

# Upcoming changes to gaming regulation in Malta

The Malta Gaming Authority has the ambitious aim of 'future-proofing' the gaming sectors it regulates, in order to retain Malta's position as the jurisdiction of choice for remote gaming excellence. An overhaul of Malta's regulatory landscape is in the works, which includes amongst other things: the potential establishment of a National Betting Exchange; the possible regulation of cryptocurrencies for betting; and the transformation of gaming licence classification. Malcolm Falzon and Terence Cassar of Camilleri Preziosi Advocates discuss the context to the planned changes in Malta, the potential changes in practice and the key issues that they look forward to being addressed as part of the process.

Novel legislative intervention and regulation was undoubtedly that which initially enabled Malta to establish itself as the hub of the European online gaming industry. The year was 2004. Malta, fresh from accession to the European Union, pioneered the regulation of the European online gaming industry by promulgating the Remote Gaming Regulations ('RGR') (Subsidiary Legislation 438.04 of the Laws of Malta), at a time when most other countries were still focusing on implementing ways to prevent online gaming operators from targeting their jurisdiction. Protection of state-controlled or imposed monopolies was the top priority for Malta's neighbours at the time. Fast-forward to today, and it is clear that most other players on the continent have shifted stance amidst an increased effort to find a successful formula for regulating the industry.

Needless to say, the growing trend of imposing local licences for targeting specific jurisdictions has rendered the Maltese gaming licence less indispensable, at least from the perspective of requiring the stamp of approval of an EU Member State in order to penetrate other Member States. Given the size of the Maltese market, it is widely acknowledged that regulatory innovation must remain at the forefront of the country's priorities for this sector in order to enable it to retain its competitive edge over its European counterparts. Malta's forward-looking regulatory framework combined with the proactive

and operator-friendly approach adopted by the Malta Gaming Authority ('MGA') (previously the Lotteries and Gaming Authority) have served the industry well so far. Interestingly, however, online gaming regulation in Malta has barely changed since its inception over a decade ago. The promulgation of the Skill Games Regulations ('SGR') (Subsidiary Legislation 438.11 of the Laws of Malta) late in January 2017 represents arguably the most significant development of our regulatory framework since inception.

Prior to the introduction of the SGR, for a proposed game offering to be licensable, its outcome had to be dependent on chance. With the coming into effect of the SGR, the concept of a 'Controlled Skill Game' was introduced, as a result of which it is possible to license games the outcome of which is dependent on a mixture of both luck and skill, rather than predominantly chance as is the case in terms of the RGR. Malta is the first country to create a licensing regime for skill games, not only meeting the needs of skill game operators wishing to operate in a regulated jurisdiction and under the seal of authorisation of a European regulator, but also addressing the at times blurred boundary between games based on chance and games based on skill. It should be noted that 'pure' skill games remain unlicensable, so far, although they now fall under the authority of the MGA and must adhere to the relevant compliance obligations.

## Major anticipated changes

The introduction of the SGR may be considered a teaser of the revamp that is on our doorstep: in an effort to retain Malta's position as the jurisdiction of choice for remote gaming excellence, a general overhaul of Malta's regulatory landscape is being meticulously planned. News of numerous changes has been fed to the market - the remaining part of this article will focus on three of the changes that are generating the most hype: the potential establishment of a National Betting Exchange ('NBE'); the possible regulation of cryptocurrencies for the acceptance and placement of bets; and the transformation in gaming licences classification.

### *The establishment of the NBE*

In April 2017, the MGA announced that the possibility of setting up a NBE is being explored. This novel project would permit gaming operators to hedge their bets, thereby allowing mitigation of risks and ensuring or at least safeguarding a profit regardless of the outcome of a particular event. Needless to say, the NBE would be particularly useful for sports book type games. The possibility of laying off the risk incurred by gaming operators would constitute a welcome step in fool-proofing the industry on a long term basis. Provision of odds is inherently a risky task given that the events on which bets may be placed are ultimately unpredictable... Leicester City winning the 2015/6 English Premier League, Donald Trump being elected





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President of the United States, the Brexit referendum outcome... the past twelve months couldn't have provided a better backdrop for a discussion on unpredictable outcomes and curbing their effect. The NBE can be considered as providing a welcome form of insurance in this high risk business model.

It appears that Project Malta, an entity set up by the Government of Malta to promote private/public sector joint venture initiatives, is actively involved in pushing forward this project together with the MGA. The NBE may indeed not be limited to MGA-licensed operators. The specifics of how this exchange will work in practice have not been disclosed to date, as the feasibility of this initiative is currently being studied.

#### *Acceptance of cryptocurrencies*

The MGA is considering the possibility of permitting and regulating cryptocurrencies as a valid legal tender for the acceptance of bets by MGA-licensed operators. As in the case of the NBE, it appears that detailed information will only be divulged once

a detailed study of this prospect has been completed. However it is already clear that Malta is leaning towards regulating cryptocurrencies and blockchain technology, the technology underlying cryptocurrencies and enabling cryptocurrencies to function. In sync with MGA announcements on this initiative, the Government of Malta approved a first draft of a national strategy to promote blockchain, as part of its drive to be on the frontline in embracing blockchain and Bitcoin. Even the Malta Stock Exchange announced that it has created a taskforce mandated specifically to formulate a strategy aimed at addressing the opportunities and challenges surrounding blockchain. A national plan for the introduction of cryptocurrencies in the gaming industry in Malta is expected to be unveiled later this year.

As a side note to the above, it would be most interesting if the MGA were to explore the possibility of using blockchain technology as a regulatory tool. The 'ledger like' capabilities of the blockchain provide a multitude

of possibilities for a regulator such as the MGA to utilise in order to ensure and police compliance with applicable laws and regulations. Verifying fairness, reporting, player protection, responsible gaming and information collection obligations (amongst potentially others) could be achieved by the MGA, almost in real-time.

#### *Licensing classification*

Under the current remote gaming licensing regime, licensable game offerings can be classified under four different types of classes of licences, excluding the new skill games licence under the SGR outlined above. In order to be able to provide a particular game offering and for that game offering to be licensable from an MGA perspective, that game offering must be capable of being categorised under one of the various possible licence classes.

The current licensing regime provides for the following classes/licence types:

- Class 1: Remote Gaming Licence (typically covering

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- casino and lottery games);
- Class 2: Remote Betting Office Licence (typically covering sportsbook games);
- Class 3: Licence to Promote or Abet Gaming (typically covering poker and other P2P games); and
- Class 4: Licence to Host and Manage Remote Gaming Operators (covers the provision of B2B services such as software, platform and games provision to B2C operators).

All the above is expected to change and be replaced with the so-called 'super licence' regime. Under this new licensing regime, essentially there will be only two types of licences - a B2B licence and a B2C licence. It can be anticipated that, in practice, the B2B licence will be similar in principle to the current Class 4 licence. However, whereas currently an operator needs to obtain a separate Class 4 licence for the different game types which can be offered, under the new B2B licence it is expected that an operator will be in a position to offer different game types under the same B2B licence.

In terms of the new B2C licence, it is expected that this will amalgamate into one licence the existing Class 1, 2 and 3 licences. Essentially, any player-facing game could be offered under the same B2C licence.

This change in classification is expected to streamline procedures and render the licensing process more efficient. It should also help from an operational perspective. In this regard, under the current system multiple licence holders are subject to audits on a revolving basis per licence held. Aggregating all games under one licence will reduce the existing multiplicity of audits and checks. It is also expected that the new regime will make it easier and smoother for operators to be able to integrate more games into their current portfolio. Presumably, the running costs for gaming operations will be reduced as operators will no longer have to pay multiple yearly licence fees. It remains to be seen what the total set of changes resulting from the pending overhaul will be - anticipation within the industry remains high.

### Pending implementation of the overhaul - changes in practice

It is common knowledge amongst industry practitioners and stakeholders that although not reflected in updates to the RGR, a number of practical adjustments to

the position set out in the regulations are being applied by the MGA. A number of these developments are worthy of note.

The RGR as they stand to date specify that to qualify for an MGA licence, an applicant must be a company established in Malta. However, it is now acceptable for companies incorporated in EU or EEA Member States to be the applicant and to hold a Maltese gaming licence.

A similar situation has arisen in relation to the requirements of a Key Official ('KO'), the company officer who is responsible for personally supervising the operation of a licensee and ensuring that the licensee is compliant with all applicable laws and regulations. In line with the wording of the current RGR, the KO must be both a director of the licensee and resident in Malta. However, subject to certain conditions including in particular the availability of the KO in Malta at short notice, the MGA no longer precludes persons residing in other EU or EEA Member States from acting as KOs.

Adjustments such as the ones indicated above are welcome from the operators' perspective. Whilst a pragmatic, practical and forward-looking approach by the regulator remains an important attribute associated with Malta's positioning as the jurisdiction of choice for the remote gaming industry, the reflection of these initiatives in the new regulatory framework will be a welcome development for practitioners and operators alike.

### What lies ahead

In anticipation of the changes to the RGR, a review of the SGR sheds light on what changes - of the practical kind as aforesaid - we can expect to see in the new package. For instance, under the SGR there is no requirement for a Malta-registered company to hold a Controlled Skill Games Licence. In fact, the SGR specifies that a person is not eligible to hold a licence unless such person is a body corporate established in an EU Member State or a Member State of the EEA. With regards to the KO, the SGR contains no provision specifying the residence of a KO.

Even in terms of licences available, the SGR is forward-looking and seems to transpose the position expected to result from the overhaul: under the SGR there are two possible Controlled Skill Games licences: (i) to offer a

controlled skill games service (the 'B2C licence'); and (ii) to offer a controlled skill games supply (the 'B2B licence').

If the SGR are anything to go by, then the sense of anticipation surrounding the eventual promulgation of the changes to the gaming regulation appears justified. Undoubtedly a step in the right direction and, as with the RGR, a statement of the MGA's mission to plug the gaps in the industry through innovative and effective legislation, the SGR have served as an important precursor to the much awaited amendments to our gaming laws. In fulfilling its ambitious aim of 'future-proofing' the gaming sectors it regulates, it is hoped that the MGA will succeed in delivering both efficacy and simplicity, whilst also revisiting its approach on a number of key issues which, in conclusion, may be summarised as follows:

- *ex-post*, rather than *ex-ante* approach: re-engineering of the MGA's licensing and monitoring processes, such that less reliance is placed on burdensome pre-licensing procedures, and more emphasis dedicated to the post-licensing stage;
- risk-based approach: an overall risk-based and outcome driven approach shall be adopted by the MGA to regulation and licensing, by differentiating its procedures on the basis of risk and avoiding a duplication of controls. This will result in a more efficient use of resources;
- new online portal for prospective licensees: the MGA's website is due to be revamped as part of the overhaul, and shall incorporate a novel online licensing application process, inclusive of a tracker, by virtue of which prospective licensees would be able to trace the progress on their application;
- revised administrative requirements: the MGA shall be revisiting various aspects of the administrative processes presently in place, inclusive of fees and gaming taxes, aimed at rationalisation and cost efficiency; and
- newly regulated products: the novel Maltese gaming law framework shall admit a wider scope of products, introducing newly regulated products such as skill games.

Change beckons. The foundations for a crucial milestone in Malta's continued growth in the remote gaming industry have been laid, and everyone is watching...