



 Digital Games of Skill with Prize  
Position Paper  
December 2015

## 1. Abstract

Following a process of public consultation and an assessment of the feedback received, the Malta Gaming Authority (hereinafter the 'Authority') is publishing its position with regard to digital games of skill with prize offered through means of distance communication.

This position paper seeks to clarify the Authority's stand with regard to the several different types of games available on the market that may include an element of skill. The Authority already licenses and regulates games that include elements of both chance and skill, provided that chance is prevalent in determining the outcome.

The Authority recognises that, within the wide spectrum of games available on the market today, certain types of games, despite their outcome being mainly accidental, are influenced by the skill of the player more than other types of games. These games still require the same licence under the current framework. However, the Authority believes that games that are very predominantly and/or totally influenced by the skill of the player (and a negligible element of chance) should be distinguished, from a regulatory perspective, from certain other types of games of chance, and games of chance and skill that are currently licensed under the *Remote Gaming Regulations* (S.L. 438.04) (hereinafter the 'Regulations').

The Authority considers that, currently, skill games with no or a negligible element of chance do not fall under the scope of application of present gaming legislation in Malta, but under other national general and consumer protection horizontal legislation.

With regard to the regulatory policy concerning skill games in the short and medium term, and within the context of the regulatory overhaul underway, the Authority is of the opinion that skill games (with prize) with no, or a negligible element of, chance should not be submitted to licensing requirements, since the risks associated with these games do not warrant such stringent *ex-ante* requirements. However skill game operators and their gaming activities should fall under the governance and regulatory competence of the Authority and be subject to certain standards and monitoring to ensure a safe and fair environment for consumers.

The Authority therefore considers that the new regulatory framework should provide for the capture of these games under the new gaming legislation, provide for more clarity in their definition and also for the adoption of softer regulatory approaches to be employed for gaming activities that do not fall, or will not fall under licensing obligations, such as skill games. It will make proposals to this effect to Government.

The Authority will continue to monitor developments in this gaming segment and will review its position as necessary in the future.

## 2. Background

This paper concerns 'games of skill' that are offered by means of distance communications, as defined within the *Lotteries and Other Games Act* (Chapter 438 of the Laws of Malta) (hereinafter the 'Act'). Such 'means of distance communications' mainly include the internet, and 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.

Moreover, this paper concerns games of skill that, distinctively, offer a prize of money or money's worth. Games without a prize do not fall within the sphere of competence of the Authority at the present time although this situation may change in the future with the new regulatory framework. Social games, understood as games of varying degrees of chance and/or skill which may be played for free or against payment, or for free but subject to the possibility of paying for additional functionalities or other advantages within the game, but which do not offer the possibility of winning a prize of money or money's worth, are also excluded as these will be the subject of a separate paper in the near future.

The market for digital games of skill is growing at a considerable pace. The added thrill of determining the outcome of a game through the player's skill seems to be becoming more desirable to the consumer. Skill includes knowledge, dexterity and reaction time of the player; however skill games also include games which have varying degrees of chance. The addition of a prize element has followed naturally as a means for operators to devise new products and business models and, indeed, in response to evolving consumer demand trends.

Certain operators have emerged which, together with, or instead of, traditional games of chance, offer skill games with the possibility of winning a prize following a similar model – the player challenges the game software and, if the player wins, a prize of money or money's worth is obtained. Other business models include operators that serve as platforms for players to play against one another for money, and charge a commission on the prize pot for the service. Others still organise online tournaments with prizes of money or money's worth.

### **The paper includes three Sections:**

- Section 3: Issues raised by the responses received further to the Consultation on the subject launched by the Authority in 2014;
- Section 4: The Authority's reasoned opinion on the most pertinent issues raised by the respondents to the Consultation;

- Section 5: The Authority's current position and proposals to Government for the treatment of Skill Games within the context of the regulatory overhaul currently being formulated.

### **3. Issues raised by responses to the consultation**

In the public consultation that was carried out by the Authority (2014 – 2015), input and feedback was sought from stakeholders on the concerns raised by digital games of skill with prize offered through means of distance communication, their present status at law, and the extent of regulatory intervention that may be necessary.

After a preliminary analysis of the responses received, the Authority held meetings with the majority of the respondents in order to seek further clarification where it was considered necessary.

A summary of the responses to the consultation document can be found on the Authority website<sup>1</sup>.

#### ***Main issues raised by the respondents:***

##### **3.1 The need for further clarity in delineating between skill and chance**

- a) Legislation should clearly delineate between game of chance, games of mixed chance and skill, and games of ‘pure’ skill. In particular, games of mixed chance and skill may be of a very wide variety and depending on the level of chance or skill prevalent, should be treated according to the risk presented. Thus, it should also be clear as to what methodology will be used in order to determine under which regulatory regime such a game should be categorised, keeping in mind the risk presented.
- b) Keeping in mind the assertion that every human activity is in some way influenced by chance, a definition of a ‘pure skill game’ needs to be present in the legislation, in order to stabilise the status at law of pure skill games providers.
- c) Testing of pure skill games is ineffective and futile. Pure skill game operators acting as platforms for players or teams competing against each other in third party, off the shelf video-games; are of the opinion that such testing would be pointless as they offer platform services for players to compete in games which are already available in the market, and their offering is based on the prior popularity of the game. Furthermore, game testing is difficult and costly and is overrated for the purposes of pure skill games where games are usually not played against the house, but played against other players, and both players start off the match with equal arms.
- d) Defining whether the predominant element of a game is chance or skill is very hard to determine as often it would be impossible to take into account all variables of the games. Furthermore, all games are widely different, making the empirical and statistical testing of each and every game a feat that would

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<sup>1</sup> <http://www.mga.org.mt/consultations-publications/digital-games-of-skill-with-prize-consultation-feedback/>

only stifle the growth of the sector and its supervisory objectives. A qualitative test would make more sense, as one would simply have to account for the fact that if a player who lacks experience in playing a game, can defeat a player with vast experience in the game, then it is not a game of skill, but a game of chance. On the same lines, if a player can find a method or strategy of play by which he measurably influences the game in his favour, then such a game is not a game of chance, but of skill.

### **3.2 Pure skill games should not be subject to licensing**

- a) Pure skill games should not be subject to a licensing regime as they are adequately covered by general legislation, including consumer protection legislation and data protection legislation. However, the regulator should be in a position to give a ruling as to whether a particular game is a pure skill game or otherwise (thus falling under gaming specific regulation).
- b) Pure skill games operators require a stable status at law in order to differentiate themselves from gambling activity, for the purposes of their relationship with banks, payment processors and other service providers, as well as their status as an electronic commerce operation.
- c) Pure skill games which offer prizes should still have some generally applicable regulations, such as age limitation, which should be between sixteen to eighteen years of age, or dependent on the age rating of the particular game.
- d) Pure skill games attract a very different audience to traditional gambling, and the regulatory risks are very different. Pure skill games players tend to be players whose main intention in playing the game is entertainment, not the generation of money. In fact, both stakes and prizes tend to be much lower than in gambling. Unlike gambling, pure skill games tend to take much longer to conclude, though this may depend on the choice of the players. However, pure skill games consumers may still be exposed to certain social risks including spending too much time and money on games, transitional risks into real money gambling, and consumer protection type risks, such as scams.
- e) Pure skill games operators do not agree with a licensing model, as they do not believe that a licence will attribute more public faith to their product, as consumers tend to go for more reputable developers themselves. Furthermore, they do not require a licence to operate in any other jurisdiction. Current legislation in place offers sufficient protection for consumers, and any regulatory intervention should occur upon the receipt of any customer complaints.
- f) Electronic sports, or eSports, should be recognised under a classification at law, as it is a booming new sector wherein players or teams are matched

against each other in tournament format in pure skill games which are generally off-the-shelf video-game titles. No licensing requirement should exist as no other country imposes such a licensing requirement and operators are still covered by adequate general legislation. However, such a sector requires formal and legal recognition. Such operators display significant levels of self-regulation.

- g) Role-Playing Games (RPG), Multiplayer Online Battle Arenas (MOBA) and Massively Multiply Online Role-Playing Games (MMORPG), despite being considered as part of eSports, are still influenced by random number generators. However, the mechanics of such games tend to be very complex in nature in that skill, knowledge, experience, strategies, level, equipment and situation all play a considerable part in the outcome, and this thus renders the element of chance almost negligible.
- h) Another borderline genre of games is digital collectible card games, such as *Hearthstone*. Players are required to construct a personalised deck of cards representing characters, spells or other utility items out of hundreds or thousands of available cards and use it to compete against other players. The deck's strength is based on the player's knowledge of the available cards chosen when constructing the deck, and on how effective a card is when used in conjunction with other cards in the deck and the manner in which it is used at a particular time during a match. Chance comes into play when drawing the cards from the deck after each turn, and whilst drawing the right cards at the right time will definitely help a player win, over the course of a whole match, particularly in tournament format, the element of chance is significantly reduced in determining the outcome of a match. Because of this, this type of game is often considered as being part of eSports, and the business model often revolves around a freemium or subscription model, as opposed to the commission model often used for gambling-type games.
- i) Pure skill games may also be subject to different taxation treatment than gambling, such as is the case with Value Added Tax (VAT). Any other specialised tax or expense may and would bear a counter effect to regulatory aims and objectives.

### **3.3 Skill-based games with elements of chance should be licensed, but differentiated from gambling**

- a) Games which are based on a random number generator at the start of the game, such as cards or dice, but which rely on skill as the game progresses, such as is in the case of games such as belote, tarot, rummy or backgammon, should be licensed, but in such a way as to be deemed different to gambling. A specific licence for such games of mixed skill and chance should help

consumers differentiate between such games and gambling. A test that could be implemented is that if a skilled player is able to win more than 56% of his matches, then the game is one of skill, rather than chance.

- b) An operator offering both traditional games of chance via the internet, as well as games of mixed chance and skill, such as board games, would rather have such games regulated under their gambling licence, as the burden and expense of proving that such games are more skill-based is not worth the re-categorisation.
- c) Another category of games requiring legal recognition are fantasy sports. Depending on the mechanics of such games, these could vary significantly as to whether such games are predominantly skill or chance. Fantasy sports games are skill-based when performance is dependent on the knowledge of the sport, the amount of statistics collected that attribute points accordingly, how often such statistics are updated, the length of the session and other general mechanics such as the ability to input commands during live games. In general, fantasy sports operators want a licence that proves to consumers that their product is genuinely based on skill, rather than chance. Stakes are usually low, with higher stakes requiring specific approval.
- d) Games that are predominantly covered by skill and pure skill games should be regulated with lighter touch regulations reflecting their crucial differences from gambling. Regulation should also be *ex post* rather than *ex ante*.

## 4. MGA's reasoned opinion

### 4.1 Defining a 'game of skill': Position under current gaming legislation and proposed way forward

A number of respondents to the Authority's consultation on the subject requested that the Authority adopts a clearer definition of a game of skill.

The Act and the Regulations currently prescribe a licensing requirement for games of chance, and games of chance and skill, that may result in a prize. The definitions in the current legislation are based on the manner in which the outcome of the game is determined. The basis for distinction between a game that is licensable or otherwise under the current legislation rests on how the outcome is generated.

In the case of games of chance and games of chance and skill, the results of the game are accidental, but may, in case of the latter, also be dependent on the skill of the player. On the other hand, a game of skill is defined in the current legislation as a game that depends 'mainly' on the skill of the participant, and such a game is exempt from the licensing requirements of the aforementioned gaming legislation. In implementing the current legislation, the Authority has interpreted the above requirements and definitions to decide on the licensability or otherwise of a gaming activity by looking at the determining element in producing the result of the game. The broad 'qualitative' tests employed by the Authority sought to determine whether a new player can ever produce a better result or defeat another player who is more experienced at the game.

In order to afford more clarity the Authority reviewed the application of the definition in other jurisdictions. However, the 'legal' method of measuring whether the outcome of the game is mainly skill or otherwise is widely divergent in different jurisdictions and the situation is rendered even more unclear with the use of the same terminology for different products.

The debate can also be seen in light of other national and supranational legal developments. European legislation, including the *E-Commerce Directive*<sup>2</sup>, the *Consumer Rights Directive*<sup>3</sup>, and the *Services Directive*<sup>4</sup> define gambling as 'wagering a stake with pecuniary value in games of *chance*, including lotteries, gambling in casinos and betting transactions'.

At European Member State level, the structure of gaming legislation and its application also differs widely. The courts of different Member States have delivered varying jurisprudence in determining whether a game is based on skill or chance. A game of skill was interpreted as being one in which the element of chance was so slight that it could only be considered a game of skill, whilst on other occasions, the

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<sup>2</sup> Directive 2000/31/EC

<sup>3</sup> Directive 2011/83/EU

<sup>4</sup> Directive 2006/123/EC

courts had determined that, where certain games, such as card games wherein chance was present at the beginning of the game, was outweighed by the skill, knowledge and attention of the players in determining the outcome, then such games could not fall within the definition of a game of chance.

In determining whether a game is a game of chance or a game of skill, American jurisprudence traditionally refers to a qualitative 'Dominance Factor Test', but has also occasionally adopted the 'common sense' approach. The Supreme Court of California, for example, opined that in view of the existence of such large volumes of literature as to how to increase the skill of a player (denoting that a skill can be acquired), a particular card game could not be considered a game of chance.

The 'Dominant Factor Test' looks at the following criteria:

1. Participants must have a distinct possibility of exercising skill and must have sufficient data upon which to calculate an informed judgment;
2. Participants must have the opportunity to exercise the skill, and the general class of participants must possess the skill;
3. Skill or the competitors' efforts must sufficiently govern the results; and
4. The standard of skill must be known to the participants, and this standard must govern the results.

However the application of this test has been subjective and inconsistent. Empirical evidence and statistical data was also presented before the mentioned Courts in determining predominance between skill and chance. Whilst most of these tests relate to statistical data gathered for specific games or variants of games, they purportedly prove how, over a significant number of 'hands', skill predominates over chance. Other statistical data refers as to how the effect of mannerisms, psychology and experience counter-balances chance.

The above brief overview solely relates to games in which both chance and skill play a part. With regard to the regulatory position, pure skill games are, by and large, allowed in most countries without the necessity of a gaming authorisation, although in certain cases, there may be certain standards or controls which require limitations on prizes, advertising, age limitations, and disclosure of information amongst other requirements.

However, the debate on what constitutes a pure game of skill is still open. Many argue that there is no human activity that does not include an element of chance. Games traditionally deemed to be pure skill, such as chess, could be said to have an element of chance, as the player who has the first move has a slight advantage over the other player. Moreover, the fact that on the particular day of the match, one of the players might be sick, and would thus not be able to participate at the highest level, to the benefit of his lucky opponent instils an element of chance. This mentality

of chance can be extended to any sport, or even farming or litigation. In fact this was one of the arguments of the defence in *R v Derek Kelly*.<sup>5</sup> The defence argued against a literal interpretation of the 1968 Gambling Act in the UK as every game could only fall under one of two categories: a game of pure chance, or a mixed game of chance and skill. A wide interpretation of the latter would result in the absurd.

In view of the above, and in the absence of Maltese jurisprudence interpreting the wording of the law, the Authority is of the opinion that the forthcoming overhaul of gaming legislation in Malta should, after taking into account of this review, opinion and responses received to the consultation:

- a) clarify the interpretation of a game of chance and skill and a game of skill, in particular the terminology referring to ‘mainly of skill’ and ‘up to a certain extent’ in the definitions of the aforementioned terms; and
- b) consider that games of pure skill might be games in which the element of chance is negligible, rather than a literal interpretation of the term.

## **4.2 Types of Skill Games**

Based on the feedback received from and during the Consultation process, the term ‘skill game’ is used by stakeholders to describe a broad spectrum of games with varying levels of chance and skill. Broadly speaking, and with the caveat that different games of the same category may fall on different points of the spectrum, this range of games have been grouped by the Authority under three broad categories:

- (i). Games in which skill plays a more predominant role than chance, although a considerable amount of chance still exists in the game (e.g. certain board games, certain card games);
- (ii). Fantasy sports games that are significantly influenced by the skill and knowledge of the player but also contain a lesser element of chance; and
- (iii). Games in which the outcome is, in practical terms, entirely determined by the skill of the player.

For ease of reference, the first two categories shall cumulatively be referred to as ‘Type I’ games whereas category (iii) shall be referred to as ‘Type II’ games.

### **Type I Skill Games**

These games are, in effect, games of chance and skill, but in which skill of the player predominates in determining the outcome. The Authority has taken into account the technical characteristics of many games which are traditionally held to fall within this category. In identifying the determining factor of these types of games, the Authority

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<sup>5</sup> Rex v. Derek Kelly, 2007.

has considered existing interpretations of the chance-skill divide of other jurisdictions.

Reference has been made *inter alia* to the extensive jurisprudence of the United States of America. In the case *In Re Allen*<sup>6</sup>, Gibson CJ opined that “the term ‘game of chance’ has an accepted meaning ... it is the character of the game rather than a particular player's skill or lack of it that determines whether the game is one of chance or skill. The test is not whether the game contains an element of chance or an element of skill but which of them is the dominating factor in determining the result of the game.”

The Authority is of the opinion that in certain games, although chance is a present and important element in determining the result of the game, skill is more prevalent and hence is the “dominating factor”.

Fantasy sports games also fall within this category, although the importance of skill in determining the outcome also depends on the format in which the game is offered. Fantasy sports games come in two main forms: games where the player chooses virtual athletes representing real-life athletes, and games where the player chooses made-up athletes. In the former case the player’s performance in the game is normally directly dependent on the real-world performance of the athletes chosen as part of the player’s virtual team. In the latter case the player ‘trains’ the athletes within the game, in one form or another, and the player’s performance in the game is dependent on the team’s performance in the virtual league or other competition. In both cases the element of skill is heavily reliant on the game structure and the number of variables that the game uses to subvert the elements of chance.

### **Type II Skill Games**

The Authority is of the opinion that Type II skill games are incomparable to games of chance, games of chance and skill, and even Type I skill games. These are games in which the result is completely determined by the skill of the player. Any element of chance that may be present, if any, is slim and does not exercise any significant influence on the final result.

These games, therefore, do not fall under the current definition of gaming and hence do not require a licence in terms of present Maltese legislation due to the element of chance that is negligible. The games that fall under this category are normally off-the-shelf games developed by third-party software game developers, although this is not necessarily always the case.

The Authority opines that this category encompasses also most off-the-shelf online multiplayer video-game titles, some of which even attract professional players – games such as *StarCraft*, *Dota*, *World of Warcraft*, *League of Legends*, sport games such as *FIFA*, and first person shooters such as *Call of Duty* and *Counter-Strike* [in

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<sup>6</sup> 59 Cal.2d 6.

the format commonly played], amongst others. Developers of such games go to great lengths to ensure that the element of chance is as negligible as possible, and this is of utmost importance to the players as well.

Certain game developers (e.g. games from providers like Blizzard Entertainment, Riot Games, Valve Entertainment, Electronic Arts, Activision and the like) organise tournaments themselves with a prize of money or money's worth for the winner/s, whereas other operators act as platforms, matching players who wish to play against one another, and offering the possibility for players to bet on their own performance.

The Authority considers that Type II skill games attract a different market to that of games of chance, games of chance and skill, and Type I skill games. These players are similar to sports and other games in that they take pride in becoming better at the game and beating those less skilled than they are. Thus, what is most important to these players is not the possibility of winning a prize of money or money's worth, but rather the win itself as confirmation of their superior skill. Any prize that may be won is seen more as compensation for the winner's hard work rather than the sole or main motivation for playing the game. The format often adopted by such Type II skill games are tournaments in which once a player loses a game or a series of games, the player is knocked out of the competition without an option to re-join. This significantly limits the amount of time and money that a player can spend actually competing in Type II skill games. On the other hand, games of chance are usually characterised by short game times that allow the player to try his luck more than once.

## 5. MGA Position

### 5.1 Defining skill games

In the light of the review undertaken, responses received and developments of the industry, the Authority recognises that the present definition of ‘skill games’ or ‘games of skill’ in the Act<sup>7</sup> is not clear enough in view of the games and technology currently available in the market, especially those described in Section 4 of this paper.

The Authority believes that having clearer indicators (qualitative and/or quantitative) as to which types of games would fall under the categories defined under the current Act, would, in future, allow for a more comprehensive regulatory framework that is clear, streamlined and provides adequate safeguards for the consumer, depending on the risk factors to which the consumer is exposed. The Authority is committed to intervene only in areas where it is warranted to mitigate and address risks to consumers and only to the extent necessary within the current and forthcoming regulatory framework.

The Authority considers that consumers of Type I skill games and Type II skill games are exposed to different risk factors to games of chance and gambling-type games. Furthermore, consumers of Type I and Type II skill games are also covered by, and benefit from, safeguards emanating from other domestic and European legislation, including the *Consumer Rights Regulations* (S.L. 378.17), which implements the *Consumer Rights Directive* (Directive 2011/83/EU) and other general consumer protection legislation.

In the light of this, the Authority will be interpreting the term ‘skill game’ or ‘game of skill’ as defined in the current Act, to include games, the result of which is determined by the knowledge, reaction time and/or the dexterity of the player. This does not mean that any element of chance has to be completely absent, rather, that any chance factor is so minimal, that the outcome of the game is not affected by such an element of chance. This determination includes Type II skill games, but does not include Type I skill games. Any other games wherein the determination of the result is based, to a significant degree, on any element of chance, would fall within the definition of a ‘game of chance and skill’ within the scope of application of the Act, and is thus a licensable operation. This includes Type I skill games.

In view of the continuous evolution and development of different types of games, the Authority is of the opinion that the ideal manner in which to categorise gaming

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<sup>7</sup> Lotteries and other Games Act, Chapter 438, Article 2: "*skill game*" or "*game of skill*" means a game for money or money's worth the results of which depend, mainly, on the skill of the participant, but does not include a sport event; "

activities is by means of a subjective assessment, on a case-by-case basis, which should, however, be conducted on the basis of a series of objective criteria.

The criteria used shall be the following:

1. The presence of random draws and their effect on the outcome;
2. The length of each game or match;
3. Whether the intention is amusement or competition;
4. Whether a skilled player is able to win more than an unskilled player;
5. Whether a player's chance of winning is significantly increased by experience in playing the game;
6. Whether skill can be acquired through reading literature or other educational material;
7. Whether a rule-set or format that is used further nullifies the effect of any element of chance;
8. Whether the game is played against other human players, or against the house, though a skill game can also be played against the house; and
9. Common sense and opinion of the player community.

An operator who contends that a particular game should be classified as a skill game rather than any other type of game under the Act, should present its case before the Authority, for the Authority to provide a decision in this regard. The onus to prove that a particular game is, in actual fact, a skill game, is vested in the operators themselves, who should acquire any relevant data or certification showing that the game is, in itself, a skill game. Data that shall be admissible for such a determination includes any information or statistics collected by the operator during any public or restricted testing phase wherein no prize was offered.

## **5.2 Is there a case for specific *ex-ante* regulation now, or within the context of the regulatory overhaul (2016)?**

### **Type I Skill Games**

In view of the element of chance present in Type I skill games, and the risks to consumers that may ensue, the Authority is of the opinion that a licensing regime and regulatory oversight provided by the current regime should be retained in the forthcoming new legislation. Whilst other legislation, such as consumer protection legislation may still apply, specific regulation is still warranted to ensure the fairness of the games, imposing responsible gaming measures, protecting player funds and keeping the industry free from fraud and crime.

In view of this, Type I skill games are currently considered as being licensable in terms of the Act and the Regulations. Concurrently, however, the Authority is of the understanding that the risk to which a player is exposed when playing Type I skill games, as opposed to other forms of gambling-type games, is different, and in

general, reduced. In this regard, the licensing and compliance requirements imposed on such operators should reflect the extent of consumer and other regulatory risk. Limitations and requirements that go beyond what is necessary to achieve the objectives of the legislation would be counter-productive, and would likely push the industry towards the black market. Thus, the position of the Authority is that Type I skill games should be distinguished from gambling-type games, and the checks and monitoring imposed should reflect the nature and characteristics of the product offered.

### **Type II Skill games**

With regard to Type II skill games, the Authority is of the opinion that an ex-ante licensing requirement is not warranted as the risks to which a player of such games may be exposed are currently adequately safeguarded by means of existent general and horizontal consumer protection legislation. In view of their nature, as explained above, Type II skill games are much less likely to offer 'unfair' games in the same way as it may be possible with other games, such as with a lottery or a slot machine.

Matches in Type II skill games take a long while to conclude, and always include transactions that are, traditionally, much smaller than those registered for gambling. In this sense, the possibility for criminality, such as money laundering, is much less, as is the possibility of a player ending up in financial ruin. The Authority, however, has identified that, in certain cases, the establishment of specific *ex-post* regulation is warranted in order to protect the specific gaming consumer, concerning matters, such as rules for maximum stake, age limitation, monitoring and data retention requirements, financial protection, and information which is required to be made available to players.

It is pertinent to clarify that *betting on the outcome of a Type II skill game* by a person who is not involved in the skill game is not, in itself, a Type II skill game but rather is tantamount to betting and hence requires a licence as per Maltese laws and regulations.

## 6. Conclusion

The Authority's position as expounded in this paper shall be taken into account in the context of the legal and regulatory overhaul which the Authority shall be proposing to the Government within the next few months.

In particular, the Authority is of the opinion that Type I skill games require less regulation than games of chance and games of chance and skill, reflective of their position in the spectrum of chance and skill as depicted in Section 4. In the Authority's opinion, regulatory intervention must appropriately and proportionately address the level of risk presented to the consumer by the type of operation, and hence such considerations shall form an integral part of the Authority's policy.

Within this context, the Authority is of the opinion that Type II skill games do not require an *ex-ante* licensing regime, although it will consider other regulatory approaches that may be necessary; such as the issuing of a set of requirements / standards / codes that providers must adhere to but which shall be monitored *ex-post* further to the establishment of the new regulatory framework. The Authority may supplement such an approach with guidelines and keep this sector under review in order to monitor the developments of both the industry and consumer behaviour and risks.

In this regard, the Authority shall be proposing to Government the following provisions, amongst others, under the forthcoming Bill for a new Gaming Act:

- Extend the scope of games that currently fall under the regulatory competence of the MGA and therefore include 'pure skill games';
- Provide for more clarity in the definitions of the different types of games, and gaming activities that shall be governed by the new Act;
- Provide for the adoption and implementation of different regulatory and monitoring approaches and instruments, such as, for example, an *ex-post* regime for those gaming activities that pose less risks to consumers and that do not form part of the licensable activities under the current or new regime; and
- Extend the functions and responsibilities of the Authority to include: the keeping of non-licensable (and licensable) activities under review, with a view to ensure the effectiveness of the regulatory approach adopted, in attaining the over-arching gaming policy regulatory objectives.