

EXPLANATORY NOTE

Guiding Principles for the Quantification of Administrative Fines May 2016

1. Introduction

1.1 Legal Framework

By virtue of article 42A of the Gaming Act (Chapter 400 of the Laws of Malta), the Malta Gaming Authority [hereinafter 'the Authority' or 'the MGA'] is empowered to impose an administrative fine on a person or entity licensed under the said Gaming Act for any offence committed against the Act or regulations issued thereunder, or for a breach of one or more licence conditions, as an alternative to proceedings in Court. The administrative fine may be issued for any amount not exceeding two hundred and thirty-five thousand Euros [€235,000]. The licensee may refuse to pay the administrative fine; however in such case criminal proceedings may be initiated, the penalties whereof are more severe and may include imprisonment both for licensees who are natural persons as well as for directors, managers, secretaries or other similar officers of a licensee which is a body corporate.

By virtue of article 68 of the Lotteries and Other Games Act (Chapter 438 of the Laws of Malta), the Authority is empowered to order the payment of an administrative penalty by a person or entity licensed under the said Act or regulations issued thereunder, for any offence committed against the Act or regulations, or for a breach of one or more licence conditions. Once again, the administrative fine may be issued for any amount not exceeding two hundred and thirty-five thousand Euros [€235,000] and the licensee may refuse to effect payment, in which case criminal proceedings may be instituted.

These powers are without prejudice to the Authority's power to suspend and/or cancel a licence.

1.2 Scope and Purpose

This Explanatory Note is intended to delineate the guiding principles which the Authority embraces and considers when deciding on the quantum of an administrative fine which it has decided to impose. The Authority has great discretion in deciding on the magnitude of an administrative fine, and hence this Explanatory Note serves as guidance to elucidate to the public on the manner in which this discretion is exercised.

2. Quantification Guidelines

2.1 Purpose of Administrative Fines

Administrative fines are imposed by the Authority in circumstances in which it is felt that a pecuniary penalty is preferable to the institution of lengthy and onerous criminal proceedings. Hence in cases which are extremely serious the Authority will not impose an administrative fine as an alternative to criminal proceedings. In those cases in which it is felt that the best solution is to impose an administrative fine, the following are the main reasons behind such decision [the list is not exhaustive]:

- (i). Ensuring that the licensee rectifies any default;
- (ii). Deterring future non-compliance and thereby also ensuring that Maltese licensees uphold high standards of behaviour consistent with regulatory requirements;
- (iii). Ensuring that any financial gain which the licensee may have made through non-compliance is eliminated.

2.2 Criteria for the Calculation of the Quantum

In deciding whether an administrative fine should be imposed, and if so the quantum thereof, the MGA takes into account the following considerations [the list is not exhaustive]:

- i. The general principles set out in 2.1 above;
- ii. The impact or potential impact of the breach on the financial stability of the licensee;
- iii. The impact of the breach on the licensing and regulatory objectives pursued by the Authority;
- iv. The seriousness of the breach, including:
 - (a) Its duration and/or frequency;
 - (b) The scale of the breach;
 - (c) Whether it was deliberate or due to negligence;
 - (d) Whether, if the breach took place due to negligence, it continued after the licensee became aware of it;
 - (e) Whether the licensee or any involved party derived any financial or other benefit;
 - (f) The involvement or lack thereof of senior management and/or the Key Official;
 - (g) Whether it reveals serious or systemic weaknesses or potential weaknesses in the licensee's business model, financial strength, governance, risk or other management systems and/or internal controls relating to all or part of the licensee's business;
 - (h) Whether there are multiple issues which, considered individually may not warrant the imposition of an administrative fine, but considered collectively warrant such imposition;
 - (i) The impact of the breach on the licensee's players.
- v. The conduct of the licensee after the breach was committed and, if previously unaware, when the licensee was made aware thereof:
 - (a) Whether any attempt was made to conceal the failure or breach;

- (b) How promptly, comprehensively and effectively the licensee brought the breach to the attention of the Authority and/or other regulatory and/or law enforcement agencies after it was committed and the licensee became aware thereof;
 - (c) The nature, extent, promptness and effectiveness or likely effectiveness of any remedial action taken by the licensee to remedy the breach and/or the effects thereof;
 - (d) The degree of cooperation shown by the licensee during the investigation of the breach carried out by the Authority and/or other regulatory and/or law enforcement agencies;
 - (e) The degree of cooperation shown by the licensee in complying with requests by the Authority and/or other regulatory and/or law enforcement agencies for the implementation of remedial action by the licensee.
- vi. The likelihood that the same or a similar type of breach will recur if the administrative fine is not imposed;
 - vii. The previous disciplinary and/or supervisory record of the licensee, including:
 - (a) Any previous enforcement or other regulatory action by the Authority and/or other regulators and/or law enforcement agencies that resulted in an adverse finding against the licensee;
 - (b) Any warnings given to the licensee by the Authority;
 - (c) Any previous agreement or undertaking by the licensee to the Authority and/or other regulators to act or refrain from acting or behaving in a particular manner and the licensee's compliance, or lack thereof, with said agreement or undertaking;
 - (d) The general supervisory record of the licensee, in particular with respect to matters relevant to the breach in question.
 - viii. Whether other sanctions, or no sanction at all, are more appropriate for the breach in question;
 - ix. The economic strength of the licensee and the effect thereon of the administrative fine;
 - x. What actions the Authority has taken in similar cases.

2.3 Quantification

The actual quantification of the administrative fine takes place in the steps outlined hereunder:

- i. **Step 1** – where relevant, the disgorgement of any economic benefit obtained by the licensee through the breach;
- ii. **Step 2** – the determination of a figure which is appropriate in view of the criteria in 2.2 above;
- iii. **Step 3** – where appropriate, an adjustment to the figure taking into account any aggravating or mitigating factors;
- iv. **Step 4** – where appropriate, an adjustment taking into account the desirability and effectiveness of the administrative fine as a deterring factor on the licensee and other licensees;

- v. **Step 5** – where appropriate, an adjustment taking into account the financial hardship which the administrative fine will cause to the licensee [the burden of proving financial hardship lies in all cases with the licensee].

3. Procedural Matters

3.1 Procedure of Issuance

When the Authority receives a report of a breach committed by the licensee, the Authority takes the necessary steps to address such breach. If the report is filed by a third party, an investigation is carried out. If the report is filed by the licensee itself, an investigation is carried out if necessary to ascertain the extent of the breach or other matters related thereto. Following the conclusion of the investigation, the Authority considers the measures which are appropriate in response to the breach committed. As aforementioned in 1.1, the Authority reserves the right to issue notices of suspension or cancellation, with regards to which certain procedural rules enshrined in the relevant legislation apply. However, together with, or instead of, such notices, the Authority may decide that it is appropriate to issue an administrative fine, when the breach is not so serious as to warrant the institution of criminal proceedings.

The usual practice of the Authority is that when a possible breach is discovered or reported early on, a warning is issued to the licensee to cease and desist from the illicit practice. Further steps are taken when such warning is not heeded. When the breach is discovered at a later stage, the Authority may go ahead and issue the fine immediately, having made the aforementioned considerations.

The administrative fine is issued as a letter addressed to the licensee. The licensee's agreement thereto is then solicited. When such agreement is not forthcoming, the Authority reminds the licensee of the consequences of lack of agreement. When such reminder is sent to no avail, the Authority proceeds to withdraw the proposed agreement for the issuance of an administrative fine in lieu of criminal proceedings, and refers the matter to law enforcement agencies.