

Regulating Gaming in Ireland

Report of the Casino Committee



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DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM
AN ROINN DLÍ AGUS CIRT, COMHIONANNAIS AGUS ATHCHÓIRITHE DLÍ

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Preface

The Government decision to establish this Committee is timely.

Gaming is governed by the Gaming and Lotteries Act, 1956. That relic of social history is utterly unsuited to effectively regulate gaming in a modern, wealthy European state. When it was enacted foreign travel was rare, the first Planning Act had yet to be passed, bingo was called pongo and much of the Oireachtas debates concerned protecting the livelihoods of persons providing gaming at carnivals.

Now one can travel to the casinos on the French Riviera in the same length of time it takes to travel by train from Dublin to Cork, Ireland has adopted decimal currency and joined the European Union, local authorities can control land use by means of a sophisticated planning and development system and there is a great demand for all types of gambling in the State.

Some of that demand is for betting. Betting is outside of the Committee's terms of reference and is referred to only where necessary to provide a contrast with gaming.

Casinos have been established in the State and purport to be bona fide members' clubs. Some indeed may be. They are entirely unregulated. The Act of 1956 does not make provision for casinos. Any bona fide members' club providing casino services is doing so pursuant to a provision enacted with the purpose of allowing card-playing in private dwelling houses.

Gaming machines can be found in amusement halls throughout the State including areas in which they are not permitted by law. The Committee is aware of one type of gaming machine which accepts €500 notes. The Act of 1956 provides a maximum stake in gaming machines of 6d and a maximum prize of 10 shillings. The Act is not being enforced and that brings the law into disrepute.

The Act of 1956 provides in Part III for a primitive form of "all or nothing" regulation in which a local authority may permit gaming in amusement halls and funfairs, or may prohibit it entirely. Neither option is satisfactory.

The recommendations in this Report provide for a modern, nuanced and effective system of regulation of gaming in accordance with the Principles of Better Regulation, thereby protecting consumers, protecting the vulnerable and keeping criminal and subversive elements from infiltrating the industry. In addition to establishing such regulation, strict enforcement of what is recommended in this Report is necessary to achieve those objectives.

Remote gaming is a multi-national, multi-billion euro financial services industry which has similarities to the major industries that Ireland has attracted by clear, efficient and focussed policies. Developments in other jurisdictions have led to this industry to look for a well-governed, business friendly, fully sovereign jurisdiction. Ireland has an international reputation for excellence in information and communication technology as well as in the provision of international financial services. This Report points the way to realising many potential synergies available to Ireland in this area.

I would like to thank my Committee for the expertise and experience that they have brought to our deliberations both in plenary committee meetings and in sub-committee meetings. Not for the first time I have been struck by the wealth of talent available in the civil service and which was on display in this Committee.

The Committee was fortunate in having an enthusiastic and hard-working secretariat in Philip McCormack, Clodagh Moore and Amber Synnott. John Roycroft, as well as serving on the Committee, co-ordinated the work of the Committee and its secretariat.

I would also like to thank the persons who responded to the Committee's calls for submissions and took the time and effort to communicate their views and suggestions. This Report is richer for their input.

Finally I would like to thank the Tánaiste and Minister for Justice, Equality and Law Reform, Michael McDowell S.C., T.D. for his support for the work of the Committee.

Michael McGrath
Chairman

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Chapter One: Background and Summary of Recommendations

1.1 Establishment of the Casino Regulation Committee

1.1.1 The Government, at its meeting on 19th July 2006, in the context of discussions on the better enforcement of the law under the Gaming and Lotteries Act 1956 and having considered a number of approaches to the issue, asked the Minister for Justice, Equality and Law Reform, Mr Michael McDowell, T.D., for proposals for the better regulation of casino-style gambling.

On 21st July 2006 the Minister, in response to the Government request, brought a memorandum before Government proposing the establishment of a Committee to report on the possibilities for a legislative style basis for the strict regulation of casino-style activities in the State.

1.1.2 Representatives from the following Government Departments and bodies were included on the Committee (*see Appendix 1 for details of the membership of the Committee*):

- Finance;
- Justice, Equality and Law Reform;
- Arts, Sport and Tourism;
- Environment, Heritage and Local Government;
- An Garda Síochána;
- Revenue Commissioners.

Mr Michael McGrath BL, a Barrister with experience in the licensing area, was nominated as Chairman by the Minister.

1.1.3 Mandate of the Committee

The Committee was asked to report to the Government on:

- The possibilities for a legislative basis for the strict regulation of casino-style operations in the State;
- The composition of a Casino Regulation Commission along the lines of similar regulatory bodies;
- The Commission's functions, the operation of a licensing system including the grant, refusal, renewal and suspension of a licence, codes of practice, investigation of complaints by aggrieved clients and others, powers of entry and inspection, appeals against decisions of the Commission;
- The inclusion or otherwise of internet gambling;
- The nature and type of offences;
- The role of local authorities;
- The conditions for meeting the requirements of the Financial Action Task Force.

The Committee was initially asked to report to the Minister and the Government by the end of October 2006 but, due to the complexity of the issues under consideration and developments internationally, this deadline was subsequently extended to December 2006.

1.1.4 The Committee, during the course of its deliberations, found it necessary to broaden its inquiries to incorporate the current gaming arcade, amusement hall and funfair sectors. Some activities in these areas also constitute gaming, often provided for by the use of gaming machines (GMs) situated in these premises. Worldwide, such GMs can also be found in casinos. The Committee considered that there was no rationale for introducing a regulatory system for casinos in which GMs might be located and leaving GMs located in gaming arcades outside such a regulatory system as similar public policy considerations arise. The Committee felt that to ignore this reality would give rise to significant public policy and legal complications. The general approach of considering, to the extent required, areas which impinged upon the Committee's terms of reference was subsequently endorsed by the Tánaiste and Minister for Justice, Equality and Law Reform, Mr Michael McDowell, T.D..

1.2 Background to the Establishment of the Casino Regulation Committee

1.2.1 The Gaming and Lotteries Act 1956 (as amended)¹ is the statute which controls and regulates gaming and lottery activity in Ireland (other than The National Lottery as provided for by the National Lottery Act 1986). The tone of the 1956 Act is clearly minimalist in nature and the essential ethos underlying the Act is that gaming should be limited and strictly controlled. In section 4(1) of the Act it defines unlawful gaming and an offence is created of promoting or assisting in promoting such

1 Hereafter referred to as "the 1956 Act".

gaming. The definition of unlawful gaming includes games in which by reason of the nature of the game the chances of all players including the banker are not equal. This prohibition would therefore include most casino-style games. Hence, under the 1956 Act, casino-style activities such as roulette and blackjack would not be lawful. An exception to unlawful gaming is contained in section 4(3) of the Act.

1.2.2 The 1956 Act expressly permits two types of gaming: (i) that carried on at a travelling show, carnival or similar event, or (ii) at a licensed amusement hall or funfair. The Act sets out the conditions under which both of these types of gaming can be lawfully conducted and also establishes a role for local authorities in determining whether or not gaming can take place in their local area.

1.2.3 Since the passing of the 1956 Act, the question of the legalisation of casinos has been formally considered in two official Reports. These are briefly reviewed below:

(a) *Report of the Casino Task Force (1996)*

In 1995, the Minister for Finance, Mr Ruairí Quinn T.D., at the request of the Government, and in the context of the consideration by the Government of the development of a National Convention Centre, established a Casino Task Force to investigate and report back to the Government on the merits of a casino licence initially in the context of financing the expected deficits of such a project. Subsequently, the Government decoupled the issue of the National Convention Centre from the issue of a casino licence and asked the Minister for Finance to report on the merits of a casino licence as a separate policy issue. It was not part of the remit of the Casino Task Force to adjudicate on the advisability of licensing casinos. The Committee reported back to Government, outlining various options, but stated that a decision on the issue was ultimately a policy decision for the Government.² Having considered the matter, the Government decided, in 1996, not to proceed with the proposal to establish a casino.

(b) *Report of the Interdepartmental Review Group (2000)*³

In May 1999, the Minister for Justice, Equality and Law Reform, Mr John O'Donoghue, T.D., established an Interdepartmental Group to "review the regulatory environment within which gaming and lottery activities are carried out ..."⁴ to make recommendations and to furnish a report to the Minister and the Government. The Interdepartmental Group published their report in June 2000 and made numerous recommendations in relation to the Gaming and Lotteries Acts and other matters. Having regard to the 1996 Government decision on casinos the Group took the view that they were not in a position to make any recommendations in relation to casinos "... other than to re-affirm the existing prohibition on casino type games in the 1956 Act."⁵

1.2.4 Provision of Casino Services by Private Members Clubs

Despite the prohibitions contained in the 1956 Act, and the 1996 Government decision, there has been, in recent years, a proliferation of private members clubs providing casino-style games to club members on the basis that the provisions of the 1956 Act do not apply to bona fide private members clubs having regard to section 4(3) of the 1956 Act. The Committee understands that there are in excess of thirty such clubs with approximately twenty based in Dublin. The Committee also understands that, at the time of writing, a further 6 or 7 such clubs are seeking to enter the market. The provision of casino-style games in these clubs is a matter of concern to the Government given that (a) the provision of such games is entirely contrary to the intentions of the 1956 Act and (b) there is no regulation of their activities.

1.2.5 Fixed Odds Betting Terminals in Bookmakers' Offices

Although betting is outside the terms of reference of the Committee, the Committee also decided to consider the proposed introduction of fixed odds betting terminals (FOBTs) into bookmakers' offices because there is a concern that such machines may provide casino-style gaming and that the proliferation of such machines in an unregulated environment may increase the incidence of problem gambling.⁶ The Committee is of the view, for reasons that are detailed later in the Report that betting

² Casino Task Force Report (1996) (unpublished).

³ *Review of the Gaming and Lotteries Acts 1956-86 2000 Report of the Interdepartmental Group* (published by the Stationery Office).

⁴ *Review of the Gaming and Lotteries Acts 1956-86 2000 Report of the Interdepartmental Group* (published by the Stationery Office), pg. 1

⁵ *Review of the Gaming and Lotteries Acts 1956-86 2000 Report of the Interdepartmental Group* (published by the Stationery Office), pg. 49

⁶ The proposed placement of FOBTs in bookmakers' offices has been strongly supported by some in the betting industry and has been opposed by others.

and gaming activities should remain separate.⁷

1.2.6 Casinos and the 2006 Financial Action Task Force Report on Ireland

The existence of private members clubs providing casino gaming products and services was also raised as a matter of concern in the recent Financial Action Task Force Report (FATF) on Ireland which was published in February 2006.⁸ The FATF is an inter-governmental body, created in 1989, whose purpose is the development and promotion of national and international policies to combat money laundering (ML) and terrorist financing. Ireland has been a member since 1991. The FATF monitors the progress of members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures and promotes the adoption and implementation of appropriate measures globally. It also collaborates with other international bodies involved in combating money laundering and the financing of terrorism.

The 2006 FATF Report stated that casinos:

“... are included as a designated body for the purposes of S.32 of the Criminal Justice Act (CJA) (1994) under S.8 of the Statutory Instrument (SI) 242 of 2003. Casinos, if they operate in Ireland, are therefore subject to ML legislation. There are no licensed casinos in Ireland, and no entities operate under the title of a casino. However, the evaluation team noted that there are private clubs operating in Ireland that offer casino-like facilities – poker, blackjack and roulette albeit they are not titled as ‘Casinos’. Since these private clubs are not casinos under Irish legislation, they are not covered by the terms of SI 242 (2003).”⁹

The Report also noted that commercial casinos were illegal in Ireland and that there was no provision for casinos in Irish legislation.¹⁰

The FATF Report outlined the operation of “private gaming clubs” in Ireland (see paragraph 577) and stated that this system did create the potential for real risks as regards anti-money laundering (AML) and combating the financing of terrorism (CFT). In terms of recommendations, the Report stated:

“It is recommended that the Irish Authorities consider whether the current regulatory arrangements mitigate against the risk of ML for private clubs operating as casinos and offering casino services.”¹¹

In the recommended action plan to improve the AML / CFT system, the Report stated:

“Ireland should be aware of the ML issues relating to the illicit operation of casinos and should be prepared to address these problems.”¹²

In light of these and other concerns highlighted above, the Tánaiste and Minister for Justice, Equality and Law Reform, decided to bring proposals before Government to deal with the regulation of casino-style activities.

⁷ See Section 4.6 of this Report.

⁸ Financial Action Task Force, *Third Mutual Evaluation / Detailed Assessment Report, Anti-Money Laundering and Combating the Financing of Terrorism: IRELAND*, 17 February 2006.

⁹ Paragraphs 35 and 36, pg. 21 of Financial Action Task Force, *Third Mutual Evaluation / Detailed Assessment Report, Anti-Money Laundering and Combating the Financing of Terrorism: IRELAND*, 17 February 2006

¹⁰ Paragraph 85, pg. 28 of Financial Action Task Force, *Third Mutual Evaluation / Detailed Assessment Report, Anti-Money Laundering and Combating the Financing of Terrorism: IRELAND*, 17 February 2006

¹¹ Paragraph 626, pg. 126 of Financial Action Task Force, *Third Mutual Evaluation / Detailed Assessment Report, Anti-Money Laundering and Combating the Financing of Terrorism: IRELAND*, 17 February 2006

¹² Table 2, Section 4, pages 164 and 165 of Financial Action Task Force, *Third Mutual Evaluation / Detailed Assessment Report, Anti-Money Laundering and Combating the Financing of Terrorism: IRELAND*, 17 February 2006

1.2.7 Views of the Minister

The Tánaiste and Minister for Justice, Equality and Law Reform, Mr Michael McDowell, T.D., upon establishing the Casino Committee, stated:

“The unregulated nature of casino-style activities is a major concern of the Government. The establishment of this Committee is a major step towards addressing this situation and I look forward to the report of the Committee in the coming months. I expect that the legislative proposals will bring about strict regulation over the establishment of and operation of casinos while ensuring that public and local interests are served. ...The views of the Financial Action Task Force which has commented unfavourably on the current situation in Ireland as regards casino operations and money laundering are also of concern and I have ensured that those views will be taken into account in the compilation of the Committee’s report.”¹³

The Committee commenced its formal work in September 2006 and was assisted by a small secretariat based in the Department of Justice, Equality and Law Reform.

1.3 Work of the Casino Regulation Committee¹⁴

1.3.1 The Committee solicited submissions from members of the public by way of advertisements placed in the Irish Times, Irish Independent and the Irish Examiner on Friday 18th and 25th of August 2006 (see Appendix 2 for details). The Committee received submissions and met with most of those who made submissions (see Appendix 3 for a list of those who made submissions to the Committee) over a two-day period on the 18th and 19th of October 2006.

1.3.2 Representatives of the Committee attended the two-day Gaming Laboratories International 4th Annual European Regulators Roundtable and Workshop in Amsterdam from 4th to 6th October 2006 and the International Gaming Conference and Expo in Dublin from 5th to 7th November 2006. Both events provided invaluable opportunities to meet regulators from other jurisdictions and members of the industry from around the world and were extremely helpful in assisting members to acquire a better understanding of the complexities involved in regulating this particular industry. The Committee also met with other interested persons, consultants and with representatives of the Competition Authority.

1.3.3 During the course of its deliberations, the Committee also found that a proper consideration of the issues assigned to it required it to examine related areas which overlapped or impinged upon its mandate. Hence, for the reasons detailed under Section 1.1 above, the Committee decided to include within its remit the licensed amusement hall and funfair sector as currently regulated under the terms of the 1956 Act. This is necessary for the sake of administrative and regulatory clarity as there are obvious difficulties with the regulation of this area under the terms of the 1956 Act and as, worldwide, the activities of this industry are clearly related to the casino sector having regard to the use of GMs and amusement-with-prizes (AWP) machines. In the opinion of the Committee, it would not be possible to propose a regime for casinos that did not also apply to this sector given that gaming activities occur in each of the two gaming environments.¹⁵

1.3.4 White Paper Principles on Better Regulation and Regulatory Impact Analysis

In undertaking the task assigned to it, the Committee had regard to the six key principles of the Government White Paper ‘Better Regulation’. The Committee did not conduct a Regulatory Impact Analysis (RIA) because having carefully considered the possibility it believed that (a) such a process would be premature in advance of key public policy parameters being set by Government and (b) the undertaking of a RIA is best left to a later stage of the process when key public policy parameters have been set and the information required to formulate a realistic assessment of costs and benefits is available. Should the Government decide to proceed along the lines outlined in this Report, a detailed RIA will need to be conducted as part of the process of ‘fleshing out’ legislative proposals and developing and implementing a regulatory system.

¹³ Press release dated 14th August 2006: ‘McDowell announces new Committee to examine regulation of Casinos’.

¹⁴ “The Committee” Throughout this report.

¹⁵ See Chapter Four of this Report where the matter is discussed in further detail.

1.3.5 The **Six Principles of Better Regulation** as identified in the Government White Paper are: necessity, effectiveness, proportionality, transparency, accountability and consistency.

- **Necessity** – Is the regulation necessary? Can we reduce red tape in this area? Are the rules and structures that govern this area still valid?
- **Effectiveness** – Is the regulation properly targeted? Is it going to be properly complied with and enforced?
- **Proportionality** – Are we satisfied that the advantages outweigh the disadvantages of the regulation? Is there a smarter way of achieving the same goal?
- **Transparency** – Have we consulted with stakeholders prior to regulating? Is the regulation in this area clear and accessible to all? Is it supported by good explanatory material?
- **Accountability** – Is it clear under the regulation precisely who is responsible to whom and for what? Is there an effective appeals process?
- **Consistency** – Will the regulation give rise to anomalies and inconsistencies given the other regulations that are already in place in this area? Are we applying best practice developed in one area when regulating other areas?

1.3.6 The Committee has taken account of these principles in drafting the Report and believes that the proposals which it is advancing are in broad compliance with them. It has also attempted to clarify the public policy objectives underlying the proposed regulation of casinos.

1.4 Public Policy Objectives

1.4.1 The primary public policy objectives behind the proposed regulation of this sector can be gleaned from the terms of the Government decision establishing the Casino Committee and from the statements of the Tánaiste. The recent Gambling Act 2005 of Great Britain is also underpinned by the same objectives as outlined below. The Committee considers the primary public policy objectives of the regulation of casinos to be as follows:

- (a) To ensure that gaming is conducted in a verifiably fair and open fashion in order to protect the interests of the consumer;
- (b) To ensure that, to the greatest extent possible, children and other vulnerable persons are protected from harm or exploitation by gaming;
- (c) To prevent gaming in casinos being or becoming a source of crime or disorder. This means that the regulatory system must ensure that casinos are not (i) used for the purpose of money laundering or to support terrorism (ii) owned, operated or infiltrated by criminals (iii) either a source of, or associated with, crime and/or public disorder.

These public policy objectives might be regarded in Regularity Impact Analysis (RIA) terms as being the ‘general’ or ‘ultimate’ objectives to be pursued as opposed to the ‘immediate’ objectives. The former category represents the overall strategic policy objectives while the latter category can be linked directly to the policy intervention. A RIA requires a focus on the latter category of objectives.

1.4.2 The ‘immediate’ objectives in this case are numerous but can be broadly categorised as follows:

- (a) To establish in the public interest, as soon as possible, a regulatory authority for gaming in order to regulate a sector of economic activity some of which is, at present, being conducted in a legally dubious area and which is explicitly counter to public policy criteria as set out in the 1956 Act;
- (b) To protect the consumer and the vulnerable, including children, by ensuring that gaming is conducted in a fair and open fashion by the adoption of suitable regulations by the regulatory authority and proper enforcement including age limits and other policies designed to limit social harm;
- (c) To deter money laundering;
- (d) To ensure that criminal elements do not control or have any interest, beneficial or otherwise, in casinos;
- (e) To create a structure which facilitates the appropriate taxation of economic activity in this sector as well as the development of this potentially significant economic sector.

The Committee is strongly of the view that social responsibility, i.e. protection of children and the vulnerable, be a key principle underlying the regulation of all gaming in Ireland.

1.4.3 Broadly speaking, there are three available public policy options or choices in relation to casinos. These are as follows:

Option 1: Do nothing i.e. retain the current status and leave the current legislation in place;

Option 2: Legislate to remove legal ambiguity i.e. ban casinos operating as private members clubs leaving all else unchanged;

Option 3: Specifically legalise casinos and associated areas of economic activity and provide for the regulation of the sector.

The Government has asked the Committee to report on the possibilities associated with Option 3 above.

1.5 Recommendations and Conclusions¹⁶

1.5.1 Establishment of an Interim Gaming Regulatory Authority

Comment

The Committee recommends the establishment of an Interim Gaming Regulatory Authority, based within the Department of Justice, Equality and Law Reform, which should develop the regulatory system. The proposed remit of the Interim Gaming Regulatory Authority is outlined in Chapter Four and includes consideration of the form and structure of the regulatory body and regulatory framework including technical standards, consultation with relevant parties and the public, provision of assistance in drafting the new legislation etc..

Recommendation 1: The Committee recommends that once the Government has established the public policy parameters for the new regulatory system, it should establish an Interim Gaming Regulatory Authority, based within the Department of Justice, Equality and Law Reform, but with representatives from other relevant Government Departments, in order to develop the regulatory system.

Chapter Four, page 104

1.5.2 The Regulatory Body

Comment

The Committee notes in Chapter Four, having reviewed regulatory models worldwide (see Chapter Three), that there is no one model or ideal model of casino or gaming regulation that can be readily identified from a worldwide trawl. The Committee outlines various regulatory models that might be appropriate in the Irish context. While the Committee is very clear as to the powers that such a body requires in order to be effective, it is not in a position to recommend the precise form which the body should take as it has sought a range of legal advices from the Attorney General in relation to this matter which are not to hand at the time of writing. The advices sought raise some very complex legal and constitutional issues. The apportionment of powers, including the precise appeals structure, is dependent on such advices.

In addition to the above considerations, the Committee notes that the Department of the Taoiseach published a consultation paper on regulatory appeals in July 2006.¹⁷ This paper primarily focuses on appeals relating to the key economic and sectoral regulatory authorities. However, it also intends that the outcome of the consultation process will inform appeals processes across the public service as a whole. The Committee considers it appropriate to await the outcome of this process in deciding on an appropriate appeals process.

¹⁶ All recommendations appear elsewhere in the relevant sections of this Report. For the purposes of clarity all recommendations are numbered in Chapter One of this Report only. The running order in which they run in this Chapter is not the same as they appear elsewhere in the Report.

¹⁷ Consultation Paper on Regulatory Appeals, Department of the Taoiseach, July 2006 [PRN. A6/1047]

Recommendation 2: The Committee recommends that (a) from a modern regulatory perspective and in the interests of effectiveness, proportionality, transparency, accountability and consistency, and (b) based on studies of international norms as outlined in Chapter Three, the regulatory system¹⁸ should be responsible for the licensing and regulation of all gaming (this definition includes premises with gaming machines)¹⁹ in the State.

Chapter Four, page 75

1.5.3 Views on the Gaming and Lotteries Act 1956 (as amended)

Comment

In Chapter Two of the Report, the Committee briefly explores the background to the adoption of the 1956 Act, the role of the 114²⁰ local authorities under the current Act and the process for the granting of a licence under the Act. The Committee also reviews and comments upon the findings of the 1996 Report of the Casino Task Force and, in particular, the 2000 *Report of the Interdepartmental Group on the Gaming and Lotteries Acts 1956-86*. The Committee received a number of submissions objecting to the powers of local authorities under the 1956 Act. These objections were also expressed orally during the course of the two-day meeting which the Committee held with some of the persons who made submissions.

It was the finding of the Committee that the powers granted to the local authorities under the 1956 Act provided for an inflexible form of regulation and that effective regulation, in the modern understanding of the term, was not, in practice, possible under the 1956 Act. The Committee notes that as a consequence of the powers granted to a large number of local authorities throughout the State, a ‘patchwork quilt’ of licensed ‘funfairs’ and ‘amusement halls’ now exists which does not bear any necessary relationship to the demand for such services from the public. It was the view of the Committee that the current licensing system is both inadequate and economically inefficient, and should be significantly revised. The rationale underlying this position is explored in some detail in Chapters Two and Four of this Report.

Recommendation 3: The Committee is of the view that the arguments against the retention of the current powers available to local authorities are overwhelming. The Committee recommends that casino and gaming operations, including premises with gaming machines or ‘amusement-with-prizes’ (AWP) machines, should be regulated and that the current powers available to local authorities under the 1956 Act should not apply.

Chapter Four, page 72

1.5.4 The Role of Local Authorities as per the 1956 Act

Comment

In Chapter Four of this Report, the Committee analysed, in some detail, the role of the local authorities and considered whether there was a continuing role for them along the lines of the one prescribed by the 1956 Act. It was the view of the Committee that there was no such role and that the current role violated at least five of the six principles set down in the Government White Paper ‘Regulating Better’. The Committee considered that the role of the local authorities could be adequately discharged under the planning system and the development plan.²¹

The Committee drew a distinction between the gaming environments of casinos and gaming arcades and noted that a higher level of regulation normally applied to the former. The Committee also noted that, historically, the operation of gaming arcades (i.e. amusement halls under the 1956 Act) had given rise in certain instances to concerns at local level. Many of these concerns arose because the activities of gaming arcades were entirely unregulated, the age limit for entry was set at 16 years and due to issues relating to the location of such arcades in communities.

18 The reference to “the regulatory system” as opposed to ‘the Regulator’ is required because legal advice is awaited by the Committee which will dictate the form of the regulatory system and the allocation of powers and responsibilities.

19 Categories of gaming machines include: Amusement-with-Prizes (AWP) machines; so-called “slot” machines; Fixed Odds Betting Terminals (FOBTs) providing gaming products and services; Video Lottery Terminals (VLTs); Multi-player Automatic Table Games etc.. Gaming machines are explored in more detail in Chapter Four of this Report.

20 A total of 114 local authorities made up of 29 counties, 5 cities, 5 boroughs and 75 towns.

21 It might be noted that the physical planning system in Ireland is run by 88 local authorities: 29 County Councils, 5 City Councils, 5 Borough Councils and 49 Town Councils.

A modern regulatory system together with planning processes should be able to deal with most, if not all, of these concerns. The Committee recognises that, having regard to possible concerns around location, it is appropriate that this matter be considered by the task force which will shortly be established to consider the issue of adult entertainment. Moreover, the Committee is of the opinion that it is appropriate that the relevant local authority be a notice party to all applications for licences for gaming arcades and that the regulatory authority shall have regard to their views in arriving at a decision as regards licensing.

Recommendation 4: The Committee recommends that the role of local authorities in relation to gaming activities should primarily be exercised through the planning process, but notes that for this to be effective there will need to be changes to the planning regulations. In that context the deliberations of the soon to be established Task Force on issues relating to adult entertainment will need to be taken into account.

Chapter Four, page 74

Recommendation 5: The Committee recommends that the local authority shall be a notice party in relation to all applications for licences for gaming arcades and the gaming regulatory authority shall have regard to the opinion and views of the local authority.²²

Chapter Four, page 74

1.5.5 Key Principles Underlying the Provision of Gaming Services

Comment

In Chapter Four of this Report, the Committee considers the key public policy principles which should underlie gaming. It is the view of the Committee that gaming, by its nature, raises important public policy concerns and that the provision of gaming services should be unlawful except pursuant to a licence granted by the gaming regulatory authority. The licence to provide gaming services should be regarded as a privilege and not a right. Moreover, a licence can be suspended or revoked.

Recommendation 6: The Committee recommends that a key principle underlying the provision and regulation of all gaming in Ireland should be social responsibility, i.e. protection of children and the vulnerable.

Chapter Four, page 68

Recommendation 7: The Committee recommends that the provision of gaming services be regarded not as a right but as a privilege, which is subject to strictly enforced public policy criteria and which can be revoked, either temporarily or permanently, subject to due process, for failure to meet those criteria. The provision of gaming services shall be unlawful except pursuant to a licence issued by the gaming regulatory authority.²³

Chapter Four, page 68

²² See Chapter Four for an elaboration of differentiations between “gaming arcades” and “amusement halls”.

²³ This shall exclude such small-scale, non-commercial, private gaming as provided for by law.

Comment

As outlined in Chapter Four, the Committee is of the view that ‘gaming’ and ‘betting’ are distinct forms of gambling which require to be treated differently in a regulatory context. The Report notes that there are 6 basic categories of gambling in Ireland at present:

1. **Casino-Style Table Gaming** – Including Blackjack; Poker; Roulette; Brit Brag; Kalooki; Punto Banco; 3-5-7 Poker etc.
2. **Gaming Machines** – GMs; “Slots”; FOBTs; AWP; Automatic Table Games etc.
3. **Remote Gaming** – Internet, Interactive and Mobile Gaming
4. **Bingo**
5. **Sports and other Betting**
6. **Lottery**

While the Committee’s remit extends to those in categories 1 to 3 above it is necessary for a variety of reasons, including definitions, to have an understanding of the other forms of gambling, especially sports betting. The Committee’s exploration of the differences between gaming and betting leads it to the conclusion that these areas should remain separate as they raise distinct regulatory issues. The Committee is of the view that to treat gaming and betting as one area would lead to a cross-over between the two environments which would permit gaming in betting premises and vice versa. The Committee does not consider that this is desirable especially having regard to the number of betting premises in the State (approximately 1,170) and the potential for the proliferation of GMs.

The Committee is aware that many bookmakers operate ‘lucky numbers’ (a lottery based system) and ‘virtual races’ and is aware of the importance of these areas to the income stream of bookmakers. These are, however, issues which can be considered by the Interim Gaming Regulatory Authority and do not detract from the Committee’s view on the separation of ‘gaming’ and ‘betting’. There are also definitional issues, some of which are explored in Chapter Four in this Report, which will need to be explored in greater detail.

Recommendation 8: The Committee recommends that “gaming” and “betting” be treated as two completely separate types of gambling activity, which raise very distinct regulatory issues and which should be treated separately in any regulatory arrangements. The Committee considers that this is fundamental for the regulation of gaming. The Committee recommends that there should be no betting of any kind permitted on or in any licensed gaming premises. Likewise, there should be no gaming activity of any kind permitted on or in any betting or bookmakers’ premises.

Chapter Four, page 82

The distinction between gaming and betting may be clarified in legislation to facilitate compliance with the above recommendation.

1.5.6 Regulatory Consistency

Comment

In Chapter Two of this Report, in reviewing the reports and recommendations of previous bodies, the Committee notes that several Departments and agencies now have a role in the area of gambling. From a regulatory coherence point of view, as well as trying to ensure tactical and strategic coherence in relation to policy making, an overall review of respective policy responsibilities is desirable.

Recommendation 9: The Committee recommends that, having regard to the possible establishment of a new gaming regulatory authority, consideration be given to a review of the role of the various bodies and Departments with responsibilities in the area of gaming and gambling with a view to ensuring coherent public policy.

Chapter Two, page 25

1.5.7 Flexibility of Legislation

Comment

The Committee was asked to report on the possibilities for a legislative basis for the strict regulation of casino-style operations in the State. The Committee has done so in Chapter Four of this Report. In Chapter Four the Committee recommends that the legislative model be sufficiently flexible in nature so as to allow the gaming regulatory authority to respond to developments in this rapidly evolving and dynamic sector. The Committee considers this to be a critical recommendation.

Recommendation 10: The Committee recommends that sufficient flexibility be provided in any legislation so as to ensure that the gaming regulatory authority and/or the Minister may, by order, make Regulations under the Act in order to respond to technical or other developments or innovations in this rapidly evolving sector. The Committee is of the view that if this is not done the regulatory process will be unable to cope with the dynamic nature of this particular industry.

Chapter Four, page 69

1.5.8 Enforcement

Comment

In Chapter Two of this Report, in reviewing the reports and recommendations of previous bodies, the Committee notes and endorses the recommendations of the 2000 Report in relation to enforcement. In this area enforcement is a key factor. An Garda Síochána and the Revenue Commissioners should also have appropriate powers in this area and there should be express statutory provision for the exchange of information between relevant agencies. This latter provision is essential if the licensing regime is to function.

Recommendation 11: The Committee recommends that enforcement should be a key function of any new gaming regulatory authority (An Garda Síochána should of course continue to have a secondary enforcement role as should the Revenue Commissioners in relation to taxation matters) and that this authority should also have a prosecutorial role. Furthermore, there should be an express statutory basis for cooperation and the exchange of information between relevant agencies.

Chapter Two, page 24

1.5.9 Money Laundering

Comment

Money Laundering is the process by which criminals convert the money that they receive from criminal activities into funds that appear to have been generated by lawful means. Frequently, these funds are impossible to trace by law enforcement to their illegal sources. The unique nature of cash and chip transactions within modern casinos has created significant apprehension regarding potential opportunities for money laundering. It is agreed among many gaming experts that if casinos are to be kept free from criminal activity and associations with money laundering, they must be subject to strong regulatory and administrative control.²⁴ It is essential, having regard to the findings of the FATF Report on Ireland that appropriate procedures be put in place. The Committee is satisfied that this can be done.

²⁴ Cabot, A. and Kelly, J. (1998)

Recommendation 12: The Committee recommends that in the establishment of any new regulatory regime, and in order to ensure the development and implementation of successful anti-money laundering strategies, the licence awarding body must have the ability to undertake in-depth background investigations into the applicant's financial, business and taxation history as well as any criminal or other relevant records. While the necessity for these powers extends beyond money laundering considerations alone, the Committee wishes to stress that action to prevent money laundering is not just limited to areas of finance, including appropriate financial procedures, but is multi-faceted and starts from basic licensing requirements with consideration of such matters as good character, criminal record, taxation, financial history, disclosure of shadow directors and shareholders etc.. The Committee is also satisfied that requirements of the FATF as well as EU law can be met by casinos and that the gaming regulatory authority, in consultation with appropriate parties and by reference to best practice in other countries, can ensure that the necessary procedures are in place.²⁵

Chapter Four, page 81

1.5.10 The Gaming Licensing Regime

Comment

The proposed nature of the gaming licensing regime is dealt with in detail in Chapter Four of this Report. Having considered various options including a *bidding process*, a *beauty competition* (or combination thereof), a *liberal* licensing regime and a *strict* licensing regime, the Committee recommends the latter option - a strict licensing regime. Under this system, the licensing powers are vested in the gaming regulatory authority, including the power to have regard to the numbers of gaming premises in issuing licences. Accordingly, very strict criteria can be set for the granting of a licence.

The Committee have made provision in their illustrative licensing framework²⁶ for a gaming operator's licence type for what are commonly identified as "super"²⁷ casinos or integrated resort casino venues, but recommends that there be a moratorium before the granting of any such licence in order to study the social and economic effects of the introduction of licensed casinos.

The Committee makes recommendations in relation to the racing industry and the charity sector. The Committee received submissions and met representatives from the horse and greyhound racing industries as well as the charity sector. The Committee recognises that the racing industries may face particular difficulties and, in addition to recommending that the racing industries and charity sector be allowed to apply for casino licences, also recommends that the impact on the racing industry be kept under review.

Recommendation 13: The Committee recommends the adoption of a restrictive licensing regime which provides the appropriate body with the power to strictly licence premises, operators, suppliers and key employees. The Committee believes that this meets the criteria for strict regulation set out by the Government as well as providing the flexibility to respond to developments and to meet public and local concerns. The appropriate regulatory authority, in the granting of licences, may have regard to the numbers and types of gaming establishments in an area.

Chapter Four, page 80

Recommendation 14: The Committee recommends that the burden of proof be on the applicant seeking a licence to satisfy all the licensing requirements, whether they are the operator, maintenance, surveillance, manufacturing or key gaming personnel.

Chapter Four, page 100

²⁵ See Directive 2005/60/EC of The European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Available online: http://eurlex.europa.eu/LexUriServ/site/en/oj/2005/l_309/l_30920051125en00150036.pdf

²⁶ See Table Thirteen, pg. 86

²⁷ The term "super casino" is not particularly helpful as it is a relative term which can only be properly understood when placed in a particular context. The term cannot be used interchangeably across countries without engendering considerable confusion. For example, a super casino in Great Britain would be much larger in scale and size than a similar enterprise in a smaller country such as Ireland. All that can be gleaned from the term itself, in the absence of other information, is that a "super casino" is, by definition, larger than a standard casino.

Recommendation 15: The Committee recommends that, if casinos are to be licensed, Horse Racing Ireland and Bord na gCon, should be allowed to apply for such licences subject to the appropriate planning and licensing consents and any necessary enabling legislation.

Chapter Four, page 67

Recommendation 16: The Committee recognises that, ultimately, it is for Government to decide on what approach it wishes to take in relation to ‘racinos’²⁸ and the relationship of any casino tax take to the needs of the horse and greyhound industries.

The Committee recommends that, at a minimum, the impacts of the advent or possible advent of a regulated casino sector on horse racing and greyhound racing industries be subjected to ongoing evaluation and, if a negative impact is established, appropriate ameliorative measures should be considered.

Chapter Four, page 68

Recommendation 17: The Committee recommends that registered charities be permitted to apply for a licence in their own right or in partnership. However, a precondition to obtaining such a casino licence is the earmarking of a portion of the casino proceeds for charitable purposes. In order to avoid creating an environment of unfair competition, the Committee also recommends that the registered charity not be afforded any tax advantage in relation to the operation of a casino as compared to a commercial operator.

Chapter Four, page 64

1.5.11 Current Amusement Halls

Comment

The Committee is aware that the proposed changes to the regulatory regime could have major implications for the existing licensed industry (i.e. amusement halls and funfairs). There will be new and strict licensing requirements and, depending on the deliberations of the new Task Force on Adult Entertainment, possible changes to the planning code. The Committee is not recommending preferential treatment for already licensed operators in that industry; it is simply acknowledging that they are engaged in lawful activity and that, in developing the new licensing regime, careful consideration should be given to the status of this sector.

Recommendation 18: The Committee recommends that in the development of a new regulatory regime careful consideration be given to the status of amusement halls currently licensed under the 1956 Act.

Chapter Four, page 74

1.5.12 Age Limits

Comment

The issue of the appropriate age limit that should apply to casinos and gaming arcades is one on which a range of legitimate and differing views can be held. Ultimately, these issues are a matter for political judgement and decision. The Committee recommends that a minimum age limit of 18 years apply to all gaming establishments. The Committee also recommends a customer registration system apply in all casinos. In relation to casinos and gaming arcades the Committee considers that the age limit might be set somewhere between 18 and 21 years and that some limited discretion might be granted to operators in setting an age limit having regard to the particular gaming environment. A similar provision applies in relation to the sale of intoxicating liquor. This argument is strongest for gaming arcades where an age limit of 18 years is proposed and no customer registration applies. This leaves the operator vulnerable to prosecution for allowing underage persons on the premises.

²⁸ A ‘racino’ is a portmanteau for a combined race track and casino. In some cases, the gambling is limited to gaming machines, but many locations in the United States include table games such as blackjack, poker and roulette.

Recommendation 19: The Committee has no rigid view on the matter of age restriction other than that persons younger than 18 years are not to be permitted in any licensed gaming premises, i.e. neither casinos nor gaming arcades.

Chapter Four, page 89

The Committee considers that the age limit for casinos might be set somewhere between 18 and 21 years (inclusive) and it may be appropriate to provide the casino operator with a discretion to set a higher age limit of up to 21 years, having regard to the particular type of gaming environment/premises. Similarly, the operators of gaming arcades should be able to set a higher age limit. These discretions could be facilitated in a somewhat similar manner to that provided by section 15 of the Equal Status Act 2000, as amended by section 25 of the Intoxicating Liquor Act 2003.

1.5.13 Intoxicating Liquor and Gaming Premises

Comment

The Committee carefully considered the issue of the sale of intoxicating liquor in gaming premises with particular reference to casinos. The Committee had regard to the fact that intoxicating liquor is widely available on racecourses in Ireland and that it also is widely available in casinos around the world. In considering its approach, the Committee had regard to the propensity for public disorder which might arise should gaming establishments facilitate late night drinking and wished to avoid such a possibility. The Committee therefore recommends that a casino licence shall not permit the sale of intoxicating liquor, but that a casino may apply for a liquor licence and that such an application will be treated like any other applicant subject to certain particular considerations which the Committee regard as necessary and proportionate. These considerations are set out in Chapter Four of this Report. The Committee also recommends that the gaming regulatory authority should be able to suspend a liquor licence attaching to a casino where the sale of intoxicating liquor is causing a breach of casino-licensing regulations.

Recommendation 20: The Committee notes the provisions of section 9(1) of the Gaming and Lotteries Act 1956 provides that the “licensee of premises licensed for the sale of intoxicating liquor shall not permit gaming on the premises.” The Committee recommends that a casino licence shall not permit the sale of intoxicating liquor. A casino may apply for a liquor licence and such an application will be treated like any other applicant with the exception of particular considerations which the Committee regard as necessary and proportionate.

Chapter Four, page 90

1.5.14 Problem Gaming: Research and Self-Exclusion

Comment

The Committee noted during the course of their deliberations that there did not appear to be a satisfactory body of empirical research into problem gaming or problem gambling in Ireland. However, the Committee also noted that even in those jurisdictions where gaming in casinos has been permitted for decades, research into problem gambling is, by way of contrast, a relatively recent phenomena. While both the quantity and the quality of research into problem gambling available from other comparable jurisdictions is very considerable and can be readily used in the case of Ireland, it is desirable that the gaming regulatory authority be able to commission empirical research specific to the Irish situation so that effective policies can be developed which reflect the Irish context. Such research might best be undertaken by an existing independent body or agency with expertise in the area. The establishment of an independent problem gambling support group should also be considered.

The Committee recommends that ‘self-exclusion’, whereby individuals who acknowledge that they have a problem with their gambling enter into an agreement to ban them from entering, or to permit themselves to be removed from, specified gaming venues, for a limited period of time or permanently, be provided for in any legislation. Broader issues of operators excluding clientele on the basis of alleged fraud etc. need to be further examined.

Recommendation 21: The Committee recommends that any new gaming regulatory authority be empowered to commission research and to cooperate with other relevant agencies, both statutory and non-statutory, with a view to developing a body of empirical research in relation to problem gambling which can then be used to develop policies and regulations to minimise problem gaming. Such research pertaining to gambling (gaming and betting) in Ireland might best be undertaken by an existing independent body or agency with expertise in the area. Furthermore, the establishment of an independent problem gambling support group should be considered.

Chapter Four, page 70

Recommendation 22: The Committee recommends that there be a statutory underpinning of the process of self-exclusion whereby individuals who acknowledge that they have a problem with their gambling enter into an agreement to ban them from entering, or to be removed from, specified gaming venues, for a limited period of time or permanently.

Chapter Four, page 70

1.5.15 Taxation

Comment

In Chapter Four of this Report, the Committee considered the issue of taxation. It should be noted that this matter is not within the terms of reference of the Committee and that the Committee has not made any recommendations as to precise rates of tax. These are matters for the Minister for Finance in the first instance. However, given the centrality of the taxation issue, the Committee is of the opinion that it is appropriate to make some general observations as this matter arose in submissions and in discussions with various groups.

The Committee reviewed taxation regimes around the world. Based on this review, the Committee considers that the casino industry should pay a higher rate of tax than that applicable to betting. The Committee also recommends that there should be some form of licensing fee. Any taxation structure for the industry will need to take account of levies, such as licensing fees and to the particular circumstances of the industry in Ireland, which is at an early stage of development and which is likely to be much smaller in scale than its international counterparts.

Recommendation 23: It is the opinion of the Committee that in addition to the normal business taxes, licensed casinos, as is the case in most jurisdictions across the globe, should pay some form of 'gaming duty' on the gross or net gaming revenue. In addition to this there should also be some form of licensing fee applied (e.g. premises / operator / supplier / key personnel or staff).

Chapter Four, page 99

Recommendation 24: Taxation policy is a matter for the Minister for Finance in the first instance. On examination of casino tax rates and licensing fee structures applied in other jurisdictions, and having given due consideration to existing associated domestic taxes, it is the opinion of the Committee that a tax rate or duty higher than the 1% of turnover currently applied to off-course bookmakers is appropriate. The rate is a matter for the Minister for Finance having regard to other factors such as the expense of the licensing regime; the nature of the industry in Ireland; consideration of potential market demand and size; the impact of higher tax on the viability of both casinos and the regulatory system etc..

Chapter Four, page 99

1.5.16 Committee Views on the Current Gaming Environment - Fixed Odds Betting Terminals (FOBTs)

Comment

The Committee examined the issue of FOBTs in the betting office environment. They also examined the position in Great Britain. The Committee notes that FOBTs were introduced into the betting office environment in Great Britain and that they were very profitable for bookmakers. FOBTs guarantee a percentage return to the bookmaker. Most FOBTs can be configured to play casino-style games.

The Committee is not opposed to the use of modern touch screen or other technology in bookmakers' shops for betting purposes. It is however strongly opposed to the spread of gaming machines into a betting environment. Modern style FOBTs can be configured to run most types of games and the Committee has seen Irish-developed machines, for use in bookmakers' premises, which can play casino games, including card games, as well as allow participants to engage in online sports betting. These machines also allow a player to play games like roulette in a real casino environment 'streamed' over the Internet. The key point is that with technological convergence there is little essential difference between computers and most modern electronic gaming machines. The software dictates the player experience.

There are approximately 1,170 bookmakers' offices in this State. The prospect of FOBTs in each bookmaker's office, even if limited in number to a maximum of four per office (as in Great Britain), has potentially severe repercussions in terms of problem gambling as can be seen from studies in numerous other jurisdictions where an uncontrolled proliferation of gaming machines was allowed. If the Government decides to allow FOBTs in the betting office environment then this environment would have to be licensed as a gaming arcade by the gaming regulatory authority. Such a development might also have consequences for bookmakers under the planning system. In Chapter Four of this Report, the Committee summarises some of the public policy issues around the placement of these machines under five headings: Tax, Social, Planning, Regulatory and Political.

Recommendation 25: It is the opinion of the Committee that contemporary fixed odds betting terminals (FOBTs) are to be treated as gaming machines. Gaming machines should not be permitted in bookmakers' offices. The term/label "fixed odds betting terminal" is now somewhat superseded by the fact that many of these machines offer gaming services in addition to betting, e.g. roulette, poker, blackjack etc., and so can be classified as electronic gaming machines. It should be noted that the Committee is not opposed to the introduction of new technology into betting or bookmakers' offices provided that the service being provided utilising such technology is exclusively that of betting.

Chapter Four, page 84

1.5.17 Location of Gaming Machines

Comment

The Committee is of the view that GMs should be regulated and controlled and should be in an appropriately regulated and licensed environment. The placement of GMs outside such a tightly regulated environment may increase the incidence of gaming in a fashion which is socially undesirable. The Committee notes that in many other jurisdictions where GMs were allowed to proliferate, Governments are now attempting to reduce the numbers of such machines. Only premises licensed by the gaming regulatory authority should be permitted to have GMs.

Recommendation 26: The Committee recommends that gaming machines (GMs) should only be permitted in the licensed environment of a casino or gaming arcade. In addition to not being permitted in betting or bookmakers' offices, gaming machines should not be permitted in shops, take-aways, restaurants, hotels, public houses or any other premises.

Chapter Four, page 85

1.5.18 Unlicensed Gaming Environments

Comment

The Committee is aware that there are approximately thirty clubs offering casino-style activities in the State and that more appear to be interested in entering the market. The Committee also notes that, anecdotally, there are other businesses who may have GMs on their premises and which are not licensed under the 1956 Act.

The Committee recognises that devising and implementing a regulatory system will take time. The Committee considers that it is important that a clear message be sent to those who are engaged in, or considering engaging in, gaming activities in this State which are not comprehended by the 1956 Act. They should be clear about the risks that they are running and the potential consequences.

The Committee is of the view that the Interim Gaming Regulatory Authority, which it has proposed be established to drive the development of the regulatory process, should review the current position as regards gaming activities and, if necessary, recommend interim amendments to the criminal law to deal with them.

Recommendation 27: The Committee recommends that the Government send a strong message to those currently engaged in casino-style or other unlicensed gaming activities to the effect that currently unlicensed operators should be advised that, in a new and strict regulatory environment, they must not assume that they will receive an operator's licence. The fact that they are engaged in such activities at present will not necessarily, under any new regime, guarantee them a licence.

Chapter Four, page 105

Recommendation 28: The Committee recommends that the Interim Gaming Regulatory Authority which it proposes should be established to develop the regulatory system, as well as other matters, should review the current position as regards such activities with a view to reporting to the Minister for Justice, Equality and Law Reform and, if necessary, recommend appropriate interim amendments to the criminal law to deal with these issues.

Chapter Four, page 105

1.5.19 Remote Gaming

Comment

Chapter Five of this Report deals with internet or 'remote' gaming which is a more inclusive term for the range of technologies involved. The Committee have received numerous submissions and met many persons with in-depth knowledge of the industry and is of the opinion that the area should be regulated. Mark Griffiths, Professor of Gambling Studies at Nottingham Trent University in Nottingham, England, and the Director of the International Gaming Research Unit, believes the way forward is to licence and regulate remote gaming operators and work with them so ensuring they adhere to the same set of regulatory principles as terrestrial operators. The alternatives are to do nothing or to take steps to try to block access or to ban the industry. The latter option, notwithstanding recent developments in the United States, presents numerous difficulties which would be very difficult to surmount and which might not be effective.

Having regard to recent developments in other jurisdictions, and the extremely dynamic nature of this multi-billion euro industry, there are many challenges ahead in remote gaming regulation. The recent passing of the Internet Gambling Prohibition and Enforcement Act 2006 (H.R. 4411) in the United States outlawing the use of certain payment instruments, credit cards, and fund transfers for unlawful internet gambling has created an environment where many remote gaming operators are now looking to locate in Europe. The Committee is of the opinion that there may be significant benefits for Ireland in this area if it is approached appropriately. Ireland, with its English speaking population, has an international reputation for excellence in information and communication technology as well as international financial services.

The Committee is also of the view that a key principle underlying the regulation of all gaming in Ireland should be social responsibility, i.e. protection of children and the vulnerable. The issue of regulating remote gaming requires in-depth analysis and investigation, not least a full consideration of the prospective social implications of licensing remote gambling, which will determine the form and manner of regulation.

This Report has recommended that the Interim Gaming Regulatory Authority should consider this issue (in conjunction with other relevant Government Departments) and that the gaming regulatory authority should ultimately regulate this area if it is decided that remote gaming should be licensed.

Recommendation 29: The Committee recommends that a regulatory system be established for remote gaming in Ireland. A full impact study, a technological assessment and industry analysis should be carried out, EU and world-wide implications as well as issues pertaining to access to these services of minors and other vulnerable persons should also be considered.

Chapter Five, page 110

Recommendation 30: The Committee recommends that work should commence on the development of a separate regulatory framework for remote gaming, under the same regulatory authority as terrestrial gaming. The Committee notes that while the objectives and principles attached to the regulation of both remote and terrestrial gaming remain the same, the means of achieving them differ considerably.

Chapter Five, page 115

Recommendation 31: The current state of development internationally of regulation of remote gaming, particularly the recent United States prohibition of payment mechanisms for gambling online, presents a window of opportunity for Ireland. The Committee recommends that the appropriate regulatory authority (in conjunction with other relevant Government Departments) address the concomitant regulatory challenges and provide a socially responsible and secure arena for the development of remote gaming based in Ireland. Should this opportunity be grasped within the appropriate timescale, Ireland, as a gaming friendly centre of excellence, can reasonably expect to attract a reasonable portion of this dynamic industry, therefore yielding significant synergistic benefits as well as employment opportunities.

Chapter Five, page 115

Recommendation 32: The Committee recommends that any development in remote gaming must be strictly regulated to protect the vulnerable, prevent criminals from entering the market and ensure that being licensed in Ireland is a trustworthy seal of approval for e-gambling customers throughout the world. Such strict regulation is in the long-term interest of the better remote gaming operators as well as the State. Further discussion with the Minister for Finance regarding possible competitive taxation rates and with other Government Departments is necessary to advance such a proposal.

Chapter Five, page 115

Chapter Two: The Gaming and Lotteries Act 1956

Gaming - A General Assessment

2.1 Introduction

2.1.1 The Gaming and Lotteries Act 1956 (as amended) is the key piece of legislation dealing with gaming in Ireland. It is not the intention of this chapter to review the provisions of the 1956 Act in detail. Such a review was already conducted by the Interdepartmental Review Group who produced the 2000 report referred to in Chapter One and below. The purpose of this chapter is therefore to:

- Briefly review some of the findings of the 1996 and 2000 Reports as they relate to the 1956 Act;
- Briefly review the role of the local authorities as it relates to funfairs and amusement halls under the 1956 Act and to better understand the origin of this role;
- Outline the possible implications for the 1956 Act having regard to these reports and the deliberations of the Casino Committee.

2.2 Review of Other Official Reports and the 1956 Act

2.2.1 Introduction

Both the 1996 'Report of the Casino Task Force' and the 2000 'Report of the Interdepartmental Group on the Gaming and Lotteries Acts 1956-86' examined the provisions of the 1956 Act. The former report concentrated on the changes that might need to be made, at a minimum, to the 1956 Act in order to allow casinos in Ireland. The latter report focussed on the 1956 Act in a more comprehensive way while excluding casinos from the review.

2.2.2 Report of the Casino Task Force (1996)²⁹

The Casino Task Force Report, inter alia, considered the 1956 Act having regard to the legislative changes which might be necessary to allow for the introduction of casinos. The Report pointed out that:

- The total ban on casino games, such as roulette, would have to be lifted within a designated casino environment;
- The monetary limits for slot machines would have to be raised significantly.³⁰

The Report also noted that changes of this nature would require consideration of whether, and to what extent, the restrictions on existing GMs in premises licensed under the 1956 Act could or should be maintained. This was in the context of the view of the Task Force that a tables-only casino, without GMs, was extremely unlikely to generate the revenue necessary to support a major project such as a conference centre.³¹ Another issue raised in the Report was whether it would be possible, given the scale of investment required for a casino, to continue local authority/District Court licensing arrangements. The Report suggested that another authority might need to be created, possibly a Gaming Board, which might have a broader responsibility extending beyond casinos. The Report noted that issues such as opening hours, age limits, powers of any supervisory body etc. would also need to be addressed.

2.2.3 Report of the Interdepartmental Group (2000)

The Report of the Interdepartmental Group reviewed the provisions of the 1956 Act (as amended) in a most comprehensive way. It is not the intention here to review the 2000 Report in detail, but it is necessary to consider some of the findings and recommendations of that Report as they relate to this Committee's mandate. The Report recommended the following:

²⁹ Unpublished.

³⁰ The Report did not suggest an amount.

³¹ The provision of, or support for, a conference centre is not a consideration for the Casino Committee. However, as stated in Chapter One, it appeared to the Committee that there is little justification for applying a strict regime to casinos, with or without GMs, while leaving the amusement hall and funfair sectors outside of such a regime, as many of the same regulatory issues apply. Moreover, it seems to the Committee that as casinos worldwide have a mix of table games and GMs that a similar model should apply in Ireland.

(a) *Legislation*

A bill should be brought forward to replace the 1956 Act which should largely cover the same areas as the existing Act. Specifically:

- i. It should provide for the establishment of the proposed Gaming and Lotteries Authority and set out its functions and responsibilities;
- ii. It should direct responsibility for the overall regulation of gaming and lotteries to a Gaming and Lotteries Authority which should, as far as possible, be self-financing on the basis of fees and other charges for the range of inspection and other services provided;
- iii. It should set out the general principles and parameters governing gaming and lotteries;
- iv. In the interests of flexibility of response to changing circumstances, it should provide where appropriate, and to a greater extent than the 1956 Act, for the making of regulations as appropriate from time to time, which would prescribe the specific operating conditions and requirements for gaming and lotteries.

(b) *Local Authority Powers*

The Interdepartmental Group stated that it gave the provision of the 1956 Act on the powers of local authorities long and careful consideration and found strong arguments for both the retention of the power as well as its removal. They accepted that, while valid arguments can be made for and against a continuing role for local authorities, their powers to adopt or rescind the provisions should on balance be maintained, with certain, quite significant, statutory adjustments in respect of gaming within their administrative areas.³² Such adjustments were to include safeguards relating to the protection of those who might be affected by local authority decisions. It should be noted that this view related to the Interdepartmental Group's consideration of amusement halls and funfairs only and not to casinos.

(c) *Internet Gaming and Lotteries*

The Report stated that the Interdepartmental Group felt unable to make specific recommendations with regard to the regulatory environment which should apply to any future internet gaming and lottery activities, other than to point out that any such activity should be in conformity with national legislation. They noted that internet developments were as likely to be in the area of betting as in the area of gaming and lotteries and thus outside their terms of reference.

The Report noted that liability issues in the area of internet gambling are likely to be as complex as in other areas of internet activity and that there were also logistical, legal and enforcement difficulties. For example, with internet operations, the provider may not be within the jurisdiction and may be providing a service which may be legal where the service is being hosted, but illegal where the service is being accessed.

The Interdepartmental Group Report stated that internet gambling, despite its growth, was still at an early stage of development and it was difficult to anticipate the way in which it would develop and impact upon this country. The Interdepartmental Group suggested in view of the complex financial, revenue, legal and technical issues involved, that a special group with appropriate competencies, outside that contained in the present Group, could be established to examine this area. They also considered that new legislation should ensure that prohibitions on specific elements of gaming and lottery activities within the jurisdictions should be enforceable in both online and offline environments. Providers of such online services should be able to guarantee that national law in this area is capable of being complied with.

(d) *Enforcement and Penalties*

The Interdepartmental Group noted that primary responsibility for the regulation and enforcement of the 1956 Act currently lies with An Garda Síochána, and to the extent that excise duty is involved, indirectly with the Revenue Commissioners. They stated that, under the Finance Acts of 1975 and 1992, the Revenue Commissioners may institute prosecutions for offences, including the operation of GMs in licensed premises and the operation of unlicensed GMs. The Interdepartmental Group also noted that some difficulties had arisen regarding the enforcement of the provisions in relation to gaming. These include problems with obtaining the necessary evidence, and the requirement, as confirmed by the Supreme Court in DPP V McMahon,³³ to obtain a search warrant, which can only be procured and

32 The Interdepartmental Group Report recommended that in cases where a local authority decides to rescind a motion which allows gaming to take place, consideration must be given to hardship arising for existing operators whose compliance with relevant requirements is not in question. In doing this, a deferral of the coming into force of a rescinding motion for a period of up to two years should be considered. All rescinding motions should be accompanied by a detailed statement giving reasons for the motion and setting out the background to the reasons for the rescinding.

33 DPP v. McMahon, Supreme Court, 20 June 1986. [1986] I.R.393.

executed by an officer of Inspector rank or higher. Difficulties with proof can also arise in cases where tokens or credits are employed in lieu of direct monetary payout to the players of these machines. The Interdepartmental Group stated that the question of the appropriateness of the regulation and enforcement function continuing to rest with An Garda Síochána arises.

The Interdepartmental Group expressed concern on a number of fronts at enforcement difficulties with the 1956 Act. They noted that the types of offences involved included exceeding the GM stake and prize limits, gaming in unlicensed premises located in areas where part III of the 1956 Act was not in force and the siting of GMs in pubs and other premises where alcohol was available. The Group felt that the penalties in force under the 1956 Act (IR£100 and/or three months' imprisonment) appeared to have insufficient deterrent value.

The Interdepartmental Group therefore recommended that stringent penalties which reflected the gravity of the offence, and which are in line with those for illegal betting included in the Finance Act, should be provided to ensure sufficient deterrent for compliance. They also recommended that penalties should include provision for the forfeiture of machines and equipment, powers of entry and evidence should be revised and strengthened and the prohibition on cheating in the 1956 Act should be maintained. In the case of alleged breaches of the law, prosecutions should be instigated by the Gaming and Lotteries Authority, but this would not affect the existing powers of the Revenue Commissioners to act in revenue-related cases.

(e) *Other Significant Recommendations*

The Interdepartmental Group also made other significant recommendations:

- i. Premises in which gaming machines are to be located should continue to require a licence;
- ii. The definitions of gaming machines should be revised to remove scope for the circumvention of the law and the precise location of gaming machines within licensed premises should be controlled;
- iii. Gaming machine stakes and prize limits should be increased and provisions made for their adjustment by Order of the Gaming and Lotteries Authority with the approval of the Minister;
- iv. New legislation should make provision for four types of lotteries under a licence issued by the Gaming and Lotteries Authority. The lottery types would vary in terms of purpose and maximum prize fund;
- v. An age limit of 18 years should apply to the use of gaming machines other than AWP's, the purchase of all lottery tickets, and the placing of bets with the totalisator. The new Act should place the responsibility for ensuring that the age limit is strictly enforced on the operators/proprietors of gaming premises and the vendors of lottery tickets;
- vi. A non-statutory mechanism should be put in place to facilitate ongoing consultation between the various agencies involved in the control and regulation of all forms of gambling in Ireland. The primary objective should be to provide for an integrated and balanced approach to the various social policy considerations which arise in the gambling area;
- vii. The Interdepartmental Group noted that the exclusion of gambling contracts from litigation is a long-standing legal provision and they saw no reason for recommending any changes in this area. They did, however, draw attention to the particular challenges this holds in the internet gaming area.

2.3 The Adoption of the Gaming and Lotteries Act 1956

2.3.1 Part III of the Gaming and Lotteries Act 1956 provides for the licensing of amusement halls and funfairs. However, section 13 (1) of the 1956 Act provides that this may only take place where a local authority has by resolution "in respect of the whole or a specified part of its administrative area" adopted Part III of the Act.³⁴ The local authority may also, by resolution, rescind such an adoption.

34 Gaming and Lotteries Act 1956, section 13(1)

The apparent rationale at the time of the passing of the legislation was that local persons should be entitled to have a say, through their elected representatives, as to whether or not gaming should be permissible in their locality. The Minister for Justice at the time, Mr James Everett, T.D., the Labour Party member for Wicklow, explained the rationale during the second stage debate in the Dáil when he stated:

“We feel it is a wise precaution to place responsibility on the local authority for having this kind of gaming in their town and that the people of the town, through their elected representatives, should have the right to say, whether gaming saloons should not be allowed to open. We do not want the local inhabitants to be forced to have gaming saloons whether they want them or not.”³⁵

2.3.2 By way of contrast, during the same debate, Deputy Michael Moran, the Fianna Fáil member for Mayo South (a Solicitor by profession and subsequently Minister in various portfolios including Minister for Justice), stated:

“The main objection to this measure arises in relation to Part III in connection with the local authority. I suggest to the Minister that that part of the Bill will be unworkable from the point of view of those who will have to operate it. The Minister provides that the local authority must adopt this resolution. To start off with, you will not have uniformity on that; you will have those that will and those that will not adopt it. ... All this, I suggest to the Minister, can be completely wiped out if the Minister will adopt the simple procedure laid down in the Public Dance Halls Act of 1935 dealing with this matter. ... I strongly suggest to the Minister that he would consider these provisions and do away with this cumbersome and complicated and — even though this may affect myself, I say — very expensive procedure provided under this particular section.”

2.3.3 Interestingly, while many speakers during the debate opposed the involvement of local authorities, this viewpoint is perhaps best captured by the Labour member for Waterford, Deputy Thomas Anthony Kyne (speaking during the same debate) and the Fianna Fáil member for Mayo South, Deputy Seán Flanagan. Deputy Kyne stated:

“I think that there is a general acceptance of the need for a Bill such as this. So long as men and women live and whether it is legalised or not, gambling in one form or another will continue. ... I suggest that the Minister should take the broad view. Let us legalise gaming up to a point. Let us limit the stakes. Let us make sure that only reputable, decent people are permitted to operate it. Let us make sure that there will be no fraud or trickery. ... I disagree with giving certain sections special rights and saying that the man in the seaside resorts who is operating on a big scale or the man in a big town is entitled to concessions that other people are not entitled to. I disagree completely with class legislation and sectional interests. The people of all sections have the same rights as long as they are good citizens. I would suggest that the Minister should examine the Bill from that point of view, of having gaming for all the people or not at all. Personally, I suggest that it should be licensed.

In my opinion it is not right that the local authority should decide as to whether or not there should be gaming in their areas. I am a member of a number of local authorities and I am aware of the influence that can be brought by sectional interests and the pressure that can be exercised. There is no person more subject to that than the ordinary public representative. ... I do not think the local authority should have that right. ... I suggest that the local authority is the very last body that should be put under the strain of having to administer the Bill or that should be given the responsibility.”³⁶

2.3.4 Deputy Seán Flanagan, during the course of the resumed debate, opposing the proposed role of the local authorities and advocating a role for the courts, stated:

“[Section 12 of the 1956 Act] provides for local authorities such as the corporation in Dublin or the county councils throughout the country adopting a resolution before bringing Part III of the Act into operation. I do not know what tempted the Minister to bring in corporations and county councils into the administration of law in this country or into the application of the law. I think it is a very bad thing indeed and there can hardly be anybody in the House with the exception of the Minister who is convinced that it is a good thing that matters like that should be the subject of canvass and debate by members of the corporation in Dublin or of county councils throughout the country.

It is a new thing and I do not see any reason why it should have been brought in. By implication it means

35 Dáil Éireann - Volume 150 – 20th April, 1955 Committee on Finance - Gaming and Lotteries Bill, 1955 — Second Stage. Available online at <http://historicaldebates.oireachtas.ie/>

36 Dáil Éireann - Volume 150 – 20th April, 1955 Committee on Finance - Gaming and Lotteries Bill, 1955 — Second Stage. Available online at <http://historicaldebates.oireachtas.ie/>

that the courts previously handling these things have been regarded as unfit to make decisions in this matter. That again I think is nonsense, and I feel sure the vast majority of the Deputies in this House would want the courts to decide questions of this kind and not the local authority, which might or might not cause an injustice to certain people.

The worst thing about local authorities - and I am afraid we must face it - is that they are politically based. In theory they are not supposed to be - they are supposed to be people concerned with local problems not on a political basis - but, in fact, as everybody knows members of such bodies, or the vast majority of them, are connected with one of the major political Parties in the country and they carry on their business at their meetings in the light of their political affiliations. It means, in effect, that politics will be brought into the administration of this particular section of the Bill and that individuals who may not be au fait with the controlling Party in a given corporation or county council might be victimised as a result of that. I think the courts established by the Constitution to deal with things like this should be left to deal with them.”³⁷

2.3.5 There were a wide range of Deputies, speaking during the course of the second stage debate, who foresaw difficulties with the proposed powers to be granted to local authorities under the 1956 Act. Their comments and observations might be regarded, fifty years later, as somewhat prescient.

2.4 The Role of Local Authorities under the 1956 Act

2.4.1 Part III of the Act

Part III of the 1956 Act provides for the licensing of ‘amusement halls’ and ‘funfairs’. Section 12 of the 1956 Act states that this Part shall “not have effect in any area unless there is for the time being in force a resolution under section 13 adopting it for that area”. Section 13 therefore provides that a local authority may adopt Part III of the 1956 Act by resolution in respect of the whole or a part of its administrative area and may by resolution rescind such adoption.³⁸ It should be noted that ‘local authority’ is defined in the 1956 Act as “a body being the council of a county, the corporation of a county or other borough, the council of an urban district or the commissioners of a town.”³⁹ Hence, there are 114⁴⁰ different bodies within Ireland who may adopt or rescind such a resolution under Part III of the 1956 Act.⁴¹

2.4.2 Process for the Granting of a Gaming Licence under the 1956 Act

The process for granting a gaming licence under the 1956 Act is that, the local authority having passed a resolution under section 13 of the 1956 Act, an applicant could then apply to the District Court for a certificate authorising the issue of a licence permitting gaming at a funfair or amusement hall. Section 15 of the 1956 Act stated that “a certificate shall not be granted unless forms of entertainment other than gaming are also provided.”⁴² The Court may attach conditions to the certificate restricting the type of gaming which could be carried on, limiting opening hours, the amounts of stakes and prizes and prohibiting or restricting gaming by persons under specified ages. The certificate granted by the Court shall specify the period in the particular year to which it relates for which the licence is to be issued. The licence is issued by the Revenue Commissioners upon production of the certificate.

2.4.3 Interestingly, section 15(6) of the 1956 Act states that the certificate so granted shall not be invalidated by the “subsequent rescission of a resolution under section 13” of the Act. This means that a licensed operator can continue in business for the period set out in the licence despite the rescission of a resolution under the 1956 Act.⁴³

2.4.4 The Casino Committee heard from Mr John Roche, General Secretary of the Irish Amusement

37 Dáil Éireann - Volume 151 – 25th May, 1955 Gaming and Lotteries Bill, 1955—Second Stage (Resumed). Available online at <http://historicaldebates.oireachtas.ie/>

38 Section 13(2) of the 1956 Act states: “For the purpose of this section the administrative area of the council of a county shall not include any borough, urban district or town.”

39 The Gaming and Lotteries Act 1956, Part I, Section 2. Available online at http://www.irishstatutebook.ie/1956_2.html

40 A total of 114 local authorities made up of 29 counties, 5 cities, 5 boroughs and 75 towns.

41 The Report of the Interdepartmental Group notes that the 1956 Act gives a role to local authorities in relation to the legality of gaming and enables them to make choices for the people they represent, but the Act does not specify whether the exercise by the local authorities of these powers is to have regard to the wider issue of the morality of gaming, the suitability of the local authority area or parts thereof for the carrying on of gaming or a combination of both of the above (see 4.2 of *Review of the Gaming and Lotteries Acts 1956-86 (2000): Report of the Interdepartmental Group*).

42 The Gaming and Lotteries Act 1956, section 15. Available online at http://www.irishstatutebook.ie/1956_2.html

43 The Committee understands that the grant of a licence is typically for one year as per section 15(5) of the Gaming and Lotteries Act 1955. Available online at http://www.irishstatutebook.ie/1956_2.html

Trades Association and a former Mayor of Wexford with extensive experience as a member of various local authorities.⁴⁴ During his oral contribution to the Committee he spoke in favour of removing the local authority involvement in gaming as he believed that this involvement placed unreasonable pressure on other members to vote for that motion of rescission for the reason that it is not politically beneficial to speak out in favour of gaming. He stated that, in his view, it is inappropriate to burden local authorities with that function when it does not apply to betting offices or public houses; that it is capable of being exploited by vocal and time-rich persons; and that this is not in the public good. He stated that, he believed, from his experience, that many local authority members would welcome gaming being regulated centrally by the Oireachtas without a local authority involvement.

2.5 Observations by the Casino Committee

2.5.1 Suitability of Current Legislative Arrangements

The 1996⁴⁵ and 2000⁴⁶ reports continue to have considerable relevance. The Casino Task Force Report, for example, noted the scale of investment likely to be required for a casino and raised a question as to the suitability of the current arrangements under the 1956 Act in relation to local authorities and District Court certification and subsequent licensing. Even if one takes the view that casinos of a smaller scale than envisaged in the 1996 Report might be established, the fact remains that casinos are a capital intensive business with high entry and operating costs. While the Casino Committee notes that the Interdepartmental Group Report (2000) recommended a continued role for local authorities, this recommendation was made in the absence of any consideration of the legalisation of casinos and in an entirely different context. The current provisions regarding local authority involvement and licensing, as set out in the 1956 Act do not, in the view of the Casino Committee, provide a suitable framework for the regulation of casinos.

The Casino Committee endorses the view expressed in the 2000 Report in relation to the requirement to bring forward new legislation to replace the current 1956 Act as well as the proposal to establish a new body to regulate the area. In regard to new legislation, the 2000 Report appeared to envisage legislation which was broadly enabling in nature and which had the capacity to facilitate ongoing developments in the industry without constantly requiring new primary legislation. It is the view of the Casino Committee that, given the nature of the industry, such an approach is essential if any gaming regulatory authority is to be effective.

2.5.2 Enforcement and Penalties

The Casino Committee also endorses the views expressed in the 2000 Report that proper enforcement and stringent penalties are essential.

Recommendation: The Committee recommends that enforcement should be a key function of any new regulatory body (An Garda Síochána should, of course, continue to have a secondary enforcement role as should the Revenue Commissioners in relation to taxation matters) and that this body should also have a prosecutorial role. Furthermore, there should be an express statutory basis for cooperation and the exchange of information between relevant agencies.

⁴⁴ Mr. Roche is the General Secretary of the Irish Amusement Trades Association and appeared before the Committee on Wednesday 18th October as part of a delegation from that Association.

⁴⁵ *The Report of the Casino Task Force 1996 - (Unpublished)*.

⁴⁶ *Review of the Gaming and Lotteries Acts 1956-86 2000 Report of the Interdepartmental Group* (published by the Stationery Office).

2.5.3 Regulatory Consistency - The Establishment of a New Body

Both the 1996 and 2000 Reports considered whether a new regulatory body might be appropriate in the context, either of casinos or existing amusement halls and funfairs. The latter Report actually recommended a new Gaming and Lotteries Authority to regulate amusement halls, funfairs and lotteries. The former Report suggested that a Gaming Board might be necessary to regulate the activity of casinos and that this might have a broader remit than simply casinos. Government policy requires the Committee to consider whether the regulatory structures it is proposing are consistent with other structures or if the objectives could be met by another body or in another way.⁴⁷

At present, Horse Racing Ireland (HRI) and the Irish Greyhound Board (Bord na gCon) operating under the aegis of the Department of Arts, Sport and Tourism, are responsible for matters relating to their respective industries, including the totaliser (“Tote”). Lotteries, falling within the ambit of the 1956 Act are, depending on their nature, the responsibility of various parties, including An Garda Síochána and the District Courts with the responsible Department being the Department of Justice, Equality and Law Reform. The National Lottery is operated by An Post National Lottery Company under the auspices of the Department of Finance. Funfairs and amusement halls (now the responsibility of local authorities, the Courts, the Revenue Commissioners and An Garda Síochána) or alternatively, casinos and gaming establishments, might yet be the responsibility of another body, under the auspices of the Department of Justice, Equality and Law Reform.

Recommendation: The Committee recommends that, having regard to the possible establishment of a new gaming regulatory authority, consideration be given to a review of the role of the various bodies and Departments with responsibilities in the area of gaming and gambling with a view to ensuring coherent public policy.

2.5.4 Regulatory Consistency – Tactical and Strategic Coherence

The 2000 Report recommended that “[a] non-statutory mechanism should be put in place to facilitate ongoing consultation between the various agencies involved in the control and regulation of all forms of gambling in Ireland. The primary objective should be to provide for an integrated and balanced approach to the various social policy considerations which arise in the gambling area.”⁴⁸

It is important to understand the social impact of future developments in technology and gaming products. The social policy aspect is critical because developments in technologies and products can have potentially significant negative social impacts unless properly understood and appropriately regulated. However, because technology is facilitating an increasing convergence of differing gambling products available to consumers (including children) via an increasing array of platforms, any such mechanism will need to have a much broader remit than social policy and will have to consider the implications of the approval of remote gambling technologies.

It might be noted that, in some jurisdictions there is a trend towards reducing the number of agencies involved in this area in order to ensure greater coherence in national policies. The Gambling Commission in Great Britain is a recent example as it has responsibility for casinos, bingo, gaming machines and lotteries (with the exception of the National Lottery) and, from 2007, the regulation of betting (with the exception of spread betting) and remote gambling, as well as helping to protect children and vulnerable people.

The Casino Committee considers that, given the continued convergence in gambling products and platforms as well as the transformative role of technology such as the Internet, there is a need to ensure tactical and strategic coherence between the various statutory national agencies in this area.

The overall objective of ensuring public policy coherence could possibly be achieved by establishing a cross-departmental, non-statutory mechanism along the lines suggested in the 2000 Report. However, it could also be done by establishing a new Agency, with input from relevant State Offices, with responsibility for the regulation of all gambling in the State (with the possible exception of the National Lottery as this is frequently exempted in other States where there is a single gambling regulator, including Great Britain). While this is not a matter which falls within the terms of reference of the

47 Government White Paper: ‘Regulating Better’. Published by the Stationery Office, January 2004 [PRN 1395]. Also see ‘RIA Guidelines: How to conduct a Regulatory Impact Analysis’; Department of the Taoiseach.

48 Section 7.18 Review of the Gaming and Lotteries Acts 1956-86, 2000: Report of the Interdepartmental Group. pg. 53.

Casino Committee the observation is included for the purpose of ensuring regulatory consistency.

2.5.5 The Role of Local Authorities

26

(a) *Inflexible Regulation*

The powers granted to local authorities under the 1956 Act are an inflexible form of regulation. Gaming can be allowed or not allowed. Gaming can be limited to a particular local authority area or available throughout the local authority area. Moreover, the local authority, having permitted gaming, can change their mind and rescind the resolution permitting gaming.

(b) *Ineffective Regulation under the 1956 Act*

Of particular interest is that where a local authority has allowed gaming, with operators subsequently granted a certificate through the Courts and a licence from the Revenue Commissioners, there is no mechanism under the 1956 Act to ensure effective on-going regulation (e.g. stake and prize limits, payout rates etc.).

In terms of the techniques and practices available to modern regulatory systems in this area, especially in other jurisdictions, the provisions of the 1956 Act are seriously deficient. Where gaming (leaving aside entirely the question of casinos) is authorised under the 1956 Act, there is no real facility to effectively protect the interests of the consumer or the broader public on an ongoing basis.⁴⁹ Hence, where problems have arisen, or are perceived to have arisen, the response of local authorities has frequently been to rescind the resolution permitting gaming.

Given the limited options available to local authorities and the absence of credible regulatory or enforcement mechanisms, it is not surprising that local authorities exercise the rescission option or indeed exercise great caution in permitting any form of gaming in their areas. If local authorities permit gaming and there are subsequent problems, or perceived problems, they are held politically accountable even though they have no enforcement or regulatory powers. The safer option is therefore to never adopt a resolution permitting gaming or to exercise the 'nuclear option' of rescission when 'problems' arise, even if those 'problems' are illusory or potentially resolvable if appropriate modern regulatory structures were in place. Given these incentives, it might be said that the present system is set up to fail. This failure is largely due to the ineffective nature of regulation and enforcement under the 1956 Act. This form of 'regulation' does not meet the interests of the consumer, the public or the operator.

(c) *Ireland has Changed*

The 1956 Act has now been in force for fifty years and a great deal has changed in that period. In social and economic terms Ireland is now a vastly different society compared to the Ireland of the 1950s. Ireland is now one of the wealthiest and economically open countries in the world, is increasingly heterogeneous as well as socially and economically liberal.

(d) *A Disproportionate and Inefficient 'Patchwork Quilt'*

As a consequence of the powers granted to 114 local authorities, both large and small, throughout the State, the State now has a 'patchwork quilt' of licensed funfairs and amusement halls which does not bear any necessary relationship to the demand for such services from the public and which operate, even where licensed, in fear of a rescission resolution from the local authority. By way of contrast with other services which might be expected to have a similar 'moral' tag, such as betting offices and public houses for example, this seems peculiarly disproportionate and economically inefficient.

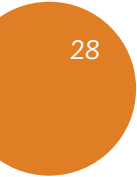
The philosophy underpinning this approach seems, upon examination and notwithstanding the many legitimate issues of public policy concern which attach to gambling in all forms, both dated and increasingly ineffective. The result, in recent times, has been a growth in unlicensed and unregulated gaming which is not desirable on public policy grounds. This growth would suggest that there is a public demand for such services. This is not surprising given the demand for other gambling services and products in Ireland.⁵⁰ In addition, in every local authority area, members of the public now access the Internet for gaming and gambling purposes.

⁴⁹ A District Court may attach conditions to a certificate limiting the hours during which gaming may be carried on, restricting the kinds of gaming, limiting stakes and prizes and prohibiting or restricting gaming by persons under specified ages etc.. The local authority is a notice party to the Court proceedings and the applicant must also publish a notice in a newspaper circulating in the local community at least fourteen days in advance of a Court hearing. The local authority, the local Garda Superintendent and any other person who appears to the Court to be interested may adduce evidence as regards the application. There is also provision for an appeal to the Circuit Court [sections 15 to 17 of the 1956 Gaming and Lotteries Act.

⁵⁰ By way of illustration betting duty in Ireland increased from €38.4 million in 2003 to €45.8 million in 2005.

(e) *The Alternative*

In the view of the Casino Committee, there is a better way than that provided for in the 1956 Act of allowing the public to engage in gaming while protecting the interests of the person so engaged as well as the overall public good. This is outlined in Chapter Four of this Report. It might also be added that proper regulation would protect the interests of the legitimate operator who, finally, might have a stable framework within which their business could be developed – in particular, removing the uncertainty now associated with investment decisions, as well as establishing a legitimate framework within which the not insignificant costs likely to be associated with proper and strict regulation can be met.



Chapter Three: An Overview of International Regulatory Practices

3.1 Gaming Regulatory Structures in Europe: One Size Fits All?

3.1.1 Across Europe, the assortment of mechanisms by which gaming is regulated is hugely diverse. This mosaic of heterogeneous regulatory systems are policy and market specific to each jurisdiction and provide us with a selection of contrasting options from which to draw in establishing policy and industry regulatory parameters appropriate to the Irish context. Evident throughout the Committee's exploration of gaming regulatory models across Europe and elsewhere is that there is no one best way to achieve regulatory controls in gaming. When exploring gaming regulations of both federal and unitary systems of governance in common and civil law jurisdictions across the globe the case remains the same. Simply put, best practice in gaming regulation is realised only when full deliberation is given to jurisdiction specific social, economic, political, market and cultural themes of analysis. All European Union (EU) countries are strong advocates of a nationally regulated market based on a licensing system, strong control and social protection considerations. It is noteworthy that 23 out of the 25 EU Member States have their own set of regulatory standards for casinos and gaming, developed over time and best suited to its current political climate. To date, Ireland and Cyprus remain the only jurisdictions within the EU who do not provide for casinos in their form of regulation.

3.1.2 Gaming regulation, in constant flux, not least due to developments in remote gaming, remains to the fore for many policy makers across Europe. That said, each jurisdiction has chosen somewhat different solutions to these new sets of circumstances. Recent jurisdictional policy difficulties and developments in online gaming regulation are dealt with in Chapter Five of this Report. Suffice to say, while there is much to learn from what other jurisdictions have experienced in regulating gaming, remote and otherwise, it makes little sense to simply superimpose contrasting models into a jurisdiction without due deliberation to their overall objectives and operational heterogeneity.

3.1.3 A relatively recent study commissioned by the Netherlands Gaming Control Board explored the diversity of organisational structures within regulatory systems adopted in Europe.⁵¹ In so doing the authors designed a matrix classifying regulators according to their positioning/independence *vis-à-vis* government ministry and relative powers. A high degree of independence illustrated on the below matrix (Table One) means the regulatory authority is an independent administrative organisation. In a jurisdiction that is grouped among those with a low degree of independence the regulation is carried out by a department of a ministry or an inspectorate. Intermediate forms across the spectrum are regulatory bodies that operate independently, but whose policies and guiding principle can be influenced by the relevant ministries. The following Table One shows at a glance what the situation is in each country.⁵²

⁵¹ Wils, J and Oostdijk, A. (2005).

⁵² In the figure Switzerland and the Netherlands are mentioned twice. Given the major differences between the existing regulators in those countries a single mention was not sufficient.

Table One: Classification of Regulators According to Their Positioning and Powers⁵³

I N D E P E N D E N C E	High	Netherlands (2)	Switzerland (1)	United Kingdom Denmark Sweden Lithuania
			Finland	Italy Norway Latvia Belgium Malta
	Low	Estonia Switzerland (2) Spain Germany/North Rhine Westphalia Iceland	Poland	Portugal Hungary Croatia Slovenia Netherlands (1) France
		Few		Many
		POWERS		

It is worth pointing out that, obviously, the more independent the authority is from the relevant Minister the more essential clarity of purpose and political parameters become within their relationship. The independence of virtually every autonomous regulatory authority is guaranteed by law, generally laid down in the gaming legislation. However, this does not mean that the regulatory authority is to carry out its duty completely unsupervised. Rather, also built into many gaming regulatory frameworks is how, exactly, the gaming regulatory authority is to be monitored and audited according to identified codes of practice and policy consistency.

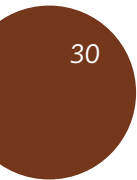
Perhaps not surprisingly there is a marked contrast also as to the size and scale of the various regulatory authorities. With such diversity of gaming regulatory systems it remains difficult to provide any meaningful comparison. At one end of the spectrum, some regulatory authorities can have as many as 100+ full-time employees while others have very few; have no separate budget and exist deep within the ministry, in some cases, with no separate office.⁵⁴ To a great extent, this spectrum of regulatory arrangements reflects considerably the degree of independence held by the regulatory authority in relation to the relevant Government Department.

3.1.4 The main benefits of having an independent regulator are:

- (a) The maintenance of a clear distinction in the allocation of responsibilities i.e. responsibilities for policy development, market supervision etc.;
- (b) The maintenance of a clear distinction of purpose i.e. who is responsible for policy and who is responsible for the supervision of the market;
- (c) The prevention of potential conflicts of interest;
- (d) The administration of a transparent system of authority;
- (e) The development of a flexible, 'best-in-practice' organisational structure of governance;
- (f) Minimal political influence from the Ministry provides organisational constancy for the regulator;
- (g) An independent regulator has a much better chance of creating a highly effective 'centre of excellence' type organisation with the requisite social, economic, legal and technical expertise available to respond immediately to what is a highly dynamic gaming market.

53 Wils, J and Oostdijk, A. (2005) pg. 3.

54 Wils, J and Oostdijk, A. (2005) pg. 6.



Referring once more to Wils and Oostdijk (2005), there are various context factors that could meaningfully provide reasons for this divergence in the organisation of gaming regulation; (i) the administrative-institutional setting (i.e. the way in which regulation is generally organised and managed by government); (ii) the policy context; (iii) the gaming market itself (i.e. size and revenue available etc.). Each is to be considered in the development of any context appropriate regulatory model.

3.1.5 Apart from the administrative positioning and organisation of the gaming regulatory authority there also exists a broad gamut of day-to-day activities, powers and instruments available to each authority. Often dependent again on the relationship as defined in the legislation between the regulatory authority and the Ministry, the parameters of influence held by the regulatory authority vary considerably across Europe. The below list of functions is by no means exhaustive, but it does provide an indication of gaming regulatory ‘reach’ of authorities.

Table Two: Instruments Available to Regulatory Authorities⁵⁵

Function/Instruments Available	Number	%
Administrative controls	24	86%
On-site inspections	19	68%
Financial controls	18	64%
Technical inspections	14	50%
On-line monitoring	9	32%
Other	10	36%
Total number of regulatory authorities surveyed	28	100%

Not all gaming authorities across Europe regulate the same gambling market sectors currently in operation. The seven main gambling market sectors generally identified are (i) casinos; (ii) “on-site” gaming machines i.e. gaming emporiums/arcades; (iii) “off-site” gaming machines i.e. pubs, restaurants etc.; (iv) remote/internet gaming (v) sports betting; (vi) bingo; and (vii) lotteries.

Many jurisdictions in Europe regulate separately for the varying forms of gambling such as casinos and “on-site” gaming machines requiring separate regulatory control to lottery and bingo. As activity in all forms, particularly, gaming machines and remote gaming, has increased dramatically, so too have regulatory efforts in the control of same. Sweden, for example, has only recently switched their licensing of slot-machines from local authorities to their Gaming Board.⁵⁶

3.1.6 By way of illustration, this Report will review how casinos and gaming machines (inside and outside casinos) are currently regulated elsewhere in Europe. An appropriate analogy which best represents the many tried and tested ways to regulate the gaming sector in Europe is that of a regulatory “mosaic”. Similar regulatory systems have proven to be more successful than others given different social, economic and political contexts. Prima facie, some appear extremely burdensome in legal detail and, consequently, difficult to manage. Some are very simple, but rigorous in demonstrating operational delivery of objectives. Again, the key goal is finding the right social, economic, political and cultural ‘fit’ appropriate to specific, historical and contemporary, jurisdiction contexts.

3.1.7 Recent observations on gaming in Europe have identified an aversion to the “American style” of casino gaming.⁵⁷ The existing casino market in Europe operators tend to be smaller, highly taxed, relatively invisible, more protected and less diversified than those in the United States. Gaming industries across Europe are often protected monopolies justified by good causes and social controls. Increasingly problematic, however, is the proliferation of convenience gaming i.e. “slot” machines in bars. Changes in the European competitive environment, aided by talks on EU harmonisation and changing patterns of capital mobility, have also significantly impacted on gaming policy development Europe-wide.

⁵⁵ Wils, J and Oostdijk, A. (2005) pg. 5.

⁵⁶ The Swedish Gaming Board at <http://www.lotteriinspektionen.se/>

⁵⁷ Eadington, W. (2005a)

3.1.8 According to the recent survey of gambling services in the internal market of the EU carried out by the Swiss Institute of Comparative Law, many EU Member States grant provincial monopoly status to selected casinos with geographic exclusivity granted for particular cities or towns (i.e. France, Italy, Germany, Portugal and Spain). Elsewhere, there is a restricted number of authorised licences (e.g. the Republic of Slovenia). In some Member States, only a single body is permitted to operate casinos, and that entity is wholly or largely owned by the Member State (i.e. Austria, the Netherlands, Finland and Sweden). In other Member States, ownership of the casinos is a mix of public sector and private sector entities (i.e. Republic of Slovenia, parts of Germany and Italy). Private sector ownership of casinos, can be found in Great Britain, Portugal, Spain, France, Malta, Hungary, Estonia, Luxembourg, Belgium, Latvia, Lithuania, the Czech Republic and Slovakia. There are at present no permitted casinos in Ireland and casinos only in that portion of Cyprus not controlled by EU law (Northern Cyprus).⁵⁸ Many Cypriots travel north across the border to visit casino facilities available to them there.

3.1.9 Due to the relatively low response rate (20%) to the primary research surveys sent out to EU Member States by the Swiss Institute of Comparative Law for the above study, a meaningful cross comparison, especially in economic terms, proves nigh impossible. There is very little standardised gaming data available across Europe. Authorities and other organisations in almost thirteen Member States failed to provide information that would have greatly benefited the Swiss study. A number of anomalies, of which this Report does not propose to deal with, beg the question as to how comprehensively the Report covers the subject. Problems of missing jurisdictional, sectoral, and systemic data obliged the research team carrying out the work on individual country-by-country national reports to consult a substantial spectrum of secondary sources for data initially unavailable upon request. As a result, several Member States and contributing agencies have taken issue with some components of the data provided for their country.⁵⁹ There remain many questions as to the reliability of certain comparisons made between Member States, particularly with issues around heterogeneous terminological use across States so leading to ambiguity regarding the concepts involved. One such example is the fact that throughout the report the terms '*gaming*' and '*gambling*' are used interchangeably even though only some forms of the former fit within the category of the latter. This again was due to the varying and inconsistent, categories of definition provided to the research team by the various Member States.

3.1.10 While there is little information regarding the regulatory agencies generally in the final draft of the Swiss Institute of Comparative Law study report, structurally speaking, the work did provide the Casino Committee with an invaluable set of contemporary sectoral definers or margins within which the Committee could begin to piece together options for gaming regulation and control. The following Table Three details those principles of gaming regulation adopted by each EU Member State as identified by the researchers at the Swiss Institute of Comparative Law in 2006.

⁵⁸ Swiss Institute of Comparative Law (2006).

⁵⁹ See Appendix of final publication of the Swiss Institute of Comparative Law (2006) Study of Gambling Services in the Internal Market of the European Union for detailed responses to work undertaken. Available online at http://ec.europa.eu/internal_market/services/docs/gambling/study6_en.pdf

Table Three a - Outline of Principle Regulatory Control across the European Union Austria-Italy

	Austria	Belgium	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy
Current number of casinos: Given that the definition, permissions granted, size and scale of casinos vary considerably across Europe, these figures are not to be used for comparison purposes. They merely provide an indication of casino activity	11 (plus 1 racino)	8	N/A	45	6	85	1 (plus 1 hotel/casino)	186	75	9	6	N/A	4
Unlawful to facilitate participation in foreign games of chance			Yes	Yes	Yes				Yes				
Severe restrictions on advertising of casino gaming		Yes				Yes							
Requirement for operator of any form of gaming to obtain a licence	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Licensed only issued by national or regional authorities - whether or not the operator complies with foreign gaming regulation is irrelevant	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes				
Specific requirement as to the type of legal entity entitled to operate a gaming activity	Yes		Yes	Yes	Yes	Yes	Yes - licensed only to non-profit organisations	Yes	Yes		Yes		
Operators offices must be registered within the state	Yes			Yes		Yes							
Restriction on accumulation of licences by individual licensees		Yes					Yes						
Numerus Clausus: where the number of casino licences is limited	Yes - 12	Yes - 9					Yes - 1		Yes - between 1 and 10 depending on region / land				Yes - 4
Numerus Clausus: where the number of gaming arcade licences is limited	Yes	Yes - 180 "gaming halls"							Yes				

Table Three a contd.	Austria	Belgium	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy
Only single operator licenced for casinos	Yes						Yes - controlled by the State						
State monopoly for games of chance	Yes				Yes	Yes	Yes		Yes	Yes	Yes		
Establishment of casinos prohibited			Yes									Yes	
Limited list of games permitted in casinos		Yes			Yes		Yes	Yes	Yes				
Casino licence limited in time: number of years	15	5			10	5 to 10	5	15 to 18	10				
Residence or domicile requirements of casino operators	Yes			Yes			Yes						
Casinos operated in specific types of towns or "gaming zones"								Yes	Yes				
Casino admission age restriction	18	21	N/A	18	18	21	18	18	Between 18 and 21 depending on the region	18	18	N/A	18
Prohibition of gaming machines outside casinos			Yes					Yes		Yes			
Prohibition of gaming machines in different types of premises							Yes - "casinos and gaming machines must be sited in a supervised space"						
Limited number of gaming machines per location	3 to 8	3 to 8			3 per restaurant with a permit to serve alcohol				3 in restaurants and 12 in gaming arcades				
Licensing requirements for gaming machine operators	Yes	Yes			Yes		Yes		Yes			Yes	Yes

Table Three b - Outline of Principle Regulatory Control across the European Union Latvia-Sweden plus Great Britain

	Latvia	Lithuania	Luxembourg	Malta	The Netherlands	Poland	Portugal	Slovakia	The Republic of Slovenia	Spain	Sweden	Great Britain
Current number of casinos: Given that the definition, permissions granted, size and scale of casinos vary considerably across Europe, these figures are not to be used for comparison purposes. They merely provide an indication of casino activity	44	16	1	4	14	31	8	7	15	32 approx.	4	N/A
Unlawful to facilitate participation in foreign games of chance					Yes			Yes			Yes	
Severe restrictions on advertising of casino gaming		Yes			Yes	Yes	Yes					
Requirement for operator of any form of gaming to obtain a licence	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes		
Licensed only issued by national or regional authorities - whether or not the operator complies with foreign gaming regulation is irrelevant	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Specific requirements as to the type of legal entity entitled to operate a gaming activity		Yes		Yes		Yes	Yes	Yes		Yes	Yes	
Operators offices must be registered within the State	Yes	Yes		Yes		Yes		Yes	Yes			
Restrictions on accumulation of licences by individual licensees					Yes							
Numerus Clausus: where the number of casino licences is limited					Yes - 14		Yes - 8 (2 more expected in 2006)		Yes - 15	Yes - set by each autonomous region	Yes - 6	Yes - 17 new casinos to be opened re. Gambling Act 2005
Numerus Clausus: where the number of gaming arcade licences is limited							Yes		Yes - 40 "game rooms"	Yes - set by each autonomous region e.g. 6057 gaming machines on the Balears		
Only single operator licenced for casinos					Yes						Yes - controlled by the State	

Table Three b contd.

	Latvia	Lithuania	Luxembourg	Malta	The Netherlands	Poland	Portugal	Slovakia	The Republic of Slovenia	Spain	Sweden	Great Britain
State monopoly for games of chance								Yes			Yes	
Establishment of casinos prohibited												
Limited list of games permitted in casinos			Yes		Yes		Yes			Yes	Yes	Yes
Casino licence limited in time: number of years			Yes - stipulated by authority	Yes - stipulated by authority								
Residence or domicile requirements of casino operators		Yes		Yes		Yes	Yes	Yes		Yes		
Casinos operated in specific types of towns or "gaming zones"			Yes			Yes	Yes					
Casino admission age restriction	18	18	18	18 (However, Maltese citizens must be at least 25)	18	18	18	18	18	18	20	18
Prohibition of gaming machines outside casinos	Yes (from 1/1/07)		Yes				Yes					
Prohibition of gaming machines in different types of premises	Yes	Yes			Yes - Prohibited in cafeterias, snack bars, community centres							
Limited number of gaming machines per location					Max. of 2 gaming machines in bars and restaurants. But more in amusement arcades							Yes (dependent on machine type)
Licensing requirements for gaming machine operators				Yes	Yes - (Operation of "slot" machines subject to a triple licensing scheme)						Yes	Yes

3.1.11 Contained in the appendices numbers 4 to 8 of this Report are outlines of various European States' casino gaming regulatory frameworks, administration, activities, instruments and powers. In order to illustrate the full spectrum of regulatory model options a case study on each framework type is provided. This typology of regulatory frameworks, drawing on much of the work undertaken by the Swiss Institute of Comparative Law, covers:

- (a) That which maintains State control with no capping of numbers of casino licences available (*Appendix No. 4 - Case Study: Denmark*);
- (b) That which provides regional concessions to casino operators with geographic exclusivity granted to particular cities, towns or "zones". (*Appendix No. 5 - Case Study: Portugal*);
- (c) That which limits the number of authorised casino licences. (*Appendix No. 6 - Case Study: The Republic of Slovenia*);
- (d) That which provides for a single entity permitted to operate casinos. (*Appendix No. 7 - Case Study: The Netherlands*);
- (e) That which facilitates a mix of public sector and private sector casino operators. (*Appendix No. 8 - Case Study: Germany*);
- (f) That which facilitates private sector ownership of casinos. (*See Section 3.5 below on Great Britain*).

3.1.12 Gaming regulation in Great Britain is the most recent being undertaken in Europe. Great Britain's Gambling Act 2005 does not come into full force until the end of 2007. As a result there has been much ongoing discussion during this period of transition with considerable debate as to the complexity and effectiveness of the Act.

3.2 Global Lessons on the Legalisation of Casino Gaming

3.2.1 The casino industry is probably the most regulated in the world. It is a booming sector, highly innovative and adaptable. In Ireland, it appears there is a burgeoning demand for all gaming products including casino-style table gaming operations, gaming machine arcades, mobile and remote/internet gaming etc.. Globally, the size, presence and stability of gaming industries have been influenced by the structure of laws, rights and regulations. Across the world there are wide variations in regulatory approaches as regards ownership structures, market configuration and tax policies.⁶⁰

3.2.2 According to Eadington of the Institute for the Study of Gambling and Commercial Gaming, Nevada, global principles of good gaming laws and legislation include:⁶¹

- (a) The establishment of regulatory and legal structures that are politically stable so creating a respected and stable set of gaming industries;
- (b) Finding an appropriate balance of how much gaming should be present in society;
- (c) Ensuring that the economic benefits generated are directed in a purposeful and socially acceptable manner;
- (d) The mitigation, in so far as is possible, of the unintended social consequences from gaming;
- (e) The minimisation of the ongoing role of political efforts to change the underlying rules of trade.

3.2.3 At this stage, even with careful study, analysis and deliberation specific to the Irish context, the precise form of regulation is difficult to anticipate as a wide range of factors need to be taken into account. Some of these factors may be peculiar to Ireland. While economic benefits from casinos and casino-style gaming are fairly straightforward, (e.g. potential tourism, regeneration etc.) there is much argument regarding economic and social costs.

3.3 Gaming Regulatory Structures Outside Europe

3.3.1 In general, casino operation trends in the United States tend to be much more consolidated and diversified than those in Europe. Compared to markets in most European States, most United States gaming markets have achieved a much greater degree of maturity and stability, with the possible exception of racinos and Californian Indian gaming where there are still several Indian gaming operations pushing for expansion via legalisation. The recent passing of the Internet Gambling Prohibition and Enforcement Act 2006 (H.R. 4411) in the United States outlawing the use of certain payment instruments, credit cards and fund transfers for unlawful internet gambling has stirred much

60 Eadington, W. (2005b)

61 Eadington, W. (2005b)

controversy.⁶² While the Government are usually an important revenue sharer in casino operations across the United States, often it is the private sector who remain the chief benefactor.

3.3.2 While it may not be immediately apparent, historically there have been many similarities between the casino sector in the United States and Europe. The chronological sequential shift in the nature of the industry in both jurisdictions is very similar. Both jurisdictions have demonstrated the same move from what was initially an illegal industry, moving then to legal but unacceptable status and then to legal and mainstream status.⁶³ Both jurisdictions initially established their casino industries isolated from population centres, but have, over time, located them in or near city centres. In both instances there has been the appropriation of models adopted in adjacent regions in the spread to new jurisdictions. Finally, although less so in European regions, the casino industry, in both cases, has operated as a tool for economic regeneration.

3.3.3 However, there also exists obvious differences between the casino industry in the United States and Europe, i.e. European casinos have tended to be more elitist (dress codes, ID membership checks) than relative egalitarian casino operations in the United States. Also, the tax regimes in Europe tend to be much higher e.g. top rates in Great Britain (40%) and Germany (80%+) Vs. Nevada (6%), Atlantic City (8%). Table Four below provides a comparative of regulatory models adopted worldwide.⁶⁴

⁶² This issue is covered more extensively in Chapter Five of this Report on remote gaming.

⁶³ Eadington, W. (2002).

⁶⁴ Adapted from Eadington, W. (2002).

Table Four: Comparative of Regulatory Models Adopted World-Wide

	The United States “Laissez Faire” Model	The “Urban” Model	The “Continental European” Model	The “Old British” Model	The “New British” Model
Ownership & Tax Rates	Private ownership – Reflects other industry. Low tax rates	Private ownership (United States) or Government ownership (Canada); tax rates moderate	Private ownership or Government ownership; tax rates high to very high	Private ownership; tax rates moderate (recent hikes)	Private ownership; tax rates suggested for 2007 quite high depending on degree of operation
Licences & Market Environment	Unlimited licences – market determined	Limited licensing or monopoly situation; constrained competitive environment	Regional monopoly authorisation; very constrained competitive environment	Competitive environment, but barriers to entry on “unstimulated demand” grounds	Competitive environment; limited barriers to entry; minimum size
Geographic Constraints	Few geographic constraints	Specified geographic constraints	Specified geographic constraints; limited presence; single purpose casino facilities	Arbitrary geographic constraints (permitted areas); constrained single purpose casino facilities (tables only)	Virtually no geographic constraints; evolving multi-dimensional casino complexes
Regulation	Limited, focussed regulation e.g. investigate heavily at the point of licensing; few constraints on permitted games and devices	Moderate to intrusive regulation	Moderate to intrusive regulation	Limited but extremely severe regulation	Limited regulation
Economic Rents		Economic rents can be substantial; captured by the city and state (province)	Economic rents are moderate but captured via high tax rates	Economic rents are moderate; split between industry and Government via moderate tax rates	Economic rents will be bid away; implicit Government partnership dependent on tax rates
Competition & Risk	Highly competitive – capital at risk	Substantial external political risk	Gaming device competition external to casinos	Gaming device competition external to casinos	Competition from extensive gaming devices outside of casinos
Owner Operators	Private ownership	Owner/operators or management contract (based on % of gross & net)	Owner/operators typical	Owner/operators typical	Owner/operators and corporations will be typical

3.4 Gaming in the United States

3.4.1 Overall, in 2005, the United States commercial casino industry continued its recent trend of significant growth. Today, eleven States allow commercial casinos; six have riverboat or dockside casinos; and twenty-eight States have within their borders casinos that are owned and operated by American Indian Tribes.⁶⁵ Nine States have racinos - Delaware, Iowa, Louisiana, Maine, New Mexico, New York, Oklahoma, Rhode Island and West Virginia.⁶⁶ All “slots” are currently prohibited in ten States – Alabama, Arkansas, Connecticut, Hawaii, Indiana, Nebraska, New Mexico, South Carolina, Tennessee and Wisconsin. Thirty years ago, lotteries were found in only seven States; now forty States have lotteries. Forty-one States have horse racing, dog racing or jai-alai.⁶⁷

The eleven States that allow commercial casinos are: Colorado, Illinois, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, Nevada⁶⁸, New Jersey⁶⁹ and South Dakota. All have State-legalised commercial casino gambling and have gaming commissions which regulate casino gaming activities. In 2005, the 455 commercial casinos in the eleven States generated more than US\$30 billion in gross gaming revenue for the first time, almost a five percent increase over 2004 totals. Also operating are 406 tribal casinos across twenty-eight States. There are approximately 10,247 electronic gaming machines.⁷⁰ Overall, commercial casinos employed more than 354,000 people and provided wages totalling US\$12.6 billion in 2005. The industry also continued to be a major contributor to State and local economies, distributing more than US\$4.9 billion in direct gaming taxes, a more than 5% increase over 2004 contributions.⁷¹ All but one State had an increase in gross gaming revenues in 2005, with Nevada (+10.3 %) exhibiting the most significant growth. Also of note, 2005 marked the first time gross gaming revenues in Nevada surpassed US\$11 billion and in New Jersey surpassed US\$5 billion.

3.4.2 Regulation of Gaming in the United States

Where gaming is legal in the United States it is very extensively regulated. Gaming regulation has always been considered the province of State and local government. Historically, gaming has been frowned upon and generally prohibited. Nevada, of course, has been the exception. Over the last 35 years many States have liberalised their rules on gaming. In the 1970s, New Jersey legalised gambling. Over the same period, Indian Tribes began to operate casinos on their reservations. Because the reservations are governed pursuant to treaties with the Federal Government, State gambling laws do not apply. Indian casinos have thrived and have had to expand to meet consumer demand. Some have argued that this has created pressure on State lawmakers to open the casino business to everyone.

3.4.3 Gaming Machines in the United States

In the United States, the public and private availability of gaming machines (GMs) is highly regulated by State governments. Many States have established gaming control boards to regulate the possession and use of GMs. Nevada is the only State that has no significant restrictions against GMs both for public and private use. In New Jersey, GMs are only allowed in hotel-casinos operated in Atlantic City. Several States (Illinois, Indiana, Iowa, Louisiana, Mississippi and Missouri) allow GMs (as well as any casino-style gambling) only on licensed riverboats or permanently anchored barges. Delaware allows GMs at three horse tracks and they are regulated by the State lottery commission.⁷²

As there is no federal law governing GMs, classes of GM may vary from State to State.

Some States have restrictions on the type (called “Class”) of GMs that can be used in a casino or other gaming area. *Class III* (or “traditional”) GMs operate independently and a player’s chance of winning any payout is the same with every play. *Class III* GMs are most often seen in Nevada or Atlantic City and are sometimes referred to as “Vegas-style slots”.

Class II GMs (also known as ‘Video Lottery Terminals’ or ‘VLTs’) are connected to a centralised computer system that determines the outcome of each wager. In this way, *Class II* GMs mimic scratch-off lottery tickets in that each machine has an equal chance of winning a series of limited prizes. Either class of GM may or may not have a player skill element.

65 American Gaming Association (2006).

66 Racetrack casinos in Florida and Pennsylvania are legal but not yet operational.

67 A Basque or Spanish game played in a court, similar to hand-ball but played with a ball and wickerwork glove.

68 See Appendix No. 10 for case study on Gaming Regulation in Nevada.

69 See Appendix No. 11 for case study on Gaming Regulation in New Jersey.

70 American Gaming Association (2006).

71 American Gaming Association (2006).

72 American Gaming Association (2006).

Some Class II game characteristics:

- (a) The player is playing against other players and competing for a common prize.
- (b) There is certain to be a winner in each game. The game continues until there is a winner.
- (c) In a given set there are a certain number of wins and losses. Once a certain combination has happened it cannot happen again until a new batch is initiated. One game is dependent on previous games.
- (d) The player must be an active participant. They must recognise events as they occur and must recognise when they have won and announce their winning e.g. Bingo.
- (e) All players play from the same set of numbers as they are announced.

Some Class III game characteristics:

- (a) The player is playing against the house.
- (b) There is a very real possibility that the player may lose the game.
- (c) Each game is independent of previous games. Any possible outcome can occur in any game.
- (d) Wins are announced automatically.

In general a game must have all characteristics of a Class II game to be a Class II game. Any characteristic of a Class III game makes it a Class III game. Generally, the casino pays a fee to the State for each Class III game and can only purchase so many Class III licences. Often, there is no such restriction for Class II games. Class II games are not so nearly regulated by the State.⁷³

3.5 Gaming in Great Britain

3.5.1 There are obvious benefits to looking to our nearest neighbours in exploring gaming regulatory models. The gaming sector in Great Britain, compared to that of Ireland, is a relatively mature industry having undergone a myriad of industry and public policy developments. It has been said that their approach to gaming is at least more evolutionary than revolutionary.

3.5.2 Taking over the role previously occupied by the Gaming Board for Great Britain, the Gambling Commission was set up under the Gambling Act 2005. Its new responsibilities and powers are to be taken on in stages and, it is intended, will be fully operational by the end of 2007. The Gambling Commission was established as a new national regulator for all commercial gambling including casinos, bingo, GMs and lotteries. The Commission is not responsible for regulating spread betting or the National Lottery which are the responsibility of the Financial Services Authority and the National Lottery Commission, respectively.

3.5.3 In addition, from 2007 the Gambling Commission will have responsibility for the regulation of betting (for example on horseracing, football or other sporting events), pool betting and remote gambling (for example by mobile phone, interactive TV or web-based). This is of particular relevance when one considers the changing landscape of the Irish context and gambling market. Ongoing published consultation on the part of Great Britain's Gambling Commission with the gaming and betting sectors in Great Britain in this process of change has presented the Casino Committee with much to think about.

3.5.4 The Gambling Commission acts as a non-departmental public body, sponsored by the Department for Culture, Media and Sport which operates at arm's length from government offering independent advice, at both a local and central government level, on all issues related to gambling. It is formally tasked with advising the Secretary of State on the incidence and nature of gambling and its impact, and it is also responsible for advising licensing authorities on how they exercise their functions under the Gambling Act 2005. Its work is funded predominantly by licence fees from the gambling industry.

⁷³ http://en.wikipedia.org/wiki/Slot_machine

3.5.5 Stated throughout the Gambling Commission's literature and policy statements are three primary objectives in regulating these activities. They are:

- Keeping out crime;
- Ensuring fair and open gambling; and
- Protection of children and the vulnerable.

The Gambling Act 2005 authorises the Gambling Commission to:⁷⁴

- (a) Issue operating licences;
- (b) Issue personal licences, replacing the current certificates of approval;
- (c) Specify general and specific licence conditions;
- (d) Issue codes of practice;
- (e) Monitor licence holders to ensure compliance with licences;
- (f) Investigate and prosecute illegal gambling and other offences;
- (g) Issue guidance to licensing authorities on their functions, including the issuing of premises licences;
- (h) Advise the Secretary of State for Culture, Media and Sport on gambling matters.

3.5.6 Licensing, Compliance and Enforcement in Great Britain

From 2007, the Gambling Commission will issue new **operating licences** to organisations and individuals who are providing facilities for gambling and **personal licences** to certain individuals working in the gambling industry. The Commission specifies some of the conditions under which these licences are granted, and also issues **codes of practice** for the provision, management and operation of gambling facilities. For example, for each operating licence, at least one person must hold a personal licence for a specified management office. In addition, the Commission will specify the persons who must hold a licence if they are to carry out a particular role. Only people who hold or have applied for an operating licence from the Commission may apply to a licensing authority for a **premises licence**.

3.5.7 The Commission has legal powers to strictly monitor licence holders and can levy fines or revoke licences. It can also investigate and prosecute illegal gambling under the Gambling Act 2005.⁷⁵

3.5.8 There are currently 141 casinos operating in Britain. By United States standards they are relatively small, and, previous to the Gambling Act 2005, could only be located in 53 certain 'permitted areas'.⁷⁶ Like Spain, the Republic of Slovenia, the Netherlands and Sweden, Great Britain will now maintain a numerus clausus (closed/limited number of licences available) for casinos, but not for gaming arcades. The Gambling Act 2005 allows for seventeen more casinos of three types: one "regional casino", eight "large" and eight "small".

- (a) "Small casinos" must offer at least 500 square metres of table gaming space and at least 250 square metres of additional, non-gambling space for the use of customers. They will also be permitted to offer betting services⁷⁷ and up to 80 category B1 GMs.
- (b) "Large casinos" must offer at least 1,000 square metres of table gaming space and at least 500 square metres of additional, non-gambling space for the use of customers. They will also be permitted to offer betting and bingo services and up to 150 category B1 GMs.⁷⁸
- (c) "Regional casinos" must offer at least 1,000 square metres of table gaming space, at least 2,500 square metres of additional gambling floor space and at least 1,500 square metres of additional, non-gambling space for the use of customers. They will also be permitted to offer betting and bingo services and an exponentially greater number of gambling machines, by reason of which they are popularly referred to as "super casinos". Their official denomination as "regional casinos" refers to the policy of the British Government to require applicants for licences to operate such casinos to propose a large number of leisure and cultural activities for both local residents and visitors, in addition to gambling services, and to formulate a strategy for supporting the macro-economic regeneration of the disadvantaged areas in which they are expected to be located. It will be able to offer casino games, bingo and/or betting and up to 1,250 Category A (unlimited

74 <http://www.gamblingcommission.gov.uk/>

75 <http://www.gamblingcommission.gov.uk/>

76 See Great Britain's Gambling Act 1968.

77 The Great Britain's Gambling Commission is empowered to regulate all gambling including betting.

78 See Appendix No. 9 for full chart on gaming machine types and grades.

jackpot) and category B1 GMs.⁷⁹

All will be regulated by the Gambling Commission.

3.5.9 The Role of Licensing Authorities in Great Britain

Under the 2005 Act, the licensing authorities in England and Wales have been given the new role of issuing premises licences for casinos and monitoring those licences.⁸⁰ In Scotland the licensing boards have become licensing authorities and will continue to have responsibilities for granting permissions for casinos in the form of premises licences. In exercising their functions generally under the 2005 Act, licensing authorities must have regard to the guidance issued by the Gambling Commission. Authorities will have similar regulatory powers to the Commission with respect to their licensees, including the power to impose conditions and to review licences, however, they will not be able to impose financial penalties.

3.5.10 The Gambling Act 2005 gives licensing authorities a number of important regulatory functions in relation to gambling. Their main functions are to:⁸¹

- (a) Licence premises for gambling activities;
- (b) Consider notices given for the temporary use of premises for gambling;
- (c) Grant permits for gaming and gaming machines in clubs and miners' welfare institutes;
- (d) Regulate gaming and gaming machines in alcohol licensed premises;
- (e) Grant permits to family entertainment centres for the use of certain lower stake gaming machines;
- (f) Grant permits for prize gaming;
- (g) Consider occasional use notices for betting at tracks; and register small societies' lotteries.

3.5.11 Licensing authorities have an obligation to provide information to the Gambling Commission, including details of licences, permits and registrations issued. In addition, licensing authorities are required to prepare, every three years, a **statement of the principles** which they propose to apply when exercising their functions. They must publish the statement. The statement can be re-evaluated and then re-published during the three-year period in which it has effect. In preparing the statement, licensing authorities must follow the procedure set out in the 2005 Act.

3.5.12 Key points under Great Britain's Gambling Act 2005 for the regulation of casinos include:⁸²

(a) *Protecting children and vulnerable people*

Adherence to strict age restrictions; publishing of policies and procedures for promoting socially responsible gambling; training employees to identify those experiencing problem gambling; provision of customer facilities for self-exclusion; alcohol must not be used as an inducement to encourage people to gamble; compliance with the exacting advertising codes of practice; refusal of credit; demonstration of robust procedures to prevent underage gambling.

(b) *Making sure casino gaming is fair and open*

Provision of full display of the rules of games, odds or house edge, average return to the player and dispute and complaints procedures; staff tips from customers are forbidden; all records of complaints and disputes are to be kept and provided to the Gambling Commission quarterly and on request.

(c) *Keeping crime out of casinos*

All key staff will have to be licensed by the Commission thus ensuring that gambling operations are in the hands of those 'fit and proper', suitable and competent to conduct them; demonstration of procedures to help in the fight against money laundering; casino operators must give the Commission full and unrestricted access to gambling premises and provide any information it requires about

⁷⁹ <http://www.gamblingcommission.gov.uk>

⁸⁰ Local government is administered by either single tier or two tier local authorities in various parts of England. The single tier authorities are the Unitary Authority, the metropolitan district and the London borough, largely in the major urban areas. The two tier authorities elsewhere are the county and the local authority district. There are single tiers Unitary Authorities throughout Wales. For the purposes of the Gambling Act 2005 the following are licensing authorities - (a) in relation to England (i) a district council, (ii) a county council for a county in which there are no district councils, (iii) a London borough council, (iv) the Common Council of the City of London and (v) the Council of the Isles of Scilly; (b) in relation to Wales (i) a county council, and (ii) a county borough council; and (c) in relation to Scotland, a licensing board constituted under section 1 of the Licensing (Scotland) Act 1976 (c. 66). Compared to the 114 local authorities in the Republic of Ireland, the Gambling Commission in the UK have 411 licensing authorities listed. The population of England and Wales combined is approximately 59 million. (Source: England and Wales Census 2001).

⁸¹ <http://www.gamblingcommission.gov.uk>

⁸² <http://www.gamblingcommission.gov.uk>

gambling facilities and activities.

(d) *Financial robustness*

Provision of evidence of adequate financing and satisfactory arrangements for control of cash and credit; all operators must ensure that customers' funds are legally ring-fenced and available for immediate withdrawal.

3.5.13 Gaming Machines in Great Britain

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The Gambling Act 2005 provides for the Secretary of State to make regulations to define four classes of gaming machine (GM): categories A, B, C and D, with category B further divided into sub-categories 1 to 4.⁸³ The regulations define the classes according to the maximum amount that can be paid for playing the machine and the maximum prize it can deliver. The regulations may also define the classes according to the nature of the gambling for which the machine may be used and the premises where a machine may be used.

Table Five below outlines the current proposals for the different categories with the maximum stakes and prizes that apply.⁸⁴

Table Five: Categories of Gaming Machine Maximum Stakes and Prizes in Great Britain

Category of Machine	Maximum Stake	Maximum Prize	Locations / Description	Max. # Per Premises
A	Unlimited	Unlimited	Regional casinos	1250
B1	£2	£4,000	All casinos	80 in small casinos; 150 in large casinos
B2	£100 per game; £15 per chip	£500	As above plus premises licensed for betting (FOBTs)	4
B3	£1	£500	As above plus bingo clubs and adult gaming centres	4
B4	£1	£250	As above plus registered clubs and miners' welfare institutes	3
C	50p	£25	As above plus premises licensed to serve alcohol (e.g. AWP)	2, but may apply for more to local authority
D	10p or 30p when non-monetary prize	£5 cash or £8 non-monetary prize	As above plus family entertainment centres and fairs	

83 See Appendix No. 9 – Categories of gaming machines and summary of all provisions related to Great Britain's Gambling Act 2005.

84 <http://www.gamblingcommission.gov.uk>

3.5.14 The Gambling Act 2005 specifies that “*category A gaming machines*” may only be operated in a “*regional casino*”, which may operate twenty five times as many machines as the number of gaming tables which it operates, but in no case more than 1,250 machines.

3.5.15 The British Government’s published intentions as to the GM policy which will be implemented before the end of 2007, defining the various categories and sub-categories of permitted gambling machines, state that “*category B1 gaming machines*” may be operated only in casinos. Large and small casinos may operate only five times and two times as many of such machines as the number of gaming tables which they respectively operate, but in no case more than 150 or 80 machines respectively.

3.5.16 Gaming Age Restrictions in Great Britain

There is a minimum age of 18 for all players for all categories A, B and C machines. There is no minimum age for players of category D machines, however, the Secretary of State has a reserve power to set a minimum age for playing category D machines with an associated power to exempt certain machines like cranes and penny pushers. The holder of a permit or premises licence will have to ensure that s/he complies with the codes of practice issued by the Commission on the location of and access to such machines by children and young persons and their separation from category C and B machines where those are also located on the same premises.

3.6 Gaming in Australia⁸⁵

3.6.1 Australia’s casino industry has a much shorter history than most other forms of gambling. Since the first legal casino opened its doors for business in Hobart (1973), three others followed in Launceston, Alice Springs and Darwin between 1979 and 1982. In the early 1980s four more established businesses in Surfers Paradise, Townsville, Perth and Adelaide. In general, the trend to larger, more elaborate casino projects in the 1980s was associated with a greater emphasis by governments on the perceived stimulus a casino would give to regional tourism, its potential contribution to direct revenue and as a visible symbol of State progress.⁸⁶ This signified a transition from the restrained approach of the British legacy which had shaped the initial stages of casino development, to more overtly commercial American strategies and more comprehensive regulation. States vied with each other to offer bigger, more lavish casinos, calling for proposals from competing corporations able to offer the financial resources, operating expertise and marketing efforts to attract large numbers of gamblers, especially affluent tourists from the United States and Asia. The result was that by the late 1990s Australian casinos had moved to a more expanded and unstable stage of development. In recent years, Australian governments have increasingly welcomed the involvement of large corporations in Australian gaming, thereby moving towards the privatisation of gaming. A feature of the move into larger corporate developments has been the emergence of publicly traded casino trusts trading on national share markets.⁸⁷

3.6.2 Along with social, industry and market trends, however, the character and structure of Australian gaming has been shaped by the variable nature of the federal system and State differences. In each State a complex matrix of events provided the conditions for economic and social change and for legalised gaming to address these trends. Responsibility for the control of legal and illegal gaming is primarily a State government responsibility. Through the policy process, each government observed the experience and responses of other jurisdictions and developed policies to suit their own needs and aspirations. The practical implementation and administration of much of Australia’s gaming legislation and policies is left up to numerous ‘semi-autonomous’ statutory bodies - boards, commissions, tribunals and committees. Some have argued that the result has been the emergence of a haphazard, unwieldy semi-government structure that makes it difficult to ensure effective parliamentary supervision.

3.6.3 Australian Gaming Industry Scale and Scope

All Australian casinos are regional monopolies and most are owned and operated by Australian companies. Australia’s casino industry consists of thirteen casinos located in capital cities and major regional areas. Most States and territories have one casino. However, Queensland has four and Tasmania and the Northern Territory have two. While gambling is the major source of revenue for casinos, they also offer a range of other facilities including international standard accommodation, theatres, sporting facilities, concert and exhibition venues and a range of food and beverage outlets.

⁸⁵ See Appendix No. 12 for Gaming Regulation Case Studies for both Queensland and Western Australia.

⁸⁶ Millen, J. (1998)

⁸⁷ Australian Casino Association (1999)

Table Six: Current Regulation of Australian Casinos ⁸⁸

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Australian Capital Territory	Northern Territory
Minister for Gaming: licences casino. Dept. of Treasury and Finance: policy and legislation. Victorian Casino and Gaming Authority (VCGA): licences key personnel; technical standards; monitors and controls casino gaming; surveillance; policy advice; research.	Minister for Gaming & Racing: licences casino. Office of Gaming and Racing: policy and legislation. Casino Control Authority (CCA): controls and monitors casino; licences key personnel. Director of Casino Surveillance (DCS): regulates casino operations; reports to CCA and Minister.	Treasurer licences casinos. Queensland Office of Gaming Regulation (QOGR): policy and legislation regulation; surveillance.	Treasurer controls gaming. Dept. of Treasury and Finance policy and legislation regulation. Gaming Supervisory Authority (GSA): supervision and regulation of casino; supervision of LGC. Liquor and Gaming Commissioner (LGC): regulation of casino operations; licensing key personnel; approval of equipment and technical standards; collection of revenue	Minister for Racing & Gaming: licensing and control of casino. Office of Racing, Gaming & Liquor (ORGL): policy and legislation surveillance and regulation. Gaming Commission of WA: regulates casino.	Treasurer control of gaming. Dept. of Treasury and Finance: policy and legislation regulation. Tasmanian Gaming Commission (TGC): regulation and control of casino gaming. Reports to Minister.	Casino Surveillance Authority monitors and regulates casino operations.	Department of Gaming and Racing controls and regulates casinos.

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3.7 Gaming in New Zealand

3.7.1 The Gambling Act 2003 repeals the Casino Control Act 1990 and the Gaming and Lotteries Act 1977 and integrates them into a single Act. Racing continues to be administered under the Racing Act 2003 (with some exceptions, such as gaming machine operations in Totalisation Agency Boards (TABs) and racing clubs). Previously, the original Casino Control Authority (disestablished since June 2004) had played an important role in the establishment of casinos and the development of the regulatory procedures and operating standards. Its residual functions were integrated into the functions of the Department of Internal Affairs and the Gambling Commission.

3.7.2 Several regulatory agencies are responsible for different aspects of the legislation. The primary agencies are:

- (a) Department of Internal Affairs
- (b) The Gambling Commission
- (c) Ministry of Health
- (d) Inland Revenue Department

88 Australian Casino Association (1999)

3.7.3 Department of Internal Affairs (DoIA)

Responsibilities

Administration of gambling licensing, regulation and compliance.

The mandate of the Department of Internal Affairs casino and non-casino gaming services help keep gambling in New Zealand fair and honest. The Casino Inspectorate regulates all casino gaming activities. The Gambling Compliance Group, a specialised unit within DoIA, is responsible for licensing gambling outside of casinos, developing game rules and standards of casino and non-casino gambling and for all forms of gambling law enforcement. The Gaming Compliance Office audits and investigates non-casino gaming activities and issues certificates of approval for casino employees.

The DoIA's main responsibilities in gambling are to:⁸⁹

- (a) Administer gambling legislation;
- (b) Licence gambling activities (except for casino gambling);
- (c) Licence Class 3 and Class 4 gambling (mainly large-scale lotteries and gaming machines);
- (d) Set game rules and equipment standards for all licensed gambling;
- (e) Set minimum operating standards for casinos;
- (f) Ensure compliance with the legislation;
- (g) Provide advice to government on gambling policy;
- (h) Provide public information and education.

In support of its overall regulatory approach of the DoIA they have adopted a problem-solving philosophy using a balance of tools to address underlying problems in the sector. These regulatory tools are listed below:

- Education and Persuasion
- Licensing
- Audits and Inspectors
- Investigations
- Sanctions

3.7.4 Types of Licences in New Zealand

There are two types of casino licence in New Zealand:

- Casino Operator's Licence
- Casino Venue Licence

Operator's licences are required if a person or society⁹⁰ wishes to operate any of the three classes of licensed gambling (i.e. Classes 3, 4 and Casino Gambling).

In addition, venue licences are required for:

- Class 4 gambling (gaming machines)
- Casino gambling

3.7.5 Casino Audits in New Zealand

In respect of casino audits the DoIA has been using a risk-based approach to auditing since 1999. The audit programme is aimed at achieving best practice casino compliance and is consistent with recognised external auditing practices and accounting standards. The DoIA have moved away from traditional approaches to casino inspection and aim to provide efficient and effective inspection of casinos. The Casino Compliance Unit within the DoIA works closely with casino operators, meeting each month to discuss and review audit findings. Within each functional area of casino operation the Casino Compliance Unit looks at each process and decides whether the process falls in one or more of the following categories:

- Gambling Act obligations
- Regulations made under the Act
- The casino premises' and operators' licences: Responsibilities of casinos
- Minimum Operating Standards and Game Rules

⁸⁹ <http://www.dia.govt.nz/>

⁹⁰ "Society" means an association of persons established and conducted entirely for purposes other than commercial purposes.

3.7.6 The Gambling Commission in New Zealand

The Gambling Commission was established under the Gambling Act 2003 and began its work on 1st July 2004. It currently consists of five Commissioners (including one Chief Gambling Commissioner).

Duties and Functions of the Commission under the Gambling Act 2003

The Gambling Commission is an independent decision-making body with the powers of a Commission of Inquiry. Its functions are wide-ranging and include the following:⁹¹

- (a) To set licence conditions for casinos;
- (b) To consider and determine applications for casino operators' licences and the renewal of casino venue licences (the first of the existing six venue licences expires in 2019);
- (c) To establish agreements and changes to agreements between casino operators and casino venue licence holders;
- (d) To specify, vary and revoke casino licence conditions;
- (e) To consider and determine appeals against regulatory and licensing decisions made by the Department of Internal Affairs in respect of class 3 and class 4 gambling⁹²;
- (f) To consider and deal with complaints about the way the Department has handled complaints in relation to class 4 gambling;
- (g) To maintain an independent role in the problem gambling levy setting process;
- (h) To advise Ministers and facilitate consultation on the setting of the Problem Gambling Levy;
- (i) To advise the Minister of Internal Affairs on matters relating to the performance of the Commission's functions and the administration of the Act, either at the Minister's request or on its own initiative.

In exercising these functions, the Gambling Commission has wide powers to determine its own procedure, to engage experts and to receive data. Maintaining a neutral and independent position, the Commission considers all matters before it, licensing matters or appeals and makes autonomous decisions.

3.7.7 There is no appeal to a court when the Commission makes a decision on an appeal related to a decision of the DoIA.

3.7.8 The exercise of the Commission's functions is guided by the purposes of the Gambling Act, which sets a new policy framework distinct from earlier legislation. The purposes of the Act include:⁹³

- (a) Controlling the growth of gambling;
- (b) Preventing and minimising the harm caused by gambling including problem gambling;
- (c) Authorising some gambling and prohibiting the rest;
- (d) Facilitating responsible gambling;
- (e) Ensuring the fairness and integrity of games;
- (f) Limiting opportunities for crime and dishonesty associated with gambling;
- (g) Ensuring that money from gambling benefits the community;
- (h) Facilitating community involvement in decisions about the provision of gambling

3.7.9 During the year 2004 to 2005 the Gambling Commission initiated a general review of licence conditions for all casinos, with the aim of updating and amending conditions to ensure they better reflect the new Act. The Commission consulted informally with a range of stakeholders in developing proposed amendments, including casino operators, the Department of Internal Affairs, the Ministry of Health and problem gambling service providers.

Applications received during 2004 to 2005 related variously to the designation of new gambling areas; approval of revised floor layouts and game mixes; the construction of smoking decks and new facilities; establishment of cashiering facilities; and applications relating to the relocation of ATMs and the installation of additional debit card EFTPOS (Electronic Funds Transfer at Point of Sale) terminals.

91 New Zealand Gambling Commission (2006).

92 Class 3 gambling involves prizes of more than NZ\$5,000, but does not take place at a casino or involve gaming machines. Class 4 gambling relates to non-casino gaming machine operations.

93 <http://www.rodney.govt.nz>

3.7.10 Administration of the Gambling Commission in New Zealand

Under the Gambling Act 2003, the Commission has no power to acquire or hold property. Instead, the Act requires the Department of Internal Affairs to service the Commission, by arranging the administrative services necessary for the Commission to perform its functions.

The Commission is funded from the Department's vote, but is functionally independent. The Commission's annual budget for 2004/2005 was NZ\$925,325. This figure was under-spent for the year by NZ\$70,000.

The Gambling Act 2003 requires the Commission to make decisions independently of the Minister and the Secretary. Staff allocated to perform administrative services for the Commission are, for this reason, required to be separated, physically and operationally from other staff responsible for policy, licensing and compliance concerning gambling.⁹⁴

The Department established a stand-alone office in Auckland in May 2004 and (in consultation with Commissioners) appointed an Executive Director of the Commission. The offices are up and running and two additional staff have been employed. The Commission met once a month in the year 2004 to 2005.

3.7.11 Ministry of Health (MoH)

Responsibilities

Problem gambling; the problem gambling levy; harm minimisation and maintaining a comprehensive public health approach to gambling.

The MoH are currently developing an integrated problem gambling strategy, which includes:

- (a) Measures to promote public health by preventing and minimising the harm of gambling
- (b) Services to treat and assist problem gamblers and their families
- (c) Independent scientific research associated with gambling
- (d) Evaluation

3.7.12 Inland Revenue Department

Responsibilities

Concerns and responsibilities around the problem gambling levy; who is liable for paying the levy and useful contacts.

3.7.13 Conditions that may Attach to a Casino Licence⁹⁵

- (a) Initiatives to encourage responsible gambling
- (b) Initiatives to minimise harm
- (c) Arrangements for any contributions to the community
- (d) Control on the placement of banking facilities available to patrons in a casino
- (e) Requirements for security and surveillance in a casino
- (f) The nature and standard of the casino facilities
- (g) The designation of areas within a casino where casino gambling may be conducted
- (h) The approval of, and procedures for the approval of, alterations to floor plans and the placement of gaming tables and gambling equipment
- (i) Conditions regulating the number of gaming machines and table games and the ratio of one to the other and player space and positions at tables and machines
- (j) The standard, type, installation and operation of electronic monitoring systems and other surveillance equipment, including closed-circuit television systems
- (k) The standard of facilities to be provided for gambling inspectors and the police

⁹⁴ New Zealand Gambling Commission (2006)

⁹⁵ See New Zealand Gambling Act 2003, Schedule 1. Available at <http://www.legislation.govt.nz>

- (l) Procedures, forms and, if appropriate, formulas for, or with respect to:
 - i. Hold percentages and calculations of hold percentages;
 - ii. Revenue drop;
 - iii. Expense and overhead schedules;
 - iv. Complementary services;
 - v. Salary arrangements and
 - vi. Personnel practices.

3.7.14 Classes of Gambling in New Zealand

Gambling is classified based on the amount of and the risks of problem gambling and criminal activity associated with a particular gambling activity. Classes of gambling range from Class 1, representing low-stake, low-risk gambling that does not require a licence, to Class 4, which represents high turnover, high-risk licensed gambling. Gaming machines outside casinos are a form of Class 4 gambling. For-profit or commercial casino operations are treated as a separate class of gambling.

The Act divides gambling into the following 6 legal classes:

- (a) Class 1 gambling (private gambling with no licence required)
- (b) Class 2 gambling (private gambling with no licence required)
- (c) Class 3 gambling (class 3 operator's licence required)
- (d) Class 4 gambling (class 4 operator's and venue licences required)
- (e) Casino gambling (casino operator's and venue licences required)
- (f) Gambling conducted by the Lotteries Commission

3.7.15 Private Gambling⁹⁶

Private gambling (i.e. Class 1 and Class 2 Gambling) in New Zealand does not require a licence e.g. Lotteries, Prize Competitions, Games of Chance and Instant Games.

For Class 1 and Class 2 gambling the Gambling Act 2003 requires that:

- (a) No commission is offered or paid to, or received by a person for conducting the gambling
- (b) No remuneration is offered or paid to, or received by a person for conducting the gambling, except a caller of housie⁹⁷ or an authorised representative of a society
- (c) The gambling must comply with any relevant game rules identified by the DoIA
- (d) The gambling does not utilise or involve a gaming machine, directly or indirectly

3.7.16 Class 1: Private Gambling

- (a) Prizes or potential turnover involved in the gambling activity or in one session of the gambling does not exceed NZ\$500.
- (b) If the game is conducted by individuals (e.g. office sweepstakes) the turnover of the gambling less any actual, reasonable and necessary costs incurred is applied to reward the winners. If the game is run by a society, the net proceeds of the gambling are applied to authorised purposes. This is defined in the Gambling Act and included charitable and non-commercial purposes.

3.7.17 Class 2: Private Gambling

- (a) Prizes offered or awarded in the gambling activity, or in one session of the gambling exceeds NZ\$500 but does not exceed NZ\$5,000. Potential turnover in the gambling activity, or in one session of the gambling exceeds NZ\$500 but does not exceed NZ\$25,000.
- (b) Can only be conducted by a society.

3.7.18 Non-casino gaming machines are allowed in New Zealand as a form of community fund raising only. Neither the organisations that own the machines (the Gaming and Lotteries Act calls these "societies") nor the venues where they are located can make commercial or personal profit from the machines.

3.7.19 If the game is run by a society, the net proceeds of the gambling are applied to authorised purposes. The winners may claim prizes or rewards without incurring costs additional to the cost of participation.

⁹⁶ <http://www.dia.govt.nz>

⁹⁷ 'Housie' means gambling that satisfies any applicable game rules and where — (i) the numbers are selected randomly and announced to participants; and (ii) the participants mark or cover the numbers announced on their own cards; and (iii) the winners are participants who mark or cover any given arrangement of the numbers on their card and announce that fact openly to the other participants and to the organisers e.g. Bingo.

3.7.20 The following consumer information must be clearly described at point of sale:

- (a) The name of the society
- (b) The name and address of the organiser of the gambling
- (c) The authorised purposes for which the gambling is conducted, stated specifically
- (d) When entries close
- (e) Details of where, when and how results will be made available
- (f) The value and characteristics of the prize or reward to be won
- (g) The cost of entry
- (h) The total number of tickets offered in the gambling
- (i) The process for determining the winners

3.7.21 Class 3: Licensed Gambling

- (a) Includes gambling where prizes are offered or awarded in the gambling activity where in one session the gambling exceeds NZ\$5,000. Larger scale lotteries are common forms of Class 3 gambling
- (b) Must be run by a society. If the gambling is conducted regularly, the society must be a corporate society⁹⁸
- (c) Does not involve a gaming machine, directly or indirectly
- (d) The DoIA must be satisfied that the proposed gambling operation is financially viable and that costs will be minimised and the returns to the community maximised
- (e) A licensed promoter may promote only Class 3 gambling that is not conducted regularly

3.7.22 Class 4: Licensed Gambling (incl. non-casino gaming machines)

An activity that involves the use of a gaming machine outside a casino is Class 4 gambling.

Class 4 gaming may only be conducted by a corporate society and only raise money for authorised (e.g. community and non-commercial purposes).

3.7.23 Requirements for Class 4 Gambling

Class 4 gambling may be conducted only by a corporate society that holds—

- (a) A Class 4 operator's licence for the gambling; and
- (b) A Class 4 venue licence for the place where the gambling is conducted.

3.7.24 As of 31st March 2006, there were 513 licensed Class 4 gambling operations, 1,721 GM venues and a total of 21,026 GMs in New Zealand.⁹⁹

3.7.25 Casinos in New Zealand

Currently there are six casinos, varying considerably in size, in New Zealand.

The establishment of new casinos is prohibited under the Gambling Act 2003.

⁹⁸ "Corporate society" means one society that is—

- (a) Incorporated under the Incorporated Societies Act 1908; or
- (b) Incorporated as a board under the Charitable Trusts Act 1957; or
- (c) A company incorporated under the Companies Act 1993 that—
 - (i) Does not have the capacity or power to make a profit; and
 - (ii) Is incorporated and conducted solely for authorised purposes; or
- (d) A working men's club registered under the Friendly Societies and Credit Unions Act 1982

(See Definitions in http://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Casino-and-Non-Casino-Gaming-Gambling-Act-2003?OpenDocument)

⁹⁹ New Zealand Gambling Commission (2006)

Table Seven: Casinos in New Zealand ¹⁰⁰

Casino	Number of Tables	Number of Gaming Machines
SKYCITY (Auckland)	110	1,647
Christchurch	35	506
Sky Riverside (Hamilton)	23	339
Dunedin	12	180
SKYCITY (Queenstown)	12	86
Wharf (Queenstown)	6	74

3.7.26 Requirements for Casino Gambling in New Zealand

A casino may be operated only by a person who holds a **Casino Operator's Licence**:

- (a) If the casino gambling occurs at a place for which the person also holds a casino venue licence;
or
- (b) If the casino operator has an approved casino venue agreement with another person who holds a casino venue licence.

3.7.27 Under the Gambling Act 2003 existing casinos will not be able to expand their gambling activities and no new casino venue licences will be issued. Current licence holders retain their licences.

3.7.28 The Gambling Commission considers casino operator's licence applications and hears appeals against decisions made against the DoIA.

3.7.29 Since July 2004 the Gambling Commission is responsible for all licensing decisions related to casinos. Casino venue licences may be renewed at the end of the current licence period. A casino venue licence expires twenty five years after the date the casino first began operating.

3.7.30 The licence renewal process:

- (a) Requires a casino impact report to be tabled, prepared by an approved person, independent of the applicant;
- (b) Provides for greater community participation;
- (c) Requires the applicants to show how the proposed renewal will benefit the local and regional community.

These provisions ensure that communities have a say in the licensing of casinos in their area and that social and economic impacts are considered equally.

3.7.31 Anyone is able to seek a casino operator's licence. However, any new licensed operator needs an agreement with an existing venue licence holder in order to operate at a casino.

3.7.32 The Gambling Act 2003 requires that persons who have or will have a significant influence in a casino must be approved as an **Associated Person** for that casino. Either the Gambling Commission or the Secretary for Internal Affairs will be responsible for approving associated persons, depending on the circumstances. Before someone can be approved as an associated person the Secretary must be satisfied that the person is suitable. Investigations into the suitability of prospective associated persons are thorough and extensive. The suitability of prospective associated persons must be investigated to ensure the integrity of the management, ownership and operation of casinos in New Zealand.

¹⁰⁰ New Zealand Gambling Commission (2006).

3.7.33 Certificates of Approval

The Gambling Act 2003 requires that all persons must hold a **Certificate of Approval** if they are employed in a casino in any capacity relating to the following:¹⁰¹

- (a) Conducting casino games
- (b) Counting money or chips derived from or used in gambling
- (c) Moving money or chips derived from or used in gambling
- (d) Buying or redeeming chips
- (e) Operating, maintaining, constructing, or repairing gambling equipment
- (f) Supervising or managing any of the above activities

Positions in these areas involve handling large sums of money and chips and can impact on the integrity of gaming. It is in the public interest that people in these positions are honest, trustworthy and reliable. The approval system is designed to assure the integrity of casino employees.

3.7.34 Casino Gambling Inspectors

The Department of Internal Affairs is committed to ensuring gambling in casinos is fair, honest, lawful and remains free from criminal influence or exploitation. To meet these aims, the Casino Compliance Unit within the DoIA maintains a team of Gambling Inspectors in each casino.

A Casino Gambling Inspector's role includes handling complaints from members of the public and ensuring casino gambling complies with the Gambling Act 2003, minimum operating standards, minimum technical standards and game rules.

The role of a Casino Gambling Inspector also includes (but is not limited to):¹⁰²

- (a) Inspecting, monitoring and auditing the conduct of gambling
- (b) Inspecting, monitoring and auditing the counting of money and chips
- (c) Inspecting gambling equipment
- (d) Detecting, investigating and prosecuting offences against the Gambling Act 2003
- (e) Detecting, investigating and prosecuting crimes involving dishonesty that involve or relate to gambling
- (f) Liaising and co-operating with the New Zealand Police and other enforcement agencies
- (g) Investigating complaints from members of the public about the conduct of gambling in casinos.

3.7.35 Regulatory Agents Responsibilities in Casino Operations: Summary

1. *The Gambling Commission*

- (a) All casino licensing decisions
- (b) Operator's licences
- (c) Renewal of venue licences
- (d) Casino venue agreements
- (e) Mortgages, charges and encumbrances
- (f) Approval of associated persons in relation to the above applications
- (g) Hears appeals against DoIA's decisions about:
 - (i) Minimum operating standards
 - (ii) Certificates of approval
 - (iii) Associated persons
 - (iv) Can issue an order for suspension or cancellation of casino licence

2. *Department of Internal Affairs*

- (a) Sets minimum operating standards
- (b) Sets minimum standards for gambling equipment
- (c) Approves associated persons

101 <http://www.dia.govt.nz/>

102 <http://www.dia.govt.nz/>

- (d) Reviews associated persons
- (e) Sets games rules
- (f) Can request that the Gambling Commission specify, vary or revoke licence conditions
- (g) Inspects and audits casinos
- (h) Can seek an order from the Gambling Commission for the suspension or cancellation of a casino licence
- (i) Approve Certificates of Approvals
- (j) Reviews Certificates of Approvals including application to suspend or cancel

3.7.36 Non-Casino Gaming Machines

There are limits on the number of gaming machines (GMs) permitted at any venue. There are strict criteria for licensing non-casino gaming machines.

3.7.37 Problem Gambling Management

The MoH is responsible for developing and implementing a problem gambling management strategy. The costs of the problem gambling management strategy are recovered from the gambling sector by a **problem gambling levy** on player expenditure, which is collected by the Inland Revenue.

The levy is imposed on gambling in the following sub-sectors: casinos; non-casino gaming machine societies; the New Zealand Racing Board; and the Lotteries Commission.

The Gambling Act 2003 contains other measures to limit problem gambling.

3.8 Gaming in Canada

3.8.1 The Criminal Code of Canada¹⁰³ says that:

“Everyone is guilty of an indictable offence and liable to imprisonment who conducts or manages or participates in a scheme by which, on the payment of consideration, a person becomes entitled to receive money or property based on the outcome of a game of chance or a game of mixed skill and chance.”

3.8.2 The Criminal Code, however, provides specific and limited exceptions to what is noted above. Two of those exceptions are contained in section 207(1) of the code, which indicates that, “... it is lawful (a) for the Government of a province ... to conduct and manage a lottery scheme in that province ... [and] (b) for a charitable or religious organisation, pursuant to a licence issued by the Lieutenant Governor in Council of a Province ... if the proceeds from the lottery scheme are used for a charitable or religious object or purpose”.

3.8.3 Referring to Table Eight at one end of the spectrum are Provinces such as Manitoba, Saskatchewan and Alberta, which have both a high per capita concentration of Video Lottery Terminals (VLTs) in the community and large permanent casinos located mainly in urban settings. Manitoba opened Canada’s first permanent casino in 1989. By 1999–2000, with a population of only 1.1 million people, the province had almost 4,500 VLTs in more than 560 locations, in addition to two permanent casinos. At the more conservative end of the spectrum, British Columbia¹⁰⁴ and Ontario have restricted gambling expansion to the development of permanent casinos and have so far rejected the idea of widespread deployment of VLTs in community settings.

3.8.4 Alberta has the most casinos at nineteen. New Brunswick, Prince Edward Island and Newfoundland have no casinos. While Quebec has the greatest number of GM venues at 3,365, British Columbia has only fourteen. British Columbia and Ontario are the only provinces that do not have GMs in bars and lounges (or restaurants, hotels, etc.).¹⁰⁵

103 The Canadian Criminal Code (formal title An Act respecting the criminal law, R.S., 1985, c. C-46, as amended) is the codification of most of the criminal offences and procedures in Canada. It is a federal statute enacted by Parliament pursuant to s91(27) of the Constitution Act 1867 which provides the Federal Government exclusive jurisdiction to legislate criminal offences in Canada. The Criminal Code contains most of the criminal offences that have been created by Parliament. The Code not only defines types of conduct that constitute criminal offences but also establishes the kind and degree of punishment that may be imposed when an individual is convicted of an offence and the procedures to be followed throughout the criminal process. Available online at <http://laws.justice.gc.ca/en/C-46/>

104 See Appendix No. 13 for Gaming Regulation Case Study for British Columbia.

105 Canadian Partnership for Responsible Gaming (2004b)

Overall, Quebec and Ontario have the greatest number of gaming venues and games, while Alberta and Saskatchewan issue the highest number of charitable gaming licences.

3.8.5 The following Table Eight lists those government and government authorised bodies involved in the regulation and operation of gaming in each of the ten Canadian Provinces. “**Operators**” are those involved either directly or indirectly in the management of gaming activity. “**Regulators**” are those agencies responsible for enforcing the legislation governing gaming. In many cases (e.g. casinos) a government agency contracts operations out to private firms. These firms will not be listed. Private operators and non-profit organisations are only listed for horse racing and licensed charitable gaming, as these gaming sectors do not, for the most part, have other government authorised parties involved in their operations.

Table Eight: Organisation and Management of Gambling in the Canadian Provinces ¹⁰⁶

Canadian Province	Casino Operators	Casino Regulators	Non-Casino Gaming Machine Operators	Non-Casino Gaming Machine Regulators
Alberta	Alberta Gaming and Liquor Commission (AGLC) Charitable or Religious Organizations	Alberta Gaming and Liquor Commission (AGLC)	Alberta Gaming and Liquor Commission (AGLC)	Alberta Gaming and Liquor Commission (AGLC)
British Columbia	British Columbia Lottery Corporation (BCLC)	Gaming Policy and Enforcement Branch, Ministry of Public Safety and Solicitor General	There are no GMs outside of casinos in British Columbia	There are no GMs outside of casinos in British Columbia
Manitoba	Manitoba Lotteries Corporation (MLC)	Manitoba Gaming Control Commission (MGCC)	Manitoba Lotteries Corporation (MLC)	Manitoba Gaming Control Commission (MGCC)
Newfoundland and Labrador	There are no casinos in Newfoundland or Labrador	There are no casinos in Newfoundland or Labrador	Atlantic Lottery Corporation (ALC) Province of Newfoundland and Labrador	Department of Finance
New Brunswick	There are no casinos in New Brunswick	There are no casinos in New Brunswick	Atlantic Lottery Corporation (ALC) Lotteries Commission of New Brunswick	Department of Finance
Nova Scotia	Nova Scotia Gaming Corporation (NSGC)	Alcohol and Gaming Authority (AGA)	Atlantic Lottery Corporation (ALC) First Nations Nova Scotia Gaming Corporation (NSGC)	Alcohol and Gaming Authority (AGA) First Nations Gaming Commissions (FNGC)
Ontario	First Nations Ontario Lottery and Gaming Corporation (OLGC)	Alcohol and Gaming Commission of Ontario (AGCO)	Ontario Lottery and Gaming Corporation (OLGC)	Alcohol and Gaming Commission of Ontario (AGCO)
Prince Edward Island	There are no casinos in Prince Edward Island	There are no casinos in Prince Edward Island	Atlantic Lottery Corporation (ALC) Prince Edward Island Lotteries Commission	Prince Edward Island Lotteries Commission
Québec	Société des casinos du Québec (SCQ; subsidiary of Loto-Québec)	Régie des alcools, des courses et des jeux (RACJ)	Société des loteries vidéo du Québec (SLVQ; subsidiary of Loto-Québec)	Régie des alcools, des courses et des jeux (RACJ)
Saskatchewan	Saskatchewan Gaming Corporation (SGC) Saskatchewan Indian Gaming Authority (SIGA) Saskatchewan Liquor and Gaming Authority (SLGA) Saskatoon Prairieland Park Corporation	Saskatchewan Liquor and Gaming Authority (SLGA)	Saskatchewan Liquor and Gaming Authority (SLGA) Western Canada Lottery Corporation (WCLC)	Saskatchewan Liquor and Gaming Authority (SLGA)

Table Nine: Number of Venues, Gaming Tables and Gaming Machines per Canadian Province ¹⁰⁷

Canadian Province	Total Casinos ¹⁰⁸	Casinos with Gaming Machines	Gaming Machines at Casinos	Total Table Games	Total Racetracks	Racinos	Gaming Machines at Racetracks	Bars / Lounges with Gaming Machines	Gaming Machines in Bars / Lounges
Alberta	19	16	5,889	424	5	3	624	1,139	5,992
British Columbia	16	14	3,832	377	5	1	0	0	0
Manitoba	4	3	2,577	69	11	1	140	568	5,172
Newfoundland and Labrador	0	0	0	0	1	0	0	578	2,639
New Brunswick	0	0	0	0	3	0	0	667	2,647
Nova Scotia	2	2	1,130	49	3	0	0	573	3,845
Ontario	11	9	11,060	555	31	16	9,342	0	0
Prince Edward Island	0	0	0	0	2	0	0	85	386
Quebec	3	3	5,774	206	16	4	430	3,358	13,863
Saskatchewan	7	6	1,990	106	4	0	0	691	3,995
Totals	62	53	32,252	1,786	81	24	10,536	7,659	38,539

Total Number of Casinos: 60

Total Number of Gaming Machines: 81,327

Total Population = 33 million approximately which implies one GM for every 393 persons in Canada.

3.8.6 Casinos in Canada

Casinos in the 1990s were laden with a number of new features: permanence, increased size, enhanced commercial appearance and the involvement of government. The availability and access to casinos, like all gambling across the country, varies from province to province. Prior to 1989, casinos in Canada were conducted and managed solely by charitable organisations and exhibition associations through a licence issued by the provincial government. With approximately 62 casinos now operating in Canada, Canadians can visit a permanent casino in every province except New Brunswick, Prince Edward Island, Newfoundland and Labrador.

Canada has a unique policy structure. Different from many international counterparts, gambling operates exclusively under the control of the provincial and territorial governments. These governments work within the limitations of the Criminal Code to offer gambling options that the market and the political environment demand. Charities, First Nations¹⁰⁹ and private operators also benefit from gambling in Canada by providing provincially authorised gambling activities through operational arrangements. The main benefactors of gaming in Canada are (i) Provincial and Territorial Governments; (ii) Private operators and suppliers of gambling products; (iii) Charity and community agencies.

¹⁰⁷ Adapted from Canadian Partnership for Responsible Gaming (2004b)

¹⁰⁸ Table updated with 2007 figures from the Alberta Gaming Research Institute, University of Alberta.

Available online at http://www.abgaminginstitute.ualberta.ca/Canada_casinos.cfm

¹⁰⁹ 'First Nations' is a term of ethnicity used in Canada. It refers to the indigenous people of North America located in what is now Canada.

3.8.7 Canadian Policy Trends ¹¹⁰

(a) *Introduction of Government Casinos*

Provincial governments developed casinos to compete for dollars lost to gambling in other jurisdictions, to stimulate local economies and to generate revenue for the provincial purse.

(b) *Private Operators*

Private casino operators have carved out a niche in the current era of gambling expansion. Government casinos in Nova Scotia, Ontario and British Columbia contract with private operator companies to provide day-to-day services. In Alberta, charitable casino day-to-day operations are also handled by private casino providers.

(c) *Reduced Charitable Casino Sector*

Most provinces with any government-run casinos have removed or reduced charitable involvement in casino table games. Ontario, British Columbia, Quebec, Manitoba, Saskatchewan and Nova Scotia licence little or no charitable/exhibition association casinos. In some of these provinces grant programs have been introduced to maintain charitable and exhibition association revenues.

3.8.8 Unique Policies

(a) *Charitable Casinos*

Alberta stands out because of its policy to involve charitable organisations and to limit government involvement in casino gambling. While there are nineteen permanent casinos in Alberta all of them are conducted and managed by licensed charity groups or exhibition associations. All of the charity licensed casinos are run on a day-to-day basis by private casino operators.

(b) *First Nations Casinos*

Saskatchewan is distinguishable because it established the Saskatchewan Indian Gaming Authority to conduct and manage four First Nations run casinos.

(c) *Government Operation*

The governments of Saskatchewan, Manitoba and Quebec are distinct because they have developed Crown Corporations to operate their casinos directly, without the assistance of a private operator.

Table Ten: Availability of Legal Gaming in Canada – As of July 2006 ¹¹¹

Casino Gaming	British Columbia	Alberta	Saskatchewan	Manitoba	Ontario	Quebec	New Brunswick	Nova Scotia	Prince Edward Island	Newfoundland and Labrador	Nunavut Territory	Northwest Territories	Yukon Territory
Electronic Horse Racing	Yes		Yes	Yes		Yes							
Player-Banked Poker	Yes	Yes	Yes	Yes	Yes			Yes					Yes
Slot Machines	Yes	Yes	Yes	Yes	Yes	Yes		Yes					Yes
Table Games	Yes	Yes	Yes	Yes	Yes	Yes		Yes					Yes
Licensed Charitable Gaming													
Bingo	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Breakopen Tickets / Pull Tabs		Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	
Casino (Monte Carlo) Nights	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes
Player-Banked Poker (Non-Casino)			Yes							Yes			
Raffles	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes
Sports Pools	Yes	Yes	Yes	Yes			Yes			Yes	Yes	Yes	Yes
Venues													
Bingos Association / Commercial	Yes	Yes	Yes		Yes	Yes		Yes		Yes			
Bingos Community Halls	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Casinos: First Nation	Yes	Yes	Yes	Yes	Yes								
Casinos: Permanent	Yes	Yes	Yes	Yes	Yes	Yes		Yes					
Casinos, Temporary / Exhibition	Yes	Yes	Yes		Yes								Yes
Community Gaming Centres	Yes												
Racetracks	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes			
Racinos	Yes	Yes		Yes	Yes				Yes				
Teletheatres	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

111 Stevens, R. (2006) – Footnotes accompanying the original text are not reproduced here.

Chapter Four: Regulating Gaming in Ireland

4.1 Overview of the Current Gambling Industry in Ireland

4.1.1 Casinos

Casinos are not specifically authorised under Irish Law. Currently operating as “private members clubs”, the legal status of the activities of these clubs remains unclear. Nonetheless, Ireland has seen significant growth in recent years in the area of private clubs offering casino-like services. Current estimates point to a figure of approximately twenty-five, the majority of which can be found in Dublin. The Committee understands since the beginning of its deliberations additional clubs have been established. While all of these businesses are subject to normal business taxes e.g. income tax, corporation tax etc., they are not subject to any gambling duty including the current betting levy of 1% as paid by bookmakers.

On the other hand, betting and games of chance, e.g. horse and greyhound racing; all other sports betting; gaming arcades; amusement halls and lotteries, have all been, to some extent, authorised and regulated for decades. The racing sector, in particular, horses and greyhounds, is an indigenous and geographically dispersed economic sector in Ireland. It is regarded by many as an integral part of social and cultural life with a long tradition.

4.1.2 Gaming

In relation to gaming, there are at present two types of licence, viz. (a) the **gaming licence (No. 374)**¹¹² which is issued by the Revenue Commissioners in respect of the premises where gaming is authorised to take place and (b) the **gaming machine licence (No. 382)**¹¹³ for individual machines.

4.1.3 Under Section 4(1) of the 1956 Act, as amended, no person shall promote or assist in promoting or provide facilities for any kind of gaming (defined as playing a game, whether of skill or chance or a combination of the two, for stakes placed by players):

- (a) *in which, by reason of the nature of the game, the chances of all the players, including the banker, are not equal, or*
- (b) *in which any portion of the stakes is retained by a promoter or is retained by the banker otherwise than as winnings on the result of the play, or*
- (c) *by means of any slot-machine*

4.1.4 Gaming in arcades, amusement halls and funfairs is permitted only on/in premises licensed by the Revenue Commissioners for this purpose in accordance with conditions laid down in the 1956 Act. A **certificate of fitness** is required from the District Court in order to apply to the Revenue Commissioners for the licence. The Court may attach conditions to the certificate authorising the issue of a licence, e.g. hours of opening etc. Where an application is refused by the District Court the applicant has a right of appeal to the Circuit Court. Before that procedure can be availed of, a local authority has, by resolution, to adopt Part III of the 1956 Act in respect of the whole or part of its administrative area.¹¹⁴

4.1.5 In relation to premises, there are **two types of gaming licence**; a €175 licence which covers a period of up to three months and a twelve month licence of €630. The 1975 Finance Act introduced an excise duty on individual gaming machines. The current rate per machine is €145 for up to three months and €505 for one year. The maximum number of machines that can be available for play is specified on the Court certificate for the premises. According to section 43(3) of the Finance Act a gaming machine may not be made available for play unless there is a current licence and that licence is displayed on the machine.¹¹⁵

4.1.6 Under Part 5 of the Act the enforcement function is a matter for An Garda Síochána.

4.1.7 In the case of gaming and amusement machines, VAT is charged on the net takings from the machine.

¹¹² See Appendix No. 17

¹¹³ See Appendix No. 18

¹¹⁴ See Gaming and Lotteries Act 1956 Part II. Section 13(1).

¹¹⁵ Office of the Revenue Commissioners, September 2006

4.1.8 Amusement Machines

An excise duty on amusement machines, as opposed to gaming machines, was introduced in the Finance Act, 1992. The legislation is clearly modelled on that which applies to gaming machines. However, currently, neither the Department of Justice, Equality & Law Reform nor An Garda Síochána has a role in regulating amusement machines.

4.1.9 Before an operator can get a licence for an amusement machine, s/he has to apply to the Revenue Commissioners for an **amusement machine permit (No. 1126)**.¹¹⁶ The only conditions governing the issue of such a permit is that the applicant must provide a tax clearance certificate and that the applicant pay the excise duty of €100. Once the person is the holder of the amusement machine permit, s/he can apply to Revenue for an **amusement machine duty licence (No. 381)**¹¹⁷ for the number of amusement machines specified on the permit. The annual licence duty is currently €125 and €38 for the three month licence. The licence must be displayed on the machine. Enforcement action consists of visits to premises to detect unlicensed machines and/or machine on which licences are not displayed.

Table Eleven: Excise Licences for Gaming - Numbers and Net Receipts¹¹⁸

Types of Licence	2003		2004		2005	
	Numbers Issued	Net Receipts €	Numbers Issued	Net Receipts €	Numbers Issued	Net Receipts €
Gaming Licence	141	70,090	109	62,590	102	58,500
Gaming Machine	12,662	2,918,210	9,229	2,337,600	9,673	2,372,965
Amusement Machine Duty	7,461	921,993	6,550	795,827	6,831	833,630

In 2005, 9,673 gaming machine licences were issued and the duty collected was €2,372,965¹¹⁹ and 6,831 amusement machine licences were issued and the duty collected was €833,630.

4.1.10 The current system of raising revenue from licences for individual gaming and amusement machines is very resource intensive. Given the low revenue yield, a more concentrated and less resource exhaustive system should be considered, for example, the same revenues might be generated using a progressive rate of duty with reference to the number of machines on the gaming and amusement premises.

4.1.11 Betting

Although betting is outside of the Casino Committee's terms of reference, the betting sector was examined because of the potential impact the introduction of casinos may have on the racing industries.

4.1.12 Taxation on Betting

Betting in Ireland is subject to three separate excise requirements:

- Payment of betting duty on bets
- Having a bookmaker's licence
- Registration of the bookmaking premises

In 1999, betting duty was reduced from 10% to 5%. In 2002 it was again reduced to 2% and in 2006 the rate was dropped to 1%. Prior to 1st June 2006 the betting duty was liable to be paid by the customer, however if bookmakers wished they could absorb the cost of the betting duty. Since 1st June 2006 bookmakers are now required to absorb and pay the betting duty. They can no longer pass it on to the customer. The excise duty on betting is in effect a 1% levy on the bookmaker's turnover. This has resulted in customers experiencing a tax-free environment whether they place bets in a shop, over the phone or on the Internet. Bets placed at the racecourse (on-course) are exempt from betting duty. Bookmakers do not get a deduction based on the betting levy when computing corporation or

¹¹⁶ See Appendix No. 19.

¹¹⁷ See Appendix No. 20.

¹¹⁸ Office of the Revenue Commissioners, September 2006.

¹¹⁹ Office of the Revenue Commissioners, September 2006.

income tax. In addition to betting duty, excise duty is also charged on a bookmaker's licence and on the registration of his/her premises.

4.1.13 Licensing Procedures for Bookmakers

The procedure for obtaining a bookmaker's licence and registering premises are similar. The bookmaker in question must apply to his/her local Garda Superintendent for a **certificate of personal fitness** for the licence and for a **certificate of suitability of premises** for the betting shop. Both applications must be signed by two Peace Commissioners. The bookmaker must also publish notices in two local newspapers of his/her intentions. If the Superintendent rejects either application (or both) the applicant has the right to appeal that decision to the District Court. When the bookmaker has received both certificates, s/he then (within twenty-one days) applies to the Revenue Commissioners for a **bookmaker's licence (No. 361)** and to have the premises registered.¹²⁰ The annual excise duty on a bookmaker's licence is €250. Registration of each premises is subject to an annual excise duty of €380. The bookmaker's licence and registration of premises must be renewed annually on 1st December. Reinstatement of a licence after de-registration is subject to a fee of €2,000.

Table Twelve: Betting Duty, Bookmaking Premises Duty and Bookmakers Licences Duty ¹²¹

Year	Bookmakers Licences		Bookmaking Premises		
	Betting Duty Net Receipts €	Numbers Issued	Net Receipts €	Numbers Issued	Net Receipts €
2000	58,868,554	600	152,369	932	309,689
2001	68,066,165	582	146,921	1,010	342,829
2002	47,952,219	560	139,813	909	343,548
2003	38,422,170	584	145,124	1,068	368,980
2004	45,552,353	535	131,474	948	329,080
2005	45,850,201	588 ¹²²	147,500	1,170	400,900

4.1.14 Tourism

Several proponents of the licensing of casinos, in particular those arguing for exclusive licences for large casino resorts, argue that tourism is the primary rationale for legalising casinos.

The 1996 Report concluded that the main focus of a casino was likely to be the domestic market rather than the overseas tourism market.

Governments often believe that casinos are an excellent way to harness the generation of tourism revenues. According to Professor Peter Collins, Director of the Centre for the Study of Gambling and Commercial Gaming at the University of Salford (UK)

“In fact, jurisdictions are only able to use casino gambling as a way of attracting tourists if they are surrounded by other jurisdictions where casino gambling is popular but illegal. That is what accounts for the success of Monte Carlo, Nevada, Macao, Atlantic City, Biloxi and Sun City. But such regional exclusivity is not characteristic of most jurisdictions and in those where it is found it does not last for very long.”¹²³

Having taken informal soundings with the tourism agencies and some overseas regulators, the Committee is of the view that, if licensed casinos exist, some overseas visitors will visit them on their trip to Ireland. However, casinos are unlikely to be a primary motivator for many especially as they are

¹²⁰ Office of the Revenue Commissioners, September 2006.

¹²¹ Office of the Revenue Commissioners, September 2006.

¹²² This number includes the seven major players in bookmaking in Ireland (Paddy Powers; Ladbrooks; Boyle Sports; William Hill; Hacketts; Celtic; and Cashman) each of which has one bookmaker's licence. A premises license is needed for each outlet. currently, these seven account for approximately 60% of the betting duty in Ireland. The number of bookmakers' licences (588) also includes all on-course bookmakers who do not require a premises license to operate. One reason for the fluctuation of bookmakers licences and premises licences year on year has been the acquisition of smaller operators by larger operators.

¹²³ Collins, P. (2004)

already available, often on a grander scale, in most of their home countries. This view was supported by Professor Peter Collins in his oral presentation to the Casino Committee.

4.1.15 The Charity Sector

In general, charity gambling means a game or gaming establishment organised by a not-for-profit organisation, the net proceeds of which are intended for social, cultural, religious, or other civic purposes. Experience gathered from other jurisdictions in Europe reveals that, when used, the term “charity gambling” normally refers to some form of charity lottery.

The Committee supports the basic principle that it should be possible to provide some financial benefit from gaming activities to a sponsoring charity. The Committee notes the long established relationship between charities and gambling in Ireland such as that exemplified by the Irish Hospital Sweepstakes.¹²⁴ This could be done both with the establishment of occasionally licensed “charity casino nights” hosted by licensed casino operators and/or the granting of permanent casino operating licences to registered charities.

According to the Swiss Institute of Comparative Law study of gambling services in the internal market of the European Union, about half of the Member States have licence requirements for charity gambling operators (Belgium, Cyprus, the Czech Republic, Estonia, Germany, Lithuania, Luxembourg, Malta, Slovakia, Slovenia and the Netherlands). In certain jurisdictions some casino proceeds are directed to community or charity organisations in the form of problem gambling levies or community benefit duties. However, in the EU at least, researchers at the Swiss Institute of Comparative Law were unable to locate a casino operation controlled by the charity sector.

The Committee wishes to acknowledge the submission made by Ireland’s Rehab Group.¹²⁵

Recommendation: The Committee recommends that registered charities be permitted to apply for a licence in their own right or in partnership. However, a precondition to obtaining such a casino licence is the earmarking of a portion of the casino proceeds for charitable purposes. In order to avoid creating an environment of unfair competition, the Committee also recommends that the registered charity not be afforded any tax advantage in relation to the operation of a casino as compared to a commercial operator.

4.1.16 Potential Impact of the Introduction of Casinos on Ireland’s Racing Industries

Horseracing Industry – Key Facts per Horse Racing Ireland

Reports from the industry state that the industry employs about 16,500 people on a conservative estimate comprising¹²⁶

- Horseracing sector - some 7,675 people
- Associated betting sector - in the region of 4,200 people
- The breeding industry - estimated at 2,400 in the stallion sector
- The broodmare sector - 2,300

On-course wagering on horse racing generates¹²⁷

- €176.00 million with Bookmakers
- € 11.34 million with SP Shops
- € 49.28 million on the Tote
- €236.00 million - Total

Attendances at race meetings exceed 1.43 million on an annual basis.¹²⁸

¹²⁴ The Irish Hospital Sweepstakes was established in 1930 and was promoted by a private company, Hospitals’ Trust (1940) Limited, in pursuance of a standing agreement with a sweepstakes committee appointed by the governing bodies of various hospitals. The Hospitals’ Trust Fund was used to channel the net proceeds of the sweepstakes to hospitals for capital purposes. Statutory responsibility for the Hospitals’ Trust Fund rested with the Minister for Health and that for the running of the sweepstakes by Hospitals’ Trust (1940) Limited with the Minister for Justice.

¹²⁵ Ireland’s Rehab Group is an independent not-for-profit organisation working for social and economic inclusion among people with disabilities and others who are marginalised. They are also a leading campaigner for reforms to remove the barriers preventing equal opportunities, particularly for people with disabilities.

¹²⁶ Indecon Consultants’ Report (2004)

¹²⁷ Horse Racing Ireland (2006).

¹²⁸ Horse Racing Ireland (2006).

4.1.17 A recent ESRI paper puts employment in the industry at 7,675 persons.¹²⁹ It also notes that State support for the racing industry in 2005 at €54.68 million was the equivalent of €38 for each of the 1.43 million attendances at race meetings.

4.1.18 Horse Racing Ireland

Horse Racing Ireland (HRI), a commercial semi-State body, is responsible for directing and promoting all aspects of racing in Ireland including directing, funding and promoting the thoroughbred horse, the operation of the Registry Office, the Tote and its racecourse division, representation of Irish horse racing internationally and the negotiation of income from the media and broadcasting rights.¹³⁰ Horse Racing Ireland was established under the Horse and Greyhound Racing Act, 2001 and takes over the functions carried out previously by the Irish Horseracing Authority (IHA) since 1994. The IHA, in turn, replaced the Racing Board that was established in 1945. Horse Racing Ireland receives its funding from the Horse and Greyhound Racing Fund which receives a guaranteed level of finance based on excise duty on off-course betting.

4.1.19 Racecourse bookmakers must be in possession of a bookmaker's licence from the State and a permit from Horse Racing Ireland. Obtaining a licence requires obtaining a tax clearance from the Revenue Commissioners and a **certificate of personal fitness** from An Garda Síochána. Persons not residing in the Republic of Ireland may obtain such a certificate from the Department of Justice. However an application for such a certificate requires endorsement from three persons resident in the State. Applications for a permit require monthly statements from a bank, building society or financial institution for the two years immediately prior to the application as well as a personal interview by the officers of Horse Racing Ireland.

4.1.20 Irish Greyhound Board

The Irish Greyhound Board (Bord na gCon), a commercial semi-State body, is responsible for the control and development of the greyhound industry in Ireland. Bord na gCon was established under the Greyhound Industry Act (1958) which gave the Board wide powers to regulate all aspects of greyhound racing in Ireland including the licensing of the different tracks, the issuing of permits to officials, bookmakers, trainers and the implementation of the rules of racing.¹³¹ Bord na gCon has licensed a total of seventeen tracks in Ireland, of which nine are owned and controlled by the Board. The remainder are owned and operated by private enterprise.

Track attendances topped 1.3 million in 2005. On-course wagering in 2005 amounted to €145 million, including Tote of €55 million. Total revenues are estimated at €300 million per year. Continued growth has facilitated a €90 million investment in greyhound track facilities over the last ten years and sector employment stands at approximately 3,000 persons.¹³²

4.1.21 Funding of the Irish Racing Sector

The fortunes of the sector have always been intimately linked to betting. This link is formalised under the Horse and Greyhound Racing Act 2001.

The 2001 Act guarantees the horse and greyhound racing sector a level of investment related to the revenue from excise duty on off-course betting paid into the Exchequer in the preceding year or the year 2000 increased by reference to the consumer price index, whichever is the greater. In other words, there is a guaranteed minimum level of annual funding for the racing sector.

Under the Act, 80% and 20% of the monies paid into the Horse and Greyhound Racing Fund are distributed to Horse Racing Ireland and Bord na gCon respectively. Funding allocated to the two bodies is not earmarked for a specific purpose and has been used over the years to increase prize money levels, meet administration and regulatory costs alongside a major programme of capital investment which has underpinned growth in the industry.

In 2004, the Government put in place regulations to increase the limit of the Fund from €254 million to €550 million and to continue the Fund for a further four years to 2008. The current arrangement is to be reviewed with a view to a further possible extension for a four year period in 2008.

¹²⁹ Fahey, T. and Delaney, L. (2006)

¹³⁰ Swiss Institute of Comparative Law (2006)

¹³¹ Swiss Institute of Comparative Law (2006)

¹³² Bord na gCon presentation to the Casino Committee, 18th October 2006.

Any shortfall in the amount generated by the excise duty is to be made up by direct Exchequer subvention. The accumulated shortfall in the Fund met from Exchequer sources amounted to €67.53 million over the period 2001-2005 and is expected to rise to €82.84 million by 2006.

From 2001 to 2006, the Fund has yielded a total of €396.46 million: €317.18 million for horses and €79.28 million for greyhounds.

4.1.22 Possible Impacts of Casinos on the Horse and Greyhound Racing Sector

The viability of the horse and greyhound sector is dependent on the ability to attract attendances and the generation of betting revenues. Betting-related revenues are redistributed through prize money for the betterment of the sector and the viability of the breeding and rearing of horses and greyhounds. The revenues generated are reinvested for the benefit of the public and those involved in the industry.

It has been suggested to the Casino Committee that any broadening of the gambling base could be a direct challenge to the sector in a number of ways. It could:

- Undermine betting related revenue which could, over time, threaten its development funding.
- Result in falling attendances from competing entertainment venues.
- Result in a threat to margins from its entry fees and food and drink sales due to competition from a casino sector where, from international experience, food and drink tend to be subsidised and entry can be free.

4.1.23 The challenges may be particularly acute for the greyhound industry given its urban, night-time base.¹³³ There is evidence that the racing industries in both the United States and Australia have suffered from falling attendances with the introduction of casinos.¹³⁴

4.1.24 However, attendances at both horse and dog tracks in Ireland have been booming in recent years even though a significant unregulated casino sector exists, especially in Dublin. One possible reason for this is that the sector, especially the greyhound racing element, is experiencing increased growth generated by major investment in its facilities and the accompanying advertising campaign. By way of contrast, the casino sector does not, at present, enjoy such widespread public recognition, although this is likely to change as the industry is regulated and the market matures.

4.1.25 Both the Horse Racing Ireland and Bord na gCon have made written and oral submissions to the Committee expressing concern about the potential impact of the advent of licensed casinos on their development and operational revenues. An outline of these concerns and their views on how this should be addressed is presented below.

The Horse and Greyhound agencies argue that, if there is to be a licensing regime for casinos, then revenues generated should, at a minimum, be subject to a gaming tax for redistribution to those industries that will be negatively affected by the introduction of casino licences and/or that they be allowed to run casinos on some of their own tracks.

4.1.26 Racinos¹³⁵

Both Horse Racing Ireland and Bord na gCon in their submissions to the Casino Committee pointed to the fact that, in certain jurisdictions like Canada and certain States of the United States, casinos are allowed on racecourses and, in some places, only on racecourses.

Horse Racing Ireland and Bord na gCon believe that, in the event of casinos being licensed, it is essential for them to have the possibility of establishing casinos on some of their tracks. They argue that this will allow them to hold the revenues that they might otherwise lose and continue to use them for the benefit of the wider industry.

¹³³ Bord na gCon presentation to the Casino Committee, 18th October 2006.

¹³⁴ Studies cited by Bord na gCon during their submission to the Casino Committee on 18th October 2006 include: Christiansen Cummings Associates Inc. (1992) *Legal Gambling in Connecticut: Assessment of Current Status and Options for the Future*, New York; Ontario Jockey Club (1992) *Study of the Impact of Casino Gambling in the Ontario Horse Racing Industry*. September 21st, 1992, Legislative Library of Ontario, Toronto; Thalheimer, R. *An Analysis of the Impact of Intra-State Intertrack Wagering, a State Lottery, and Casino Gambling on Parimutuel Horse Race Wagering New Jersey - An Expanded Analysis* Equine Industry Program, Department of Equine Business, College of Business and Public Administration, University of Louisville; Farrell, L. (2006) *Measuring the Impact of the Introduction of Casinos in Ireland on the Irish Greyhound Racing*. The Geary Institute and School of Economics, University College Dublin.

¹³⁵ A 'racino' is a portmanteau for a combined race track and casino. In some cases, the gambling is limited to gaming machines, but many locations in the United States include table games such as blackjack, poker and roulette.

Recommendation: The Committee recommends that, if casinos are to be licensed, Horse Racing Ireland and Bord na gCon, should be allowed to apply for such licences subject to the appropriate planning and licensing consents and any necessary enabling legislation.

4.1.27 Racinos – Issues and Options

If racinos are to be allowed, then the rationale for allowing them is to allow revenues from their operations to flow back to the wider industries which Horse Racing Ireland and Bord na gCon support. There are a number of options around racinos that will be determined by the general approach taken to the licensing of casinos.

Option 1: If the Government decides that there should only be a limited number of casinos, then it is open to Government to decide that there be a special subset of those casino licences for racinos. This option raises a number of issues.

Questions arise as to whom such licences should be granted. Immediately related to this is whether or not the granting of these licences should be restricted to Horse Racing Ireland and Bord na gCon. Another consideration is whether or not these licences should be open to bidding by all tracks. The potential issue arising here is what happens in the event of a privately-owned course getting a racino licence. In this instance, ensuring the benefits flow back to wider industry is a matter for further consideration.

Option 2: If the Government decides that the number of casino licences be determined by the application of strict regulatory requirements, then Horse Racing Ireland and Bord na gCon should be subject to the same regulatory regimes as other operators. However, by virtue of their commercial semi-state status and associated corporate governance regimes, they may have certain inbuilt advantages in producing evidence of fitness and probity.

Under this option there is also no absolute guarantee that Horse Racing Ireland and Bord na gCon courses would get a licence to operate a casino/racino and, therefore, there is no guarantee that there would be any flow of income back to the wider horse and greyhound industries. In this context, care would need to be taken to ensure that any casino code does not, unintentionally discriminate against bodies like Horse Racing Ireland and Bord na gCon.

4.1.28 Casino Taxation and the Horse and Greyhound Sectors

Horse Racing Ireland and Bord na gCon have argued that, in other jurisdictions such as Ontario, Australia and various States of the United States, taxation on casino gaming has been redistributed for the benefit of prize money distributions in horse and greyhound racing. Bord na gCon therefore argue that this model should be considered to offset the possible negative effects from the introduction of casinos on the greyhound and horse racing industries.

Horse Racing Ireland and Bord na gCon believe it is critical that a new casino code ensure the tax take from casinos be distributed in such a manner as to facilitate the continued support and development of the horse and greyhound racing sector, i.e. some or all of the tax take be ring-fenced for those industries.

There is a whole series of questions that such a proposal raises which are not within the Casino Committee's terms of reference as set out in Chapter One. Therefore, they are not to be dealt with in this Report.

4.1.29 If Horse Racing Ireland and Bord na gCon succeed in obtaining licences for racinos, the question arises as to the rationale, if any, for them getting a slice of the tax take. If they are to receive a portion of the tax take the issue as to how much this should be set at would require careful deliberation. There are many public policy considerations that need exploration in this regard. Potential alternative demands for a share of the tax take also need to be taken into account e.g. charities, problem gambling research and support services.

Recommendation: The Committee recognises that, ultimately, it is for Government to decide on what approach it wishes to take in relation to ‘racinos’ and the relationship of any casino tax take to the needs of the horse and greyhound industries.

The Committee recommends that, at a minimum, the impacts of the advent or possible advent of a regulated casino sector on horse racing and greyhound racing industries be subjected to ongoing evaluation and, if a negative impact is established, appropriate ameliorative measures should be considered.

4.2 The Regulation of Gaming in Ireland

4.2.1 The Purpose of Regulation

The purpose, or policy objectives, underlying gaming can vary considerably but typically the following public policy objectives underlie most systems of gaming regulation:

- (a) Protect the consumer, i.e. the player;
- (b) Protect the vulnerable, including children;
- (c) Prevent crime e.g. money laundering;
- (d) Protect Exchequer revenue (i.e. taxation) by ensuring a proper audit trail;
- (e) Ensure a future for gaming through appropriate regulation.

Another objective might be to ensure that the provision of gaming services “... should be sufficient, but no more than sufficient, to satisfy an unstimulated demand for gaming which might otherwise seek an illegal outlet.”¹³⁶ The primary goal is therefore to ensure that clearly stated public policy objectives are attained to the maximum extent possible through effective compliance and regulation as well as to ensure public confidence through effective operation and regulation. The Committee set out in Chapter One the public policy objectives which they believe should underlie gaming regulation in Ireland.

Recommendation: The Committee recommends that a key principle underlying the provision and regulation of all gaming in Ireland should be social responsibility, i.e. protection of children and the vulnerable.

Recommendation: The Committee recommends that the provision of gaming services be regarded not as a right but as a privilege, which is subject to strictly enforced public policy criteria and which can be revoked, either temporarily or permanently, subject to due process, for failure to meet those criteria. The provision of gaming services shall be unlawful except pursuant to a licence issued by the gaming regulatory authority.¹³⁷

4.2.2 The Gaming Industry is Both Complex and Dynamic

The regulation of the gaming industry is not an easy undertaking. However, it is achievable in an efficient and effective manner as is demonstrated in many other jurisdictions. At the time of writing this Report, Ireland and Cyprus are the only two Member States of the EU who have not provided for casinos. Internationally, the gaming industry is both complex and dynamic and the regulation of gaming is recognised as being both complex and technically demanding. The industry is highly innovative in terms of product development and marketing strategies and a multiplicity of games is available, sometimes varying significantly between different markets due to consumer preferences.

Games can be now offered on a variety of different platforms and the ‘stand-alone’ gaming machine is increasingly being supplanted by machines connected to a central server from which games can be downloaded on demand or which are actually played on the server. In theory, such a server can be located anywhere in the world. Hence, the emerging regulatory environment is increasingly computer based with all the usual complexities which arise. These include ensuring the security of the casino network, wireless or otherwise, as well as the prevention of cheating by operators manipulating the

¹³⁶ Seeley, A. (2000) – see pg. 8.

¹³⁷ This shall exclude such small-scale, non-commercial, private gaming as provided for by law.

game operating software unknown to the customer or, indeed, the customer manipulating the game. While some of the issues raised by this technology are primarily matters for the operators and not the gaming regulatory authority e.g. the security of the casino network, they also raise significant issues for any regulator.

Inevitably, given the nature of the technology, the speed of innovation and change in this environment is very significant. Hence, both the laws and the supporting regulations must be sufficiently flexible to cope. A mantra that the Committee often heard in relation to the regulation of gaming was “the regulator is either in control or out of control.” The key point was that there was no such thing as being in part control. For example, unless a regulatory authority can control the types of games (software) and hardware (GMs and table games) in casinos, the gaming regulatory authority cannot ensure player protection e.g. payout rates, valid random number generation systems etc.. Different jurisdictions approach control in a variety of ways. Some use the ‘black list’ approach in that they set out what is not permissible which means that anything not on that list is, in theory, allowable. Others use the ‘white list’ approach in that they set out what is permissible which means that everything else is not allowable. Many have argued that the latter approach gives a greater degree of control so providing for better protection for the consumer as well as the vulnerable in society.

Recommendation: The Committee recommends that sufficient flexibility be provided in any legislation so as to ensure that the gaming regulatory authority and/or the Minister may, by order, make regulations under the Act in order to respond to technical or other developments or innovations in this rapidly evolving sector. The Committee is of the view that if this is not done the regulatory process will be unable to cope with the dynamic nature of this particular industry.

4.2.3 To illustrate the difficulties which can arise, consider the case where a regulator approves for use a game which meets the regulatory standards set out and has been tested accordingly. How does the gaming regulatory authority ensure that, subsequent to approval, the software of the game is not tampered with so as to, for example, alter the approved rate of return to the player? The answer is that an inspection system allied with an appropriate gaming standard promulgated by the regulatory authority and supported by appropriate checking technology can ensure that such tampering is detected. Such tampering can be made a criminal offence.¹³⁸ This approach requires appropriate and flexible primary legislation as well as supporting regulations which can be altered and/or amended by the gaming regulatory authority to keep in touch with technological developments. If a regulator cannot, for example, detect such tampering having approved software and hardware then the regulatory authority is not in control and the system of controls is largely illusory and will not be able to achieve its public policy objectives. A system of this nature will, inevitably, be abused.

4.2.4 Most regulatory systems set out the types and classes of gaming permitted, the nature of the games permitted, the location of such games and GMs as well as other criteria. The type of regulation includes:¹³⁹

- (a) The licensing of operators, manufacturers and others;
- (b) Procedures for operating any gaming establishment;
- (c) Day-to-day regulations for each type of gaming;
- (d) Technical standards for games and systems;
- (e) Independent testing of machines, games and systems; and
- (f) Controls for movement of machines and games.

These regulations must be supported by proper enforcement and policing of the laws and regulations, a regulatory database of approved machines and games and penalties for infringements. A proper system of regulation therefore requires a regulatory authority with an appropriate mixture of skills. While most of these should be in-house, some may be outsourced.

¹³⁸ This, of course, will be subject to the nature of the powers conferred to the gaming regulatory authority in due course.

¹³⁹ Adapted from Gaming Laboratories International’s Technical Standards.

4.2.5 Problem Gaming: Research and Self-Exclusion

The Committee noted during the course of its own deliberations that there appeared to be a dearth of empirical research into problem gaming or problem gambling in Ireland. However, the Committee is aware that even in those jurisdictions where gaming in casinos has been permitted for decades, research into problem gambling is, by way of contrast, a relatively recent phenomena. While both the quantity and the quality of research into problem gambling available from other comparable jurisdictions is very considerable and can be readily used in the case of Ireland, it is desirable that empirical research be commissioned specific to the Irish situation so that effective policies can be developed which reflect the Irish context.

4.2.6 The Committee notes a facility that exists in many jurisdictions which allows a person who believes that they have a problem with gaming/gambling to voluntarily exclude themselves from a gaming establishment. The Committee considers this to represent best practice and recommends that 'self-exclusion', whereby individuals who acknowledge that they have a problem with their gambling enter into an agreement to ban them from entering, or to be removed from, specified gaming venues, for a limited period of time or permanently, be provided for in any legislation. The Committee believes that protection of the vulnerable and the consumer should be central to the regulatory process and that a great deal of further work needs to be done to develop coherent and effective policies in this area. This matter is to be explored in great depth by the authority that takes on the regulatory process.

Recommendation: The Committee recommends that any new gaming regulatory authority be empowered to commission research and to cooperate with other relevant agencies, both statutory and non-statutory, with a view to developing a body of empirical research in relation to problem gambling which can then be used to develop policies and regulations to minimise problem gaming. Such research pertaining to gambling (gaming and betting) in Ireland might best be undertaken by an existing independent body or agency with expertise in the area. Furthermore, the establishment of an independent problem gambling support group should be considered.

Recommendation: The Committee recommends that there be a statutory underpinning of the process of self-exclusion whereby individuals who acknowledge that they have a problem with their gambling enter into an agreement to ban them from entering, or to be removed from, specified gaming venues, for a limited period of time or permanently.

4.2.7 The Role of Local Authorities and the Planning Process

As stated in Chapter Two of the Report, it is the view of the Committee that the powers granted to local authorities under the 1956 Act do not provide an appropriate or modern mechanism within which casinos and gaming generally can be regulated. The 1956 Act provides for an inflexible form of regulation which is both inefficient and ineffective. The essence of the 1956 Act is prohibitionist in nature as can be seen from the patchwork quilt of licensed areas, licensed funfairs and amusement halls across Ireland. It can be argued that this framework was appropriate for 1950s Ireland (and even that was disputed in the Dáil second stage speeches at the time) but it is very difficult to argue that it is appropriate for the contemporary economic and social climate.

4.2.8 Two Key Issues for Consideration

It is against this background and having regard to the proposals to now introduce a mechanism to legalise and regulate casinos that the Committee considered the question of the nature of the current powers of the local authority to permit lawful gaming in their areas. There are two key issues:

Issue 1: To consider the current process for local authority approval of gaming, as provided for in the 1956 Act and to explore whether or not this should be expanded to include casinos, and/or should be amended in some form or should be altogether removed.

Issue 2: To consider whether or not approval for gaming anywhere in the State should be a function of a new gaming regulatory authority and the extent to which it should take account of the position or views of the local authorities.

Issue 1 – Retention of Existing Provisions of the 1956 Act

4.2.9 Arguments in Favour

The following arguments can be made in *favour* of retaining the existing provisions of the 1956 Act with regard to local authorities:

- (a) One of the principal elements of ‘Better Local Government’¹⁴⁰ was to extend the remit of local government where possible, recognising the legitimacy of the role of local authorities in representing and articulating the needs and concerns of their areas.
- (b) Local authorities act in the interests of the communities which they represent in taking decisions to approve gaming in all or part of their local areas.
- (c) While the planning system gives local authorities certain powers in relation to controlling the location of an amusement hall, the provisions of the 1956 Act strengthens this power by enabling them to impose a prohibition for all or part of their area.

4.2.10 Arguments Against

The following arguments can be made *against* retaining the existing provisions:

- (a) The 1956 Act predates the control that local authorities now have under the Planning and Development Acts 2000 – 2006¹⁴¹ in relation to securing the coherent location of different types of development within their areas. The planning system assesses the land-use implications of planning applications for developments that are considered by some to be socially sensitive, such as those relating to adult products and services.
- (b) The power of local authorities under the 1956 Act:
 - i. Are somewhat arbitrary in nature, for example, a decision to rescind a resolution under section 13 of the 1956 Act, which is a reserved function, can be taken without any formal notice being given to interested parties and there is no mechanism for such parties to make their views known;
 - ii. Are not supported by any policy framework that would explain, justify or support in a transparent and rational way the decision-making process;
 - iii. Are not accompanied by any right of appeal by those affected by the local authority decision;
 - iv. Can be exercised repeatedly on an on-going basis, thereby placing lawful businesses (i.e. amusement halls and funfairs) under continuing uncertainty;
 - v. Takes no account of the possible undermining of investment on the part of existing amusement hall operators.
- (c) The current system also flies in the face of at least five of the six principles set down in the Government White Paper ‘Regulating Better’, namely effectiveness, proportionality, transparency, accountability and consistency (the remaining principle is necessity) and is completely out of step with modern regulatory practice.
- (d) Local authorities do not have an analogous power in relation to similar gambling activities, such as a betting office, race track or greyhound track. Nor do they have such powers in relation to licensed premises. There is no rationale, especially in the current environment, which justifies the singling out of amusement halls and funfairs.
- (e) The provisions of the 1956 Act have not prevented the widespread flouting of the law in numerous local authority areas where gaming is currently unlawful. Moreover, it takes no account of the reality of internet gambling whereby in every local authority area persons can gamble online irrespective of the views of the local authority. The reality is that many people want to gamble and are circumventing the existing law.
- (f) The non-passing or rescission of a resolution permitting gaming is a particularly crude means of dealing with the problems believed to be associated with gaming, including perceived problem gambling, and by driving gaming underground may, in fact, exacerbate it.
- (g) There is no evidence to suggest that in a small country the incidence of problem gaming fluctuates in accordance with local authority boundaries so that something is a threat to health in, say, Dublin City but not in, say, Bray. This is particularly so in our increasingly open and mobile society.

140 ‘Better Local Government’ – A Programme for Change (1996): Department of the Environment.

141 The Planning and Development Act 2000 revised, extended and consolidated the legislative basis for the Irish planning system, including the Local Government (Planning and Development) Act 1963.

Recommendation: The Committee is of the view that the arguments against the retention of the current powers available to local authorities are overwhelming. The Committee recommends that casino and gaming operations, including premises with gaming machines or ‘amusement-with-prizes’ (AWP) machines, should be regulated and that the current powers available to local authorities under the 1956 Act should not apply.

Issue 2 - The Roles of the Gaming Regulatory Authority and the Local Authority

4.2.11 Central to this issue is the consideration of whether or not approval for gaming anywhere in the State should be a function of a new gaming regulatory authority and the extent to which it should take account of the position or views of the local authorities. Also to be deliberated upon is local authority power and how it is the interests of local communities are taken into account.

4.2.12 These considerations, while distinct, are also related in a practical sense and so are explored together below. The Committee has examined the position in Ireland as well as gaming regulatory practices in other jurisdictions and has taken account of the Government White Paper on better regulation. The conclusions which the Committee has drawn from its research and deliberations are unambiguous. The Committee is of the view that a single regulatory authority with a broad remit is required. This is discussed in section 4.3 below.

4.2.13 However, the Committee is also of the view that local authorities continue to have an important role as regards the location and the use of premises for gaming purposes. This role can best be exercised through the planning process, the nature of which is outlined in a general fashion below.

4.2.14 The Planning Process

The planning and development regulations set out the rules and regulations governing the making of planning applications, submission of third party views in relation to planning permissions, appeals to An Bord Pleanála, types of development that are exempted from the planning code etc.. The physical planning system in Ireland is run by 88 local authorities: 29 County Councils, 5 City Councils, 5 Borough Councils and 49 Town Councils.¹⁴²

The development plan lies at the heart of the planning legislation. It sets out an overall strategy for the proper planning and sustainable development of the area of the development plan. It is the main instrument for the regulation and control of development in an area and is adopted by the councillors in each local authority. In particular, a Development Plan shows the authority’s objectives for the sole or primary use of particular areas (e.g. residential, commercial, industrial and agricultural), for road improvements, for development and renewal of obsolete areas and for preserving, improving and extending amenities. This is generally known as “zoning”.

4.2.15 The planning process is not a mechanism for determining the quantity or supply of a commercial activity in a given area and does not seek to do so.¹⁴³ Any attempt to use it as such would be inherently anti-competitive and almost certainly have unforeseen consequences. Consequently, the planning code is not a suitable means by which the supply or quantity of a commercial activity (casino, gaming arcade or otherwise) should be determined. However, the planning system will obviously have a role in relation to the assessment of land use implications of any proposed development.

4.2.16 Generally speaking, private members clubs operating as casinos, are likely, at present, to be located in areas that have been zoned for mixed use development (for example, both commercial and residential). City centres, towns and suburbs would generally be zoned in this way. From a planning perspective it is preferable not to group exclusively, or prohibitively, or to narrowly cluster development types.

4.2.17 The Committee recognises that, historically, the operation of gaming arcades (i.e. amusement halls under the 1956 Act) had given rise in certain instances to concerns at local level. Many of these concerns arose because the activities of gaming arcades were essentially unregulated, the age limit for

¹⁴² Whereas the physical planning system is run by 88 local authorities as indicated above, the 1956 Act provides for the involvement of 114 local authorities as detailed in Chapter Two.

¹⁴³ Of course, the planning system might not permit a commercial activity in a given area for zoning or any number of appropriate planning reasons. However, this is not based on supply and demand considerations but on the requirements of proper planning.

entry was set at 16 years and because of issues related to the location of such arcades in communities. A modern regulatory system together with planning processes should be able to deal with most, if not all, of these concerns. The Committee recognises that, having regard to possible concerns around location, it is appropriate that this matter be considered by the task force which will shortly be established to consider the issue of adult entertainment. This is discussed below under the section headed ‘The Way Forward’.

4.2.18 Change of Use

There are a number of issues in the planning area that require clarification as regards casino-style operations. At present, the planning regulations provide that if a change of use of a premises from any use into an amusement arcade (which is defined as “a premises used for the playing of gaming machines, video games or other amusement machines”) is carried out, planning permission is required. The planning regulations do not state whether or not a material change of use occurs if, for example, there was a change of use from:

- (a) One of the existing casinos (i.e. those established as private members clubs) into a licensed casino proper;
- (b) A financial, professional or any other service type office (i.e. Class 2)¹⁴⁴ into a casino;
- (c) An amusement hall into a casino.

It could be argued therefore that ambiguity would arise in these instances. As matters stand, it would appear to be somewhat inconsistent that the planning regulations could potentially treat casinos either more leniently or ambiguously than amusement halls and this should be remedied.¹⁴⁵

4.2.19 Zoning

Development plans do not, at present, provide any guidance as to what locations are suitable for casinos. As matters stand therefore, a local authority or An Bord Pleanála, in considering a planning application, would make a decision based on the particular circumstances before them and this might require a degree of ‘improvisation’ as regards the zoning category into which a casino might fall. In the absence of provisions in development plans in relation to casinos, there is a possibility of different approaches emerging in different local authority areas. However, where differing approaches emerge they may also simply be a reflection of differing local concerns and circumstances. This could give rise to some difficulties in urban areas comprising a number of local authorities.

4.2.20 The Way Forward

It should be made clear in the planning regulations that a change of use from any existing use into a casino¹⁴⁶ or any business involving gaming constitutes a material change of use, i.e. requiring planning permission. The regulations will need to take account of the possible changes which may arise in the categorisation of gaming operations on foot of future legislation to ensure that there are no planning loopholes and that all gaming activity is properly subject to the planning system.

4.2.21 A definition of a casino¹⁴⁷ in the planning regulations would also be strongly advisable. To ensure consistency the definition use should be the same as the definition of casino being incorporated in the other legislative changes that ultimately emerge from the work of the Casino Committee. This position should also apply to the other definitions such as those relating to amusement halls.

4.2.22 As regards zoning, the Committee is aware that the Minister for the Environment, Heritage and Local Government is in the process of setting up a task force to address zoning issues in the planning code relating to premises for adult entertainment. The Committee understands that this will incorporate the issue of adult gaming environments. The output of the Task Force should go towards ensuring that there will be a coherent approach to the location of such activities throughout the State.

¹⁴⁴ Planning Use Class 2 groups together financial and professional services which are provided principally to visiting members of the public such as banks, betting offices etc.. See Class 2, Part 4, Schedule 2 of the Planning and Development Regulations 2001.

¹⁴⁵ It is also interesting to note that a change of use of a building from financial services or professional services to a betting office does not require planning permission, i.e. a material change of use is not regarded as taking place.

¹⁴⁶ This could have implications for private members clubs which provide casino-style activities for their members.

¹⁴⁷ See Appendix No. 21 for an illustrative list of definitions. The Committee acknowledges that this list is by no means exhaustive and requires further detailed analysis and consideration.

4.2.23 Both the casino and gaming arcade sectors are to be strictly regulated. The Committee notes that casinos and gaming arcades raise separate issues in that they are quite distinct gaming environments. This being the case, both are to be regulated as completely distinct gaming environments. Casinos should be a certain minimum size and therefore, given market demand and the costs associated with regulation, will be fewer in number than gaming arcades given that the latter should be smaller in both size and scale and, hence, may be more numerous.

4.2.24 The Committee is recommending that the appropriate body should be given broad powers regarding the licensing of casinos and gaming arcades. In the granting of licences, the appropriate body is likely to have regard to the numbers and types of gaming establishments in an area.¹⁴⁸ The Committee recommends that the role of the local authority as regards casinos should be limited to the planning process (including zoning) and that, without seeking to pre-empt the findings of the Task Force discussed above, the zoning requirement for casinos should be reasonably flexible. The Committee is also of the view, that any concerns about the location of gaming arcades should be considered in the context of the forthcoming Task Force on Adult Entertainment.

4.2.25 The Committee is aware that the proposed changes to the regulatory regime could have major implications for the existing licensed industry (i.e. amusement halls and funfairs). There will be new and strict licensing requirements and, depending on the deliberations of the new Task Force on Adult Entertainment, possible changes to the planning code. The Committee is not recommending preferential treatment for already licensed operators in that industry; it is simply acknowledging that they are engaged in lawful activity, and that, in developing the new licensing regime, careful consideration should be given to the status of this sector.

Recommendation: The Committee recommends that the role of local authorities in relation to gaming activities should primarily be exercised through the planning process, but notes that for this to be effective there will need to be changes to the planning regulations. In that context the deliberations of the soon to be established Task Force on issues relating to adult entertainment will need to be taken into account.

Recommendation: The Committee recommends that the local authority shall be a notice party in relation to all applications for licences for gaming arcades and the gaming regulatory authority shall have regard to the opinion and views of the local authority.

Recommendation: The Committee recommends that in the development of a new regulatory regime careful consideration be given to the status of amusement halls currently licensed under the 1956 Act.¹⁴⁹

4.3 The Gaming Regulatory Authority

4.3.1 As identified in Chapter Three, there is no one model or ideal model of casino regulation which can be readily identified from a worldwide trawl. Even in federal States, regulatory models can vary enormously as between individual States within the federation. However, it is possible to take from best practice in other jurisdictions and to have regard to differences in the scale and size of markets. The Committee was conscious of the need to propose a regulatory model which was appropriate to the relatively small scale of the Irish casino and gaming market but which was also robust and sufficiently flexible in nature so as to enable it to adapt to change without requiring ongoing primary legislation.

4.3.2 Any proposals in this area will need to be further developed as the regulatory model evolves. The proposals for possible legislative content as presented in section 4.8 of this Report and the related Appendix No. 14 represent a legislative outline which will have to be adjusted to take account of the complexities, legal and otherwise, that will, no doubt, emerge as the regulatory model is developed and as other views are taken on board.

¹⁴⁸ See Recommendation No. 12, Chapter One.

¹⁴⁹ In this context, the term “licensed” means an area where the local authority has adopted a resolution under section 13 of the 1956 Act and where the operator has obtained a certificate from the District Court and a licence from the Revenue Commissioners.

Recommendation: The Committee recommends that (a) from a modern regulatory perspective and in the interests of effectiveness, proportionality, transparency, accountability and consistency and (b) based on studies of international norms as outlined in Chapter Three, the regulatory system¹⁵⁰ should be responsible for the licensing and regulation of all gaming (this definition includes premises with gaming machines) in the State.

4.3.3 Precise Form of the Regulatory Body

The Committee had intended to propose a specific form of regulatory body. Various models can be mooted. These include the following:

- (a) **A Regulator Only Model:** One body that has all licensing and inspection powers including the powers to impose a range of penalties. An appeal would be possible, as of right, to the Courts in respect of certain specified matters and on points of law.
- (b) **A Regulator and Board Model:** The regulatory authority would have a broad range of powers but would not be involved in licensing which would be a matter for the Board. Various appeal options would include an appeal to the Board and/or the Courts in respect of certain specified matters and to the Courts on points of law.
- (c) **A Regulator and Appeals Board Model:**¹⁵¹ The regulatory authority would have powers similar to the model under (a) above but with the appeal on the exercise of many of those powers resting with the Appeals Board. Again, recourse to the Courts would be on a point of law.
- (d) **A Regulator and Court Model:** The regulatory authority would have broad powers of inspection and control of licensing premises. Breach of regulatory standards would be a criminal offence for which prosecution could be brought before the Courts.

Other variations on the above models are, of course, possible.

4.3.4 The precise form of the regulatory body will depend on a range of factors including the nature of the powers which may be constitutionally exercised by a body other than a Court. This is a critical factor as the proposed regulatory model has at its heart a range of powerful penalties and deterrents designed to ensure compliance with the licensing conditions set down by the gaming regulatory authority. The Committee has sought legal advices from the Attorney General on the nature of the powers that may be exercised by the regulatory body, as well as on some other matters. The advices sought raise complex legal and constitutional issues. At the time of writing these advices are not yet to hand and the Committee is therefore not in a position to propose a precise regulatory model. The apportionment of powers, including the precise appeals structure, is dependent on such advices. However, before definitive advices can be obtained it might well be necessary to develop a clearer understanding of the relevant issues.

4.3.5 In addition to the above considerations, the Committee notes that the Department of the Taoiseach published a consultation paper on regulatory appeals¹⁵² in July 2006. This paper primarily focuses on appeals relating to the key economic and sectoral regulatory authorities. However, it is intended that the outcome of the consultation process will inform appeals processes across the public service as a whole. The Committee considers it appropriate to await the outcome of this process in deciding on an appropriate appeals process.

4.3.6 Neither the absence of legal advices nor the outcome of the above consultation paper has stopped the Committee from setting out in some detail, as required by our terms of reference, the nature of the licensing and other powers that such a regulatory system will require. It has prevented the Committee from proposing a precise regulatory model. The Committee is, however, confident that a suitable regulatory model can be framed once the advices and the outcome of the consultation process are to hand and following additional work on the details of a licensing system and technical standards has been undertaken.

¹⁵⁰ The reference to 'the regulatory system' as opposed to 'the Regulator' is required because legal advice is awaited by the Committee which will dictate the form of the regulatory system and the allocation of powers and responsibilities. (See Section 4.4 below).

¹⁵¹ This model would be similar to the Private Security Authority.

¹⁵² Department of the Taoiseach (2006) *Consultation Paper on Regulatory Appeals*, July 2006 [PRN. A6/1047]

4.4 Approaches to Licensing

The Committee carefully considered the question of how a gaming licence should be allocated in Ireland. Different approaches have been tried in different jurisdictions. Two broad scenarios can be posited:

- Scenario 1. Models based on quantitative restriction of the numbers of licences
- Scenario 2. Models based on supply and demand considerations

4.4.1 Scenario 1: A quantitative restriction on the number of licences awarded for reasons of public policy. Licences are awarded based on either:

- (a) A competitive bidding process

and/or

- (b) Some form of “beauty” competition where the most appropriate bidders under a number of predetermined headings are awarded licences.

4.4.2 It might be noted that while these above options are considered below for the sake of clarity as separate policy choices, they could also be combined in some fashion. Public policy considerations **might** include the desire to ensure ease of regulatory control, to better control potential problem gambling or to foster a small number of large scale casinos to optimise the taxation return. The possible costs and benefits of such a policy are outlined below. This analysis does not purport to be exhaustive and will need to be subject to Regulatory Impact Analysis.

Scenario 1 (a): Quantitative Restrictions: Using Competitive Bidding

4.4.3 (i) Possible Benefits:

- (a) Likely attraction into Irish market of large international operations with a proven track record and professional expertise.
- (b) Fewer small and medium sized casinos due to market entry costs and uncertainty of returns.
- (c) Smaller number of larger casinos making regulation easier and more cost effective for both the regulatory authority and the operator.
- (d) Public acceptability and possibly fewer social costs due to the restricted number of casinos.¹⁵³
- (e) Potentially higher revenue yield to the Exchequer, especially if the licences are based on casinos of a medium to large-scale size.¹⁵⁴
- (f) As the market matured the numbers of licences could be increased thereby yielding an on-going revenue stream to the Exchequer.

4.4.4 (ii) Possible Costs:

- (a) Quantitative restrictions work best where there are resources or other constraints inherent to the market. This is not the case in this instance (but could be the case if it was decided to grant a small number of licences sufficient to ‘saturate’ the market and generate maximum tax revenue). Hence, quantitative restrictions often involve the creation of an ‘artificial’ market which can give rise to a variety of problems. For example, such market restrictions are by their nature anti-competitive and create a secondary market in the trading of licences where the benefits accrue to the owner of the licence and not to the consumer or to the Exchequer. They may also lead to higher costs as operators are shielded from the full rigor of competition.

¹⁵³ However, this might depend on upper size limits being imposed by the regulatory authority.

¹⁵⁴ The optimisation or maximisation of tax revenue is presented throughout this section as an option because it is one of the primary considerations underlying licensing in many jurisdictions. Its inclusion here is not intended to suggest that it is a key consideration for Ireland.

- (b) Competitive bidding processes usually go hand in glove with the award of exclusive geographical or market areas in order to ensure that the bidder is guaranteed a reasonable prospect of return on investment. This would require a detailed survey of the market by the regulatory authority before they could advertise for bids which could be expensive, time consuming and controversial.
- (c) A bidding competition may give rise to the phenomena of the 'winners curse' where applicants overbid for licences to the subsequent detriment of their business. From a regulatory standpoint this is undesirable.
- (d) The market for casinos is 'immature' in Ireland and may not attract a large number of bids or significant bids thereby diminishing or depressing Exchequer returns.

Scenario 1 (b): Quantitative Restrictions: Using 'Beauty Competition' Process

4.4.5 (i) Possible Benefits:

- (a) The regulatory authority could devise criteria for selection which best fit public policy criteria or considerations.
- (b) Likely attraction into the Irish market of large international operations with a proven track record and professional expertise.
- (c) Fewer small and medium sized casinos due to market entry costs and uncertainty of returns.
- (d) Smaller number of larger casinos overall making regulation easier and more cost effective for both the regulatory authority and the operator.
- (e) Possibly greater public acceptability and fewer social costs.¹⁵⁵

4.4.6 (ii) Possible Costs:

- (a) Quantitative restrictions work best where there are resources or other constraints inherent to the market. This is not the case in this instance (but could be the case if it was decided to grant a small number of licences sufficient to 'saturate' the market and generate maximum tax revenue). Hence, quantitative restrictions involve the creation of an 'artificial' market which can give rise to a variety of problems. For example, such market restrictions are by their nature anti-competitive and create a secondary market in the trading of licences where the benefits accrue to the owner of the licence and not to the consumer or to the Exchequer. They may also lead to higher costs as operators are shielded from the full rigor of competition.
- (b) Devising suitable criteria which best fit public policy considerations is difficult, inherently subjective and may be insufficient in itself to determine the allocation of licences. It may also give rise to subsequent litigation as losers challenge both the procedures and the outcome.
- (c) Quantitative restrictions on the number of operators would suggest that the regulatory authority would require some rationale for choosing a specific number of licences to allocate as well as some idea as to the number of licences to be awarded in various geographical areas. This would require a detailed survey of the market by the regulatory authority prior to the competitive process which could be expensive, time consuming and controversial.

4.4.7 Scenario 2: A more supply and demand oriented approach subject to:

- (a) A liberal licensing regime
- or
- (b) A more restrictive licensing regime.

4.4.8 Irrespective of licensing requirements, the cost of entry to this market can be significant but not, it could be added, so significant that it is likely to deter numerous operators from seeking to enter the market. This is a labour and technology intensive industry with significant ongoing skill and capital requirements. Ultimately, under this scenario, the demand for services will determine the success or failure of the business venture. If desired, the growth in demand for such services, however, can be limited by placement of restrictions on advertising and

¹⁵⁵ However, this would depend entirely on upper size limits being imposed by the regulatory authority.

marketing if this is considered necessary for reasons of public policy. The possible costs and benefits of the policies listed in 4.4.7 above are outlined below.

Scenario 2 (a): Supply and Demand Focussed Liberal Licensing Approach

4.4.9 (i) Possible Benefits:

- (a) Prospective operators, rather than the State, will make their own decisions as to whether there is likely to be sufficient demand for their services.
- (b) This approach is likely to avoid the pitfalls of a quantitative approach in terms of overbidding or litigation arising from the 'sore loser' syndrome.
- (c) It may also avoid the necessity for the gaming regulatory authority to engage in a potentially difficult and controversial market study in order to allocate licences.
- (d) Competition may be quite intense over the short to medium term due to numerous market entrants thereby giving rise to greater choice and lower costs for the consumer.
- (e) Market demand will ultimately determine the number of casinos and is likely to balance supply and demand without unnecessary State intervention. It is likely in any event that, over time, through a process of competitive consolidation as has occurred in many other jurisdictions, casinos will become fewer in number and larger. This will facilitate better regulation and is likely to increase tax yield.
- (f) Using a progressive scale of tax rates, there may be a potentially higher revenue yield to the Exchequer, as operators strive to develop what is, at present, a relatively immature and under-developed market.

4.4.10 (ii) Possible Costs

- (a) There may be an over-supply of casinos leading to a highly competitive cost-cutting environment. This may not be in the interests of the consumer in that some operators may reduce the rate of return to the customer or may be inclined to cheat. Nor would such a process necessarily lead to better regulation as there would be a strong incentive for operators to resist or to stint on the costs associated with regulation.
- (b) More firms are likely to fail possibly leading to an adverse impact on the regulatory process and public dissatisfaction.
- (c) The gaming regulatory authority may be initially overwhelmed by operator applications for licences and so may find such a market difficult to regulate. The regulatory authority may also experience considerable resistance from operators to any regulations which increased their cost base. Such resistance could very speedily become political in nature and may lead to pressure to reduce the scope and reach of regulation.
- (d) There may be negative social consequences due to competitive pressures impact on costs (e.g. leading to a failure to properly monitor problem gambling, improper enforcement of age restrictions etc.) which cause operators to ignore or circumvent regulations. Such a process could lead to a severe public backlash.
- (e) Intense competition and associated cost pressures may lead to negative consequences for consumers and give rise to customer satisfaction and associated complaints.

Scenario 2 (b): Supply and Demand Focussed Restrictive Licensing Approach

4.4.11 (i) Possible Benefits

- (a) While prospective operators, rather than the State, will make their own decisions as to whether there is likely to be sufficient demand for their services, a restrictive licensing regime may constitute an additional barrier to entry over and above the normal costs associated with entry. Such a regime might not deter from entry the more substantial international operators or those who may have been in the business for some time. However, the qualification criteria would be more onerous than under the above Scenario 2(a). This approach is likely to have similar benefits to 2(a) above in avoiding the pitfalls of the quantitative approach, but would also have the likely additional benefit of facilitating better regulation as operators are likely to be financially better equipped to bear the costs of regulation.

- (b) The consumer is likely to be offered products which have been tried and tested in other markets leading to greater public satisfaction.
- (c) Public satisfaction with a restrictive regime may be higher and adverse social consequences may be less.
- (d) There may be a potentially higher revenue yield to the Exchequer, as larger and experienced operators strive to develop what is, at present, a relatively immature and under-developed market. They are better positioned financially to develop such a market and it may be possible to apply a higher tax rate than would be the case if there were many small operators.

4.4.12 (ii) Possible Costs

- (a) The cost of regulation might deter the entry of otherwise reputable and able operators thereby reducing competition.
- (b) A more restrictive licensing regime may give rise to a more expensive operating environment (although this is not necessarily the case if some of the restrictions are 'front-loaded' i.e. they do not form part of the ongoing operating costs of the business, but form part of the cost of the initial application).
- (c) The licensing regime may restrict market innovation thereby reducing the stream of benefits to the consumer in particular and society at large.
- (d) The market may develop in a slower fashion than might otherwise be the case giving rise to slower tax gains to the Exchequer and fewer benefits to consumers in the short to medium term.
- (e) The public may resent a strict regime as being too 'nanny State' in its approach.

4.4.13 While the ultimate decision as to how licences may be awarded rests with the Government, the Committee tends to favour the adoption of scenario 2(b), i.e. a restrictive regime, as offering the best combination of strict regulatory oversight with the ability to respond to unforeseen consequences. This particular scenario would grant the gaming regulatory authority the power to control market entry based on strict licensing criteria as well as the power to respond to public concerns around the numbers or locations of gaming premises. It would also avoid the real pitfalls of the 'bidding' or 'beauty competition' approach. In addition, the Committee has no reason to believe that the Government approach to this area is based on the desire to maximise return to the Exchequer. The primary rationale would appear to be based on the examination of possibilities for the provision of a service to be provided for which there is considerable demand while ensuring the protection of both the public and private interest.

Recommendation: The Committee recommends the adoption of a restrictive licensing regime which provides the appropriate body with the power to strictly licence premises, operators, suppliers and key employees. The Committee believes that this meets the criteria for strict regulation set out by the Government as well as providing the flexibility to respond to developments and to meet public and local concerns. The appropriate regulatory authority, in the granting of licences, may have regard to the numbers and types of gaming establishments in an area.

4.5 Money Laundering

4.5.1 The terms of reference of the Committee required the Committee to consider the conditions for meeting the requirements of the Financial Action Task Force (FATF) - see Chapter One for a brief discussion on the FATF.

4.5.2 For the purposes of section 32 of the Criminal Justice Act 1994 casinos are a designated body under the Criminal Justice Act 1994 (section 32) Regulations 2003. The activity of operating a casino is a prescribed activity for the purposes of section 32(2) of the Criminal Justice Act 1994 under the Criminal Justice Act 1994 (section 32) (Prescribed Activities) Regulations 2004.

4.5.3 The Forty Recommendations of the FATF in relation to money laundering¹⁵⁶ contain several recommendations relating to money laundering and casinos:

“[Recommendation] 12. The customer due diligence and record-keeping requirements set out in recommendations 5, 6, and 8 to 11 apply to designated non-financial businesses and professions in the following situations:

a) Casinos – when customers engage in financial transactions equal to or above the applicable designated threshold.¹⁵⁷

[Recommendation] 24. Designated non-financial businesses and professions¹⁵⁸ should be subject to regulatory and supervisory measures as set out below.

a) Casinos should be subject to a comprehensive regulatory and supervisory regime that ensures that they have effectively implemented the necessary anti-money laundering and terrorist-financing measures. At a minimum:

- Casinos should be licensed;
- Competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino;
- Competent authorities should ensure that casinos are effectively supervised for compliance with requirements to combat money laundering and terrorist financing”.

4.5.4 Recommendations 5, 6, 8 and 11 referred to in the above extract relate to customer due diligence and record keeping by designated non-financial businesses and professions. The Committee has discussed the issues associated with money laundering in casinos with various parties including experts in the area.

4.5.5 Article 10.1 of the Third Money Laundering Directive also provides that Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of €2000 or more. Article 10.2 provides that casinos subject to State supervision shall be deemed in any event to have satisfied the customer due diligence requirements

156 Financial Action Task Force (FATF) on Money Laundering (2003)

157 At present the threshold is USD/€3000

158 “Designated non-financial businesses and professions” includes Casinos (which also includes internet casinos).

if they register, identify and verify the identity of their customers immediately on or before entry, regardless of the amount of gaming chips purchased.¹⁵⁹

4.5.6 There is little doubt that the requirements of the FATF as they relate to casinos can be met, but in order to do so the gaming regulatory authority will have to be given sufficient powers to make appropriate Regulations in this area. Various technical issues arise, such as how to track an individual's spending over a night especially in relation to table games. For example, a requirement that cash could not be used in any circumstances in a casino and that every time a customer wanted to place a bet on a table game, s/he would have to go to the cashier if s/he did not have sufficient chips and could cause severe difficulties for the conduct of table games.

Recommendation: The Committee recommends that in the establishment of any new regulatory regime, and in order to ensure the development and implementation of successful anti-money laundering strategies, the licence awarding body must have the ability to undertake in-depth background investigations into the applicant's financial, business and taxation history as well as any criminal or other relevant records. While the necessity for these powers extends beyond money laundering considerations alone, the Committee wishes to stress that action to prevent money laundering is not just limited to areas of finance, including appropriate financial procedures, but is multi-faceted and starts from basic licensing requirements with consideration of such matters as good character, criminal record, taxation, financial history, disclosure of shadow directors and shareholders etc. The Committee is also satisfied that requirements of the FATF as well as EU law can be met by casinos and that the regulatory authority, in consultation with appropriate parties and by reference to best practice in other countries, can ensure that the necessary procedures are in place.

4.6 Gaming Licence and Gaming Machine Typologies

4.6.1 Distinctions in Gaming Markets

Many jurisdictions make marked distinctions between different types of gaming. The distinction between what many perceive to be "harder" forms of gaming, such as casino games and GMs, on the one hand, and lotteries and betting on the other is particularly common. As is outlined earlier in this Report, in many countries this is reflected in separate legislation for gaming (which in those cases covers casinos and often also GMs), betting and lotteries. The statutory framework for the two types of gaming differs mainly in the form of regulation, and often in the form of supervision. Market differentiation according to the nature of different gaming environments (e.g. "super" casinos¹⁶⁰; smaller casinos; remote gaming; gaming arcades etc.) and assorted forms of gaming (e.g. table games; card games; gaming machines; 'amusement-with-prizes'machines etc.) is necessary in order to provide a meaningful and transparent regulatory structure. Consistency necessitates a structure that can be easily applied regardless of the composition of any gaming operation. It must be simple to follow with clear parameters outlining exactly the limits on gaming activity permitted across a broad spectrum of varying classes of operating licences.

¹⁵⁹ See Directive 2005/60/EC of The European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Available online: http://eurlex.europa.eu/LexUriServ/site/en/oj/2005/l_309/l_30920051125en00150036.pdf

¹⁶⁰ The term "super casino" is not particularly helpful as it is a relative term which can only be properly understood when placed in a particular context. The term cannot be used interchangeably across countries without engendering considerable confusion. For example, a super casino in Great Britain would be much larger in scale and size than a similar enterprise in a smaller country such as Ireland. All that can be gleaned from the term itself, in the absence of other information, is that a "super casino" is, by definition, larger than a standard casino.

4.6.2 Today in Ireland there are six basic categories of gambling:

- (a) Casino-Style Table Gaming – Including Blackjack; Poker; Roulette; Brit Brag; Kalooki; Punto Banco; 3-5-7 Poker etc.
- (b) Gaming Machines – Electronic Gaming Machines (EGMs); “Slots”; FOBTs¹⁶¹; AWP; Automatic Table Games etc.
- (c) Remote Gaming – Internet, interactive and mobile gaming
- (d) Bingo
- (e) Sports and other Betting
- (f) Lottery

4.6.3 As stated earlier, the Casino Committee is concerned with the regulation of “Gaming”¹⁶² and so the Committee has focussed its attention on the first three categories of gambling i.e. casinos; gaming machines (in casinos, gaming arcades and stand alone at other venues); and remote gaming.

4.6.4 In broad layman’s terms, the difference between “gaming” and “betting” is that in “betting” the individual placing a stake on a particular event has no part or influence, directly or indirectly, on the outcome of the event/process being bet upon. Whereas in “gaming” the individual participates in the event/process. The legal difference between the two can, at times, appear quite blurred, but there is a distinction. This legal distinction, however, needs to be developed and refined.¹⁶³ These legal definitions are critically important to good regulation. Unless these definitions are properly drafted, gaming operators will, no doubt, find a technical method to defeat the intent of the legislature. For example, a technical method might be constructed whereby a customer could play a casino-style game, e.g. roulette, on a machine in such a way as to constitute a bet as it is currently defined or interpreted in law.

4.6.5 The Committee’s exploration of the differences between gaming and betting leads it to the conclusion that these areas should remain separate as they raise distinct regulatory issues. The Committee is also of the view that to treat gaming and betting as one area would lead to a cross-over between the two environments which would permit gaming in betting premises and vice versa. The Committee does not consider that this is desirable especially having regard to the number of betting premises in the State (approximately 1,170) and the potential for the proliferation of GMs.

4.6.6 The Committee is aware that many bookmakers operate ‘lucky numbers’ (a lottery based system) and ‘virtual races’ and is aware of the importance of these areas to the income stream of bookmakers. These are, however, important issues of detail which can be considered by the Interim Gaming Regulatory Authority, or whichever body is established to take this work forward. These issues do not detract from the Committee’s view on the principle of the separation of gaming and betting.

Recommendation: The Committee recommends that “gaming” and “betting” be treated as two completely separate types of gambling activity, which raise very distinct regulatory issues and which should be treated separately in any regulatory arrangement. The Committee considers that this is fundamental for the regulation of gaming. The Committee recommends that there should be no betting of any kind permitted on or in any licensed gaming premises. Likewise, there should be no gaming activity of any kind permitted on or in any betting or bookmakers’ premises.

The distinction between gaming and betting may be clarified in legislation to facilitate compliance with the above recommendation.

161 Definitional issues become extremely important when attempting to classify distinct categories of gambling activity. What constitutes each distinct category of gambling activity i.e. “casino”; “gaming arcade”; “gaming”; “gaming machine”; “amusement hall”; “amusement machine”; “betting” etc., requires further in-depth analysis and detailed consideration. See Appendix no. 21 for an illustrative list of definitions. This list is by no means exhaustive and requires further development. The central point in the development of separate legal definitions is the nature of the gambling activity actually being engaged in.

162 See Chapter One.

163 Section 1 of the Betting Act 1931 only states that ‘the word “bet” includes “wager, and cognate words shall be construed accordingly.

4.6.7 The Casino Committee has not been requested to explore the possibilities for the further regulation of the betting market in Ireland. While the activities of both the gaming and betting markets obviously have direct impact on one another, this is of no immediate relevance to the design of a regulatory structure exclusively for gaming.¹⁶⁴

Generally speaking, the toughest conditions and the most intensive supervision regimes are applied to games in a casino environment. The conditions for GMs in a non-casino environment are generally less strict, although this particular market is considered to be a problem in many countries because it represents a low threshold form of gaming and because the wide distribution of GMs over many venues makes strict supervision more difficult. However, this can be prevented by restrictive licensing arrangements and firm and continuous monitoring of industry codes of practice.

4.6.8 Fixed Odds Betting Terminals (FOBTs)¹⁶⁵

The Committee notes that Fixed Odds Betting Terminals (FOBTs) were introduced into the betting office environment in Great Britain in 2001. United Kingdom Customs and Excise figures show a fourfold leap in the betting industry turnover to £29.4 billion since the first roulette FOBTs began appearing in 2001.¹⁶⁶ However, the introduction of such machines does raise fundamental public policy issues.

'Fixed odds betting' is defined to some extent in section 10(1) of the UK Betting Gaming and Duties Act 1981. Under this definition a bet is made at fixed odds only where each of the persons making the bet know or can know at the time the bet is made the amount they will win subject to certain exceptions.¹⁶⁷

4.6.9 Definitional issues become extremely important when attempting to classify distinct categories of gambling activity. What constitutes each distinct category of gambling activity i.e. 'gaming'; 'betting'; 'casino'; 'gaming arcade'; 'gaming machine' etc., requires further in-depth analysis and detailed consideration.¹⁶⁸ However, aside from the related consequences of increased accessibility to convenience gambling and potential increased incidence of problem gambling, the central issue that arises in permitting the operation of FOBTs in bookmakers' premises is not just one of legal definition, but primarily one of public policy i.e. the public good.

4.6.10 The central point in the deconstruction of this definitional quagmire should be the nature of the gambling activity actually being undertaken. For example, the playing of roulette should be treated as gaming irrespective of whether it takes place on a machine in a gaming establishment or on a FOBT.

4.6.11 The Committee is not opposed to the use of modern touch screen or other technology in bookmakers' shops for betting purposes. It is, however, strongly opposed to the spread of gaming machines into a betting environment. Modern style FOBTs can be configured to run most types of games and the Committee has seen Irish developed machines, for use in bookmakers' premises, which can play casino games, including card games, as well as allow participants to engage in online sports betting. These machines also allow a player to play games like roulette in a real casino environment 'streamed' over the Internet. The key point is that with technological convergence there is little essential difference between computers and most modern electronic gaming machines. Technology i.e. hardware/software and availability of multiple gaming suites, dictates the player experience.

4.6.12 There are approximately 1,170 bookmakers' offices in this State. The prospect of FOBTs in each bookmaker's office, even if limited in number to a maximum of four per office (as in Great Britain), or fewer, has potentially serious repercussions in terms of problem gambling as can be seen from studies in numerous other jurisdictions where a proliferation of gaming machines was permitted. Machines in bookmakers' offices raise exactly the same regulatory issues as in gaming environments. According

¹⁶⁴ The impact of gaming on the horse and greyhound betting sector is discussed elsewhere in this Report.

¹⁶⁵ FOBTs are software-driven, often touch screen, terminals, usually of about the same size and shape as a stand alone floor-standing cash dispenser. FOBT users can hazard stakes on a variety of gambling products and services whose outcome is driven by a random number generator operated by an independent third party and located remotely. Gambling products on offer by means of FOBTs generally include virtual horse and greyhound racing and can be configured to play casino-style games such as roulette.

¹⁶⁶ This figure includes all betting shop products as well as internet and telephone betting.

¹⁶⁷ Olswang Lawyers (2002).

¹⁶⁸ See Appendix No. 21 for an illustrative list of definitions. This list is by no means exhaustive and requires further development.

to GamCare¹⁶⁹ in the United Kingdom, a recent unpublished survey by Mintel for the Association of British Bookmakers has revealed dramatic increases in the use of FOBTs by problem gamblers (Europe Economics-Mintel 2006). The research examined patterns of gambling participation amongst betting shop visitors and found that, between 2004 and 2005, the use of FOBTs among problem gamblers had escalated from 12% to 40%. According to GamCare's own research, FOBTs remained the second most problematic mode of gambling¹⁷⁰ affecting 25% of their clients.

4.6.13 It is the view of the Committee that, if permitted, the proliferation of this type of GM outside of licensed casinos and gaming arcades with the potential social consequences, would require very strict licensing and regulation by the gaming regulatory authority. Betting offices, operating as gaming establishments, might even be required to reapply for planning permission in accordance with zoning regulations. In line with the demarcation between "gaming" and "betting", it is the opinion of the Committee that no sports or other betting services be provided for in either casinos or gaming arcades of any type and that the converse should also apply.

4.6.14 The public policy issues around the placement of FOBTs in bookmakers' offices can be summarised under five headings:

- (a) **Social:** The placement of such machines in an unregulated environment such as a bookmaker's office is socially undesirable because there is ample evidence that permitting the proliferation of such machines outside of gaming arcades may give rise to negative social consequences.
- (b) **Tax:** Bookmakers attract a favourable tax rate of 1%. Gaming, worldwide, attracts a higher tax rate.
- (c) **Planning:** The possible planning consequences arising from the placement of such machines in bookmakers' offices and the conversion of those offices to combination betting/gaming arcades were not considered by the Committee during their deliberations. The question therefore arises as to whether such activities might constitute a change of use under the planning regulations.
- (d) **Regulatory:** If bookmakers can engage in gaming then, logically, gaming establishments should be permitted to engage in betting. Gaming and Betting require different regulatory approaches. The Committee is of the view that these activities should remain separate for the reasons that are outlined in this Report.
- (e) **Political:** It is undesirable that such sweeping changes should be made to public policy, with potentially significant adverse social consequences, in the absence of appropriate decisions on these matters by the Executive and the Oireachtas.

4.6.15 In addition, in order to avoid a proliferation of GMs in unregulated environments the Committee recommends that GMs be permitted in casinos and gaming arcades only. They should not be permitted in shops, take-aways, restaurants, hotels, public houses or any other premises. The placement of such GMs outside of a tightly regulated environment is not desirable and may give rise to social problems as well as a proliferation of machines which it will be impossible to regulate or control. The Committee notes that in many other jurisdictions, such as New South Wales in Australia, where GMs were allowed to proliferate, Governments are now attempting to reduce the numbers of such machines.

Recommendation: It is the opinion of the Committee that contemporary fixed odds betting terminals (FOBTs) are to be treated as gaming machines. Gaming machines should not be permitted in bookmakers' offices. The term/label "fixed odds betting terminal" is now somewhat superseded by the fact that many of these machines offer gaming services in addition to betting e.g. roulette etc., and so should be classified as electronic gaming machines. It should be noted that the Committee is not opposed to the introduction of new technology into betting or bookmakers' offices provided that the service being provided utilising such technology is exclusively that of betting.

169 GamCare, a registered charity in the UK, is the national centre for information, advice and practical help regarding the social impact of gambling. See <http://www.gamcare.org.uk>

170 Second only to off and on course betting (mainly off course) which continued to be the most problematic gambling mode for 45% of clients, an increase of 11% on 2004. See GamCare Care Services 2005 Report.

Recommendation: The Committee recommends that gaming machines (GMs) should only be permitted in the licensed environment of a casino or gaming arcade. In addition to not being permitted in betting or bookmakers' offices, gaming machines should not be permitted in shops, take-aways, restaurants, hotels, public houses or any other premises.

4.6.16 Licensing Framework

Central to the regulation of gaming in Ireland is a licensing framework that is flexible enough to accommodate all gaming arrangements. So as to reflect the present circumstances and future strategic direction of the gaming sector in Ireland, this framework or licensing model must also be realistic and workable in its application. Further market research of the current gaming sector is required to complete the picture, but in order to embrace the diversity of gaming environments and varying forms of gaming currently available in Ireland, the Casino Committee recommends the establishment of a gaming operating licensing structure along with a system of categorisation of games and gaming machines. This will facilitate the elaboration of parameters clearly outlining what each gaming operating licence type grants the holder. It will also create a set of comprehensible rules relating to the nature of gaming activity permitted in any gaming environment.¹⁷¹ The gaming operator licensing structure offered in Table Thirteen below by the Casino Committee as an example for consideration is loosely modelled on the framework currently being applied in Great Britain. Table Thirteen below is valuable in that it creates structure and defines parameters in aligning different gaming market arrangements, facilities and gaming services available.

***Important Note:** Essentially, Tables Thirteen, Fourteen and Fifteen provide an illustrative framework for regulating a variety of distinct gaming environments with a diversity of facilities and services available. Further consideration and examination is required so as to test the suitability and applicability of such a framework in the Irish context.*

4.6.17 Within this framework there are six mutually exclusive gaming premises/location types. Each has its own licence with each licence facilitating the provision of a selection of gaming machines of specific grades. These licence types are:

- **“Casino” Type A:** Gaming tables and all grades of gaming machines.
- **“Casino” Type A1:** Gaming tables and limited stake/prize grade 2a to 4 gaming machines only.
- **“Casino” Type A2:** Gaming tables only. No gaming machines.
- **“Gaming Arcade” Type B:** No gaming tables. Limited stake/prize grade 2c to 4 gaming machines and amusement “no pay out” machines only.
- **“Gaming Arcade” Type B1:** No gaming tables. Limited stake/prize grade 3 and 4 gaming machines and amusement “no pay out” machines only.
- **“Amusement Hall” Type C:** “No pay out” amusement machines only. No gaming tables or gaming machines.

Gaming machines are “graded” according to the stake and winning limits set on each. See Table Fourteen for a full illustration.

Further market research into the area of types/categories of gaming machine, gaming market segmentation and the diversity of gaming environments is required before a full recommendation of the below can be made.

¹⁷¹ Similar issues pertaining to remote or internet gaming are dealt with separately in Chapter Five of this Report.

Table Thirteen: Illustrative Gaming Licensing Structure and Premises / Location Type¹⁷²

Classes of Gaming Operator Licence	Gaming Licence Type	Gaming Premises / Location Type	Types of Games	Minimum Age	Player Registration
Unlimited Type A	“Casino” Type A	“Super” Casino	Casino: Gaming Tables and all GMs	18/21	Yes
Limited Type A1	“Casino” Type A1 - Limited EGMs only	Casino	Casino: Gaming Tables and limited GMs only	18/21	Yes
Limited Type A2	“Casino” Type A2 - No EGMs	Casino	Casino: Gaming Tables only	18/21	Yes
Limited Type B	“Gaming Arcade” Type B	Adult Gaming Arcades	No Tables: all limited GMs only i.e. 2c to 4	18	Yes / No - ID Check
Limited Type B1	“Gaming Arcade” Type B1	Adult Gaming Arcades	No Tables: Grade 3 & 4 GMs only	18	Yes / No - ID Check
No Pay Out Type C	“Amusement Hall” Type C	Family Amusement Halls / Fairs etc.	“No Pay Out” Amusement Machines	None	N/A

Table Fourteen: Illustrative Categories of Gaming Machine with Suggested Maximum Stakes & Winnings

Category / Grades of Gaming Machine	Maximum Stake	Maximum Win	British Maximum Stake Gambling Act 2005	British Maximum Win Gambling Act 2005
Grade 1	> €5	> €5,000	Unlimited	Unlimited
Grade 2a	€5	€5,000	£2 (€2.93 approx)	£4,000 (€5,850 approx)
Grade 2b	€3	€1,000	£100 (€146.00 approx)	£500 (€731 approx)
Grade 2c	€2	€500	£1 (€1.46 approx)	£500 (€731 approx)
Grade 2d	€1	€100	£1 (€1.46 approx)	£250 (€366 approx)
Grade 3	€1	€50	50p (€0.73 approx)	£25 (€36.55 approx)
Grade 4 (AWP)	50 cent or €1 when non-monetary prize	€10 cash or €20 non-monetary prize	10p (€0.14) or 30p (€0.45) when non-monetary prize	£5 (€7.31) cash or £8 (€11.88) non-monetary prize

¹⁷² The term “super casino” is not particularly helpful as it is a relative term which can only be properly understood when placed in a particular context. The term cannot be used interchangeably across countries without engendering considerable confusion. For example, a “super casino” in Great Britain would be much larger in scale and size than a similar enterprise in a smaller country such as Ireland. All that can be gleaned from the term itself, in the absence of other information, is that a “super casino” is, by definition, larger than a standard casino.

4.6.17 Table Fifteen below supplies the assorted degrees of gaming arrangements permitted per operator gaming licence type. Presented below is a full spectrum of GMs. No betting is to be permitted under any of the casino/gaming arcade licensing arrangements. Of considerable significance also is the fact that no casino-style gaming tables are to be permitted in gaming arcades.

Table Fifteen: Illustrative Gaming Arrangements Permitted per Licence Type

Classes of Gaming Licence	Table Games	Gaming Machines Grade 1	Gaming Machines Grade 2a & 2b	Gaming Machines Grade 2c & 2d	Gaming Machines Grade 3	Gaming Machines Grade 4 AWP	Amusement Machines - "No Pay Out"	Betting
Casino Type A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Casino Type A1	Yes	No	Yes	Yes	Yes	Yes	Yes	No
Casino Type A2	Yes	No	No	No	No	No	Yes	No
Gaming Arcade Type B	No	No	No	Yes	Yes	Yes	Yes	No
Gaming Arcade Type B1	No	No	No	No	Yes	Yes	Yes	No
Amusement Hall-No Pay Out Type C	No	No	No	No	No	No	Yes	No

4.6.18 Table Sixteen below illustrates an initial draft suggestion of limits on the numbers of tables and GMs per operating licence type. Comparable figures from Great Britain are also shown. Figures per venue will be dependent on floor square footage available or permitted – both for gaming and non-gaming activities.

Table Sixteen: Illustrative Table and Gaming Machine Numbers Permitted per Licence Type

Operator Gaming Licence Type	Max. # of Tables - to be determined by Order	Max # of GMs - to be determined by Order	UK Maximum Numbers
Casino Type A	Dependent on floor sq. footage. In the British Gambling Act 2005 “Regional (super or resort-style) casinos” must offer at least 1,000 square metres of table gaming space, at least 2,500 square metres of additional gambling floor space and at least 1,500 square metres of additional, non-gambling space	Subject to 5:1 GM to table ratio. Max. 500 of any combination of GM grades 1 to 4	Max. number of 50 gaming tables. Subject to 25:1 GM to table ratio. Max. 1250 of any combination of GM grades 1 to 4
Limited Casino Type A1	Dependent on floor square footage. In the UK Gambling Act 2005 “small casinos” (much like those currently in operation in Ireland) must offer at least 500 square metres of table gaming space and at least 250 square metres of additional, non-gambling space	Subject to 3:1 GM to table ratio. Max 100 of any combinations of GM grades 2 to 4	Max. number of 30 gaming tables. Subject to 5:1 GM to table ratio. Max. 150 GMs of any combinations of GM grades 2 to 4
Limited Casino Type A2	Dependent on floor sq. footage. In the UK Gambling Act 2005 “small casinos” (much like those currently in operation in Ireland) must offer at least 500 square metres of table gaming space and at least 250 square metres of additional, non-gambling space	None	None
Gaming Arcade Type B	None	Max. total of 80 GMs of any combination of machines in grades 2c to 4. Max. of 4 GMs of categories 2c & Max. of 10 of categories 2d.	Max. total of 80 GMs of any combination of machines in categories 2 to 4.
Gaming Arcade Type B1	None	Max. total of 80 GMs Grades 3+4. Max of 20 Grade 3 GMs	No limit on grade 4 GMs
“No Pay Out” - Amusement Hall Type C	None	No limit on “No Pay Out” amusement machines	No limit on “No Pay Out” amusement machines

4.6.19 Central to the formation of the above structure is the capturing and creation of different gaming environments. For example, listed above are three types of casino operation: 1. So-called “super” casino¹⁷³; 2. Casino with limited GMs; 3. Casino with no GMs. It should be stressed that the Committee are not recommending the establishment of so-called “super” casinos as the preferred option. This particular licence type is presented in order to demonstrate the spectrum of possibilities. Indeed, if a decision is taken to create such a licence type, the Committee recommends a moratorium on its introduction so as to facilitate a study of the social and economic consequences of the introduction of licensed casinos. Also catered for are two types of gaming arcades i.e. types B and B1, the main difference being the grade of GMs available in each.

4.6.20 Occasional Licences for One-Off Events

The Committee notes that one-off gaming events such as poker nights etc. take place all over the country. There should be provision for the licensing of such events. Such occasional events could be held under the auspices of licensed operators or perhaps suitably licenced persons. Alternatively, depending on the type of event and the level of control required, legislation could also provide for the issue of **occasional licences**. These matters should be considered in greater detail at a later stage by the Interim Gaming Regulatory Authority.

4.6.21 Age Limits

The suggested structure for age restriction for admittance into any casino is 18/21 years and for gaming arcades 18 years. Age restrictions on entry into gaming establishments vary considerably from 18 to 21 years around the world.¹⁷⁴ There are strong arguments that can be made for favouring a higher age limit than 18 years for casinos given the particular nature of this gambling environment and

¹⁷³ See previous footnote 27

¹⁷⁴ It might be noted that the setting of a minimum age for entry to casinos frequently relates to the legal age for the consumption of alcohol. In the majority of States in the United States this is 21 years.

arguments have been advanced by some operators who would prefer an age limit of 21 years. Equally, there are strong arguments that can be advanced which favour 18 years and indeed, other operators have argued that, particularly as regards poker, the age limit should be set at 18 years and that it was more desirable to facilitate younger players to play in the social environment of a casino rather than force them into the online environment. It may be considered appropriate to grant casino operators a discretion to set an age limit for entry of up to 21 years.

4.6.22 It is most important that gaming operators are able to enforce an age limit and for this purpose a policy with customer registration and defined photo ID (e.g. passport, driving licence, an identity card issued by a Member State of the European Communities etc.¹⁷⁵) should apply at all times in casinos. It should be noted that customer registration is also an important factor in the detection and deterrence of money laundering. For gaming arcades, an entirely different gaming environment, such as a registration policy might be considered somewhat draconian. Moreover, it would be a radical departure from the policy which now pertains in amusement halls and might not be commercially viable. The age limit for such gaming establishments should therefore be set at a minimum of 18 years.¹⁷⁶ In recognition of the fact that owners will face severe penalties for permitting persons under the age of 18 years on the premises, holders of such licences might be granted instead the right to set a higher age limit along the lines of section 15 of the Equal Status Act 2000, as amended by section 25 of the Intoxicating Liquor Act 2003.¹⁷⁷ The purpose of this provision was to allow publicans to set a higher age limit than 18 years, given the difficulty of age verification, so that they could have some additional protection against possible prosecution for serving alcohol to persons under 18 years in the mistaken belief that they were over 18 years.

Recommendation: The Committee has no rigid view on the matter of age restriction other than that persons younger than 18 years are not to be permitted in any licensed gaming premises, i.e. neither casinos nor gaming arcades.

The Committee considers that the age limit for casinos might be set somewhere between 18 and 21 years (inclusive) and it may be appropriate to provide the casino operator with a discretion to set a higher age limit of up to 21 years, having regard to the particular type of gaming environment /premises. Similarly, the operators of gaming arcades should be able to set a higher age limit. These discretions could be facilitated in a somewhat similar manner to that provided by Section 15 of the Equal Status Act 2000, as amended by Section 25 of the Intoxicating Liquor Act 2003.

4.6.23 Intoxicating Liquor in Gaming Premises

The Committee carefully considered the issue of the sale of intoxicating liquor in gaming premises with particular reference to casinos. The Committee had regard to the fact that intoxicating liquor is widely available on race courses in Ireland and that it also is widely available in casinos around the world. In considering its approach, the Committee had regard to the propensity for public disorder which might arise should gaming establishments facilitate late night drinking and wished to avoid such a possibility. The views of the Committee are set out below.

4.6.24 The Committee recommends that a casino licence shall not permit the sale of intoxicating liquor. A casino may apply for a liquor licence and in that application will be treated like any other applicant with the following considerations which the Committee regard as necessary and proportionate:

- (a) Intoxicating liquor may not be sold or consumed on the gaming floor. Any necessary amendment to section 9 of the Licensing Act, 1872 should be made;
- (b) The issue of a casino licence shall not constitute licensing by Justices as a place of public entertainment for the purpose of section 7 of the Excise Act, 1835 (theatre licences);
- (c) Intoxicating liquor may not be supplied free of charge, i.e. any supply of intoxicating liquor must involve a sale;
- (d) Intoxicating liquor may be sold until but not beyond the latest time permissible pursuant to a

¹⁷⁵ Section 15(2) of the Intoxicating Liquor Act 2003 might serve as a useful guide in this regard.

¹⁷⁶ It is currently 16 years.

¹⁷⁷ Section 25 of the Intoxicating Liquor Act 2003 amended section 15 of the Equal Status Act 2000 inter alia by the addition of the following subsection: “(4) If—

(a) the holder of a licence or other authorisation which permits the sale of intoxicating liquor adopts a policy of refusing to supply intoxicating liquor to any person below a specified age which exceeds 18 years, (b) a notice setting out the policy is displayed in a conspicuous place in or on the exterior of the premises, and (c) the policy is implemented in good faith, a refusal to serve intoxicating liquor to such a person shall not constitute discrimination on the age ground.”

special exemption order. That is to avoid casinos becoming late-night drinking establishments when other licensed premises are compelled to cease serving intoxicating liquor. The strict regulation of casinos will permit effective policing of that requirement. Either an amendment shall be made to section 5 of the Intoxicating Liquor Act, 1927 or a new category of licences for casinos shall be created;

- (e) The application shall be on notice to the gaming regulatory authority;
- (f) Nothing in the Licensing Acts, 1833-2004 shall prevent the gaming regulatory authority from suspending a liquor licence attaching to a casino where the sale of intoxicating liquor is causing a breach of casino-licensing regulations.

An intoxicating liquor licence should not be issued for a gaming arcade in the short to medium term. In the view of the Committee a gaming arcade constitutes a very different type of gaming environment to a casino and different considerations arise which require detailed study. This position may be reconsidered in time by the gaming regulatory authority but only once detailed and relevant research has been undertaken which is focussed on the issues of social responsibility and other potential impacts.

Recommendation: The Committee notes the provisions of section 9(1) of the Gaming and Lotteries Act 1956 provides that the “licensee of premises licensed for the sale of intoxicating liquor shall not permit gaming on the premises.” The Committee recommends that a casino licence shall not permit the sale of intoxicating liquor. A casino may apply for a liquor licence and such an application will be treated like any other applicant with the exception of particular considerations which the Committee regard as necessary and proportionate.

4.6.25 Gaming Machines¹⁷⁸

The world of gaming is in flux. The convergence of technologies with the concomitant complexities continues to alter gaming arrangements, both business and regulatory, globally. A primary focus of gaming regulation is the question of definition and the need to focus on the nature of the gaming activity actually taking place. As discussed earlier, differing gaming environments require separate and distinct regulatory standards with clearly defined parameters on permitted gaming activity. Without firstly establishing some key principles in terms of definitions, this would be impossible. What follows is an outline of the issues pertaining to the defining of specific instruments of gaming and gaming activities.

4.6.26 Simply put, when attempting to categorise gaming machines, it is first necessary to identify them as separate and completely different entities from so-called ‘amusement machines’. For the purposes of the work of the Committee ‘amusement machines’ are machines that offer ‘No Pay Out’ of any form other than, perhaps, the value of allowing the customer the opportunity of continued playing for amusement. Unlike amusement machines, ‘gaming machines’, as illustrated in Table Fourteen are not to be permitted in amusement halls, where there is no age restriction.

4.6.27 In the current Irish context, a machine is an “amusement machine” if:

- (a) It is constructed or adapted for play of a game, and
- (b) The player pays to play the machine by the insertion of a coin or token or card or in some other way, and
- (c) The outcome of the game is determined by the action of the machine, whether or not provision is made for manipulation of the machine or use of skills by the player, and
- (d) When played once and successfully by a player, affords that player no more than an opportunity –
 - (i) to play again once more without paying to play, or
 - (ii) to obtain a non-monetary prize which, if available for purchase or a similar item were so available, would not normally exceed €7 in value.¹⁷⁹

¹⁷⁸ Definitional issues become extremely important when attempting to classify distinct categories of gambling activity. What constitutes each distinct category of gambling activity i.e. “casino”; “gaming arcade”; “gaming”; “gaming machine”; “amusement hall”; “amusement machine”; “betting” etc., requires further in-depth analysis and detailed consideration. See Appendix No. 21 for an illustrative list of definitions. This list is by no means exhaustive and requires further development. The central point in the development of separate legal definitions is the nature of the gambling activity actually being engaged in and the public policy considerations surrounding such activities.

¹⁷⁹ Finance Act 1992.

4.6.28 The current Irish legal definition of an ‘amusement machine’, point (d)(ii) above, providing as it does for the possibility for a player to win a non-monetary prize up to the value of €7, contradicts the definitional distinction between amusement and gaming machines as outlined in the Committee’s illustrative gaming framework.¹⁸⁰ ‘Amusement-with-Prizes’ (AWP) machines as identified in the Committee’s framework are gaming machines in that it is possible for a player to win something other than the opportunity to continue playing.

4.6.29 In drafting gaming legislation, the potential confusion between ‘amusement machines’ and ‘AWP machines’ must be given careful consideration. One matter requiring further deliberation is how the gaming regulatory authority should provide for the novelty ‘redemption’ machines, cranes and coin-pusher machines. These machines are known to many members of the public as amusement machines and are currently available to all regardless of age. If the gaming regulatory authority is to treat these novelty machines as AWP ‘gaming machines’ then they are to be permitted only in licensed gaming arcades and not amusement halls. If they are to be treated as ‘amusement machines’ then legislation will need to provide for the means to host such machines in amusement halls. ‘Amusement machines’ and ‘AWP machines’ are two separate entities. Ireland’s current legislation does not provide for this fact. With further exploration and analysis separate legal definitions may follow along. The current definitional overlap, however, should be acknowledged and unravelled accordingly.

4.6.30 It should be noted that there is no equivalent definition of ‘gaming machine’ or ‘slot machine’ in the 1956 Act.¹⁸¹ Instead the 1956 Act defines a “gaming instrument” which is “any table or instrument of gaming and any coin, card, token or other article used as an instrument or means of gaming.”

4.6.31 For excise duty purposes a machine is a gaming machine if:

- (a) It is constructed or adapted for gaming, and;
- (b) The player pays to play the machine whether by the insertion of a coin or token or in some other way, and;
- (c) The outcome of the game is determined by the action of the machine, whether or not provision is made for manipulation of the machine by the player.¹⁸²

4.6.32 Australian Capital Territory’s Gaming Machine Act 2004 defines a gaming machine as a machine:

- (a) Designed for playing a game of chance, or of mixed chance and skill; and
- (b) Designed to be played completely or partly by
- (c) The insertion of 1 or more coins, notes or tokens; or
- (d) By the application of a monetary credit registered on the machine or elsewhere; and
- (e) That offers, or that appears to offer, people a chance to win monetary or other valuable consideration by playing the machine.¹⁸³

4.6.33 A gaming machine is a device where a player may place a small wager on a game of pure chance, or a game of both chance and an application of game rules, but not pure skill or manual dexterity, and potentially win a prize either in cash or in kind.

4.6.34 In order to differentiate between varying types and grades of gaming machines, Table Fourteen above is useful in that it illustrates a proposed model defining machine grades aligned with GMs in Great Britain. The gaming machine regime presented is essentially hierarchical in nature, the highest of which are gaming machines with stakes and prizes of greater than €5 and greater than €5,000 respectively to be determined by the gaming regulatory authority. An operator can provide any machine category below the highest category specified for its premises.

4.6.35 The stake and win limits in Northern Ireland are set under the Betting, Gaming and Lotteries and Amusements (Northern Ireland) Order 1985 and associated subordinate legislation. In Northern Ireland, they work off a different model to that of Great Britain, but the maximum stake per gaming machine is 50p (73 cent) and the maximum prize limit is £250 (€370 approx.). In registered clubs there is limited availability of “Jackpot” GMs. The maximum stake is again 50p with a maximum pay out of £2,540 (€3,770 approx.). No more than three machines can be made available for gaming. Maximum

¹⁸⁰ See Table Fourteen, pg. 86.

¹⁸¹ Section 10 of the 1956 Act, which was the only section that referred to “slot machines”, was repealed in 1970 and the definition was accordingly otiose.

¹⁸² Section 43(2) of the Finance Act 1975

¹⁸³ Australian Capital Territory Gaming Machine Act 2004

prize £8 (€11.88). AWP are allowed in amusement halls, licensed commercial bingo clubs, licensed bookmakers, bars and travelling shows/fairs etc.. AWP maximum stake is 30p (€0.45) with a maximum prize of £8 (€11.88). AWP maximum all cash prize £25 (€37 approx.) machines can be used in amusement halls, commercial bingo halls, licensed bookmakers and bars. Maximum stake for these games is 30p. Persons under 18 years do not have access to the gaming area where these machines are placed.

Table Seventeen: Amusement-with-Prizes Stakes / Winnings of Sample EU States ¹⁸⁴

AWP Stakes / Winnings of sample EU States			
Country	€ Max. Stake	€ Max. Prize	Min. % Pay Out
Denmark	0.07	40.14	70
Spain	0.40	120	75
Netherlands	0.20	40	60
Germany	0.20	2	60
Norway	1.25	250	80
Hungary	0.80	20	80
Finland	1.00	40	85
Austria	0.50	20	85
Italy	0.50	50	75
Belgium	0.25	50	84

4.6.36 Table Seventeen above is a further breakdown of maximum stakes and prizes from AWP machines (GM grade category 4 – as outlined in Table Fourteen) and GMs outside of casinos across the EU. Given the diversity of definitions of “gaming machine” available across all gaming service providers these figures are not directly comparable to the Irish context. They do however give us some indication of maximum stakes and prizes on these particular grades of AWP machines.

4.6.37 There are a host of diverse machines in terms of technology, prizes, payout rates and the range of stakes and losses. In addition, the regulatory environment in which these machines operate often conditions their accessibility and operating characteristics. This situation parallels other commodities, such as alcohol, where variations in the product together with different market preferences, cultural norms and regulatory environments create similarly complex markets.

4.6.38 The Committee noted that the traditional “slot machine”¹⁸⁵ consisted of a stand-alone unit in which reels rotated and winning was based on the reels finishing in a position at which various symbols (typically pieces of fruit) were aligned. While many of these GMs are still in operation in Ireland, increasingly they are on the way to being replaced with more modern GMs. The display on modern GMs is effectively a computer screen which gives the impression of reels spinning or shows casino-style games such as roulette wheels, blackjack, poker etc. Winning is usually determined by random number generating software. Internationally, in more mature and regulated markets, the GM is often linked to other GMs by a central server, which may or may not be located in the jurisdiction of the GM. The player can select which gaming option s/he wants to run on the machine. Technically this means that gaming patterns, stake value, payout rates, even the game itself can be altered from a central server without the players’ knowledge.

4.6.39 In order to effectively police modern GMs there must be a full audit trail kept. The gaming regulatory authority must have the power to shadow the playing of games on GMs. It must be determined whether payout rates are based on each terminal or on all terminals connected to a server.

¹⁸⁴ Euromat Country Matrix, Taken from proceedings of Eurotechno 2003 22nd / 23rd May.

¹⁸⁵ It is the opinion of the Committee that the term “slot machine” representing as it does an outdated medium of gaming be superseded by the more contemporary and generic umbrella term “gaming machine”.

4.6.40 Payout Rates

The payout rate is the average amount won by players as a share of the cumulative amount staked. This rate is critical in determining player losses. The Australian Gaming Machine Manufacturers Association noted that payout rates are lower outside Australia and that regulation plays an important role:

“... the ‘return to player’ in both unregulated jurisdictions and certain regulated jurisdictions overseas is considerably lower than it is in Australia; the critical point is that in Australia, the return to player is fixed by regulation and is monitored and enforced by regulatory authorities.”¹⁸⁶

While most gaming machines across the world have a payout rate of over 80%, Australian machines do compare favourably, having one of the highest payout rates in the group of identified countries. United States payout rates range more widely than Australian rates, although they appear to converge on average. For example, in Colorado, slot machines must pay out between 80% and 100%.¹⁸⁷ However, most pay out around 90%, similar to Australian machines.

Canadian Video Lottery Terminals (VLTs) pay out at a 92% rate.

Payout rates in Japan appear to be slightly lower, at around 80% to 90%.

The minimum payout percentage is 70% in Britain, with pubs often setting the payout at around 78%.

The exact payout rate on the various grades of gaming machines as outlined is a matter for later deliberation, but strict regulation, inspections, machine testing and audits are vital in sustaining the integrity of the service being provided.

4.7 Taxation

4.7.1 Rationale for Casino Taxation¹⁸⁸

Casino taxation must be examined within the larger context of legalisation and regulation of gaming by individual jurisdictions. As many jurisdictions across the globe have legalised various forms of State-sponsored and commercial gaming over the past thirty years they have done so with an explicit recognition of the potential social costs of expanded gaming and have developed elaborate regulatory contexts within which gaming takes place. States often regulate the location and number of casinos, GMs and table games in order to minimise potential social costs. Taxation has often been one of the tools used for the regulation of this sector.

4.7.2 Another reason for the taxation of casinos is the traditional logic of a “sin tax”. Recognising the potential detrimental effects of casinos and gaming in general, some jurisdictions apply taxes to reduce the amount of these activities. Whether such taxation is effective in reducing the level of gaming activity depends, in part, on the size of the tax, the price elasticity of demand for casino gaming and the nature of the supply of casino gambling opportunities.¹⁸⁹

4.7.3 Another rationale is the need to cover state regulatory and enforcement costs for the casino and gaming industry and the public safety and infrastructure needs of the Local Governments where the casinos are located.

4.7.4 Taxes and fees on casinos are also intended to cover, at least in part, the potential social costs associated with problem gaming. However, it should be noted that not all social costs can be laid at the door of the gaming industry. The taxation regime which applies to gaming in a given society is influenced to a significant degree by the moral view attaching to gaming e.g. the “sin tax” as mentioned above.

4.7.5 Bearing the above in mind, the goal of the taxation regime of any sector is to determine the maximum amount of revenue that can be extracted from the activities of the sector under different systems of taxation having regard to a range of countervailing factors, policy trade-offs and competing public policy priorities. When the price of gaming is set by regulation above its competitive level, the economic losses created by excessive investment in the sector can be reduced by taxation. A turnover

¹⁸⁶ The Australian Gaming Machine Manufacturers Association.
Available online at <http://www.agmma.com/index-agmma.html>

¹⁸⁷ Colorado Division of Gaming (1999)

¹⁸⁸ Anderson, J. (2005).

¹⁸⁹ Anderson, J. (2005).

tax on the amount gambled can maximise both tax revenue and the economic welfare of the country. Due to administrative constraints, a number of countries rely on the taxation of the casinos' fixed assets or a combination of a turnover tax and a tax on fixed costs.¹⁹⁰

4.7.6 In terms of establishing the elements of an appropriate model of gaming taxation or excise duty there are a number of options that bear consideration:

- (a) All gaming environments being subject to normal corporation tax arrangements.
- (b) An initial casino / gaming arcade / amusement hall premises licence fee with reduced renewal rate. This can be up to ten years in some States.
- (c) An initial or annual operator's licence fee granting a casino / gaming arcade / amusement hall operator permission to operate gaming on their premises.
- (d) A separate supplier and key personnel/staff licence fee to be renewed annually.
- (e) A separate flat annual excise duty on each table game and/or gaming machine available for play in any gaming environment.
- (f) A sliding scale excise duty charged on gaming itself relating to the level of gaming taking place on the premises, e.g. varying the taxation take depending on the nature of the gaming environment (opening hours, seasonality etc.) and/or stake and prize limits available on the various automatic table games or gaming machines on the premises.
- (g) A straightforward flat rate duty on the gross gaming yield (the amount the operator retains in profit after winnings have been paid to customers, but before payment of other operator expenses) regardless of gaming environment or gaming machine type/grade.
- (h) A sliding scale, multi-faceted duty on the gross gaming yield (the amount the operator retains in profit after winnings have been paid to customers, but before payment of other operator expenses) depending on the scale of profits yielded by the operator of gaming environment or gaming machine. This provides a flexible form of taxation linked to the economic performance of the casino. Such a system effectively "takes a slice off the top", with no complications with determining net profits, deductions for business expenses, etc.

4.7.7 Such a multi-faceted tax regime applied to a casino in the State would be broadly consistent with the tax regimes applied at present in the State particularly in the gambling area generally.¹⁹¹ For example, bookmakers pay excise duty on their licences and their registration of their premises. Betting duty (currently 1%) is then charged on the gross amount staked. Similarly, in the case of gaming machines, excise duty is charged in respect of an operator's gaming licence and then on each individual gaming machine. VAT is then chargeable at 21% in respect of the net receipts from the machines; in effect, the net takings are treated as being inclusive of the 21% VAT charge.

4.7.8 International Taxation of Casinos

All States in the United States that permit commercial casinos impose some form of gaming duty. The precise definition of the tax base varies from State to State, but the essential tax base in all cases is a form of adjusted gross receipts (AGR), or gross gambling receipts minus payout for prizes. The States of Illinois, Indiana, Iowa, Louisiana, Mississippi and Missouri apply a wagering tax on riverboat casinos. Tax rates range from 4% to 70% of Adjusted Gross Receipts (AGR). Missouri applies a flat rate of 20% to AGR while the other riverboat States apply graduated rates varying from a low of 4% in Mississippi to a high of 70% in Illinois.

Land-based casinos are taxed in Michigan, Nevada and New Jersey. The States of New Jersey and Michigan apply flat rate taxes of 8% and 18%, respectively, to AGR. Nevada applies graduated rates from 3% to 6.25% of AGR. The States of Colorado and South Dakota permit limited-stakes casino gambling with South Dakota applying a flat rate tax of 8% of AGR and Colorado applying graduated rates from 0.25% to 20% of AGR.¹⁹²

Admissions taxes are applied primarily in riverboat casino States. States applying such admissions taxes require that each gambler boarding the riverboat casino pay a tax. Admissions tax rates range from a low of US\$2 in Missouri to a high of US\$5 in Illinois and Iowa. In some cases, the admissions

190 Benar, H. and Jenkins, G.P., (2006b).

191 Casino Task Force Report (1996) unpublished.

192 Anderson, J. (2005).

tax varies with patronage or size of the facility, for example. In Illinois the admissions tax is US\$4 per person at facilities admitting 2.3 million or fewer persons the previous year and US\$5 per person for larger facilities. In other cases, the tax varies with the Local Government unit, as in Louisiana where the admissions tax can vary between US\$2.50 to US\$3.00 per person depending on the parish. Iowa allows both State and local governments to apply an admissions tax of US\$.50 per person.

Other taxes and fees are also required in most States. In riverboat casino States there are typically licensing fees, as in Iowa where the fee is based on the capacity of the riverboat, or a Local Government licence fee based on AGR as in Mississippi. Land-based casino States have the most extensive systems of fees and taxes imposed by local and State governments. Michigan applies a municipal service fee. Nevada has a system of county licence fees, State licence fees and a separate slot machine tax. New Jersey applies an annual licence fee per facility and a slot machine fee. New Jersey applies a tax on the value of casino complementarities such as entertainment, food, rooms and beverages provided at no or reduced prices to patrons, a tax on gross revenues of casino companies conducting multi-casino progressive slot machines and an investment alternative tax applied to casino licensees. Most often, the fees are municipal or Local government fees designed to generate revenue to cover Local government costs associated with hosting the casino.

Table Eighteen: Global Casino Tax Rates¹⁹³

Jurisdiction	Casino Tax Rate
Colorado	Graduated 0.25% to max 20%
Illinois	Graduated 15% to 50% (A High of 70% on Riverboat Casinos)
Indiana	Graduated 15% to 35%
Iowa	Graduated with maximum 24%
Louisiana	21.50%
Michigan	18%
Mississippi	Graduated on rate 1st €104,500 of Gross Gaming Revenue (GGR), with all subsequent gaming revenue taxed at 8%. (Up to 4% additional tax may be imposed by local governments)
Missouri	20%
Nevada	Graduated from 3% to maximum 6.75%. (Additional levies may be imposed by counties, municipalities and State adding approx. 1% to the tax burden)
New Jersey	8%, plus a community investment obligation of 1.25%; 4.25% tax on casino complimentary
South Dakota	8%, gaming device tax of €1,560 per machine per year
Tasmania	Graduated 15% to 35%
Western Australia	15% (plus 1% tax for island upkeep)
Victoria	22.25% for regular players; 10% for premium players (plus 1% on gaming revenue for community benefit)
New South Wales	Graduated 20% to 45% (10% or €0.3million on high rollers, whichever is higher) (plus 2% community benefit)
Queensland	Graduated 10% to 20% specific to each casino (plus 1% for community benefit)
South Australia	10%
Australian Capital Territory	Graduated 10% to 20%
Northern Territory	8%
New Zealand	4% casino duty. Plus 0.51% problem gambling levy
Great Britain	2.5% on the first £534,500 (approx €720,000) 12.5% on the next £1,186,500 (approx €1,597,980) 20% on the next £1,186,500 (approx €1,597,980) 30% on the next £2,078,000 (approx €3,797,210) 40% on the remainder
Austria	35% to 80% federal casino levy. Progressive scale based on stakes minus winnings
Denmark	If GGR < €5.5m tax = 45%. If > €5.5m tax = 45% on first €5.5m and then 75% thereafter
Estonia	€958 per gaming table p/a; 18% of stakes for games of chance which are not organised on a gaming machine or gaming table
Germany	Graduates - 50%. Some territories receive an additional levy of 20% and higher. Full tax can be as high as 90% in some districts
Latvia	€28,000 p/a for roulette i.e. for each table that is connected to the rotating device of roulette. €6,890 for each gaming machine in a casino or gaming arcade. €1,206 for the playing place of each machine

193 NOTE: All data gathered from regulatory reports from each jurisdiction.

Lithuania	Fixed amount for each gaming device per year. €2,084 per gaming machine of category type A. €692 for category B. €3,475 for roulette, card or dice table
Malta	36% for table games; 40% for slot machines. All remote gaming is subject to fees of €7,000 per month
Netherlands	40% to 85%
Poland	45%
Portugal	30% to 50%
Slovakia	27% of the financial guarantee of €387,000
Spain	20% to 61% on progressive scale

Upon first glance of the above one can see the diversity of casino taxation models applied across the various jurisdictions – some more onerous than others. These rates obviously do not exist in a vacuum. There are other taxes and fees applied in some of the jurisdictions e.g. corporation taxes etc., which are difficult to compare with revenue structures elsewhere.

4.7.9 One observation that can be made about the current pattern of gaming taxes around the world are the major disparities of tax rates between different forms of gambling. Earlier in this chapter there was an overview of the taxation regime in Ireland applied to gaming as opposed to betting. Although it is likely that the scale of the casino industry in Ireland is smaller than the international norm, it is still useful to note that casino, gaming machine and betting taxation rates across a variety of jurisdictions vary considerably. Table Nineteen below illustrates this diversity.

Table Nineteen: Comparative-Equivalent Indications of National Tax Rates ¹⁹⁴

COUNTRY	Average Casino Gaming Tax Rates - % of Gross Gaming Revenue unless otherwise stated	Average % Tax Rates on Gaming Machines Outside Casinos	Betting Tax Rates %
Austria	57.5%	25%	Up to 28.46% (6.8% on gross revenue, plus 32.5% of winnings depending on area)
Belguim	17.6%	10.2% (up to €3,570 per machine p/a)	13%
Cyprus	N/A	Not lawful	18.5% (11% on horserace pool betting, 26% on other pool betting)
Czech Republic	13% of profit	13% on profit	3.25% (13% of profit)
Denmark	60%	55%	6.33% (average 19% of net revenue)
Estonia	18%	0.9% (approximately €320 per machine p/a)	5%
France	57.2%	Not lawful	Not available
Germany	70% plus 30% on profit	10.5% (Up to €3,672 per machine p/a depending on area)	16.66%
Greece	33%	Not lawful	4.33% (3% of net revenue and 5% of winnings)
Hungary	21.66%	11.15%	11% (30% of net revenue from fixed-odds betting, 17% of winnings from totalisators)
Ireland	N/A	1.44% (€505 per machine p/a)	1% of gross revenue
Italy	Not available	13.5%	Not available
Latvia	Licence fees of at least €533,000	18%	3.33% (10% of net revenue)
Lithuania	Insufficient information	5.95% (approximately €2,084 per machine p/a)	5%
Luxembourg	45%	Not lawful	15%
Malta	29%	Not lawful	4.42% (25% of net turnover on off-line betting and 0.5 % of gross turnover on online betting)
Netherlands	Not available	0% (gaming machines do not attract special taxes)	19.33% (29% of winnings)
Poland	45%	45%	6%
Portugal	40%	Not lawful	Insufficient information
Slovakia	€104,500 p/a	3.34% (€1,170 per machine pa)	Up to €12,900 p/a approx
Republic of Slovenia	Insufficient information	Up to 20%	Insufficient information
Spain	40.5%	10.95% (Up to €3,832 per machine p/a depending on area)	6.66% (10% of winnings)
Sweden	Not available	36%	Not available
United Kingdom	21%	8% (approx. €2,800 per machine p/a)	15% of net revenue, plus up to 10% of profit from fixed odds betting on the results of horse races.

194 All of this data was extrapolated from the Swiss Institute of Comparative Law (2006) *Study of Gambling Services in the Internal Market of the European Union* © European Commission. As the percentage tax rates given apply to different tax bases, true comparison of rates is difficult. Where possible figures were verified with the regulatory authority of the appropriate jurisdiction. Please see Appendix No. 15 for an explanatory note on comparison of data.

Recommendation: It is the opinion of the Committee that in addition to the normal business taxes, licensed casinos, as is the case in most jurisdictions across the globe, should pay some form of ‘gaming duty’ on the gross or net gaming revenue. In addition to this there should also be some form of licensing fee applied (e.g. premises/operator/supplier/key personnel or staff).

Recommendation: Taxation policy is a matter for the Minister for Finance in the first instance. On examination of casino tax rates and licensing fee structures applied in other jurisdictions, and having given due consideration to existing associated domestic taxes, it is the opinion of the Committee that a tax rate or duty higher than the 1% of turnover currently applied to off-course bookmakers is appropriate. The rate is a matter for the Minister for Finance having regard to other factors such as the expense of the licensing regime; the nature of the industry in Ireland; consideration of potential market demand and size; the impact of higher tax on the viability of both casinos and the regulatory system etc.

4.8 Possible Legislative Content

4.8.1 Introduction

What follows is an outline of the possible legislative content required in this area. It must be stressed that the examples provided below and the issues covered in this section are purely illustrative and do not purport to be comprehensive.

The overall objectives of any gaming legislative content should include:

- (a) Control of the growth of gaming
- (b) The prevention and minimisation of harm caused by gaming
- (c) The authorisation of some gaming and prohibition of the rest
- (d) The facilitation of responsible gaming
- (e) Ensuring the integrity and fairness of games, and limiting opportunities for crime or dishonesty associated with gaming

4.8.2 The terms of reference asked the Casino Committee to report on:

“The possibilities for a legislative basis for the strict regulation of casino-style operations in the State.”

4.8.3 The remit of the Committee is to deal with gaming in general, incorporating both casino-style operations and those of gaming arcades.

4.8.4 Gaming should be defined as being distinct from betting or other types of gambling activities.

‘Gaming’ means playing a game (whether of skill or chance or partly of skill and chance) for stakes hazarded by the players.¹⁹⁵

4.8.5 “Betting” is not exhaustively defined in statute law. The following definition is a good approximation of the common law understanding:

“Betting” means making or accepting a bet on:

- (a) The outcome of a race, competition or other event or process,
- (b) The likelihood of anything occurring or not occurring, or
- (c) Whether anything is or is not true.¹⁹⁶

4.8.6 One key difference between “gaming” and “betting” is the player participation element. Gaming requires the participation of the person in a game which could effect the outcome. Betting, on the other hand, excludes any participation of the individual laying the stake in the action or process being bet upon, therefore denying the individual from possibly effecting the outcome. Where there is a possibility of overlap, the definitions should be amended to eliminate that possibility.

¹⁹⁵ Gaming and Lotteries Act 1956, section 2.

¹⁹⁶ As per Great Britain’s Gambling Act 2005.

4.8.7 In this chapter the Committee wish to outline a framework for gaming that outlines the possibilities for legislation. This draft framework of issues for consideration presented in Appendix 14 is by no means exhaustive in content but should serve to demonstrate the complexities and technicalities involved in regulating this industry.

4.8.8 As was detailed in Chapter Four, the Committee has not proposed a specific form of regulatory body. Various different models may be used and will depend on various legal advices which the Committee has sought and on further development of the technical standards relating to this area.

4.8.9 The type of regulatory model that may be established is fundamental because it has at its heart a range of powerful penalties and deterrents designed to ensure compliance with the licensing conditions set down by the gaming regulatory authority.

4.8.10 The Committee has sought legal advices from the Attorney General on the nature of the powers that may be exercised by the regulatory body or bodies. The resulting advices should remove ambiguity on some very complex legal and constitutional issues.

4.8.11 At the time of writing and as detailed in Chapter Four of this Report these advices are not yet to hand and the Committee is therefore not in a position to propose a precise regulatory model. The apportionment of powers, including the precise appeals structure, is largely dependent on such advices. Descriptions of the various regulatory options are outlined earlier in this chapter.

4.9 Licence Requirements

4.9.1 There are concerns surrounding the area of money laundering and the possibilities of casinos being used for this purpose. Implementing effective preventative measures and taking on board the recommendations and standards of the Financial Action Task Force (FATF) are crucial.

4.9.2 The gaming regulatory authority must be given broad investigatory powers. Many of these are outlined in the possible legislative content (see Appendix No. 14). Powers may include reviewing existing and pending civil lawsuits, pending criminal charges, criminal records and police records. An investigation of those owning or controlling a casino to include natural persons, or a corporate entity and key gaming premises employees may also be carried out. The purpose of the background investigation is to give the gaming regulatory authority the information necessary to decide whether a person is suitable to hold a gaming licence. The gaming regulatory authority will inquire into matters such as associations with organised crime, the honesty and integrity of the applicant, finances (personal and business) and whether they have adequate business experience. Criminal background checks may extend to the applicant's family and close associates.

Recommendation: The Committee recommends that the burden of proof be on the applicant seeking a licence to satisfy all the licensing requirements, whether they are the operator, maintenance, surveillance, manufacturing or key gaming personnel.

4.9.3 The issue of the ownership of casinos needs to be explored in great detail, with regard to the principles of company law, to issues such as the transfer of shares resulting in material changes to the ownership of a company, changes to company directors and the existence of shadow directors. In essence, the gaming regulatory authority would need to be given powers to look behind the corporate veil.

4.9.4 As has been the case in many jurisdictions across the globe, the gaming regulatory licensing framework may need to provide for the following licence types:

- (a) Gaming Operator Licence
- (b) Gaming Premises Licence¹⁹⁷
- (c) Gaming Manufacturer Licence
- (d) Gaming Supplier Licence
- (e) Gaming Personnel Licence

¹⁹⁷ Premises may firstly need to be approved as appropriate as per planning process.

- 4.9.5 The granting of a licence has two broad elements, namely:
- (a) The applicant's character, tax and financial checks and confirmation that the applicant has the resources available for the purpose of carrying out the licensed activities; and
 - (b) The suitability of the proposed premises for gaming.

4.9.6 Any forthcoming legislation should also require applicants and (where corporate entities) their promoters and directors to produce tax records for an extended period,¹⁹⁸ in order to ensure that the applicant has a history of tax compliance and to ensure that the source of the funds are bona fide.¹⁹⁹

4.9.7 The possible legislative content attached to this Report²⁰⁰ provides an illustrative overview of the different types of licences that the gaming regulatory authority could issue. This is by no means exhaustive. In any legislation the gaming regulatory authority and/or Minister should, to the greatest extent possible, be given broad powers to vary stake and prize limits.

4.9.8 In Table Thirteen of this Report the Committee has outlined five separate gaming licence types plus one amusement hall licence type. This is so as to provide for a 'spectrum' of differently graded gaming environments, e.g. casinos, gaming arcades etc. Gaming environments and premises may differ in structure and facilities available. Some licensed premises will carry table games, a specified variety of gaming machines and other gaming services. Some will not. Some gaming premises will be licensed to offer higher stakes and higher payouts. Some will be limited in gaming machine types and prizes. Each gaming environment or premises is to have a specified minimum age requirement.

4.9.9 Gaming operating licences A, A1 and A2 refer to casinos. All casinos will have an admissions policy that requires player registration. Player registration may require the player to register by proof of identification, and other personal details such as home address, contact number(s) etc..

4.9.10 Gaming licence A refers to what is commonly identified as a "super"²⁰¹ or integrated resort style casino venue. The Committee have made provision in their illustrative licensing framework for a gaming operator's licence for such a casino type, but recommends that there be a moratorium before the granting of any such licence in order to study the social and economic effects of the introduction of licensed casinos.

4.9.11 Gaming licence categories B and B1 refer to gaming arcades. These establishments will have gaming machines but no table games and the stakes and prizes for the gaming machines may be configured at a lower level than those applying to casinos. A strict admissions policy with a suggested age restriction of 18 years will be provided for.²⁰²

4.9.12 Licence C refers to amusement halls, where gaming is prohibited from taking place. Amusement halls are permitted to operate amusement machines only. A player may play games for amusement and obtain nothing representing money, goods or any other benefit other than the opportunity to continue to use the machine.

4.10 Operation of Gaming Premises

4.10.1 The possible legislative content (Appendix No. 14) also deals with the operation of gaming premises. This section of the legislation proposes to reserve many powers to the gaming regulatory authority. Given the dynamic and rapidly evolving character of the technology concerned, in respect of gaming content and technical standards, any legislation dealing with these issues will need to be both broad and enabling in nature.

4.10.2 Controls relating to the admissions policy, the player registration and the monitoring systems, all provide a means of traceability and help prevent the possibilities for fraud and money laundering.

198 This can be as high as ten years in some jurisdictions.

199 This might need to be varied or waived in certain circumstances and the legislation would need to make provision for this.

200 See Appendix No. 14.

201 The term "super casino" is not particularly helpful as it is a relative term which can only be properly understood when placed in a particular context. The term cannot be used interchangeably across countries without engendering considerable confusion. For example, a "super casino" in Great Britain would be much larger in scale and size than a similar enterprise in a smaller country such as Ireland. All that can be gleaned from the term itself, in the absence of other information, is that a "super casino" is, by definition, larger than a standard casino.

202 See Section 4.6 for further elaboration on this point.

4.10.3 This area of the possible legislative content may also deal with gaming operations referring to admissions policy; types of casino games; types of gaming equipment; opening hours; gaming employees activities; casino/gaming arcade physical layout; security and cash management systems. This allows the gaming regulatory authority appropriate degrees of control on the operation of gaming premises and provides a much needed degree of transparency in relation to what takes place on/in the gaming premises.

4.10.4 The possible legislative content might also provide, for example, that all games are unlawful in casinos and gaming arcades, except those authorised by the gaming regulatory authority. Games can be added to or removed from any list of games permitted by the gaming regulatory authority. The same condition may be repeated for the schedule of operational hours, gaming equipment and other matters.

4.11 Powers of the Gaming Regulatory Authority

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4.11.1 The possible legislative content (Appendix No. 14) deals with the powers of the gaming regulatory authority and responsibilities of the gaming operator. These should include provisions for gaming inspectors as well as the keeping of accounting and administrative records.

4.11.2 Gaming regulatory authority inspectors need to be given powers of entry into and inspection of gaming premises. These will include broad investigatory and supervisory powers, in relation to the operation of the gaming premises including gaming equipment, instruments of gaming, books and records. They should also be given powers to investigate illegal gaming wherever it occurs.

4.11.3 The gaming regulatory authority will have to approve the system of internal controls that a gaming premises are permitted to use. These include the accounting system, the keeping of appropriate books, records and documents used in the running of a gaming premises. These measures are imperative for the prevention of fraud, money laundering and for a proper assessment of tax liability.

4.11.4 The Committee recommends that the legislation might also include provisions that empower the gaming regulatory authority to determine the period of time for which it is necessary for an operation to keep surveillance/CCTV records. This is a protection measure for the player and operator in the event of gaming disputes and to prevent other illegal activities that may occur, for example intoxicating liquor being served on the gaming floor.

4.11.5 The legislation may also provide for appropriate systems for the management of administrative records. The Committee recommends that such records be kept for a specified period of time on the gaming premises to allow for the investigation of any unlawful conduct that may arise in this accord.

4.12 Remote Gaming

Remote gaming means remote communication by means using:

- (a) The Internet;
- (b) Telephone;
- (c) Television;
- (d) Radio; or
- (e) Any other kind of electronic or other technology for facilitating communication.

4.12.1 It is the opinion of the Committee that any group established to further examine the regulation of land-based or terrestrial gaming should examine the possibilities of providing a legislative framework for the regulation of online or remote gaming.

4.12.2 If remote gaming is to be regulated it should be done so by the same regulatory authority as land-based gaming, but it requires a different regulatory system and licensing mechanism.

4.13 Advertising

The gaming regulatory authority should have the power to set standards and define parameters of advertising. Gaming advertisements shall not be directed at minors or vulnerable people. The main reasons for this would be social responsibility and protection of children and the vulnerable, ensuring they are not exposed to the glamorisation of gaming.

If the gaming operation is not regulated in their State it would be imprudent to allow advertisements of these activities for public policy reasons. In accordance with EU law, however, if the gaming operation is regulated in another EU State this policy may need to be reviewed. It also raises complex and legal issues which will need to be carefully teased out.

4.14 Problem Gaming

4.14.1 The possible legislative content also deals with issues surrounding problem gaming. One protection that may be put in place, as a precautionary measure, is an '**exclusion order**'. An exclusion order may be applied to a player by the gaming regulatory authority or the gaming operator. This matter requires further consideration.

4.14.2 A self exclusion order may also be taken by the customer themselves as a means of self protection for whatever reason. The circumstances and mechanisms by which self-exclusion may be applied, and by whom, as well as the nature of appeals procedures will need to be considered in great detail.

4.14.3 Exclusion orders may be legally enforceable and a period of ninety days may be considered for this purpose or another period stated by the gaming regulatory authority. A self-exclusion order should apply to all licensed gaming premises. For example, it would be completely counter-productive if a player could self-exclude from one gaming premises and walk into another directly after taking this action and resume gaming. Legislation will have to deal with legal enforcements of an exclusion order and its duration.

4.14.4 The opportunity for a player to self-exclude should be openly displayed on/in all gaming premises along with information about problem gambling, relevant help-lines etc.. This section of the legislation should oblige each gaming premises to have this information prominently displayed at the entrance to the premises and on the gaming floor itself. The size and other specifications for this information should be reserved to the gaming regulatory authority.

4.15 Enforceability of Contracts

4.15.1 Issues for consideration in drafting possible legislative content makes provision for the enforceability of gaming contracts as illustrated in Appendix No. 14.

Essentially, there are two issues here:

1. The enforcement of contracts.
2. The granting of credit by gaming operators.

4.15.2 A gaming contract refers to the implied contract that exists when a player participates in a game against the house or against other players. In a game the player is required to put the stake upfront before the game begins. Then pending on the outcome, the player either wins or loses. If the player wins, s/he should be legally entitled to collect the winnings in the same way the operator has a right to take the money first staked.

4.15.3 The enforcement of gaming contracts is primarily a consumer protection concern. If gaming as an industry is regulated then gaming contracts should equally be given the protection of the law.

4.15.4 The Committee proposes that the provision in section 36 (1) of the 1956 Act which relates to the non-enforceability of gaming contracts may need to be reviewed. There is a long standing tradition in common law that prohibits the enforcement of gaming or wagering. Great Britain's Gambling Act 2005 has repealed this provision recently under section 334 and 335. See Appendix No. 22 for the relevant excerpt of Great Britain's Gambling Act 2005.

4.15.5 Relating to the provision of credit by the operator to consumers, it is the opinion of the Committee that contracts of credit should not be legally enforceable. This does not prohibit operators

from providing credit facilities to their customers. They may do so at their own risk. If they do so they have no recourse to the courts in the event of non-payment by a customer.

4.16 Offences and Sanctions

4.16.1 Enforcement is the key to the effective running of any regulatory system. Any criminal gaming offences will be the preserve of the Courts.

4.16.2 The Committee has sought legal advices on the possibilities of levying administrative fines as is the norm internationally. A system without some provision of this type, whenever implemented, is unlikely to be effective.

4.16.3 Due to the technical nature of the industry and the potential for a large amount of breaches of a technical type, a system of licence endorsement should be considered for breaches as a means of sanctioning gaming operators, maintenance, surveillance, manufacturer and key gaming personnel. After a certain number of endorsements the licence could be suspended or forfeited. Endorsements carried may be relevant to the renewal of the licence. For serious breaches, suspension or revocation of the gaming licence could also be permitted.

4.16.4 The precise nature of what constitutes a breach and an offence, and how it is to be dealt with requires further study and consideration.

4.16.5 For every criminal offence and/or breach of regulatory sanctions there will need to be an appropriate sanction in place. These sanctions will have to be strictly enforced in order to ensure the effective operation and integrity of this regulatory system.

4.16.6 Gaming offences will include the following: money laundering; facilitating money laundering; the presence of underage persons in casinos; and the keeping of incomplete or inaccurate accounting and administrative records. The sanctions and offences will also deal with licensing issues and non-compliance of the licensing provisions; employee offences; operational offences concerning surveillance records etc.; the specifications of gaming equipment; the gaming drop; cheating; forgery and offences dealt with in the possible legislative content of this Report (*Appendix No. 14*). This legislative content is illustrative and does not purport to be exhaustive.

4.17 The Establishment of an Interim Gaming Regulatory Authority

Recommendation: The Committee recommends that once the Government has established the public policy parameters for the new regulatory system, it should establish an Interim Gaming Regulatory Authority, based within the Department of Justice, Equality and Law Reform, but with representatives from other relevant Government Departments, in order to develop the regulatory system.

The Interim Gaming Regulatory Authority should:

- (a) Consider and report to Government, following consideration of the legal and appeal body issues on the precise nature of the regulatory authority;
- (b) Tease out the precise regulatory framework including the technical standards;
- (c) Consult with relevant parties including the public;
- (d) Engage relevant experts, including international experts, to assist with the above process;
- (e) Work closely with those drafting new legislation which should be enabling in character and which should supersede the 1956 Act;
- (f) Consider in more detail the area of internet gambling and the public policy approach – this might be done by an appropriate sub-committee as separate highly technical issues arise;
- (g) Undertake a Regulatory Impact Assessment of the proposed regulatory model;
- (h) Consider such other matters as the Minister may direct.

4.17.1 The Committee notes that the issue of lotteries, including bingo, was not within its terms of reference. The Committee has therefore not examined this area in detail but notes that developments are taking place within this context as well and that the 1956 Act may need significant revision in order to deal with these issues. The Committee also notes the recommendations in the 2000 Report on the establishment of a Gaming and Lotteries Authority.

4.17.2 The Minister may wish to consider whether the regulatory body should have a remit which extends to the lotteries area in order to ensure consistency and public policy coherence. In this context, the Minister may wish to consider whether this area should also be the subject of a review by the above Interim Gaming Regulatory Authority or another group.

4.18 Proposed Response to Current Developments

4.18.1 The Committee is most concerned at developments which are taking place in the context of the current legal environment as set out in the 1956 Act. The Committee recognises that it may take some time to establish a new gaming regulatory authority and draft, debate and pass into law appropriate new legislation. The Committee notes the following:

- (a) The 1956 Act specifically prohibits casino-style games and sets out where, when and how gaming can occur;
- (b) The 1956 Act is being widely flouted, as regards gaming, by the use of various legal devices which are somewhat dubious and which fly in the face of public policy as set out by law;
- (c) The Government, in trying to resolve these issues, has decided to adopt a regulatory approach rather than prohibition. The Committee, based on its research, believes that this is the best way forward.

Recommendation: The Committee recommends that the Government send a strong message to those currently engaged in casino-style or other unlicensed gaming activities to the effect that currently unlicensed operators should be advised that, in a new and strict regulatory environment, they must not assume that they will receive an operator's licence. The fact that they are engaged in such activities at present will not necessarily, under any new regime, guarantee them a licence.

Recommendation: The Committee recommends that the Interim Gaming Regulatory Authority which it proposes should be established to develop the regulatory system, as well as other matters, should review the current position as regards such activities with a view to reporting to the Minister for Justice, Equality and Law Reform, and if necessary, recommend appropriate interim amendments to the criminal law to deal with these issues.

Chapter Five: Remote Gaming

5.1 What is Remote Gaming?

5.1.1 A number of what appear to be synonymous terms are often used when speaking about remote gaming. They include 'internet gaming'; 'online gaming'; 'I-gaming'; 'E-gaming' or 'wireless gaming'. For the purposes of clarity the all-inclusive term 'remote gaming' is used in this Chapter. The main reason for this is that if the full breadth of the sector is to be captured, it is imperative that a technologically neutral definition term is adopted so encompassing all forms of 'player-not-present' gaming. "What matters is that there is a common understanding that the delivery systems included in these definitions encompass the Internet, interactive television, and any other remote access devices that are currently available and, just as importantly, might be developed in the future."²⁰³

5.1.2 Remote or interactive gaming simulates the environment of a real gaming environment or casino with the rules to real games remaining exactly the same. It covers a variety of games, from casino to whatever games a particular remote gaming environment provides. With the use of internet, these remote casinos allow multi-player games. In order to participate, players need to open up an account. Funds are transferred by credit card, electronic cheque, certified cheque, money order and wire transfer. Wins and/or losses are calculated electronically. Losses will be deducted from the players account. In winning situations, the player can request to "cash out" and the remote casino will issue a cheque for the winning amount and send it to the user's home address.²⁰⁴

5.1.3 In most of the online gaming websites, it is not uncommon to find gaming such as blackjack, video poker, virtual three-reel slot machines, craps, roulette, baccarat, keno, pai gow poker and caribbean stud. The software quality of these games varies widely from one site to another. Some have well-developed software and the games are nicely presented while some have pre matured software that might scare off gamblers. The presentation includes speed, graphics and sound. For some of the online casino sites, the gamblers are required to download illustrations and images on the personal computer's hard drive before play begins. These games play fast, with many users claiming them to be every bit as "entertaining" as their counterparts played in a live casino.

5.1.4 Nowadays, online casinos can be divided into three types:²⁰⁵

- The first type is where participants need to download a program for free in order to participate in the game. Players need to wait for the application to download and install their hardware, but these games typically offer better graphic, sound and animation;
- The second type uses JAVA to write their game, which the JAVA applets run in the users' computers. These casinos usually offer sound and animation with good quality graphics; and
- The third is HTML-based which does not offer sound and animation. However, the graphics are usually good quality and the response is usually fast.

5.1.5 It is reasonable to suggest that other types of online casinos will develop with technological advances and consequently the gaming regulatory authority should have the flexibility to adapt to those developments.

5.2 The Development of Remote Gaming

5.2.1 By its very nature the remote gaming market is a global one. This makes it very difficult to be precise in any way about its origins, size or potential. The developmental history of remote gaming is relatively short as compared to traditional gaming. If we trace back the history of online gaming, we can start with the establishment of "The Free Trade and Processing Zone Act" in 1994 by the Government of Antigua Barbuda. Many online casinos today operate under licences granted pursuant to this legislation. Antigua Barbuda continues to be one of the online gaming industries most popular licensing jurisdictions. In the same year, Microgaming, one of the Internet casino industry's first and largest software developers and suppliers, was founded.²⁰⁶ In 1996, lots of online gaming related companies established themselves. These include CryptoLogic, Starnet Communications and Boss Specialtidningar AB. In order to get around local legal barriers, these companies usually establish offshore subsidiaries to carry out development, licensing and e-commerce functions for clients.

203 Great Britain's Department for Culture, Media & Sport (2006).

204 Kong, L., Ngan, L., and Leung, J. (2005)

205 Kong, L., Ngan, L., and Leung, J. (2005)

206 http://www.gamblingplanet.org/history_main.php

5.2.2 The most important breakthrough for the online gaming industry in 1996 is the issue of the first licence to WagerLogic, a company wholly owned by CryptoLogic, which accepted electronic money. Later, InterCasino went live laying claim to being the first internet casino to accept a real money wager online.²⁰⁷ Competitors were quick to enter the space soon after InterCasino, and by 1998 dozens of casinos were operating online, including many of today's best-known casinos.

5.2.3 There are some drawbacks to the growth of this sector. They include:

- (a) Loss of tax revenue for the Government;
- (b) Because Governments have neither the human nor full technological resources to effectively enforce a ban on remote gaming, prohibition simply does not work;
- (c) It is easier to conduct illegal activities such as computer fraud over the Internet by using anonymous names, resulting in tractability problems;
- (d) Prohibition drives online gaming underground and into the hands of unscrupulous merchants, which would adversely increase the dangers of problem gaming;
- (e) It can generate problems between different jurisdictions with different approaches to the regulation of online gaming.

5.2.4 With the rapid propagation of communication technologies and the growing popularity of the Internet, gaming has now become a borderless activity. In traditional gaming, people had to find a physical gaming counter partner, go to a casino in order to participate in gaming activities, and go to a bookmaker's office to place bets. These physical constraints have entirely been overcome in the Internet world. As long as the players have a computer connected to the Internet, they can simply stay at home and take part in gambling activities without time and space limitations.

5.2.5 Simply put, taking part in gaming activities has never been easier. Gaming businesses have taken considerable advantage of the recent technological advances of the Internet. As a result many gaming operations have gained easy access to an ever burgeoning community of global customers. With its rapid diffusion, it may be only a matter of time before gaming becomes one of the most profit-yielding businesses on the Internet.

5.2.6 In short, anyone in Ireland with access to the Internet can participate in remote gaming. This particular activity or provision of such gaming services/products online tends to be regulated inadequately if at all. Any regulation of the area will have the effect of reducing the existing opportunities for online gaming. Consequently, the social effects of the regulation of online gaming can only be positive. That remains the case should Ireland strive to become an international centre for online gaming.

5.2.7 It is estimated that in excess of a trillion dollars is wagered annually worldwide on the various forms of gambling. The online gambling market itself grew in value from €12.9 million to €2.28 billion from 1996 to 2000.²⁰⁸ That figure doubled again by 2003 to €4.55 billion and it's continuing to grow significantly as people adapt modern technology to some of their favourite recreational activities.²⁰⁹

5.2.8 Generally, markets are growing worldwide. Estimates as to the exact size of the market vary widely. Recent projections include a recent survey by Merrill Lynch that suggests that the Internet gaming market is currently worth €44 billion per annum.²¹⁰

5.2.9 The Online Gambling Research and Markets Group expects that online gambling will reach €95 billion by 2015, while Merrill Lynch predicts even higher growth, to €130 billion by that year.

5.2.10 Gambling and playing games on mobile phones has increased steadily since 1997. It is only recently that operators have sought to provide more advanced games, such as poker, on mobile devices. Valued at €49 million in 2000, it is now worth about €1.52 billion globally, according to technology research firm eMarketer. eMarketer expects that amount to grow to €8.35 billion by 2010.²¹¹

207 Kong, L., Ngan, L., & Leung, J. (2005)

208 Jain, H. IntruGuard Devices, Inc. (2006)

209 Jain, H. IntruGuard Devices, Inc. (2006)

210 <http://www.gamingpublic.com/>

211 Jain, H. IntruGuard Devices, Inc. (2006)

5.2.11 According to Mobile Consumer Data & Multimedia Services, 78.6 million wireless subscribers in the United States will play mobile games by 2009 and gaming downloads will increase more than tenfold from 2003 levels. Strategy Analytics expects that active users of downloadable games will reach 220 million globally in 2009.²¹²

5.2.12 The global online gaming market has experienced rapid growth since its establishment in the 1990s, but remains relatively immature. Online gaming is but a very small piece of the global gambling market. Although estimates as to the current size and growth rates of the global online gaming market vary considerably, the market generated revenue of approximately €8 to €10 billion in 2005, representing just over 4% of the total global gaming market.²¹³ It has been stated that while the United States market had accounted for half the Internet gambling market, online gambling equalled less than 4% of the estimated total €198 billion global land-based gambling market.²¹⁴

5.2.13 In 2005, casino and bingo games represented approximately 29% of the online gaming market and poker represented approximately 13%.²¹⁵

5.2.14 In Japan and Korea alone, mobile game revenues exceeded €0.76 billion in 2003 and 2004. Asia as a whole accounts for around 58% of the global mobile games market. This number is expected to decline to around 45% by 2009, with substantial growth in revenues from the Chinese and Indian markets being matched by a marked increase in revenues from the United States market.

5.2.15 According to Juniper Research, the total value of the global mobile games market will rise by 78% during 2005 to nearly €3.8 billion. The North American market, which currently accounts for just 14% of the total market, should increase nearly tenfold over the next five years to more than €3 billion, or 22% of the total.²¹⁶

Table Twenty below summarises the key markets for remote gaming.

Table Twenty: Key Market for Remote Gaming²¹⁷

Market	No. of Regular Remote Gamblers	Turnover	Euro / Gambler / Year	Comments
United States	4 million	€5.31 billion	€1,441	Currently the largest individual national market for online gambling. Market share predicted to fall as other key markets are exploited.
Asia - Pacific	7 million	€12.14 billion	€1,745	This region is as yet relatively untapped, but is large and growing fast.
Europe	3.5 million	€4.55 billion	€1,366	An area of huge interest and activity, particularly in Great Britain due to recent changes in licensing and regulation. High per capita income and internet penetration make this a key region for growth in the long-term.

5.2.16 There are about 80 countries worldwide that permit online gaming. The online casino industry, which is believed to have some 2,300 online casinos, entertained well over 20 million players. More than a quarter of these online casinos are based on the Caribbean island of Antigua. A 2005 survey commissioned by the American Gaming Association revealed that 4% of Americans gamble online, but 38% of them said they started last year, and 70% of them reported that they began betting online in the last two years. It is of no surprise then that, according to some analysts, global online gambling is expected to expand to a €11.7 billion industry in 2006, up from €9.4 billion in 2005.²¹⁸

212 <http://www.gamingpublic.com/>

213 http://www.partygaming.com/about_us/global_online.html

214 Shore, D. (2006)

215 <http://www.betsage.com/gamblingnews/15122006/bignumbersfrom.htm>

216 Jain, H. IntruGuard Devices, Inc. (2006)

217 Microgaming.com: Cited in Great Britain's Department for Culture, Media & Sport (October 2006) A Literature Review and Survey of Statistical Sources on Remote Gambling.

218 Des Jardins Securities analyst David Shore, who cited statistics from Global Betting and Gaming Consultants.

5.2.17 At present, remote gaming in the EU, as elsewhere, accounts for a comparatively small percentage of all gaming, perhaps worth €3 billion in annual gross gaming revenues. However, a number of factors make substantial growth seem inevitable:²¹⁹

- (a) An increasing proportion of the population have access to the relevant technologies;
- (b) The technologies are becoming increasingly user-friendly;
- (c) The technologies are becoming increasingly integrated. For example, a single compact, portable piece of hardware functioning as personal computer, mobile phone and interactive television combined will soon be widely available;
- (d) These systems have automated and convenient electronic billing systems which make financial transactions increasingly easy;
- (e) Adult populations in the years to come will increasingly consist of people who have grown up familiar with playing electronic games and utilising computers in their everyday lives;
- (f) The ingenuity of existing and emerging technology companies and remote operators is ensuring that more and more games and other vehicles for gaming are available through the new technologies;
- (g) Spending on leisure is increasing;
- (h) Spending on home-based entertainment is increasing;
- (i) The burgeoning interest of some countries in Europe in providing a home for online gaming.

5.3 Technological Complexities

5.3.1 Remote gaming is the fastest growing sector of the world gambling industry. Twenty-four hour availability of the Internet facilitating the crossing of national borders, along with extensive growth in modern remote technologies has created, for the first time, a gaming medium that is truly an international product. Such a dramatic development brings with it new and complex challenges for both regulators and governments.

5.3.2 Continually changing technologies and on-going shifts in global marketing and associated legislation make it very difficult to identify any one route to regulatory success. As is the case with terrestrial gaming regulation, there are many ways to tackle the issue. The most appropriate response is that which best considers the full gambit of potential social, economic, political and cultural impacts.

5.3.3 However, the issues pertaining to remote gaming, while thematically similar to those related to terrestrial gaming, are far more complex and difficult to contain. Technological revolutions and global freedom across the world-wide web keep successful regulatory control of remote gaming always just out of reach. No sooner than a particular regulatory mechanism to help contain internet gaming has been devised, e.g. the banning of the use of certain payment methods when gaming on the Internet, does a new technology surface thus facilitating on-going activity. For this reason among many, it is necessary therefore to establish a different set of regulatory objectives and controls when dealing with remote, as opposed to terrestrial, gaming. While the regulatory principles remain the same in both cases, the ways and means in which successful regulation can be realised are different.

5.3.4 There is yet much work to be done in order for us to frame the issue of remote gaming in an Irish context. Little or no research has been undertaken in Ireland as to the social, economic and political impacts and matters related to remote gaming i.e. technology, responsible gaming, age verification, payment methods, etc.. As it is, while there undoubtedly remains a growing demand for remote gaming products and services across the island of Ireland, with a dearth of empirical data available, very little is known about the sector.

5.3.5 Many jurisdictions across the globe have explored this issue in considerable detail, independently, it must be stated, to their deliberations on gaming regulation in general. Each have adopted a regulatory model best suited to their technological, political and geographical context. Ireland, with its open economy balanced on the periphery of Europe is ideally positioned to offer itself as a socially responsible and secure arena for remote gaming. This is certainly the case given recent events in the United States where certain payment methods have been banned for gaming on the Internet. Many have predicted that much of the world's remote gaming activity is to become centralised in Europe.

²¹⁹ Swiss Institute of Comparative Law (2006)

The Committee notes that, even in the current environment, one of the industry-leading software providers for online gaming companies, have already considered doing so.

5.3.6 According to the website www.gaminglicences.com, there are four factors that dictate where a gaming operation will base itself. These can be summarised as follows:

- (a) **Jurisdictional Commerciality:** The availability of licences for the various forms of remote gaming, such as betting, casinos, betting exchanges and lotteries;
- (b) **Regulatory Structure:** The existence of regulation is not a deterrent: indeed it can be attractive, since reputable operators will often place a value on being licensed in a jurisdiction, which sets high standards of integrity. Some jurisdictions are more attractive than others simply because obtaining information and dealing with competent regulatory bodies is easier and quicker. However, the cost of licences (including the costs of satisfying licence terms) can have a negative impact too;
- (c) **Policy Stability:** The stability of the political environment and what form any changes to policies governing interactive gaming are likely to be. Tax rates are also a major factor for operators deciding where to locate;
- (d) **Telecommunications Facilities:** Remote operators will need to be satisfied about the availability, reliability and cost of communications, especially (though not only) internet access, adequate bandwidth, the availability of leased lines and satellite communications.

5.3.7 Local resources immediately available in Ireland, such as a strong technological infrastructure, bandwidth, qualified personnel etc. could, if structured well and regulated successfully, allow Ireland to realise the potential benefits from what is fast becoming the most dynamic and profitable sector on the web. Any development in remote gaming must be strictly regulated to protect the vulnerable, prevent criminals from entering the market. There are many regulatory challenges ahead and careful consideration must be given to the possibilities of Ireland providing a socially responsible and secure arena for the development of remote gaming based in Ireland.

Recommendation: The Committee recommends that a regulatory system be established for remote gaming in Ireland. A full impact study, a technological assessment and industry analysis should be carried out. EU- and world-wide implications as well as issues pertaining to access to services of minors and other vulnerable persons should also be considered.

5.3.8 Any model/framework template for the regulation of remote gaming must incorporate the following

- (a) Cooperative approach with operators
- (b) Mutual recognition of regulators and service providers — licensing and approvals
- (c) Role of the gaming regulatory authority.
- (d) Inter-governmental agreements
- (e) Elaboration of national and international standards
- (f) Full assessment of business capability & financial viability
- (g) Player protection measures
- (h) Safeguards for the young and the vulnerable
- (i) Taxation — collection & remittance
- (j) Systems & software
- (k) Player identification and verification standards – IP & credit card checks
- (l) Identification of winners based on personal IDs (minors excluded)
- (m) Privacy of Information
- (n) Advertising code
- (o) Payment methods
- (p) Anti-money laundering policy compliance
- (q) Remote gaming in non-licensed public premises
- (r) Retention of information for research

5.3.9 Deliberation on each of the above, one immediately recognises, is starkly different to the exploration of similar themes in terrestrial gaming. Presented in Appendix No. 16 of this Report are the experiences of other jurisdictions in their efforts to regulate remote gaming. This merely scratches the surface of the complexities – technological and legal – but it does provide us with requisite definers, legal principles and market dynamics of which we need to be aware before taking the matter further.

5.3.10 In order to curb remote gaming, many governments have already established in place regulations or ordinances to either totally ban or restrict remote gaming activities. In many jurisdictions all forms of gaming other than those taking place in designated licensed locations are treated as illegal activities with people operating or taking part in these illegal gaming activities liable to fines and penalties. The Committee is of the view that censorship of the Internet in an effort to achieve such ends is frequently self-defeating, is unlikely to achieve the intended results, leads to the diversion of scarce law enforcement resources and frequently has unintended and undesirable consequences.

5.3.11 Due to the rapid evolution of the Internet, the legal issues surrounding gaming on the Internet have become extremely complicated. Gaming regulations have traditionally been contained within the boundary of a nation. The Internet has already made regulating gaming activities difficult for many nations. What nations now face is a jurisdictional challenge. As governments realise their inability to exercise control over citizens participating in illegal activities offshore through the Internet, many of them, like Ireland, are now faced with figuring out an appropriate regulatory approach to tackle the problem.

5.4 Overview of International Situation

5.4.1 Until very recently there was very little communication between governments and regulators on remote gaming. The main reason for this was because of the significant differences in earlier approaches to the problem of regulating for remote gaming in the first place. These approaches varied from:

- (a) Having absolutely no remote gaming regulation whatsoever.
 - Countries like Costa Rica allow companies to conduct remote gaming in an unregulated environment.
- (b) Having some remote gaming regulation but hardly any enforcement.
- (c) Having some form of self-regulation where the onus was on the operator to regulate their operations.
 - In countries like Central America, their approach to remote gaming is more flexible and reliant on self-regulation. There are low barriers of entry in terms of licensing and little or no official tax to attract operators.
- (d) Providing for maximum protection and compliance via strict regulation.
 - In some European countries, policies are with the highest standards to ensure fairness and protection of both players and operators. These policies have mechanisms for verifying the age and geographic location of the players. With extensive testing and auditing of software and gaming systems, these policies focus on minimising fraud and money laundering and have moderate to high taxation rates.
- (e) Having a dictatorial approach with little/no regard for the commercial realities facing the sector.
- (f) Total prohibition of remote gaming, which still applies in many parts of the world.

5.4.2 More and more operators use the Internet to distribute betting games. In the United States, Federal and State legislation prohibits gaming via the Internet. In Danish law, the provision of foreign betting games is covered by the prohibition against gaming without a licence if the provision can be said to be offered to Danes. In October 2004, a bill for new gaming legislation was presented in the United Kingdom, opening for the granting of around 150 concessions to operators wishing to offer remote gaming. It does not appear from the bill to what extent such games can be offered to the citizens of other countries.

5.4.3 Currently, the majority of sites are registered in just a few jurisdictions. There are 85 jurisdictions around the world that currently regulate remote gaming. The table below shows the number of sites in the most popular jurisdictions in 2005.²²⁰

²²⁰ Stewart, D., (2006).

Jurisdiction	Number of Sites
Antigua	537
Costa Rica	474
Kahnawake Mohawk (Canada)	401
Curacao	343
Gibraltar	111
United Kingdom	70
Belize	60

5.4.4 Generally speaking, governments that do permit and promote remote gaming, such as Gibraltar, Antigua and Malta, are much more aware of the need to have a proper regulatory framework in place. There seems to be a general consensus that there is a need to promote and ensure the integrity not only of the operators, but also the games that are made available.

5.4.5 Some of the jurisdictions set out in the above table may not have the full attributes of sovereignty sufficient to give comfort to a responsible online gaming operator wishing to invest heavily in providing a quality online casino. There is a massive gap in the market for an innovative, technologically sophisticated and focussed EU Member State with experience in international money transfers and a population of English speakers who generally understand the mechanics of gambling to become the natural home to a significant and quality portion of this dynamic industry.

5.4.6 An extensive account of different jurisdictions' experience with remote gaming across the globe including descriptive case studies on Gibraltar, Malta and Antigua is presented in Appendix No. 16 of this Report.

5.5 Regulatory Options Available to Ireland

5.5.1 Where to now?

In light of legal and political developments in other regions around the globe — especially in North America — it is quite possible that much of the world's remote gaming business will, in fact, be based in European jurisdictions. Malta and Great Britain already have laws permitting and regulating remote gaming on their statute books. Gibraltar, which is, for the purposes of gaming regulation, an EU jurisdiction, hosts a number of remote gaming companies which account for a large share of the world's remote gaming market, much of it consisting of remote gaming services delivered to customers resident outside the EU.

5.5.2 It is essential therefore, in considering the likely economic impacts of removing barriers to an internal market in gaming, to consider the likely effects of remote gaming on the overall EU gaming market. This is a difficult forecast to make, partly because much depends on how the EU collectively responds to the issue of whether and how to regulate remote gaming, partly because other jurisdictions, such as the United States, are likely to take decisions which will affect European markets, and partly because the future market for this form of e-commerce will be dependent on both technological and legal developments which are quite difficult to anticipate.²²¹

5.5.3 It is therefore useful to try to identify key determinants and to discern trends when trying to construct a plausible scenario about how remote gaming might affect the traditional markets for gaming services in the EU.²²² An additional challenge that must be addressed in this endeavour is that because remote gaming is such a new phenomenon, the availability of published peer-reviewed research covering the topic is still quite limited. Further research is required.

5.5.4 Remote Gaming and Government Alternatives

For ease of analysis we have made the distinction between two types of regulation for remote gaming:²²³

- Macro-Regulation – regulation governing whether remote gaming is legalised or prohibited;
- Micro-Regulation – the licensing framework, legal and technical standards that have to be adhered to by operators, covering issues as diverse as protection of customer funds, continuous and repetitive play and intervention to tackle problem gaming.

5.5.5 (a) Macro-Regulation

There is much disagreement in the international community regarding the best way to regulate remote gaming at a macro-level.

Some research suggests that there are four principal macro-regulatory approaches:²²⁴

- (a) Free Market:** Antigua and Costa Rica are frequently cited as more liberal jurisdictions when it comes to remote gaming. Antigua was one of the first nations to legalise and licence remote gaming in 1996, while Costa Rica has attracted over ninety operators to the Island. In Antigua, operators are charged US\$100,000 for a gaming licence. For this directors and shareholders have to meet due diligence requirements, the software making odds for the games have to meet internationally recognised standards of fairness and the operator has to have offices and servers on the island.
- (b) Regulated Free Market:** Following the implementation of the Gaming Act in 2007, Britain will be a regulated free market for remote gaming operators (although it is still currently illegal to supply remote gaming from Great Britain). From September 2007 onwards the British public will be able to bet on sites regulated by the Gaming Commission. Operators must adhere to licence conditions and codes of practice.
- (c) Isolationist:** Australia takes a more isolationist regulatory approach to remote gaming by encouraging operators to base their companies in the country while simultaneously prohibiting these sites from taking bets from Australian residents. However, lotteries and sports betting are exempt from this ban, with online casinos being the primary target of the legislation.
- (d) Prohibition:** The recent passing of the Internet Gambling Prohibition and Enforcement Act 2006 (H.R. 4411) in the United States outlawing the use of certain payment instruments, credit cards and fund transfers for unlawful internet gambling.

5.6 Views of the Committee and Recommendations as to a Possible Licensing Regime for Remote Gaming

5.6.1 So what are our options?

Governments often think about internet and other forms of remote gaming by asking: “Should we permit this activity and, if so, how much should we permit and how should we regulate it?” However, in light of the reality of remote gaming already in existence, the appropriate questions that governments should ask are: “How can this activity be properly regulated? What will the consequences be of trying to do so?”

²²² Swiss Institute of Comparative Law (2006)

²²³ Department for Culture, Media & Sport (2006)

²²⁴ Department for Culture, Media & Sport (2006)

5.6.2 The dilemma is given that there is little popular support for enforcing gaming prohibition, what is the Government to do given that there is a large and growing illegal gaming industry.

5.6.3 One alternative is to declare that all forms of remote gaming are illegal and that consumers found gaming on the Internet will be prosecuted. This, however, poses serious problems with enforcement. With remote gaming, there is no consensus that such policing measures would be acceptable. Governments are often encouraged to explore the option of prohibition because they are lobbied either by existing gaming industries or their benefactors that wish to avoid competition, or by those who are opposed in principle to any (additional) form of legal gaming.²²⁵ However, the underlying problem for any jurisdiction contemplating prohibition of remote gaming is whether there is sufficient political will both to enforce prohibition, which is a function of the level of popular support for the policy and to accept the consequences of trying to enforce prohibition.

5.6.4 The next alternative is regulation. The primary reason for wanting stricter regulation on remote gaming than applies to other forms of entertainment is to minimise problem gaming that might occur because of the potential for high-stakes gaming continuously available via remote gaming channels. This is also a reason for jurisdictions to consider legislation that regulates remote gaming in a manner that encourages citizens to gamble on sites regulated by their home governments. Governments are also motivated to improve their current account balances and to stimulate their domestic economies; they can accomplish this by regulating remote gaming in a manner that encourages increased spending by foreign customers and/or discourages spending by their own citizens on remote gaming sites based in foreign countries. In general, to fulfil these objectives, they should establish legal and institutional structures which inspire customer confidence in the probity of the remote games, the companies which offer them and the comparative advantages of gaming with home-based companies rather than others.²²⁶

5.6.5 In order to achieve the aim of encouraging both consumers and suppliers to buy and sell gaming services primarily via the Internet sites which they authorise and regulate, governments need to make it more attractive to consumers and suppliers to operate (and pay fees and taxes) within their jurisdictions, rather than going abroad. For consumers, this means that gaming products must be as attractive, as easily accessible and as inexpensive as the products offered from overseas jurisdictions. For suppliers, it means that the costs of doing business onshore (including most notably taxes) must not exceed the costs of doing business offshore by more than the increased benefits which the company would derive by operating and being regulated onshore. For both consumers and suppliers, it means that the burden of regulation must not be onerous and unnecessarily bureaucratic, in comparison with that imposed upon offshore sites.

5.6.6 One means of encouraging remote gaming companies to operate in jurisdictions which offer strong protection against problem gaming and other negative social impacts (and thereby impose some additional regulatory burdens) would be to prevent anyone who is not so regulated from advertising their products through land-based media within the jurisdiction or, in the case of the EU, via any website with a suffix referring to a Member State (.fr, .uk, etc.). This would give operators of remote gaming businesses duly licensed in the EU an advantage in relation to the task of attracting and retaining customers. However, this would prove very difficult to realise. Standardised EU regulations on this seem very unlikely given the fact each EU Member State has its own legislation and hold very different positions on the issue. Advertising could also be used by governments to make the public aware of the dangers and disadvantages of gaming with sites not regulated according to EU standards and not subject to EU compliance procedures, including the dangers of fraud and uncertified technology.²²⁷

5.6.7 It would also be possible to attempt to control internet gaming (or unlicensed, uncertified remote gaming) via the banking industry by, for example, declaring that debts owed to credit card companies as a result of internet gaming may not be enforceable at law and electronic funds transfers for gaming purposes are illegal. This is very difficult, because it is at present quite easy to disguise, through various mechanisms, payments made to remote gaming companies. Another difficulty is that, just as anti-usury legislation creates an environment conducive for illegal loan-sharking, making debts unenforceable at law might lead to the emergence of e-banking businesses which enforce their debts by extra-legal means. Nevertheless, if both gaming operators and their customers were aware that the likelihood of their being able to collect their respective winnings depends on the jurisdiction regulating their gaming activity, this would provide a major incentive for both to do their business subject to local regulation.

225 Swiss Institute of Comparative Law (2006)

226 Swiss Institute of Comparative Law (2006)

227 Swiss Institute of Comparative Law (2006)

5.6.8 It seems likely that as more and more gaming takes place via remote technologies regardless of the status of national laws, with perceived dangers to citizens of individual countries and with loss of tax and other revenues, pressure will mount to establish and enforce international agreements among nations which permit and regulate remote gaming. The ultimate result may eventually be the establishment of common international standards and regulatory requirements that will minimise differences among jurisdictions. This may be an important way of encouraging EU citizens to gamble within EU regulated companies because of the legal protections afforded.

Recommendation: The Committee recommends that work should commence on the development of a separate regulatory framework for remote gaming, under the same regulatory authority as terrestrial gaming. The Committee notes that while the objectives and principles attached to the regulation of both remote and terrestrial gaming remain the same, the means of achieving them differ considerably.

Recommendation: The current state of development internationally of regulation of remote gaming, particularly the recent United States prohibition of payment mechanisms for gambling online, presents a window of opportunity for Ireland. The Committee recommends that the appropriate regulatory authority (in conjunction with other relevant Government Departments) address the consequential regulatory challenges and provide a socially responsible and secure arena for the development of remote gaming based in Ireland. Should this opportunity be grasped within the appropriate timescale, Ireland, as a gaming friendly centre of excellence, can reasonably expect to attract a reasonable portion of this dynamic industry, therefore yielding significant synergistic benefits as well as employment opportunities.

Recommendation: The Committee recommends that any development in remote gaming must be strictly regulated to protect the vulnerable, prevent criminals from entering the market and ensure that being licensed in Ireland is a trustworthy seal of approval for e-gambling customers throughout the world. Such strict regulation is in the long-term interest of the better remote gaming operators as well as the State. Further discussion with the Minister for Finance regarding possible competitive taxation rates and with other Government Departments is necessary to advance such a proposal.

5.6.9 A more significant evolution, however, could be an international one. New technologies are fundamentally changing our society. This evolution and the development of the information society will need to be accompanied by an adequate and open regulatory framework. In a time where gamblers no longer need to go to a casino established in their jurisdiction, but with a simple click can access similar services in another jurisdiction, with its own, sometimes more progressive, regulation, an international approach, i.e. cooperation between the competent authorities or a harmonisation of legal regimes, may be required.

5.6.10 In the future, restrictive national remote gaming law will be more and more challenged on grounds of European Law, in particular because countries such as the United Kingdom and Malta, have adopted a more progressive approach towards remote gaming.²²⁸ Such a framework will not only offer new business opportunities for operators, e.g., application of the country of origin principle, but should also provide for an adequate protection of the online gambler.

5.6.11 There is some uncertainty with regard to whether gaming via the Internet etc. will increase the prevalence of gaming problems in the future. This uncertainty is connected to how the availability of gaming in the private sphere without “social controls” impacts on risk elements.

5.7 Conclusion

5.7.1 Most governments have not enacted nor even considered any special laws on remote gaming. Many governments say they are only studying it.²²⁹ However, the loss of tax revenue from online gaming has forced these governments to re-examine their stance towards the issue.

5.7.2 Ignoring the impacts of the Internet gaming does not work. Governments have demonstrated their unwillingness to lose tax revenue from their citizens who have already developed gaming habits by taking part in offshore online gaming activities. At the same time, they do not object to foreigners taking part in their authorised gaming operations, which will bring in more tax revenue.

5.7.3 There are now approximately eighty-five jurisdictions issuing some forms of online gaming licences. These are primarily smaller nations, such as Antigua, and individual States and territories of larger nations, including those in Australia who are starting to compete by offering lower tax rates, which range from 8% to a prohibitive 50%.²³⁰ Tax bases differ from jurisdiction to jurisdiction.

5.7.4 Tax rates on internet gambling vary among jurisdictions, with most below 5%. Some examples of current tax rates include:²³¹

- (a) Isle of Man 2.5% on the first £10 million of “handle”; 0.5% between £10 million and £40 million; 0.1% above £40 million.
- (b) Antigua and 3% of “hold” (the amount retained by the Barbuda gaming entity after paying off winning bets); ceiling of US\$50,000 per month.
- (c) Alderney £75,000 per year fee (zero tax).
- (d) Several commentators anticipate that Great Britain will impose higher tax rates on internet gambling than most other jurisdictions. Great Britain is expected to announce its tax rate in 2007.

5.7.5 Some governments across the globe in their announcing prohibition of remote gaming have reacted very quickly without due consideration of the many complex issues and potential benefits involved. It is of the utmost importance that Irish policy makers do not make the same mistake. It is the opinion of the Committee that strict regulation of the remote gaming market be established.

5.7.6 Some governments, in particular large nations such as the United States have adopted a go-slow attitude because of ethical considerations. It is always idealistic to have regulation or a total ban on online gaming. Gaming operations are having an impact on many nations’ tax revenues. After various legislation debates, prohibition usually means clarifying the law to create partial legalisation, allowing some forms of restricted online gaming operations.²³²

5.7.7 It looks as if the future outlook of internet gaming is already set. It appears that many more governments will be getting into the business of regulating and licensing online gaming. Government officials realise that the remote gaming industry has grown more quickly than what they expected. The trend is also toward more regulation. Nonetheless, although regulation or a total ban of online gaming seems ideal, due to the special nature of the Internet and the gaming industry, any attempts to regulate or to completely prohibit online gaming is likely to have a minor impact.

5.7.8 The issues involved in online gaming are a lot more complicated today. The ever-changing technology behind the Internet means prohibiting online gaming is virtually impossible. Online casino operators are based offshore, which is beyond the reach of gaming laws and regulations.

5.7.9 Online gaming is still a very controversial issue. Whether one is to opt for outright prohibition or to legislate for the provision of remote gaming activities is a question that can only be addressed when considering national, social, economic and political contexts. There is no way to really know, but the fact is many nations have put a great deal of effort into trying to facilitate effective gaming regulations to control online gaming. However, to what extent the regulations could be measured as ‘effective’ is still dubious. As was stated earlier, we are merely scratching the surface on these issues. More work is necessary in relating each and all of these matters to the Irish context.

229 Kong, L., Ngan, L., and Leung, J. (2005)

230 Rose, N. (2000).

231 Stewart, D. (2006).

232 Kong, L., Ngan, L., & Leung, J. (2005)

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Appendix No. 1

Committee Members of the Committee on the Regulation of Casinos

Chairman

Mr Michael McGrath BL

An Garda Síochána

Chief Superintendent Gerry Blake

Department of Arts, Sport and Tourism

Mr Francis Rochford

Department of Environment, Heritage and Local Government

Mr Tom Sheridan

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Department of Finance

Mr Pat Murphy

Mr John Burke

Department of Justice, Equality and Law Reform

Mr John Roycroft

Revenue Commissioners

Mr Philip Brennan

Mr Ciaran Callan

Secretariat to the Committee on the Regulation of Casinos

Committee Researcher

Mr Philip McCormack

Secretary to the Committee

Ms Clodagh Moore

Committee Administrator

Ms Amber Synnott

Appendix No. 2

DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM

PUBLIC ADVERTISEMENT FOR SUBMISSIONS

COMMITTEE ON THE REGULATION OF CASINOS

The Minister for Justice, Equality and Law Reform, Mr Michael McDowell T.D., has established an interdepartmental committee to report on the possibilities for a legislative basis for the strict regulation of casino-style operations in the State. The Committee includes representatives from the Departments of Finance; Justice, Equality and Law Reform; Arts, Sports and Tourism, and Environment, Heritage and Local Government as well as An Garda Síochána and the Revenue Commissioners. The Committee is to be chaired by Mr Michael McGrath, B.L.

The Committee is to report to the Minister and the Government by the end of October 2006 on:

- The possibilities for a legislative basis for the strict regulation of casino-style operations in the State;
- The form of regulation, the functions and powers of any regulatory body, the licensing system, codes of practice, investigation of complaints, entry and inspection, appeals against decisions, the nature and type of offences, internet gambling etc.;
- The role of local authorities;
- The requirements of the Financial Action Task Force.

SUBMISSIONS

The Review Group invites submissions from interested parties, groups or individuals in relation to the above matters.

Submissions in writing should be addressed to;

The Secretary,
Committee on the Regulation of Casinos,
Department of Justice, Equality and Law Reform,
Block 2, Harcourt Centre,
Harcourt Street, Dublin 2.

Submissions can also be made by e-mail to: casinocomm@justice.ie

Submissions should not arrive later than Friday, 15 September 2006

Appendix No. 3

List of Written Submissions

- Ms. Antoinette Kennedy, Managing Director on behalf of Amusement City
- Mr. David Campbell - Parent
- Mr. Ian O'Halloran and Seamus Morrissey on behalf of Fitzpatrick's Sporting Club/Ace Leisure
- Mr. Mike Futter, Managing Director on behalf of Futter Management Services
- Mr. David Hall, Chairman on behalf of Gaming and Leisure Association of Ireland
- Mr. Andrew Tottenham, Managing Director on behalf of Harrah's Entertainment Inc., European Headquarters
- Mr. Brian Kavanagh, Chief Executive on behalf of Horse Racing Ireland
- Mr. Hugh Mulcahy on behalf of International Group of Gaming and Resorts
- Mr. John Roche, General Secretary on behalf of Irish Amusement Trades Association
- Mr. Harry Cohen, Managing Director on behalf of Irish Casino Clubs Ltd. & Montague Leisure Limited
- Mr. Michael Foley, Acting Chief Executive on behalf of Irish Greyhound Board
- Mr. John James Woods
- Mr. John McKeon - Chartered Accountant
- Lifford Greyhound Stadium
- Mr. Maurice Fitzgerald - Member of the Public
- Mr. Michael Hallinan - Former Assistant Secretary to the Higher Education Authority
- Mr. Harry Cooke, Head of Operations and Corporate Affairs on behalf of National Lottery
- Mr. John Kennedy, Company Director on behalf of Oasis Entertainment Ltd
- Mr. Breon Corcoran, Managing Director on behalf of Paddy Power, Non Retail and Development
- Ms. Pat Allison, Navan Road Community Council
- Mr. Tom Reddy of Reddy Communications - Pocket Kings Ltd.
- Ms. Angela Kerins, Chief Executive Designate on behalf of Rehab Group
- Mr. Clive Hawkswood, Chief Executive on behalf of Remote Gambling Association
- Mr. Robert Hartnett - Public Relations Consultant
- Mr. Robert McKeon - BA (Psychology), MA (Addiction Studies)
- Mr. Roy Sherlock - Chartered Surveyor
- Ms. Sally Cox
- Mr. Noel O'Beara Seaside Amusement and Funfair Association
- Mr. David Hickson, Managing Director on behalf of The Golden Horseshoe Ltd – Facilities Company to the Fitzwilliam Card Club
- Mr. Michael Houlihan and Partners on behalf of The Sporting Emporium

Oral Submissions and Presentations – 18th and 19th October 2006

- Mr John Roche, Mr Jim Rickard and Mr Brendan Martin on behalf of Irish Amusement Trades Association
- Mr Michael Foley, Mr Adrian Neilan, Mr Vinny Barrett on behalf of Irish Greyhound Board
- Mr Niall Mackey and Ms Clare Walsh on behalf of Horse Racing Ireland
- Mr David Hall, Mr David Hickson, Ms Lucy Cronin, Mr Aidan Eames and Mr Sylvester Geoghan on behalf of Gaming and Leisure Association
- Mr Alan Brownlee on behalf of Remote Gambling Association
- Mr Stephen Rowen - Clinical Director of the Rutland Centre²³³
- Mr Rob McKeon - BA (Psychology), MA (Addiction Studies)
- Mr Frank Flannery, Ms Angela Kerins, Ms Sonya Felton and Mr John McGuire on behalf of Rehab Group
- Mr Charles Harbourne and Mr Paul O'Reilly on behalf of Irish Casinos Clubs Ltd. t/a The Merrion Casino Club
- Mr Ian O'Halloran, Mr Joe O'Donoghue and Mr Dudley Burke on behalf of Fitzpatrick's Sporting Club/Ace Leisure
- Mr Breon Corcoran on behalf of Paddy Powers
- Mr John James Woods
- Mr Rob Hartnett - Public Relations Consultant
- Mr John McKeon - Chartered Accountant
- Mr Andrew Tottenham, Managing Director on behalf of Harrah's Entertainment Inc., European Headquarters
- Professor Peter Collins, Director, Centre for the Study of Gambling and Commercial Gaming, University of Salford, Manchester
- Mr John Purcell on behalf of Public Access Technology and Management Consultants
- Mr Michael Houlihan, Mr John Gilmore and Mr Martin Moore on behalf of The Sporting Emporium

²³³ Mr Stephen Rowen was invited to attend by the Committee so that the Committee could hear his views on problem gambling. He very kindly facilitated the Committee and the Committee wishes to express its sincere appreciation.

Appendix No. 4

Gaming Regulation in Denmark

Currently the Danish gambling market is principally managed by **two central groups**:

- **Dansk Tipstjeneste A/S**²³⁴ - operates lotteries, betting and gaming machines outside casinos.
- **Det Danske Klasselotteri A/S**²³⁵ - operates the Danish State lottery.

The Tipstjeneste group has a monopoly on most of the gambling within the country, except slot machines and the six private casinos. In addition the market includes a number of private gaming providers who, like the State, either donate the profit to public benefit or, in return for their licences and permits, pay a high duty to the State Treasury. All profits are distributed according to rules laid down by the Danish Parliament for sporting, cultural and other non-profit purposes.

The gaming market is administered by four ministries (Ministry of Taxation, Ministry of Justice, Ministry of Finance and the Ministry of Family and Consumer Affairs) plus a recently established Gaming Authority whose role is to regulate, supervise and monitor gaming in Denmark. The National Supervisory Authority for games and lotteries is part of the Gaming Authority under the Ministry of Taxation. A breach of the acts is sanctioned by a fine or imprisonment according to the Criminal Code.

The objectives for the current system and legislation are:

- Keeping the consumption of games with financial stakes at a moderate level,
- Protecting consumers when they engage in gaming and in betting activities,
- Limiting gambling addiction and combating economic crime as well,
- Restricting private individuals' access to utilise people's desire to gamble as a basis for a commercial gain.²³⁶

Casino Gaming

Casino gaming in Denmark involves roulette (both French and American), baccarat and blackjack. According to the Casino Act the Ministry of Justice grants the licence to run a casino in Denmark and can allow other kinds of games, as well as limit the number of games in any one casino and the maximum and minimum stakes available.

Casinos in Denmark ²³⁷

Property	Location	No. of Tables	No. of Gaming Machines
Casino Aalborg	Aalborg	7	40
Casino Copenhagen	Copenhagen	21	150
Casino Marienlyst	Helsingor	5	Not available
Casino Munkebjerg	Vejle	14	66
Casino Odense	Odense	11	35
Royal Scandinavian Casino	Aarhus	4	60
Total		57	311

Source: Adapted from the GBGC Report

²³⁴ Dansk Tipstjeneste (est'd 1948) with all profit going directly to sports and other activities of general benefit for the public or to the State Treasury. It is 80% owned by the State and the other 20% by 2 Danish sports organisations i.e. the Danish Sports Federation (DIF) (10%) and the Danish Gymnastics and Sports Association (DGI) (10%).

²³⁵ Det Danske Klasselotteri is the Danish State lottery set up by the Ministry of Taxation

²³⁶ Swiss Institute of Comparative Law (2006)

²³⁷ GBGC (2005)

Currently there are six casinos in Denmark. Danish law permits that only larger hotels are to have casinos and indeed dictates which ones are allowed to have them. Foreign ownership of casinos in Denmark is permitted under strict conditions.

There are several requirements that a casino must adhere to in order to be lawful, for example, they must register information about their customers; obey strict regulations concerning the management of gaming money, their staff etc.. It is the police that supervise the casinos.

There is **no monopoly** on the casino market in Denmark. While it appears that there is no capping of casino licences, suggested in an explanatory note to the Gambling Casino Act states that the Ministry of Justice finds that there will only be economic basis for a few casinos in Denmark. Accordingly, the Ministry of Justice expects that only a single figure number of licences will be granted.²³⁸ In terms of the awarding of licences the Act makes it very clear that a casino must be run in a “good way”.²³⁹ Article 1 of the Gambling Casino Act stipulates that:

- “(1) The Minister of Justice may grant licences to establish and operate gambling casinos.*
- (2) A licence may be granted for up to 10 years at a time.*
- (3) In determining whether a licence should be granted, an important consideration should be that it must be assumed that the applicant for a licence intends to operate the gambling casino in a fully responsible manner.*
- (4) A licence may be subject to conditions”.*

Machine Gambling Outside Casinos

In 2002 a particular law for machine gambling, the Act on Gaming Machines Offering Cash Winnings, was passed and one of its primary objectives was to combat the illegal market for slot machines by channelling gambling on slot machines into legalised, controlled forms and to limit gambling addiction. The law states that the Gaming Authority shall supervise the market. Article 6 specifies the conditions for a permit:

“Placement and running of gambling machines can take place with a permit from the Gaming Authority. The permit for placement and running of gambling machines can be given to a restaurant, with an alcohol permit, with up to 3 gambling machines or for placement and running of gambling machines in a gaming hall.”

The permit can be given for a maximum of five years and Article 8 makes it clear that:

“Permits for placement and running of gambling machines can be given, if one can assume, that the applicant will run the activities with gambling machines in a fully warrantable or responsible way. At the decision if permission for placing and running gambling machines in a gaming hall shall be given, importance can also be attached to the size of the gaming hall, its placement etc..”

1% of the gross revenue from machine gambling is transferred in favour of the treatment of problem gambling and research.

²³⁸ Swiss Institute of Comparative Law (2006)

²³⁹ Article 1 of the Gambling Casino Act.

Appendix No. 5

Gaming Regulation in Portugal

The basic rule is that Portuguese law prohibits private persons and other entities to freely engage in the exploitation of gambling.²⁴⁰ The right to operate gaming is reserved to the State. It may cede such right by means of a concession. These concessions to operate casinos are a direct manifestation of the **State's monopoly** on games. Gaming law states that the right to operate games of chance may only be exercised by companies constituted as limited liability companies to which the Government grants the respective concession by means of an administrative contract. Concessions are awarded for fixed periods of time which can later be extended and are subject to extremely strict regulation and control. Extensions to the concession can be granted by Governmental initiative or by request of the concession holder. This has proved restrictive to the expectations of other would-be candidates exploring potential opportunities to tender when concessions come closer to the end of their term.

In order to facilitate this regulatory regime, Portugal formulated a system of “gaming zones”. These “zones” provide the framework upon which gaming can be operated once a concession is granted from the Ministry.²⁴¹ Operation of a casino cannot start without first obtaining a concession from the Ministry. In Portugal, regulation cannot be delegated to a body outside the responsible ministry, although supervision of the gaming market is usually carried out by inspectorates who have a close relationship with the Ministry.²⁴² Operating and practicing gaming away from casinos existing in recognised gaming zones without a concession constitutes a crime.

Under Portuguese law gaming is allowed in casinos (including gaming machines), but only in the specified “gaming zones”. These are the Azores, Algarve, Espinho, Estoril, Figueira da Foz, Funchal, Porto Santo, Póvoa de Varzim, Troia and in Vidago-Pedras Salgadas. Specific games of chance are identified as being permissible with the conditions and rules of each game stated in advance by public law.

In a recent report prepared for the Portuguese Government, a working group spelled out the reasons justifying the nature of this particular gaming regulatory framework. Gaming, states the Report, is an “a-typical and sensitive economic activity” belonging to public order, which must be closely scrutinised in order to prevent organised crime and money laundering. For the sake of consumers and families protection and in order to “sublimate the human tendency to gambling”, the State undertook to regulate each area of gaming, keeping the few persons and entities allowed to exploit gaming under tight control.²⁴³ This way, it is believed, the State can better regulate and control the various modes of gaming, thus continually deciding upon what are acceptable levels of gaming available to its population.

Machine Gambling Outside Casinos

Slot machines are only permitted in casinos established in the same special authorised gaming zones. It is forbidden to operate gaming machines outside casinos. Portuguese law forbids exploitation of gaming machines that award money prizes on the basis of skills of the player and likewise machines offering similar types of games are forbidden in all other areas.

²⁴⁰ Swiss Institute of Comparative Law (2006)

²⁴¹ This does not apply to lotteries and similar activities, because Portugal accorded a national monopoly on lottery and lottery-like gaming to the charity entity Santa Casa da Misericórdia de Lisboa (SCML).

²⁴² Wils, J and Oostdijk, A. (2005).

²⁴³ Wils, J and Oostdijk, A. (2005).

Appendix No. 6

Gaming Regulation in the Republic of Slovenia

The Office for Gaming Supervision is responsible for supervising all processes directly or indirectly related with gaming organisation in Republic of Slovenia. It supervises and analyses the implementation of all applicable regulations and monitors the ownership structures of those holding concessions to operate gaming within the State. The Office of Gaming Supervision is also responsible for the validation of all the information required for the wrapping up of concession agreements and the issuing of licences.

The system of organising gaming in the Republic of Slovenia is regulated under the 1995 Gaming Act, which was amended in both October 2001 and October 2003. On the basis of this Act the following regulations were issued:

- Regulation on technical requirements for gaming devices and conformity assessment procedures
- Regulation on Institutions for Issuing Gaming Device Test Reports
- Regulation on the supervisory information system of gaming devices
- Regulation on organising games on slot machines in gaming arcades
- Regulation on licences for employees in the casino industry
- Regulation on detailed criteria that need to be fulfilled by permanent organisers of classical games
- Regulation on societies and non-profit humanitarian organisations that are allowed to organise classical gaming occasionally

In the Republic of Slovenia they have two categories of “gaming” - (i) *Classical gaming*: occasional and permanent gaming including lotteries; bingo; sports bets; sports pools; raffles. (ii) *Special or Casino games*: “Games played by players against the casino or one against another at special playing tables with balls, dice, cards, playing boards or on slot machines as well as bets and other similar games, in accordance with international standards.”²⁴⁴

Classical Gaming

Classical gaming can be arranged permanently by a joint-stock company based in the Republic of Slovenia to which a concession has been granted by the State. All sorts of permanent classical games can only be organised by two organisers at the most. Classical gaming can also be organised occasionally (e.g. once a year) in association with sport competitions by societies and non-profit organisations that are based in the Republic of Slovenia and defined by the government, according to benefits to public interest etc. on the basis of a licence issued by the Minister of Finance.²⁴⁵

Casino Games

Currently, there are thirteen casinos operating in the Republic of Slovenia, the first of which opened in 1964.²⁴⁶ Casino games can only be operated in casinos and in gaming arcades (EGMs only) by a joint-stock company based in the Republic of Slovenia and to which a concession has been awarded by the government. The organisation of games by foreign entities is not permitted.

The government decides upon awarding a gaming concession on the basis of a discretionary right considering a wide range of different circumstances (e.g. impact of gaming on social, cultural and natural environment, development of gaming activity, extent of gaming in a certain area and gaming experiences of the applicant).²⁴⁷ Consensus from the local community must be secured. The Minister of Finance signs the concession contract with the operator.

According to the Gaming Act (1995) the Government of the Republic of Slovenia can award a limited number of fifteen concessions for casinos and forty-five concessions for gaming arcades. The law does not limit the amount of concessions awarded to one company and in practice some companies have more than one - either concessions for organising games in casinos or concessions for organising games in gaming arcades.

244 Markelj, T. (2006)

245 <http://www.gov.si/unpis/angl/index.htm>

246 <http://www.ntz-nta.si/en/default.asp?id=2409&crawler=1>

247 <http://www.gov.si/unpis/angl/index.htm>

Gaming arcades in the Republic of Slovenia were introduced with the 2001 Amendment of the Gaming Act. In said amendment it states that a gaming arcade can have a minimum of fifty and a maximum of 200 slot machines and should be based at a centre for tourism. 90% of money inserted must be returned to the players. There is no ceiling on the number of slots in casinos.

According to the 1995 Gaming Act the operator of a casino must be a joint-stock company. That is to say that apart from the Republic of Slovenia, local communities and legal entities, owned or founded by the Republic of Slovenia, shareholders of a concessionaire can also be companies, organised as a joint-stock company, which fulfil certain conditions set by the Gaming Act (e.g. these companies should make income predominantly from the activity of banking, insurance business, tourism, financial brokerage or activity of investment or pension funds).²⁴⁸ There is no prearranged ownership structure for an operator of a gaming hall, which can be a joint-stock company or a company with limited responsibility. Full approval of the Minister of Finance is needed for the purchase of the normal shares of a company granted a concession to operate. Such an approval is also needed for any change in the ownership of an operating licence for a gaming hall.

The Gaming Act also stipulates that each gaming device (EGMs, Tables etc.) be certified having conformed to a series of technical and other standards. All must be tested and assessment results reported.

Similar to Great Britain and many other jurisdictions, specific staff in casinos and gaming arcades require a licence as laid out in the 2001 Amendment of the Gaming Act. These positions are: casino managers, croupiers, games leaders, people performing internal control and chief and assistant cashiers. The licences are issued by a special commission, which is composed of three members (two are appointed by the Minister of Finance, whilst the third one is a member of the Casino Association of Slovenia). Currently there are no special restrictions on advertising and opening hours in the Gaming Act.

²⁴⁸ <http://www.gov.si/unpis/angl/index.htm>

Appendix No. 7

Gaming Regulation in the Netherlands

The Netherlands gaming control board (College Van Toezicht op de Kansspelen) was established on January 1st 1996 as an independent advisory body to the Minister of Justice in respect of the national gaming monopolies.

The ultimate objective of the Board is to administer and supervise all national gaming monopolies in The Netherlands. The national gaming monopolies include: the Netherlands State Lottery, National Good Causes Lotteries, De Lotto (instant lottery, sports betting and lotto), Scientific Games (horse betting) and Holland Casino.²⁴⁹ The Board advises the Minister of Justice on the issuing, alteration and revoking of the licences for these monopolies and on the approval of their constitution and regulations. The Board does not have any coercive or compulsory powers. Its leading principles are transparency and consistency. The Board advocates and promotes social responsibility in all matters pertaining to national gaming and emphasises the transparency of prizes, costs and proceeds for good causes and the treasury. The Board endeavours to achieve a consistent gaming policy, offering each of the national gaming monopolies the same set of conditions and regulations in as far as is possible.

The Board itself consists of seven independent members, appointed by the Crown. The permanent secretariat has a staff of four and forms a part of the civil service of the Department of Justice. Gaming regulation has been concentrated in one department – the Department of Justice – instead of the five departments that used to be involved in gaming regulation. Although an independent body, the Board comes under the political responsibility of the Minister of Justice, who also provides for the Board's annual budget.²⁵⁰

Casino Gaming Regulation

The amended Dutch Act on Games of Chance (1964) provides for the issuance of a single licence to organise casino games. Contrary to licences for some other games of chance, the casino gaming licence is issued on a permanent basis and is subject to extremely strict conditions. The Dutch Gaming Board monitors the compliance of the licensee with the casino regulations. The Gaming Act states that the casino gaming licence must specify the advertising policy for casino games, must limit the stake money and must list the type and number of casino games that are allowed in a casino. A stringent advertising code lists a series of additional obligations in order to counter excessive gaming, prevent gaming addiction and protect the interests of minors and consumers. *The Dutch Measurement Institute* carries out the statutory certification and issues official approval certificates. The current holder of the licence to organise casino games in the Netherlands is the National Foundation for the Exploitation of Casino Games (Holland Casino). It holds the one and only licence that covers up to fourteen casinos, with the consent of the appropriate local authority. The licence will remain in force until such a time as the government decides to revoke it. Any net profit of Holland Casino is remitted to the Exchequer. The age restriction on admission into casinos is set at eighteen years.

Gaming Machines Regulation

Operating machine gaming in casinos is subject to a separate gaming licence in the Netherlands. The Gaming Act, in its current form, states that a gaming licence permitting the operation or organisation of machine gaming in a casino can only be issued to the licensee of the casino games (i.e. Holland Casino). The licensee can only operate type-approved slot machines in its casinos. Again, the net proceeds of the slot machines operated in the casinos are for the benefit of the Exchequer.

Outside of casinos gaming machines may be operated by amusement halls, hotels and other catering sector locations. The local Mayor issues the licence for gaming machines in bars. There are approximately 300 EGM / slot machine operators in the Netherlands. About 80% of these operators are in the hotel and catering sector, 16% in amusement halls, with the remainder active across both sectors.

The gross gaming revenue earned by EGMs/slot machines is traditionally divided equally between the operator and the proprietor of the hotel or sector location. About sixty operators have slot machines in gaming arcades, with about twenty-eight of these being single site operators. A further twenty have between two and five sites. The largest operator has approximately 34 gaming arcades.²⁵¹ Again the age restriction on admission to any premises operating gaming machines is 18 years.

249 <http://www.toezichtkansspelen.nl/information.html>

250 Swiss Institute of Comparative Law (2006)

251 Swiss Institute of Comparative Law (2006)

There are three types of licences for the operation of gaming machines:

“Operation Licence”	Issued by central government for the gambling operator
“Premises Licence”	Issued by local authority for managers of catering sector locations with a maximum of two gaming machines
“Amusement Hall Licence”	Issued by local authority for the operation of amusement halls

Appendix No. 8

Gaming Regulation in Germany

The organisation and operation of games of chance in Germany is prohibited unless the operator is validly licensed. It is equally illegal to act as an intermediary in the participation of unlicensed or foreign games of chance or to advertise such games.

Gaming Legislation

As gaming is considered to come within the scope of danger prevention, the organisation of the gaming sector is mainly governed by the legislation of the sixteen German regional entities (hereafter “Länder”), with the exception of horse races and machine gaming outside casinos. The Gaming Laws of the Länder govern the sectors of lotteries, sports bets and casinos. Although this leads to a complex legislative landscape, the legal situation in the sixteen Länder (Singular Land) is *de facto* rather similar.

The Federation regulates machine gaming outside casinos, which is subject to the Trade, Commerce and Industry Law (*GewO*) and is also competent to legislate concerning betting on horse races, which traditionally follows a specific lawful purpose and which is regulated in the Race Betting and Lottery Act (*RennWLOttG*). The exercise of these activities is subject to a strict licence requirement.

Licensing Practice

The regulatory structure of gaming activities is complex and strict conditions have been fixed for the licensing of games, especially for their commercial operation. The conditions for the authorisation of games of chance vary pursuant to the type of game and to the level of control required respectively.²⁵²

While the sectors under federal legislation (i.e. betting on horse races and machine gaming outside casinos) are “only” subject to licence requirements, the access to the market is the most strictly regulated in the sectors subject to the Länder legislation. The Interstate Agreement on Lotteries and the lottery acts of the Länder reserve the commercial operation of games either to themselves, to entities organised under public law or to private law entities whose major shares are directly or indirectly held by the Land Regional Authority.²⁵³

Licences can be issued to private entities, however only under very strict conditions and only under certain circumstances. A licence is granted by the respective Land in which the operator wishes to exercise their activity. The issuance of casino licences is also very restrictive and is limited to a small number of casinos. The casino Acts of certain Länder provide for a grant of a licence exclusively to a State operator, others allow access to private casino operators either in a complete private ownership or a mixed form (public/private), but in general, and *de facto*, in the latter case the majority of shares are most often held by the Land.

Even if foreign providers are not openly discriminated against since gaming laws contain no express exclusion of operators from abroad, their possibility of operating games of chance is generally theoretical for the sectors of high economic interest (public lotteries, sports bets and casinos) as the provisions either provide for Länder operators, public law entities or private law entities dominated by the State and restrict the number of licences which may be granted.

Casino Gaming

Legislation regulating casinos is the exclusive power of the Länder, regulated in the casino Acts that, in most of the Länder, replaced the former federal law on casinos. 84 German casinos are operating at present.²⁵⁴

252 Swiss Institute of Comparative Law (2006)

253 Swiss Institute of Comparative Law (2006)

254 Swiss Institute of Comparative Law (2006)

Some casino Acts (e.g. Lower Saxony) allow private operators to access the casino market and in that case admit also foreign shareholders; others do not provide for private ownership but for either a mixed private-public ownership (e.g. Schleswig-Holstein, Saarland) or they are completely State held (e.g. Bavaria where casinos are operated as State enterprises).

In practice the majority of the casinos are run by companies whose shares are totally or predominantly held by the Land. A minority is run by private operators, which are extensively controlled by the State. Casinos are usually exempt from income and lottery taxes, but are subject to a levy²⁵⁵ and, depending on the Länder legislation, to additional levies. Casinos are no longer exempt from turnover tax.

As an example, Lower Saxony amended its legislation in 2004. Up to 10 casinos can be permitted and licences can be issued to private operators (as opposed to the act of 1989 pursuant to which only private companies whose shares were exclusively held by the Land were allowed to obtain licences). The licence determines who may operate the casino, in which commune and in which local location it may be operated and which games may be authorised, and can also include authorisation of games on the Internet. The licence is however not transferable.²⁵⁶

Saxony-Anhalt amended its legislation in 2004 as well, but still only issues licences to companies whose sole shareholder is the Land. However, the Land is authorised to sell its shares. The licence is usually granted for up to 10 years. In some Länder under certain modalities it can be extended once for an additional 10 year period.

Machine Gaming Outside Casinos

Machine gaming outside casinos is governed by the Federal Trade, Commerce and Industry Regulation Act and the Gaming Regulation and not by the Länder legislation. These provisions focus on offline games.

The operation of gaming machines requires a licence. Furthermore, operating machines must satisfy certain criteria which are fixed by the National Metrology Institute. The authorisation only covers the authorised machines. The Gaming Regulation contains further details for the operation of such machines.

Approximately 200,000 to 250,000 machines are in operation in Germany.²⁵⁷ The classification of machines as machines of games of skill or of games of chance may be problematic. This has been the subject of court proceedings concerning “other” games that allow players to win something as well as games of skill which are also subject to an authorisation procedure.

The Gaming Regulation has been recently amended in relation to gaming machines. It has now established conditions as to the construction, installation and surveillance of gaming machines. The new version lowers and modifies the conditions for the installation and surveillance of gaming machines.

²⁵⁵ Levy percentage differing from Land to Land (50% or more of the gross revenues, following a graduation system) Some Länder receive an additional levy (up to 20% of the annual gross revenue) and even a third levy calculated on the basis of the annual surplus or deficit of the licensee (30%).

²⁵⁶ Swiss Institute of Comparative Law (2006)

²⁵⁷ Swiss Institute of Comparative Law (2006)

Recent Events in Germany

Two months after the United States banned online gambling, it appears Germany is considering a similar ban. In December 2006, head of individual German states postponed a decision on whether or not to ban online. Already three German States i.e. Bavaria, Saxony and Hesse have instituted their own ban and others may follow.

The European Commission is fighting to open up and liberalise the European gambling market, but faces opposition from local and national governments who want to preserve their lottery and gambling monopolies. The three south German states who have outlawed online gambling were doing so because they ruled that an Austrian company, Bwin Interactive, infringed their monopoly.

Of course, if Germany goes ahead with this plan, they may face some other problems as well. Other European countries have been called into investigations for trying to put in place similar bans.

Appendix No. 9 Categories of Gaming Machine and Summary of all Provisions Related to Great Britain’s Gambling Act 2005

Premises Type	Machine Category								
	A	B1	B2	B3	B4	C	D		
Regional Casino (machine/table ratio of 25:1 up to maximum)	Maximum of 1,250 machines. Any combination of machines in categories A to D, within the total limit of 1,250 (subject to table ratio)								
Large Casino (machine/table ratio of 5:1 up to maximum)		Maximum of 150 machines. Any combination of machines in categories B to D, within the total limit of 150 (subject to table ratio)							
Small Casino (machine/table ratio of 2:1 up to maximum)		Maximum of 80 machines. Any combination of machines in categories B to D, within the total limit of 80 (subject to table ratio)							
Pre-2005 Act Casinos (no machine/table ratio)			Maximum of 20 machines categories B to D or C or D machines instead						
Betting Premises and Tracks Occupied by Pool Betting				Maximum of 4 machines categories B2 to D					
Bingo Premises				Maximum of 4 machines in category B3 or B4		No limit category C or D machines			
Adult Gaming Centre				Maximum of 4 machines in category B3 or B4		No limit category C or D machines			
Family Entertainment Centre (with Premises Licence)							No limit on category C or D machines		
Family Entertainment Centre (with Permit)							No limit on category D machines		
Clubs or Miners’ Welfare Institutes with Permits					Maximum of 3 machines in categories B4 to D				
Qualifying Alcohol Licensed Premises						1 or 2 machines of category C or D automatic upon notification			
Qualifying Alcohol Licensed Premises with Gaming Machine Permit						Number as specified on permit			
Travelling Fair							No limit on category D machines		
	A	B1	B2	B3	B4	C	D		

Appendix No. 10

Gaming Regulation in Nevada

For almost fifty years casino gaming was only legal in Nevada when it enjoyed a long period with little legal competition. In the late 1950s, the State first permitted publicly-held companies to own and operate gaming facilities, which eventually led to the entrance of companies such as Hilton and Ramada into the industry, improving the industry's standing. It was at this time that intense gaming activity spread from downtown Las Vegas to the Strip and began to grow in Reno and Lake Tahoe. Nevada State now has 330 plus land-based casinos. No other State has such a large share of State revenues or economic activity provided by the gaming industry.

In 1959, the Nevada Tax Commission was relieved of its regulatory duties over the gaming industry by the creation of the Nevada Gaming Commission. The five-member Commission was formed with officials appointed by the Governor for a four year term. Licensing and policy decisions comprised the bounds of authority for the Commission. In 1971, legislation expanded the duties of the State Gaming Control Board to include gaming tax collection and administrative responsibilities for the Gaming Commission.²⁵⁸

Local governments have concurrent authority to licence and regulate gaming. Both State and local government must approve a casino licence. However, local governments seem to perceive licensing as primarily a method of taxation and rarely utilise their powers in a regulatory fashion. A local government can prohibit or restrict gaming within its city or county limits. In the Las Vegas area, casino gaming generally is limited to areas designated as "gaming enterprise districts." Each district is established by the local government having jurisdiction over the area.

The State's reputation, previously tarnished with its association with organised crime, quickly improved with the creation of the Nevada Gaming Commission and the State Gaming Control Board. The toughened regulatory system and the addition of respected companies and individuals eliminated the threat of federal intervention and contributed to the growth and respectability the industry enjoys today.

Regulatory Framework

The Gaming Policy Committee is an eleven-member committee which meets at the call of the Governor to discuss matters of gaming policy. The committee is advisory in nature - its recommendations are not binding on the Nevada Gaming Commission or the State Gaming Control Board. The Gaming Policy Committee is comprised of:

- The Governor (who chairs the Committee);
- One member of the State Senate;
- One member of the State Assembly;
- One member of the Nevada Gaming Commission;
- One member of the State Gaming Control Board;
- One member of a Nevada Indian Tribe; and
- Five members appointed by the Governor:
 - Two representatives of the general public;
 - Two representatives of non-restricted gaming licensees; and
 - One representative of restricted gaming licensees.²⁵⁹

The Nevada Gaming Commission and the State Gaming Control Board comprise the two tiered system charged with regulating the Nevada gaming industry. The Commission and Board administer the State laws and regulations governing gaming for the protection of the public and in the public interest in accordance with the policy of the State.

The State Gaming Control Board has evolved into the primary administrative arm for casino gaming regulation. The Board has responsibility for handling investigations for licensing, collecting taxes and enforcing gaming regulations. The State Gaming Control Board is composed of three members, one of which must be a certified public accountant, one of which must have experience in law enforcement and one of which must have experience in business administration or management. Board members are appointed by the Governor for staggered four-year terms and are expected to serve full-time.

258 Dunstan, R., (1997b).

259 http://gaming.nv.gov/about_regulation.htm

The Gaming Control Board oversees the granting of licences. The Board serves as the prosecutor in disputes.

The State Gaming Commission issues, denies, restricts, limits, suspends, or revokes gaming licences. The Commission is composed of five part-time members also appointed by the Governor. The Gaming Commission also handles disciplinary proceedings.

The primary responsibilities of the Commission include acting on the recommendations of the State Gaming Control Board in licensing matters and ruling in work permit appeal cases. The Commission is the final authority on licensing matters, having the ability to approve, restrict, limit, condition, deny, revoke, or suspend any gaming licence. Additionally, the Commission is charged with the responsibility of promulgating regulations to implement and enforce the State laws governing gaming.

There are two different types of gaming licences issued by the Nevada Gaming Commission:

1. **Restricted Licences** prohibit the operation of more than fifteen slot machines and do not allow the licensee to operate any other type of game. Holders of these licences are generally owners of small bars, restaurants and grocery stores. Only a routine investigation is required for restricted licences.
2. **Unrestricted Licences** allow the operation of any number of slot machines, gaming devices or table games. A thorough investigation is conducted by the Gaming Control Board, who refers its licensing recommendations to the Gaming Commission. The Gaming Commission makes the final decision on an application for a gaming licence.²⁶⁰

Licensing is very thorough and intrusive. An applicant must pay approximately US\$500,000 to US\$1 million to cover the State's costs. The State takes approximately one year to complete the process and issue a licence. There are two public hearings where every personal and business transgression is subject to inquiry. The State Gaming Control Board provides a recommendation on licensing to the Commission.

The basic criterion for licensing is the applicant's character. A criminal record is neither necessary nor sufficient for denial of a licence. There are a number of additional criteria:

- Financing of the Operation.
- Business Competency.
- Suitability of Location.
- Multiple Licences Criteria.

Besides the casino licence, a number of employees are required to have licences. Nevada's requirements are not as extensive as New Jersey's. However, as certain elements of organised crime have been identified in ancillary positions, the type of positions that are required to have a licence has spread.

²⁶⁰ Dunstan, R., (1997b).

Appendix No. 11

Casino Regulation in New Jersey

Legalised in 1976, New Jersey now has twelve land based casinos. New Jersey also has a two agency regulatory structure. The State role is divided into an investigating office under the Attorney General and a licence, rulemaking and quasi adjudicative function.

Historically, while the general structure is modelled after Nevada, casinos are regulated much more strictly and rigidly in New Jersey than in Nevada.

The New Jersey Casino Control Commission²⁶¹ is responsible for licensing casinos, employees and the firms that do business with them. The Commission consists of five members appointed by the Governor for a term of five years. No more than three members may be from the same political party. The Casino Control Commission (CCC) is a quasi judicial agency in the Department of Treasury. The Commission has its own staff. The Commission's operations are divided among five principal areas: the Divisions of Compliance, Licensing, Financial Evaluation, Administration and Legal. The CCC is funded from licence application fees, slot machine taxes and licences and permitting fees. The objective of this funding mechanism is to protect the agency from politics by not requiring a legislative appropriation to fund the agency.

The Casino Control Commission's task of regulating casinos is shared with the New Jersey Division of Gaming Enforcement. While the Casino Control Commission is an independent agency which is in, but not of, the Department of Treasury, the Division of Gaming Enforcement is an arm of the State's Attorney General's Office. It conducts investigations into licence applicants and reports the results to the Commission.

When it comes to licence applications or regulatory violations, the Division of Gaming Enforcement acts as the police/prosecuting agency while the Casino Control Commission acts in a quasi-judicial manner ruling on those applications and assessing penalties for any regulatory violations.

Members and employees of both New Jersey agencies are subject to strict post-employment restrictions. The goal is to eliminate or at least reduce the possibility of a revolving door between the industry and the regulators.

²⁶¹ <http://www.state.nj.us/casinos>

Appendix No. 12

Gaming Regulation in Australia

Queensland (QLD)

Queensland Office of Gaming Regulation (QOGR)

Gambling regulation undertaken by QOGR encompasses casinos, charitable gambling, machine gaming, interactive gambling, keno, lotteries and wagering. Regulatory activities include licensing premises and persons, investigating complaints, conducting prosecutions and ensuring industry compliance with gambling legislation. QOGR also administers community benefit funds and manages various responsible gambling programs.

While QOGR's head office is in Brisbane, it also has on-site inspectors in Queensland's four casinos and a gaming inspector in Rockhampton. The Minister responsible for the regulation of the State's gaming industry is the Deputy Premier and Minister for Finance.

Queensland Gaming Commission

The Commission, an independent statutory body, has five members, has various functions and responsibilities provided for in the Gaming Machine Act 1991 and has responsibility for the hearing of certain appeals provided for in other gaming Acts.

It is empowered to and carries out various functions and responsibilities provided for in that Act. Various other gaming Acts also vest in the Commission responsibility for the hearing of certain appeals provided for by those Acts.

The Commission typically meets twelve times a year with meetings held at the Queensland Office of Gaming Regulation's office in Brisbane.

The various functions and responsibilities performed by the Commission include:

- The issuing, cancelling and suspending of various licences including gaming machine licences, monitoring operators licences and major dealers licences;
- The determining of the permitted hours of gaming at sites and other operational conditions;
- The determining of the maximum number of machines operable at sites.

As required by the provisions of the Gaming Machine Act 1991, the Commission reports annually to the Minister on the Commission and its operations. The Minister lays these reports before the Legislative Assembly within fourteen sitting days of their receipt.

Additionally, the Commission also publishes:

- Guidelines on various matters relating to the Commission's functions
- Reports on Lodgements of Community Benefit Statements
- Other documents associated with conducting business with the Commission.

The *Gaming Machine Act 1991* stipulates that the Queensland Office of Gaming Regulation is to provide the Commission with the required administration and advisory services and to fund its expenses.

The Gambling Community Benefit Fund of Queensland provides one-off grants to AU\$30,000 to Queensland based not-for-profit community groups.

Western Australia (WA)

The Department of Racing, Gaming and Liquor, through the licensing of suppliers and the provision of industry support services, promotes and maintains the integrity of lawful racing, gambling and liquor activities for Western Australians to participate in, within community expectations on harm minimisation. The objective of the Department is to administer the legislation listed under the ministerial portfolio of racing and gaming in an efficient and effective manner consistent with government policy.

The **Gaming and Wagering Commission** was established under the Gaming and Wagering Commission Act 1987 and is responsible for the administration of gaming and wagering activities in Western Australia. The Commission administers the legislation outlined below which is achieved through a service delivery agreement with the Department of Racing, Gaming and Liquor.

The Current Legislative Framework

In 1985, the Government legislated to enact the Casino (Burswood Island Agreement) Act to ratify an agreement with the developers of the planned Burswood Island casino resort complex. The Government viewed the project as providing a major boost to the economy of the State. The agreement committed the resort developers to spending AU\$220 million on the project. The Government regarded the project as a method to create jobs in the construction industry and at the casino complex and also through a broad section of industry and commerce. The development was expected to increase tourism resulting in further increases in income and employment across many businesses. The Government also saw that the State's revenue would be boosted by a tax of 15% of gross casino revenue; an annual licence fee set initially at AU\$400,000 to be paid to the Casino Control Committee (later the Gaming Commission) and increased each year by Consumer Price Index (CPI) change; AU\$30 million for land and consideration of the State signing the agreement; and by the establishment of a public park funded by revenue from the operations of the casino.²⁶²

A number of competitive restrictions exist in this Act in favour of the casino operator. These are not related to gaming in casinos per se, but to the specific issue of securing a viable casino operation. In the latter context the then Government agreed to the developers being granted exclusive rights to casino gaming in Western Australia for a period of fifteen years. The casino has the exclusive rights to certain games except the games of poker with cards and "two-up". The game of "two-up" may be allowed to be played outside a radius of 200 kilometres from the casino. After the fifteen years exclusivity period the agreement provided that the State shall not grant another casino licence within a radius of 100 kilometres of Perth unless it is in a hotel and casino of comparable size and standard to the Burswood casino. Outside of the 100 kilometres a hotel and casino need only to be built to international standards.

Following on from the various assessments discussed above, the Government legislated to enact the Casino Control Act 1984, which enabled the Government through the responsible Minister to enter into negotiations with prospective developers of a casino complex. Parliament was to be afforded the right to deliberate on the terms of any agreement reached between the Minister and the developer because the Act provided that a casino agreement was not enforceable by either party thereto unless and until it had been ratified by an Act.

The Casino Control Act further provided for the administrative mechanisms to licence casinos, the control of gaming operations within casinos and for the regulation of casino gaming operations by a statutory authority. Originally this body was the Casino Control Committee. However, upon the proclamation of the Gaming and Wagering Commission Act 1987 the powers of the Casino Control Committee were merged with those of the Gaming Commission (the Commission).

Part III of the Casino Control Act provides the Minister with the power to enter into agreements for the construction and establishment of casinos. The Minister may also agree to a period during which further casino licences will not be granted. Part IV of the Act provides the powers of the Commission and Minister when considering applications for casino licences and outlines the procedures to be followed in the determination process. Part V of the Act details provisions for the control of gaming operations within casinos in Western Australia. Part V provides that the games played in casinos must be authorised by the Commission and that the rules of play are required to be approved by the Commission prior to the games being played in casinos. Part V further provides powers for the Commission to issue directions to casino licensees in respect of casino gaming operations, account keeping, the production of records relating to the casino gaming operations and the supervision and control of casino gaming operations.²⁶³ The Casino Control Act 1984 is aimed at casino gambling generally.

In 1987 the Government acted upon the recommendations of the Committee appointed to inquire and report upon gaming in Western Australia. The Gaming and Wagering Commission Act 1987²⁶⁴ was enacted. The Act allows for social gaming without legal restraint and other forms of gaming under a permit system. The Act deals with gaming and betting connected with gaming, but does not include betting related to horse and greyhound racing which remained under the ambit of the Betting Control Act 1954 and the Totalisator Agency Board Betting Act 1960.

262 <http://www.orgl.wa.gov.au/home/legislation.php>

263 <http://www.slp.wa.gov.au/statutes>

264 <http://www.slp.wa.gov.au/statutes>

The Act created the Gaming Commission. The duties of the Commission are to administer the law relating to gaming and betting; to keep under review the conduct, provision, use and location of gaming and betting facilities; and to formulate and implement policies for the scrutiny, control and regulation of gaming and betting, taking into consideration the requirements and interest of the community as a whole.

The Commission is also responsible for administering the Casino Control Act, Casino (Burswood Island Agreement) Act and the Casino Control (Burswood Island) (Licensing of Employees) Regulations. Part IV of the Act transferred (the then) existing provisions of the Police Kalgoorlie Two-Up Regulations and the Police Act dealing with unlawful gaming; common gaming houses and cheating. Part V of the Act provided for the lawful conduct of certain types of gaming by permit. This part also provided for the lawful conduct of gambling which was spontaneous (even though it may occur regularly), was not promoted and for which no charge was made to be considered to be social gambling and was lawful without a permit being required to authorise its conduct.

The Act provided for the lawful conduct of two-up, bingo, lotteries and gambling functions under a permit condition, provided that the gambling was conducted on behalf of a community based organisation and was not conducted for commercial purposes or for the purposes of private gain. Other types of minor fundraising activities such as chocolate wheels were made lawful without the requirement to obtain a permit. The second reading speech associated with the Gaming Commission Bill notes that the Bill was aimed at:

“Regulating and controlling, but at the same time liberalising some of the archaic gaming laws which will result in many benefits to the community at large, including, opportunities for sporting and other bona fide non-profit clubs and organisations to engage in fund raising activities; the proper scrutiny and control of approved premises and persons engaged in gaming activities; the ability of ethnic people and others who regard gaming as a normal part of their way of life, to play their traditional games lawfully, and a more effective and permanent control of illegal gaming” (page 1377, Hansard Tuesday 26 May 1987: Gaming Commission Bill Second Reading Speech).

Overview of Current Legislative Position

By 1988, with the implementation of the Gaming Commission Act, as a result of a number of public inquiries and the subsequent implementation of the findings of those inquiries by successive Governments as discussed above, public policy had been shaped relating to gaming. That policy is reflected in the current legislation.

In essence, Governments have legislated to provide the public access to the gaming activities that they have expressed desire to participate in. The form of this access has been influenced by the recognition that the gaming industry may be particularly attractive to unscrupulous operators and organised crime. In an effort to provide protection to the consumer from fraudulent activity and to ensure that organised crime does not have an interest in operating or owning gaming activities, Governments have determined that it is in the public interest to have a legislative regime requiring licensing and strict regulation of the gaming industry.

Policy decisions of successive Governments have shaped an industry in Western Australia where casino gaming and bookmaking is the ambit of the private sector. Other gaming activities are the ambit of bona fide community based organisations and the Lotteries Commission, with the exception of the Kalgoorlie “Two Up” School which is retained in private hands, reflecting the historical and cultural development of gaming in Kalgoorlie. Other than those mentioned, gaming activities cannot be conducted by commercial organisations nor conducted for the purpose of private gain. Governments have realised the potential to broaden the revenue base of the State by taxing gaming activities. This has also enabled the costs of regulation to be met by the industry.

The Totalisator Agency Board, the Lotteries Commission and the Gaming Commission are the statutory authorities charged with the responsibility of administering the legislation pertaining to gaming and betting. The Gaming Commission is responsible to administer the Casino Control Act 1984, the Casino (Burswood Island Agreement) Act 1985 and the Gaming and Wagering Commission Act 1987. The development of public policy pertaining to gaming in Western Australia has resulted in inter-related provisions contained across individual Acts. A review of the gaming legislation administered by the Gaming Commission is most appropriately performed by consideration of the various Acts as one package of legislation. Inherent in the approach described above is the need for a large and complex regulatory structure based on a number of restrictions on the operation of the gaming market. The

major focus for the Acts is the creation of a licensing system covering all those involved in the supply of gaming products. These licences have appended to them a wide variety of associated restrictions. These restrictions relate to the particular form of gaming being covered by the licence as set out in the Acts.

Appendix No. 13

Gaming Regulation in British Columbia

British Columbia (BC)

Under the authority of the Gaming Control Act, the British Columbian Lottery Corporation (BCLC) conducts and manages commercial casinos through contracts with gaming services providers. Provincial gaming policy does not permit the establishment of new casinos. However, the BC Lottery Corporation is authorised to relocate casinos according to marketplace demand, subject to approval of the host local government. The corporation manages the process from beginning to end and makes all final decisions.

As an agent of the Crown, BC Lottery Corporation is responsible for the conduct and management of all commercial gaming in BC, except for horse racing. The Corporation is responsible for the following:²⁶⁵

- Ensuring commercial gaming facilities operate according to government and corporation standards, policies and procedures
- Authorising the location or relocation of, and any substantial changes to, gaming facilities.
- Setting operational rules of play in all gaming facilities
- Managing contracts with gaming service providers and ensuring service providers fulfil their contracts.
- Transferring net proceeds from commercial gaming to the Province
- Ensuring there is responsible gambling/problem gambling information at all gaming facilities.

The corporation is responsible to the Minister of Public Safety and Solicitor General, through a Board of Directors appointed by the provincial government. Its headquarters are in Kamloops and it has a sales and marketing office in Richmond. In all, it employs about 560 staff. This includes employees who are based in the above two offices, as well as lottery, casino and bingo support staff in gaming operations throughout the province. BCLC has partnered with eight private sector casino service companies to provide, under contract, both casino facilities and day-to-day operational services (including casino staffing) for a service fee based on revenue generated.

The Gaming Policy and Enforcement Branch (GPEB) of the Ministry of Public Safety and Solicitor General regulates all gaming in British Columbia, ensures the integrity of gaming industry companies, people and equipment and investigates allegations of wrongdoing. This includes regulatory oversight of the British Columbia Lottery Corporation (which conducts and manages lotteries, casinos and commercial bingo halls), all gaming service providers and gaming workers, BC's horse racing industry and licensed gaming events. The Branch also manages responsible gambling programs and manages the distribution of gaming funds received by organisations.

The Gaming Control Act and Regulation makes the GPEB the Regulatory Authority of the casino industry in British Columbia. The legislation requires that corporations and individuals who intend to provide gaming services to casinos in British Columbia be registered by GPEB.

The Gaming Control Act defines gaming services to mean any that are related to the activities of operating a casino. The legislation also gives GPEB the authority to refuse to issue or renew the registration of a gaming worker or gaming service provider if it determines that the applicant fails to meet high standards of integrity.

Role of Gaming Policy and Enforcement Branch (GPEB):²⁶⁶

- Develops and manages gaming policy, legislation and standards;
- Regulates all aspects of the gaming industry;
- Licences charitable gaming events and horse racing;
- Oversees horse racing events, determining the outcome of each race and adjudicating any related matters;
- Registers gaming service providers and gaming workers, and approves and certifies gaming equipment and lottery schemes;
- Conducts audits of charitable and commercial gaming activities to ensure compliance;
- Investigates all alleged contraventions of BC's Gaming Control Act and investigates, in cooperation with law enforcement, all alleged contraventions of relevant sections of Canada's Criminal Code;

²⁶⁵ <http://www.bclc.com>

²⁶⁶ <http://www.pssg.gov.bc.ca/gaming/>

- Manages the distribution of government's gaming proceeds, including grants to community organisations, local governments and the horse racing industry;
- Manages the Province's Responsible Gambling Strategy and Problem Gambling Program, in order to minimise harm and promote responsible gambling practices.

Structure²⁶⁷

- **Legislation, Policy and Standards Division** develops and maintains a rigorous and transparent policy and regulatory framework for gaming and horse racing in British Columbia. The Division establishes industry-wide public interest standards and manages responsible gambling initiatives and problem gambling treatment programs.
- **Licensing and Grants Division** distributes grants to community organisations through the direct access and bingo affiliation grant programs and issues gaming event licences to eligible charitable and religious organisations.
- **Racing Division** regulates and manages horse racing in BC by monitoring and enforcing the rules of racing and BC's Gaming Control Act.
- **Registration Division** conducts comprehensive financial and personal background checks on all gaming services providers and gaming workers. The Division registers participants in gaming and horse racing and also approves and certifies that gaming equipment meets provincially developed technical standards.
- **Audit and Compliance Division** conducts audits of commercial gaming, licensed gaming events and community organisations' use of gaming proceeds. The division works closely with community organisations to improve compliance with all applicable legislation and policies.
- **Investigation Division** investigates all complaints and allegations of regulatory wrongdoing and assists law enforcement agencies in criminal investigations in gaming and horse racing in British Columbia.
- **Management Services Division** provides financial advice to the Branch Executive, administers the Branch budget and makes grant and other payments on behalf of the Branch. In addition, the division provides information and technology support and manages all Branch facilities.

Gaming Service Providers

The British Columbian Lottery Corporation (BCLC) contracts with private sector companies to provide day-to-day operational services at its gaming facilities and lottery outlets. These companies include casino, bingo and community gaming centre operators. Service providers must ensure all gaming employees have taken appropriate response training and that no persons under the age of nineteen participate in gambling activity in gaming venues or are present where gaming activity occurs. These gaming services providers are monitored by the Registration Division to ensure they adhere to their conditions of registration and continuously demonstrate the highest level of integrity.

Gaming Equipment

The Gaming Control Act requires that only gaming equipment approved by GPEB be used in casinos. The Act also requires that GPEB issue its approval only if satisfied that the gaming equipment will be fair according to standards approved by GPEB. Key steps in helping GPEB meet its gaming equipment responsibilities include ensuring that:

- Gaming equipment is purchased from only approved suppliers;
- Approved technical standards for assessing the fairness of gaming equipment have been implemented; and
- Gaming equipment is adequately tested against the standards before use in casinos.

²⁶⁷ <http://www.pssg.gov.bc.ca/gaming/responsibilities.htm#mngmtservices#mngmtservices>

Types of Licences

Class A Licence (Over C\$20, 000)

A Class A licence may be issued to an eligible organisation for a gaming event or series of gaming events expected to generate more than C\$20,000 in gross revenue.

Eligible events are:

- Ticket raffles, such as 50/50 draws, meat draws, poker rides and rubber duck races;
- Independent bingos conducted in a facility other than a commercial bingo hall. (Organisations seeking affiliation with a commercial bingo hall in their community must apply for a bingo affiliation certificate, not a gaming event licence);
- Wheels of Fortune conducted at an approved community event; and
- Social occasion casinos, which are small, casino-type events conducted in conjunction with a social event, such as a dinner, dance or benefit. Attendance is restricted to members of the gaming event licensee and their guests.

Class B Licence (Under C\$20, 000)

A Class B licence may be issued to an eligible organisation for a gaming event or series of gaming events expected to generate C\$20,000 or less in gross revenue.

Eligible events are:

- Ticket raffles, such as 50/50 draws, meat draws, poker rides and rubber duck races;
- Independent bingos conducted in a facility other than a commercial bingo hall. (Organisations seeking affiliation with a commercial bingo hall in their community must apply for a bingo affiliation certificate, not a gaming event licence);
- Wheels of Fortune conducted at an approved community event; and
- Social occasion casinos, which are small casino-type events conducted in conjunction with a social event such as a dinner, dance or benefit. Attendance is restricted to members of the gaming event licensee and their guests.

Class C Licence (Fairs and Exhibitions)

A Class C licence may be issued to an eligible agricultural fair or exhibition or registered gaming services provider for the following gaming events, which must be conducted in conjunction with an approved fair or exhibition:

- Ticket raffles, such as 50/50 draws, meat draws and rubber duck races;
- Independent bingos conducted at a fair or exhibition;
- Wheels of Fortune conducted at a fair or exhibition; and
- Limited casinos, which are casino-type events – without slot machines – conducted at a fair or exhibition. Not all approved fairs or exhibitions will be permitted to operate a limited casino. When a limited casino is permitted, the event must be operated by a registered casino gaming services provider.

Registration

The Registration Division of the Gaming Policy and Enforcement Branch plays an important role in helping to ensure the gaming industry meets high standards of honesty, integrity and financial responsibility.

The division conducts mandatory background checks to ensure potential employees and service providers are suitable for participation in the gaming industry.

Applicants for registration must submit an application form and all other documents required as part of a disclosure package.

A background check is then completed and includes, but is not limited to the following information which is supplied by the applicant in the disclosure package:

- A criminal record check,
- A credit check and
- Verification of information

The division also approves and certifies all gaming equipment.

Commercial Casinos

Casinos in BC are smaller than casinos in most other provinces. The BC Lottery Corporation has the discretion to place slot machines in casinos based on market demand, contingent on local government approval. In determining the location of casinos and the placement of slot machines, the BC Lottery Corporation must comply with Part 3 of the Gaming Control Act and Part 3 of the Gaming Control Regulation. Both the Act and Regulation are posted as of July 19th, 2002 in the Gaming Archives.

Most other provinces permit slot machines in hotels, taverns and restaurants. British Columbia doesn't allow any slot machines in these locations or anywhere else outside approved gaming facilities.

The maximum bet at a table game in Ontario's large casinos is C\$5,000. In BC the limit is C\$500, although a limit of C\$1,000 is being tested in some casinos.

The Province permits a maximum of 22 casinos, 41 bingo halls, 7 horse racing tracks and 26 teletheatres to operate in the Province. Lottery tickets can be purchased at retail outlets across BC.

Role of Local Government

The Province gives local governments the authority to determine the type and scope of gaming within their boundaries. As part of this authority, local governments must undertake certain responsibilities regarding the location or relocation of gaming facilities. Specifically, they must:

- Approve the proposed location or relocation of a gaming facility
- Where required, provide evidence that adequate community input has been sought and considered as part of their decision-making process
- Where required, consult with communities immediately adjacent and with those that will be materially affected by such location, relocation or substantial change.

Host local governments are entitled to receive a portion of gaming revenue from casino games located within their boundaries. 10% of net revenue from community casinos and one-sixth of net revenues from destination casinos.

Appendix No. 14

Legislation – Issues for Consideration

Introduction

The purpose of this Appendix is to illustrate the nature of the issues and problems which Irish gaming legislation will have to comprehend. The Committee has drawn on the legislation listed below to assist it in this regard. It must be stressed that the examples provided and the issues covered in this Appendix are purely illustrative and do not purport to be comprehensive. There are numerous areas which this Appendix does not cover. This is the case, in particular, with remote gaming which requires the drafting of very specific legislation as it raises issues which are distinct from terrestrial gaming.

Below is a list of various gambling acts drawn upon for the purposes of drafting the possible legislative content.

Australia

Queensland

- Casino Control Act 1982
- Gaming Machine Act 1991

Victoria

- Casino Control Act 1991
- Gambling Regulation Act 2003

Western Australia

- Casino Control Act 1984

New South Wales

- Gaming Machine Act 2002
- Casino Control Act 1992
- Gaming Machines Amendment (Miscellaneous) Bill 2003

United States

New Jersey

- Casino Control Act 1977

Nevada

- Nevada Gaming Control Act and Ancillary Statutes 2005

Canada

British Columbia

- Gaming Control Act 2002

Ontario

- Gaming Control Act 1992

Saskatchewan

- The Alcohol and Gaming Regulation Act 1997
- Gaming Corporation Casino Regulations Act 2002

Belgium

- Act on Games of Chance, Gaming Establishments and the Protection of Players 1990

Hungary

- Act XXXIV of 1991 on Gambling Operations

Ireland

- Gaming and Lotteries Act 1956

Latvia

- Gambling and Lotteries Law 2005

New Zealand

- Gambling Act 2003

Poland

- Law of 29 July 1992 on Games and Mutual Wagering

Portugal

- Gambling Law Decree-Law No. 422/89 of 2nd December
- Organic Law Decree No. 184/88

Sweden

- Swedish Casino Act 1999
- Lotteries Act 1994

United Kingdom

- Gambling Act 2005

Licensing Requirements

Nature of Licence

- The gaming regulatory authority will issue gaming premises and gaming arcade operating licences in accordance with the provisions of the licensing framework, conditions and specifications as outlined below.

Form of Licence

- A casino, gaming arcade or amusement hall operating licence must specify:
 - (a) The person or entity to whom it is issued; and
 - (b) The period during which it is to have effect; and
 - (c) Any condition attached by the gaming regulatory authority e.g. opening hours; availability of alcohol; table games / gaming machines permitted in/on the specified gaming premises, adherence to any technical standards as promulgated by the gaming regulatory authority.
- The gaming regulatory authority must ensure that a casino, gaming arcade or amusement hall operating licence:
 - (a) Identifies the operating licence type, therefore establishing the legal status and category of the gaming premises so licensed, and
 - (b) Is issued in such form as the regulations specify; and
 - (c) Contains all such information as the regulations specify (e.g. opening hours; availability of alcohol; table games/gaming machines permitted in/on the specified gaming premises).

Illustrative Framework for Casino / Gaming Arcade / Amusement Hall Operating Licence²⁶⁸

- Six Types of Gaming Operating Licence:
 - (a) Casino Type A
 - (b) Casino Type A1
 - (c) Casino Type A2
 - (d) Gaming Arcade Type B
 - (e) Gaming Arcade Type B1
 - (f) Amusement Arcade Type C
- Type A Casino Operating Licence:
 - (a) Type A casino operating licence refers to the type of casino often referred to as resort-style or as “super-casinos”²⁶⁹
 - (b) This licence type would permit the casino operator to operate a gaming establishment hosting table games, all grades²⁷⁰ of gaming machines and ‘amusement-with-prizes’ (AWP) machines.
 - (c) The minimum age to enter is 18 years old although the Casino Committee has suggested that provision could be made to allow the gaming operator discretion to increase the age limit of entry to 21 years.
 - (d) Player registration with photo ID is required.
 - (e) The maximum stakes and maximum payouts should be set by the gaming regulatory authority and/or the Minister.

²⁶⁸ These categories are purely illustrative and are intended to provide the reader with an example of what such a licensing regime might look like. The regime that is ultimately adopted may be very different.

²⁶⁹ The Committee have made provision in their illustrative licensing framework for a gaming operator’s licence for such a casino type, but recommends that there be a moratorium before the granting of any such licence in order to study the social and economic effects of the introduction of licensed casinos. As pointed out at various points in the earlier text, the term “super casino” is not particularly helpful as it is a relative term which can only be properly understood when placed in a particular context. The term cannot be used interchangeably across countries without engendering considerable confusion.

²⁷⁰ All gaming machines are graded according to maximum stake/prize available. (See Chapter Four)

- Type A1 Casino Operating Licence:
 - (a) Type A1 casino operating licence refers to what are often small to medium size casinos.
 - (b) This licence type would permit the casino operator to operate a gaming establishment hosting table games, all limited stake/prize grades of gaming machines and ‘amusement-with-prizes’ (AWP) machines.
 - (c) The minimum age to enter is 18 years old although the Casino Committee has suggested that provision could be made to allow the gaming operator discretion to increase the age limit of entry to 21 years.
 - (d) Player registration with photo ID is required.
 - (e) The maximum stakes and maximum payouts should be set by the Gaming regulatory authority and/or the Minister.

- Type A2 Casino Operating Licence:
 - (a) Type A2 casino operating licence also refers to what are often small to medium size casinos.
 - (b) However, this licence type would only permit the casino operator to operate a gaming establishment hosting table games – i.e. no gaming machines.
 - (c) The minimum age to enter is 18 years old although the Casino Committee has suggested that provision could be made to allow the gaming operator discretion to increase the age limit of entry to 21 years.
 - (d) Player registration with photo ID is required.

- Type B Gaming Arcade Operating Licence:
 - (a) Type B gaming arcade operating licence refers to a gaming establishment with gaming machines only.
 - (b) This licence type would permit the gaming arcade operator to operate a gaming establishment hosting limited grades 2c to 4 gaming machines and amusement machines (grade 5).
 - (c) No table games are permitted.
 - (e) The minimum age to enter is 18 years old although the Casino Committee has suggested that provision could be made to allow the gaming operator discretion to increase the age limit of entry to 21 years.
 - (f) Player photo ID is required.
 - (g) The maximum stakes and maximum payouts should be set by the gaming regulatory authority and/or the Minister.

- Type B1 Gaming Arcade Operating Licence:
 - (a) Type B1 gaming arcade operating licence refers to gaming arcades or any gaming establishment with gaming machines.
 - (b) This licence type permits the gaming arcade operator to operate a gaming establishment hosting limited grades 3 and 4 gaming machines and amusement machines (grade 5).
 - (c) No table games are permitted.
 - (d) The minimum age to enter is 18 years old although the Casino Committee has suggested that provision could be made to allow the gaming operator discretion to increase the age limit of entry to 21 years.
 - (e) Player photo ID is required
 - (f) The maximum stakes and maximum payouts should be set by the gaming regulatory authority and/or the Minister.

- Type C Amusement Hall Operating Licence:
 - (a) Type C amusement hall operating licence refers to amusement halls with no gaming machines.
 - (b) This licence type permits the amusement hall operator to operate an amusement establishment hosting “no pay out” amusement machines (grade 5) only.

- (c) No table games are permitted.
- (d) There is no age limit restriction.
- (e) Player photo ID is not required.

Gaming Licence Application Procedures

- Prior to a gaming licensing agreement being entered into, investigations will be carried out by the Gaming Regulatory Authority to determine the suitability of the applicant. The requisite investigations will be carried out on the gaming licence applicant and all persons, whether natural persons or not, associated or connected or to be associated or connected with the ownership, administration or management of the operations or business of the gaming licensee. The burden is on the applicant to provide by clear and convincing evidence attestation on the following:
 - (a) That each person has never had a criminal conviction.
 - (b) That each person or entity has the resources necessary to carry out the licensed activities.
 - (c) That each person or entity in question has access to or is able to obtain adequate funding from a legitimate financial source which is fully traceable.
 - (d) That this funding is adequate to ensure the financial viability of the gaming premises.
 - (e) That each person or entity in question is fully tax compliant and have obtained a tax clearance certificate which must be renewed annually.
 - (f) That each person or entity in question have kept and maintained tax records for the past seven years (this may be a shorter or longer period and may need to be varied in any event to allow for other factors).
 - (g) That each person or entity in question is of good repute, having regard to character, honesty and integrity.
 - (h) That in the case of the gaming licensee not being a natural person or entity – that it has arranged or, as the circumstances require, has, in an appropriate case, a satisfactory ownership, trust or corporate structure.
 - (i) That none of the persons associated with this gaming licence application has any business association with any person, body or association who or that, in the opinion of the gaming regulatory authority after investigation made or caused to be made by the gaming regulatory authority, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial sources.
 - (j) The applicant has or is able to obtain the services of persons who have sufficient experience in the management and operation of a gaming premises.²⁷¹
- In order to satisfy the aforementioned licensing criteria, the person or entity seeking a licence must be fully vetted and approved as a potential gaming premises owner/operator and all that that entails.
- An applicant will be required to receive the approval of the gaming regulatory authority in respect of the gaming premises. This may be done as part of the gaming operator licence or by way of a separate licensing regime.
- A casino licence shall not permit the sale of intoxicating liquor. However, a casino operator may apply for a liquor licence and in that application will be treated like any other applicant.

Denial or Approval of Gaming Operator Licence

- After requisite investigation and hearing, the gaming regulatory authority may either deny the application or grant a gaming licence to an applicant whom it determines to be qualified to hold such a licence.²⁷²
- The gaming licence applicant will be denied approval if the applicant fails to prove by clear and convincing evidence that s/he is qualified to hold a licence;

²⁷¹ As per Queensland Casino Control Act, 1982.

²⁷² This section has been included for illustrative purposes as it has not yet been determined whether the gaming regulator authority is to be the licensing authority.

- The gaming licence applicant will be denied approval if the applicant fails to provide information, documentation and assurances required by legislation or requested by the gaming regulatory authority, or to reveal any fact material to qualification, or if the applicant supplies information which is untrue or misleading as to a material fact pertaining to the qualification criteria.
- If an application is denied, the gaming regulatory authority shall prepare and file an order denying such application with the general reasons therefore, and if requested by the applicant, shall further prepare and file a statement of the reasons for the denial, including the specific findings of facts.
- After an initial gaming operating licence application is submitted to the gaming regulatory authority, a final action shall be taken within ninety days²⁷³ after completion of all hearings and investigations and the receipt of all information required by the gaming regulatory authority.
- If satisfied that an applicant is qualified to receive a gaming operator licence, and upon tender of all licence fees and taxes as required by law and any regulations of the gaming regulatory authority, and such bonds as the gaming regulatory authority may require for the faithful performance of all requirements imposed by law or regulations, the gaming regulatory authority shall issue a gaming operator licence for a specified term.
- The gaming regulatory authority shall fix the amount of the surety bond or bonds to be required in such amounts as it may deem appropriate, by rules of uniform application.
 - (a) The bonds so furnished may be applied by the gaming regulatory authority to the payment of any unpaid liability of the licensee under this Act. The bonds shall be furnished in cash or negotiable securities, by a surety bond guaranteed by a satisfactory guarantor, or by an irrevocable letter of credit issued by a banking institution of this State acceptable to the gaming regulatory authority.
- If the surety bond is furnished in cash or negotiable securities, the principal shall be placed without restriction at the disposal of the gaming regulatory authority, but any income shall inure to the benefit of the licensee.
- The gaming regulatory authority shall also be able to suspend an operator's licence for a specified period of time for serious breaches of the conditions attached to the licence.
- There shall be a right of appeal against decisions of the gaming regulatory authority.²⁷⁴

Renewal of Licences and Registrations

- Subject to the power of the gaming regulatory authority to deny, revoke or suspend any licence, any gaming licence or any registration may be renewed upon proper application for renewal and the payment of fees in accordance with the regulations of the gaming regulatory authority, but in no event later than the date of expiration of the current licence or registration.²⁷⁵

²⁷³ This time period could be more or less than ninety days. Alternatively, any legislation could be silent on the precise time period required and might simply require "a reasonable period of time" for a final decision.

²⁷⁴ There will need to be a right of appeal against decisions of the gaming regulatory authority but the precise nature of the appeal mechanism remains to be determined.

²⁷⁵ Based on the New Jersey Casino Control Act, 1977.

Casino Operations

Types of Games Offered

- All games are unlawful except those included in a list reserved to the gaming regulatory authority. This list should detail all tables games and/or gaming machines games permitted on/in the specific gaming premises and includes, but is not limited to:
 - (a) Baccarat/Mini Baccarat
 - (b) Blackjack
 - (c) Roulette
 - (d) Pai Gow
 - (e) Mini Dice
 - (f) Tai Sai
 - (g) Pontoon
 - (h) French Boule
 - (i) Caribbean Stud Poker
 - (j) Specified games that can be played on gaming machines
- This list may be added to without prejudice by Order of the gaming regulatory authority.
- The gaming regulatory authority must publish a notice on the gaming regulatory authority website that an approval for the addition of a particular game has been given.
- The gaming regulatory authority, with reference to international best practice and taking into account developments in the gaming sector generally, may make or revise rules for the playing of games in gaming premises.

Gaming Equipment

- A casino operator must ensure that all gaming equipment in/on a gaming premises is of a high standard of manufacture, from a licensed manufacturer registered and approved by the gaming regulatory authority, is maintained in good order and condition and is serviced by a licensed maintenance service provider registered and approved by the gaming regulatory authority.
- A person must not possess, maintain or exhibit any gaming equipment in the area of a gaming premises used and approved for the conduct and playing of games (i.e. the gaming area of the gaming premises), or bring into or remove from a gaming premises' gaming area any gaming equipment, unless the equipment:
 - (a) Has been approved by the gaming regulatory authority; and
 - (b) Is necessary for the conduct of gaming;
 - (c) Has permanently affixed thereto or permanently imprinted, impressed or engraved thereon an identification number or symbol authorised by the gaming regulatory authority; and
 - (d) Is under the exclusive control of the gaming premises operator or the operator's agents or employees;
 - (e) Is brought into or removed from the gaming premises' gaming area at times authorised for that purpose by the gaming regulatory authority or at other times when prior notice has been given to and written approval granted by an Inspector.
- A gaming premises operator must ensure the number of gaming machines in/on the gaming premises, or a particular part of the gaming premises, does not exceed such limit as fixed for the gaming premises.
- A gaming premises operator must ensure a drop box or other receptacle (a deposit receptacle) used for the deposit of money, chips, vouchers, slips or other papers at the gaming premises (whether or not there is any thing in the deposit receptacle) is fitted with locks approved by the gaming regulatory authority.

- A gaming premises operator must ensure a gaming table to which a deposit receptacle is attached is fitted with a lock that secures the deposit receptacle to the gaming table.
- A gaming premises operator must ensure a count room or storage area in which a deposit receptacle is being used in connection with the operation of the gaming premises is fitted with locks approved by the gaming regulatory authority.
- A gaming premises operator must ensure that chips used, or for use, in the gaming premises are clearly and permanently impressed, engraved or imprinted with:
 - (a) The name of the gaming premises or a symbol identifying the gaming premises; and
 - (b) Any other matters provided for under regulation.
- A gaming premises operator must ensure:
 - (a) That chips used in a gaming premises for gaming are of such physical characteristics as are approved by the gaming regulatory authority; and
 - (b) That chips used in a gaming premises for gaming are in good condition.
- A gaming premises operator must, before placing an order for gaming equipment with a licensed gaming equipment manufacturer registered with the gaming regulatory authority, give the order to the gaming regulatory authority for approval.
- A gaming premises operator must not purchase gaming equipment from a chips manufacturer other than a gaming equipment manufacturer approved by the gaming regulatory authority.
- A gaming premises operator must not, without the consent of the gaming regulatory authority:
 - (a) Destroy gaming equipment or chips; or
 - (b) Permanently part with the physical possession of gaming equipment or chips.

Gaming Premises Layout

- It is a condition of a gaming premises licence that gaming is not to be conducted in the gaming premises unless the facilities provided in relation to the conduct and monitoring of operations in the gaming premises are in accordance with plans, diagrams and specifications that are approved by the gaming regulatory authority.
- The gaming regulatory authority may approve plans, diagrams and specifications indicating the following:
 - (a) The situation within the gaming premises of table games, gaming equipment, counting rooms, cages and other facilities provided for operations in the gaming premises;
 - (b) The manner in which a closed circuit television system operates within the gaming premises, including details of the positions and field of coverage of the cameras and viewing screens and the height of the cameras above the gaming;
 - (c) The position and description of a surveillance system for the direct visual monitoring of operations in the gaming premises.
- A gaming premises operator shall:
 - (a) Ensure that visibility throughout any gaming area of the gaming premises wherein games are being played is clear and unobstructed;
 - (b) Submit for the approval of the gaming regulatory authority a floor plan in connection with the gaming premises drawn to a scale satisfactory to the gaming regulatory authority indicating in detail the placement of table games, gaming equipment, gaming machines, count rooms, cages and all other associated facilities;
 - (c) Submit a diagram of the closed-circuit television system indicating camera positions as they relate to the floor plan and full information indicating heights of cameras from table games and their scope of coverage.

- A gaming premises operator shall not operate gaming premises having the placement of table games, gaming equipment, gaming machines, count rooms, cages and other associated facilities other than in accordance with a floor plan approved by the gaming regulatory authority.

Times of Operation/Opening Hours

- It is a condition of a gaming premises licence that the gaming premises is to be open to the public for gaming in accordance with regulation on such days and at such times as are directed by the gaming regulatory authority by order in writing served on the gaming premises operator.
- A premises licence shall be subject to the condition that the premises shall not be used to provide facilities for gaming on Christmas Day or at such other times as may be provided for by law.

Keeping of Records

- CCTV footage relating to the operations of the gaming premises complex or the gaming premises, as the case may be, shall be kept by the gaming premises operator on the gaming premises.
- The gaming premises operator must keep a book, record or document for five years after the end of the transaction to which the book, record or document relates.²⁷⁶

Gaming Premises Personnel

- A person shall not work as or be a licensed gaming premises employee unless the person is 18 years or more.
- A person employed in/on a gaming premises to do any of the activities listed below must hold a certificate of approval as issued by the gaming regulatory authority. The activities are:
 - (a) Conducting approved games (for example, as a dealer);
 - (b) Counting money or chips derived from or used in gaming;
 - (c) Moving money or chips derived from or used in gaming;
 - (d) Buying or redeeming chips;
 - (e) Operating, maintaining, constructing, or repairing gaming equipment;
 - (f) Supervising or managing any of the activities described above.²⁷⁷

Licensing of Key Employees/Gaming Personnel

- Key employees/gaming personnel are those who are generally involved in the operation of a gaming premises and whose duties predominantly involve, maintenance or operation of gaming activity, equipment and assets.
- No person may be employed as a gaming premises key employee unless s/he is the holder of a valid gaming premises key employee/personnel licence issued by the gaming regulatory authority.
- Each applicant must, prior to the issuance of any gaming premises key employee licence, produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the financial stability, integrity and responsibilities of the applicant, including but not limited to bank references, business and personal income and disbursements schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers. In addition, each applicant shall, in writing, authorise the examination of all bank accounts and records as may be deemed necessary by the gaming regulatory authority.
- Each applicant must provide details of his/her business activities, financial affairs covering at least the five year²⁷⁸ period immediately preceding the filing of the application.

²⁷⁶ As per Queensland Casino Act, 1982.

²⁷⁷ As per New Zealand Gaming Act, 2003.

²⁷⁸ The five year period is for illustrative purposes only. It could also be a lesser period of time and could vary depending on the applicant.

- Each applicant will also be required to provide details, if any, of any criminal records that the applicant may have.
- If the applicant has been associated with gaming or gaming premises operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the gaming regulatory authority, produce letters of reference from the gaming or gaming premises enforcement or control agency, which shall specify the experience of such agency with the applicant, their associates and their participation in the gaming operations of that jurisdiction.
- Each applicant shall submit to the gaming regulatory authority the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The gaming regulatory authority is authorised to exchange fingerprint data with and receive criminal history record information from An Garda Síochána or such other law enforcement agencies and their agents as the gaming regulatory authority deems appropriate. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check.
- The gaming regulatory authority shall deny a gaming premises key employee licence to any applicant who is disqualified on the basis of the criteria contained in the relevant legislation.²⁷⁹

Inspection of Gaming

Inspectors

- The gaming regulatory authority:
 - (a) May appoint members of its staff as Inspectors for such period and subject to such terms and conditions as the Authority may determine;
 - (b) May appoint persons other than employees of the gaming regulatory authority as Inspectors;²⁸⁰
 - (c) Each Inspector shall be given a warrant of their appointment and, when exercising any power, shall, on request by any person affected, produce the warrant or a copy thereof, together with a form of personal identification.²⁸¹

Rights of Gaming Inspector on/in Gaming Premises

- A gaming Inspector as appointed by the gaming regulatory authority may at any time enter and remain on the premises of a gaming premises for the purposes of doing any one or more of the following:
 - (a) Observing any of the operations of the gaming premises;
 - (b) Ascertaining whether the operation of the gaming premises is being properly conducted, supervised and managed;
 - (c) Ascertaining whether the provisions of the relevant legislation are being complied with;
 - (d) In any other respect, exercising his or her functions under the relevant legislation.²⁸²

²⁷⁹ As per the New Jersey Casino Control Act, 1977. Each provision may also apply in whole or as modified to the other licences, to include surveillance, maintenance and manufacturer licences.

²⁸⁰ As per Great Britain's Gambling Act, 2005.

²⁸¹ Based on section 15 of the Private Security Services Act, 2004.

²⁸² As per the Victoria Casino Control Act.

Functions of Gaming Inspectors

- The functions of Inspectors are as follows:
 - (a) To supervise operations in a gaming premises and to inspect the gaming equipment used on/in any gaming premises, or part thereof, for the purpose of ascertaining whether or not the licensed gaming operator is complying with the provisions of the relevant legislation, the conditions of the gaming licence, and any directions issued by the gaming regulatory authority;
 - (b) To assist in any other manner, where necessary, in the detection of offences on/in a gaming premises;
 - (c) To receive and investigate complaints from the patrons of gaming premises relating to the conduct of gaming in the gaming premises. The Inspector must give or send a copy of their report to the licensed operator of the gaming premises and must inform the complainant of the results of the investigation of the complaint and of any action taken or to be taken as a consequence of it (*see also "Investigation of Complaints" below*);
 - (d) To report to the gaming regulatory authority regarding operations on/in a gaming premises;
 - (e) Such other functions as may be conferred on Gaming Inspectors by law.

Powers of Gaming Inspectors

- An Inspector may do any one or more of the following:
 - (a) At all reasonable times enter, inspect, examine and search any place where the Inspector believes that gaming is taking place;
 - (b) Require any person in possession of, or having control of, any gaming equipment or records to produce the equipment or records for inspection and to answer such questions or provide such information relating to the equipment or records as fall within the person's control or responsibilities;
 - (c) Inspect any gaming equipment or records and remove and/or take copies of, extracts, or notes relating to, any records;
 - (d) Enter any premises or place other than a gaming premises in which the gaming Inspector suspects on reasonable grounds that there is gaming equipment or records if the Inspector does so with the consent of the occupier or in accordance with a search warrant;
 - (e) In a gaming premises or a place entered, search for, seize and remove and retain any gaming equipment or records that the Inspector considers afford evidence of an offence reasonably suspected by the gaming Inspector;
 - (f) By notice in writing require the operator, an employee, or any other person associated with operations on/in a gaming premises or their management, to attend before the gaming Inspector at a specified time and place and answer questions, or provide information, with respect to operations on / in a gaming premises;
 - (g) Examine and test any gaming equipment on/in a gaming premises and order the person in charge of a gaming premises to withdraw unsatisfactory gaming equipment from use on/in the gaming premises or to destroy unsatisfactory gaming instruments;
 - (h) Take with him/her or call to his or her aid a member of An Garda Síochána if s/he has reasonable cause to apprehend any serious obstruction in the execution of his or her duty.
- If an Inspector seizes gaming equipment or records under this section, they may be retained by the Gaming Inspector until the completion of any proceedings (including proceedings on appeal) in which they may be used as evidence but only if, in the case of records, the person from whom the records were seized is provided, within a reasonable time after the seizure, with a copy of the records certified by an Inspector as a true copy.
- A copy of records provided is, as evidence, of equal validity to the records of which it is certified to be a copy.

- A person is not required by this section to answer a question that might incriminate the person.
- A member of An Garda Síochána has, while acting in aid of a Gaming Inspector, the functions of a Gaming Inspector.

Search Warrants

- A Gaming Inspector may apply to a Judge of the District Court for the issue of a search warrant if the Gaming Inspector believes on reasonable grounds that gaming equipment or records are on any premises and that:
 - (a) In relation to those articles an offence has been, is being, or is likely to be, committed, or
 - (b) That those articles may be evidence of an offence.
- A judge of the District Court to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a Gaming Inspector named in the search warrant and any assistants to enter the premises, or part premises, specified in the warrant, for the purpose of exercising the functions of a gaming Inspector.

Offences Relating to Obstruction of Gaming Inspectors

- A person must not:
 - (a) Assault, obstruct, hinder, threaten, abuse, insult or intimidate a Gaming Inspector, or a member of An Garda Síochána acting in aid of an Inspector, when the Inspector is exercising or attempting to exercise their functions as an Inspector, or
 - (b) Fail to produce for inspection any gaming equipment or records in the possession, or under the control, of the person when required so to do by an Inspector in the exercise of their functions as an Inspector, or
 - (c) Fail without reasonable excuse to attend before an Inspector and answer questions or supply information when required so to do by the Inspector in the exercise of their functions as an Inspector, or
 - (d) Except with the permission of an Inspector, take any gaming equipment or records seized, impounded or retained by the gaming regulatory authority, or
 - (e) When directed by a Gaming Inspector, in the exercise of their functions as an Inspector, to destroy any instruments of gaming considered by the gaming Inspector to be unsatisfactory for use, fail to comply with the direction, or
 - (f) When directed by a Gaming Inspector, in the exercise of their functions as a gaming Inspector, to cease to have available for use any gaming equipment considered by the Inspector to be unsatisfactory for use, fail to comply with the direction, or
 - (g) Provide to a Gaming Inspector (whether in answer to a question asked by the gaming Inspector or otherwise) information which the person knows is false or misleading in a material particular, or
 - (h) Prevent, directly or indirectly, a person from attending before a gaming Inspector, producing to a gaming Inspector any gaming equipment or records or answering any question asked by or supplying any information to an Inspector when that person is required to do so.
- If a Gaming Inspector requires a person in a gaming premises to state their full name and residential address the person must not:
 - (a) Fail to comply with the requirement, or
 - (b) In purported compliance with the requirement, state a name or address that is false.

- A Gaming Inspector is not authorised to require a person on a gaming premises to state his/her full name or residential address unless the Gaming Inspector
 - (a) Suspects on reasonable grounds that the person is committing or has committed an offence, and
 - (b) Has informed the person, at the time of stating the requirement, that it is an offence to fail to comply with the requirement.
- A Gaming Inspector who suspects on reasonable grounds that a person has stated a name or residential address that is false may request the person to provide reasonable proof of the person's identity.

Gaming Inspectors to Investigate Complaints

- On receiving a complaint from a patron relating to the conduct of gaming on/in a gaming premises, a Gaming Inspector must forthwith investigate the complaint with due diligence.
- The Gaming Inspector must inform the gaming premises operator of the substance of the complaint and give the operator a reasonable opportunity to make a response to it.
- If, as a result of the investigation, the Gaming Inspector is satisfied that the conduct of any game on/in a gaming premises has contravened any condition of the gaming licence, any game rules or any direction given by the gaming regulatory authority under the forthcoming Act a full report is submitted to the gaming regulatory authority and appropriate action taken.²⁸³

Bookkeeping

Approved System of Controls and Procedures to be Implemented

- A gaming operator is not to conduct operations on / in the gaming premises unless the gaming regulatory authority has approved in writing a system of internal controls, administrative and accounting procedures for the gaming premises.
- Any such approval may be amended from time to time, as the gaming regulatory authority thinks fit.
- An approval or amendment of an approval takes effect on the date that notice of it is given in writing to the gaming operator concerned or on a later date specified in the notice.
- It is a condition of a gaming licence that the gaming operator must ensure that the system approved for the gaming premises is implemented.
- A system approved for a gaming premises may contain different internal controls, or different administrative or accounting procedures, for different parts of the gaming premises.²⁸⁴

²⁸³ As per New South Wales Casino Control Act 1992. Any legislation might also contain a requirement that the complainant must initially have sought redress from the casino operator before lodging a complaint with the gaming regulatory authority

²⁸⁴ As per New Jersey Casino Controls Act 1977.

Content of Approved System

- A system of internal controls and administrative and accounting procedure approved by the gaming regulatory authority is to include (but is not limited to) the following:
 - (a) Accounting controls and procedures, including the standardisation of forms and the definition of terms, to be used in operations in the gaming premises, include but are not limited to the following:
 - (i) Hold percentages and their calculation,
 - (ii) Revenue drop,
 - (iii) Expense and overhead schedules,
 - (iv) Complimentary services,
 - (v) Salary arrangements,
 - (vi) Personnel practices,
 - (vii) Junkets,
 - (viii) Cash equivalent transactions.
 - (b) Job descriptions and the system of organising personnel and chain of command on/in the gaming premises. This is necessary so as to establish diversity of responsibility among employees engaged in operations on/in the gaming premises and identification of primary and secondary supervisory positions for areas of responsibility;
 - (c) Procedures for the conduct and playing of all games on/in the gaming premises;
 - (d) Procedures and standards for the security of gaming machines and for the payment and recording of gaming machine prizes;
 - (e) Procedures within a cashier's cage for the receipt, storage and disbursement of chips and cash, the cashing of cheques, the redemption of chips and the recording of all transactions pertaining to gaming operations;
 - (f) Procedures for the collection and security of money at the table games and other places on/in the gaming premises where games are conducted;
 - (g) Procedures and forms for the transfer of chips to and from the gaming tables and other places on/in the gaming premises where games are conducted and to and from a cashier's cage;
 - (h) Procedures for the transfer of money from the table games and other places on/in the gaming premises where games are conducted to other areas of the gaming premises for counting;
 - (i) Procedures and forms for the transfer of money or chips from and to a gaming area;
 - (j) Procedures and security for the counting and recording of revenue;
 - (k) Procedures and security for the transfer of money from the gaming premises to a bank, building society or credit union and from a bank, building society or credit union to the gaming premises;
 - (l) Procedures for the security, storage and recording of chips utilised in the gaming operations in the gaming premises;
 - (m) Procedures and standards for the maintenance, security and storage of gaming equipment;
 - (n) Procedures for the payment and recording of prizes associated with games where the prizes are paid by cash, cheque or in a non-monetary form (other than chips);
 - (o) Procedures for the issue of chip purchase vouchers and the recording of transactions in connection therewith;
 - (p) Procedures for the cashing of cheques and recording of transactions by cheque;

- (q) Procedures for the establishment and use of deposit accounts, procedures for the use and maintenance of security and surveillance facilities, including closed circuit television systems;
 - (r) Procedures governing the utilisation of security personnel within the gaming premises; and
 - (s) Procedures for the control of keys used or for use in operations on/in the gaming premises.
- For the purposes of an approval or amendment of an approval, controls and procedures may be described by way of narrative or represented diagrammatically, or by a combination of both methods.

Banking

- It is a condition of a gaming licence that the gaming operator must:
 - (a) Keep and maintain separate accounts, as approved by the gaming regulatory authority, at a bank, building society or credit union in the State for use for all banking transactions arising in relation to the operator, and
 - (b) From time to time provide the gaming regulatory authority, as required, and in a form approved by the gaming regulatory authority, with a written notice addressed to that bank, building society or credit union authorising the bank, building society or credit union to comply with any requirements of a gaming Inspector exercising the powers conferred to them.
- A Gaming Inspector may, by notice in writing, require the manager or other principal officer of that bank, building society or credit union to provide the Gaming Inspector with a statement of such an account and such other particulars relating to the account as may be specified in the notice, and a person of whom such a requirement is made must comply with it.
- A Gaming Inspector may not exercise the powers conferred to them without the prior written approval of the gaming regulatory authority.
- A person who complies with a requirement of a notice does not on that account incur a liability to another person.

Accounts to be Kept

- It is a condition of a gaming licence that the gaming operator must keep such accounting records as correctly recorded and explain the transactions and financial position of the operations of the gaming premises.
- The accounting records must be kept in such a manner as will enable true and fair financial statements and accounts to be prepared from time to time. The financial statements and accounts are to be conveniently and properly audited.

Statement of Accounts

- It is a condition of a gaming licence that the gaming operator must, as soon as practicable after the end of the financial year determined for the gaming premises by the gaming regulatory authority, prepare financial statements and accounts, including:
 - (a) Trading accounts, where applicable, for the financial year;
 - (b) Profit and loss accounts for the financial year; and
 - (c) A balance-sheet as at the end of the financial year.

Books and Other Records to be Kept on Gaming Premises

- It is a condition of a gaming licence that the gaming operator must ensure that all books, records and documents relating to the operations of the gaming premises are:
 - (a) Kept at the gaming premises, and
 - (b) Retained for not less than seven years after the completion of the transactions to which they relate.

- The gaming regulatory authority may by instrument in writing grant an exception to a gaming operator from all specified requirements in respect of all or specified, or specified classes of books records or documents and may grant such an exception subject to conditions.

Audit

- It is a condition of a gaming licence that the gaming operator must, as soon as practicable after the end of the financial year determined for the gaming premises by the gaming regulatory authority, cause the books, accounts and financial statements of the operator in relation to the gaming premises to be audited by a person approved by the gaming regulatory authority to audit the accounting records of the gaming operator.
- It is a condition of a gaming licence that the gaming operator must cause the auditor's report to be lodged with the gaming regulatory authority within four months after the end of the financial year to which the report relates.

Submission of Reports

- It is a condition of a gaming licence that the gaming premises operator must submit to the gaming regulatory authority accounting and administrative records and reports relating to the operations of the gaming premises.
- The gaming premises accounting and administrative records and reports are to be submitted at such times and are to contain such information, as is specified by order in writing given to the gaming operator by the gaming regulatory authority from time to time.
- The Gaming Inspector must also report to the gaming regulatory authority in writing any other contravention of a provision of the relevant legislation.

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Advertising

Meaning of Advertising

- A person advertises gaming if:
 - (a) S/he participates in or facilitates an activity knowing or believing that it is designed to:
 - (i) Encourage one or more persons to take advantage (whether directly or through an agent) of facilities for gaming, or
 - (ii) Increase the use of facilities for gaming by bringing them or information about them to the attention of one or more persons.
- A person shall be treated as bringing facilities for gaming to the attention of one or more persons with a view to increasing the use of the facilities if:
 - (a) S/he enters into arrangements (whether by way of sponsorship, brand-sharing or otherwise) under which a name is displayed in connection with an event or product, and
 - (b) Either:
 - (i) The provision of facilities for gaming is the sole or main activity undertaken under that name, or
 - (ii) The manner or context in which the name is displayed is designed to draw attention to the fact that facilities for gaming are provided under that name.

Regulations Regarding Advertising

- The gaming regulatory authority is to provide a code of practice and regulations controlling the advertising of gaming. The regulations may, in particular, make provision about:
 - (a) The form of advertisements;
 - (b) The content of advertisements;
 - (c) Timing;
 - (d) Location.
- Regulations may, in particular, require specified words to be included in advertisements.
- In making regulations the gaming regulatory authority shall, in particular, have regard to the need to protect children and other vulnerable persons from being harmed or exploited by gaming.
- A person commits an offence if s/he contravenes a requirement of advertising regulations under this section as provided for in the relevant legislation.
- Regulations under this section may, in particular, make provision generally or by reference to:
 - (a) Specified classes of gaming,
 - (b) Specified classes of advertisement, or
 - (c) Activity undertaken in or in connection with specified places.

Problem Gambling Exclusion Orders

- The gaming regulatory authority or the gaming premises operator may give a written order to a person, on the person's voluntary application, prohibiting the person from entering or remaining in a gaming premises. The application must be in writing and the person's signature on it must be witnessed in a manner determined by the gaming regulatory authority. This shall be known as an "exclusion order". A self-imposed exclusion order remains in force in respect of a person for ninety days²⁸⁵.
- The gaming regulatory authority or the gaming operator or the person for the time being in charge of the gaming premises may, in the manner prescribed by law, give a written order prohibiting a person from entering or remaining in a gaming premises. This shall be known as an "exclusion order". The exclusion order shall remain in force for such period of time as may be prescribed by law.
- It is a condition of a gaming licence that the gaming operator must, within thirty six hours of the exclusion order being made, notify the gaming regulatory authority of:
 - (a) Any information pertaining to the person which was given under the admissions and player registration policy;
 - (b) The date the order was made;
 - (c) Whether the order was imposed by²⁸⁶
 - (i) The Gaming Premises Operator;
 - (ii) A Superintendent of An Garda Síochána;
 - (iii) Self-Imposed.
- A person must not provide any part of a list of those persons subject to exclusion orders or any information contained in the list, to any person except²⁸⁷:
 - (a) The gaming premises operator;
 - (b) A gaming premises employee;
 - (c) A gaming Inspector;
 - (d) The gaming regulatory authority;
 - (e) A member of An Garda Síochána, or
 - (f) A person approved by the gaming regulatory authority for the purpose;

²⁸⁵ The ninety day period is illustrative only and the period could be longer or shorter or varied according to circumstance.

²⁸⁶ This list is illustrative only. The persons who can issue such an order would need to be carefully considered.

²⁸⁷ The list of persons to whom information is to be given is illustrative only. The circumstances under which information could be provided and the conditions attaching to the provision of such information requires elaboration.

- (g) A person subject to an exclusion order (but only information relating to that person may be provided), or
 - (h) Such other person/s as may be authorised by the gaming regulatory authority, and then only in such manner as is prescribed by law.
- A Garda Superintendent may direct a gaming operator in writing to exclude a person from a gaming premises by giving the person or cause the person to be given an exclusion order and it is a condition of the gaming licence that the gaming operator must comply with the direction. The grounds upon which such a direction may be made shall be set out in law.
 - All persons who are the subject of an exclusion order may apply to the gaming regulatory authority (or an Appeals Body in the case of orders made by the gaming regulatory authority) for a review of the order. The appeal shall be made in writing and shall detail the grounds on which the appeal is made.
 - The gaming regulatory authority (or Appeals Body) may undertake such inquiries as they think fit and may overrule the exclusion order or allow it to stand and must communicate its decision to the applicant in writing.
 - The regulations may make provision for or with respect to matters to be taken into consideration by the gaming regulatory authority or Appeal Body in making its decision with respect to an application for review of an exclusion order.
 - If the decision of the gaming regulatory authority or Appeals Body is to overrule the exclusion order, the decision operates to revoke the order but does not prejudice the right of a gaming operator or person for the time being in charge of a gaming premises, acting in good faith, to give a further exclusion order to the person affected.
 - An application for review of an exclusion order does not stay or otherwise affect the operation of the order pending a decision on the application.
 - A Court that finds a person guilty of an offence regarding an exclusion order may, if satisfied (after taking into account any evidence that the Court thinks it proper to consider) that the person has a problem arising from the person's gaming activities, postpone its decision as to the imposition of a penalty on condition that the person agrees to undergo such gaming counselling, for such a period as is specified by the court.
 - A Court that postpones its decision as to the imposition of a penalty for a period is to make its decision:
 - (a) As soon as practicable after the end of the period, or
 - (b) If, during the period the person concerned advises the court that s/he does not intend to continue to undergo the gaming counselling, as soon as practicable after receiving that advice, or
 - (c) If, during the period the Court is satisfied that they have failed to undergo the gaming counselling, as soon as practicable after being so satisfied.
 - The following persons in a gaming premises:
 - (a) The person for the time being in charge of the gaming premises,
 - (b) An agent of the gaming operator,
 - (c) A gaming premises employee,

must, as soon as practicable after it becomes known to the person that a person the subject of an exclusion order (including an exclusion order given on the voluntary application of a person) is on / in the gaming premises, notify a gaming Inspector or the gaming regulatory authority, and then remove the person, or cause the person to be removed, from the gaming premises. It is lawful for a person to whom this section applies, using no more force than is reasonable in the circumstances:

- (a) To prevent a person the subject of an exclusion order from entering the gaming premises, and
- (b) To remove such a person from the gaming premises or cause such a person to be removed from the gaming premises.²⁸⁸

Enforceability of Contracts

- The fact that a contract relates to gaming shall not prevent its enforcement.
- This is without prejudice to any rule of law preventing the enforcement of a contract on the grounds of unlawfulness (other than a rule relating specifically to gaming).
- No provision shall be made for the enforcement of contracts to extend credit for the purposes of gaming.²⁸⁹

Offences and Sanctions

“Applicant” is a natural or non-natural person applying for a gaming operator’s licence.

- It is an offence for an applicant to provide the gaming regulatory authority with false and/or misleading information.
- It is an offence for an applicant to omit information that may be deemed material by the gaming regulatory authority for the purposes of the application procedure.
- It is an offence if a person/entity does not hold a gaming licence and uses a premises, or causes or permits a premises to be used to:
 - (a) Operate a gaming premises,
 - (b) Make a gaming machine available for use,
 - (c) Provide other facilities for gaming.
- It is an offence for a person to operate a gaming premises contrary to the provisions of the gaming operator’s licence, such offences include but are not limited to the following:
 - (a) Non-adherence to the relevant admissions policy;
 - (b) Not checking the requisite identification and/or not maintaining the requisite record;
 - (c) Not keeping customers details up to date on file
 - (d) The numbers of table games and/or gaming machines are not in accordance with what the licence provided for.
- It is an offence for a gaming premises to operate on days or hours that are prohibited by the gaming regulatory authority.
- It is an offence not to provide the gaming regulatory authority with a schedule of operating times or to fail to notify the gaming regulatory authority of any changes made to the schedule of operating times.

Liquor

- It is an offence to supply free alcohol or to sell alcohol at a reduced rate on a gaming premises.
- It is an offence to have alcohol on the gaming floor.
- It is an offence to do anything prohibited in the Liquor Licensing Act 2003 including but not limited to giving a person alcohol when they are intoxicated.
- The gaming regulatory authority may suspend a liquor licence attaching to a casino where the sale of intoxicating liquor is causing a breach of casino licensing regulations.

Self-Exclusion

- It is an offence to allow a person who has self-excluded back onto the gaming premises before the stated exclusionary time.
- It is an offence for any gaming operator who fails to provide the gaming regulatory authority with the names and relevant details of any person that has self-excluded or been excluded within thirty-six hours (or other stated period).

Problem Gaming Information

- It is an offence if an operator fails to display in a prominent place on the gaming floor and at the entrance of the gaming premises, information about problem gaming, problem gaming contact numbers and other relevant information. The size and specifications of the display shall be determined by the gaming regulatory authority.

Under Age

- A person commits an offence if s/he invites, causes or permits a person under the age of 18 to participate in gaming. This provision does not include participation in small-scale, non-commercial private gaming.

Gaming Operator's Relationship with Employees

- It is an offence for a gaming operator to allow a person under the age of 18 to work on the gaming premises.
- It is an offence for a gaming operator to allow key gaming employee/personnel to work in a gaming premises without a gaming worker licence, gaming premises key employee/personnel licence or a gaming employee licence.
- It is an offence for a gaming operator to fail to provide the gaming regulatory authority with the names, gaming worker number and any other relevant details required by the gaming regulatory authority.

Gaming Employees

- It is an offence for a gaming employee:
 - (a) To work without a valid gaming worker licence;
 - (b) To provide the gaming regulatory authority with false and misleading information;
 - (c) To omit information that may be deemed material by the gaming regulatory authority for the purposes of the application procedure;
 - (d) To fail to inform the gaming regulatory authority of a change of employment with seven days after this occurs (or stated period). This includes the previous gaming premises and if applicable the new gaming premises.

Keeping of Records

- It is an offence for a gaming operator to use a system of internal control that has not been approved by the gaming regulatory authority.
- It is an offence for an operator not to keep surveillance or monitoring records on the gaming premises for a period of thirty days (or stated period).
- It is an offence for an operator not to keep on the gaming premises for a period of five years a book, records or any document related to the running of the gaming premises as prescribed by the gaming regulatory authority.
- It is an offence to alter or tamper with records detailing financial information or any information as prescribed by the gaming regulatory authority.
- It is an offence for a gaming operator not to maintain separate bank accounts for the gaming business as approved by the gaming regulatory authority.
- It is an offence for a gaming operator to use a gaming premises to launder money or for any illegal activities or any illegal purposes.

Advertising

- A person commits an offence if s/he advertises unlawful gaming.
- Advertised gaming is unlawful if:
 - (a) The particular gaming activity being advertised is not licensed by the gaming regulatory authority; or
 - (b) At the time of advertising:
 - (i) A licence to operate a gaming establishment has not been granted by the gaming regulatory authority;
 - (ii) The arrangements for the gaming as advertised are not such as to ensure that an exception to the offence will apply.²⁹⁰
- A person does not commit an offence by reason only of delivering transmitting or broadcasting a communication or making data available if:
 - (a) S/he acts in the course of a business of delivering, transmitting or broadcasting communications (in whatever form or by whatever means) or making data available; and
 - (b) The nature of the business is such that persons undertaking it have no control over the nature or content of the communications or data.
- Where a person commits an offence in regard to advertising regulations by causing an advertisement to be displayed or made accessible, s/he shall be treated as committing the offence on each day during any part of which the advertisement is displayed or made accessible.
- A person commits an offence if s/he makes an advertisement attractive for children or vulnerable people.
- It is an offence to advertise gaming when contrary to the gaming regulatory authority standards. These may include but are not limited to
 - (a) Form of advertisements
 - (b) The content of advertisements
 - (c) Timing
 - (d) Location

Gambling Software

- A person commits an offence if s/he manufactures, supplies, installs or adapts gambling software for a gaming premises unless s/he acts in accordance with an operating licence.

Security Personnel

- It is an offence to work as security on a gaming premises unless licensed by the Private Security Authority.

Surveillance Personnel

- It is an offence to work in surveillance on a gaming premises unless licensed by the gaming regulatory authority.

Maintenance Personnel

- It is an offence to work in maintenance on a gaming premises unless licensed by the gaming regulatory authority.

²⁹⁰ The gaming regulatory authority may provide for exceptions as may the relevant legislation.

Cheating

- A person commits an offence if s/he cheats at gaming, or does anything for the purpose of enabling or assisting another person to cheat at gaming.
- It is immaterial whether a person who cheats
 - (a) Improves their chances of winning anything, or
 - (b) Wins anything.
- Cheating at gaming may, in particular, consist of actual or attempted deception or interference in connection with
 - (a) The process by which gambling is conducted, or
 - (b) A real or virtual game, race or other event or process to which gambling relates.

Employment to Provide Facilities for Gaming

- A person commits an offence if s/he employs a person under the age of 18 to provide facilities for gaming.
- If s/he employs a person under the age of 18 to perform any function on a gaming premises.
- The above does not apply to the provision of facilities in connection with small scale, non-commercial private gaming.

Fraudulent Practices in Gaming Premises

- Where a person, for themselves or another person, obtains or gains tokens or credit for gaming or betting that person shall be taken to have obtained a benefit.
- Where a person, in relation to the gaming or betting, makes any false representation, engages in any sleight of hand, uses any gaming equipment or any instrument or article of a type normally used in connection with gaming or appearing to be of a type normally used in gaming and does so fraudulently, or makes fraudulent use of any other thing that person shall be taken to have employed fraudulent means.
- Any gaming premises licensee, or any gaming premises key employee, or other person concerned in the organisation or management of gaming operations in a gaming premises, who in the gaming premises conducts any game in such a manner as to win or attempt to win from any person for himself or herself or for any other person any money, tokens, prize, benefit or other valuable thing by :
 - (a) Any fraud;
 - (b) Any fraudulent means;
 - (c) Any machine, equipment or thing that permits or facilitates, or is intended to permit or facilitate, fraud, cheating or stealing; or
 - (d) Any wrongful practice, trick or scheme,commits an offence.
- A person who, in a gaming premises, uses or has in possession
 - (a) Any token that the person knows is bogus or counterfeit;
 - (b) Any instrument of gaming that the person knows has been marked, loaded or tampered with; or
 - (c) For the purpose of fraud, cheating or stealing, any machine, equipment or thing that permits or facilitates, or is intended to permit or facilitate, the fraud, cheating or stealing,commits an offence.²⁹¹

- The provisions relating to fraudulent practices do not apply to, or in relation to, the lawful use or possession of a thing by a person concerned in the organisation or management of the gaming operations, an officer of the gaming regulatory authority or a member of An Garda Síochána where the thing in question:
 - (a) Has been seized by any of those persons from another person for destruction or for potential use as evidence in proceedings for an offence;
 - (b) Is so used or possessed for the purposes of conducting an investigation into a suspected offence; or
 - (c) Is so used or possessed, with the consent of the gaming premises licensee, for instructional purposes.

Forging and/or Personating in Gaming Premises

- A person who:
 - (a) Forges or counterfeits any token used in a gaming premises;
 - (b) Forges or counterfeits, or with intent to defraud alters or falsifies, any voucher, book or other document or form of identification in relation to gaming operations in a gaming premises, or who knowingly utters the same;
 - (c) Personates or falsely represents him/herself to be a person named in a form of identification used in relation to gaming operations in a gaming premises, or to be a gaming key employee, or other person concerned in the organisation or management of those operations, or an officer of the gaming regulatory authority; or
 - (d) Connives at any such forgery, counterfeiting, alteration, falsification, uttering, personation or false representation,

commits an offence.

Operational Offences

- There are also many other offences that will need to detail that concern the operation of the gaming premises. These may include but are not limited to:
 - (a) The procedures surrounding money used on the gaming floor;
 - (b) Count room personnel;
 - (c) Collection personnel;
 - (d) Deposit box;
 - (e) Drop box.

Remote Gaming²⁹²

Non-Land Based, Internet or Remote Gaming

Remote Gaming²⁹³

- “Remote gaming” means gaming in which persons participate by the use of remote communication.
- “Remote communication” means communication using:
 - (a) The Internet;
 - (b) Telephone;
 - (c) Television;
 - (d) Radio; or
 - (e) Any other kind of electronic or other technology for facilitating communication.
- Regulations may provide that a specified system or method of communication is or is not to be treated as a form of remote communication.
- An gaming operating licence is a “remote gaming operating licence” if it authorises activity to be carried on:
 - (a) In respect of remote gaming, or
 - (b) By means of remote communication.
- A remote gaming operating licence may not also authorise activity which is neither:
 - (a) In respect of remote gaming, nor
 - (b) Carried on by means of remote communication.
- A gaming operating licence must state whether it is a remote operating licence or not.

²⁹² Remote gaming is a highly complex area and will require further detailed consideration before any legislative proposals can be brought forward.

²⁹³ As per Great Britain’s Gambling Act, 2005.

Appendix No. 15

EU Comparative Tax Table No. 19 pg. 99 Explanatory Note

Swiss Institute of Comparative Law (2006) Study of Gambling Services in the Internal Market of the European Union © European Commission – Explanatory note on cross comparison of data.

Introduction

According to the terms of reference of the present Study, the European Commission requires, in respect of each sector of the market for gambling services, a summary comparative table of the rates of taxation levied by each of the Member States, so as to indicate the risks of distortions within the Internal Market due to divergences in fiscal treatment of revenue generated by the provision of gambling services. Several such summary comparative tables follow. They are, however, only meaningful when read in light of the following explanations.

Incomparable Data

The legislation of the different Member States in respect of the taxation of revenue generated by the provision of gambling services is formulated in completely heterogeneous terms. Thus, the amount of tax payable by a supplier of gambling services is sometimes expressed as a percentage rate and sometimes as a fixed sum of money payable annually or monthly.

The percentage rate may be referable to the profits derived by the supplier after payment of winnings, operating costs and business expenses, but it may also be referable to revenue received less winnings paid and no other deductions (which will be referred to as “net revenue”), or simply to all revenue received (which will be referred to as “gross revenue”) or to all amounts paid out to winning players (which will be referred to as “winnings”).

Further complications are introduced by national legislation in the form of reduced rates or exemptions from tax liability for the benefit of certain gambling service providers or certain sub-sectors of the market. Certain legislative provisions do not impose a single rate of taxation, but set out several rates on a progressive scale related to increasing amounts of revenue. Some, but by no means all, Member States require suppliers to pay substantial fees for the issuance and periodic renewal of licences, or to guarantee the performance of the supplier’s private and public legal obligations, in addition to paying taxes. Suppliers in some sectors of the market are also required to make compulsory contributions to good causes or activities which are considered to be in the public interest.

Structural differences between the Member States also have repercussions on their fiscal treatment of gambling revenues. Thus, different taxation rates are often imposed by the provinces, regions or Länder which make up the federally organised Member States. Of the Member States which reserve to public enterprises the supply of some or all types of gambling services, some but not all require those enterprises to pay taxes, before their profits are paid into public revenues and/or distributed to organisations deemed to be of public interest.

Assumptions and Categorisations Permitting Comparisons to be Made

So as to be able to make any sort of comparison between these extremely different tax provisions, it is indispensable to subject them to a number of simplifications, categorisations and assumptions.

First, we have taken into account limited tax exemptions and specifically targeted reductions of tax rates only for the purposes of checking whether they might be so important as to effectively amend the relevant standard tax rates.

Secondly, we have taken into account fixed-sum licensing fees and duty payments, expressed as numbers of euros rather than as percentage figures, only when they are so high as to effectively rival a percentage tax obligation in their economic importance.

Thirdly, wherever a number of different tax rates are applicable to the same type of gambling service supplied in a particular Member State, either as a progressive scale related to increasing amounts of revenue, or because of provincial diversity, we have taken the mean tax rate as representative of the tax burden imposed by that Member State.

Fourthly, so as to be able to compare tax rates referring to conceptually differing tax bases, it is necessary to designate one as a standard and to arithmetically adjust the remainder. Given the rates of return that actually prevail in the gambling industry, we have chosen to designate, as our standard, a tax rate expressed as a percentage of gross revenue, to reduce by one third all percentage rates attributable to winnings, to reduce by two thirds all percentage rates attributable to net revenue and to reduce by three quarters all percentage rates attributable to gambling service suppliers' profits. The one exception is the machine gambling services sector, where almost half the Member States levy fixed sums in respect of each machine located outside casinos, while all the remaining Member States that permit the supply of this type of service impose a tax expressed as a percentage rate of the net revenue generated by the gambling machines. We have therefore chosen, as our standard, the tax rates expressed as percentages of net revenue generated by gambling machines and have turned fixed-sum imposts into percentage figures by assuming that an attractive and efficiently located gambling machine which accepts relatively high stakes and offers relatively high prizes could generate net revenue of €35,000 per annum.

Fifthly, where all of the profits generated by the lawful supply of a particular type of gambling service in a particular Member State are eventually paid into public revenues, either because the exclusive supplier is publicly owned, or for legal or structural reasons, we have treated the effective tax burden as being the highest possible and have ranked those Member States at the top of each table.

Finally, wherever it appears that two or more Member States impose the same effective tax burden, either expressly or in light of the analytical steps outlined above, we have listed those Member States in alphabetical order. This is also true of the Member States in which supply of the relevant type of gambling service is entirely prohibited, or for which we do not presently have sufficient tax information to be able to allocate a ranking; those Member States appear at the bottom of each table.

It should be noted that our analysis is restricted exclusively to taxes which are expressly payable by reference to gambling revenues. Thus, we have not taken into account differences in the personal or corporate income tax rates which suppliers established different Member States are required to pay as a percentage of their net taxable earnings. Even if some suppliers of gambling services may be exempted from liability to pay income tax, while others are not, the inclusion of income tax considerations in addition to gambling tax considerations would render this comparison so complex as to be effectively meaningless. Much the same can be said of differences between the rates of Value Added Tax prevailing in the various Member States.

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Meaning and Findings

At the bottom of the table (see Table No. 19 pg. 99) referring to each market sector, has been set out, in very brief and concise terms, the finding as to the degree of divergence that currently exists between the tax rates of the various Member States. If the degree of divergence is great, it can be concluded, without further analysis, that there exists a risk of distortion of the internal market in gambling services.

That is also the sole purpose of these tables. They should not be relied upon for any other purposes. In particular, the tax rates listed there do not necessarily reflect what any particular supplier of gambling services actually pays in tax, or would be required to pay if it entered the relevant national market. The listed rates instead indicate, in an easily comparable manner, the very approximate proportions of the economic benefit generated by supply of each of the relevant types of gambling services, in each of the Member States, that are appropriated to public purposes. The tables should not be interpreted as implying any sort of judgement that any particular tax rates are abnormal, unrealistic, unjustifiable or otherwise unacceptable.

We have not been able to prepare comparative tables in respect of the media, sales promotional and charity gambling services. As relevant information has neither become publicly available nor been provided to us by stakeholders in respect of most of the Member States, it would currently be pointless to prepare tables for those sectors.

Appendix No. 16

Remote Gaming Case Studies

Situation in the United States

The recent United States internet Gambling Prohibition and Enforcement Act (2006) to prevent the use of certain payment instruments, credit cards and fund transfers for unlawful internet gambling has created huge debate across the sector. Its impact and potential knock-on effects are being deliberated upon by both industry and policy makers across the globe. For example, according to Nielsen/NetRatings, a global leader in internet media and market research, traffic to the top ten internet gambling sites dropped a staggering 56% in October 2006.²⁹⁴ With so many diverse opinions as to where this will take the world of remote gaming, it is nigh impossible to speculate as to where it will come to rest. One can only assume that this will depend on regulatory controls adopted by other jurisdictions.

The legal framework for regulating remote gaming in the United States has proved itself to be rather complex; being covered by a mixture of State and federal statutes. The United States Justice Department has used the Federal Wire Act (1961) to prosecute remote gaming activities (related to sports betting by citizens of States where it is illegal) across State lines. For instance, David Carruthers, CEO of Betonsports, was arrested in July 2006, because his company's website was being used by citizens in Louisiana (where sports' betting is illegal) to place bets. These bets were placed using electronic communication across State lines, hence the use of the Federal Wire Act to prosecute him.

The use of the Federal Wire Act to prosecute individuals has not been without its controversy. The Act itself appears to contain some ambiguities that would limit its applicability, particularly around the types of gaming that it covers. The United States Department of Justice appears to take the view that the Act "is NOT limited to sports-related gaming activities" but case law in the United States on this issue is conflicting.²⁹⁵

The non-executive Chairman of Sportingbet, Peter Dicks, was arrested in September 2006 after a warrant was issued by the Louisiana State Police. Like David Carruthers and Jay Cohen before him, Mr Dicks appears to have been arrested due to sports bets being offered to Louisiana citizens over the telephone and internet. However, this has not stopped the share price of leading gaming companies (e.g. Party Gaming and 888) from falling sharply in light of these developments.

The economic rationale for regulating, or prohibiting altogether, remote gaming markets is that they are a type of market that could have undesirable side effects. Many scholars suggest that several forms of gambling, including bets via the Internet, should be regulated.²⁹⁶ They raise concerns about youth gambling, gambling addiction and the potential of gambling to increase crime. One of the concerns about remote gambling is that it may attract youth. The Internet can be used anonymously, creating a danger that youths can access internet gambling sites. Young people may be attracted to online sports wagering, tournaments and sweepstakes.

A second problem arises from gambling addiction, which is one of the reasons that groups like Gamblers Anonymous have formed. High levels of privacy and easy access offered by internet gambling may exacerbate problems with pathological gambling.²⁹⁷

A third problem arises because of concerns with crime. Some concerns have been raised about credit card fraud or general fraud. Other concerns have been raised about organised crime using this vehicle as a way to increase its reach. For example, online casino operators could easily alter or remove their websites at a moment's notice and they or other hackers could manipulate software in order to alter the odds of winning. Online gambling could also be used as a means to launder money. Those addicted to gambling may be particularly vulnerable to gambling firms that extend credit to people with limited abilities to pay. Gambling addicts may finance their gambling habit in ways that increase crime such as theft and robbery. These illegal activities provide a rationale for government intervention, and, as the Government here has recognized, strict regulation is needed.

²⁹⁴ Nielsen/NetRatings Market Wire (November 2006).

²⁹⁵ UK Department for Culture, Media & Sport (2006)

²⁹⁶ Hahn, R. and Tetlock, P. (2006)

²⁹⁷ Shaffer, H.J., & Hall, M.N. (2002)

These may all have been the precipitating factors in the introduction of Internet Gambling Prohibition and Enforcement Act, but the main reason is the rapid growth in online gambling during the past six years to about \$12 billion per year worldwide, with about half of that in the United States. Remote gaming is fast becoming a major threat to government revenue from gambling and to its control over how and where gambling takes place. Many believe that governments are concerned about remote gaming primarily because it threatens the revenue and other political advantages they get from taxing and tightly regulating various forms of gambling. Remote gambling is very hard to regulate and tax because online companies can set up in remote places and make gaming available to practically anyone who has access to the Internet.

Situation in Europe

Different countries in Europe hold very different views on remote gaming. As there is yet no consistent and coordinated action taken by the European Commission, some countries have taken their own legislative steps to restrict remote gaming, which many regard as a bad and even dangerous hobby.

Most of the attempts to enforce their laws - originally designed to cover terrestrial-based gaming - for purposes of prosecuting illegal remote gaming have failed to receive the endorsement of the few continental European Courts that have handled such cases.

Not all the European countries restrict remote gaming. There are three general purposes of these European national legislation efforts.²⁹⁸ Firstly the strictest legislation can be found in Italy, Spain, France, Belgium, Germany and Portugal. The legislation in these countries has aimed to prohibit internet gaming, particularly in those cases where the player and the server handling the bets are located in the same national territory.

Secondly, the legislation, which had aimed to regulate internet gaming is to be found in countries like Great Britain, the Netherlands and Scandinavian countries.

Thirdly, the more laissez-faire strategy, in order to attract new business and investments was, generally, adopted by smaller jurisdictions including:²⁹⁹

- Tax havens like Andorra, Liechtenstein and Gibraltar;
- The Isle of Man began issuing online casino licences in 2001. Licensees include Sun International, MGM Mirage and the Rank Group; and
- The Republic of San Marino, an enclave within Italian territory twenty kilometres from the resort of Rimini, is considering the prospect of opening itself to internet gaming in an effort to revive its sources of taxable income.

As part of the recent Swiss Institute of Comparative Law Study a survey instrument was developed and disseminated to all known remote gaming operators in the EU, as well as the regulatory authorities in Gibraltar and in Malta. The remote gaming companies in those jurisdictions were all asked to provide information on the demographics of their registered players. All respondents reported a growing number of registered players within both their primary EU country of operations and other EU Member States. They reported an aggregate of 63% of all registered players to be within the 18-35 age group, 32% to be within the 36-55 age group, and 5% to be of age 56 and over. Respondents were also asked to differentiate between the percentage of their EU gaming revenues that were generated within the Member State where they are primarily based versus cross-border Gross Gaming Revenue (GGR) within the EU. (For the purposes of this analysis, responses from Gibraltar were treated as if they were primarily based in the United Kingdom). The respondents indicated that between 15% and 30% of their revenues came from other Member States between 2000 and 2003, increasing to about 45% in 2004 (probably due to the expansion of licences in Malta). The forecast through 2009 had the percentage of EU cross-border spending in the 20% to 30% range.³⁰⁰

It is interesting to compare these primary figures with published estimates, each of which assume only clearly predictable changes in the policy context. For example, Gaming and Betting Global Consultants (GBGC) have issued in their leading publication which is normally referred to in this Report as the "GBGC analysis" figures for Gross Gaming Revenue (GGR) from remote gaming in Europe showing a rise from an initial low level in 1999, that took off sharply in 2001 and carried on increasing substantially

298 Kong, L., Ngan, L., and Leung, J. (2005)

299 Bes, R. (2002)

300 Adapted from Swiss Institute of Comparative Law (2006)

through 2002 and 2003, but at a decreasing rate. It would appear that the market is still in an early phase of growth, but perhaps showing signs of heading towards maturity. The rates of increase per year are as follows; 2000 162.5%, 2001 233.3%, 2002 55.7% and 2003 31.1%.

If the future annual percentage rates of increase remain at two-thirds of the previous year [i.e. in 2004 the increase is 20.5%, in 2005 13.5% and so on] then by 2012 remote gaming GGRs in Europe would be roughly €2,700 million. Since the EU accounts for 90.5% of Europe's total gaming spend, we may estimate that the EU would generate an interactive GGR of about €2,400 million in 2012. This would be about 85% greater than it was in 2003.

Based upon a review of these studies of remote and internet gaming – as well as survey data collected as a portion of the Swiss Institute study – the best estimate of the size of the European Union remote and internet gaming sector (that sector which offers gaming services via the Internet, through mobile phone services, and through interactive television wagering) represented between €2,000 million and €3,000 million in GGRs from EU consumer expenditures in 2004, and growing rapidly.

If the above estimates hold true, then the economic importance of remote gaming is likely to continue to rise, but not beyond 5% of the total EU gaming market by 2012. This estimate takes account of both factors favouring growth and factors that could restrict it. In those EU Member States which have poorly developed land-based gaming sectors, the importance of remote gaming as a proportion of the total market for gaming services could rise well beyond 5%. It is possible that some EU Member States will try to effectively prohibit remote gaming with overseas operators or foreign operators generally, but consumers would likely still find a way to indulge their passion – as the United States has found.

Firms that offer land-based as well as remote gaming services will pursue the remote business to extend their sales in total, even though some of it will undoubtedly substitute for their land-based sales. Relative taxation levels will be an important factor in determining the relative extent of remote versus land-based gaming. If remote gaming, due to its situational mobility, were able to induce governments to offer it lower tax rates on income than is paid by land-based businesses, that might be particularly conducive to growth. Low tax rates on remote gaming could, however, be counterweighted by the lower profit margins that may emerge if indeed it turns out to be more competitive than land-based gaming, due to easier entry into the market and depending on the ultimate resolution of legal challenges with respect to the right to offer remote gaming services in various Member States.³⁰¹

Although the above estimates probably reflect a set of reasonable speculations that would be forthcoming from remote gaming industry professionals and analysts, it is appropriate to include some words of caution.

Firstly, while many agree that remote gaming is unlikely to replace land-based gaming, the view is that the two forms of gaming are increasingly likely to merge, for example in branding and marketing, and in the context of retail outlets such as internet sports cafes where it is possible to gamble on remote sites.

Secondly, new forms of gaming are likely to emerge which particularly suit delivery by remote means and which secure a very large share of the market very quickly. This has already occurred with poker – a game of both skill and chance where consumers endeavour to play with others of approximately the same skill levels and similar tolerance for losses; the Internet makes organising such games easier than in traditional physical settings. Lottery and bingo games may prove to be especially suitable for provision by remote means, for different reasons such as the easy access of the billing system. It also seems plausible that people will find ways of betting on the interactive video games they currently play and this might further extend the remote market. In general then, much of what will happen with remote gaming over the next decade may not be able to be anticipated today.

³⁰¹ Adapted from Swiss Institute of Comparative Law (2006)

Country Reports for Remote Gambling³⁰²

The table below from the Swiss Institute for Comparative Law summarises the positions taken by Member State Governments in response to the rising importance of remote gambling. Generally, policies of increasing liberality are featured in the columns further to the right. Countries are mentioned in more than one column when they display multiple characteristics, but few cross more than five ranges of liberality. The following brief descriptions point out some of the policy positions toward remote gambling, including sports betting and lotteries, that have emerged among the Member States.

Restrict Gambling Activity	Internet Gambling Prohibited	Protect State/Private Monopolies and Revenues	Foreign Operators Not Allowed	Domestic Internet Based Gambling Allowed	Accepts Cross Border Internet Gambling	Liberal Approach with Licences Offered
Austria	Greece	Austria	Belgium	Austria	Cyprus	Finland
Belgium	Hungary	Belgium	Denmark	Belgium	Latvia	Latvia
Luxembourg	Lithuania	Denmark	France	France	Malta	Malta
Spain	Luxembourg	Finland	Hungary	Germany	Great Britain	Great Britain
		France	The Netherlands	Italy		
		Greece	Italy	Portugal		
		Hungary	Spain	Slovakia		
		The Netherlands		The Republic of Slovenia		
		Norway		Spain		
		Portugal		Sweden		
		Sweden				

Great Britain

The gaming atmosphere in Great Britain is undergoing considerable debate. There are a variety of types of gaming available, with new games almost everyday. However, the law of gaming is not as updated as the game. Great Britain gaming law, awaiting the full implementation of the Gambling Act 2005, is currently based on the Gaming Act 1968 and is somewhat outdated. With regards to online gaming, it is perfectly legal for a customer to gamble online. However, online casino companies cannot be based in Great Britain. As the Gaming Act was passed prior to the Internet, casino licences can only be given to land-based premises. Currently online casino operators must be based offshore and operating within the relevant legal requirements of their host country.

The latest independent research commissioned by the Government shows that there are nearly one million regular online gamblers in Britain alone. They make up nearly one-third of Europe's near 3.5 million regular online gamblers. These stake approximately £3.5 billion pounds (€5.2 billion) a year – an average of £1,000 each.³⁰³

Remote betting by telephone (and more recently over the Internet) is the oldest form of legalised remote betting and there are no restrictions on the jurisdictions from which bets can be taken, so that bets can be accepted over the Internet by both Great Britain licensed and other suppliers. Consumers can access any remote gaming site. The Gambling Act 2005 allows remote gaming to be fully based in the country for the first time, without restrictions on where the players may be located. Non-British operators will be able to apply for licences. EU-based operators will be able to advertise their services in Britain on the same terms as those holding British licences. Bookmakers (especially William Hill and Ladbrokes) are the biggest internet revenue earners, with betting dominating, but also offering off-shore

302 Adapted from Swiss Institute of Comparative Law (2006)

303 UK Department for Culture, Media & Sport *Remote Gambling Fact Pack* (2006).

licensed casino and gaming services. Sportingbet is a specialist internet operator. Betfair dominate the betting exchange market and are expanding overseas.³⁰⁴ Restrictions on operators' activities have been imposed by the Competition Commission, which prevented an exclusive deal between BSkyB and Ladbrokes in 2002. The interactive television gaming system operating in the United Kingdom is the most advanced in the world. In 2004, Littlewoods, Sportingbet and William Hill launched their own iTV channels. Poker played on a person-to-person basis will be designated as "equal chance gaming", but if played against a bank, it becomes a casino game.

The Gambling Act was passed in April 2005 and will come into force on the 1st September 2007. The Sections of the Act relating to remote gaming deal with new forms of gaming through

- Home computers,
- Television sets,
- Radio,
- Mobile phones.

The Gaming Commission has published proposed licence conditions and codes of practice for consultation in March 2006. These included proposed requirements for remote operators to:

- Introduce measures to control continuous and repetitive play;
- Ensure customers are made aware of how much time and money they have spent on their website;
- Train staff to identify and deal with customers who may be affected by problem gaming;
- Enable customers who feel they have a gaming problem to exclude themselves from the website;
- Use the best publicly available information for age verification purposes, including random credit card checks to verify age. The Gaming Commission will follow this up with mystery shopping exercises using under-16s to ensure that operators are not allowing children to gamble online.

At the end of 2006 The Gaming Commission will publish the final version of the licence conditions and codes of practice.

Strict advertising regulations, overseen by the Gaming Commission and Advertising Standards Authority, will bar advertisers from:

- Encouraging irresponsible or excessive gaming;
- Seeking to harm or exploit children, the young, or other vulnerable persons;
- Directing advertisements at those under 18;
- Featuring people who seem to be under 25.

There will also be a ban on advertising from non-European Economic Area countries that don't meet the standards of regulation set by the Gaming Commission.

The impact of these changes will be closely monitored through three yearly prevalence studies. These will provide an extensive snap-shot of the current gaming habits in Great Britain. The Gaming Commission is currently conducting field work for their prevalence study which will report in mid 2007.

*Isle of Man*³⁰⁵

During 2001 the Department of Home Affairs of the Isle of Man progressed the primary and the secondary legislation to legalise the operation of well-regulated online gaming sites. The Online Gaming Regulation Act came into force in May. Four sets of regulations were approved by Tynwald in June. The first three licences under the regulations were issued in November.

The application fee is £1,000 and the licence fee is £80,000 per annum. In addition, licence holders are required to deposit £2 million as a guarantee for the payment of customers and to establish a formal reserve for gaming based on a stated formula. Changes in 2003 somewhat softened these terms.

304 Swiss Institute of Comparative Law (2006)

305 <http://www.lowtax.net/lowtax/html/isleofman/jimeleg.html>

Austria

Österreichische Lotterien offers an online lottery and gaming operation to Austrian residents. This grew from €205.27 million (15.9% of sales) in 2002, to €281.4 million (20.9% of sales) in 2003. In addition to the Internet, the Österreichische Lotterien has also been utilising Wide Area Protocol (WAP) phones for the lotto 6/45 and Joker games since January 2001. Casinos Austria set up a website in 2000 and by 2003 had weekly revenues of €3.9 million.³⁰⁶ iTV gaming is also allowed, with a platform consisting of four games: slots, video poker, blackjack and baccarat.

Belgium

The national lottery has an exclusive monopoly right to offer remote games, including lotteries, games of chance and sports bets on line. Overseas and domestic competitors are not permitted to offer such services at present. Belgians spent €27 million on internet gaming in 2003.³⁰⁷

Cyprus

High tax rates on legal betting have fostered a growing illegal market for sports betting. On the Turkish side of the island, Turkbet has commissioned Chartwell Technology to create an online betting/casino site for them. Currently the Government is looking at regulating and licensing remote gaming operators.³⁰⁸

Czech Republic

SAZKA, the national lottery operator, has an internet site that offers only news and data on sports, including bookmakers' odds.

*Denmark*³⁰⁹

Danish law bans foreign operators from offering either land-based or remote gaming services in Denmark and shows concern about foreign remote operators undermining Danish tax revenues. The Ministry of Taxation, Trade and Justice released a substantial review and recommendations entitled the 'National Internet Gaming Strategy' during May 2001. This report dealt with issues on the legality of internet betting sites both within and from outside Denmark and was intended as a basis for further discussions and deliberations of the future of gaming in Denmark. A proposal to take measures to block payment of transactions to foreign providers has never been realised. In February 2000, the Klasselotteriet was the first State gaming company to launch its lottery on the Internet. Dansk Tipstjeneste, another lottery company running Denmark's largest lottery and the 'Nordic' lottery, has opened a website and plans to offer WAP services. The Danish Government sees the main purpose of its restrictive legislation to be the need to uphold legitimate interests with regard to public policy and order as well as to limit damaging social consequences such as problem gaming and fraud. A second ground, which is not without relevance, is that betting and lotteries may make a significant contribution to the financing of benevolent or public interest activities such as social and charitable undertakings, sport or culture.

Estonia

Eesti Loto launched its online services in December of 2001. Sports betting and a few games are available online via the Olympic Committee site.

Finland

Oy Veikkaus, a State owned lottery operator, has an online site offering betting and gaming. WAP phones are also catered for. The online service provided 6% of turnover in 2002 at €56.6 million. In 2003, an iTV (interactive Television) gaming channel was offered. In 2003, Fintoto, a company offering horse racing totalisator services, began to offer access via mobile phones and the Internet. In a fairly recent development, the Aland Islands, an autonomous part of Finland, now licence remote betting and gaming operations.

306 Swiss Institute of Comparative Law (2006)

307 www.gamblinglicenses.com/LicencesDatabaseDetail.cfm?Licenses_ID=89&Region=Europe

308 Swiss Institute of Comparative Law (2006)

309 Swiss Institute of Comparative Law (2006)

France

France is not against internet betting *per se* and in 2003, its monopoly pool betting provider, *ari-Mutuel-Urbain*, launched its own online site and has a well developed iTV facility. The national lottery operator (and 70% state-owned) *Français de Jeux* offers lottery and sports betting services on the Internet to French residents only. Otherwise, online gaming is illegal preventing operators from selling their services in France.³¹⁰

Germany

In Germany, each *Land* is responsible for its own gaming policies, usually through State monopolies. Financial bets are now traded through online betting exchanges, which include *Betfair*. Few of the State lotteries use the Internet, but the casino of *Wiesbaden* has become the first officially licensed online casino. German online products can be sold to the rest of the world. The Federal Government is looking critically at the State monopoly system in the light of the *Gambelli* decision.

Greece

All internet gaming in Greece is banned. The Government takes the view that games of chance and betting should remain under State control via a monopoly.³¹¹ It is supposed that private operations in Greece would lead to disturbance of the social order, incitement to commit criminal offences and exploitation of consumers.

Hungary

Hungarian law provides for a State gaming monopoly. Betting or gaming with foreign operators via telecommunication is banned, as is any intermediary activity. Action has been initiated against *Sportingbet*, a British licensed company, because it has a Hungarian language website offering betting services.

Italy

Italy has had an interesting relationship with online gaming. Policy is mainly concerned with protecting the State monopolies and concessionaires that provide land-based gaming services. The existence of the Internet has not really been incorporated into Italian gaming policy. *Lottomatica* has a State concession to offer online information and lottery games.³¹² Some court cases have been pursued concerning overseas firms trying to access the highly taxed Italian betting market, most notably the *Gambelli* case. Strictly speaking, internet gaming is illegal for Italian residents, but the means and the will to enforce this do not exist.

In February 2006, the country attempted to ban all IP (internet protocol) addresses of online gaming sites and then a few days later reportedly tried to set up an 'exclusive' relationship with an online poker room, allegedly for a slice of the pie.

Now, following an investigation undertaken by the ECJ (European Court of Justice), Italy has taken the step that Great Britain, and many other countries have taken, and is moving toward regulation of the industry. As of January 1st, 2007, it will be legal for Italian citizens to gamble online. The new law also clears the way for things like public sports betting and bingo parlours.

This piece of legislation de-regulates all ability based and fixed betting activities, which poker clearly falls under. The Italian plan apparently mirrors that of the plan in Great Britain with respect to how the entities that do business in Italy are regulated. One thing of note is that if a company does business with Italian customers, the Government will stand to make a 3% tax on any gaming based revenues acquired by the company.

Latvia

The new regulatory regime introduced in 2003 includes licences for remote gaming.

Lithuania

There are no internet operations in Lithuania, but lotto is available over the telephone, branded as *Teletotto*.

Luxembourg

The national lottery offers games on the Internet, but it is to be played for fun only.

³¹⁰ www.goldenruleofpoker.com/legal.htm

³¹¹ www.rga.eu.com

³¹² www.gruppolottomatica.it

Malta

In 2004, Malta joined the EU and offered licences to remote gaming firms for a full range of services in addition to its 200 previously issued licences for internet betting. It is the first EU Member State to offer such all-encompassing regulated licensing facilities.³¹³ Malta's licensed firms include Bet 24, Beton Markets, Expekt, Sportwetten-Online and Unibet. Betfair is currently taking out a licence for an online poker site. Maltese licensed firms are not allowed to sell their services to Maltese residents.

The Netherlands

The current legal position is that Holland Casino's and De Lotto hold exclusive licences to offer internet gaming. Dutch operators have sued foreign online operators for accepting Dutch players - on the grounds that they do not have a Dutch licence. For example, the case De Lotto v. Ladbrokes sought to prevent Ladbrokes accepting Dutch players; the Court at Arnhem found in favour of De Lotto on 31st August 2005. The Dutch monopolies cannot accept internet bets and Holland Casino's is taking legal action against other Dutch online companies.

Poland

Researchers for the Swiss Institute of Comparative Law Report were not able to find information on remote gaming in Poland.

Portugal

According to Association of Remote Gambling Operations (ARGO), protection is given to State monopolies and national revenues. There is a threat to social order if money goes to states where the amount of winnings is more attractive.³¹⁴ It has since been announced that Portugal is considering the possibility of licensing online gaming, but remote services are intended to be provided only by holders of licences to operate land-based gaming in Portugal and only to residents of Portugal. Exceptions could be introduced by Ministerial order on the basis of international reciprocity.

Slovakia

TIPOS, a joint stock company and leading lottery provider, has a licence to offer lottery, bingo, keno and betting services. E-Keno and E-Tipos are available online to Slovak residents only, using Slovak banks for payments. In 2003, the Internet generated only 0.02% of sales.

The Republic of Slovenia

Sportna Loterija was the first lottery operator to introduce games for mobile phones. Casino company, HIT has worked with Boss Media to create an online casino, HIT Stardust.

Spain

Spain has an active and profitable remote gaming market, subject to strict State monopoly regulation, mainly by regional governments. Public lotteries make up 18% of the Spanish gaming market. They can sell their approved lottery products through the Internet. Internet sites must be registered with the Mercantile Registry and can offer lotteries and gaming.

Sweden

Sweden seeks to prevent private, for-profit gaming, preferring state-organised betting and lotteries. Two enterprises dominate the market: State owned AB Svenska Spel (lotteries, sports betting and gaming machines) and horse racing associations owned by AB Trav och Galopp (horse race betting). Svenska Spel offers lottery games, bingo and casino gaming on the Internet. Furthermore, Svenska Spel was the first national lottery to offer sports betting services online. In 2003, online revenues were €52.6 million, 4.2% of the total sales. In 2003, a private organisation was licensed to provide internet lottery, keno and scratchcards. In 2004, it was announced that Trisslotten, Sweden's most popular gaming product, is to be available both on Svenska Spel's internet site and via mobile telephone. The European Commission is investigating Sweden's gaming laws, on the issue of whether they are protectionist regarding State revenues. It is not illegal for Swedish gamblers to place bets on operators' websites, or even for the operators to accept them.

313 Swiss Institute of Comparative Law (2006)

314 Swiss Institute of Comparative Law (2006)

Asia Pacific

In the eyes of gaming website operators, Asia Pacific is a potential market. Gambling is illegal across much of Asia, but the traditional extensive gaming prohibitions across the countries in Asia Pacific have created a powerful demand for their borderless product. The Asia Pacific market is huge and because of the long suppressed interest, Asian players tend to spend the most money and are the most enthusiastic gamblers. The market in Asia Pacific is now growing faster than the United States and other well-established markets such as Great Britain.

Australia

A Federal law in Australia (The Interactive Gaming Act 2001) prohibits Australian and offshore bodies from providing internet gaming services to Australian residents. The Act defines an internet gaming service as an internet casino or interactive gaming website. The prohibitions of the Interactive Gaming Act apply to all internet gaming service providers no matter if they are in Australia or offshore or whether they are owned by Australians or foreigners. It is also stipulated in the Act that anyone breaching the Act is liable to a maximum penalty of AU\$220,000 (€139,000) per day for individuals and AU\$1.1 million (€694,000) per day for corporate bodies.³¹⁵

Nonetheless, the Act does not prohibit online sports betting and lotteries. Instead, these activities are regulated by Australian State and Territorial legislation. Generally, State and Territorial legislation prohibits online sports betting and lotteries unless the operator is licensed in the relevant jurisdiction.

Self-regulation and government monitoring are introduced in the Act. Internet service providers are required to develop a code of practice relating to internet gaming issues. If they fail to act, the Australian Broadcasting Authority may set industry standards that ensure the Internet service providers to provide customers with appropriate filtering software or similar devices to prevent access to prohibited sites.

The Authority can initiate investigations of interactive gaming activities and can also accept complaints from the public. It can also prevent interactive gaming service providers from targeting Australian customers by implementing a complaints-based command.

On July 12th 2004, the Australian Government made a decision against regulating betting exchanges following the review of the Interactive Gaming Act, 2001, which include a wide range of issues including problem gaming. Foreign online betting exchanges will be able to seek licences to operate in Australia after Federal cabinet decided not to amend the Interactive Gaming Act to ban them.

Hong Kong

In Hong Kong, gaming is basically illegal. Gaming is only restricted to activities organised by the Hong Kong Jockey Club. The aim of the Government's policy is to restrict gaming to a limited number of controlled authorised outlets. In accordance with this policy, the Jockey Club is authorised to operate betting on horse racing, football and the Mark Six lottery.

The Jockey Club is a non-profit organisation. A designated percent of surplus funds profiting from the gaming activities are donated to charities. The Club is Hong Kong's largest provider of charity funding other than the Government. The Club also pays betting duty to Government and is Hong Kong's largest single tax payer.

In May 2002, the Hong Kong Legislative Council passed the Gaming (Amendment) Ordinance 2002 to ban all offshore gaming, including offshore internet gaming. This legislation applies to both operators and bettors. Under the ordinance, offshore betting and bookmaking are criminal acts. Breaching the ordinance, the maximum punishment for brokers is seven years' imprisonment and a penalty of HK\$5 million (€476,000), while individual bettors face nine months' imprisonment and a penalty of HK\$30,000 (€2,854) if convicted. The Bill also prohibits financial institutions based in Hong Kong from preventing Hong Kong residents from placing internet gaming bets using credit cards or similar means of payments.³¹⁶

Nonetheless, some forms of internet gaming are legal in Hong Kong. The 2002 Amendment allow Hong Kong residents' legal participation on internet gaming with the only gaming service provider, Hong Kong Jockey Club, which has the complete control of the gaming market.

315 Kong, L., Ngan, L., & Leung, J. (2005)

316 Kong, L., Ngan, L., & Leung, J. (2005)

Macau

Macau became a special administrative region of China since December 20th, 1999. Gaming is completely legal in Macau. The Government is heavily dependent on the gaming sector. The Government has restructured the gaming sector after the return of its sovereignty to China. The forty years' monopoly held by the Macau Tourism and Amusement Company expired on December 31, 2001. Since then, the Macau Government has liberalised the gaming industry. Three casino operators are now allowed to operate gaming business in Macau.

Internet gaming is not addressed by Macau's gaming laws. No authorities have made effort to curb gaming activities on the Internet. Macau Tourism and Amusement Company now holds the Macauslot.com, a site that provides soccer and basketball betting services to players around the world, including those in jurisdictions where such bets are prohibited.

Philippines

Since June 11th, 2003, the Cagayan Special Economic Zone and Free Port of the Philippines accepted internet gaming licences applications following the approval of the Government of the Interactive Gaming Act. Cagayan offers a commercially attractive business model for online gaming operators to target the Asian market and international gaming community.

The Government authority, Cagayan Economic Zone Authority, supervises and manages all activities within the Cagayan Special Economic Zone and Free Port. Under the Republic Act 1922, the authority is empowered to issue internet gaming licences independently. Application fees are US\$29,756 (€22,099), with US\$18,598 (€13,814) refundable should the applicant not be successful. The application fee includes the first year's annual fee. In the second and subsequent years, annual fees are set at US\$29,756 (€22,099) per annum and includes up to US\$11,159 (€8,289) as an advance against future taxes.³¹⁷ Taxes are set at 2% of gross win. Once an applicant has been licensed, it allows them to conduct all approved forms of internet gaming.

Remote Gaming Case Study 1

Remote Gaming in Gibraltar³¹⁸

Remote Gaming is defined in subsec. 2(1) of the Gaming Ordinance 2005 in Gibraltar as:

“... gaming in which persons participate by means of remote communication, that is to say, communication using –

- (a) The Internet,
- (b) Telephone,
- (c) Television,
- (d) Radio, or
- (e) Any other kind of electronic or other technology for facilitating communication.”

Subsecs. 3(2) and 3(3) of the Ordinance establish a fairly clear separation between remote gaming licences and other kinds of licences. Thus, the holder of a remote gaming licence is not permitted to supply any kind of gaming services in “non remote” form, meaning in “bricks and mortar” gaming premises or otherwise face-to-face with players. Similarly, holders of other types of licences are not permitted to supply the relevant gaming services in “remote” form, except that bookmakers and lottery promoters may apply for special authorisation to respectively accept bets and sell tickets by telephone.

Despite all of these distinctions, it is generally unlawful under the Gaming Ordinance 2005 for suppliers who are not physically present in Gibraltar to offer gaming services in Gibraltar. This appears partly from the provisions of the Ordinance and partly from the standard terms of licence agreement offered by the Gibraltar Licensing Authority to potential licensees. Under subsec. 4(1), the Licensing Authority enjoys a very broad discretion as to the terms on which it agrees to issue individual licences.

Subsec. 3(5) of the Ordinance dictates that every licence issued must specify the “premises” on which the relevant gaming activities are authorised and subsec. 2(1) defines “premises” as “includ(ing) the whole or part of a building, any place (whether open or enclosed) and any ship, boat or other vessel or a vehicle of any description”. For the case of a remote gaming licence, subsec. 24(5) explains that such a licence may be granted on condition that all or a specified part of the equipment used in supplying the remote gaming services be situated in Gibraltar. Clause 17, in conjunction with the Third Schedule to the standard licence agreement in fact requires the licensee to “manage and operate all its Gaming Activities from the Approved Premises”, subject to the possibility of maintaining some facilities outside Gibraltar, while clause 18 obliges the licensee to obtain “all telecommunications services ... including the supply of a circuit and internet access service ... from a Gibraltar licensed provider using an authorised telecommunications network or system”. The Government of Gibraltar has stated that it holds the policy of licensing only operators who maintain “a substantial bricks and mortar presence” in Gibraltar. The unlicensed provision of gaming services in Gibraltar constitutes a criminal offence under subsecs. 7(2), 11(2), 15(2), 21(1), 22(3) and 23(1) of the Ordinance.

Beyond these requirements of physical presence, licences permitting the lawful supply of gaming services in Gibraltar are in fact issued only to enterprises which agree to be based in Gibraltar. Under clause 9 of the standard licence agreement, the licensee must be a company incorporated under the Companies Ordinance of Gibraltar and under clauses 24 and 25, the effective control, management, business operations and financial transactions of the licensee must all be carried out in Gibraltar, subject to exceptions for which the approval of the Government of Gibraltar has been obtained in advance.

Taken together, these provisions effectively prevent suppliers of gaming services who are based in other EU jurisdictions from lawfully supplying those services in Gibraltar to Gibraltar residents. This constitutes a complete barrier to the free movement of gaming services into Gibraltar.

As concerns the freedom of establishment in Gibraltar by suppliers of gaming services currently located elsewhere in the EU, it would appear that they are able to comply with all of the provisions of the Gaming Ordinance 2005 and with the terms of the standard licence agreement. It should be noted however, that para. 3 of Schedule 1 to the Ordinance instructs the Licensing Authority not to grant a licence in any case where it considers that “the public interest” would otherwise be prejudiced and states that the question of whether sufficient resources are available in Gibraltar to permit the establishment of additional gaming operations is to be taken into account when considering “the

³¹⁸ National Gaming Board of South Africa (2005)

public interest". This provision could potentially restrict the freedom of establishment in Gibraltar of suppliers of gaming services based elsewhere in the EU.

The market for gaming services in Gibraltar, as a more or less directly proportional equivalent of the population of that jurisdiction, is tiny. It is accordingly unlikely, for purely economic reasons, that many suppliers of gaming services based elsewhere in the EU would want to incur the costs of specifically targeting that market, either by establishing a local subsidiary or by attracting Gibraltar customers for directly supplied cross-border gaming services. As a matter of legal principle, it is nevertheless appropriate to note that such suppliers would be faced with solid barriers if they did so. The very peculiar nature of Gibraltar and its market for gaming services might conceivably give rise to extraordinary justifications for the maintenance of those barriers. The authors of the Swiss Institute of Comparative Law have not found or been referred to any justifications within the temporal scope of this Report.

It is interesting, finally, to note a restriction in the standard licence agreement on the cross-border supply of gaming services *from* Gibraltar. Clause 13 contains an undertaking by the licensee not to provide gaming services to any person in circumstances where this "would be illegal under the applicable law" and the somewhat doubtful statement that "the advertising and promotion of Gaming Activities can only be directed to citizens of nations in which it is not illegal for such activities to be undertaken". Besides the facts that the latter statement does not constitute an obligation imposed on the licensee and that former undertaking raises the complicated problem of identifying the law applicable to a particular gaming transaction, the importance of the provision is relative in that it purports to apply only when the relevant type of gaming or the particular gaming transaction is in any case prohibited by the law of a foreign jurisdiction. To the extent that this provision constitutes a barrier to the free movement of gaming services in the Internal Market, it accordingly does so only in a secondary manner, by reinforcing another (primary) barrier.

Remote Gaming Case Study 2

Remote Gaming Regulations in Malta³¹⁹

Remote gaming in Malta is regulated by the Remote Gaming Regulations 2004 issued under the Lotteries and Other Games Act 2001 (LOGA). The regulatory body in Malta supervising remote gaming operations is the Lotteries and Gaming Authority.

In order to provide remote betting/gaming services from Malta, one needs to obtain a licence of the class appropriate to the operations. Licensees are expected to operate in compliance to LOGA and the Regulations, as well as anti-money laundering legislation, electronic commerce legislation and any other relevant law. The following four classes of licences are available in Malta:

- **Class 1:** For operators managing their own risk on repetitive games. This class covers casino-type games, skill games and online lotteries.
- **Class 2:** For operators managing their own risk on events based on a matchbook. Under this class falls, fixed odds betting, pool betting and spread betting.
- **Class 3:** For operators taking a commission from promoting and/or betting games. This class includes P2P, poker networks, betting exchange and game portals.
- **Class 4:** To host and manage remote gaming operators, excluding the licensee him/her self. This is intended for software vendors who want to provide management and hosting facilities on their platform.

A licence of any class is granted for the period of five years and may be renewed thereafter for periods of five years. A company may apply for more than one class of licence, but the applicant must be a Maltese registered company.

A basic tenet of the Regulations is the requirement that the core part of the online gaming/betting operations must be physically located in Malta. Other components of the system, for example, front-end of the games or customer support operations, may be situated outside Malta at the location of choice of the licensee.

The online gaming system (which is defined as a computer system deployed by a licensee and including all its components, the operating system and application software) must be certified for compliance to the satisfaction of the Gaming Authority. Certification is only necessary for those components of the system, the functioning of which directly impacts the operation of the games or the reporting of gaming and financial transactions. Certification also involves audit as to whether the gaming system is compliant with the requirements of ISO-17799:2000 Information Technology - Code of Practice for Information Security. An “ISO-17799 gap analysis” audit will be carried out by experts approved by the Gaming Authority. Certification costs are chargeable to the licensee; such audit fees approximate to €2,500 for a standard, well documented gaming system. After the certification process required for issue of the full five year licence, the gaming system need not be tested regularly, but there will be follow up audits by the Gaming Authority when deemed prudent. Only significant changes to the live gaming system require approval by LGA before they can be introduced. Wherever a discrete random number generator (RNG) is used, its certificate must be submitted to the Lotteries and Gaming Authority.

Where the gaming system used by an operator has already been certified (which is possible when one uses the gaming platform already licensed in Malta), no further gaming system certification is required, but then the individual licensee’s Control System will be subject to audit by the Authority. The system of internal controls, reporting and accounting procedures used by the licensee constitute their Control System which must be approved by the LGA. Any gaming/betting offered by the licensee should only be conducted under the approved control system. The licensee will set up the Control System in the live environment prior to audit and may be permitted to run operations, under a provisional licence, during this period subject to scrutiny by the Lotteries and Gaming Authority.

Every licensee must have one key official, whose role is to personally supervise the operations of the licensee and to ensure that the licensee complies with the applicable laws, regulations, licence conditions and any directives. The key official must be a director of the licensee and be resident in Malta.

³¹⁹ Lotteries and Gaming Authority (LGA) of Malta (2006)

Taxation Summary

The gaming tax is differentiated according to the type of gaming/betting operations as follows:

Class 1: LM2,000 (€4,600) per month for the first six months, subsequently LM3,000 (€6,900) per month.

Class 1 under Class 4: The gaming tax payable by casino operator is LM500 (€1,150) per month. The gaming tax payable by the host platform is no tax for the first 6 months of operation, LM1,000 (€2,300) per month for the subsequent 6 months and subsequently LM2,000 (€4,600) per month for the entire duration of the licence.

Class 2: Fixed-odds betting: 0.5% on the gross amount of bets accepted. On betting exchanges: 0.5% on the sum of all net winnings calculated per player per betting market. (In cases where the exchange is involved in the risk) Pool betting: 0.5% on the aggregate of stakes paid.

Class 3: Tax is a percentage of net takings. Percentage amount depends on nature of operation.

Tax Capping

The maximum gaming tax payable annually by one licensee in respect of any one licence is LM200,000 (€460,000). However, in cases where casino operators (under Class 1) operate from the host platform (under Class 4 licence).

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 LM200,000.

Corporate Tax

An ITC (International Trading Company), the corporate vehicle for an online gaming operation from Malta, is subject to a corporate tax of 35% on profits like any other Maltese company. Shareholders of 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. This means that the effective rate of tax of 4.17% on profit is applicable.

Remote Gaming Licence Fees

- a. **Application fee:** The application fee for a new licence of any class is LM1,000 (€2,300). This fee is payable together with the submission of an application for the licence. The fee for the licence renewal (i.e., for subsequent five-year period) is LM500 (€1,150).
- b. **Annual fee:** The annual licence fee, for any class of licence, is LM3,000 (€6,900).

A Guideline to the Remote Gaming Licence Application Process

The Lotteries and Gaming Authority applies a rigorous process prior to granting a remote gaming licence. The application process to obtain a licence is divided into three stages.

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

On successful conclusion of the first stage the applicant is examined on the instruments required to conduct the business. This process includes examining incorporation documents, the games, the business processes related to conducting the remote games, the rules, terms, conditions and procedures of the games, the application architecture and system architecture of the gaming and control systems. Normally the first stage is completed within two weeks and the second stage within 3 weeks, depending on the correctness and completeness of the information submitted to the Authority.

At the end of the second stage the applicant is given a letter of intent to operate remote gaming with the intent of obtaining a certification of compliance within six months. The applicant may then establish the business in Malta, conclude all agreements and carry out testing of the set-up. A formal licence is issued when the Authority obtains approval from the compliance certification entity. A normal compliance certification procedure takes two weeks to be carried out.

First Stage: Fit and Proper

To start the process for a Remote Gaming Licence the applicant must complete an Application for Remote Gaming Licence (Form LGA/51/2004-1) and a Personal Declaration Form (Form LGA/51/2004-2) for each person with 5% or more interest. In the case that one or more of the parties is another business entity, ownership and incorporation details need to be submitted. Applications may be submitted manually or electronically. The following signed documents should accompany the application form.

- Affirmation and Consent;
- Authorisation to Release Information.

The following information and/or documents must be attached, if applicable:

1. For each qualifying shareholder appearing on the ownership structure form and key management personnel:

- A true copy of the birth certificate;
- A true copy of the passport;
- Passport size photo;
- A conduct certificate, or a relevant document, issued by a law enforcing authority in the country of origin of the applicant;
- Statement of Affairs;
- Credit and/or financial references;
- Bookmaker licences if issued in other countries;
- A document issued by a legal entity stating that all documentation submitted is a true copy of the original.

2. A copy of the business-plan must be submitted. The business plan should 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 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 and sales plan;
 - Forecast balance sheets;
 - A financing plan showing sources of finance, distinguishing between shareholder funds and other funds.

Second Stage: Business and Technical Ability Assessment

On successful completion of the first stage, the Authority shall inform the applicant to proceed to the next stage. The following documentations have to 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;
- Agreements with business partners, affiliates, agents.

Third Stage: Compliance Audit

- A Service Provider Authorisation Form (LGA/51/2204-4) if applicable, 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 must be attached to the agreement. Serial numbers for all equipment installed are to be attached.
- Details or copies of agreements with all third parties which may impact the licensee's gaming or control systems are also required by LGA (these are the gaming software provider, all payment service providers, any odds/results provider used, any other software partners)
- Before certification, the Control System submission will be reviewed and tests made on the live data and procedures. Samples reports from the live system will be requested to show how the management of the betting system is conducted.
- An assessment of the information management in the operations will be made; recommendations may be made to improve security of the players' data.
- The backup and disaster recovery procedures will be reviewed. Change management procedures will also be reviewed.
- The online website will be reviewed via a test account to see that the site operates in accordance with the Regulations and with the operator's declared procedures (including notifying changes). The Player Protection measures required by LGA will be confirmed.
- Bank account balances will be compared with online player account balances to ensure that the liabilities are sufficiently covered.
- Routine data submitted on a monthly basis to LGA will be reviewed. Any anomalies will be investigated with the operator to ensure that correct data is available to LGA and 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 will be scrutinised for probity. Copies of all relevant agreements and national licences will be required by LGA for review and filing.
- Staff lists and duties will be checked against the records held at LGA. The licence is then issued for a period of five years.

Licence and Application Fees

A non-refundable application fee is to be submitted with the application. The annual licence fee is to be paid within fifteen days from the formal grant of the licence and is to be paid annually. Payments can be done by a cheque drawn on Maltese Currency or bank transfer in favour of the Lotteries and Gaming Authority.

The Benefits of Malta's Remote Gaming Regulations

The provenance of licence applications range from all regions - from Asia to Europe to the Americas. Applications are processed efficiently, but rigorously. Licensees have to pass unscathed the three phases of the application process, before they are granted a full remote gaming licence for a period of five years with ongoing monitoring over the period. Strong, but pragmatic regulation has become the hallmark of Malta's success as the leading European remote gaming jurisdiction. Indeed, remote gaming operators are not enticed to get a Maltese licence by the competitive tax rates or the favourable corporate structures, but by the quality of regulation and jurisdiction stability which has become a point of differentiation that adds value to their business and minimises their risks, especially for those operators seeking a listing on the stock market or already publicly listed.

Over an incredibly short period of time the iGaming industry has transcended the limitations of bricks and mortar casinos and high street betting shops, relying evermore on high tech innovations that have increased player interactivity and made it possible to deliver gaming anytime, anywhere and on any telecommunication device. For this reason, iGaming is also fraught with difficulties when it comes to define its conceptual and legal parameters. The rules of the real world have become inadequate to address the issues of its cyber equivalent. The fact that many still persist in applying the bricks and mortar rules to the online reality is a mistake.

Remote Gaming Case Study 3

Remote Gaming Industry of Antigua³²⁰

As part of its economic development and diversification strategy, the Antiguan Government took a series of steps commencing in 1994 to provide a framework for the development of a remote gaming industry on the island.

By the late 1990s, Antigua had enacted a comprehensive regulatory scheme for companies providing remote gaming services. The island's reputation as a well-regulated jurisdiction for remote gaming operators contributed to a dramatic growth in its domestic gaming industry. Alongside the remote gaming services sector, other "offshore" services were developing in Antigua at the same time, particularly financial institutions and trust companies.

Antiguan regulation provides for two kinds of gaming and betting licences — (1) interactive gaming and (2) interactive wagering. The gaming licence is for casino-style gaming and the wagering licence is for sports betting.

The remote gaming operators in Antigua offer what is called "account betting" where a player must fund an account with money before being able to enter into wagers. The amount of a wager cannot exceed the funds on deposit in the account and players are not offered credit on which to gamble. If a wager is lost, the amount of the bet is taken from the player's account for the benefit of the operator. If the player wins, the winnings are credited to the account. Players may request that all or any portion of the funds in their account be directed back to them.

Summary of the Antiguan Gaming Regulations

- **Strict Licensing Requirements:** All licensed operators must meet a number of requirements and are subjected to a thorough due diligence review in order to be licensed.
- **Player Account Regulations:** There are a number of regulations governing player accounts. These regulations require operators to fully register and verify the identities of players before allowing participation in wagering. Operators must also confirm the name, date of birth and place of residence of registering players. Player identity must remain confidential.
- **Age Limitations:** Operators are not permitted to allow persons under the age of 18 to either participate in the conduct of the gaming operations or to participate as players or contestants in games.
- **Responsible Gaming:** Operators are required to display on their web sites a warning of the addiction possibilities of gaming and information on sites to assist compulsive gamblers. Operators are also required to exclude players from website access upon the player's request.
- **Anti-Fraud and Money Laundering Regulations:** The regulations ensure honest play and that account wagering systems cannot be used by players to launder money.

The Antiguan Directorate of Offshore Gaming

The Antiguan gaming regulations are enforced by the Antiguan Directorate of Offshore Gaming (the "Directorate"). The Directorate maintains a frequently updated web site providing information on obtaining a license, on existing licence holders, on legislation and on other topical matters. (See www.antiguagaming.gov.ag.) Licensed operators are required to take and investigate customer complaints and either report back to the customer or Directorate within twenty-one days of the complaint. Complaints may also be made directly to the Directorate. The Directorate is required to investigate and provide a response to the customer. The Directorate has investigatory powers and may conduct investigations of operators whether pursuant to a complaint or otherwise. The Directorate also has monitoring powers that permit it to oversee, monitor and supervise operators, their key persons, or games offered by the operator.

The Financial Services Regulatory Commission - Division of Gaming provides a comprehensive listing of all of our licensees for public information. The listing has been broken down into three main categories

- Active Licencees
- Closed Licencees
- Non-licencees

320 Antigua Online Gaming Association - <http://www.aoga.ag/abinfo.html>

Active Licensees refer to companies that have been issued licences by the Division of Gaming to perform interactive wagering, interactive gaming or both and that are still active and currently operating under the jurisdiction of Antigua and Barbuda.

Closed Licensees refer to companies that have been issued licences by the Division of Gaming to perform interactive wagering, interactive gaming or both and that are no longer active or operating under the jurisdiction of Antigua and Barbuda.

Non-Licensees refer to companies who are not currently licensed by the jurisdiction of Antigua and Barbuda to perform interactive wagering, interactive gaming or both, but have been fraudulently purporting to be licensed by the jurisdiction.

Antiguan Gaming Preferential Seal

The "Preferential Seal" is issued to qualifying offshore gaming entities licensed under the laws of Antigua and Barbuda and ensures the following:

- Directors and shareholders holding 5% or more for this company have met personal and corporate due diligence requirements.
- The software, which makes the odds for games played on this site, meets internationally recognised standards for fairness.
- The company has its physical corporate headquarters and primary server in Antigua and Barbuda. The primary server in this case is that on which the transactions are conducted.

Any site displaying the "Preferential Seal" can be validated by clicking on the image of the seal that is found on the site. Clicking on a valid seal will take you to a webpage that states the seal is valid and displays basic information about the company whose seal was clicked.

Appendix No. 17 – Gaming Licence [copy]



GAMING AND LOTTERIES ACT, 1956
NO. 374.
GAMING LICENCE.

C 07681
CANCELLED 01 OCT 2009

I, the undersigned, duly authorised by the Revenue Commissioners, hereby grant licence to
..... to carry on the business of Gaming at
..... from 19
to 19, he having paid the sum of for this licence.

This licence is issued subject to the conditions attached to the Certificate issued to the said
..... at
District Court on the day of 19

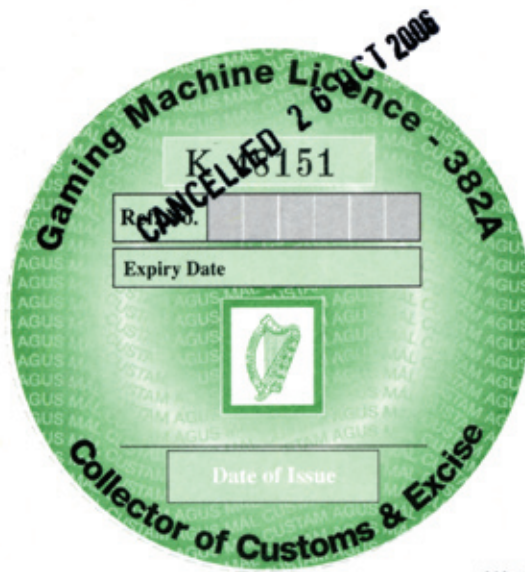
Dated this day of 19

Collector of Customs and Excise

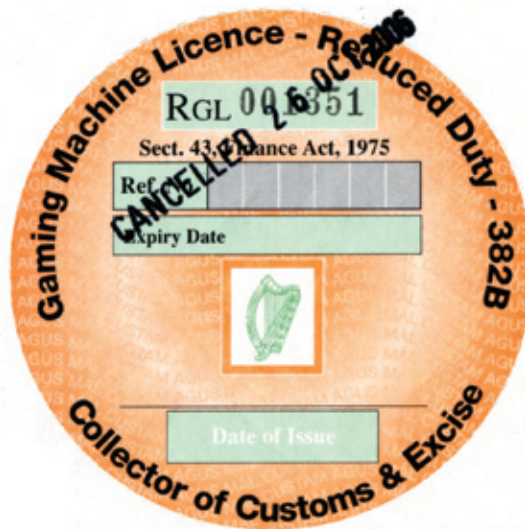
Office Stamp

..... Collection
GERO&M 8/89

Appendix No. 18 – Gaming Machine Licence [copy]



382 A



382 B

Appendix No. 19 – Page One – Amusement Machine Permit [copy]

1126



AMUSEMENT MACHINE PERMIT

[Large empty rectangular box for permit details]

Excise Duty

Trader's Reference No.

Permit Expiry Date

[Empty box for permit details]

I, the undersigned, duly authorised by the Revenue Commissioners, hereby grant an Amusement Machine Permit for the places listed on the schedule of such places issued by the Revenue Commissioners in correlation with this permit. This permit is valid from the date upon which it is granted until midnight on the permit expiry date shown hereon, duty as above having been paid.



CANCELLED 26 JUL 2005
1851

Collector of Customs and Excise



Appendix No. 19 – Page Two - Amusement Machine Permit Cont'd

1126

NOTES

1. This permit is granted under the provisions of Section 122 of the Finance Act, 1992.
2. An Amusement Machine, as defined in Section 120 of the Finance Act, 1992, shall not be made available for play in a public place unless:
 - (a) the operator has a valid permit granted under Section 122 of the Finance Act, 1992, in respect of that place, and
 - (b) there is a current licence, granted by the Revenue Commissioners under Section 122 of the Finance Act, 1992, displayed in a secure and conspicuous position on the machine.
3. This Amusement Machine Permit is granted in respect of the public places listed on the schedule of such places issued by the Revenue Commissioners in correlation with this permit.
4. The Revenue Commissioners shall, on application of the holder of this Amusement Machine Permit, issue an amendment to the schedule of public places issued in correlation with it so that the permit shall apply in respect of public places other than those specified at the time of first application.

Appendix No. 20 – Amusement Machine Duty Licence [copy]



381 A



381 C

Appendix No. 21

Illustrative List of Definitions

The Committee has revised some definitions in the 1956 Act and included others. These definitions are not intended to be definitive and may be subject to substantial revision.

'Amusement Hall' means a premises or part of a premises where person(s) may operate amusement machines only as authorised and licensed by the gaming regulatory authority.

'Amusement Machine' means a mechanical, electrical or electronic machine or device, operated by the insertion of a coin or amusement machine token or by the use of credits, which is intended exclusively for amusement purposes and not for gambling purposes and from which the player can obtain nothing representing money, goods or any other benefit other than the opportunity to continue to use the machine.

'Amusement Machine Token' means a device which can be bought for insertion in amusement machines instead of money, for the operation of such machines.

'Amusement-with-Prize(s) Machine' means a mechanical, electrical or electronic machine or device, operated by the insertion of a coin or token or device or by the use of credits, which is intended for the amusement of the player only and from which the player can obtain a monetary prize (max. €10) or goods to the value of (max. €20) e.g. crane amusement machines, pushers, redemption machines.

'Applicant' is a natural person or body corporate applying for a gaming operator's / manufacturer's / maintenance / inspector's / supplier's / personnel licence.

'Bet' includes wager and cognate words shall be construed accordingly (Betting Act, 1931).

'Betting' means making or accepting a bet on:

- (a) The outcome of a race, competition or other event or process,
- (b) The likelihood of anything occurring or not occurring, or
- (c) Whether anything is or is not true

and shall not include gaming.

'Casino' means a gaming premises or part of a premises where person(s) may participate in one or more table games or operate gaming machines pursuant to a casino licence as authorised by the gaming regulatory authority.

'Charity Gaming' means gaming organised by a registered charity, authorised by the gaming regulatory authority, the net proceeds of which are intended for social, cultural, religious, or other charitable or benevolent purposes only. All charity gaming must be operated by a gaming operator licensed by the gaming regulatory authority.

'Exclusion Order' means a written order of the gaming regulatory authority prohibiting a person from entering, or remaining in on a gaming premises.

'Game' is a game that may be conducted or played in a gaming premises as authorised by the gaming regulatory authority. All games are unlawful except those included in a list reserved to the gaming regulatory authority and this list may be added to without prejudice by order.

'Gaming' means the playing of a game as authorised by the Regulatory Authority for the chance of winning money, or something of monetary value or other stakes and does not include betting.³²¹

'Gaming Arcade' means a gaming premises or part of a premises where person(s) operate one or more gaming machines for the purposes of gaming pursuant to a gaming arcade licence as authorised by the gaming regulatory authority.

'Gaming Area' means those areas of the gaming premises that are indicated on the premises floor-plan as being the table gaming area, gaming machine area and any other area in which facilities for gaming are or are to be provided;

³²¹ Please read in conjunction with the definition on unlawful gaming. Alternatively the definition of gaming in the 1956 Act, or an appropriate variation thereof may be used i.e. "gaming' means playing a game (whether of skill or chance or partly of skill and partly of chance) for stakes hazarded by the players" Gaming and Lotteries Act, 1956. Part 1, section 2.

‘Gaming Employee’ means:

(a) Any natural person employed in a gaming premises who is connected with the operation of a licensed casino and without prejudice to the generality hereof include persons carrying out one or more of the functions set out in the Schedule [list of examples below] hereto.

(b) Employees of manufacturers or distributors of gaming equipment whose duties are involved with the manufacture, repair or distribution of gaming equipment, but does not include bartenders, cocktail waitresses and waiters or other persons engaged in preparing or serving food or beverages (unless acting in some other capacity).

Examples of Employees

- Pit Boss - The person who supervises all the games and casino personnel attached with a pit during a particular work shift. Pit bosses are in place to watch for cheating, settle disputes and give complimentary gifts to big bettors.
- Dealers or Croupiers
- Floor Man
- ‘Skills’ - A house employee who bets money and pretends to be a player to attract customers.
- Machine Operators
- Casino Security Employees
- Count Room Personnel
- Cage Personnel
- Slot Machine and Slot Booth Personnel
- Collection Personnel
- Casino Surveillance Personnel
- Simulcasting Facility Personnel involved in wagering related activities in a simulcasting facility
- Supervisors or Managers
- Ticket Writers

‘Gaming Equipment’ means a gaming machine, gaming device or thing used remotely or directly to conduct or monitor gaming and includes:

- (a) Any electrical, electronic or mechanical device used or suitable for use in relation to gaming
- (b) A device or other thing which is incidental to the basic operation of gaming equipment.

‘Gaming Inspector’ means a person appointed by the gaming regulatory authority as an inspector to conduct authorised inspections of gaming premises and operations therein.

‘Gaming Instrument’ means anything used for the purposes of gaming and includes without prejudice to the generality hereof money, coins, notes, cards, chips, gaming wheels, dice, balls, counters and anything included on a list reserved to the gaming regulatory authority which may be added to without prejudice.

‘Gaming Machine’ means any device whether wholly or partly mechanically, electrically or electronically operated that is so designed that:

- (a) It may be used for the purpose of playing a game, and
- (b) As a result of participating in a game on the device, winnings may become available and
- (c) Includes any machine declared by the gaming regulatory authority to be a gaming machine.

‘Gaming Maintenance Licence’ means a licence issued to a person who will be required to meet maintenance standards and specifications as set down by the gaming regulatory authority and upon meeting those specifications will be approved by the gaming regulatory authority.

‘Gaming Manufacturer Licence’ means a licence issued to a person who will be required to meet manufacturing standards and specifications as set down by the gaming regulatory authority and upon meeting those specifications will be approved by the gaming regulatory authority.

‘Gaming Operator’ means the holder of a gaming operators’ licence as issued by the regulatory authority.

'Gaming Premises' means either:

- (a) Casino, or
- (b) Gaming arcade

as licensed by the gaming regulatory authority

'Gaming Surveillance Licence' means a licence granted by the gaming regulatory authority to a person employed in the operation of gaming surveillance.

'Non-Gaming Area' means those areas of the casino that are available to customers and are indicated on the plan as being areas other than gaming areas.

'Player' means a natural person who enters a gaming premises and registers, with or without the intention of participating in games.

'Playing' involves the act of playing a game.

'Prize' means money or money's worth and includes both a prize provided by a person organising gaming and winnings of money staked.³²²

'Remote Gaming' means gaming in which persons participate by the use of remote communication.

'Remote Communication' means communication using

- (a) The Internet,
- (b) Telephone,
- (c) Television,
- (d) Radio, or
- (e) Any other kind of electronic or other technology for facilitating communication.

'Table Games' include, but are not limited to, the following:

- (a) Baccarat/Mini Baccarat
- (b) Blackjack
- (c) Roulette
- (d) Pai Gow
- (e) Mini Dice
- (f) Tai Sai
- (g) Pontoon
- (h) French Boule
- (i) Caribbean Stud Poker

This list is to be reserved to the gaming regulatory authority and may be added to without prejudice.

'Table Gaming' means casino games played on ordinary gaming tables, or partially or wholly automated gaming tables.

'Table Gaming Area' in relation to a casino premises licence, means the area indicated on the plan as being for table gaming.

'Unlawful gaming' means all gaming that takes place without a licence issued by the gaming regulatory authority and all gaming played in a gaming venue that has not been permitted by the gaming regulatory authority.³²³

³²² As per Great Britain's Gambling Act 2005

³²³ Please read in conjunction with the definition on gaming. This does not include small-scale, non-commercial private gaming.

Appendix No. 22 – Excerpt from Great Britain’s Gambling Act 2005

PART 17

LEGALITY AND ENFORCEABILITY OF GAMBLING CONTRACTS

334 Repeal of provisions preventing enforcement

(1) The following shall cease to have effect—

(a) section 1 of the Gaming Act 1710 (c. 19) (voiding of security for winnings or for repayment of gaming loan, &c.),

(b) remaining provisions of the Gaming Act 1835 (c. 41) (security deemed given for illegal consideration),

(c) section 18 of the Gaming Act 1845 (c. 109) (voiding of gaming contracts),

(d) section 1 of the Gaming Act 1892 (c. 9) (voiding of promise to repay), and

(e) in section 412 of the Financial Services and Markets Act 2000 (c. 8) (gaming contracts)—

(i) in subsection (1)(a), the words “section 18 of the Gaming Act 1845, section 1 of the Gaming Act 1892 or”, and

(ii) subsection (1)(b).

(2) The repeals in subsection (1) do not permit enforcement of a right which is created, or which emanates from an agreement made, before this section comes into force.

335 Enforceability of gambling contracts

(1) The fact that a contract relates to gambling shall not prevent its enforcement.

(2) Subsection (1) is without prejudice to any rule of law preventing the enforcement of a contract on the grounds of unlawfulness (other than a rule relating specifically to gambling).

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<http://www.ukgamblingforums.co.uk>
<http://www.unr.edu/gaming/pubs/bogpref.asp>
<http://www.worldcasinodirectory.com/>

Regulators

EUROPE

Alderney Gambling Control Commission (<http://www.gamblingcontrol.org/>)

Belgium - Commission de Jeux de hasard (Belgian Gaming Commission)

Denmark National Gaming Authority: Toldskat <http://www.skat.dk/SKAT.aspx?oID=100239&vID=0>

Great Britain - Gaming Board for Great Britain (<http://www.gamblingcommission.gov.uk>)

Guernsey - Gambling Control Commission (<http://www.gov.gg/ccm/navigation/home-department/gambling-control/>)

Hungary - Gaming Board for Hungary (<http://www.szf.hu/>)

Isle of Man - Gambling Control Commission (<http://www.gov.im/gambling/>)

Jersey - Gambling Control and CI Lottery <http://www.gov.je/EconomicDevelopment/Gambling+Control+and+CI+Lottery>

Latvia - Lotteries and Gambling Supervisory Inspection (http://www.iaui.gov.lv/english/par_m/)

Lithuania - State Gaming Control Commission (<http://www.vlpk.lt/>)

Malta - Lotteries and Gaming Authority (<http://www.lga.org.mt/lga/home.asp>)

Norway - National Gaming Authority (<http://www.lotteritilsynet.no/>)

Portugal - Inspeção-Geral de Jogos General Inspectorate on Gaming - Portuguese Gaming Board (<http://www.igjogos.pt/>)

Spain - Comisión Nacional del Juego (<http://www.mir.es/juego/>)

Sweden - National Gaming Board (<http://www.lotteriinsp.se/>)

Switzerland - Federal Office of Justice (<http://www.ofj.admin.ch/bj/fr/home.html>)

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