

Legislating for Skill Games in Malta

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Malta has been evaluating the need for the regulation of skill games for a number of years. It has done so by means of various consultations with the industry.

This resulted in the issuing of a document whereby the Malta Gaming Authority ('MGA') confirmed that, due to the differences *from games of chance and games of chance and skill, specific regulations were necessary to regulate skill games with prize which would be based on a risk-based approach compatible with the nature of such games.* Following this position, work has been ongoing on the drafting of the legislation and recently Malta has enacted and notified legislation which should achieve the goal of specific regulation for skill games with prize.

Exemption of Fantasy Sports Games from Current Regulation

As a first step towards the new skill game with prize regime, Malta enacted the *Fantasy Sports (Exemption) Regulations* ('FSER'). Prior to the latter regulations coming into force the MGA licensed fantasy sports games operators, that showed interest in obtaining a licence, under the remote gaming regime, even though they were never really considered as games of chance. Now the position is clear. Fantasy sports games are games of skill and are therefore to be regulated in a different manner from other games. The *interim* approach to regulating fantasy sports is through the enactment of the FSER whereby fantasy sports operators may offer such games in and from Malta without the requirement of a licence as from the 1st of August 2016. This will be superseded with the *Skill Games Regulations* ('SGR') which will regulate all skill games with prize offered by means of distance communication.

For a fantasy sports game to qualify for this exemption it must adhere to the following elements:

1. it must be a contest played for money or money's worth;
2. the winning outcome is predominantly determined through the skill or knowledge of the player; and
3. the result is determined by the accumulation of statistical results of the performance of a number of individuals in sporting events.

Fantasy sports businesses may by means of a voluntary notification procedure request the MGA's seal of recognition of the fantasy sports games they offer upon compliance with certain requirements. This will give operators' players the security that the operator whose services they are using is a serious operator who has undergone a level of scrutiny.

How will Skill Games with Prize be Regulated?

Malta notified the SGR to the European Commission on the 19th of August 2016 and they are currently in the standstill period following which the SGR should come into force. By means of the SGR digital games of skill with prize, including fantasy sports games, organised in Malta, provided from the territory of Malta or promoted or offered to persons in Malta, shall be regulated by specific requirements which are compatible with the nature of such games. Malta shall be positioning itself as a leader in the regulation of such games with the introduction of the SGR.

Malta shall also be recognising any equivalent authorisation issued from a European Union or European Economic Area Member State.

In determining whether a game is to be considered a skill game certain criteria shall be taken into consideration, which include:

- whether a player's chance of winning is significantly increased by experience in playing the game;
- whether skill can be acquired through training, experience, reading literature or other educational material;
- the level of interaction between the players;
- the level of interaction between the players and the operator;
- the level of intervention by the operator during the event, competition or match;
- the possibility of any negative social impact;
- the presence of draws in the game and their effect on the outcome.

To guarantee the seriousness of the operator and the operation, the operator needs to satisfy the MGA that the people involved in the operation are untainted with illegality and have the reputation and expertise to ensure that the business is operated successfully and in a compliant manner.

Keeping consumers' interests safeguarded and protecting minors and vulnerable persons remain fundamental regulatory objectives therefore skill games licensees will have various player protection mechanisms which they must adhere to. Such player protection mechanisms include allowing the player to set a deposit limit and a definite or indefinite exclusion period; the licensee needs to make available to the player a transaction history; and a player may submit a complaint with the licensee or the MGA if they feel that they have been aggrieved.

Another effective player protection mechanism and requirement is that player funds must be kept in a separate account from the operational accounts of the licensee. A licensee may propose an alternate method of protecting player funds however the MGA would need to approve of such a method whilst ensuring that it is, as a minimum, as secure as having a separate account for player funds. Such funds are insulated against creditors of the licensee.

Evolution of Malta's Legislative Framework

These are interesting times in the legal gaming sphere in Malta due to the evolution of the legal structure and the materialisation of the overhaul. The FSER and SGR are the first impetus of what is to be expected from the overhaul whereby we see that Malta is continuing to understand the requirements of the gaming industry and adapting to such needs whilst always ensuring the protection of the fundamental elements of gaming. A more risk-based approach is being implemented which guarantees that the critical elements of the operation are reviewed and allows space for innovation in this sector which is constantly evolving.

Skill games operators, including fantasy sports operators, now have in Malta a jurisdiction whereby they can be licensed by a reputable regulator and also find all the expertise and services required to operate in a legal and professional manner.

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