



**National
Gambling Board**

a member of **the dti** group

Report on the Regulation of Interactive Gambling

October 10th, 2005



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A. MAIN REPORT

1. Background

1.1. Mandate

Item 5 of the transitional provisions of the National Gambling Act, 2004 (Act No. 7 of 2004) mandates the National Gambling Board to:

“...establish a Committee to consider and report on national policy to regulate interactive gambling within the Republic. The Committee must finalise its report and submit it to the Board and the Council within one year after the coming into operation of the Act. Within two years after the coming into operation of the Act, the Minister, after considering the report of the Committee and any recommendations of the Board or the Council, must introduce legislation in Parliament to regulate interactive gambling within the Republic.”

1.2. Committee established

A Committee contemplated in the abovementioned provisions of the Act, consisting of representatives from key government departments (Department of Trade and Industry, National Treasury, National Prosecuting Authority, Department of Communications), the National Gambling Board, provincial licensing authorities and industry advisors was duly established in early 2005. Following two initial meetings during which feedback was obtained from members and the terms of reference and membership of the Committee were refined, a project scoping session was held in late February 2005. At this session, the Committee recognised that, while it should remain the ultimate decision-making body in the fulfilment of the mandate of the Act, it would require a consultant to drive the day-to-day activities of the project.

1.3. Consultant appointed, research conducted

A consultant was duly appointed and the process entered its research phase.

The Committee decided to examine in detail the regulatory regimes of ten jurisdictions as well as the outcomes of each regulatory approach. This was done using a comprehensive regulatory framework, gleaned from the structure of interactive gaming regulation in three key jurisdictions¹. In addition, an invitation to the public for inputs was placed in major newspapers and requests for submissions were made to all major gaming organisations in South Africa. All of the CEOs of provincial gambling boards were canvassed for their views at the CEO’s Forum held in Mpumalanga. A questionnaire was also administered to ten of the world’s largest interactive gaming operators². The research was compiled by the consultants into an extensive working document and used by the Committee to prepare this report³.

¹ The detailed output of this part of the research process is available as appendices to this report. It includes, as Appendix A, a summary of the regulatory regimes of Alderney, Antigua and Barbuda, Australia, Costa Rica, Gibraltar, Isle of Man, Kahnawake, Malta, the United Kingdom and the United States of America; and as Appendix B a summary of the outcomes in a series of key impact areas of each regulatory approach.

² The detailed output of this part of the research process is available as appendices to this report. Appendix C.i. contains the inputs from the various sub-committees of the main committee; Appendix C.ii. contains the inputs from various industry associations – CASA, SAGMA, NRGPA and LPMA; Appendix C.iii. contains a summary of the responses to a questionnaire-based research project with ten of the world’s leading online casino operators;

2. Regulatory Objectives

2.1. Primary objectives

In framing a sound, internally consistent regulatory regime for interactive gambling, probably the most important step is the development of a clear guiding philosophy. The Committee deliberated at length in this area, taking into account the myriad inputs it had received. The Committee believes that the primary objectives⁴ for South Africa's policy in this area should be:

2.1.1. *The protection of our citizens and other players.*

The Committee recognises the reality that a number of South Africans already partake of various forms of interactive gaming in spite of this being technically illegal under the current Act. Furthermore, with increasing accessibility of technology, mainstream marketing activities by these enterprises and the easing of exchange control regulations, the Committee has no doubt that this activity will become more prevalent. The Committee's goal in this context is to provide local players with an opportunity to engage in interactive gaming legally and safely, preferably on South African-licensed sites.

2.1.2. *The preservation of South Africa's reputation in the world community as an upstanding and responsible global citizen.*

Interactive gaming is, by its nature, a global phenomenon. The Committee wants its regulation to reflect international norms of good governance, crime prevention and responsible gambling, so as to enhance and not devalue South Africa's stature in the world community. To this end, South Africa's entire regulatory regime and infrastructure must operate at the highest levels of competence and integrity and the funding, management and operation of interactive gambling must remain free from criminal influence and exploitation.

2.1.3. *The promotion of a successful interactive gaming industry in South Africa.*

The Committee is aware that the global interactive gaming industry is today beyond its infancy. A number of jurisdictions have created environments in which the world's largest and most reputable operators are happy to locate and are subject to very limited taxation. With the possible exception of the UK (because of its extremely high stature in the world community), few new entrants could persuade the major gaming operators to shift the bulk of their businesses from their present locations. In addition, South Africa does not

Appendix C.iv. contains responses from some of the Provincial Gambling Boards; and Appendix C.v. contains submissions from several organisations in response to the public request for input.

³ The various working documents prepared for the committee's deliberations are available as Appendix D to this report.

⁴ The Committee felt it vital to commence the process with a clear common understanding of objectives. It also agreed that a few primary objectives would comprise a better working model than a wide range of limited goals. Amongst the secondary objectives suggested by certain Committee members and embraced by the remainder of the Committee as such were the protection and enhancement of the existing licensed gambling industry in South Africa. The Committee further recognised the potential tension between its primary objectives of citizen protection, on the one hand, and the creation of a thriving industry, on the other. However, it is the view of the Committee that these two objectives are, in fact, complementary and a sound regulatory regime with excellent player protection measures is a prerequisite for a successful local interactive gaming industry.

have the flexibility of the smaller jurisdictions to create special taxation arrangements for a specific class of taxpayer.

With this as background, however, our research has suggested that it is still possible to create a regulatory environment in South Africa that would, at very least, attract reputable South African companies to locate their interactive gaming operations in the country. Regulation will have to ensure that they can do so and compete successfully, at least for the South African interactive gambler, and hopefully for certain international customers, with the best in the world. Once the industry begins to emerge, the possibility exists that one or more leading interactive gaming operators might choose to locate some or all of their operations here⁵.

3. Regulatory Philosophy and Approach

3.1. Guideline nature of laws

The Committee believes that regulation in this domain must take account of the speed with which interactive gambling is evolving. In order to avoid placing statutes on the books that quickly become outdated, it is recommended that laws that are simple, clear, broad and enduringly technology-neutral.

3.2. Single regulatory entity with resources and discretion

A single national regulatory body – the National Gambling Board (hereafter referred to as “the regulator”) – must provide and administer the policy guidelines.

The regulator must be adequately staffed by individuals with international experience in gaming regulation, licensing and regulatory work. The regulator should have the right and the resources⁶ to devolve the definition and/or implementation of certain aspects of regulation and enforcement to the provincial, licensing authorities and/or other third parties. The regulator should have broad discretion to put in place whatever rules, guidelines and codes of practice it deems necessary to fulfil its function and achieve the objectives of the regulatory regime.

3.3. Direct revenues to fund regulator

All fees and taxes collected from licensed interactive gaming operators will be used, in the first place, to fund the operations of the regulator. This will help ensure that the regulator is both effective and efficient.

⁵ In this regard, Appendix C.v. is informative. Of the six respondents to our survey, who represent as much as 70% of global online casino traffic, the most commonly raised issues of importance for locating an operation were the ability to repatriate funds, bandwidth and hosting capabilities, low gambling taxes, a commercial regulator, clear and comprehensive regulations, stable policy and low corporate taxes. Whilst we have the ability to deliver on most of these requirements, we cannot compete with the corporate tax regimes of jurisdictions such as Kahnawake, Malta, Isle of Man and Gibraltar. At present, South Africa also does not offer cost competitive bandwidth.

⁶ Several inputs to the Committee were at pains to point that, while the NGB was the appropriate regulator for interactive gaming, it did not presently have adequate (or adequately qualified) resources to fulfill the regulatory function.

3.4. ‘Free market’ international regime

Other than allowing the regulator the freedom to negotiate cooperation and collaboration with other national jurisdictions, legislation should not attempt to embrace an extraterritorial dimension. Whilst always mindful of South Africa’s role in the international community, South African licensees should not be restricted by the regulator from accepting bets from citizens of any particular country⁷. The onus rests on the licensee to ensure that he conducts his business in a lawful manner and keeps abreast with the laws of the jurisdictions within which he conducts business.

3.5. Practical regulation that allows effective enforcement

Having reviewed ten of the major regulatory regimes worldwide, the Committee has established a strong view that regulation without enforcement is probably worse than no regulation at all, since it creates the mistaken impression of strictness and allows unscrupulous operators to thrive behind the veneer of “paper rules”.

Legislation needs to take into account the practical realities of enforcement, including cost, time and the likely operator response, and ensure that they allow for effective implementation.

3.6. Consistency with existing legislation

Since South Africa already has legislation in place that defines many of the key dimensions of gambling, wherever possible the new regulation should remain consistent with the definitions and interpretations of the existing legislation. Specifically, the regulatory approach defined for the provincial licensing authorities should be used as a model.

3.7. Exclusion of lotteries and sports betting

An important aspect of interactive gambling policy is the scope of such regulation. Whilst opinions were expressed at both extremes, the Committee ultimately took the view that this regulation should specifically exclude lotteries – which are catered for under a separate national Act and horseracing and sports betting (bookmaking) which is already regulated at the provincial level. The Committee recognises that this may well create the opportunity for conflicts and contradictions and the drafters of the legislation will have to complete their task mindful of the existing statutes and provincial regimes.

3.8. Definition of interactive gaming

The Committee recommends defining an interactive game as any game in which a prize consisting of money or anything else of value may be won, and whereby a player tenders some item of value to participate in the game and, in addition, participates in

⁷ Attempts to prevent licensed operators from accepting bets from certain other jurisdictions have proven problematic and ineffectual in jurisdictions such as Alderney and Isle of Man. In the latter territory, regulations have been recently altered to remove such an onus from the local regulator.

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the game, partially or wholly using a Communications Service, as defined in the Convergence Bill of 2005⁸ but not including communications over a Local Area Network (LAN) that allows no access to players beyond the LAN⁹. The winner is then decided wholly or partly by chance, or by a competition in which the outcome is wholly or partly dependent on the skill of the player or another person.

The Committee wishes to adopt the phrase “remote gaming” from the UK legislation, as this is probably more accurately descriptive of the class of activity that South Africa intends regulating.

3.9. Location of the gambling activity

The Committee recommends that the vexed question of where the gambling activity takes place and when a wager occurs be answered simply, in the following manner: *gambling takes place at the location where and at the moment when, the wager is accepted (i.e. placed on record as a wager in the operator’s system)*, which is consistent with age-old principles of South African law relating to offer and acceptance and the “striking” of an agreement.

3.10. Prohibition of Premises-based interactive gaming

In the context of the definitions in the clauses above, the Committee recommends the prohibition of the offering of an interactive gaming activity from any physical premises in which the offeror of such a service benefits commercially in any way from the gambling activity other than in terms of an interactive gaming licence, duly issued as described in paragraph 4 hereunder.¹⁰

4. Licensing

Licensing of relevant participants in the industry should be the cornerstone of South Africa’s interactive gambling regulation. This process will define who is entitled to participate in the industry and will allow the regulator to ensure that participants are fit and proper and exhibit appropriate behaviour in all respects.

4.1. No limitation on licences issued

Unlike land-based gambling, there is initially no need to place a prior limit on the number of licences granted, because, as any single site is accessible to an

⁸ Clause 1 of the Bill defines a Communications Service as: “...any service provided in terms of this Act or the related legislation which is normally provided for remuneration to – (a) the public; (b) sections of the public; or (c) the subscribers of such service, and consists wholly or mainly of the conveyance of communications over communications networks, including transmissions over communications networks used for broadcasting, but excluding content services;...”

⁹ This definition has been purposefully crafted to allow land-based casino operators to offer games on their premises (within the casino or adjacent hotel), via a Local Area Network ONLY and in such event be subject to the regulation of their Provincial Licensing Authority and not to that of the NGB. However, as soon as the game offered has its gaming server beyond the LAN, we argue that this becomes interactive gaming and subject to the regulation of the NGB.

¹⁰ This prohibition is specifically to prevent the emergence of unlicensed “Internet cafes” that are really fronts for interactive gaming. It achieves its end by allowing an Internet café operator to charge only for the generic internet service, but not to benefit in any way over and above that related to the gambling activity.

unlimited number of players at any one time, such a restriction would have limited bearing on the extent or intensity of interactive gambling activity that takes place among South African citizens. To the extent that South Africa reaches a point where the regulator believes the number of licensees might have an undue impact on gambling activity through their combined advertising and promotion, the regulator must have the power at that point to place limits on new licences.

4.2. Licensing of all operators and key personnel

In line with the provincial licensing authority guidelines, all operators and key personnel will require licences.

The persons who are deemed to be 'key personnel' are the following:

- CEO of the licensee company and decision makers reporting to the CEO;
- The company's nominee;
- Other designated decision makers within the company;
- Directors and significant shareholders (holding more than 10% of the shares).

4.3. Software provider licences

In addition, software providers will require a licence that will also be subject to a probity test, the extent and content of which should be subject to the discretion of the regulator.

4.4. Strict probity testing

The probity process for industry entry should be as strict and comprehensive as that required for land-based operators in South Africa.

It should include a review of corporate and financial probity, a test of the adequacy of financial resources and a measure of the skills available to operate a sound, competitive and effective interactive gaming concern.

The legislation should allow the regulator to formulate detailed criteria for the issue of a licence within these broad parameters, guided by the principles of the provincial licensing authorities.

4.5. Annual renewal

All role players should be required to apply for, and be granted, a licence to operate in conduct during the preceding year and any additional review procedure that the regulator deems necessary.

Review and renewal must take place at least ninety days prior to the annual expiry date of the licence.

4.6. Licence conditions

4.6.1. Company form and focus

Licences will be granted only to public or private companies registered in the Republic whose business is solely that of operating an interactive gaming business.

4.6.2. Game server location

The operator's game server must be located in South Africa.

4.6.3. Employment requirements and BEE

The licensee must employ a significant percentage (subject to the regulator's discretion) of South Africans in its local operations and will have to be Employment Equity and BEE compliant in accordance with prevailing South African legislation in this regard.

4.6.4. Operating currency

It must offer gaming to South African players in Rands and its licensed business must report in Rands, although it will be entitled to present an interface to foreign players in other major currencies, for example Sterling or US Dollars

4.6.5. Sub-licensing

No sub-licensing will be allowed.

4.6.6. Guarantees

Licensed operators should be required to put in place financial guarantees to cover all player balances in their system, which levels should be reviewed monthly (see section 6 on Monitoring and Control).

4.6.7. Payment compliance

All payments to and from players must ultimately be effected via a licensed financial institution.

4.6.8. FATF

Operators must follow the FATF guidelines.

4.6.9. Other conditions

The regulator will have the right to attach further conditions to any individual licence if it deems such conditions relevant to the fulfilment of its mandate and the achievement of the objectives of the regulatory regime.

4.7. Application processing

The regulator must ensure that all licence applications are processed with due speed and that, in the event that it turns down an application, its reasons are promptly made known to the applicant in writing. In this regard the regulator must be compliant with the Promotion of Administrative Justice Act or such other prevailing South African legislation in this regard.

5. Software Testing

5.1. Source code testing inappropriate

The Committee concluded that the traditional land-based approach to software testing– that of source code testing – is both impractical and ineffective in the interactive gaming environment. The Committee cannot expect to expose the source code of major software developers to the scrutiny of third parties, no matter how trustworthy we believe they are. Nor can the Committee subject software packages to near-daily review to take account of the inevitable upgrades and bug fixes that characterise interactive systems.

5.2. Stringent output-based testing recommended

As such, whilst the Committee advocates extremely stringent testing as a prerequisite of continued licensing of operators and retention of licenses by software providers, the Committee recommends that such testing is output-based and continuous. By continually checking both the input and output of the system, it is feasible to test that the system is meeting regulatory requirements while providing operators and software developers with operational flexibility. By checking each and every transaction for its completeness, together with spot testing of transactions, it is possible to verify that all transactions are faithfully recorded.

By performing further analysis of the summary data and subjecting the vast amounts of data to rigorous statistical testing, one can further confirm the integrity of the random number generator in particular and of the system as a whole¹¹.

In circumstances where this output-based testing provides the regulator with reasonable grounds for suspicion of inappropriate software design or functioning, it reserves the right to call for full review of the system design and the source code and, in these circumstances, will provide a commitment to the software provider as to the confidentiality of the review process.

¹¹ A number of regulatory regimes, as well as NGOs such as eCOGRA, have demonstrated that such testing is feasible at reasonable cost and extremely high degrees of reliability.

5.3. *Testing process and costs*

Regulation must put in place a process for such software testing, which testing would be for the account of the operator.

6. Monitoring and Control

As suggested above, good regulations without good enforcement are a “paper tiger”. Monitoring and control processes must at least match the rigour of probity and licensing.

The general approach in this area should mirror that of the provincial licensing authorities but also recognise the unique dimensions that interactive gambling brings.

6.1. *Prior approval of control system*

Prior to commencing operations, licensees will be required to have a ‘control system’ approved by the regulator as a part of the licensing process. This approval will provide for all the internal controls and operating procedures relevant to the day-to-day running of the business. This is likely to include, inter alia, for the conduct of the interactive games, accounting systems and chart of accounts, administrative systems and procedures, computer software, and general procedures and standards for maintenance, security, storage and transport of equipment, for recording and paying prizes and for maintaining security. The purpose of this approval is to ensure that licensees adhere to sound internal controls and operating procedures, thereby minimising risks associated with physical security of information, service levels, financial accounting, player protection, and money laundering.

6.2. *Programme for ongoing monitoring*

The regulator will develop and implement a programme for the ongoing monitoring of industry participants. This will include, but not be limited to, ongoing software input/output testing, as described in 5 above, periodic review of financial results as well as regular and ad hoc analysis of transactions from the operator’s system. Operators will be obliged to provide the regulator or its agents with regular detailed reports, as well as access to all transaction and financial reports on demand.

6.3. *Audits, inspections and investigations*

The regulator will have the right to conduct audits and inspections of any operator at its absolute discretion. In such event, the operator will be obliged to make available all records and documentation concerning its business on request.

The regulator will further have the right to investigate any licensed operator or related person if it reasonably suspects that this entity no longer meets the suitability requirements for a licence or has failed to report accurately and completely on its operations in terms of the procedure specified.

6.4. *Suspensions and revocations of licence*

The regulator will be entitled, at its sole discretion, to suspend or revoke a licence if it believes an operator has breached the relevant terms and conditions. Such decisions by the regulator will be subject to review through the normal legal processes of South Africa.

7. Player Protection

As one of the overarching objectives, player protection must receive prominence in the South African interactive gaming regulations. The Committee has drawn from best practice in other jurisdictions to identify the key tenets of player protection.

7.1. *Underage gaming*

A licensee must not knowingly allow a player under 18 years old to participate in games. Any prize won by, or losses incurred by an underage player will be forfeited to the regulator, who will contribute it to the National Responsible Gambling Programme.

7.2. *Player identification*

All players should be required to register with the operator, furnishing details of identity, place of residence and age.

7.3. *Operator accessibility to players*

Every website of a licensee must contain contact details to allow players to easily and quickly communicate with the operator.

7.4. *Game rules*

Game rules must be clearly posted on the operator's site. The site should have a schedule available to players that provides information on the theoretical statistical return to the player. Operators must comply with game rules as described.

7.5. *Credit balance remissions*

Operators must remit requested funds in credit balance to a player within a reasonable period of request.

7.6. *Player information*

Operators are not entitled to disclose any player information furnished to them or contained within their databases except with player authorisation, when reasonably required to play a game, or if authorised by the regulator for law enforcement purposes.

7.7. Prize entitlements

If a player wins a prize, it must be credited immediately to his account or, if it is non-monetary, delivered to the player. Prizes must be claimed within 12 months and if the claim cannot be resolved by the operator then the claimant may request the regulator to investigate and communicate a decision in writing.

7.8. Aborted games

A game is defined as aborted in the event that it is interrupted between the time that the player has had a wager accepted and the game outcome has been decided, and it cannot be reliably restored to its pre-interruption status. The stake on a game aborted due to telecommunications failure must be refunded. The regulator can investigate and adjudicate in the event of a game aborted due to any form of failure.

7.9. Inactive accounts

Accounts inactive for 180 days must be refunded their balances, less reasonable costs of the operator for administration of the dormant account, which costs will be subject to review and adjustment at the discretion of the regulator.

7.10. Self-limitation

Players must be able to exclude themselves from the site and set their own deposit limits, including zero, if they wish to be excluded (which limit must be effected immediately on receipt of notice by the operator), and revoke such limits in writing (which notice must take effect only seven days after receipt by the operator). Operators must adhere to all self-set limits.

7.11. Responsible gambling information

The site must furthermore contain information on problem/responsible gambling, appropriate tools which will assist players to address problem gambling and contact details for players to obtain further information and/or assistance in this regard.

8. Advertising

8.1. No non-licensed sites

No advertising will be allowed in South Africa in any form or medium by interactive gaming operators not licensed in the Republic. The purpose of this rule is to provide licensed operators with an advantage in attracting and retaining local customers.

8.2. Content and form

Rules around the content and form of advertising will be enforced by the Advertising Standards Authority.

9. Fees and Taxes

9.1. Annual licence fee

An annual licence fee of R150,000 will be payable by each operator.

9.2. Costs borne by operator

All costs of probity, testing, reporting and licence application will be for the account of the licensee. The regulator may decide to levy an upfront fee to cover certain of these anticipated costs.

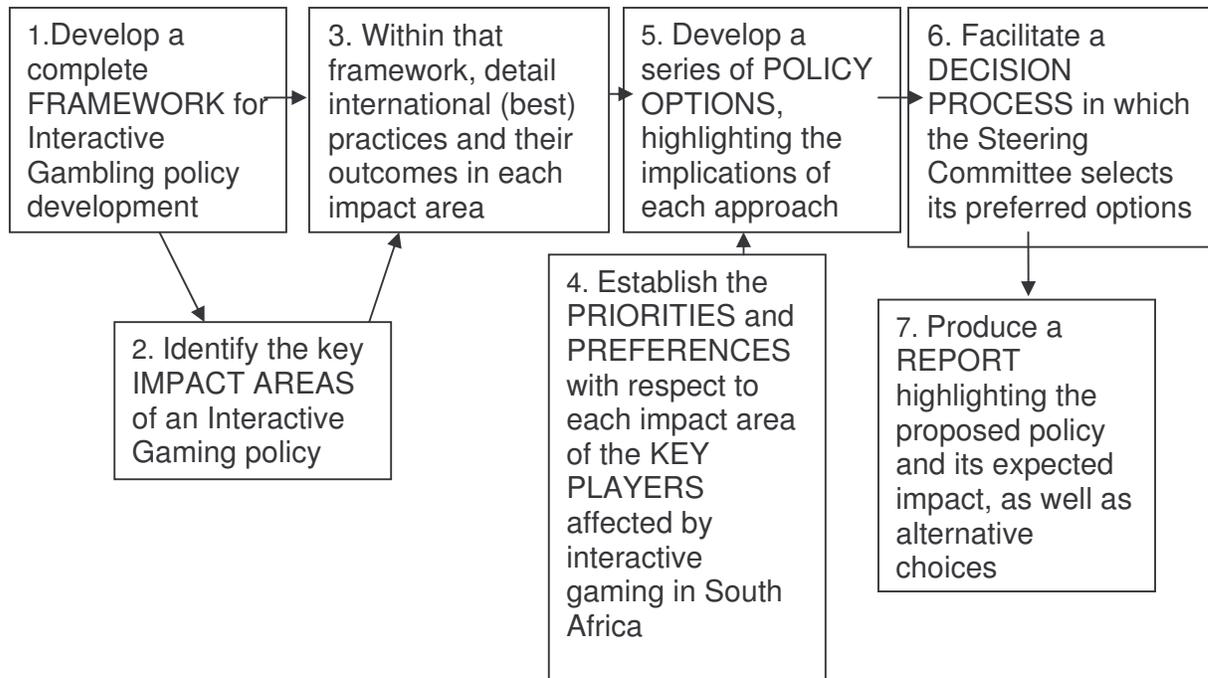
9.3. Gaming tax

In addition, a gaming tax of 2% of net gaming revenue will be levied.

B. INTERIM REPORTS AND ANALYSES

B.i. Project Design

- The project was designed with seven phases.



Phase 1 – Regulatory Framework Development Process

- The first phase saw research to develop a comprehensive framework within which to develop an interactive gaming policy.
 1. Develop a complete FRAMEWORK for Interactive Gambling policy development
 - i. Review selected existing national IG policies to identify all relevant dimensions of a framework
 - a. Identify jurisdictions that have comprehensive policies that are formally set out and available
 1. Consult with experts
 2. Conduct desk research
 - b. Select model policy documents
 1. Secure policy documents
 2. Select representative documents
 - c. Review documents and extract all key policy dimensions
 - ii. Interview selected industry experts to ensure that draft framework is comprehensive and appropriately structured
 - a. Identify industry experts
 - b. Contact them to establish availability
 - c. Present them with draft framework and obtain their inputs

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- d. Ensure that all of these dimensions are present in the current sub-project structure (if not, modify sub-project structure as necessary)
- iii. Finalise framework with Steering Committee

Phase 2 – Impact Area Identification Process

- Phase 2 focused on the identification of all areas in which an IG policy will have an impact.

Identify the key IMPACT AREAS of an Interactive Gaming policy

- a. Develop preliminary guideline of possible impact areas
- b. Obtain input from sub-project teams and Steering Committee members on impact areas and anticipated impacts
 - i. Interview relevant team and Committee members
- c. Conduct desk research to highlight impact areas and impacts in other jurisdictions
- d. In parallel with task 1.b., interview selected industry experts to review and modify impact area framework and potential impact assessment

Phases 3 and 4 – Research Process

- Phases 3 and 4 constituted the two main research processes. Their results appear as the core of this report.

Within the developed frameworks, detail international (best) practices and their outcomes in each impact area

- a. Review and summarise policies of selected jurisdictions
 1. From formal policy documents
 1. Obtained in task 1.a.ii.1.
 2. From articles and expert opinions
 1. Conduct desk research for relevant articles
 2. Obtained in parallel with task 1.b.
- b. Establish 'best practice' in each dimension of the framework
 1. From articles and expert opinions
 2. From analysis of policy impact
 3. From consultations with sub-project teams
- c. Prepare an interim report on frameworks, impact areas and best practice options

Phases 5 and 6: Decision Process for the Committee

- Before it can provide a framework for regulation, the Committee must make a series of logical decisions based on the inputs obtained from the research process.
 1. Should we propose an active/comprehensive regulatory scheme at **National level**?
 2. If so, what should be the **scope** of such a scheme?
 3. What should be the **objectives** of the policy (primary and secondary)?
 - TEST: Are these objectives aligned with government policy?
 - TEST: Are these objectives consistent with public opinion?
 - TEST: Are these objectives realistically achievable?
 - TEST: Are these objectives internally consistent?
 4. What should be our overall **regulatory approach** to achieving these objectives?
 - TEST: Is this approach likely to achieve the stated objectives?
 - TEST: Is this approach aligned with government policy?
 - TEST: Is this approach consistent with public opinion?
 5. What specific **regulatory tools** should we use to implement this approach and how should we use them?
 - TEST: Are these tools consistent with our stated regulatory approach?
 - TEST: Are these tools and their proposed application likely to achieve our stated objectives?
 - TEST: Are these tools consistent with government policy and public opinion?
 - TEST: Is the combination and application of tools internally consistent?
- The research summarised in this report focused on questions 1, 2, 3 and 4 which were the primary topic of discussion in the Committee session of August 5th.

B.ii. Regulatory Framework

- The following framework was developed, refined and used in all analysis.

1. Regulatory Structure, Process and Infrastructure

- a. Style, format, philosophy, objectives and jurisdictional scope of regulation
 - i. Philosophy and objectives
 - ii. Form and design of legislation
 - iii. Scope of laws and regulations
 1. Geographic
 2. Definitions of Interactive Gaming
 - iv. Interaction with international law and other jurisdictions
 - v. Interaction with other South African laws and regulatory bodies
- b. Identity, mandate and powers of regulator/s
- c. Staffing, financing and monitoring of regulator/s
- d. Enforcement mechanisms

2. Definitions of Interactive Gaming

- a. Definition of an interactive game
- b. Types of gaming allowed
- c. Scope of activities defined as gaming
- d. Definition of location of gaming activity
- e. Definition of industry participants (role players)

3. Licensing and Operator Monitoring

- a. Role players requiring licensing
 - i. Operators
 - ii. Key Personnel
 - iii. Agents
 - iv. Sub-licensees
 - v. Software providers
- b. Limitations on number of licenses (by role player)
- c. Content and scope of license
- d. Licensing criteria (by role player) and grounds for refusal
 - i. Degree of regulator discretion
- e. Licensing process (by role player)
 - i. Application
 1. Application forms/information required
 2. Application procedure
 3. Requirements of the applicant
 4. Obligations of the regulator
 5. Maximum processing time
 6. Form of response to application
 7. Review and probity testing
 8. Decision making

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9. Appeal procedures
10. Application costs and fees
11. Quantum of fees
12. Payment method
- ii. Temporary licenses
- f. Definition of required operator behaviour/structure
 - i. Licensing of premises
 1. Criteria
 2. Process
 - ii. Structure/form of company
- g. Conditions of license
 - i. Operator reporting requirements
 1. Approval of control systems
 2. Criteria and scope of systems
 3. Application, review, decision and appeal processes
 4. System change process
 5. Audits
 6. Approval of auditors
 7. Audit process, frequency and reporting
 8. Reports and maintenance of records
 9. Gaming activity
 10. Financial and accounting
 11. Financial institution accounts and transactions
 - ii. Operator monitoring process
 1. Activities to be monitored
 2. Authorised monitors
 3. Rights of presence and access by monitors
 - iii. Technical compliance and game testing
 1. Definition of authorised games
 2. Process for authorisation, suspension and revocation of games
 3. Game testing
 4. Authorised testing agencies
 5. Application procedure
 6. Application costs
 7. Testing procedure
 8. Criteria for acceptable games
 9. Equipment testing
 10. Authorised testing agencies
 11. Application procedure
 12. Application costs
 13. Testing procedure
 14. Criteria for acceptable equipment
 15. Operator financial securities required
 16. Transferability of license
- h. Variation or addition of conditions
- i. Sanctions and controls
- j. Period of validity of licenses (by role player)
- k. Process and criteria for renewal

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- l. Process and criteria for revocation or suspension
- m. Public availability of licensee information

4. Player protection and regulation

- a. Fair gaming rules and standards
 - i. Operator obligations
 - ii. Player compliance and sanctions
- b. Advertising
- c. Criteria to qualify as a legal player
 - i. Sanctions for illegal players
- d. Player registration and information
 - i. Required information
 - ii. Registration procedure
 - iii. Requirements and process for deregistration
- e. Player funds management
 - i. Limitations on number and type of accounts
 - ii. Access to player funds and information
 - iii. Adequacy of funds to cover exposure
 - 1. Credit betting
 - iv. Operator obligation to repay
 - v. Limitations on holding inactive funds
- f. Addiction management
 - i. Player screening requirements
 - ii. Player communication requirements
 - 1. Content
 - 2. Frequency
 - 3. Vehicle/s for communication
 - iii. Limitations on activity
 - iv. Player self-management procedures and obligations
 - 1. Setting of time and value limits

5. Gaming rules and procedures

- a. Prizes
 - i. Definitions of acceptable prizes
 - ii. Obligations for prize delivery
 - iii. Unclaimed prize procedure
- b. Aborted games
 - i. Definition
 - ii. Obligations of player and operator
- c. Complaints procedure and rules

6. Transaction processing and financial flows

- a. Processor licensing and selection
- b. Payment methods
- c. Foreign exchange controls
- d. Other financial controls

7. Commercial environment

- a. Taxation
 - i. Operator fees and taxes

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1. Licensing fees
 2. Other fees (testing, application etc.)
 3. Corporate taxes
 4. General
 5. On foreign income
 6. Specific gambling taxes
 7. VAT
- ii. Player taxes
- b. Financial restrictions
 - i. Profit repatriation
 - ii. Foreign exchange controls
- c. Enabling factors
 - i. Technical infrastructure
 1. Cost competitive bandwidth
 2. Hosting facilities
 - ii. Banking and financial support
 1. Payment processing
 2. Banking and treasury
 3. Capital access
 - iii. Labour
 - iv. Advertising regulation
 1. Allowable content, form and media
 2. Approved advertisers
 3. Approval process
 4. Process for sanction and appeal
 - v. Reporting requirements

B.iii. Impact Area Framework

- We identified the following list of potential impact areas to consider:
 1. Competitiveness with global gaming jurisdictions
 - a. Cost of operation
 - b. Ease of establishment
 - c. Effectiveness of infrastructure and environment
 2. Funds flows
 - a. Inflows
 - i. Licensing fees
 - ii. Taxation
 - iii. Capital investment
 - iv. Purchases of services and goods
 - v. Salaries and wages
 - b. Outflows
 - i. Player losses
 - ii. Profit repatriation
 3. Employment
 - a. Direct
 - i. Operators
 - ii. Technology providers
 - iii. Infrastructure providers
 - b. Indirect
 - i. Service providers
 1. Telecommunications
 2. Financial services
 3. Call centres
 4. Administration
 - c. Foreign workers
 - d. Skills development
 4. Competition with local gambling industry
 5. Gambling exposure and addiction of SA citizens/residents
 6. Exposure to money laundering and organised crime
 7. International image and status of South Africa
 8. International relations
 9. Costs of regulation and monitoring

B.iv. Jurisdiction and Stakeholder Research Summary

Jurisdiction Research Summary *Selection*

- We selected ten of the world’s leading jurisdictions for research, with a view to obtaining a spread of regulatory objectives, styles and outcomes.

1. UK (3)	Regarded by some as likely to become the most attractive jurisdiction following recent changes in the law but implementation will take until 2007.
2. Kahnawake (2)	One of the earliest to create regulations and has benefited by hosting some of the world’s largest online casino’s. Main attractions are superb infrastructure, zero taxes and loose enforcement.
3. Antigua (4)	Open regulations, infrastructure and proximity to the US have led this to be a common site for IG operators targeting the US market. Recently, tightening regulation has seen an outflow of less reputable operators.
4. Costa Rica (7)	The easiest place to get a license, this has led to massive influx of operators, mostly with US-targeted sportsbooks, many not that reputable, and major local employment.
5. Gibraltar (1)	Attractive to major operators as part of the EU but lightly regulated, Gibraltar initially limited its license base to big British bookmaking players, but has now lost most of them to the UK and attracted the largest casino operators.
6. IOM (12)	Emerging as a viable jurisdiction, Isle of Man has created an extensive regulatory framework.
7. Malta (6)	An aggressive jurisdiction, seeking to attract major operators, Malta has had success in attracting a few large players.
8. Alderney (14)	With an exceptionally comprehensive regulatory structure, Alderney has only managed to attract a few big British corporates and no big operators yet.
9. Australia (n/r)(9)	This country’s complex federal system and problematic position on local players has ensured almost no casino operators, but several big local sportsbooks.
10. USA (n/r)	The US continues, at the National level, to take a prohibitionist stance but has failed to regulate meaningfully, leading to a massive ‘illegal’ industry serving its consumers.

Note: Figure in parentheses is rating of jurisdiction by casinocaity.com on the basis of internet traffic

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Stakeholder Research Summary
Selection (1)

- We canvassed input and opinion from a number of sources in an attempt to obtain a comprehensive view of public opinion and an insight into government policy.

Category	Process	Representatives	Status of Feedback
<i>General Public</i>	Newspaper advertisements were placed to solicit input from all interested parties	Betfair.com (major UK-based betting exchange) ARGO (UK-based association of operators) BMM Testlabs (International system/software testing agency)	Received written inputs from the three organisations
<i>Stakeholder Organisations</i>	Identified by NGB Contacted via e-mail and telephone and requested input Prepared comprehensive questionnaire Conducted face-to-face interviews where requested	CASA (D. Auret) Bingo Ass'n (A. Scott) LPMSA (E. Mphande) SAROA (P. Leonard) SAGMA (L. Smith) NRGP (P. Collins) NLB (V. Ram)	Received written input No input Received written input Promised but not yet received Completed interview Completed interview No input
<i>Sub Committees</i>	Prepared e-mail questionnaire and requested inputs	Raymond Paola (Financial) Trish Naidoo (Technical) Wayne Lurie (Legal) Vuyo Nkosi (Social) Viren Parmanand (Risk)	Received Not received Received Received Not received

**Stakeholder Research Summary
Selection (2)**

- We canvassed input and opinion from a number of sources in an attempt to obtain a comprehensive view of public opinion and an insight into government policy.

Category	Process	Representatives	Status of Feedback
<i>Provincial Regulators</i>	Briefed CEOs of Provincial Gambling Boards at CEO's Forum meeting followed up with e-mails and phone calls	All 9 Provincial CEOs	Received written inputs from Eastern Cape in response to public newspaper advertisement Received e-mail input from Free State and Northwest No other responses received
<i>Major Gambling Operators</i>	Prepared a questionnaire and communicated to 10 operators representing more than 75% of global online casino traffic	Promised to keep identities confidential	Responses received from 6

**Stakeholder Research Output
Scope of Policy**

- Stakeholders all have a similar definition of Interactive Gaming, although most are somewhat broader than that in the National Gambling Act, 2004.
 - **How would you define Interactive Gambling?** (Selected responses)
 - IG is performing a gambling activity remotely from the place at which the outcome is decided and/or the wager is processed.
 - Gambling delivered by the “new technologies” of Internet, cellphone and ITV. The game must be “hosted” at a distance from the player. I would argue that we should define the gambling as taking place in the jurisdiction where the site is regulated (it is not for one jurisdiction to enforce the rules of any other).
 - Gambling through internet i.e. not physically at a gambling institution.
 - Remote (non face to face from different locations) gambling via the internet or any other remote computer network through any electronic means including but not limited to, through a telecommunications infrastructure (all inclusive copper, fibre optic, satellite and cellular). “Gambling” would have the meaning given in the land-based statute.
 - It’s defined in the National Gambling Act, 2004 (Act No 7 of 2004), as “*a gambling game played or available to be played through the mechanism of an electronic agent accessed over the Internet other than a game that can be accessed for play only in licensed premises, and only if the licensee of any such premises is authorised to make such a game available for play;*” ...

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Jurisdiction Research Output ***Scope of Policy (1)***

- The definition in those jurisdictions that consciously regulate is also fairly similar, driven not by the ‘internet’ but by the notion of a telecommunication device.

1. UK	Remote gambling is defined as gambling in which persons participate by the use of remote communication (the internet, the telephone, television, radio or any other kind of electronic technology for facilitating communication).
2. Kahnawake	Authorised games by means of a telecommunication device, including the Internet. An interactive game means a game which offers a prize of value in which a player enters or takes any step by means of a telecommunications device and gives or promises to give value to enter and the winner is decided either wholly or partly by chance or by a competition wholly or partly dependent on player skill.
3. Antigua	Something of value is offered; a player enters a game or takes any step in the game by means of a telecommunications device including, but not limited to, the internet
4. Costa Rica	Costa Rica’s Supreme Court and attorney general have ruled that gambling does not take place in Costa Rica if no bets are accepted from locals and the company’s merchant account is in another country. Online gambling on offer is not limited to any particular products due to the lack of restrictions on online gambling activity, and includes spreadbetting, sportsbetting, casinos, poker and bingo.
5. Gibraltar	There is no official definition of interactive gaming, since no statute currently exists.
6. IOM	Any gaming where any player enters or may enter the game, or takes or may take any step in the game, by means of a telecommunication; the negotiating or receiving of any bet by means of a telecommunication, any lottery in which any participant acquires or may acquire a chance by means of a telecommunication.
7. Malta (6)	Any form of gaming by means of distance communications. “Means of distance communications” is defined as “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; such means may be unaddressed or addressed printed matter, a standard letter...telephone with human intervention [but which does not include phone-ins during radio and television programmes] or without human intervention (such as automatic calling machine, audiotext), radio, videophone (telephone with screen), videotext (microcomputer and television screen) with keyboard or touch screen, electronic mail, facsimile machine (fax) and television (teleshopping) and any other means of communication, transmission, conveyance and receipt of information by wire, radio, optical means, electromagnetic

REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

	40 means or by any electronic means". Whilst "electronic means" is defined as all electronic data transfer whether by telephony, facsimile computer or any other means of distance communications as approved by the Authority.
8. Alderney (14)	<p>Interactive games involve games in which a prize consisting of money or anything else of value can be won, and a player enters the game by means of a telecommunication device and provides some form of consideration to enter the game. The winner is then decided wholly or partly by chance, or by a competition in which the outcome is wholly or partly dependent on the skill of the player or another person.</p> <p>Electronic betting involves a customer paying an amount to an electronic betting centre to effect a betting transaction. A betting transaction occurs where one of the parties to the transaction acts as a bookmaker, and an electronic betting centre is an operation conducted in approved premises by which the transactions are effected remotely by customers by means of the internet or some other telecommunications medium.</p>
9. Australia (n/r)(9)	Interactive gaming services are defined in the IG Act and include gaming services provided over the internet. Gaming services include games of chance and games of mixed chance and skill. Examples include roulette, poker, craps, online 'pokies' and blackjack.

Stakeholder/Jurisdiction Research Output
Scope of Policy

- Differences do exist, however, as to whether betting, gaming and lotteries should be lumped into our regulatory scope.
 - “I do not distinguish in this definition between betting and gaming – in both cases, the player is putting something at risk in the hope of winning a prize on an event of which the outcome is uncertain.” *P. Collins*
 - “From the outset a distinction must be drawn between internet gambling and internet betting...It is submitted that the provinces should continue to regulate all activities related to bookmakers and telebetting” *Eastern Cape submission*
- Of the jurisdictions reviewed, three different approaches to this can be identified, with no obvious reason for each choice.

Jurisdiction	All lumped together	Viewed separately but regulated together	Betting and / or lotteries separately regulated
UK	√		
Kahnawake	√		
Antigua		√	
IOM			√
Australia			√
Alderney		√	
Costa Rica	√		
Malta	√		
Gibraltar		√	

Stakeholder Research Output
Need for National level regulation

- In general, stakeholders canvassed were convinced that IG should be regulated at a National Level.
 - **Do you believe Interactive Gambling should be regulated at a National level?** (Selected responses)
 - Yes. If you don't, it will only go underground and then very difficult to deal with. All "connected" parties e.g. Operators, Banks, Punters etc should be covered. *Free State Gambling Board*
 - If government decides to prohibit, then it should be co-ordinated nationally. If, however, it decides to regulate, it should be done by the provincial boards. *E. Cape Gambling Board*
 - It is key to regulate at a National level. A couple of key areas must be covered: we need to create enabling regulations to allow our local operators to compete effectively; we need to conduct very tight probity checks and game tests. However, it may make sense to do the actual licensing in the province in which the operator intends to locate – this will create healthy competition between provinces and hopefully drive competitiveness. *L. Smith (SAGMA)*
 - IG must be regulated at a national level because: - Due to the borderless nature of the internet, players on South African based IG sites will come from everywhere; - We will want to try to generate some "export" business in this process and to do this we need the national government's "seal". I must point out, however, that in my view the NGB is not currently adequately resourced to fulfil the role of sole regulator of this activity and its capacity and competency in this area will have to be beefed up to meet what is a very serious and challenging set of accountabilities. *P. Collins (NRGP)*
 - It must be regulated at a National level; however, the various provinces should have the autonomy to develop their own laws within the National framework regulations. *R. Paola (National Treasury)*
 - Absolutely. I personally cannot see a practical basis for a universal and borderless medium like the internet to be governed at any fragmented state or provincial level. The only effective way, in my view, to even attempt to regulate such activity would be on a national or federal level. *W. Lurie (Legal Advisor)*

Jurisdiction Research Output
Need for National level regulation

- Of the ten jurisdictions analysed, only three can throw any light on the issue of national versus local regulation, since the other seven are small territories.

Jurisdiction	Approach	Result
Australia	At national level, the <i>Interactive Gaming Act 2001</i> prohibits a person from providing an internet gambling service to Australian residents and those from 'designated countries', but does not cover sportsbetting and lotteries. However, the country's constitution does not allow it to expressly regulate gambling (which is the right of the provinces) so the IG Act targets ISP's to effect its prohibition.	Each Australian state has taken its own line on IG. Victoria, Queensland and ACT have legislation in this regard and Northern Territory ('NT') and Tasmania have attempted also to introduce regulatory regimes to attract operators. It is widely accepted that the national level prohibition has simply had the effect of limiting the number of Australian operators (other than traditional sports bookmakers) and not of preventing Australians from gambling online with international sites. Acting on their own, none of the Australian states has succeeded in becoming a meaningful location for IG (other than local sports betting) – Lasseter's, Australia's largest online casino regulated in NT is ranked number 218 in the world.
UK	The UK's new gambling regulatory regime has taken an expressly more national and integrated approach. While the new <i>Gambling Act 2005</i> does still allow local and regional authorities to play a role in licensing terrestrial gambling operations, all 'remote gambling' (as the UK defines IG) will be regulated at the national level.	Until the new regime begins licensing in 2007, it is difficult to make judgements as to the impact of the philosophy to regulate IG nationally. At present, the UK is a thriving IG location largely driven by the major bookmakers, who generally offer casino and poker services from other jurisdictions.

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	<p>Regulators argue that this form of gambling is, in any event, 'borderless', although the policy does require physical location in the UK.</p>	
<p>USA</p>	<p>While prohibition and regulation have been debated at each sitting of the legislature for at least 5 years, no legislation has emerged. Absent new rules, the USA has clung spiritedly to the 50-year old <i>Wire Act</i> to justify its prohibitionist stance on IG. This has resulted in aggressive enforcement by various state and national (DOJ) officials, aimed particularly at the transaction processing and marketing industries.</p>	<p>In spite of the lack of formal regulation and the aggressive enforcement efforts, the US remains by far the world's largest IG market, representing close to 80% of all activity.</p>

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Jurisdiction Research Output Objectives

- IG policy objectives can be arrayed across a spectrum from “defensive” to “expansive”. In this context, the ten jurisdictions exhibit substantial differences, but several core commonalities can be identified.

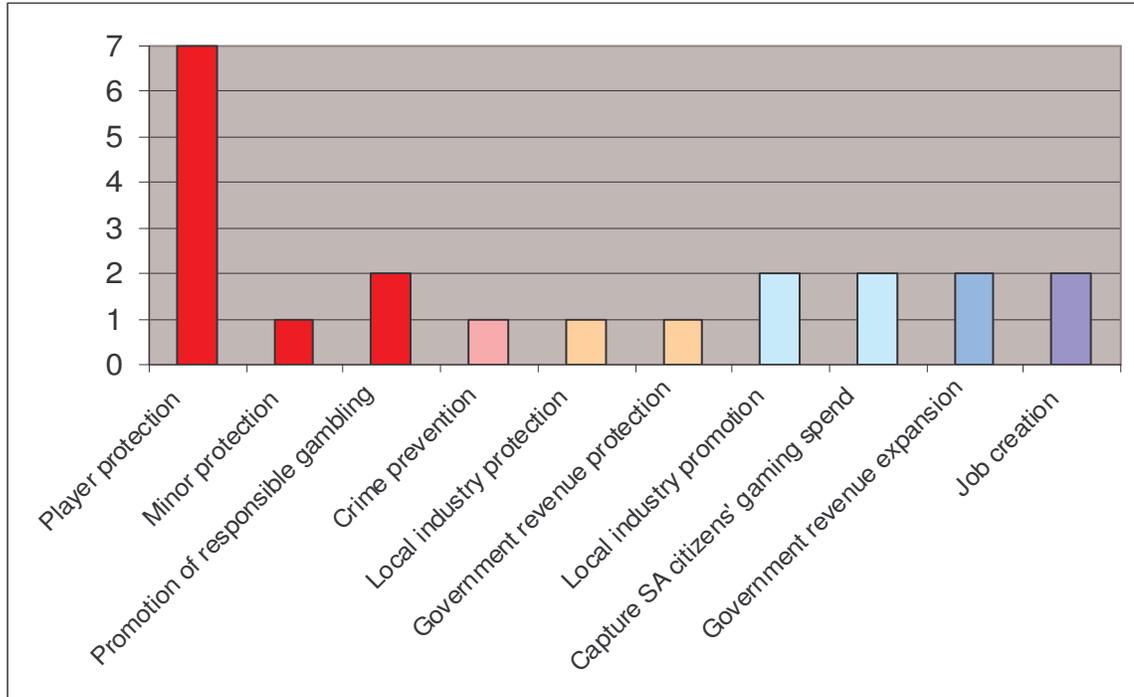
Jurisdiction	Protect local citizens	Protect international reputation	Protect land-based gaming operators	Enhance local gaming operators	Capture local citizens' spend	Create a local IG industry
1. UK	√	√		√	√	√
2. Kahnawake	√					√
3. Antigua	√					√
4. Costa Rica	√					√
5. Gibraltar						√
6. IOM	√					√
7. Malta	√					√
8. Alderney	√					√
9. Australia	√	√	√	√		
10. USA	√		√			

- To the extent that written regulation exists in each jurisdiction, the stated goals of such regulation are remarkably similar; not surprisingly, once embodied in regulations, these goals focus on ‘defensive’ issues.

Jurisdiction	Stated Goals
1. UK	Prevent gambling from being a source of crime or disorder, ensure gambling is conducted in a fair and open way; protect children and other vulnerable persons.
2. Kahnawake	Only suitable persons and entities operate within the territory; games offered are fair to the player; winners are paid.
6. IOM	Keep gambling industry crime free; protect the young and vulnerable; ensure that the facilities offered by licence holders are fair and that players receive their true winnings.
7. Malta	Protect minors and vulnerable persons; safeguard players’ rights; promote responsible gaming in a safe environment; ensure the integrity of games and gaming devices; keep gaming free from criminal activities; consolidate all regulatory functions relating to gaming activities; support the industry and technological innovation.
8. Alderney	Ensure that: all gaming and betting is conducted honestly and fairly; the funding and operating of online gambling on Alderney remains free from criminal influence and exploitation; activities are regulated and monitored to protect the interests of the public and minimise the harm that gambling may cause.

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- Stakeholders canvassed exhibited a similar range of goals, with a premium placed by all on the need for regulation to ensure player protection and, beyond that, a slight leaning to the 'expansive' end of the spectrum.



Jurisdiction Research Analysis
Objectives and Regulatory Approaches Compared

- Below is a summary view of the varying objectives and approaches. The USA and Australia (at national level) are the two jurisdictions that have adopted an essentially defensive approach. Approaches have also differed by the degree to which “active” measures have dominated the regulatory agenda.

*

	Active*	Passive *
Defensive Protect citizens Protect reputation Protect local industry	USA	Australia
Expansive Enhance local operators Secure local gaming revenues Create an IG industry	Alderney IOM Malta	UK Gibraltar Antigua Kahnawake Costa Rica

***Indicators of active vs passive approach**

Active

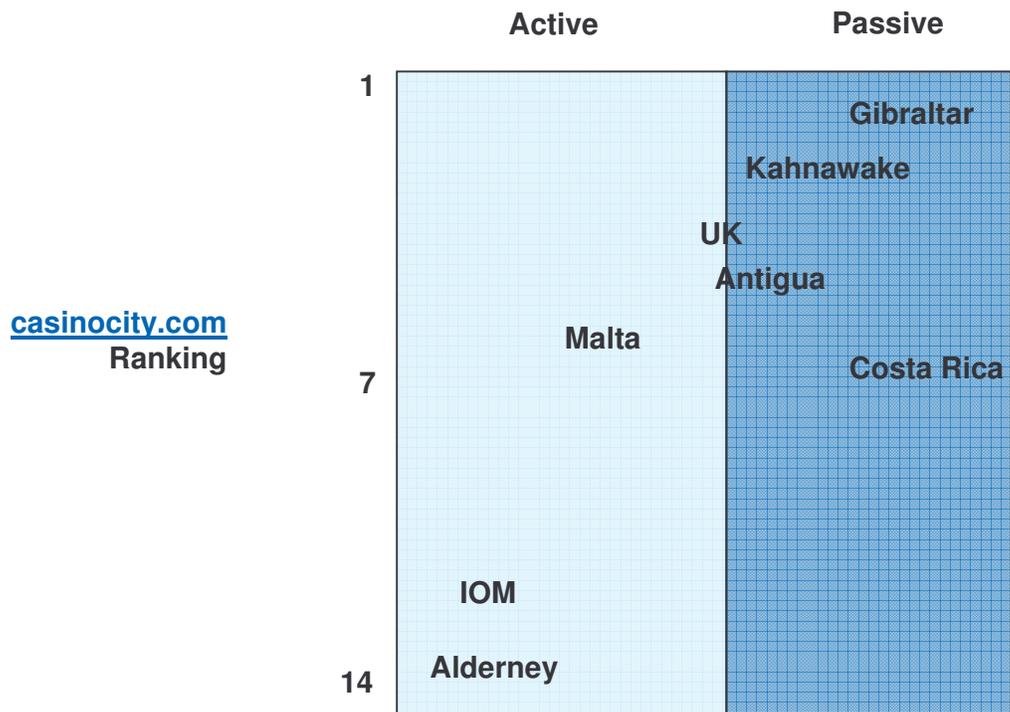
- Detailed regulations
- Active enforcement
- Action on related policies (e.g., taxation, infrastructure)

Passive

- Broad or no regulations
- Limited enforcement
- No action on related policies

Regulatory Approaches and Outcomes (1)

- Of the expansive jurisdictions, it appears that those who exercised a 'lighter' regulatory touch, *ceteris paribus*, had relatively greater success in terms of attracting gambling traffic.



Regulatory Approaches and Outcomes (2)

- To the extent that number of sites and/or operators is a relevant measure of success, relative “passivity” coupled with jurisdiction “stature” seem to be the determining factors.

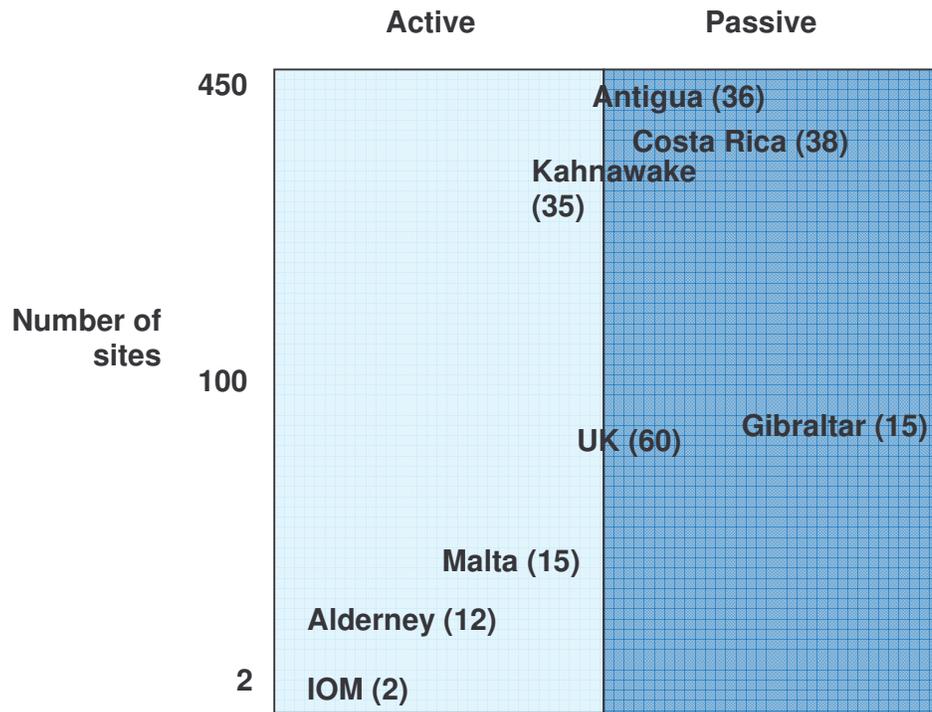
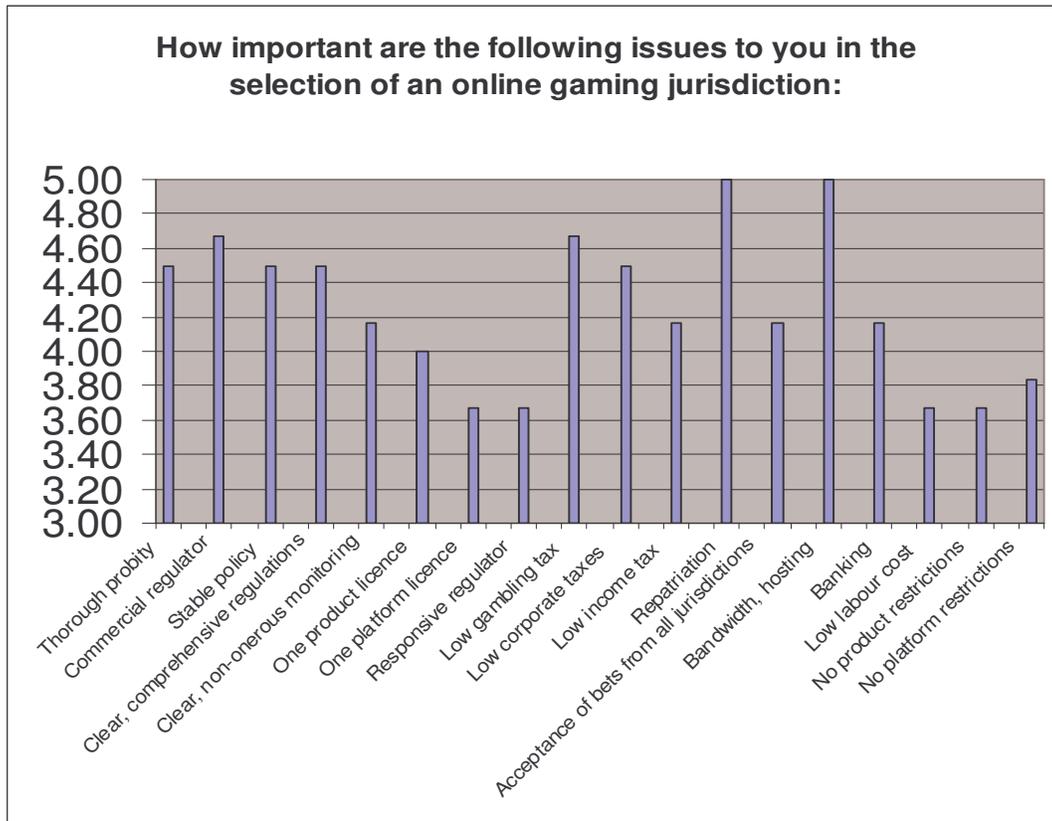


Figure in parentheses for each jurisdiction is number of OPERATORS

**Stakeholder Research Analysis
Regulatory Approaches and Outcomes**

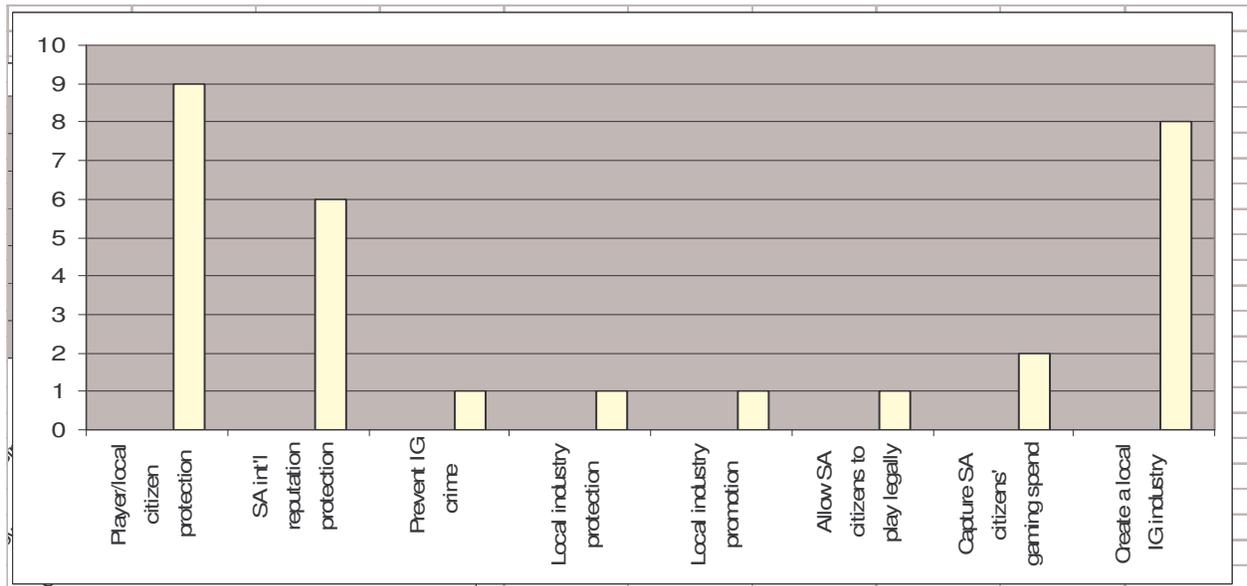
- This is borne out by the operator research conducted, although the need for active engagement in areas such as infrastructure and taxation is also clear.



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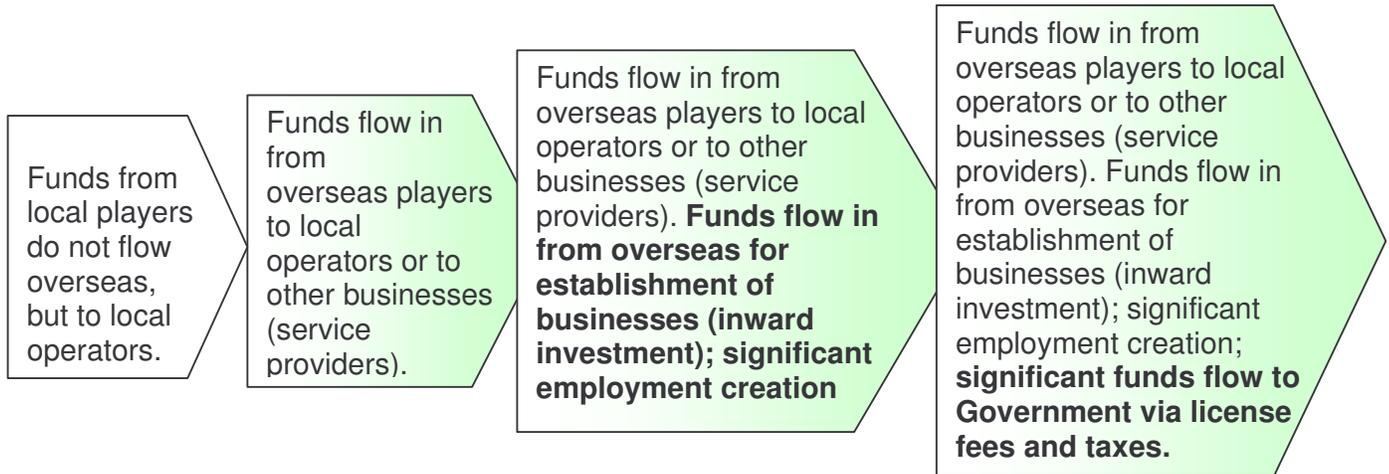
Objectives of the policy (primary and secondary)

- Committee members agreed that the policy should have three primary goals: citizen protection, national reputation protection and the creation of a thriving local industry.

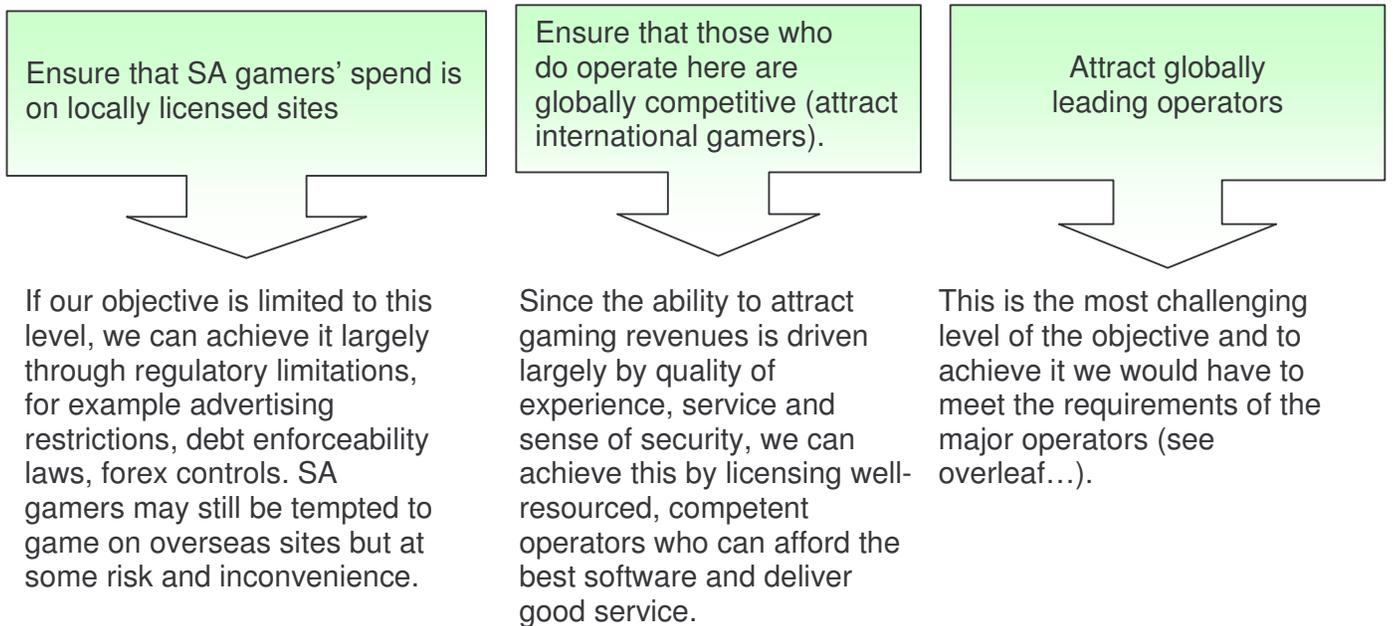


Objectives of the policy (primary)

- **How do we define having a local industry?**
 - There is a spectrum of measures by which we might define the existence of an IG industry in South Africa:

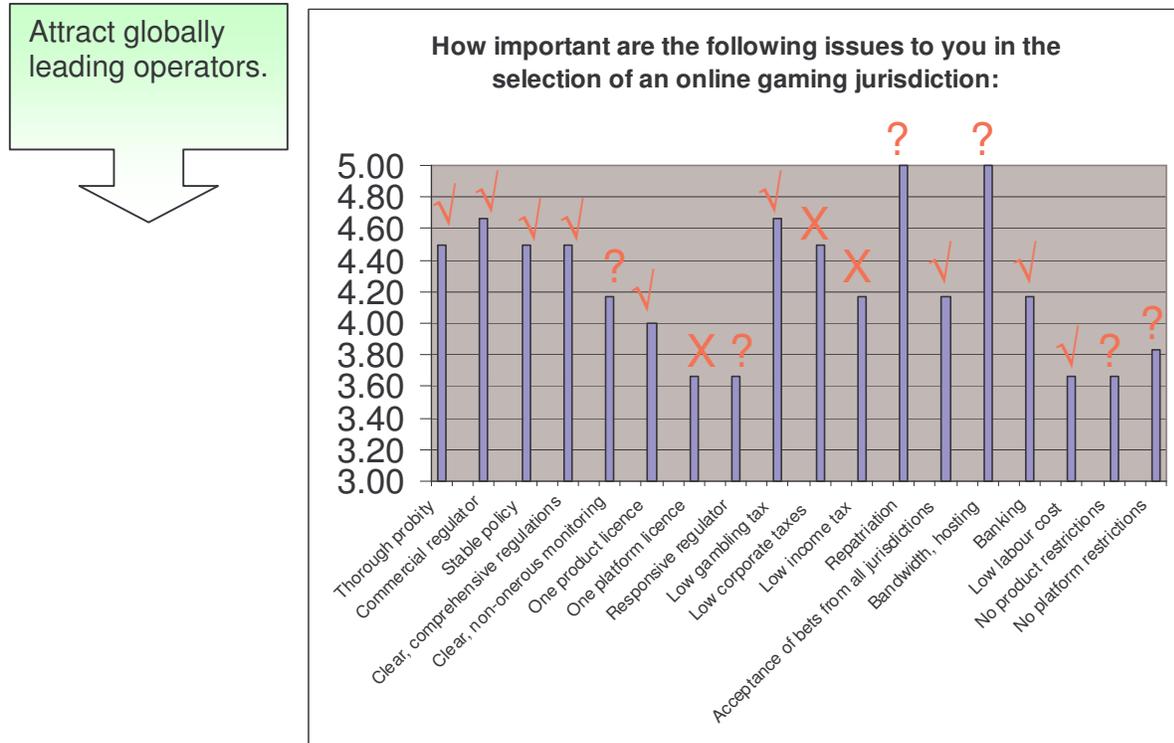


- **At what level do we consider ourselves to have a “flourishing” industry?**
 - From a slightly different perspective, we could define a flourishing industry in different ways, each of which might suggest a different regulatory approach.



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- **At what level do we consider ourselves to have a “flourishing” industry?**
 - To attract leading operators, we would have to address their needs as expressed in their answers to our survey – is this realistic?



Issues

- Can we offer what they consider to be non-onerous monitoring and still retain our reputation?
- If we exclude betting and lotteries, we can't offer one platform license.
- Given our resources, can we staff up a responsive regulator?
- We cannot influence corporate or income taxes to compete with the very low tax regimes.
- Will SA bandwidth and hosting ever be world competitive?
- Are we willing not to restrict products and platforms?

Background on Taxation and Fees

The **Alderney** Gambling Control Commission's ("AGCC") 2004 Annual Report shows licensing fees received of £1.2m (R13.9m) - based on a £75,000 annual license fee. There is no gambling tax, VAT, or corporate tax.

Application license fees per operator in **Antigua** for online gaming and sportsbetting are US\$75,000 and US\$100,000 respectively. An annual fee of \$5,000 is payable for both types of licenses. A 3% tax is payable on net win, capped at \$50,000. Total annuity licensing fees and tax is estimated to be \$1m pa.

In **Australia**, license fees and taxes differ between the various states and territories. Northern Territory, the only territory to license an online casino operator, levies a gaming tax of 4% of net win. During the half year ended 31/12/04, this casino operator (Lasseters) paid a gaming tax of AU\$280,000 (R1.4m). No corporate tax was paid as the casino made a loss of AU\$691,000.

Currently no licensing fees or taxation is payable by online gambling companies based in **Costa Rica**.

In **Gibraltar**, there are no prescribed start-up licensing fees, but there is an annual fee of £2,000. Annual fees are therefore estimated to be £30,000 pa (R350,000). The tax rate is 1% of turnover for sports books and 1% of gross profit for online casinos. Tax is capped at £287,000 pa, with 1st and 2nd year minimum amounts payable of £28,700 and £57,400 respectively.

In **IOM**, the annual wagering licence fee of £80,000 for each of the 2 licensed operators would result in income of £160,000 (R1.9m) pa accruing to the government. Online betting companies pay 10% of gross profits from bets received from IOM residents, 15% of GP from bets received from UK residents, and 1.5% of GP from bets received from any other country. Paddy Power, the biggest licensee, earned gross profit from online and telephone activities of £29m for the year ended 31/12/2004. Although this includes poker and casino activity which is not licensed in IOM, this would indicate a tax contribution in excess of £500,000 (R5.8m). Corporate tax is not applicable to online gambling operators.

In **Kahnawake**, with licensing fees of \$10,000 pa and estimated 35 operators, revenue generated will be in the region of \$350,000 pa. There are no gambling and corporate taxes.

Malta's gaming industry employs about 240 local full-time employees, pays around \$7.9 million annually in taxes, and uses about ten percent of the islands' Internet bandwidth.jurisdiction.

In the **UK**, a current gross profits ("GPT") tax of 15% is levied on remote betting, however the local remote gambling industry is strongly advocating a single rate of tax across all remote betting products. In its Position Statement, iGGBA recommends a GPT of 2%. The Report calculates that if 5% of online gaming sites locate in the UK, gambling (2%) and corporate tax (25%) could amount to £87.5m pa. To reach this amount, the Report assumes 75 sites each with £16.6m gross profit pa. These numbers are probably grossly overstated.

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In addition to gambling and corporate tax, UK rules governing VAT means that UK-based operators pay an equivalent of 3% tax on gross win before any specific gambling duty is charged.

C. APPENDICES

C.i. JURISDICTION ANALYSES

1. ALDERNEY

General comments:

- *Ranked 14th by popularity - Casino City¹²*
- *Widely regarded as the most thoroughly regulated jurisdiction for online gaming, attracting a number of well-known reputable terrestrial brand names*
- *To date has not attracted the most successful online operations (and has not necessarily targeted these operators)*
- *16 English language sites operate from this jurisdiction, the most popular being The Ritz Club and Virgin Games*

1. Regulatory Structure, Process and Infrastructure

The first legislation permitting electronic betting was passed in 1997. A cautious approach was initially adopted and an initial cap on the number of licensees was imposed, however this has since been repealed.

Following the introduction of online betting, the Alderney Gambling Control Commission (“the Commission”) was formed in May 2000 as an independent non-political organisation responsible for regulation and control of the industry. People with international experience in gaming regulation, licensing and regulatory work were appointed to the Commission, including Andre Wilsenach, an experienced regulator from South Africa, as its CEO. The Commission is now constituted by a Chairman and three members.

The Commission proceeded to review existing legislation including the Australian legislative initiatives, with a view to designing a regulatory framework which meets the highest international standards. The Commission believes the end result has achieved the objectives which were set for the Commission, i.e. to establish a well-regulated jurisdiction for reputable online gambling operators who would share in the values of operating according to high levels of competence and integrity.

The Commission has stated that its intention is to attract the relatively small number of operators who seek a comprehensive and tightly controlled regime. These are often the major gambling operators who have a brand that they wish to protect and who wish to be able to demonstrate to the relevant land-based regulators that they are subject to similar high standards when operating outside their normal jurisdiction.

The Commission’s main objectives are to ensure that:

- All gaming and betting is conducted honestly and fairly;
- The funding, management and operation of online gambling on Alderney remains free from criminal influence and exploitation;

¹² www.casinocity.com

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- Gaming and betting activities are regulated and monitored so as to protect the interests of the public, in particular ensuring that players understand what they are being offered when they take part in the gambling offered; and
- The harm that gambling and betting may cause to the public, individuals and families is minimised.

Separate enactments have been made to regulate interactive gaming and electronic betting.

The Commission voted on 28 February 2005 to allow a 'free market approach' towards online gambling. This enables licensees to not be restricted by the Commission when accepting bets from all other countries, including the US (the Commission does not see itself as responsible for enforcing the laws of other countries). This places the onus upon the licensee to ensure that he conducts his business in lawful manner and keeps abreast of the laws of the jurisdictions within which he conducts business.

After licenses have been awarded and the licensee is operational, regular and ad hoc compliance testing is conducted to ensure compliance with the approved technical standards and internal controls. This testing may be undertaken by the Commission's staff or independently appointed agencies.

Compliance testing is not limited to purely technical requirements, and also addresses compliance with financial requirements, player protection and continuing probity testing.

In April 2002, the Commission established an industry forum consisting of all licensed operators, called the Alderney Gambling Licensees Forum. The purpose of this forum is to enable regular and continuous dialogue with the licensees to facilitate ongoing compliance with the requirements. It also enables the debate of matters of common interest and facilitates communication between the Commission and the industry.

2. Definitions of Interactive Gaming

Interactive games involve games in which a prize consisting of money or anything else of value can be won, and a player enters the game by means of a telecommunication device and provides some form of consideration to enter the game. The winner is then decided wholly or partly by chance, or by a competition in which the outcome is wholly or partly dependent on the skill of the player or another person.

Electronic betting involves a customer paying an amount to an electronic betting centre to effect a betting transaction. A betting transaction occurs where one of the parties to the transaction acts as a bookmaker, and an electronic betting centre is an operation conducted in approved premises by which the transactions are effected remotely by customers by means of the internet or some other telecommunications medium.

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The Commission is of the view that the gambling transaction takes place where the gaming server and database are based, hence a requirement that gaming servers are based within the Commission's regulatory jurisdiction. Licensees may not offer a lottery.

3. Licensing

a. Types of licenses

3 types of online gambling licenses are available:

- An Electronic Betting Centre Licence;
- An Interactive Gaming Licence; and
- A Certificate of Prior Approval.

The Interactive Gaming Ordinance provides for the issuing of a Certificate of Prior Approval to gaming system vendors, and in this regard a distinction is made between two categories of suppliers of interactive gaming equipment, namely:

- A person who both supplies the gaming software and who offers a turnkey solution, where the casino owner is responsible for the marketing of the casino, but the day to day operation of the games is performed by the supplier on the owner's behalf. In terms of the Ordinance, only the holder of an interactive gaming license is authorised to play interactive games. Therefore, a system supplier in this category will be required to obtain an interactive gaming licence; and
- A person who acts as a system vendor, only, and takes no active part on in the operation of the games. This type of supplier is considered as a business associate of an interactive gaming licensee (or applicant for an interactive gaming licence) and, as such, is required to pass probity checks to ensure that the company is fit and proper to be associated with the operations conducted by an interactive gaming licensee. This supplier may apply for a Certificate of Prior Approval.

5 companies have currently been issued Certificates of Prior Approval.

b. Licensing process

An applicant for a license must be resident on Alderney, which means that either an individual must reside in Alderney or, if a corporate application is made, the company must be incorporated in Alderney. A company must also appoint a nominee resident on the island who is approved by the Commission and answerable to the Commission and its inspectors.

The regulatory framework has 3 main components:

- Licensing;
- Technical compliance; and
- Internal controls.

Licensing

The main objective of licensing is to ensure that the company, its shareholders, key personnel and associates and its sources of funding satisfy appropriate

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probity tests. The probity investigation is not limited to the applicant company and its key personnel, but is also extended to the system provider. The application for a license requires the completion of the following 3 forms:

- Formal Application to the Commission;
- Corporate Declaration Form, including information such as ownership of the applicant company and of all related companies, and sources of funds;
- Key Person Declaration Forms, including personal history with particulars of previous employment, relevant experience, financial circumstances etc.

The persons who are deemed to be 'key personnel' are the following:

- CEO and persons reporting to the CEO;
- The company's nominee;
- Other decision makers within the company;
- Directors and significant shareholders (>3%);
- Persons who have 'root level' access to computer systems and / or those who are able to influence the outcome of a game or customer accounts;
- Directors and executives of the companies that supply back-end gambling software;
- All employees and associates of software testing companies who have access to either operations or gambling system software and security;
- Any person concerned with the financial arrangements and / or promotion of the facilities of the operation.

If the outcome of probity tests is satisfactory, then the applicant and the key personnel are awarded licenses conditional upon the approval of both their operating and gambling systems, as well as their internal controls.

Technical compliance

The Commission provides a set of technical standards to which the prospective licensee's software is tested. Following the granting of a license, the licensee must submit its software system to an independent testing authority, accredited by the Commission.

These technical standards provide for the security and integrity of the gambling activity, system requirements, interface requirements and player protection. In order to assist applicants and licensees, the Commission has developed a set of standards contained in its 'Guidelines for Control System Submissions'. The Commission will participate in the discussions to determine the scope of testing to be undertaken, however the contractual relationship for the testing is between the applicant and the testing agency. All costs related to testing are for the applicant's account.

Following approval and certification of a licensee's system, the licensee must submit all material changes to the Commission for approval. The Commission is conscious of the commercial realities of an online business and endeavours to deal with any changes efficiently and pragmatically.

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Internal controls

Prior to commencing operations, licensees are also required to have a 'control system' approved by the Commission. This Control System Submission ("CSS") will provide for all the internal controls and operating procedures relevant to the day to day running of the business. The purpose of this is to ensure that licensees adhere to sound internal controls and operating procedures, thereby minimising risks associated with physical security of information, service levels, financial accounting, player protection, and money laundering.

4. Player protection and regulation

a. Fair gaming rules and standards

Players participating in an authorised game must comply with the rules of the game under the conditions on which the game is authorised by the Commission.

The site should have a schedule available to players that provides information on the statistical return to the player. Player return for a game should be shown demonstrably, as well as theoretically, to be no less than the required published regulatory minimum for that game.

Games should not be designed to give the player a false expectation of better odds by falsely representing any occurrence or event. Games that are designed to give the player the perception that they have control over the game when they clearly do not (i.e. the game outcome is fully random) are not permitted.

b. Advertising

Advertising requirements are set out in an appendix to the Control System Guidelines. The following is included:

- Advertising is to be truthful;
- Advertising should not bring the Commission into disrepute;
- Advertising should not target people below legal gambling age;
- Marketing and advertising should not encourage excessive participation;
- Direct marketing and pyramid schemes are not permitted;
- Advertising should not challenge or dare people to participate.

c. Player registration and information

Only players registered with the licensee are permitted participate in an interactive game. The licensee may only register the player once an application for registration in an approved form has been received from the player. A person is not eligible for registration unless evidence of a kind required by the Commission is produced:

- of the players identity and place of residence; and
- that he is at least 18 years of age.

Player access to the site must involve at least a user ID and a password.

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Prizes won by minors will be forfeited and paid to a charity nominated by the Commission.

The licensee may not register one of his employees or an employee of a business associate (whether a key personnel licensee or not) as a player.

A player can only have one active account at any time within a licensee's system.

d. Player funds management

The licensee must, at the request of a player, remit funds standing to the credit of the player as directed by the player no later than the first business day after the request is received.

The licensee has no recourse to the funds in a player's account except to debit the account when the player makes a wager, or to remit funds standing to the credit of the account to the player at the player's request, or otherwise authorised under the Ordinance.

Player wins must be immediately credited to the player's account.

Player funds must be maintained in an account which is separate to the funds of the company.

Payments from a player's account are to be paid directly to an account with a financial institution in the name of the player, or made payable to the player and forwarded to the player's address. The name and address are to be the same as that held in the registration details.

Any funds left in an account that is to be de-activated are to be remitted to the player.

Credit may be granted to certain players under approved circumstances. Player accounts may not be overdrawn or exceed their credit limit.

The CSS must set out procedures for dealing with dormant customer accounts where there is either a credit or debit balance, and identify how an account will be designated dormant and how these players will be found in the event that they are no longer at their registered address.

If a prize or winnings is not claimed within 5 years after the last betting activity, the entitlement to the money is extinguished and the money is forfeited to the Commission.

The CSS must identify the procedures by which a customer may be excluded. This should specify the reasons why such customers should be excluded, the notification procedures to those customers and the method by which their account is closed.

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e. Addiction management

i. Player protection information

The player protection page on the operators website must include the following:

- Advice that the site provides information on problem gambling and a link to that advice;
- A list of the player protection measures that can be invoked by the player (session time limit, bet limit, etc.) and an option to enable the player to invoke those measures;
- A link to an industry accepted and simple 'self-assessment' process to determine at risk potential;
- Links to problem gambling services;
- Links to a recognised filtering programme to enable players to configure their computers with an intent to prevent access by minors.

The player protection page should be readily accessible from any screen where game play may occur.

ii. Limitations on activity

Players may, by written notice to the licensee, set a limit on their gaming activity. These limits may be set in relation to the amount a player:

- may deposit during a period of time specified in the notice;
- may lose by way of a maximum amount that may be lost over a number of games, or during a period of time;
- may wager.

The limits may be set:

- in relation to a game or any number of single games;
- by way of a maximum limit that may be wagered over a number of specified games or played during a specified time; or
- at zero.

A player may change or remove a previously set limit by submitting written notice to the licensee, and a change increasing or removing a limit shall not have effect unless 7 days have passed since the notice was received by the licensee, and the player has not notified the licensee of his intention to withdraw the notice.

A notice reducing a limit is effective when the notice is received by the licensee.

Players should be provided with the option of selecting the duration of a session. If a selection is not made, the default session duration is to be set at one hour. Effectively this means that the player session is to be terminated after the conclusion of the game that may be being played as the session expires.

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During a session, after each hour (and at the end of the game being played as the hour expires), a message should appear on the screen clearly advising the player that they have been playing for one hour plus the total hours already elapsed in the session. The player should physically acknowledge this to continue gambling.

The default and minimum game play duration value is to be 3 seconds.

iii. Player self-management procedures and obligations

Players are to be informed that they can apply to the Commission for self-exclusion from all play. Self-excluded players may also apply to the Commission for revocation of an exclusion order. The licensee is to ensure that once a self-exclusion order has been issued, the licensee immediately ceases to accept bets from that person.

The Commission may issue an order prohibiting a player from participating in a game on the application of a person who satisfies the Commission of a close personal interest in the welfare of the person against whom the prohibition is sought.

Information regarding the procedures for self-exclusion directly through the Commission is still being prepared and is not publicly available.

5. Gaming rules and procedures

a. Prizes

The CSS must include procedures for identifying unclaimed prizes and winnings, and the steps taken to make a legitimate payment to the correct player. There must also be procedures for the remittance of unclaimed amounts to the Commission for distribution to a nominated charity.

b. Aborted games

Malfunction of equipment will result in the voiding of the game bets and the return of affected bets. The licensee is required to report all malfunctions to the Commission.

The gaming system must provide a mechanism for a player to complete an incomplete game before a player is permitted to participate in any other game. Upon reconnection by the player, the system is to present the player with the incomplete game for completion.

c. Complaints procedure and rules

The licensee's website must have a player protection page which includes an easy and obvious mechanism to advise the player of the right to make a complaint against the licensee, and to enable the player to notify the Commission of the making of such a complaint. This should include a link to the Commission's home page.

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In respect of player complaints, the Commission invites aggrieved players to submit their complaints directly to the Commission's Chief Executive.

6. Anti-Money Laundering Procedures

The licensee must take all possible steps to prevent its services being used for money laundering purposes, and licensees must comply fully with the procedures laid down by the Commissioner in respect of:

- Identification of players;
- Keeping of records;
- Identification of suspicious transactions;
- Making payments to players;
- Training of staff; and
- Appointing a senior member of staff to act as its money laundering reporting officer.

7. Commercial environment

a. Operator fees and taxes

Online gaming and online sports betting licenses each cost £75,000, valid for three years. The applicant must pay the cost of all investigation required for the issuance of a license, and a £15,000 deposit is required at the time of application.

A Certificate of Prior Approval costs £30,000.

Software systems compliance testing is required, and is the responsibility of the licensee. This cost can potentially be considerable (believed to exceed £150,000).

Most licensees are able to negotiate exempt status for all corporate taxes (by electing to pay instead a flat fee of £600 per annum irrespective of profits).

In Alderney there is no Value Added Tax, no tax on capital gains, and no gaming and betting taxes.

Residents are subject to a maximum tax rate of 20%, and enjoy generous personal allowances.

b. Financial restrictions

There are no foreign exchange controls or restrictions on repatriation of funds.

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c. Enabling factors

i. Legal and political environment

Alderney, which is part of the British Channel Islands, is a self-governing democratic territory and one of the principal islands of the Bailiwick of Guernsey. The island is outside the EC and is a British offshore finance centre. The United Kingdom looks after the Channel Islands in the areas of foreign affairs, defence and their association with the EU.

The Legislature is a stable, experienced parliamentary body which actively embraces the development of online gambling. Alderney has its own independent judiciary, and English law applies.

ii. Technical infrastructure

In May 2005, the Commission announced that it would be introducing legislation to permit online gambling licensees to locate their servers permanently in Guernsey, extending the Commission's jurisdiction to regulate online gambling transactions taking place in Guernsey. This decision followed concerns expressed by prospective and existing licensees over the telecoms infrastructure in Alderney, and specifically over prospective constraints arising from the increasing requirements for bandwidth, speed and security associated with multi-player games.

The telecoms infrastructure in Alderney, consisting of a microwave link, will now be complimented with direct access to the Guernsey infrastructure, which is linked by way of multiple fibre optic cables to both France and the UK over an SDH (Sonet) system. This will provide total bandwidth availability in the terabit range, and provides a backup solution to the single telecoms mast in Alderney.

Cable and Wireless offers hosting, managed services and business internet services in Alderney.

iii. Banking and financial support

Full commercial banking facilities are available from major international banks.

iv. Labour

There are only about 2,400 people resident in Alderney, however the workforce is skilled and highly computer literate. Alderney also has a considerable number of specialists in the areas of banking, law and accounting.

2. ANTIGUA AND BARBUDA

General comments:

- *Ranked 4th by popularity - Casino City¹³*
- *36 operators with 429 sites*
- *Antigua and Barbuda was one of the first jurisdictions to formally adopt regulations for online gaming*
- *At one stage there were over 100 licensed operators, but this has declined due to operators leaving for jurisdictions with less stringent regulations, as well as the termination of numerous licenses held by operators who could not meet Antigua's revised regulatory standards*
- *The jurisdiction is considered to have well drafted regulations, which do not appear to overly constrain the operators' ability to remain globally competitive. It is not clear how actively the regulations are being enforced.*
- *The largest site is Sportingbet, a UK listed company, while most of the other large sites are casinos*

1. Regulatory Structure, Process and Infrastructure

In the mid 1990's, Antigua recognised the economic potential of offshore gambling and included it as a free-trade-zone industry, such that it was not subject to local licenses, taxes and import duties.

In 1999 the government created the Directorate of Offshore Gaming, which is a regulatory body responsible for the oversight of all aspects of the offshore gaming industry in the country. The operations of the Directorate are split as follows:

- The area of technical administration and enforcement deals with the collection and analysis of all information required to establish the ongoing fairness of gaming software and the accurate recording of revenues for every licensee.
- An administrative arm is responsible for the processing of applications, revocation of licenses and facilitation of operators. This department also deals with the preferred licensee program and operation of the toll-free numbers, which allow direct access to the Directorate by players. This facility allows for the registration of complaints and enquiries as to the license status of operators in the jurisdiction.

On 1 June 2001, amended regulations were passed with improved player protection measures and anti-money laundering controls.

In December 2002 new I-gaming regulations were again adopted, further strengthening policies related to money laundering, underage gambling and player protection. The Directorate of Offshore Gaming then became part of the International Financial Sector Regulatory Authority, which regulates the offshore industry in Antigua and Barbuda, and includes banks, insurance companies and trusts. The FSRC is a government statutory

¹³ www.casinocity.com

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body, with an independent Board of Directors falling under the portfolio of the Ministry of Finance and the Economy.

All internet gaming companies are now classified as 'financial institutions' and are subject to annual on-site inspections to ascertain their compliance with relevant laws, regulations and international standards. These inspections include determining financial safety, soundness and solvency.

The regulatory framework for gaming companies has been provided in the 1982 International Business Corporations Act (the IBC Act) and the Interactive Gaming and Interactive Wagering Regulations (IGIWR). The regulatory regime comprises a three pronged focus on money laundering prevention, player protection and industry enhancement.

2. Definitions of Interactive Gaming

Licenses are granted separately for interactive gaming (games such as roulette, blackjack, other percentage games played with cards, dice or any device or machine for money, and games such as keno, bingo and lottery), and interactive wagering (e.g. sports betting and spread betting).

3. Licensing and Operator Monitoring

The process of establishing an Interactive Gaming Operation (online casino) or Interactive Wagering Operation (online sports book) is fairly straightforward. In order for the Division of Gaming to ascertain the background and qualifications of all proposed investors, the following process has been established by which qualified applications may be granted a license to operate their company:

- Submission of 'Schedule A' – This document is an application for an interactive gaming or wagering license, and requires personal and business details of the applicant, including investment amounts, corporate structure, list of investors, names of directors, etc.
- Submission of 'Schedule B' – Detailed business entity information, to be completed by the controlling business entity seeking to obtain the license
- Submission of 'Schedule C' – A personal information package, which must be completed by each director, partner and CEO of the applicant business entity, key persons, and shareholders with five percent or more ownership (an annual renewal application package must also be completed by each of these individuals).

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Applicants must provide a non-refundable deposit of US\$10,000 plus US\$1,000 per key person with their application. If the investigation expenses exceed the deposit amount, the applicant must provide an additional deposit as required by the Directorate of Offshore Gaming.

The authorities undertake to promptly consider all applications, and within 30 days either grant a license, deny the application or request further information.

Software providers do not require a license, however a supplier that has a contract with an license holder must provide the Authority certain particulars if the supplier receives a percentage of the winnings of the license holder.

License holders must report to the Authority any material change to the information provided for the purposes of an application (e.g. changes to the directors, a reduction in financial resources) and this must be approved by the Authority.

License renewal applications must be made annually.

Licenses may be suspended or revoked under specified circumstances, such as the license holder no longer being suitable to hold a license or if the license holder has contravened a material term or condition of the license.

No sub-licensing is permitted.

Conditions of license

In order for an applicant to be considered suitable to hold a license, the following criteria (amongst other things) must be satisfied:

- The applicant's good character, honesty and integrity;
- The applicant's good business reputation, sound current financial position and financial background;
- The applicant has arranged, or is arranging, a satisfactory ownership, corporate or other business structure;
- The applicant has, or is able to obtain, appropriate resources and is able to maintain minimum required reserves as established by the Board in order to ensure that the players shall have winnings paid and deposits returned;
- The applicant has the appropriate technical ability to conduct interactive gaming or interactive wagering;
- The applicant has the appropriate business ability to conduct interactive games under an interactive gaming or interactive wagering license;
- The applicant is committed to maintaining a physical presence in Antigua and Barbuda;
- The applicant shall take appropriate measures to eliminate any pornography on a licensed site;
- The applicant shall take measures to discourage a compulsive gambler from utilising a licensed site;
- The applicant is in the Authority's opinion untainted with illegality;

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- The applicant shall follow policies and take affirmative steps to prevent money laundering and other suspicious activities;
- The applicant must prohibit underage gambling.

Place of operation

The license holder may not conduct authorised gaming from premises outside of Antigua and Barbuda, unless this is disclosed to the Authority and it's done pursuant to a license from the other jurisdiction.

The license holder must have its gaming server located in Antigua and Barbuda.

Control systems

The license holder must have sufficient control systems in place to prevent suspicious transactions in connection with receiving and withdrawing money illegally obtained.

The control system must also address accounting systems, administrative systems, computer software, the procedures for recording and paying prizes, and the procedures for maintaining security facilities.

Any changes to the approved control system requires approval from the Authority.

Approved equipment

The interactive gaming equipment (which includes the gaming software) must be satisfactorily tested by an approved testing agency. This also applies to modification of the equipment. This certification must include a declaration by the testing agency that the software is fair and reliable.

The approved gaming equipment must be situated at the approved premises of the license holder.

Age verification

The license holder may not allow a person under the age of 18 to participate in the operations. Persons under the age of 18 may not participate in the games, and any underage person's winnings must be forfeited to the Authority.

Responsible gaming

The site homepage must display a warning of the possibility of gambling addiction, and information on other sites available to assist problem gamblers. A player must be able to request self-exclusion via a telecommunications device, and the player can revoke their self-exclusion with 7 days' notice.

Player registration

The player registration form must be approved by the Authority, and must include the player's birth date and place of residence. The player's identity must be authenticated by the license holder before the player can participate in a game.

Granting of credit

No credit may be provided to players.

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Approved payment methods

The license holder may not accept cash from a player. Credit cards, debit cards, electronic transfer, wire transfer, cheques and any other payment mechanism approved by the Authority are permissible.

Withdrawals

Withdrawals in excess of US\$5,000 require satisfactory evidence of the player's age, place of residence and identity. Winnings, where possible, must be made to the same account from which the funds originated, otherwise the funds must be mailed to the player's validated address.

Payments should be remitted to players within 5 business days unless there is suspicious activity.

Payments to players over US\$25,000 must be reported to the Supervisory Authority.

Dormant accounts

If there has been no activity on the player's account for more than 18 months, then the funds should be remitted to the player.

Confidentiality of player information

The license holder may not disclose, without authorisation, any information about the name or other identifying particulars of a player, or use information about a player for a purpose other than the purpose for which it was given (unless the information is required for the administration or enforcement of the regulations, or if related to an official investigation).

Gaming and accounting records

The Authority may approve a place where the license holder must keep the gaming records.

The license holder must keep accurate accounting records, and prepare financial statements which are properly audited. The audit must be completed by a certified public accountant within 3 months of the company's year end.

Bank accounts

The license holder must keep an account with an approved financial institution, and the account must not be used for any other purpose than for which it was approved.

Prizes

Winnings must be immediately credited to the player's account.

Aborted games

Where games are interrupted due to a failure of the communications device, then the wager must be refunded to the player, or the game must be resumed without detriment to the player.

Advertising

Only authorised games may be advertised, and the license holder must ensure that the advertisement is not indecent, pornographic or offensive, false, deceptive or misleading, or intended to specifically appeal to minors.

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Player complaints

The license holder must respond to player complaints within 21 days. The player may also use dispute resolution services provided by approved organisations such as the IGC, and the IGC's ruling will be binding on the license holder. If the 3rd party organisation's decision is unacceptable to the player, then the player may appeal to the Authority.

Duty to report dishonest or unlawful acts

If the license holder has a reasonable suspicion that a person has obtained a benefit from an unlawful or dishonest act, then this must be reported to the Authority within 24 hours.

This also applies to fraudulent or suspicious transactions which may involve money laundering.

Inspectors

An inspector may, without consent of the license holder, enter the place where the license holder carries on business, at any time when the place is open for business.

For the purpose of monitoring or enforcing compliance with the regulations, the inspector may (pursuant to a warrant issued by a magistrate) search any part of the license holder's premises, copy documents, and remove items.

4. Transaction processing and financial flows

All internet gaming companies are classified as 'financial institutions' and are subject to all the Anti-Money Laundering (AML) and Caribbean Financial Action Task Force (CFATF) requirements of the jurisdiction.

In 2001 the country was removed from the Financial Action Task Force's list of uncooperative jurisdictions, ultimately leading to the US and UK treasuries lifting financial advisories against doing business there.

The IMF carried out an evaluation of the jurisdiction's international banking sector in February and March 2004, and in its report the IMF found Antigua and Barbuda compliant, or largely compliant, with the Basel Core Principles (largely considered as the international standard in banking supervision).

5. Commercial environment

a. Operator fees and taxes

The annual license fees for online gaming and sportsbetting are US\$75,000 and US\$100,000 respectively.

Key person licenses are US\$1,000 for the first year, and US\$250 annually thereafter.

An annual fee of \$5,000 is payable for renewal of the online gaming and sportsbetting licenses.

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A 3% tax is payable by operators on their 'net win' which is defined as the difference between the gross stakes laid and the winnings paid out.

Operators are entitled to deduct software licensing or software development costs from this amount, capped at no more than 40% of the net win. Operators are also entitled to deduct charge backs on credit cards for a period up to 18 months after the original charge was made.

Operators are entitled to a maximum cap of US\$50,000 per month on taxes and the Commissioner of Inland Revenue would have no interest in the books of entities that pay the full cap.

Capital gains are not subject to tax.

Resident individuals are not assessable for personal income tax.

Systems compliance (testing) costs are believed to be negligible.

b. Financial restrictions

The government allows foreign investors to repatriate all capital royalties, dividends and profits free of taxes or any other charges on foreign exchange transactions.

c. Enabling factors

Antigua and Barbuda welcomes foreign investment, and provides a hospitable environment and generous incentives to online gaming companies to encourage such investment.

At one stage internet gaming revenues represented 10% of the jurisdiction's GDP, and employed as much as 3,000 locals. This motivated the Government in conjunction with its telecoms partners to make a substantial investment to increase the infrastructure to meet the industry's demands, both current and future.

Various hosting facilities now exist in Antigua and Barbuda, including competitive hosting by various telecommunications and proprietary providers. The jurisdiction has high speed fibre optic services from Cable and Wireless, and satellite communications from various providers.

The government grants work permits and the necessary residential status to all expatriates who are key to a company's operations.

Other factors conducive to a favourable operating environment are as follows:

- English speaking
- Good labour relations
- Political stability, based on a parliamentary democracy
- Currency tied to US dollar
- Hundred percent foreign ownership permitted
- Full commercial banking services available from international banks

3. AUSTRALIA

General comments:

- *Ranking by popularity - Casino City¹⁴*

State / Territory	Ranking	English Sites	Casinos	Sportsbooks / Racing	Lotteries
<i>Northern Territory</i>	<i>9</i>	<i>13</i>	<i>3¹⁵</i>	<i>9</i>	<i>1</i>
<i>Australian Capital Territory</i>	<i>27</i>	<i>1</i>		<i>1</i>	
<i>Western Australia</i>	<i>28</i>	<i>2</i>		<i>2</i>	
<i>New South Wales</i>	<i>32</i>	<i>3</i>		<i>3</i>	

- *No Australian state or territory has been successful in attracting substantial online casino operators - Lasseters Online Casino, the largest online casino licensed in Australia, is only the 218th most popular internet gambling site – Casino City.*

1. Regulatory Structure, Process and Infrastructure

1. Style, format, philosophy, objectives and jurisdictional scope of regulation

Australia’s Commonwealth (federal) constitution does not permit the Commonwealth to expressly regulate gambling. Regulation takes place at the state and territory government level.

Australia has been taking steps to regulate online gambling since 1997, and current Commonwealth legislation is contained in the *Interactive Gambling Act 2001* (“the IG Act”), which prohibits a person from providing an internet gambling service to Australian residents and to certain ‘designated countries’¹⁶. The IG Act does not cover sports betting, wagering and lotteries, and therefore these services on the internet are not prohibited or regulated by Commonwealth legislation. These services may then be regulated through state and territory legislation.

Therefore in Australia two types of regulatory models apply to internet gambling – one for internet gaming (including internet casinos and interactive games) and another for internet wagering, sports betting and lotteries.

The IG Act is not directly concerned with people accessing internet gaming products, but rather it requires both interactive gambling service providers licensed in Australia and Australian internet service providers (“ISP’s”) to implement measures to prevent end users in Australia from accessing, and

¹⁴ www.casinocity.com

¹⁵ All three sites are owned by one operator – Lasseters Corporation

¹⁶ No foreign countries have currently been designated. In order for a country to be designated, the government of that country must request a designation under the IG Act from the minister, and there must be legislation in force in that country that corresponds to the main offence provision of the IG Act.

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being able to access, internet gaming services. The prohibition to provide Australian end-users with access to internet gaming services extends to foreign operations, and there are self-regulatory and mandatory obligations for Australian ISP's to help block these services.

Where an activity is not prohibited by the IG Act, it is permitted. Therefore licenses to provide interactive gaming services can still be issued by the states and territories, in accordance with the relevant regulations of these jurisdictions. These licenses can only apply to the provision of interactive gaming services to off-shore players.

Online wagering (including sportsbetting and horseracing) is not prohibited by the IG Act, however internet bets may only be accepted before an event has started (i.e. betting 'in-running' is prohibited). In certain cases, existing state and territory legislation relating to wagering, sportsbetting and lotteries has been amended to enable these traditional forms of gambling activities to include provision over the internet. Most states and territories provide a licensing regime for wagering, sportsbetting and lottery operators.

New South Wales, South Australia and Western Australia have not enacted specific legislation for the regulation of internet gaming. Victoria, Queensland and the Australian Capital Territory ("ACT") have specific legislation governing internet gambling, whereas only Northern Territory ("NT") and Tasmania have specific regulations for this activity. NT and Tasmania are of the opinion that online gambling cannot effectively be prohibited due to the ease with which Australians can access the sites, and consequently they have sought to regulate and control the activities rather than prohibit them. Of course, there is also the benefit of increased taxation revenue.

For the purposes of this report, only the NT regulations (in conjunction with the IG Act where applicable) will be examined for the following reasons:

- Only NT and Tasmania have regulations for internet casinos, but only NT currently has a licensed internet casino operator;
- Although most states and territories have licensed Internet wagering, sports betting and lotteries, the applicable regulations are enshrined in existing 'land-based' legislation which has either been slightly amended or not amended at all (i.e. these amendments have in general terms applied to the regulations for telephone and physical wagering/betting).

Northern Territory regulations

In NT, the *Gaming Control Act* has been amended to include a section regulating internet gaming, called the *Gaming Control (Internet Gaming) Regulations*. In addition, restrictions applying to each operator are contained in individual agreements between the territory and the relevant operator.

The licensing of bookmakers is regulated via the *Racing and Betting Act*, which makes it an offence to conduct business as a bookmaker without a license.

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2. Identity, staffing, mandate and powers of regulator/s

The NT Treasury includes a Licensing Commission, which is an independent statutory authority with the power to regulate and enforce the Territory's legislation.

The Licensing Commission is comprised of a Chairman and 5 members, and is supported by the Racing, Gaming and Licensing Division which has two branches:

1. Policy and Legislation, which is responsible for strategic policy and legislative advice and formulation, data and information, and administration of the Community Benefit Fund;
2. Operations Branch, which manages all licensing matters and the daily enforcement of relevant legislation. Functions include audit and compliance checks, assessment of licence applications, complaint and dispute handling, and monitoring the technical quality of gambling systems.

2. Definitions of Interactive Gaming

Interactive gaming services are defined in the IG Act and include gaming services provided over the internet. Gaming services include games of chance and games of mixed chance and skill. Examples include roulette, poker, craps, online 'pokies' and blackjack.

4. Licensing and Operator Monitoring

1. Role players requiring licensing

- Operators

Internet gaming operators require an internet gaming licence which is granted under the IG Act.

- Key Personnel

Those persons performing key duties must hold internet gaming key employee licenses. Key duties and functions include:

- Occupying or acting in a key position, or carrying out a key function, in relation to the internet operations;
- Being in a position to control or exercise significant influence over the operations; and
- Occupying a position designated in the approved control system as a key position.

A person without a key employee license that performs key duties will incur a penalty of AU\$2,000.

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Key employee licenses are valid for 5 years.

- Software providers

Licensing of software providers is not required.

2. Limitations on number of licenses (by role player)

There is no level of exclusivity for existing licensees.

3. Licensing process and application costs

There is no fixed application cost, and this is negotiated on an individual basis with the applicant.

No application forms are available on the Treasury website, and no mention is made of these forms or process. This is probably a result of the policy of a negotiation process between the licensee and the Director. Due to the limited interest by online casino operators in obtaining an NT license, there has probably been little need to formalise the process.

4. Conditions of license

- Operator reporting requirements

1. Approval of control systems

The licensee's control system must be approved. The control system includes accounting systems, administrative systems and procedures, computer software and hardware, procedures for maintaining the integrity of data, the structure of the organisation, and measures for securing all data, equipment and premises. If games are not conducted under an approved control system, there is a penalty of AU\$2,000.

Approved control systems may only be changed with the approval of the Director of the Racing, Gaming and Licensing Division.

The Director may also instruct the licensee to change the approved control system in a specified manner.

2. Audits

Licensees are required to ensure that financial statements and accounts are properly audited. The audit must be conducted in accordance with the approved control system, at the licensee's own expense. Permissible auditors are specified in the *Corporations Act 2001*.

3. Reports and maintenance of records

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1. Gaming activity

Gaming records must be kept and the licensee's public office or at a place specified by the Director. These records must be kept for a period of 7 years.

2. Financial and accounting

The licensee must maintain accounting records which correctly record the transactions in relation to, and the financial position in respect of, operations conducted under the licence. Financial statements must be prepared which provide a true and fair view of the financial operations.

3. Financial institution accounts and transactions

Licensees must keep an approved account or accounts with an approved financial institution, for use for all banking or similar transactions in relation to the operations conducted under the license. There is an AU\$2,000 penalty if the account is used for a purpose other than that for which the account is approved.

- Technical compliance and game testing

Internet games can only be conducted under an approved computer system. Both new systems and changes to existing systems must be approved. The licensee is liable for the costs of evaluating the system. There is an AU\$2,000 penalty if games are offered on a non-approved computer system, or changes are made to the system without prior approval.

5. Period of validity of licenses (by role player)

Licenses for internet gaming, sports books and wagering are valid for five years.

5. Player protection and regulation

1. Fair gaming rules and standards

Players must comply with the rules of the game specified at the internet site at which the game is conducted by the licensee. Persons may not, without the Director's authorisation, interfere in the proper conduct of the game.

2. Advertising

The IG Act makes it an offence to publish or broadcast advertisements for interactive gaming services in Australia (including via the internet, print media and billboards). This prohibition does not attempt to extend to advertisements in magazines published overseas or on websites not aimed specifically at Australian audiences.

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3. Player registration and information

Only registered players may participate in internet games. The player must submit a registration application in an approved form. Persons cannot be registered if they have provided false information.

The licensee or an employee or other person engaged in duties related to the conduct of a game may not disclose information about the name or other identifying particulars of a player, or use information about a player for a purpose other than the purpose for which the information was given.

The disclosure of information, or its use for a purpose other than the purpose for which it was given, is permitted if authorised by the player, is reasonably necessary for the conduct of games, is a requirement for the administration of the IG Act or these regulations, or required otherwise by law.

4. Player funds management

- Access to player funds and information

The licensee must not deal with the players' funds except to debit the player's account when a wager is made, to remit funds to the player at the player's request, or as specified in the licensee's approved control system.

- Adequacy of funds to cover exposure

Wagers cannot be accepted unless there are adequate funds in the account to cover the amount of the wager.

The licensee must not provide credit to the players. If a player makes a payment by means of a credit card, the licensee must ensure that the payment does not exceed the amount specified for the player in the approved control system.

- Operator obligation to repay

Payment to players may only take place once the player's identity, age and place of residence have been verified under the approved control system.

Funds in a player's account must be remitted to the player as soon as practicable after receipt of the request to repay funds is received from the registered player. Funds can only be remitted in an approved manner. The licensee may take such time as is reasonably necessary to ensure that:

- The player is a registered player;
- The games played have been verified;
- Security and other internal procedures in relation to the player are conducted; and

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- The rules applicable to the awarding of prizes have been compiled with by the player.
- Limitations on holding inactive funds

If no transaction has taken place on the player's account for 6 months, then the licensee must comply with the approved procedures for determining the player's intentions in relation to the account.

5. Addiction management

- Player screening requirements

Minors must not be allowed to participate in the games offered by the licensee, and the licensee must take all reasonable steps to restrict access by minors. There is an AU\$2,000 for contravention of this requirement.

If the licensee suspects that a player is a minor, then the licensee may withhold payment of winnings until such time that the player has submitted proof that he or she is an adult. A prize won by a minor is forfeited to the Territory.

- Player self-management procedures and obligations

A player must be able to set a limit on the amount to be wagered within a specified period. Notice can be electronic or written. The player can also revoke the limit by electronic or written notice, but increasing or revoking the limit will only have effect after 7 days of receiving the notice. It should be noted that 'wager' here means the amount wagered from the player's funds deposited into the account, and does not include any winnings generated from the wager.

Players must be able to notify the licensee if they wish to permanently deregister. Deregistration must take place as soon as possible, and within 24 hours of receiving notice. Deregistered players can only be re-registered with the approval of the Director. There does not appear to be a requirement to enable players to self-exclude for shorter periods.

6. Gaming rules and procedures

1. Prizes

If a prize is won by a player, then the licensee must as soon as practicable pay the prize to the player by crediting the player's account. But before crediting the player's account, the licensee may take the time necessary to verify the player's registration as a player, verify the operation of the game concerned, conduct security and other internal procedures in relation to the player and his or her account, and ensure that the rules relating to the award of prizes have been complied with.

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If a claim is made for a prize within 5 years of the end of the game, then the licensee must immediately try to resolve the claim. If the prize is not claimed within 5 years, then the player has no entitlement to the prize.

2. Aborted games

Games that are interrupted due to a failure of the communications system or the player's computer system must enable the player to resume his participation when the system is restored, in the same state as immediately before the interruption.

If the game cannot be continued, then the game must be terminated in accordance with the approved control system, and the player's wager must be refunded to the player's account.

If a game fails due to the licensee's computer operating system, then the licensee must refund the wager to the player, immediately report the failure to the Director, and must not conduct a further game if the game is likely to be affected by the same failure.

3. Complaints procedure and rules

No specific processes or facilities appear to be provided for dispute resolution, however the regulations do cater for occurrences where a player is unable to resolve a claim for a prize with the licensee. The player may ask the Director to review a decision by the licensee in respect of the claim. The Director may then carry out investigations to resolve the matters in dispute, and will determine whether or not the prize is to be given to the player.

7. Transaction processing and financial flows

Players' funds must be provided in a way that is approved by the Director. Foreign exchange controls do not exist. The regulations make no mention of anti-money laundering controls.

8. Commercial environment

1. Taxation

- Operator fees and taxes

1. Licensing, other fees and gambling taxes

Application, licensing and renewal fees are all negotiated on a case by case basis, which will be applied depending on the applicant's scope of business and assessed credentials.

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Racing bets are taxed at 1.55% of turnover if they originate in Australia, and 0.5% for off-shore bets. Sports betting is taxed at 0.5% of turnover if originating in Australia and New Zealand, and 0.25% for other off-shore bets. Online gaming (Lasseters Corporation) is currently taxed at 4% of net gaming win.

Systems compliance testing is estimated to cost US\$100,000.

2. Corporate taxes

Resident companies in Australia are taxed on world-wide income from all sources, at a tax rate of 30%.

2. Financial restrictions

Foreign exchange controls have been abolished in Australia. Foreign investment policy is implemented by the Foreign Investment Review Board, and although in principle the board must be notified of all foreign investment proposals, in practice those involving assets of AU\$50 million or less are not examined.

3. Enabling factors

- Technical infrastructure

NT has fully redundant fibre-optic communications to all major centres, and multiple private hosting companies offering small but modern facilities exist.

- Banking and financial support

Full commercial banking facilities are available from major international banks, and unrestricted funding may be accessed from major international financial institutions and markets.

- Labour

Australia has a population of just over 20 million, with almost 80% English speaking and a 100% literacy rate. There is a 5.1% unemployment rate. The NT population however is only about 168,000.

- Reporting requirements

The Director may require the licensee to provide a report about the licensee's operations under the internet gaming licence. No detail is provided in the regulations as to the content required.

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- Other

The legal system is based on English common law.

Probably the most attractive reason for locating an online gaming operation in Australia is its favourable position to access the emerging Asian markets with their enormous propensity for gambling.

4. COSTA RICA

General comments:

- *Ranked 7th by popularity - Casino City¹⁷*
- *Costa Rica is considered attractive to new operators with little funding*
- *Lack of license fee and licensing requirements has created the perception that Costa Rica is a risky jurisdiction for the bettor*

1. Regulatory Structure, Process and Infrastructure

Costa Rica's Supreme Court and attorney general have ruled that gambling does not take place in Costa Rica if no bets are accepted from locals and the company's merchant account is in another country. Consequently, a large number of online gambling operations operate out of Costa Rica without any specific regulatory approval.

Since the online gambling activity is not gambling, it is deemed to be a data processing business.

2. Definitions of Interactive Gaming

Online gambling on offer is not limited to any particular products due to the lack of restrictions on online gambling activity, and includes spreadbetting, sportsbetting, casinos, poker and bingo. 371 online gaming sites operate from Costa Rica, with the most successful being Bodog and Sportsbook.com.

3. Licensing and Operator Monitoring

N/A – Data processing activities are not subject to any specific licensing requirements, government regulation or oversight.

4. Player protection and regulation

N/A – Data processing activities are not subject to any specific licensing requirements, government regulation or oversight.

- Gaming rules and procedures

N/A – Data processing activities are not subject to any specific licensing requirements, government regulation or oversight.

- Transaction processing and financial flows

Merchant accounts must be held in another country, therefore transaction processing and financial flows do not take place in Costa Rica.

¹⁷ www.casinocity.com

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- Commercial environment

The government is currently considering legislation for licensing requirements and taxation, by proposing to make some fundamental reforms to the country's taxation system in order to bolster the government's tax revenues and pay off the country's growing foreign debt. This is based upon a proposed licensing fee and operational fees and taxes of about \$1,000 pa per employee, with a minimum and maximum of \$20,000 and \$60,000 respectively. The new legislative measures will include a register of operators, and do not provide for probity checks on operators, or any regulation.

The government hopes to generate an estimated \$4-5 million in annual revenues, however it is believed that this fiscal tax reform bill has a long way to go before it is passed into law by Congress.

The following is a translation¹⁸ of the proposed bill:

“The companies dedicated to receiving and processing data that generates electronic bets must purchase an operation license from the State according to the number of people employed in a dependence relation. The Ministry of Economy, Industry and Trade must appoint the proper institution to implement the registration of such companies. Those companies dedicated to receiving electronic bets will be strictly forbidden from operating in Costa Rica if they are not inscribed in this register.

For the aforementioned inscription, the MEIC will demand payment of a tariff or tax which will entitle the company to obtain its operation license for one year that will coincide with the natural year.”

There are no restrictions on profit repatriation, or foreign exchange controls. In fact, much of the money wagered through the Costa Rican operations never reaches the island due to the fact that merchant accounts are maintained offshore. Therefore these funds are not subjected to corporate taxes.

Costa Rica has long been an attractive jurisdiction for online gaming since it offers an extremely high quality infrastructure, including a stable government, good air transportation, a relatively high standard of living, an educated populace, excellent telecommunications, and skilled technicians. The telecommunications network includes both satellite and microwave links provided by Intel Corp.

Most operators locate in Costa Rica to take advantage of the cheap workforce that usually can speak English in addition to Spanish. Most of the operators comprise sports books, which offer both online and telephone betting, with the telephone betting services typically requiring significant numbers of staff.

¹⁸ Translation by Luis Pereira of D.Y.N. Servicios in San Jose, published in Interactive Gaming News, March 23, 2004

5. GIBRALTAR

General Comments:

- *Ranked 1st most popular by Casino City*
- *95 sites, approximately 15 operators*

GIBRALTAR – THE COUNTRY

Gibraltar geographically has one foot in Europe and one foot in Africa, although in culture it is very European and more so, British. It is located on the Southern tip of the Spanish peninsula and is directly opposite the North African country of Morocco, separated by roughly 16 kilometres of ocean, the Straits of Gibraltar. Some key facts regarding Gibraltar include:

- *Bilingual population: English and Spanish are the official languages;*
- *Small, well educated population (highest pro rata number of graduates in the world) of approximately 30 000;*
- *Good communications infrastructure, although bandwidth is expensive, it is expected that through the current liberalisation of the telecommunications sector and creating competition to the existing telecoms monopoly the current high telecoms costs will be eased;*
- *English common law with official status of “UK Overseas Territory”, meaning that it has an English common law system and that the UK is responsible for Gibraltar’s defence and foreign affairs and that Gibraltar is self-governing in every other respect;*
- *Due to Gibraltar’s strategic location it is an important port and shipping and international trade forms an important part of Gibraltar’s economy;*
- *Other key contributors to its economy are its “offshore” financial centre status and tourism;*
- *Gibraltar is an European Union member, although it would seem that its EU status is “piggy-backed” off that of the UK and that in order for Gibraltar to obtain completely “independent” EU status it would have to fall into line with various criteria set by Brussels, not the last of which with regard to its tax laws (it is currently excluded from compliance with EU law pertaining to VAT, the Customs Union and Agricultural policy), which would likely effect its current favourable tax regime;*
- *The Gibraltarian government have openly stated that they wish for e-commerce to become as important a contributor to its economy as shipping and its “tax haven” status.*

1. REGULATORY STRUCTURE, PROCESS AND INFRASTRUCTURE

Gibraltar has an English common law and a number of local statutes. Courts in Gibraltar apply English Common law and rules of equity.

Gibraltar does not have a statute dealing specifically with interactive gaming. At the time of compilation of this report, there is said to be an early draft of totally new regulations, which have been circulated exclusively to the current 15 online licensees within Gibraltar. This is said to be a closed process but there is some anecdotal evidence that the regulations are similar to, but less onerous than, those currently in existence in the Isle of Man. There was also some, apparently educated, speculation in the local Gibraltarian press with regard to the contents of the draft bill and some provisions thereof were alluded to, namely:

- “Section 23” imposing the requirement that anyone conducting or providing facilities for remote gambling must hold a remote gambling licence;
- “Section 25” concerning the safeguarding and integrity of computer equipment used to facilitate the carrying on of online gambling. In particular it is said to require the holder of a remote gambling licence to send annually to the Gambling Commissioner a certificate that the equipment has been tested by a testing house approved by the Commissioner;
- “Section 26” requires a licence holder to supply information to the Regulator with regard to the supplier and specification of software which is used by the licence holder for the purposes of remote gambling;
- “Section 27” directed at preventing under-age gambling;
- “Section 28” directed at preventing problem gambling;
- Sections “29 to 31” deal with the registration of participants in remote gambling;
- “Section 32” dealing with the situation where there is an interruption in an online gaming transaction as a result of a failure of the licence holder’s equipment or telecommunications equipment. The section provides for refunds of stakes in appropriate cases and for notification to the Regulator of any failure which caused detriment to a participant or if there is any suspicious circumstance.
- “Section 34” containing specific anti money laundering provisions pertaining directly to online gaming.

Interactive gaming is **currently regulated** through a hybrid of:

- Guidelines issued directly by the Financial and Development Secretary who issues the gaming licences (“the Regulator”);

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- application of certain overarching principles contained in the “**Gaming Ordinance, 1958**” (“Gaming Act”) and contained in the “**Electronic Commerce Ordinance Act, 2001**” (“EC Act”).

Interestingly, the Regulator is not empowered by any specific statute to regulate online gambling but simply seems to have this portfolio as the result of a combination of the exercise of some executive power and the fact that he is the designated official with regard to land-based gambling. Accordingly, Gibraltar is an excellent example of a regulator’s adaptation of traditional law to fit to a modern mechanism delivering an age-old form of entertainment. On the other hand, there are those that may argue that this type of regime is a total over-extension of executive authority, without legislative mandate and certainly open to abuse and problems in an environment any larger than tiny Gibraltar.

The Gaming Act is absolutely archaic and has no practical application to online gaming whatsoever.

The EC Act facilitates the use of electronic means for transmitting and storing information and affords legal recognition to transactions effected electronically. It also provides a framework for the accreditation of electronic signatures and determines the activities and liability of service providers. The provisions of this act naturally have a good deal of bearing on the manner in which an operator conducts its business, some of the more relevant provisions include:

- the sender of all commercial communications (i.e. e-mail) must be clearly identifiable;
- spam must be marked as such;
- contracts may be concluded by electronic means;
- all information held electronically must be kept confidential.

2. DEFINITIONS OF INTERACTIVE GAMING

There is no official definition of interactive gaming, since no statute currently exists.

3. LICENSING AND OPERATOR MONITORING

The Regulator is afforded an extremely wide discretion with regard to the issuing of an online gaming licence. There is no formal process or documentation pertaining to the application for an online gaming licence.

The process for obtaining an online gaming licence is very simple and consists of 2 major phases explained below:

- operators address a letter to the Regulator (it is not unusual for operators to precede the letter with legitimate visits to high-ranking government officials to discuss the potential for licensing) containing concise details as to:

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- what the operation intends to offer by way of online gambling e.g. “online casino games using x software”;
 - the beneficial owners of the operation and their backgrounds;
 - measures that will be adopted to prevent money laundering
- If the Regulator expresses an interest in further considering the application, then he will invite further details of business plans, capital reserves of the operator.

After considering the documentation and conducting probity to the extent that he believes fit, the Regulator will either grant or decline the application.

If the Regulator decides to grant the licence he will generally require the management, operations and customer services element of the business to be based in Gibraltar. It is possible to establish a tax exempt corporate vehicle to house the gaming operation, although there is a gaming tax payable (see below) on the revenue derived by the operator from gaming.

There are **no costs involved in the licence application.**

The annual licence fee is equivalent to £2 000 per year.

4. PLAYER PROTECTION AND REGULATION

Operators must ascertain the identity, residential address, gender and age of each prospective gambler desirous of placing bets with their operations, prior to opening an account for them. Operators must also positively ensure that any potential account holder is over 18 years of age.

As previously mentioned, all customer data needs to be protected from third parties.

Operators must at all times have adequate financing available to pay all current and reasonably estimated prospective obligations in respect of prize payouts and to ensure there is adequate working capital to finance ongoing operations. The Operator will pay winnings and account balances to registered players in accordance with clearly established arrangements agreed to with the customer

5. TRANSACTION PROCESSING AND FINANCIAL FLOWS ANTI MONEY LAUNDERING

All funds received from players must be paid into bank accounts in the Operator’s name and controlled by the Operator. The same applies to any credit card merchant account used by the Operator to process any payments. All receipts, processing and holding of funds must take place in Gibraltar or within an institution outside of Gibraltar but specifically approved by the Regulator.

The bank accounts into which any customers, funds, stakes, wagers, prizes or other monies are received, held or paid out from shall be in the name of and controlled by the Company. The operation of any credit card merchant account used in the course of the business shall be in the name of and fully and effectively controlled by the Company.

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Bank accounts and credit card merchant accounts, the receipt, processing, holding and clearance of customer funds and credit card transactions, shall be carried out in a Gibraltar licensed institution or with an institution in a jurisdiction other than Gibraltar as approved by the Regulator.

The Operator is required to produce audited accounts and maintain its financial records in accordance with the applicable law from time to time. The Operator shall also be required to meet all its accounts and filing requirements as set out in the “**Companies Ordinance**”, “**the Companies (Accounts) Ordinance**” and “**Companies (Consolidated Accounts) Ordinance**” and any other applicable legislation.

In addition to the banking and audit requirements, there are strict anti money laundering requirements stipulated by the “**Criminal Justice Ordinance**” (very much in line with the international FATF guidelines), with which Operators are required to comply.

This statute creates the offences of money laundering (assisting another person to retain the benefit of criminal conduct, acquisition, possession or use of property representing proceeds of criminal conduct, concealing or transferring the proceeds of criminal conduct and failing to report knowledge or suspicion of money laundering).

The primary legal requirement of this statute is that the identity and source of funds of an Operator’s clients is known and recorded before entering into any arrangement. If the business finds or suspects that money laundering has or may be about to happen, the requirements impose upon them an obligation to make a report to the authorities. This requirement is otherwise known as the ubiquitous “**Know Your Client**” catchphrase.

KYC records are required to be maintained and be made available to government investigating agencies for a period of up to five years from the end of the business relationship.

Operators are also required to provide training for all staff on the detection and prevention of money laundering.

6. SPORTS-BETTING LICENCES

In addition to online gaming licences, the Regulator also provides online sports-betting operations and betting exchanges with licences. The criteria for the issue of such licences, the process of award and the regulation thereof are substantially similar to those pertaining to online gaming operations and therefore will not be repeated. The only substantial difference between the treatment of sports-betting and betting exchanges as opposed to online gaming operations is the tax treatment, which is detailed below.

7. COMMERCIAL ENVIRONMENT

i. Taxation

For internet casinos gaming tax is currently levied at 1% of the gaming yield (the drop) with the gaming tax capped at £287,000 per annum, with a minimum annual tax payable on the first year of £28,700 and in the second year and thereafter £57,400. For sports betting operations gaming tax is currently levied as from 1 April 2004 at 1% of the turnover up to £28,700,000 of annual turnover. The capped gaming tax is the same as for internet casinos. Betting exchanges are taxed on the same basis as bookmaking operations.. with a minimum tax of £50,000 per annum payable for the first two years and thereafter as for bookmakers.

ii. Advertising regulation

All advertising, promotion and sponsoring activity of whatever type and through whatever medium shall be truthful and accurate. Operators are obliged to ensure that all advertising of online gaming activity shall be exclusively targeted at adult players. Operators shall ensure that such internet websites as are used to advertise, promote and/or operate its gaming activities shall not include links to other sites with violent or immoral content or which may be designed for access by minors.

Operators may only direct advertising to citizens of nations in which it is legal for such activities to be undertaken and are not entitled to provide betting services to any person where the provision of such services by the operator would be illegal under the law of the country in which the person resides.

6. ISLE OF MAN

General Comments:

- *Ranked 12th most popular by Casino City*
- *2 sites, both sportsbook operators*

The Country

- *the Isle of Man is located in the Irish Sea between Britain and Ireland;*
- *the population numbers around 76 000;*
- *the island has for a long time been an offshore financial centre and tax-haven and has significant experience in this regard. Many large financial sector “corporates” maintain significant operations on the island;*
- *In addition to the financial sector corporations that exist on the island, there are a number of Information Technology companies based there, including Dimension Data due to the island’s first class telecommunications infrastructure;*
- *The main source of revenue for the island is undoubtedly that derived from its status as an offshore financial centre.*

1. REGULATORY STRUCTURE, PROCESS AND INFRASTRUCTURE

a. Style, format, philosophy, objectives and jurisdictional scope of regulation

i. Philosophy and objectives

In 2001 with the introduction of the ***Online Gambling Regulation Act*** (“the Act”), the legislature clearly saw an opportunity to make itself attractive as a centre for online gambling companies, given its experience and success with both the financial sector and the IT sector and given that both financial processing and IT are core components of an online gambling enterprise.

On its website the Manx government states the three core regulatory principles of the Act to be:

1. to keep the gambling industry crime free;
2. to protect the young and vulnerable; and
3. to ensure that the facilities offered by licence holders are fair and that players receive their true winnings.

ii. Form and design of legislation

The Act specifically and exclusively deals with all forms of online gambling, but excludes lotteries and sports-betting by licensed bookmakers, which both fall to be regulated by the ***Gaming, Betting and Lotteries Act, 1988***. Land-based gambling activity is regulated by the ***Gaming, Betting and Lotteries Act*** and the ***Casino Act 1986***.

The Act is very clear and concise and makes its administration and enforcement the responsibility of the Department of Home Affairs (“the Regulator”). It also allows the Regulator to introduce additional Regulations detailing the processes, procedures and taxes alluded to at a broad level within the Act itself. Currently there are 6 published regulatory documents, with which a licensee is required to comply:

1. Online Gambling Duty Order, 2005;
- ii. Online Gambling (Licence Fees) Order, 2004;
- iii. The Online Gambling (Systems Verification) regulations, 2001;
- iv. The Online Gambling (Registration and Accounts) Regulations, 2001;
- v. The Online Gambling (Advertising) Regulations, 2001;
- vi. The Online Gambling (Prescribed Descriptions) Regulations, 2001

Whilst the Regulations are somewhat more comprehensive than the Act itself, they still require some interpretation with regard to their practical implementation and enforcement. A prime example of this is the case of the “Online Gambling (Systems Verification) Regulations, 2001”. These regulations:

- stipulate that the gaming software or “OGS” has to demonstrate a standard of randomness and further stipulates the recording and the reporting requirements for the OGS;
- provide for the certification of the OGS by an independent party.

The methods of certification are not specifically prescribed but to date these provisions have translated into a “source code testing” requirement of the licensee’s software by an independent testing house. Since this requirement is considered by many online gambling software providers to be unacceptable (largely for intellectual property security reasons), it is understood that the practical testing is soon to take the form of results or outcome-based testing as opposed to source code testing.

iii. Scope of laws and regulations

i. Definition of Interactive Gaming

- (1) “online gambling” means –

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- (a) any gaming where any player enters or may enter the game, or takes or may take any step in the game, by means of a telecommunication,
 - (b) the negotiating or receiving of any bet by means of a telecommunication,
 - (c) any lottery in which any participant acquires or may acquire a chance by means of a telecommunication.
- (2) For the purposes of this Act, a person "conducts" online gambling where-
- (a) in the case of gaming or a lottery, he takes part in its organisation, management or promotion;
 - (b) in the case of a bet, he carries on any business involving the negotiating or receiving of the bet; or
 - (c) he maintains, or permits to be maintained, in the Island any computer or other device on or by means of which the game or lottery is operated, or the bet is received, as the case may be.
- (3) A service provider shall not be treated as conducting online gambling by reason only that, in the course of a business, he handles electronic communications on behalf of another person with whom he is not associated.

For the purposes of the definition set out above, the Act defines certain terms used there in the following manner:

- "game" includes a game played by one person by means of a computer or other device, even though no other person participates in the game;
- "game of chance" does not include any athletic game or sport but, with that exception, includes a game of chance and skill combined and a pretended game of chance or of chance and skill combined;
- "gaming" means the playing of a game of chance for winnings in money or money's worth, whether or not any person playing the game is at risk of losing any money or money's worth;
- "telecommunication" means a communication sent, transmitted or received by means of a telecommunication system;

b. Identity, mandate and powers of regulator/s

Gambling in general, including online gambling falls within the portfolio of the Isle of Man's Department of Home Affairs (the Regualtor), although there is

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active promotion of the island as a licensor of online gambling activity through the Department of Trade and Industry.

The Regulator created a Gambling Commission over 40 years ago to deal with “hands-on” regulation of all gambling on the island (excluding the national lottery) and such department also regulates online gambling.

The Isle of Man government announced in late 2004 that it was considering transferring the regulation of gambling activity from the Regulator to the Department of Treasury. *As at the time of compiling this report, no official announcement had been made in this regard.*

c. Staffing, financing and monitoring of regulator/s

The Gambling Commission currently consists of five “Gaming Control Commissioners”, including a retired chief of police, a retired senior customs official and a practising attorney.

The Commissioners are currently supported by three “Gambling Control Inspectors” and a “Senior Secretary”.

The Act, under section 11, provides the Commissioners wide powers to:

- Supervise the operation of any online gambling conducted on the Island;
- Investigate the character and financial status of any person applying for or holding any online gambling licence;
- Ensuring that all relevant licence fees are timeously paid.

Financing of the Gambling Commission is by the Regulator and presumably the licence and registration fees derived from online gambling operations (see 4 (e)(ii) below) accrue to the Gambling Commission.

d. Enforcement mechanisms

The Gambling Commission (“the Commission”) is granted wide powers of investigation and sanction in terms of the Act and there are also a number of offences contemplated by the Act, with penalties attached to each.

The Commission is entitled to cancel a licence granted by it, where The holder of the licence or the designated official of the operation, required to be present on the island:

- is convicted of an offence under the Act or any other gambling law;
- is convicted of any “indictable offence” in the UK or Ireland;
- is convicted of any offence by any court in the world, with a sentence of two years or more;

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- fails to pay any fees in terms of the Act;
- fails to comply with any condition of the licence. Where the non-compliance pertains to a licensee's failure to comply with the Act's inspection criteria, the Commission shall be entitled to suspend the licence until the licensee is in compliance therewith;
- fails to comply with the anti-money laundering provisions and advertising regulations of the Act or the island's Criminal Justice Act;
- fails to adhere to any lawful direction of the Commission. In such circumstances, the Commission is granted discretion to suspend the licence until the licensee is in compliance with its directions, as an alternative to outright cancellation.

The Commission is entitled to enter any premises where online gambling is being conducted or suspected of being conducted and is further entitled to inspect all documents and computers at such premises. Any interference with an inspector, in such circumstances is an offence punishable by a fine of GBP5 000 or 6 months imprisonment or both.

Apart from the offence referred to above, any other offence in terms of the Act is punishable by imprisonment ranging from 6 months to 2 years or a fine of up to GBP5 000 or both.

The Commission is also empowered by the Act to regulate advertising activities by any licensee (see 4(e)(2)) and currently regulations of this nature exist.

2. Definitions of Interactive Gaming

a. Definition of an interactive game

The full definition is replicated in clause 1(a)(iii)(1) above.

b. Types of gaming allowed

The definition of "gaming" includes games of skill and chance or a combination of both. The powers that the Regulator are granted in licensing operators include licensing gaming "of any prescribed description". Accordingly the Regulator would appear to have an open-ended mandate to stipulate the nature of gambling activity that it will allow its licensees to engage in.

Notwithstanding the a for going, "**The Online Gambling (Prescribed Descriptions) Regulations 2001**" specifically excludes the following activities from the definition of online gambling:

- lotteries;

- any game involving a pool;
- any game involving pari-mutuel or pool-betting;
- any game involving spread-betting.

c. Definition of location of gaming activity

The Act defines a “game”¹⁹ as “including a game played by one person by means of a computer or other device, even though no other person participates in the game”. By virtue of such definition, it would appear that the location of the player is paramount in determining where the gaming activity takes place.

3. Licensing and Operator Monitoring

a. Role players requiring licensing

The Act requires the gaming operator to be licensed and represented by a “designated official”. No other parties in the process need necessarily be licensed i.e. the software provider (although the software itself is subject to certain regulations and testing).

i. Operators

The Act limits the granting of a licence to conduct online gambling to corporate entities incorporated in the Isle of Man alone.²⁰

ii. Key Personnel

The Act calls for a “designated official”²¹ who is resident upon the island and a director of the licensee to be responsible for all aspects of compliance with the licence, to the extent that such individual may personally be encumbered with any criminal sanctions imposed upon the licensee entity.

b. Content and scope of license

The licence scope may be as broadly defined as the Regulator wishes to make it, as referred to in clause 2(b) above and may be contingent upon a number of conditions which the Department may dictate in its sole discretion.

c. Number of licences

Applicants are restricted to one licence alone and a total of only 3 licences may be in issue in terms of the Act at any given time, although the “Council of Ministers” may vary such number in terms of the Act.

d. Licensing criteria (by role player) and grounds for refusal

i. Nature of licence and degree of regulator discretion

The Regulator is granted a very wide discretion in granting a licence which is largely based on the outcome of probity and on its perception of the licence applicant’s disclosures of ownership, character and integrity and financial means to maintain its operations. The Act also provides that the Regulator must consult with various other government departments and authorities upon the island, prior to issuing any licence.

The Department may also only issue a licence with a maximum of five years duration, where after they are subject to a renewal process, not dissimilar to the original application process.

Licenses may be revoked in circumstances where parties become “unsuitable” either through their financial circumstances becoming unstable or through the conviction of the licensee or its members of an offence on the island or within the UK and Ireland or anywhere in the world where such offence carries a sentence of 2 years or more.

e. Licensing process

i. Application

The core focus of the application procedure is to establish that the applicant is controlled by persons of integrity and accordingly extremely detailed probity procedures are stipulated.

Only after the Regulator is entirely satisfied that the applicant is suitable and that all the applicant’s suppliers and management are suitable will the licence be granted. In considering the suitability of the applicant, the following key factors are taken into consideration:

- ability to actually operate an online gambling business;
- the transparency and credibility of the operator’s ownership structures;
- the financial position of the operator.

The Act provides for an appeal to the Manx High Court within 21 days of the refusal of a licence for such decision to be reviewed and potentially changed.

ii. Application costs and Security

The fees for the licence application are GBP1 000, with an annual licence fee of GBP35 000.

There is a formal security requirement that all operators lodge an amount of GBP2 million with the Regulator as security for winnings. The Commissioners have not enforced this requirement in recent history and for all intents and purposes it has been done away with. The Commissioners are in practice rather flexible on the issue of security and will settle for alternative security arrangements, including but not limited to insurance policies.

f. Definition of required operator behaviour/structure

i. Structure/form of company

The applicant must be a company incorporated on the island and limited by share capital.

Once the licence is granted, any change to the ownership structure of the company influencing more than 5% of its shares must be reported to the Regulator and the Regulator may then subject the new owners to probity and assess their suitability with regard to the continued holding of the licence by the company.

g. Conditions of license

i. Technical compliance and game testing

1. Types of games

The operator may only provide games:

- of the type prescribed in the Act;
- that are demonstrably secure, reliable, and auditable;
- that do not provide the player a false expectation of better odds by falsely representing any occurrence or event;
- where the maximum expected house advantage associated with a particular game shall be specified by the Commissioner's and approved by the Regulator;
- that have fair and clear rules.

2. Game testing

This is currently a contentious issue within this jurisdiction with regard to gambling software source code testing. The “**Online Gambling (Systems Verification) Regulations, 2001**” stipulate certain features that the software should inherently exhibit such as randomness and various audit features. The regulations simply state that the testing must be conducted by a party approved by the Regulator and do not stipulate a method. However, historically the Regulator used to insist upon source code testing by an approved testing lab. It has now been indicated that they intend to abandon source code testing in favour of results-based testing i.e. focussing on the outcome of games as opposed to what drives each game.

4. Player protection and regulation

a. Fair gaming rules and standards

The “**Online Gambling (Registration and Accounts) Regulations, 2001**” stipulate certain criteria regarding identification of players prior to them engaging in gambling, as well as certain “rules as to play”.

Prior to allowing any party to gamble, operators:

- are obliged to establish certain details, so as to know their customers, i.e. age, identity and place of residence;
- are obliged to avoid taking bets from any person under the age of 18 years;
- must, upon registration, issue players with a unique password.

Operators are required to ensure that all information provided by players is kept completely private and not disclosed to any third parties. This privacy requirement also extends to all information regarding the player’s “play” with the operator.

The Regulations further stipulate that operators must use “best endeavours to exclude from registration, and to cancel the registration of, problem gamblers.”

There is no indication as to what measures should be used to establish the behaviour constituting “problem gambling” and it would seem that the operator is given a large degree of free reign to establish its own criteria for identifying and excluding problem gamblers.

As far as “fair play” rules go, the operator:

- may not accept any bet which would result in a player account becoming overdrawn;

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- must verify the password of the player at each gaming session to ensure that it is the same password issued to such player at the outset;
- must allow the player to set a maximum daily or weekly betting limit.

b. Advertising

The “**Online Gambling (Advertising) Regulations, 2001**” stipulate certain rules with regard to both the advertising of online gambling and the actual appearance and content of the gaming website.

The general requirements with regard to advertising include:

- it shall be factual and based on fact;
- it shall not be indecent, misleading or offensive;
- it shall not be directed to jurisdictions where online gambling is illegal;
- it shall not be directed at persons under the age of 18;
- if it alludes to any form of payout it shall “contain sufficient information to enable a person to determine readily and easily the expected percentage return to him over a period of time, disregarding any exercise of skill by him.

Some of the provisions relating to website appearance include:

- every website shall display the name and address of its registered office;
- the licence number and date upon which it was granted by the Regulator;
- a statement that the online gambling is regulated in the Isle of Man and a coat of arms of the Isle of Man;
- hyperlinks to the website of the government of the Isle of Man and Gamblers anonymous;
- hyperlinks to a statement that online gambling debts are enforceable in the Isle of Man and that under-18's may not participate.

5. Transaction processing and financial flows anti-money laundering

All Operators must comply with the “**Criminal Justice (Money Laundering Offences) Act 1998**”. This act requires that Operators have in place anti-money laundering policies, procedures and practices in relation to money laundering, including the

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financing of terrorism. Specifically, this act requires that Operators should not form business relationships or carry out one-off transactions with or for another person unless they:-

- establish procedures which establish the identity of their customers (“Know Your Customer”) as soon as is reasonably practicable after contact is first made;

Operators are also expected to:

- report suspicious transactions;
- maintain adequate records;
- adopt adequate internal controls and communication procedures;
- provide appropriate training for employees; and
- establish internal reporting procedures, including the appointment of a Money Laundering Reporting Officer (“MLRO”).

Any person who fails to comply with the requirements of the Act may be liable on summary conviction to a fine of up to GBP5000, to custody of up to 6 months, or both, and may be liable on conviction on information to a fine, to custody of up to 2 years, or to both.

6. Commercial environment

a. Taxation

The tax regime with regard to online gambling companies was very recently changed on 6 April 2005 to eradicate tax. This is significant given that the standard corporate tax rate is 15%. However, this exemption only applies to the portion of income derived from online gambling activities. Were an online gambling company to derive a portion of its income from activities outside of online gambling (as unlikely as this may be), the standard rate of taxation would apply to such income.

7. Sports-betting

In addition to the online gambling licence, the Regulator also provides internet sports-betting licences.

There are two forms of sports-betting licence available. The first is a “public betting office licence” and the second is a “restrictive betting office licence”.

With a public betting office licence one may take both land-based bets and online bets. In other words, this licence is appropriate to a betting shop, which also requires the flexibility to take online bets. The major restriction with regard to a licence of this nature is that the holder may only take bets from within the United Kingdom and the Isle of Man. The fee for this licence is GBP100.

The restrictive betting licence restricts its holder to only taking bets upon the internet or telephone and no physical premises is authorised. This licence is entirely unrestricted, unlike the public betting office licence, as to where the bet

may emanate. Accordingly, with a restrictive betting licence the holder may take international bets. This is the true internet sports-betting licence out of the two kinds of sports-betting licences available. The fee for this licence is GBP25 000 per year, vastly different in price from the fee for the public licence.

Interestingly the Isle of Man Council of Ministers has proclaimed that holders of restrictive betting licences may not take bets from the United States because it is felt that whilst the US Wire Act may be inapplicable to online gambling, it has application to telephone sports-betting and internet betting. There is some commentary that this restriction may be lifted.

The regulations governing restrictive betting licences are currently the “**The Restricted Betting Office Regulations 2001**”, although these are to be totally redrafted. The regulations in general are far more basic than the online gambling licence ones and are less prescriptive, stating primarily that:

- Operators must have adequate administrative systems in place in order to identify risks pertinent to the size and nature of the business;
- Operators must publish in writing their terms of business and hours of operation; and
- Operators must maintain proper accounting systems.

Unlike online gambling operations, the sports-betting operators must pay taxes on the island. Sports-betting operators must pay the following taxes:

- 10% of gross profit derived from bets made by residents of the Isle of Man;
- 15% of gross profit derived from bets made by residents of the United Kingdom;
- 1.5% of gross profit derived from bets made by residents of any other country in the world.

7. KAHNAWAKE

General Comments:

- *Ranked 2nd by popularity – Casino City*
- *Kahnawake is one of the longest standing jurisdictions and attracted many of the early entrants to the industry*
- *299 English Language sites, about 35 operators*
- *While Kahnawake's regulations are thorough and well drafted, sources suggest that enforcement is fairly lax*

1. Regulatory Structure, Process and Infrastructure

a. Style, format, philosophy, objectives and jurisdictional scope of regulation

Kahnawake's regulations were drafted in the mid-1990s with the specific purpose of attracting online operators to the territory. Modelled on Queensland, Australia's Interactive Gambling (Player Protection) Act, Kahnawake's regulations were drawn up under the guidance of Frank Catania, a former director of the New Jersey Division of Gaming Enforcement.

i. Form and design of legislation

Regulations are embodied in one major piece of legislation enacted by the Kahnawake Gaming Commission ("KGC") on 9 July, 1999, pursuant to Section 35 of the Kahnawake Gaming Law

The regulations are driven around the right of the KGC to issue a gaming licence to a person or persons playing one or more roles in the conduct of interactive gaming.

Built on the back of a general prohibition, with the regulations the sole manner for allowing operation of interactive games.

ii. Scope of laws and regulations

Regulations apply to all interactive games conducted by, or from premises situated within, the Mohawk Territories of Kahnawake, including interactive games involving players situated both within and outside the Territories. Thus, the definition hinges on the location where the game is conducted and not the location of the player.

iii. Interaction with international law and other jurisdictions

Regulations viewed as a basis for harmonisation with other jurisdictions but are expressly not dependent on the ratification or approval of any other jurisdiction or regulatory body.

iv. Identity, mandate and powers of regulator

The sole regulator is the KGC whose powers include the enactment of the Regulations. The KGC has a fair amount of leeway to make judgements in licence approvals, to expand the definition of, for example, 'agent', and to interpret the Law.

See Inspectors' powers below.

Decisions of the KGC under these Regulations are final and binding, cannot be challenged or appealed or subject to court order.

Offences against the Regulations are either indictable or subject to summary conviction.

v. Staffing, financing and monitoring of regulator

Members of the KGC may not take part in any authorised game, accept or solicit employment from an operator or have any financial or business

association with an operator during employ by the KGC or for one year after leaving office.

The KGC can appoint duly qualified Inspectors at its discretion, which Inspectors will have the powers under the Regulations and will be subject to the directives of the KGC and will carry ID cards that must be produced when exercising any power. Inspectors may, without consent of the occupier, enter any premises where an authorised game is being or is about to be conducted or where a licence holder/client provider/agent carries on business. The Inspector may search any place, inspect, measure, test or film any activity/event there, take items, copy documents, access any system used to conduct an authorised game etc.

vi. Enforcement mechanisms

KGC can suspend licence application processing if it has not received application fees. Any breach of Regulations or a range of other events that might bear on the suitability of the licence holder to continue operating (conviction, financial failure, misrepresentation etc.) can result in immediate amendment, suspension or revocation of a licence, but requires a 'show cause' procedure.

2. Definitions of Interactive Gaming

Authorised games by means of a telecommunication device, including the Internet. An interactive game means a game which offers a prize of value in which a player enters or takes any step by means of a telecommunications device and gives or promises to give value to enter and the winner is decided either wholly or partly by chance or by a competition wholly or partly dependent on player skill.

Interactive gaming activity is any activity which the KGC deems to be related to interactive gaming.

3. Licensing and Operator Monitoring

a. *Operator licensing criteria*

Licenses are granted for a time period not exceeding 2 years. Renewals (further two years) and amendments to licence conditions are also possible. Temporary authorisations may also be granted at the discretion of the KGC for client providers who will link to a existing license holder and appears to be suitable.

Operators are divided into core licence holders, client providers – who can offer gaming hosted by a core licence holder (with a valid licence), and agents – who can perform certain activities on behalf of operators. The criteria for the former two are 'suitability' of the applicant and of each director, shareholder with 10% or more, partner and CEO. The KGC ultimately can deny a licence at its 'sole discretion'. Suitability includes:

- ✓ Good character, honesty, integrity
- ✓ Good business reputation, sound current financial position and financial background
- ✓ Satisfactory ownership and corporate structure
- ✓ Appropriate resources, services and technical ability to conduct interactive gaming
- ✓ Ability to conduct interactive games under a licence and
- ✓ Any other matter which the KGC deems appropriate.

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'Key persons' also need to be licensed. They are defined as anyone who is a manager of an interactive gaming operation, is in a position of control or influence or plays a key role in the control system.

1. *Licensing process*

i. Application

A standard form must be filled in and submitted to the KGC for each licence type. In addition to the information required on the form, additional forms must be filled out with information on all relevant business entities and all relevant individuals. A non-refundable deposit of Canadian \$5,000 is required. The applicant is liable for all costs incurred by the KGC for processing the application. If these exceed the \$5,000 deposit, the KGC will notify the applicant in writing to provide an additional deposit. Renewal applications may require additional information, at the KGC's discretion, and also require a \$5,000 deposit. Key Person applications require a \$2,500 deposit. Agent applications are in the form of an ex post facto (within 7 days of signature) provision to the KGC of the relevant agency agreement for review and a six-monthly update of all agents.

ii. Review and probity testing

The KGC is obligated to promptly consider every valid application and either grant, deny or return the application for more information. In the event an application is denied, the KGC must give its reasons for refusal in writing.

The KGC, or an appointee, must conduct a thorough investigation into the applicant and relevant entities and individuals. The KGC may consider proof that an applicant has been licensed to conduct gaming in another jurisdiction as *prima facie* evidence of suitability.

Renewal applications require consideration of any complaints, concerns or problems with the operator during the original licensing period.

iii. Appeal procedures

None in the event of an original application or a renewal, but a detailed 'show cause' procedure in the event of a revocation, terms amendment or suspension.

b. *Definition of required operator behaviour/structure*

Rules and procedures for licence holders and client providers include those that require them to 'know their players', protocols to monitor, recognise, address, report and prevent suspicious activities concerning players' accounts. Licence holders must have an approved control system and all games must be conducted under such a system. The system can only be altered with the approval and under the supervision of the KGC.

Control system must be submitted for approval at least 90 days before operations commence. This includes, for the conduct of the interactive games, accounting systems and chart of accounts, administrative systems and procedures, computer software, and general procedures and standards for maintenance, security, storage and transport of equipment, for recording and paying prizes and for maintaining security.

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This control system undergoes a detailed review by the KGC who may approve it, refuse approval, request additional information or recommend changes. To the extent approval is not given, the KGC must provide a written explanation. All interactive gaming equipment must also go through an approval process, with a \$5,000 deposit and can only be located at a place approved by the KGC.

c. Operator reporting requirements

The KGC may approve a place in which a licence holder/client provider must keep its gaming records, exempt certain gaming records from this location requirement, either temporarily or permanently, approve a modification of the format of the gaming record or approve its destruction. In general, records must be kept for 5 years.

A licence holder/client provider must keep accounting records that correctly record and explain transactions and financial position of the operator, allow for financial statements to be prepared and properly audited. Financial statements must include trading accounts, profit and loss accounts and a balance sheet as at each financial year-end.

Licence holders/client providers must report to the KGC as required by written notice and may not seek to mislead the KGC in any way.

Within 3 months of financial year-end, an operator must submit audited financial statements for its licensed operations, at its own cost. The KGC has the right to request further information after reviewing the financial statements.

4. Operator monitoring process

The KGC can investigate any operator or related person if it reasonably suspects that this entity no longer meets the suitability requirements for a licence. As part of the investigation, the KGC may demand information from the person or entity under investigation, which entity is obliged to surrender such information.

The KGC may approve a programme for the ongoing monitoring of industry participants. Participants must do anything reasonably necessary to allow an Inspector of the KGC to carry out required monitoring.

5. Sanctions and controls

6. Technical compliance and game testing

The KGC will establish rules concerning game conduct, prizes, etc. It will provide copies of its rules to all licence holders and authorised client providers, who will post the rules on their Internet sites and ensure that their key persons, agents and employees have a good working knowledge of these rules and ensure that they and their agents comply with all rules.

4. Player protection

A licence holder or client provider must not allow a player under 18 years old to participate in games. Any prize won by an underage player is forfeited to the KGC. No obscenity is allowed in player designations or game content.

The KGC defines registration requirements for players, including evidence of identity, place of residence and age.

a. Fair gaming rules and standards

Players must comply with game rules as notified.

Operator must remit requested funds in credit balance within one business day of request.

No disclosure of player information except with player authorisation, reasonably required to play a game or authorised by the KGC for law enforcement.

If a player wins a prize, it must be credited immediately to his account or, if it is non-monetary, delivered to the player. Prizes may be claimed for 5 years and if

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the claim cannot be resolved by the operator, the claimant may, within 10 days of receiving notice, request the KGC to investigate and communicate a decision in writing.

The stake on a game aborted due to telecommunications failure must be refunded. The KGC can investigate and adjudicate in the event of a game aborted due to any form of failure.

A licence holder/client provider has a duty to inquire into any complaint made to it and, within 21 days, give written notice of the outcome of the inquiry to the complainant and, if referred by the KGC, to the KGC.

b. Advertising

Only authorised games can be advertised in the Territories, only with the permission of the licence holder/client provider. No indecent, false or misleading advertising is allowed. If the KGC reasonably believes that an advertisement does not comply, it can stop the ad being shown or change it via a direction in writing stating the grounds for the decision and, if a change order, how the ad must be changed.

c. Addiction management

Wagers only allowed on established accounts with adequate funds to cover the wager in full.

No credit allowed.

Players must be able to set their own limits, including zero if they wish to be excluded (which limit must take place immediately on receipt of notice by the operator), and revoke such limits in writing (which notice must take effect only seven days after receipt by the operator). Operators MUST adhere to all self-set limits.

An application can be made to the KGC to prohibit a person from participating in some or all authorised games and a process is set out for this request to be adjudicated and communicated.

The KGC has established a Gaming Addiction Fund whose programs and services are determined by the KGC. The Fund consists of all penalties and fines imposed by the KGC pursuant to the Regulations and contributions from operators.

5. Transaction processing and financial flows

a. Processor licensing and selection

A licence holder/client provider must keep financial institution accounts approved by the KGC for use for all banking and similar transactions for the operations conducted under the licence and for this purpose only.

b. Payment methods

c. Foreign exchange controls

d. Other financial controls

Players may only access accounts to obtain a balance, obtain winnings, close the account or otherwise only as authorised by the KGC.

Operator may only access a player account to debit the amount of a wager or to remit funds standing to player's credit.

Accounts inactive for 90 days must be refunded balances.

6. Commercial environment

a. Taxation

i. Operator fees and taxes

1. Licensing fees

A licence holder or client provider must pay an annual fee of \$10,000. In addition, a penalty of 10% per annum of the unpaid amount calculated on a per diem basis must be paid on any outstanding fees.

A licence holder is jointly liable for the payment of the fees of a client provider using its licence.

Outstanding fees and/or penalties are debts enforceable by law.

2. Other fees (testing, application etc.)

A licence holder is liable to pay all costs incurred by the KGC related to its licence including applications, investigations, monitoring and addressing complaints. These costs are due and payable on receipt of statement from the KGC and outstanding amounts of 30 days or more are subject to penalties (10% per diem).

Licence holders may be required by the KGC, at its discretion, to post security which can be used to fulfil obligations of the licence holder to the KGC or to a client.

3. Corporate taxes

None.

4. Specific gambling taxes

None.

b. Financial restrictions

None.

c. Enabling factors

ii. Technical infrastructure

The MIT facility, established by tribal statute, is widely regarded as one of the best providers of hosting and bandwidth in the world.

iii. Banking and financial support

No laws inhibit, nor do they particularly enable, these processes for operators.

8. MALTA

General Comments:

- Ranked 6th most popular by Casino City
- 26 sites, approximately 15 operators (3 casino operators)

Malta is an island situated in the heart of the Mediterranean. In addition to its innovative remote gambling laws, Malta has other benefits should one wish to establish an operation there, namely –

- *it is a member state in the European Union (“EU”) and accordingly benefits from the application of the internal market principles relating to the freedom to provide cross – border services within the EU (in this regard, see clause 2.b.v);*
- *English and Maltese are the official languages;*
- *in commercial matters, the legal system in Malta is a synthesis of civil law foundations and UK – based commercial legislation;*
- *Malta’s tax framework is in line with major EU directives;*
- *it has high regulatory and anti money laundering standards and a comprehensive framework for financial services which is regulated by the Malta Financial Services Authority (“MFSA”);*
- *there are strong professional secrecy and confidentiality laws imposing the obligation of confidentiality on lawyers, accountants, the MFSA and the Lotteries and Gaming Authority (“the Authority”);*
- *Malta has an advanced telecommunications infrastructure.*

1. REGULATORY STRUCTURE, PROCESS AND INFRASTRUCTURE

a. History and background

In Malta, the Authority, established under the Lotteries and Other Games Act, 2001 (“**the Act**”) is the regulator which oversees all gaming activities. In the past, responsibility was split between the police for amusement machines and racetracks, the Gaming Board, established under the Gaming Act, 1998 (“**the Gaming Act**”) for casinos and the Public Lotto department which operated the national lotteries. However with the accession to the European Union (“EU”), the government decided to privatise the state lotteries and bring all forms of gaming under a single legislation (being the Act). Malta became the first EU member state to regulate remote gaming.

b. Style, format, philosophy, objectives and jurisdictional scope of regulation

i. Form and design of legislation

The gaming industry in Malta is based on a 3 tier legal framework, which is made up as follows –

- The first tier is the enabling tier. In the gaming sector this is the Act. The Act establishes and regulates all forms of gaming in Malta (with the exception of land based casinos which remain regulated under the Gaming Act), it establishes the regulatory authority (i.e. the Authority), establishes the fundamental principles of gaming and provisions of how to conduct gaming and establishes the general principles of specific sectors of gaming.
- The second tier is the regulatory tier, in terms whereof, pursuant to the Minister of Finance’s assent thereto, regulations are published by legal notice which sets the specific requirements for different forms of gaming and outlines the requirements for the granting of licenses in the specific sectors. The remote gaming sector of the gaming industry is regulated under the provisions of the Remote Gaming Regulations (L.N. 176/04) (“**the Regulations**”).
- The third tier is made up of technical specifications which comprise the detailed requirements of the procedures, technical systems and applications for every specific method of carrying the game and are updated by the Authority in the form of directives.

Whilst the Act requires parliamentary intervention in order to keep the gaming principles contained therein in line with current gaming trends, the Regulations do not. Accordingly, the Regulations can be issued and updated relatively quickly by the Authority upon the publication of a notice. This is significant because insofar as the Malta Remote Gaming Council (“**the MRGC**”), which is discussed in detail in clause 2.c.ii below and which is comprised of all stakeholders in the remote gaming industry (including licensed operators (“**licensees**”) but excluding the Authority), provides the Authority with valuable feedback so as to enable it to keep abreast with the latest developments in the industry, the Regulations are up to date and in line with current business operations. This is mutually beneficial to all parties involved in the online gaming sector in that it affords operators with the flexibility to take advantage of current trends, whilst simultaneously providing the Authority and government with a controlling mechanism that safeguards the game, the players and the gaming industry.

Whilst the Regulations cater for a very widely defined notion of remote gaming (in this regard, see clause 3.0. below), they regulate and provide clear rules which –

- deal with the reputability of all persons involved in the gaming operation;
- ensure that operators have the required expertise and financial resources;

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- protect players' funds; and
- establish the standards for the gaming systems used.

ii. Philosophy and objectives

The Regulations are both technology and game neutral. They are game neutral in that they focus on the means rather than the methods of gaming and regulate the functions and procedures employed by the operator to carry out the remote gaming and are technology neutral in that they encompass any type of gaming where the players are participating through means of distance communication (including internet, digital TV, mobile phone technology, telephone and fax) in a game that is happening on a system located in Malta. Accordingly, any remote game which can be securely managed under the Regulations will be considered for licensing.

iii. Scope of laws and regulations

1. Definitions of Remote Gaming

Remote gaming is defined by the Regulations "as any form of gaming by means of distance communications".

The types of gaming allowed are far reaching as a result of the wide definition afforded to "means of distance communications".

"Means of distance communications" is defined as "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; such means may be unaddressed or addressed printed matter, a standard letter...telephone with human intervention [but which does not include phone-ins during radio and television programmes] or without human intervention (such as automatic calling machine, audio text), radio, videophone (telephone with screen), videotext (microcomputer and television screen) with keyboard or touch screen, electronic mail, facsimile machine (fax) and television (teleshopping) and any other means of communication, transmission, conveyance and receipt of information by wire, radio, optical means, electromagnetic means or by any electronic means". Whilst "electronic means" is defined as all electronic data transfer whether by telephony, facsimile computer or any other means of distance communications as approved by the Authority. (Regulation 2 of the Regulations read together with Article 2 of the Act)

iv. Other legislation relevant to the gaming industry

- Electronic Communications (Regulation) Act
- Data Protection Act
- Prevention of Money Laundering Act

- Prevention of Corruption (Players) Act

v. Interaction with international law and laws of other jurisdictions

- **The EC Treaty and related case law**

Although Malta is a member state of the EU, the issue regarding the ability of an operator to reach customers across borders without unnecessary hindrance has been subject to debate. The reason being that although the free movement of services in the EU is a principle enshrined in the EC Treaty, most member states have certain restrictions on the provision of gambling within their territory. However in light of recent decisions handed down by the European Court of Justice (“**the ECJ**”), pressure has been mounting to eliminate these restrictions that protect state monopolies and sacrifice the free movement of services.

The ECJ has ruled that the restriction on the applicability of the general principle of freedom to provide gambling services may, in certain circumstances, be (objectively) justifiable. A justifiable restriction would be one that can be imposed on grounds of public policy, however, it must be genuine and should not be used to exploit the social policy or consumer protection measures in order to create a monopolistic or protectionist environment. Whilst the ECJ does recognise the wide discretionary power of member states to enforce and adopt restrictive gaming measures, such measures must be proportionate to the principle of subsidiarity and the freedom to provide services. In the pro – liberal decision of the Gambelli case, the ECJ liberalised the Italian prohibition of cross border sports betting with an offshore site licensed in Britain.

The proposed directive on services may go further in enabling the free movement of gaming services as it aims to remove the obstacles to the freedom of establishment for the provision of services and the freedom to provide services within the free market. Gambling is referred to in the proposed directive as “a certain specific matter” requiring additional harmonisation at a later stage. On this harmonisation occurs, “gambling operations will [fall] squarely within the scope of the [proposed] directive” and the principle of free movement of services will apply (Olga Finkel “Operator Requirements and Commercial Benefits of Operating in Malta” I-Gaming Malta Supplement).

- **Tax**

Malta has adopted international tax standards for transparency and exchange of information and has joined OECD member countries in committing to eliminate harmful tax practices.

Malta has a vast network of double taxation treaties.

c. Identity, mandate and powers of regulator/s

i. The Authority

The Authority is a single regulatory body that is responsible for the governance of all gaming activities in Malta. The Minister of Finance may, in matters that affect the public interest, give to the Authority written directives of a general character on the policy to be followed to which the Authority is obliged to give effect (Article 12(1) of the Act).

In regulating all gaming activities, with the exception of land-based casinos, under one comprehensive legislative instrument, the Act vests the Authority with a wide array of powers, thereby providing it with the necessary tools to implement effective regulation.

The aims and objectives of the Authority in effecting the regulations are to –

- protect minors and vulnerable persons;
- safeguard players' rights;
- promote responsible gaming in a safe environment;
- ensure the integrity of games and gaming devices;
- keep gaming free from criminal activities and to prevent, detect and ensure the prosecution of any offence under the Act;
- consolidate all the regulatory functions relating to gaming activities;
- operate a successful and a fully integrated Authority;
- support the industry and technological innovation;
- provide authoritative and accessible information;
- provide a one-stop-shop for licensing.

The activities of the Authority include –

- conducting research on various aspects of gaming;
- inquiring into the suitability of licensees and the main suppliers thereof;
- granting licences relating to gaming and lotteries;
- monitoring licensed gaming and ensuring that those involved in the operation, promotion or sale of authorised games operated by such licensees are fit and proper persons to carry out their functions relative to such games;
- investigating complaints pertaining to gaming operations;
- collecting gaming taxes on behalf of the Government; and
- ensuring that the sector contributes to the country's development.

The functions of the Authority have been divided into three directorates

- the Legal and Enforcement Directorate which is responsible for the drafting of regulations and all the legal aspects of licensing;
- the Inspectorate carries out day to day checks on operators and is responsible for the compliance testing of remote gaming licensees that has to be submitted before a license may be issued

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- the Corporate Services Directorate which is responsible for administration.

ii. The MRGC

Participants in the remote gaming sector can, through the MRGC, which was established under the Malta Remote Gaming Council Act, 2005 (“**the MRGC Act**”) contribute to the regulatory regime that governs their sector and can accordingly play an active role in influencing the Regulations

The MRGC, is an initiative of the Authority as part of its strategic plan to create a dynamic regulatory environment for remote gaming, the MRGC is an autonomous body with separate legal personality which is legally and functionally independent of the Authority.

The aims and objectives of the MRGC are to–

- provide a forum for discussion (including an online forum) within the remote gaming sector of the gaming industry in Malta in order to enable licensees and other stakeholders in the sector to use their collective experience to meet new challenges;
- serve as an ongoing discussion forum giving valuable feedback to the Authority to be able to keep abreast with the latest developments in the remote gaming sector;
- attain the highest possible levels of sustainable development within the remote gaming sector;
- act as the voice of the remote gaming sector and to provide input on all issues relevant to the industry, including regulatory matters, technical standards and benchmarking;
- promote fair and responsible gaming;
- establish and promote trade guidelines and practices that enhance consumer confidence;
- assist and make recommendations to the Authority in conducting arrangements involving the organisation of any programs or information campaign, with the aim of combating irresponsible or illegal gaming or gaming by under aged persons;
- build credibility in the remote gaming sector; and
- promote and enhance the sector.

(Article III of the MRGC Act)

The activities of this non-profit organisation shall include –

- representing the common interests of the members of the MRGC;
- lobbying;
- developing codes of practice; and
- disseminating information of interest to MRGC members.

(Article IV(4) of the MRGC Act)

iii. The MFSA

This financial services regulator plays an important role in the licensing of online betting companies and is involved in, inter alia –

- the regulation and registration of companies (including betting companies);
- the coordination of administrative matters;
- the due diligence process on prospective licensees;
- advising the Authority on the suitability of an applicant for the issue of a betting license.

(Michael Frendo and Olga Caruana Finkel “Malta” Chapter 31).

d. Staffing, financing and monitoring of regulator/s

i. The Authority

A Chairman and four members constitute the Board of the Authority. Members of the non-executive board are appointed by the Minister of Finance for a maximum period of three years. The Board is primarily responsible for overseeing the strategic development of the Authority and to ensure that targets are met. The Board also liaises with the Government whenever the Authority is consulted on matters of policy. The Authority may appoint inspectors as well as any officers or employees, whose terms and conditions of employment shall be established by the Authority.

The Authority is required to conduct its affairs such that the expenditure required for the proper performance of its functions is met out of the various fees and duties paid to it, as well as other statutorily established funds.

ii. The MRGC

The MRGC is made up of all stakeholders in the remote gaming industry. Accordingly, all remote gaming operators which have a Remote Gaming License under the Regulations and ancillary support service providers directly related to the remote gaming industry in Malta (such as, data carriers, internet service providers, lawyers and professional services providers) may be members of the MRGC.

The MRGC is responsible for meeting its own financial requirements.

e. Enforcement mechanisms

i. Inspectors

In terms of the Act and the Regulations, an inspector may –

- Require any records relating to online gaming activity by a licensee to be presented to him;
- Require the inspection or testing of any gaming device;
- direct a licensee, whether in writing or orally, to refrain from using any gaming device, in relation to the operation, promotion or sale of authorised games, that the inspector considers to be unsatisfactory for the use for which it was intended;
- investigate complaints with regard to a licensee;

ii. Offences and Penalties

Any contravention of the Regulations is deemed to be an offence against the Act and any person convicted of such an offence shall be fined an amount not less than Lm3,000 and not more than Lm100,000 or to imprisonment for a term of not more than 2 years or to both such fine and imprisonment. Provided that –

- where the person convicted of such an offence is a recidivist, he shall be fined an amount not less than Lm5,000 and not more than Lm150,000 or to imprisonment for a term of not less than 6 months and not more than 3 years or to both such fine and imprisonment; and
- in addition, where a licensee contravenes a condition of his license or any directive issued by the Authority under the Regulations, the Authority may impose an administrative fine or sanction upon the licensee, which administrative fine or sanction may be imposed as an alternative to court proceedings and may not exceed Lm100,000.

2. DEFINITIONS OF REMOTE GAMING

a. Definition of remote gaming

Remote gaming is defined by the Regulations “as any form of gaming by means of distance communications”.

b. Types of gaming allowed and scope of activities defined as gaming

The types of gaming allowed are far reaching as a result of the wide definition afforded to “means of distance communications”. (see 1(b)(iii)(1) for definition of “distance communications”)

Accordingly, an operation will be considered as remote gaming when the players are participating, by means of distance communications, in a game that is happening on a system which is located in Malta.

Gaming includes any agreement, scheme or arrangement between two or more parties to play together at a game of chance in which a prize or reward consisting of money or some other item of value, worth, advantage or opportunity is offered or can be won and become the property of the winner under defined conditions established for the purpose of the game (Regulation 2 of the Regulations).

The Act defines a “game” as including a game of chance or a game of skill but which does not include a sport event (although it includes a sport bet and any other game of chance and game of chance and skill the operation of which depends on a sport event or a set of sports events or the result or outcome thereof) and does not include an amusement game. A “game of chance” is defined in the Act and the Regulations as “a game for money and, or prizes with a monetary value, the results of which are totally accidental”, whilst a “game of chance and skill” means a game for money and or prizes with a monetary value, the results of which are not totally accidental but which depend, to a certain extent on the skill of the participant.

3. LICENSING AND OPERATOR MONITORING

a. Role players requiring licensing

i. Operators

The regulations define a “licensee” as “a person to whom the Authority has issued a remote gaming license”.

ii. Key Personnel

Every licensee is required to appoint at least one key official, whose appointment has to be approved by the Authority and whose appointment shall be a condition of the license. An application for the appointment must be made to the Authority in writing on an approved form. The Authority shall not issue a license to an applicant for a key official unless it is satisfied that such person is fit and proper to fulfil his obligations and discharge his duties.

The key official is required to personally supervise the operations of the licensee of which he is a key official and ensure that the licensee complies with all

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applicable laws and regulations, the conditions of the license and any directives issued by the Authority to the licensee.

The key official must be a director of the licensee and resident in Malta.

iii. Agents and Employees

Any agents acting for the operator will be scrutinised for probity during the application process.

iv. Software providers

The Class 4 Remote Gaming License is a license to host and manage remote gaming operators, excluding the licensee himself. This license would be for software vendors which want to provide management and hosting facilities on their platform.

b. Limitations on number of licenses (by role player)

The First Schedule to the Regulations provides that applicants may apply for any or all of the 4 (four) licenses discussed in detail below.

c. Content and scope of license

The licenses are categorised into four classes and are modelled on the nature of the operation.

- The Class 1 Remote Gaming License is a remote gaming license for operators which manage their own risk on games of chance with repetitive events such as casino, games, slots and lotteries. (“games of chance” is defined by the Act as “a game for money and, or prizes with a monetary value, the results of which are totally accidental”).
- The Class 2 Remote Gaming License is a remote betting office license or an online betting exchange office license and is granted to operators which manage their risk on a singular spread and offer games based which are non repetitive and have a singular outcome for a particular event or group of events e.g fixed odds betting, pool betting, spread betting and any other form of betting.
- The Class 3 Remote Gaming License is for operators which promote or abet gaming from Malta which are not involved in the risk but which take a commission, for example, multi-jurisdictional poker, P2P and game portals.
- The Class 4 Remote Gaming License is a license to host and manage remote gaming operators, excluding the licensee himself. This license would be for software vendors or for platform operators which do not partake in the risk undertaken by the multiple operators which they host.

d. Licensing criteria (by role player) and grounds for refusal

i. Degree of regulator discretion

The regulator is granted a fair amount of discretion which is largely based on the outcome of its investigations, certifications, testing results and its perception of the applicant's disclosures of ownership character, integrity as well as whether or not it has the financial means to maintain its operations.

e. Licensing process (by role player)

i. Application

1. Application procedure and the application forms/information required

Applications for a license must be made on forms provided by the Authority and must include the following information –

- personal background information;
- financial information;
- participation in legal activities, including, but not limited to any interest or equity in any other commercial activity;
- criminal record information;
- information concerning all pecuniary, equity and other interests in the applicant; and
- any other information required by the Authority, for every director, key official and chief executive officer of the applicant and for every shareholder with five percent or more ownership of or controlling interest in the applicant.

The Authority may, in its sole discretion, require that all beneficial owners of shares in the applicant provide the aforesaid information.

The Application process to obtain a remote gaming licence is divided into three stages.

- **First Stage: Fit and Proper:**

The purpose of the first stage is to conduct a fit and proper exercise on the applicant. During this stage, the Authority analyses all information related to persons involved in the financing and management of the applicant as well as the business viability of the operation. It conducts probity investigations with other national and international regulatory bodies and law enforcement agencies and carries out a financial analysis of the business plan.

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- Application for Remote Gaming Licence
- Personal Declaration Form for each person with 5 (five) per cent or more controlling interest
- Personal Declaration Form (to be filled by the key official)
- Where one or more of the controlling parties is another business entity, ownership and incorporation details need to be submitted

A signed Affirmation and Consent document and a signed Authorisation to Release Information document must be submitted with the application. Whilst, an applicant may claim privilege afforded to him by any other law in refusing to answer questions or supply information requested by the Authority in conjunction with its application, Regulation 5(3) of the Regulations provides that such a claim of privilege may constitute sufficient grounds for denial of a license. (See clause 2.b.v. regarding the extent of the obligation of confidentiality imposed on the Authority)

The following information and/or documents must, where applicable, be attached –

- for each qualifying shareholder appearing on the ownership structure form and key management personnel –
 - a true copy of his/her birth certificate;
 - a true copy of his/her passport;
 - a passport size photo;
 - a conduct certificate or a relevant document issued by a law enforcing authority in the country of origin of the applicant;
 - a Statement of Affairs;
 - credit and/or financial references;
 - bookmaker licenses if issued in other countries;
 - a document issued by a legal entity stating that all documentation submitted is a true copy of the original.
- a copy of the business plan, which must outline in detail the following –
 - the objectives of the operation;
 - the proposed company structure, including business functions and human resources to be employed (e.g. risk managers, odds compiler, financial officers, etc.);
 - the nature of the games to be offered (e.g. betting, pool betting, betting exchange, casino leagues, etc.);
 - the technologies to be used to conduct remote gaming (e.g. internet, telephone, fax, mobile, etc.);
 - an overview of the application software to be used as gaming and control systems;

- a three year business plan including marketing a sales plan, forecast balance sheets, a financing plan showing sources of finance distinguishing between shareholder funds and other funds (such as venture capital, bank guarantees, etc.)

Subject to the correctness and completeness of the information submitted to the Authority, the first stage is usually completed within 2 (two) weeks. On successful completion of this stage, the applicant is informed by the Authority to proceed with the next stage.

- **Second Stage: Business and Technical Ability Assessment**

During this stage, the applicant is examined on the instruments required to conduct the business. This process includes examining incorporation documents, the games, the business process related to conducting the remote games, the rules, terms, conditions and procedures of the games, the application and system architecture of the gaming and control systems. Subject to the correctness and completeness of the information submitted to the Authority, this stage is usually completed within 3 (three) weeks.

The following documentation must be submitted at this stage-

- a Maltese Company Registration Certificate (including, an International Trading Company Certificate, if applicable);
- Memorandum and Articles of Association;
- Business Entity Information Form (LGA/51/2004-3);
- a detailed operational manual outlining the application architecture, the system architecture, the software developer, security and control procedures, back – up and disaster recovery procedures;
- the payment methods, the payment system/s and its provider/s; and
- agreements with business partners, affiliates, agents;
- if applicable, a Service Provider Authorisation Form (LGA/51/2204-4).

- **Third Stage: Compliance Audit**

- If applicable, A Service Provider Authorisation Form (LGA/51/2004-4) including the agreement with the equipment hosting provider in Malta outlining clearly the functions and responsibilities to be carried out by such provider. A site plan of the data floor indicating the location of the equipment and serial numbers for all equipment installed must be attached to the agreement;
- Details or copies of agreements with all third parties (such as, the gaming software provider, all payment service providers, any odds/results provider used, any other

- software partners) which may impact the licensee's gaming or control systems are also required by the Authority
- LGA Compliance Audit Questionnaire - This is a requirement for those operators seeking to gain or retain a licence for Remote Gaming in Malta.

On successful conclusion of the second stage, the applicant is given a letter of intent to operate remote gaming with the intent of obtaining a certificate of compliance within 3 (three) months. The applicant may then establish its business in Malta, conclude all agreements and carry out testing of the set up.

A formal license is issued for a period of 5 (five) years when the Authority obtains approval from the compliance certification entity. However, before certification, the control system submission is reviewed and tests on the live data and procedures are conducted. Sample reports from the live system are requested to show how the management of the betting system is conducted. An assessment of the information management in the operations is undertaken and recommendations may be made to improve security of the players' data. Back up and disaster recovery procedures and change management procedures will also be reviewed. The online website is reviewed via a test account to see that the site operates in accordance with the Regulations and with the operator's declared procedures which includes notified changes. The player protection measures required by the Authority are confirmed and bank account balances are compared with online player account balances to ensure that the liabilities are sufficiently covered. Routine data submitted on a monthly basis to the Authority is reviewed and any anomalies are investigated with the operator to ensure that correct data is available to the Authority and that the rules relating to test data are observed. Spot checks on the odds, payout ratios and randomness as applicable may be made. Any agents acting for the operator are scrutinised for probity and copies of all relevant agreements and national licenses are required by the Authority for review and filing. Staff lists and duties are checked against the records held at the Authority. Certification also involves an audit as to whether the gaming system is compliant with the requirements of ISO-17799:2000 *Information Technology – Code of Practice for Information Security*.

2. Requirements of the applicant

To qualify for a license, an applicant must –

- be a limited liability company registered in Malta (Regulation 4 of the Regulations);

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- fit and proper (in this regard, see Regulation 8(2)(a) of the Regulations);
- demonstrate a business and technical ability to carry out the operation;
- demonstrate that the operation is covered by sufficient reserves or securities to ensure player winnings and deposit returns [the regulations don't call for a bank guarantee unless the Authority foresees that the players' money is at risk?]

3. Obligations of the regulator

- **Maximum processing time**

An application may be processed and granted within 4 (four) to 8 (eight) weeks. This is because, and subject to the correctness and completeness of the information submitted to the Authority, the first stage of the application process is usually completed within 2 (two) weeks and the second stage within 3 (three) weeks.

On successful conclusion of the second stage of the application process, the applicant is given a letter of intent to operate remote gaming with the intent of obtaining a certificate of compliance within 3 (three) months.

A formal license is issued when the Authority obtains approval from the compliance certification entity. A normal compliance certification procedure takes 2 (two) weeks to be carried out.

4. Review and probity testing

See comments made under the certification process of stage 3 of the application process.

5. Obligations of the licensee

- The licensee is obliged to notify the Authority immediately of –
 - any change in its board of directors or management;
 - any material changes to any of the information or documentation submitted to the Authority during the application process or in terms of any provision under the Act, the Regulations or in terms of any condition attached to the license;
 - any resolution or intended resolution or any application or intended application for the winding up or dissolution of the licensee.
- The Authority's prior written approval must be obtained before any change occurs in the licensee's shareholding or profit share mechanism.

ii. **Application costs, fees and security**

1. **Quantum of fees**

The non refundable fee to be paid together with the submission of an application for the issuing of a license for all classes of remote gaming licenses is an amount of Lm1,000.

Upon receipt of notice that the class or classes of licenses applied for will be granted for a period of 5 years, a license fee for each license shall be charged by the Authority for an amount of Lm3,000.

The same fee has to be paid again on an annual basis for all classes of remote gaming licenses.

After the expiry of the initial 5 year period, a renewal fee of Lm500 is payable. The quantum of the renewal fee is the same for all classes of remote gaming licenses.

2. **Security**

For the purposes of protecting player's funds, the Authority may, for just cause, order, by means of a directive, that the licensee take out a bank guarantee in favour of the Authority. Failure by the licensee to comply with the directive within 3 business days from the issue of the license, may result in the suspension of the licensee's license.

iii. **Temporary licenses**

Licenses are initially issued provisionally for a period of 3 months in order to afford the operator with time to establish itself in Malta and have its system ready for compliance testing.

The official license is issued when the live system is certified to comply with the Authorities specifications. Compliance testing focuses on information, security, risk – management and anti money laundering procedures but certain critical system components may require source code certification.

iv. **Period of validity of licenses**

A license granted by the Authority is for a period of 5 years, where after it may be renewed by the Authority for further five year periods at a time

v. **Process and criteria for renewal**

The renewal is subject to the compliance by the licensee, during the preceding term of the license, with the provisions of the license and applicable legislation.

vi. Process and criteria for revocation or suspension

1. Suspension and cancellation of the licence

The Authority may order the suspension or cancellation of a license if:

- any person who has an interest in the licensee or any key official in relation to the license, is convicted in any country or territory of an offence which is punishable in that country or territory by imprisonment;
- the licensee has, without reasonable cause being shown, failed to comply with any material term or condition of the remote gaming license;
- the licensee has failed to discharge financial commitments for the license holder's operations or the Authority has reason to believe that such failure is imminent;
- the license holder is insolvent or is being wound up;
- the license holder applies for an order or is compelled by any means or for any reason to discontinue or to wind up its operations;
- the remote gaming license was obtained by a false or misleading representation or in some other improper way;
- the license holder is in breach of the laws or regulations at any time in force for the prevention of money laundering;
- the license holder has failed to meet its commitments to players;
- the license holder has failed to pay all gaming or betting taxes due to the Authority timeously;
- the Authority, in its sole discretion, has determined that there is material and sufficient reason for suspending or revoking the license;
- the Authority reasonably deems it necessary in the national interest to cancel or suspend a license; and
- the Authority is reasonably satisfied that the licensee presents a danger to the reputation of gaming in Malta.

The suspension, revocation or expiration of the license, as the case may be, shall not affect any liability of the license holder for anything done or omitted to be done prior to the date of such suspension, revocation or expiration, as the case may be.

The liability of the license holder to pay any fee or remote gaming tax shall continue during any period when the license is suspended.

Public availability of licensee information

See clause 5.0 below.

viii. Transferability of license

Regulation 10(1) of the Regulations provides that the granting of a license is a revocable privilege, and no holder thereof shall be deemed to have acquired any vested rights therein or there under. Accordingly, the Regulations prohibit the assignment or transfer of a license, which assignment or transfer shall be null and void unless the prior written consent of the Authority is obtained and shall constitute sufficient grounds for the Authority to cancel that license.

ix. Conditions of license

The Authority may subject any license it grants to such conditions as it may deem appropriate and further to vary or revoke any condition so imposed or to impose new conditions. Such conditions may relate to:

- the proper operation of interactive games;
- the protection of players;
- the prevention of money laundering; and
- exigencies of public interest.

m. Definition of required operator behaviour/structure

i. Location of the remote gaming system

The remote gaming system is comprised of a gaming system and a control system. The gaming system is that part of the application which provides the game content to the players, whilst the control system consists of the group of applications which provides the game outcome and channels sensitive information to and from the player. That is, since the control system is a system of internal controls and administrative and accounting procedures for the conduct of a remote gaming office, it must, in terms of the Regulations, be physically located in Malta. However, the gaming system and other components of the system (such as the front end of the games or customer support operations) may be situated outside of Malta at the location of choice of the licensee. Accordingly, the operator is afforded with flexibility in locating the games which are geographically closest to its players. This also permits other forms of gaming which is embedded in gaming devices operated by mobile technologies.

ii. Structure/form of company

A remote gaming license may only be issued to a limited liability company registered in Malta.

Although there is no legal requirement for a licensee to be established as an international trading company (“ITC”), the use of the ITC as a corporate vehicle is generally recommendable as it affords non-residents with tax advantages upon the distribution of profits. The Income Tax Act defines an ITC as a

company registered in Malta which is engaged solely in carrying on trading activities with persons who are not resident in Malta and which has expressly limited its objects to such trading activities as well as to such acts and activities as are necessary for the conduct of its operations from Malta. That is, it must carry out its business from Malta but not in Malta and accordingly may not offer its online services to residents of Malta.

Accordingly, an ITC is a normal onshore Maltese company which has its status recognised for tax purposes only. Non resident shareholders of a Maltese ITC receive certain re-imburements on corporate taxation paid by the company on distribution of profits (personal taxation falls outside the scope of EU tax legislations). A company will not, however, be regarded as an ITC if it claims a benefit under any law other than the Income Tax Act during the year immediately preceding a year of assessment.

iii. Operator reporting requirements

1. Approval of control systems

A “control system” is “a system of internal controls, and administrative and accounting procedures for the conduct of a remote gaming office which is set up and maintained in Malta” and an “approved control system” is defined as “a control system approved by the Authority, and shall include an approved control system changed or modified with the approval of the Authority”

Regulation 24 of the Regulations requires that all remote gaming be conducted under the control system which has been approved by the Authority.

a. Criteria and scope of systems

The applicant is required to submit a written document outlining in detail the control system functionality and specifications for approval by the Authority and update it if there are changes. A license is granted after the Authority has issued a compliance certificate in respect of the control system. The aforesaid written document must include detailed information regarding –

- the operation of remote gaming;
- general procedures to be followed for the operation of remote gaming;
- computer software, where applicable;
- procedures for recording and paying prizes won in remote gaming;
- accounting systems and procedures;
- procedures to be followed to play a game;

- procedures and standards for the maintenance, security, storage and transportation of equipment to be used to conduct remote gaming;
- procedures for the setting up and maintenance of security facilities including general compliance and internal controls relating to access to critical systems;
- a disaster recovery plan;
- an adequate system of data backup; and

b. Application, review, decision and appeal processes

An applicant for a license must submit the written specifications of the control system which it intends to use during operations to the Authority.

The Authority may, in its sole discretion, submit or direct the applicant or licensee to submit the proposed control system or an approved control system, to an audit, the costs of which shall be borne by the applicant. The Authority may then decide upon whether the control system is appropriate and accordingly, refuse or grant the licence.

c. System change process

The provisions set out in a. above apply when a licensee intends to change a control system which had previously been approved by the Authority.

2. Audits

a. Audit process, frequency and reporting

- See 3b below regarding the auditing of financial statements.
- During the certification stage of the application process there must be an audit to determine whether or not the gaming system is compliant with the requirements of ISO-17799:2000 *Information Technology – Code of Practice for Information Security* and an “ISO-17799:2000 gap analysis” audit will be carried out by experts approved by the Authority. After the certification process required for issue of the license, the gaming system need not be tested regularly. Although there will be follow up audits by the Authority whenever it deems prudent.

- The audit fees are payable by the licensee and cost approximately 2, 500 (two thousand and five hundred) Euros.
- When the gaming system used by an operator has already been certified (this occurs when one uses the gaming platform already licensed in Malta), no further gaming certification is required but then the individual licensee's control system will be subject to audit by the Authority.
- Prior to audit, the licensee will set up the control system in the live environment and may be permitted to run operations under a provisional license during this period. However, this will be subject to scrutiny by the Authority.
- The audit currently requires source code testing

3. Reports and maintenance of records

a. Gaming activity

- **Procedure to keep records**

The Authority may by written notice to a licensee –

- approve a place indicated by the licensee other than the licensee's registered office, as a place for keeping the licensee's remote gaming ("Approved Place");
- specify any remote gaming records of the licensee that are not required to be kept at the Approved Place;
- specify remote gaming records of the licensee that may be kept temporarily at a place other than the Approved Place and the period for which, or the circumstances in which the records may be kept at such other place;
- approve the keeping of information contained in a remote gaming record in a manner different from the manner in which the information is to be kept under the licensee's approved control system.

- **Relevant definitions**

“gaming records” is defined by the Regulations as “all records directly or indirectly related to remote gaming and to bets provided by a licensee and to player account information, wagers placed and the outcome of games played.

“player’s account” is defined by the Regulations as “a record kept by the license holder, which record shall at all times be accessible to the player, which shows the player’s credit against such license holder, taking into account all wagers placed and all prizes won by such player and any other debits or credits as may be permitted by these regulations or approved by the Authority.”

b. Financial and accounting

The licensee is required to keep proper accounts and records which show a true and fair view of the financial position and state of affairs of the licensee in respect of the transactions and affairs relating to the remote gaming operations.

Within 60 (sixty) days from the end of its financial year, the licensee must file with the Authority an audited set of financial statements prepared in accordance with international financial reporting standards.

Within 30 (thirty) days from the end of the half yearly period, the licensee must file with the Authority interim financial statements signed by the key official and prepared in accordance with international financial reporting standards which show the license holder’s results.

The Authority may require additional financial information in a specified format and may, at its sole discretion, conduct an investigation of a licensee and/or a key official if it is brought to its attention or it has reason to believe that the licensee and/or key official/s are not conforming with the Act and/or regulations.

c. Financial institution accounts and transactions

The Regulations are silent in this regard.

iv. Operator monitoring process

1. Activities to be monitored and authorised monitors

For the purposes of ascertaining whether the provisions of the Act, the Regulations, the conditions of any license issued, the full amount of fees, duty, tax or under any sum payable under the Act or the Regulations made there under may be paid, inspectors appointed in terms of Article 17 of the Act have the following powers and any others which the Authority awards it, in consultation with the Minister from time to time.

v. Technical compliance and game testing

Regulation 25 of the Regulations read together with the Third Schedule to the Regulations. See above.

1. Definition of authorised games

Regulation 2 of the Regulations define “authorised game” as “remote gaming that a licensee is permitted to conduct under [the] regulations”.

2. Process for authorisation, suspension and revocation of games

3. Game testing

a. Authorised testing agencies

The Authority is authorised to publish a list of approved certification companies and organisations.

b. Application procedure, changes to the gaming system, further

An applicant for a license or a licensee must, in respect of a new gaming system and before any such system becomes operational, provide adequate certification that may be required by the Authority. The certification must show that gaming system has, within the previous (6) six months, been found to comply with each and all the technical specifications laid down in the Third Schedule to the Regulations.

No changes to the gaming system may be made without the prior approval of the Authority and additional certification of compliance.

Notwithstanding the fact that the system has been approved for operation, the Authority may at any time direct the licensee to submit, at the licensee's cost, the system's software for further testing, checking or verification.

Where approval of the system is refused, the Authority must inform the applicant or licensee of its decision in writing and must state its reasons therefore.

c. Certification costs

These costs are chargeable to the licensee.

d. Gaming equipment testing

No gaming equipment may be used in the operation of an authorised game pursuant to an online betting or online gambling license, without the prior approval of the Authority. The Authority may, by written notice, require that gaming equipment be submitted for certification by an approved company or organisation. (Regulation 30 of the Regulations).

4. PLAYER PROTECTION AND REGULATION

a. Fair gaming rules and standards

i. Operator obligations

The licensee must make available to the player all the rules relating to authorised games conducted by the licensee and any relative processing fee that may be incurred by the player.

A licensee is obliged to maintain a website, in terms whereof the home page must contain the following information, being –

- the registered name of the licensee's company;
- the address of the aforesaid registered office;
- the official number and date of issue of the license;
- a statement that the licensee's operations are regulated by the Authority;
- hyperlinks to the website of organisations specialised in helping problem gamblers and which are approved by the Authority;
- hyperlinks to the rules of the games or betting offered and the procedures adopted by the licensee for the registration of the players;
- the kite – mark of the authority which shall double up as a link to the Authority's website;

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- any other information that the Authority may deem necessary and expedient.

b. Advertising

Part XVII of the Regulations deals with Advertising. Regulation 60 of the Regulations prohibits –

- licensees or any persons involved in the licensee's operations to engage in advertising that –
 - implies that remote gaming promotes or is required for social acceptance, personal or financial success or the resolution of any economic, social or personal problems;
 - contains endorsements by well – known personalities that suggest that remote gaming contributed to their success;
 - targets and encourages individuals under the age of eighteen years to engage in remote gaming;
 - exceeds the limits of decency;
- licensees, irrespective of whether it is through their own operations or by the intervention of third parties, from engaging in any activity that involves the sending of unsolicited electronic mail.

c. Criteria to qualify as a legal player

In order to qualify as a legal player, the player must be over the age of eighteen years.

d. Sanctions for illegal players

Any funds deposited or any money won by persons under the age of eighteen years must be forfeited to the Authority (Regulation 32(3) of the Regulations)

e. Player registration and information

Regulation 32 of the Regulations prohibits a licensee from participating as a player in an authorised game conducted by the licensee unless that person is registered as a player and holds an account with the licensee. The licensee may only register a person as a player if it has received an application for registration from that person which such application shall, at least, include the information set out in clause 4.d.i below.

f. Required information

- The player is over the age of eighteen years. (Persons under the age of eighteen years may not be registered as players and any funds deposited or any money won by any such persons must be forfeited to the Authority).
- The identity of the player.
- The place of residence of the player.
- A valid e-mail address of the player.

If the licensee becomes aware that a person has provided false information in this respect, the licensee shall not register such person and where that person has already been registered, the licensee shall immediately cancel that person's registration as a player with the licensee.

g. Registration procedure

The licensee may only register a person as a player if it has received an application for registration from that person which such application shall, at least, include the information set out in clause 4.d.i above.

h. Obligations of the licensee

The licensee is required to-

- keep a secure online list of all registered players at all times (Regulation 32(4) of the Regulations);
- make available to the player –
 - all the rules relating to authorised games conducted by the licensee, which the player of an authorised game is obliged to comply with; and
 - any relative processing fee that may be incurred by the player.

i. Player funds management

i. Limitations on number and type of accounts

Any one player can only register a single account with the licensee (Regulation 32(5) of the Regulations).

A "player's account" is defined by the Regulations as a record kept by the licensee which shows the player's credit against such license holder, taking into account all wagers placed and all prizes won by such player

and any other debits or credits as allowed by the Regulations or approved by the Authority.

ii. Access to player funds and information

- The records of the player's account referred to in clause 5.t.i must at all times be accessible to the player (Regulation 2 of the Regulations).
- The licensee must instruct and authorise the credit financial institution by which a player's account is held to disclose any information as may be requested by the Authority in respect of a player's account (Regulation 41 of the Regulations).

iii. Adequacy of funds to cover exposure

a. Credit betting

A licensee is prohibited from -

- providing credit to a player or a player's account; and
- acting as agent for a credit provider to facilitate the provision of credit to a player or a player's account.

(Regulation 35(5) of the Regulations)

b. Receipt of funds from the player

The licensee may not accept cash from a player and funds may be received from the player only by any of the following methods –

- credit cards;
- debit cards;
- electronic transfer;
- wire transfer;
- cheques;
- any other method approved by the Authority.

(Regulation 35(4) of the Regulations)

iv. Operator obligations in respect of players' accounts

The licensee must establish and maintain a player's account in respect of each registered player.

The licensee must credit to the account of each registered player all funds-

- received by the licensee from or on behalf of the player; or
- owned by the licensee to the player.

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The licensee may not accept a wager from the player unless a player's account has been established in the player's name and there are adequate funds in the account to cover the amount of the wager or the funds necessary to cover the amount of the wager are provided in an approved way.

v. Operator obligation to pay players and remission of funds

A licensee is prohibited from making a payment in excess of Lm1,000 out of a player's account until the player's identity, age and place of residence have been verified.

A licensee must, at the request of the registered player in whose name a player's account has been established, remit the funds standing to the credit of the account to the player by no later than 5 (five) business days of the request, if applicable. An amount may only be remitted by the licensee to the player to the same account from which the funds paid into the player's account originated.

Before remitting funds to a player upon request as aforesaid, the licensee may take such time as is reasonably necessary for the purpose of –

- verifying the player's registration as a player;
- verifying the playing of a game by the player;
- conducting security and other internal procedures in relation to the player's account; and
- ensuring that the approved rules relating to the award of the prizes to players have been complied with.

iv. Limitations on holding inactive funds

Regulation 40 of the Regulations provides that where no transaction has been recorded on a player's account for 30 months, the licensee shall remit the balance in that account to the player or to the Authority, if the player cannot be satisfactorily located. Where such balance has been remitted to the Authority, no claim shall lie against the licensee.

v. Addiction management

A licensee is required to display, at all times, in a prominent place, on the entry screen of the website, a warning of the addiction possibilities of gaming and information and links to other websites assisting compulsive gamblers

vi. Player self-management procedures and obligations

a. Setting of time and value limits

Regulation 43 of the Regulations provides that a registered player may by written or electronic notice to the licensee –

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- set a limit on the amount the player may wager within a specified period of time;
- set a limit on the losses the player may incur within a specified period of time;
- set a limit on the amount of time the player may play in any one session; and
- exclude the player from playing for a definite or indefinite period of time.

A player who has set a limit or exclusion as aforesaid may change or revoke the limit or exclusion by written or electronic notice to the licensee.

Whilst effect may only be given to a notice which increases or revokes a limit or decreases the exclusion after 7 days of receipt by the licensee of the notice, a notice which reduces a limit or increases the exclusion has effect immediately after it is received by the licensee.

Licensees are prohibited from accepting a wager/s from players which are contrary to the limits or exclusions as set by the player.

b. Display of counters

Where the game is displayed on a screen, the licensee must, at all times during the game, display on the screen a counter which automatically updates and shows the player's account balance.

A licensee must make available to every player an automatic reality check at intervals of one hour which shall—

- suspend play;
- clearly indicate for how long the player has been playing;
- display the player's winnings and losses during such period of time;
- require the player to confirm that the player has read the message;
- give the player an option whether to end the session or return to the game.

All amounts displayed which relate to wagers and winnings, must be quoted with the symbol of currency that the player is playing with. Without derogating from the aforesaid provision, full screen games may not be offered to players unless –

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- a real time clock is displayed on the screen at all times; and
- players are given a facility to exit the game.

5. GAMING RULES AND PROCEDURES

a. Aborted and miscarried games

i. Obligations of player and operator

a. Procedure to be followed when game aborts

Regulation 47 of the Regulations

A licensee is required to take all reasonable steps to ensure that the licensee's approved computer system enables a player whose participation in a game is, after he or she has made a wager, interrupted by a failure of the telecommunications system or of the player's computer system which prevents the player from continuing the game, to resume, on the restoration of the system, his or her participation in the game that was interrupted as at the time immediately before interruption. If it cannot restore, a refund must be passed

b. Complaints procedure and rules

A licensee must immediately inquire into any complaint made to the licensee or to the Authority by a registered player.

6. COMMERCIAL ENVIRONMENT

a. Taxation

"Malta embraces international tax standards for transparency and exchange of information and has joined OECD member countries in committing to eliminate harmful tax practices" OECD Official News Release, June 2000.

i. Operator fees and taxes

a. Licensing fees

See clause 4.1 above

b. Other fees (testing, application etc.)

- The Authority may require all applicants for a license to pay the actual costs involved incurred in conducting investigations into their backgrounds suitability and qualifications to obtain a license.
- Certification costs are chargeable to the licensee fee.
- The audit fees for the audit of the gaming system during the certification process is approximately 2,500 (two thousand and five hundred) Euros.

c. Corporate taxes

i. General

The normal company rate of tax is currently 35%.

Malta has an inflation rate and long term interest rate lower than the EU average (the average annual inflation rate is 2.6%).

Malta's wide network of double taxation agreements as well as other methods for relieving double taxation on cross border transactions facilitate the establishment of tax efficient structures, including ITC and international holding companies. ITC and international holding companies may request an advance ruling on their tax status. This is as advisable firstly because such a ruling guarantees the tax position of the company for a minimum period of 5 (five) years and may be renewed for a further period of 5 (five) years and secondly because any changes in the tax legislation during these periods will have a moratorium of 2 (two) years.

ITC

An ITC is taxed at the normal company rate of tax. However, upon receipt of a dividend from an ITC, non – resident shareholders are -

- taxed at a flat rate of 27.5% on the gross amount of the dividend and are credited with the amount of tax paid by the company on

- the profits out of which the dividend was paid; and
- entitled to a refund under the provisions of the Income Tax Management Act of two – thirds of the Malta tax paid by the company on the same profits.

Accordingly, shareholders of an ITC who are not resident in Malta benefit from a substantial refund of the tax paid by the company, whereby on distribution of dividends to non – resident shareholders, such shareholders have the right to claim certain refunds amounting in aggregate to 30.83% of the 35% tax paid by the company. Thus the effective rate of tax of 4.7% is applicable.

International Holding Company

The Maltese tax system does not have a specific “international holding company” regime. However, a Maltese holding company may qualify to hold a “participating holding” in an overseas company. A “participating holding” means a holding of at least 10% (ten percent) of the equity shares of a company not registered in Malta. If the shareholding percentage is less than 10% (ten percent), its shareholding will qualify as a participating holding if –

- the Maltese corporate shareholder is entitled at its option to purchase or has the right of refusal on a disposal of the balance of the equity shares of the overseas company;
- the Maltese corporate shareholder is entitled to be represented on the board of the overseas company;
- the shareholding value exceeds Lm 500,000 (five hundred thousand liri) or the equivalent sum in a foreign company;
- the shares are held in the overseas company for the furtherance of the business of the Maltese company.

Non – resident shareholders of a Maltese holding resident company qualify for a full refund of the Malta tax paid by the Maltese company on income arising from these foreign holdings.

ii. On foreign income

See paragraph 7.a.i.3.a above regarding international holding companies.

d. Specific gambling taxes

The gaming tax rates offer reduced rates of tax on the first months of operation, thus making this jurisdiction attractive to start up operations, and by capping the maximum amount of tax payable per year it is attractive to established operators.

The gaming tax which a licensee must pay to the government on behalf of the government is differentiated according to the type of betting / gaming operation as follows –

- **Class 1**

on all remote gaming (except betting and pool betting), an amount of Lm 2,000 (two thousand Maltese liri) during the first 6 (six) months after the issuance of the license and subsequently Lm 3,000 (three thousand Maltese liri) per month for the entire duration of the license

- **Class 1 under Class 4**

on remote gaming operated by a Class 4 Remote Gaming licensee, the licensee who operates the hosting platform shall not pay any tax for the first 6 (six) months after the issuance of the license and subsequently Lm 2,000 (two thousand Maltese liri) per month for the entire duration of the license and licensees operating from the hosting platform shall pay Lm 500 (five hundred [Maltese?] liri) per month.

- **Class 2:**

- on the gross amount of bets accepted in remote betting operations a sum equivalent to 0.5% (half a percent);
- on betting exchanges, an amount of 0.5% (half a percent) on the sum of all net winnings calculated per player per betting market;
- on pool betting, a sum equivalent to 0.5% (half a percent) on the aggregate of stakes paid.

- **Class 3**

Tax is the percentage of net takings. Percentage amount depends on the nature of the operation

Tax Cappings

- The maximum gaming tax payable per annum by one licensee in respect of any one license shall not exceed Lm 200,000 (two hundred Maltese liri).
- [Where casino operators (under Class 1) operate from the host platform (under Class 4 license) the tax cap is applicable to the total tax payable by all licensees in this “cluster ” together. In this case, the tax cap is reached when the sum of tax payable by all casino operators licensed under Class 1 and their common host platform reaches Lm 200,000 (two hundred Maltese liri).] [The Remote Gaming Regulations – Licensing and Technical Standards Fact Sheet].

The licensee must make payment of the tax due in respect of the preceding month by not later than the twentieth day of the following month to the Authority

b. Enabling factors

i. Cost competitive bandwidth

Internet bandwidth is regarded as being the weakest point in the remote gaming industry when compared to other jurisdictions. In terms of –

- quality, latency times are unstable and guaranteed uptime is low;
- quantity, up until 2003, Malta had only 155 Mbits;
- reliability, up until 2004, there was only one international carrier;
- vulnerability, it was open to DDOS attack;
- cost, the bandwidth pricing remains substantially higher compared to the average offered by datacentres in Europe.

ii. Advertising regulation

A Code of Conduct on Advertising and Promotions sets out the position for operators when marketing their activities.

iii. **Reporting requirements**

- **Anti – Money Laundering provisions**

In order to –

- ensure a safe, stable and serious regulatory environment to both operators and players alike,
- ensure that no money laundering occurs with regard to gaming activities;
- to provide regulatory safeguards to minimise the operators' exposure to fraud

Malta has established strict regulatory monitoring and compliance audits.

The law imposes an obligation on any person to inform the supervisory authority in cases where he/she suspects that a transaction is linked to money laundering. This obligation is imposed both under the Prevention of Money Laundering Act and under the Electronic Commerce Act. A reporting obligation is imposed on information society service providers if they suspect illicit transactions by recipients of their services. A complete accounting trail should always be available and a betting operator is required, on a regular basis, to provide the Authority with information reflecting the operators' compliance with the Regulations

9. UNITED KINGDOM

General Comments:

- *Ranked 3rd most popular by Casino City*
- *84 sites*
- *Dominated by the major UK bookmakers*
- *The new Gambling Act was passed in April 2005. A key aspect of the Act is to pass regulation to a single Gambling Commission. This process is in its initial stages, so the UK regulation can really be regarded as very much “in transition”.*

1. Regulatory Structure, Process and Infrastructure

a. Style, format, philosophy, objectives and jurisdictional scope of regulation

The key shift made by the new UK gambling legislation (Gambling Act 2005) is that it integrates what was previously a fragmented and outdated series of regulations. As a result, “remote gambling,” as IG is described in the British legislation, is simply a subset of the broader gambling laws with some specific sections of the law dedicated only to it. By the same token, the new laws are fairly broadly framed across the entire scope of the gambling industry, with a great deal of leeway being given to the newly established regulatory body, the Gambling Commission, to make judgements upon, and create detailed regulations around, specific aspects of the industry. The purpose of this was, inter alia, to ensure adequate flexibility within the regulatory framework to account for changes in technology, social attitudes and commercial circumstances.

Because the Act was only recently promulgated, it is difficult to be certain as to precisely the style and nature of regulation that the Commission will enact as the prescribed “codes of practice” and specific regulations have yet to be defined and enforced.

The laws are national – but do not attempt to embrace international dimensions – and in the case of remote gambling, all licensing will occur at the national level and, as detailed below, licensed operators will be obliged to physically and corporately locate in the UK. It is an offence in terms of the Act to advertise “foreign” (non-EEA based) gambling in Britain. Operators are deemed subject to the regulation if they use at least one piece of equipment (database, presentation device, result determining device etc.) in Great Britain, regardless of whether other devices are outside the country and/or the users are outside the country. The Secretary of State has the ability to designate a country as a “prohibited territory” and if a person does anything in Great Britain for the purpose of inviting or enabling a person in a prohibited territory to participate in remote gambling, an offence has been committed.

It is clear from the various documents put out by the British Department of Media, Culture and Sport (DCMS), under whose charge this legislation was formulated, that a major objective of the remote gambling legislation was to make the UK an attractive jurisdiction for leading IG operators and to create a thriving IG industry in the country. To quote from a DCMS white paper: “There is a potentially vast international market for which gambling operators based in this country will be encouraged to compete. Consumers, both here and

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abroad, will be able to access a full range of gambling sites licensed and located here, safe in the knowledge that the probity and integrity of the gambling operators and the products they offer are assured by the Gambling commission.”

The specific objectives of the licensing process in the UK are set out as:

- (a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
- (b) ensuring that gambling is conducted in a fair and open way, and
- (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.

The principles of regulation that the DCMS cites as underpinning its approach are:

- Transparency
- Accountability
- Proportionality
- Consistency
- Targeting

b. Identity, mandate and powers of regulator/s

All of UK gambling falls under a single statutory regulator, the Gambling Commission. The Commission is charged with operating controls on entry to the industry, issuing licences and monitoring operator activities as well as imposing penalties for non-compliance. The Commission is charged by the Gambling Act with issuing (and, if appropriate, revising and/or revoking) one or more codes of practice about the manner in which facilities for gambling are provided, with a specific purpose of achieving the three core objectives of the legislation. While certain licensing activities in terrestrial gambling are devolved to local authorities, the Commission is solely responsible for issuing and monitoring remote gambling licences.

c. Staffing, financing and monitoring of regulator/s

The Commission is envisaged to be staffed by a chairman and other commissioners appointed by the Secretary of State, although only with a budget, over and above that of the existing Gambling Board, in the region of GBP2 million per annum. The Commission will assume all of the staff and activities of the Gambling Board. Commissioners will serve for a maximum period of ten years.

d. Enforcement mechanisms

The Commission will have fairly extensive rights of inspection and, when required, the ability to levy fines and/or revoke or amend licences. It is guided by the legislation to enlist the assistance in this task of other statutory bodies such as the police and HM Customs & Excise. Appeals against Commission decisions will go through an Appeals tribunal. Offences under the Act are punishable by up to a year in prison (51 weeks) and/or a “fine not exceeding level 5 on the standard scale.”

2. Definitions of Interactive Gaming

Remote gambling is defined as gambling in which persons participate by the use of remote communication (the internet, the telephone, television, radio or any other kind of electronic technology for facilitating communication). This covers gaming, betting and lotteries.

3. Licensing and Operator Monitoring

a. Role players requiring licensing

Both operators (providers of gambling facilities) and key personnel (at least one individual per licensed facility) require licences. The Act provides for the possibility that the Commission might require software to conform to standards but does not require software licensing.

b. Content and scope of licence

An operating licence is a "remote operating licence" if it authorises activity to be carried on-

- in respect of remote gambling, or
- by means of remote communication.

Such a licence may not also authorise "non-remote" gambling facilities.

A remote operating licence is subject to the condition that remote gambling equipment used by the licensee in connection with the licensed activities must be situated in Great Britain.

The scope of precise content of such a licence is left very broad and open by the Act. It allows the Commission leeway, inter alia, to define standards around random number generation and "any other aspect of the process of remote gambling".

In general, licences will be of indefinite duration, although this may be varied by the Commission.

c. Licensing criteria (by role player) and grounds for refusal

In terms of the Act this is left very broad and very much to the discretion of the Commission. The DCMS had referred to broad criteria of "honesty, competence and ...financial means."

d. Licensing process

i. Application

Again, as far as the recently promulgated Act goes, the Commission has absolute discretion to define the licensing process, to require applicants to submit to various tests and produce as yet undefined evidence of compliance to standards.

An application must-

- specify the activities to be authorised by the licence,
- specify an address in the United Kingdom at which a document issued under this Act may be served on the applicant,
- be made in such form and manner as the Commission may direct,
- state whether the applicant has been convicted of a relevant offence,
- contain or be accompanied by such other information or documents as the Commission may direct

2. Application costs and fees

The Act stipulates that the holder of an operating licence will be subject to an initial and then subsequent annual fees but does not stipulate what these fees will be for any specific licence type or circumstance.

e. Conditions of license

The breadth and flexibility of the law at this stage is best captured in a quote from the Act:

“In considering an application under section 69 the Commission-

- shall have regard to the licensing objectives,
- shall form and have regard to an opinion of the applicant's suitability to carry on the licensed activities,
- shall consider the suitability of any gaming machine to be used in connection with the licensed activities, and
- may consider the suitability of any other equipment to be used in connection with the licensed activities

The Commission may, in particular, have regard to-

- the integrity of the applicant or of a person relevant to the application;
- the competence of the applicant or of a person relevant to the application to carry on the licensed activities in a manner consistent with pursuit of the licensing objectives;
- the financial and other circumstances of the applicant or of a person relevant to the application (and, in particular, the resources likely to be available for the purpose of carrying on the licensed activities).”

i. Technical compliance and game testing

Once again, the legislation is broad in this area:

“The Commission may establish, or provide for the establishment of, standards in respect of the manufacture, supply, installation or adaptation of gambling software.”

“The Commission may establish, or provide for the establishment of, standards in respect of-

- a system used for the generation of results in a virtual game, virtual race or other virtual event or process used in the course of remote gambling;
- any other aspect of the process of remote gambling

In particular, the Commission may-

- provide for the enforcement of standards by the attachment of conditions under section 75 or 77;
- make arrangements with any person for the establishment of standards;
- make arrangements with any person for the administration of tests of compliance with standards;
- for the purpose of considering whether a condition under section section 75 or 77 has been complied with, require the licensee under a remote licence-
 - to submit to a test in accordance with arrangements made under paragraph (c) above, and
 - to produce specified evidence of the result of the test..”

If there is a change of corporate control of an operator, the licence must be surrendered or reapplied for.

4. Player protection and regulation

a. Fair gaming rules and standards

The details of these codes have yet to be produced by the newly established Commission. However, this is clearly a major priority of the UK regulatory authorities. The DCMS philosophy in this regard is captured in the following paragraphs from its White Paper:

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“It is impossible to do away with problem gambling and excessive controls could make matters worse by encouraging the growth of illegal gambling...the law should provide assurance that all parts of the industry will operate to the highest standards of social responsibility, recognising that the strength of the controls embodied in the law will need to be kept under careful review and adjusted if necessary. There are therefore two sides to the issue: a set of statutory safeguard governing specific gambling activities and – running alongside them – a commitment by all licensed gambling operators to conduct their business in a way which is socially responsible. The... Gambling Commission should issue formal codes of practice in relation to social responsibility which should become part of the conditions of licences to operate. These codes should cover such matters as the avoidance of encouragement of children to gamble; provision for players to bar themselves from gambling; the display of clear information to customers about problem gambling and what people who think they need help might do. The codes should apply as much to [remote] gambling...”

b. Advertising

This is a fundamental policy tool of the UK regulators, aimed most specifically at preventing non-UK operators from capturing the UK consumers gambling spend. A non-EEA operator is not allowed to advertise in the UK in any way.

5. Commercial environment

Operators are liable for an as-yet-unspecified fee, a levy and normal corporate and gambling taxes.

No specific enabling legislation has been promulgated.

10. UNITED STATES

The Country

- *Biggest internet gaming market in the world by far. Roughly 80-90% of all play emanates from the United States of America (“US”);*
- *World-leading, affordable bandwidth and accessibility to the internet;*
- *Huge popularity and history with regard to gaming culture: Las Vegas, Atlantic City, Mega-Lotteries and World Series of Poker.*

1. REGULATORY STRUCTURE, PROCESS AND INFRASTRUCTURE

The legislative landscape in the US with regard to internet gaming can be highly confusing to navigate for the uninitiated because, apart from the manifest disconnect between the actions of the legislature and those of the executive or administration, one needs to try and reconcile the federal/state approaches to the issue of internet gaming. Accordingly, our approach to the subject will be to discuss the issue under the following heads:

- Congress – the federal legislature’s approach to i-gaming;
- The Executive – the federal administration’s approach to i-gaming, particularly through the Department of Justice;
- The States – the approach by many individual states to the issue of i-gaming.
- The Judiciary – what the US courts have to say on the issue

(a) The Congressional Approach

- *Congress runs in 2 year cycles and since the start of 2005, the US is in the the 109th congress, which will run until the end of 2006.*
- *Congress is a split legislature comprised of 2 “Houses”, with approximately 460 “Congressmen” in the House of Representatives, and approximately 110 “Senators” in the Senate.*
- *In order to make law, a member of either House may introduce a bill in that House. Once, that House has passed the bill, it moves to the other House for consideration.*
- *If the bill passes both Houses it goes to the President for veto or rubber stamping, if not it dies halfway out of the “gates”.*
- *If a similar bill is introduced and passes in each individual House, a special committee will be formed with members of both Houses to consider and reconcile the bills, where after the combined bill will be passed to the President.*

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Since 1995, the issue of i-gaming has been cropping up in every congress in the most highly politicised fashion. Most notably, the issue has developed into a “prohibition” versus “regulation” argument with a vocal caucus for each form of regulation. Interestingly, the battle lines seem to be drawn almost directly down the middle between the Republican party on the one hand (prohibition) and the Democrats on the other (regulation).

i. 104th and 105th Congresses

The first mention of i-gaming was by Senator John Kyl of Arizona, who as become the number one proponent of prohibition thereof. Kyl introduced the **Internet Gambling Prohibition Bill** in 1995 in the 104th Congress. This, his first attempt at prohibition died a natural death without getting near to being passed. Again in the 105th and 106th Congresses, the same bill was introduced and had the relative success on both occasions of being passed by the Senate, although somewhat modified to create “carve-outs” for horse and dog racing but not Indian gaming, which was to some extent its death knell. The bill never passed through the House of Representatives (“HOR”). It is noteworthy, for reasons which will become apparent in our discussion of the Executive’s approach to i-gaming, that final version of Kyl’s bill sought to amend the existing **Wire Act** (see (b) below).

Kyl’s bill sought to place a heavy onus on Internet Service Providers causing a lashback from that sector and from various civil rights groups. An accompanying factor to Kyl’s introduction of his bills, was always his persistent rhetoric regarding the damage that i-gaming causes the economy and the moral dangers of i-gaming. Critics have argued that his primary motivation was actually the deprivation of state coffers of any taxes relating to i-gaming.

ii. 106th Congress

It was also during the 106th Congress that a number of Congressman introduced various prohibition bills:

- The Goodlatte Bill
- The Conyers-Cannon Bill; and
- The Leach-Lafalce Bill

Each of these bills took a slightly different approach to the issue of prohibiting i-gaming and the mechanisms to effect the same. The Goodlatte Bill (HR3215) was undoubtedly the harshest and put major burden on ISP’s to prevent i-gaming under the threat of prosecution. In addition, Goodlatte made it clear that, in his view, i-gaming was incompatible with good Christian morality and family values and accordingly was undesirable. Goodlatte’s bill was quickly stymied in the HOR, largely because of the ISP burden issue but also because it attempted to outlaw any future prospect of internet lotteries, entering into a highly politicised arena.

By contrast, the Conyers-Cannon Bill simply sought to amend the **Wire Act** to categorically include internet gaming without any “carve outs”. A critical difference was that Conyers-Cannon specifically exempted ISP’s from prosecution. Conyers and Cannon did not aggressively pursue the passage of their bill but rather took the stance that if Goodlatte continued to attempt to “push through” HR3215, they

would “block” him with a simultaneous introduction of their bill. This strategy would later make sense when Conyers sought to introduce an internet gaming regulation bill, in stark contrast to previous attempts at prohibition. The question which would naturally arise, was whether Conyers ever sought to actually prohibit i-gaming or rather sought to confuse the prohibition issue, so as to impede the progress of any bill in this regard.

The Leach Bill sought to place pressure on all financial institutions to shut down the critical payment channels, so vital to the fund flows in i-gaming by placing an onus on banks and financial processors to prohibit their customers from funding their i-gaming endeavours. In its passage through the House Banking Committee, the bill was so radically modified (so as to give individual states the right to override the bill, by proclaiming i-gaming to be legal in their jurisdictions) that Leach, no longer happy with his own bill, abandoned the passage thereof. By the end of 2000, three prohibition bills had been introduced and died during the 106th Congress.

iii. 107th Congress

During the 107th Congress four new i-gaming related bills were introduced. The bills introduced during the 107th Congress were:

- ***The Combatting Illegal Reform and Modernisation Act, HR3215*** by Bob Goodlatte;
- ***The Unlawful Internet Gambling Funding Prohibition Bill, HR556*** by Leach;
- ***The Internet Gambling Payments Prohibition Act, HR2579*** by LaFalce; and
- ***To Create a Commission on Internet Gambling Licensing and Regulations, HR5760*** by John Conyers

In HR3215, Goodlatte modified his approach and clearly sought to achieve his objectives, whilst placating certain opponents to his previous bill by seeking to deal with their concerns. Goodlatte, rather than introducing a standalone piece of legislation, sought to modify the ***Wire Act*** to expressly prohibit i-gaming, but still placed an onus on banks to prohibit the funding of i-gaming through any financial instruments issued, or administered, by them. The bill now provided an exemption for interstate gambling i.e. if a state legalised i-gaming, it would only be allowed to take place between individuals/entities within that particular state’s borders. It also exempted ISP’s from liability for the i-gaming activities of their clients.

The bill met an ingenious resistance from Rep. Canon, who wished to amend the bill, by removing carve-outs for, *inter alia*, horse and dog racing and lotteries thus dooming it, due to the fierce resistance by proponents of these sports and paving the way for a regulatory approach, favoured by the Conyers Bill, HR5760. Because of Canon’s proposed amendments, HR5760 failed to get anywhere and died during the 107th Congress.

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Contemporaneously, the Leach Bill, HR556 was attempting to pass through Congress. Like the bill introduced by Leach in the 106th Congress, this bill sought to close payment or funding channels for i-gaming, provided by financial institutions, and outlawed the use of such financial instruments by the i-gaming operators. The bill cleverly sought to avoid the highly politicised arguments around the prohibition of i-gaming and was silent on prohibiting such activities; it just simply prohibited the actual funding of the activities. The bill seemed to garner a great deal of support but ironically it was Leach's former ally, LaFalce, who stymied the bill with his own HR2579, which was more "beefed-up" and whilst Leach and LaFalce attempted to reconcile the differences between their bills, September 11, 2001 happened. As a result i-gaming bills and many others were put on the backburner. Leach, not to be outdone attempted to have the provisions of HR556 included into an urgent piece of anti-terrorism legislation passing through Congress in a hurry, claiming that i-gaming was a rich source of terrorist funding. The argument was unconvincing and Leach was unsuccessful in his attempt, notwithstanding the assistance of the chairman of the House Financial Services Committee, Michael Oxley.

During the second year of the 107th Congress (2002), the Leach bill rallied again, this time with the written endorsement of the White House and the bill passed through the HOR in November, 2002 the last few days of Congress. It was a pyrrhic victory for Leach though, because the Senate could not possibly pass the bill in the short time left in Congress.

It was also toward the end of the 107th Congress that John Conyers' regulation bill was introduced. This stands out as the only congressional attempt to date to actually try and regulate or legalise i-gaming in the US. Conyers' bill proposed the establishment of a commission to investigate the viability of, and mechanisms for, i-gaming. The bill, due to its late introduction, never got anywhere.

iv. 108th Congress

During the 108th Congress three new i-gaming related bills were introduced. The bills introduced during the 108th Congress were:

- ***The Unlawful Internet Gambling Funding Prohibition Bill, HR21*** by Leach;
- ***The Unlawful Internet Gambling Funding Prohibition Bill, HR2143*** by Bachus;
- ***S627, The Unlawful Internet Gambling Funding Prohibition Bill*** introduced by Senator John Kyl in the Senate

The Leach bill, his third attempt in six years was doomed from the start because it contained penalty provisions i.e. a prison sentence stipulated for the offences it created with regard to using financial instruments to process online gaming transactions. This inclusion of a penalty, rather than leaving the actual issue of a penalty for the offence to a specific piece of US legislation stipulating penalties for a broad range of offences, required the bill to be forwarded to the HOR Judiciary Committee, as opposed to the HOR Financial Services Committee (a committee

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headed by Oxley and thus partisan to i-gaming prohibitions). Due to the lack of support for such initiatives in the Judiciary Committee and some fancy footwork by proponents of regulation and anti-anti i-gaming, the bill languished in the Judiciary Committee and died a slow death.

Bachus' version of the bill, with an identical name to Leach's, contained carve-outs for horseracing and lotteries and ironically these carve-outs again created an apprehension against devout anti-i-gaming proponents that the bill would actually create an argument for i-gaming with regard to horseracing and lotteries. The bill was quashed.

Kyl's version of practically the same bill in the Senate suffered from the same issue, so the carve-outs were eliminated and accordingly the horse and dog racing lobbies as well as the lotteries lobby made sure that the bill never passed.

v. 109th Congress (2005/6)

No bills have been introduced as yet in the 109th, although it seems that Leach or Kyl are planning to try yet again.

(b) The Executive Approach

Somewhat ironically, given the attempts in Congress over the last 8 or so years to pass a prohibition bill, the DOJ has claimed that the legal position with regard to online gambling is entirely clear. That is, that i-gaming is entirely illegal in terms of the ***Interstate Wire Act 318 U.S.C §1084***. The ***Wire Act*** states:

“whoever being engaged in the business of betting or wagering, knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.”

The issue of the applicability of the ***Wire Act*** to i-gaming is the topic of much debate, including in the US courts themselves (as will be examined in further detail below). The DOJ argue that this act applies to all wagering and betting, whilst there is a strong caucus of opponents to such view, which claims that the ***Wire Act*** categorically applies to sports-betting. A plain English reading of the statute would certainly seem to support such view. In addition, if one takes into consideration the fact that this act was drafted in 1961 – a time when it would have been near impossible to conduct a casino game over the telephone but very possible, and indeed rife, to place sports bets over the telephone – the DOJ argument becomes somewhat implausible. There are those that may even say that the steadfast reliance by the DOJ upon this act, whilst Congress clearly recognises its inapplicability to i-gaming (hence the efforts in Congress over the last eight years to settle the issue) is an abuse of the DOJ's executive power.

Notwithstanding the foregoing, since around 2001, perhaps having become tired, with what the executive perceives to be the consistent failure of the legislature to

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properly settle the issue surrounding the legality of i-gaming, the DOJ has embarked on a campaign to attempt to stifle the i-gaming industry's penetration, and continued exploitation, of the US market. The DOJ's campaign has clearly centred on closing the important commercial channels that i-gaming operations rely on for continued access to the US Market, primarily:

- Payment channels; and
- Marketing Channels

The DOJ in conjunction with various State Attorney-Generals, most notably Eliot Spitzer (the New York AG) has been very successful in persuading a number of large financial institutions to desist from processing i-gaming related transactions. In late 2001/early 2002, a number of large US based financial institutions were approached including Citibank (which issues over 10% of US credit cards), Chase Manhattan and American Express and as a result these institutions and others declined to continue processing i-gaming transactions. Interestingly, these financial institutions were not officially charged but simply pressured under threat of the applicability of the **Wire Act** to i-gaming to cease processing these transactions. As a result, the i-gaming industry did and has become more dependent on "web wallets" and other "alternative payment methods" (various ostensibly non-gaming related instruments funded by credit card or wire transfer and then used online in conjunction with pin codes, etc to purchase i-gaming credits). One of the most successful web wallets initially was *PayPal*. Shortly after *PayPal* was acquired by the famous online auction house *eBay*, they were pressured by the New York Attorney General to discontinue the processing of all i-gaming transactions – a blow to the industry. However, the i-gaming industry is extremely adaptable and while some of the smaller i-gaming operations may have suffered and closed as a result of the pressures of payment channels being shut, today there are more alternative payment methods available to a potential online gambler than ever before. Many of these payment methods emanate from countries outside of the US, which either licence i-gaming operations or are not concerned with prohibiting i-gaming. Accordingly, it is unlikely that the DOJ would ever be entirely successful in ever completely closing this channel.

Realising that it could, at best, only have an effect on onshore financial institutions in the US, the DOJ embarked on a campaign to attempt to prevent US-based media companies from publishing i-gaming advertisements both online and in conventional media. In June 2003, the DOJ began issuing letters to a number of media houses ("publishers") stating that by accepting advertising from i-gaming operations, publishers may be "aiding and abetting" in criminal conduct. Later in 2003, in around November, the Attorney General for the Eastern District of Missouri, Raymond Gruender, convened a grand jury to investigate i-gaming. This grand jury issued a number of subpoenas to various publishers but to date has not issued an indictment. The effect of these letters and subpoenas and obviously the desired one, was to prompt a number of publishers to cease carrying i-gaming related content including two major search engines, Google and Overture (the Yahoo search engine's parent company). Whether these letters have any legal foundation, apart from the DOJ's, arguably flawed, interpretation of the **Wire Act**.

One publisher, Casino City, an online portal providing facts and figures regarding the i-gaming industry and advertising various i-gaming ventures, decided to

challenge the DOJ on the abovementioned “aiding and abetting” letters last year, 2004 in the Court for the Middle District of Louisiana. The basis of the challenge was that the actions of the DOJ violated the First Amendment rights of freedom of expression, entrenched in the US Constitution. After many months of papers being exchanged, the DOJ succeeded in having the matter dismissed without being heard on the basis, ironically, that Casino City was not targeted or charged with regard to any crime and that the letters were simply informative. Accordingly, the DOJ argued that Casino City had no legal standing to bring an action against it, an argument which the court accepted and consequently dismissed the application.

Accordingly, the DOJ has had a good deal of success in making the US a more difficult landscape for i-gaming operations to penetrate, however, the US still remains the biggest i-gaming market by far and is likely to remain that way until Congress injects clarity into the legal situation by either choosing “full-blown” prohibition or taking the regulatory approach.

(c) The States – an individual approach by various states

Most states within the US, with the exception of Utah and Hawaii have some form of regulation pertaining to gambling in general and as a result on a state-by-state basis, one would find varying degrees of legality pertaining to i-gaming. The position in individual states ranges from i-gaming being expressly outlawed to a general prohibition on any form of “unlicensed gambling” (obviously including i-gaming) to no mention of i-gaming whatsoever. An analysis of each state’s laws or position on i-gaming would be voluminous and beyond the scope of this analysis. The more important question in this context is whether it is practical for an individual state within the US to seek to exercise jurisdiction over a borderless medium like the internet.

US federal law itself assists in this regard, with the piece of law known as the “Dormant Commerce clause”. It is a doctrine of Congressional power interpreted by the U.S. Supreme Court from the actual Commerce Clause contained in the Constitution²² and applies to situations where there is no federal or Congressional law on a commercial trade matter but there is prohibitive state law.

The doctrine was fostered in the mid-1900’s by the Supreme Court. In the case of ***H.P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 532, 93 L. Ed. 865, 871 (1949)***, the US Supreme Court stated that *“Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation.”* In more recent and modern application of the “dormant commerce” clause, in dealing with pornographic websites²³, the courts held that

²² The U.S. Constitution, at Article I, Section 8, Clause 3, states that Congress has the power to regulate interstate commerce. The commerce clause says: “The Congress shall have power to... regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”

²³ *Reno v. ACLU*, supra, *American Book Sellers Foundation for Free Expression v. Dean*, 202 F.Supp.2d 300 (D. Vt. 2002); *PSI Net, Inc. v. Chapman*, 167 F.Supp. 878 (W.D. Pa. 2001) (4th Cir. 2003); *Cyberspace Communications, Inc. v. Engler*, 142 F.Supp.2d 827 (E.D.

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the internet is by its nature “interstate commerce” deserving of the protection of the “dormant commerce” clause.

Based on the foregoing, there exists a potentially powerful argument that until Congress actually passes law on the issue of i-gaming it remains legitimate “interstate commerce”. The DOJ would of course, as evidenced by the discussion on the “Executive” above, argue that the **Wire Act** is a federal law which actually applies to i-gaming and accordingly that the “dormant commerce” clause is inapplicable. This would not explain why Congress has tried for approximately eight years to legislate one way or the other on the issue – seemingly Congress does not believe that effective gaming regulation exists, in the form of the **Wire Act** or otherwise.

Notwithstanding the foregoing, various State A-G’s have attempted to prosecute i-gaming operations within their jurisdictions. The NY-AG’s action against a number of financial institutions processing i-gaming transactions has been previously discussed. In addition, some other examples of this form of action include:

- The New Jersey AG’s attempted prosecution, in 2001, of a number of i-gaming operations engaging in “bricks and mortar” billboard advertising in his State. These prosecutions were all settled before reaching the courts on the basis that these operations would use best efforts to not knowingly target residents of NJ with i-gaming advertising or knowingly;
- The Florida A-G brought pressure to bear upon Western Union, the premier US wire transfer provider, in 1997 to cease processing transactions related to i-gaming. The matter was settled on the basis that Western Union would comply, prior to any formal court action taking place.

In concluding with regard to the “State Approach” to i-gaming it is clear that the issue of i-gaming rightfully falls to be determined at a federal level for various reasons i.e:

- The fact that very few i-gaming businesses actually “target” any particular state with their advertising, rather choosing to generically advertise on the internet or through media that is nationally distributed throughout the US, such as cable television. In addition, most i-gaming operators specifically advise potential gamblers, in their terms and conditions, to take cognisance of their State’s laws and not to register if it is illegal in their State.
- On a practical level, individual States are very limited in their powers to enforce their laws outside of their jurisdictions and to bring the requisite resources to bear on largely offshore/international enterprises.
- The challenge, by an i-gaming operator, to any State action under the “dormant commerce” clause remains a distinct probability.

(d) The Judiciary

There have been some interesting judgements by US courts regarding i-gaming but perhaps the most influential judgement of recent times, focussing on the applicability of the **Wire Act** to any non-sports-betting related i-gaming is the case of ***In re: Mastercard Int'l Inc 590 132 F. Supp 2d 468 (E.D. La. 2001)***(“**Mastercard**”) decided by a federal court, the Fifth Circuit Court (a multi-jurisdictional court based in Louisiana, hearing this matter notwithstanding filings in New York, California, Alabama and Illinois by multiple complainants).

In Mastercard, a number of individuals sought to sue the famous credit card association, along with its competitor Visa for “illegal” involvement with i-gaming. The basis of their complaint was that i-gaming was illegal under the **Wire Act**. The argument continued by stating that by processing financial transactions, which funded i-gaming, these credit card associations were violating **RICO**, the **Racketeer Influenced and Corrupt Organisation Statute 18 U.S.C. RICO** is a statute designed to prosecute parties acting in concert to commit a crime or crimes, each party playing a different role, even though potentially located in remote locations from the other.

In deciding whether there was indeed a **RICO** violation, the court categorically held that:

*“However, even a summary glance at the recent legislative history of internet gambling legislation reinforces the Court's determination that internet gambling on a game of chance is not prohibited conduct under 18 U.S.C. §1084. Recent legislative attempts have sought to amend the Wire Act to encompass “contest[s] of chance or a future contingent event not under the control or influence of [the bettor]” while exempting from the reach of the statute data transmitted “for use in the new reporting of any activity, event or contest upon which bets or wagers are based.” See S.474, 105th Congress (1997). Similar legislation was introduced the 106th Congress in the form of the “Internet Gambling Prohibition Act of 1999.” See, S. 692, 106th Congress (1999). That act sought to amend Title 18 to prohibit the use of the internet to place a bet or wager upon “a contest of others, a sporting event, or a game of chance...”Id. .”Id. As to the legislative intent at the time the Wire Act was enacted, the House Judiciary Committed Chairman explained that “this particular bill involves the transmission of wagers or bets and layoffs on horse racing and other sporting events.” See 107 Cong. Rec. 16533 (Aug. 21, 1961). Comparing the face of the Wire Act and the history surrounding its enactment with the recently proposed legislation, it becomes more certain that the **Wire Act's prohibition of gambling activities is restricted to the types of events enumerated in the statute, sporting events or contests. Plaintiffs' argument flies in the face of the clear wording of the Wire Act and is more appropriately directed to the legislative branch than this Court.**” (writer's emphases)*

There are other US judgements pertaining to i-gaming but none as significant or conclusive as this one and none which highlights the lack of any meaningful and decisive legislation relating to i-gaming in the US.

Another recent judgement, not by an US court but by an international arbitration panel, should be mentioned. In ***Antigua and Barbuda vs United States of America***, before the World Trade Organisation (“WTO”) the government of Antigua brought an action against the US based on a purported violation of the ***General Agreement on Trade and Services (“GATS”)***. Antigua’s claims were based, *inter alia*, on the proposed statutes in Congress regarding the banning of i-gaming funding and the DOJ’s active enforcement action against credit card companies. Antigua is a licensing jurisdiction for i-gaming and it claimed that the US’s actions, which effectively were aimed at preventing Antigua’s licensees from providing i-gaming into the US, amounted to a violation of international trade law. By being a signatory to ***GATS***, the US is obliged to allow other signatories access to its national markets, unless a prohibition of such access is based on sound reasons for protecting public morals, human life or health or protecting the population from fraudulent practices.

The WTO found in favour of Antigua, notwithstanding the US’s arguments pertaining to, *inter alia*, public morality.

The US is not obliged to follow the WTO ruling, although this does place the US under some pressure, not the least of which is brought to bear by the perception of other ***GATS*** members that the US is willing to “pick and choose” as to when to honour its ***GATS*** commitments.

(e) Conclusions

- The *status quo* in the US is a useful and informative example of a jurisdiction with no clear law as to the legality of i-gaming but with a very active “protectionist” policy inherent within the administration or executive, which manifestly acts out of synchronisation with the other two major organs of state, the legislature and the judiciary.
- Notwithstanding, the active attempts by the executive to police and dissuade i-gaming, the US remains the most active and populous i-gaming market in the world.
- It would seem that even if the US chose to implement a prohibition policy, there would be little chance of stemming the tide in terms of its “gambling-crazy” population. This could be why a very strong pro-regulation caucus exists within Congress. However, it seems that as long as the strong “prohibitionist” lobby continues to exist in Congress, the issue will be vexed for some time to come, leaving the administration, the i-gaming operators and ultimately, the judiciary to resolve the position with regard to i-gaming in the US.

C.ii. IMPACT AREA OUTCOMES

Impact Area Outcomes in Key Jurisdictions

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Impact Area	Alderney	Antigua	Australia
Number of sites ²⁴	17	434	19 ²⁵
Number of online operators (estimated)	12 (only 1 bookmaker)	36	11 (only 1 casino operator)
Competitiveness with other licensing jurisdictions	<p>Each country's ability to compete with other licensing jurisdictions is a function of the areas addressed in the analysis of each jurisdictions' framework elsewhere in this report. This includes regulatory structure and oversight, but probably most importantly the commercial environment offered by the jurisdiction (e.g. operator fees and taxes, restrictions on profit repatriation, and hosting facilities and bandwidth).</p> <p>A jurisdiction's relative competitiveness is probably best measured by its ranking in terms of popularity. Popularity is measured by the amount of player traffic that is received by the sites licensed in a particular jurisdiction. Using the number of sites or operators is not an accurate reflection of competitiveness, as a few operators account for the majority of the online gaming activity (for example, PartyPoker has more than 50% of the poker market, and the online casino market is dominated by 888.com and the larger Microgaming licensed operators).</p>		
Ranking by popularity ²⁶	14	4	9 ²⁷
Revenue generation <ul style="list-style-type: none"> ▪ Licensing fees ▪ Taxation 	The Alderney Gambling Control Commission's ("AGCC") 2004 Annual Report shows licensing fees received of £1.2m (R13.9m) - based on a £75,000 annual license fee. There is no gambling tax, VAT, or corporate tax.	Application license fees per operator for online gaming and sportsbetting are US\$75,000 and US\$100,000 respectively. An annual fee of \$5,000 is payable for both types of licenses. A 3% tax is payable on net win, capped at \$50,000. Total annuity licensing fees and tax is estimated to be \$1m pa.	License fees and taxes differ between the various states and territories. Northern Territory, the only territory to license an online casino operator, levies a gaming tax of 4% of net win. During the half year ended 31/12/04, this casino operator (Lasseters) paid a gaming tax of AU\$280,000 (R1.4m). No corporate tax was paid as the casino made a loss of AU\$691,000.
Funds outflows <ul style="list-style-type: none"> ▪ Player losses ▪ Profit repatriation 	With a population of 2,400, any losses incurred by residents on locally licensed foreign owned sites where profits are repatriated is likely to be negligible. Online gambling activity is not restricted to locally licensed sites, and therefore residents may be gambling on any of the other	With a population of 68,000 ²⁸ any losses incurred by residents on locally licensed foreign owned sites where profits are repatriated is likely to be negligible. Online gambling activity is not restricted to locally licensed sites, and therefore residents may be gambling on any of	Licensed operators all appear to be Australian registered companies, and therefore there is unlikely to be an outflow from player losses. In addition, Australian licensed online gaming operators may not accept bets from Australian residents.

²⁴ www.casinocity.com - English sites only

²⁵ Total for all states and territories

²⁶ A jurisdiction's www.casinocity.com

²⁷ Ranking is for Northern Territory, the most successful Australian jurisdiction, as this is only shown by territory and state

²⁸ <http://www.odci.gov/cia/publications/factbook/index.html>

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	2,000+ sites not licensed in Alderney. The operators' marketing efforts are also highly unlikely to be targeting Alderney residents.	the other 2,000+ sites not licensed in Antigua. The operators' marketing efforts are also highly unlikely to be targeting Antigua residents.	
Costs of regulation and monitoring	The AGCC's 2004 Annual Report reflects regulation and monitoring costs of £524,000.	Unknown – not likely to be too material due to the fact that Antigua regulations do not appear to be actively enforced.	Unknown
Direct employment by operators (including call centres)	Employment by licensees is not encouraged, and the highest local employment by a licensee is 12 (according to the 2004 Annual Report).	At its peak, the online gaming industry directly employed about 3,000 people. With licensed operators having been reduced from over 100 to 36, the number employed has reduced dramatically.	Online casino operations are estimated to have an average of 25 employees per company. It is difficult to quantify how many employees of betting companies are directly attributable to the online operations, as many of these employees would be employed anyway by the telebetting operations.
Indirect employment (service providers) <ul style="list-style-type: none"> ▪ Software developers ▪ Infrastructure providers ▪ Telecommunications ▪ Financial services 	<p>Indirect employment may be generated from software development and support, provision and maintenance of equipment and hardware, network installation, security and support, gaming and site server hosting, database management, software testing for licensing purposes, payment processing, advertising and marketing.</p> <p>However, unless it is a condition of the operator's license to maintain these services in the licensing jurisdiction, the operator will seek to locate each of these functions in whichever country is able to provide the service at an appropriate level of cost and quality (for example, if a Malta licensed casino operator is targeting a US customer base, then the operator is likely to employ US based marketing and advertising resources). Traditionally the licensing jurisdictions have only required the hosting of the gaming servers to be done in their jurisdiction, leaving the operators free to locate call centres, payment processors, software developers etc. elsewhere. Only the UK appears likely to impose a requirement on the operators to ensure that most of the related operations are based in the UK (and this is widely regarded as something which will discourage operators from obtaining a UK license).</p>		

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<p>Competition with local gambling industry</p>	<p>Due to the ubiquitous nature of online gambling, the act of licensing online gambling is not likely to have the effect of introducing this form of gambling to a jurisdiction (i.e. it is readily available and easily accessible worldwide), and therefore there should not be materially increased competition for any local terrestrial gambling industry.</p> <p>In 2004, a UK based trade organisation called the Interactive Gaming, Gambling and Betting Association (“iGGBA”) issued a position statement on remote gambling and tax for the UK Treasury, Customs and Excise, wherein it was stated that “The assumption of a substitution effect between traditional based gambling offerings and remote gambling is false. Remote gambling is a unique customer experience. It is in many ways complementary to the traditional gambling premises. This is witnessed by the fact that many of the high street casinos, bingo halls and bookmakers offer remote gambling in addition to their terrestrial offerings. It is true that operators often offer better odds on betting events through remote gambling channels, but this seems to have no discerning effect on traditional betting revenues with the large brand name operators stating record profits this year from their bricks and mortar shop operations. For games such as roulette and card based games, the odds of winning are not changed between remote and traditional operators.”</p>		
<p>Gambling exposure and addiction of citizens</p>	<p>Online gambling is available on the internet to residents of any of the jurisdictions considered in this report, regardless of whether a particular jurisdiction licenses the activity, and therefore it cannot be construed that by issuing licenses gambling exposure and addiction will necessarily be increased. However Alderney does provide for, and enforce, regulations addressing responsible gambling (both access by minors and problem gambling), and those residents betting with local sites will have proper safeguards available to them.</p>	<p>Online gambling is available on the internet to residents of Antigua, regardless of the fact that Antigua licenses the activity, and therefore it cannot be construed that by issuing licenses gambling exposure and addiction will necessarily be increased.</p>	<p>Australia does not permit online gaming operators to accept bets from Australian end users.</p> <p>Online betting is available on the internet to Australian residents regardless of the fact that Australian jurisdictions license the activity, and therefore it cannot be construed that by issuing betting licenses gambling exposure and addiction will necessarily be increased. However Australian states and territories do provide for, and enforce, regulations addressing responsible gambling (both access by minors and problem gambling), and those residents betting with local sites will have proper safeguards available to them.</p>

REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

Exposure to money laundering and organised crime	<p>Although online gambling does potentially present opportunities for disreputable operators to collude with players to participate in money laundering, through proper licensing and regulation it is relatively easy to ensure that sites are crime free and honest and conducted in accordance with the law. These measures include proper probity processes for licensees and the key employees, and know your customer (player) procedures adopted by the operators and payment processors for both anti-money laundering and anti-fraud control. It is understood that Alderney, Antigua and Australia have ensured that licensees implement appropriate controls to ensure that there is no real increased risk of crime and money laundering. Furthermore it has to be considered that in order for funds to be deposited at an online gambling operation, and to be paid to a player, these funds must pass through financial institutions (player accounts should not be funded with cash) which are also subject to anti-money laundering controls such as the Financial Action Task Force guidelines.</p>
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REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

Impact Area	Costa Rica	Gibraltar	Isle of Man
Number of sites	377	95	2
Number of operators (estimated)	38	15	2 (both sportsbooks)
Competitiveness with other licensing jurisdictions	<p>Each country's ability to compete with other licensing jurisdictions is a function of the areas addressed in the analysis of each jurisdictions' framework elsewhere in this report. This includes regulatory structure and oversight, but probably most importantly the commercial environment offered by the jurisdiction (e.g. operator fees and taxes, restrictions on profit repatriation, and hosting facilities and bandwidth).</p> <p>A jurisdiction's relative competitiveness is probably best measured by its ranking in terms of popularity. Popularity is measured by the amount of player traffic that is received by the sites licensed in a particular jurisdiction. Using the number of sites or operators is not an accurate reflection of competitiveness, as a few operators account for the majority of the online gaming activity (for example, PartyPoker has more than 50% of the poker market, and the online casino market is dominated by 888.com and the larger Microgaming licensed operators).</p>		
Ranking by popularity	7	1	12
Revenue generation <ul style="list-style-type: none"> ▪ Licensing fees ▪ Taxation 	<p>Currently no licensing fees or taxation is payable by online gambling companies based in Costa Rica.</p>	<p>No prescribed start-up licensing fees, but there is an annual fee of £2,000. Annual fees are therefore estimated to be £30,000 pa (R350,000). The tax rate is 1% of turnover for sports books and 1% of gross profit for online casinos. Tax is capped at £287,000 pa, with 1st and 2nd year minimum amounts payable of £28,700 and £57,400 respectively.</p>	<p>The annual wagering licence fee of £80,000 for each of the 2 licensed operators would result in income of £160,000 (R1.9m) pa accruing to the government.</p> <p>Online betting companies pay 10% of gross profits from bets received from IOM residents, 15% of GP from bets received from UK residents, and 1.5% of GP from bets received from any other country.</p> <p>Paddy Power, the biggest licensee, earned gross profit from online and telephone activities of £29m for the year ended 31/12/2004. Although this includes poker and casino activity which is not licensed in IOM, this would indicate a tax contribution in excess of £500,000 (R5.8m).</p>

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			Corporate tax is not applicable to online gambling operators.
<p>Funds outflows</p> <ul style="list-style-type: none"> ▪ Player losses ▪ Profit repatriation 	Operators licensed in Costa Rica are not permitted to accept bets from Costa Rica residents, therefore there is unlikely to be an outflow from profit repatriation.	With a population of 68,000 ²⁹ any losses incurred by residents on locally licensed foreign owned sites where profits are repatriated is likely to be negligible. Online gambling activity is not restricted to locally licensed sites, and therefore residents' may be gambling on any of the other 2,000+ sites not licensed in Gibraltar. The operators' marketing efforts are also highly unlikely to be targeting Gibraltar residents.	With a population of about 76,000 any losses incurred by residents on foreign owned sites where profits are repatriated is likely to be negligible. Online gambling activity is not restricted to locally licensed sites, and therefore residents' may be gambling on any of the other 2,000+ sites not licensed in IOM. The operators' marketing efforts are also highly unlikely to be targeting IOM residents.
Costs of regulation and monitoring	Not applicable – there is no legislation for online gambling	Not likely to be too material, since Gibraltar does not have a statute dealing specifically with online gambling (although there is a licensing and taxation process).	Unknown
Direct employment by operators (including call centres)	The larger sportsbooks in Costa Rica employ over 500 people, and therefore with an estimated 38 operators on the island, direct employment created by online and telephone gambling is likely to be considerable.	It is estimated that 1,200 people are directly employed in the online gambling industry in Gibraltar.	Unknown, however the telephone and online call centre staff contingent of both operators is likely to be considerable (total 500?).

²⁹ <http://www.odci.gov/cia/publications/factbook/index.html>

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<p>Indirect employment (service providers)</p> <ul style="list-style-type: none"> ▪ Software developers ▪ Infrastructure providers ▪ Telecommunications ▪ Financial services 	<p>Indirect employment may be generated from software development and support, provision and maintenance of equipment and hardware, network installation, security and support, gaming and site server hosting, database management, software testing for licensing purposes, payment processing, advertising and marketing.</p> <p>However, unless it is a condition of the operator's license to maintain these services in the licensing jurisdiction, the operator will seek to locate each of these functions in whichever country is able to provide the service at an appropriate level of cost and quality (for example, if a Malta licensed casino operator is targeting a US customer base, then the operator is likely to employ US based marketing and advertising resources). Traditionally the licensing jurisdictions have only required the hosting of the gaming servers to be done in their jurisdiction, leaving the operators free to locate call centres, payment processors, software developers etc. elsewhere. Only the UK appears likely to impose a requirement on the operators to ensure that most of the related operations are based in the UK (and this is widely regarded as something which will discourage operators from obtaining a UK license).</p>
<p>Competition with local gambling industry</p>	<p>Due to the ubiquitous nature of online gambling, the act of licensing online gambling is not likely to have the effect of introducing this form of gambling to a jurisdiction (i.e. it is readily available and easily accessible worldwide), and therefore there should not be materially increased competition for any local terrestrial gambling industry.</p> <p>In 2004, a UK based trade organisation called the Interactive Gaming, Gambling and Betting Association ("iGGBA") issued a position statement on remote gambling and tax for the UK Treasury, Customs and Excise, wherein it was stated that "The assumption of a substitution effect between traditional based gambling offerings and remote gambling is false. Remote gambling is a unique customer experience. It is in many ways complementary to the traditional gambling premises. This is witnessed by the fact that many of the high street casinos, bingo halls and bookmakers offer remote gambling in addition to their terrestrial offerings. It is true that operators often offer better odds on betting events through remote gambling channels, but this seems to have no discerning effect on traditional betting revenues with the large brand name operators stating record profits this year from their bricks and mortar shop operations. For games such as roulette and card based games, the odds of winning are not changed between remote and traditional operators.</p>

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Exposure to money laundering and organised crime	There are no probity processes for online gambling operators, and no regulation for the gambling activities exists, and therefore it could be assumed that the opportunity for money laundering and organised crime to occur does exist.	Although online gambling does potentially present opportunities for disreputable operators to collude with players to participate in money laundering, through proper licensing and regulation it is relatively easy to ensure that sites are crime free and honest and conducted in accordance with the law. These measures include proper probity processes for licensees and the key employees, and know your customer (player) procedures adopted by the operators and payment processors for both anti-money laundering and anti-fraud control. It is understood that Gibraltar and IOM have ensured that licensees implement appropriate controls to ensure that there is no real increased risk of crime and money laundering. Furthermore it has to be considered that in order for funds to be deposited at an online gambling operation, and to be paid to a player, these funds must pass through financial institutions (player accounts should not be funded with cash) which are also subject to anti-money laundering controls such as the Financial Action Task Force guidelines.
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REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

Impact Area	Kahnawake	Malta	UK
Number of sites	299	26	84 The new remote gambling regime is expected to increase the number of sites and competitiveness within the market.
Number of operators (estimated)	35	15 (3 casino operators)	60 (casino operators not permitted)
Competitiveness with other licensing jurisdictions	<p>Each country's ability to compete with other licensing jurisdictions is a function of the areas addressed in the analysis of each jurisdictions' framework elsewhere in this report. This includes regulatory structure and oversight, but probably most importantly the commercial environment offered by the jurisdiction (e.g. operator fees and taxes, restrictions on profit repatriation, and hosting facilities and bandwidth).</p> <p>A jurisdiction's relative competitiveness is probably best measured by its ranking in terms of popularity. Popularity is measured by the amount of player traffic that is received by the sites licensed in a particular jurisdiction. Using the number of sites or operators is not an accurate reflection of competitiveness, as a few operators account for the majority of the online gaming activity (for example, PartyPoker has more than 50% of the poker market, and the online casino market is dominated by 888.com and the larger Microgaming licensed operators).</p>		
Ranking by popularity	2	6	3
Revenue generation <ul style="list-style-type: none"> ▪ Licensing fees ▪ Taxation 	<p>With licensing fees of \$10,000 pa and estimated 35 operators, revenue generated will be in the region of \$350,000 pa.</p> <p>There are no gambling and corporate taxes.</p>	<p>Malta's gaming industry employs about 240 local full-time employees, pays around \$7.9 million annually in taxes, and uses about ten percent of the islands' Internet bandwidth.jurisdiction.</p>	<p>A current gross profits ("GPT") tax of 15% is levied on remote betting, however the local remote gambling industry is strongly advocating a single rate of tax across all remote betting products. In its Position Statement, iGGBA recommends a GPT of 2%. The Report calculates that if 5% of online gaming sites locate in the UK, gambling (2%) and corporate tax (25%) could amount to £87.5m pa. To reach this amount, the Report assumes 75 sites each with £16.6m gross profit pa. These numbers are probably grossly overstated.</p> <p>In addition to gambling and corporate tax, UK</p>

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			rules governing VAT means that UK-based operators pay an equivalent of 3% tax on gross win before any specific gambling duty is charged.
<p>Funds outflows</p> <ul style="list-style-type: none"> ▪ Player losses ▪ Profit repatriation 	<p>With a population of less than 10,000 any losses incurred by residents on locally licensed foreign owned sites where profits are repatriated is likely to be negligible. Online gambling activity is not restricted to locally licensed sites, and therefore residents' may be gambling on any of the other 2,000+ sites not licensed in Kahnawake. The operators' marketing efforts do not target the Mohawks, and therefore the act of licensing online gaming operators should not result in an increase in online gambling activity by residents.</p>	<p>With a population of 398,000³⁰ any losses incurred by residents on locally licensed foreign owned sites where profits are repatriated is likely to be negligible. Online gambling activity is not restricted to locally licensed sites, and therefore residents' may be gambling on any of the other 2,000+ sites not licensed in Malta. The operators' marketing efforts are also highly unlikely to be targeting Malta residents.</p>	<p>Bookmakers which currently conduct the majority of online betting transactions are UK listed and registered entities, typically with a considerable high street presence too (e.g. Ladbrokes and William Hill). The offshore repatriation of player losses is therefore not currently an issue. This situation is likely to prevail once online gaming operations are permitted to be licensed in the UK.</p>
<p>Costs of regulation and monitoring</p>	<p>Unknown – not likely to be too material due to the fact that Kahnawake regulations do not appear to be actively enforced.</p>	<p>Unknown</p>	<p>The Department for Culture, Media and Sport in the UK estimated in its Gambling Bill Regulatory Impact Assessment that the estimated regulatory costs will be as much as £2.54m (R40m) pa. This is the cost to run the Gambling Commission.</p>
<p>Direct employment by operators (including call centres)</p>	<p>Operators licensed in Kahnawake do not have staff present in the jurisdiction. However, the Mohawk Internet Technologies data centre has been established as a direct consequence of the licensing regime, and currently employs in excess of 300 locals.</p>	<p>Online casino operations are estimated to have an average of 25 employees per company. It is difficult to quantify how many employees of betting companies are directly attributable to the online operations, as many of these employees would be employed anyway by the telebetting operations.</p>	<p>The UK betting operations vary considerably in size, with the largest operators like Ladbrokes likely to have several hundred people in the remote betting operations. Note that telebetting and online betting operations are normally integrated, and therefore it is difficult to estimate how much employment is a direct result of the online betting activities.</p>

³⁰ <http://www.odci.gov/cia/publications/factbook/index.html>

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<p>Indirect employment (service providers)</p> <ul style="list-style-type: none"> ▪ Software developers ▪ Infrastructure providers ▪ Telecommunications ▪ Financial services 	<p>Indirect employment may be generated from software development and support, provision and maintenance of equipment and hardware, network installation, security and support, gaming and site server hosting, database management, software testing for licensing purposes, payment processing, advertising and marketing.</p> <p>However, unless it is a condition of the operator’s license to maintain these services in the licensing jurisdiction, the operator will seek to locate each of these functions in whichever country is able to provide the service at an appropriate level of cost and quality (for example, if a Malta licensed casino operator is targeting a US customer base, then the operator is likely to employ US based marketing and advertising resources). Traditionally the licensing jurisdictions have only required the hosting of the gaming servers to be done in their jurisdiction, leaving the operators free to locate call centres, payment processors, software developers etc. elsewhere. Only the UK appears likely to impose a requirement on the operators to ensure that most of the related operations are based in the UK (and this is widely regarded as something which will discourage operators from obtaining a UK license).</p>		
<p>Competition with local gambling industry</p>	<p>Due to the ubiquitous nature of online gambling, the act of licensing online gambling is not likely to have the effect of introducing this form of gambling to a jurisdiction (i.e. it is readily available and easily accessible worldwide), and therefore there should not be materially increased competition for any local terrestrial gambling industry.</p> <p>In 2004, a UK based trade organisation called the Interactive Gaming, Gambling and Betting Association (“iGGBA”) issued a position statement on remote gambling and tax for the UK Treasury, Customs and Excise, wherein it was stated that “The assumption of a substitution effect between traditional based gambling offerings and remote gambling is false. Remote gambling is a unique customer experience. It is in many ways complementary to the traditional gambling premises. This is witnessed by the fact that many of the high street casinos, bingo halls and bookmakers offer remote gambling in addition to their terrestrial offerings. It is true that operators often offer better odds on betting events through remote gambling channels, but this seems to have no discerning effect on traditional betting revenues with the large brand name operators stating record profits this year from their bricks and mortar shop operations. For games such as roulette and card based games, the odds of winning are not changed between remote and traditional operators.</p>		
<p>Gambling exposure and addiction of citizens</p>	<p>Online gambling is available on the internet to residents of Kahnawake, regardless of the fact that Kahnawake licenses the activity, and therefore it cannot be construed that by issuing licenses gambling exposure and addiction will necessarily be increased.</p>	<p>Online gambling is available on the internet to Malta residents regardless of the fact that Malta licenses the activity, and therefore it cannot be construed that by issuing gambling licenses gambling exposure and addiction will necessarily be increased. However Malta does provide for, and enforce, regulations addressing responsible gambling (both access by minors and problem gambling), and those residents betting with local sites will have proper</p>	<p>Online betting is available on the internet to UK residents regardless of the fact that the UK licenses the activity, and therefore it cannot be construed that by issuing betting licenses gambling exposure and addiction will necessarily be increased. However the UK does provide for, and enforce, regulations addressing responsible gambling (both access by minors and problem gambling), and those residents betting with local sites will have proper</p>

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		safeguards available to them.	safeguards available to them (e.g. Gamcare).
Exposure to money laundering and organised crime	<p>Although online gambling does potentially present opportunities for disreputable operators to collude with players to participate in money laundering, through proper licensing and regulation it is relatively easy to ensure that sites are crime free and honest and conducted in accordance with the law. These measures include proper probity processes for licensees and the key employees, and know your customer (player) procedures adopted by the operators and payment processors for both anti-money laundering and anti-fraud control. It is understood that Kahnawake, Malta and the UK have ensured that licensees implement appropriate controls to ensure that there is no real increased risk of crime and money laundering. Furthermore it has to be considered that in order for funds to be deposited at an online gambling operation, and to be paid to a player, these funds must pass through financial institutions (player accounts should not be funded with cash) which are also subject to anti-money laundering controls such as the Financial Action Task Force guidelines. Furthermore, many Kahnawake licensees are also regulated by eCOGRA, which has its own set of requirements for anti-money laundering to which all approved operators must continually comply.</p>		

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With regards to the USA, www.casinocity.com shows 18 sites, of which 14 are skill gaming sites (which do constitute gambling and do not require a license) and 4 are racebooks. The largest racebook, youbet.com, has two licenses as follows:

- An in-state and out-of-state multi-jurisdictional wagering hub Advance Deposit Wagering license issued by the State of California; and
- A multi-jurisdictional simulcast and interactive wagering totalisator hub license to accept and place online and telephone horse racing pari-mutuel wagers from the Oregon Racing Commission.

Since this type of licensing regime and market is not what is being contemplated in this report, the USA has not been addressed for the purposes of this impact assesement.

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C.iii. SUB COMMITTEE RESPONSES

1. FINANCE

Question 1

Interactive gambling is any gambling that takes place online, via the internet and includes I-gaming.

Question 2

It must be regulated at National level however the various provinces should have autonomy to develop their own laws within the National framework regulations.

Question 3

The key goals should include a well regulated yet orderly market that gives player protection, results in job creation and creates an income stream for the country from tax revenue.

Question 4

The key areas to be covered must be taxation, licensing, cross-border monitoring, anti-money laundering and payment methodologies.

Taxation remains a major issue having regard to current operators in jurisdictions that have approved interactive gambling trying to gain the advantage over each other by introducing favourable tax regimes. This needs to be addressed both from a point of view of a favourable regime or one that remains the same. In other words both angles need to be covered.

Licensing is important to enable proper regulation to take place and to retain the orderly market principle.

Currently all cross-border transactions are monitored which ensures an orderly regulated market. It is important that we can monitor in and outflows and have an audit trail of all transactions.

No explanation is necessary regarding anti-money laundering as this is a world wide concern. Checks and balances must be put in place to ensure compliance.

The payment methodology must comply with the financial system of the country to ensure the stability thereof.

Question 5

The issues outlined in question four are relevant here as well. Issues outside our domain that should also be of importance are to ensure that the operators that are allowed into the market are viable as is their software and they are in a position to make payments i.e. credible track record or alternatively some form of security to ensure payment.

Turning back to the areas that we control one can not ignore licensing, taxation, capital investment, money laundering and efficient regulation.

REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

- 2 -

Licensing should be annually and must compare to other forms of gambling that are currently permitted as one does not want different levels of fees for some type of gambling.

Taxation will always come up as it is a world desire to have the most efficient taxation regime to attract the companies into the country. However one must be realistic that in the event of a zero tax regime not being granted other alternatives need to be there to allow a policy that will be able to work for the country.

Obviously one of the spin offs we would like to see is the capital investment. This form of industry is not capital intensive so we have to look at how will this benefit the economy in the long term. Some form of transfer of skills, manufacturing facilities for the software on a world wide basis an infrastructure developments for the people of the country. These are just suggestions whether they are workable or not is questionable.

Money laundering needs no further discussion as it is a world wide concern and needs to be addressed.

Finally, we must ensure that whatever is agreed to we are in a position to regulate in an effective manner.

Question 6

The concerns for me are money laundering, taxation and corporate social responsibility. They can be addressed by ensuring that there are checks and balances in place to monitor any suspicious transactions. Audit trails are a necessity. Tax is of a major concern to me as it seems that if we do not come up with a competitive regime all will fail. It is imperative to create an alternative to promote this industry if the favourable tax regime is not achieved.

Question 7

We must all ensure that we implement a document that is workable and to the benefit of the country as a whole without putting us in a situation we are unable to manage.

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2. LEGAL

1. How would you define Interactive Gambling?

Remote (non face to face from different locations) gambling via the internet or any other remote computer network through any electronic means including but not limited to, through a telecommunications infrastructure (all inclusive copper, fibre optic, satellite and cellular).

“Gambling” would have the meaning given in the land-based statute.

2. Do you believe Interactive Gambling should be regulated at a National level?

Absolutely. I personally cannot see a practical basis for a universal and borderless medium like the internet to be governed at any fragmented state or provincial level. The only effective way, in my view, to even attempt to regulate such activity would be on a national or federal level.

3. What do you believe should be the key goals of an Interactive Gambling Policy (e.g. player protection, job creation, tax revenue)?

First and foremost the regulation must seek to **ensure “fair play”** i.e. that a gambling site licensed by our regulator can be trusted and that the outcome of a bet will be within acceptable parameters comparable to land-based gambling. In tandem, with this imperative is the need for **player protection** because interactive gaming provides an ease of entry and ease of continued play that may be detrimental to a gambler. In this regard, player protection provisions should be meaningful and actually require active system alerts or flagging for problem gamblers.

Secondly, the regulator must derive some form of **taxation so as to be able to finance a meaningful interaction with its licensees** but at the same time such taxation **should not be prohibitive** so as to make the territory an unattractive option for operators.

Job creation and **skills transfer** to South Africa as a whole is important and the **pure e-commerce skills** involved in an interactive gaming business, which South Africans could gain as a result of being involved in these type of businesses should be considered valuable.

4. What key areas should be covered by such regulation? Please explain your views.

- (a) as mentioned previously “fair play”, so the regulator should be directed by the legislation to ensure that the outcomes of play upon the gaming systems to be licensed by it are consistently fair. Care should be taken to be as technology-neutral as possible and to ensure that the legislation is less focussed on the technology involved i.e. software source code and control systems, than it is upon the actual outcome of the technology interacting with the end-user or the results.

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- (b) The legislation should also include a stringent probity process, so as to ensure that the parties behind the interactive gaming operations are sound, commercial businessmen.
- (c) The issue of players being settled for their winnings should be canvassed and there should be stiff penalties for non-compliance.
- (d) Strict anti money laundering controls should be prescribed.
- (e) Very importantly, the act should allow an element of off-shore structuring so as to ensure that operators are able to obtain levels of tax relief which would not ordinarily be available, particularly since they are unlikely to obtain direct tax concessions from the Fiscus. Without an element of tax relief, South Africa cannot, in my view, hope to compete on any meaningful global level as a licensing jurisdiction.

5. What do you believe should be the main tenets of such a policy that would contribute to achieving your stated goals (e.g., strict operator licensing, software testing, specific tax laws)? Please be as detailed as possible in your answers in the areas that pertain specifically to the ambit of your sub-committee.

See sections 3 and 4 above.

6. What are your issues/concerns about the formulation of a National Interactive Gambling Policy? How might these be addressed/resolved?

- (a) Taxation and the consequences thereof on the success or failure of South Africa as a viable jurisdiction. At the end of the day, these operators are businessmen looking for prestigious premises to house their businesses. If the rent is too high and there is a better or similar block for less, where is the motivation?
- (b) Apart from the obvious cooperation of the Fiscus, other departments such as DTI should be looking to create incentives for i-gaming companies looking to establish a presence in South Africa, relating to skills transfer, training and development – perhaps beyond the standard SETA's.
- (c) The regulator itself needs to “tool up” with the requisite skills and infrastructure to be able to meaningfully regulate in this area, without developing a reputation as another Curacao, for instance.

7. What other comments/input/guidance can you provide for the consultants/project teams/committee/NGB with respect to this process?

Being a “mid to late starter” in this area, we have all the benefits of the lessons learned in other jurisdictions.

For example, why did the Isle of Man, which was one of the first top tier jurisdictions scrap taxation on i-gaming companies? Why did the island also lift restrictions on where operators could take bets from? And lastly, why have they scrapped source

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code testing as a compulsory requirement of licensing? If the project team is able to address these fundamental questions, then it is halfway to assisting the regulator in creating a successful regime for South Africa. The other half falls to the regulator and other government departments, to really want to establish South Africa as a leading i-gaming jurisdiction (which it certainly has the potential to become) and to create a conducive environment on a par with the first-tier EU jurisdictions which are constantly refining their own regimes.

3. SOCIAL RESPONSIBILITY

1. How would you define Interactive Gambling?

It's defined in the National Gambling Act, 2004 (Act No 7 of 2004), as "a gambling game played or available to be played through the mechanism of an electronic agent accessed over the Internet other than a game that can be accessed for play only in licensed premises, and only if the licensee of any such premises is authorised to make such a game available for play,"

2. Do you believe Interactive Gambling should be regulated at a National level?

Item 5(5) is quite clear on this, it provides that, the Minister must introduce legislation to regulate interactive gambling in the country: "(5) Within two years after the effective date, the Minister, after considering the report of the committee and any recommendations of the board or the Council, must introduce legislation in Parliament to regulate interactive gambling within the Republic."

3. What do you believe should be the key goals of an Interactive Gambling Policy (e.g. player protection, job creation, tax revenue)?

In the perception of the sub-project, it will be general benefits for the country, player protection, job creation and promote responsible gambling.

4. What key areas should be covered by such regulation? Please explain your views?

SOCIAL & RESPONSIBILITY

- a. Benefits interactive gambling will have for the country;
- b. Impact will regulation of interactive gambling have on the current forms of gambling;
- c. Social upliftment; and
- d. Responsible gambling.

Benefits interactive gambling will have for the country

- a. Consider the benefits interactive gambling will have for the country include growth in the economy of the country;
- b. Job creation;
- c. Understanding how technology works;
- d. Will businesses for the operators grow?
- e. Community upliftment or development?

What impact will regulation / prohibition of interactive gambling have on the current forms of gambling?

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When looking at the impact that regulation of interactive gambling will have on the current forms of gambling the following must be considered:

- a.** The impact to current forms of gambling, namely - internet, phone, mobile, interactive TV, LAN network, intranet and portal technology?
- b.** Legislation relevant to the conduct of I-Gaming both on the part of the licensee and the player?
- c.** The interaction the licensee and player will have across different geographic territories which will make co-operation of the respective jurisdictions very critical.
- d.** Issues of jurisdictions, operators, players, software providers and all others involved in this sphere.

Further considerations:

- a.** Which regulatory and supervisory approach will be suitable for our country?
- b.** Will that approach meet the very highest of international standards?
- c.** What measures should be embarked upon to ensure that online gambling is conducted honestly and fairly, remains free from criminal influence and exploitation and does not cause harm to the public interest, individuals and families?
- d.** Will there be a platform established for the industry to discuss and debate matters of common interest, namely regulating effectively in order to protect the public and the reputation of the government?

Social upliftment

Considerations:

- a.** Will the introduction of interactive gambling have a negative or positive impact on the social upliftment of our communities?
- b.** Will those benefits be the same as of land-based gambling establishments?
- c.** Will this mean improvement in computer and communications businesses for the communities?
- d.** Will this result in communities becoming skilled and more computer literate, experienced?
- e.** Will it offer comprehensive portfolio of services including network consultancy, system design, building, maintenance development, game design, finance and business development staff?
- f.** Will it create and be perceived as the creative industry which have their origin in individual creativity skill and talent and which have a potential for wealth and job creation through the generation and exploitation of intellectual property?

Responsible gambling

Considerations:

- a.** Will the e-gaming environment promote a responsible gaming environment that actively discourages problematic gambling?
- b.** How will this be monitored and enforced?

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- c. Will the Responsible Gambling Programmes and helplines be made available to online gamblers? If so how?
- d. Will links and/or a telephone numbers to recognised problem gaming organisations be displayed on the homepage of the operator's website?
- e. Will it be a requirement that legal disclaimer be displayed on the operator's website stating that no player below the legal age of majority is legally permitted to participate in Internet gaming?
- f. Will the legal disclaimer be displayed on the operator's website stating that only players legally permitted by their jurisdiction can participate in Internet gaming?
- g. How will customer complaints and support be dealt with?

5. What do you believe should be the main tenets of such a policy that would contribute to achieving your stated goals (e.g., strict operator licensing, software testing, specific tax laws)? Please be as detailed as possible in your answers in the areas that pertain specifically to the ambit of your sub-committee.

- (a) Benefits interactive gambling will have for the country, in particular job creation, player protection, ;
- (b) Impact of regulation of interactive gambling have on the current forms of gambling?
- (c) Promotion of responsible gambling.

6. What are your issues/concerns about the formulation of a National Interactive Gambling Policy Committee? How might these be addressed / resolved?

I have no concerns, safe to say it is very important and a requirement in terms of the National Gambling Act. I believe the recommendations made by the Committee will inform legislation on interactive gambling regulation. Stakeholders have been approached to assist in the process and will continue being given a platform to do so.

7. What other comments/input/guidance can you provide for the consultants/project teams/committee/NGB with respect to this process?

All comments are highlighted in the paragraphs above.

C.iv. INDUSTRY ORGANISATION RESPONSES

1. CASINO ASSOCIATION OF SOUTH AFRICA



CASA Submission to NGB Consultancy on Internet Gambling

1. Introduction

The Casino Association of South Africa (CASA) was formed in 2003. Its members include all the companies currently operating legal casinos in South Africa.

Although CASA did not exist in 1999 when the Report to the National Gambling Board on Internet Gambling by Prof Peter Collins and colleagues was published, the industry was nevertheless strongly supportive of the analysis and recommendations made there.

Had CASA been in existence, we would have welcomed the proposal that South Africa should seek to attract foreign operators to its jurisdiction with a view to establishing an export industry in Internet-based gambling services. This would not only have secured foreign investment and a stable stream of foreign earnings in South Africa: it would also have boosted South Africa's general e-commerce capacity and provided much needed training and jobs in the general technology area.

The Government at the time took the view that to propose the legalization of Internet gambling so soon after the legalization of both casinos and the National Lottery would have led to the perception that they were encouraging more gambling and exposed them to criticism on the grounds of irresponsibility in relation to problem gambling.

At all events, in CASA's view, the opportunity to make SA the jurisdiction of choice amongst suppliers of Internet gambling services has now passed. Hitherto, Gibraltar which hosts the world's most successful Internet casino businesses as well as the phenomenally successful Party Poker and substantial Internet betting operations has been the jurisdiction most effective in terms of capitalizing on its reputation for good gambling regulation in order to secure foreign investment and earnings from Internet gambling. Malta and the UK have now also established regulatory frameworks that are likely to be attractive and, because these jurisdictions are in the EU, it seems likely that they will receive some form of European seal of approval that will enhance their reputations still further.

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Notwithstanding the fact that Internet gambling has now been outlawed in South Africa, it remains impossible to prevent South Africans from gambling at foreign-based jurisdictions and a number of suppliers of international Internet gambling services do operate out of South Africa.

For these reasons, CASA believes that the main emphasis in South Africa now should be on doing as much as possible to ensure that South Africans who do wish to gamble via the Internet and other “remote”³¹ technologies such as cell phones and interactive television are able to do so in a manner which secures the three internationally recognised objectives of all good gambling regulation, namely:

- To keep crime out
- To ensure fairness to customers
- To protect minors and other vulnerable persons.

2. Summary of Recommendations

In CASA’s view, this means ensuring that:

- A new law establishes a regulatory and licensing regime for remote gambling which will secure these objectives
- To qualify for a licence to supply remote gambling services a company must have secured a licence to deliver land-based gambling services in South Africa
- Only companies which are regulated by the South African government will be allowed to advertise on land-based media within South Africa and on Internet sites with a “za” suffix
- Internet gambling debts will only be enforceable by consumers against suppliers who are regulated by the South African government
- Internet gambling debts will only be enforceable by suppliers of “remote” gambling services, including suppliers of banking services for gambling purposes, against

³¹ The term “remote gambling” was coined by the UK Government in preparing its Gambling Act of 2005. The term covers all forms of where the consumer of a gambling product or service accesses the supplier without being present in the location where the suppliers operate. Remote gambling thus covers gambling by telephone as well as by Internet, cell phone and interactive radio or television. It should be noted that the UK Government decided (wisely, in our view) that the gambling would be deemed to be taking place in the location from which it was supplied. This means that, from a legal point of view, those who will access UK-based gambling sites from outside the UK will be treated in exactly the same way as tourists who come to the UK to gamble at UK casinos, bingo clubs, bookmaker’s shops etc. The term “Remote gambling” in this submission will have the same sense that it has in UK law.

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- consumers who have incurred their gambling debts playing on South African regulated sites
- All South African regulated remote gambling sites must contain information about the dangers of gambling and how to avoid them
- All South African regulated remote gambling sites must display the help line number and website address of the National Responsible Gambling Programme and facilitate access to them
- All South African remote gambling sites must conform to a code of practice laid down by the National Gambling Board
- Appropriate methods of player identification should be mandatory
- The burden of regulation – as with all good regulation - should be proportionate to, and effective in minimizing the harm which it is the object of regulation to achieve
- Any taxation and licence fees should not result in the price of remote gambling to consumers gambling with a South African regulated company becoming unattractive and uncompetitive in comparison with the price of gambling in foreign jurisdictions.

With regard to the “Questionnaire for Key Players in the SA Gaming Industry”, the following considerations apply from a CASA perspective inasmuch as they are not covered by responses elsewhere in this submission:

1. How would you define Interactive Gambling?

The opportunity for a member of the public with access to the Internet to play casino games on line for money stakes (play for fun).

2. Do you believe Interactive Gambling should be regulated at a National level? If so, what key areas should be covered by such regulation? Please explain your views on both questions.

We would propose that Interactive Gambling should be regulated at a national level. This should include the licensing of interactive gambling sites, the number of sites, the related software, games, odds and compliance with the NRGF policies and procedures.

Compliance could be the responsibility of provincial gambling boards to the extent that a site (to be defined) is attached to an existing land based casino but this would need to be the subject of an agreement between the National Board and the subject provincial board.

3. What do you believe should be the key goals of an Interactive Gambling Policy (e.g. player protection, job creation, tax revenue)?

The key goals of a South African on-line initiative must be to capture the potential revenue currently lost to sites established outside South Africa. This would be for the benefit of the fiscus and of course the site owner/operator.

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The operation of sites in South Africa that could attract custom from other regulated countries.

We do not see job creation as a key objective, and taxation levels would have to be set to ensure that South African sites can compete globally. It should be born in mind that certain highly successful sites are situated in tax havens or low tax jurisdictions.

It could be argued that player protection should be an objective on the basis that 0.5% of South Africans gamble on-line (270,000).

4. What do you believe should be the main tenets of such a policy that would contribute to achieving your stated goals (e.g., strict operator licensing, software testing, specific tax laws)? Please be as detailed as possible in your answers.

The tenets of South Africa's on-line policy should be clearly understood by all stakeholders (including the customer). From this standpoint the policy must address:

- objectives
- Licensing requirements and process
- Certification of software, games and business processes
- Compliance with FICA
- Guarding against money laundering
- Protection of the vulnerable and in particular children and adolescents
- Regulations and compliance
- Probity – owners, operators, directors, key employees
- Odds – minimum return to the public on slot games (RTP)
- Taxation levels
- Exchange control
- Credit

5. What are your issues/concerns about the formulation of a National Interactive Gambling Policy? How might these be addressed/resolved?

The real question that needs to be addressed is how can a regulated on-line industry in South Africa compete globally with operators not subject to the same licensing requirements, regulations, taxation etc.

The imposition of restrictions on access to un-licensed sites is an option but difficult to achieve. Payments to and from credit cards/ debit cards/celphones - perhaps presents itself as a further option but this again could be difficult to achieve.

Too many restrictions, regulations, requirements combined with an unrealistically high level of taxation could result in the on-line gaming industry being "still born".

6. What other comments/input/guidance can you provide for the consultants/project teams/committee/NGB with respect to this process?

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Ensure that the committee has representation from the industry – ie. someone with on-line experience. Alternatively engage an on-line gaming specialist as a consultant to guide the committee in its deliberations on policy formulation.

Protection for the player and operator through system architecture.

We are entering the sector very late in the day and we should benefit from the experience of others (eg. Australia) and avoid re-inventing the wheel.

In the rest of this submission we offer an analysis of likely future trends in the remote gambling market and set out our reasons for believing that the best interests of South Africa would be served by introducing legislation to make the consumption and supply of remote gambling services legal in South Africa in a regulatory environment which incorporates these features.

3. Factors favouring growth in the remote gambling market

At present remote gambling in South Africa, as elsewhere, is a minute percentage of all gambling. However, a number of factors make substantial growth seem inevitable:

- More and more people have access to the relevant technology
- The technology is becoming increasingly user-friendly
- The technology is becoming increasingly integrated: a single compact, portable piece of hardware functioning as personal computer, cell phone and interactive television combined will soon be widely available
- These systems have in-built billing systems which will make financial transactions very easy
- Tomorrow's adult population will increasingly consist of people who have grown up familiar with playing games on screens
- The ingenuity of operators is ensuring that more and more games and other vehicles for gambling are available through the new technologies
- Spending on leisure is increasing
- Spending on home-based entertainment is increasing
- Access to mobile phones is already widespread, including amongst the poor, and Internet access, including access to gambling sites, is easily available at Internet cafes and other venues, making ownership of a computer unnecessary for those who want to gamble on the Internet.

4. The Wrong Questions to Ask and the Right Ones

Governments often start thinking about Internet and other forms of remote gambling by asking the wrong questions. They ask: "Should we permit this and, if so, how much should we permit and how should we regulate it?" In other words they ask the same questions they are used to asking about land-based gambling. Sometimes, because they ask these questions they answer, as did the Australian Federal Government: "We should certainly forbid this because it will lead to there being a casino in every Australian home." But there is already a casino in every Australian home - and in the homes of every resident of every other continent - where there is a computer with Internet access.

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The questions with which governments, therefore, need to start are: “Can we stop or otherwise control this? If so, how? And what will the consequences be of trying to do so?” From the point of view of government, the issue is not at all like wondering whether to introduce a national lottery or to authorize international-style casinos: it is much more like wondering what to do given that there is a very large and growing illegal gambling industry in a situation where there is little popular support for the draconian policing measures which would be necessary to enforce prohibition.

This, of course, was the situation in South Africa prior to 1996 and it has been a measure of the success of South African legislation, widely recognized internationally, that it has led to a massive reduction of illegal gambling, especially on machines.

5. Prohibition

It is, of course, possible to declare that all forms of remote gambling are simply illegal and that consumers found gambling on the Internet will be prosecuted. But how will this be enforced? Will private homes and offices be subject to police raids and the seizure of PCs? Will special anti-gambling squads be formed and funded whose central business is to track down Internet gamblers? Will citizens be encouraged to report one another to the police?

It is sometimes claimed that it is impossible to prohibit Internet gambling. This is not so. In the case of child pornography, the measures outlined above are employed with some success to crack down on both consumers and suppliers. The difference with remote gambling is that there is nothing like the same international consensus that we are dealing with an evil sufficiently great as to merit these draconian policing measures.

The fact that the police do not attempt at present to arrest and prosecute individuals for gambling on the Internet is not a sign of police incompetence; it is a sign of their correct identification of public priorities with respect to crime and the use of scarce law enforcement resources to combat it.

However, as described below, there are other ways which do not require draconian enforcement procedures of motivating both consumers and suppliers of e-gambling services to gamble on locally regulated sites rather than on foreign ones.

Governments are often moved to explore the option of prohibition because they are vigorously lobbied, on the one hand, by existing land-based industries who wish to avoid further competition for the public’s gambling budget, and, on the other hand, by those who are opposed in principle to the government’s condoning of any form of gambling by making it legal. However, the underlying problem for any jurisdiction contemplating the prohibition of remote gambling (as indeed of anything else) is whether there is sufficient political will to enforce prohibition and that in turn, at least in democracies, depends on whether there is sufficient popular support for the policy. Although public opinion about remote gambling has not been tested within SA, it seems likely that there would not be sufficient support for prohibition and the draconian measures necessary to enforce it to make that a workable option.

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6. Regulation

The case for claiming that, if citizens are to be permitted to gamble on the Internet and via other remote devices, they must only be able to do so in a suitably regulated environment flows from the claim that all forms of gambling should only be permitted under stricter regulation than applies to other forms of entertainment. In the case of remote gambling, the argument is particularly powerful in relation to minimizing problem gambling because the Internet makes high-stakes gambling continuously available in locations of maximum convenience - the "casino in every living room."

This is why many European jurisdictions are considering legislation to regulate Internet gambling in such a way that their citizens will be at least encouraged, if not compelled to gamble on sites regulated by their home government.

Governments are also influenced by the same factors that cause jurisdictions to regulate gambling so as to increase foreign earnings and reduce foreign spending. That is, they see an opportunity to attract "cyber-gambling tourists" from jurisdictions where gambling is either illegal (overwhelmingly, the USA) or not regulated in a manner which inspires customer confidence in the probity of the games and the companies which offer them. At the same time they hope to persuade their domestic Internet gamblers to gamble with home-based companies rather than with those based offshore.

7. Attracting consumers and suppliers to regulated sites

In order to achieve the aim of encouraging both consumers and suppliers to buy and sell gambling services only or mainly via the Internet sites which they authorize and regulate, governments need to make it more attractive to consumers and suppliers to operate (and pay fees and taxes) within their jurisdiction rather than going abroad.

This means that:

- For consumers, gambling products must be as attractive, as easily accessible and as cheap as the products offered from overseas jurisdictions
- For suppliers, the costs of doing business onshore (including most notably taxes) must not exceed the costs of doing business offshore by more than the increased profits which the company derives from attracting additional custom thanks to the confidence which the fact of their being regulated onshore generates
- For both consumers and suppliers, the burden of regulation must not be perceived as unduly onerous and unnecessarily bureaucratic by comparison with that imposed by offshore sites.

8. Advertising

The most effective means of encouraging remote gambling companies to operate in South African jurisdictions which offer strong protections against problem gambling and other negative social impacts (and thereby impose some additional regulatory burdens) is to forbid anyone who is not so regulated to advertise their products through land-based media within the jurisdiction or, in the case of the South Africa, via any website with a .za country suffix.

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This would give the operators of duly licensed South African e-gambling businesses a substantial advantage in relation to the crucial and often crippling problem for all e-commerce ventures of attracting and retaining customers.

Advertising could also be used by governments (using some of the revenues raised through licensing e-gambling companies) to make the public aware of the dangers and disadvantages of gambling with sites not regulated according to SA standards and not subject to SA compliance procedures e.g. the dangers of fraud and the potential unreliability of the technology.

10. *Debt Enforcement*

It would also be possible to assail illegal Internet gambling via the banking industry and to declare that debts to credit card and other e-payment companies incurred through gambling are not enforceable at law. This is not as easy as it sounds because it is at present quite easy to disguise, through various sorts of e-wallet, payments made to e-gambling companies. Another difficulty is that, just as anti-usury legislation may lead to the emergence of illegal loan-sharking businesses, making debts unenforceable at law might lead to the emergence of e-banking businesses which enforced their debts other than at law.

Nevertheless, if it were widely known that, depending on where they were regulated, it would be more or less easy or difficult for both gambling companies and their customers to collect their respective winnings, this would provide a major incentive to both to do their business subject to local regulation.

11. *International Agreements*

It seems likely that as more and more gambling takes place via remote technologies, accompanied by increases in violations of national laws, in perceived dangers to the citizens of individual countries, and in loss of tax and other revenues, pressure will mount to establish and enforce international agreements. Such agreements exist and are more or less effective in areas such as atomic energy, aviation and aspects of conservation. Pressure for internationally effective agreements may be expected to grow in relation to other parts of e-commerce such as the distribution of medication.

The effect of this, paradoxically, may well be to make it increasingly less advantageous for both consumers and suppliers of e-gambling services to shop around the world for the most congenial jurisdiction and instead to operate out of their home-based jurisdiction. This is because the establishments of common international standards and regulatory requirements will minimize the differences between jurisdictions. The result will be that EU citizens will gamble with EU regulated companies with physical offices that they can readily visit and government departments they can readily complain to.

12. *Remote Gambling and Land-based Gambling Market*

It should not be assumed that remote forms of gambling will in the long run simply take over from land-based forms of gambling – with the result that there is no significant growth in the overall gambling market.

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The first effect of introducing remote forms of gambling may be to grow the market for land-based gambling as people learn to enjoy commercial gambling via the Internet and are thereby encouraged to sample land-based opportunities. This is what usually happens when a national lottery is introduced: expenditure on all forms of gambling tends to increase. In some circumstances a similar effect is seen when limited forms of machine gambling are introduced outside casinos and gambling at casinos grows.

A clearer lesson is perhaps supplied by the home entertainment industries. For example, the opportunity to watch films at home has not in fact resulted in people ceasing to go to cinemas. On the contrary the main effect of the video rental industry has been that people watch more films than they used to, although it is arguable that movie-makers have had to concentrate more on the aspects of film which are best appreciated on large screens. In the same way people like to go out to restaurants and bars even though they can order in high quality food and drink at home.

It is also relevant from a psychological point of view, though this has not been much studied empirically, that most people seem to want to go out to work at least some of the time even if they could just as easily work from home. In the same way the ease with which sports events can be watched on television has supplemented interest in sport but not supplanted attendance at live sporting events.

Entertainment, then, seems to be something that at least many people for much of the time like to go out to do even though they can do it from home. In the pursuit of pleasure, they do not always wish to be either alone or only with their families. It seems plausible to suggest, therefore, that however easily various forms of entertainment can be delivered in the home there will still be a market for people who want to "go out." There is something about the ambience of the venue or the character of the occasion that gives going out to watch films or to eat and drink a special appeal. It seems likely therefore that people who like to gamble are still likely to want to go out to gamble even if they also gamble at home. This will be especially true of casinos, bingo clubs, betting shops and dog and horse racing tracks.

13. *Hybridisation*

One area where growth may confidently be expected is that of the delivery of remote gambling services in land-based venues. Already it is possible to go to an Internet café and engage in all forms of gambling. It is also the case that the future of gambling in casinos is increasingly going to be server-based. It is, consequently, not unreasonable - regulators permitting - to expect the emergence of Internet sports cafes, where people can eat, drink, watch racing and other sports, bet on them, play bingo on interactive TVs and server-based casino games ranging from poker and blackjack to all manner of slot-type game.

In the case of lottery products, too, the process of hybridisation may be expected to increase as lottery products become available not only on the Internet but especially via mobile phones.

14. *Crime*

The principal purpose of requiring land-based providers of gambling services to undergo probity is to prevent gambling businesses being owned and operated by

REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

people with criminal backgrounds and particularly by people with links to organized crime.

Since the holders of South African land-based gambling licenses will already have passed stringent probity tests, the restriction of the right to supply remote gambling services to companies that are licensed in South Africa will address this issue automatically.

Moreover, holders of valuable licenses to operate land-based gambling businesses will be very unlikely to jeopardize these licenses by engaging in any illegal activity.

In respect of money-laundering the same rules that presently apply to land-based transactions will be applicable to remote transactions.

15. *Fairness*

Fairness to players has three components in respect of remote gambling:

- Appropriateness and reliability of the technology
- Cheating-prevention strategies
- Effective and equitable complaints and appeals procedures

There is considerable experience in South Africa and in the rest of the world of the technological issues and how to address them. The main requirement is for compliance with suitable technical specifications.

The prevention of cheating requires mainly that full records of all transactions be kept for a suitable period of time and that these be available to regulators and police on demand. The principles are similar to those which apply to the electronic surveillance of land-based operations.

An equitable appeals procedure requires that complaints may be made to a regulator or other public authority and, where appropriate pursued in the courts, with a realistic chance that if the complaint or appeal is upheld the offending company can be held accountable and made to pay appropriate compensation.

Each of these components of fairness will be much more easily achieved if a National Gambling board dealing with established land-based companies regulates remote gambling in South Africa.

16. *Problem Gambling*

Increasing and decreasing the risks of excessive gambling are associated with the following aspects of gambling:

- Features of the games played, notably the size of stakes and prizes and the frequency of betting opportunities and pay-outs
- Convenience of access and therefore of temptation to gamble on impulse
- Lack of understanding of how gambling works and how to avoid the dangers of gambling too much

REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

Remote gambling is sometimes said to be the highest risk form of gambling because it offers all forms of gambling including the so-called “hardest” forms. It can also be accessed with maximum convenience.

It is, of course, much easier to regulate the features of games if what is permitted is restricted to what is allowed at land-based operations, though as with remote gambling generally, so with individual games: if people are prohibited from playing them on domestically regulated sites they will easily be able to play them on sites located abroad.

Moreover, while nothing can be done to mitigate the convenience factor in remote gambling – convenience is, after all its *raison-d’etre* – a great deal can be done to ensure that players are equipped with the necessary knowledge for avoiding getting into trouble by gambling too much. Such knowledge includes:

- understanding of how the games work and that they pay for the pleasure of playing them by accepting a small house advantage
- familiarity with strategies such as pre-setting limits and sticking to them for avoiding trouble
- ability to recognize the tell-tale signs of excessive or compulsive gambling
- awareness of how to seek help if necessary.

Education players in all these areas can be easily be delivered remotely. Access to help can be made literally a click or a phone call away. Facilities for setting daily, weekly or monthly limits (or all three) can easily be made available. And all this can be made a condition of licence with which responsible operators will gladly acquiesce.

17. *Player Identification*

Good player identification strategies are mainly necessary with remote gambling to prevent underage gambling. They are also thought to be desirable for crime prevention purposes. It would be relatively easy to require those wishing to play on South African licensed remote sites to identify themselves in the same way as they are now required to do for opening a bank account. CASA would be happy to discuss details of how this could work effectively in practice should greater detail be sought.

18. *Conclusions*

CASA believes that the main benefit of legalizing and regulating remote gambling in South Africa is that it will enable the Government to crack down on the proliferation of remote gambling opportunities increasingly offered (and advertised) to South Africans without any suitable safeguards being put in place to protect consumers, especially the young and vulnerable.

CASA also believes that if remote gambling were legalized in South Africa along the lines recommended in this submission, there would be significant revenues for government since South African licensed companies would add their remote earnings to their land-based earnings and pay tax on the combined GGR. Obviously, at present there are no tax revenues coming from either South Africans who gamble on remote sites nor from cyber-tourists who play at remote sites operated out of South Africa.

REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

CAPE TOWN

8 AUGUST 2005

A couple of additional points that you may wish to consider, to the extent that I have not already dealt with them:

- 1) The issue that it is likely that South African internet gamblers are currently spending significant amounts on offshore sites – i.e. money is flowing out of South Africa, and a sound Internet policy could contain this outflow.
- 2) Land-based casinos were required to invest substantial amounts of money in South Africa to obtain and maintain their casino licences. They therefore have more to lose by not complying with the law and therefore are more easy to regulate than operators without land based casinos.
- 3) The high cost of internet bandwidth needs to be addressed.
- 4) It is important that remote gambling is regulated at a national level to avoid interminable problems arising from different regulations in each province, but I think I have already stressed this sufficiently.

2. SOUTH AFRICAN GAMING MANUFACTURERS ASSOCIATION

Key Stakeholder Questionnaire

Mr Lawrence Smith – *Immediate Past President, SAGMA*

1. How would you define Interactive Gambling?

IG is performing a gambling activity remotely from the place at which the outcome is decided and/or the wager is processed.

2. Do you believe Interactive Gambling should be regulated at a National level? If so, what key areas should be covered by such regulation? Please explain your views on both questions.

It is key to regulate at a National level. A couple of key areas must be covered: we need to create enabling regulations to allow our local operators to compete effectively; we need to conduct very tight probity checks and game tests. However, it may make sense to do the actual licensing in the province in which the operator intends to locate – this will create healthy competition between provinces and hopefully drive competitiveness.

3. What do you believe should be the key goals of an Interactive Gambling Policy (e.g. player protection, job creation, tax revenue)?

First, we have to decide whether we want to try to provide a viable, well-regulated environment for operators to set up here. Whilst I am highly sceptical about our ability to compete with the established jurisdictions (we have to give the established guys a REALLY good reason to move their operations), if we want to have a go at this, we need to ensure a super high quality IT infrastructure – a serious challenge in SA – and a very low tax base – and as soon as we do this we will receive complaints from the existing terrestrial operators that we are unfairly favouring the IG players. It seems to me that today the IG industry competes increasingly on the ‘brands’ of the operators and less and less on the brands of the jurisdictions in which they reside. I would suggest, therefore, that we face reality and temper our objectives to the following: create an opportunity for the existing SA terrestrial gambling operators to expand viably and competitively into IG and possibly attract some of the newer, high quality small players. So our overriding policy objective should be to ensure that South Africans, if they are going to gamble online, do so on a South African site.

4. What do you believe should be the main tenets of such a policy that would contribute to achieving your stated goals (e.g., strict operator licensing, software testing, specific tax laws)? Please be as detailed as possible in your answers.

We need strict licensing with excellent probity tests. We need a very clear policy on what is permitted – for example, the regulation must cover such activities as gambling via the TV in a hotel room – currently a grey area.

5. What are your issues/concerns about the formulation of a National Interactive Gambling Policy? How might these be addressed/resolved?

I think I covered these in the prior questions. Although you might have expected me, with a terrestrial hat, to express a concern about cannibalisation of existing operator revenues, I am not at all worried about this. I think the shift of gambling revenues will

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be minute and, in any event, it is already happening – those South Africans who want to gamble online are doing so with international operators.

6. What other comments/input/guidance can you provide for the consultants/project teams/committee/NGB with respect to this process?

No answer

3. NATIONAL RESPONSIBLE GAMBLING PROGRAMME

Key Stakeholder Questionnaire

Prof Peter Collins –President, NRGF

1. How would you define Interactive Gambling?

Gambling delivered by the “new technologies” of Internet, cellphone and ITV. The game must be “hosted” at a distance from the player. I would argue that we should define the gambling as taking place in the jurisdiction where the site is regulated (it is not for one jurisdiction to enforce the rules of any other). I do not distinguish in this definition between betting and gaming – in both cases, the player is putting something at risk in the hope of winning a prize on an event of which the outcome is uncertain. I also like to add the rider that the player should be doing this for fun as this removes such areas as the stock market from the definition of gaming and also allows the industry to be recognised, as it should be, as part of the entertainment and leisure cluster.

2. Do you believe Interactive Gambling should be regulated at a National level? If so, what key areas should be covered by such regulation? Please explain your views on both questions.

IG must be regulated at a national level because:

- ✓ Due to the borderless nature of the internet, players on South African based IG sites will come from everywhere;
- ✓ We will want to try to generate some “export” business in this process and to do this we need the national government’s “seal”.
- ✓ I must point out, however, that in my view the NGB is not currently adequately resourced to fulfil the role of sole regulator of this activity and its capacity and competency in this area will have to be beefed up to meet what is a very serious and challenging set of accountabilities.

3. What do you believe should be the key goals of an Interactive Gambling Policy (e.g. player protection, job creation, tax revenue)?

My suggested primary goal would be to keep SA gamblers from playing online elsewhere than on an SA site. You can’t stop them from gambling online – it is naïve to think you can, so we have to seek the dominant economic benefit available. Maybe also attracting some foreign capital, tax revenue and license fees, but we have an uphill battle to achieve the latter goals.

We must also protect players rights to enjoy a fair game and not be exploited or defrauded or addicted.

4. What do you believe should be the main tenets of such a policy that would contribute to achieving your stated goals (e.g., strict operator licensing, software testing, specific tax laws)? Please be as detailed as possible in your answers.

We need excellent player identification and security, to give players and the government comfort.

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We need licensing with strict probity tests – just as comprehensive as we do for our land-based licensees. Because of the cross border issues, I agree with the UK approach of saying that an SA-licensed operator must be physically located in SA. Operator licensing doesn't need to be cumbersome – we can do what people like Gibraltar did and only accept major players, whose corporate standing pretty much ensures that they are bona fide operators of integrity and means. I believe the operators must also demonstrate a social responsibility.

Technical requirements are vital – to protect players' accounts from tampering and to avoid breakdowns that inevitably result in disputes. Operators must have excellent records and perfect audits. We need to license people who “know their stuff.”

On responsible gambling, I would see three key requirements:

- ✓ The site must carry appropriate consumer information, comprising a clear and intelligent description of what to do if you think you are in trouble and a link to the NRGF site/help line;
- ✓ A clear and simple explanation on the site of how the games work and even what the “house advantage” is on each game (or at least an explanation that, probabilistically, this does in fact exist); and
- ✓ At least make it possible for people to set limits per time period for themselves. Research indicates that limit setting is probably the single key component of responsible gambling.
- ✓ A bit more of a controversial one would be to track playing patterns and warn players of problem behaviour before it occurs and to actually forcing players to use smart cards to identify themselves and be “licensed to play”.

I believe to achieve our goals we should regulate advertising, making it illegal for anyone except a licensed player to advertise in SA.

We should also say that debts are only legally enforceable with licensed operators – this will legitimise the process and close the loop.

4. LIMITED PAYOUT MACHINE ASSOCIATION OF SOUTH AFRICA

1. How would you define Interactive Gambling?

Interactive gambling is essentially internet gambling i.e. the act of gambling using an online website.

2. If so, what key areas should be covered by such regulation? Please explain your views on both questions.

- Regulation of online gambling operators. These operators must comply with basic business legislation as well as any additional requirements unique to online gambling operators. This will be critical to legitimize the online gambling operator business.
- Technological review and regulatory approval. Since interactive gambling is a fairly technologically intensive arena, it stands to reason that all software involved with interactive gambling, from that used to process online payments from players to the games themselves, must be independently evaluated to ensure that the player and operator are safeguarded at all times.

3. What do you believe should be the key goals of an Interactive Gambling Policy (e.g. player protection, job creation, tax revenue)?

The interactive gambling policy will be no different, in many respects, to the current gambling regulatory infrastructure in place for bricks-and-mortar casinos and their suppliers. Player protection, job creation, tax revenue and fair compliance obligations must be looked at. The policy must represent the operator, the player and the suppliers fairly and not end up burdening the online gambling industry with taxing compliance obligations that would serve as barriers to trade and legitimate business activity by all that derive an honest living from the industry.

4. What do you believe should be the main tenets of such a policy that would contribute to achieving your stated goals (e.g., strict operator licensing, software testing, specific tax laws)? Please be as detailed as possible in your answers.

- Operator licensing. The operator must comply, not only with the online gambling legislation, but also with requirements of the Companies Act, relevant labour legislation and other legislation that govern the operations of all businesses;
- Gambling software testing and approval. The software must be tested against established standards and norms to ensure that players gambling with this software do not end up being treated unfairly because the software was not designed according to strict quality and regulatory requirements.
- Information technology (IT) verification. The state of the Information technology used by the online operator to deliver an online gambling experience to their customers must be checked for robustness and conformity to established IT standards and practices to ensure that, in the event of a disaster (e.g. power failure, virus attacks computer hackers), the player and operator can be protected.

5. What are your issues/concerns about the formulation of a National Interactive Gambling Policy? How might these be addressed/resolved?

A key area to consider would be the impact of the online gambling industry on the bricks-and-mortar casinos and limited payout machine route operators (LPM).

People might prefer the comfort of staying at home and dialing into an online casino to gamble than having to get into a car, drive many kilometers to a casino or LPM site, pay a lot of money for parking and then gamble. Research conducted on the international experience (USA) might be relevant here.

The impact of interactive gambling on casinos and LPM might be comparable to the DVD vs. cinema situation currently being reported by many countries (South Africa included). Cinema admissions, and by extension box office revenue to the cinema and film studio, have been on a decline for the last 3 years due the rise in expenditure on DVD players and DVDs. People, when faced with the option of getting the same experience but within the comfort of their home, will choose to do so and this is how I see the players might respond to internet gambling.

6. What other comments/input/guidance can you provide for the consultants/project teams/committee/NGB with respect to this process?

It is imperative that all online gambling operators, regulators and developers work together to develop a robust framework for interactive gambling regulation which will achieve the aim of player protection, job creation and economic activity but without burdening any or all trade sectors of the online gambling industry with onerous compliance requirements.

7. Potential prejudice of other category of gaming operator licenses

The license fees, levies and other charges applied to online gambling operators at a provincial and national level should not be less onerous than for existing gaming operators.

Examples of other charges might be the contributions required to be made to organizations such as the National Responsible Gambling Program or other forms of Corporate Social Investment.

8. Impact of regulations on technology supplied to or to be supplied to the broader gaming industry

Care should be exercised to ensure that there is no inadvertent adverse impact on the supply of technology to the broader gaming industry.

An example of this might be the change in the delivery mechanism for game content to server-based solutions.

C.v. OPERATOR RESPONSE SUMMARY

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Current licensing jurisdiction	Kahnawake	Kahnawake	Gibraltar	Kahnawake	Curacao/Kahnawake	Gibraltar
Years in operation	5	3.5	10	3	6	10
Approximate number of staff employed	60	30	50	26	80	325
How important are the following issues to you in the selection of an online gaming jurisdiction:						
Thorough financial and management probity processes applied to all applicant licensees	5	3	5	5	4	5
Understanding by the regulator of operators' commercial realities	5	4	5	4	5	5
Stable gambling policy	5	4	5	4	5	4
Clear and comprehensive regulatory framework	5	4	5	4	5	4
Non-onerous and clearly defined regulatory monitoring and reporting requirements	5	4	5	4	4	3
One license for all interactive gambling products	5	4	3	5	3	4
One license for all interactive gambling platforms	5	4	3	4	3	3
A responsive regulator	5	3	4	3	3	4
Low gambling tax	5	5	5	5	3	5
Low corporate taxes	5	5	4	5	3	5
Low income tax	5	5	3	5	2	5
Ability to repatriate capital and profits	5	5	5	5	5	5
No restrictions on the acceptance of bets from other jurisdictions	2	5	5	5	4	

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Current Licensing Jurisdiction	Kahnawake	Kahnawake	Gibraltar	Kahnawake	Curacao/Kahnawake	Gibraltar
High bandwidth and advanced hosting facilities	5	5	5	5	5	
First world banking and related support services	5	4	4	4	3	5
Access to low cost of labour	5	3	2	4	3	5
No restrictions on the types of interactive gambling products that may be offered	5	4	3	4	3	3
No restrictions on the platforms for providing interactive gambling	5	4	3	4	3	4

The following questions pertain to key aspects of the regulation of online gaming. Please indicate whether you agree or disagree with the following statements:

Players care strongly about where the operator is licensed	4	2	3	3	5	4
The UK is likely to become the preferred jurisdiction for operators due to its perceived credibility as a major first world country	4	2	4	4	4	5
Unless the UK offers a very low gambling tax rate, it is unlikely to attract operators with a global target market	3	5	4	4	4	4
Unless the UK offers a very low corporate tax rate, it is unlikely to attract operators with a global target market	3	5	4	4	3	4
In order to remain competitive, operators should have the flexibility to locate operations (marketing, call centres, etc.) in multiple jurisdictions	4	5	4	5	5	5
Source code testing of software ensures that the games are fair	5	1	2	4	4	4
Regulatory oversight that retards competitive advantage in any way is unacceptable	5	5	5	4	5	5

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	Kahnawake	Kahnawake	Gibraltar	Kahnawake	Curacao/ Kahnawake	Gibraltar
Is your organisation currently subjected to a high degree of regulatory oversight by your jurisdiction?	Y	N	Y	N	N	N
In your opinion, which jurisdiction is perceived as the most favourable by operators, and why?	The Kahnawake Gaming Commission – mainly due to its location and ability to offer high bandwidth solutions that suit our demanding needs. Also, it has great Infrastructure and reliability.	Kahnawake due to low barrier to entry, high stability, little probity/oversight and extremely good infrastructure - however, that said, jurisdictions like IOM/Gib seem to be preferable for mainstream/established operators. You can't set up a corporation/head office in Kahnawake.	Any European jurisdiction as these are perceived to have greater credibility for players and lawmakers worldwide.	Kahnawake for convenience and hosting efficiency. Gibraltar for credibility.	Kahnawake. It has the technical infrastructure to handle hosting the servers without too many issues for being licensed there.	The UK due to the high reputation of the G gambling Board.
In your opinion, which jurisdiction is perceived as the most favourable by players, and why?	Again Kahnawake. Because service is so integral in this business the high bandwidth facilities, infrastructure and reliability appeal to player that want a unique gaming experience. With all the competition out there it's vital to remain on top and have players' needs met.	Couldn't say, but I would say a place like UK or a Euro territory. I doubt most US players even know the difference between IOM, Gib and Kahnawake.	Any European jurisdiction as these are perceived to have greater credibility for players and lawmakers worldwide.	Probably Gibraltar because it is a European/British jurisdiction but in reality I don't think the players care - unless they have a major problem getting paid or similar.	None - since there is no First World regulatory license issuing country. Kahnawake is considered to be a bit of a "joke" in that it is not under the regulation of the Canadian government.	Also the UK for the same reason.
If you were licensed in South Africa, would it be important that you are able to accept bets from South African citizens? Please provide a reason for your answer.	Yes. We believe that South Africa has a booming Internet market, and with the provision of high bandwidth and good infrastructure, the market could be grown substantially.	No. We are not based in SA. Only our back-office, and being licensed here would bring the business into the SA revenue net.	No. The SA market is too small on a global scale.	Yes. Although I have checked YES, I am not really qualified to provide an answer to this. We have very few customers from SA. However, I believe that ultimately we need to be licensed in every jurisdictional area where we do or seek business. SA is a vast area of huge potential.	No. Our focus is not on the SA market.	Yes.
If offered the opportunity, which aspects of your operation would you consider locating in South Africa, and why?	A concern is the bandwidth/hosting capabilities of South Africa. If a more cost effective solution were offered (which was licensed by the South African Gaming Commission), we would consider relocation and offering a service to the local South African market.	Administration, e-cash, software development, marketing admin, graphic design. We live here and want to continue to do so. It's a relatively cheap labour pool.	The back office and CSC may be a possibility if regulations allowed.	Possible customer support and transaction/risk/payment systems departments.	None for now. High taxes, serious bandwidth problems and extremely high cost of bandwidth in comparison to other locations means we would not move to SA.	Call centre due to competitive costs and good educational background.

C.vi. PROVINCIAL GAMBLING BOARD INPUTS

1. EASTERN CAPE GAMBLING AND BETTING BOARD



**REPORT IN RESPONSE TO INVITATION BY NATIONAL GAMBLING BOARD ON
INTERNET GAMBLING**

INTRODUCTION

1. The National Gambling Board (“NGB”) has issued an advertisement inviting comment on the issue of Internet gambling. This is a response to that invitation.
2. Kindly take note that this report has not been referred to or considered by the Honourable MEC responsible for gambling in the Eastern Cape and should not necessarily be considered to reflect his views.
3. From the outset a distinction must be drawn between Internet gambling and Internet betting. In the case of Internet gambling the result is determined by a computer or random number generator whereas in the case of Internet betting the result is determined in the physical world. To date certain Internet betting has taken place in terms of provincial legislation, telebetting with a bookmaker being one form thereof. This is presently well regulated and this document will not presume to deal with the issue of Internet betting but rather to confine itself to Internet gambling (e.g. with an Internet Casino). It is submitted that provinces should continue to license and regulate all activities relating to bookmakers and telebetting is so closely connected to the existing bookmaker businesses that provinces should continue to regulate this, as contemplated in the National Gambling Act, 2004.
4. In previous documentation there appears to have been a fundamental flaw in the process insofar as the documentation has sought only to answer the question how Internet gambling should be introduced. There has been a failure to address the more fundamental question of whether Internet gambling should be allowed at all. The latter question involves consideration of the pros and cons of Internet gambling including possible unintended consequences.
5. By way of introduction it will be proposed in this document that this fundamental question should be answered first.

PROS AND CONS OF INTERNET GAMBLING

6. When considering these issues it is beneficial to consider the issue of why legalised gambling was allowed in South Africa at all. The “Main Report on Gambling in the Republic of South Africa” by the erstwhile Lotteries and Gambling Board listed a number of reasons to introduce legalised gambling including removal of illegal gambling, choice of the public, generation of income and employment and generation of economic growth. These factors are of critical importance in relation to the issue of gambling.
7. According to a report “The Economic Impact of Legalised Gambling in South Africa” compiled by A A Ligtholm of the Bureau for Market Research at Unisa and L T Mabaso of Kahlulu Marketing Consulting for the NGB some 50 000 jobs were created in the gambling industry as a result of the legalisation of gambling, taking into account the multiplier. In addition, the same report at page 99 mentions some R10.5 billion being invested in the industry from 1994 to 2000. These businesses are presently sustained by the members of the public who participate in lawful gambling. The NGB report indicates that about 19.3% of the populace participate in casino gambling, 15.3% in horse betting, 2.3% in sports betting, 7.2% in bingo, 0.6% in online gambling and 27.5% abstained from gambling. In short the above 50 000 jobs and R10.5 billion in investment are sustained by approximately 19.3% of the population.
8. In a previous report on the issue of Internet gambling entitled “Interim Report: Internet Gaming and South Africa: Implications, Costs and Opportunities” Professor Peter Collins mentions a number of possible benefits including “an export opportunity” and the possibility for the development of an Internet gambling business creating employment and technical expertise in South Africa. This report proposed low taxes on Internet gambling in order to be internationally competitive. This Board has previously commented on this report and our comments thereon as well as on the report commissioned by the NGB from GGS and entitled “The Internet (E-Gambling) Policy of South Africa” should be regarded as incorporated herein.
9. Let us consider a few of the possible benefits of legalisation of Internet gambling:

(a) **Job creation**

It is true that the legalisation of Internet gambling could result in some job creation. On the other hand, the average Internet gambling business creates few new jobs as software is usually purchased off the shelf from a software supplier such as Micro Gaming. Call centres are usually outsourced and certain call centre business is already being generated in South Africa serving the international market without this form of gambling being legalised in South Africa. Here again it is questionable how many jobs would be created.

(b) **Export opportunity**

In regard to this issue any good marketing book would recommend first looking at possible customers. In regard to Internet gambling one would therefore have to look at both potential users of the service and potential service providers. As regards potential users of the service, it would appear that a number of international markets are excluded, including the United States, China, European nations (other than Britain) and Australia. A large number of international

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jurisdictions prohibit their citizens gambling on Internet sites. As regards potential operators, many of the United States operators set up sites in Internet friendly jurisdictions like the Isle of Man and have subsequently closed these sites both due to pressure from their United States regulators and potential lack of clients.

In the light of the judgment in the Panel of Appeal of the World Trade Organisation in the matter United States – Measures affecting the cross border supply of gambling and betting services WT/05285/AB/R it would appear that were South Africa to legalise Internet gambling it would be obliged in terms of World Trade Organisation rules to allow unfettered access to the domestic market of operators from all other jurisdictions allowing Internet gambling. An operator in Antigua could thus freely target South Africans and market to South Africans. As Antigua has a much lower tax rate and does not charge VAT on gambling transactions its operators could return a higher percentage to player and South Africans may be more inclined to play on the Antiguan site than on a local site. Legalisation of Internet gambling could in fact result in an import opportunity.

In discussions with various local players it would appear that were Internet gambling to be allowed these players would first and foremost target South Africans. This creates an interesting issue that persons who presently gamble in casinos could then rather gambling on the Internet. There are various reasons for this—

- (i) The futurist Faith Popcorn coined the phrase “cocooning” to explain the phenomenon in which persons were inclined to spend more time at home with their nuclear family than to go out. This is an international phenomenon exacerbated in certain parts of South Africa by possible hijackings and crime.
 - (ii) As a result of their low cost structures and little obligation to create tourism icons or high employment levels, Internet casinos are able to offer a much better return to player than a land-based casino. This situation would be even worse were Internet casinos to operate on a VAT-free basis as opposed to land-based casinos.
 - (iii) The computer in the study or interactive television (or cellphone slot) is simply more convenient and allows far more opportunity for impulse gambling than the casino down the road.
- (c) **Taxation**

The two previous reports compiled by the NGB referred to possible taxation but stated that this should be at low levels to remain competitive. At the very least it would seem unfair for a high cost land-based casino compelled to employ hundreds of people and sustain a structure costing several hundred million Rand to have to compete with an Internet casino with no minimum employment running on a leased server and using leased software if the latter had a substantially lower tax rate than the former. If there were to be displacement of high-income players from high cost land-based casinos to low tax rate Internet casinos the possibility exists of taxes in fact decreasing.

POSSIBLE NEGATIVE CONSEQUENCES OF ALLOWING INTERNET GAMBLING

10. There are a number of possible negative implications of allowing Internet gambling. These will not be discussed in detail and the list below is not comprehensive but is merely to assist the NGB in its deliberations—

(a) **Loss of employment**

Although presently few people participate in Internet gambling the potential growth in this area is astronomical in as far as Internet gambling is presently frustrated by a number of issues including prohibitions on advertising in some Provinces (e.g. Eastern Cape), exchange control, few sites targeting South Africans and lack of access to Internet facilities. A report by Intdev Internet Technologies estimates that only 4% of South Africans had access to the Internet in 2000. The majority of these users were in LSM8, 25% of users had a monthly income of R10 000 or above and 11% R15 000 or above. Coincidentally the NGB report indicates that 0.7% of people with an income of R5 000 to R10 000 gambled online and 1.8% of those with an income of R10000 and above. It is also clear that the present casinos are largely being sustained by the higher income groups who can afford to spend R500 to R2000 per visit. These are the groups who will inevitably have a computer at home and are more likely to switch a substantial portion of their gambling spend from land-based casinos to the Internet. A drop in revenues and visitation will affect jobs at casinos, especially at the lower end where less waiters, slots attendants, etc. would be required.

(b) **Loss of revenue**

The two previous reports commissioned by the NGB recommended that Internet gambling should have a low tax rate to be internationally competitive. It was also suggested in the GGS report that all Internet casinos should be based in Gauteng. The effect of this where players switch from land-based casinos to Internet would be to reduce taxation overall and further to lead to Provinces losing tax revenues paid at the higher rate to land-based casinos to Gauteng where the servers would be situated. Although this could be mitigated to some extent by revenue sharing or tax being paid to the player's jurisdiction in the case of South African's, Australia tried a model based on the latter scheme and found it to be an administrative nightmare. Taxes would also be lost where South African's chose to gamble with offshore sites. It might also prove difficult to resist calls for tax deductions for land-based gambling businesses if internet casinos pay lower rates of tax. Lower taxes and lower infrastructure costs will also allow higher payouts at internet casinos, putting land-based businesses at a competitive disadvantage.

In addition to this where advertising and mass marketing are allowed by external Internet casinos, there could be a total negative outflow of cash from South Africa to low cost jurisdictions such as Antigua, particularly where the export market does not arise as a result of international jurisdictions other than South Africa and Britain prohibiting their citizens gambling on the Internet. It should be noted that the Panel of Appeal judgment allows such prohibition unless a jurisdiction allows operators to target foreign markets. In addition to the above, the decision of the European

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Court of Justice in the matter of Piergiorgio Gambelli and Others (Case No. C-243/01) seems to confirm that the principle is do unto others as you would have them do unto you. A country is thus allowed to take steps to prohibit certain forms of gambling for social reasons unless it allows operators in its jurisdiction to participate in the prohibited activity. In terms of the Gambelli judgment the court appeared to be of the impression that Italy could prohibit Internet betting from outside its jurisdiction with Italian punters if it prohibited its operators from indulging in such activity.

In consequence and were low cost jurisdictions to be able to compete for South African punters, given the limited number of people who sustain the existing casinos and indirectly pay the taxes thereat, there could be a loss of revenue to the Provinces.

(c) Social issues

It is trite that surfing the Internet is an activity where concentration can result in persons being unaware of the passing of time. Similarly, gambling in a live environment on a machine can have a similar effect. The question must then be asked what the effect would be if these two issues were combined. See in this regard the article in the Sunday Times of 6 February 2005 attached hereto.

The Honourable Portfolio Committee of Parliament raised a number of concerns on the issue of protection of minors from gambling. These concerns extended to the issue of minors being able to see the casino floor from walkways adjacent thereto. In at least one Province the Board has determined that limited payout machines should not be visible to minors. The question then must be asked as to why these steps are necessary where minors would be freely allowed to observe (and even possibly participate in) the gambling activities of their parents taking place in the study or, in the future, on the cellphone or interactive television in the sitting room. A number of parents presently see nothing wrong with under 18's on gambling floors and would no doubt allow children to anonymously transact at home. Even if this did not occur the children would be introduced to gambling at home at an early age and without any of the controls that exist in a LPM site or land-based casino. Legislation makes it unlawful for minors to enter gambling areas and this is done for social reasons. What justification can there be for excluding minors from gambling areas if they are freely allowed in the gambling area at home?

The National Act also limits the number of casinos and limited payout machines for social reasons. It seems contradictory to limit gambling opportunities at casinos and on LPM's for social reasons and then allow unlimited machine and tables type gambling wherever there is a personal computer, internet café, digital television or cellphone linked to the internet.

It is also to be noted that South African law is extremely strict on advertising of land-based gambling businesses in as far as these may over-stimulate the latent demand for gambling. It is doubtful whether the same standards can be applied to businesses located in low regulation areas targeting South Africans as provided for in the WTO Panel of Appeal ruling.

(d) Exchange control

South Africa presently maintains a system of exchange control which inter alia can be utilised to prevent offshore gambling businesses targeting South Africans. If South Africa allows Internet gambling and thereby opens the door for a ruling that

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overseas businesses can target South Africans it may be ruled that the exchange control forms a barrier to free trade which impact negatively on its retention.

(e) **Proper regulation**

Many Provinces within South Africa are recognised as amongst the best in regulation in the world. This reputation has been established by hard work and has been hard won. Internet gambling creates a number of difficulties relating to proper regulation of gambling. The issue of minors being present within the living room where gambling is taking place whilst being prohibited from a gambling floor has already been alluded to. Provinces presently have international standard probity requirements with regard to licensees. Should South Africa be compelled to permit Internet gambling from persons licensed in low regulation or no regulation jurisdictions, this would be negatively affected.

It is also understood that the use of proxy servers and mirror servers can create a number of difficulties. An entity may be licensed in South Africa and may deploy an offshore server so that a percentage of transactions or transactions with certain persons are recorded in South Africa whilst the remaining transactions take place in a jurisdiction where it is free of tax or not highly regulated. This would result in loss of taxes.

It must also be mentioned that the holder of a casino licence or any other terrestrial licence invests a large amount of money in their business, in the case of a casino totalling hundreds of millions of Rands. This aids regulation as such a person cannot afford to lose their licence and thereby be left with a white elephant and lose their initial investment. Such considerations do not apply to a fly-by-night Internet casino operator who may easily remove their server to a different jurisdiction and/or who is utilising a leased server who will have little to lose should their licence be revoked.

It must here also be recalled that many of the leading casino operators have previously looked to being licensed in jurisdictions such as the Isle of Man and have not proceeded therewith. It is therefore a question what operators would seek to be licensed in South Africa. The door is also thereby opened for South African illegal operators to lease server space on servers in low regulation jurisdictions and target South Africans in accordance with the WTO ruling. This Board has unconfirmed information that such is already taking place.

In as far as regulators are required to be even-handed it may be difficult to compel a land-based business to exclude minors from the gambling area when Internet gambling businesses may not know who is present when gambling takes place and may even inadvertently take bets from minors where such persons utilise their parents credit card or account with or without permission.

(f) **Over-stimulation**

This issue has been alluded to. It is noted that according to the NGB report a minimal number of people presently gamble on the Internet. With proper marketing and easy access this may no longer be the case.

It was recently reported in the Sunday Times of 23 January 2005 that the CEO of the NGB was of the belief that there is already too much gambling in South Africa and too many casinos. Allowing a casino in every living room, unlimited numbers of Internet dining halls linked to Internet casinos and/or unlimited Internet monitors

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in pubs and clubs (as opposed to the present restricted number of casinos and gambling machines outside of casinos) is hardly likely to improve the situation.

(g) **Site licences**

The LPM process has largely been intended to assist the small businessman. Proper regulation however requires that site licence applicants undergo probity and meet with all regulatory requirements on an ongoing basis. If Internet terminals are allowed the question will have to be asked as to why anyone would go through probity and submit to ongoing regulation when at no cost they could install computer monitors and/or remote Internet gambling terminals in their premises at little cost and not thereby have to be regulated on an ongoing basis. An operator could set up 20 computers linked permanently to various sites, allow minors in such an area, not have to register their staff and not have to get a licence, without any negative legal implications whatsoever. The issue of Internet gambling sites setting up Internet dining halls with multiple monitors to approximate the ambience of a casino and without a licence cannot be excluded. Such an operation would totally negate the limitation on the number of casinos contained in the National Gambling Act.

(h) **Money laundering**

It has been noted by various authorities, particularly in the United States, that Internet gambling may be a haven for money launderers, especially where bets are struck with operators in low regulation jurisdictions. This was inter alia a finding of the United States General Accounting Office in a report entitled "Internet Gambling Overview". The NGB would be well advised to consider this report which is available at www.gao.gov.

(i) **Empowerment**

A number of land-based casinos have empowerment shareholdings where the shareholders use revenue from the casino to pay off loans made in order to acquire the shareholding. If casinos lose revenue to Internet casinos these empowerment shareholders may not be able to pay off the loans to secure their shares.

CHOICES REGARDING INTERNET GAMBLING

11. There are essentially three choices available relating to Internet gambling, namely totally free trade, regulated trade or prohibition.
12. It is trite that in South Africa the PLA's have established a reputation that South Africa is well-regulated jurisdiction. The same would have to apply to any Internet casinos. The difficulty here concerns the consequences of the WTO case. If South Africa allows Internet licensees it will be obliged to allow operators from other jurisdictions (where they may not be regulated to the same extent or at all) to access its market. It is doubtful South Africa could ever justify having unregulated Internet gambling alongside highly regulated terrestrial gambling. The totally free market option does not appear to be an option at all.

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13. The second option of a regulated industry has the problems set out above regarding possible loss of revenue, especially to the provinces and possible job loss at terrestrial businesses. This Board has previously recommended a model in terms of which only land-based casinos would be allowed to operate Internet sites as part of their casino licences. This model would have allowed the casinos to utilise revenues from Internet operations to cross-subsidize their bricks and mortar casinos. It would also have ensured all money lost to the terrestrial operation would still accrue to the operator thereby saving jobs and revenues. This model could allow for cost effective regulation by PLA's who would simply add the Internet operations to their existing inspections. The model also would have provided for cross marketing to promote tourism and any revenues earned from persons outside of South Africa could have accrued to the existing casinos to better the position of the empowerment shareholders. Please find herewith for ease of reference an executive summary of the previous representations made in this regard on a previous report on Internet gambling.
14. The difficulty, however, is that the Panel of Appeal decision would mean that if this model were followed South Africa would still have to allow free access to its markets by operators located in other jurisdictions. Even with the additional security provided to regulators and punters in knowing that the Internet site was backed by terrestrial assets on the ground it is a question whether the model is still sustainable and still has benefit.
15. It is to be noted that apart from Caribbean nations and the United Kingdom few countries have embraced Internet gambling. Many in fact outlaw it. It is noticeable that although a number of states in Australia such as Queensland produced model Internet Acts and as there was about to be a large rollout of this industry the Federal Government of Australia effectively outlawed Internet gambling except in certain limited circumstances. The Act which achieved this was recently reconsidered and the status quo largely prohibiting Internet gambling being offered to Australians was maintained.
16. In Nevada a law allowing Internet gambling if the Nevada Gambling Commission can show that it can be properly regulated has been on the statute books for approximately five years. To date the Commission has clearly not been able to show that it can be properly regulated, as Nevada does not offer Internet gambling.
17. In other jurisdictions such as the Channel Islands operators have taken out licences and then withdrawn their operations for financial reasons or due to pressure from the regulators of the mother company in the United States.
18. New Jersey also sought to introduce a Bill on Internet gambling but nothing has come of this in three years.
19. In short, it would appear that few jurisdictions have embraced Internet gambling.
20. On the issue of control and regulation or prohibition of Internet gambling, it appears logical that if one is able to regulated something to a sufficient extent that it can be properly regulated it can also be prohibited. It is true that if there is a demand for a service which is not met such service may go underground and take place despite prohibition. Examples of this include the illegal gambling operators in South Africa in the 80's and 90's and the liquor prohibition in the United States. It is however a question whether it can be argued that persons in South Africa do not presently have gambling opportunity and sufficient opportunity to meet their gambling needs given the

REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

21. opportunities provided by casinos, the lotto, bookmakers, totalisators, bingo operators and limited payout machines.

22. On the technical prohibition of Internet gambling a number of countries such as China and certain of the Arab states have successfully instituted blocking regimes. The

Australian Productivity Commission report also sets out how although blocking may not be 100% effective it is sufficiently effective to achieve the result for a substantial majority of the population.

23. The NGB would be well advised to read the well researched paper by the Australian Productivity Commission and Chapter 18 of that report, which deals with Internet gambling, should be regarded as incorporated herein. Please also find herewith an annexure to a report entitled "Empirical analysis of Internet Filtering in China" by Jonathan Zittrain and Benjamin Edelman of the Berkman Centre for Internet and society ant Harvard Law School.

24. Apart from technical blocking through ISP's and at a central level Internet gambling is vulnerable in the sense that any business needs to advertise itself and given the number of sites available on the Internet terrestrial advertising is still required. Examples of this relate to sites targeting South Africa who have still found it necessary to advertise in magazines, on radio and on television. A prohibition on advertising can therefore assist in this regard. Some success has been had where magazines were forced to remove advertising, the local Superbike Championship was forced to remove a sponsor's name in certain provinces, the advertisements by the sponsor of Big Brother were removed and a distribution company was forced to stop distributing software disks.

25. In addition to the above Internet gambling is vulnerable relating to the flow of money. In the United States MasterCard and Visa have ceased processing Internet transactions. All Internet casinos targeting South Africa utilise local bank accounts and this method too could effectively be used to combat Internet gambling.

26. While any one method may not deter every person from participating in Internet gambling, a combination of the methods above could achieve a marked degree of success.

CONCLUSION

27. We trust that the above considerations will assist the NGB in its deliberations on the issue of Internet gambling.

V G MATI
CHIEF EXECUTIVE OFFICER

REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

2. FREE STATE

1. How would you define Interactive Gambling?

Gambling through internet i.e. not physically at a gambling institution.

2. Does your Province/ Board have in place any formal policy/regulation/legislation with respect to interactive Gambling? If so, please summarize it for us.

No.

3. Does your Province/ Board have in place any **informal** policy/regulation/legislation with respect to interactive Gambling? If so, summarise it for us.

No. Interactive gambling not allowed.

4. Do you believe Interactive Gambling should be regulated at a National level? If so, what key areas should be covered by such regulation? Please explain your views on both questions.

Yes. If you don't, it will only go underground and then very difficult to deal with. All "connected" parties e.g. Operators, Banks, Punters etc should be covered.

5. What do you believe should be the key goals of an Interactive Gambling Policy (e.g. player protection, job creation, tax revenue)?

Player protection, tax revenue and protection (prohibition) of minors.

6. What do you believe should be the main tenets of such a policy that would contribute to achieving your stated goals (e.g., strict operator licensing, software testing, specific tax laws)? Please be as detailed as possible in your answers.

All the above and additional measures should be in place to prohibit minors' access. Credit guarantors e.g. Banks should also be closely monitored. The existing tax Laws should be adequate to deal with issue and can be reviewed if need be.

7. What are your issues/concerns about the formulation of a National Interactive Gambling Policy? How might these be address / resolved?

Strict monitoring. The National Gambling Board (NGB) would have to establish a very strong Compliance and audit departments. In order to attract foreign investment and Job creation, the "companies" should operate from R.S.A.

REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

8. What other comment/inputs/guideline can you provide for the consultants/project teams/committee/NGB with respect to this process?

Interactive gambling is here and we cannot wish it away. It will be difficult to monitor but this should not justify its prohibition.

The most important thing to do is to conduct a thorough research, like you are doing now, to be able to close all the known loopholes.

Moeketsi Ratsomo
Acting Chief Executive Officer

3. NORTH WEST GAMBLING BOARD

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Megacity Shopping Complex
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Mmabatho, 2735
North West Province
South Africa



Private Bag X34
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Mr Sheldon Cohen
Mpande Advisors

Dear Sheldon

RE: QUESTIONNAIRE FOR CEOs OF PROVINCIAL GAMBLING BOARDS

I forward hereunder my response to the various issues/questions raised in the above mentioned questionnaire. The questions are dealt with in the order they appear in the questionnaire.

1. How would you define Interactive Gambling?

Interactive gambling refers to gambling through the use of interactive facilities such as:

- The internet,
- Telephone;
- Television;
- Radio;
- Any other kind of electronic or technology bases methods for facilitation of communication

2. Does your Province/Board have in place any formal policy/regulation/legislation with respect to Interactive Gambling? If so, please summarize it for us.

There is no policy nor legislation on interactive gambling at present in the North West Province.

3. Does your Province/Board have in place any informal policy/regulation or legislation with respect to Interactive Gambling? If so, please summarize it for us.

In the absence of legislation providing for interactive gambling, our position is that interactive gambling is currently outlawed in the province.

4. **Do you believe Interactive Gambling should be regulated at a National level? If so, what key areas should be covered by such regulation? Please explain your views on both questions.**

There is a lot of merit in the idea of regulating interactive gambling at national level. Being a cross border type of activity, interactive gambling may logically be regulated more effectively through a centralized regime. This would be more appropriate at national level. The national lottery, albeit non-interactive, is a good example in relation to the appropriateness of regulating a gambling activity such as this at a national level.

Licensing/regulation of interactive gambling at provincial level may result in a multi-segmented regulatory system over a gaming market with no physical link to any of the provinces. This may also over-stretch limited resources at provincial level.

The following key areas should be covered in the regulation of interactive gambling:

- (i) Establishment of an appropriate interactive gaming policy
- (ii) Formulation of effective legislation
- (iii) Appropriate taxes and levies
- (iv) Advertising standards
- (v) Fraud prevention
- (vi) Punter protection
- (vii) Connectivity issues

5. **What do you believe should be the key goals of an Interactive Gambling Policy (e.g. player protection, job creation, tax revenue)?**

The key goals of an interactive policy should be:

- (i) Design and formulation of an appropriate legislative infrastructure;
- (ii) Attraction of investment;
- (iii) Prevention of fraud;
- (iv) Job creation;
- (v) Gaming revenue;
- (vi) Protection of punters.

6. **What do you believe should be the main tenets of such a policy that would contribute to achieving your stated goals (e.g. strict operator licensing, software testing, specific tax laws)? Please be as detailed as possible in your answers.**

A useful interactive gambling policy must be premised on the following tenets amongst others:

- 6.1 Appropriate and conducive regulatory environment

Given its interactive nature and consequent operational complexities, interactive gambling in South Africa will require an effective, clear and

well-defined regulatory framework that conforms to international standards.

An appropriate regime for the regulation of interactive gambling should be characterized by the following:

- Sound policy principles;
- A clear legislative framework
- Flexibility of legislation;
- Well defined compliance requirements;
- Commercial sensitivity;
- Responsiveness;
- Affordability of costs for regulation e.g. costs of investigations; licensing; testing and certification etc.

6.2 Taxation

Issues of tax will be amongst the most critical elements of an interactive gambling policy in South Africa. The formulation of policy principles in this regard will certainly not be easy given the need to balance such decisions with the practice in most international jurisdictions, and the need for manifest revenue benefits within the context of the South African economy.

It appears that many international jurisdictions have zero taxation policies as a drive to attract foreign licensees and investments. Those jurisdictions that charge taxes do so at very minimal levels for the same reason. Whilst this may be sensible and beneficial in these jurisdictions, it may not be so in South Africa as there is a clear need for revenue and fiscal spin-offs in the ultimate justification of the regulation of interactive gambling. The nature and context of the South African economy would also demand such benefits from interactive gambling operators.

The following matters related to taxation will have to be taken into account in the formulation of an appropriate interactive gambling policy for South Africa:

- Gaming levies;
- Corporate Tax;
- Income Tax;
- Value Added Tax;

Appropriate policy directives will also have to be formulated regarding repatriation of profits by foreign licensees. Comparison with international jurisdictions may again make decisions in this regard very difficult as a number of these jurisdictions allow repatriation of profits by foreign licensees.

Issues pertaining to fraud, protection of punters and prevention of access by minors

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In light of the remote nature of interactive gambling activities, one of the most important considerations in relation to a policy dealing with this type of gambling should be the prevention of fraud, protection of punters and prevention of access by minors. There is, in this regard, a fair amount of useful experience to be gleaned from international jurisdictions already licensing and dealing with interactive gambling e.g. Antigua, Malta, Alderney, Kahnawake and the Ilse of Man. Consideration may also be given to the approach taken by jurisdictions such as the USA and the UK on these issues.

6.4 Other relevant considerations

A policy on interactive gambling will also need to be informed by and take into account certain practical realities such as connectivity issues, hosting facilities and support services, which may pose serious problems in any interactive gaming industry.

7. **What are your issues/concerns about the formulation of a National Interactive Gambling Policy? How might these be addressed /resolved?**

(i) Taxation

Several complexities are bound to be attendant to the taxation aspects of an interactive gambling policy in South Africa. Whilst there will be no ready solutions, it would be appropriate to adopt an approach that balances the need to make an interactive gambling industry in South Africa attractive to all participants including foreign licensees, and the need for beneficial spin-offs to our economy.

Gaming revenue is one of the important motivators for the licensing and regulation of any industry. This reality prevails more manifestly in the so-called third world economies given the need to improve their fledgling status. The idea of exemption in relation levies and/or taxes for interactive gaming licensees may therefore not be compelling proposition within the South Africa context. Accordingly, a taxation/levy system may have to be implemented, at a minimal level, to ensure revenue/fiscal benefits whilst at the same time not deterring foreign investors from the country. This is a possibility as our low exchange rates would to a degree compensate for the burden in relation to tax.

(ii) Fraud

International jurisdictions have been grappling with the issue of fraud prevention over the years and new systems have been developed to keep the industry ahead of innovation by fraudsters. The recent Global Interactive Gambling Summit and Expo in Montreal provided insight into the success/effectiveness of recent systems such as the CVV2 and 3-D Secure which provide guarantees against chargebacks and are sponsored by International Card Associations. These systems compare highly favourably to other an older systems such as AVS and Geolocation.

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It appears in essence that international experiences and practices may provide useful lessons for South Africa in the prevention of fraud in relation to interactive gambling. A lot of emphasis will also need to be laid on the importance of operators “knowing their customers” as this helps minimize potential for fraud. Detailed scrutiny of interactive gambling subscribers is an important and critical requirement and should be strictly applied by all interactive gambling operators.

(iii) Access by minors

Strict age verification requirements will be necessary to ensure that financial instruments such as credit cards, debit cards and even prepaid mobile phones are not issued to minors.

The requirement to “know your customers” would apply equally in relation to the prevention of access to interactive gambling by minors.

(iv) Protection of punters

The success or failure in the requirements for protection of punters will lie primarily with the authority responsible for the licensing and regulation of interactive gambling operations.

Proper and efficient probity requirements will need to be formulated and implemented to ensure suitability of all licensees. Regular monitoring will in addition be necessary to ensure continuous compliance with requirements aimed at ensuring punter protection. There is a fair degrees of consensus internationally regarding the importance of efficiency in the regulation of interactive gambling. Appropriate regulatory resources, skills and knowledge will thus be critical in the regulation of interactive gambling in South Africa.

There is a strong view, in line with the requirement for efficient regulation, that gambling should be deemed to take place at the place where the server is located in order to enable regulators sufficient control over interactive gambling licensees.

(v) Advertising

Many interactive gambling operators will argue that advertising is more important to the remote gambling sector because it is competitive and readily available.

The different approaches taken by jurisdictions such as the USA, UK and European countries on interactive gambling advertising provides an interesting variety of options in relation the approach to the subject of advertising.

The US for instance has taken a totally prohibitive approach, possibly in line with its stance on interactive gambling. This is despite the fact that US punters contribute half of all global online gambling revenues. The UK has a more permissive approach, although this applies more particularly to advertisers from countries on the so-called “white list” i.e. EEA member states.

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A flexible approach would seem more appropriate for South Africa. There would be no logic in the total prohibition of advertising in the country if interactive gambling is allowed. On the other hand, we would need to have clear guidelines and criteria in relation to the type of adverts that may be allowed, a similar approach to current requirements for adverts in relation to land based gambling facilities. The criteria should ideally deal with matters such as the form, content, location and perhaps timing of the advertisement, and should require inclusion of messages in promotion of responsible gambling.

8. What other comments/input/guidance can you provide for the consultants/project teams/committee/NGB with respect to this process?

There is certainly some extensive ground to cover in relation to the research and formulation of appropriate policies and legislative requirements for interactive gambling in South Africa.

Experiences in the above mentioned international jurisdictions will certainly be useful and should be borrowed to assist the Interactive Gambling Committee in its research, deliberations and recommendations to the National Gambling Board and the National Gambling Policy Council on the regulation or otherwise of interactive gambling in the country.

Kind regards



.....
Thuli Nxumalo
Chief Executive Officer

C.vii. INDUSTRY INPUTS

1. ASSOCIATION OF REMOTE GAMBLING OPERATORS

argo

association of remote gambling operators

Regency House
1-4 Warwick Street
London W1B 5LT

0207 479 4040

29 June 2005

Dear Ms Nkosi,

INTERACTIVE GAMBLING POLICY REVIEW

Introduction

1. Thank you for letting me have a copy of your 'Working list of interactive gambling policy dimensions' and for giving our association the opportunity to contribute to the review being undertaken by the National Gambling Board.
2. It might be helpful at the outset if I explain that the Association of Remote Gambling Operators (ARGO) was established in 2004 to promote the interests of remote gambling companies who are licensed and operating within the European Economic Area (EEA). Its members all run online gaming businesses from various jurisdictions and most of them also run betting operations from the UK, Ireland, and Gibraltar. A full list of the current membership is attached.
3. We were closely involved with the development of the British Gambling Act 2005. As you know, as part of its overhaul of British gambling laws, the British Government introduced for the first time a new licence category of remote gambling operator and for the first time it will allow remote gaming to be hosted in the UK.
4. The development of that legislation took place over several years and many of the issues that you are now seeking to address were considered at great length. We would hope that our experience of that process and knowledge of what has happened in many other jurisdictions will be of use to you in drawing up your own laws and regulations.

Starting points

5. When considering each of the categories in your 'Working list' we would suggest that there are some general principles that should be kept in mind. They are:
- Remote gambling is the newest and fastest growing part of the world gambling industry. For the first time it has made gambling a truly international product brings with it new challenges for regulators and governments.
 - It is a sector of the gambling industry that is capable of being properly regulated and, in many respects, provides regulators with greater safeguards than more traditional forms of gambling. However, as with all good regulation, any restrictions should be necessary, non-discriminatory, and proportionate.
 - Many of the concerns that have been expressed in the past about remote gambling, for instance about it being an easy vehicle for money-laundering, are clearly unfounded. A country like the UK would not have chosen to embrace this industry if that had been the case. Instead it concluded that remote gambling can be controlled in a way that meets all reasonable public policy, security and health concerns.
 - Prohibition is not a realistic option. It is only by regulating operators rather than prohibiting them that the gambling public around the world can be properly protected.
 - The demand for remote gambling is reflected in the rapid growth in the world market and new technologies mean that it will become increasingly available.
 - Attempts in some countries to restrict access to online gambling sites have been largely unsuccessful. If the main objective of governments and regulators is to protect consumers then the most effective way to do that is to offer safe alternatives.
 - This must mean that licensing regimes should be provided which achieve that and also, as this is a specialist area that is very distinct from land-based forms of gambling, that licences are available to remote gambling companies that are already tried and tested in this field irrespective of whether they currently have a gambling operation in South Africa or not.

Working list

6. Rather than comment in fine detail on every aspect of the 'Working list' we thought it would be more productive to restrict ourselves at this stage to some key messages on each.

Regulatory structure, process and infrastructure

7. Regulatory regimes have found it increasingly difficult to keep pace with new technologies, especially when it comes to online gambling. If they are not to become outdated regularly then they need to have sufficient flexibility to respond quickly to new challenges. In this regard we favour the approach adopted in the UK where the

REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

new legislation provides a framework, but the Gambling Commission should have the ability to react where necessary without deterring the success of the industry.

8. By its very nature, remote gambling is an international business and it is almost impossible for one state to apply its laws extraterritorially. It makes sense to only try and control the activities of gambling operators who are licensed in South Africa or the activities, such as advertising, of others that take place there.
9. Any other approach may bring you into conflict with the World Trade Organisation as was shown recently in the case involving Antigua and the USA.

Definitions

10. Customers of remote gambling operators normally expect to be offered a full suite of products and there is no reason to restrict artificially what bets and games are offered as long as they are regulated properly.

Licensing and operator monitoring

11. This is one of the detailed areas that we would welcome the chance to provide fuller views on in due course, but for now it is worth saying that operators need regulators to recognise that the right balance must be achieved between the need of the authorities to regulate effectively and the need of operators to act commercially; in short, these processes should not be overly onerous for operators because if they are then their businesses become unviable and they will not be able to base themselves in South Africa.
12. The subject of game testing is a very complicated and technical one, but our policy on this is that outcomes testing will normally be preferable to source code testing which carries the risks of being too expensive and too inflexible.

Player Protection

13. We fully acknowledge and support the principle that consumers must be treated fairly and that operators have a responsibility to help combat problem gambling. There are many examples of good practice already in existence and, as an association, these issues are something to which we have given priority. Our members have an agreed Social Responsibility Code, which was endorsed by Gamcare, and we would be happy to let you have a copy if that would be useful.

Transaction processing

14. Again, because this is an international business, we accept that appropriate checks have to be in place to monitor flows of funds and payment methods. However, flexibility is again important and we would argue against any plans to introduce any system that is too restrictive, particularly where it concerns how gambling transactions are paid for.

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Commercial environment

15. Our website, www.argo.org.uk, gives access to a report that we commissioned this year from Europe Economics which looked, among other things, at remote gambling tax rates in various regimes. It provides some useful comparisons that could help you in formulating your own tax regimes.
16. The main finding was that tax rates for remote gambling operations are internationally very low, that competition means that companies' margins are very tight, and that regimes with unrealistically high levels of overall tax (so the total tax burden rather than just the rate of gambling tax) will price themselves out of the market.
17. Technical infrastructure is also an important driver for online businesses. For instance, the availability of bandwidth at competitive rates will continue to be vital. Access to high standard financial services will also be a vital factor going forward.
18. The ability to advertise is crucial for remote gambling companies and, while it is necessary to have in place the right controls to protect the young and vulnerable, this does not have to lead to an overly tight regime.

Conclusion

19. We are hopeful that in the light of all the evidence you will receive you will conclude that the remote/interactive gambling industry is one that can be regulated to a high standard and is one that is worthy of encouraging.
20. South Africa has a long-established gambling industry and a reputation as a jurisdiction with progressive regulatory standards. The National Gambling Board's report on interactive gambling will inevitably attract a good deal of international attention as businesses and other regulators look to see what approach you will adopt.
21. The decisions that you and the South African Government take will therefore reflect more widely on our industry and we are very anxious to help you reach objective conclusions on the many regulatory questions that you are faced with.
22. Consequently, if we can help in any way with further information about the operation of remote gambling businesses or their regulation then do please let us know.

Yours sincerely,

Clive Hawkswood
General Secretary, ARGO

ARGO MEMBERSHIP

Members:

bet365 provide the Internet and telephone betting division of the bet365 Group Limited. The bet365 Group Limited owns the bet365 chain of licensed betting offices in the UK and is affiliated to the Backhouse bet365 chain of licensed betting offices.

Bet Direct the online betting face of Littlewoods Gaming wholly owned by Sportech plc.

Blue Square was launched in 1999 and has fixed odds betting services on the Internet, Interactive TV, WAP and telephone. Blue Square was a wholly owned subsidiary of the Intercapital Group Ltd until January 2003 when it was acquired by Rank, one of the UK's leading leisure and entertainment companies.

Coral was established in 1926, while Eurobet was the first Company to accept bets via the internet in 1996. In 1999 Eurobet joined forces with Coral, to form Coral Eurobet. They are now one of the leading betting and gaming operators in the World.

Globet was established in 1995. It holds a British bookmaker's permit and has developed a customer base of over 100,000 across Europe.

Ladbrokes is the betting and gaming division of Hilton Group plc, the world's premier international hotel brand. They are the UK and Ireland's largest off-track bookmaker with around 2000 high street licensed betting shops. Ladbrokes was the first major betting and gaming brand to develop multi-player poker and now operate Europe's No.1 online poker site.

Paddy Power was founded in 1988 on the merger of three existing Irish high street bookmakers. It is now the largest operator of licensed bookmaking offices in Ireland with a network of 161 shops in Ireland and the UK.

Partygaming It recently floated on the Stock Exchange in London and was valued at being worth nearly £5bn. **Skybet** was formed from the established bookmaker Surrey Sports and is part of BSkyB, one of the world's leading broadcasters and producer of the Sky Sports channels.

Sportingbet is a publicly listed company on the London Stock Exchange and has over 800,000 customers from over 100 territories.

Stan James has been one of the major players in the UK betting industry since being established in 1973. It continues to be one of the most respected names within the betting industry.

Stanleybet is Stanley Racing's Internet betting service. Stanley Racing Limited is a subsidiary of Stanley Leisure plc which is quoted on the London Stock Exchange and is the leading casino operator in the UK.

Totesport was introduced to make it easy for customers to place fixed odds bets on a wide variety of sports in addition to Tote pool products for horse racing. The Tote has more than 4000 employees and provides a major presence at each of the 59 British racecourses. As a

REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

Non-Departmental Public Body (NDPB) it is responsible to the British Government's Department for Culture, Media, and Sport.

Victor Chandler was founded in 1946 and led the move to offshore betting and gaming in the 1990s. The Group includes online and telephone betting both in UK and from Gibraltar as well as online gaming and has customers in over 70 countries.

William Hill has been established since 1934 and currently operates over 1,600 licensed betting offices in the UK. They have 184,000 active telephone customers and operate an online sportsbook and casino.

32Red is the registered business name of Trafalgar Betting & Gaming Limited, a British company incorporated and based in Gibraltar. 32Red continue to be one of the most respected online casino operators having received a number of awards for the quality of service they provide.

2. BETFAIR

Interactive Gambling Policy



Submission to the National Gambling Board Interactive Gambling policy review consultation

On behalf of Betfair Limited, a licensed UK-based internet bookmaker, currently seeking a bookmaker's license in South Africa

30 June 2005

Introduction

Betfair welcomes the opportunity to make a submission to the Interactive Gambling policy review consultation being undertaken by the National Gambling Board (NGB). We understand that the NGB is responsible for the co-ordination of the gambling and gaming industry in South Africa at a national level.

We have noted the six policy dimensions upon which comments are invited. The subject areas which the review is attempting to cover are all linked to the future of interactive gambling in South Africa, and they encompass a very broad range of issues.

Betfair has kept its comments as brief as possible and has focused on the implications of policy from an operator's perspective. Our submission recommends certain key policy solutions which we suggest the NGB should adopt, and also comments on the general manner in which we recommend that regulatory issues should be approached.

Given the very wide policy area under review, our experience from participation in similar policy review exercises around the world suggests that government policy would benefit from more detailed submissions (both oral and written) from industry and other stakeholders on the basis of the specific policy recommendations which result from the current review. We would therefore encourage the NGB and the DTI to seek further consultation as its policy direction develops.

Executive Summary

- **The need for regulation**

The NGB should, in Betfair's view, recommend that gambling is *regulated* rather than *prohibited*.

Government objectives in relation to gambling are the need to:

1. Levy the appropriate taxes;
2. Maintain the integrity of the regulated gambling activities;

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3. Keep out crime; and
4. Protect vulnerable individuals.

These objectives are best achieved through regulating operators and ensuring that they adhere to the country's requirements.

It is extremely difficult (if not impossible on the internet) to prevent punters from finding the product that they want. It is far easier to ensure that the product being sought adheres to standards of probity, and pays due taxes.

A regulatory structure which enables interactive gambling operators from around the world to be licensed to conduct business in and from South Africa is the best way for South Africa to ensure that it maintains maximum control of punters' behaviour, of gambling operators, and of its fiscal position. It would also almost certainly result in inward investment, as responsible operators seek to acquire licenses rather than to operate from offshore.

In contrast, prohibition means the government loses the opportunity to achieve its key objectives, or to monitor its success in doing so. Betfair's experience has been that the technology in use by the leading internet operators can in fact be harnessed to improve the ability of regulators and governments to achieve their policy targets.

- **The shape of regulation**

Any regulatory structure should be considered within the objectives of South African's gambling policy generally. It should:

1. Be flexible for future technological development and changing market conditions
2. Aim to encourage competition to ensure value and choice for consumers
3. Ensure operators take responsibility for ensuring consumers are protected
4. Encourage innovation (a further means of attracting inward investment)

The regulatory framework for interactive gambling be technology-neutral. It is the gambling product offered by the operator that needs to be regulated, rather than the platform of delivery.

- **The benefits of this approach**

Regulating interactive gambling in this manner would:

- Ensure transparency and consumer protection through the imposition of appropriate effective regulatory controls over licensed operators and their products;
- Create a reputable interactive gambling industry onshore, thereby attracting inward investment opportunities, encouraging sustainable competition in the gambling sector, and providing greater employment opportunities in both e-commerce and associated technology sectors;

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- Secure tax and revenue generation to the benefit of South Africa rather than to its international competition. Indeed, South Africa would capture international money flows generated by interactive gambling operators licensed in South Africa;
- Harness the opportunities for better regulation and greater consumer safety that are presented by advanced technology;
- Provide safeguards for South African consumers who will otherwise seek the flexibility, value and range of gambling available on the internet from offshore operators which are potentially unlicensed, unregulated, and perhaps even unscrupulous. Consumers prefer to gamble with regulated operators over unlicensed operators, if given the choice, but will seek out operators which provide the products they require in unregulated environments if the regulated environment does not deliver them.
- Underpin South Africa's leadership in internet regulation and accessibility in Africa, and allow it to become a regional centre for investment in this sector

Background

- **What is Interactive gambling?**

The term "Interactive Gambling" is commonly used³² to define gambling services that can be accessed through the use of a telephone connection. It falls into two categories:

- **On-line betting:** interactive services where the bet occurs on-line, but the event occurs off-line. The gambled-on event takes place separately from the platform and the result is independently verifiable. The on-line system does not generate the result: it is used as a conduit for communicating information. (Examples include wagering on sports and racing, and lotteries.)
- **On-line gaming:** gaming services which involve the use of random number generator or other device to determine the outcome. (Examples include online casinos and poker rooms.) This activity is already captured by the definition of "interactive game" in the National Gambling Act.

The number of platforms that enable such services to be accessed has grown through the wider availability of internet usage from home, office and leisure locations; interactive television; and the massive growth in the coverage and capabilities of mobile technology. The further development of "Third Generation" technology, and consumer access to higher data speeds will result in an enormous number of new access points becoming available from within South Africa in the imminent future.

Online sports betting and interactive poker rooms (where customers play against each other in a controlled virtual environment) are the fastest growing parts of the sector. Although still relatively young, the dynamic and evolutionary nature of these products online has led to an ever-increasing rate of growth in the last five years. The largest online poker room, operated by PartyGaming, recently listed successfully on the London Stock Exchange. Anticipating a permissive regulatory environment in the UK, a number of other large and reputable online gambling groups are said to be planning listings on the London market.

³²For example, *The Budd Report*, UK Department of Culture, Media & Sport (DCMS),2001

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The development of interactive gambling has presented challenges to traditional systems of gambling regulation, because of the absence of fixed physical locations and the fact that the consumer is not present.

As technology has developed, consumers have been faced with a diversity of choice and a very high degree of access over the internet, but often, at the same time, with uncertain safety and protection.

The regulatory challenge is to develop a modern system which caters for the developments in the industry. Such a system has already been developed in some countries, where modern regulatory regimes:

- add credibility to the businesses of the operators licensed in their jurisdictions
- recognise the consumer right to participate in a legitimate leisure activity with protection provided for the vulnerable and children, and
- recognise the right of sovereign governments to capture international revenues through taxation of these businesses, while still providing suitable protection for the betting consumer.

Other countries have sought to prohibit or tightly restrict gambling over the internet. Each has failed to achieve the objectives outlined above, and have lost control of their policy imperatives.³³ The United States, for example, is host to one of the largest active online gambling populations in the world, despite its prohibitory stance. In spite of attempts to impose legal barriers, American consumers enjoy their pastime with companies based outside the US, where they are not protected by US law.³⁴ To the extent there is a social impact carried by the relevant agencies, the cost is not compensated for by taxing the operators.

Conversely, as is demonstrated by the PartyGaming listing in the UK, the encouragement and careful but permissive regulation of interactive gambling in credible jurisdictions such as South Africa will act as a focus for wider economic activity, will support related technology industries, and contribute to the expansion of e-commerce. Accordingly, in addition to the generation of direct tax revenues from those operators who seek licensing, a significant amount of indirect economic activity is also stimulated.

- **What is the global market for interactive gambling?**

The interactive component of the global gambling market is likely to grow to a significant percentage over the next decade. Previous brakes on growth of the internet sector have become increasingly irrelevant as technology has progressed. The sector is estimated to have grown from US\$2.2bn annually in 2000 to around US\$9.2bn in 2005, with analysts suggesting annual revenues reaching US\$18bn by 2008.

At the forefront of recent interactive gambling developments which has resulted in considerable growth in the industry has been the introduction of betting exchanges and on-line poker. Betfair operates in both of these markets.

³³ This fact is implicit in the decision of the WTO recent ruling in favour of the Antigua claim.

³⁴ PartyGaming's recent flotation prospectus openly stated that a vast bulk of its revenues came from the United States.

Betting Exchanges

- Betting exchanges are the fastest growing part of the global sports betting market. Betfair, the largest exchange, is now an integral part of the global sports industry. It processes more than 3 million bets a day.
- A betting exchange is bookmaker which uses technology to offset all of its risk. Whereas a traditional bookmaker will match up demand to the extent that he can, a betting exchange matches different opinions perfectly. The effect for consumers is that they appear to match bets with each other, or among groups. The reality is that the operator accepts bets from its customers if, and only if, it can offset the full risk of the bet. It therefore makes its money by expressing its margin in the form of a stated commission rather than by adding it into the risk-margin of its overall book.
- An exchange operates in a manner resembling any stockmarket. On a stockmarket a trader can buy or sell a commodity, and similarly on a betting exchange a player can either support or oppose an outcome.
- Betfair, launched in 2000 with now more than 95,000 active monthly users, is a licensed bookmaker in the UK, but its business is global. Often likened to no-frills airlines in the manner that its product has allowed consumer choice and better value in a traditional industry, and considered by many to be an on-line marketplace similar to eBay, Betfair is a regulated operator which has delivered innovation and competition to the sports betting marketplace. As an example of the innovation encouraged under the UK's regulatory framework for gambling, the company's success has been recognised with the grant of The Queen's Award for Enterprise. The company was also named *Company of the Year* by the Confederation of British Industry in 2004.

Poker

- Poker is another example of a global betting marketplace. It is estimated that revenues at online poker sites alone will hit US\$2.4bn in 2005, reaching US\$5bn around 2008. PartyGaming, the company behind PartyPoker.com, has seen turnover grow from \$30.1m (£16.6m) in 2002 to \$153.1m in 2003 and to \$606.6m in 2004; pre-tax profit has risen from \$5.8m in 2002 to \$89.2m in 2003 and to \$371.7m in 2004.
- In June 2005 PartyGaming priced its initial public offering at 116 pence, entering UK's FTSE 100 index of leading shares with a value of £4.64 billion (\$8.46 billion).

- **Who are interactive gambling customers?**

The availability of on-line services will continue to increase over the next five years as the adoption of on-line services grows in line with the internet itself, and other technologies. The stated objective of the South African government to encourage internet take up across the country and in Africa as a whole will only enhance this process. As access increases, the availability of interactive gambling (regulated or not) to South African consumers will be impossible to prevent.

On-line gambling service sites rank globally amongst the most visited entertainment sites on the internet. The availability of much greater choice, convenience and value than is offered by the conventional gaming and gambling industry is the main reason for this. Punters can reduce margin almost to zero by 'cherry-picking' the best prices available on the outcome of

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events through sites such as oddschecker.com. Alternatively, they can place hundreds of bets with the touch of a button – for example, through some Australian sports betting sites.

As an example of the innovation offered by interactive operators, Betfair's product offers a number of advantages over conventional bookmakers, and these are recognised by our customers who seek us out from over 90 countries around the world. The consumer can:

- ask for better odds than those currently on offer about an outcome or offer or request his own odds;
- hedge a bet to minimise a potential loss or lock in a certain profit before the outcome of the event has been determined – a facility which promotes and encourages responsible gambling;
- bet with the guarantee of payment, with all funds fully-collateralised;
- be confident that his account will not be closed because he is too successful;
- bet with an operator which is not interested in the outcome of the event, and therefore has interests in line with regulators;
- bet in an environment where customers are known to the operator as a result of stringent 'Know Your Customer' verification, and identifiable to regulators in the event of any suspicious betting;
- easily access details of what has been traded on every outcome at what prices, because all activity on the exchange is completely transparent. Access to similar information with a conventional bookmaker is invariably closely guarded by the bookmaker; and
- set voluntary limits on his spending and risk, which are enforced automatically – a facility not available from conventional bookmakers.

What are the Regulatory Options?

- **Why a new approach?**

The Interactive Gambling Review provides an opportunity for the Government to appraise the various regulatory options and recommend appropriate regulation for interactive gambling. The direction of future legislation will determine how successful South Africa will be in capturing an element of the global interactive betting and gambling market through a framework that encourages efficient inward investment by global businesses.

The South African Government has previously advocated³⁵ a well-regulated gambling sector that serves as a positive contributor to the country's development agenda: it would support reconstruction; encourage inward international investment; stimulate infrastructure development; create empowerment opportunities; and drive prosperity through job creation. Equally, inadequate or absent regulation would limit this opportunity and cause social as well as economic harm to the infrastructure of the country and the people.

In a report commissioned for the National Gambling Board in 1999, the National Centre for Academic Research concluded that estimates of a 25%-33% share of a

³⁵ Alec Erwin, in his capacity as the then Minister of Trade & Industry, 22 September, 2003

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US\$7bn industry for South African-based internet gaming businesses within two years were not unreasonable, given the right policies. The report stated that it was not

unreasonable to expect these earnings to be sustainable, provided businesses operating out of South Africa establish themselves there before those in other credible and competing countries.

Among the specific recommendations of the 1999 report were the following:

- “That the National Gambling Board adopt the introduction of a legal and well-regulated Internet gaming industry in South Africa as a high priority project, to be planned, regulated, co-ordinated and, in due course, administered by the National Gaming Board under an amended National Gambling Act;
- That the National Gambling Act be amended as to permit wagering and gaming to be conducted over the Internet, subject to such regulations as may be promulgated by the responsible Minister in national Government, and such licensing procedures as may be required by the National Gambling Board;
- That the Board and its principal stakeholders comment upon this report and make recommendations to its authors on what needs to be done to finalise this report as a comprehensive document which can be adopted by the Board and presented to Cabinet, via the Department of Trade and Industry. Ideally, the completed report should pre-empt all possible occasions for political controversy and bureaucratic delay;
- That the National Board should proceed to explore the best ways of achieving recognition of its policies and regulations by comparable international jurisdictions, especially those on Australia, Europe and Canada;
- That the National Board should facilitate, as a matter of urgency, discussions of this project by the Cabinet of the National Government, and in particular, as needed with the Ministries of Finance, Foreign Affairs and of Posts, Telecommunications and Broadcasting, in addition to the Department of Trade and Industry;
- That the National Board should establish a provisional timetable, with a critical path and deliverable, so as to ensure that the various stakeholders and role players keep to a schedule which can see South Africa trading in this international industry by no later than the end of the first quarter of the year 2000.”

The 1999 report stated that the introduction of a sound regulatory environment for internet gaming would lead to the development of South Africa as a thriving centre for e-commerce businesses generally. It also said that in considering the regulation of internet gaming, the South African government must think of itself as acting on behalf of "South Africa Incorporated", an enterprise which will be internationally competitive and successful.

The report recommended that South Africa must seek to make itself the jurisdiction in which Internet gaming providers operate and pay taxes in preference to key online gaming centres. The National Gambling Board in response stated that the country is **'confronted with the fact that online gambling cannot be prohibited. It is clear**

- **that the only viable option is to ensure that online gambling is regulated and monitored by the gambling board.'**

- **What are the lessons from international experience?**

Betfair believes that the recommendations of the National Centre in the 1999 Report remain equally valid now, and that the NGB should adopt those recommendations. In doing so, the review committee should be aware of the fundamental reasons why other countries have sought to regulate interactive gambling rather than attempt to prohibit:

1. It is impossible to prohibit online gambling. The global nature of the Internet and technological limitations has rendered territorial legislation largely impotent. Instead, the capture of as much of the global industry as possible for the benefit of the country and its consumers is what is sought.
2. They do not want to lose governmental tax revenues. In many countries, gambling legislation has been revised to prevent the increasingly large sums of money leaving the country through offshore gaming sites.
3. Banning on-line services would not deter consumer behaviour: in the internet age, customers will find the product they want at the price they want. Governments wishing to retain control of a product need to ensure that there is consumer choice onshore.
4. The practicalities of enforcing a prohibition over a potentially huge population base make effective prohibition unworkable, even where legislation is in place.
5. There is increasing customer confidence in online gambling sites. Many countries want to introduce legislation governing online gambling in a bid to shake off a reputation for sharp business practice.
6. Regulation allows the efficient implementation of unprecedented harm minimisation procedures. Governments can implement harm minimisation procedures to standardise sites and offer security against problem gambling and underage gambling.

- **How should interactive gambling be regulated?**

Interactive gambling should be regulated as any other gambling service: it differs only in as much as it is delivered using the internet as its access point to consumers. In addition, however, regulators should anticipate the rate of change in the interactive environment and allow for a significant degree of flexibility in regulation.

The following specific observations and recommendations in respect of the Policy Dimensions provided in the NGB's consultation document are, in Betfair's view, worth noting. Examples from Betfair's own experience and current business practices are included where we believe they may be of use to the NGB:

- **Regulatory structure**

Regulation is most successful when the internet is acknowledged to be an alternative consumer access point for services which are the same as those already available in other environments. In the instance of gambling, this focuses policy on the *type of gambling activity* rather than the *delivery channel*, and assists in 'future-proofing' legislation.

Regulation of internet gambling should therefore be included within the mandate of the existing national gambling regulator, and acknowledge that internet betting (as with telephone betting) is not restricted by provincial borders.

- **Definitions**

Comments regarding definitions appear above.

- **Licensing and Operator Monitoring**

As with other forms of gambling that are already successfully regulated in South Africa, probity checks and fit and proper criteria should be employed. Operators should be required to demonstrate that their technology is sufficiently robust, and their transaction recording and other safeguards sufficiently trustworthy, to meet the same standards used to regulate conventional land-based licensed gambling operators.

The technology employed by internet companies could be employed by regulators to help raise regulatory standards, through requirements to register users, monitor gambling activity, safeguard against problem gambling, and verify the sources of funds.

Technology and automation, properly harnessed, should greatly assist audit and tax collection.

Given the highly technical nature of the interactive sector, further detailed consultation with existing operators both within and outside South Africa, in order to ensure appropriate licensing/monitoring/technical standards which are deliverable by industry, is recommended.

- **Player Protection**

Betfair implements a rigorous 'Know Your Customer' programme that records all relevant customer details and independently verifies their identity. As well as helping to prevent both underage and problem gambling, there is clear evidence that this acts as a deterrent to wrongdoing and fraud. With conventional cash-based gambling platforms, operators relatively rarely know the identity of the customer or the source of their funds.

Betfair operates a support programme for customer service staff organised by Gamcare, a UK charity for the treatment of problem gambling, to identify those who may be at risk of problem gambling. The founder of GamCare has stated that 'the incidence of people contacting the helpline having got in trouble on betting exchanges is very small. It appears to mostly attract controlled gamblers who understand what they are doing'.

Technology enables Betfair to provide robust self-exclusion facilities. Betfair allows customers to control their betting behaviour, limiting their financial spend or the time spent betting. More significantly, the ability for a customer to

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manage his risk position on Betfair enables the consumer to bet with confidence, safety and control.

The information-sharing agreements which Betfair has with leading sporting bodies around the world (including the SA National Horseracing Authority) enables those bodies to police their own rules effectively, and pursue suspicious betting. The UK government's recent review into corruption in sport highlighted the example Betfair has set to the bookmaking industry, and recommended that the industry as a whole adopts similar player protection standards.

- **Transaction processing/financial flows**

The online gambling sector has already adopted world-leading transaction processing systems, in the battle to deliver the most efficient, secure and trustworthy payment processing service to international customers.

Betfair accepts deposits in 9 currencies, and holds all customer monies in a separate trust account. All transaction flows are recorded and can be audited independently. Betfair's KYC policy (see above) requires our customers to deposit electronically, either from their bank account or via credit card, and withdrawals are paid directly back to the original source of funds to ensure the audit trail remains intact and any risk of money laundering is minimised.

Exchange Control: Licensed operators within South Africa should be encouraged to obtain SARB authorisation to facilitate international money flows. The country's existing totalisator operators have successfully obtained an authorisation which allows the netting-out of inflows and outflows resulting from international betting into their tote pools. This recognises that the flow is generated not by the individual, but by the locally-licensed operator.

- **Commercial environment**

Taxation: Betfair's experience of the most successful tax environments has been that those which punish the gambler are more likely to drive gambling activity underground or offshore, whereas those which impose a levy based on the operator's ability to pay will attract new and responsible operators willing to be licensed.

In the UK, the change to a gross profits tax in 2001 created the incentive for the country's flagship bookmaking firms to relocate their internet and telephone betting business back onshore. In such an environment, the profits of all operators have increased significantly, while at the same time the UK government effectively reversed the loss of regulated gambling activity to offshore jurisdictions. In South Africa as well, the casino industry has thrived because of a government decision to tax operators on what they earn from their customers (GGR).

Financial restrictions: see the recommendation above regarding exchange controls. Corporate profits earned by licensed subsidiaries of global groups should be treated as any other dividend flow.

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General: Operators should be encouraged to participate fully in the South African economy as any other enterprise. Contributions should include new

employment, new technology, new inward investment and innovation. BEE requirements will ensure that the objectives of transformation are progressed. A clear, stable and consistent regulatory environment for all gambling operators (irrespective of their delivery channel) provides the best framework for these investment decisions to be made.

A local kite-mark awarded by regulators to verify probity would have the equivalent value to an online operator licensed in SA as a publicly-displayed paper licence has to a land-based gambling operator.

With the interactive sector being the fastest-growing consumer access point around the world, successful regulation of interactive gambling in South Africa will help to drive wider usage and take up of the internet in the country. It will also encourage the perception of South Africa as an attractive centre for technology businesses generally, and a hub for African internet growth.

Closing remarks

Betfair is grateful for the opportunity to make this submission to the NGB's interactive gambling review, and would welcome the opportunity to clarify or expand on any aspect of the points raised. Once the board has developed its thinking to specific policy recommendations, we would be pleased to assist any further consultation process.

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3. BMM TESTLABS

INTERACTIVE GAMBLING POLICY DISCUSSION PAPER

Introduction

BMM has been involved with the regulation of Internet Gaming since 1998. BMM wrote the key technical requirements that have been adopted throughout the world (with very few amendments). BMM has conducted compliance testing on Internet Gaming and Wagering systems for most, if not all, jurisdictions around the world that regulate Internet Gaming and Wagering.

The comments below summarise our experience gained over 7 years of certification and compliance testing of Internet Gaming and Wagering systems. BMM has restricted its comments to the areas relevant for testing agencies. The comments are not intended to provide any advice in relation to South Africa's policy objectives for Internet Gaming and Wagering.

Regulated Internet Gaming

Unlike land-based gaming premises, which is subject to geographical constraints, Internet gaming sites have a worldwide presence. Consequently, jurisdictions effectively "compete" against one another to secure desirable (in terms of policy objectives) Internet gaming and wagering operators.

Jurisdictions compete on a number of fronts, including:

- Reputation.
- Taxation rates (both gaming and business taxes).
- Other fees.
- Regulatory environment (e.g. difficulty and cost of achieving compliance, level of pragmatism, regulators as encouraging or discouraging operations)
- Regulatory conditions (e.g. prohibitions on certain countries, prohibitions on the use of certain financial instruments, repatriation of profits)
- Internet connectivity (bandwidth, delay and redundancy).
- Cost and quality of hosting facilities.
- Access to and cost of technical personnel.
- Availability of funds transfer mechanisms (e.g. credit card processors).

The policy decisions that impact these areas will determine the types of operators that are attracted to the jurisdiction. A tough stance on some areas will not necessarily discourage all operators, especially those operators seeking a highly reputable jurisdiction.

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Scope of Laws and regulations

Where sensible and feasible, most details of Internet Gaming should be covered by regulation rather than legislation. This enables a quicker (but still considered) response to changes made by other jurisdictions. Areas to consider covering by regulation include:

- Gaming taxation rates (as opposed to other business taxes)
- Whether or not to impose technical requirements on operators, and the status of any technical requirements.
- The testing regime to be adopted (e.g. use of ATFs and the controls on those ATFs).
- Whether or not to restrict operators from accepting bets from certain countries.
- Whether to impose restrictions on certain financial transactions.

Not all regulations would need to be administered by the relevant gaming authority or commission.

Regulator's Powers

The Internet Gaming environment is highly innovative, with new gaming products and new technologies frequently appearing. Regulators need flexibility to ensure that the introduction of these new products and technologies is consistent with policy objectives. A notable recent example of a new product is betting exchanges. Technology areas where regulators may need powers include:

1. The ability for the policy group to introduce, amend and repeal technical requirements.
2. The ability for the policy group to introduce, amend and repeal non-technical requirements such as advertising requirements, anti-money laundering requirements, limits on financial transactions, etc.
3. The ability for the policy group to read down any technical requirements.
4. The ability for the policy group to determine the testing and compliance regime.
5. The ability for the policy group to introduce special conditions on particular operators.
6. The ability for the policy group to define the contents and frequency of mandatory reports.
7. The ability for the enforcement group to inspect gambling equipment without attaining a warrant.
8. The ability for the enforcement group to order the shut down of an operation on reasonable grounds.
9. The ability for the enforcement group to enter, search and seize materials (subject to normal warrant procedures) without notice to the operator.

Definitions of Internet Gambling

Traditional gambling definitions tend to follow the following generic categorisation:

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1. Games based on luck (e.g. slots)
2. Skill based games (e.g. poker)
3. Lotteries (including variants like Bingo and Keno)
4. Parimutuel wagering (e.g. totalisators)
5. Fixed odds (e.g. sportsbetting)
6. Trade promotions.
7. Small-value charity events (e.g. raffles)

However, the definitions chosen for Internet Gambling should take into account the frequent introduction of new products. The introduction of new and hybrid products tend to blur traditional definitions:

1. Betting exchanges.
2. Non-monetary consideration (both in terms of the bet and any prizes).
3. Mobile gaming (e.g. cell phones).

Consequently, consideration should be given to make the definitions as broad as possible to capture products that would be reasonably considered in South Africa to be gambling products.

Technical Compliance and Game Testing

A significant number of jurisdictions are already regulating Internet gambling. These jurisdictions have adopted technical requirements that are more-or-less consistent and complementary with each other. This means that suppliers and operators are able to transfer the results of compliance testing between jurisdictions and thus achieve cost-effective certification in multiple locations. Subject to policy objectives, South Africa should consider adopting technical requirements that are compatible with technical requirements in comparable jurisdictions.

As South Africa has already adopted an “ATF” scheme to verify computer systems meet regulatory requirements, consideration should be given to extending this scheme or developing a parallel scheme to cover Internet Gambling. A parallel scheme has the benefit that potential ATF’s can be evaluated on the basis of the skills that have in Internet Gaming, as those skills are different to the skills required to test traditional land-based gaming.

Player Protection

Many jurisdictions have invested significant effort to find ways to protect players. These mechanisms fall into several categories:

Bet, Loss and deposit limits

Bet, Loss and deposit limits, designed to limit a player’s financial exposure to one or more operators. These are easily understood and already implemented by many suppliers. Caution should be exercised before requiring mandatory bet limits, as this can lead to complaints that an operator has “locked out” a player “just before the jackpot was about to go off”.

Exclusions

Self-exclusion and third party exclusions (with suitable re-instatement periods) are designed to prevent a player from accessing one or more sites under the control of the operator and/or

regulator. Third-party exclusions can be in conflict with Privacy legislation. Moreover, it can be operationally difficult for a regulator to issue a jurisdiction-wide ban on specific individuals.

Time limits

Time limits are designed to restrict the amount of time a player spends gambling at one or more sites. Time limits have not been widely implemented by suppliers. While the ability to set an “optional” time limit is non-controversial from a player perspective (but not from a supplier perspective), mandatory time limits (such as 1 hour) are likely to lead to complaints for the same reason as mandatory bet limits.

Mandatory warnings and links to counselling services.

Mandatory warnings and links to counselling services are generally well accepted, provided that they do not force players to click through multiple screens before reaching the games.

4. ECOGRA (SOFTWARE TESTING)

TOTAL GAMING TRANSACTION REVIEW

In the world of regulated online gaming, there is considerable discussion about two different approaches to the testing of gaming software. While it may seem an arcane subject, this is critically important to software developers, site operators, regulators and ultimately, to the players.

eCOGRA – which stands for e-Commerce and Online Gaming Regulation and Assurance – is an independent organisation established to assure fair gaming practices. eCOGRA requires its approved software providers and operators to comply with a comprehensive list of minimum requirements called eCOGRA Generally Accepted Practices (also known as “eGAP”) addressing player protection, fair gaming and responsible operator conduct, and a core aspect of these requirements is the effective and appropriate testing of gaming software. To achieve this, eCOGRA has adopted an advanced form of output-based testing called Total Gaming Transaction Review (“TGTR”). For reasons that I enumerate here, eCOGRA strongly believes that TGTR verification is far superior, and far fairer to all parties concerned, than source code testing.

Some testing companies argue that the only way to be certain that the random number generator (RNG) -- the key to computer-based casino games, whether real-world slot machines or online slots and table games -- is operating properly is to study the source code of its program. They maintain that such a time-consuming analysis is required for regulators to be assured that a game will perform as it’s supposed to.

Of course, the business of testing companies is performing tests, so they stand to earn more money if they perform the most complicated tests possible. But assuming good faith on the part of these companies, I think the problem is that they, along with many of the regulators who rely on their work, are far too enmeshed in the mindset of land-based gaming.

Traditional gaming has been with us far longer than online gaming, and most regulators and testing company employees come from a background in traditional gaming.

In a real-world slot machine, the RNG and the machine form a single, integrated unit of hardware that is locked to the outside world. Once the software is reviewed and burned into the EPROM chip of the unit, it cannot be physically changed. In addition to their access to surveillance cameras, regulators typically require casinos to keep detailed records of any incident of the machine being opened, to minimise the chance that an operator could substitute one EPROM chip for another.

By analysing the source code of the game, regulators, or the testing companies that they hire, can be confident that the game performs as specified. These procedures have worked well in the traditional gaming environment.

The world of online and network gaming, however, is far more complex. To begin with, no one except the player has any control over the hardware on which the game is being played, which is usually the player’s personal computer. The gaming server, the computer that runs the game, assumes a critical role for which there is no counterpart in real-world gaming.

Companies such as Microsoft, Oracle and Sun spend hundreds of millions of dollars to develop and refine their proprietary server products. Likewise, gaming software developers invest huge sums in their proprietary gaming servers.

The server does much more than house a random number generator. It has to link into a highly sophisticated transaction processor and controller that routes the millions of messages

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coming into the system each minute, providing each message with a response, creating complete records of all messages (in and out), while being able to provide summary information. All of this is done in real time.

The design of these amazing servers is jealously guarded by software developers, who are constantly refining them to offer a better and faster experience for the end user, while increasing security and reducing maintenance costs. The server is the core competitive advantage for these companies. It is the culmination of the intellectual property that is their primary asset.

I realise that regulators and testing firms are aware of the need for the utmost confidentiality in their work. But consider the ramifications if a rogue employee were to steal this intellectual property, perhaps posting it on the Internet. Who would bear the legal liability and pay the enormous damages if this happened?

Much of the modern world, in both business and government, depends on the products of companies such as Microsoft, Oracle, Sun and SAP. Yet they do not supply their source code to their customers. Their products are assessed on the basis of their total performance, not on their source code.

This is the fallacy of regulators and testing companies who insist on source code review. They may be well-intended, but their model – land-based gaming – is obsolete. They should be taking their cues from the software industry, not the gaming industry.

The problems with source code testing extend far beyond the issue of intellectual property, for this approach is also impractical. Regulators often don't appreciate how much maintenance work must be done on gaming servers. Nearly all of them rely on operating systems from Microsoft or Sun, who release security patches almost every week. These have to be added to the system. Hardware failures (in the form of network cards, memory card, power supplies) occur and need to be rectified. Unlike a traditional gaming machine, a network system has many more points of ongoing failure, which need to be monitored and fixed. This requires constant access to the server system.

Requiring the software provider to get approval from a regulator or testing house every time the provider needed access to the system would be an operational nightmare. In fact, this

very issue is understood to be one of the reasons that Kerzner Interactive closed its Isle of Man online casino earlier this year.

Practically speaking, the software provider must have round-the-clock access to its system. But if such access is permitted, there is nothing to prevent a provider from temporarily replacing source code. The code could be tested and digitally signed by the testing company. But if the provider could temporarily bypass the tested code, what is the value of such testing? If the provider is trusted not to do that, why bother testing the code in the first place? Source code testing is fully capable of giving regulators, and players, a false sense of security.

TGTR verification is not just an alternative; it's the best way for regulators to handle their quite legitimate need for testing. Rather than attempting to test each individual component of the system, as source code testing tries to do, test the system as a whole. One of the best features of this approach is that it can be done on a continual basis.

Let's remember the purpose of testing. We all want to ensure that the player gets a fair game in accordance with the rules, that the government gets its correct tax allocation and that the regulators can easily ensure that all players adhere to the law. Fortunately, using the tried and tested practices of the software and auditing industries, this can be easily done. It does, however, require a shift of thinking away from "traditional gaming testing" towards "systems testing."

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By continually checking both the input and output of the system, it is perfectly feasible to test that the system is meeting the regulatory requirements while providing the operators and software developers with complete operational flexibility. By checking each and every transaction for its completeness, together with spot testing of transactions, it is possible to verify that all transactions are faithfully recorded.

By performing further analysis of the summary data and subjecting the vast amounts of data to rigorous statistical testing, one can further confirm the integrity of the random number generator in particular and of the system as a whole. After all, it's the fairness of the final outcome that players, and the regulators who protect them, really care about.

With TGTR verification, the online gaming industry has a solution that goes far beyond trying to match the security of a real-world slot machine. This is a solution that allows for rapid advances in technology, reduces development and regulatory costs, provides for easier dispute resolution and is easily implemented using existing methods from the broader commercial world.

Among its core principles, eCOGRA recognises the need for rigorous regulation of online gaming. Ongoing testing by independent parties is a key component of any regulatory regime worth its salt. The very fact that the industry is having this discussion about the best method of testing is a healthy sign.

But we also need to remember that all of our regulated operators compete in a world in which there are, and probably always will be, operators doing business in totally unregulated environments. Online gaming companies, and their players, are not well served by regulators, and the testing companies they retain, who rely on technological approaches that were developed for land-based casinos.

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E. COMMITTEE

REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

COMPOSITION OF THE NATIONAL GAMBLING BOARD COMMITTEE

Members

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F. GLOSSARY

REPORT ON THE REGULATION OF INTERACTIVE GAMBLING

Interactive Gambling

The conduct of any form of gambling in which the player uses some form of telecommunication device to take one or more steps in the process, generally communicating with a computer in another location to do so.

Operators

Individuals or entities engaged in the operation of an interactive gambling business.

Technology-neutral

Not favouring any particular technology or technological solution.

Provincial Licensing Authorities

Those organisations mandated via the National Gambling Act of 2004 to license, monitor and control all gambling activities within each province of the Republic.

Local Area Network

A group of computers and associated devices that share a common communications line or wireless link and typically share the resources of a single processor or server within a small geographic area (for example, within an office building). Usually, the server has applications and data storage that are shared in common by multiple computer users. A local area network may serve as few as two or three users (for example, in a home network) or as many as thousands of users.

Software Providers

Providers of the computer programmes that allow the operation of an interactive gambling business.

Game Server

The computer processor that controls the actual gaming activity, including the random number generator that decides the outcome of each play, the interface with the player and the presentation of the gaming experience.

Interface

In a system, a shared boundary, *i.e.*, the boundary between two subsystems or two devices – e.g., the user interface is the boundary between the player and the game server. A point of interconnection between user terminal equipment and commercial communications facilities.

Licensed Financial Institution

A bank or an institution licensed by banking authorities to provide payment services.

FATF Guidelines

Financial Action Task Force, an international grouping of nations that fight money laundering.

Source Code Testing

Testing the reliability and integrity of a computer system and or software by examining the original programming code.

Output-based Testing

Testing the reliability and integrity of a computer system and or software by setting up a series of controlled inputs and checking the results (outputs) to ensure that they match those expected.

Random Number Generator

A random number generator is a computational or physical device designed to generate a sequence of numbers that does not have any easily discernable pattern, so that the sequence can be treated as being random. In online gaming, the Random Number Generator is the piece of software on the game server, the purpose of which is to randomly select hundreds of numbers and symbols every second. Each random number corresponds to a certain reel and symbol combination that is randomly chosen after each play.

Theoretical Statistical Return

The expected return to the operator on a given game after a very large number of plays, based on the game rules and game odds.