney Hester Bais) against AFM, forcing the Dutch financial regulator into providing the first Binary Options Licence in the Netherlands, http://www.gaminglegalgroup.com/binaryoptions, and the case of Dutch gambling device operator Wetsteijn against the Dutch Tax Authorities, confirming that the Dutch gambling tax was in breach of the First Protocol with the Human Rights Treaty, http://www.gaminglegalgroup.com/dutchgamingtax.

Bas has produced various scientific publications within various areas of expertise, which may be found at www.gaminglegal.com. Being a former web designer, Bas is able to value client products from a technical perspective as well.

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Born in Ireland, Stephen Dullaghan, tech director of Gaming Legal Innovation in Malta, gained his noteworthy reputation with building Just Some Coding Ltd., the local market leader for smartphone solutions. By teaming up with Gaming Legal Group in 2014, both companies in a combined effort now cater for strong and innovative technical solutions to the international gaming market.

Gaming Legal Group is a combination of independent companies spread out across the globe, each specialising in a specific trade. Its mission statement is to cater to the legal needs of the global gaming industry, discreetly and with diligence.

FINDING NEW WAYS TO DO BUSINESS

Gaming Legal Innovation is the innovative "think tank" of Gaming Legal Group. Its mission is to enhance the business of the client. The team assists in setting up new company structures and guides in and advises on the development of licenses for online gaming within the EU and Curaçao.

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Mexico

Begoña Cancino

Sofia Castañón

Creel, García-Cuéllar, Aiza y Enríquez, S.C.

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

In Mexico, the General Bureau of Gaming and Raffles (the "Bureau") of the Ministry of Internal Affairs (the "Ministry") is the administrative body in charge of regulating, licensing, monitoring and the surveillance of gambling and gaming matters.

The only authorised gaming activities in Mexico are chess, dominoes, bowling, billiards, races (of persons, vehicles or animals), sports and raffles. All other games not mentioned are considered prohibited. Additionally, all betting games and raffles transactions must be prior authorised by the Ministry in terms of the applicable law and its regulations and shall be made in Mexican pesos. Games and raffles occasionally carried out within private homes for avocation purposes by family and friends are not governed by the Law.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

In Mexico, gambling and gaming matters are governed by: (i) the Federal Gaming and Raffles Law (the "Law"); and (ii) Regulations of the Federal Gaming and Raffles Law (the "Regulations").

Pursuant to the Political Constitution of the United Mexican States, gambling and gaming activities are considered federal matters; thus, their legislation is reserved for the Mexican Congress. This means that the Law and its Regulations are applied across all Mexican territory.

In addition, other laws or regulations may apply to this matter, such as the Federal Consumer Protection Law, the Federal Law on Protection of Personal Data in Possession of Private Entities, the General Health Law, and federal and local Mexican Tax Laws.

As a general rule, gambling is a forbidden activity in Mexico. Any betting games and raffles transactions must be prior authorised by the Ministry; thus, the Bureau only has the authority to grant gambling and raffles permits: i) for opening and operating horse race betting, greyhound racetracks, frontons, and for setting remote betting centres; ii) for opening and operating fairs; iii) for opening and operating temporary off-site horse races and cockfighting betting; and iv) for holding and organising any of the regulated types of raffles. According to the Bureau's criteria, any other gambling activity not specifically provided by the Law would be unauthorised and rejected for lack of legal grounds.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Exclusively Mexican entities – commercial companies duly constituted under Mexican Laws – can apply for a licence to install gambling facilities.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Exclusively Mexican entities can apply for licences from the Bureau.

However, a Mexican entity with a physical establishment and a permit to install a gambling facility (the "Permit Holder") may partner with a non-licensed entity, even foreigners, for the use of its permit through a joint venture or any other association or type of agreement, prior authorisation from the Bureau, and only when such agreement/partnership does not allow the partner to (i) acquire corporate or administrative control, (ii) become a beneficiary of the Permit Holder, or (iii) assign the operation of the betting centre to third parties.

Premises authorisations are granted through municipal permits, and not by the Bureau.

Furthermore, the Bureau must authorise any advertisement and marketing over gaming activities, betting and raffles, shareholder structure modifications of the Permit Holder, changes in location of establishments, gaming operation system and the data infrastructure to be used in the facilities, among others.

2.3 What restrictions are placed upon any licensee?

In addition to the restrictions set forth in the Regulations, additional restrictions may be established on a particular permit.

To abstain from operating other gambling games and raffles rather than those explicitly authorised by law and/or permits, to abstain from assigning, transferring or selling the permit, to abstain from

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giving credit to players/gamblers, to abstain from installing casinos within 200 metres of an educational institution or religious centre, to abstain from allowing the admission of underage players or people under the influence of alcohol or drugs into the establishments, to forbid the shareholders of the Permit Holder to be individuals or legal entities resident in territories with tax advantages or jurisdictions with low tax rates, to forbid the acquisition of shares of the Permit Holder, directly or indirectly, through trusts, as well as particular advertisement restrictions, are some of the most common restrictions imposed on Permit Holders or licensees.

2.4 What is the process of applying for any gambling licence or regulatory approval?

Applications to request a gambling permit must be filed before the Bureau through the official process and include the following information and documentation:

a. name, nationality and address;
b. property and financial statements;
c. *curriculum vitae*;
d. professional or patrimonial links with other Permit Holders, shareholders, advisors, beneficiaries or staff members;
e. an affidavit stating they have no criminal record or history of bankruptcy; and
f. a credit report from a credit information company.

Legal entities must additionally file:

a. a copy of the incorporation deed, as well as all modifications;
b. balance sheets and statements of income;
c. a certified copy before a notary public of the act whereby the relevant corporate body of the legal entity has authorised the investment in the company requesting the permit;
d. a list of names, nationalities and addresses of the members of the board of directors and statutory auditor;
e. a list of shareholders; and
f. the identity of the final beneficiaries.

The Bureau may take up to three months to grant or reject the application, and may request additional information or documentation. Every granted permit will be published on the Bureau's webpage and will be publicly available.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Permits for opening and operating horse race betting, greyhound racetracks, frontons, and for setting remote betting centres will be granted for a minimum validity of one year and a maximum of 25 years. These permits may be extended for subsequent 15-year periods, prior authorisation from the Bureau.

Permits for opening and operating fairs, as well as for opening and operating temporary off-site horse races and cockfighting betting will be granted for a maximum validity of 28 days, or the authorised period, as applicable.

Permits for holding and organising raffles will be granted for a maximum validity of one year.

Permits will lose validity: (i) at the end of the validity period; (ii) at the end of the event, as applicable; (iii) by revocation; (iv) in case of entities, insolvency, dissolution, liquidation or extinction of the permittee; and (v) in case of individuals, insolvency or death of the Permit Holder.

Any infringement of the provision of the Law, such as the transfer of the permit, the non-compliance with the object established in the permit, the non-compliance of stated operation deadlines, or the substantial modification of the terms and conditions of the authorised gambling and gaming activities, may cause the revocation of the permit and the permanent closure of the facility, if applicable. All causes of revocation shall be stated on the permit.

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

- The admission of underage players or people under the influence of alcohol or drugs into the facilities shall not be allowed.
- Gaming equipment may only be leased or sold to authorised Permit Holders, operators and establishments.
- All bets must be made in the national currency (pesos).
- Establishments are not allowed to grant credit to participants.
- The permit may contain specific advertisement requirements for the gambling activities, such as the indication that only individuals older than 18 may participate in those gaming or betting activities, the obligation to abstain from explicitly promoting bets placed on gambling facilities, the obligation to abstain from using advertisements that may cause confusion to consumers, and the obligation to include the relevant permit number.

2.7 What are the tax and other compulsory levies?

The following taxes apply to gambling activities in Mexico:

i) General Bureau of Gaming and Raffles Fees. Within the permit, a licence fee has to be paid to the Ministry, in amounts that range from 1% to 2% of their income, depending on the origin of the bet and their permits.
ii) Income Taxes (*Impuesto Sobre la Renta* – "ISR"). Every individual or entity with a permanent establishment in Mexico must pay an Income Tax for all their income, at an approximate range of 30% for legal entities minus authorised deductions over expenses.
iii) Special Production and Services Tax (*Impuesto Especial Sobre Producción y Servicios* – "IEPS").
iv) Local and State Taxes (depending on the state and location). Some Mexican states impose additional taxes to casino users, such as value added tax (*Impuesto al Valor Agregado* – "IVA").

2.8 What are the broad social responsibility requirements?

The prevention of gambling addiction, money laundering and criminal acts committed through authorised establishments or through the black market.

Gambling services providers' social responsibilities are mainly towards the advertisement of gambling activities, through the non-allowance and non-promotion of underage individuals participation in such activities, and inviting individuals through advertisements to game and bet in a responsible and healthy way and always with the main purposes of entertainment, leisure and recreation.

All gambling personnel have to receive special training and, as stated in the answer to question 2.2, must comply with particular requirements set forth in the Law and Regulations to be able to

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provide professional services involving brokerage, betting crossing or fronton quartermaster.

In addition, the Bureau collaborates with the National Commission against Addictions (CONADIC) and the National Center for the Prevention and Control of Addictions of the Ministry of Health for the prevention and treatment of gambling addictions.

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

Gambling activities are considered "Vulnerable Activities" pursuant to Mexican legislation; thus, gaming service providers and gambling Permit Holders and operators are required to comply with the regulations provided in the following laws, among others:

i) the Federal Law on the Prevention and Identification of Transactions with Funds from Illegal Sources (the "Anti-Laundering Law");

ii) the Regulations to the Federal Law on the Prevention and Identification of Transactions with Funds from Illegal Sources; and

iii) the General Rules referred to by the Federal Law on the Prevention and Identification of Transactions with Illegal Resources.

Pursuant to the Anti-Laundering Law, the execution of gambling and raffle activities, as well as the sale of tickets or tokens for such purpose, obliges the Permit Holders to identify every client and user involved and verify their identity, accept requests from the involved clients regarding information about the business owner, protect information about the Vulnerable Activity and avoid the loss of this information, allow verification visits to related authorities and give notice to the applicable authority when any of the aforementioned activities exceeds approximately $2,500.00 USD.

All betting games and raffles transactions must be made in Mexican pesos. Thus, virtual currencies are not permitted for gambling.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Pursuant to the Regulations, online betting over authorised gaming activities are permitted; however, online betting is only regulated with respect to online bets received by entities which already have an authorisation from the Bureau, which have a physical establishment in Mexico, and which carry out authorised betting and gaming activities.

For such purposes, these activities may be carried out at racetracks, dog tracks, frontons, fairs or remote betting centres (*centros de apuestas remotas*). Remote betting centres are establishments authorised by the Ministry to hold and operate betting data of sports competitions, events and games permitted by the Law, carried out in Mexico or abroad which may be broadcasted in time. Such remote betting centres are also allowed to place online bets with respect to sport events.

Yet, pursuant to the Regulations, a remote betting centre may receive and match bets, provided, however, that it does not receive and/or match bets from or contained at remote betting centres located abroad.

Furthermore, the Law and Regulations do not provide any specific prohibitions/provisions for gaming and betting via the Internet, when offered from an entity that is not related to an establishment authorised to install a remote betting centre, either foreign or Mexican.

3.2 What other restrictions have an impact on online supplies?

In Mexico, (i) there are no specific legal provisions applicable to gaming and bets via the Internet when offered from a foreign-based or local operator, (ii) the Law and its Regulations are silent as to a Mexican person placing online bets by any means, and (iii) Mexican law principles state that private parties are authorised to execute any kind of transaction when not specifically prohibited by Mexican law.

The legislative omission regarding independent online gaming which involves betting leaves unclear the permission or prohibition over such online supplying of gambling services. Thus, the loophole in the Law and its Regulations on this matter is covered by legislation applicable to other related matters.

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

Gambling machines and terminals are only permitted in physically established gambling facilities. Additionally, they shall be formally identified and in compliance with Mexican Official Standards ("NOMs").

Activities conducted with machines, whereby individuals bet by inserting coins, tokens or electronic devices, subject to chance and with the purpose of obtaining a prize, are also allowed.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

The relevant Permit Holder and its operator, if applicable. Furthermore, in Mexico, legal entities are criminally liable for crimes committed on their behalf, in their name, for their exclusive benefit, by their legal representatives and/or administrators. On the other hand, directors or legal representatives of the Permit Holder may be liable for breaches made by the relevant entity.

4.2 What is the approach of authorities to unregulated supplies?

As stated in question 3.2, the lack of an updated gambling regulation is currently being covered by legislation applicable to other related matters, such as Criminal or Commercial Law. In this sense, any bad practice in the provision of gambling services in Mexico could be subject to sanctions imposed by other matters such as data and consumer protection, anti-bribery, commercial or criminal matters (i.e. electronic fraud, which would be managed and prosecuted by the Attorney General's Office).

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

No, they do not.

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4.4 Are gambling debts enforceable in your jurisdiction?

No. The Regulations provide specifically that Permit Holders may not grant credit, directly or indirectly, to bettors in betting games or raffle participants, on the development of their permit-related activities.

5 Anticipated Reforms

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

Since 2014, there is a proposal to substantially amend the betting and gambling Law – *dated from 1947* – and, as a consequence, the complete gambling legal framework in Mexico. In general, such amendment proposes a new law aligned with technological advances, innovative business and communication models, and centred on the individuals and their freedom of leisure.

In particular, it proposes to incorporate the National Institute of Games and Raffles as a new gaming regulator and autonomous authority, introduce the obligation for all personnel to be certified by such Institute, and properly introduce online gaming.

Unfortunately, to date, such proposal remains unapproved and seems unlikely to be approved within 2018.

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Netherlands

Gaming Legal Group

Bas Jongmans

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The Netherlands (Country of the Netherlands, Dutch: "*Nederland*") is the main 'constituent country' of the Kingdom of the Netherlands. It is a small, densely populated country, located in Western Europe with three island territories, deemed special municipalities, in the Dutch Caribbean. The content of this chapter is limited to the country of the Netherlands. For more information on the Dutch Caribbean and the former (dissolved on 10 October 2010) "**Netherlands Antilles**" (Dutch: "*Nederlandse Antillen*"), we would like to refer you to our chapter on the Dutch Caribbean.

As of 1 April 2012, gambling activities originating from and/or aimed at the Netherlands are regulated by the "**Dutch Gaming Authority**" (Dutch: "*Kansspelautoriteit*", or: "**KSA**"). Regulation includes licensing, compliance, the gathering of intelligence and investigation of potential violations of the "**Dutch Gambling Act of 1964**" (Dutch: "*Wet op de kansspelen*", or: "**WOK**"). Local municipalities supervise the licensing as well as the operation of local events within their region, which also includes the monitoring of gambling machines in public houses. The "**Dutch Metrological Institute**" (Dutch: "*Nederlands Metrologisch Instituut*", or: "**NMI**") provides for testing and compliance, ensuring the technical fitness of gambling machines. The KSA operates as an independent administration under the responsibility of the Dutch Government. This task has been delegated to the Dutch Undersecretary ("**Staatssecretaris**") of Security and Justice. The KSA has also been involved in preparations for the launch of a legal framework that should have accommodated the distribution of online gambling licences, officially as of 1 January 2015. However, the proposed legislation was met with heavy criticism from the market as well as the Dutch parliament. In 2014, Gaming Legal Group had already predicted that the draft legislation in its current form would not be workable and acceptable.

On 7 July 2016, consensus was reached on the proposed legislation which was then passed to the Dutch Senate for final approval or rejection. The main cause of the many delays has been disagreement between various parties regarding the tax rate to be levied. Originally, a 20% tax rate was proposed for online gaming against a 29% tax rate for land-based casinos. This proposal was opposed by Gaming Legal Group on behalf of many land-based operators who felt that their business would suffer. The proposal was then amended; in its final version, a 29% tax rate is levied from online as well as land-based operators. Despite opposition by the online operators, this proposal was accepted.

Even if the Dutch Senate passes the draft legislation, it is expected that this will not lead to any active licences any time soon because of the relatively high tax burden as well as various legal obstacles.

Violations of the WOK are deemed economic offences, punishable by law under the "**Economic Offences Act**" (Dutch: "*Wet op de economische delicten*", or: "**Wed**"). With respect to criminal prosecution, the Public Prosecutor has authority; however, the KSA also has the mandate to impose sanctions (administrative fines, including (more or less) a mandate to "*name and shame*"). If an administrative sanction has been imposed, the same offence shall not be prosecuted by the public prosecutor ("*una via*", or: "*one road*" principle). Sanctioning policies of violators are described in more detail in section 4. Although not holding regulatory authority, noteworthy is the representative of Dutch operators of gaming devices: "*VAN Kansspelen Branche-organisatie*" (or, in short: "**VAN**", www.vaninfo.nl), one of the many clients of Gaming Legal Group.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

A game of chance is by Dutch law defined as an opportunity to compete in the distribution of a prize or premium in connection with the outcome of a random event on which the participants do not have a predominant influence. Under Dutch law, games of chance may be domestic or foreign in origin. A game of chance is deemed domestic if the organiser/operator is a private individual who is deemed a resident of the Netherlands, or a legal entity which is deemed to have its statutory seat within the Netherlands. Since certain financial instruments also meet the abovementioned criteria (stock options, binary options, contracts for difference), the legal definition of a game of chance is limited by the "**European Markets in Financial Instruments Directive**" ("**MiFID**"), which has been implemented in the Dutch "**Financial Regulation Act**" (Dutch: "*Wet op het financieel toezicht*", or: "**Wft**"). Therefore, services and products deemed financial instruments are excluded from the legal definition of a game of chance. This prevents two regulators, KSA and/or the financial regulator *Autoriteit Financiële Markten* (or "**AFM**"), from claiming authority. Although the MiFID/Wft dictates that entrepreneurs who own a MiFID certified financial licence may operate on the Dutch market after following the proper notification procedures with AFM, this financial regulator hinted in 2014 that parties who opt for notification may still be charged with an economic offence if they do not own an additional gambling licence. In 2014, Gaming Legal Group initiated administrative

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litigation procedures against AFM, who included the ownership of a gambling licence as a pre-requirement for the issuance of a financial licence. In January 2015, these procedures resulted in a ruling of the court in Rotterdam that financial instruments can indeed not be deemed as games of chance as well. This resulted in the first binary options licence, issued by AFM in the Netherlands. Nevertheless, AFM has appealed the ruling. The Dutch higher administrative court gave its final ruling on 4 October 2016, making the ruling of the lower court final. This means that financial instruments cannot be deemed games of chance in the Netherlands. The ramifications of this are also expected to be felt in other Member States of the European Union. Recently, Belgium introduced a ban on binary options. Since Member State legislation should be compliant with the MiFID, it is doubtful if this local legislation will meet European standards. (For more information, we would like to refer you to the following article: https://www.financemagnates.com/binary-options/analysis/breaking-dutch-court-ruling-could-reshape-binary-options-regulation-under-mifid/.)

For more information on the treatment of binary options in Malta, we refer you to our Malta chapter.

The legal framework that regulates Dutch games of chance is concentrated in the abovementioned Dutch gambling act: WOK. Offering games of chance without a licence and/or participating in operations such as soliciting, plugging, and/or other activities in connection with games of chance are prohibited. An exception applies for specific small operations, which shall be tolerated if specific criteria have been met. Such criteria include characteristics such as scope, importance and elements of charity, and vary per local administrative municipality. As a general guideline, no licence shall probably be required if a game of chance is offered within a small community and the prize does not exceed the amount of EUR 400. A local administrative licence usually is required if the total of the prizes exceeds this amount. A specific KSA licence might be required if the total of the prizes exceeds EUR 4,500, although there are many exceptions to this rule. One should always consult a professional before organising a game of chance. Rules regarding compliance, such as technical criteria for gambling machines' specific technical details, have been amplified in several arrangements (WOK enclosures). Since the WOK was conceived in 1964, it has been amended several times. Many critics, Gaming Legal Group included, feel that the current legislation lacks consistency and vision (http://www.pokernews.com/news/2014/08/gaming-lawyer-bas-jongmans-on-holland-19002.htm). There is currently no provision for allowing online games of chance, although a proposition for such a paragraph was sent to Dutch parliament in the summer of 2014; however, no substantial changes were introduced. The number of specific types of licence is sometimes maximised by law. The WOK currently provides for the issuance of only one licence (monopoly) that allows for the operation of table games. This single licence has been awarded to the Dutch state-owned *Holland Casino*, although this state-owned monopoly shall end in the near future. In September 2015, the Dutch Government decided that the publicly owned operations are to be split into five regions and sold to private parties. This decision has been motivated by the fact that Holland Casino incurred heavy losses in the past (EUR 22.3 million in 2013), as well as the fact that the Government has been pressured by the European Commission to put a stop to the Dutch monopoly which, many feel, is outdated. Although it has been announced that online gaming should be regulated in the Netherlands as of 2018, this is highly doubtful.

Also, the operation of sports betting has been monopolised by law and has been issued to *Stichting De Nationale Sporttotalisator* (or "**Lotto**"). Specific sports betting, such as horse racing, has been monopolised separately. The monopoly on horse racing bets is currently owned by *Sportech Racing B.V.* Plans are currently being debated to merge Lotto activities with the state lottery operations, operated by the *Stichting Exploitatie Nederlandse Staatsloterij* (or foundation "**SENS**").

The levy of Dutch gaming tax is regulated by the "**Dutch Gaming Tax Act**" of 1961 (Dutch: "*Wet op de kansspelbelasting*", or: "**KSB**") and is described in more detail in question 2.7. It is noteworthy that the Netherlands did already have a gaming taxation in place before the law that made games of chance legal was introduced. This did not happen before 1964. As a result, the Dutch Gaming Tax was only aimed at taxing illegal games of chance.

On 29 July 2015, in a case that was represented by Gaming Legal Group, the Higher Tax Court in The Hague ruled that taxation on Dutch gambling machines, imposed on a Dutch operator as of 1 July 2008, conflicts with the right to the peaceful enjoyment of possessions, in line with Protocol No. 1 to the European Convention on Human Rights. An amount of approximately EUR 1.4 million in damages was awarded to the operator. The ramifications of this important judgment are expected to be substantial since it is likely that other operators shall also be entitled to damages. The Dutch Government has appealed and a final ruling in this case is expected in 2019.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Depending on the specific nature of supply, a supplier is required to hold a supplier's licence.

In general, all Dutch licence application procedures are mainly focused on ensuring that those offering games of chance are suitable (fit and proper) to do so and that their operations will be of a low and therefore acceptable risk to the public. As part of the application and compliance procedures, the applicant is required to provide documentation on the following:

(1) Identity and ownership.
(2) Current affairs and history.
(3) Integrity.
(4) Competence.
(5) History of any criminal behaviour.

Gambling facilities, such as software, may be freely produced without a licence. Software may be supplied to foreign operators in a business to business (B2B) environment, if this operator has been fully certified to offer online games of chance to specified legal markets. However, suppliers need to be aware of the existence of the Dutch "**Money Laundering and Financing of Terrorism Prevention Act**" ("*Wet ter voorkoming van Witwassen en Financiering van Terrorisme*", or: "**Wwft**"). Suppliers are required at any time to provide proof of the fact that they are not participating in illegal activity of any kind.

Gambling machines may be sold to the market without a specific gambling licence, although machines should always be certified to comply with the legally required specifications.

Gambling machines may be owned by anyone if they are not being operated (thus for collection purposes). If gambling machines are operated and the machine is being leased from the owner, the owner (lessor) as well as the *de facto* operator (lessee) is required to hold specific licences.

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2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

In principle, an applicant should have its principal or a subsidiary permanent establishment somewhere within the European Union (EU) or European Economic Area (EEA), or in a state that has been identified by the Dutch Minister of Justice as having sufficient safeguards against criminal activity such as money laundering and the financing of terrorism. These criteria have been codified in the abovementioned Wwft.

Wwft provisions are generally aimed at two goals:

(1) the notification of unusual and/or irregular transactions; and

(2) the identification of transaction participants.

The Wwft includes some standard notification requirements regarding larger withdrawals, deposits and/or cash payments. The identification requirements are extensive, since these include the screening of several categories of persons, if involved, such as political figures and/or persons who have been suspected in the past of preparing terrorist or other criminal activities such as money laundering and tax evasion. The identification and notification requirements are in general limited to professionals and/or persons involved in rendering specific professional services. Professionals who do not execute Wwft obligations properly may be held liable. Ideally, the applicant should have a full legal status as a legal entity. Alternatively, a legal partnership (Dutch: "*Vennootschap onder Firma*", or: "**V.O.F.**") or private individual may also qualify. Participants such as legal entities and/or private individuals who function as ultimate beneficial owners are required to present evidence of good standing and reputation. This proof could be provided via a certificate of good standing that has been issued by the local or national administration, and can also include a recommendation by a private individual. These requirements may also be extended to members of the staff who operate within certain establishments that offer games of chance.

Depending on the type of licence, third parties may also be required to hold a specific licence for their appointed tasks. For example, in the case of gambling machine operation, the legal owner of the gambling machine is required to hold a specific ownership licence. However, the proprietor of an arcade establishment is required to hold a separate arcade licence with an additional licence attached in which the maximum number of allowed gambling machines is described. In addition to all these requirements, by law, a separate integrity check must be performed. The specifics of these integrity assessments are being regulated by the "**Administrative Integrity Assessments Act**" (Dutch: "*Wet Bevordering IntegriteitsBeoordelingen door het Openbaar Bestuur*", or: "**BIBOB**"). This integrity assessment may be performed by the local administration and/or municipality, nicknamed: **Small Integrity Assessment** (Dutch: "*kleine BIBOB*"). The local administration may also opt to invoke a national assessment screening, which is performed by the national BIBOB institute, nicknamed: "**Large Integrity Assessment**" (Dutch: "*grote BIBOB*"). This investigation results in non-binding advice in which the licence applicants risk status is earmarked as low, medium or high. Since the abovementioned advice is non-binding, the administrative body that has opted for the national BIBOB assessment has a final say in the matter. Due to the extensive amount of research involved with a national assessment procedure, the concrete application procedure may take up to a year to reach completion. The licence applicants are required to pay for all integrity assessments. Whether or not an administrative authority will opt for a small or large integrity assessment, traditionally, heavily depends on the region. For example, the region of Amsterdam is infamous for opting for a large integrity assessment. Depending on the scope of the investigation, costs for initiating this procedure may vary from EUR 500 up to EUR 5,000.

2.3 What restrictions are placed upon any licensee?

Licences may come with additional rules and limitations attached, which may be amended, supplemented, or revoked by the proper authorities at any time. Depending on the circumstances, additional rules and regulations may be added to the already existing duties of the licence holder regarding methods of player recruitments and solicitation. Furthermore, the licence holder is, by law, at all times required to be fully aware of signals of gambling addiction, and he or she is required to execute policies aimed at the prevention of risks that are associated with gambling addiction.

2.4 What is the process of applying for any gambling licence or regulatory approval?

Due to lack of transparency, typical for various application procedures required for collecting all necessary licences, it is recommended that a licence applicant seeks professional advice before completing and returning any forms that may have been made available by local and/or national authorities. Please note that national and/or local authorities do not offer the option of informal pre-compliance, so that any irregularities (even if they were initial) may result in an undesired track record. In 2016, the Dutch gambling regulator KSA invited potential licence applications to "pre-register" for an online gambling licence. Gaming Legal Group feels that this pre-registration does not bring an applicant in a better position and one should first seek professional guidance before entering into any application process whatsoever.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Time limits on applications are heavily dependent on the application of a specific type of licence. For example, a gambling machine ownership licence could be relatively easily obtained within the time frame of a month, whereas the application for an arcade establishment licence could take years. Duration of an issued licence also varies. Some licences need to be extended every year, while location-based licences can have a duration of several, up to 10, years. One should therefore consult with a local professional prior to starting any desired application procedure.

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

The operation of the licence holder is strictly limited to the scope of its specific licence. Due to the nature of the abovementioned WOK legislation, any non-licensed activities connected to gambling operations will be stipulated as illegal and open up the participating subject or subjects to criminal prosecution. In this regard, a noteworthy subject of interest is the current position of the operation of online games of chance. These specific activities are currently restricted since the WOK legislation does not provide for a licensing structure.

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2.7 What are the tax and other compulsory levies?

Within the KSB, which is a source tax, several individuals and/or entities may be taxed with KSB at a rate of 29%, which shall be temporarily increased on 1 January 2018 to 30.1% in order to compensate for the delay in the regulation of online gambling. The tax rate shall be decreased again, six months after the online gaming regime has become in force. Gaming Legal expects that the increase will not be cancelled any time soon. KSB is levied from:

a. Operators who have the legal ownership of gambling machines. The tax is calculated over the gross revenues. These machine owners are solely responsible for payment of this type of gaming tax, even if these machines are placed with third parties, such as in a public house. In 2012, the Amsterdam Higher Tax Court ruled that the entire legal taxation paragraph was in violation of the First Protocol with the Human Rights Treaty, since it was deemed excessive. This ruling, however, was overturned in 2012 by the Dutch Supreme Court, who ordered The Hague Higher Tax Court to investigate ramifications for individual entrepreneurs. As mentioned above, in July 2015, in this individual case, an amount of EUR 1.4 million was awarded in damages. The operator was represented by Gaming Legal Group.

b. Operators of table games. This currently involves only one entity, the state-owned Holland Casino. However, illegal operators may also be taxed under this provision.

c. Those who operate domestic *online* games of chance. Please note, this currently only involves illegal operators since no legal paragraph is yet in force that provides for games of chance that are legal.

d. Those who are entitled to prizes that exceed the amount of EUR 449 (exemption of 2016), won by participating in a (land-based) Dutch game of chance that is not a table game or machine-operated game. Please note that it is expected that this threshold will be significantly lowered when (and if) the proposed online gambling regime comes into force.

e. Dutch residents who are entitled to prizes that exceed the amount of EUR 449 (exemption of 2016), won by participating in any foreign game of chance.

These tax provisions have been and still are under constant legal scrutiny and dispute due to potential conflicts with European Directives and basic European rights such as the European right to freedom of establishment and freedom of services. The enforcement of several provisions has been limited by national and international case law.

Private individuals who have paid KSB may, under certain circumstances, deduct this source tax from their personal income tax.

Those who offer games of chance are exempt from indirect, value-added tax ("**VAT**"). Due to this exemption, they are not allowed to deduct payable VAT on costs of operations, resulting in a higher cost base.

Compulsory levies include a yearly payable administrative destination fee for licence holders, to provide for KSA funding, varying from EUR 1,000 up to EUR 50,000 (in 2016).

The fee for arcade proprietors and/or gambling machine owners is based on the maximum number of allowed gambling machines (*de facto*, spaces are counted, not the number of machines actually present).

2.8 What are the broad social responsibility requirements?

Social responsibility requirements usually include a substantial donation to charity; furthermore, market participants are required to participate in the compensation and prevention of effects connected to addictive behaviour.

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

As of 2014, several Dutch payment providers entered into an agreement with the KSA to discontinue services for online gambling operators who are deemed illegal by the KSA. This covenant has been initially aimed at blocking payments to (sanctioned) foreign operators who (still) continue to target the Dutch market. However, it is expected by Gaming Legal Group that the scope of this covenant shall be extended to also block future Dutch providers who shall not comply with (future) domestic regulations for online gambling. Furthermore, it is expected that the KSA will follow the European trend in targeting any operation that fails to disclose ultimate beneficial owners, often shielded by a trust and/or fiduciary ownership. In 2015, the KSA also imposed a fine to several trust companies abroad, suggesting that these companies facilitated the illegal offering of games of chance. As these cases unfolded, as it appears, no case against a trust company has held up in court. On 8 September 2016, additional AML provisions in the Wwft were added to the authority of the KSA, making it possible for the KSA to impose administrative sanctions to operators, held in violation of AML regulations. In 2017, restrictions were further tightened by restricting display of symbols that are regarded by the Gambling Authority as typically Dutch (e.g. windmills and wooden shoes). No online regime is yet in force in the Netherlands.

3 The Restrictions on Online Supply/Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

It is expected that no online gambling licences shall be operated in the Netherlands before 2019. Expected future developments are described in more detail in question 5.1.

3.2 What other restrictions have an impact on online supplies?

On 20 May 2015, the Fourth Anti-Money Laundering Directive ("**AMLD**") signed by the European Council and the European Parliament, after which it was published on 5 June 2015. The outer 'implementation period' – which is the term given to Member States to transpose the Directive into national law – is set at two years. Member States, therefore, need to 'upgrade' from the Third Anti-Money Laundering Directive (2005/60/EC) to the latest AMLD (2006/70/EC).

The introduction of this new anti-money laundering directive will affect the laws and regulations with which financial firms must comply. This applies in particular to the Wwft and shall lead to reassessment of businesses. As mentioned above, it is expected that the KSA will impose future additional requirements via payment service providers. Gaming Legal Group expects that a future demand to disclose all ultimate beneficial owners will have the largest ramifications for operators embedded in a trust or fiduciary ownership structure.

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On 5 July 2016, the Dutch Finance Ministry, in cooperation with the Dutch Ministry of Justice and Security, initiated a phase of public consultation regarding the implementation of the Fourth AMLD, which ended on 16 August 2016. This public consultation is one of the steps in the preparation of the new legislation to come into force in the first half of 2017. The implementation deadline was not met. As a consequence, the Fourth AMLD has become effective for the Netherlands as well without having been implemented. Operators are advised to seek professional guidance as to possible ramifications for existing businesses.

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

Gambling machines and terminals must be approved by the *Dutch Metrological Institute* ("**NMI**"). In public houses, a maximum of two gambling machines is allowed. Placement conditions for gambling machines in arcades depend on local administrative policies.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

All (licensed or unlicensed) persons who engage in licence-restricted activities are primarily held responsible in case of violations. However, third parties, including legal and tax professionals, may also be held responsible if it is established that they have (on a structural basis) consciously supported and/or assisted persons in committing offences and/or crimes.

The KSA has the authority to sanction those who are in violation of the WOK. KSA also has the authority to intervene in illegal operations. Sanction policies have been made public via a "sanction factsheet", available to download at the KSA website (www.kansspelautoriteit.nl).

Administrative measures include the optional use of administrative force (in cooperation with police law enforcers) or by imposing a conditional, progressive penalty. The KSA is also allowed to punish violators by imposing an administrative fine, maximised at EUR 820,000 (in 2017). The KSA may also demand the removal of certain commercial outings, demand a blockade of payments and/or exchange information with other gambling regulators.

In principle, a violator will receive administrative punishment. However, certain aggravating circumstances may lead to criminal prosecution and punishment. If an administrative sanction is imposed, the violator can no longer be prosecuted on a criminal basis.

4.2 What is the approach of authorities to unregulated supplies?

In principle, violations of the WOK are treated as economic offences, unless they have been explicitly labelled as crimes. Violations have been explicitly labelled as crimes if it is established that no mistake was involved, the violator was aware and the violation was committed on purpose. Violations of the WOK that are deemed crimes are punishable by imprisonment of up to two years; however, combined with other offences such as the failure to file for and/or pay taxes may easily multiply the severity of the punishment.

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

The Netherlands is a member of the "*Financial Action Task Force*" ("**FATF**") and has adopted and codified FATF AML standards in its local legislation and regulations. As described in question 3.2, it is expected that the Fourth AMLD shall enter into force in the first half of 2017.

Several gambling law and tax provisions have been and still are under constant legal scrutiny and attack due to potential conflicts with European Directives and basic European rights such as the European right to freedom of establishment and freedom of services. Enforcement of several provisions has been limited by national and international case law.

4.4 Are gambling debts enforceable in your jurisdiction?

Article 7A:1825 of the Dutch Civil Code states that obligations resulting from participating in a game of chance are only enforceable if the game was offered on a legal basis. However, if the loser has paid voluntarily, he may not claim restitution, unless there has been fraud on the part of the winner. If the obligations are indeed enforceable, a judge may reduce obligations if these are deemed excessive.

5 Anticipated Reforms

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

The Dutch have been endlessly debating rules and regulations for the domestic online market. Although legislation for such an online regime was adopted by Dutch parliament in 2016, it is yet to be approved by the Dutch Senate. Gaming Legal Group estimates that no licences shall be distributed any time soon.

Operators shall be taxed at a 30.1% tax rate of gross gaming revenue – plus an additional percentage for KSA funding. A preferential tax rate of 20% was rejected after complaints by land-based operators. As a result, both types of operations shall be taxed at 30.1%. It is expected that operators shall be required to store copies of their online information in a database located within the Netherlands.

There will be no obligation for the Dutch gambling regulator to accept gambling licences that have been issued by other EU Member States. In comparison, MiFID-based licences for financial instruments are valid in other EU Member States after notification.

It is expected that the currently proposed measures that are aimed at protecting the licensed market against illegal operators shall not be effective. As a result, it is unlikely that a sufficient percentage of illegal operators will opt to validate for the Dutch online market.

The proposed legislation has been heavily criticised by the Dutch State council. Furthermore, Gaming Legal Group feels that the proposed legislation will gravely limit possibilities for smaller Dutch operators to enter the Dutch online market, due to the required large investments combined with insufficient market shielding against illegal operators.

The views of Gaming Legal Group on the Dutch online regime have been debated and discussed all over the world. For a closer view on developments, please contact our team.

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Bas Jongmans, attorney at law, studied tax litigation at Leiden University, specialising in the offset of tax losses. After working for several years within the international and litigation tax practices of *Deloitte* (formerly Andersen) and *Spigthoff* litigators, in 2010 he founded "**Gaming Legal**", which became the "**Gaming Legal Group**" in 2014, a combination of five independent companies. Bas is a member of the "**Dutch Order of Tax Advisors**" (Dutch: "*Nederlandse Orde van Belastingadviseurs*", or: "**NOB**"), the "**Dutch Bar Association**" (Dutch: "*Nederlandse Orde van Advocaten*", or: "**NOVA**"), the "**Dutch Order of Mediators**" (Dutch: "*Nederlands Mediation Instituut*", or: "**NMI**") and the "**Dutch Association of Attorneys and Tax Litigators**" (Dutch: "*Nederlandse Vereniging van Advocaten-Belastingkundigen*", or: "**NVAB**"). Bas has earned his international reputation by winning several spectacular cases, such as the case of Optieclub (in joint effort with Dutch attorney Hester Bais) against AFM, forcing the Dutch financial regulator into providing the first Binary Options Licence in the Netherlands, http://www.gaminglegalgroup.com/binaryoptions, and the case of Dutch gambling device operator Wetsteijn against the Dutch Tax Authorities, confirming that the Dutch gambling tax was in breach of the First Protocol with the Human Rights Treaty, http://www.gaminglegalgroup.com/dutchgamingtax.

Bas has produced various scientific publications within various areas of expertise, which may be found at www.gaminglegal.com. Being a former web designer, Bas is able to value client products from a technical perspective as well.

Gaming Legal Group has rapidly built itself a reputation of being a worldwide renowned niche specialist in the field of gaming. It has a focus on hybrid cases in which government, tax, civil and financial law are often combined. Gaming Legal Group always tries to aim for a scientific and/or innovative approach. This is what makes Gaming Legal Group a worldwide "*mover and shaker*".

Gaming Legal Group was founded in the Netherlands by Dutch tax attorney Bas Jongmans. In 2014, the company expanded to include Gaming Legal Innovation (Malta), Gaming Legal Compliance (Dutch Caribbean) and Gaming Legal Advisory (Greater Antilles). In 2015, Gaming Legal Group launched its latest addition to the Gaming Legal family: Gaming Legal Media, which specialises in providing media services and services in the field of public relations. All of these independent companies are working closely together under the Gaming Legal brand.

Gaming Legal Group offers professional services and advice in fields such as, but not limited to: international tax; gaming law; compliance; intellectual property; company formation; investment and asset management services; advisory services; gaming product development; and the development of financial products and services, such as binary options. Gaming Legal Group also advises several leading casinos in how to set up effective addiction prevention policies. By request of the casino, individual players are advised and coached by Gaming Legal Innovation in Malta on aspects of sensible and moderated player behaviour. In 2016, Gaming Legal Attorneys further expanded its practice to include financial law.

The leading opinions of Gaming Legal Group are followed worldwide. Would you like to know more? Please take a look at our other chapters in this guide, regarding Malta, the Dutch Caribbean and the Greater Antilles, visit us at www.gaminglegal.com, facebook.com/gaminglegal and nl.linkedin.com/in/gaminglegal, or follow us on Twitter: @gaminglegal.

Although this chapter has been composed with great care, please note that Gaming Legal Group and its affiliated entities cannot accept liability for this publication, since one should always consult a legal professional for the purpose of retaining individual advice.

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Norway

Brede A. Haglund

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Brækhus Advokatfirma DA

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The Norwegian Gaming and Foundation Authority (*Lotteri- og Stiftelsestilsynet*) regulates gaming activities such as casino games, betting, lotteries, slots, skill games and any other gambling activity, either online or offline, which require a payment and may provide winnings as a result of a draw, guess, chance or any other procedure that is partly or wholly determined by a random event, collectively defined as "*Lottery*" in the Norwegian Lottery Act Section 1 first paragraph letter a).

The Authority also regulates gaming schemes such as money games in conjunction with sporting events, etc., *cf.* the Gaming Scheme Act Section 1.

The Norwegian Ministry of Culture is the paramount authority for the Lottery Act and the Gaming Scheme Act.

The Norwegian Ministry of Agriculture and Food is the paramount authority for the Totalisator Act, hereunder horse racing and related betting activities.

Both ministries are unable to instruct the Gaming and Foundation Authority in individual cases.

The Lottery Committee is an independent body appointed by the Ministry of Culture, tasked with reviewing any appeal of a decision by the Authority.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Gambling activities in Norway are regulated by the following acts:

- The Totalisator Act of 1 January 1927 no. 3

  The Totalisator Act regulates horse racing and related betting activities and prescribes that said activities require an authorisation.
- The Gaming Scheme Act of 28 August 1992 no. 103

  The Gaming Scheme Act grants Norsk Tipping the exclusive right to operate gaming schemes related to sporting events and other competitions which are not governed by other acts.
- The Lottery Act of 24 February 1995 no. 11

  The Lottery Act prescribes that the provision of a lottery without an authorisation is prohibited; see question 1.1 for the definition of what constitutes a "*lottery*". As a general rule, an authorisation is only granted to organisations with a humanitarian and socially beneficial purpose, where proceeds are distributed to said purpose.

The legislation mentioned above generally prohibits the provision, marketing or distribution of any form of gambling activity without an authorisation from the Norwegian Gaming and Foundation Authority. The regulated Norwegian gaming market consists of the following services and service providers:

- Norsk Tipping: State monopoly for Lotto, Viking Lotto, Eurojackpot, sports betting, gaming terminals, interactive gaming, scratch tickets and other number games (Keno, Extra).
- Norsk Rikstoto: State monopoly on all gaming activities related to horse racing.
- Private lotteries: Bingo, scratch tickets, gaming on ferries, pre-drawn and post-drawn lotteries, poker tournaments and other minor lotteries.

The Norwegian Tax Act contains a special provision concerning income generated from incidental winnings in gambling activities in Section 5-50, *cf.* question 2.7 below.

Furthermore, there is a great number of regulations that govern specific areas of gambling.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Any organisation may apply for an authorisation to supply gambling facilities, though authorisations to operate commercial gambling activities are not provided, as Norsk Tipping and Norsk Rikstoto are the sole providers of gambling services in Norway by virtue of the Norwegian gambling monopoly. As such, gambling activities are prohibited without an authorisation from the Gaming and Foundation Authority, *cf.* the Norwegian Lottery Act Section 6 and the Norwegian Gaming Scheme Act Section 2.

In private lotteries, poker and bingo there is a limited right for private organisations to apply for an authorisation to provide gambling activities under the relevant legislation, though national or foreign organisations are not eligible to request a full gaming authorisation from the Authority.

An authorisation to hold a lottery may be granted to nationwide, regional or local organisations which have a humanitarian or socially beneficial purpose within the area in which the lottery is held.

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Commercial gambling organisations may act as intermediaries for the organisers with the aforementioned humanitarian or socially beneficial purpose.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

In accordance with the Norwegian Lottery Act Sections 7 and 5 second paragraph and the Regulation on the Norwegian Gaming and Foundation Authority and the Lottery Registry Chapter 5, the following gambling activities are exempt from the requirement of authorisation:

- Pre-drawn or post-drawn lotteries:
  - With an annual turnover not exceeding NOK 200,000.
  - Where the organisation behind the lottery has a humanitarian or socially beneficial purpose.
  - Where the organisation has given 14 days' prior notice to the Authority before the sale of lottery tickets, *cf.* the Regulation on the Norwegian Gaming and Foundation Authority and the Lottery Registry Section 5-1 first paragraph.
  - Where the organisation does not utilise a commercial third party to organise the lottery.

The following gambling activities are exempt from both the requirement of authorisation, as well as the requirement of having a humanitarian or socially beneficial purpose:

- Lotteries:
  - Provided they are not accessible by the general public.
- Private poker games:
  - That are held in a private home.
  - Which do not have an organised or professional character.
  - With less than 10 participants belonging to the same social circle.
  - Where the participants are all over 18 years of age.
  - Where the entry fee does not exceed NOK 1,000 per person.
- Bazars:
  - Where the proceeds go to a specific purpose.
  - Where the activity is concluded in one day.
  - That do not sell lottery tickets beforehand.
  - That do not involve a prize exceeding NOK 1,000.
  - Where the price of each lottery ticket does not exceed NOK 5.
  - Where the maximum value of a single prize does not exceed NOK 8,000.
  - Where the maximum value of all prizes does not exceed NOK 40,000.
  - Where all prizes are drawn at the same time and with the participants in attendance.
  - Where the organiser has not engaged the help of an intermediary against payment.

Consequently, any organisation wishing to hold a lottery with an annual turnover exceeding NOK 200,000 or for other purposes, or otherwise provide any other gambling activity, must acquire a prior authorisation from the Norwegian Gaming and Foundation Authority, *cf.* the aforementioned Regulation Section 2-1 and the Norwegian Lottery Act Section 6. Said organisations must be registered with the Norwegian Central Coordinating Register for Legal Entities (NCCRLE) and have a humanitarian or socially beneficial purpose.

If a lottery activity is to be held in a fixed location, the proprietor of the location must also hold an authorisation. An authorisation is required if the implementation of lotteries is entrusted to an operator in return for payment. In regard to the limited number of authorisations, see question 2.4 below.

2.3 What restrictions are placed upon any licensee?

See question 2.1 above and question 2.8 below.

2.4 What is the process of applying for any gambling licence or regulatory approval?

In order to apply for a gambling authorisation, an application is filed using the applicable form provided by the Norwegian Gaming and Foundation Authority. Certain authorisations are only granted by public application, hereunder:

- Lottery activities where a private organisation is responsible for the drawing of winnings and where said organisation has a humanitarian or socially beneficial purpose, *cf.* the Regulation on the Lottery Act Section 7. The aforementioned Regulation prescribes that only five such authorisations may be valid at the same time. Currently, no new authorisations are expected to be granted until 2025.
- Land-based tournament poker, *cf.* the Regulation on the Lottery Act Section 8.

Application fees range between NOK 1,250 and NOK 20,300, with additional yearly licensing fees applicable if the application is approved.

Depending on the type of gambling activity in question, the applicants may be required to submit, *inter alia*:

- A police certificate of good conduct of the organisation's chairman of the board, the proprietor or other participants.
- Financial statements, annual report and auditor's report.
- Articles of association.

After submitting an application, the Norwegian Gaming and Foundation Authority will issue a non-binding preliminary evaluation of the matter.

A final decision will take anywhere between six to 12 months.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

The time limit and potential for expiry of an authorisation is determined by the type of gambling activity.

For lottery activities as described in the Regulation on the Lottery Act Section 7 and question 2.4 above, the authorisation is valid for a period of nine years.

Authorisations for land-based poker tournaments are valid for a period of three years, *cf.* the Regulation on the Lottery Act Section 8 and question 2.4 above.

Authorisations for pre-drawn or post-drawn lotteries or bingos are valid for a period of one year, *cf.* the Regulation on Bingo Section 2 and question 2.2 above.

An authorisation may be revoked where the holder has breached the Norwegian Lottery Act, other legislation or terms provided in accordance with the Lottery Act. The authorisation may also be

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revoked where a gambling device used in the gambling activity does not perform satisfactorily, or where the holder has breached public order or otherwise facilitated an environment harmful to children and adolescents.

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

The terms and restrictions of an authorisation differ depending on the type of authorisation. The Regulation on Bingo and the Regulation on the Lottery Act Sections 5, 6, 7a and 8 provide a number of restrictions, *inter alia*:

- **Lottery**
  - The value of the main prize cannot exceed NOK 2,000,000.
  - The total value of the prizes must amount to a minimum of 25% of the lottery's allowed turnover.
  - The organisation may not use more than 15% of the lottery's turnover on marketing.
- **Poker tournaments**
  - The value of the main prize cannot exceed NOK 2,000,000.
  - The maximum allowed number of participants is 5,000.
  - Participants must be over 18 years of age.
  - The authorised organisation must receive a minimum of 5% of the turnover. The operator may recuperate costs incurred in arranging the tournament with a limitation of 10% of the turnover.
- **Bingo**
  - The maximum allowable turnover per year is NOK 700,000.
  - The authorised organisation must receive a minimum of 15% of the profits (30% from electronic bingo and pre-drawn bingo games).
- **Post-drawn and pre-drawn public lotteries**
  - The maximum allowable turnover cannot exceed NOK 100,000,000 per year.
  - The authorised organisation must receive a minimum of 20% of the turnover.
- **Lotteries drawn by a commercial organisation**
  - The maximum allowable turnover cannot exceed NOK 300,000,000 per year.
  - The authorised organisation must receive a minimum of 50% of the turnover.

All foreign and non-authorised organisations are prohibited from marketing online gambling activities in Norway, *cf.* the Norwegian Lottery Act Section 11 and the Gaming Scheme Act Section 2.

However, the ban is not effectively enforced by the Norwegian Gaming and Foundation Authority. The lack of enforcement is mainly due to the Authority's lack of resources, consequently making it difficult for the Authority to supervise all marketing activity.

As such, gambling-related advertising is a common feature. This is partly due to the aforementioned lack of resources, as well as jurisdictional issues, risk assessments and Directive 2010/13/EU, which prescribes that if a broadcaster advertises in accordance with the laws of the broadcaster's country of origin, said advertising is considered legal regardless of the laws of the country to whom the broadcaster broadcasts to.

However, in cases where the marketing activity was carried out from outside of Norway, the Authority has issued administrative orders where they considered that the marketing activity was directed towards Norwegian customers, *cf.* the Authority's decision of 9 November 2016 against PlayCherry Ltd. and Spillautomater.com.

2.7 What are the tax and other compulsory levies?

Winnings considered incidental prizes exceeding NOK 10,000 are taxable with a tax rate of 24%, *cf.* the Norwegian Taxation Act Section 5-50 (1). This includes winnings from foreign gambling organisations. Some exceptions apply, hereunder:

- Prizes won from lotteries held for the benefit of a humanitarian or socially beneficial aim, such as those provided by Norsk Tipping and Norsk Rikstoto, *cf.* the Taxation Act Section 5-50 (2). This exception may also apply to gambling and lotteries in other EEA states which are comparable to the games or lotteries legally available in Norway and subject to public oversight and control in the home state.
- If you are gaming professionally, the winnings may be regarded as income through self-employment. As a result, you will be taxed as a tradesman and be able to enter costs related to the poker as a deductible. This exception only applies in cases of extensive gaming activity where said activity is considered suitable to make profits.

2.8 What are the broad social responsibility requirements?

In order to arrange bingos, lotteries or other gambling activities, an organisation must generally apply for an authorisation from the Norwegian Gaming and Foundation Authority, *cf.* the Norwegian Lottery Act Section 6 first paragraph and the Gaming Scheme Act Section 2.

Authorisation is usually only granted where the organisation has a humanitarian or socially beneficial purpose, *cf.* the Lottery Act Section 6 second paragraph and Section 5 first paragraph. In an assessment of whether said organisation should be granted authorisation, the Authority takes into account the degree of socially justifiable distribution of the income from the bingo or lottery endeavour.

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

Currently, the Norwegian Money Laundering Act does not encompass entities providing gambling services. This is expected to change due to the requirements introduced through EU Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Fourth EU Anti-Money Laundering Directive). The preparatory works of the Norwegian Money Laundering Act anticipates that the Act will need a future revision in regard to its area of application, including gambling entities.

When gambling organisations become encompassed by the Act, such organisations will have a duty to inspect and report any irregular activity, prepare risk evaluations and establish compliance programmes.

The Norwegian Lottery Act Section 11 prohibits the facilitation of lottery activities without authorisation, *cf.* question 2.8 above. This prohibition includes the provision of services enabling the payment of any winnings and buy-ins, entry fees, stakes, etc. between a gambling organisation and its customers. Norway implemented payment blocking between gambling organisations and customers in 2010.

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To circumvent the aforementioned prohibition, foreign gambling organisations have long used payment service providers. The Norwegian Gaming and Foundation Authority have recently identified seven companies offering payment services to gambling organisations active in the Norwegian market.

In order to counter this circumvention, the Norwegian Gaming and Foundation Authority passed a resolution of 29 March 2017 that prohibits the processing of payment between foreign gambling organisations and Norwegian customers through seven bank account numbers used by two gambling organisations and five payment service providers. As such, banks and other financial enterprises are prohibited from facilitating payments to or from these bank account numbers. The aim of this regulation is to complicate the payment process of these unauthorised organisations in order to secure regulated and controlled gambling activities.

However, there is some doubt as to the effectiveness of the Authority's prohibition due to the feasibility of amending or creating new bank account numbers used by the gambling organisations or payment service providers to facilitate the payment between the aforementioned organisations and its customers.

Norwegian law does not regulate the question of whether virtual currencies may be used for gambling activities.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Norwegian law does not differentiate between online gambling activities and their land-based counterparts.

The Norwegian gambling monopoly provides Norsk Tipping and Norsk Rikstoto with the exclusive right to offer online gambling activities within Norway, effectively prohibiting foreign gambling organisations from offering the same services. Norsk Tipping offers various online gambling activities, such as poker, blackjack, roulette and other games.

As such, online gambling activity is prohibited where the organiser does not have an authorisation in accordance with the Norwegian Lottery Act Section 6 first paragraph or the Gaming Scheme Act Section 2. As previously mentioned, said authorisation is generally only attainable where the organisation has a humanitarian or socially beneficial purpose.

However, private individuals are permitted to engage in online gambling activities on foreign-based gambling websites. The Gaming and Foundation Authority does not supervise foreign gambling organisations, regardless of their legality. This entails that private individuals are able to gamble on their own risk using said websites, as there are no guarantees that prizes are actually paid out.

3.2 What other restrictions have an impact on online supplies?

This is not applicable in our jurisdiction.

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

With the exception of certain terminal-/machine-based machines in bingo halls and Norsk Tipping's own Multix-automats, terminal-/machine-based gaming is prohibited in Norway.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

The provider or organiser can be held liable for any breach of the relevant gambling legislation. Organisations who license machines/terminals or software to gambling operators are likewise subject to liability if they breach the relevant gambling legislation, *cf.* the Norwegian Lottery Act Sections 6 and 11 and the Gaming Scheme Act Section 2.

4.2 What is the approach of authorities to unregulated supplies?

The Norwegian Gaming and Foundation Authority have the power to issue an administrative order to the organisation responsible, demanding that the organisation cease and desist its purported unlawful operations or rectify the situation. The Authority may also issue a compulsory fine in order to ensure that the order issued is implemented within a specified time limit.

Breaches of the relevant legislation can also be punished by fines, or by imprisonment for up to three years.

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

No, they do not.

4.4 Are gambling debts enforceable in your jurisdiction?

As a general rule, gambling debts are unenforceable under Norwegian law, *cf.* the Enforcement Act for the General Civil Penal Code Section 12, which prescribes two situations in which gambling debt is considered unenforceable by law.

Firstly, if the gambling debt has been acquired through the participation in an illegal game or similar activity, the debtor is not liable for the payment of the debt. The unenforceability of the aforementioned debt applies regardless of the debtor's or opposing gambler's knowledge of the illegality of the game, *cf.* the Supreme Court's judgment in Rt. 2003 s. 1210.

Secondly, where the debtor has acquired a debt though a loan, the debtor is not liable for the payment of the debt unless the creditor had no knowledge that the loan was going to be used in gambling.

5 Anticipated Reforms

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

As previously mentioned in question 2.9 above, Norwegian legislators intend to amend the Norwegian Money Laundering Act in order to encompass organisations offering gambling activities. This will influence the compliance requirements for such entities, *cf.* question 2.9 above.

Norsk Tipping and other operators are authorised to conduct permanent live online casinos. Currently, there are some political efforts in favour of allowing casinos, though whether there will be any change remains to be seen.

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Mr. Haglund founded and heads our Gaming and Entertainment desk. He is the key account manager of Norsk Tipping and has assisted Norwegian players and investors in the international gambling and entertainment market since 2008. Mr. Haglund has assisted in the establishment of professional gaming entities abroad and other M&A-related activity.

Mr. Haglund covers national and international tax law and corporate law. He regularly advices on end-of-year tax reporting for several Norwegian professional poker players, including inbound and exit tax issues. Mr. Haglund is the author of "*Taxation of Poker*", a yearly guidebook published by the Norwegian Poker Association.

Mr. Haglund's experience with data protection, technology, IT and cloud services will potentially bring value to service providers in the gaming industry.

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Mr. Mollan graduated from the University of Oslo (LL.M.) in 2015 where he specialised in EU competition law, petroleum contracts and company law. He wrote his thesis on investigational duties as a pre-emptive measure against insider trading.

Prior to joining Brækhus, Mr. Mollan interned at Heathrow Airport Holdings Ltd. (formerly British Airport Authority Plc) in London, United Kingdom. He has also studied Chinese and international business law at Santa Barbara City College, USA.

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Brækhus is one of the few law firms in Norway with a dedicated group of experts in gaming and entertainment activities. Our lawyers have experience in establishing international service offerings, sales processes, tax issues, national and EU/EEA legal issues, financial requirements, marketing law, optimisation of ownership and the development and licensing of intellectual property rights and general legal and commercial relationships in Norway.

Today's technology enables the collection and utilisation of personal data at an unprecedented scale. Brækhus has expertise in privacy, risk management, and opportunity interval in consent and information sharing.

Brækhus understands the regulatory landscape of the gaming industry, both within Norway and on the European level. We have knowledge of regulatory conditions and decision-making processes, as well as technical and operational aspects important to our clients.

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Portugal

Luiz Gomes & Associados,
Sociedade de Advogados, SP, RL

Gonçalo Afonso Proença

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The Portuguese Gambling Regulatory Authority is *Serviço de Regulação e Inspeção de Jogos of Turismo de Portugal* (SRIJ), which is the entity responsible for monitoring, inspecting and regulating the following types of games:

a) Land-based games of chance (casino games, poker, slot machines and bingo).

b) Online gambling (games of chance, fixed-odds sports betting and pari-mutuel and fixed-odds horseracing bets).

State-run games (lotteries, pari-mutuel sports betting, land-based pari-mutuel horse betting and land-based fixed-odds sports betting) are operated by *Santa Casa da Misericórdia de Lisboa* (SCML), through its Games Department, under an exclusive right system.

SCML is a private entity with public administrative interest under State control and subject to the supervision of the social security ministry.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

The specific legislation applicable by product is:

a) Land-based games of chance operated in casinos or outside of them in the geographical gambling areas – Decree-Law No. 422/89, of 2 December, as amended by Decree-Law No. 114/2011, of 30 November, and Decree-Law No. 64/2015, of 29 April.

b) Bingo operated in bingo halls – Decree-Law No. 31/2011, of 4 March, as amended by Decree-Law No. 65/2015, of 29 April.

c) Online Gambling (in Portugal referred to as "RJO") approved by Decree-Law No. 66/2015, of 29 of April, as amended by Law No. 13/2017, of 2 May and Law No. 101/2017, of 28 August.

d) National Lottery approved by Decree-Law No. 40 397, of 24 November 1955, as amended by Decree-Law Nos. 43 399, of 15 December 1960, and 120/75, of 10 March, and by Decree-Law No. 479/77, of 15 November, as amended by Decree-Law Nos. 11/88, of 15 January, 96/91, of 26 February, and 200/2009, of 27 August.

e) Mutual sports betting, approved by Decree-Law No. 84/85, of 28 March.

f) Scratch cards approved by Decree-Law No. 314/94, of 23 December.

g) EuroMillions approved by Decree-Law No. 210/2004, of 20 August, as amended by Decree-Law No. 44/2011, of 24 March.

h) Online *social games* referred to in indents d) to i) above – regulated by Decree-Law No. 282/2003, of 8 November.

i) Land-based fixed-odds sports betting approved by Decree-Law No. 67/2015, of 29 April.

j) Land-based mutual horseracing bets approved by Decree-Law No. 68/2015, of 29 April.

It should be pointed out that among the legislation that impacts upon gambling activity are the following acts:

- AML/FT measures – Law No. 83/2017, of 18 August.
- Data Protection Regulation – Law No. 68/98, of 26 October, in its updated version.
- Publicity Code approved by Decree-Law No. 330/90, of 23 October, in its updated version.

Skill and prize competitions and draws are only regulated when they are land-based and are subject to the supervision of the internal affairs ministry which establishes for each case the conditions deemed to be suitable, as well as the respective regime. A change in law in the near future may consider the authorisation of these games by the municipalities.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Any legal entity incorporated in the form of a limited liability company or equivalent with a registered office in the EU or in a State which is a signatory of the EEA which is bound to administrative cooperation in the field of tax and in combatting fraud and money laundering may apply for a licence, provided that, in the case of foreign companies, they have a branch in Portugal, may be a competitor in a public tender to be awarded a concession in land-based casino games and/or an applicant to be granted a licence in online gambling.

A public or private entity may be a competitor in a public tender regarding the award of a concession for the exploitation of bingo in bingo halls outside the casinos.

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In either of the above cases, the grant of concessions/licences shall be dependent on the following cumulative conditions: having its social security and tax affairs in order; and being of good standing, with technical and financial capacity.

No licences are, or shall be, issued regarding any of the games entrusted to SCML, since its operation as referred in question 1.1 was awarded by the State in the form of an exclusive right.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Regarding land-based games of chance, only the concessionaires are authorised to explore games of chance in casinos and bingo halls. The premises do not need a specific licence for gambling but must fulfil the requirements of functionality, well-being and comfort which characterise a high-category tourist establishment.

In what concerns online gambling, only the operators are required to hold a gambling licence and are the sole guarantors responsible towards the SRIJ. Therefore suppliers or subcontractors, including platform providers (B2B), do not need to obtain a licence or an authorisation.

2.3 What restrictions are placed upon any licensee?

In land-based casino games, the concessionaire may only operate games of chance inside the casino and within the designated geographical gambling area, or out of those casinos, in the special cases previewed in the law (for example, aircraft and ships). There are actually 10 gaming areas: Azores; Algarve; Espinho; Estoril; Figueira da Foz; Funchal; Porto Santo; Póvoa de Varzim; Troia; and Vidago-Pedras Salgadas.

The operation of bingo outside casinos may only occur in bingo halls in locations previously defined by the member of the Government responsible for tourism.

In online gambling, all the specific conditions, such as the duration of the licence, the games the operator may offer and the security deposits are set forth in the licence. Subsequently, a licence to provide gambling will only cover the games which have been applied for, and if the licence holder wishes to supply new games, prior approval from the SRIJ must be obtained.

2.4 What is the process of applying for any gambling licence or regulatory approval?

The operation of land-based games of chance in casinos and bingo halls is granted by the Portuguese State through a public tender which specifies all the terms and conditions for the awarding of the concession agreement. These terms and conditions include, among others, the location of the casino or bingo hall where the gaming activity will be carried out and the assets allocated to the concession, the period of the concession agreement, the possibility of its renewal and the awarding criteria. Also, specific conditions related to financial obligations and to touristic and cultural development are set forth in the public tender.

The operation of online gambling is granted by means of a licence by the SRIJ. There are four different types of licences available (fixed-odds sports betting; pari-mutuel and fixed-odds horseracing bets; bingo; and other games of chance, including Baccarat punto banca/Macau, French banque, blackjack, slot machines, poker, American and French roulette).

The licence application has to be submitted on the standard form approved by the SRIJ and duly accompanied by the documents required for the verification of the applicant's good standing and fulfilment of the technical, financial and economic requirements. The applicant must also submit a structuring plan of the gambling technical system containing, among others, a document describing the gambling technical system, the location, in the national territory, where the front-end recording infrastructure will be hosted, the identification of the categories and types of online gambling to be operated, the mechanisms for player self-exclusion and for preventing the registration of players banned from gambling, the betting limits, the allowed payment methods and rules for calculating and paying prizes, the way in which all the transactions in the player account are made and how transactions which involve transfers of funds between the operator and the player are processed and the information security mechanisms adopted.

If the decision of the approval to grant a licence is favourable, the operator shall proceed with the down-payment of the licence fees, present the safety deposits, and obtain certification of the technical gambling system and subsequent homologation by the SRIJ. Only then will the licence be issued and the licensee may begin the operation.

During the term of the licence the operator may request authorisation to operate new types of games of chance besides those referred to above, the rules of which must be previously approved in a regulation issued by the SRIJ.

The authorisation for operating new types of games is endorsed on the licence, after the proper certification and official approval of the gambling technical system.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

The time limits of the concessions of land-based games of chance varies from 10 years (bingo halls) to 15–20 years (casinos). The concessions agreements may be revoked by the State in case of non-compliance with the contractual and legal obligations, and may also be terminated for reasons of public interest, subject to a specific compensation.

Online gambling licences are valid for three years from the date of issue and may be extended for successive periods of three years in case the operator fulfils the legal requirements.

The licence for the pursuit of the activity of operating online gambling expires at the end of its term if not extended and also if the operator is extinguished.

The licence may be revoked by the SRIJ at any time if the licensee, in the specific cases foreseen in the law, does not comply with its legal obligations or no longer is able to operate in a sound financial manner and may be also suspended whenever the occurrence of one of the specific situations is not sufficiently serious to bring about the revocation.

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

Land-based games of chance (casinos and bingo halls) must comply with the following restrictions when providing services to customers:

- minimum age for entrance and playing fixed at 18 years old;
- limitation and prohibition on certain persons to play due to the fact that these persons carry out positions of responsibility in public bodies;

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- limitation and prohibition for entrance and playing of persons who are self-excluded or banned from gambling by the SRIJ or by a court decision;
- limitation and prohibition on employees of casinos to participate in the game, either directly or through an intermediary to grant credit or lend money for gambling or to pay gambling debts; and
- there are limits to the betting amounts that vary according to the type of games.

In online gambling there are the same restrictions referred to above. Players must also register with the operator providing personal data and a payment account number and will only be allowed to play after the operator verifies the personal data information.

In 2015 the advertising of games of chance and online gambling was allowed by law as long as it is conducted in a socially responsible manner, respecting the protection of minors, as well as of other vulnerable risk groups, highlighting the entertainment aspect of gambling and does not demean non-players, does not appeal to aspects relating to obtaining easy winnings, does not suggest success, social achievement or special skills as a result of gambling, or encourage excessive gambling practices.

It is expressly prohibited to aim gambling adverts at minors, to feature minors in such adverts, and to advertise gambling in schools or other infrastructures intended to be frequented by minors or within 250 metres in a straight line from schools or other infrastructures intended to be frequented by minors.

Material promotion is allowed in casinos and bingo halls, but is subject to specific rules and must be at all times previously approved by the SRIJ.

2.7 What are the tax and other compulsory levies?

Gambling in Portugal is subject to different taxes according to different types of games:

1. Land-based casino games are subject to a special gambling tax, known as IEJ, which varies according to the geographical gambling area where the casinos are located, and varies between 4.5% and 40% of the gross gambling revenues (GGR).

   No other general or local tax is claimed regarding the exercise of the activity or of any other activities to which the concessionaire companies may be obliged under the terms of the concession contracts and for the period of time these contracts are in force.
2. Land-based bingo in bingo halls (traditional and electronic) is subject to Stamp Duty of 25%.
3. Online gambling is subject to a special online gambling tax, known as IEJO, which varies according to the following:
   i) In games of chance (including bingo), and on pari-mutuel horseracing bets, the IEJO is levied on the GGR of the operator. The IEJO rate on these games varies between 15% and 30%.

      When the fees charged by the operator are the sole revenue deriving directly from operating games of chance in which the players play against each other, the IEJO is levied on these fees at the rate of 15%.

   ii) In fixed-odds sports betting and fixed-odds horseracing bets, the IEJO is levied on the revenue from the amount of the bets placed. The IEJO rate on these games varies between 8% and 16%.

      When the fees charged by the operator are the sole revenue deriving directly from operating fixed-odds sports bets or fixed-odds horseracing bets in which the gamblers play against each other, IEJO is levied on these fees at the rate of 15%.

      The revenue deriving directly from the pursuit of activities liable to the IEJO is not liable to Corporate Income Tax (IRC) and Stamp Duty.
4. State-run games are subject to Stamp Duty of 4.5% on the amount of the bet and of 20% of the amount of the prize that exceeds €5,000; an exception is made to mutual horseracing bets, which are subject to IEJ at a rate that varies from 15% to 30% of GGR.

2.8 What are the broad social responsibility requirements?

In gambling operations, the integrity, reliability and security of such operations must be safeguarded, and awareness of the complexity of this activity must be assured. In addition, the holding of preventive awareness-raising and information activities, the drafting of codes of conduct and the dissemination of good practices must be fostered.

Concessionaires and online operators must adopt measures which ensure responsible gambling and provide the players with the necessary information, fostering moderate, non-compulsive and responsible attitudes.

Before beginning operations, online operators must also draw up a plan which, among others, includes the following matters:

a) general policy of information about the operator and the online gambling it offers;

b) policy of information and communication to the player about responsible gambling behaviour and the dangers of dependence on and addiction to gambling, which includes a permanent message about responsible gambling on the website;

c) measures adopted by the operator which seek to protect minors and persons self-excluded from gambling, and preventing the access of such persons to online gambling;

d) mechanisms made available on the website which permit the players to limit the amounts deposited in their account and the bets placed;

e) self-exclusion mechanisms, the way in which these are publicised on the website, and how to access them; and

f) timing of the game or of the bet, in cases where this is applicable.

The SRIJ shall foster, in liaison with the competent entities, the holding of studies aimed at identifying addictive behaviour and propose the adoption of preventive and deterrent measures.

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

The 4th AML/FT Directive has been transposed into Portuguese law through Law No. 83/2017, of 18 August.

The Portuguese State decided not to exempt the providers of gambling services from the law, nevertheless maintaining the possibility to exempt in the future, in full or in part, providers of certain gambling services from the national provisions.

The law establishes an obligation for providers of gambling services to apply customer due diligence measures to gambling services providers for transactions amounting to €2,000 or more whether the transaction is carried out in a single operation or in several operations which appear to be linked.

The law also foresees specific simplified due diligence measures applicable to casinos and bingo halls. These concessionaires must

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identify and verify the ID of all customers at least in one of the following situations: (i) when the customer enters in the casino or the bingo hall; or (ii) when he purchases or exchanges gambling chips (in casinos) or purchases gambling cards or collects winnings (in bingo halls).

In casinos the issuing of cheques in exchange for chips are allowed only to previously identified players, as long as these players have acquired those chips through a bank card or cheque in the maximum amount equal to the sum of those acquisitions. The cheques that may be issued shall mandatorily be nominative and crossed with a prohibitive clause indicating endorsement.

The online gambling legal framework, although approved in 2015, included due diligence measures anticipating the transposition of the 4th AMT/FT Directive. Players' registrations on gambling websites only become active after their identities have been verified, after which players may engage in online gambling.

Only electronic payment methods using the legal tender in Portugal and that allow the traceability of the transactions are acceptable and, for funding the player account, the operators may only allow payment methods supplied by payment service providers duly authorised by the competent authorities and that allow the person ordering the payment operation to be identified. Operators are obliged to register all gambling and financial transactions.

The SRIJ supervises the implementation of the AML/FT Law by casinos and online gambling operators.

Virtual currencies are not allowed for gambling in Portugal.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Online gambling is prohibited by law without a valid licence and the operators may only offer the games authorised and expressly mentioned in their respective licence.

If an operator provides or promotes games without a licence or which are not covered by the licence shall be subject to a criminal offence.

3.2 What other restrictions have an impact on online supplies?

Whenever the SRIJ detects a website which provides online gambling operated by an entity which is not legally qualified to do so, it shall notify that entity to, within a maximum period of 48 hours, cease the activity and remove the online gambling service from the internet, without prejudice to any criminal liability which it may incur.

Once the 48-hour period has expired without the activity having ceased and the service having been removed from the internet, the SRIJ shall notify the intermediary network service providers (ISPs) in order to prevent access to, the availability of, and the use of such an offer.

The website of the operators shall always be available in Portuguese. Nevertheless, operators may also provide the information existing in their websites in other languages to be chosen at the option of the player.

All the transactions shall occur in euros. No other currencies are allowed.

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

The operation and practice of gaming machines are only allowed in casinos, or exceptionally out of the casinos, in the following cases:

- on board aircraft or ships registered in Portugal, when outside of Portuguese territory; in this situation, the operation may only be granted to companies that are owners or freighters of Portuguese ships or aircraft, or to concessionaire companies of gaming areas with permission of the former; and
- in places where tourist activity predominates, the operation and practice of gaming machines may be authorised in hotels or complementary establishments to the concessionaires of the gambling area where the casino, a straight line, is situated nearer the place where the operation is to be carried out (denominated Arcades).

Arcades are not regulated; therefore, its exploitation is not allowed in Portugal.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Any person who operates land-based games of chance in places other than those legally authorised shall be subject to criminal charges.

The same is applicable to those who, by any means and without being duly authorised for the purpose, operate, promote, organise or consent to operating online gambling, or make it available in Portugal through servers situated in or outside of the national territory.

An administrative offence is foreseen for those who breach the exclusive rights of operating the games entrusted to SCML.

4.2 What is the approach of authorities to unregulated supplies?

The SRIJ provides technical support to and cooperates with the police authorities with regard to the prevention and punishment of illegal practices relating to land-based games of chance. These actions take place regularly and randomly across the country and with a high degree of success.

The SRIJ also develops administrative cooperation mechanisms with the relevant authorities regarding the prevention and punishment of illegal online gambling and practices. As referred to in question 3.2 above, the SRIJ may notify ISPs in order to prevent access to, the availability of, and the use of unlawful online gambling, without a previous judicial court order.

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

Portugal is a member of the EU, therefore Portugal respects the freedoms of TFEU, namely, in what concerns gambling, those covered by its Articles 49 and 56.

Notwithstanding, the ECJ admits that some restrictions on gambling may be justified by overriding reasons in the public interest, such as consumer protection and the prevention of both fraud and incitement to squander money on gambling. The ECJ also admits that the objective of combatting criminality linked to gambling is

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capable of justifying restrictions on fundamental freedoms under those rules. Portugal has drawn up the online gambling legislation according to these principles.

4.4 Are gambling debts enforceable in your jurisdiction?

According to the Portuguese Civil Code, gambling agreements are void and do not constitute a source of civil obligations; but when lawful, they are a source of natural obligations.

This means that the "debts" resulting from unlawful gambling are incapable of creating any obligation for participants.

The Portuguese online gambling legislation has expressly foreseen the mandatory constitution of a security deposit of €500,000, by the operators, as collateral for the performance of its legal obligations, including the payment of the estimated balances of the player accounts (prizes).

A similar rule can be found in the bingo legal framework – demanding a bond that guarantees the fulfilment of all legal and contractual obligations, including the payment of prizes.

5 Anticipated Reforms

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

Portugal is amending Decree-Law No. 422/89, of 2 December, which is expected to be an overall and systematic review.

The online gambling legal framework is to be amended in order to allow share liquidity. The project of this amendment has already been revealed and is now in discussion in the Portuguese Parliament.

According to the online legal framework, the SRIJ will present to the Portuguese Government a reassessment of the framework in 2018.

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Gonçalo Afonso Proença has been a Partner of LGPAS since 2017.

He was a Counsel of Cuatrecasas until 2017 and an Associate Lawyer since 2005.

He is a notable practitioner in Public Law and Litigation and provides current legal advice to clients in public procurement law.

Gonçalo's areas of particular expertise include contracting law, litigation, namely, actions for damages arising from (i) extracontractual liability of the state and other public entities, and (ii) non-compliance of concession contracts, and pre-contract procedures.

He has been a legal advisor on matters concerning the concession contracts of casino games of chance in Portugal and the financing of tourism promotion through the gaming concessionaries.

Gonçalo was involved in the legal framework for online gambling that was published in Portugal, and has extensive focus and knowledge concerning Portuguese gaming law.

He has a Law Degree from the School of Law of the Portuguese Catholic University of Lisbon and a Postgraduate Degree in Administrative Litigation. He has participated in international gaming law conferences, both domestic and abroad.

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Romania

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The National Gambling Office (hereinafter referred to as "the Office"), an entity under the Romanian Government, is the regulatory authority for the gambling industry. A supervisory committee ("the Committee") has been set up within the Office to grant to gambling operators, as well as suppliers in the gambling field, the licences/authorisations required by law. The Committee has two executive members (the President and the Vice-President of the Office) and seven non-executive members appointed by the Prime Minister and proposed by various players in the central administration.

The following games are currently identified as gambling products under Romanian legislation:

a) **lottery games** – traditional/remote games (both are placed under the legal monopoly of the National Company "Loteria Romana – S.A.");

b) **betting** – traditional or remote games, including those involving:
   (i) mutual betting;
   (ii) fixed-odds betting; and
   (iii) betting exchange;

c) **games of chance specific to casinos (including poker)** – traditional games;

d) **games of chance specific to poker clubs** – traditional games;

e) **slot-machine-type games** – traditional games, including the following:
   (i) slot machines;
   (ii) electronic devices offering limited-risk winnings (amusement with price – "AWP"); and
   (iii) video-lotteries;

f) **bingo games played in gaming rooms** – traditional games;

g) **bingo games organised via television networks** – traditional games;

h) **casino-type games** – remote games, includes all of the games of chance defined in subparagraphs c) and d) above;

i) **bingo and keno games** – remote games;

j) **tombola** – defined as the activity of drawing numbers, letters or other symbols, regardless of the characteristics of the equipment used to make the draw (cups, drums, wheels or other similar equipment), whether or not organised with the players physically present, whereby the prizes are fixed in kind, and do not depend on the number or the price of the tickets sold, or of the stubs, tokens and other evidence of participation in the tombola;

k) **any other type of games of chance** – including new games or combinations of games mentioned above, subject to being licensed and authorised by the Office; and

l) **temporary games** – the games of chance described in subparagraphs c), e) point (i) and f) taking place in tourist resorts or on cruise ships, for which a gambling organiser has obtained an organiser's licence and an operator's authorisation for a period of three months with the possibility of an extension of a maximum of three more months. This category also includes the Poker Festival – traditional game – a temporary event consisting of a poker tournament which takes place exclusively between participants in rooms (premises) within accommodation establishments.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

The main Romanian legislation which impacts upon gambling activity comprises the following acts:

(i) Government Emergency Ordinance no. 77/2009 on the organisation and operation of gambling activities, as further amended and supplemented ("EGO 77/2009");

(ii) Government Decision no. 111/2016 for the approval of the Methodological Norms for implementation of Government Emergency Ordinance no. 77/2009 on the organisation and operation of games of chance ("Methodological Norms" or "secondary legislation");

(iii) Government Emergency Ordinance no. 20/2013 on the organisation and functioning of the National Gambling Office and in regard to the modification and supplementation of Government Emergency Ordinance no. 77/2009 on the organisation and operation of gambling activities ("EGO 20/2013");

(iv) Law no. 227/2015 regarding the Fiscal Code, as further amended and supplemented ("Romanian Fiscal Code");

(v) Law no. 207/2015 on the Fiscal Procedure Code ("Romanian Fiscal Procedure Code");

(vi) Law no. 656/2002 on the prevention and sanctioning of money laundering, as well as for setting up some measures for the prevention and combating of terrorism-financing acts, republished;

(vii) Order issued by the President of the National Gambling Office no. 47/2016 for the approval of the content, reports

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and access to the information transmitted by the remote gambling operators to the National Gambling Office;

(viii) Order issued by the President of the National Gambling Office no. 48/2016 for the approval of the procedure for fulfilling the conditions for connecting the traditional slot machines and betting games of chance;

(ix) Order issued by the President of the National Gambling Office no. 93/2016 for the approval of the mandatory requirements for certification and audit of the remote gambling systems; and

(x) Order issued by the President of the National Gambling Office no. 135/2016 for the approval of the General Norms for filling in and using the mandatory registries and forms specific to gambling, of the Specific Norms for filling in and using the mandatory registries and forms specific to gambling, as well as the models thereof, per type of game of chance.

With regards to skill and social games, the Romanian legislation currently in force does not expressly regulate such games.

However, given Romania's definition of gambling activities, we may say that any game (including skill games or social games) that lacks any of the elements falling within the legal definition of gambling should not be deemed as gambling, and thus should be permitted in our jurisdiction without prior authorisation.

Therefore, any skill or social game that does not involve (i) material winnings, (ii) a participation fee, or (iii) the random selection of the results or the events to which the object of the game relates, regardless of how these results are achieved, shall not be regarded as gambling activity.

In addition, according to the gambling law, the following types of games are not considered games of chance and do not require authorisation:

a) tombola games organised in schools, kindergartens or other such establishments, as well as those organised by non-profit organisations or foundations, that have an entertainment purpose or non-profit nature for the organisers. A tombola is considered non-profit when the total amount of participation fees is equal to the total value of prizes awarded; the same principle also applies in the case of prizes in the form of goods, etc.;

b) games of an entertainment nature, operated via any kind of machines, apparatus or devices of any kind, that do not involve winning based on random elements, but which are intended to test the participant's strength, intelligence or dexterity;

c) activities lawfully organised by various businesses in order to stimulate sales and which do not involve any participation fee or any additional expenditure for the participants, or any increase in the price of the product relative to its price before the promotion; and

d) amusement or sporting games whereby players are required to demonstrate knowledge and skills and which are not based predominantly on chance.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

According to the current Romanian gambling legislation, an economic operator applying for a licence and authorisation to organise games of chance can be either a Romanian legal person established under the Romanian law or a legal person duly established in a Member State of the European Union, the European Economic Area or in the Swiss Confederation, having "gambling and betting" activities as its main object of activity and the share capital subscribed and paid-in to the amount stipulated by the law.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Apart from the legal entities which may apply for a Class 1 licence to organise gambling activities, as indicated in our answer provided to question 2.1 above, the following economic operators that perform auxiliary activities in the field of remote games of chance in Romania, (other than the network providers and electronic communications services providers), are also obliged to obtain a licence (i.e., a Class 2 licence) from the Office in order to lawfully carry out their type of activities:

a) operators who hold management and integration platforms specific to remote games of chance, as well as the operators of server storage centres (data centres);

b) economic operators who carry out activities relating to the manufacturing, distribution, repair and maintenance of gaming equipment, as well as import, export, intra-community acquisition and intra-community delivery or other related activities involving gaming equipment or components;

c) payment processors;

d) companies which develop and/or distribute specialised software for games of chance, as well as companies that broadcast images of games of chance characteristic to casinos;

e) affiliates (marketing);

f) certifiers (testing labs);

g) auditors (testing labs); and

h) conformity assessment bodies (testing labs).

Also, certain activities – such as manufacturing, distribution, maintenance, import, export, intra-community trade – related to gaming means, are subject to the respective operators obtaining a Class 2 licence from the Office.

A Class 3 licence is to be granted to the organiser of remote lotto games (still under the monopoly of the Romanian State). No such licence has yet been granted in Romania at the date of writing this chapter.

2.3 What restrictions are placed upon any licensee?

This is not applicable in our jurisdiction.

2.4 What is the process of applying for any gambling licence or regulatory approval?

The licensing (both for Class 1 and for Class 2 applicants) process, as well as the authorisation application process, is rather straight forward. The legislation regulates a closed-box procedure, all regulatory approvals being granted based exclusively on documents submitted to the Office, without the applicant or its local representative being present in front of the Committee for the hearing when the application is analysed and voted on.

The list of documents to be submitted in the process is expressly provided by the legislation, such documents being aimed to provide

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information on the applicant (up to, in some cases, to the ultimate beneficial owner), its good standing (as well as the good standing of its legal representatives) – including the capacity to cover debts towards the State budget or the applicant's own players at any moment – but also the technical system intended to be used for carrying the respective games of chance activity in Romania (in the case of a Class 1 licence), or the capacity and means to provide the service for which the licence is requested (in the case of a Class 2 licence).

The legislation, however, provides for the obligation of the applicant to provide any data or information as requested by the Office – a provision that appears to have been included in the legislation with the view to ensuring that no unpredictable and/or unpredicted situations appear during the licensing process, which cannot be handled due to lack of regulatory framework.

The documentation must be submitted at least nine working days prior to the date the Committee meeting is scheduled for the representatives of the Office to have the time to review the application, and request additional data or information from the applicant, if necessary. Once the initial review is finalised, the documentation is put forward to the Committee, whose members make the final decision on the actual granting of the approval.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

The licence to organise games of chance is valid for 10 years, subject to the payment of annual fees.

The Office may decide to **revoke** the licence to organise games of chance for cases such as: (i) failure to comply with the payment obligations to the general consolidated budget or payment of the respective obligations, in accordance with the legal provisions in force, more than 30 days from the date on which they become due in accordance with the law; (ii) the organiser no longer has the organising of games of chance as its main object of activity; (iii) after the approval issued by the police authorities for the legal representatives of the legal entity has been withdrawn, the latter keeps the respective position for more than 30 days from the date on which the withdrawal of the approval was communicated; (iv) a final judgment of conviction without rehabilitation was issued against the legal entity; (v) the legal representatives of the economic operator are in a situation of incompatibility for more than 30 days, calculated from the date on which the incompatibility occurred; (vi) any of the shareholders or legal representatives of the legal entity keep their position for more than 30 days, when a final judgment of conviction without rehabilitation was issued against the respective entity, in Romania or in a foreign State, for a crime stipulated by the Romanian gambling legislation or for any other crime committed with intent for which a minimum two-year prison sentence was applied; (vii) the organisation of fraudulent games of chance; (viii) the security fund was not created to the amount, format or by the deadline provided by law; (ix) where there are irregularities with regards to the way the winnings awarded have been recorded, withholding the related sums of money and not paying them, or paying them after a delay of more than 30 days, as well as with regards to a failure to comply with any requirements for licensing and authorisation established by gambling legislation in force; and (x) it is found that gambling activities do not comply with the provisions of Law no. 656/2002 for the prevention and sanctioning of money laundering.

After the licence to organise games of chance has been revoked, a new application can be submitted after at least one year from the date on which the revocation decisions became irrevocable in the appeal system.

Moreover, the Office may decide to **cancel** a licence to organise games of chance or the authorisation to operate games of chance, as the case may be, if the Office finds that, on the date these documents were granted, the applicants provided incorrect or inaccurate information which, if known, would have led to the licence to organise games of chance or the authorisation to operate games of chance, as applicable, not being granted.

In this situation, a new application for authorisation can be submitted after at least five years from the date on which the cancellation decision becomes final in the administrative appeal system or from the date on which the court judgment becomes final and irrevocable.

The Office may also decide to suspend or revoke a licence to organise games of chance, as the case may be, at the request of the National Tax Administration, the Fraud Investigations Directorate within the General Inspectorate of the Romanian Police, the Minister of Administration and Interior, or the National Office for the Prevention and Control of Money Laundering, due to failure to comply with the provisions of the legislation regarding the prevention and control of money laundering and financing of terrorist activities, determined by administrative documents that have remained final in the administrative appeal system, or by court judgments that are final and irrevocable.

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

One of the key limits is the prohibition of minors under 18 years old from taking part in gambling activities.

In addition, the current Romanian legislation incriminates as a criminal offence the deed committed by an individual who participates as a player in a remote game of chance, while also being a member of staff or part of the management of a legal entity that is a contractual party with the licensed gambling organiser, on Romanian territory, regarding any activity connected or associated with that game of chance, or being an associate or shareholder of this legal entity.

Romanian legislation also contains certain restrictions related to advertising. Most important are:

- spamming is forbidden – publicity in the form of unsolicited electronic messages that include information regarding a game of chance, addressed to an unlimited number of recipients, is forbidden;
- sending advertising materials to self-excluded players is prohibited;
- the advertising of gambling services not authorised in Romania is prohibited;
- outdoor advertising may not be placed within or around education institutions, social-cultural or religious institutions;
- promoting bonuses for games of chance to participants is only allowed on the organiser's own website or in its own locations and/or on affiliates websites (holding a Class 2 licence) and/or through the sending of electronic messages to players holding active accounts, in its own database, provided that the latter have given their prior consent to receive such messages; and
- certain restrictions are applicable for TV advertising, mainly in terms of the timeslots when such advertising is allowed.

2.7 What are the tax and other compulsory levies?

Gambling activities are generally subject to the following taxes and fees:

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- Annual licensing fee and annual authorisation fee

  Both the annual licensing fee and the annual authorisation tax need to be paid before commencing gambling activities in Romania.

  The annual licensing fees range between EUR 6,000 and EUR 120,000. Fees for temporary games (operating for up to a three-month period) or poker festivals are lower.

  The annual authorisation tax for remote games of chance will be calculated as 16% of the gross gaming revenue, but not less than EUR 100,000, whereas the annual authorisation tax for traditional games of chance varies, both in terms of the method of calculation and in terms of the amount payable, from one type of game to another.

- Corporate income tax

  Where applicable, the general corporate income tax rate is 16%, applied to the taxable profit (i.e., accounting profit adjusted with non-taxable revenues and non-deductible expenses). The law provides for an exception in what concerns casino activities, where it is stated that this category may be subject to a 5% turnover tax in case the profit tax is less than 5% of their revenues.

- Income tax on players' gains

  Generally, the tax on players' revenue is to be withheld by the organiser of the gambling activity; for remote gambling, the tax must be declared and paid directly by players on an annual basis. Each online gambling organiser will need to communicate each gross revenue obtained by each player to the tax authorities on a yearly basis. In addition, the organiser will have to annually transmit to the players the information referring to the revenue achieved within the respective fiscal year.

- Special taxes

  The law also regulates other special taxes, such as: (i) 3% applied on the video lottery operators' revenues; (ii) access fees for casinos (RON 50) and poker clubs (RON 30); (iii) a vice tax for slot machines in amount of EUR 400/authorised post/year (not applicable for AWP); and (iv) administrative taxes for obtaining the licence for remote games, namely (a) a tax of EUR 2,500 for analysing the file, and (b) a tax of EUR 8,500 a year for each licence issued.

2.8 What are the broad social responsibility requirements?

The gambling regulatory framework is focused on protecting minors and preventing their access to gambling, preventing fraud, money laundering and the financing of terrorist actions, as well as ensuring the integrity and transparency of gambling activities, and maintaining a fair game system which is constantly supervised.

For remote gambling the legal framework specifically provides for mechanisms to allow players to set daily, weekly or monthly play limits, and to self-exclude from the game temporarily or permanently.

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

Payment instruments used in the financial-banking system and money, including bank cards, are accepted forms of payment that contribute to the operation of games of chance.

In addition, all payments to players should be made only through payment processors, who, in addition to having an authorisation for payment services or for the issue of electronic coins, are also licensed by the Office (a Class 2 licence) or by land-based gambling operators who perform deposits to, or withdrawals from players accounts in the name and on behalf of remote gambling operators, based on their prior agreement.

Romanian legislation does not regulate the use of virtual currency for gambling.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

According to the Romanian gambling legislation, the permitted remote products defined as "remote products" (in Romanian "*la distanta*") are as follows:

a) lottery games are under the legal monopoly of, and may only be carried out by, the National Company Loteria Romana;

b) casino-type games defined as gambling activities characteristic to games played in casinos and poker clubs, played entirely without the players being physically present, organised by the same operator, on the same gaming platform, using a single internet domain, and which are organised and transmitted via any communication system (internet, fixed or mobile telephone system or any other transmission system);

c) fixed betting;

d) mutual betting;

e) betting exchange;

f) bingo and keno games;

g) tombola games defined as the activity of drawing numbers, letters or other symbols, regardless of the characteristics of the equipment used to make the draw (cups, drums, wheels or other similar equipment), organised without the players being physically present, whereby the prizes are fixed and do not depend on the number or the price of the tickets sold, or of the stubs, tokens and other evidence of participation in the tombola. The winners – a predetermined number of participants – will be established by means of a random draw of at least 50% of the total value of the stakes paid to participate in the game in compliance with rules posted in advance and approved by the NOG's Supervisory Committee. The prizes may only be issued in kind and must have a minimum value; and

h) any other type of games of chance, such as (i) new games, or (ii) combinations of games regulated by the gambling legislation and for which an organiser obtains a licence and an authorisation from the NOG's Supervisory Committee.

3.2 What other restrictions have an impact on online supplies?

In order to protect consumers from unlicensed operators, the Office has the responsibility and obligation to identify the websites that enable access to remote games of chance which do not hold a licence to organise/an authorisation to operate games of chance in accordance with Romanian legislation.

Moreover, the Office should identify the websites used for carrying out marketing, advertising and publicity activities, or any other promotional activities relating to the remote games of chance or activities and services related to these, which are not authorised in accordance with Romanian legislation.

In such cases, the Office communicates all information regarding any unauthorised activities identified to the internet providers,

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so that access to these websites can be blocked, and in addition shall also communicate the information about these unauthorised websites to payment institutions and services so that any payments to and from these unauthorised websites can be blocked.

The operators carrying out unauthorised remote gambling activities will be literally blacklisted, along with their unlawful websites. Such blacklist is available on the website of the Office, at http://onjn.gov.ro/lista-neagra/.

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

The Romanian gambling legislation in force covers terminal/machine-based gaming as follows:

- Slot-machine-type games can be grouped into three categories:
  - i) slot-machine-type games with unlimited stakes and winnings;
  - ii) slot-machine-type games played via electronic devices offering limited-risk winnings (also known as AWP – Amusement with Price); and
  - iii) video lottery or VLT gaming activity, carried out via specialised terminals, which attributes winnings randomly, the result of the participation to the game being displayed to the player via the video lottery terminal, the dexterity or the ability of the player not having any influence/relevance in obtaining the winnings. The video lottery game is performed via an unitary network of terminals with closed circuit that functions only when connected to the central national level system via the internet.

For slot-machine-type games, the minimum number of pieces of gaming equipment that may be operated by the same gambling operator will be 75 slot machines (electronic devices with unlimited stakes and winnings and/or electronic devices offering limited-risk winnings, including gaming stations or terminals constituted as a single entity), which may be operated in the same or different premises.

According to the provisions of the primary law in force, the number of slot machines for each location is as follows:

(i) a minimum of 20 slot machines for gambling halls located in Bucharest, or a minimum of 12 slot machines for those in locations other than Bucharest;

(ii) a maximum of three electronic devices offering limited-risk winnings for spaces in which other business activities take place, with only a single organiser placing, organising and operating the gaming equipment in question at the premises;

(iii) a maximum of five slot machines for premises authorised for betting activities;

(iv) a minimum of 50 pieces of gaming equipment interconnected within the jackpot gaming system where the gaming equipment is operated in at least two premises;

(v) a minimum of two gaming terminals (stations) for slot-machine-type games that are built as a single entity and operated from multiple gaming terminals (stations); and

(vi) a minimum of two slot machines for premises authorised for temporary games.

- Betting activities

For betting activity, the minimum number of locations in which the activity can be carried out by the same economic operator is 15, whereas the minimum number of specialised terminals that an economic operator may have is 30.

Depending on their operating method, betting terminals can be grouped in two categories: (i) dependent terminals, which are operated by the organiser's personnel working within the betting agency; and (ii) autonomous terminals, which are operated directly by the game participants.

A betting agency is a specialised location used for betting activities – traditional games – such as mutual betting, fixed-odds betting or betting exchange, in which at least one dependent betting terminal is operated.

These games of chance will be operated directly within the agency via dependent or autonomous betting terminals, or at premises specialised in gambling activities via autonomous terminals, providing that the activity is centralised and the results are reported through the respective work point or through a work point or betting agency belonging to the organiser, designated for collection operations, if the results homologation and winnings validation operations cannot be performed directly by the player by operating the terminal.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Carrying out any activity in the gambling sector without a licence or authorisation is considered a criminal offence and is punished with a prison sentence of between one month and one year or a criminal fine. According to the provisions of the Romanian Criminal Code, the sanction applied to a legal entity for committing such a crime is a fine of between approximately EUR 2,250 to EUR 22,500, as well as the additional sanction of dissolving the legal entity. Additional measures, such as the confiscation of the revenues arising from the illicit activity, may be imposed.

Based on the provisions of the Romanian Criminal Code, when the elements of a criminal offence are met, criminal liability arises. In order for a criminal offence to exist, the deed provided for by the criminal law must be committed with guilt, unjustifiable (e.g., not in self-defence) and imputable to the person who committed it (e.g., not under exterior constraints). The criminal infringement, provided for in Romanian gambling legislation, is presumed to have been committed with intentional guilt, as there can be no actions committed by fault under EGO 77/2009. Furthermore, the persons having committed the criminal offences may be either authors or co-authors, or even instigators and accomplices, provided that all elements of the criminal offence are fulfilled for each one of them.

In addition, carrying out any of the activities related to remote gambling activities in Romania (namely the activities of the operators which offer management and hosting facilities on their gambling platform, payment processors, manufacturers and distributors of software, affiliates, certifiers and auditors to the gambling sector) without a Class 2 licence is considered a minor offence and is sanctioned with a fine of between RON 50,000 to RON 100,000 and confiscation of the amounts derived from the illicit activity. However, in a rather conservative interpretation of the legal provisions, criminal liability cannot be excluded due to the fact that the operation of any kind of activities related to the gambling field in the absence of a licence constitutes a criminal offence (and the primary legislation does not make a distinction in this sense between First Class licensees and Second Class service providers).

In what concerns the players, participation in remote gambling activities not authorised by the Office by natural persons, in Romanian territory, represents a minor offence. The sanction for this offence is a fine of between RON 5,000 and RON 10,000.

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4.2 What is the approach of authorities to unregulated supplies?

In recent years, less than 30 civil and criminal cases pertaining to gambling activities have been finalised (in some of the cases, with a court's decision for conviction leading to imprisonment) or are currently pending before the Romanian courts.

The regulator has already blacklisted certain operators (the full list is available at: http://www.onjn.gov.ro/home/lista-neagra) and has instructed all internet service providers to block access to their websites, and redirect all traffic to an IP address that is publicly known to belong to the Special Telecommunications Service (the central specialised structure which organises and coordinates the activities in the special telecommunications field for the Romanian public authorities, having military structure and being part of the national defence system).

The most visible cases remain the cancellation by the Office of the interim right to operate granted to HILLSIDE GAMING LP and HILLSIDE SPORTS LP (bet365.com) as well as EUROPE ENTERTAINMENT LIMITED (stargames.com and skill7.com) – against which the Office has also filed criminal complaints, but also the revocation of the interim right to operate granted to RG FAIRPLAY SRL (dollarobet.ro). In the court actions filed against the Office, the Bucharest Court of Appeal has recently decided that the interim rights granted to EUROPE ENTERTAINMENT LIMITED as well as HILLSIDE GAMING LP and HILLSIDE SPORTS LP have been erroneously cancelled by the regulator and ruled that the cancellation decisions issued by the Office must be in their turn cancelled. The two court decisions are subject to appeal in front of the High Court of Cassation and Justice.

Gambling has also been on the agenda of the National Audiovisual Council since the beginning of 2017. The audiovisual regulator has recently summoned several TV stations to enter into legality due to the fact that they broadcasted commercials for online gambling services (licensed in Romania) during timeframes considered by the Council as available to the general public, thereby breaching the principle of minors protection. This action does not clarify the permitted timeslots for airing gambling advertisements on television, since there is a discrepancy between the intervals mentioned in the Council's sanctionatory decision and the subsequent official press release on this topic.

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

Under Directive 98/34/EC, when laying down a procedure for the provision of information in the field of technical standards and regulations, Member States (thus, including the Romanian State) must notify the European Commission and other Member States of the draft regulations regarding products and Information Society services (such as remote gaming and betting) before adopting them.

4.4 Are gambling debts enforceable in your jurisdiction?

Only debts arising from authorised games of chance are enforceable.

5 Anticipated Reforms

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

While discussions about a new taxation system for remote games of chance have been carried out with the local authorities, no draft legislation on this matter has been made public by the date of the writing of this chapter.

Another important legislative proposal which may impact the gambling industry refers to the draft bill restricting gambling advertising in the audiovisual medium. More specifically, there is a proposal to amend the audiovisual legislation in the sense of introducing a total ban of gambling advertising in the audiovisual environment. However, such legislative proposal has sat with the Romanian Parliament for more than a year now.

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NNDKP is a preeminent full service business law firm active in Romania and a trusted legal and tax advisor to domestic and international companies, financial institutions and entrepreneurs. We line-up one of the most reputed and the strongest teams in Romania.

In gaming, our dedicated practice has been at the forefront of the development of the Romanian gambling market. We have been building our expertise for the past several years, since the first international companies active in this field started tackling Romania. Members of our team have been directly involved in the drafting of the primary and secondary Romanian gambling legislation.

We are well equipped to provide specialised gaming advice doubled by seamless access to a vast pool of resources across business law areas, including IP, tax, commercial, M&A, data protection, competition and more.

Operators, financial services providers, industry-relevant associations, auditors and certifiers, marketing affiliates in the gambling industry and software/platform suppliers for the gaming industry regularly turn to us for expert legal advice in this industry.

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Slovakia

WH Partners

Robert Skalina

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

There are several entities which are involved in the regulation and supervision of gambling games in the Slovak Republic. These are:

a) the Ministry of Finance of the Slovak Republic ("Ministry");
b) the Financial Directorate of the Slovak Republic ("Financial Directorate");
c) tax offices;
d) customs offices; and
e) municipalities.

Each of them has a specific role described in Act No. 171/2005 Coll. on gambling games, as amended ("Gambling Act").

The Gambling Act regulates the following types of gambling games:

a) lottery games (in particular: draw lotteries; raffles; numerical lotteries; bingo; instant lotteries; and cash receipts lotteries);
b) casino gambling games;
c) betting games;
d) gambling games operated by means of gambling machines;
e) gambling games operated by means of technical equipment operated directly by gamblers or operated by means of telecommunication equipment, and video lottery terminals;
f) gambling games operated via the Internet ("Internet Games");
g) off casino card games;
h) charity lotteries; and
i) any other games which meet the conditions laid down in the definition of a gambling game ("Other Games").

A gambling game is defined in the Gambling Act as a game in which a player, after paying a deposit (except in the case of cash receipts lotteries), may obtain winnings, provided that he/she meets the conditions specified in advance. The result of a gambling game has to depend solely or predominantly on luck or a previously unknown result of a certain circumstance or event.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

The Gambling Act contains comprehensive regulation of gambling games in the Slovak Republic.

Some of the other acts and decrees which also impact upon gambling activity are:

- Act No. 40/1964 Coll. Civil Code ("Civil Code");
- Act No. 71/1967 Coll. on administrative proceedings (Administrative Procedure Code);
- Act No. 264/1999 Coll. on technical requirements for products and on conformity assessment;
- Act No. 300/2005 Coll. Criminal Code ("Criminal Code");
- Act No. 250/2007 Coll. on consumer protection;
- Act No. 297/2008 Coll. on protection against money laundering and terrorism financing ("AML Act");
- Decree of the Ministry No. 641/2008 Coll., laying down requirements for equipment and systems used in the operation of video games;
- Decree of the Ministry No. 17/2009, laying down the requirements for an expert appraisal of equipment and systems used in the operation of gambling games;
- Act No. 492/2009 Coll. on payment services;
- Act No. 563/2009 Coll. on administration of taxes ("Tax Code");
- Act No. 351/2011 Coll. on electronic communications; and
- Act No. 122/2013 Coll. on personal data protection.

There is no specific regulation of skill games, social games, fantasy, virtual or eSports in the Gambling Act. That does not mean that they are not permitted or do not constitute gambling games as such. They are considered gambling games and are regulated by the Gambling Act if they involve: (i) payment of a deposit in cash or other asset; (ii) winnings; and (iii) the result depends solely or predominantly on luck or a previously unknown circumstance or event.

Major licensed operators of betting games offer bets on virtual sports/eSports, including via the Internet as a communication channel, under their individual licences to operate betting games.

The Gambling Act expressly states that the following activities are not gambling games:

a) games of a relaxation or sporting character, even if a stake is necessary for participation in them, which is not refundable if the participant loses;
b) entertainment games for material prizes using a gambling device, if the stake does not exceed €0.50;
c) games using a gambling device in which winnings constitute another game on the same gambling device;
d) quizzes based on answers to questions or proving knowledge and skill, if the result is determined predominantly based on proving knowledge and skill;
e) draw in-kind lotteries and raffles, if the game principal does not exceed €1,500;

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f) promotional contests which are not an independent business activity and serve only for sales promotion of goods and services and in which a payment of a deposit in cash or other asset is not a condition of participation; and

g) sporting events pursuant to Act No. 1/2014 Coll. on organising public sporting events, including those which are not considered public under such act.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

A licence may be granted or issued only to a legal person with a registered office in the territory of the Slovak Republic. Such legal person can have foreign owners only if they have a registered office or permanent residence in another EU Member State or a member state of the OECD.

Individual licences can only be issued and held by a joint-stock company or limited-liability company with a Supervisory Board established.

There is no limitation on the number of licences which can be issued for each type of gambling game.

There is a state monopoly for the operation of the following gambling games, as a licence for their operation can only be granted to the national lottery company wholly owned by the state:

a) numerical lotteries;

b) special bingo;

c) cash receipts lotteries; and

d) Internet Games.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Only operators must hold a licence. Entities which do not operate gambling games are not required to hold a licence. As such, key suppliers do not need a licence. Personal licences are not required. Specific premises licences are also not required.

2.3 What restrictions are placed upon any licensee?

During the entire duration of the licence, the licensee has to comply with the Gambling Act and any conditions set out in the licence.

2.4 What is the process of applying for any gambling licence or regulatory approval?

The available licences, according to the Gambling Act, are:

i. general licences; and

ii. individual licences, which are the following:

  i. a licence for the operation of lottery games;

  ii. a licence for the operation of casino gambling games;

  iii. a licence for the operation of betting games;

  iv. a licence for the operation of gambling games by means of gambling machines;

  v. a licence for the operation of gambling games operated by means of technical equipment operated directly by gamblers or operated by means of telecommunication equipment, and operation of video lottery terminals;

  vi. a licence for the operation of Internet Games;

  vii. a licence for the operation of the state lottery;

  viii. a licence for the operation of a charity lottery; and

  ix. a licence for the operation of Other Games.

General licences, issued by the Ministry, cover:

a) draw in-kind lotteries;

b) raffles; and

c) off casino card games.

For a general licence, the Ministry will determine the conditions for the operation of draw in-kind lotteries, raffles and off casino card games. The Ministry shall issue a general licence for a number of legal persons not determined beforehand.

After meeting the conditions specified in the general licence, an operator may operate the gambling game for which this general licence is issued. Prior to commencement of the operations under a general licence, an operator has to make a written notification of the intention to operate the respective gambling game to the locally competent tax office.

Individual licences are issued by the Ministry or municipality. Municipalities issue an individual licence for gambling game operation by means of the gambling machines that are located in their territory. In all other cases, including the licence for the operation of gambling machines in casinos, or if bets are made in foreign currencies, the individual licence is granted by the Ministry.

The Gambling Act contains a list of documents and information which an applicant for an individual licence shall provide in its application irrespective of the type of gambling game it wants to operate. The information which needs to be provided relates to the applicant, its officers, directors and shareholders, its business activities and source of funds and includes, *inter alia*, proof of good standing and minimum capital as required by the Gambling Act, proof of satisfaction of technical and personal requirements as set out in the Gambling Act, proof of payment of a financial surety as required by the Gambling Act, proof of no debts to the tax authorities, proof of payment of the application fee, a game plan which has to be approved by the Ministry, a business plan which shall include expected revenues in the first three years of operation, expected expenses and the extent of liabilities in connection with the operations, documents on the technical assessment of the equipment and systems which will be used during the operation of gambling games, etc.

The Gambling Act also contains certain additional specific requirements for certain types of games. For example:

i. In case of the following games:

- casino gambling games;
- gambling games by means of gambling machines;
- gambling games operated by means of technical equipment operated directly by gamblers;
- video lottery terminals; or
- Other Games,

an applicant has to provide a written declaration that the operation of such games is not restricted by a generally binding order of the municipality in the territory of which it wants to operate. The applicant must also provide the municipality's opinion on placing the casino, technical equipment or video lottery terminals respectively in its territory. Such opinion is valid for one year and new opinion has to be supplied to the Ministry upon its expiry each year.

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ii. In case of betting games and bingo, applicants must also provide consent of the municipality, in the territory of which the betting office is to be located or bingo is to be operated.

The individual licence for most type of gambling games shall be granted no later than within 15 business days from the day of submission of a complete application for an individual licence. In case of an application for an individual licence for the operation of casino gambling games, the Ministry shall make a decision on whether to grant the licence or not within 60 days from the day of submission of a complete application.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

General licences are issued for an indefinite time period.

Individual licences can be granted for a maximum of:

a) two years for pecuniary draw lotteries, pecuniary-in-kind draw lotteries, and instant lotteries;

b) five years for betting games;

c) five years for bingo except for special bingo;

d) one calendar year for gambling machines, except for gambling machines operated in casinos, for which an individual licence is granted for a period corresponding to the life-cycle of gambling machines; however, this can be no longer than until the end of the validity of the licence for gambling game operation in casinos;

e) two years for gambling games operated by means of technical equipment operated directly by gamblers or for gambling games operated by means of telecommunication equipment, and for operation of video lottery terminals;

f) five years for the state lottery;

g) two years for gambling games in casinos;

h) five years for charity lotteries; and

i) two years for Other Games.

The Ministry or municipality can revoke an individual licence if the gambling game is not operated in compliance with the conditions laid down in the Gambling Act or the conditions specified in the individual licence. The Ministry or municipality will revoke an individual licence if such facts occur or additionally emerge, the occurrence of which means it would not be possible to grant the individual licence, or if it finds out that the data, based on which the individual licence was granted, are not true.

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

It is prohibited to accept stakes, accept bets, pay out winnings, draw lots, and perform other acts leading to the determination of the result of a gambling game, as well as to perform other acts which during the operation of a gambling game are performed publicly, or during which communication between the player and the operator takes place, except for the publishing of results of gambling games, and except for the operation of the numerical lottery Eurojackpot, including its supplementary game, on the following days:

a) Good Friday;

b) 24 and 25 December;

c) national days of mourning; and

d) outside of opening hours.

Municipalities may by a generally binding order prohibit the existence of 'gambling houses' in its territory and thus also the existence of gambling machines and video lottery terminals (among others) in its territory.

2.7 What are the tax and other compulsory levies?

In addition to the general income tax, which amounts to 21% of taxable profits, gambling game operators must also pay a gambling levy, as follows:

a) 15% of the game principal to the state budget in the case of draw lotteries and raffles;

b) 20% of the game principal to the state budget in the case of numerical lotteries;

c) 20% of the amount calculated as the difference between the game principal and the winnings paid out to the state budget in the case of instant lotteries;

d) 6% of the game principal in the case of charity lotteries and betting games (except for race bets); and in the case of odds betting games, 5.5% of the game principal shall be paid to the state budget and 0.5% to the budget of the municipality in which the establishment is situated;

e) 4.5% of the game principal in the case of bingo, of which 4% is paid to the state budget and 0.5% to the budget of the municipality in which the bingo room is situated;

f) 4% of the game principal in the case of special bingo shall be paid to the state budget;

g) 1% of the game principal in the case of race bets shall be paid to the state budget;

h) 30% of the game principal in the case of casino gambling games including board games and gambling games operated through technical equipment operated directly by gamblers, of which 27% of the game principal shall be paid to the state budget and 3% to the budget of the municipality in which the casino is situated;

i) €2,600 per calendar year and per gambling machine shall be paid to the state budget, in the case of gambling games operated through gambling machines on the basis of an individual licence granted by the municipality, regardless of the period of operation during the calendar year. In the case of gambling machines operated on the basis of an individual licence for gambling game operation in casinos, €4,700 per calendar year shall be paid to the state budget for each such gambling machine regardless of the period of operation during the calendar year, and €2.20 per such gambling machine per day (subject to a minimum of €800 per calendar year) to the budget of the municipality;

j) €3,900 per calendar year per technical device regardless of the period of operation during the calendar year shall be paid to the state budget in the case of gambling games operated through technical equipment operated directly by gamblers, and €2.50 per such technical device per day (subject to a minimum of €900 per calendar year) shall be paid to the budget of the municipality;

k) €4,700 per calendar year shall be paid to the state budget per video lottery terminal, including the terminals operated on the basis of an individual licence for gambling game operation in casinos regardless of the period of operation during the calendar year, and €2.20 per such terminal per day (subject to a minimum of €800 per calendar year) shall be paid to the budget of the municipality;

l) €200 per table per calendar month or €1,500 per table per calendar year shall be paid to the state budget in the case of off casino card games;

m) 10% of the game principal in the case of gambling games operated through telecommunication devices shall be paid to the state budget;

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n) 27% of the difference between the stakes received and the winnings paid out shall be paid to the state budget in the case of Internet Games; and

o) in the case of Other Games, the Ministry shall specify the amount of the levy, taking into consideration the amount of the levy referred to in letters a)–n) above in respect of a gambling game the nature of which is the most similar to the relevant Other Game.

2.8 What are the broad social responsibility requirements?

Minors cannot participate in gambling games and the operators are obliged to take measures to prevent them from participating in gambling games.

As of 1 January 2019, any natural persons included in the register of the natural persons excluded from gambling ("register of excluded persons") will not be allowed to participate in most types of gambling games and the operators will be obliged to take measures to prevent such persons from participating in such games. Persons included in the register of excluded persons will also be prohibited from entering any 'gambling house' and the operators will be obliged to ensure compliance with this prohibition.

The operators must keep a game plan of the gambling game which they operate in a visible place in all rooms used for gambling game operation, which the gamblers can access.

The operators of:

a) casino gambling games;

b) gambling games operated by means of gambling machines;

c) gambling games operated by means of technical equipment operated directly by gamblers or operated by means of telecommunication equipment; and

d) video lottery terminals,

are obliged to place, in a visible place on the technical equipment operated by them and intended for gambling game operation, the telephone number of a specialised healthcare institution operating in the area of prevention, diagnostics and treatment of substance and non-substance addictions, which will also be published by the Ministry on its website.

The operators of a gambling game who use the Internet for data transmission and collection and operators of Internet Games shall, *inter alia*, provide players, in a visible place during the entire game, with information on the health risks resulting from excessive gambling, warning that gambling games represent a risk of high financial losses, and information on the time spent playing the game.

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

Customers can make their stakes in cash or using a cashless method (via bank account transfer, bank cards or other payments systems permitted under Slovak law).

Neither the Gambling Act nor any other piece of legislation regulate virtual currencies. Their use in the gambling games is thus not regulated either.

Gambling Operators are obliged to identify players and comply with all other relevant obligations under the AML Act.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

The Gambling Act defines Internet Games as gambling games, in which a gambler participates through connection via the Internet to the game server of the gambling game operator or an entity authorised by them, on which game systems are placed using software through which the gambling game is operated, and the gamblers play against this game system or against each other. The Gambling Act also expressly states that the transmission and collection of data and information connected with the operation of gambling games realised via the Internet is not considered to be the Internet Game.

Internet Games in Slovakia are constituted by the state lottery, and a licence for the operation of the state lottery can only be granted to a national lottery company wholly owned by the state.

Despite the state monopoly over the operation of Internet Games and with the Ministry's consent, odds betting games are operated via the Internet as a communication channel by several private operators who hold individual licences to operate betting games.

3.2 What other restrictions have an impact on online supplies?

The Financial Directorate compiles and publishes a list of websites through which legal persons or natural persons provide or promote unlicensed gambling games via the Internet (the "Blacklist") on its website on the first business day of each week.

The Financial Directorate can request a local court to issue an order addressed to Internet service providers, instructing them to prevent access to the website through which an unlicensed operator offers gambling games via the Internet (a "Site Blocking Order") and/or an order addressed to payment service providers instructing them to prevent execution of a payment operation or other payment service in favour of a bank account used by an unlicensed operator offering gambling games via the Internet (an "Account Blocking Order").

A Site Blocking Order or an Account Blocking Order must be issued within seven days from the filing of the request by the Financial Directorate. The Gambling Act states that no remedy is admissible against the Site Blocking Order or the Account Blocking Order.

If the reasons for the issuance of a Site Blocking Order or an Account Blocking Order cease to exist, the Financial Directorate shall ask the respective court to cancel it.

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

The following types of terminal/machine games are permitted under the Gambling Act:

1. gambling games operated by means of gambling machines;
2. gambling games operated by means of technical equipment operated directly by gamblers; and
3. video lottery terminals.

As of 1 January 2018, it will only be possible to operate all of these machines in a 'gambling house', which means a room or a set of rooms connected with each other, purpose fitted and set up for the

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operation of such games. A 'gambling house' must be situated in an isolated area with a separately lockable entrance and must be part of a building construction with walls. A 'gambling house' can only be located in:

a) hotels, motels, and lodging houses;
b) buildings used for trade and services;
c) buildings used for culture and public entertainment; and
d) apartment dwelling houses, if a majority of the owners of units in such houses provide their written consent.

As of 1 January 2018, the minimum number of such machines/terminals in any given 'gambling house' will be set at 12.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Primary responsibility for breaches of the gambling legislation lies with the operators and persons who promote gambling games.

Additionally, persons who, based on a contractual or similar relationship, perform activities connected with the operation or promotion of gambling games are liable under the Gambling Act. This is a broad and catch-all category which can potentially include even other entities in the supply chain.

Internet service providers and payment service providers are also liable and face sanctions in case they do not comply with Site Blocking Orders and Account Blocking Orders.

Under the Criminal Code, unauthorised operation of lotteries and other similar games is a criminal offence punishable with imprisonment for one to 15 years and forfeiture of property.

4.2 What is the approach of authorities to unregulated supplies?

Unlicensed land-based offers are being targeted based on the Gambling Act in administrative proceedings as well as the Criminal Code in criminal proceedings.

Unlicensed online offers were to a large extent not specifically targeted until July 2017. An amendment to the Gambling Act adopted in 2016 granted broad powers to oversee unlicensed online offers to the Financial Directorate. It has powers to include such offers on the Blacklist and request the local court to issue Site Blocking Orders and Account Blocking Orders. A penalty of up to €500,000 may also be issued to unlicensed operators.

The Financial Directorate compiled and issued the first Blacklist on 17 July 2017. It included several of the major international operators who hold licences in other EU Member States. Since then, the Financial Directorate has been expanding the Blacklist on a weekly basis. The Blacklist is available at: https://www.financnasprava.sk/sk/infoservis/priklady-hazardne-hry.

The first Site Blocking Orders and Account Blocking Orders were issued in August 2017. Additional Blocking Orders have been issued since then. They are available at: https://www.financnasprava.sk/sk/elektronicke-sluzby/verejne-sluzby/zoznamy/prikazy-sudu-k-zakazanym-ponuk.

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

Yes. The Slovak Republic is a Member State of the EU. EU laws are therefore applicable; in particular:

- the freedoms guaranteed by the Treaty on the Functioning of the European Union;
- case-law of the European Court of Justice; and
- obligations under Directive 98/34/EC and Directive (EU) 2015/1535;

impact upon enforcement by the Slovak authorities of the Gambling Act *vis-à-vis* operators based in other EU Member States.

4.4 Are gambling debts enforceable in your jurisdiction?

The Civil Code states that winnings from bets and games are not enforceable. It also states that it is also not possible to enforce loans made knowingly in connection with a bet or a game. Nevertheless, this does not apply to gambling games under the Gambling Act. As such, the winnings from the gambling games and loans made in connection with the gambling games regulated by the Gambling Act are enforceable.

5 Anticipated Reforms

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

The Ministry intends to make certain changes to the regulation of gambling games operated via the Internet and present the draft for comments to the public in January 2018. The details of proposed changes are not yet available.

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Spain

Patricia Lalanda Ordóñez

LOYRA Abogados

Fernándo Martín Martín

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Gambling activities in Spain can be divided into the following categories:

- "Public gambling", which is a State monopolistic activity entrusted to two incumbent operators, SELAE and ONCE, which are in charge of managing a series of passive, deferred, result-type lottery games and sport and charity pool betting; and
- "Private gambling", made up of licensed private operators, who are subject to an intense regulatory burden and which comprises all other types of gambling (land-based and online).

The Spanish Constitution divides regulatory and other powers over a series of matters between the central State and the Autonomous Regions (*Comunidades Autónomas*) ("Regions"). The Regions have taken on the regulation, authorisation, taxation and supervision of private and public gambling activities within the scope of their respective territories.

Any State-wide gambling offering is subject to the competence of the Ministry of Finance and General Government. Within the same, the Directorate General for the Regulation of Gambling (*Dirección General de Ordenación del Juego*) ("DGOJ") regulates, authorises, supervises, controls and, if necessary, penalises gambling activities in the Spanish State. Hence, it has competence over private and public online gambling offered in more than one Region.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Gambling is understood to be any activity involving risking sums of money, or items of economic value in whatever form, on future and uncertain results which depend to some degree on chance, and which allow these sums to be transferred between the participants, regardless of whether the level of skill of the players has a decisive impact on the results, or if the results depend wholly or fundamentally on luck, stakes or chance. The prizes may be in cash or in kind, depending on the type of game. Any activity falling within this definition is subject to specific gambling legislation. Social games are commonly understood to have no cash or economic-value prices, hence they are not considered as part of this definition.

Common legislation for land- based and online gambling

Gambling operators and activities are subject to the relevant laws governing the environment, zoning, advertising and anti-money laundering in addition to gambling regulation and taxes.

Land-based gambling

a) Casinos

Each Region has established a licensing regime to install and operate casinos. Usually, whenever a certain Region intends to grant a licence for a new casino, it must call and conduct a public tender, where applicants submit their proposal which must comply with the requirements of the tender in terms of investment size, technical and financial suitability, location, potential for employment creation, guarantees, feasibility study, etc. The licence is granted to the applicant who attains the best score according to a scale provided for in the tender. Typically, the total number of casinos that can be authorised within a concrete Region as well as the number of casinos that can be operated by the same operator (and its group of companies) is limited.

Once the licence to install the casino has been granted, the applicant must obtain the authorisation to operate it, which is not transferable. However, transfers of ownership of the applicant/operator are permitted, provided the Region is notified or, in some Regions, approved.

Generally, any company that intends to operate a casino must be duly incorporated in Spain, have a certain minimum share capital and have the operation of casinos as its primary business purpose. Shareholders, directors and top-level management need to undergo a suitability analysis and comply with regulatory requirements.

In the last few years, both the Regions of Madrid and Catalonia have approved legislation framing the licensing of "integrated resort"-type casinos to be installed and operated in their territory.

b) Gambling machines

Manufacturers and distributors must comply with legislation regarding the physical characteristics of the machines, amounts wagered, prize payout statistics and locations where each type of slot machine may be placed. In certain Regions, transfers of ownership interest in machine manufacturers and distributors are subject to prior authorisation or notification to the relevant Region.

Registration and homologation of each machine model is mandatory. Additionally, each machine must be labeled with the name of the manufacturer and the relevant operating permit. Moreover, machine manufacturers, distributors and operators must register with and be approved (in terms of technical, reputational and financial suitability and compliance) by the gambling authority of the Region in which they intend to conduct business. Machine operators are also required

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to deposit financial guarantees which vary across each Region and must keep records and documentation related to the machines they operate. In addition, there are regulations on the types of locations at which machines can be installed and the number of machines that can be placed in each of them.

Regulations refer to three general types of machines: Type A (amusement only – although excluded from Directive 123/2006/CE); Type B (amusement-with-prize, "AWP"); and Type C (casino-type). There are sub-types and other classifications that are being omitting herein for the sake of simplicity. AWP machines installed in bars are the most common (max payout: €500).

Multi-position machines and the possibility of linking them in certain locations and under a number of requirements are generally allowed in the Spanish Regions and may offer larger prizes (i.e. the highest is €80,000 in the Madrid Region for bingos).

c) Gambling arcades

Regional laws and regulations have some differences, but the key requirements for the grant of a licence for the operation of gambling arcades are the following: (i) registration with the regional registry as a gambling arcade operator (including a statement as to the machine type(s) that are intended to be installed); (ii) a specific gambling arcade licence; (iii) provision of financial guarantees; (iv) municipal licences for the operation of the location of the gambling arcade; (v) communication to the competent gambling authority of any change in the information supplied; and (vi) in some Regions, annual or monthly reporting of key information.

d) Bingo halls

Regions have passed legislation for the installation and operation of bingo halls including many requirements as to registration with the competent authority, incorporation and corporate purpose, and the provision of financial guarantees. In addition, bingo hall operators must comply with filing requirements related to employees and obtain authorisations for transfers of ownership or variations in the terms and conditions of the licence. Over the past few years, electronic and inter-connected bingos have been regulated in several Regions. Bingo halls may also, under certain conditions, operate Type B machines.

e) Sports betting

Regulation is variable across the Regions and sports betting terminals and counters can only be installed in certain gambling locations. Dedicated sports betting locations may also be opened in certain Regions.

f) Regional lotteries

The Regions may also regulate public gambling activities (lotteries) that take place within their respective territories.

Online gambling operations – State level

Online gambling is regulated by Law 13/2011, of 27 May 2011, on the regulation of gambling (''Law 13/2011''), which applies to the offering of gambling via interactive means both from Spain and to Spain.

There are three types of general licences: "bets"; "contests"; and "other games". In addition, the online gambling verticals that can be offered via singular licence: "bingo"; "black jack"; "roulette"; "baccarat"; "slots"; "poker"; "complementary games"; "fixed odds betting"; "fixed odds sports betting"; "sports pool betting"; "horse fixed odds betting"; "horse pool betting"; and "exchange betting". If not comprised within the latter definitions, they cannot be offered.

Law 13/2011 has been implemented with the approval of a long set of regulations (Royal Decree 1613/2011 on technical requirements, and Royal Decree 1614/2011 regulating licences, authorisations and gambling registers), resolutions (technical, regulatory implementation, procedures and responsible gambling) and ministerial orders (one for each type of gaming vertical, i.e. singular licences).

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Please see question 1.2 above.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Land-based gambling

Please see question 1.2 above.

Online gambling – State level

As opposed to other EU jurisdictions, there is no distinct licence for platform software providers. However, any entity who fully or partially carries out a gambling activity, having revenue from that activity related to the gross or net revenue, commissions, and any amounts for gambling-related activity, and which in turn carry out any marketing of the gambling activity, such as non-exhaustively determining the number of prizes or matches, managing policies on players, transactions and settlement of payments, managing the gambling platform or user accounts, is considered an "operator". Those who meet such requirements must obtain a gambling licence, which has been the case for some platform providers as there is no intermediate legal figure.

Other key suppliers do not have to obtain a specific type of gambling licence.

2.3 What restrictions are placed upon any licensee?

A licensee will not be granted a licence or it will be withdrawn if it or its management get involved in certain circumstances related to, e.g., crime, bankruptcy, failure to comply with the State or Regions gambling regulations, tax, or Social Security obligations compliance, etc.

2.4 What is the process of applying for any gambling licence or regulatory approval?

Land-based gambling

Please see question 1.2 above.

Online gambling – State level

As described above, at least two licences must be applied for (general and singular licence). General licences are granted via an open public tender (no limited number of licences, to date) that contains requirements regarding technical, financial, reputational compliance, software security and reliability requirements, and anti-fraud and anti-money laundering requirements. A company who seeks to obtain a licence must, among many other requirements, be a public limited company or limited liability company, with the company address in an EEA Member State ("MS"), which has a sole corporate purpose to organise, market and operate gambling activities.

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- Process financial obligations: among others, meeting the fees related to the regulated gambling activity which are: €38,000 for technical reports; €2,500 for registering each licence; and €10,000 for each gambling licence.
- Technical obligations: among others, creating a specific website under an '.es' domain; redirecting to the specific website under an '.es' domain; and implementing an internal monitoring system to capture and register gambling operations and financial transactions in Spanish territory.
- Timing: once the application is submitted there is a maximum period of six months to award the licence (or not). This term can be increased because of certain legal circumstances. Licences will be granted provisionally and from this moment gambling operation may begin, with the commitment to submit, within a period of four months, the final report of the gambling technical systems certification.

A guarantee in cash, real estate mortgage, insurance or security for an amount of €2,000,000 for general betting and other games licences or €500,000 for contest general licences must be set. The amount of the guarantees is reduced from year two onwards.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Land-based gambling

- Casino: 10–15 years (renewable) for the same periods of time.
- Gambling machines: five-year renewable term.
- Gambling arcades: (depends on the Region) the licence may be indefinite, e.g. Andalusia; or limited for 10 renewable years, e.g. the Canary Islands.
- Bingo halls: (depends on the Region) indefinite, e.g. Andalusia; 10 years, e.g. Valencia; or five years, e.g. the Canary Islands.
- Sports betting: Madrid and Valencia – 10 years; and Andalusia and Basque Country – indefinite.

Online gambling – State level

General Licences: valid for 10 renewable years. Singular licences: valid for three to five years, depending on the type of game. The licences will be annulled in the following cases: a) by express waiver from the licence holder; b) if the validity period elapses; and c) by termination by the DGOJ for a number of reasons.

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

Common to land-based and online gambling

There are certain groups of people who are restricted from gambling, among others, minors (under 18 years old), people who have been declared disabled by law or judicial resolution, and people who have voluntarily requested their access to gambling be prohibited.

Depending on the Region, gambling arcades can be limited in number (e.g. Basque Country) and/or distance between each other or to youth and learning facilities (e.g. Castilla y León), except for the Madrid, Extremadura and Asturias Regions, which have no limitations, including limitations regarding size. Likewise, the opening hours are different depending on each Region and on each type of gambling facility. It is the same case for bingo halls, which are also subject to regulations on size, number, location and opening hours, with the exception of the Madrid and Extremadura Regions.

Currently, credit to gambling patrons is generally prohibited under Spanish law.

Online gambling

Only residents from the Region's territory can play on regional online gambling webpages. State-wise, Law 13/2011 does not prohibit non-residents to play in an '.es' gambling webpage or APP against a Spaniard, but it is the operator's obligation, in compliance with other jurisdictions' gambling regulations, to block players' IPs from jurisdictions where gambling is prohibited for their residents.

Advertisements

Regarding State-wide online gambling activities, to carry out gambling activities on audio-visual programmes, news media or websites, operators must have authorisation. The applicable rules are: (i) the general Law 34/1988, on publicity, and others that do not make an express reference to gambling; (ii) the code of conduct of AUTOCONTROL, which is not mandatory; and (iii) the existing provisions of Law 13/2011, in particular articles 7 and 8, as well as several provisions contained in regulations that develop Law 13/2011.

The code of conduct sets, among other things, broadcasting time tables and recommends technical measures such as size, pixels, velocity, which the adverts should have, messages that must be shown, such as "play with responsibility", and a link to the webpage jugarbien.es.

At regional level, general publicity regulations apply as well. Although traditionally very strict in the Regions, gambling advertisements have been liberalised or subject to previous administrative authorisation.

Promotions such as bonuses are accepted for online gaming. These have been traditionally forbidden for land-based gaming, however legislation is changing towards liberalisation, depending on each Region.

2.7 What are the tax and other compulsory levies?

Generally, gambling taxes are imposed on the operator, i.e. the person or entity holding the relevant gambling licence. Manufacturers and distributors are not subject to gambling tax.

Gambling machine operators are required to pay gambling tax on a quarterly or half-year basis to the Region in which the gambling machine is operated. There is no taxable base, but an annual fixed amount that is paid for each gambling machine and which varies from Region to Region and depends on the type of machine (annual average at approximately €3,500). There are reduced tax amounts for multi-position machines (i.e. the fixed rate is not multiplied by the number of positions at the machine on a linear basis).

Casino operators are required to pay gambling taxes on a quarterly basis to the Region in which they are located. Taxes are based on a sliding scale and assessed on GGR for the table games activity and machines pay the corresponding fixed tax rate. For example, in the Andalusia Region, the sliding scale goes from 15% to 58% and Type C machines are taxed at an annual €5,300 (per position) fixed rate.

Sports betting operators pay a variable tax (for example, 10% in the Region of Madrid) on GGR.

Gambling arcades and bingo halls operators do not pay a specific gambling tax, which is levied on sales of bingo cards, the machines installed and sports betting activities, as applicable, that may be located in each of them.

In addition, gambling operators must pay certain one-off administrative taxes in relation to the grant of authorisations, installation of machines, renewals, homologation of machines, systems and gambling equipment, etc. Gambling activities are VAT-exempt, but gambling operators must bear VAT on any other services

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acquired from third parties and/or offered to customers. Corporate tax (statutory rate: 25%) and economic activities tax (depending on the municipality) further apply to their activities and locations.

Online gambling

Depending on the specific type of gambling activity, Law 13/2011 establishes 15% to 25% of stakes or GGR.

Players' tax

Players must declare winnings from gambling in their Personal Income Tax return; however, they can also deduct losses (levelling the winnings as maximum).

2.8 What are the broad social responsibility requirements?

Gambling operators shall draw up a series of measures related to mitigating the possible damaging effects that gambling may cause to persons, and they shall incorporate the basic regulations for a responsible gambling policy. Therefore, with regard to consumer protection it is necessary to: a) pay proper attention to risk groups; b) provide the public with the information needed to make a conscious choice about their gambling activities, promote moderate, non-compulsive and responsible attitudes to gambling; and c) inform of the prohibition to participate in games by minors and persons included in a registry (RIAJ), or in the Register of People Linked to Gambling Operators.

Online gambling operators (national) and gaming operators, generally, shall establish financial limits for the deposits each participant may receive daily, weekly or monthly in the different games.

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

Gambling operators and activities are subject to the relevant laws governing AML and terrorism prevention regulations. Directive 849/2015 of the EU and Law 10/2010 and Royal Decree 304/2014 include specific regulation on payment of prices and client identification which apply to providers. This regulation is more specific and intense in relation with casinos and online gambling. These regulations require operators to apply customer due diligence measures for single transactions amounting to €2,500 and €2,000 for buying/selling casino chips.

Regarding online gambling, cryptocurrencies such as bitcoin can be implemented as a means of collection/payment and an electronic collection/payment utility with bitcoins, provided that the gambling account of the player is nominated in euros. Regarding land-based gambling, the analysis of playing with bitcoins is a bit different; the rules expressly refer to monetary units in euros (the price of games or bets, the number of prizes, etc.) hence playing with bitcoins is not possible *a priori*.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Online gambling activities are defined as those games that are played with electronic, computerised, telematic and interactive means and those in which personal attendance is of an accessory nature. This scope encompasses the so-called "auxiliary terminals and machines" which are used for the organisation, operation or development of gambling activities. The latter plus the software used are understood to be part of the gambling platform and hence are subject to the same approval and certification gaming regulations. However, it is complicated to obtain the Regions' authorisations to install such terminals.

3.2 What other restrictions have an impact on online supplies?

State-wide online gambling is restricted to the regulated gambling verticals, previously licensed and to be offered according to the technical homologations granted, if breached sanctions are applicable, e.g. offering gambling to the Spanish territory without a licence is a very serious infringement of the law and a fine might be imposed between €1,000,000 and €50,000,000. Regarding enforcement, the Administration has been rather active with 55 sanctioning proceedings initiated for operating without a Licence and 91 for other infringements, during the period 2012 to 2015.

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

SB machines are not prohibited specifically in any Region but have only been regulated explicitly in the Castilla y León Region. In the rest of the Regions they are adapted to other types of gambling machine regulation.

Depending on the Region, the type of gambling facility and on the type of machines, the machines may allow cash or cards (or both). However, AWPs in bars only allow cash as, to date, SBG are not expressly contemplated for these facilities.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

In Spain, the general rule is that liability for gambling infringements corresponds to those who exploit these activities.

Only in very exceptional cases third parties are liable such as athletes, coaches or other direct participants, referees performing or acting in the event or sport activity on which they place their bets, as well as the people who resolved appeals against the decisions of those.

Audio-visual or electronic communications service providers, mass media, advertising agencies and ad networks will be responsible for the promotion, sponsorship and advertising of gambling when organisers do not have the necessary authorisation to legally advertise those games.

4.2 What is the approach of authorities to unregulated supplies?

Illegal offline gambling has always been duly prosecuted in Spain. However, until Law 13/2011 was published and enacted, Spanish authorities were quite permissive with regards to illegal online gambling operations.

In the case of breaches or violation of applicable gambling laws and regulations, the corresponding infringements regime of each Region or the central State (depending on the territorial scope) applies, all of which, in addition to substantial fines, include the possibility of

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competent authorities suspending or revoking licences in case of significant or sustained lack of compliance.

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

General EU rules and principles under the Treaty on the Functioning of the European Union apply to gambling activities, and EU case law has a great impact on the way national markets are and may be shaped but not upon liability and enforcement.

The MS are free to pursue their own policy, set relevant restrictions on betting and gambling activities and define the required level of protection to safeguard the MS's regulations. Nevertheless, any restrictive measures (such as gambling monopolies or licensing systems) that any given MS may impose in its gambling legislation may constitute restrictions to the freedom to provide services in the internal market of the EU (article 56 of the TFEU) and must satisfy the conditions laid down in relevant case law of the Court of Justice of the European Union about their proportionality, suitability and coherence with regards to achieving the policy objectives of the MS.

4.4 Are gambling debts enforceable in your jurisdiction?

While legal gambling contracts are valid and amounts won can be claimed, in the case of illegal gambling (operated without the relevant authorisations), the amounts won cannot be claimed before any court.

5 Anticipated Reforms

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

Online gambling

New general licence process: the DGOJ has currently promoted the third tender for the online gambling licences process (18 September 2017). The head of the Ministry of Finance has now three months to reach a decision accepting (with or without amendments) or provide justified refusal to the call, and then the interested companies will be able to submit applications.

"International Liquidity": following an international agreement, a draft resolution has been proposed for Portuguese, Italian, French and Spanish shared player liquidity among poker websites. The public information period finalises on 1 October 2017.

Land-based gambling

Spanish Regions are constantly amending their land-based regulations to adapt them to new technologies and gambling verticals. Currently, the following are in process:

New general gambling laws in the Murcia and Valencia Regions. These are not predicted until at least mid-2018.

New Regulations in the Balearic Island, Andalusia, Navarra and Cantabria Regions. These regulations partially amend previous casino, bingo and slot machine regulations.

Budget measures laws: the drafts are contemplating tax amendments, mostly more burdensome gambling tax. Higher gambling tax for slot machines in the Andalusia Region; Higher gambling tax for casinos, slots and betting in the Valencia Region. Foreseeably entering into force on 1 January 2018.

Gambling advertising

The Government issued a draft national regulation on the advertising of gambling activities in 2015, which, to date, remains unapproved.

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Switzerland

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MME Legal | Tax | Compliance

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Swiss law has a federal and a cantonal supervisory body:

- The Swiss Federal Gaming Board (SFGB) supervises cash gambling games of luck (casino games). The SFGB acts as an independent public authority board, which is part of the Federal Department of Justice and Police. The SFGB has regulatory oversight over casinos and supervises their compliance with the Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA) and other applicable regulations. Furthermore, the SFGB is in charge of deciding whether a game shall qualify as a game of skill or as a game of chance and, thus, shall be subject to the FGA. Casino licences, on the other hand, are issued by the Swiss Federal Council, which also determines the number of licences that may be issued and their period of validity.
- Betting and lotteries pursuant to the Federal Act on Lotteries and Commercial Betting of 8 June 1923 (SR 935.51; SLA) are under the supervision of the cantons, which for their part assigned this task to the Intercantonal Lottery and Betting Board (Comlot). Comlot was established by the cantons in 2006 and is the global licensing and supervising body for lotteries and betting in Switzerland. Comlot evaluates the licence applications of lottery and betting operators and supervises compliance with laws, regulations, licensing requirements and the like. The Intercantonal Appeals Commission is in charge of guaranteeing appropriate legal protection and serves as the judicial authority where lottery operators may appeal a decision of Comlot. Nevertheless, each canton retains the right to prohibit certain lottery products on its territory, even if such games had previously been allowed by Comlot.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

In Switzerland, games of luck are governed by article 106 of the Federal Constitution. Article 106 of the Federal Constitution distinguishes between two kinds of gaming, i.e. casino gambling and betting/lotteries.

The FGA is the main federal legal basis for the assessment of any cash gambling games of luck (casino games) in Switzerland. Any other games, such as lotteries and betting, are governed by the SLA. Any question regarding online gambling, sports betting and any services provided to betting operators or facilitating betting has to be assessed under these laws.

In Switzerland, casino games, such as poker, blackjack or roulette, are qualified as cash games of luck and are governed by the FGA. While organising or offering cash games of luck within licensed terrestrial casinos is legal, the organisation or operation of online (remote) games of luck (e.g. online casinos) is always illegal. Thus, no licences may be obtained to provide online operating services in Switzerland.

Lotteries, bets (including sports betting) and bingo (as well as lottery-like and lottery-related activities) are governed by the SLA. Article 33 SLA generally prohibits the professional provision of betting services related to sports events. Exceptions only apply based on cantonal law for the provision of betting services with a totalisator (pari-mutuel) at local live sports events with a special licence. Not taking into consideration this exception, regulatory prohibitions exist to provide sports betting services in Switzerland.

Nevertheless, individual cantons have assigned betting-permits/licences to providers.

Such licences have only been granted to two (cantonal) organisations (Swisslos and Loterie Romande, which collaborate with Paris Mutuel Urbain). Thus, effectively there exists a sports betting duopoly in Switzerland. The same applies to online betting: while the provision of such services is principally illegal, the cantons (i.e. Comlot) did grant licences. However, as of today, only Swisslos and Loterie Romande have obtained such licence for sports betting services. Apart from that, internet-based lottery and betting services are illegal in Switzerland.

Switzerland does not have any special rules for mobile and interactive gaming on television. To the extent that such offers qualify as remote access games within the meaning of the FGA or the SLA, the provision of these services is illegal.

Switzerland does not have a special regulatory regime for fantasy, egaming and social gaming. Therefore, it must be decided on a case-by-case basis as to whether it qualifies as a lottery, bet or casino game under the Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA) or the Federal Act on Lotteries and Commercial Betting of 8 June 1923 (SR 935.51; LLB). Providing that social games are free and/or there is no monetary advantage to be won, it will not require a licence. This is likely to apply if the participants can purchase gaming credits but cannot gain any monetary advantage. However, if the participant purchases credits and has the possibility to gain a monetary profit (such as money or credits that may be exchanged for cash, prizes or further gaming activities that are otherwise only accessible after payment), it is likely that the service will be illegal.

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2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Casino licences may be issued to legal entities under public law and to joint stock companies organised in accordance with Swiss law whose share capital is split into registered shares, provided that the members of these companies' administrative boards have their primary residence in Switzerland (article 11 FGA). Moreover, licences may also be issued to co-operatives organised in accordance with Swiss law if their members have their primary residence in Switzerland. Further, a licence may only be granted if the applicant and its most important business partners, as well as its beneficial owners and the shareholders, have sufficient capital, a good reputation and guarantee a proper business.

Lottery permissions in the form of licences may only be issued to corporations and public-law institutions, as well as associations of individuals and foundations, under private law, and all must have their primary address in Switzerland (article 6 SLA).

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Swiss law distinguishes between two kinds of casino licences:

- Licences for casino location: Licences for casino locations may only be granted if the appropriate canton and local community support the application, and if the applicant provided evidence for the economic benefit of the planned casino for the region (article 13(1) FGA).
- Operation licences: Operation licences may only be granted if the applicant (i) guarantees the independence of the management and supervision of the gaming operation, (ii) presents a security (AML, fraud management) and social security (player protection) concept, and (iii) presents a business continuity plan. Casinos can be operated only after the licence has been granted by the federal government and issued by the SFGB (article 13(2) FGA).

The holder of the casino location licence and the holder of the operation licence do not necessarily need to be the same legal entity/person. However, if the licence holders are not identical, a written agreement, approved by the SFGB, covering all rights and duties between these two parties, is required.

Lottery law legislation does not distinguish between local and operational licences (for licensing requirements see question 2.1 above).

2.3 What restrictions are placed upon any licensee?

Licensees may only provide lottery/betting or casino services within the scope of (i) the licence obtained, and (ii) the applicable regulations.

With regard to casino licences, a wide range of detailed restrictions apply with regard to the casino games that may be offered, how these games must be organised, what form and in which amounts payments may be accepted, and how the problem gambling concept and the security and AML procedures are organised. If the licensee fails to comply with the applicable regulations, the SFGB may cancel or impose restrictions on the licence.

With regard to cantonal lotteries, the restrictions placed upon a licensee are subject to cantonal legislations and may vary throughout Switzerland.

Under Swiss law, lottery and casino licences are not transferable to any third party. Any legal transaction involving the transfer of a lottery or casino licence is null and void.

2.4 What is the process of applying for any gambling licence or regulatory approval?

The written application for casino licences must be submitted to the Swiss Federal Council. The SFGB reviews the applications and issues a recommendation to the Swiss Federal Council. The application will be released to the public, which will be invited to comment on the planned casino. Finally, the Swiss Federal Council decides on whether the licence shall be granted or not; this decision is final. With granting the licence, the Swiss Federal Council imposes the obligation to the licensee to comply with all provisions of the FGA.

Generally, lotteries and betting are prohibited pursuant to Swiss law. However, by way of exception, cantonal law may allow raffles and lotteries organised for the purpose of public utility, as well as betting on sporting events held within the cantonal territory. In order to fall within the exceptions provided by cantonal law, the applicant must submit his application to the competent cantonal authority (article 5 SLA). However, as these licences are granted pursuant to cantonal law, cantonal legislation may provide for additional requirements to be met.

For large-scale lottery events, a Comlot licence is required: in Switzerland, only Swisslos (for the German-speaking part and Ticino) and Loterie Romande (for the French-speaking part) are licensed to provide intercantonal lottery and sports betting services.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

A casino licence will usually be granted for a period of 20 years (article 17 FGA). After the 20-year period has lapsed, the licence may be extended or renewed. Under certain circumstances the licence may be revoked, restricted or suspended. A revocation of the licence is possible if the requirements for issuing the licence are no longer fulfilled or if the licensee has obtained the licence based on incomplete or false information; it may also be revoked if the licensee has not started operations within the set time limit by the SFGB or if the licensee leaves the business inoperative. Furthermore, the licence may be revoked if the licence is used for any unlawful or improper purposes.

The licensed/permitted lottery play (not large-scale events) must be performed within two or three years respectively (three if drawn in several series). However, the granting authority may extend the period for an additional year. Furthermore, a revocation of the licence/permit is possible if the holder of the licence/permit does not fulfil the conditions imposed or if he contravenes the legislative or ordinance provisions.

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

- Casinos: The FGA differentiates between two different types of casinos in terms of the possible types of games of chance to be offered, the winnings and the maximum number of slot machines (A-type and B-type casinos):
  - A-type casinos are casinos with no limits in stake and may offer 14 different table games, with unlimited stakes,

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jackpots and maximum winnings at all slot machines. An A-type casino is only allowed in an area with a population of at least one million people.

- B-type casinos are usually spa or resort casinos, with a maximum of three kinds of table games and limited stakes, jackpots and maximum winnings at all slot machines. The maximum number of gambling tables operated per casino is three. The number of slot machines is limited to 250. While for the A-type casinos there are no limitations as per the maximum stake, the limit per stake in B-type casinos is CHF 25 and the maximum jackpot offered is CHF 25,000.

- Large-scale Lotteries: Currently, large-scale lotteries (e.g. lotteries that are not considered to be small-scale as defined below) may, *de facto* and due to the existing intercantonal conventions, only be provided by Swisslos and Loterie Romande.
- Raffles and Small-scale Lotteries: Annual contingents of small-scale lotteries are allocated to individual cantons. According to the Swiss Intercantonal Agreement on the Joint Running of Lotteries, the planned or expected annual amount of such lotteries may not exceed CHF 1.50 *per capita* of the respective cantonal population. In French-speaking cantons, the 9th Convention on the Loterie Romande C-LoRo defines a lottery as a small-scale event if its planned or expected amount is less than CHF 100,000.
- Promotion and Advertising: Any advertisement for the commercial offering of games of chance with regard to licensed land-based casinos is prohibited if made in an obtrusive way by the FGA. With regard to unlicensed casinos or foreign online operators, marketing measures are generally considered as illegal.

Any promotion for bets within Switzerland's borders for betting or lottery services that are not licensed by the Swiss authorities is prohibited by the SLA. If any person or company carries out promotion activity in Switzerland, Comlot would, if notified, open an investigation against them. Any illegal promotion, including the transport and distribution of the promotional material in Switzerland, can be sanctioned with up to a three-month prison sentence and a fine of up to CHF 10,000.

2.7 What are the tax and other compulsory levies?

The tax systems for the casino sector and the lottery and betting sector are different:

In accordance with the Swiss constitution, casinos' gross revenues are taxed. The collected tax funds flow into Switzerland's pension system. The tax rate may vary from 40% to 80% of gross revenues, but casinos may request a reduction in the rate in case of exceptional economic conditions.

Type-A casinos pay 40% tax on gross revenues up to CHF 10 million. If gross revenues exceed this sum, the tax rate rises by 0.5% per million Swiss francs. Type-B casinos pay 40% tax on gross revenues up to CHF 10 million. If gross revenues exceed this sum, the tax rate rises by 1% per million Swiss francs. The federal government is, however, free to change the current level of taxation and set taxation rates of up to 80%.

As lottery and betting winnings in most cantons are considered as income, such winnings are not tax free. Betting and lottery winnings of CHF 1,000 or more are taxed at 35% (withholding tax) in every canton of Switzerland. The tax amount is subtracted automatically when the betting or lottery winnings are claimed/paid out; the tax amount may then be reclaimed by the player on his or her tax return.

According to article 18 IKA, the organisers of large-scale lotteries, i.e. Swisslos and Loterie Romande, must pay taxes at the rate of 0.5% of their total gross revenues. The cantons, on the other hand, must use these tax proceeds for the prevention of and fight against gambling addiction.

Casino winnings are tax-exempt; this is not so for lottery and betting winnings. However, it is planned to raise the tax allowance of currently CHF 1,000 (see question 5.1).

2.8 What are the broad social responsibility requirements?

One of the main objections to the deregulation of the casino market is the assumption that deregulation would result in an increase in gambling addiction. Therefore, applicants must present a problem gambling policy, including measures to prevent gambling addiction and strict security policies.

One measure is the general ban on casino gambling, which applies to the following persons:

- persons under the age of 18;
- persons who have been suspended by casinos;
- board members or members of the SFGB;
- casino employees who are involved in the daily business;
- representatives of companies that manufacture or deal in gaming facilities; and
- representatives of casinos.

Casino employees who are not involved in the daily business, shareholders holding more than 5% of the share capital of the casino and corporate members are also subject to exclusion. Moreover, casinos may refuse access to persons without the need to indicate any reason.

Furthermore, players who are insolvent or fail to meet their financial obligations must be blocked from casino gaming operations. The same holds true for players who risk wagers that are disproportionate compared to their income or their assets, as well as players who negatively affect the operation of a casino. A clear understanding of a player's income or assets is not necessary to block a player; an assumption is sufficient so long as it is based on the casino's own perception or on the basis of reports of third parties. However, the casino itself is not allowed to investigate a player's financial circumstances. Moreover, the player himself may also apply for a self-blockage. The casino must register the blocked players and notify all of the other casinos in Switzerland. However, the blockage must be cancelled as soon as the reason for the blockage has ceased to exist. Finally, casinos are allowed to grant neither loans nor advances to players.

The same applies to the lottery market: in short, the social protection regulations and conditions of accreditation fall into the following categories of effective prevention of problem gambling and gambling addiction:

- information on gambling addiction and responsible gambling;
- early diagnosis of at-risk individuals;
- staff training and awareness-raising (organisers and sales-outlets);
- product concepts and designs that mitigate risk;
- restrictions in terms of age, access, stakes;
- imposition of bans; and
- supervision of the implementation and impact of social protection regulations.

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

AML regulations restrict or impact on casinos as follows: casinos

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are subject to the Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector (Anti-Money Laundering Act, AMLA) and are considered as financial intermediaries. The SFGB has issued an ordinance to clarify the application of the AMLA for casinos. In addition, the majority of the licensed casinos are members of the Self-Regulating Organisation (SRO) which sets the AML standards for its members. Financial intermediaries have to comply with different duties of due diligence. For example, casinos must verify the identity of the customer on the basis of an identification document when either entering into the casino or when reaching a certain threshold, or when establishing a certain business relationship (accounts or depots). Furthermore, casinos have a duty to report any suspicion of money laundering immediately. Further, casinos have to respect the criminal provisions of the AMLA. In addition, a violation of provisions of the AMLA (e.g. if money is being laundered in the casino) may lead to a revocation of the casino licence.

Lottery companies are not (yet) considered as financial intermediaries.

As of today, but lacking specific legislation, virtual currencies are not accepted by licensed casinos and lottery operators.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Organising online games of chance is illegal (article 5 FGA). Moreover, each and every activity which supports, funds or simply facilitates online gambling is illegal. The prohibition in article 5 FGA typically includes online casinos, i.e. cash games of chance offered online. Depending on the specific circumstances of the individual case, the following activities have been prosecuted or are deemed illegal by the SFGB:

- operation of a gaming server;
- processing certain financial transactions in connection with online gambling;
- advertising or marketing for online games (also hypertext linking); and
- management and/or financing of online gambling.

This means that both operators as well as suppliers may be prosecuted. However, participation in online games of chance is not illegal. Thus, Swiss players do not need to fear sanctions. Furthermore, and according to prevailing legal doctrine, the mere accessibility of a foreign online service in Switzerland does not qualify as an activity on Swiss territory and the Swiss gambling prohibition does not apply. Finally, but subject to certain restrictions to be assessed in each individual case, it is legal for an international online gaming operator to set up its corporate headquarters in Switzerland to consolidate its operations and/or to organise all its group internal financial transactions to be undertaken by Swiss banks.

Also, internet-based lotteries and betting services are illegal in Switzerland. This means that effectively no online licences may be obtained.

3.2 What other restrictions have an impact on online supplies?

As mentioned under question 3.1, online gaming and online lotteries and online betting are generally not allowed under Swiss law. Accordingly, there are no restrictions which may have an impact on online supplies. There are currently no payment or ISP restrictions in place regarding foreign-based online gaming operators.

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

Basically, there are two main categories of slot machines: first, gaming machines, which have the sole purpose of entertainment and have no benefit in view, such as table football, pinball and any kind of sports simulators; and secondly, slot machines, which give the player an opportunity to win money or other prizes of monetary value (points, chips or goods). Equivalent to casino rules, the casino may adopt rules for its slot machines and submit them to the SFGB for approval. The rules need to be summarised in plain language and placed on the table game area or on each slot machine, and released on demand. The cantons are responsible for the licensing of gaming machines involving an element of skill. If the element of chance is predominant, gambling machines are subject to article 3, paragraph 1 FGA and are only allowed to be operated in licensed casinos. Accordingly, machines that offer games of skill may be operated outside of casinos if permitted by cantonal law. The cantonal permission may only be granted in case the SFGB has qualified the respective gaming machine as skill-based.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Liable for breaches of the relevant gambling legislation are the following parties:

- The casino licensee.
- The customer itself.
- The lottery and betting licensee.
- The gaming service operator and supporting third parties.

4.2 What is the approach of authorities to unregulated supplies?

To the extent that unregulated supplies significantly support the provision of unauthorised gaming services (e.g. marketing services), they may qualify as an abettor of the gaming operator and be held liable for its conduct. However, so far, the authorities have only in very few cases investigated such conduct.

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

No, there are no other non-national laws that have an impact upon enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

Generally, under Swiss law, gambling and betting do not give rise to a claim (non-actionable claim; article 513 of the Code of Obligations (SR 220; CO)).

However, lotteries and prize draws give rise to a claim only where they have been approved by the competent authority. In the

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absence of such approval, the claim is treated as a gambling claim. Lotteries or draws authorised abroad do not enjoy legal protection in Switzerland unless the competent Swiss authority has authorised the sale of tickets (see article 515 CO).

Further, article 515a CO states that games of chance in casinos give rise to claims where they take place in a casino licensed by the competent authority. Therefore, if the above-mentioned requirements are met, gambling debts are enforceable in Switzerland.

5 Anticipated Reforms

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

On 29 September 2017, the Swiss Parliament passed a revised gambling law (Money Gaming Act) in their final vote. The Money Gaming Act shall replace the current regulatory regime (see question 1.2). According to Swiss law, citizens have the opportunity to launch a public referendum if they oppose a law. If 50,000 eligible voters provide their signature within 100 days after publication of the law, the electorate will decide on an Act. Opposing parties have already announced to initiate such a referendum against the Money Gaming Act – mainly because of the technical blocking of foreign operators (see the second bullet point below). The Act was published on 10 October 2017. Thus, it will be seen by 18 January 2018 if the referendum committee will be successful in collecting the required amount of signatures. It seems unlikely that the new law will enter into force prior to 2019.

The essential innovation of the Money Gaming Act in a nutshell:

- Online gambling ban removed: The Money Gaming Act aims to replace the existing online gambling ban with a system that allows online gambling based on a concession. However, only a holder of a licence for a land-based casino shall qualify to apply for an online licence. Hence, the draft does not contain the possibility for foreign operators to enter into the Swiss market without partnering with a local terrestrial licence holder. Furthermore, in order to be able to extend an existing terrestrial concession to online gambling services, the applicant will have to establish the commercial viability of the planned service.
- Blocking of foreign operators: The revised law does not introduce a prohibition for the use of foreign online gambling services in Switzerland. However, the activities of non-licensed (foreign) providers shall effectively be reduced by means of technical measures and non-financial blocking measures. In particular, the Money Gaming Act provides that blacklists of non-licensed providers of casino game websites are kept and that access to the listed websites has to be blocked by internet access providers. Only websites by operators that are domiciled abroad or disguise their domicile are blacklisted. Details of the process of how a domain name will be blocked are yet to be established and will be legislated in an ordinance. But principally, the authorities will blacklist certain domain names and inform internet access providers, which will be obliged to implement the blocking within a certain deadline.
- Legalisation of small-scale poker tournaments: The Money Gaming Act legalises small-scale poker tournaments under certain condition and subject to a licence. The licence requirements include that the number of participants as well as the buy-in must be limited and that the tournament is held in a public location.
- Tax exemption: Currently, gains from lottery and betting are taxed if they exceed CHF 1,000. Under the revised law, such gains are taxed only if they exceed CHF 1,000,000. In addition, gains from online gambling are also subjected to income tax.
- Player protection: The revision aims to strengthen player protection by different measures like play suspensions, offer of treatment and advice against gambling addiction, etc.
- Secure gambling: Further, a number of provisions are in place to ensure secure and transparent gaming operations (e.g. measures against the manipulation of sports competitions).

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The authors lead the gaming law practice group of MME. MME advises leading national and international gaming service providers – both casinos and internet gambling services – in gambling and lottery law. MME is an exclusive general member of the International Masters of Gaming Law and a member of the self-regulating organisation of the Swiss Casino Association (SRO SCV).

Our attorneys regularly act as advisors to the SRO SCV and assist the industrial federation of Swiss Gambling Houses as well as national and international supervisors and gaming providers in the implementation of legal and regulatory provisions.

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Turkey

EB LEGAL

Prof. Av. Esra Bicen

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The Turkish Criminal Code defines **gambling** (*Kumar*) as games played for a gain where profit or loss depends on chance, and any act that falls within this definition is prohibited. In addition, roulette, pinball, slot and other gaming machines are classified as special forms of gambling and are banned under the Law Regarding Roulette, Pinball and Gaming Machines.

In Turkey, certain forms of gambling, although not defined as such by law, are classified as regulated gaming and betting. These include **games of chance** (*Şans Oyunları*), real-time horse race betting and sports betting. The answers provided in this chapter will, therefore, also include regulated games of chance, and horse race and sports betting played for cash.

Games of chance and betting are regulated and operated by Turkish government agencies.

Games of chance include the national lottery (*Milli Piyango*), numeric games (*Sayısal Oyunlar*) and instant-win games or sweepstakes (*Hemen-Kazan*) which are regulated by the Ministry of Finance and operated by the National Lottery Administration (*Milli Piyango İdaresi*).

Sports betting is regulated by the Ministry of Sports and operated by the Spor Toto Association (*Spor Toto Teşkilatı*).

Horse race betting is regulated by the Ministry of Agriculture (*Tarım ve Köyişleri Bakanlığı*) and operated by the Turkish Jockey Club.

As per Decree Law No. 680 passed by the Council of Ministers on 2 January 2017, the licence to operate games of chance (effective from 6 January 2017) and licence to operate horse race betting (effective from 1 January 2018) will be issued to the Turkey Wealth Fund for a period of 49 years. The above mentioned government agencies will continue to have monitoring and supervising powers over games of chance and horse race betting.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

- **Gambling**
  - Turkish Criminal Code (prohibits gambling activity, imposes criminal sanctions and imprisonment).
  - Law Regarding Roulette, Pinball and Gaming Machines (prohibits special forms of gambling such as roulette, pinball, slot and other gaming machines).
  - Misdemeanours Law (penalises persons engaging in gambling activity with an administrative fine and confiscates gambling revenue).
- **Games of Chance**
  - Decree No. 320 regarding National Lottery Administration.
  - Decree No. 680 regarding licensing the Turkey Wealth Fund.
  - Regulation regarding licensing, regulating and supervising Games of Chance.
  - Regulation regarding Instant-win (*Hemen-Kazan*) games.
  - Regulation regarding Numeric Games (*Sayısal Oyunlar*).
  - Regulation regarding Social Games (*Talih Oyunları*) Offered Online (prohibits online offering of Social Games).
- **Horse Race Betting**
  - Law regarding Horse Racing.
  - Decree No. 680 regarding licensing the Turkey Wealth Fund.
  - Horse Race Betting Regulation.
  - Horse Racing Regulation.
- **Sports Betting**
  - Law regarding Football and Other Sports Betting.
  - Sports Betting Regulation.
  - Regulation on Licensing Private Legal Entities to Offer Sports Betting.
- **Other Laws Applicable to Regulated Gaming and Betting**
  - Law Regarding Taxes, Funds and Public Charges Levied Upon Gaming.
  - Consumer Protection Law.
  - Electronic Communications Law.
  - Law Regarding Internet Broadcasting and Combatting Criminal Offences Committed via Internet Broadcasting.
  - Law on Prevention of Laundering Proceeds of Crime.
  - Secondary legislation to the above should also be noted as applicable.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Any form of gambling is prohibited. The regulated forms of gaming

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and betting, i.e. games of chance, horse race betting and sports betting, are operated under licences issued to Turkish public operators affiliated with the Turkish government agency regulating the activity.

The Council of Ministers has the authority to tender licences for games of chance, horse race betting and sports betting.

Licence to operate games of chance can be issued to a state-owned enterprise, a private joint stock company or to a consortium.

Licence to operate sports betting can be issued to private legal entities.

Licence to operate horse race betting can be issued to associations established with the purpose of horse breeding and certified as a public service association.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Operation licences are under the monopoly of the Turkish government agencies and can only be offered to third parties through a public tender or privatisation, if and when decided by the Council of Ministers.

In addition, dealer permits are issued by the licence holders to individuals and legal entities who wish to offer games of chance, horse race and sports betting on land-based, online, interactive and electronic platforms. The main eligibility criteria for dealers are as follows:

- Turkish nationality and residence.
- Clean criminal record.
- Solvency.
- Tax registration.
- Dedicated employees.
- Dedicated landline and mobile phone line.
- Security deposit.
- Minimum 25-square-metre area furnished with an LCD TV.
- A computer with internet access and live broadcasting of scores.
- If applicable, an online or electronic platform infrastructure.

2.3 What restrictions are placed upon any licensee?

An operational licence holder is prohibited from engaging in any one of the following acts:

- Partially or fully assigning or transferring the licence.
- Change of address (applicable to dealers).
- Any type of fraudulent or dishonest acts.
- Forgery in security bonds.
- Fraud and dishonest behaviour in gaming and betting.
- Advertising and promotional activities against public order and morals of society.
- Advertising and promotional activities misleading consumers and targeting young persons below 18 years of age.
- Allowing young persons below 18 years of age to participate in games of chance and betting.
- Promoting illegal games.
- Soliciting customers by sending text messages, faxes, emails or calls.
- Allowing unauthorised persons to sell games of chance tickets.
- Under-reporting or attempting to under-report gaming and betting revenue.
- Misappropriating gaming tickets by engaging in money-laundering activities.
- Offering social games (*Talih Oyunları*) online and on other electronic platforms.
- Offering loans or accepting payment by credit card.

In addition, the following persons are banned from participating in games of chance:

- Licence holders.
- Shareholders, boards of directors and executives (having representative power) of legal entities which own 10% or more of the shares of the operators; this includes their spouses and children.

In horse race betting, jockeys and apprentice jockeys are prohibited from participating in games of chance. Jockeys, apprentice jockeys, trainers and hostlers are prohibited from publicly sharing predictions via print and visual media channels.

2.4 What is the process of applying for any gambling licence or regulatory approval?

Unless there is an officially announced public tender, individual bids for operation licences are not accepted.

The process to apply for an operation licence would be announced in the tender documentation; however, in general, the bidders must:

- Sign a confidentiality undertaking.
- Pay a non-refundable deposit to obtain the information memorandum and tender specifications.
- Pay an additional deposit to access the tender authority's data site to verify its technical qualifications.
- Submit its financial and technical pre-qualification applications to be assessed by the tender authority.
- Submit a surety bond.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Effective from 6 January 2017, the licence to operate games of chance, and effective from 6 January 2017, the licence to operate horse race betting, are both issued to the Turkey Wealth Fund for a period of 49 years. Spor Toto Association is authorised by law to operate sports betting for an unlimited term.

In 2017, the transfer of licences for games of chance and horse race betting has been included in the agenda of the Council of Ministers. Although there has not been any official announcement, the Minister of Finance had mentioned in his press releases in 2017 that this was a top priority agenda item for the government and a public tender was envisaged to be held in the first quarter of 2018.

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

Advertisements, promotions, sponsorships and other public relations activities related to regulated games of chance, horse race and sports betting cannot contain any of the following content:

- Violations against public order and against the morals of society.
- Tempting bad habits and dependency on gaming.

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- Including legally banned text, logos and similar signs.
- Misleading consumers as to the winning conditions, prizes and participation fees.
- Targeting young persons under 18 years of age.
- Promoting gaming as an alternative means to generate income.
- Discriminating based on ethnicity, race, nationality, religion, age and gender.
- Involving violence and sexual abuse.
- Promoting substance abuse and illegal acts such as gambling.

Operators are required to openly announce the gaming age limit as 18 years of age and to seek written verification from each participant as to his/her eligibility.

Operators and their authorised dealers and representatives (both real persons and legal entities) are prohibited from calling or sending phone messages, faxes, letters, electronic mail or similar communications to persons other than their members in order to promote participation in games and bets.

2.7 What are the tax and other compulsory levies?

Prizes won in regulated games of chance (lottery, numeric games and instant-win games) and social gaming (*Talih Oyunları*) operated by the Turkey Wealth Fund are exempt from taxes, levies and charges.

Sports betting and horse race betting revenues and cash or in-kind prizes won in sports and horse race betting and non-cash lotteries and raffles are subject to gaming tax (ŞOV), value-added tax (VAT), special consumption tax (ÖTV), income tax and inheritance tax.

Taxation of Regulated Gaming and Betting Revenues of Operators

- Gaming tax:
  - Gaming tax base is the revenue derived from authorised gaming and betting activities. The Law Regarding Taxes, Funds and Public Charges Levied Upon Gaming defines "*revenue*" as the total amount collected from gaming and betting players less the applicable value-added tax.
  - Tax liability is imposed upon the gaming and betting operator and its licensees and dealers.
  - The gaming tax rate applicable to sports betting is 5%, horse race betting is 7% and games of chance is 10%.
  - Gaming tax is declared in the tax declaration and payable until the 20th day following the end of the respective taxation period.
  - Gaming tax is not qualified as a deductible or an expense item in the calculation of personal and corporate income tax.
- Value-added tax:
  - Value-added tax law imposes value-added tax upon any type of games and bets.
  - Tax liability is imposed upon game or bet participants.
  - Value-added tax base is the sum of participation fees and platform access fees (land-based or online).
  - The value-added tax rate applicable to gaming and betting is 18%.
  - Value-added tax is declared quarterly in tax declarations and payable until the 24th day following the end of the respective taxation period.
- Income tax:
  - Any kind of income derived from commercial and industrial activities is considered commercial income and will be subject to income tax.
  - Tax liability is imposed upon the gaming and betting operator and its licensee and dealers.
  - The Corporate Income Tax rate is 20%.
  - The Personal Income Tax rate is between 15–35% calculated based on the income bracket thresholds announced in a given year.
  - Income tax for a calendar year is declared in the tax declaration and payable until March 25th of the following year.

Taxation of Cash and Non-cash Prizes Won in Regulated Gaming, Betting, Non-cash Lotteries and Raffles

- Inheritance tax:
  - Cash and non-cash prizes won in games, bets, lotteries and raffles with a value exceeding the qualified deductible for the respective year shall be subject to 10% inheritance tax.
  - Inheritance tax is withheld by the gaming or betting operator at time of payment (qualified deductible for the year 2017 is TL 4,068).
- Value-added tax:
  - Value-added tax law imposes value-added tax upon non-cash prizes won in games, bets, lotteries and raffles.
  - Tax liability is imposed upon game or bet participants receiving non-cash prizes.
  - Value-added tax base is the value of the non-cash prize.
  - The value-added tax rate applicable to non-cash prizes is 18%.
  - Value-added tax is withheld by the gaming or betting operator at the time of receipt of the prize.
- Special consumption tax:
  - Special consumption tax law imposes special consumption tax upon non-cash prizes won in games, bets, lotteries and raffles.
  - Tax liability is imposed upon game or bet participants receiving non-cash prizes.
  - Special consumption tax base is the value of the non-cash prize.
  - The special consumption tax rate varies by the non-cash prize, i.e. vacation, car, durable goods, toys, etc. The applicable rate to a given good should be checked from the special consumption tax rate lists, and periodically updated and appended to the special consumption tax law by the Turkish Revenue Administration (*Gelir İdaresi Başkanlığı*).
  - Special consumption tax is withheld by the gaming or betting operator at the time of receipt of the prize.

2.8 What are the broad social responsibility requirements?

A games of chance licensee shall remit 25% of any advertising, sponsorship and promotional expenses made in excess of 1% of its revenue generated in the same calendar year to the regulator. This amount shall be exclusively spent to build and maintain healthcare, education, sports and gaming facilities.

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

Under the Law on Prevention of Laundering Proceeds of Crime, the

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following persons are listed among the "Obliged Persons" who are responsible for verifying customer identification information and must report suspicious activity to the Financial Crimes Investigation Board (MASAK):

- Social gaming, lottery and betting licence holders, including the National Lottery Administration, Sport Toto Association and Turkish Jockey Club.
- Real persons and legal entity operators and dealers authorised by the licence holders.

Verifying Customer Identification

Obliged Parties are required to identify their customers by verifying their identification information in case the amount of prizes won as a result of a lottery draw, game of chance or betting amounts to or more than TL 20,000.

Reporting Suspicious Activity

The legal definition of suspicious activity is a transaction where there is information, suspicion or reasonable grounds that the asset subject to such transaction carried out or attempted to be carried out through Obliged Parties has been acquired by illegal means or used for illegal purposes within the scope of terrorist activities or by terrorist organisations or terrorists or by those who finance terrorism.

The Law requires Obliged Parties to report suspicious transactions to MASAK regardless of its monetary value. In face of a suspicious transaction, the Obliged Party (in case of a legal entity, its legal representative) shall report the suspicious transaction to MASAK within 10 business days. Obliged Parties shall not disclose any reporting activity to third parties, including the parties of the transaction, except for MASAK inspectors and the court upon any production of information request during a trial.

Games of chance, sports and horse race betting are played for cash prizes, and virtual currency is not allowed in the Turkish jurisdiction.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Games of chance legislation permits interactive gaming through online platforms such as the internet, phones, interactive TVs and similar electronic platforms, provided that the individual signs a subscription agreement with the operator or one of its registered dealers.

Sports betting legislation permits online betting on domestic and international real-time sports events, provided that the activity is administered by online dealers who have duly obtained online dealership permit (*sanal bayi ruhsatı*) from the Spor Toto Association. The law further authorises the Spor Toto Association to hold public tenders to procure private legal entities and joint ventures for projects involving the development and supply of betting platforms, risk management centres, related infrastructure and to deliver management services.

Horse race betting legislation permits online betting on real-time domestic and international races, provided that the activity is administered by online dealers who have duly obtained an online dealership permit from the operator and provided that they exclusively use the online betting infrastructure developed by the operator.

The Turkish Criminal Code prohibits any form of gambling (as defined in question 1.1 above) and considers utilising information systems to commit the offence an aggravating factor.

Current regulated gaming legislation prohibits any unauthorised offering of online games of chance, sports and horse race betting. In addition, Law No. 6495 amending the Law regarding Football and Other Sports Betting prohibits providing online access via internet sites or by other means to international sports betting and games of chance administered abroad for persons in Turkey.

3.2 What other restrictions have an impact on online supplies?

The Law regarding Offering Social Games Online prohibits operating, advertising or promoting social games (as defined in question 3.3 below) online via a computer, on the internet, and through interactive TVs and mobile phones. The Law further prohibits establishing business enterprises, developing infrastructure and allocating supplies and facilities for the purpose of offering social games online.

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

The Regulation on Licensing and Supervising Games of Chance defines social games (*Talih Oyunları*) as games played by tokens, chips or cash with a gaming tool against a terminal or with a gaming machine. Social games were operated by tourism and entertainment facility operators under permits issued by the Ministry of Tourism until 2005, when the new regulation, the Regulation on Certification of Tourism Facilities, dated 21 June 2005, abandoned the section on social games and the procedure for issuing social gaming permits. At present, social games seem to appear in Decree No. 320 of the National Lottery Administration and are offered out of land-based terminals/machines at facilities owned by individuals or private legal entities under a permit issued by the games of chance operator.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

- **Turkish Criminal Code**
  - Persons providing a venue or enabling gambling may be subject to imprisonment from one to three years and a minimum of 200 days' judicial fine.
  - Aggravating factors: enabling children; utilising information system tools; and committing the offence in an organised setting.
  - Legal entities shall be made subject to security measures such as cancellation of workplace operation permits and any licences, confiscating of revenue, receivables and assets.
- **Misdemeanours Law**
  - Persons who gamble may be subject to an administrative fine of TL 100 and any gambling revenue or assets shall be confiscated as public revenue.
- **Decree No. 320 – Games of Chance**
  - Organisers of unauthorised games of chance for cash and non-cash prizes, persons engaging in fraudulent activity in offering authorised games of chance and social games may be subject to imprisonment from two months to two years and a monetary fine of up to TL 10 million.
- **Law Regarding Horse Racing**
  - Organisers of unauthorised horse race betting and persons who personally or through engaging others, prepare, copy,

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sell and disseminate any unauthorised betting material may be subject to imprisonment from three months to two years and a judicial fine of up to 5,000 days. Any assets that are allocated, used or related to unauthorised betting shall be seized and any revenue and receivables collected therefrom shall be confiscated by enforcement officers. Legal entities shall be subject to security measures such as seizure of assets, confiscation of revenue and receivables, and cancellation of workplace operation permits and licences.

- Persons who are subject to an investigation or a prosecution related to unauthorised horse race betting shall be banned from entering all racing venues and facilities.

- **Law Regarding Football and Other Sports Betting**
  - Organisers, venue providers or enablers of unauthorised sports betting may be subject to imprisonment from three to five years and a judicial fine of up to 10,000 days.
  - Enablers of online access via internet sites or by other means to international sports betting and games of chance administered abroad for persons in Turkey may be subject to imprisonment from 4 to 6 years.
  - Intermediaries assisting with the handling of money transfers related to unauthorised sports betting may be subject to imprisonment from three to five years and a judicial fine of up to 5,000 days.
  - Persons convincing others to engage in unauthorised sports betting via advertising and by other means may be subject to imprisonment from one to three years and a judicial fine of up to 3,000 days.
  - Players engaging in unauthorised sports betting may be subject to an administrative fine of up to TL 20,000.
  - Any assets that are allocated, used or related to unauthorised betting shall be seized and any revenue and receivables collected therefrom shall be confiscated by enforcement officers. Legal entities shall be subject to security measures such as seizure of assets, confiscation of revenue and receivables, and cancellation of workplace operation permits and licences.
  - In cases of unauthorised online activity, blocking access to internet sites and the removal of content shall be invoked by the Telecommunication Communication Authority.

4.2 What is the approach of authorities to unregulated supplies?

Under the Turkish Criminal Code and the Law Regarding Internet Broadcasting and Combatting Criminal Offences Committed via Internet Broadcasting, the following forms of technical measures are available to combat unregulated supplies:

- Access blocking via domain name, IP address, content (URL) blocking and other similar methods.
- Removal of content (URL) from servers by content providers and online and electronic platform providers.
- Blocking access to websites.
- Cancellation of facility workplace permits.
- Confiscating revenue and assets.

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

No, extra-territoriality of non-national laws does not apply in the Turkish jurisdiction unless the same activity also violates a Turkish statute and is considered a criminal offence or a misdemeanour at the time of committing the offence.

4.4 Are gambling debts enforceable in your jurisdiction?

Gambling Debt

In the Turkish jurisdiction, gambling debts are not enforceable and therefore cannot be pursued. Commercial paper and/or negotiable instruments issued (even if endorsed) *in lieu* of a gambling or betting debt cannot be enforced. The law reserves the rights of third parties who receive and possess such negotiable instruments in good faith.

Regulated Games of Chance and Betting Receivables

In the Turkish jurisdiction, regulated games of chance and betting receivables can be enforced and collected. Unauthorised games of chance and betting receivables, including international games and bets, are treated as gambling debt and are not enforceable.

5 Anticipated Reforms

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

There are none at this time.

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United Kingdom

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Currently, the gambling regulator in Great Britain is the British Gambling Commission ("**the Commission**"). The Commission was formed pursuant to the Gambling Act 2005 ("**the GA 2005**") and unlike its predecessor, the Gaming Board of Great Britain, its remit covers bookmaking as well as lotteries and gaming. The National Lottery Commission (the National Lottery's regulator) merged with the Commission in October 2013. However, premises licences (if relevant) are the purview of the authority where the premises are located. The GA 2005 also established the framework for personal licences to be held by key individuals in an operating company (Personal Management Licences and Personal Functional Licences), as well to license the activity of providing gambling software and the supply (including the manufacture, maintenance, installation and adaptation) of a gaming machine, and acting as a betting intermediary (enabling one party to bet with another). The tax position in relation to gambling entities sits under another governmental body, Her Majesty's Revenue and Customers ("**HMRC**"). Finally, the Tote (pool betting on horses) which was privatised and sold in 2011 to a bookmaker, Betfred, is also now regulated by the Commission. Spread betting falls outside the Commission's statutory remit; it is regulated by the Financial Conduct Authority.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

The GA 2005 was intended to reform the piecemeal legislation which previously regulated gambling in Great Britain (which divided regulation broadly across product types, casino, bingo, gaming machines, lotteries and bookmaking, including tote and pool betting). Therefore, in relation to most gambling products today, the GA 2005 is the only applicable statute. However, one exception to this is the National Lottery Act 1993 (the regulators may have now merged but different legislation is applicable to the licensed activities). Also, tax legislation independently addresses gambling services under the Betting, Gaming and Duties Act 1981, as amended by various Finance Acts from time to time.

Social games are not currently specifically regulated by statute, although a number of different consumer protection statutes regulate the typical 'freemium' models. Moreover the Commission is taking an active interest in products where the distinctions are blurred, e.g. skins betting and esports.

Skill games are indirectly regulated by the GA 2005 (in that the GA 2005 provides a skill threshold test for determining whether a product has a sufficiently high level of skill so as to preclude it from being deemed a lottery, given that lotteries are by definition a game or event which is wholly determined by chance). Certain types of free lottery and domestic gaming are also carved out of the regulations.

The Fourth Money Laundering Directive ("**4MLD**") was transposed into English law in June 2017. It was widely speculated that it would extend the provisions of the Third Money Laundering Directive to include other gambling operators in addition to remote and non-remote casinos, but ultimately the British government did not consider the attendant risks warranted it. Operators who are bound by the provisions of the 4MLD need to conduct customer due diligence (€2,000 per transaction or linked transactions) as well as implementing compliance processes appropriate to the regulated sector. However, it is worth noting that that the Commission is currently seeking to impose increasingly higher standards of customer scrutiny across all sectors (i.e. not just casinos) and in particular has expressed concern that procedures around source of wealth/source of funds need to be robust for all gambling supplies.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

There are no limits to the number of operational licences that may be applied for. For premises licences, there is a restriction on the number of casinos under the GA 2005 (limited to 17 in number), but most operators trade under the old 1968 Gaming Act licences which were grandfathered-in under the GA 2005. Operational licences need not be held, or applied for by a British entity, or entity within the EEA, although some corporate information may be harder for the Commission to verify, which may cause delays to an application. There is nothing to preclude a person from individually making a licence application, albeit most entities (for a combination of tax and succession planning) elect to apply and hold licences through corporate entities.

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2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

There are numerous restrictions placed on licensees, although there are broadly no product embargoes, provided the entity holds the correct licence. The exception is horse racing pool betting (pari-mutuel) which is still the monopoly of the Tote (albeit now in private hands) and the National Lottery. This in effect means no other person can offer pool betting on horse racing or provide any other lottery, save for charitable lotteries which are restricted from offering large jackpots. The specific restrictions placed on licensees under the GA 2005 are largely imposed as a consequence of the Licence Conditions and Codes of Practice (the "**LCCP**"), the broad rationale of which is to uphold the GA 2005 licensing objectives; namely to keep out crime, to protect children and the vulnerable, and to keep gambling fair and safe for all. With the exception of the two existing monopolies, there are other key issues to note as basic restrictions upon operators' rights to supply, which are set out in question 2.3 below.

2.3 What restrictions are placed upon any licensee?

Listed below are the most significant restrictions; myriad obligations are also imposed upon licensees under the LCCP and in adherence to the overarching principle of social responsibility. Discrete conditions can also be imposed on specific licensees by the Commission.

2.3.1 The GA 2005 makes it a mandatory condition that the holders of non-remote casino and bingo licences cannot provide credit. This provision is widely considered to be outdated and there have been many calls for it to repealed or relaxed for certain high-net-worth individuals.

2.3.2 With limited exceptions, any licensee is subject to the mandatory condition that if it were brought to its attention that a child or young person (under 18) had wagered a stake or paid a fee, etc., that stake must be returned and no prize distributed or paid.

2.3.3 Bookmakers, pool betting operators and betting intermediaries are precluded from offering bets on the outcome of the UK National Lottery or lotteries forming part of it. Previously this meant that operators licensed offshore, who were permitted to target the British market (because no equipment was located in Great Britain, there was no need to obtain a licence, and the provisions that addressed advertising allowed unimpeded supplies/marketing from the EEA, Gibraltar and all white-listed jurisdictions – Antigua and Barbuda, Isle of Man, Alderney and Tasmania) could also offer bets on the outcome of the National Lottery, but this loophole has been indirectly closed by the provisions of the Gambling (Licensing and Advertising) Act 2014 (the "**GLAA**"). The GLAA requires an entity to hold a UK licence if its gambling services are capable of being accessed in the UK. There is currently a consultation with the DCMS (now closed) that may extend the lotteries that may also be the subject of this embargo for UK licensed operators.

2.3.4 Across all gambling licensed premises (there are limited carve-outs for private members' clubs and premises licensed for the sale of alcohol which are addressed separately), there are strict limits on the types and numbers of gaming machines that can be made available. The stakes and pay-outs cannot be increased save by statutory instrument. These provisions are too complex to spell out in huge detail in this forum. However, the key provisions to note are that gaming machines are categorised from A to D, with A machines having the highest stakes and pay-out (potentially unlimited). However, category A machines are of little more than theoretical interest because only one regional casino licence will be permitted to have Category A machines and there is little political impetus to award a regional casino licence. Therefore the rights to site the next-highest category of machine (the B machines) have become extremely critical on certain premises because of the higher pay-outs. Currently, casinos have the highest tier entitlement to machines; the GA 2005 neglected fully to address the 1968 Act casinos, but by virtue of various statutory instruments and regulations, 1968 Act casinos are entitled to up to 20 B1 machines (or a mixture of the lower C to D machines) with a payment of £10,000 and an entitlement to have linked jackpot on a set of premises of up to £20,000. The GA 2005 large casinos entitlement is capped at 150 B1 machines (or a mixture of the lower machines), or five times the number of gaming tables. Small casinos are limited to twice the number of gaming machines but capped at 80 B1 machines (or a mixture of the lower machines). All other premises licensed for gambling are limited to certain Category B machines or lower categories.

2.3.5 Only casinos granted under the GA 2005 are permitted to offer bingo and betting on the premises and small casinos have no entitlement to bingo. As stressed above, there is no regional casino in prospect in Great Britain at least for the foreseeable future. In broad terms, all other types of premises are only permitted the one "type" of gambling activity for which the licence is held, with the exception of gaming machines permitted on certain premises, e.g. licensed betting premises or pubs.

2.3.6 The "Regional" casino award is limited to one in number, and large and small to eight each. After political controversy and media scrutiny concerning problem gambling, which was alleged would arise as a consequence of permitting a potential unlimited number of resort casinos in Great Britain, the Department for Culture, Media and Sport, ("**DCMS**") the governmental body responsible for the GA 2005, limited the regional casinos to eight in number, but as a last-minute compromise in order to secure the passage of the Bill, this was reduced to one. The controversy in relation to the Bill also then dogged attempts by government to determine which region should be awarded the privilege of being able to award a regional casino premises licence. The provisions permitting the process have now been shelved. Of the large and small casinos to be awarded, regional authorities made bids for the right to grant premises licences in their jurisdiction but the process has been faltering and slow and some of the casinos are yet to be constructed. At the date of print only four large GA 2005 casinos are open and two of the small. Currently, there are 147 casinos open in the UK.

2.3.7 With the above exceptions, there are no other significant restrictions on the types of activity that can be offered, provided the correct operational and premises licence is held, licence fees paid and the LCCP adhered to. Likewise, various advertising codes impact upon marketing content; broadcasting advertising is permitted, but gaming adverts are only permitted after the watershed (excluding bingo). Betting adverts can be broadcast around the time when a sports event is taking place. There are a number of voluntary codes of practice that apply too, but marketing of gambling in particular has been scrutinised heavily by the Advertising Standards Authority recently. In October 2017 the Advertising Standards Authority and the Commission (together with the Remote Gambling Association – a trade body and the Committee of Advertising Practice ("**CAP**" – the entity that promulgates non-broadcast advertising standards) wrote to a wide number of operators asking them to remove adverts that may appeal to children, e.g. cartoon imagery or those which are freely accessible. Also important to remember is that wider customer protection laws may impact upon the way in which an operator conducts business.

Unlike in many jurisdictions, remote gambling is permitted.

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2.4 What is the process of applying for any gambling licence or regulatory approval?

Applications for operational and personal management licences are made to the Commission. The different categories of operational licence now include:

2.4.1 Non-remote and remote casino (including networks and live streaming).

2.4.2 Non-remote and remote bingo (including networks and live streaming). (Note that "bingo" is regarded by the Commission to comprise equal chance gaming with a high degree of participation, for example the marking off of numbers, and a clear start and end to each game).

2.4.3 Non-remote and remote bookmaker or pool betting (including telephone betting).

2.4.4 Licence to operate arcades, adult gaming centres or family entertainment centres.

2.4.5 Licence to supply software (remote or non-remote).

2.4.6 Licence to manufacture, supply, maintain, install or adapt gaming machines (remote or non-remote).

2.4.7 Society lottery and local lotteries (remote and non-remote).

2.4.8 Non-remote and remote betting intermediary licence (including trading rooms).

The licence fees vary depending upon prospective turnover of the applicant. These are too complex to set out in full here. However, in broad terms, application fees need to be paid on application, and licence fees once the licence is granted. The fees payable may depend upon the number of intended outlets and/or the gross gaming yield.

In addition, application fees need to be paid for securing personal management licences, as well as personal functional licences. Personal management licences are a fixed cost of £370 per licence, which need to be renewed every five years, and personal functional licences cost £185, again with a requirement to pay again after five years. Personal functional licences are required for certain functions within land-based casinos (e.g. croupier). Personal management licences are needed by key people within an operator's set-up (there are small scale exemptions – see below).

The people needing personal management licences are those who are responsible for overall strategy (usually, but not always, the CEO), finances (again usually, but not necessarily, the CFO), and those who are in charge of marketing, IT and related security, and compliance. In addition, for casinos, the general manager of those premises will require personal management licences, as will regional managers, for all other types of non-remote businesses where five or more sets of premises are managed in a specific area.

Individuals are allowed to hold a personal management licence to carry out more than one of these functions, save in most cases for compliance where the Commission believes it is not appropriate for a person to hold mixed responsibilities.

However, there is a small-scale operator exception (including the role of compliance), where there are three or fewer people occupying a qualifying position. Nonetheless the Commission has stated that it is of the view that (because of the complexity of the business) it does not regard a remote casino operator as being able to qualify as a small-scale operator.

The process in the normal course takes eight to 10 weeks, during which the case worker assigned to the application may seek certain clarifications. In some instances, where an application throws up a difficult issue (for example, a key person in the application has a spent criminal conviction or has had a previous licence application refused) the matter may be referred to a panel hearing through the Commission's regulatory review panel ("**the Panel**") processes. If this occurs, the applicant will be given scope to make additional written representations and attend the hearing in person with a legal representative. The Panel is normally convened too in circumstances where a Commission review has prompted a "minded to" finding, e.g. licence revocation or the imposition of sanctions, etc.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Licences once granted are indefinite in duration, unless forfeited, surrendered, lapsed or revoked. Forfeiture occurs where the relevant licence holder is convicted of a "relevant offence". These offences are set out in Schedule 7 to the GA 2005 and include (unsurprisingly) most gambling offences, theft and related offences, sexual, firearms and drug-related offences as well as the equivalent offences under non-UK legislation. Surrender is a voluntary act by the licence holder. Lapse occurs when a licensee dies, is deemed incapable due to mental or physical incapacity or is made bankrupt. For corporates, the same applies if it ceases to exist, or goes into liquidation. Review by the Commission of any licence may result in a warning, amendment or the addition of a condition, suspension, revocation and imposition of a penalty. Penalties can be unlimited in size albeit the Commission will take into account the ability on the censured licensee's part to pay, as well as issues such as the gravity of the offence. Personal licences can similarly be reviewed with a right of appeal to the Gambling Appeals Tribunal, now divided between first and upper tiers.

In relation to premises licences, these can also be reviewed but only on the application of a licensing authority such as the Commission or any person who lives in the vicinity of the relevant premises or has a business there. Grounds for reviewing need to relate to obligations of the premises licence-holder to adhere to the GA 2005 principles rather than, for example, wider health and safety matters or matters within the purview of the planning authorities. Appeal is made to the magistrates' courts.

Note that premises licences can also be revoked where the licence holder fails to pay the annual licence fee.

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

The key commercial restrictions that impact upon licences are set out below. These are not exhaustive but this is an extremely complex area. Most of the impediments that are critical relate to the restrictions on the siting and use of gaming machines and the wide interpretation of the statutory definition as interpreted by the Commission. However, the following should be borne in mind:

2.6.1 Any entity whose remote gambling services can be accessed in the UK must have a Commission granted operational licence. Passporting from EU territories is not permitted. "Advertising only" licences are not permitted (i.e. one advertises in the UK but blocks UK residents (which is not entirely counterintuitive as football sponsorship of a UK team would ensure promotion whenever the relevant match is broadcast). However, the Commission does not permit this. Overseas lotteries similarly cannot be promoted in the UK (irrespective of whether the lottery is online or not).

2.6.2 In casinos, one of the large commercial impediments is the inability to grant credit. Although junket operators are now permitted in Great Britain, the inability to provide credit lines handicaps British operators in a way that their overseas counterparts do not face. As stressed above there has been extensive lobbying to change this.

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2.6.3 The Commission has altered its stance on retail non-remote primary purpose, which was a principle originally designed to ensure that sufficient features were being provided in the gambling establishment for the activity licensed, because a number of operators were deriving most of their revenues from the machines and there was no motivation to provide the wider ambient services, e.g. over-the-counter betting. The concept has been replaced with a social responsibility code requirement that requires operators in the non-remote sector to provide substantive facilities for the activity for which he holds a licence to operate at a specific set of premises in order to justify the ongoing entitlement to gaming machines. In addition, in the guidance to local authorities, the Commission has made it clear that they should take into account the proposed business plans in determining whether a licence should be granted, and specifically the issues surrounding the facilities intended to be provided as well as matters such as supervision and layout. Additionally, operators will need to provide proof to the Commission (and make the evidence available to local authorities) that they have undertaken appropriate local risk assessments given the changing nature of some locations. These requirements are largely intended to bolster protections around machines with high pay-outs being available in easily accessible (albeit in most cases adult-only) locations. The bookmakers have been heavily criticised for the proliferation of betting shops on the high street and much frustration expressed that local authorities cannot do more to curtail them. These provisions coupled with recent initiatives by the Commission to improve the calibre of operators' AML policies will continue to put retail operators, particularly on the high street, under extreme pressure.

2.6.4 Lotteries that do not form part of the National Lottery are significantly hampered in terms of the jackpot prizes they can offer, so as a consequence have a significant commercial impediment when trying to gain significant market share from the National Lottery.

2.6.5 The GA 2005 created a licensing regime which specifically made acting as an intermediary a licensable activity. Hitherto betting exchanges and other bet brokers occupied a somewhat anomalous position. Exchanges held bookmaker's licences but did not act as a bookmaker. Betting exchanges were considered to facilitate P2P wagering and, in the case of most brokerages, the broker facilitated B2C business (i.e. customer betting with a bookmaker at good rates (normally) because of the liquidity introduced). However, the issue is problematic because of the tax position under the Betting Gaming and Duties Act 1981, as amended, pursuant to which exchanges are only charged tax on commission, whereas bet brokers are taxed as if they were the bookmaker so that both the broker and the ultimate bookmaker will pay gambling duty on the same transaction, depending on where the bookmaker, broker and customer are located. This creates a commercial impediment to a number of potentially flexible business models. In addition, betting syndicates in an unincorporated body may comprise Collective Investment Schemes which require FCA licensing.

2.6.6 Other suppliers requiring licensing include network operators, providers of gambling software and those involved in supplying gaming machines or maintaining, installing or adapting them. Entities who provide live streaming are licensed as operators, despite the fact that they usually operate as B2B providers.

2.6.7 The greatest impediment created for retail offerings are the strict limits on gaming machines and the wide interpretation of what comprises a machine. Prior to the GA 2005 being implemented, operators in bingo halls, casinos, family entertainment centres, adult gaming halls and betting halls were all able to benefit from the limited provisions defining gaming machines, and other permitted activities in the premises. Put simply, the legislation had not kept pace with technology, the consequence of which enabled those premises licence-holders to significantly multiply the number of machines available on the premises, in some cases with much higher jackpots. With very few exceptions, the GA 2005 closed those loopholes and widened the definition of a gaming machine, such that opportunities that remote technology could present for cross-conversion or enhanced play from within retail premises have now been stifled. Almost any device provided by the operator would be likely to be regarded as a gaming machine and reduce the entitlement to locate a gaming machine on the premises. This having been emphasised, there are certain limited exceptions for automated and semi-automated games machines on casino and bingo premises.

2.6.8 There are also strict limits on gaming machine play; credit and debit cards cannot be permitted to be used as a means of paying for usage of the machine. Returns to player must be stated (or alternatively odds of winning), and these must be strictly adhered to. With very limited exceptions, machines cannot facilitate the pay-out of non-money prizes. There are strict limits on loading and pre-committing funds for the machines to prevent spending too quickly.

2.6.9 Progressive jackpots are not permitted save in relation to cases where linkage can be made, but only within one set of casino premises, where pay-out is capped at £20,000 per unit on the premises.

2.6.10 The marketing of gambling services falls under the purview of the Advertising Standards Authority and there are various codes that apply depending on whether the advertising is broadcast or non-broadcast (the BCAP and CAP codes, respectively). (The Broadcast Committee of Advertising Practice ("**BCAP**") is the broadcasting equivalent of CAP.) Whilst there are certain principles that apply to all forms of advertising (e.g. they must be truthful and not deliberately offensive) there are additional obligations that apply specifically to gambling advertisements. These are too long to list here but they constrain any promotions that may be regarded as exploitative. Advertising which may appeal to minors, or suggests that gambling is linked to sexual prowess; gives some peer advantage or comprises a rite of passage; creates an association with luck or suggests a guaranteed return; or presents that gambling is an escape from personal or financial problems are all precluded.

For operators licensed in the UK, CAP and BCAP adherence is enshrined in the LCCP so as to oblige operators to adhere (they form part of the social responsibility obligations so they comprise a licence condition as opposed to a code of practice meaning that a breach has more severe consequences).

There is also a voluntary code to which operators adhere. This falls under the remit of the industry body the Industry Group for Responsible Gambling. The code further refines the CAP and BCAP obligations by requiring operators to, for example, carry socially responsible advertising and to adhere to the watershed for television advertising at 9pm (exceptions exist for bingo and betting advertising around sports events, albeit there are requirements not to promote specific sign-up offers before the 9pm watershed).

Gambling advertising has come under particular scrutiny, largely as a result of the huge numbers of gambling advertisements particularly on television (prior to the CAP and BCAP rules changing in 2007 there was only a very limited scope to broadcast gambling advertisements). The ASA has upheld a number of complaints many of which have focused on the misleading nature of "free" bets (which have required minimum spend or were subject to other onerous conditions). However, there have been such a high volume of complaints that the ASA has published a specific guidance document in which they have sought to categorise the typical complaints and the interpretation of the CAP/BCAP rules. ("Guidance

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as to Rules for Gambling Advertising"). These are (i) social responsibility, e.g. linking gambling to alcohol consumption, (ii) advertising gambling where it might appeal to children, (iii) where adverts have an irresponsible appeal, e.g. linking gambling to sexual prowess, (iv) where the adverts may promote problem gambling, e.g. that gambling should take priority over, or can offer an escape from, everyday activities, or (v) where advertising might be misleading, e.g. encouraging play where terms and conditions of deposit/free play are not clear. Gambling advertising has again been the subject of press interest in October 2017 which ultimately prompted operators being requested to remove advertisements likely to appeal to children or be readily accessible (see paragraph 7). Separate advice is available for betting tipster services.

2.6.11 Esports which enable customers to bet on themselves and their performance as well as betting on the performance of others is currently under review; however, the Commission has not been able to definitively determine what comprises gambling and what would be a legitimate tournament fee, i.e. "backing" yourself to win say a chess competition because each case will turn on its facts. Fantasy sports are regulated as betting products and often pool betting depending on the prize mechanics.

Other consumer protection laws may apply to limit supplies, e.g. data protection laws or those which legislate for unfair contract terms. Similarly, the wider obligations under the Proceeds of Crime Act impact irrespective of whether any entity holds a licence (the latter can impact on any handling of criminal proceeds which could be derived from unlicensed gambling or where the provenance of the monies may be tainted).

With the exception of the above, there are no real restrictions on the types of products that can be offered or deposit or pay-out limits (albeit deposits and play must be capped at the customers' request).

2.7 What are the tax and other compulsory levies?

Currently, the following tax rates apply (generally calculated by reference to stakes lost, less winnings paid):

2.7.1 Remote Gambling – 15% tax for sportsbook and remote gaming duty for casino (including bingo) (for poker set by reference to any rake received). Pool betting duty is set at the same rate. From 1 December 2014, operators have been obliged to pay tax on a point of consumption basis (i.e. the tax is triggered if the customer is normally resident in the UK).

2.7.2 Land-based – 15% for bookmaking/sportsbook, up to 50% for land-based casino and 10% for land-based bingo.

2.7.3 Gaming machines – 25% for B2 machines and 20% for balance.

2.7.4 Skill games are VATable (currently 20%) (skill games are not regulated by the Commission).

2.7.5 Exchanges – 15% of commission. Other betting intermediaries pay 15% as if they are the bet-taker (i.e. not commission-based).

2.7.6 Spread betting companies pay 3% on financial and 10% on sports spread bets.

In addition, operators are obliged to make a contribution to some good-cause entity dedicated to the research and related assistance and prevention of problem gambling. This obligation is under the LCCP and has the effect of a condition of the licence (see question 2.8 below). The Secretary of State may yet elect (as the power is created under the GA 2005) to create a compulsory levy but as yet has not done so and the industry has adhered to its obligations voluntarily (both before and after it was introduced under the LCCP and additionally adhered to by entities not holding a British licence).

Finally, after a period of prolonged debate, there will be a new horse racing levy of 10% of all profits made by operators taking bets from British horse racing (where profits exceed £500,000 per levy period). The previous controversy has centred on the fact that overseas operators were not making any contribution aside from those who entered in a co-operation agreement (the Authorised Betting Partner initiative) with the horse betting regulator the British Horseracing Authority.

2.8 What are the broad social responsibility requirements?

The guidelines contained in the LCCP are extremely detailed. However, what is critical is the fact that they comprise a licence condition as opposed to the "guideline" codes of practice. In essence, operators and suppliers who are licensed must have policies and procedures in place to detect and deter problem gambling. This requires interaction with a customer if there is a concern about someone's ability to control his or her gambling, as well as self-help aid such as links to sites and helplines dedicated to assisting problem gambling, and tools such as bet or wager limits and self-exclusion. A period of self-exclusion can be no less than six months.

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

The Fourth Money Laundering Directive (the 4AMLD) applies to remote and non-remote casinos. This requires operators to positively Know-Your-Customer ("**KYC**") customers when a deposit or spend exceeds €2,000, as well as additional obligations concerning the appointment of an anti-money laundering officer and a positive obligation not to "tip off" a potential offender if a suspicion of money laundering is raised. The 4AMLD also contains requirements designed to secure best practice and gambling regulated entities must also adhere to compliance guidelines issued by the Commission. (A consultation on the 4AMLD issued by the Commission in the summer of 2017 has closed with the responses published and available on the Commission website). In addition, by virtue of the LCCP, the Commission has extended a number of the relevant requirements to the non-casino industry, and has consistently pointed out that the obligations under the Proceeds of Crime Act ("**POCA**") apply to all persons, not just the regulated sector. In addition, the Commission has amended the LCCP to incorporate enhanced obligations in connection with AML and related social responsibility issues which need to be viewed in conjunction with its advice about compliance within POCA. Essentially, operators are expected not only to be more vigilant in identifying players (even in an anonymised retail environment) as well as conducting suitable background checks in connection with the source of funds and source of wealth. Fundamental to this shift in the LCCP is the concept of presumption that any high-roller gambler (VIP players are by definition those who spend more) is deemed to have a gambling problem even if they can afford to lose and need to be treated accordingly.

As emphasised above, non-remote casinos and bingo operators cannot permit the granting of credit. Moreover, even though in the case of a typical credit card it would be issued by a third party, its use is still precluded by the GA 2005.

Similarly, the GA 2005 precludes the use of UK credit cards on gaming machines. (A person commits an offence if he supplies,

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installs or makes available for use a gaming machine which is designed or adapted to permit money to be paid by means of a credit card.) In addition, there are restrictions imposed by statutory instrument which also preclude the facilitation of use of debit cards on gaming machines too.

In relation to virtual currencies, the Commission will regard them as "real money" if they can be traded for anything that has a monetary value. This has been recently reviewed again in the context of skins betting and the Commission has announced that it intends to be vigilant in relation to any in game item that has a tradable value. The Commission prosecuted one such operator (the two individuals ran the business) in September 2016; there was specific concern in that case that minors were being targeted and that the FIFA coins used on the site had a clear monetary value.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Online or remote gambling is permitted, provided that the correct licence is held.

3.2 What other restrictions have an impact on online supplies?

There are no restrictions on online supplies.

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

Gaming machines may be lawfully sited in premises licensed for gaming, or limited forms of gaming. These are arcades (Family Entertainment Centres and Adult Gaming Centres), betting premises (Licensed Betting offices) and tracks where pool betting is permitted (e.g. greyhound and horse tracks), bingo premises, casinos, pubs, clubs and other premises licensed to sell alcohol and travelling fairs. Each set of premises only carries an entitlement for a specific category of gaming machine and for a specific number.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Any person who provides "facilities" for unlawful gambling may be liable to prosecution. The Commission may determine who in that supply chain may be required to have a licence to provide such facilities in order to make such activity lawful. In addition, there are certain specific offences connected to certain product offerings on certain premises.

In addition, there are offences created under the GA 2005. It is an offence to:

4.1.1 cheat at gambling;

4.1.2 invite/participate in a chain gift scheme;

4.1.3 invite/censure/permit a child or young person to gamble or to enter certain licensed premises including related employment offences;

4.1.4 as a person aged between 16 and 18 to gamble (with certain permitted carve-outs);

4.1.5 advertise gambling where a British licence is not held;

4.1.6 provide false or misleading information to the Commission (or relevant licensing authority and/or obstruct investigation/ failure to comply with an order of forfeiture); and

4.1.7 sell or promote non-British lotteries in Great Britain.

There are additional specific offences related to obligations under personal, operational and premises licences.

4.2 What is the approach of authorities to unregulated supplies?

The industry has engaged in a high level of self-regulation which prevents, for example, widespread illegal advertising. The majority of enforcement action has focused on action taken against licence holders, so that the primary threat has been in connection with licence withdrawal and related disciplinary proceedings.

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

The UK judiciary has rejected a claim by the operators regulated in Gibraltar that the revised law under the GLLA offends TFEU obligations. The challenge, in connection with the point of consumption tax, appears also likely to fail (a preliminary ruling by the CJEU issued in June 2017 determined that the claims were unfounded).

4.4 Are gambling debts enforceable in your jurisdiction?

Gambling contracts are enforceable, as are related debts.

5 Anticipated Reforms

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

The change that has attracted the most focus and attendant controversy is whether bookmakers should be obliged to reduce the £100 stake available on the Fixed Odds Betting Terminals or B2 machines. The roulette spins can take place every 20 seconds and hence there exists a concern that large sums of money could be quickly lost. The DCMS has published its consultation but has not indicated how much of a reduction it currently favours.

We have also referenced above that the embargoes on credit in casinos may be amended.

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Having spent five years working in-house in the gambling sector (and three as head of the gambling division at Ladbrokes), Hilary returned to private practice in 2000. She recognised the need to create a legal service to support all the needs of gambling clients on a multi-jurisdictional basis, including regulatory issues, general commercial and corporate support (including fund raising) and structural and tax planning.

Hilary has played a role in most of the online sector floats/acquisitions since 2000, but continues to advise bricks and mortar businesses from tracks to casinos. She has written legislation and regulations for offshore governments and has drawn up industry codes of practice.

She joined DLA Piper LLP in September 2011 as a Partner, becoming a Consultant in 2013 in order to take up the role of deputy chairman of Playtech PLC which she left at the end of 2015.

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USA – Illinois

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The Illinois Gaming Board (the "IGB") has jurisdiction to regulate every person, association, corporation, partnership and trust involved in riverboat gambling operations and video gaming operations in the State of Illinois, including all persons in establishments where video gaming operations are conducted.

The Illinois Racing Board has jurisdiction to regulate every person who holds or conducts any meeting within the State of Illinois where horse racing is permitted for any stake, purse or reward.

The Illinois Lottery Control Board and the Department of the Lottery are responsible for implementing and regulating the State Lottery.

The Illinois Department of Revenue is responsible for regulating and issuing licences to conduct bingo games, games of chance involving cards, dice, wheels, random selection of numbers and gambling tickets which may be conducted at charitable games events, pull tabs and jar games.

The Raffles and Poker Runs Act grants the governing body of any county or municipality within the State of Illinois the authority to establish a system for the licensing of organisations to operate raffles and poker runs meeting certain minimum criteria.

The Attorney General or State's Attorney is authorised to enforce the Prizes and Gifts Act, which governs sweepstakes and promotions whereby no payment is required to participate but there remains an element of chance and a prize or gift award.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Gambling is generally prohibited in Illinois unless it falls under one of the exceptions specified in Article 28-1 of the Illinois Criminal Code. Article 28 sets forth a broad definition of what constitutes a gambling offence. Specifically, Article 28 provides that a person commits gambling when he or she knowingly: (1) plays a game of chance or skill for money or other thing of value, *unless such conduct falls within a specific exception as set forth in the statute*; (2) makes a wager upon the result of a game, contest or any political nomination, appointment or election; (3) operates, keeps, owns, uses, purchases, exhibits, rents, sells, bargains for the sale or lease of, manufactures or distributes any gambling device; (4) contracts to have the option to buy or sell any grain or other commodity under certain circumstances; (5) owns or possesses any book, instrument or apparatus by means of which bets or wagers have been, or are recorded or registered, or possesses any money which he or she has received in the course of a bet or wager; (6) sells pools upon the result of any game or contest of skill or chance, political nomination, appointment or election; (7) sets up or promotes any lottery or sells, offers to sell or transfers any ticket or share for any lottery; (8) sets up or promotes any policy game or sells, offers to sell or possesses or transfers any policy ticket, slip, record, document or other similar device; (9) drafts, prints or publishes any lottery ticket or share, or any policy ticket, slip, record, document or similar device (except as authorised by and conducted in accordance with the laws of the State); (10) advertises any lottery or policy game (except as authorised by and conducted in accordance with the laws of the State); or (11) establishes, maintains, or operates an Internet site that permits a person to play a game of chance or skill for money or other thing of value by means of the Internet or to make a wager upon the result of any game, political nomination, appointment or election by means of the Internet (except as authorised by and conducted in accordance with the laws of the State).

Exceptions to the statutory definition of gambling include: (1) agreements to compensate for loss (i.e., insurance contracts); (2) offers of prizes, awards or compensation to the actual contestant in a *bona fide* contest for the determination of skill, speed, strength or endurance or to the owners of animals or vehicles entered in such contest; (3) pari-mutuel betting as authorised by the laws of the State, including the Horse Racing Act of 1975 (230 ILCS 5/1 *et seq.*); (4) manufacture of gambling devices, including acquisition of essential parts, for transportation to any place outside Illinois when not prohibited by applicable Federal law or as authorised under the Illinois Video Gaming Act (230 ILCS 40/1 *et seq.*); (5) bingo as authorised by the Bingo License and Tax Act (230 ILCS 25/1 *et seq.*); (6) lotteries as authorised by the Illinois Lottery Law (20 ILCS 1605/1 *et seq.*); (7) possession of an antique slot machine that is not used in the operation or promotion of any unlawful gambling activity; (8) raffles and poker runs as authorised by the Raffles and Poker Runs Act (230 ILCS 15/1 *et seq.*); (9) charitable games as authorised by the Charitable Games Act (230 ILCS 30/1 *et seq.*); (10) pull tab and jar games as authorised by the Pull Tab and Jar Games Act (230 ILCS 20/1 *et seq.*); (11) gambling games conducted on riverboats as authorised by the Illinois Riverboat Gambling Act (230 ILCS 10/1 *et seq.*); (12) video gaming terminal ("VGT") games as authorised by the Illinois Video Gaming Act (230 ILCS 40/1 *et seq.*); (13) games of skill or chance where no purchase is required to participate; and (14) certain other promotion raffles as authorised by the laws of the State and the related rules and regulations promulgated under each relevant Act.

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With respect to raffles, the Raffles and Poker Runs Act promulgates authority to the governing body of any county of municipality to establish a specific system for the licensing of organisations to operate raffles in accordance with the Raffles and Poker Runs Act and any additional restrictions set forth by the local governing body.

Finally, the Native American Gaming Compact Act (230 ILCS 35/1 *et seq.*) also requires Illinois' Governor to submit a request for authority to the General Assembly prior to entering into any compact with a Native American tribe authorising such tribe to conduct gaming in Illinois. Illinois does not currently have any Native American gaming activity in operation.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Any qualified person or entity may apply to the IGB for an Owner's licence to conduct riverboat gambling operations or for a Supplier's licence to provide gaming equipment and supplies, including real estate, under the Riverboat Gambling Act. The IGB is authorised to award up to 10 Owner's licences for riverboat gambling operations. There is no restriction on the number of Supplier's licences that can be issued.

Any qualified person or entity may apply to the IGB for a Terminal Operator's licence under the Video Gaming Act for the purpose of maintaining and placing up to five VGTs in Licensed Establishments. A Terminal Operator is prohibited from holding a Manufacturer licence or Distributor licence, or from owning, managing or controlling a Licensed Establishment. Moreover, each Terminal Operator is required to qualify as an Illinois resident. To apply for an establishment licence, an entity must either be a retail establishment that holds a liquor licence allowing for alcoholic liquor to be drawn, poured, mixed or otherwise served for consumption or qualify as a fraternal organisation, veterans organisation or a truck stop (as defined by the Video Gaming Act). Additional restrictions on establishment applicants may apply based on their distance from an organisation licensee under the Illinois Horse Racing Act, a riverboat gambling operation, a school or a place of worship.

The Illinois Raffles and Poker Runs Act restricts the issuance of raffle licences only to *bona fide* religious, charitable, labour, business, fraternal, educational or veterans organisations that operate without profit and have been in existence for a period of five years immediately before making an application for a licence, with certain exceptions.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

The Riverboat Gambling Act affords the IGB the discretion to identify which positions must be approved by the IGB and must maintain suitability as a Key Person. Generally, the following individuals are required to be designated and approved as a Key Person for an Owner's licence: any person with an ownership interest or voting rights of more than 5%; the directors, chief executive officer, president, and chief operating officer, or their functional equivalents; and a gaming operations manager or anyone with influence or control over the conduct of gaming. Certain exceptions are allowed for Institutional Investors (as defined by the SEC) that hold or acquire ownership interests in a licensee. In addition, any employee of the riverboat gambling operation must hold an occupational licence. The following individuals are usually required to be designated and approved as a Key Person for a Supplier's licence: any person with an ownership interest or voting rights of more than 25%; the chief executive officer; and the chief operating officer or their functional equivalents.

The Video Gaming Act similarly affords the IGB the discretion to identify which individuals must be designated and qualify as a Person With Significant Influence or Control ("PSICs") for both Terminal Operator applicants and establishment applicants. Generally, this includes any owner of a Terminal Operator, any person that shares in the video gaming revenue, as well as any other person who holds a position or level of influence or control that is significant to regulatory concerns and obligations (i.e., chief executive officer, chief financial officer, or their functional equivalents). With respect to Licensed Establishments, this includes all officers of the applicant (including the IGB-required video gaming manager), direct and indirect owners of the applicant who meet certain ownership percentage thresholds, any individual or entity who will otherwise share in the video gaming revenue of the Licensed Establishment, and certain other individuals with control over video gaming operations at the applicant's premises as determined on a case-by-case basis. In addition to Terminal Operators and Licensed Establishments, the IGB also issues licences to Manufacturers, Distributors, Suppliers, Terminal Handlers and Technicians to participate in the video gaming industry.

2.3 What restrictions are placed upon any licensee?

While the IGB has the authority to place restrictions or conditions on any licence issued pursuant to the Riverboat Gambling Act or Video Gaming Act, such restrictions are not routinely imposed. All licensees are required to comply with the IGB's rules and the regulations promulgated thereunder and the licences are not generally transferable. In addition, an applicant or Owner's licensee must immediately inform the IGB of certain changes and must receive prior approval for the following changes: Key Persons; type of entity; equity and debt capitalisation of entity; investors or debt holders; sources of funds; economic development plans or proposals; schedule of operations; capacity or design changes to the riverboat gambling operations; gaming positions; anticipated economic impact; and agreements relating to the acquisition or disposition of property of value greater than $1,000,000.

Raffle licence requirements vary by municipality or county. Generally, there are restrictions on the date, time and location of the event as well as where, and by whom, tickets may be sold and the maximum value of the prize awarded.

2.4 What is the process of applying for any gambling licence or regulatory approval?

Under the Riverboat Gambling Act, the applicant for an Owner's or Supplier's licence is required to complete an application form and submit an application fee. In addition, any individual or business entity that qualifies as a Key Person must also submit a disclosure form and undergo an investigation. The IGB will conduct a thorough investigation of the applicant and each Key Person over the course of several months. In reviewing the application, the IGB considers the applicant's and each Key Person's character, reputation, financial integrity and experience. This involves disclosing an individual's

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personal history, including familial relationships, education, employment, criminal background, litigation, and a detailed review of one's financial history. Among other requirements, an applicant for an Owner's licence must also demonstrate it has adequate business competence and experience and that the proposed funding of the entire operation is adequate and from a suitable source. It is the applicant's burden to establish by clear and convincing evidence that it meets all statutory requirements. If the IGB finds an applicant for an Owner's licence or Supplier's licence suitable, it will direct the IGB's Administrator to issue a licence upon payment of the licence fee.

The requirements for any Manufacturer, Distributor, Supplier or Terminal Operator applicant, and any PSIC, are similar under the Video Gaming Act. The application for video gaming establishments applying to host VGTs requires disclosure of all owners and officers of an applicant, and any indirect owners of an applicant subject to certain ownership percentage thresholds. In addition to the applicant itself, all direct owners and officers, as well as certain indirect owners who meet the applicable ownership percentage thresholds, are required to undergo a background investigation. The background investigation requires submission of fingerprints to the IGB and focuses predominantly on the individuals' criminal history and personal history, including compliance with Illinois and Federal tax obligations. Additionally, prior to licensure, the premises whereupon the applicant proposes to host VGTs must be inspected to ensure compliance with regulatory requirements.

An organisational licence is required to conduct horse race meetings. Only an organisation licensee can apply for and obtain an inter-track wagering licence for on-site pari-mutuel wagering. Only an organisation licensee or a person with operating control of a licensed racing facility can apply for and obtain an inter-track location wagering location licence for off-track pari-mutuel wagering. Occupational licences are required for any individual whose work, in whole or in part, is conducted upon an organisation licensee's facilities, with some exceptions. Applicants will be subject to an investigation regarding the applicant's character and financial fitness, and certain individuals associated with each type of applicant will be subject to an investigation of their personal and criminal history. Occupational licence applicants are required to submit fingerprints to the Illinois Racing Board. Organisation licensees or third parties who contract with an organisation licensee to conduct advance deposit wagering ("ADW") must also be licensed by the Illinois Racing Board.

Any individual or entity that wishes to sell lottery tickets at its establishment must obtain a sales agent licence from the Department of the Lottery. Illinois allows online lottery sales by licensed sales agents who are granted online status by the Director of the Department of Revenue and are otherwise authorised to sell online products.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Under the Riverboat Gambling Act, the initial Owner's licence and Supplier's licence is valid for a period of one year. Thereafter, the IGB has the discretion to renew the licence for up to four years. Each year the licensee, and each Key Person, is required to submit materials to the IGB for its review and the licensee must pay an annual licence fee. In considering the request to renew the licence, the IGB may examine the timeliness and responsiveness of the information submitted, the background, reputation, character and integrity of each Key Person, the continuing ability to maintain the quality of the products, overall compliance with all rules and regulations and any other information the IGB deems appropriate and necessary to maintain the public confidence in the credibility and integrity of gambling operations.

Under the Video Gaming Act, both the initial licence and any subsequent licence are valid for a period of one year. The renewal process for applicants under the Video Gaming Act is similar to the process set forth above for licensees under the Riverboat Gambling Act. With respect to Licensed Establishments, it is critical that the establishment maintain a valid liquor licence and be current with all State and Federal tax obligations to remain qualified to hold a gaming licence.

An applicant and licensee have limited statutory rights in the event of a denial or non-renewal of their respective licence. The IGB has considerable authority to issue disciplinary actions against licensees. All requests for hearings and answers to disciplinary actions must strictly comply with the IGB's applicable rules and regulations. Generally, an applicant or licensee may pursue administrative review of any final decision by the Board in the circuit court in accordance with the Illinois Administrative Procedures Act.

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

The Riverboat Gambling Act restricts each Owner's licence to a maximum of 1,200 gaming positions for each licence, determined in accordance with IGB rules. In addition, any enhanced payout, tournament or giveaway must be documented in the Owner's licensee's internal control system and must be approved by the Administrator.

Generally, under the Video Gaming Act, Terminal Operators are responsible for conducting advertising and promotional activities in a manner that does not reflect adversely on or that would discredit or tend to discredit the video gaming industry. The advertisement of video gaming is generally not otherwise restricted.

2.7 What are the tax and other compulsory levies?

Currently, under the Riverboat Gambling Act, riverboat casinos are subject to a graduated tax ranging from 15% to 50% of annual gross receipts, dependent upon the total adjusted gross receipts for the period. For purposes of calculating this tax, "adjusted gross receipts" include gross receipts less winnings paid out. Riverboat casinos are also subject to an admissions tax ranging from $2 to $3 per admission, dependent on the riverboat's admission totals for the previous calendar year. Applicants for an Owner's licence, Supplier's licence and occupational licence are required to pay an application fee, a licensing fee immediately upon licensure, and an annual fee in connection with each annual licence renewal (or annual update submission, in the case of an Owner's licensee).

Under the Video Gaming Act, net terminal income (defined as the total funds wagered less credits paid out to players) is subject to a 30% tax. Also, the IGB imposes a fee to compensate the provider of the State-wide central communications system linking all VGTs, which was initially set at .7275%. After payment of the tax and central communications fee, the remaining net terminal income is split equally between the Terminal Operator and the Licensed Establishment. Additionally, the Act imposes an annual licence fee of $100 per VGT. Many municipalities throughout Illinois impose a similar per-VGT or licence fee, as well. Applicants for Terminal Operator, Distributor, Supplier, Manufacturer, Terminal Handler, Technician and Licensed Establishments are required to pay an application fee, a licensing fee immediately upon licensure, and an annual fee in connection with each subsequent licence renewal.

Under the Horse Racing Act, pari-mutuel wagering facilities, including inter-track wagering licensees located at facilities which

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are licensed to conduct horse races and offsite inter-track wagering locations, commonly referred to as off-track betting facilities ("OTBs") are required to pay a flat pari-mutuel tax of 1.5%, plus additional pari-mutuel taxes imposed on ADW, along with an admissions tax and other surcharges. OTBs are also required to pay 2% of their pari-mutuel handle to the host city and county. Applicants for an organisation licence, inter-track wagering licence and OTB licence, as well as applicants for an occupational licence are required to pay an application fee and renewal fee.

Under the Illinois Lottery Law, individuals or entities seeking to obtain a licence to sell lottery tickets are required to pay an application fee, and, once granted, a renewal fee each time the licence is renewed. Additionally, each lottery licensee granted online status pursuant to the Department of the Lottery's rules must pay a weekly fee in connection with related telecommunications charges incurred by the Department.

2.8 What are the broad social responsibility requirements?

Generally, every person involved in the gambling industry is responsible for maintaining public confidence and trust in the credibility and integrity of all gambling operations and the regulatory process. In addition, the Riverboat Gambling Act requires licensees to post certain signage, including information regarding the availability of resources to address compulsive gambling and the withholding of delinquent child support. The IGB has also developed a robust voluntary self-exclusion programme which allows individuals to acknowledge a gambling problem, commit to not visiting any riverboat gambling operation and remove oneself from all mailing, marketing and promotional lists and databases. The IGB remains committed to promoting responsible gaming in Illinois and making valuable changes to the self-exclusion programme. In addition, the IGB imposes certain contracting goals with minority-owned and female-owned businesses.

The Video Gaming Act similarly requires the posting of signage to promote compulsive gambling resources and 25% of collected licence fees are appropriated to the Department of Human Services for the administration of programmes for the treatment of compulsive gambling.

Participation in the Lottery is limited to individuals that are 18 years of age or older. Similarly, the Illinois Lottery Law provides for individuals to participate in a voluntary self-exclusion programme for Internet lottery sales. Moreover, each lottery sales agent is obligated to post certain signage regarding compulsive gambling resources.

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

The U.S. Department of Treasury's Financial Crimes Enforcement Network is primarily responsible for the enforcement of federal anti-money laundering laws governing entities who supply gambling. The Riverboat Gambling Act requires all wagering tokens, chips, and electronic cards to be purchased from a licensed owner or manager at a riverboat or an IGB-approved onshore facility located where the riverboat docks. Licensed owners and managers may, however, provide wagering tokens, chips, and electronic cards to patrons by extending credit. The IGB's rules promulgated under the Video Gaming Act prohibit Terminal Operators or Licensed Establishments from extending any form of deferred payment to players. The Illinois Racing Board permits ADW, allowing ADW account holders to deposit by cash, cheque, money order, credit card, debit card, other electronic fund transfers, or any other means permitted by an ADW licensee.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Under Illinois' criminal laws, a person is prohibited from establishing, maintaining or operating an Internet site that permits a person to gamble or make a wager upon the result of any game, contest, political nomination, appointment or election, with the exception of the Lottery conducted by the State of Illinois in accordance with the Illinois Lottery Law, which allows for the purchase of tickets through the Internet. In addition, pari-mutuel betting is authorised in accordance with the Horse Racing Act.

Illinois law defines "Internet" as an "interactive computer service or system or an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, and includes, but is not limited to, an information service, system, or access software provider that provides access to a network system commonly known as the Internet, or any comparable system or service and also includes, but is not limited to, a World Wide Web page, newsgroup, message board, mailing list, or chat area on any interactive computer service or system or other online system".

3.2 What other restrictions have an impact on online supplies?

Due to the limited applicability of online sales and wagering, there are no other material restrictions that impact online supplies.

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

The Riverboat Gambling Act allows for approved electronic gaming devices that meet certain minimum standards, subject to the applicable restriction on the number of gaming positions at each riverboat gambling operation.

Illinois has the largest regulated VGT industry in the United States. Each local municipality may elect to "opt out" to prohibit video gaming in their local municipality. The Video Gaming Act allows for up to five VGTs to be placed in Licensed Establishments in participating municipalities. Establishments that are eligible for licensure include (1) any retail establishment where alcoholic liquor is drawn, poured, mixed or otherwise served for consumption on premises, (2) truck stops (as defined in the Video Gaming Act), (3) fraternal organisations, and (4) veterans organisations.

All VGTs in Illinois are connected to a central communication system. The VGTs currently accept only cash, but the Video Gaming Act contemplates the use of an electronic card or other voucher which would allow for ticket-in, ticket-out capabilities.

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4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Under Illinois' criminal laws, the participant, the promoter, bookkeeper, operator, and advertiser may be held liable for breaches of the relevant gambling prohibition. Illinois' gambling laws cover individuals, natural persons, public or private corporations, governments, partnerships, unincorporated associations, and other entities. Gambling is a Class A misdemeanour and certain subsequent convictions may result in a felony conviction.

4.2 What is the approach of authorities to unregulated supplies?

It is illegal to own, operate, use, purchase, rent, sell, manufacture, distribute, have in your possession, or even bargain for the sale or lease of a "gambling device". The definition of a "gambling device" is expansive and includes any machine for the reception of money or other things of value on chance or skill, or where money or anything of value is staked, or even any furniture or equipment designed primarily for use in a "gambling place". A "gambling device" is any property used for gambling not authorised under the Riverboat Gambling Act or the Video Gaming Act. Exemptions under "gambling devices" include, but are not limited to, equipment under the Video Gaming Act and certain vending machines and amusement machines. The Illinois Criminal Code authorises the seizure of gambling devices by state police or local authorities.

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

No, non-national laws do not have any impact on enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

In Illinois, gambling contracts are void *ab initio* under common law and the Illinois Criminal Code. However, certain contracts that relate to gambling are permitted under the strict oversight of various regulatory agencies pursuant to State statutes, such as the Illinois Video Gaming Act, the Riverboat Gambling Act, and the Illinois Horse Racing Act. The listing of exceptions to what constitutes gambling can be found in Section 28-1(b) of the Illinois Criminal Code. Section 28-8 of the Illinois Criminal Code also provides that any person who loses more than $50 to another person due to gambling can sue and recover the money and costs from the "winner" by filing a lawsuit in the State's lowest courts. An intermediary who merely facilitates the gambling transaction is not considered a "winner". If after six months the person who lost the money does not file a lawsuit, then any person can file the lawsuit against the "winner" to recover the gambling loss. Finally, although there has been litigation in this matter, Illinois courts will also give full faith and credit to foreign judgments for gambling debts that are registered and sought to be enforced in Illinois.

5 Anticipated Reforms

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

The Illinois legislature regularly considers amendments to Illinois' gaming laws, from minor technical changes to various expansion proposals. In recent years, the legislature has considered amending the Illinois Riverboat Gambling Act to authorise new riverboat casinos in the City of Chicago and at least four other municipalities, additional gaming positions at existing riverboat casinos and slot machines at horse racing facilities. In addition, various bills have been introduced to amend the Illinois Video Gaming Act. These bills include proposals to raise the minimum wager and maximum jackpot amounts, allow progressive jackpots and increase the number of VGTs in truck stops and certain other Licensed Establishments. In addition, the IGB regularly considers and adopts new or revised administrative rules for the riverboat and video gaming industries.

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Chapter 37

USA – Mississippi

Balch & Bingham LLP

Scott E. Andress

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The Mississippi Gaming Commission is the primary regulatory body that oversees casino activity, charitable bingo, and daily fantasy sports, but other governmental authorities regulate gambling in the State of Mississippi as well. The Mississippi Department of Revenue assists the Commission with these regulatory efforts. Also, the Commission restricts unsanctioned gambling activity with the help of local police forces.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Mississippi permits casino gambling in accordance with the laws, rules, and regulations pursuant to the Mississippi Gaming Control Act of 1990. *See*, *e.g.*, *Miss. Code Ann.* §75-76-1 *et seq*. However, this is not the only form of gaming that the State regulates. Mississippi also regulates charitable raffle and bingo games pursuant to *Miss. Code Ann.* §§97-33-50 and 97-33-49, respectively. The State's statutory code includes provisions that regulate daily fantasy sports operations as well. *See Miss. Code Ann.* §97-33-301 *et seq.*

The State expressly outlaws internet sweepstake cafes under *Miss. Code Ann.* §97-33-8, and sections of the Mississippi criminal code enforce criminal penalties against those who do not comply with the Gaming Control Act under *Miss. Code Ann.* §97-33-1 *et seq.* E-gaming is not an authorised form of gambling under the Gaming Control Act. Lotteries are prohibited in Mississippi.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Mississippi law provides for three different licences associated with casino gaming: (1) a gaming operator licence; (2) a licence to manufacture gaming devices or associated equipment; and (3) a licence to distribute such devices/equipment. Anyone, either an individual person or an entity, may obtain these licences to conduct activities related to gaming activities. State law also provides for a "finding of suitability" status that permits an individual or an entity to own, control, direct or engage in business with a licensee.

However, the State does not permit people or entities with particular criminal backgrounds to obtain either a licence or a finding of suitability. If one has been convicted of a felony by a Mississippi, federal, or other state court, the person or entity cannot obtain a licence or a finding of suitability. The same is true if that person or entity committed any crime according to either federal law or the law of another state that would constitute a felony in Mississippi. Finally, conviction of a misdemeanour related to gambling, the sale of alcohol to minors, prostitution, or the inducement of others to engage in prostitution will disqualify a person or entity from obtaining a licence or a finding of suitability.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

If a person or entity desires to operate a casino or manufacture/sell gaming devices and materials in Mississippi, that person or entity must apply to the Mississippi Gaming Commission for the appropriate licence. Gaming operator licences permit the holders of these licences to conduct gaming operations on particular sites that are unique to each licence. Likewise, manufacturer and distributor licences allow the holders of such licences to engage in the manufacture or trade of gaming devices and materials that have been specifically approved by the Gaming Commission. The Gaming Commission may limit or broaden the scope of these licences as it sees fit.

Similar licensing and approval requirements apply to charitable bingo and daily fantasy sports operations. Those who operate and/or supply either of these types of operations must apply for the appropriate licences from the Gaming Commission.

Other activities related to the gaming industry require approval by the Gaming Commission as well. Corporate officers and directors of a licensee entity or its holding companies must apply to the Commission for a finding of suitability to associate with the licensee. Gaming employees of any operation regulated for gaming activities must seek work permits from the Commission. In addition, game testing labs and junket representatives must obtain approval from the Commission to operate.

The Commission has also decided to require owners of at least 5% of the voting securities of a licensee or the holding company of a licensee to apply to the Commission for a finding that the person

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or entity is suitable to associate with the licensee. In addition to this finding of suitability, such person or entity holding over 50% of a licensee, directly or indirectly, must register as a publicly traded company or as a holding company of the licensee.

However, there is an exception for "institutional investors" who own, directly or indirectly, more than 5%, but no more than 15%, of the voting securities of the licensed entity. For this exception to apply, the investor must hold these securities in the ordinary course of business as an institutional investor for investment purposes only. That means that the investor cannot use the securities to alter either the membership of the entity's board of directors or influence the corporate policies of the licensee, but the investor can vote on issues on which fellow stockholders vote, as well as participate in all other activities that are consistent with the duties and concerns of an institutional investor. An institutional investor owning more than 10% of a licensed entity (but no greater than 15%) must obtain a waiver from the Commission to maintain the exception and avoid the triggering of a finding of suitability requirement.

2.3 What restrictions are placed upon any licensee?

Mississippi allows essentially all forms of traditional casino games and devices. New games must be approved by the Mississippi Gaming Commission before being offered for play in a casino. The minimum age for gaming in Mississippi is 21. The State does not restrict the number of gaming licences. However, licences are not perpetual. Gaming licences are issued for a maximum of three years, and findings of suitability to associate with licensees are issued for a maximum of nine years.

All licensees and those found suitable to associate with licensees must comply with all requirements pursuant to the Mississippi Gaming Control Act and all regulations imposed by the Mississippi Gaming Commission, and any dispute involving a gaming licence must be adjudicated in Mississippi. The Act only permits gaming in the 14 counties that border either the Gulf Coast or the Mississippi River. Voters in each of these counties have the right by local option to allow gaming if they so choose. Currently, nine of the 14 counties allow gaming, and seven of those counties currently have at least one gaming operation carrying out gaming activities.

Mississippi does not restrict the hours that a gaming operation may conduct gaming activities, the number of games it offers, or the amount of space that it may dedicate toward gaming activities. However, the Commission does restrict where structures with gaming activities may be located. For structures within counties that border the Mississippi River, the majority of the gaming floor must be situated over an elevation under the Mississippi River's "bank full" (or flood stage) elevation. Structures that host gaming activities and are within counties bordering the Gulf Coast may reside completely on shore so long as the gaming floor does not extend more than 800 feet beyond the 19-year mean high water line of the Mississippi Sound, St. Louis Bay, or Biloxi Bay. Harrison County, which borders the Gulf Coast, has a special exception that allows the structure to extend past the 19-year mean high water line up to Highway 90.

The Commission also requires licensees to provide certain amenities for its customers. These regulations apply to all new casinos and those that have been previously closed and later acquired for renewed gaming activities. The gaming floor of the operation must have at least 40,000 square feet of space, and the operation must have some amenity that is unique from all other gaming operations. However, the requirements touch more than just the gaming experience. The operation must also include a dining area with a minimum capacity of 200 seats as well as a restaurant that can seat at least 75 guests. In addition, the operation must include a "three diamond" or equivalent rated hotel with at least 300 rooms, and a parking facility that can hold at least 500 motor vehicles. These requirements are designed to encourage economic development and tourism in the area of the casino.

2.4 What is the process of applying for any gambling licence or regulatory approval?

The Mississippi Gaming Commission provides the applications to obtain gaming licences, findings of suitability, and daily fantasy sports and charitable bingo licences on the Gaming Commission's website. The website provides addenda forms that are specific to each type of application. The Commission may charge licensing and/or application fees depending on the type of application submitted, and applicants must also pay an investigative fee deposit before the Commission will consider their applications. In addition to the relevant addenda, any natural person who applies for a finding of suitability to associate with a licensee must complete the International Association of Gaming Regulators' Multi-Jurisdictional Personal History Disclosure Form which the Commission provides on the website, and two fingerprint cards. The filing of an application triggers a Commission request for various categories of supporting documentation.

The Commission has the power to accept or deny any application for any reason it deems appropriate, and Mississippi courts do not have the power to review these decisions unless the Commission is found to have exceeded its statutory authority. The Investigations Division of the Commission reviews all applications and files findings and reports to the entire Commission for approval. During these investigations, the Investigations Division conducts background checks and interviews applicants and/or representatives of applicants to determine their suitability. The Corporate Securities Division reviews corporate documents and financial statements. The entire investigation process typically takes at least four to six months to complete, but can last even longer depending on the nature and complexity of the applicant and the proposed project. Once the investigation is complete, the applicant or a representative of the applicant must appear at a scheduled meeting before the Commission for its final consideration of the application.

The Commission's investigative and review powers extend beyond the application process. The Commission has the power to require a licensee or its holding company to disassociate from persons or entities who fail to complete the appropriate applications or are found unsuitable to affiliate with any licensee. The Commission can also order a licensee or its holding company to suspend or fire board members, executives, and employees for the same reasons. Those persons filling positions requiring a finding of suitability have 30 days from the date they begin to perform their duties in which to file an application.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

The standard term for gaming licences is three years, and findings of suitability are typically granted for nine years. Charitable bingo operator licences are issued for a maximum term of three years, while those for charitable bingo manufacturers and distributors are issued for a maximum term of one year. The term of a fantasy contest operator licence is three years.

All licences, findings of suitability, and registrations are subject to the Mississippi Gaming Control Act and all regulations promulgated by

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the Gaming Commission. The Commission may revoke or suspend licences and findings of suitability for failure to comply with these laws and regulations. Any adverse disciplinary action may occur only after the accused has been given notice of the charges and a fair hearing to contest the charges. Regardless, violations typically result in settlement agreements with financial penalties paid to the Commission.

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

The Gaming Commission currently does not place significant restrictions on a licensee's ability to advertise or promote its business, although the Mississippi Department of Banking prohibits advertisements offering cheque cashing services unless licensed as a cheque casher thereby. Gaming licensees may only acquire gaming equipment and certain associated equipment from manufacturers and vendors with the appropriate licences. For all other goods and services that do not fall under those categories, licensees may acquire those goods and services from unlicensed manufacturers and vendors. However, the Commission has the power and authority to require such unlicensed manufacturers and vendors, and indeed anyone connected or doing business with a licensee, to obtain a finding of suitability to be associated therewith.

2.7 What are the tax and other compulsory levies?

Mississippi imposes a flat annual licensing fee of $5,000 on all gaming operator licences. The State also levies a tax of up to 8% on all gross gaming revenue, which the gaming operator may use as a credit against Mississippi State income tax liability. Cities and counties may also, and typically do, levy an additional tax of up to 4% on gross gaming revenue.

In addition, gaming operators must pay an annual investigative fee of up to $300,000, depending on the number of games on the gaming floor, and an annual licensing fee equaling $81,200 for the first 35 games plus $100 for every additional game on the gaming floor. The State permits cities and counties to impose similar licensing fees on these games.

2.8 What are the broad social responsibility requirements?

The Mississippi Gaming Control Act does not impose strict social responsibility requirements. The Act does implore both the Commission and gaming operators to employ as many Mississippi residents as possible. The Commission itself has set regulations to address gaming-related issues such as gambling addiction and underage gambling.

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

Gaming patrons may not use either credit cards or virtual currencies for gaming purposes. Casino licensees may offer credit to casino patrons, and may place ATMs on the casino floor for cash withdrawals. Casinos are subject to federal AML restrictions and reporting.

3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Online gaming physically conducted within the State of Mississippi is illegal.

3.2 What other restrictions have an impact on online supplies?

Online gaming physically conducted within the State of Mississippi is illegal.

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

Online gaming physically conducted within the State of Mississippi is illegal.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

The Gaming Commission has exclusive authority to regulate gaming licences according to the Mississippi Gaming Control Act and regulations issued by the Gaming Commission. However, both local law enforcement officers and agents of the Mississippi Gaming Commission have the authority to enforce the laws and regulations that restrict unsanctioned gaming activities in Mississippi.

4.2 What is the approach of authorities to unregulated supplies?

The State of Mississippi heavily regulates and restricts gaming devices and materials that are available for play outside of a licensed gaming premises or have been manufactured or distributed without the appropriate licensing, as well as the use of unlicensed or illegal gaming devices and materials.

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

No other non-national laws impact upon liability and enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

Mississippi permits licensed gaming operators to enforce gaming debts by the appropriate legal processes.

5 Anticipated Reforms

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

There have been recent calls for Mississippi to enhance its gaming

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offerings by authorising lotteries and sports betting. Although it is believed that the 2017 amendments to the Mississippi Code effectuating the legalisation and regulation of fantasy sports betting also removed the impediments to sports betting in casinos, there remain federal prohibitions to overcome. The legalisation of lotteries will require further action by the Mississippi Legislature. The Legislature meets each year beginning in January.

The Mississippi Gaming Commission has currently proposed an amendment to its institutional investor regulation that would raise the permissible holdings (directly or indirectly) of voting securities of licensees by institutional investors without a finding of suitability from 15% to 25%. This amendment, which is expected to pass, would bring Mississippi in line with Nevada and New Jersey.

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Chapter 38

USA – Nevada

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Nevada has a two-tier State gaming regulatory system. The Nevada Gaming Control Board (the "Board") is a three-member, full-time regulatory body consisting of two members and a Chairman. The Nevada Gaming Commission (the "Commission") is a five-member, part-time regulatory body consisting of four members and a Chairman. All members of the Board and the Commission are appointed by Nevada's Governor.

The Board and the Commission work together to regulate all gambling activity in Nevada. This includes Nevada's large "non-restricted" casino resorts, such as those found along the famous Las Vegas Strip. This also includes small "restricted" gaming locations, such as taverns and convenience stores that have slot machines, and all race books, sports pools, and race tracks in the State, as well as those companies that serve the gaming industry, such as slot machine manufacturers and distributors.

Local city and county licensing authorities in Nevada also issue gaming business licences to gaming establishments located within their jurisdictions.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Gaming in Nevada is as wide-ranging as can be found anywhere else in the world and includes casino table gaming, slot machines, race books and sports pools, and horse racing. Gaming in the State is authorised and regulated under the State's Gaming Control Act, which is codified as Chapter 463 of the Nevada Revised Statutes (NRS 463).

Other relevant Nevada statutes include: NRS Chapter 368A, which provides for a Live Entertainment Tax; NRS Chapter 462, which regulates lotteries (note that only charitable lotteries are allowed in Nevada, and the large State or multi-State lotteries such as Powerball are not permitted in Nevada); NRS Chapter 463A (regulates gaming employees' labour organisations); NRS 463B, which allows for operation by the State/State appointee of a gaming establishment whose licence is surrendered, lapsed, suspended or revoked; NRS Chapter 464, which regulates pari-mutuel wagering; NRS Chapter 465, which outlines criminal actions and liabilities regarding gaming; and NRS Chapter 466, which covers horse racing.

The Commission also promulgates regulations that cover all aspects of the licensing, operation, accounting, and discipline for gaming licensees.

When it comes to anti-money laundering ("AML") in gaming, Nevada used to have its own set of AML statutes and regulations, but has since deferred to the federal law on this topic and Nevada's casinos are treated as financial institutions under federal law.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Natural persons, business entities (whether public or private), trusts, and sovereign wealth funds may apply for a Nevada gaming licence.

There is no residency requirement *per se* in connection with applying for a Nevada gaming licence, but a foreign business entity applying for a Nevada gaming licence must be qualified to do business in Nevada and have the proper State and local business licences. There is no limitation on the number of Nevada gaming licences that may be issued, but the issuance of gaming licences is limited by zoning restrictions, such as Gaming Enterprise Districts (NRS 463.308) and, in the case of "non-restricted" gaming operator licences, "resort-hotel" construction requirements (found in NRS 463.01865).

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Any person or business entity that wishes to undertake an activity that requires a Nevada gaming licence must first procure such licence before commencing business. Generally speaking, the licence categories encompass: (a) gambling operators; (b) manufacturers and distributors of gaming devices, mobile gaming systems, or cashless wagering systems; and (c) certain "service providers". Holding companies are required to register with the Commission, and all direct and indirect owners of the applicant are required to be licensed or registered, as applicable. In addition, key officers, directors, and other executives of the applicant entities must be found suitable (get licensed), and any individual that handles day-to-day operations at the licensed establishment must be licensed. In addition, any employee, agent, guardian, personal

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representative, lender, landlord, or holder of indebtedness of a gaming licensee who, in the opinion of the Commission, has the power to exercise *significant influence* over the licensee's operation of a gaming establishment may be required to apply for a licence.

Gaming operator licences are both applicant-specific and establishment-specific and are not transferable among persons or establishments (subject to very narrow exceptions).

2.3 What restrictions are placed upon any licensee?

Nevada gaming licences may be approved subject to such conditions, limitations, or orders of registration as determined by the Nevada Gaming Commission. Nevada licensees must at all times comply with applicable statutes and regulations and "self-police" their activities to ensure their continuing "suitability" for licensure. Such self-policing would include the ongoing examination of other business ventures and business associations to ensure that the licensee is complying with the law and not engaging in any activity that would tend to reflect discredit on gaming in Nevada. Generally speaking, large gaming companies have compliance committees who perform these self-policing functions.

2.4 What is the process of applying for any gambling licence or regulatory approval?

The licensing process varies depending on the parties involved, the licence(s) being sought, and any applicable transaction. Local city/county licensing authorities also issue gaming licences, and it is those authorities that have the power to issue liquor licences. Generally speaking, the process commences with the filing of an application with the Board. Once the application is deemed complete, an investigative team is assigned. In the non-restricted licensing context, the applicant must bear the entire cost of the investigation. The investigation itself consists of a very thorough background and financial review (both business and personal) of the applicants and a detailed examination of any applicable transaction. The applicants are required to produce myriad personal and financial documents, such as tax returns and bank statements, submit to interviews, and generally cooperate with any and all requests of the investigating agents.

When the investigation has been completed, the investigators prepare a written investigative summary for the Board. The matter is then scheduled on an agenda for consideration by the Board and the Commission at public meetings. After extensive questioning of the applicants on the public record, the Board votes on a recommendation to approve or deny an application. In cases where there are outstanding issues, the Board sometimes refers applications back to staff. The Board also considers any requests to withdraw an application.

Approximately two weeks after the Board meeting, the Commission conducts its public meeting to consider the Board's recommendation. The Commission usually follows the Board's recommendation, but it is not obligated to do so. In addition, a 2017 law gives the Commission the discretion to "reject" an application that the Board has recommended for denial.

The entire process can take six to 12 months or more depending on the complexity of the investigation, any "areas of concern", the responsiveness of the applicants, the workload of the agents, and/or other factors.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Unless limited in duration by the Commission (a limitation is typically one or two years), most Nevada gaming licences are issued without an expiration date. Once granted, such licences are revocable privileges, and no holder acquires any vested rights in a licence. In the event of an alleged violation of the Gaming Control Act by a licensee, it is up to the Board to file a complaint and demonstrate that disciplinary action should be taken against a licensee under a "preponderance of the evidence" standard. The licensee receives due process, but most complaints are settled because the process favours the Board. Licensing decisions made by the Commission are not subject to judicial review.

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

In the United States, government regulation of advertising (commercial speech) is generally limited by First Amendment principles. Such speech is not generally subject to government restraint, provided it is not deceptive or misleading and does not advertise unlawful activities.

There are not many restrictions on gaining market share or supplying to customers under Nevada law. New games are subject to Board approval, and the offering of certain types of wagers are subject to prior Commission approval. Certain types of wagers are prohibited by regulation. Junket operators are subject to prior Commission approval as "independent commissioned representatives".

2.7 What are the tax and other compulsory levies?

Under Nevada State law, Nevada gaming licensees must pay: (a) an annual tax and a quarterly fee based on the number of slot machines; (b) an annual tax and a quarterly fee based on the number of table games; (c) a monthly percentage fee based on gross gaming revenue; and (d) a live entertainment tax equal to 9% of admission charges, if applicable. The rates depend on the number of slot machines/table games and the amount of gross gaming revenue. In addition, licensees are required to remit quarterly 75% of the value of unredeemed slot machine wagering vouchers.

Gaming licensees other than casino operators must pay annual fees based on their licence category. A licensee may be required to pay federal and/or local city/county taxes as well.

2.8 What are the broad social responsibility requirements?

A portion of slot machine fees is dedicated to addressing problem gaming issues. Each licensee must post or provide problem gaming materials near gaming, cage and cash access areas. Each licensee must implement procedures for training employees regarding problem gaming. Each licensee must also implement a programme to permit self-exclusion from direct gambling marketing activities.

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

Nevada follows federal AML guidelines, publications, regulations and statutes. Third-party virtual currencies are not permitted for gambling use; however, licensees may issue promotional chips or credits that are used *in lieu* of cash for gambling transactions.

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3 The Restrictions on Online Supply/ Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Since 2001, Nevada has had statutory authority to grant State licences to conduct online gaming, which is called "Interactive Gaming" in Nevada. Interactive Gaming operator licences are limited to resort hotel operators. Currently, Nevada grants licences only for online poker, but has the statutory authority to grant licences for all other online games. Since at least the 1970s, Nevada has permitted licensed race and sports pool operators to offer intrastate remote account wagering. Today, intrastate remote account wagering on sports is facilitated primarily through smartphones.

3.2 What other restrictions have an impact on online supplies?

Most service providers to interactive gaming operators will be required to have some level of licensing or approval. The level of investigation, cost, and time to obtain such licensing or approval is dependent on the role of the service provider in facilitating online gaming. Currently, online poker may be offered only to those in Nevada and Delaware, and no other forms of online gambling games have been authorised. Remote-account-based sports wagering is offered strictly on an intrastate basis due to U.S. federal laws.

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

Nevada permits online poker to be offered by interactive gaming licensees using TCP/IP-based computing hardware (such as personal computers, laptops, tablets and smartphones). Nevada-licensed interactive gaming operators may offer online poker only to those in Nevada and Delaware.

Remote-account-based sports wagering may occur through telephone and approved TCP/IP platforms and applications. Remote-account-based sports wagering is offered only within the borders of the State of Nevada due to U.S. federal laws.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

The foundation for all gaming regulation in Nevada is found in NRS 463.0129. This statutory section is known as "the Public Policy Concerning Gaming". The section heading announces that a "license or approval is a revocable privilege". It acknowledges the vital economic importance of the gaming industry to Nevada and the need to insure that public confidence and trust in these institutions are maintained by regulating persons, locations, practices associations and activities related to the operation of gaming establishments, the manufacture, sale and distribution of gaming devices and associated equipment and the operation of inter-casino-linked systems. The overriding intent is to ensure that gaming activities are conducted honestly and competitively and do not reflect discredit on the State of Nevada and the gaming industry.

That policy statement allows Nevada's gaming regulators to impose obligations upon a broad range of individuals and entities having involvement or association with the gaming industry. Some of these categories include: licensees; gaming employees; manufacturers; distributors; equity holders; landlords; lenders; operators of tournaments; persons furnishing services and property; persons doing business on the premises of a gaming establishment (including lessees of shops, restaurants and nightclubs); and, of course, customers.

Each of the major operating units of the Board is tasked with keeping the industry free from criminal and corruptive elements as well as providing a "consumer protection" role for customers.

To keep abreast of its regulatory obligations, most non-restricted licensees (specifically referencing casino operators) have formed "compliance committees" to monitor internal standards and assure the regulators that they are not engaging in an "unsuitable method of operation" (NGC Reg. 5.011) or the violation of other State and federal laws, especially pertaining to gambling, marijuana involvement and anti-money laundering.

Gaming suppliers, or those who furnish a gaming device (defined in NRS 463.0155), must be licensed and their products must be tested first by an independent testing laboratory and then field tested and reviewed by the Board's Technology Division. Suppliers of products that are not classified as "gaming devices" may fall into the category of "associated equipment" defined in NGC Reg. 14.020(4), or "inter-casino linked systems", whose standards are described in NGC Reg. 14.100, or interactive gaming service providers as defined in NRS 463.677. Each of these systems is also reviewed by the independent lab and the Technology Division and the manufacturers and distributors are either required to be registered or found suitable after a full investigation (NGC Regs. 14.260–14.305). Additionally, all gaming equipment suppliers who ship gaming devices either into or out of Nevada must be registered with the U.S. Department of Justice in order to be exempt from 15 U.S.C. 1172 (NRS 463.410 and 463.420).

4.2 What is the approach of authorities to unregulated supplies?

Licensees who would offer unregulated or adulterated equipment are subject to disciplinary action, which could include fines and suspensions, licence limitations or revocation (NRS 463.310). It is unlawful for any person, either as an owner, lessee or employee to operate, carry on, conduct or maintain any form of manufacture, selling or distribution of any gaming device, cashless wagering system, mobile gaming system or interactive gaming system for use or play in Nevada without first procuring all required federal, State, county and municipal licences, and it is unlawful for such persons to knowingly distribute such devices from Nevada to any jurisdiction where the possession or use of such devices are illegal (NRS 463.650(1) and (10)).

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

The Board has entered into Compacts or Memoranda of Understanding with other gaming regulatory bodies throughout the world and regularly shares information concerning persons and investigations which are of mutual interest. As a "law enforcement agency" and a member of the Law Enforcement Intelligence Unit ("LEIU"), agents from the Board perform joint investigations with the world's premiere law enforcement organisations, including,

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but not limited to, Interpol, Scotland Yard and RCMP. The Board works cooperatively with anti-money laundering investigations conducted by FinCEN (Financial Crimes Enforcement Network) and the Federal Bureau of Investigation ("FBI") and the Securities Exchange Commission ("SEC") concerning allegations involving the Federal Corrupt Practices Act ("FCPA"), stock manipulation and insider trading. A violation of an international law or federal statute can bring an independent disciplinary action by the Board against a Nevada licensee.

4.4 Are gambling debts enforceable in your jurisdiction?

"Credit Instruments" are defined in NRS 463.01467 and may be enforced by legal process (NRS 463.368). An incomplete credit instrument may be accepted, provided that it is signed by the patron and states the amount of the debt in figures. Under those circumstances, the licensee may complete the credit instrument to be presented for payment. A licensee may accept a credit instrument either before, at the time, or after the patron incurs the debt. A patron's claim of having a mental or behavioural disorder involving gambling is not a defence in any action by a licensee to enforce a credit instrument and is not a valid counterclaim to such action.

Notwithstanding, each licensee is required to implement procedures and training for all employees who directly interact with gaming patrons in gaming areas. The training shall, at a minimum, consist of information concerning the nature and symptoms of problem gambling behaviour and methods for assisting patrons in obtaining information about problem gambling programs (NGC Reg. 5.170).

Each credit application must contain a statement, separately signed by a patron, acknowledging the patron's understanding that under Nevada law a credit instrument is the same as a personal check, and knowingly writing a credit instrument with insufficient funds in the account upon which it is drawn, or with the intent to defraud, is a criminal act in the State of Nevada which may result in criminal prosecution (NGC Reg. 6.118). District Attorneys in Nevada regularly enforce the provisions of NRS 205.130, which makes it a felony to fail to pay in full a credit instrument of $650 or more for credit extended by a licensed gaming establishment. A person who violates this provision may be adjudged guilty of a category D felony, which is punishable by one to four years in State prison and a fine of $5,000. Once the case has been submitted to the District Attorney for prosecution, a settlement through the prosecutor's office requires the payment of a 10% service fee. Although a felony arrest warrant is an extraditable charge, that remedy is seldom utilised.

A debt incurred by a patron for playing an interactive gaming system of an establishment licensed to operate interactive gaming is also valid and may be enforced by legal process (NRS 463.780). In all other respects, with the exception of obligations which are claimed to be owed by the licensee to a patron and which are resolved through a "patron dispute" hearing process by the Board, gaming debts that are not evidenced by a credit instrument are void and unenforceable and do not give rise to any administrative or civil cause of action (NRS 463.361).

Only bonded, duly licensed collection agencies, or a licensee's employees, junket representatives, attorneys or affiliated or wholly-owned corporations and their employees, may collect, on the licensee's behalf and for any consideration, gaming credit extended by the licensee. Notwithstanding, no licensee shall permit any person who has been denied a gaming licence or a work permit to collect any markers on behalf of a licensee (NGC Reg. 5.140).

5 Anticipated Reforms

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

As a worldwide leader in gaming, the State of Nevada engages in a constant cycle of review and revision to its gaming statutes and regulations. Because the Nevada State legislature meets only for 120 days every other year in the odd-numbered years, the next legislative session is not scheduled until February 2019. Therefore, there are no current statutory changes in the works. Changes to Nevada's gaming regulations, however, are ongoing. For example, regulations in the process of workshops and revision in 2017 included amendments to NGC Regulation 2, Regulation 5.300 through 5.380, and Regulation 25, regarding confidentiality of the Board and Commission employee records, operation of club venues, and independent agents.

A hot topic that is likely to engender new regulation in 2018 is the intersection of recreational marijuana and gaming. With the legalisation of recreational marijuana in Nevada and recreational dispensaries operating as of July 1, 2017, gaming licensees in Nevada are faced with many questions of how they can and cannot serve this industry and the standards they will be held to in policing the use of recreational marijuana on their premises.

Acknowledgment

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