



**Code of Commercial
Communications**

Public Consultation

January 2016

1. Background

Marketing and advertising are a critical part of any gaming service. Consumers are faced with a wide array of options in terms of operators and games across different mediums - players can choose anything from slot machines in one of the casinos, to online sports-betting to a traditional bingo night. Attracting consumers to their products is thus a foremost consideration for gaming operators, whether it is through traditional or digital means of advertising, or through inducements and bonuses. In light of this, the proper regulation of advertising of gaming services is of paramount importance.

The current provisions on advertising of gaming services are scattered across different legal instruments, some of which are outdated and may not reflect industry practice in its current form. From a market and technological perspective, the media landscape is constantly evolving, and gaming operators are dedicating a significant percentage of their budgets towards marketing and advertising.

The Malta Gaming Authority (hereinafter the 'Authority'), the entity responsible for regulating gaming activity in Malta, is of the opinion that the current rules for the advertising of gaming services need to be updated to better reflect the sector, in terms of player behaviour, marketing techniques, technological and legal developments, and the needs of society. Thus, the Authority has on the basis of the above, drafted a new Code which is intended to replace the present rules and which is hereby being published as **Schedule 1** (hereinafter referred to as the 'draft Code' or 'the Code') to this consultation document. The Authority is inviting the public to submit any comments and feedback in relation to the draft Code.

The general aim of the draft Code is the protection of minors and other individuals who are, or may be, more susceptible to problem gambling, the promotion and safeguarding of players' rights and responsible gaming, the elimination of misleading terms, and the fair and non-predatory treatment of consumers by gaming operators in general.

Gaming also has a significant social element which the Authority is duty-bound to consider as part of its function to protect consumers. Problem gambling can be manifested in a number of ways, such as addiction or the squandering of money. The legislative framework already contains various safeguards, including the possibility of excluding oneself from gambling activity or premises in which gambling activity takes place, as well as other statutory limitations that are also in place.

As part of the Authority's mission to regulate effectively, it keeps the framework under review and updates it as necessary. By virtue of this public consultation and of the intention to update and upgrade the provisions at law on advertising, the Authority is hereby re-affirming its foremost objective, duty and intention to strengthen consumer protection measures.

The vision behind the draft Code is to have an instrument which applies to all gaming activity, irrespective of the type of game, technology used or the medium through which the game is provided, and is not limited to licence holders, but will be applicable also to commercial and advertising partners.

In view of the above, the Authority is in the process of proposing policy changes to Government with regard to the regulation of the gaming sector, and this includes changes in

the framework regulating the advertising of gaming services. Keeping in mind the concept of an interface-neutral approach, the current legislative and policy instruments imposing prohibitions on advertising by land-based casinos and gaming parlours are also considered under review. The feedback to this Consultation and its assessment will feed into, and form the basis of, the Authority's proposals to Government on the advertising policy in gaming.

The draft Code is tailored to implement the relevant parts of the European Commission's 2014 [Recommendation on the Protection of Consumers](#)¹ and is intended to replace the current [Code of Conduct on Advertising, Promotions and Inducements](#) published by the Authority in 2004.

¹ European Commission, 'Commission Recommendation on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online' (Recommendation, 14 July 2014) L 214/38.

2. Scope and Applicability

The draft Code is intended to apply to all legal and natural persons authorised to conduct gaming activity in or from Malta in terms of the *Lotteries and Other Games Act* (Chapter 438 of the Laws of Malta) and the regulations made thereunder, and therefore, gaming activity that falls within the regulatory remit of the Authority. The proposed Code thus applies to the National Lottery licence holder, online gaming companies licensed in terms of the *Remote Gaming Regulations* (S.L. 438.04), gaming parlours licensed in terms of the *Gaming Devices Regulations* (S.L. 438.07) and licensees under the *Commercial Tombola (Bingo) Regulations* (S.L. 438.05). Gaming activity which falls under the *Gaming Act* (Chapter 400 of the Laws of Malta), including land-based casinos and cruise casinos, shall also be made subject to the Code. The aforementioned list of licensed entities is not exhaustive, as persons exempt from the requirement to acquire a licence would also be subject to the Code. The applicability of the Code also extends to the actions of entities performing activity on behalf of authorised persons, including agents, partners or intermediaries, and the licensee shall remain responsible for such actions at all times.

Furthermore, and for the avoidance of doubt, it is being clarified that a person who conducts gaming activity without an authorisation under Chapter 438, or under any other applicable law, is prohibited from advertising such gaming activity, and both the gaming activity itself and the advertising thereof would constitute an offence against Chapter 438, and are punishable by severe fines and/or imprisonment as per Article 67 of the same Act.

Activities which do not constitute gaming as defined under Chapter 438, such as amusement games or skill games, are excluded from the applicability of the Code.

Notwithstanding the above, specific provisions and limitations relating to advertising in the applicable legal instruments, as well as any further conditions imposed by the Authority by means of Directives or licence conditions, are not superseded by this Code. Other legal instruments covering specific areas of advertising, including those relating to broadcasting media in terms of the *Broadcasting Act* (Chapter 350 of the Laws of Malta) and the *Requirements as to Advertisements, Methods of Advertising and Directions applicable to Gambling Advertisements* (S.L. 350.25) and the provisions relating to unfair, misleading or aggressive commercial practices under the *Consumer Affairs Act* (Chapter 378 of the Laws of Malta) shall subsist and will continue to be considered as falling under the remit of the Broadcasting Authority and the Malta Competition and Consumer Affairs Authority respectively.

Furthermore, other legal instruments regulating gaming outside of the aforementioned Acts, specifically the *Public Lotto Ordinance* (Chapter 70 of the Laws of Malta) and the *Racecourse Betting Ordinance* (Chapter 78 of the Laws of Malta), are not affected by this Code, as such gaming activity falls outside the regulatory remit of the Authority.

3. Specific Aspects

The Authority is in the process of proposing a new legislative framework for gaming activity to the Government of Malta, whereby the regulation of gaming activity in Malta will be brought under a single legislative instrument. Technological developments, particularly in the field of remote gaming, have diluted the distinction between channels through which gaming is provided, as well as the way marketing and advertising is conducted.

Nowadays, technology allows a live table in a casino to be populated both by players physically present within a casino, as well as by players who could be participating in the game from the comfort of their own home, watching a live stream over the internet on any connected device, be it a computer, tablet, smartphone or television. Furthermore, the industry is consolidating as a whole, so the same business owning a casino premises may also want to provide the same product via the internet or other means.

Product diversification is also another important industry development, as gaming operators offer a larger variety of games to their clientele, ranging from slot-type games, to poker, to sports-betting and other innovative game concepts. It is in this spirit that the Authority is proposing the convergence and applicability of the same general rules across all gaming activity, subject to the limitations required and necessary to protect civil society from the possible adverse effects of gaming.

As a general obligation, the draft Code prohibits advertising that may be attractive to under-age persons, that induces problem gamblers to play more, or that misleads consumers. As a principle, the operator must be identifiable at all times, must confirm that it is licensed and regulated by the Authority, and must publish warnings on minimum age requirements and on responsible gaming.

The draft Code considers different media for advertising, and thus envisages both traditional means, such as adverts on billboards, printed media, and leaflets, and the areas in which they can be distributed, as well as modern or specialised methods of marketing, such as internet-based advertising including via social media or mailshots and advertising via application software, whether through pop-ups or push notifications. In this regard, the text of the draft Code seeks to cover the specific features of these media. The Authority is of the opinion that a continuous review and assessment of the draft Code is necessary in order to retain its effectiveness.

The draft Code also includes a specific section covering bonus schemes, establishing standards of practice that must be adhered to for one of the more commonplace methods of marketing employed by gaming operators. In particular, this section focuses on the information that must be made available and accessible to the player and providing that ambiguity will be interpreted in a way that is least prejudicial to the customer.

4. Consultation Process

The public consultation will run for a period of eight weeks, starting from Friday 29th January 2016 until Monday 28th March 2016. The process is open for all stakeholders and interested parties, including, but not limited to, gaming operators, non-governmental organisations, support groups and the general citizenry.

Opening Date of Consultation Friday, 29th January 2016

Closing Date of Consultation Monday, 28th March 2016

Feedback on the draft Code, or requests for clarification, may be submitted as follows:

Email: consultations.mga@mga.org.mt

The Authority will consider only those contributions which clearly identify the originator of the contribution, contact information, and a clear statement of the interest they represent.

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 or belongs to. Where such requests are granted, the contributors' information will be anonymised and will clearly indicate the stakeholder/interest group.

The Authority will ensure that any data that is confidential to an operator's environment or business is kept confidential at all times and will not be disclosed in the consultation reports.

The Authority will consider all responses carefully when finalising its proposals, but will only alter its position if it believes there is a sound basis to do so. Following the end of the consultation, the Authority will prepare a summary of responses, which it will publish alongside the finalised documents.

As part of this consultation, individuals are invited to forward their recommendations, views and opinions which will enhance the process. The Authority intends to collect the name of the organisation or individual responding to the consultation and the contact details of the individual (e-mail and telephone number). The contact details provided will enable the Authority 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 placed, in full or in part, on the Authority's website after the consultation has been concluded. The contribution of the organisation or the individual may be accompanied by the 'Display Name' as listed at the time when the contribution was submitted by the respondent. If a respondent chooses to have his/her name removed from the comments, the moderator will categorise these comments according to the following stakeholders' list:

1. Gaming operators;
2. Industry representative bodies;

3. Industry experts;
4. Sector associates or stakeholders;
5. Social or religious non-governmental organisations;
6. Citizens;
7. Others.

The personal data collected will be processed by the Authority according to the provisions of the Data Protection Act (Chapter 440 of the Laws of Malta) 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: consultations.mga@mga.org.mt

Furthermore, all documents held by the Authority, including documents related to this public consultation, may be released following a request as per the provisions of the Freedom of Information Act (Chapter 496 of the Laws of Malta), unless such request is subject to an exemption arising from the same Act.

Schedule 1

Code of Commercial Communications

In exercise of the powers conferred by article 76 and 76A of the Lotteries and Other Games Act (Cap. 438 of the Laws of Malta), the Malta Gaming Authority is hereby issuing the following Directive and Code in order to establish standards and requirements for fair and responsible commercial communications, including advertisements, promotions and inducements by operators of authorised games as defined in the Lotteries and Other Games Act and the Gaming Act (Cap. 400 of the Laws of Malta), and the regulations made thereunder.*

Part I – Preliminary

1. The short title of this Directive and Code of Conduct is the Code of Commercial Communications.
2. This Code of Conduct shall come into force on the date of publication by the Authority.

Part II – Definitions

3. In this Code, unless the context otherwise requires:

“**Act**” means the Lotteries and Other Games Act (Cap. 438 of the Laws of Malta);

“**Advertising Lottery**” means a game which is organised with the purpose of promoting or encouraging the sale of goods or services, and which does not constitute an economic activity in its own right, and where any payments required to be made by the participant serve only to acquire the promoted goods or services and not to participate in the game, although it may be a condition that a person purchases the promoted goods or services in order to participate in the game;

“**Amusement Game**” has the same meaning assigned to it by the Act;

“**Authorised Person**” means any natural or legal person who is authorised under any law in Malta, or any law enacted by a member state of the European Union or the European Economic Area, or by any other jurisdiction or territory approved by the Authority, to operate, promote, sell, or in any way aid or abet the operation, promotion or sale of a game, that originates from Malta, is offered from Malta, which involves a transaction that is concluded in Malta or which is offered to any person in Malta;

“**Authority**” means the Malta Gaming Authority established under article 9 of the Act;

“**Code**” means the Code of Commercial Communications;

“**Commercial Communications**” means text, images, sound or any other medium transmitting information, designed to promote, directly or indirectly, the goods, services, image or brand of a person pursuing gaming as an economic activity, and for the avoidance of doubt, this also includes product placement and any emerging advertising techniques, and “advertisement” and “promotion” shall have the same meaning;

“**Game**” has the same meaning assigned to it by the Act, which, for the avoidance of doubt, shall not include an amusement game and a skill game;

“**Material Information**” means any information, requirement or restriction within a marketing scheme which may influence a person’s decision whether to subscribe to such a scheme or otherwise;

“**Non-profit Game**” means a game organised by a non-profit organisation, the net proceeds

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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 Government Gazette prescribe;

“Under-age Person” means a person who has not attained the age required to participate in a game; and

“Vulnerable Person” means any person who is known to have a gambling problem, any person whose social circumstances may make him or her more susceptible to problem gambling, or any person who by virtue of a defect in the capacity of will and understanding, is rendered more susceptible to problem gambling, and this shall include players who are undergoing a period of self-exclusion, persons who have been diagnosed by medical professionals as being problem gamblers, persons who are currently seeking treatment for problem gambling and this is known by the authorised person, and persons under the influence of alcohol or drugs.

4. All other terms used in this Code shall have the same meaning that is attributed to them in the Act.

Part III – Applicability

5. This Code applies to all authorised persons, which shall include:
- a) Licensees under the Act and the regulations made thereunder;
 - b) Persons authorised to operate or promote games in or from Malta or to persons residing in Malta, under any law enacted by a Member State of the European Union or the European Economic Area, or by any other jurisdiction or territory approved by the Authority;
 - c) Licensees under the Gaming Act and the regulations made thereunder;
 - d) Any other person otherwise exempt from holding a licence or permit, who, in any way promotes a game or a gaming activity; and
 - e) Any person providing any service on behalf of, or in any way in collaboration with, any licensee or any other person mentioned in this section.

Part IV – Protection of Under-Age and Vulnerable Persons

6. An authorised person shall not publish, or cause to be published, any commercial communication which:
- a) Encourages or targets under-age persons or vulnerable persons to play a game;
 - b) Features under-age persons, persons who appear to be under-age as a result of their appearance or dress, or persons who appear to have attained the age required to participate in a game but are dressed to look under-age;
 - c) Appeals to under-age persons or vulnerable persons in any way;
 - d) Exploits the susceptibilities, aspirations, credibility, inexperience or lack of knowledge of under-age persons or vulnerable persons; and
 - e) Promotes the abuse of alcohol or drugs whilst gaming.

Part V – General Obligations and Limitations

7. An authorised person shall not publish, or cause to be published any commercial communications which:
- a) Encourage any person to contravene a gaming law;
 - b) Provide false or untruthful information about the chances of winning or expected return from gaming;
 - c) Suggest that gaming is a form of financial investment;
 - d) Portray, condone or encourage gaming behaviour that is socially irresponsible or

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- could lead to financial, social or emotional harm;
- e) Suggest that skill can influence games that are purely games of chance;
 - f) Imply that gaming promotes or is required for social acceptance, personal or financial success or the resolution of any economic, social or personal problems;
 - g) Contain endorsements by well-known personalities or celebrities that suggest games of chance contribute to their success;
 - h) Suggest that gaming can provide an escape from personal, financial, professional or educational problems such as loneliness, depression or unemployment;
 - i) Portray gaming as indispensable or as taking priority in life, for example over family, friends or professional or educational commitments;
 - j) Suggest that gambling can enhance personal qualities, for example that it can improve self-image or self-esteem, or is a way to gain control, superiority, recognition or admiration;
 - k) Suggest peer pressure to game, or disparage abstention from gaming;
 - l) Tarnish the goodwill and privilege that is associated or related in any manner whatsoever to an authorised person, or tarnish the image or reputation of another authorised person; and
 - m) Exceed the limits of decency.
8. An authorised person shall not attempt to induce any player to continue gaming when such a player has shown the intention to stop the gaming session or to leave the premises in which the gaming activity is being conducted.
9. (a) An authorised person shall not engage in any activity that involves sending of unsolicited standard mail or electronic mail, or any other unsolicited commercial communications, whether it is through its own operation or by the intervention of third parties.
- (b) An authorised person engaged in the sending of any commercial communications by standard mail or electronic mail, or any other unsolicited commercial communications, must comply with a request by any person to stop receiving such commercial communications.
10. (a) Unless specifically provided otherwise in this Code, any law, or any Directive issued by the Authority, an authorised person shall not distribute leaflets or tokens, in a public place;
- (b) Authorised persons may distribute such leaflets or tokens within specific areas hosting conferences, seminars, conventions and fairs specific to the gaming sector:
- Provided that, in case of doubt, an authorised person shall ask the Authority for clearance as to whether such leaflets or tokens may be distributed in a particular area.
11. An authorised person shall cause all commercial communications to clearly display:
- a) The name of the authorised person;
 - b) A statement to the effect that it is authorised and regulated by the Authority, and referring to any relevant authorisation reference numbers;
 - c) A sign indicating the minimum age to participate in the game being promoted; and
 - d) An educational message on responsible gaming.

Provided that where deemed impractical due to spatial limitations, such as on the screens of portable communications devices, the Authority may authorise, at its sole discretion, the use of alternative means, such as pop-ups to deliver the requisite information.

12. An authorised person who, subject to the Data Protection Act (Chapter 440 of the Laws of Malta) and the regulations made thereunder, collects statistical data about customers, and, or, groups customers based on patterns and demographics to identify appropriate marketing strategies or player categorisation, shall not use the data gathered to urge or induce any person fitting the profile of a person with a gaming problem to play.

Provided that if a player has been identified by the authorised person as having a gambling problem, such player shall be provided with the contact details of entities offering support to such persons and shall be notified of the player protection mechanisms available to him, including self-exclusion and limitations.

13. Authorised persons promoting or advertising via broadcasting means shall be subject to the Requirements as to Advertisements, Methods of Advertising and Directions Applicable to Gambling Advertisements (S.L. 350.25).

Part VI – Misleading and Unfair Promotional Mechanisms

14. Promotional schemes operated by authorised persons shall be subject to Parts V – VIII of the Consumer Affairs Act (Cap. 378 of the Laws of Malta).

15. (a) Any promotional scheme purporting to grant any advantage or opportunity to a player must not be misleading:

i. A scheme cannot mislead or be likely to mislead players into thinking that they are receiving free money or credit;

ii. A scheme cannot omit or hide material information, or present it in a manner which is unclear, unintelligible or ambiguous;

iii. A scheme must delineate all material information, including wagering and deposit requirements which must be fulfilled by a player in order to become entitled thereto, as well as all or any applicable restrictions or other conditions in a clear and unambiguous manner:

Provided that any ambiguity shall be interpreted in a way that is least prejudicial to the player;

iv. The promotion or advertisement of a scheme, which promotion or advertisement is limited by time or space must include as much material information as practical, and must direct players to an easily accessible alternative source where all material information is prominently displayed;

v. The authorised person offering the scheme shall ensure, to a reasonable extent, that any player accepting the scheme has read and understood all material information relating to the scheme;

vi. The terms and conditions of the scheme shall be expressly agreed to by the players before being enrolled in the scheme;

vii. The terms and conditions of the scheme must always be readily available and accessible to the player who has subscribed to the scheme, throughout the duration of the scheme;

viii. The authorised person shall ensure that players can view their progress in fulfilling the requirements in order to benefit from any opportunity or advantage granted by such a scheme.

(b) For the purposes of this section, material information means any information, the absence of which may impair a player's ability to make an informed decision, or which may cause a player to take a transactional decision which the player would not have otherwise taken, and which shall include any requirements, benefits, time frames and restrictions, and for the avoidance of doubt, all material information shall be included in the terms and conditions.

Part VII – Prohibition of Commercial Communications in Specific Locations

16. An authorised person shall not issue, or cause to be issued, any commercial communications within the premises of, or within a radial distance of, not less than seventy five (75) metres from the perimeter of such premises of the following establishments:
- a) Schools frequented by under-age persons;
 - b) Child care centres;
 - c) Senior citizens' care facilities;
 - d) Places of worship;
 - e) Playgrounds;
 - f) Sports nurseries;
 - g) Youth centres;
 - h) Social welfare institutions;
 - i) Cinemas showing movies aimed at under-age persons; and
 - j) Any venue used as a treatment centre for social vices.

Part VIII – Sponsorships

17. Authorised persons sponsoring any organisation, event or activity for religious, sports, philanthropic, cultural, social or civic purposes, shall ensure that any logo, imagery or promotional material published shall:
- a) Clearly indicate the identity of the authorised person;
 - b) Not be displayed at events where participation is exclusively restricted to under-age persons or where under-age persons are the main target;
 - c) Not be used in any merchandise designed for under-age persons; and
 - d) Not encourage the public to participate in the games.

Part IX – Social Media

18. (a) Any commercial communication by authorised persons through social media must be filtered by age to the effect that:
- i. Under-age persons must be excluded from the target audience; and
 - ii. Announcements, posts or notifications cannot be displayed to user profiles operated by minors.
- (b) Social media accounts held by authorised persons shall contain an educational message on responsible gaming, and an age-limit warning.

Part X – Exemptions

19. Notwithstanding Part VII, but without prejudice to Part IV of this Code, a non-profit organisation organising a non-profit game may issue commercial communications within its premises, and within the premises of affiliated entities.
20. Commercial communications, the sole purpose of which is to inform the public of an opportunity for employment or for an educational purpose, shall be exempt from the provisions of this Code, provided that such commercial communications shall not include references to any gaming activity.

Part XI – Powers

21. (a) The Authority may, for the purpose of ascertaining that the provisions of this Code are adhered to and in the fulfilment of its function as per article 11(f) of the Act, that gaming

is advertised fairly and in a responsible manner:

- i. Order the retraction or suspension of any commercial communication, including any advertisement, promotion, sponsorship or scheme which does not comply with this Code;
- ii. Order the modification of any commercial communication, including any advertisement, promotion, sponsorship or scheme which does not comply with this Code;
- iii. Call on the support of any relevant competent authorities for the removal of any material which is in breach of this Code or the Act;
- iv. Take any administrative action required, including the issuing of administrative penalties against authorised persons; and
- v. Require any authorised person to submit a marketing plan for prior approval by the Authority.

(b) An authorised person shall be held responsible for any breach of this Code, even if the action is not performed directly by it, but by any third party.

Provided that the Authority may decide against subjecting an authorised person to administrative penalties if it can be shown that the third party acted without the knowledge or approval of the authorised person, and as long as the Authority is satisfied that the authorised person took sufficient action forthwith to rectify the breach.

(c) An authorised person shall, in the event that its gaming activity is being advertised or promoted by a third party in breach of this Code, endeavour to rectify the situation forthwith.

22. Failure by any authorised person to comply with any provision of this Code shall be construed as being guilty of an offence under the Act and any applicable regulation made thereunder.
23. The Authority shall have sole discretion in determining whether there has been a breach of this Code, after taking into consideration the objectives to be attained and the applicable circumstances.