

CONTENTS

Introduction	1
“Gaming” and “Unlawful Gaming”	1
“Unlawful Gaming” Applies to Operator, Not Customer	2
Casinos and Private Members’ Clubs	2
Advertising of Gaming	2
Sanctions for Violations of 1956 Act	3
Anti-Money Laundering	3
Recent Developments and Future Regulation	3

THE REGULATION OF GAMING IN IRELAND

Recent Developments

Introduction

Gaming in Ireland is regulated under the Gaming and Lotteries Act 1956, as amended, (the “1956 Act”). The 1956 Act has not been updated to specifically address online gaming. Ireland also has a thriving licensed bookmaking industry which is regulated separately under the Betting Act 1931 and multiple other amending Acts and Regulations, which create a regulatory framework that is operated by the Revenue Commissioners (off-course) and Horse Racing Ireland (on-course).

“Gaming” and “Unlawful Gaming”

The 1956 Act prohibits gaming in Ireland with the exception of gaming carried on at a travelling show, carnival or similar event or at a licensed amusement hall or funfair. All other gaming is prohibited unless:

- (a) it falls outside the definition of what constitutes “unlawful gaming” under the 1956 Act; or
- (b) it can be brought within the exception for private members’ clubs.

“Gaming” is defined under the 1956 Act as “playing a game (whether of skill or chance or partly of skill and partly of chance) for stakes hazarded by the players”. This broad definition captures almost all popular forms of gaming, including poker, blackjack, roulette and slot-machine type games.

However, some games can be structured in such a way as to avoid being “unlawful gaming”. Unlawful gaming occurs when the game is one in which the chances of the players, including the banker, are not equal and in which any portion of the stakes is retained by the promoter or by the banker otherwise than as winnings on the result of the play. Section 4(3) of the 1956 Act provides that gaming shall not be unlawful if no stake is hazarded by the players with the promoter or banker other than a charge for the right to take part in the game, provided that:

- (a) only one such charge is made in respect of the day on which the game is played, and
- (b) the charge is of the same amount for all players, and

- (c) the promoter derives no personal profit from the promotion of the game.

Gaming by means of slot machines is permitted provided the person who makes the gaming machine available for play has a valid licence for each gaming machine, as required by Section 43 of the Finance Act 1975, as amended. The licensing regime in respect of slot-machines affords the various council or district areas discretion to determine locally whether slot-machines are permissible or not.

“Unlawful Gaming” Applies to Operator, Not Customer

It is worth noting that the offence of unlawful gaming is committed by the operator rather than the customer. Section 4(1) of the 1956 Act makes it an offence for a person to promote, or assist in promoting, or to provide facilities for, any kind of gaming. Thus, the 1956 Act effectively prohibits the operation of casinos in Ireland and at present, it is not possible to obtain a gaming licence to cover casino activity in Ireland. However, nothing in the 1956 Act prohibits Irish residents from gambling on an internet casino site established outside of Ireland. In addition, we are not aware of the Irish authorities attempting to take action against internet casinos, and there does not appear to be any intention to prevent Irish residents using such services.

Section 36(1) of the Betting Act 1931 provides that “every contract by way of gaming or wagering is void”. This means that, in theory at least, customers may be able to renege on gaming contracts they have entered into with online operators on the grounds that such contracts are void. Section 36(2) goes on to provide that a promise, express or implied, to pay any person any money paid by him under or in respect of a gaming or wagering contract is void and no action shall lie for the recovery of any such money. Credit facilities for gaming or wagering contracts are therefore entirely at the operator’s risk.

Casinos and Private Members’ Clubs

Notwithstanding the *prima facie* unlawful nature of their activities, casinos do operate in Ireland under the guise of private members’ clubs. It should be noted, however, that the private

members’ clubs exemption only applies to private lotteries, and there is no such private gaming exemption provided for under the 1956 Act. As such, private members’ clubs operating casinos are illegal if they promote or provide facilities for any kind of gaming that is deemed “unlawful gaming” for the purposes of the 1956 Act. In practice, these private members’ clubs offer casino games such as poker, roulette and blackjack, which fall within the definition of unlawful gaming, and are therefore in breach of the 1956 Act.

It is reported that there up to 50 such private members’ clubs operating in Ireland. In light of the fact that the relevant authorities had, until very recently, turned a blind eye to casinos operating illegally, operators have extended their activities and some now even offer online gaming services. However, this apparent lack of appetite on the part of the relevant authorities to strictly enforce the terms of the 1956 Act appears to have dissipated in the last few days, with a casino raid as recently as Saturday 17 May 2008 indicating that there will be a shift in what will be tolerated. This raid is reported on in more detail below under the section relating to Sanctions for Violations, and Enforcement, of the 1956 Act.

Advertising of Gaming

Advertising of gaming is permitted provided the gaming itself is lawful. In practice, however, this will mean that advertising gaming websites within Ireland will be prohibited as such gaming is unlawful. This would also apply to advertisements placed in the Irish media. Advertisements, however, in respect of offshore operations made available to Irish residents, may be acceptable on the basis that Irish legal jurisdiction would not extend to the offshore operations. There is an argument therefore that advertisements placed in Ireland by offshore operators may well be legal as the gaming is not illegal *per se*, as it is not taking place in Ireland. In practice, there is relatively little advertising of offshore online gaming in Irish print media, on billboards or on television or radio, the obstacle to such advertising apparently being that the publishers, agencies and broadcasters are wary of the law, rather than the actual law itself.

Sanctions for Violations, and Enforcement of the 1956 Act

Both civil and criminal sanctions can be imposed on operators who promote or assist unlawful gaming. Under Section 37 of the 1956 Act, a member of the Irish police force (An Garda Síochána) may seize any gaming instrument which he has reason to believe is being used for unlawful gaming. Search warrants can be issued to An Garda Síochána under Section 39 of the 1956 Act where there are reasonable grounds for suspecting that a breach of the 1956 Act is taking place in any place or premises in the Irish State.

Under Section 40 of the 1956 Act, a member of An Garda Síochána may arrest without warrant any person whom he finds conducting or assisting in conducting in a public place any kind of gaming which he has reason to believe to be contrary to the 1956 Act. The penalty for unlawful gaming is a maximum fine of €127 and/or a maximum three months' imprisonment or both. There are similar sanctions in respect of persons who authorise or permit a body corporate to undertake such illegal activities.

Until recently, there had been few reported enforcement actions against private members' clubs, although the Northern Irish Poker Championship, due to have been hosted in Ireland, was reported to have been cancelled in March 2007 at the last minute on foot of a raid by An Garda Síochána.

Newspaper reports on 19 May 2008 have indicated that the legality of casinos operating as private members' clubs is likely to be tested in the courts in the near future after An Garda Síochána raided and closed a casino in Clonmel, Co. Tipperary on Saturday 17 May 2008. It is reported that the enforced closure of the Atlantis Casino Club, believed to be the first time such a club was forcibly shut down for alleged breach of the 1956 Act, will have major implications for other casino operators. The action was taken under Section 39 of the 1956 Act, on foot of a search warrant issued by the District Court. It is understood that a roulette wheel, a safe and gambling chips were seized as part of the operation.

Significantly for punters, it is reported that those members who were present at the Atlantis Casino Club for the purpose of gaming with the house were told that they were not doing anything illegal. This accords with Section 4(1) of the 1956

Act which directs the prohibition at the operators rather than the customers (discussed opposite). This will be of interest to those operating in the Irish market through online facilities that are based off-shore, as this would appear to be an affirmation that a properly structured operation whereby the key infrastructure is based outside of Ireland will not be in violation of the 1956 Act.

The Gaming and Leisure Association of Ireland, which it is reported represents 12 casinos, claims it is not subject to the 1956 Act because its clubs function as private members' clubs. It remains to be seen what action, if any, the Irish courts will take on foot of the crack-down by An Garda Síochána. What is beyond doubt, however, is that some reform is needed, and this recent action will hopefully spur the present administration to offer more clarity on the gaming laws in Ireland by way of new legislation.

Anti-Money Laundering

The law relating to money laundering in Ireland is contained, primarily, in the Criminal Justice Act, 1994 ("the 1994 Act") as amended. The 1994 Act gave effect to the first EU Money Laundering Directive 91/308/EC. The Second Money Laundering Directive 2001/97/EC extended the list of businesses regulated by the anti-money laundering regime established by the 1994 Act to include casinos.

A new bill called the Criminal Justice (Money Laundering) Bill 2008 has recently been published which will transpose the Third Money Laundering Directive 2005/60/EC into Irish law. Under the proposed legislation, gaming clubs and private members' clubs that carry on casino-like activities will be subject to anti-money laundering procedures and thus, they will be obliged to adopt strict customer due diligence measures and implement document management systems to ensure records are kept for five years. The Bill is set to bring private members' clubs, which have up until now been excluded, under the 1994 Act.

Recent Developments and Future Regulation

The Financial Action Task Force (FATF), in its Third Mutual Evaluation Report on Ireland, published in 2006, expressed concern at the ever-expanding number of private members' clubs in Ireland operating casino-like facilities that create a risk of money laundering. This, as well as the

many media reports on the number of such private members' clubs prompted the then Minister for Justice to respond to these developments.

In August 2006, the Casino Regulation Committee (the "CRC") was established to prepare a report on how the casino industry in Ireland should be regulated. While the report has not yet been published, media reports have indicated that one of the conclusions reached by the CRC is that there will be significant benefits for Ireland if the industry is properly regulated. It is widely reported that the CRC advised that the gaming industry should be put on a legal footing, but that large-scale "super" casinos should be banned until their social and economic effects can be measured. It is understood that the report also recommended that work should commence on a separate regulatory framework for remote gaming under the same regulatory authority that will govern land-based casinos.

The newly appointed Taoiseach (prime minister) in Ireland, Mr. Brian Cowen, announced a cabinet reshuffle on 7 May 2008. As part of that reshuffle, Mr. Dermot Ahern has been appointed as Minister for Justice, Equality and Law Reform. His immediate predecessor, Mr. Brian Lenihan, had indicated that a cross-party parliamentary committee would be established to consider the findings of the CRC and the introduction of new legislation. It remains to be seen how Minister Dermot Ahern intends to tackle this issue, though some who favour regulation of the industry point

to Minister Ahern's background as a solicitor as being a positive sign.

The recent raid on one of two casinos based in Clonmel, Co. Tipperary would indicate that further developments in this area are imminent. In these circumstances, Minister Ahern and his cabinet colleagues may be forced to tackle this issue as a priority.

The form that any new legislation takes is sure to be of keen interest to many stakeholders. There is likely to be a public consultation period, during which period many of the major stakeholders will lobby hard for a favourable tax regime, particularly in the context of international competition.

The current regulatory regime is likely to be the subject of a radical overhaul in the near future, assuming the government accepts the advice of the CRC and implements their recommendations but also as a response to the recent raid.

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