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MALTA

I. INTRODUCTION

1. General approach to gambling

Malta has opted to embrace the gaming industry and permits a broad range of activities. Important distinctions, however, are made between gaming by Maltese residents and foreigners – the latter being subject to less stringent regulation than the former. Malta invites active participation in this industry by foreign companies, offering favourable corporate and tax structures to such enterprises.

The Lotteries and Other Games Act (LOGA), the central piece of legislation in this area, provides for the regulation of all gaming operations other than land-based casinos which remain regulated under the Gaming Act 1998. LOGA established a new regulatory body, the Lotteries and Gaming Authority, a legal entity distinct from the government, which is the gaming regulator for Malta. New Remote Gaming Regulations govern the burgeoning Internet gaming industry.

2. Definitions

1. *Lottery*

Lotteries and Other Games Act Cap. 438, §2:

lottery means any game of chance where prizes are distributed by lot or chance among participants in the game;

2. *Casino Gaming*

Gaming Act 1998, as amended by Acts XXIV of 2001 and III of 2004:

casino means such premises in relation to which the Minister has granted a concession under article 3.

3. *Machine Gambling Outside Casinos*

Although there are numerous definitions of each of these types of machines (VLT, amusement machine, etc.) our research has revealed no comprehensive definition of this category.

4. *Betting*

Lotteries and Other Games Act Cap. 438, §2:

bet means a game in which the player is required to forecast any result or outcome in respect of one event or a set of events; and betting shall be construed as the playing of a bet;

Subsidiary definitions

Lotteries and Other Games Act Cap. 438, §2:

amusement game means a game played by means of an amusement machine;

amusement machine means any type of machine, whether operated electrically, electronically, mechanically, manually or otherwise, used for the purpose of playing games exclusively for amusement purposes and not for gambling purposes, and which is operated

by the insertion of money or any amusement machine token and where in the operation thereof a successful player neither receives nor is offered any benefit other than the opportunity, if any, afforded by the automatic action of the machine to play the game again without the insertion of other money or amusement machine tokens;

amusement machine token means a device which can be bought for insertion in amusement machines instead of money, for the operation of such machines;

game means and includes, except for the purposes of the definitions of amusement machine and amusement game in this sub-article, a game of chance and a game of chance and skill, but does not include (i) a sport event, although it includes a sport bet and any other game of chance and game of chance and skill the operation or playing of which depends on a sport event or a set of sport events or the result or outcome thereof and (ii) and amusement game;

game of chance means a game for money and, or prizes with a monetary value, the results of which are totally accidental;

game of chance and skill means a game for money and, or prizes with a monetary value, the results of which are not totally accidental but depend, to a certain extent, on the skill of the participant,

gaming device means any electrical, electronic or mechanical device, ticket or any other thing which is used or intended for use in connection with the operation, promotion or sale of a game and, or in gaming, and includes a totalisator, a VLT, a VLT central computer, a tombola scorecard and a tombola score sheet.

other games means and includes non-profit games operated by non-profit game licensees, commercial tombola games operated by tombola (bingo) hall licensees, commercial communication games operated by commercial communication game licensees, broadcasting media games operated by broadcasting media game licensees, VLT games operated by VLT licences, and racecourse bets and sweepstakes operated by racecourse betting licensees, in terms of their respective licence and under such terms and conditions as may be prescribed by virtue of regulations, or by their respective licence;

racecourse bet means a bet on a horse race or races or on a dog race or races conducted on a racecourse; and racecourse betting shall be construed as the playing of a racecourse bet;

5. *Bingo*

Lotteries and Other Games Act Cap. 438, §2:

tombola game means a game of chance, also known as **bingo** in which the player uses a tombola scoresheet or a tombola scorecard or an electronic representation thereof bearing numbers and is played by marking or covering numbers from one (1) to ninety (90), both numbers inclusive, as are identical to numbers drawn by chance, whether manually or electronically, and won by the player who first marks or covers the line which is achieved when, during one game, for the first time all five numbers on one horizontal row on one scorecard are drawn; or the house or bingo is achieved when, during one game, for the first time all the fifteen numbers on one scorecard are drawn;

6. *Media Gambling Services*

Lotteries and Other Games Act Cap. 438, §2:

broadcasting media game means any game which is organised by the owner or operator of a radio or television station, or a sub-contractor thereof, where the participation of players therein takes place by or as a result of their presence during the transmission or recording of the programme during which such game is organised or by any intervention on their part by any means of distance communication during or after the transmission or recording of the programme during which such game is organised;

Subsidiary definitions

Lotteries and Other Games Act Cap. 438, §2:

means of distance communication includes any means which may be used for the communication, transmission, conveyance and receipt of information (including information in the form of data, text, images, sound or speech) or for the conclusion of a contract between two or more persons; without the simultaneous physical presence of those persons; such means may be unaddressed or addressed printed matter, a standard letter, press advertising with an order form, a catalogue, telephone with human intervention (including phone-ins during radio and television programmes) or without human intervention (such as automatic calling machine, audiotext), radio videophone (telephone with screen), videotext (micro-computer and television screen) with keyboard or touch screen, electronic mail, facsimile machine (fax), and television (teleshopping), and any other means of communication, transmission, conveyance and receipt of information by wire, radio, optical means, electromagnetic means or by any electronic means;

7. *Sales Promotional Gambling*

Our research has revealed no definition of this term

8. *Charity Gambling*

Lotteries and Other Games Act Cap. 438, §2

non-profit game means a game organized by a non-profit organization, the net proceeds of which are intended for a religious, sports, philanthropic, cultural, educational, social or civic purpose or for any other purpose as the Minister may by order in the Gazette prescribe;

non-profit organization means any non-profit organization *domiciled in Malta* [emphasis added] such as religious societies, band clubs, youth movements, cultural societies, literary societies, clubs promoting arts, sports clubs and sports associations, charitable societies, philanthropic societies, political party clubs and political parties, trades union, social clubs or any other association or body of persons or individual person pursuing objectives of a religious, philanthropic, cultural, educational, social or civic nature, and approved in writing as a non-profit organization by the Authority for the purposes of this Act, and in respect of which such approval has not been revoked.

3. Taxes

Online Gaming

The tax on betting is 0.5% of turnover (i.e. the value of all bets received and accepted by the betting company at its betting office).

Although International Trading Companies (ITC) are subject to the normal corporate tax of 35% levied on all Maltese companies based upon their chargeable income for the year of assessment, upon a distribution of dividend by an ITC to its non-resident shareholder, certain fiscal incentives and tax refunds available to non-resident shareholders render the effective tax rate 4.17%.

The application fee for a [new license of any class, including a] Remote Gaming Licence, is Lm 1'000 (approx. 2,500). The fee for the license renewal for a subsequent five-year period is Lm 500 (1,250).

The annual licence fee for any class of licence is Lm 3 000 (approx. 7 500). Where a 5-year licence renewal of a licence is granted, a fee for of Lm 3,000 per annum is payable.⁵⁰⁶

All remote gaming (except betting and pool betting) is subject to fees of Lm 2,000 per month during the first six months after issue of the licence and subsequently Lm 3,000 per month for the entire duration of the licence period, provided that on remote gaming operated by a Class 4 Remote Gaming licensee, the licensee who operates the hosting platform shall not pay any tax for the first six months after the issue of the licence, shall pay tax of Lm 1,000 per month for the subsequent six months and subsequently Lm 2,000 per month for the entire duration of the licence. Licensees operating from the hosting platform shall pay five hundred Lm 500 per month.⁵⁰⁷

With respect to betting and pool betting, the licensee pays tax (a) On the gross amount of bets accepted in remote betting operations a sum equivalent to 0.5%; (b) On betting exchanges 0.5% on the sum of all net winnings calculated per player per betting market, and on pool betting a sum equivalent to 0.5% on the aggregate of stakes paid.

The foregoing notwithstanding, in all cases the total maximum of tax payable per annum by one licensee in respect of any one licence shall not exceed Lm 200,000.

Casino gaming

A casino licensee pays a tax of 36% on total gross takings of table games, 15% of the gross takings generated by table games dedicated to approved junkets, 40% on total gross takings of gaming machines played at the casino, 25% on the gross takings of all gaming machines dedicated to approved junkets⁵⁰⁸ in addition to such rate of tax on the casino entrance fee as may be specified in the casino licence.⁵⁰⁹

Other Gaming

The National Lottery is operated under an exclusive licence with private licensee pursuant to terms including the payment of fees and taxes included in that licence. Our research revealed no publicly available information concerning the fees and taxes applicable to the current licensee.

⁵⁰⁶ Remote Gaming Regulations 2004 Second Schedule

⁵⁰⁷ Remote Gaming Regulations 2004, Fourth Schedule.

⁵⁰⁸ Gaming Act CAP 400 Act X of 1998, as amended by Acts XXIV of 2001 and III of 2004, Schedule Taxation.

⁵⁰⁹ Ibid at §37(4).

Malta law provides for the issuance of licenses for Amusement Machines (which are regulated by the executive police) as well as for Broadcasting Media Games, Commercial Bingo Halls⁵¹⁰, Commercial Communication Games and on-course racecourse betting and sweepstakes. With the exception of Amusement Machines, each of these licences will be subject to fees and/or taxes in accordance with regulations which have yet to be published.

⁵¹⁰ N.B. on January 27, 2006, the Lotteries and Gaming Authority published Commercial Bingo (Tombola) Regulations.

II. LISTING**A) LEGISLATION ENACTED****a) Federal****1. General**

Financial Services Act (CAP. 330)

Financial Services Act (CAP. 330): Distance Selling (Retail Financial Services Regulations, L.N. 36 of 2005

Prevention of Money Laundering Act CAP. 373

Prevention of Money Laundering Regulations 2003, L.N. 199 of 2003

Consumer Affairs Act (CAP. 378)

Operation of Betting Offices Regulations 2000, L.N. 34 of 2000

Lotteries and Other Games Act (Act NO. XXIV of 2001, as amended by Act III of 2004)(CAP. 438)

Lotteries and Other Games Act (Act NO. XXIV of 2001): National Lottery Gaming Devices Regulations, 2004 L.N. 75 of 2004

Lotteries and Other Games Act (Act NO. XXIV of 2001): National Lottery Regulations, 2004

Lotteries and Other Games Act (Act No. XXIV of 2001): Notice of coming into force, L.N. 74 of 2004

Lotteries and Other Games Act: Publication of a Directive by the Lotteries and Gaming Authority

Lotteries and Other Games Act: Remote Gaming Regulations, 2004

Gaming Act and Prevention of Corruption (Players) Act

Electronic Commerce Act arts. 22-25

Remote Gaming Regulations 2004 L.N. 176 of 2004

2. Lotteries

See above (no legislation regulating only lotteries)

3. Casino Gaming

Gaming Act 1998 (CAP. 400)

Gaming Act: Gaming Act (Amendment) Regulations, L.N. 79 of 2003

4. Machine Gambling Outside Casinos

See above (no legislation regulating only machine gambling outside casinos)

5. Betting

Racecourse Betting Ordinance, Cap. 78⁵¹¹

6.-9. Relevant provisions included in legislation cited above.

⁵¹¹ Repealed [?]

B) DRAFT LEGISLATION

Draft Remote Gaming Regulations 2005

Draft Remote Gaming Regulations 2006 (not yet published)

Although neither technically draft legislation, nor effective legislation as of the cut-off date for this report, we note that new Commercial Tombola (Bingo) Regulations, 2006 became effective as of January 27, 2006.

C) SELF-REGULATION

Our research has revealed no relevant information

D) JURISPRUDENCE**a) Federal****1.-9. General**

We do not have access to Maltese case law and were therefore unable to perform the relevant research.

III. BARRIERS

a) Panorama

1. General

Persons in Malta may only play those games that are specifically authorised by the law. Under art. 67 of the Lotteries and Other Games Act, an offence against the Act is punishable by a fine of 3 000 – 100 000 liri (Lm) and/or imprisonment for up to 2 years.

2. Lotteries

A single National Lottery is permitted under Part VI of the Lotteries and Other Games Act. The Minister of Finance may grant a licence to operate a National Lottery to only one person at a time. The Minister of Finance may impose such terms and conditions on such licence as he deems appropriate. **Such person must be a company registered in Malta** whose sole purpose is to operate the National Lottery. In 2004, an exclusive 8-year licence to operate all State Lottery Games was granted to the Greek company Intralot.

The sale of games comprising the National Lottery requires a permit from the Lotteries and Gaming Authority subject to the terms and conditions the Authority deems appropriate.

3. Casino Gaming

The Lotteries and Gaming Authority is responsible for issuing casino licences. Pursuant to article 15 of the Gaming Act, **such licences are issued only to companies registered in Malta**. Casino employees, casino managers and junket leaders must have a licence from the Authority. **Although the minimum age for entry into a casino generally is 18 years, citizens of Malta must be at least 25 years old.**⁵¹²

The Authority may specify the games that may be played in a casino.⁵¹³ Article 49 of the Gaming Act prohibits most forms of advertising of casinos within Malta.

4. Machine Gambling Outside Casinos

The importation, manufacture, maintenance or supply of gaming devices requires a licence from the Lotteries and Gaming Authority.⁵¹⁴

The operation of Video Lottery Terminals is subject to a licence by the Authority, which may be issued only to a company registered in Malta.

5. Betting

Games of chance and games of chance and skill, sport bets and games which depend on a sport event or a set of sports events are **prohibited unless specifically authorised**. This includes games offered directly or indirectly from abroad or from Malta to persons in Malta

⁵¹² CAP. 400 arts. 14, 20 and 26.

⁵¹³ CAP. 400 art. 20.

⁵¹⁴ CAP. 438 art. 7.

through a means of distance communication. No authorised game may be organised on the results of games operated by the holder of a casino licence issued under the Gaming Act without the prior approval in writing of the Lotteries and Gaming Authority and subject to the terms and conditions imposed by that Authority.⁵¹⁵

Racecourse Betting

Racecourse bets on horse races and dog races, as well as sweepstakes in connection with horse races, require a licence from the Authority. Both the racecourse(s) and the meetings must be approved by the Minister of Finance.

Internet Gaming

Online gaming was addressed by legislation in 2000. No person may operate, promote, sell or abet remote gaming in or from Malta without a valid licence of the relevant class. Four types of licenses are available:

- Class 1: Online Gaming License (Covers casino and casino-type games)
- Class 2: Online Betting Office License
- Class 3: Online Betting Exchange License
- Class 4: Online Gaming Platform (Covers software platforms from which casinos can operate)

Licences are granted for five year periods but are revocable by the Authority. To qualify for a licence, an applicant must be a limited liability company registered for this purpose in Malta. Commitment of the applicant to maintaining a physical presence in Malta is one of the criteria for granting such licence. One of the criteria for suspension or cancellation of a licence is that the Authority be reasonably satisfied that the licensee presents a danger to the reputation of gaming in Malta.

Betting operations are carried out through an International Trading Company (ITC) set up for that purpose. The activities of ITCs are limited to those carried out outside Malta, therefore Maltese residents are prohibited from placing bets with licensed companies and the companies may only take bets from non Maltese residents.

If the ITC is to be a processing operation only and will not conclude contracts for bets in Malta, it need not be licensed; however such companies will be asked to make a voluntary contribution to the arts or to a charity of their choice, the amount of such contribution being left entirely to their discretion. If the ITC will operate a call centre in Malta to receive bets as well as a processing operation, a licence will be required.

A presence in Malta is required in the form of premises from which the betting office's operations are carried out. Generally speaking, a call centre is established exclusively to receive bets together with a processing (back office) operation. Betting against computer generated games such as cyber-casinos on the Internet will not be given licences but the Internet may be used as a communication medium (though e-mail) to the call centre.

The Malta Financial Services Agency, which regulates the financial services sector as a general matter, regulates and registers all companies, including betting companies, oversees the due-diligence process on prospective licenses and advised the Gaming Authority on the suitability of an applicant for the issue of a betting license.

⁵¹⁵ CAP. 438 art. 3-4.

6. Bingo

The operation of commercial tombola games requires a licence from the Lotteries and Gaming Authority which will be granted only to a company registered in Malta.

7. Media Gambling Services

Operation of a broadcasting media game requires a licence from the Authority.⁵¹⁶

8. Sales Promotional Gambling

Operation of a commercial communication game⁵¹⁷ requires a licence from the Authority. Where the prizes to be won in such a game are participations in the National Lottery and the game is operated in agreement with the National Lottery, the licence requirement does not apply.

9. Charity Gambling

Under §38 of the Lotteries and Other Games Act, the Authority may grant a licence to a company registered in Malta to operate commercial tombola games in a tombola (bingo) hall.

⁵¹⁶ CAP. 438 arts. 1, 41.

⁵¹⁷ CAP. 438 arts. 1, 40.

b) Table

A) LEGISLATION ENACTED

Applicable Laws and specifically relevant provisions	Barriers to the Free Movement of Gambling Services	Justifications for Continuation of Barriers ⁵¹⁸
<p>Gaming Act § 14 No person may open or operate a casino unless he is in possession of a licence by the Authority.</p> <p>§ 15 (1) It shall be lawful for the Authority by licence to authorise a person to open and operate a casino in Malta. (2) The Authority shall not issue such licence to a person unless that person is a company registered in Malta [...]</p>	<p>Casino licences issued only to companies registered in Malta</p>	
<p>Gaming Act §26 (1) A person shall not enter a casino during the hours of operation of the casino, if the person – [...] (c) is in the case of a citizen of Malta under that age of twenty-five years; (a) is in the case of any other person under the age of eighteen years</p>	<p>Casino age limits different for Maltese citizens.</p>	

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Maltese legislation does not generally include language indicating the justification for the adoption of the laws in question.

<p>Lotteries and Other Games Act</p> <p>§3 (1) Any game which is not an authorised game, or which is not authorised to be operated under any law in Malta other than this Act and regulations made thereunder, is prohibited from being played by any person in Malta. (2) The provisions of subarticle (1) also apply to any game offered directly or indirectly from abroad or from Malta to persons in Malta through a means of distance communication.</p> <p>§5 Any game which is not an authorised game, or which is not authorised to be operated under any law in Malta other than this Act and regulations made thereunder, or which is not a game which is operated by the holder of a permit granted under regulations made under article 78(3) in terms of such permit, is prohibited from being operated, promoted or sold by any person in Malta.</p> <p>§ 26 (1) The Minister may operate the National Lottery or may decide to concede the operation of the National Lottery to another person in accordance with the provisions of this Act: Provided that the Minister may not operate the National Lottery at a time while a National Lottery licence is still in force: Provided further that the Minister may not operate the National Lottery for such time during which a National Lottery licence is suspended in terms of article 35.</p>	<p>All gaming must be specifically authorised by Maltese law.</p>	
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<p>§ 27 (1) The National Lottery licence shall be issued for such term as the Authority after consultation with the Minister, and for the first time after the entry into force of this Part as the Minister, may specify in the licence, which term shall commence to run on such day as may be specified in the licence as the date from when the licence shall become effective.</p>		
<p>Lotteries and Other Games Act §7 No person shall import, manufacture maintain or supply any relevant gaming device unless such person is in possession of a valid licence to this effect issued by the Authority or unless such person is exempted from such licensing requirement in respect of such relevant gaming device in terms of regulations made under this Act.</p>	<p>The importation, manufacture or maintenance of gaming devices is subject to a licence.</p>	
<p>Lotteries and Other Games Act §11 The functions of the [Lotteries and Gaming] Authority shall be – (b) to issue a National Lottery licence and licences to operate other games and to supervise the operation of licensees to ensure that licensees comply with the terms and conditions of their licence and with the provisions of this Act and of regulations made under this Act and with any applicable directives issued by the Authority in terms of this Act or regulations made thereunder; (c) to issue permits to sellers of games forming part of the National Lottery in terms of article 36;</p>	<p>Monopolistic National Lottery</p>	

<p>(d) to inquire into the suitability of licensees and the main suppliers thereof, an to ensure that those involved in the operation, promotion or sale of authorised games operated by such licensees are fit and proper persons to carry out their functions relative to such games.</p>		
<p>Lotteries and Other Games Act § 36 (1) No person may sell games forming part of the National Lottery unless such person is in possession of a valid permit issued by the Authority</p>	<p>Sale of National lottery game requires permit</p>	
<p>Lotteries and Other Games Act⁵¹⁹ §37 (1) The Authority may grant a licence to a non-profit organization to operate a non-profit game in terms of the provisions of the First Schedule. (2) No person may operate a non-profit game unless such person is in possession of a valid non-profit game licence. Any person who acts in breach of the provisions of this subarticle shall be guilty of an offence against this Act. §38 (1) The Authority may grant a licence to a company registered in Malta to operate commercial tombola games in a tombola (bingo) hall in terms of the provisions of the Second Schedule.</p>	<p>Non-profit games, tombola (bingo) halls, commercial communication games, broadcasting media, racecourse betting and sweepstakes require a licence</p>	

⁵¹⁹ These articles are not yet in force.

<p>(2) Without prejudice to the provisions of item 5(4) of the Second Schedule, no person may operate commercial tombola games in a tombola (bingo) hall unless such person is in possession of a valid tombola (bingo) hall licence. Any person who acts in breach of the provisions of this subarticle shall be guilty of an offence against this Act.</p> <p>§§39-44 include similar provisions concerning commercial communication games, broadcasting media games, VLTs, racecourse betting and sweepstakes.</p>		
<p>Lotteries and Other Games Act</p> <p>§ 42 (1) The Authority may grant a licence to a company registered in Malta to operate VLT games and gaming through a VLT or VLTs in terms of the provisions of the Fifth Schedule.</p> <p>(2) Without prejudice to the provisions of item 5(4) of the Fifth Schedule, no person may operate VLT games and, or gaming through VLT or VLTs unless such person is in possession of a valid VLT licence, and no person shall operate or keep a VLT, or shall exchange or redeem a VLT payout voucher for a VKLT game prize, or shall operate or keep the means of exchanging or redeeming VLT payout vouchers for LT game prizes, in any premises other than premises authorised to be used for such purposes under the relevant VLT licence. Any person who acts in breach of the provisions of this subarticle shall be guilty of an offence against this Act.</p>	<p>VLT licenses granted only to companies registered in Malta.</p>	

<p>Remote Gaming Regulations 2004 L.N. 176 of 2004 of the Lotteries and Other Games Act (ACT XXIV of 2001)</p> <p>§3. No person shall operate or promote or sell or abet remote gaming in or from Malta unless such person is in possession of a valid licence of the relevant class [...]</p> <p>§4. To qualify for a licence, an applicant must be a limited liability company registered in Malta.</p> <p>§8. (1) The Authority shall not issue or renew a licence applied for under these regulations unless it is reasonably satisfied that all persons involved in the applicant company are fit and proper person. (2) In determining whether the applicant is a fit and proper person, the Authority 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 shareholder 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 Authority in order to ensure that players shall have winnings paid and deposits returned; (e) commitment of the applicant to maintain</p>	<p>Remote gaming licence granted only to limited liability company registered in Malta; commitment to maintain physical presence in Malta is criterion for grant of licence</p>	<p>§ 9. (2): Proper operation of interactive games, protection of players, prevention of money laundering and exigencies of public interest</p>
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III. BARRIERS Table

LEGISLATION ENACTED

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<p>a physical presence in Malta; (f) whether the applicant is, in the Authority'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 Authority deems appropriate.</p>		
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B) DRAFT LEGISLATION

The only relevant currently published draft legislation is the 2005 Remote Gaming Regulations which will soon be superseded by the 2006 Remote Gaming Regulations. As such, we have included no analysis of the former.

C) SELF-REGULATION

Our research has revealed no relevant information.

D) JURISPRUDENCE

We have do not have access to the Maltese case law which would allow us to perform the relevant research.