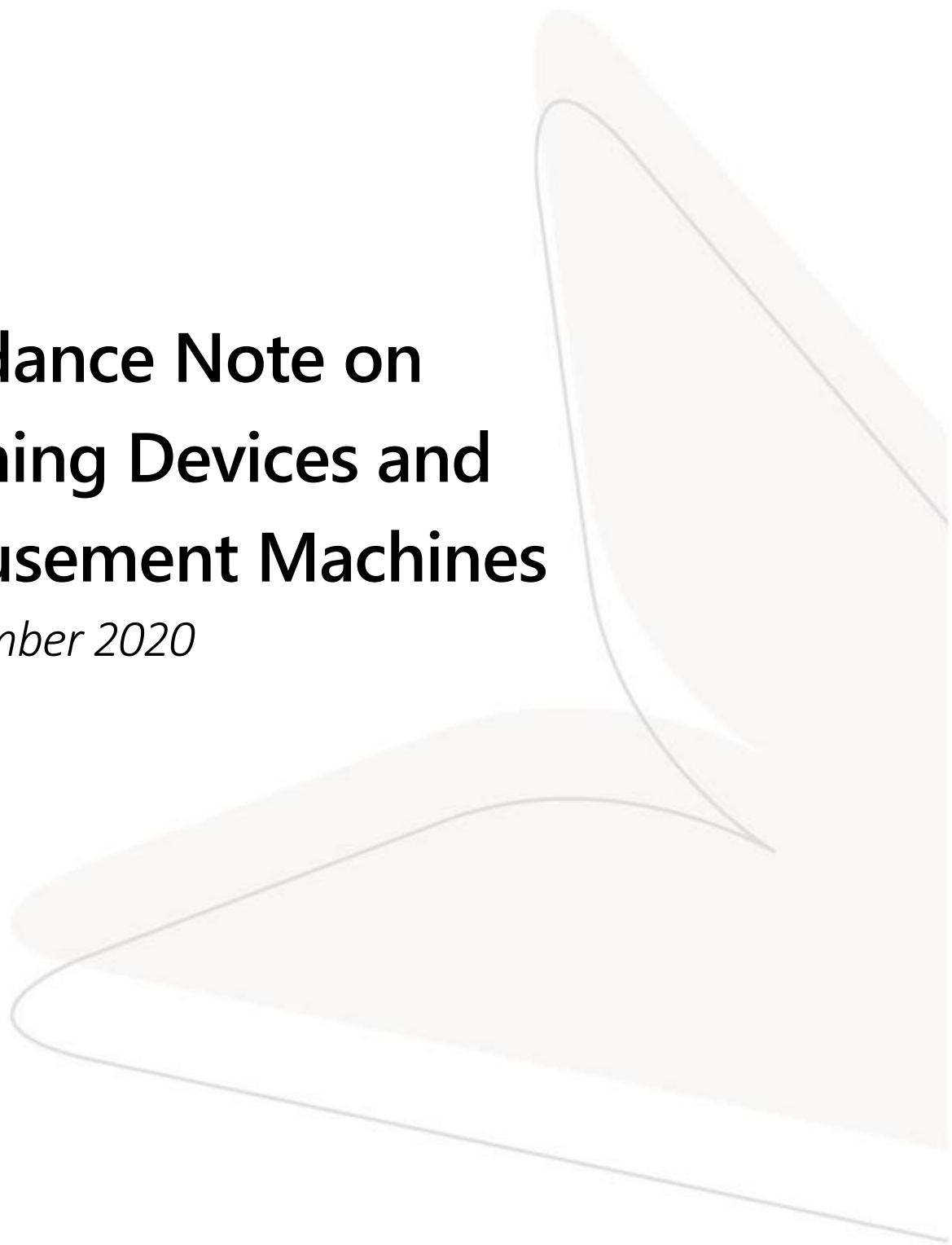


Guidance Note on Gaming Devices and Amusement Machines

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Contents

1	Introduction	3
2	Definitions	3
2.1	Gaming Device	3
2.2	Amusement Machines	5
3	Registration and Approval of Gaming Devices and Amusement Machines	6
4	Applicable Fees and Levies	7

1 Introduction

The scope of this Guidance Note (Note) is that of establishing more clearly which elements are to be considered when assessing whether a device or article ought to be classified as a gaming device or an amusement machine per the Gaming Act (CAP. 583 of the Laws of Malta) ('Act') and the subsidiary legislation thereunder (referred conjointly as the 'Law').

The categorisation of a device as a gaming device, an amusement machine or as a device which is not considered to fall within one of the previously mentioned categories, directly affects whether the person or persons, who are directly or indirectly involved in making available for use or operating such a device, are obliged by law to meet and adhere to several obligations (referred further on in Section 3 and 4) pertaining to the classification attributed to such a device.

This Note shall supplement the provisions relating to gaming devices and amusement machines as stipulated in the law; in turn, it shall also be useful in aiding both unauthorised and authorised persons, consultants and judicial bodies in making such an assessment.

The Authority shall endeavour to keep this Note under review and up to date.

2 Definitions

The Gaming Definitions Regulations (S.L 583.04 of the Laws of Malta) ('Regulations') define several terms used throughout the law, including 'gaming device', 'amusement machine', 'game', 'gaming service' and 'gaming premises' amongst others. The purpose of this Note is that of delving into these definitions to further clarify what they entail.

2.1 Gaming Device

"Gaming device means any device or object, including any electrical, electronic, or mechanical device, any gaming table, ticket or any other thing, that is used or is by its nature intended for use as part of a gaming service or in connection therewith in order to allow a player to place a wager, and, or to obtain the outcome of a game in a gaming premises;"

Given that this definition contains several important principles which may require further explanation, it is being dissected and explained into manageable parts.

Gaming Device is 'used or is by its nature intended for use... .. in a gaming premises.'

i. Use

The use of any article (be it electrical, electronic, mechanical etc.) which allows a player to place a wager or to obtain the outcome of a game, or to both place a wager and obtain the

outcome of a game, through its use in gaming premises,¹ is sufficient to render that article a gaming device.

For the sake of clarity and as an example, 'upholstery buttons' which are used in a gaming premises in the representation of a wager or if not in the representation of a wager, in order to obtain the outcome of a game, are, in that context, considered to be gaming devices notwithstanding that the scope for which they are designed and intended is not that of being used as gaming devices but to join fabrics together. Along the same lines, non-certified cash-chips or coloured chips can likewise possibly be deemed gaming devices. Any item which is not considered certificate-grade² for professional performance e.g. items which are bought from a toyshop, or items such as the above-mentioned upholstery buttons which are at first glance not intended to be used for gaming purposes, are still considered gaming devices if they are used in a gaming premises to allow a person to take part in a game.

Toyshop devices which are designed to mimic the performance of certificate-grade gaming devices are considered gaming devices, where, in consideration of other circumstances, such devices are found in a place which may be suspected to have been used for gaming purposes, and if the devices could have been used as a means to establish an outcome of a game, even if not to the levels required at the professional level.

ii. **Nature**

This refers to those devices that are by their very nature intended for use to allow an individual to wager, or if not to wager, to obtain the outcome of a game, or both, such as the devices that are manufactured at certification-grade but which may not necessarily be found in a gaming premises; their intended nature is sufficient to render them gaming devices independent of the place where they are situated.

While a device may be electrical, electronic or mechanical, it need not be. Any gaming table such as but not limited to, a poker table or a baccarat table is by its nature considered a gaming device even if not found in a gaming premises. Additionally, any normal, everyday object which is used or is, in consideration of the circumstances of the case at hand, considered to have been used to allow a player to make a wager or to obtain the outcome of a game per the foregoing line of thought, is considered a gaming device.

This provides for an indefinitely wide spectrum of gaming devices, in the sense that any gaming device intended for use as such and any object which may have been used for gaming purposes in the setting of a gaming premises, ought to be considered a gaming device.

The gaming device is used or intended for use '*...as part of a gaming service or in connection therewith in order to allow a player to place a wager, and, or to obtain the outcome of a game in a gaming premises*'

¹ Gaming premises will be defined in this Note as well.

² Certificate-grade for the purpose of this Note shall mean gaming devices which are certified to be used by authorised gambling operators such by casinos in events and tournaments.

iii. As part of a gaming service or in connection therewith...

The provision of a gaming service in the context of land-based gaming is considered to mean providing players with the opportunity of participating in a game³ by means of the gaming device (as explained above). The level of involvement in providing this gaming service can be direct or indirect; similarly, a person can singularly offer such a service but such a service may be a conjoint effort of persons or entities.

iv. Gaming Premises

“Gaming premises”, as defined in the Regulations, means any premises which is accessible to the public, which is used or intended to be used for players to participate in the aforementioned gaming service.

Further to the above, ‘accessible to the public’ whether on payment or otherwise, shall include a residential or commercial property if such a property is made accessible to the public, and is (1) used (games have indeed been made available to a person or persons present in such a premises) or is (2) intended to be used for players to participate in a game as part of a gaming service. A premises is considered to be intended for use for the provision of a gaming service, where the circumstances are as such, which point to the premises having been used to make a game available for participation by players. If for instance a gaming device whether used or intended for use as a gaming device per the above, were discovered in such a premises which was, at the time, open to the public, such a premises is considered gaming premises.

This means that even where a premises does not have persons in attendance or such in attendance had not been witnessed to have participated in the provision of a gaming service, if such a premises contains a gaming device and the setting is as such which indicates that the premises was used or could have been used for gaming, then that premises will be considered a gaming premises.

This shall also be applicable to premises which are not authorised by the Authority to offer a gaming service.

2.2 Amusement Machines

The Regulations define an amusement machine as:

“any type of machine through which a game may be played via an electronic display, made available for use by players in a gaming premises by an operator on a consistent basis, whether or not it is operated by the insertion of money or token, whether or not a successful player receives or is offered a prize, and where the exclusive purpose of such a machine is for amusement and not for gambling purposes;”

³ Defined by the Regulations as a game of chance or skill.

This definition provides that for an amusement machine to be considered as such, it must only be played via an electronic display; a table-soccer, table-tennis or any table or device which is used for any cue sport, for instance, which does not or is not played via an electronic display, could not be considered to fall within this category and therefore falls out of scope.

The elements of stake and prize in conjunction, or one at the expense of another, does not at all affect an amusement machine being categorised as such.

In establishing that a device is an amusement machine, one needs to ascertain the level of chance that is in play when establishing the outcome of the game. Where the game is exclusively or predominantly determined by chance, then the game is not an amusement machine but would be classified as a gaming device.

Furthermore, if a machine is not made available consistently but is made available for use in a sporadic, unorganised, and unscheduled nature, such a machine ought not to be considered an amusement machine.

3 Registration and Approval of Gaming Devices and Amusement Machines

Following the classification of a device as a Gaming Device or an Amusement Machine, such must be registered and approved by the Authority per reg. 19 and reg. 31 of the Gaming Authorisations Regulations (S.L 583.05) ('Authorisations Regulations').

Reg. 19 establishes that:

"No person shall service, place on the market, distribute, supply, sell, lease, transfer, host, operate or in any other manner make available for use any gaming device or gaming system in the territory of Malta, unless such gaming device or system, as the case may be, has been approved or exempted from approval by the Authority."

In addition to reg. 19, reg. 31 of the Authorisations Regulations states:

"Notwithstanding its status as an exempt game, a person shall not place on the market, distribute, supply, sell, lease, transfer, host, operate or in any other manner make available for use any amusement machine in any gaming premises, unless such amusement machine has been registered with the Authority by means of the applicable procedure as may be established by the same Authority:

Provided that in registering any such amusement machine, the Authority may levy any applicable administrative fees:

Provided further that the person registering the amusement machines shall ensure that the Authority is notified of any changes to the information provided to the Authority."

4 Applicable Fees and Levies

The below is a list of fees which are applicable to gaming devices and amusement machines:

Gaming Devices

- Part III of the Gaming Tax Regulations (S.L 583.10) stipulates the applicability of a “Levy on Gaming Devices”.
- Article 4 of the Gaming Tax Regulations stipulates that “There shall be due and payable to the Authority in each and every tax period a levy on gaming devices.”
- The Fourth Schedule to the Gaming Licence Fees Regulations (S.L 583.03) (‘Licence Fees Regulations’) charges authorised persons an administrative fee of €100 per device for a request for the approval of a new gaming device.

Amusement Machines

- While no such levy is applicable to amusement machines, a one-time, non-refundable administrative fee of €50 subsists to register an Amusement Machine in terms of the Fourth Schedule to the Gaming Licence Fees Regulations.
- Further information related to the registration and operation requirements of amusement machines can be found in the [Amusement Machines Directive – Directive 5 of 2019](#) and the [Directive on the rules applicable to Amusement Machines and Low-Risk Games – Directive 7 of 2019](#).