Digital Games of Skill
with Prize

Consultation Paper

Date: 17 December 2014
Foreword

Malta’s Lotteries and Other Games Act ("LOGA") (Cap 438 of the Laws of Malta) empowers the Minister responsible for the Lotteries and Gaming Authority ("LGA"), after consulting with the LGA, to issue regulations on the provision of skill games with prize via distance communication that are offered commercially. In 2012 and 2013 the LGA conducted preliminary research into the possible regulation of skill games with prize. At the time, a number of stakeholders were consulted and the LGA made recommendations to the Minister based on its findings then. The LGA is now required either to confirm recommendations previously made to the Minister or to make fresh recommendations.

The LGA feels that before making recommendations in this area, it should carry out a more in-depth and wide-ranging public consultation in respect of the desirability as well as the precise parameters of this type of regulation. It is therefore inviting interested industry stakeholders and the public at large to participate in this consultation process in order to allow it to make better and stronger recommendations to the Minister.

Your detailed answers, with explanations and examples were necessary, to the questions which we have listed in section 5 of this document would be greatly appreciated. It would be most useful to the LGA if you answered all of the questions applicable to you to the fullest extent possible.

I encourage you to consider the issues discussed in this document and especially the questions set out in section 5. Your contribution will greatly assist us with the formulation of policy in respect of skill games with prize and the recommendations which the LGA is required to make to government on this topic.

It is likely that following the LGA’s receipt of answers, the LGA will carry out a number of meetings with respondents, either on a bilateral or multilateral basis.

We look forward to having your views and suggestions.

Joseph Cuschieri
Executive Chairman
Definitions

"LGA" the Lotteries and Gaming Authority established by article 9 of the LOGA

"LOGA" the Lotteries and Other Games Act (Chapter 438 of the Laws of Malta)

“skill games” or “games of skill” a game played for money or money’s worth\(^1\) the results of which depend, mainly\(^2\), on the skill of a participant, but excluding a sporting event

1. Context

Skill games should be distinguished from games the outcome of which is dependent to a greater extent on chance or on the occurrence of some fortuitous event. Reference is made to the various definitions found in the LOGA which in fact makes this distinction. Skill may include the exercise of speed, reflex, memory, knowledge, intellect, shrewdness or other abilities and conscious faculties.

To date the need to specifically regulate games of skill has perhaps not been overtly felt, also given that the exercise of skill within the context of a competition or contest and the ability of a contestant to prevail is considered meritorious and indicative of that contestant’s prowess. This is not to say that the providers of skill games are not subject to any laws and regulations. The Consumer Affairs Act (Cap 378, Laws of Malta) and the Electronic Commerce Act (Cap 426, Laws of Malta) most certainly apply also to the provision of skill games, as do the provisions of the Commercial Code (Cap 13, Laws of Malta) and the Civil Code (Cap 16, Laws of Malta) and various legal acts of European Union law, which Maltese legislation takes into account, transposes, and upon which it is based.

However, the type of games played for skill and the manner in which they are distributed and played has evolved significantly over the past decade, primarily thanks to progress in broadband and mobile communication technology. Developments in payment technology, increased consumer trust in services offered online and the widespread use of mobile devices mean that almost anybody anywhere can pay to play.

The basis for the LGA’s interest in looking more closely at skill games with prize is due to:

i. The fact that the LOGA already provides that their regulation by legal notice be separately considered.

ii. A concern that certain aspects of the manner in which skill games are provided might not be adequately covered by legislation currently in force. Whilst the LGA acknowledges that existing legislation already offers a significant degree of consumer protection and protection from unfair commercial practices it feels that comprehensive regulation may be a better way of addressing the concerns outlined below.

iii. A perceived increased trend for games based on skill to be played for the opportunity to win a prize, whether monetary or having monetary value as well as the increased convergence between the two activities of games of chance and games of skill as defined under Maltese law.

The LGA also wishes to explore in greater detail whether an appetite exists in the market for games played via web or mobile including puzzles, music and dance games, board games, multiplayer games, action games, simulators and certain types of card games whether through contests or otherwise to be played for a prize of money or money’s worth.

Research conducted by the LGA in 2012/2013 indicated that digital games such as World of Warcraft, Call of Duty, Minecraft, Assassin’s Creed, Battlefield and FIFA could be organised in a competition format leading to the winning of prizes by players/participants who have paid a fee to play/participate.

\(^1\)And for the sake of clarity excluding in-game currency which is not convertible into money or money’s worth.

\(^2\)The LGA interprets the term “mainly” to mean both “mainly” and “solely”, so that this definition covers both games the outcome of which is “mainly” dependant on skill, or “solely” dependant on skill.
All of these types of games require a degree of skill which arguably is the determining factor in the game’s outcome. There are several persons hosting these types of games on their online platform[s] and facilitating the playing of such games against the payment of a fee and with the possibility of winning a prize if they win the game.

The LGA wishes to clarify that so-called “social games” will not be included in the scope of any regulations on skill games with prize. This is irrespective of whether the outcome of these “social games” is determined mainly by chance or by skill.

The LGA does not exclude issuing guidance, possibly even proposing a regulatory framework for social games at a later stage. However it should be clear that although the LGA has followed ongoing debates on whether or not social games ought to be regulated by specific legislation, to date it has not considered this possibility in sufficient detail to form a view on the matter and nothing has come or been brought to its attention which would justify intervention in this area.

2. Laws and regulations as currently in force: what level of skill?

The LGA acknowledges that the LOGA distinguishes between:

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<th>Activity</th>
<th>Outcome</th>
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<tr>
<td>Skill Game</td>
<td>Mainly skill but interpreted by the LGA to mean “only, or mainly skill”.</td>
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<tr>
<td>Game</td>
<td>Chance OR chance and skill where the outcome is not totally accidental but depends, to a certain extent, on the skill of the participant</td>
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The LGA, conscious of its broad obligations under the LOGA to safeguard consumers, in particular the weak and the vulnerable, is of the view that the term “mainly” is open to interpretation and consequently it feels that the test which ought to be used to determine whether a game falls within the definition of “skill game”, or rather whether it should be classified as a game of chance and skill, ought to be clarified.

The current wording of the LOGA may make it hard to differentiate satisfactorily between a ‘skill game’ and a ‘game of chance and skill’.

The LGA is interested in receiving representations from the public as to whether ”mainly” should be interpreted as requiring a particular threshold of skill to be the determining factor of a game in order for it to qualify as a “skill game”. If so, the LGA would further appreciate any feedback based on experience as to the tests available to determine how such a threshold can be established.

Following the public’s replies to this consultation, the LGA will consider whether it should issue a clarification on this matter.
3. Why regulate skill games?

The LGA currently regulates games of chance with prize and games of chance and skill with prize. Games that do not provide the possibility for the participants to win a prize are not regulated by the LGA.

The notion that a participant in a game is, or might be, lured by the possibility of monetary gain underpins the LGA’s interest in skill games from a regulatory point of view. This is in keeping with the LOGA, which clearly treats games played solely for entertainment purposes differently to those which lure a participant with the promise of winning a prize in money or money’s worth.

The principal areas of concern which the LGA has identified and which seem to indicate a need for the specific regulation of skill games with prize are:

a) The fact that a monetary transaction is occurring, most probably with the ability for a participant to have an “account” with a “skill game” provider on which funds are held which belong to the account holder.

b) The fact that monetary transactions including deposits and cash outs are susceptible to various forms of crime, including money laundering and financing of terrorism.

c) Ensuring that games which rely mainly on chance are not being offered for public consumption under the guise of being “skill games”, thus ensuring utmost consumer protection.

d) The fact that although the age of majority (which entails the capacity to contract) is attained at eighteen years of age, debit (and at times credit) cards as well as other payment methods are available to persons under the age of 18.

e) The fact that skill games with prize are potentially available to persons of all ages.

f) Ensuring that the prizes are distributed fairly and in accordance with the performance of the participant.

4. Pre-consultation activities

In 2012 and 2013 the LGA conducted preliminary research into the possible regulation of skill games with prize. At the time, a number of stakeholders were consulted and the LGA made recommendations to the Minister based on its findings then.

The LGA now feels that the consultation process should be more formal and wide-ranging. It is for this reason that the LGA is publishing this consultation paper with the view of receiving feedback from anyone that is interested in contributing.
5. Consultation questions

It is within the context described above that we would very much appreciate your response to the following questions, as well as any further comments which you may have.

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<td>Do you offer skill games (as defined above), or are skill games offered through your platform or from your premises? If no, please proceed to Q4</td>
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<td>What types of games do you offer or promote? Can you please describe the mechanics of the games, in particular with relation to how the results of the games are determined, and the channel of distribution of these games to the public?</td>
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<td>Can participants win a prize (money or money’s worth) if they are successful? If no, please proceed to Q4. If yes, can you please describe the type of prize or prizes which a participant can win?</td>
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<td>Do you offer or are any gambling services offered via your platform or via your premises? If no, please proceed to Q6</td>
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<td>If you do currently offer skill games with a prize, are these offered on the same platform or in the same premises as those on which gambling services are offered? If you have answered no to Q1, please proceed to the following question.</td>
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<td>Would you be interested in offering skill games with a prize in the foreseeable future, or in allowing this type of game to be offered through your platform? If you have answered yes to Q1 and Q3, please disregard this question.</td>
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<td>Do you plan to offer skill games with a prize on the same platform as that on which you offer gambling services? If you have answered no to Q4, please disregard this question.</td>
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<td>Do you believe that if skill games with prize are licensed and regulated activities, customers would feel more comfortable and secure to play such games? Do you think that legislation currently in force does not adequately protect skill game participants?</td>
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<td>Do you believe that if skill games with a prize were regulated, providers of these services would benefit from easier banking and payment processor relationships? Would a licence add value to the business of a skill games with a prize provider?</td>
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<td>Do you consider that if a provider of skill games with a prize holds customer money, its activities should be regulated?</td>
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<td>If you currently offer skill games via your platform or from your premises, how are customers’ funds protected and payments guaranteed? Is there a self-regulation mechanism to which you adhere?</td>
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<td>Do you think that skill games for a prize, if made available on the basis of the creation of an account and the holding of funds for a customer, should be restricted to individuals who have attained the age of majority? Please state reasons if your answer is in the negative.</td>
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<td>Do you consider that where a game is provided that is described as, or purports to be one the outcome of which is mainly dependant on skill, it is necessary or desirable for independent verification of whether that is actually the case? Do you consider it to be in the interest of consumers to have the prevalence of skill in a game independently tested and certified?</td>
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<td>In your experience, (i) how difficult/easy is it to obtain such independent verification, (ii) which certifiers would you be willing to rely on and (iii) what would be the cost of obtaining such verification?</td>
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<td>What other features of a skill game would, in your opinion need testing and/or verification?</td>
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<td>Would you be interested in obtaining a skill games licence in an EU Member State?</td>
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6. Consultation procedure

In this section of the consultation paper, the Authority sets out relevant information about the process and related information.

6.1 Consultation period

This period of consultation will be for 7 weeks from launch, as follows:

| Opening date of consultation | 17th December 2014 |
| Closing date of consultation  | 4th February 2015  |

7. Queries and contributions

The Authority has set up a dedicated electronic mailbox for the purposes of this consultation. The Authority will receive queries/requests for clarifications that contributors may have in respect of the contents of the paper and proposals, and contributions/feedback from interested parties on the following email address: skillgames.lga@lga.org.mt.

All queries and contributions will be acknowledged within 2 working days from receipt.

Every contribution must clearly identify the originator of the contribution, contact information, and a clear statement of which interest they represent.

7.1 Direct interaction

Depending on the scope, extent and quality of contributions, the Authority may decide to provide additional opportunities for respondents to interact directly with Authority via one-to-one meetings, and/or events. Kindly indicate whether you would be available to attend such meetings.

All one-to-one meetings will be recorded on the transparency register and documented. Any events which the Authority may decide to organise for the purposes of direct interaction with relevant stakeholders will be announced on the consultation website and, where applicable, invitations may also be sent by the Authority to stakeholder groups.

7.2 Transparency register

The Authority will maintain a register containing details of all contributions received. This register will be published on the Authority’s website following the closing date of the consultation. The following information will be published in the register; names of respondents, and all related documents, meeting minutes, individual contributions.

The Authority will consider contributions which include a request for anonymity on a case-by-case basis. However, for such requests to be considered, they must include a clear indication of the interest group which the contributor represents/belongs. Where such requests will be granted, the contributors information will be anonymised and will clearly indicate the stakeholder/interest group.

7.3 Post consultation

The Authority will consider all responses carefully when finalizing its action plan. Following the end of the consultation the Authority will prepare a summary of responses, which it will publish alongside the finalized documents.
8. Data Protection Statement - Data Protection Act (Chapter 440)

As part of this consultation, invited companies and individuals are requested to forward their recommendations, views and opinions which will enhance the process. We intend to collect the following information: name of the organisation or individual responding to the consultation, the contact details of the individual (e-mail and telephone number). The contact details provided will enable us to contact the person to clarify their contributions – if the moderator of this consultation needs to seek such clarifications.

The recommendations will be analysed and may be made available to the public, in full or in part, the LGA website or otherwise, after the consultation has been concluded.

The personal data collected will be processed by the people involved in the consultation process according to the provisions of the Data Protection Act (Cap 440) and will not be accessed or disseminated to third parties.

Contributors may request for modification or deletion of their submitted contribution to this consultation process, by sending their request via e-mail to:

skillgames.lga@lga.org.mt.

In addition, please be aware of:

- Disclosure under the Freedom of Information Act (Chapter 496)

As we are a public authority all documents we hold, including documents related to this public consultation process, may be released following a request to us under the Freedom of Information Act (Chap. 496), unless such request may be subject of an exemption arising from the same Act.