

L.N. 31 of 2017

**LOTTERIES AND OTHER GAMES ACT
(CAP. 438)**

Skill Games Regulations, 2017

IN EXERCISE of the powers conferred by article 78(3) of the Lotteries and Other Games Act, the Minister for Competitiveness and Digital, Maritime and Services Economy, after consultation with the Malta Gaming Authority, has made the following regulations:-

Part I

Preliminary

1. The title of these regulations is the Skill Games Citation. Regulations, 2017.

Part II

Definitions

2. (1) In these regulations unless the context otherwise Interpretation. requires -

"Act" means the Lotteries and Other Games Act; Cap. 438.

"Authority" means the Malta Gaming Authority established under article 9 of the Act;

"controlled skill game" means a skill game subject to a licensing requirement in terms of regulation 6;

"controlled skill games operator" means a person offering a controlled skill games service;

"controlled skill games service" means making a controlled skill game available for participation by end customers, whether directly or indirectly, and whether alone or with others;

"controlled skill games supply" means the organisation of a controlled skill game for or with a controlled skill game operator;

"licence" means a licence granted for the operation of a controlled skill game in accordance with regulation 8 and "licensee"

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shall be construed accordingly;

"player funds" means players' money or money's worth held by a licensee under an arrangement made between such a licensee and the player for the provision of a controlled skill games service and includes, but is not limited to, funds that the player has the right to withdraw and funds committed to games pending determination of the outcome of those games;

"qualifying shareholding" means a direct or indirect shareholding in a company which represents ten *per centum* (10%) or more of the share capital issued by such company or of the voting rights attaching to such share capital or which makes it possible to exercise a significant influence over the management of the company, provided that where the rights held as to the percentage of votes, to profits available for distribution and to rights to assets available for distribution on a winding up in respect of such holding are not identical, the highest percentage figure shall be deemed to be the percentage of equity holding held, and "qualifying shareholder" shall be construed accordingly;

"regulatory objectives" means the objectives set out in regulation 3;

"skill" means knowledge, dexterity, strength, speed, accuracy, reaction time, coordination, and, or competence in other physical or mental feats acquired, developed or learnt through practice, experience or study;

"skill game" means a game for money or money's worth and through means of distance communication, the result of which is determined by the use of skill alone or predominantly by the use of skill and is operated as an economic activity, but does not include a sport event.

(2) Unless the context otherwise requires, terms used in these regulations and which are not defined herein shall have the same meaning assigned to them in the Act.

(3) In these regulations, if there is any conflict between the English and Maltese texts, the English text shall prevail.

Part III

Regulatory Objectives

Objectives.

3. These regulations are being issued with a view to ensuring that:

(a) skill games are subject to risk-based regulatory intervention, where this is necessary in the public interest, and that such regulatory intervention is proportionate, consistent and non-discriminatory;

(b) skill games are conducted in a fair and transparent manner and that the sector is kept free from crime;

(c) the interests of all consumers are adequately safeguarded and proper controls are in place to protect minors and other vulnerable persons; and

(d) all other relevant objectives listed in the Act are fulfilled.

Part IV

Applicability

4. All skill games organised in Malta, provided from the territory of Malta or promoted or offered to persons in Malta shall be regulated by the provisions of these regulations: Applicability.

Provided that the burden of proving that an activity is a skill game shall rest at all times on the party operating or promoting such an activity.

5. The Authority is vested with the discretion to classify the activity as a skill game or otherwise on the basis of the considerations listed in the First Schedule, and after taking into consideration the submissions of the party operating or promoting the activity and any research or publication issued by any other authoritative entity. Classification.

6. The Authority may determine, by means of a ruling issued under these regulations, that a game is a controlled skill game if, acting reasonably, the Authority deems it necessary and, or desirable in pursuance of the regulatory objectives. Controlled skill game.

7. A ruling issued under regulation 6 shall be guided by the criteria listed in the First Schedule, as well as any other criteria which are deemed necessary in the public interest. Ruling criteria.

Part V

Licensing

8. A controlled skill game shall not be organised in, or provided from the territory of Malta, and shall not be offered, made available or promoted to any person in the territory of Malta unless: Operations.

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- (a) (i) it is licensed in terms of these regulations; or
- (ii) it is offered under an equivalent authorisation issued by the government or a competent authority of another Member State of the European Union or a Member State of the European Economic Area; or
- (iii) it is exempt from the requirement of a licence under the Act or any other law; and

(b) it is at all times compliant with these regulations and any other applicable regulatory instrument:

Provided that the Authority may, in respect of a controlled skill game offered under paragraph (a)(ii), impose such proportionate requirements and conditions in conformity with European Union law, as it may deem necessary in fulfilment of its functions under the Act and these regulations:

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Provided further that for an applicant who already holds a Class 3 licence, or a corresponding Class 4 licence issued by the Authority in terms of the Remote Gaming Regulations, the Authority shall not duplicate the administrative requirements in terms of these regulations that have already been satisfied by the same applicant and furthermore such applicant shall be exempt from the annual licence fee referred to in regulation 49.

Offence.

9. Any person who organises, provides, offers, makes available or promotes a controlled skill game in violation of regulation 8 shall be guilty of an offence against the Act.

Licensing.

10. (1) The Authority shall have the power to issue licences as set out in these regulations.

(2) A licence issued under these regulations shall be a licence to offer a controlled skill games service, or a licence to offer a controlled skill games supply:

Provided that the Authority may specify the activities covered by each licence held and may also specify categories of licences, subject to any such requirements which may be described.

Term of the licence.

11. (1) The term of a licence issued under these regulations shall be five (5) years.

(2) Upon the expiry of its term, a licence may be renewed by the Authority for a further five-year term, provided that any such renewal shall in all cases be subject to the continued compliance by

the licensee, during the preceding original or renewed term of the licence, with the provisions of the Act, these regulations, all applicable regulatory instruments and all other applicable laws.

(3) A person who desires to obtain or renew a licence shall file an application with the Authority making use of the relevant forms published by the Authority and submitting all information, documentation and assurances required by the Authority in a general manner or specifically with regards to the applicant as the Authority may deem necessary in accordance with the regulatory objectives.

(4) An application for the renewal of a licence shall be made no later than ninety (90) days prior to the expiration the current licence and the Authority shall not entertain a late application for renewal unless the applicant can show that due to matters beyond its reasonable control it could not have filed an application for renewal of that licence any sooner.

12. A person is not eligible to hold a licence unless such person is a body corporate established in a Member State of the European Union or a Member State of the European Economic Area. Qualifications.

13. (1) The Authority shall not issue or renew a licence in any of the following instances: Application for a licence.

(a) if the application is not submitted through the relevant forms designated by the Authority and in accordance with the established procedure; or

(b) if the application is incomplete; or

(c) if the applicable fees have not been paid; or

(d) if the Authority, in its reasonable discretion, is not satisfied that the applicant is fit to and can properly carry on its business, or proposed business;

(e) if the Authority, in its reasonable discretion, is not satisfied that the following persons are fit to and can properly be involved with the type of business carried on or proposed to be carried on by the applicant:

(i) any person having a qualifying shareholding in the applicant;

(ii) any person having effective control over management of the applicant's affairs, including the person having legal and, or judicial representation of the

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applicant;

(iii) any person being a member of the board of directors, or equivalent position howsoever named, of the applicant;

(iv) any person being a chief executive, managing director, or equivalent of the applicant and having the authority to manage the day to day affairs of the applicant; and

(v) any other person who performs such key functions for the applicant, or is connected with the applicant in such manner, as may be determined by the Authority from time to time.

Fit and proper.

14. In determining whether an applicant is fit to and can properly carry on its business, or proposed business, the Authority shall consider the following matters and shall make provision for the publication of any other criteria which it deems it must consider in making such a determination, with a view to adhering to the regulatory objectives:

(a) the financial background and business reputation, and current financial position of the applicant's promoters, shareholders and directors;

(b) whether the applicant is, in the Authority's opinion, untainted with illegality;

(c) whether the applicant's management appears to be suitably qualified to run the applicant's business, or proposed business;

(d) whether the applicant appears to have the necessary competence, technical know-how and resources to carry on its business, or proposed business;

(e) whether the applicant's business model suggests that the applicant will offer Controlled Skill Games in a manner which is compliant with these regulations and with its obligations at law, as well as with any conditions or directives which the Authority may deem necessary to impose on the applicant with a view to adhering to the regulatory objectives;

(f) whether the applicant is committed to implement policies and to take affirmative steps to detect and prevent money laundering, the funding of terrorism, fraud, and any

other criminal or suspicious transactions;

(g) whether the applicant is proposing to fund its business or proposed business through its own funds or through funds borrowed or otherwise raised from third parties, and in which case, who those third parties are; and

(h) whether the applicant will comply with any additional requirements that the Authority considers, on the basis of a risk-based approach, necessary to be imposed on the applicant, which requirements may include but are not limited to financial safeguards, security, changes to the proposed set-up, as well as the implementation of any policies and procedures:

Provided further that the matters described above shall be without prejudice to any further matters which the Authority may deem relevant to consider when assessing the person in question.

15. In determining whether a person is fit to and can properly be involved with the type of business carried on or proposed to be carried on by the applicant, the Authority shall consider the following matters in adherence to the regulatory objectives: Involved persons.

(a) the character of the person concerned and his business reputation;

(b) the financial position of the person concerned;

(c) whether the person concerned has been charged with the commission of a crime and the nature of the charges against him;

(d) whether the person concerned has been found guilty of a crime and the nature of the crime of which he is guilty;

(e) the business experience of the person concerned; and

(f) the training, academics and professional qualifications of the person concerned:

Provided that the matters described above shall be without prejudice to any further matters which the Authority may deem relevant to consider when assessing the person in question.

16. The Authority shall not issue or renew a licence if it believes that issuing or renewing a licence to the applicant may pose a Discretion to renew.

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risk to the reputation of Malta or be otherwise not in the public interest.

Licence conditions.

17. In granting a licence in terms of these regulations, the Authority may subject the licensee to any such other conditions as it may deem appropriate in pursuit of the regulatory objectives, and these regulations, and the Authority may, at any time following the grant of the licence, vary or revoke any condition so imposed, or may impose new conditions:

Provided that whenever the Authority deems it appropriate to vary any condition or impose any new condition in the licence, the Authority shall, unless such a variation or imposition of a new condition has been requested by the licensee itself, by notice in writing inform the licensee of its intention to vary the said condition or to impose the said new condition, calling upon the licensee to show cause, within such period being not less than twenty (20) days after the issue of the notice as may be specified in the same notice, why such a condition should not be varied or imposed, and the Authority shall consider any representations made by the licensee within the period specified in the notice, before varying or imposing the condition.

Proof of skill.

18. An applicant for a licence must be able to satisfy the Authority that an activity which it intends to offer under a licence issued in terms of these regulations is a skill game and the Authority shall examine the documentation submitted, including any studies, research, rulings or certification submitted by an applicant prior to making such a determination.

Prohibition of assignment or transfer of the licence.

19. A licence granted by the Authority may not be assigned or transferred in any way whatsoever to any other person without the prior written consent of the Authority, and any such assignment or transfer to any other person without the Authority's consent shall be considered null and void and constitute sufficient grounds for the Authority to cancel that licence.

Material changes.

20. The licensee shall notify the Authority forthwith of:

(a) any change in the Board of Directors, executive management or other key personnel of the licensee, or in general the effective control of the licensee;

(b) the acquisition or disposal of a qualifying shareholding in the licensee by any person;

(c) the increase or reduction in the nominal or issued share capital of the licensee;

- (d) any material change in the voting rights of the licensee;
- (e) the merger of the licensee with another company;
- (f) the reconstruction or division of the licensee;
- (g) the sale or other disposition by the licensee of its business;
- (h) any resolution or intended resolution, or any application or intended application to any Court, or any other action for the dissolution and winding up of the licensee, as soon as the licensee becomes aware of such resolutions, intended resolutions, applications or intended applications or any other action;
- (i) any ongoing litigation involving the licensee or any interested person;
- (j) any ongoing investigation into the licensee or any interested person by the competent authorities of any other jurisdiction;
- (k) any material changes in the information and documentation previously provided to the Authority; and
- (l) any material change in the games offered or operated:

Provided that in all cases, the licensee shall strive to notify the Authority of any of the above before the act takes place, and as soon as the intention becomes executable.

Part VI

Suspension or Termination of a Licence

21. A licensee may request the surrender of the licence at any time during the licence term and the Authority shall accept the surrender of the licence unless in its opinion, circumstances indicate that the surrender of the licence may prejudice the players or the Authority's ability to investigate, enforce or carry out any of its functions at law: Surrender of a licence.

Provided that if the licensee is holding players' monies, the Authority shall also require evidence that players' monies have been duly refunded or alternative arrangements in respect of such monies

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have been made to the satisfaction of the Authority.

Suspension and
cancellation.

22. The Authority may order the suspension or cancellation of a licence if:

(a) any person with an interest in the licensee, including any shareholder, director, any person vested with an executive management function, effective control or any other key person is deemed to be no longer fit to and can no longer properly be involved with the type of business carried on by the licensee;

(b) the licensee has failed without reasonable cause being shown to comply with the Act, these regulations, any directive, any material term or condition of the licence, any regulatory instrument issued by the Authority, or any other applicable law;

(c) the licensee has failed to discharge financial commitments for the licensee's operations or the Authority has reason to believe that such failure is imminent;

(d) the licensee is insolvent or is being wound up;

(e) the licensee applies for an order, or is compelled by any means or for any reason, to discontinue or to wind up its operations;

(f) the licence was obtained by a materially false or misleading representation or in some other improper way;

(g) the licensee has failed to meet commitments made to players or such failure is imminent;

(h) the licensee has failed to pay any monies due to the Authority in a timely manner;

(i) the Authority, in its sole discretion, has determined that there is material and sufficient reason for suspending or cancelling the licence;

(j) the Authority reasonably deems it necessary in the national interest to suspend or cancel the licence;

(k) the Authority is reasonably satisfied that the licensee presents a credible and imminent danger to players or consumers; and

(1) the Authority is reasonably satisfied that the licensee presents a danger to the reputation of Malta.

23. (1) The suspension, cancellation or expiration of a licence shall not affect any liability of the licensee for anything done or omitted to be done before the date of suspension, cancellation or expiration. Liability of the licensee.

(2) The liability of the licensee to pay any fee shall continue during any period when the licence is suspended.

(3) The term of a licence shall continue running notwithstanding the suspension of a licence.

24. (1) Where a ground for cancellation or suspension of a licence arises under regulation 22, the Authority shall, by notice in writing, request the licensee, and may request any other person who in its opinion has an interest in the licence, to show cause, within such period being not less than twenty days after the issue of the notice as specified in the same notice, why the licence should not be cancelled or suspended on such ground as is stated in the notice: Procedure for suspension or cancellation.

Provided that the Authority may, in the same notice, require the person on whom the notice is served in terms of this regulation, to tender any information or documents which the Authority may deem necessary in the circumstances.

(2) The Authority shall have regard to any representations made under sub-regulation (1) in such a manner that:

(a) where the matter is resolved to its satisfaction, it shall take no further action and shall inform the licensee in writing accordingly;

(b) where the matter is resolved to its satisfaction, and it considers that further action under paragraph (c) is not warranted, it may caution the licensee in writing; or

(c) where the matter is not resolved to its satisfaction and it is satisfied that further action is warranted, it may:

(i) by notice in writing give such direction to the licensee as it considers appropriate; or

(ii) suspend the licence for such period as it thinks fit, or cancel such licence.

(3) Where a direction given by the Authority under sub-

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regulation (2)(c)(i) is not complied with within the time specified in the notice, the Authority shall cancel the licence.

(4) Nothing in this regulation shall prejudice anything contained in Part VIII of these regulations.

Part VII

Key Official

Requirement of
a key official.

25. (1) A licensee shall appoint and maintain at least one key official throughout the duration of the licence term, and such appointment has to be approved by the Authority.

(2) A key official shall:

(a) personally supervise the operations of the licensee of which he is a key official;

(b) ensure that the licence holder shall comply with all applicable laws and regulations, the conditions of the licence and any directives issued by the Authority to the licensee;

(c) have access to the licensee's systems;

(d) be responsible for the licensee's reporting obligations;

(e) be knowledgeable and competent in matters relating to compliance and the operations of the licensee;

(f) act as a liaison between the licensee and the Authority; and

(g) be readily available to the Authority.

(3) The Authority shall not approve of the appointment of a key official unless it is satisfied that such person is fit and proper to fulfil his obligations and discharge his duties.

(4) The Authority may, in its sole discretion, determine that an approved key official is no longer fit and proper to fulfil his obligations and discharge his duties, and may revoke any approval previously granted, and order the licensee to appoint another person as key official.

(5) The Authority may impose further conditions or requirements on any person holding the office of a key official.

(6) A person holding the office of a key official of a licensee shall remain answerable to the Authority even after leaving the office of a key official for any issues occurring during the time in which he held such office.

(7) A key official may resign, or may be removed from office and the licensee shall request the appointment of a replacement within not more than fourteen days from the date of resignation or removal from office.

(8) An application for the appointment of a key official shall be made to the Authority on the relevant form as designated by the Authority.

Part VIII

Operations

26. The Authority may issue requirements with regards to the organisation, provision, offering, making available or promotion of skill games or may issue directives to any operator of skill games, as may be necessary in pursuit of the regulatory objectives.

Requirements or Directives of the Authority.

27. (1) An applicant for a licence or a licensee shall, as may be specified by the Authority in the licence application, or at any time:

Obligations of the licence holder.

(a) provide the Authority with any such documentation and information on the systems used as may be required by the Authority;

(b) comply with any technical regulation, specification, directive, order or licence condition as may be imposed or issued by the Authority;

(c) certify any systems in accordance with any technical specifications as may be required by the Authority; and

(d) provide any documentation, information or certification which may be requested by the Authority with regards to any service that the licensee outsources to any third party.

(2) A licensee shall conduct the controlled skill games services and the controlled skill games supply under the systems approved by the Authority.

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(3) The licensee shall notify the Authority forthwith of any material changes to the systems used by the licensee in conducting the controlled skill game service or the controlled skill games supply.

(4) The Authority shall be empowered to order the licensee to make any changes to the systems used by the licensee for the purposes of compliance with the provisions of these regulations, any regulatory instrument or any other applicable law, or in pursuit of any of the regulatory objectives.

Other powers of the Authority.

28. The Authority may issue specifications, directives, orders or licence conditions relative to controlled skill games or a category thereof setting out:

(a) the minimum age required to participate in a controlled skill game, provided that unless otherwise specified, the minimum age to participate in a Controlled Skill Game shall be eighteen (18);

(b) the keeping of player, game and financial records;

(c) the registration, identification and verification of players;

(d) requirements regarding payment methods;

(e) the interface used, and the information made available to the players;

(f) requirements relating to the technical infrastructure;

(g) requirements related to the prizes awarded; and

(h) any other obligations that the Authority may deem it necessary to impose in adherence with the regulatory objectives.

Single player's account.

29. A player shall not register more than one account with a licensee, and the licensee shall take all steps necessary to prevent collusion.

Information to be made available to the player.

30. (1) The licensee shall make available to a player the following information:

(a) all the rules relating to the controlled skill game conducted by the licensee:

Provided that any change in such rules must be

notified to the player prior to the entry into force of said change;
and

(b) any fees, including processing fees that may be incurred by the player.

(2) The player of a controlled skill game shall comply with all rules mentioned in sub-regulation (1)(a).

Part IX

Players' Funds

31. (1) The licensee shall, where applicable, keep a record Players' funds. per player of all funds received by the licensee from or on behalf of the player, or owed by the licensee to the player.

(2) The licensee shall not accept a financial commitment from a player unless:

(a) the player is above the minimum age required to play the game; and

(b) the player holds adequate funds to cover the amount of the financial commitment.

(3) A licensee shall not provide credit to a player or act as agent for a credit provider to facilitate the provision of credit to a player.

32. A licensee shall not make a payment to a player, or process any deposit from a player which cumulatively is in excess of two thousand euro (€2,000), until the player's identity, age and place of residence have been verified. Identity verification.

33. (1) A licensee shall, at the request of the player to whom the funds are owed, remit said funds to the player by no later than five working days, or as soon as practicable if for duly justifiable reasons the funds cannot be remitted within those five working days, after receipt of the request. Remission of player funds.

(2) A licensee may, before remitting funds to a player in accordance with sub-regulation (1), take such time as is reasonably necessary for the purpose of:

(a) verifying the player's identity, age and place of residence;

(b) verifying the playing of a game by the player;

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(c) conducting security and other checks in relation to the player's activity; and

(d) ensuring that the rules that are approved relating to the award of the prizes to players have been complied with.

(3) The Authority may, at any time, require a licensee to abide by obligations and procedures for the detection and prevention of money laundering and other related crimes.

Protection of
players' funds.

34. (1) A licensee shall keep players' funds separately from the licensee's own funds in a clients' account held with a credit institution approved by the Authority.

(2) (a) The funds in the clients' account, including funds in transit or in the process of being cleared through the banking system or by credit card processing companies, shall at any time be at least equal to the players' funds held by the licensee:

Provided that if the funds standing to the credit of the Clients' account fall below the aggregate total of the amounts standing to the credit of players' accounts, the licensee shall make good the shortfall from the licensee's own funds forthwith.

(b) The Authority may, at its sole discretion, consider funds held in other accounts belonging to or controlled by the licensee to be included with funds in the clients' accounts for the purpose of these regulations.

(3) (a) For the purpose of protecting players' funds the Authority may, for just cause, order the licensee to take out a bank guarantee in favour of the Authority.

(b) The bank guarantee shall be in such amount and for such period of time, as determined by the Authority:

Provided that if the licensee fails to comply with the order within three working days from the issue of such an order, the Authority may suspend or cancel the licence.

(4) For the purpose of avoiding doubt as to the effect of this regulation, save as may be explicitly stipulated in the garnishee order, any precautionary or executive garnishee order shall not have any effect or be construed as ever having had any effect on players' funds, including funds in the licensee's clients' account held with a credit institution or in an account of a trustee who on behalf of the licensee holds, manages, administers or deals in any other way with players funds, held with a credit institution, players' funds in transit or in the

process of being cleared through the banking system or by credit card processing companies, including credit or financial institutions, and any players' funds held in other accounts held with a credit institution belonging to or controlled by the licensee or belonging to or controlled by a trustee as aforesaid, as the Authority may have determined in terms of sub-regulation (2)(b) to be included with funds in the clients' accounts.

(5) The licensee shall instruct and authorise the credit financial institution by which a players' account is held to disclose any information as may be requested by the Authority in respect of a player's account and evidence of this shall be submitted to the Authority.

(6) The Authority may accept alternative methods of security of players' funds, or demand additional methods of security of players' funds provided that in its sole discretion, such player funds are protected in a way that is equivalent or superior to the above requirements.

(7) For the avoidance of doubt, player funds shall be insulated against the claims of creditors of the licensee, or of any other person holding such funds other than players themselves, including in the event of insolvency.

35. (1) A licensee shall provide players with the option to:

Player protection mechanisms.

(a) set a limit on the amount the player may deposit or play; and

(b) exclude oneself from playing for a definite or indefinite period of time.

(2) A player may amend the limit or exclusion imposed above by notice to the licensee:

Provided that a notice increasing the limit or revoking a limit or decreasing the exclusion has effect only twenty-four (24) hours after the licensee has received notice, whilst a notice reducing a limit or increasing the exclusion shall have immediate effect.

(3) A licensee shall not accept any financial commitment from a player, or allow a player to play contrary to a limitation or exclusion imposed in terms of sub-regulation (1).

36. Where a player retains funds deposited with the licensee, the licensee shall cause the updated player's balance to be viewable and accessible by the player at all times.

Player's balance to be viewable and accessible.

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Transaction history.

37. A licensee shall, where applicable, make the player's transaction history, including any deposits, commitments and wins available to the player.

Aborted games.

38. A licensee shall take all reasonable steps to ensure that in the event of the interruption of a game, including due to a failure of the telecommunications system, the game shall be restored and resumed to the situation prior to failure without adversely affecting the player, and if the game cannot otherwise be resumed without adversely affecting the player, the game shall be terminated and the player's financial commitment restored to the player accordingly, together with any additional benefits which the player would have reasonably and legitimately accrued prior to interruption:

Provided that the Authority may order a licensee to stop offering a particular controlled skill game, if such game is suffering such serious failures impacting the players' experience.

Contents of the game portal.

39. A licensee shall maintain the following information accessible by any person:

- (a) the registered name of the licensee's company;
- (b) the address of the company's registered office;
- (c) the reference number of the licence;
- (d) a statement that the licensee's operations are regulated by the Authority;
- (e) any tool that the Authority may integrate for the purposes of allowing players to verify that the operation is licensed and regulated by the Authority; and
- (f) any other information that the Authority may deem necessary and expedient:

Provided that the Authority may require such information to be presented in a particular format.

Regulatory data.

40. The licensee shall make any regulatory data required accessible to the Authority as may be determined by the Authority.

Audit.

41. (1) The Authority may require the licensee to undergo an audit conducted by a certified third party with regards to the licensee's financial position, its compliance with these regulations and any regulatory instrument issued by the Authority and any additional scope which the Authority may determine:

Provided that any expense related to the engagement and performance of such an audit shall be borne by the licensee.

(2) The Authority may require that the results of the audit are directly or otherwise reported to the Authority.

(3) The licensee shall ascertain that the certified third party performing the audit shall be authorised to disclose information to the Authority.

(4) The Authority may order a licensee to make any changes it deems necessary on the basis of the findings of the audit.

(5) The Authority may engage a certified third party to perform an audit on a licensee on its behalf, and the Authority may charge any reasonable expenses incurred by it for such an audit to the licensee.

42. (1) A licensee shall immediately inquire into any complaint made to the licensee or to the Authority by a registered player in respect of the operation of a game operated by the licensee, or any entity providing services related to the licensee's controlled skill game service or supply. Player complaints.

(2) The licensee shall inform the complainant, or the Authority, where the complaint was referred to the licensee by the Authority, by notice in writing of the results of the inquiry within twenty days from the date on which the complaint has been lodged with the licensee.

(3) Where a complaint is lodged directly with the Authority, the Authority may:

- (a) either inquire into the complaint itself; or
- (b) refer the complaint to the licensee against whom the complaint is made:

Provided that the licensee shall follow the procedure set down in sub-regulation (2).

(4) A complaint shall contain clear and unequivocal information about the complainant's identity, and shall give all the relevant details that gave rise to the complaint.

43. Nothing in these regulations shall prejudice article 20 of the Act. Secrecy.

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Part X

Investigation and Enforcement

Investigation. **44.** The Authority may, at its sole discretion, conduct an investigation of a licensee and any associated persons or entities if it is brought to its attention or it has reason to believe that the licensee is in breach of these regulations, any regulatory instrument or any other applicable law, or is compromising the regulatory objectives.

Enforcement. **45. (1)** The provisions of articles 18 and 19 of the Act shall apply *mutatis mutandis* to these regulations and any reference contained therein to gaming or a gaming device shall, for the purposes of this regulation, be deemed to be a reference to a skill game or a device used in relation to the offering of a skill game.

(2) An inspector or any officer of the Authority shall, for the purpose of ascertaining that these regulations and all regulatory instruments issued by the Authority are complied with, and that the full amount of fees, tax or any other sums payable under the Act or under these regulations are being paid, also have the powers:

(a) to inspect, test and examine any equipment or software being used in the operation of skill games;

(b) to remove any equipment or software to another place or premises approved and designated by the Authority, for the purpose of an inspection or examination;

(c) to inspect any premises whether approved or not where equipment, software, documents or records are kept;

(d) to request information or the production for inspection of any document or any other thing for the purposes of an inspection;

(e) to remove any document or any other thing produced as a result of a request under paragraph (d) or discovered during an inspection for the purpose of examining the document or other thing or making copies or taking extracts.

(3) An inspector or any officer of the Authority removing equipment, software, document or other thing from approved premises or other place under sub-regulation (1) or (2) shall first provide a receipt for it to the person who owns or is in charge of the premises or place and, subject to sub-regulation (4), shall promptly return the equipment, software, document or other thing to the premises or other place after completion of the inspection,

examination, testing, making of copies or taking of extracts, as the case may be.

(4) An inspector or any officer of the Authority may, for the purposes of evidence, detain any equipment, software, document or other thing that the inspector discovers while acting under this regulation and believes, on reasonable and probable grounds, may afford evidence of a violation of or a non-compliance with anything contained in these regulations:

Provided that copies of or extracts from documents or other things removed from a licensed premises or other place under this regulation, and certified by an officer of the Authority making the copies or taking the extracts as being true copies of or extracts from the originals, are admissible in evidence to the same extent as, and have the same probatory value as, the documents or things of which they are copies or from which they are extracts.

46. (1) The person who owns or is in charge of any place or premises entered by an inspector under regulation 45, and any employee or agent of such person shall give all reasonable assistance to the inspector or any officer of the Authority to enable him or her to exercise the powers given under articles 18 and 19 of the Act and regulation 45, and shall furnish the inspector or officer with such equipment, software, records, documents, information or other thing as may reasonably be requested. Premises.

(2) No person shall hinder, obstruct or otherwise interfere with, or knowingly make a false or misleading statement, either orally or in writing, or provide or produce a false document or other thing to, an inspector or other officer of the Authority who is carrying out his or her duties and functions under this regulation:

Provided that any act of commission or omission or any other behaviour in contravention of this regulation shall constitute an offence against the Act.

47. Any contravention of these regulations shall be considered an offence against the Act and any person so guilty of an offence shall, on conviction, be liable to a fine (*multa*) of not less than three thousand euro (€3,000) and not more than one hundred thousand euro (€100,000) or to imprisonment for a term of not more than three years, or to both such fine and imprisonment: Penalties.

Provided that where the person convicted of such an offence is a recidivist, he shall be liable to a fine (*multa*) of not less than six thousand euro (€6000) and not more than two hundred and fifty thousand euro (€250,000), or to imprisonment for a term of not

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less than six months and of not more than four years, or to both such fine and imprisonment:

Provided further that where the person so found guilty is the director, manager, secretary or other similar officer of a company or other undertaking, the said person shall, for the purpose of this regulation, be deemed to be vested with the legal representation of the same company or other undertaking, which shall accordingly be liable *in solidum* with the person found guilty for the payment of the said fine.

Applicability of provisions of the Act.

48. The provisions of articles 68, 69, 70, 72, 73 and 74 of the Act shall apply *mutatis mutandis* to these regulations and any reference contained therein to gaming or a gaming device shall, for the purposes of this regulation, be deemed to be a reference to a Skill Game or a device used in relation to the offering of a skill game.

Part XI

Financial Provisions

Fees.

49. (1) A licensee shall pay to the Authority the relevant licence fees, application fees, approval fees and any other administrative fees as laid down in the Second Schedule.

(2) The Authority may, when objectively reasonable, require applicants or licensees to pay the actual costs and any other expenses incurred in conducting analyses, inspections and investigations into their backgrounds, suitability and qualifications to obtain and maintain a licence, including any checks performed by the Authority following notification in terms of regulation 20 and the Authority may publish a Directive setting out a schedule of fees.

Taxation.

50. The provider of a controlled skill games service organised in, or provided from the territory of Malta that is licensed in terms of these regulations, or providing a controlled skill games service to any person in the territory of Malta in terms of regulation 8(a)(ii) or (iii) shall pay to the Authority on behalf of Government the rate of tax established in the Third Schedule.

Part XII

Monitoring

Power to implement a monitoring system.

51. (1) The Authority may, at any time, following consultation with the licensees, require a licensee, a specific category of licensees or all licensees to connect any of its systems to a monitoring system operated by the Authority, and to maintain such

connection at all times.

(2) In the event that the Authority imposes the requirement referred to in sub-regulation (1), the Authority may specify the specifications necessary for it to be able to, and the manner in which it shall operate the monitoring system in directives, and licensees shall modify or upgrade their systems as necessary to ensure their compatibility with the monitoring system and the requirements of the Authority.

52. (1) The Authority may use a monitoring system for:

Use of the monitoring system.

(a) receiving reports or statements which licensees are obliged to submit to the Authority in terms of these regulations, any directive, any other applicable law or any condition of the licence;

(b) monitoring and receiving information relating to the games and the gaming operation, including player, game and financial data as may be required by the Authority to fulfil its objectives at law;

(c) investigating the licensee's compliance with the Act, these regulations, any licence conditions, directives, and any other applicable legislation, including any laws or regulations at any time in force for the prevention of money laundering;

(d) research and the compilation of statistics and analytics in an aggregated format; and

(e) any other purpose required by the Authority in fulfilling its objectives at law, or as may be specified in directives issued by the Authority from time to time.

(2) Any information collected by the Authority in terms of sub-regulation (1)(d) may be made available to the public.

(3) The Authority shall not be held liable for any loss or damage due to a fault in the monitoring system, or in the telecommunications system used to operate the monitoring system.

53. Where the obligations referred to in regulation 51 have been imposed, a licensee shall ensure that its systems, and the means of distance communication through which its systems are connected to the monitoring system comply with any standards or requirements established by the Authority, and remain so compliant throughout the duration of the licence, and shall not be modified, tampered with, or

Proper operation of the monitoring system.

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re-programmed by any person without the approval of the Authority.

Part XIII

Administrative Review

Administrative
review.

Cap. 490.

54. (1) Any person who feels aggrieved by a decision of the Authority taken in terms of these regulations may appeal to the Administrative Review Tribunal, constituted in terms of the Administrative Justice Act, in accordance with the provisions of this regulation:

Provided that in any case, a person filing an appeal with the Administrative Review Tribunal shall explain and bring evidence of his juridical interest in impugning the decision being appealed from.

(2) An appeal from a decision of the Authority shall be made by application and shall be filed with the secretary of the Administrative Review Tribunal within twenty days from the date on which the said decision was notified to the party appealing.

(3) The application of appeal shall be notified to the Authority which shall file its reply thereto with the secretary of the Administrative Review Tribunal within the time granted for such a purpose by the Administrative Review Tribunal.

Appeal.

55. (1) The decision of the Authority under appeal shall remain in force pending an appeal, whether before the Administrative Review Tribunal or the Court of Appeal (Inferior Jurisdiction), unless otherwise determined by the Administrative Review Tribunal.

(2) The Administrative Review Tribunal or the Court of Appeal, as the case may be, where it considers it to be appropriate, may on the application of a party to the appeal, suspend the decision of the Authority, pending the final determination of the appeal. The Administrative Review Tribunal or the Court of Appeal in deciding to suspend the decision shall state their reasons for doing so.

Part XIV

Miscellaneous

Transitory
period.

56. (1) The Authority may provide for a transitory period of not more than three months from the date of coming into force of these regulations, or a ruling made thereunder, for any person to comply with the provisions thereof.

(2) The Authority may also provide for additional transitory measures in the implementation of these regulations.

57. Without prejudice to the provisions of regulation 56, the Fantasy Sports (Exemption) Regulations are hereby revoked.

Revocation of
Fantasy Sports
(Exemption)
Regulations.
S.L. 438.10

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First Schedule

Regulation 3

Criteria for Classification

The criteria which the Authority shall take into consideration in determining whether a game is a skill game or a controlled skill game in terms of regulation 5 and 7 shall include the following:

- (a) the presence of random draws and their effect on the outcome;
- (b) whether the game is played for money and, or prizes with a monetary value;
- (c) whether participation in a game involves any form of monetary commitment, or commitment of a monetary value;
- (d) the possibility of any negative social impact of the game;
- (e) whether the activity is closely associated with games of chance and/or gambling;
- (f) the duration of each event, competition or match;
- (g) whether, on the face of it, a skilled player is able to win more than an unskilled player;
- (h) whether a player's chance of winning is significantly increased by experience in playing the game;
- (i) whether skill can be acquired through training, experience, reading literature or other educational material;
- (j) whether a rule-set or format that is used further nullifies the effect of any element of chance;
- (k) whether the game is played against other human players, or otherwise;
- (l) the level of interaction between the players, the level of interaction between the operator and the players, and the level of intervention by the operator during the event, competition or match; and
- (m) the complexity of the game, including the amount of player choices and their potential effect on the outcome, and the strategies involved.

Provided that when the Authority determines, basing itself on any one or more of the above criteria, that an activity is more akin to a game of chance or a

game of chance and skill than to a skill game as intended by the Act and any regulations made thereunder, then such an activity shall not fall within the parameters of this Schedule.

Second Schedule

Regulation 49

Fees

Description	Fee	Regulation
Non-refundable application/ renewal fee	€ 2,300	Regulation 11
Licence fee	€ 8,500 per annum	Regulation 49

Third Schedule

Regulation 50

Taxation

1. (a) The rate of taxation due shall be five per centum (5%) of real income.

(b) Real income shall be construed as total wagers less total monies paid out to players.

Provided that the Authority may issue directives or further specifications as to the manner in which such tax is to be calculated.

2. The tax due shall be paid to the Authority monthly, and by not later than the twentieth (20th) day of the following month.

3. The maximum tax payable annually by a single controlled skill game operator shall not exceed four hundred and sixty-six thousand euro (€466,000).

4. The Authority may, in order to avoid the possibility of double taxation, grant credit, set-off or relief with respect to tax under these regulations on a unilateral basis, or pursuant to bilateral or multilateral treaties, agreements, memorandum of understanding or other arrangements entered into with any foreign government or any local or foreign authority or government agency.

