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L.N. 246 of 2018

**GAMING ACT
(CAP. 583)**

Gaming Player Protection Regulations, 2018

Arrangement of the Regulations

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IN exercise of the powers conferred upon him by article 12 of the Gaming Act, the Parliamentary Secretary for Financial Services, Digital Economy and Innovation, in consultation with the Malta Gaming Authority, has made the following regulations:-

Part I

Citation and Interpretation

1. The title of these regulations is the Gaming Player Citation. Protection Regulations, 2018.

2. (1) In these regulations, save as provided in sub-regulations (2) and (3), all words and phrases shall have the same meaning as prescribed in the Gaming Definitions Regulations, 2018. Interpretation. L.N. 242 of 2018.

(2) In these regulations, unless the context otherwise requires, "the Act" means the Gaming Act. Cap.583.

(3) All other terms used in these regulations shall have the same meaning attributed to them in the Act.

Part II

Responsible Gaming

3. (1) An operator shall produce sufficient evidence to the Authority to show that the following objectives are being satisfied thereby: Responsible gaming objectives.

(a) ensuring that proper controls, policies and procedures are in place to prevent gaming by minors;

(b) ensuring that proper controls, policies and procedures are in place to protect vulnerable persons;

(c) ensuring that the interests of all players are adequately safeguarded and that players are provided with information on any and all avenues of recourse they may have if they feel aggrieved by a decision of the authorised person;

(d) ensuring that all information relevant to the gaming

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service is readily available to players;

(e) ensuring that information related to responsible gaming is readily available to players;

(f) ensuring that tools are readily available empowering players or any other persons to control their use of gaming services and to safeguard themselves from the effects of problem gaming; and

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(g) ensuring that the marketing and advertising of the gaming service is fair and in accordance with the Gaming Commercial Communications Regulations, 2018 and any other applicable regulatory instrument or any other applicable law.

(2) The Authority may, by means of a binding instrument, further specify how any or all of the above objectives must be met by one or more categories of authorised persons.

Part III

Protection of Player Funds

Player funds to constitute distinct patrimony.

4. (1) An authorised person in possession of player funds shall hold such funds solely for and on behalf of and in the interest of that player.

Cap. 16.

(2) Notwithstanding anything stated in article 1894 of the Civil Code or in any agreement entered into between the authorised person and the player, and notwithstanding the fact that the player funds held by the authorised person are registered in the name and title of or are otherwise vested in the authorised person, such funds shall be deemed to constitute a distinct patrimony, separate from that belonging to the authorised person.

(3) Without prejudice to any relevant provisions of the Act, the control of player funds by an authorised person shall not give or be deemed or construed to give to the authorised person any rights over such funds; nor shall it create any form of loan between the authorised person and the player notwithstanding the nature of the funds or the rights or obligations of the authorised person in relation thereto.

Player retains ownership of player funds.

5. A player whose player funds are held by the authorised person enjoys a right of ownership over such funds notwithstanding that they may be registered in the name and title of, or are otherwise vested in, the authorised person.

6. (1) Notwithstanding anything stated in any other law, and notwithstanding anything stated in any agreement which the authorised person may have entered into, the creditors of an authorised person shall have no claim or right of action on or against the player funds held by the authorised person for and on behalf of and in the interest of any player, and such funds shall not be affected in any manner by the provisions of laws and regulations in force regulating the insolvency or bankruptcy of the authorised person:

Player funds protected from operator's creditors.

Provided that for the sake of clarity, any agreement or clause therein which conflicts with this sub-regulation shall, to the extent of such conflict, be deemed *ipso jure* null and void:

Provided further that in the event of commingling of player funds with the funds of the authorised person in contravention of this sub-regulation, the claims of players for player funds owed to them shall constitute a privileged claim, and shall be paid in preference to all other claims whether privileged or hypothecary.

(2) In the event of any such insolvency or bankruptcy or related order or resolution, or in the event that the Authority so requires, the authorised person or any administrator or receiver or other officer appointed to represent it by any court or otherwise shall, on demand of any player or of the Authority, immediately transfer the control, possession and title to all player funds held by such authorised person to such other person as may be instructed by the Authority.

(3) In the event that any funds held under the control of the authorised person are, at the request of any creditor of the authorised person, made subject to any precautionary or executive act or warrant granted by any Court in terms of the Code of Organization and Civil Procedure, or any other similar measure, any players on whose behalf player funds are being held, the authorised person on behalf of the players or the Authority may, by application to the Court, request the release of the funds from such act, warrant or measure and the Court shall, on production of evidence as it may deem fit, accede to the application without undue delay.

Cap. 12.

7. (1) An authorised person shall segregate player funds at all times from the funds of any other person, provided that the funds of each player may be held in a common player funds account. The funds of each player shall remain separately identifiable at all times.

Player funds to be kept segregated.

(2) The Authority may, in its sole discretion, exercise viewing rights over the common account of player funds.

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Authorised person retains responsibility when outsourcing.

8. Where the authorised person delegates or entrusts functions or duties relating to the management and, or holding of player funds to a third party, without prejudice to the liability of such third party towards the authorised person or otherwise, the authorised person shall be fully responsible for all regulatory requirements connected to player funds, and shall be liable towards players for any loss or prejudice suffered by such players as a result of the acts, omissions or insolvency of such third party.

Authority may issue binding instrument.

9. (1) Without prejudice to the other provisions in this Part or in the Act, the Authority may by means of a binding instrument specify in further detail the means by which an authorised person must safeguard player funds.

(2) Without prejudice to the other provisions in this Part or in the Act, the Authority shall only allow a third party to hold player funds on behalf of the authorised person if it is satisfied that the player funds shall be adequately safeguarded thereby:

Provided that the provisions of this Part shall apply even when the funds are held by such a third party.

Part IV

Unfair Terms

Criteria for terms and conditions.

10. (1) Operators shall ensure that the terms and conditions applicable to the provision of their gaming service are intelligible and easily accessible, and that changes thereto are made in a fair and transparent manner, and that players have explicitly accepted the latest version of the terms and conditions before being allowed to start or continue being the recipient of a gaming service.

(2) Where any provision in such terms and conditions is ambivalent, or any reasonable doubt arises as to the meaning thereof, the interpretation most favourable to the player shall prevail.

Unfair terms.

Cap. 378.

11. Operators shall ensure that the terms and conditions applicable to the provision of their gaming service are not unfair in terms of Part VII of the Consumer Affairs Act.

Part V

Player Disputes

Players must comply with terms and conditions.

12. Players shall make use of a gaming service in a fair manner and shall comply with the terms and conditions applicable thereto.

13. (1) Operators shall make readily available to players the applicable procedures for making a complaint to them and for referring a complaint to the Player Support Unit or to another ADR entity in the event described in regulation 14.

Players to be informed of complaint mechanisms.

(2) (a) Operators shall, upon receipt of a complaint made by a player who makes or has made use of their gaming service, immediately inquire into the complaint.

(b) Operators shall inform the complainant of the results of such inquiry within ten days from the date on which the complaint is received:

Provided that where the nature of the inquiry is such that more time is necessary to complete it, such period may be extended by a further ten days:

Provided further that where such extension is necessary, the player shall be informed within the first ten days from the date of receipt of the complaint that the authorised person shall be making use of such extension, and the reason or reasons why such extension is warranted.

(c) In communicating the results of the inquiry to the complainant, the operator shall also provide the complainant with the procedure for referring the complaint to the Authority's Player Support Unit or to another ADR entity in terms of regulation 14.

14. Where a player feels aggrieved by a decision or other action of the operator, he shall be able to make a complaint to the operator and, in the event that he is not satisfied by the response of the operator, the player may refer such complaint and all relevant facts to the Authority's Player Support Unit or to another ADR entity.

Players to be able to make complaint.

15. (1) There shall be established by the Authority, whether as part of the Authority or as an independent entity, a Player Support Unit with the function of receiving complaints from players arising out of or in connection with any gaming service.

Player Support Unit.

(2) Without prejudice to the provisions of sub-regulation (3), the Player Support Unit shall, with respect to any complaint which shall be received thereby, examine the merits of such complaint and act as a mediator between the player and the relevant authorised person to facilitate an amicable settlement of the dispute.

(3) Without prejudice to the generality of the powers of officials of the Authority in terms of the applicable regulatory instruments and any other law, in investigating a complaint the Player

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Support Unit shall be entitled to demand any pertinent information from the relevant authorised person.

(4) If during the handling of a player complaint, the Player Support Unit identifies a potential breach of a regulatory instrument, the Player Support Unit shall escalate the issue to the Authority's directorate responsible for compliance.

(5) The Authority may, by means of a binding instrument, establish the rules and procedures to which the Player Support Unit shall adhere, including but not limited to the minimum criteria for a complaint to be received and processed thereby.
