

SUBSIDIARY LEGISLATION 583.06**GAMING COMPLIANCE AND
ENFORCEMENT REGULATIONS**

20th July, 2018

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Arrangement of the Regulations

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Part I

Citation and Interpretation

- 1.** The title of these regulations is the Gaming Compliance and Enforcement Regulations. Citation.
- 2.** (1) In these regulations, save as provided in sub-regulations (2) and (3), all words and phrases shall have the same meaning as prescribed in the Gaming Definitions Regulations. Interpretation.
S.L.583.04.
- (2) In these regulations, unless the context otherwise requires, "the Act" means the Gaming Act. Cap. 583.
- (3) All other terms used in these regulations shall have the same meaning attributed to them in the Act.

Part II

General Compliance

- 3.** (1) An authorised person shall, throughout the term of an authorisation, continuously fulfil and comply with all relevant requirements and be responsible for all obligations imposed by all applicable regulatory instruments. Obligation of continuous compliance.
- (2) An authorised person shall, throughout the term of an authorisation, comply with the policies and procedures which must be notified to the Authority in terms of any regulatory instrument, and any breach of such policies and procedures shall be tantamount to a breach of a regulatory instrument.

Authority may give orders to take specific actions.

4. The Authority may require any authorised person to take actions, implement procedures or systems, to make submissions, to provide information, reports, compliance certificates and, or any other evidence of compliance to the Authority, on a regular or *ad hoc* basis, to demonstrate the authorised person's compliance with all applicable regulatory instruments:

Provided that only compliance certificates issued by certifiers and auditors approved by the Authority shall be recognised by the Authority.

Power to order compliance audit.

5. The Authority may require any authorised person to undergo a compliance audit, on a regular or *ad hoc* basis, in accordance with any binding instrument that may be issued by the Authority:

Provided that only compliance audits carried out by auditors approved by the Authority shall be recognised by the Authority.

Part III

Compliance Review

Compliance review.

6. (1) The Authority may, where it deems necessary, initiate a review of all or part of the conduct and, or operations of an authorised person.

(2) If, in conducting such review, the Authority discovers conduct and, or operations which are not, or may not be, in accordance with the applicable regulatory instruments, it shall notify the authorised person of this fact, giving such authorised person a reasonable time to make any relevant submissions:

Provided that if the authorised person fails to make submissions within the allocated time, the Authority shall reach a decision based on the information available to it:

Provided further that in conducting such review, the Authority may also request any information from third parties that directly or indirectly provide one or more services to, or obtain one or more services from, the authorised person that it deems relevant, without requiring the consent of the authorised person and with or without informing the authorised person.

(3) If the authorised person fails to make submissions or, in its submissions, does not address any concerns which the Authority may have, the Authority may initiate a formal investigation and, or take such other measures, including enforcement measures, as it may deem appropriate.

Part IV

Formal Investigation

7. (1) When the Authority has reason to suspect that an authorised person is conducting its affairs in breach of any applicable regulatory instrument or is otherwise no longer suitable to hold such authorisation, it shall initiate a formal investigation of such authorised person. Authorisation suspension.

(2) The authorised person shall be informed of the investigation and the reasons for which it was initiated:

Provided that where the Authority reasonably believes that informing the authorised person of such investigation may prejudice the investigation or any possible outcome thereof, or is precluded from informing the authorised person by virtue of any applicable law, it may carry out the investigation without informing the authorised person.

(3) In conducting such investigation, the Authority shall be empowered to request and, or access any and all information, documents and other things from the authorised person or from third parties that directly or indirectly provide one or more services to, or obtain one or more services from, the authorised person, that it deems relevant.

Provided that where the Authority requests information, documents or any other things from a third party, it shall not require the consent of the authorised person to which the information, documents or other things relate.

Provided further that, where such information, documents and other things constitute personal data, the Authority shall only request and, or access the personal data which it deems to be relevant to the investigation.

(4) It shall be an offence against the Act for the authorised person not to provide the Authority with any information, documents and, or other things which the Authority may require, or to otherwise hinder the Authority's investigation or to neglect to collaborate therewith. In any such case it shall also be lawful for the Authority to make a decision based on the information available to it.

(5) When the Authority's investigation is concluded, the Authority shall provide the authorised person with a report thereon which shall include:

(a) the reason or reasons for which the investigation was initiated;

(b) the breaches of applicable regulatory

instruments by the authorised person, if any, and the evidence proving such breaches; and

(c) the enforcement measures which the Authority has deemed it fit to take in the circumstances, if any:

Provided that the Authority may withhold any or all of the above information if disclosing them to the authorised person may prejudice the interests of players or of any other person, or would amount to a breach of any applicable law.

(6) The authorised person may contest the findings in such report within twenty days from the date of notification thereof.

(7) Upon receiving the authorised person's contestation, if any, or upon the lapse of twenty days from the date of notification of the Authority's report, whichever is earlier, the Authority shall communicate to the authorised person its final decision on the matter, confirming, revoking or amending the report.

Part V

Enforcement Measures

Enforcement
measures.

8. (1) The enforcement measures which the Authority may take are the following:

(a) an order, howsoever named, directing the authorised person to do, or to refrain from doing, something or to otherwise correct its conduct and, or operations; and, or

(b) a warning, howsoever named, directing the authorised person to do, or refrain from doing, something in the future; and, or

(c) adding, removing or amending conditions attached to the authorisation held by the relevant authorised person; and, or

(d) in the case of a breach which is not an offence against the Act, imposing an administrative penalty in terms of article 25(3) of the Act; and, or

(e) in the case of a breach which is an offence against the Act, and without prejudice to article 25(1) of the Act, filing a report to the Executive Police for the commencement of criminal proceedings; and, or

(f) suspending or cancelling the licence, in terms of regulations 9 or 10, as the case may be:

Provided that the enforcement sanctions mentioned in this

sub-regulation shall not be made public unless the Authority determines that this is in the public interest or if the Authority is obliged to make such sanction public in terms of any other law:

Provided further that any measure mentioned in paragraph (f) shall be made public.

(2) The Authority may exercise an enforcement measure solely following the conclusion of a compliance review and, or a formal investigation:

Provided that the Authority may, in exceptional circumstances and in the interest of players or on grounds of public policy, public security or the safeguarding of the reputation of Malta, exercise any enforcement measures which it deems appropriate prior to the performance of the review and, or investigation, or following the conclusion thereof but prior to the lapse of the time within which the authorised person may contest the findings.

(3) Without prejudice to the above and to any provision of the Act or any other law, in the case of the offence listed in paragraph (a) of the Third Schedule to the Act, the Authority may, whether the person in breach is an authorised person or otherwise, impose an administrative fine on the person in breach and, or give any other direction it may deem fit as an alternative to criminal proceedings in terms of article 25(1) of the Act:

Provided that any person in breach of paragraph (a) of the Third Schedule to the Act may request that the above enforcement measure be taken in his regard, and the Authority shall take such measure as an alternative to criminal proceedings unless it is reasonably satisfied that criminal proceedings are more appropriate, having regard to the circumstances of the case:

Provided further that for the avoidance of doubt, the Authority's decision not to impose an administrative fine on the person in breach as an alternative to criminal proceedings shall be considered to be an administrative act subject to an appeal in terms of article 43 of the Act.

(4) Without prejudice to the foregoing, the Authority shall also be empowered to keep and publish a list of operators which are not compliant with the applicable laws and, or regulatory instruments:

Provided that any operator included on such list shall be given the opportunity to make submissions to the Authority, clarifying and, or addressing its lack of compliance, in order for the Authority to remove such operator from the list:

Provided further that should the Authority refuse, further to remonstrations from such operator, to remove the operator

from such list, the refusal shall be deemed to constitute an administrative act which may be appealed from in terms of article 43 of the Act.

Grounds for suspension.

9. (1) The Authority shall have the power to suspend an authorisation in the following instances:

(a) the Authority is satisfied that the authorised person, or a person holding a direct or indirect interest in the authorised person, or a person holding a key function in the authorised person, is not, or has ceased to be, in the opinion of the Authority, fit and proper to hold such authorisation;

(b) the authorised person has failed to comply with an order issued by the Authority;

(c) the authorised person has failed to comply with one or more applicable obligations in terms of any regulatory instrument or any other applicable law of Malta;

(d) the authorised person has failed to discharge financial commitments for its operations or the Authority has reason to believe that such failure is imminent;

(e) in the case of a natural person, the authorised person becomes incapable of exercising his or her functions as an authorised person due to physical and, or mental incapacity or for any other reason;

(f) the authorised person is bankrupt, insolvent or is being wound up;

(g) the authorised person applies for an order, or is compelled by any means or for any reason, to discontinue or to wind up its operations;

(h) the authorised person is in breach of the laws or regulations at any time in force for the prevention of money laundering and financing of terrorism;

(i) the authorised person has failed to meet commitments to players in a timely manner, or the Authority has reason to believe that such failure is imminent;

(j) circumstances arise which, had they been present and known to the Authority at the time of issuance of the authorisation, would have led the Authority not to issue such authorisation;

(k) the authorised person has failed to seek the prior approval of the Authority of any material change where such

prior approval is required in terms of any regulatory instrument, or has failed to notify the Authority of such material change where such notification is required;

(l) the authorised person has failed to pay in a timely manner all amounts due to the Authority; or

(m) the Authority, in its sole discretion, has determined that there is material and sufficient reason for suspending the authorisation.

(2) (a) Where a ground for suspension of the authorisation arises in terms of sub-regulation (1), the Authority shall, by notice in writing, give the authorised person an amount of time, being not less than twenty days, to show cause why the authorisation should not be suspended.

(b) Where a ground for suspension of the authorisation in terms of sub-regulation (1) is deemed to exist following a formal investigation and the authorised person has already been granted a period of time to contest the findings of such investigation in terms of regulation 7(6), the time period mentioned in paragraph (a) shall not be applicable:

Provided that, notwithstanding the above and any other provision in any regulatory instrument or any other law, the Authority shall have the right to suspend an authorisation with immediate effect, by written notice to the authorised person and without giving the authorised person time to show cause why the authorisation should not be suspended, where it determines that there exist exceptional grounds for doing so, including but not limited to:

(i) when the Authority becomes aware that the authorisation was obtained by one or more materially false or misleading representations or in some other improper way; or

(ii) when the authorised person presents an imminent threat to the reputation of Malta; or

(iii) when the authorised person presents an imminent threat of serious prejudice to the interests of players or to public or national interest.

10. (1) The Authority shall have the power to cancel an authorisation in the following instances:

Grounds for
cancellation.

(a) one of the grounds for suspension envisaged in regulation 9 arises and the Authority, in its sole discretion, determines that cancellation of the authorisation is the most appropriate measure;

(b) the Authority has suspended the authorisation in

terms of regulation 9 and, in the circumstances of the case, the Authority becomes satisfied that the matter which has led to the suspension cannot be rectified;

(c) the authorisation has been voluntarily suspended for more than six (6) months and the authorised person has not provided a plan outlining when it expects the authorisation to be reactivated, to the satisfaction of the Authority; or

(d) the authorised person continues to provide a gaming service and, or a gaming supply and, or a key function, notwithstanding the suspension of the authorisation by the Authority in terms of regulation 9.

(2) (a) Where a ground for cancellation of the authorisation in terms of sub-regulation (1) arises the Authority shall, by notice in writing, give the authorised person an amount of time, being not less than twenty days, to show cause why the authorisation should not be cancelled.

(b) Where a ground for cancellation of the authorisation in terms of sub-regulation (1) is deemed to exist following a formal investigation and the authorised person has already been granted a period of time to contest the findings of such investigation in terms of regulation 7(6), the time period mentioned in paragraph (a) shall not be applicable:

Provided that, notwithstanding the above and any other provision in any regulatory instrument or any other law, the Authority shall have the right to cancel an authorisation with immediate effect, by written notice to the authorised person and without giving the authorised person time to show cause why the authorisation should not be cancelled, on grounds of national interest or to safeguard the reputation of Malta, or if the authorisation was obtained by one or more materially false or misleading representations or in some other improper way.

Suspension or
cancellation not to
affect liability.

11. (1) The suspension or cancellation of the authorisation shall not affect any liability of the authorisation holder for anything done or omitted to be done, or for any amounts due which may have already accrued, before the date of suspension or cancellation.

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(2) Without prejudice to any provision in the Gaming Licence Fees Regulations, the liability of the authorised person to pay any applicable compliance contribution, gaming devices levy and, or gaming tax shall stop accruing during any period in which the authorisation is suspended:

Provided that the authorised person shall have no right to recover any applicable dues paid in advance.

12. Notices of suspension or cancellation shall be served on the authorised person in accordance with article 53 of the Act:

Service of notices of suspension or cancellations.

Provided that where the authorised person is notified by electronic means, if the Authority does not have evidence that the notice was received by the authorised person within twenty-four hours, the Authority may issue the suspension or cancellation notice on its website and the authorised person shall be considered to be notified immediately as soon as the notice is visible on such website:

Provided further that where the suspension or cancellation is issued with immediate effect in terms of the proviso to regulation 9(2) or the proviso to regulation 10(2), the Authority may publish such notice prior to the lapse of such twenty-four hours and the authorised person shall be considered to be notified immediately as soon as the notice is visible on the website.

Part VI

Powers of the Authority

13. (1) Without prejudice to anything contained in any other regulatory instrument, an officer of the Authority shall, for the purpose of ascertaining that all applicable regulatory instruments are being complied with, have the following powers:

Powers of officers of the Authority.

(a) to inspect, test and, or examine any equipment, software or other thing being used in the provision of a gaming service, a gaming supply, or a key function;

(b) to remove any equipment, software or other thing to another place or premises approved and, or designated by the Authority, for the purpose of an inspection and, or examination;

(c) to inspect any premises, whether authorised by the Authority or otherwise, in which gaming is taking place or in which he reasonably suspects that gaming is taking place, or in which there is, or he reasonably suspects that there is, any equipment, software or any other thing related to such gaming;

(d) to demand information or the production of any document or other thing related to gaming or which he reasonably suspects relates to gaming for the purpose of an inspection and, or examination, including but not limited to requiring any person found within any premises in which gaming is taking place to produce identification documents and, or evidence of his age;

(e) to remove any document or other thing produced as a result of a request under the preceding paragraph or discovered during an inspection for the purpose of examining

it and, or making copies or taking extracts or otherwise documenting its existence and, or characteristics;

(f) to play a game or games for the purpose of confirming whether such game requires authorisation in terms of the Act or any other regulatory instrument;

(g) to play a game or games which are authorised by the Authority to be offered for the purpose of confirming whether such game is compliant with the Act and any other applicable regulatory instruments;

(h) to demand information and, or the production of any document or other thing, from any person whom the officer of the Authority reasonably suspects to be conducting gaming without the necessary authorisation, or aiding or abetting gaming without the necessary authorisation;

(i) to access, retrieve and, or make extracts or copies of any data, information and, or any document or other thing pertaining to an authorised person, including but not limited to surveillance footage and any recording by whatever means of video, audio and, or any other information, wherever such data, information, document or other thing is located and, or stored;

(j) to call to his assistance for the purpose of carrying out his functions -

(i) another officer of the Authority;

(ii) any member of the Police Force, any local council, any department of Government or any agency of Government, or any other public authority, whether local or foreign;

(k) to do all such things as may be ancillary or conducive to his powers and duties under the Act, these regulations and any other regulatory instrument or any other law.

Provided that, in exercising any of the powers under this provision, the officer of the Authority shall respect the principles of data minimisation and proportionality as defined within data protection legislation. Furthermore, the Authority shall not retain any copies or extracts beyond what is necessary in the exercise of the relevant power.

(2) Whenever an officer of the Authority removes equipment, software, document or any other thing from any premises or place in terms of sub-regulation (1), the Authority shall provide a receipt for it to the person who owns or is in charge of the premises or place and,

subject to sub-regulation (3), shall promptly return the equipment, software, document or other thing to the premises or other place after completion of the inspection, examination, testing, making of copies or taking of extracts, as the case may be.

(3) An officer of the Authority may, for the purposes of evidence, detain for such time as may be required any equipment, software, document or other thing that the officer discovers while acting in the exercise of his powers and which he believes, on reasonable grounds, may afford evidence of a violation of or a non-compliance with anything contained in the Act or any other regulatory instrument.

(4) Copies of or extracts from documents or other things removed from any premises or other place by an officer of the Authority, and certified by an officer of the Authority making the copies or taking the extracts as being true copies of or extracts from the originals, are admissible in evidence to the same extent as, and have the same probatory value as, the documents or things of which they are copies or from which they are extracts.

14. (1) The person who owns or is in charge of any place or premises entered by an officer of the Authority in the exercise of his powers, and any employee or agent of such person shall give all reasonable assistance to the officer of the Authority to enable the officer to exercise his powers in terms of the Act and these regulations, and shall furnish the officer with such equipment, software, records, documents, information or other thing as the officer may request.

Obligation to assist with investigations.

(2) No person shall hinder, obstruct or otherwise interfere with, or knowingly make a false, incomplete or misleading statement, either orally or in writing, or provide or produce a false document or other thing to, an officer of the Authority who is carrying out his duties and functions:

Provided that any such false, incomplete or misleading statement shall be deemed to be a false, incomplete or misleading statement made to the Authority in terms of article 34 of the Act.
