Player Protection for Online Gamblers

Author: Hans-Christian Walderstedt Jonson
Supervisor: Professor Lena Olsen
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### Abbreviations

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<td>AGCC</td>
<td>Alderney Gambling Control Commission</td>
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<td>DoJ</td>
<td>Department of Justice</td>
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<td>EEA</td>
<td>European Economic Area</td>
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<td>EG</td>
<td>Everleaf Gaming</td>
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<td>European Union</td>
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<td>FTP</td>
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<td>MediaCorp</td>
<td>Media Corporation public limited company</td>
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<td>The Act</td>
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1 Introductory chapter

1.1 Introduction
Every time that I hear about a company that offers online gambling has stolen millions of dollars from their players I reckon there will be an outrage from politicians, legal scholars and the media. When service providers steal from customers it is usually big news and legislators are often keen to use the opportunity to revise their own laws in order to avoid similar incidents occurring in their country. However, it would seem that when it is a gambler that has been deceived the theft is not all that interesting. I say this because, apart from a few articles about some of the bigger scandals in mainstream media, no one outside the industry seems to notice.

Since the dawn of the new millennium online gambling has grown to become a billion dollar industry that is still expanding. There are more and more companies who enter the market but, unfortunately, there have also been an increase in instances where such companies have stolen money from their players. Players have to deposit money, which is usually done through the software or homepage of the site which the player intends to gamble on, and the money is then transferred to either the company itself or a bank or other payment processor. These deposits have been stolen by both the gambling sites and third parties in the past. Many of these scandals have ended with players simply losing their deposited money without anyone being formally charged with a crime.

1.2 Purpose and delimitation
Online gambling is a relatively new phenomenon and the regulation of the industry is still evolving. In this thesis I will focus on the rules that strive to protect the ones who chose to engage in online gambling sites from getting the funds that they have deposited with the gambling site stolen. I chose to do this because there have been numerous scandals where players have had their money stolen or frozen by authorities pending investigation for long periods of time. Because any insolvency proceeding in all likelihood would prove inadequate to refund players in full, the possibility of using such a measure to retrieve money from an insolvent online gambling provider will not be discussed in the thesis.

1 For a summary of some of the biggest scandals up until July 2012 see http://www.pokerhistory.eu/history/online-poker-scandals.
In this thesis I will describe some of the protections players have against getting their money stolen that can be found in a regulatory regime and discuss how some of these safeguards could have prevented the actions that enabled an online gambling provider from stealing hundreds of millions of dollars from its players. I will also discuss what other measures could be used to give players the protection they deserve when depositing money with an online gambling provider.

In chapter 2 I will give a brief introduction to the industry, which will focus on the companies that offer online gambling and countries that issue licences. I will also discuss what transpired behind the scenes when an online gambling provider stole a large amount of money from its players. I chose to focus on this scandal in particular because there are two thorough investigations available about what happened which, unfortunately, is not the case with other similar incidents. In chapter 3 I will present Malta’s regulatory regime and discuss some of the rules that can protect players from having their deposited money stolen. I chose Malta because it is one of the most popular countries to hold a licence in for online gambling providers and because its legislation concerning online gambling is regarded to be of a high level and to be sophisticated. In chapter 4 I will discuss how Malta’s regulation of online gambling protects players from having their money stolen and also suggest new measures that can further protect players. In chapter 5 I will sum up the findings of this thesis.

1.3 The parties mentioned in this thesis
To clarify, something should be mentioned about the naming of the parties and the handling of the government bodies mentioned in this thesis. Companies that offer online gambling often choose to do this under a different name than their registered company name. This can be done by starting a new subsidiary through which the gambling services are offered or by simply offering gambling under different trademarks. In this thesis I will use the trademarks used by companies to offer online gambling since that is the most commonly used way to identify a specific party.

1.4 Methodology
The sources forming the basis of this thesis will mainly be legislation, articles, press statements, internet sources, court documents and documentation of a regulators rea-

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soning for revoking a licence. I have also been provided with a spreadsheet prepared by a group of players affected by an ongoing online gambling scandal. Because of the scarcity of legally relevant articles and publications dealing with player protection, in the sense this thesis will discuss it, there is no basis for a discussion about the practical application of the Maltese rules available. I sent out a request for information to the regulating body for gambling in Malta asking for clarification about how the rules discussed in this thesis have been enforced which, sadly, yielded no response. Because of this I will rely on an example of a company, that operated under rules issued by another country, to exemplify how companies can steal from its players. This example will then be used in the discussion about the practical application of the rules.
2 Online gambling

2.1 Defining online gambling
In 2011 the European Commission published a green paper, a document aimed at start-
ing discussions among interested parties on topics at European level, on online gam-
bling in the Internal Market of the European Union (the EU). In the green paper, online
gambling services was defined as “any service which involves wagering a stake with
monetary value in games of chance, including lotteries and betting transactions that are
provided at a distance, by electronic means and at the individual request of a recipient of
services.” In this thesis I will rely on the definition of online gambling derived from the
green paper.

2.2 The market for online gambling
According to a working paper published by the European Commission, the annual reve-
nues generated by the online gambling industry in Europe exceeded 9.3 billion euro in
2011 and had an average annual growth rate of 14.7 %. In 2010 the total global internet
gambling market was estimated to be worth approximately 23.28 billion euro. Online
betting is recognised as the most popular form of online gambling while poker is the
second most popular.

2.3 The competitive situation for online gambling providers
Companies that offer online gambling offer digital services over the internet and as such
are largely unaffected by factors like geographical distances, taxes on imports and ex-
ports and costs incurred for buying and maintaining real property. This holds especially
ture when compared to their land-based brick-and-mortar counterpart who need alluring
facilities to attract and retain customers and employees to deal card games, run table
games, receive bets, supervise the games offered and much more. Companies that offer
online gambling need a licence in order to operate in most jurisdictions, which means
that they will suffer costs for complying with the conditions of the licence. The condi-

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3 The European Commission, Green Paper on Online Gambling in the Internal Market, SEC(2011) 321
final.
345 final, p. 9.
6 Ibid.
7 Ibid., p. 10.
tions of a licence also often mean that the licensee must pay taxes and licensing fees, and in some cases host their servers or management inside, the relevant jurisdiction. Because of this, tax considerations, bandwidth availability, reliability of power and communications network, infrastructure and server location requirements, the regulatory regime, licensing costs, and the ability to service target markets are relevant factors to consider when deciding in which jurisdiction the company should apply for a licence.8

Both William Hill and Ladbrokes, two of the most prominent online gambling providers in the UK, announced in August 2009 that they were moving their online operations from the UK to Gibraltar.9 The move meant that the companies enjoyed a reduction in taxes which both saw as a necessity in order to keep up with the competition.10 Betfair, another online gambling behemoth, announced the move of its betting exchange from the UK to Gibraltar in March 2011, citing tax reasons and the desire to compete on the same terms as the majority of online betting companies operating in the UK.11 In July 2013, Svensk Travsport (the Swedish Trotting Association) who together with Svensk Galopp (the Swedish Jockey Club) own the Swedish horse betting monopoly Aktiebolaget Trav och Galopp (the Swedish Horse Racing Totalisator Board) threatened to move its online business to Malta. They claimed that restrictions on advertising and development of new betting products as well as taxes and an obligation to contribute to the sport put them at a disadvantage against foreign, unlicensed online gambling providers.12 An agreement was eventually reached that meant improved conditions on licensure allowing for a modernisation of the betting products offered, a reduction of the obligation to contribute to the sport and a promise from the government to investigate the possibility of a lowering of the gambling tax.13

The fact that these companies moved, or at least contemplated a move, shows just how fierce the competition can be in the online gambling market and how differences in total costs in one jurisdiction can have a significant impact when companies decide on where to get their gambling licence. Legislators know this and therefore should not be

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10 Ibid.
overly keen on implementing conditions on licensees that will create additional costs for the licensees, since this could mean that they could lose tax revenue to countries with lower overall costs.

2.4 The case of Full Tilt Poker (FTP)

2.4.1 Background

FTP was licensed by the Alderney Gambling Control Commission (AGCC) that license and regulates gaming activity on the island of Alderney.\(^{14}\) The conditions of the licence included, among other things, that the company would ensure that there at all times were enough funds held in the company’s account to cover all balances held by the company on behalf of its customers.\(^{15}\) According to Alderney eGambling Regulations 2009 regulation 231(3) the funds should also be remitted to the customer upon request.

In March 2008 a potential customer e-mailed FTP’s customer support, citing concerns over the safety of deposits and asking if the funds in a FTP account were held in trust. When the customer service manager forwarded this e-mail to Raymond Bitar, co-founder and Chief Executive Officer of FTP, he advised the manager that FTP could represent to players that FTP kept all of its player funds in segregated accounts and that funds would always be available for withdrawal by players.\(^{16}\) The customer later replied to customer service, asking for clarification if the players’ funds were kept in segregated accounts that FTP could not use for its own purposes. Bitar then reviewed and approved a draft response that assured the customer that the players’ funds were kept in separate accounts distinct from FTP’s operating accounts.\(^{17}\) Templates for responding to questions regarding the security of the players’ funds were subsequently created, using the same language that Bitar had approved, and used by FTP customer service.\(^{18}\) A representative from FTP also replied to forum posts on a popular online discussion forum about poker, discussing if FTP used players funds to cover advertising and other operating costs, representing that player funds where secure and kept segregated from FTP’s operating accounts.\(^{19}\)


\(^{16}\) *United States v. Raymond Bitar and Nelson Burtnick* Superseding Indictment, S8 10 Cr. 336, pp. 7-8.

\(^{17}\) Ibid., pp. 8-9.

\(^{18}\) Ibid., p. 9.

\(^{19}\) Ibid., pp. 9-10.
However, in a plea agreement struck between Bitar and the prosecutors from the United States District Court for the Southern District of New York, Bitar confessed to have worked with others to defraud FTP’s players by misleading them about the security of their funds and that they were held in separate and segregated accounts. Money that FTP collected from their players had in reality simply been transferred into company bank accounts, where the players’ funds and operating funds were combined. By telling potential customers that this was not the case customers were tricked into depositing money on the site, believing their funds would be safe and secure.

From at least as early as the end of August 2010, FTP held far less funds in bank accounts than was owed to the players. To conceal this fact Bitar ordered the company’s Director of Finance to falsify the monthly financial reports submitted to the AGCC. This was done by declaring money owed to FTP by payment processors as cash at hand, even though this money had been stolen by a payment processor or been seized pursuant to a US court order. E.g., in the financial statement prepared for the AGCC in August 2010, FTP claimed to have about 370 million dollars cash in hand which was enough to cover the about 322 million dollars owed to players. However, according to an internal financial report FTP only had 124 million dollars of cash available in its bank accounts at the end of August 2010, approximately 245 million dollars less than had been reported to the AGCC and 200 million dollars less than was needed to refund all of its players. According to a projection presented to Bitar by his financial staff in the beginning of 2011, all of the company’s cash would run out within months. Despite the warning from his financial staff, Bitar continued to approve distributions of approximately 10 million dollars per month to him and the other owners, widening the gap between money owed to players and cash at hand.

Internal financial statements dated March 31st 2011 showed that FTP owed its players 390 million dollars but had less than 60 million dollars available in its bank ac-

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21 United States v. Raymond Bitar and Nelson Burtnick Superseding Indictment, S8 10 Cr. 336, p. 10.
22 Ibid., p. 12.
24 Ibid.
26 Ibid.
28 Ibid.
counts. On April 15th 2011, after a Superseding Indictment was unsealed which charged eleven defendants, among them Bitar, FTP’s internet domain was seized and the website shut down. An agreement was reached which provided that FTP was allowed to use its internet domain name in order to let US players withdraw their funds from the site. As players from both the US and the rest of the world tried to get their money off the site they were told that they could not be repaid immediately. FTP blamed this on “legal and jurisdictional issues” and “anti-fraud and anti-money laundering checks” they were conducting in order to stall for time and get new deposits to pay off the backlog of withdrawal requests and cover operating expenses.

FTP’s licence was suspended by the AGCC on July 27th 2011 and subsequently revoked on September 29th 2011. The AGCC also released a detailed notice where it explained its reasoning for revoking the licence. Among other things, the financial situation, failure to keep sufficient funds to cover customers’ balances and inaccurate accounting records were cited as grounds for the revocation of its licence. When FTP was forced to stop operating it was unable to repay its players all of the approximately 350 million dollars it owed them.

2.4.2 The Unlawful Internet Gaming Enforcement Act (the UIGEA) and the failing banks

On October 13th 2006, the United States enacted the UIGEA. The act made it a federal crime for a person engaged in the business of betting or wagering to knowingly accept most forms of financial transactions “in connection with the participation of another

29 Ibid., p. 16.
32 United States v. Raymond Bitar and Nelson Burtnick Superseding Indictment, S8 10 Cr. 336, pp. 16-17.
36 Ibid., p. 4.
37 Ibid., pp. 11-12.
person in unlawful internet gambling.” Following the enactment of the UIGEA, most online gambling providers exited the US market. Because of this, and because they wanted to continue operating in a market with virtually no competition, online gambling providers who remained in the US market post-UIGEA needed to find a solution that enabled players to continue to deposit and withdraw money from the poker sites. This was a huge problem for the online gambling providers since Visa and MasterCard required banks that processed credit card transactions for merchants, so-called “acquiring banks”, to apply a particular transaction code to transactions that involved internet gambling. Most US banks refused to extend credit to customers for internet gambling purposes and automatically declined transactions bearing the internet gambling transaction code. Because of this, FTP sought out small banks that were on the verge of default who agreed to process gambling transactions in return for multi-million dollar investments, basically bribes, in the banks.

2.4.3 Aftermath

Bitar surrendered to US authorities in July 2012, approximately 1 year after he had been indicted. Bitar pleaded guilty to violating the UIGEA and to conspiracy to commit bank fraud and wire fraud in April 2013. Bitar also agreed to forfeit 40 million dollars in assets derived from the criminal activity he pleaded guilty to. The plea agreement was accepted on April 15th 2013 by US District Judge Loretta A. Preska who, because Bitar had an extremely serious heart condition and was in urgent need of a heart transplant, gave him a lenient sentence of time served and the forfeiture of the 40 million dollars he had previously agreed to when pleading guilty. Preska added that she would have “imposed a substantial term of imprisonment” if it were not for the severe health concerns involved.

The players who had deposited money with FTP were for a long time not sure if and when they would get their money back. It was not until FTP and its fiercest competitor, Pokerstars (PS), reached a unique settlement with the US Department of Justice (the DoJ) in July 2012 that the players knew what was going to happen. FTP agreed to for-

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41 31 U.S.C § 5363.
42 United States v. Raymond Bitar and Nelson Burtnick Superseding Indictment, S8 10 Cr. 336, p. 4.
43 Ibid.
44 Ibid., p. 6.
47 Ibid.
feit virtually all of its assets to the US government.\footnote{United States District Court Southern District Of New York v. Pokerstars, et. al. Stipulation and Order of Settlement Regarding Full Tilt Poker, 11 Civ. 2564 (LBS), pp. 4-6.} PS in turn would forfeit a sum of 547 million dollars to the government as well as make 184 million dollars available for withdrawal to non-US FTP players, which was the full amount owed to these players.\footnote{United States District Court Southern District Of New York v. Pokerstars, et. al. Stipulation and Order of Settlement Regarding Pokerstars, 11 Civ. 2564 (LBS), pp. 3-5.} FTP’s US players had to file petitions for remission of forfeiture with the DoJ in order to get their money back and the forfeited 547 million dollars was to be used in part to repay the US players.\footnote{Ibid., pp. 3-4.} The remission process for US players started in September 2013 and is still ongoing.\footnote{Oresteen, P., \textit{Players Anxious as Full Tilt Refund Process Begins}, BLUFF, September 16, 2013 and The Garden City Group, \textit{Full Tilt Poker Claims Administration}. Retrieved from http://www.fulltiltpokerclaims.com/index.php.}

2.4.4 Summary

The online gambling market is a lucrative one that is showing great potential for growth. Even so, its customers have faced poor treatment when enjoying the services offered by the industry, in all probability discouraging some of the existing customers to continue playing and deterring potential new customers from depositing money with online gambling sites. The scandal mentioned above is simply one of many and when an online gambling provider steals from its customers the whole industry suffers a serious blow to its credibility and it could create the impression that depositing money on a site can in itself be a gamble.

FTP stole money from its players by using deposited funds to cover operating expenses and give distributions to owners. Players were also lied to in order to get them to deposit money on the site. Money that FTP needed to cover up the fact that it was operating with far less funds than it was obligated to hold according to the conditions of its licence. Had the players known about this they most certainly would not have deposited or kept any money with the company. But deception from the management and the AGCC’s failure to notice what was happening meant that the truth could be kept a secret from players. The fact that the financial reporting had been falsified was probably the reason for the AGCC’s failure to notice what was going on. The banks that were used to process withdrawals and deposits from players were depending on bribes from FTP in order to survive which lead them to engage in activities that might have been illegal at the time. When it was discovered that funds belonging to the players had been
stolen there was no recourse available for the players. The funds that remained were not enough to pay everyone back and how anyone was going to get any money off the site was not clear. It took a truly unique solution in order to be able to get the money needed to pay the players back and many of the affected players are still waiting to be reimbursed.

In order to create a safe gaming experience for the ones who choose to gamble online there must be rules that do not give companies the ability to repeat the transgressions against players that they have endured in the past. There also needs to be predetermined and easy ways for the players to regain their money that does not require long periods of time to pass and exceptional circumstances to be feasible. This is complicated because of the fact that countries offering online gambling licences have an incentive to attract licensees, since regulations that mean compliance costs for the licensee can mean that the country will lose licensing fees and taxes in competition with other countries. There are several examples of gambling providers moving their online operations due to cost concerns which attest to this.
3 The Maltese regulatory regime

3.1 EU law and the European Consumer Centres

The EU has not adopted any primary or secondary legislation specifically concerning the gambling sector. Online gambling is in fact often expressly excluded from the scope of Directives, e.g., the Directive on Electronic Commerce\(^{52}\) article 1(5)(d), the Services Directive\(^{53}\) article 2(2)(h) and the Audiovisual Media Services Directive\(^{54}\) recital 18. The Distance Selling Directive\(^{55}\) is applicable to the relationship between the players and the online gambling provider. This means that the online gambling provider among other things must provide potential customers with comprehensive information before they commit to using the gambling services. The Directive on Privacy and Electronic Communications\(^{56}\) imposes obligations on the online gambling providers handling of the information collected on the players.

Even though there is a lack of harmonisation within the EU, a Member State, who wants to impose restrictions on online gambling, must still respect the several fundamental freedoms enshrined in the treaties of the EU. Gambling has been ruled as an economic activity by the European Court of Justice which means that when it comes to online gambling, the freedom of establishment, found in Article 49 of the Treaty of the Functioning of the EU (TFEU), and the freedom to provide cross-border services found in Article 56 of the TFEU applies.\(^{57}\) When it comes to regulating online gambling these freedoms have proven to be troublesome for the Member States to respect. The European Court of Justice has concluded that Member States legislation is violating the freedoms on more than one occasion.\(^{58}\) The European Commission started infringement
proceedings in November 2013 against several Member States, since it suspected that
they were in breach of EU law, by sending out letters of formal notice requesting informa-
tion on national legislation restricting the supply of gambling services. The European
Commission also asked one Member State, Sweden, to take action to fully comply with
the freedom to provide cross-border services.\(^{59}\)

In October 2012 The European Commission drafted an action plan that identified
the key challenges posed by the co-existence of national regulatory frameworks within
the EU. It also sought to propose answers to these challenges in the form of actions to
be taken both at the national and the EU level.\(^{60}\) At the time it was deemed inapprop-
iate to introduce sector-specific EU legislation. The European Parliament adopted a non-
binding resolution in September 2013 where it recognised that the Member States have
the right to determine how to organise and regulate gambling. It was noted that any leg-
islation concerning gambling must be proportionate, consistent, transparent, and non-
discriminatory and that more coherent EU policies to address the cross-border nature of
online gambling was needed.\(^{61}\)

Players domiciled in an EU Member State, Norway or Iceland that are experiencing
problems with an online gambling provider based in an EU Member State, Norway or
Iceland can turn to their national European Consumer Centre in order to get help han-
dling their complaint.\(^{62}\) However, this is not possible if the online gambling provider is
based in the player’s home country.\(^{63}\)

### 3.2 Online gambling in Malta

Malta became one of the first countries to offer licences for online gambling when
amendments were made to the Public Lotto Ordinance to regulate offshore betting of-
ices through Legal Notice 34 of 2000.\(^{64}\) When Malta joined the EU in May 2004, it
became the first Member State that regulated online gambling.\(^{65}\) Malta has to date is-

\(^{59}\) The European Commission, *Commission Requests Member States to Comply with EU Law when Regu-
late Gambling Services*, IP/13/1101.

\(^{60}\) The European Commission, *Towards a Comprehensive European Framework for Online Gambling*,
COM/2012/0596 final.

\(^{61}\) The European Parliament, *Resolution of 10 September 2013 on Online Gambling in the Internal Mar-
ket*, (2012/2322(INI)).

\(^{62}\) The European Consumer Centre Network, *Our services*. Retrieved from

\(^{63}\) Ibid.

\(^{64}\) The Lotteries and Gaming Authority, *Remote Gaming*. Retrieved from

\(^{65}\) Ibid.
sued over 400 licences which are shared by over 250 companies. The licensing of online gambling constitutes a large part of Malta’s gross domestic product, claimed to be between 10 and 11% as of the beginning of 2014. In 2012 the government made a profit of over 47 million euro from the activities of the regulating body for gambling in Malta which mainly comes from the licensing of online gambling.

In February 2014 it was announced that a Responsible Gaming Foundation would be launched, which functions will include administering the funds collected to support individuals suffering from problem gambling and organise projects to serve as rehabilitation for the victims of excessive gambling. The Foundation will also conduct active research about excessive gambling.

3.3 The Lotteries and Other Games Act (the Act)

The Act, Act XXIV of 2001, Chapter 438 of the Laws of Malta, was enacted in 2001 and incorporated all gaming legislation, with the exception of land-based casinos, into a single legislative instrument. The Act provides that, should there be a conflict between the Maltese and English versions of the Act or any regulation made thereunder, the English version shall prevail, the Act 2(3). Because of this I will be using the English version of all relevant legislation. According to Article 5 of the Act, games of chance or games of skill and chance cannot be operated, promoted or sold by any person in Malta unless it is authorised by the LGA or by the laws of Malta. Such authorisation is however not required if the operation of a game is instead authorised to be operated under any law of the Member States of the EU, the European Economic Area (EEA) or a jurisdiction or territory approved by the LGA. The exception was added when the European Commission in 2007 asked Malta to bring its gambling legislation in line with the freedom to provide services and allow licensed online gaming providers from the

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EEA to offer its services in Malta. Article 2(1) defines a game of chance as “a game for money and, or prizes with a monetary value, the results of which are totally accidental” and a game of chance and skill as “a game for money and, or prizes with a monetary value, the results of which are not totally accidental but depend, to a certain extent, on the skill of the participant”.

3.4 The Lotteries and Gaming Authority (the LGA)

The Act established the LGA through Article 9. The aim when the LGA was established was that it should regulate the gambling sector effectively, responsibly and diligently. The functions of the LGA includes, among other things, to issue licences to operate games and to supervise the operation of licensees to ensure that they comply with relevant legislation and the terms and conditions of their licence, Article 11(a). The LGA also inquires into the suitability of licensees and ensures that those involved in the operation, promotion or sale of authorised games operated by its licensees are fit and proper persons to carry out their functions relative to such games, Article 11(c), and ensures that authorised games are operated fairly, responsibly and in accordance with the law, Article 11(f). The LGA also has a policy-making function and may issue Directives on matters that is authorised by the laws of Malta, Article 11(l).

The LGA generally avoids taking a bureaucratic approach when licensing online gambling providers, instead embracing an industry-focused, practical attitude towards the particular circumstances of each applicant or licensee. An example of this pragmatic approach can be seen in the Compliance Audit Manual which is used when determining whether a licensee is operating in compliance with the relevant laws and the conditions of its licence. In the disclaimer of the checklist contained in the manual it is explicitly stated that the auditor should use the checklist in light of the facts and circumstances of each particular gaming licensee. The LGA has won several recognitions for its work as regulator of Malta’s gambling market; amongst others to be included in the European’s Fast50, a report that recognises the 50 fastest growing companies in the

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world, in 2011 and 2012 and receiving the Business Britain award for Services to the Online Gaming Industry in 2005, 2006 and 2007.76

3.5 The Remote Gaming Regulations (the RGR)

The RGR, Subsidiary Legislation 438.04, was adopted through Legal Notice 176 of 2004. The objectives of the RGR are to keep gaming free from crime and money laundering, to see to that gaming is delivered in a fair way and to protect minors and vulnerable persons.77 Online gambling is called “remote gaming” in the RGR which is defined in the RGR regulation 2 as “any form of gaming by means of distance communications”. “Gaming” is defined in the RGR regulation 2 as an agreement, scheme or arrangement between two or more parties to play together at a game of chance in which a prize or reward consisting of money or some other item of value, worth, advantage or opportunity is offered or can be won and become the property of the winner under defined conditions established for the purpose of the game. “Means of distance communications” in turn is defined in the Act Article 2(1) as any means which may be used for the communication, transmission, conveyance and receipt of information between two or more persons, without the simultaneous physical presence of those persons, by any means of communication, transmission, conveyance and receipt of information by wire, radio, optical means, electromagnetic means or by any electronic means.

The RGR regulation 3 states that no person is allowed to operate, promote, sell or abet remote gaming in or from Malta unless the person is in possession of a valid licence of the relevant class. The wording gives the impression that holding a licence in Malta enables the online gambling provider to offer their services to consumers in any country. In reality the right to offer online gambling services in different countries depend on how the target country has chosen to regulate online gambling and it is the responsibility of the licensee to ensure that they comply with the laws of their target countries.78

There are four different classes of licences available and which class that is needed is determined by the kind of gambling services someone intends to offer. The different


classes are listed in the first schedule of the RGR and guidelines about which licence to choose is posted on the LGA’s website.\textsuperscript{79} E.g., in order to offer online betting in or from Malta, one would need a class 2 remote gaming licence, defined as a remote betting office licence, the RGR First Schedule regulation 1(b). A licence is however not needed if the online gambling provider possesses an equivalent authorisation by the government or competent authority of an EEA Member State, which upon the finalisation of Croatia’s accession to the EEA will include all Member States of the EU, or any other jurisdiction approved by the LGA.

The RGR contains several provisions aimed at securing the players funds and prohibiting unfit persons and companies from offering online gambling. In the following I will examine some of these provisions as well as discuss how they were applied in two cases.

3.6 Measures that protect online gamblers

3.6.1 The application process

When applying for a licence the applicant must supply the LGA with information needed to conduct due diligence checks concerning its directors, key officials, chief executive officers and shareholders with 5% or more ownership of, or controlling interest in, the applicant, the RGR regulation 5. This information includes personal background and financial information, information concerning pecuniary, equity and other interests in the applicant as well as interests in other commercial activities and criminal record information. The information is generally substantiated by submitting birth certificates, copies of passports and passport photos, police conduct certificates and bank and other professional references.\textsuperscript{80} When a body corporate holds shares in the applicant the LGA also generally requires the certificate, memorandum and articles of incorporation, a certificate of good standing and bank and professional references in relation thereto.\textsuperscript{81} The LGA can also request other information that it deems useful in order to complete its due diligence work. Although not a requirement imposed by the RGR, the LGA requires that all employees of a licensee fill out a form in which the employee discloses information that the LGA deem important, such as employment history,


\textsuperscript{81} Ibid., p. 209.
criminal record, past involvement in litigation and former addresses. Based on the information supplied the LGA then decides if it should approve the employee. The LGA also conducts its own probity investigations with other national and international regulatory bodies and law enforcement agencies.

The applicant must also show that it has the financial means and expertise required to operate the online gambling for which they are applying for a license as well as fulfil all obligations under the law. As a matter of LGA policy, a business plan is therefore generally provided by the applicant during the application process which normally includes a marketing and sales plan, a three year financial forecast, a business strategy, the nature of the games to be offered, technologies to be used and a financing plan showing sources of finance. The applicant must also submit for approval the specifications of the control system and the gaming system he intends to use during operations, the RGR regulation 20 and 25 respectively. These systems are later audited in a testing environment by an independent certified auditor. The systems need to be in conformity with both the documentation supplied by the licensee and the RGR. The audit among other things includes system and player account security, fraudulent activity detection and reporting procedures. Should there be any change in the Board of Directors or management of the licensee, or if there should be a material change in the information supplied, it is the duty of the licensee to notify the LGA of the change, the RGR regulation 11(2)(a).

Based on the information supplied as well as the results of any probity check conducted the LGA then has to decide if it is reasonably satisfied i) that all persons involved in the applicant company are fit and proper, ii) that the applicant is untainted by illegality and iii) if the applicant possesses the appropriate business ability, financial means and expertise needed to operate online gambling before granting a licence. When deciding this the LGA, among other things, considers i) the character and business reputation of the persons with executive powers in the applicant, ii) the financial position and background and business reputation of the promoters, shareholders and directors of the applicant, iii) if the applicant is able to maintain minimum required reserves in order

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83 Ibid.


to ensure that players will have winnings paid and deposits returned and iv) whether the applicant has the capacity and internal control structures to enable it to comply with the policies and Directives which the LGA deems appropriate, the RGR regulation 8(2).

These conditions when applying for a licence constitute an effective safeguard against companies lacking the proper resources, and people who should not be involved in the industry, getting the opportunity to offer online gambling. The applicant must show not only that the persons involved with the running of the company are fit and proper but also that they have the technical and financial means to do so in a secure and stable manner. The investigations undertaken by the LGA during the application process lessens the risk of an applicant being granted a licence on false or misleading information since it does not rely solely on information supplied by the applicant.

3.6.2 The key official

The applicant need to appoint at least one person to act as key official whom has to be approved by the LGA and the appointment of a key official is a condition of the licence, the RGR regulation 15(1). The key official is tasked with personally supervising the operations of the licensee and ensuring that the licensee complies with all applicable laws and regulations, the conditions of the licence and any Directive issued by the LGA, the RGR regulation 15(2). According to the definition of a key official found in the RGR regulation 2, the key official must be a resident in Malta and a director of the licensee. The LGA shall not approve any person to act as a key official unless it is satisfied that the person is fit and proper to fulfil his obligations and duties, the RGR regulation 17. When applying to become a key official the person applying must also show adequate proof that he will make himself readily available whenever required by the LGA. The key official must be able to access information required by the LGA in a timely manner and must be competent and vested with the required expertise to make the necessary decisions to assist the LGA in resolving and controlling potential problems. It is recommended that all required reports are formulated and submitted to the LGA under the guidance of the key official. If a person is approved, the LGA will issue a key official licence to that person. According to the RGR regulation 18(1)(c) the

88 Ibid.
LGA may, in its sole discretion, cancel the licence of a key official if it determines the key official to no longer be a fit and proper person. Apart from being cancelled by the LGA, a key official licence can be surrendered by the key official with the written consent of the LGA, the RGR regulation 19. The fact that the key official licence, and the responsibilities associated with holding the position of key official, cannot be freely surrendered ensures accountability and responsibility both during the term of the licensee’s licence and after, in the event of potential mishandling of player funds or other transactions.89

The requirement to have a specifically appointed key official means that there will always be someone who will be able to explain any problems with the operation of a licence and who can be held accountable if something illegal transpires. Because of this the key official has an incentive to make sure that he is kept informed about the operations of the licensee and also to investigate and report any suspicious activities. By only approving persons who has made a commitment to make himself readily available, and who wields adequate executive powers within the company to supply the LGA with necessary information and make decisions to contain and investigate potential problems, the LGA makes sure that only those who are able to shoulder the responsibilities connected with being a key official are approved to act as such.

3.6.3 The licensee’s handling of players’ deposited funds
The RGR does not allow licensees to permit a person to participate in an authorised game conducted by the licensee unless the person is duly registered as a player and holds an account with the licensee, the RGR regulation 32(1). An “authorised game” is defined in the RGR regulation 2 as remote gaming that the licensee is permitted to conduct under the RGR, for example by having a valid licence of the relevant class pursuant to the RGR regulation 3. In order for a person to become registered as a player they must apply for it to the licensee, the RGR regulation 32(2)(a), and the application must at least contain a representation that the person is over eighteen years old and the identity, place of residence and a valid e-mail address to the person applying to become a player, the RGR regulation 32(2)(b). For every person who gets registered as a player the licensee is obligated to establish and maintain a players’ account, the RGR regulation 35(1). The licensee is obligated to credit a player account all funds received from or on the behalf of the player, or “owned by the licensee to the player”, the RGR regulation 89 Ibid.
A player must have funds standing to their credit if they wish to gamble for money since the licensee is not allowed to provide credit to a player, the RGR regulation 35(5).

When a registered player with a player’s account makes a request to withdraw funds from the account the licensee must remit these funds within five working days, if practicable, the RGR regulation 37(1). However, before remitting the funds the licensee may take such time as is reasonably necessary for the purpose of i) verifying the player’s registration as a player, ii) verifying the playing of a game by the player, iii) conducting security and other internal procedures in relation to the player’s account and iv) ensuring that the rules that are approved relating to the award of the prizes to players have been complied with, the RGR regulation 37(3). The licensee is not allowed to deal with the players’ money in any way other than debit money for wagers placed, remit funds requested by the players, pay reasonable bank charges for deposits and withdrawals or if its otherwise authorised by the RGR, the RGR regulation 38.

The restriction of the licensee’s handling of the players’ funds to predetermined and non-arbitrary dispositions means that the theft of funds cannot be easily disguised as lawful actions by the licensee. By imposing a time-limit for how long withdrawals are allowed to take the players know when they are to become suspicious if a requested withdrawal is not processed.

3.6.3.1 The example of Everleaf Gaming (EG)
EG was licensed by the LGA and was one of the few providers that offered online gambling to US players in the beginning of 2012. However, after receiving a cease-and-desist order by the US Department of Homeland Security in February 2012, EG chose to withdraw from the market. When doing so, it gave its American players three options as to how they could withdraw their funds. Open an account at one of the online wallets Neteller or Moneybookers, who did not accept American customers, or open up a bank account outside the US which meant logistical hassles and travel expenses for

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90 "Owned" seems to be a misspelling of "owed" since the former meaning does not make any sense in the context. "Owed" on the other hand would describe the licensee’s obligation to credit the player’s account following a wager won by the player. This also seems to be corroborated by the fact that the LGA’s Compliance Audit Manual, under provision F.25, states “Observe that the Gaming Systems has only dealt with the amount standing to the credit of a player account as follows: a. Funds from or on behalf of the player or won should be credited to this account”. The Lotteries and Gaming Authority, Compliance Audit Manual, p. 28. Retrieved from http://www.snapadministration.com/snapdatafiles/files/1ga/634874708232963750.pdf.
the players opting for this alternative. The LGA never addressed this failure to create viable options for American players to withdraw their funds.

On March 8th 2012 the LGA issued undisclosed sanctions against EG after an investigation had shown “a number of irregularities in their operation”. On March 30th 2012 the LGA told the public that EG was “addressing the identified non-compliances”. What sanctions were imposed, what irregularities existed and what the non-compliances consisted of has been kept a secret by the LGA to this day. On February 1st 2013 the LGA claimed that a “great majority” of players who had requested withdrawals from EG had been paid and that EG was regularly updating the LGA with the progress of processing the remaining payments. This was disputed by a group of players who had started a Facebook group that discussed the problems with withdrawals from EG. Even though some player had reported getting their requested withdrawals, the group had only gotten a mere 3% of their requested withdrawals. Important to note is that the players had been waiting for several months for their withdrawals to come through, even though this should be handled in a matter of weeks at most according to the RGR regulation 37(1).

I contacted the Everleaf Gaming Coalition, a group of former players at EG that has banded together to discuss the problems with getting their money off the site, and asked them what the current status on their withdrawals were. They supplied a spreadsheet that showed how much money the group had requested to withdraw, how much had been released to the group and how much money was still pending (Appendix 1). According to the spreadsheet the total requested withdrawals amount to 150,552 euro. Merely 11,600 euro had been remitted to players while withdrawal requests amounting to 138,952 euro were still pending. That means that around 7.7% of the requested withdrawals have actually been processed. This seems to contradict that a great majority of players have been paid. Granted, the 24 players named in the spreadsheet constitute a small percentage of the total players at EG and thus it cannot prove that the LGA’s

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93 Ibid.
98 In order to protect the privacy of the players I have redacted the names of the players.
statement was untrue. However, while researching the matter I have found no indication that there have been a significant number of payouts and the LGA has not shown anything that supports their claim that a majority of players having gotten paid.\(^99\) The last successful withdrawal recorded in the spreadsheet was on February 8\(^{th}\) 2013.

In a press release from April 26\(^{th}\) 2013 the LGA said that EG had been under scrutiny since the beginning of the year due to the slow payment of players and that the LGA had intervened directly in order to rectify such slow payments.\(^{100}\) On July 29\(^{th}\) 2013 the LGA reported that EG’s license had been suspended as of three days before, well over a year after the issues with processing withdrawals had begun.\(^{101}\) At the same time the LGA stated that no further information would be released at that stage as to not compromise any further investigation that may need to be performed.

Nothing was heard on the subject until after a new board of the LGA was appointed, following a change in political ruling party in Malta, who launched an audit into the handling of the EG matter.\(^{102}\) This audit was expected to be finished “in the coming weeks” in late August 2013 but the results of the audit have not yet been announced.\(^{103}\) Once completed, this investigation can provide Maltese legislators with invaluable information on how to change their regulation of online gambling in order to make sure players are protected. The new chairman of the LGA, Joseph Cuschieri, said in an interview that the police had issued an international arrest warrant for the owners of EG, that he promises to “make it a point to ensure that whoever was bitten will be repaid” and that a player protection fund of 3.5 million euro might be used to repay EG’s players.\(^{104}\) According to the interview the obstacle that was now holding up the repayment of players was the judicial process and since the LGA could not just take the money.\(^{105}\)


\(^102\) Altaner, D., Malta Seeks Audit Of Gambling Regulators Over Everleaf Episode, GamblingCompliance, August 22, 2013.

\(^103\) Ibid.

\(^104\) Macdonald, V., Future-proofing Malta’s Gaming Sector, CSBgroup, January 13, 2014.

\(^105\) Ibid.
3.6.4 Obligation to keep funds segregated with an approved credit institution

According to the RGR regulation 40(1), a licensee is to keep players’ funds separated from those of the licensee in a clients’ account held with a credit institution approved by the LGA. The funds in this account, including funds in transit or in the process of being cleared through banking systems or by credit card processing companies, must at all times be at least equal to the aggregate of the amount standing to the credit of all players’ accounts held by the licensee, the RGR regulation 40(2)(a). The RGR regulation 40(2)(a) also provides that if the funds standing to the credit of the clients’ account should fall below the aggregate total of the players’ accounts, the licensee is obligated to make good on the shortfall using its own funds within a period of thirty days of the end of the month in which the shortfall occurred. The LGA may, at its sole discretion, consider funds held in other accounts belonging to or controlled by the licensee to be included with funds in the clients’ account, according to the RGR regulation 40(2)(b).

The LGA has issued a Directive\textsuperscript{106} on how a licensee is required to report liabilities towards its players, the balance of all clients’ accounts used to hold the players’ funds and the amount of funds in transit or in the process of being cleared through banking systems or by credit card processing companies. Copies of documentation regarding the amount of liabilities towards players, copies of bank statements showing the balance of the clients’ accounts and copies of supporting documentation regarding funds in transit or in the process of being cleared are to be included in the report. The reporting is to be done monthly to the LGA and failure to submit a report is tantamount to an offence against the Act and the RGR. This means that the LGA can make sure on a monthly basis that enough funds are held by a credit institution to cover all funds standing to the credit of the players. The Directive also imposes an obligation upon the licensee to enable remote access for the LGA to the reporting systems of the licensee. The licensee must also instruct and authorise the credit institution in which the players’ funds are held to disclose any information requested by the LGA in respect of the account of the players, the RGR regulation 41. This gives the LGA an opportunity to verify the monthly reports the licensees are required to submit.

The licensee needs to show proof to the LGA that the credit institution in which the players’ funds are held have made certain commitments. The commitments include a declaration that the credit institution will i) not attempt to enforce or execute any


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charge, write-off, set-off or other claim against a clients’ account, ii) not combine the clients’ account with any other account in respect of any debt owed to the credit institution by the licensee, and iii) credit any interest payable on a clients’ account only to that account, the RGR regulation 40(3). The LGA may, for the purpose of protecting players’ funds, order the licensee to take out a bank guarantee in favour of the LGA. This happened once during a legal dispute of a private nature where a licensee was the defendant in order to secure the players’ funds and liquidity.\textsuperscript{107} The RGR regulation 40(5) provides that, unless it is explicitly stipulated in the court order, a garnishee or similar order shall never have any effect on players’ funds held by a third party or which the LGA has determined to be included with the funds in the clients’ account pursuant to the RGR regulation 40(2)(b).

These provisions means that if the rules are enforced properly, the funds belonging to the players are safeguarded from theft committed by the licensee and cannot be used by the credit institution to cover fees or other payments should the licensee run into economic difficulties. Further, the clear separation of players’ funds from the licensee’s coupled with the provisions in the RGR regulation 40(5) means that a third party, seeking indemnification of some sort, will have no success in targeting funds that belong to the players. The RGR regulation 40(5) also protects against claims made against accounts that technically are not set up as clients’ accounts for players but that the LGA has determined to be included with the funds in the client’s account, meaning that players will always be able to withdraw all their funds even if the balance of the accounts that have been specifically set up for them would not allow for it.

\textbf{3.6.5 Investigations to be conducted before a licence can be surrendered}

To surrender a licence the licensee must secure the approval of the LGA to do so, the RGR regulation 11(4)(f). Should a licensee wish to surrender its licence the LGA will not approve the surrender unless it is shown to the LGA’s satisfaction that the licensee is not in breach of any law, directive issued by the LGA or the conditions of the licence, the RGR regulation 12(4)(a). Before approving the surrender of the licence the LGA shall also require evidence that players’ funds have been refunded or that alternative arrangements have been made that is to the satisfaction to the LGA, the RGR regulation \textsuperscript{107} The Lotteries and Gaming Authority, \textit{Dispute between Boss Media AB and PokerTrillion Ltd.} Retrieved from \url{http://www.lga.org.mt/content.aspx?id=92258}.
12(4)(b). If a licence is not allowed to be surrendered it means that all conditions the RGR impose must still be complied with or the licensee is in breach of the law.

3.6.5.1 The example of Purple Lounge (PL)

PL was licensed by the LGA and owned by the publicly traded company Media Corporation public limited company (MediaCorp), which was listed on the Alternative Investment Market on the London Stock Exchange. On April 27th 2012 it was announced by MediaCorp that the site had been temporarily suspended as a result of recent losses.108 The site was closed without giving the players the chance to withdraw their funds and on May 31st 2012 MediaCorp announced that PL would have its staff laid off and that the company would be put into liquidation.109 The announcement also mentioned mitigating “expected player losses”, which would mean that the players’ funds had been used by the company in contravention of the RGR regulation 38. Despite this fact, the LGA claims to have ascertained that PL was operating in compliance with the rules governing its licence before terminating their licence on April 23rd 2012.110 This does not add up since the RGR regulation 40(2)(a) provides that the licensee are to keep enough money to cover all liabilities towards players at all times and the RGR regulation 12(4)(b) obligates the LGA to make sure that all players have been refunded or satisfactory alternative arrangement with regards to the players’ funds have been made. Hence, there could not have been any loss of player funds if the rules had been followed and the players should have been paid, or been told about an alternative arrangement in connection with the surrender of the licence. The LGA told players that because PL was no longer licensed by the LGA, it could not offer any assistance with issues they were having with the company following the termination date.111

3.6.6 Sanctions for non-compliance with the RGR

Any person who contravenes the RGR and is subsequently convicted of an offence is liable to pay a fine of between around 7 000 and around 233 000 euro, to imprisonment for a term of not more than 2 years or both such fine and imprisonment. If the person

111 Ibid.
convicted is a recidivist the span of the fine is increased to be between around 11 500 and around 349 500 euro and the maximum term of imprisonment is increased to 3 years. A recidivist may also be liable to both the fine and the imprisonment. The fact that any contravention of the RGR is covered by criminal liability gives an added incentive for people employed by the licensee to make sure that they act in accordance with the RGR. According to the LGA, offences have been reported to the police which later lead to convictions. I have however not been able to find any verdict delivered by a court in Malta that supports this.

If the person found guilty is a director, manager, secretary or other similar officer of a company or other undertaking, the person is considered to be vested with the legal representation of the company or undertaking which means that the company or undertaking will be liable in solidum with the person found guilty for the payment of the fine. This provision creates an incentive for the licensee to monitor the activities of the management to ensure that no breaches of the RGR occur and that the company at all times complies with the RGR. It also means that a prosecutor does not need to prove that the company had knowledge of an offence taking place when it is committed by a person of authority within the company in order for the company to become liable for the person’s actions.

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4 A critical evaluation of the protections online gamblers enjoy

4.1 Introduction

From the case with FTP it is evident that an effective regulation of online gambling must include adequate protection for the deposited funds of players as well as an easy way for the players to get their money back when the online gambling provider has in fact stolen money from the players. In chapter 3 I discussed parts of the Maltese regulatory regime for licensing online gambling that could protect the players’ deposited funds and now I’ll discuss how these safeguards could have protected the players of FTP, had they been licensed by the LGA today, and which additional measures could be introduced to further reinforce the player protection for online gamblers.

4.2 The application process

Anyone applying for a Maltese licence must submit a wide array of documents showing, among other things, that all persons involved with the running of the company are fit and proper persons, that the company has the necessary financial and technical expertise to conduct online gambling and financial means to ensure that the players can withdraw all funds standing to their credit. The LGA complements this information by conducting its own probity checks and by cooperating with national and foreign regulatory bodies and law enforcement agencies. By reviewing the information gathered in this stage of the application process the LGA can make a well-informed decision whether the applicant is fit to hold the right to offer online gambling to players or not. The licensee is obligated to inform the LGA if the information supplied changes during the licensing period in a material way which protects against changes in the company that could negatively affect players.

However, as both EG and PL show us, thorough investigations and an obligation to report material changes that could mean that the LGA would reassess the suitability of a licensee has not provided enough protection for players in the past. Since not much is known about what went wrong within the companies it is hard to pinpoint exactly what should be done to improve these conditions. The persons responsible for the players getting their money stolen or frozen pending investigation might very well be fit and
proper persons on paper, which makes the job of detecting improper and unfit persons more difficult.

4.3 The key official

By having a specifically appointed key official there will always be someone who will be expected to be able to explain any mishaps or problems with the operation of a licence and who can be held accountable if something illegal has occurred. Because of this, the key official has an incentive to make sure that he is kept informed about the operations of the licensee and also to investigate and report any suspicious activities. Since it is a requirement that the key official has to be a director of the company the RGR mandates that the key official is to be in a position where he has both power and insight into the licensee to accomplish this as well as being able to take decisions to rectify or contain problems that arises with the operation of the licence.

However, like the case was with the due diligence conducted by the LGA before granting a licence and the obligation for the licensee to report any material changes to the information supplied, this requirement did not stop the players at EG and PL from getting their money stolen and/or having them frozen during the investigations into the licensee. Since no arrests have been made yet it is unclear if and in what way the key official/s improperly discharged their duties. But because a key official’s duties includes personally supervising the operations of the licence and to ensure that all applicable laws and regulations are complied with it stands to reason that they have not executed their duties to an acceptable degree.

4.4 The licensee’s handling of players’ deposited funds

A licensee must credit a player’s account all funds it has received from, or on behalf of, a player and all money won by the player. A time-limit exists that dictates how long a withdrawal request is allowed to take which means that the players knows when they are to become suspicious as to why they have not received their money. The ways which a licensee is allowed to deal with the amount standing to the credit of a player’s account maintained by the licensee is limited to predetermined and non-arbitrary dispositions. Since a licensee is not allowed to deal with the amount standing to the credit of a player’s account maintained by the licensee however it likes, there does not exist a legal way in which a licensee can use its players’ money for its own operations. Any
breaches of these rules are punishable either by a fine or imprisonment or both if a person is convicted of it.

In the case of PL the company that owned PL said it was expecting player losses, which would mean that player funds had been used to the point that not even the company’s own funds could be used to cover the shortfall. In this scenario the players will have to take the brunt of the licensee’s unlawful handling of their money. The LGA said, with regards to EG, that a player protection fund it maintained might be used to repay players. As this fund was limited to 3.5 million euro it is possible that this will not suffice to make up for the shortfall. The use of a fund as a final measure to make sure that players are repaid if a licensee has handled their money in a way they are not allowed to is also not a stable solution, since if it is depleted it cannot offer any help to other players looking to get their money back. In order for a fund to be an effective safeguard it needs to have adequate funds to cover what a licensee can divert during the course of at least a month, since financial reporting is done on a monthly basis. There also needs to be an easy way for players to be able to apply for reimbursement.

4.5 Obligation to keep funds segregated with an approved credit institution

The licensee must keep the funds it has received in a separate bank account with a credit institution approved by the LGA. These funds are shielded from third party claims against the licensee by the RGR, which mean that the licensee’s business dealings cannot negatively affect the players’ funds. The fact that the LGA has to approve the credit institution eliminates the risk that the players’ money is handled by a bank or a similar institution who lets the licensee spend the money in ways the RGR does not authorise. In the case of FTP, the banks who handled the players’ money only did so after being offered investments from FTP in order to continue operating. This shows that the banks were willing to take risks in processing transactions that might have been illegal in order to receive bribes from an online gambling provider. If the credit institution and the company offering online gambling are depending on each other to that degree it means that the proper handling of deposited player funds also could be in jeopardy. As long as the LGA only approves legitimate credit institutions with adequate finances and monitors the credit institutions it has approved this should not be a problem. A credit institution has everything to lose by not complying with the commitments the RGR sets forth.
and non-compliance would tarnish the reputation of the credit institution if it helped a licensee to circumvent the RGR.

By requiring the licensee to hold enough funds in the segregated players’ account with a credit institution to cover the aggregate total of all players’ accounts the RGR guarantees that all the players of a licensee will be able to withdraw all of their deposited funds. Any breaches of these rules are punishable by either a fine or imprisonment or both if a person is convicted for it. According to the LGA there have been instances in the past where online gambling providers did not manage the segregated funds properly and was reported to the police and subsequently convicted. Provided that this is true, it should serve as a warning to persons contemplating doing something illegal with the players’ funds.

The licensee is required to supply the LGA with monthly reports detailing the total amount of liabilities towards players as well as bank account statements from the credit institution used to hold the players’ funds. The RGR demands that the credit institution that holds the players’ funds commits to supplying the LGA with information about the players’ account directly if requested. This gives the LGA the opportunity to verify any monthly report submitted if the veracity of these reports should come into question. Provided that the LGA actually uses this tool to review reporting when there are suspicions about the reports accuracy and performs spot checks on their licensees this constitute an effective safeguard against falsified financial reporting, which was an important reason why FTP was able to steal as much money as they did.

By granting the LGA the right to consider other funds held by the licensee as player funds, should the funds in the account held by a credit institution not at least amount to the aggregate total of all players’ accounts, the RGR provides an additional safeguard against licensees stealing money from players. If caught the licensee would have to pay out of its own pocket to reimburse the players affected in addition to being subjected to a likely review determining if they are to keep its licence.

4.6 Conducting investigations before a licence can be surrendered

By making sure that a licensee is following all the relevant rules that apply to the licence it wishes to surrender, the LGA can make sure that the licensee is not in breach of any law when it wishes to surrender the licence. This is important since it gives the LGA the opportunity to check for any offences that it should report to the police or demand that the licensee rectifies, which it no longer have the power to do once the li-
cence is surrendered. Failure to submit to this review is in itself an offence punishable by either a fine or imprisonment or both. The LGA must also make sure that all players have been repaid or an alternative arrangement has been made. This is one of the most effective protections enshrined in the RGR since, if properly enforced, this means that a licensee cannot escape the LGA’s regulatory supervision without showing that the players have been taken care of. However, in the case of PL we saw that this rule is not always properly enforced since the company that owned PL reported expected player losses and liquidated the company shortly after surrendering their licence. The LGA claims to have made sure that all relevant rules were complied with at the time the licence was surrendered. However, this is disputed by the fact that players neither were repaid nor was informed of alternative arrangements. As no investigation into the matter of PL is currently being conducted, getting a clear picture of what went wrong during the process of surrendering the licence will not be possible.

4.7 Concluding remarks

The protections discussed in this chapter constitute effective safeguards against theft of the players deposited funds by the licensee. There are rules that prohibit the licensees from handling the deposited funds in any way other than what can be expected in order to conduct their business. In addition to this, there are also rules that obligates the licensee to keep enough money in specific bank accounts to pay back every player all the funds that is standing to his credit. Should there for any reason not be enough in these accounts the LGA has the authority to consider funds owned by the licensee to belong to players to cover the shortfall. Should a licensee not have enough in their own accounts to reimburse the players the people responsible for the deficit could face a fine or imprisonment for their actions.

At all times there are key officials tasked with making sure that all relevant rules are complied with whom, as a director of the licensee, has insight into the operations of the licensee and can report any suspicions to the LGA. Every month the licensee must report the total liabilities towards players as well as provide bank statements for the account used to hold the players’ money. The LGA also has the opportunity to verify that enough funds are kept in the bank account set up for the players in order to cover all liabilities towards them.

However, as the LGA has not always been vigilant with enforcing these rules, as the examples of PL and EG shows us, there needs to be a way for players to get their money
back even when some of it has been stolen or a licensee is under investigation. The slow reaction from the LGA and the judicial process has meant that the players of EG are still waiting to get their money back, over two years after the problems with payments started. The results of the investigation into the LGA’s handling of the EG matter will provide Maltese legislators with crucial information regarding what needs to be changed in order to fully protect the players. The non-enforcement of rules with regards to PL has left the players asking themselves what they are to do to get any money back whatsoever. As this scandal is not currently being investigated, but it is obvious that rules of the RGR were not properly enforced, the LGA should make adjustments to their procedures when investigating if a licence should be allowed to be surrendered.

Having a fund used to cover the shortfall in cases where money has been stolen and the assets of the licensee are not enough to cover the money stolen is definitely a good start. In order for it to be an effective remedy for theft from players this fund needs to be properly maintained in order to be able to cover what a licensee can steal before the theft is detected. It also needs to be easy for the players to apply for reimbursement and the situations where the fund is to be used needs to be clearly defined in order for players to know when they are to expect to be able to use the fund.

Another more controversial measure which could be adopted is that the country that licensed the operator is obligated to refund all players if repayment problems arise. It would afford players absolute protection for their deposited funds and also create a stable and foreseeable recourse when it is discovered that money has been stolen. The players could just apply for reimbursement with the government agency the country had appointed to deal with such matters and would not need to wait for investigations to conclude. The country could then sue the licensee to get as much money back as possible and use money earned through taxes and fees on licensing online gambling to regain the money they cannot get from the licensee in question. This would also create an incentive for legislators to make sure that the reporting systems used are adequate to ensure that no money is being used in an unlawful way. The players, who have no influence or insight into the online gambling provider, would get their money back and the country that failed to enforce its own rules would face the risk of not getting back all of the money it paid out to players. This also makes sense when you consider the fact that it is the country, through the government body that supervises the operation of online gambling, that has the ability to make sure that all financial obligations for the licensee are met.

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Since gambling is far from socially accepted I find it hard to believe that such a measure would ever be adopted. People who are not overly fond of gambling would be outraged that their tax money was used to help others gamble under more secure circumstances. Since players from all around the world converge and gamble on the same website, this would also mean that tax money would be given to people from other countries. The implementation of such a measure, which would undoubtedly be effective in protecting players, is therefore politically unrealistic. Such a measure would also undoubtedly lead to increased costs for licensees, either in the form of raised taxes and fees to account for the added risk or additional costs for complying with new legislation, which means it is not very likely that countries will readily impose such an obligation on themselves. As the competitive situation for online gambling providers is fierce, the additional costs could make them apply for a licence in another country, which would mean that countries that accept such an obligation would lose out on taxes and fees.
5 Summary

The legislation concerning online gambling in Malta contains several effective safeguards against players gambling online having their money stolen by an online gambling provider. Before anyone is allowed to offer online gambling in or from Malta the applicant must complete a rigorous application process. During this process the LGA reviews information it has gathered as well as information supplied by the applicant in order to determine if an applicant has the expertise, means and work force needed to offer online gambling in accordance with applicable rules. One of the applicable rules is that at least one key official must be appointed by the licensee. The key official is tasked with personally supervising the operations of the licensee and ensuring that the licensee complies with all applicable laws and regulations, the conditions of the licence and Directives issued by the LGA. The key official is able to access information required by the LGA in a timely manner and is competent and vested with the required expertise to make the necessary decisions to assist the LGA in resolving and controlling potential problems.

There are several rules that govern in what ways a licensee is allowed to deal with its players’ money and even which third parties are allowed to hold the players’ funds. These rules are complemented by requirements to report liabilities towards players and how much is held in accounts specifically set up for the players with a third party. The LGA also has the ability to verify the reports by requesting information regarding the players’ accounts from the third party who is holding the players’ money. Should the LGA receive a request from a licensee to surrender its licence, the LGA is not allowed to let them surrender the licence without making sure that all players are repaid. Any contravention of the rules discussed in this thesis is punishable by either a fine or imprisonment or both.

By looking at examples such as the FTP scandal, and what allowed it to happen, the need for such protections becomes evident. However, online gambling providers licensed in Malta have recently been able to circumvent the rules to the dismay of players. The LGA has also shown an example when it did not properly enforce rules that are supposed to protect players. The LGA let PL surrender their licence without making sure that players’ funds had been returned, which left the players asking themselves how they were to get their money back. As the matter of PL is not currently being investigated, the players can only hope that the LGA will make adjustments to their pro-
cedures when investigating if a licence should be allowed to be surrendered. When it comes to EG, the results of the ongoing investigation can be of great help to legislators and the LGA when revising their laws and internal procedures.

A good measure when an online gambling provider has stolen money and do not possess enough other assets to cover the shortfall is the player protection fund that reimburses players in that situation. However, this fund needs to be continuously replenished in order to always be able to reimburse players. There also needs to be an easy way to apply for reimbursement as well as clearly defined rules as to when the fund is to be used.

An obligation for the country which has licensed an online gambling provider that has stolen from the players to reimburse the players would be the ultimate protection for online gamblers. If a licensee is to come under investigation the players would not need to wait for investigations to conclude. They could just apply for reimbursement with the government agency the country had appointed to deal with such matters. The country could then sue the licensee for the money it had paid out and use the money earned through licensing online gambling to regain the money it could not recoup from the licensee. Since this would mean that tax money would be used to help online gamblers, in many cases people from other countries, the implementation of such a measure is politically unrealistic. Such a measure would also undoubtedly lead to increased costs for licensees, either in the form of raised taxes and fees to account for the added risk or additional costs for complying with new legislation. As the competitive situation for online gambling providers is fierce, the additional costs could make them apply for a licence in another country, which would mean that countries that accept an obligation to reimburse players would lose out on taxes and fees. This also makes the implementation of such a measure less likely.
References

Literature

Articles
Altaner, D., Malta Seeks Audit Of Gambling Regulators Over Everleaf Episode, GamblingCompliance, August 22, 2013.
Balzan, J., Responsible Gaming Foundation to Lead Prevention Drive, MaltaToday, February 18, 2014.

**Case-law**

*Anomar v Portugal* Case C-6/01 ECR I-08621.

*HM Customs and Excise v Schindler* Case C-275/92 ECR I-01039.

Joined Cases *Stanleybet International Ltd and Others* Case C-186/11 and *Sportingbet plc v Ypourgos Oikonomias kai Oikonomikon and Ypourgos Politismou* Case C-209/11 not yet referenced in the European Court Reports.

Joined Cases *Daniele Biasci and Others* Case C-660/11 v *Ministero dell’Interno and Questura di Livorno* and *Cristian Rainone and Others v Ministero dell’Interno and Others* Case C-8/12 not yet referenced in the European Court Reports.

**EU official texts and related documents**


**Internet sources**


**Other sources**


Defendants; All Right, Title and Interest in the Assets of Pokerstars, et al., Defendants-in-rem, 11 Civ. 2564 (LBS).
Superseding Indictment. United States v. Raymond Bitar and Nelson Burtnick, S8 10 Cr. 336 (LAK).
## Appendix 1 – Spreadsheet prepared by the Everleaf Player Coalition

| Value | Player 1 | Player 2 | Player 3 | Player 4 | Player 5 | Player 6 | Player 7 | Player 8 | Player 9 | Player 10 | Player 11 | Player 12 | Player 13 | Player 14 | Player 15 | Player 16 | Player 17 | Player 18 | Player 19 | Player 20 | Player 21 | Player 22 | Player 23 | Player 24 |
|-------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| Value | 0.7000  | 0.5000  | 0.6000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  | 0.4000  |
| Total  | 0.138 952 |