

L.N. 74 of 2011

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

Amusement Machines Regulations, 2011

IN exercise of the powers conferred upon him by article 78(5) of the Lotteries and other Games Act, the Minister of Finance, the Economy and Investment, after consultation with the Lotteries and Gaming Authority, has made the following regulations:-

PART I

Preliminary

1. (1) The title of these regulations is the Amusement Machines Regulations, 2011. Citation and commencement.

(2) These regulations shall come into force on the 15th day of March, 2011.

(3) These regulations have been notified in terms of the procedure for the provision of information in the field of technical standards and regulations and rules pertaining to information society services on the 11th day of March, 2010, which was followed by a standstill period, as laid down in Directive 98/34/EC of the European Parliament and of the Council.

PART II

Definitions

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

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

"administrator" means a person who manages, controls or administers an applicant or a licensee, including but not limited to a director, a manager or a trustee, and any person who carries out such functions even if under another title;

"applicant" means a person that files an application for a licence in terms of regulation 3 or 10 or a person that files an application for an authorisation in terms of regulation 13;

"approved amusement machine" means an amusement machine that has been examined and approved for operation by the Authority following an application submitted in terms of regulation 13;

"approved area" means that area, within a licensed premises, approved by the Authority for the hosting of amusement machines;

"associated persons" means qualifying holders, officers, administrators, partners or other associates of a Class 1 licensee or of an applicant for a Class 1 Licence, as the case may be;

"Class 1 Licence" means a licence granted by the Authority in terms of regulation 3, and the term "Class 1 licensee" shall be construed accordingly;

"Class 2 Licence" means a licence granted by the Authority in terms of regulation 10, and the term "Class 2 licensee" shall be construed accordingly;

"equivalent amusement machine" means an amusement machine which has been approved and, or otherwise authorised by the competent authority of another Member State and which satisfies the technical requirements laid down in these regulations for approved amusement machines;

"hosting" means the placing of, or the allowing, suffering or otherwise permitting the placing of, in a premises or any part thereof, which is accessible to the public; and the term "host" shall be construed accordingly;

"kiddie-ride" means an amusement ride designed primarily for use by children which entertains the rider with motion, including but not be limited to, track rides, miniature ferris wheel rides, carousel rides, hydraulic rides, base rides and free movement (bumper car-like) rides;

"licence" means a Class 1 Licence or a Class 2 Licence granted by the Authority in terms of these regulations;

"licensed premises" means a premises in respect of which a Class 2 licence has been issued by the Authority to a Class 2 licensee in terms of these regulations;

"Member State" means a Member State of the European Union or the European Economic Area;

"the Minister" means the Minister responsible for finance;

"other amusement machine" shall mean an amusement machine listed in the Third Schedule;

"operate" means the making available for hosting, and for the purposes of these regulations shall not include the use by a player of an amusement machine for the purpose of playing an amusement game;

"person" includes an individual or an entity regardless of the legal form thereof;

"personal background information" means such security, criminal, historical and financial information as may be required by the Authority from time to time for the purpose of determining the suitability of an applicant to become a Class 1 licensee or of a Class 1 licensee to retain a licence;

"premises" means any venue or other physical infrastructure;

"premises accessible to the public" means premises accessible to the public whether for free or for a charge and includes private clubs where memberships are given or sold for the privilege of belonging to the private club and accessing premises for social or business purposes;

"qualifying holding" means:

(a) a direct or indirect holding in an entity of at least twenty per centum of the capital in issue, provided that where the rights held as to the percentage of votes, to profits available for distribution and to rights to assets available for distribution on a winding up in respect of such holding are not identical, the highest percentage figure shall be deemed to be the percentage of equity holding held; or

(b) an equity holding which makes it possible for the holder thereof to appoint the majority of the administrators of the entity,

and the term "qualifying holder" shall be construed accordingly;

"subsidiary" has the same meaning as is assigned to the term "subsidiary undertaking" by the Companies Act. Cap. 386.

(2) Except as otherwise expressly provided in these regulations, nothing in these regulations shall prejudice the operation of, or shall be deemed to substitute or to derogate from any provision of the Act or any other law or regulation.

(3) In these regulations, in case of any conflict of interpretation between the English and the Maltese texts, the English text shall prevail.

(4) Terms used in these regulations and not defined shall, unless the context otherwise requires, have the same meaning assigned to them in the Act.

PART III

Licences - General

Requirement of
relevant licence.

3. (1) Notwithstanding the provisions of any other law, regulation, or authorisation, no person shall:

(a) manufacture or assemble;

(b) place on the market, distribute, supply, sell, grant on lease or transfer;

(c) operate; or

(d) in any premises accessible to the public which is managed, run or otherwise controlled by him, host;

an amusement machine, unless such person is in possession of a valid licence issued by the Authority as set out in the First Schedule.

(2) Notwithstanding the provisions of sub-regulation (1), where a person, already legally established in another Member State and duly licensed to provide or to carry out the activities listed in sub-regulation (1)(a) to (c) by the competent authority of another Member State (the "Service Provider") applies for a licence to provide or carry out the activities listed in sub-regulation (1)(a) to (c) in Malta:

Cap. 500.

(a) the Authority shall, in terms of the applicable provisions of the Services (Internal Market) Act, not duplicate requirements or controls which are equivalent or essentially comparable as regards their purpose to which such Service Provider may already be subject to in the Member State in which he is already legally established; and

Cap. 500.

(b) the Authority shall recognise the right of a Service Provider to exercise his freedom to provide or carry out the same activities in Malta on a temporary and occasional basis in terms of the applicable provisions of the Services (Internal Market) Act.

A Service Provider shall, notwithstanding the provisions of sub-

regulation (1)(a) to (c), not be required to obtain a licence in respect of the said activities, and the following regulations shall not apply to a Service Provider -

- (i) regulations 4 to 7;
- (ii) sub-regulation (1) of regulation 8; and
- (iii) regulation 9,

(hereinafter referred to as the "excluded regulations").

For the purposes of these regulations any references to a Class 1 licensee other than in an excluded regulation shall be deemed to include a reference to a Service Provider.

(3) The determination of whether the provision or the carrying out of the activities listed in sub-regulation (1)(a) to (c) are being provided on a temporary and occasional basis in Malta, shall be assessed by the Authority by reference to all the particular circumstances, including but not limited to, the duration, frequency, regularity and continuity of the provision or the carrying out of the activities listed in sub-regulation (1)(a) to (c).

(4) Where the Authority determines that the provision or the carrying out of the activities listed in sub-regulation (1)(a) to (c) are not being provided on a temporary and occasional basis by a Service Provider in Malta, such Service Provider shall, upon notification by the Authority of such a determination, be prohibited from providing or carrying out the activities listed in sub-regulation (1)(a) to (c) unless such person is in possession of a valid licence issued by the Authority as set out in the First Schedule.

(5) Except where these regulations expressly provide otherwise, a person may qualify for more than one type or class of authorisation, licence or approval under these regulations.

Class 1 Licence

4. (1) A Class 1 licence may be granted by the Authority to a person for the purpose of authorising such person to carry out one or more of the activities set out in regulation 3(1)(a) to (c). In order to obtain a Class 1 licence the applicant shall apply in writing to the Authority, provided that the Authority may designate that the applicant may also apply by electronic means. Class 1 Licence.

(2) Applications for a Class 1 licence shall be made on such forms provided by the Authority from time to time and shall be

accompanied by *inter alia*:

(a) personal background information of the applicant and of any associated person as determined by the Authority;

(b) criminal record information of the applicant and of any associated person as determined by the Authority;

(c) in the case of an applicant who is an individual, a passport size photo of the applicant;

(d) a bank reference or other proof of credit-worthiness of the applicant and of any associated person as determined by the Authority;

(e) a copy of the identity card or passport or certificate of incorporation, as the case may be, of the applicant and of any associated person as determined by the Authority;

(f) the memorandum and Articles of Association or other constitutional documents of the applicant, where applicable; and

(g) such other information as may be required in the application form.

Class 1 Licence
Application Fee
and Annual
Licence Fee.

5. (1) The granting of a Class 1 licence under these regulations shall in all cases be subject to the payment of a non-refundable application fee as set forth in the Second Schedule.

(2) The Authority may further require applicants for a Class 1 licence to pay, in addition to the application fee referred to in sub-regulation (1), the actual costs incurred by the Authority for the purpose of conducting investigations into such applicant's background, suitability and qualifications to be granted a Class 1 licence and of verifying the information submitted by such applicant in terms of these regulations.

(3) The application fee referred to in sub-regulation (1) shall be paid contemporaneously with the filing of the application for a Class 1 licence.

(4) No application for a Class 1 licence shall be processed, and no Class 1 licence shall be issued or renewed, until payment of all amounts due to the Authority in connection with the processing of the application, the grant of the Class 1 licence and the monitoring and enforcement thereof has been effected.

(5) Following the granting of a Class 1 licence, a Class 1

licensee shall pay an annual Class 1 licence fee as set out in the Second Schedule, together with, where required by the Authority, the actual costs incurred by the Authority for the purpose of conducting investigations into such Class 1 licensee's background, suitability and qualifications to retain a Class 1 licence and of verifying the information submitted by such Class 1 licensee in terms of these regulations. Such annual Class 1 licence fee and, where applicable, the costs incurred by the Authority as aforesaid, shall be payable by the Class 1 licensee by not later than thirty days prior to the lapse of every calendar year following the date of issue of the Class 1 licence.

(6) If a Class 1 licensee fails to pay the annual licence fee as set out in the Second Schedule and, or any other amount due pursuant to sub-regulation (5), within the time period set out in sub-regulation (5), the Class 1 licence shall lapse automatically.

6. A Class 1 licence granted under these regulations shall be for a term of one year, automatically renewable for further periods of one year each, subject to continued compliance by the Class 1 licensee with the provisions of the Act and of these regulations, with the terms and conditions of the Class 1 licence and with any directive or code of conduct issued by the Authority in terms of the Act or of these regulations applicable to such Class 1 licence.

Term of Class 1 Licence.

7. (1) The Authority shall not grant or renew a Class 1 licence applied for under these regulations unless it is reasonably satisfied that the applicant and any associated persons are fit and proper persons.

Grant and renewal of Class 1 Licence.

(2) In determining whether the applicant for the granting or renewal of a Class 1 licence and the associated persons are fit and proper persons, the Authority shall have regard to:

(a) the character and business reputation of the applicant and any associated person; and

(b) such other matters as may be included in directives issued by the Authority from time to time.

(3) A Class 1 licence shall be in such form and shall contain such particulars as the Authority may determine.

8. (1) In granting a Class 1 licence the Authority may subject such licence to such terms, conditions or requirements as it may deem appropriate, and after the grant of such Class 1 licence the Authority may from time to time vary or revoke any term, condition or requirement so imposed, or impose new terms, conditions or requirements:

Conditions of Class 1 Licence.

Provided that such terms, conditions and requirements are necessary and proportionate, in fulfilment of the Authority's functions under the Act and in conformity with Community laws.

(2) In granting a Class 1 licence, the Authority may, if reasonably justified by overriding reasons relating to public interest, impose conditions related to the number of amusement machines that can be owned and, or operated by a Class 1 licensee.

Consent of
Authority before
certain acts.

9. (1) Notwithstanding anything contained in any other law or regulation, the approval in writing of the Authority shall be required before any person may lawfully -

(a) increase an existing qualifying holding in a Class 1 licensee to cause it to equal or exceed thirty per centum or fifty per centum or to cause the Class 1 licensee to become that person's subsidiary;

(b) reduce an existing qualifying holding in a Class 1 licensee so as to cause it to fall below thirty per centum, or to cause the Class 1 licensee to cease to be that person's subsidiary;

(c) reduce a qualifying holding in a Class 1 licensee so as to cause it to cease to be a qualifying holding; or

(d) divest himself of a qualifying holding in a Class 1 licensee.

(2) It shall be the duty of the Class 1 licensee to notify the Authority forthwith upon becoming aware that any person intends to take any of the actions listed in sub-regulation (1).

(3) The Authority may request such information as it deems necessary to be furnished to it in connection with the notification referred to in sub-regulation (2).

(4) Within eight weeks of receipt of the notification referred to in sub-regulation (2) or of the information referred to in sub-regulation (3), whichever is later, the Authority shall:

(a) grant unconditional consent to the taking of the action;

(b) grant consent to the taking of the action subject to such conditions as the Authority may deem appropriate; or

(c) refuse consent to the taking of the action:

Provided that where the Authority fails for any reason to issue such a notice within the aforesaid period, this fact shall be construed as if the consent has been granted in terms of paragraph (a).

Class 2 Licence

10. (1) It shall not be lawful for any person to host an amusement machine in a premises accessible to the public which is managed, run or otherwise controlled by him unless such person is in possession of a Class 2 licence issued by the Authority in respect of that particular premises: Class 2 Licence.

Provided that where more than one person manages, runs or otherwise controls the same premises, only one Class 2 licence shall be required in respect of that particular premises and the limitation set out in regulation 3(1)(d) shall not apply to such other persons not holding a Class 2 licence in respect of that licensed premises.

(2) Applications for a Class 2 licence shall be made on such forms provided by the Authority from time to time and shall be accompanied by such information as the Authority shall determine, including *inter alia*:

- (a) proof of title on, or permit to set up, the premises;
- (b) criminal record information of the applicant as determined by the Authority;
- (c) description of the nature, location, and dimensions of the premises in respect of which an application for a Class 2 licence is submitted;
- (d) a plan to scale of the premises in respect of which an application for a Class 2 licence is submitted;
- (e) diagrams that indicate clearly the proposed approved area within the premises in respect of which an application for a Class 2 licence is submitted;
- (f) an undertaking completed on the appropriate form provided by the Authority to the effect that the premises in respect of which an application for a Class 2 licence is submitted shall not be used for the purpose of placing relevant gaming devices therein; and
- (g) such other information as may be required in the application form.

(3) The Authority shall not grant a Class 2 licence applied for under these regulations unless it is reasonably satisfied that the applicant is a fit and proper person.

(4) In determining whether the applicant for the granting of a Class 2 licence is a fit and proper person, the Authority shall have regard to:

(a) the character and business reputation of the applicant; and

(b) such other matters as may be included in directives issued by the Authority from time to time.

Term and
renewal of a
Class 2 Licence.

11. (1) A Class 2 licence granted under these regulations shall be for a term of one year, automatically renewable for further periods of one year each, subject to continued compliance by the Class 2 licensee with the provisions of the Act and of these regulations, with the terms and conditions of the Class 2 licence and with any directive or code of conduct issued by the Authority in terms of the Act or of these regulations applicable to such Class 2 licence.

(2) The granting of a Class 2 licence under these regulations shall in all cases be subject to the payment of a non-refundable application fee as set forth in the Second Schedule.

(3) The Authority may further require applicants for a Class 2 licence to pay, in addition to the application fee referred to in sub-regulation (2), the actual costs incurred by the Authority for the purpose of conducting investigations into such applicant's background, suitability and qualifications to be granted a Class 2 licence and verifying the information submitted by such applicant in terms of these regulations.

(4) The application fee referred to in sub-regulation (2) shall be paid contemporaneously with the filing of the application for a Class 2 licence.

(5) No application for a Class 2 licence shall be processed, and no Class 2 licence shall be issued or renewed, until payment of all amounts due to the Authority in connection with the processing of the application, the grant of the Class 2 licence and the monitoring and enforcement thereof has been effected.

(6) Following the granting of a Class 2 licence, a Class 2 licensee shall pay an annual Class 2 licence fee as set out in the Second Schedule, together with, where required by the Authority, the actual costs incurred by the Authority for the purpose of conducting

investigations into such Class 2 licensee's background, suitability and qualifications to retain a Class 2 licence and of verifying the information submitted by such Class 2 licensee in terms of these regulations. Such annual Class 2 licence fee and, where applicable, the costs incurred by the Authority as aforesaid, shall be payable by the Class 2 licensee by not later than thirty days prior to the lapse of every calendar year following the date of issue of the Class 2 licence.

(7) If a Class 2 licensee fails to pay the annual licence fee as set out in the Second Schedule and, or any other amount due pursuant to sub-regulation (6), within the time period set out in sub-regulation (6), the Class 2 licence shall lapse automatically.

12. (1) In granting a Class 2 licence the Authority may subject it to such terms, conditions or requirements as it may deem appropriate, and after the grant of such Class 2 licence the Authority may from time to time vary or revoke any term, condition or requirement so imposed, or impose new terms, conditions or requirements:

Class 2 licence conditions.

Provided that such terms, conditions and requirements are necessary and proportionate, in fulfilment of the Authority's functions under the Act and in conformity with Community laws.

(2) In granting a Class 2 licence, the Authority may, if reasonably justified by overriding reasons relating to public interest, *inter alia*:

(a) impose conditions in relation to the licensed premises or the approved area, including but not limited to the type of amusement machines and amusement games which can be hosted therein;

(b) impose conditions on the maximum number or the type of amusement machines which can be hosted at the licensed premises;

(c) require the Class 2 licensee to notify and, or obtain the approval of the Authority prior to carrying out any of the activities specified in the Class 2 licence.

(3) It shall not be lawful for a Class 2 licensee to host any amusement machines in any premises managed, run or otherwise controlled by him unless such amusement machines are approved amusement machines or equivalent amusement machines.

Amusement Machines and Amusement Games

13. (1) No person shall carry out any of the activities listed in regulation 3(1)(b) and (c) unless and until the amusement machine in respect of which such activity is carried out has been approved and registered by the Authority following the submission, by such person to the Authority, of an application for that purpose:

Provided that no such approval and registration shall be required with respect to equivalent amusement machines.

(2) Applications made under sub-regulation (1) shall be made by persons carrying out any of the activities listed in regulation 3(1)(b) and (c) on such forms as may be prescribed by the Authority from time to time and shall be accompanied by the following:

(a) a manufacturer's certificate for the amusement machine in conformity with Community law and standards;

(b) manuals, including software manuals, and any other documents issued by the manufacturer of the amusement machine containing:

(i) a full description of the amusement machine;

(ii) the theme of the amusement game or amusement games that can be played on the amusement machine;

(iii) instructions to be followed by players of the amusement machine; and

(iv) all the rules pertaining to the amusement game or amusement games that can be played on the amusement machine;

(c) the details of the licence held by the person submitting the application;

(d) the details of the premises where such amusement machine will be hosted and the details of the relative Class 2 licensee;

(e) a statement of compliance with the terms of these regulations;

(f) proof of the legal title of the applicant over the amusement machine, or the relevant agreement or agreements governing the commercial relationship between the owner, seller or distributor of the amusement machine and the person

carrying out the activities listed in regulation 3(1)(a) to (c);

(g) the non-refundable fee for registration of the amusement machines as set out in the Second Schedule.

(3) Any person carrying out any of the activities listed in regulation 3(1)(b) and (c) through the use of equivalent amusement machines shall, prior to the date of commencement of such activities, submit to the Authority, by electronic means or otherwise, in such form as may be determined by the Authority from time to time and made available on the official website of the Authority, a copy of the documents referred to in sub-regulation (2)(a) to (g) or evidence in the form of an attestation, certificate or document issued by the competent authority of the Member State which authorised such equivalent amusement machine that such documents have already been submitted to the competent authority of that Member State.

(4) The Authority may in accordance with the provisions of the Act and the Services (Internal Market) Act impose additional requirements and take any measure which it deems necessary with respect of equivalent amusement machines. Cap. 500.

14. (1) Where the application submitted pursuant to regulation 13 is approved by the Authority, the Authority shall proceed to: Registration of amusement machines.

(a) register the amusement machine in the name of the applicant and shall issue a certificate to that effect to the applicant;

(b) issue a registration tag to be permanently affixed to the amusement machine, setting out:

(i) the registration number allocated by the Authority to the amusement machine;

(ii) the unique manufacturer's amusement machine serial number;

(iii) the name of the manufacturer of the amusement machine;

(iv) the brand name of the amusement machine;

(v) the amusement machine model number.

(2) The registration tag shall remain the property of the Authority and no person, other than officials, employees or agents of

the Authority, shall affix, remove, erase or otherwise tamper with the registration tag.

(3) The Authority shall maintain a register containing the records of the amusement machines registered in accordance with this regulation.

(4) The Authority may place seals on key components of the amusement machines.

(5) In the event that the registration tag mentioned in sub-regulation (1)(b) is for any reason detached from the amusement machine or otherwise damaged, it shall be the duty of the applicant and any Class 2 Licensee hosting the amusement machine to immediately notify the Authority and disconnect and render inoperable the amusement machine until an official of the Authority has checked, certified and re-affixed such registration tag.

Changes to
amusement
machines or
amusement
games.

15. (1) The person in whose favour an amusement machine is registered shall not effect or suffer to be effected any changes to the amusement machine before obtaining the approval of the Authority, which approval shall be manifested by the issue of a replacement registration tag to be affixed by an inspector over, or in replacement of, the existing registration tag and, where applicable, by the replacement of seals placed on key components of the amusement machine.

(2) It shall be the duty of the person in whose favour a amusement machine is registered and of the qualifying holders and administrators thereof to notify the Authority forthwith, and in any case within no later than three working days, of any change in the details submitted to the Authority referred to in regulation 13(2) and (3):

Provided that no change in the ownership, operation, management or possession of an amusement machine shall take place until approved by the Authority.

(3) No person may dispose of, destroy or otherwise permanently withdraw from operation an amusement machine unless and until the Authority shall have granted its approval for such purpose and thereafter removed the amusement machine's registration tag and struck the amusement machine off the register.

Conditions
related to
amusement
machine.

16. (1) Any person carrying out an activity referred to in regulation 3(1)(b) and (c) shall, at all times, ensure that any amusement machine used or involved in carrying out any such activity:

- (a) is hosted in an approved area;
- (b) has a registration tag affixed thereto;
- (c) is functioning properly and, when that is not the case, is immediately shut down until repaired and fit for operation;
- (d) is not used to offer or play a game as defined in the Act;
- (e) is not modified, tampered with, re-programmed or otherwise altered, save with the approval of the Authority.

(2) It shall be unlawful for any person to, directly or indirectly, offer or receive a prize, reward or other benefit of a monetary value or capable of being converted into a prize, reward or other benefit of a monetary value, as a result of, or in connection with, the use by any person of an amusement machine.

PART IV

Further requirements applicable to amusement machines

17. An amusement machine approved and, or registered by the Authority in terms of these regulations shall also meet the following requirements:

Further requirements to be met by amusement machines.

- (a) the amusement machine shall provide the player with:
 - (i) the name of the amusement game;
 - (ii) the cost of a credit;
 - (iii) the rules of the amusement game;
 - (iv) warnings against excessive playing;
- (b) the maximum price to play one amusement game shall in no case exceed two euro;
- (c) amusement machines shall not have bill acceptors or any other device which is capable of accepting bank notes or payments through credit cards, debit cards or prepaid cards, provided that the Authority may at any time direct that amusement machines be modified or re-programmed in such a way as to accept only amusement machine tokens approved by the Authority;

(d) amusement machines shall not give out, print or otherwise produce any real or fictitious currency or any bills, tokens, vouchers or any other ticket whatsoever.

PART V

Other Amusement Machines

Other
amusement
machines.

18. (1) Regulations 3 to 17, 22(1), 22(2) and 23 to 30 shall not apply to other amusement machines or any person carrying out any of the activities set out in regulation 3(1) in respect of other amusement machines.

(2) Notwithstanding any other law, regulation or authorisation, no person shall carry out any activity listed in regulation 3(1)(d) in respect of an other amusement machine unless such person:

(a) registers the other amusement machine with the Authority by submitting such form as the Authority may prescribe;

(b) pays to the Authority the registration fee and the annual fee specified in the Third Schedule;

(c) affixes on the other amusement machine the registration tag issued by the Authority upon registration of the other amusement machine in terms of this regulation.

(3) The maximum price to play one amusement game on an other amusement machine shall in no case exceed one euro.

(4) The Authority may from time to time issue directives by virtue of which the Third Schedule shall be amended.

PART VI

Enforcement

Powers of
inspectors.

19. (1) Without prejudice to anything contained in the Act, an inspector shall, for the purpose of ascertaining that these regulations and that all the conditions of a licence issued by the Authority under these regulations are being complied with, and that the full amount of fees payable under these regulations are being paid, have the following powers:

(a) to inspect amusement machines;

(b) to remove an amusement machine from its present location in order for an inspection or examination to be carried

out at a site approved and designated by the Authority, for the purpose of ensuring compliance with these regulations;

(c) to take such measures as may be necessary, in case of doubt or contestation, to conclusively determine whether a device is an amusement machine or otherwise;

(d) to inspect the premises where amusement machines are hosted; and

(e) to request information or the production for inspection of any document or other thing for the purposes of conducting an inspection.

(2) An inspector removing an amusement machine from any premises shall provide a receipt for it to the person who manages, runs or otherwise controls such premises and, subject to sub-regulation (3), shall promptly return the amusement machine to the same premises after completion of the inspection and, or examination as the case may be.

(3) An inspector may detain for the purposes of evidence any amusement machine that the inspector discovers while acting under this regulation and believes, on reasonable grounds, may afford evidence of a violation of, or non-compliance with, anything contained in these regulations.

20. The person who manages, runs or otherwise controls a premises wherein amusement machines are hosted, and any employee or agent of such person, shall give all reasonable assistance to the inspector conducting an inspection in terms of these regulations to enable the inspector to exercise the powers granted to him by the Act and these regulations and shall furnish the inspector with such amusement machine, information or other thing as the inspector may reasonably request.

Assistance to be given to inspectors.

PART VII

Offences and Penalties

21. (1) Any person who contravenes any provision of these regulations shall on conviction be liable to a fine (*multa*) of not less than one thousand euro (€1,000) and not exceeding two hundred and fifty thousand euro (€250,000) in respect of any contravention of, or failure to comply with, the provisions of these regulations and, or the seizure, removal, confiscation, destruction or disabling of amusement machines or any equipment or software related or connected thereto.

Offences.

(2) The provisions of article 68 of the Act shall apply *mutatis mutandis* and any reference contained therein to a licensee or holder of a permit issued in terms of article 36 of the Act shall be deemed to be a reference to a "licensee" as defined in these regulations.

PART VIII

Transitory Provisions

Transitory
provisions.

22. (1) Any person who, on the date of the coming into force of these regulations, already carries out any of the activities listed in regulation 3(1), hereinafter also called an "incumbent", shall, notwithstanding the provisions of any other law, regulation or authorisation, within a peremptory period of two months from the date of entry into force of these regulations:

(a) apply with the Authority for the relevant licence in terms of these regulations;

(b) where applicable, apply with the Authority for the authorisation referred to in regulation 13; and

S.L. 10.36.

(c) pay the registration fees prescribed in these regulations, provided that the aggregate of such fees payable by persons holding a valid authorization in writing from the Commissioner of Police issued in terms of the Use of Amusement Machines (Restriction) Regulations, shall, upon presentation of such authorization in writing to the Authority, be reduced *pro rata* by the amount paid by such person to the Commissioner of Police for the purpose of the issue thereof.

(2) Notwithstanding anything contained in these regulations, an incumbent shall not be deemed to be in breach of the provisions of these regulations until the happening of one of the following events, whichever is earlier:

(a) the incumbent fails to submit an application in accordance with sub-regulation (1) within the time period stipulated therein;

(b) the Authority informs the incumbent that the application submitted by him in terms of sub-regulation (1) has been refused and that no licence and, or authorisation shall be granted:

Provided that the Authority may grant such incumbent a period of not more than fifteen days to provide such other information or supplemental documentation or to carry out such acts as the Authority

may deem necessary for the purpose of determining whether the licence and, or authorisation is to be granted in accordance with these regulations.

(3) The provisions of sub-regulations (1) and (2) shall not apply to other amusement machines. Any person who on the date of the coming into force of these regulations already hosts, in any premises accessible to the public which is managed, run or otherwise controlled by him, an other amusement machine, shall, notwithstanding the provisions of any other law, regulation or authorisation, within a peremptory period of two months from the date of entry into force of these regulations, comply with the requirements set out in regulation 18(2), provided that such licence application fees and, or amusement machine authorisation fees as may be prescribed in these regulations, and provided that the aggregate of such fees payable by persons holding a valid authorization in writing from the Commissioner of Police issued in terms of the Amusement Machines (Restriction) Regulations, 1988 shall, upon presentation of such authorization in writing to the Authority, be reduced *pro rata* by the amount paid by such person to the Commissioner of Police for the purpose of the issue thereof. S.L. 10.36.

(4) Notwithstanding anything contained in these regulations, any person referred to in sub-regulation (3) shall not be deemed to be in breach of the provisions of these regulations until the lapse of the time period referred to therein as long as within such time period the requirements of regulation 18(2) shall have been complied with.

PART IX

General

23. (1) Every person seeking to obtain a licence, authorization or other approval from the Authority in terms of these regulations shall submit to the Authority the appropriate application form, together with such ancillary documentation as may be required in terms of these regulations and in terms of the application form: Application procedure.

Provided that in addition to the requirements set out in this sub-regulation, the Authority may, in ensuring whether an applicant satisfies the requirements in these regulations, request and conduct an interview with such applicant.

(2) The Authority shall not commence processing an application form unless the application form is complete. In the event that it receives an incomplete application form, the Authority shall inform the applicant of the need to supply any additional information or documentation. For the purposes of this sub-regulation, an

application form shall not be deemed to be complete unless the application form is correctly filled in and unless the Authority is in receipt of all the documentation required to be submitted together with the application form as set out therein and as set out in these regulations.

(3) The Authority shall determine whether an applicant shall be granted a licence, authorization or approval within no more than one hundred and twenty days after the date of receipt of an application form which is complete in accordance with the requirements of sub-regulation (2).

(4) The period mentioned in sub-regulation (3) may, prior to the expiry of such period, be extended by the Authority for one period of not more than thirty days. Such extension and the reasons thereof shall be notified to the applicant.

(5) The Authority shall acknowledge receipt of a complete application form and, where applicable, the application fee, by letter to the applicant, which shall specify:

(a) the period within which the Authority shall determine the application, as set out in sub-regulation (3) and sub-regulation (4);

(b) the procedure in terms of which a refusal by the Authority to grant a licence, authorization or other approval may be appealed from in accordance with regulation 30; and

(c) a statement in accordance with sub-regulation (6) that in the absence of a response by the Authority within the period specified in accordance with paragraph (a), the licence, authorization or approval applied for shall be deemed to have been granted.

(6) Where the Authority does not determine whether an applicant shall be granted a licence, authorization or approval within the period mentioned in sub-regulation (3), or within the extended period mentioned in sub-regulation (4), such applicant shall, for all intents and purposes, be deemed to have been granted the licence, authorization or approval.

(7) Where a licence, authorization or approval is refused, the Authority shall inform the applicant of such decision and state the reasons for such refusal.

Assignment or
transfer.

24. (1) A licence or authorisation granted by the Authority in terms of these regulations may not be assigned or transferred in any

way whatsoever to any other person without the prior written approval of the Authority.

(2) In the event that a licensee wishes to surrender a licence or an authorisation, he shall notify the Authority in writing and the Authority shall proceed to cancel the licence or authorisation accordingly. A cancellation of a licence or of an authorisation shall not affect any liability of the licensee for anything done or omitted to be done before the date of cancellation.

(3) It shall be the duty of a licensee and of the qualifying holders and administrators thereof to notify the Authority of the happening of any of the following:

(a) any change in the administrators of the licensee;

(b) any material changes in:

(i) the information and documentation provided to the Authority in terms of these regulations, or any other information or documentation provided by the licensee to the Authority in terms of any other provision of the Act, or in terms of conditions attached to the licence; or

(ii) any material change in the circumstances that may be reasonably expected to affect the abilities of the licensee to comply with the Act, these regulations and the licence;

(c) any resolution or intended resolution, or any application or intended application to any Court or other institution or authority, or any other action, for the dissolution and winding up of the licensee or the declaration of bankruptcy of the licensee as soon as they become aware of such changes, resolutions or intended resolutions, applications or intended applications or actions.

(4) The notification referred to in sub-regulation (3) shall be made on such forms as prescribed by the Authority by not later than five days from the happening of any of the events referred to in sub-regulation (3).

(5) Where as a result of a change referred to in sub-regulation (3), irrespective of whether such change has been notified to the Authority, a situation is brought about that, had it existed at the time of the application for a licence or authorisation under these regulations, it would have precluded the grant of the licence or

authorisation, the Authority shall by notice inform the licensee accordingly. In the event that such situation is not remedied to the satisfaction of the Authority within one month from the notice, the Authority may revoke or suspend the licence or the authorisation.

Compliance with Act, regulations, directives issued by the Authority and licence conditions.

25. (1) Every licensee shall at all times comply with the provisions of the Act, these regulations, the directives issued by the Authority from time to time and the conditions of the licence or licences held. Furthermore every licensee shall carry out the activities specified in the licence in accordance with the procedures, codes of conduct and internal controls which may be prescribed by the Authority from time to time, and all such procedures, codes of conduct and internal controls shall, for all intents and purposes, be deemed to be conditions of the licence, whether or not expressly included therein.

(2) Every licensee shall maintain accounting and technical records of its operations and shall forward same to the Authority in such form, detail and at such frequency as may be prescribed by the Authority in codes of conduct which may be prescribed for this purpose by the Authority from time to time.

(3) Every licensee shall promptly report to the Authority any fact or circumstance relating to the operation of amusement machines which he reasonably suspects to constitute an offence under these regulations or the Act.

(4) The granting by the Authority of a licence or authorisation under these regulations to any person shall not relieve such person from obtaining any other permit, approval or licence required by or under any other law or regulations.

Revocation or suspension of a licence or authorisation.

26. The Authority may revoke or suspend a licence or authorisation granted in terms of these regulations on any of the following grounds:

(a) the licensee contravenes any provision of the Act or these regulations, or is found by the Authority to be in breach of any condition of the licence or any directive issued by the Authority in terms of the Act or regulations made thereunder;

(b) the licensee knowingly or negligently supplies to the Authority information that is false or misleading;

(c) the licensee is being wound up or otherwise dissolved; or

(d) the Authority is reasonably satisfied that the licensee

is not, or has ceased to be, a suitable person to hold the licence.

27. (1) Where a ground for revocation, suspension or non-renewal of a licence arises under these regulations, the Authority shall, by means of a duly reasoned notice in writing, request the licensee to show cause why the licence should not be suspended or revoked or why the licence should be renewed on the ground or grounds set out in the notice. Such notice shall specify the time, not being less than twenty-one days, within which the licensee or interested person is to file a response with the Authority.

Review
procedure.

(2) The Authority shall consider any response made under sub-regulation (1) in such manner that:

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

(b) where, although the matter is not resolved to its satisfaction, it considers that further action is not warranted, it shall caution the licensee in writing; or

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

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

(ii) suspend the licence for such period as it thinks fit; or

(iii) revoke or not renew the licence.

(3) Where a direction given by the Authority under sub-regulation (2)(c)(i) is not complied with within the time specified in the notice, the Authority may revoke, suspend or not renew the licence.

(4) The Authority shall in the case of any action taken in terms of sub-regulation (2)(b) and (c), provide the licensee with reasons for its decision.

(5) The suspension, revocation or non-renewal of a licence shall not affect any liability of the licensee for anything done or omitted to be done before the date of suspension, revocation or non-renewal.

(6) The liability of the licensee to pay any fee shall continue

throughout any period during which the licence is suspended.

Codes of
Conduct.

28. The Authority may issue Codes of Conduct regulating the conduct and operations of Class 1 licensees and Class 2 licensees.

Doubt as to
requirement of
licence.

29. In the event of reasonable doubt as to whether a licence or authorization is required in terms of these regulations, the matter shall be determined by the Authority.

Appeal.

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

Cap. 490.

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

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

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

Decision of
Authority to
remain in force
pending appeal.

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

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

FIRST SCHEDULE

(Regulation 3)

LICENCES

CLASSES OF LICENCES

Applicants may apply for either or both of the following licences -

1. Class 1 Licence shall cover the following activities:

- (a) the manufacture or assembling of an amusement machine;
- (b) the placing on the market, distribution, supply, sale, granting on lease or transfer of an amusement machine; and
- (c) the operation of an amusement machine.

2. Class 2 Licence shall cover the hosting by any person, in any premises accessible to the public which is managed, run or otherwise controlled by him, of amusement machines.

SECOND SCHEDULE

(Regulations 5, 11 and 13)

FEES

CLASS 1 LICENCE APPLICATION AND ANNUAL FEES

1. With every application for a Class 1 licence, the applicant shall pay to the Authority, in terms of regulation 5, a one-time non-refundable fee of €2,000.

2. The annual fee payable by a Class 1 licensee shall be €1,000 per amusement machine registered in his name.

CLASS 2 LICENCE APPLICATION AND ANNUAL FEES

3. With every application for a Class 2 licence, the applicant shall pay to the Authority, in terms of regulation 11, a one-time non-refundable fee of €1,000.

4. The annual fee payable by a Class 2 licensee is €1,000 per premises managed, run or otherwise controlled by him.

AMUSEMENT MACHINE REGISTRATION FEE

5. With every application for registration of an amusement machine, the applicant shall pay to the Authority, in terms of regulation 13(2)(g), a one-time non-refundable fee of €80 per amusement machine.

THIRD SCHEDULE

(Regulation 18)

OTHER AMUSEMENT MACHINES

1. The following are other amusement machines in terms of these regulations:

- (a) billiards, pool and, or snooker tables unless operated electronically through video display;
- (b) table-soccer tables unless operated electronically through video display; and
- (c) ‘kiddie-rides’.

2. With every application for registration of an other amusement machine, the applicant must pay to the Authority, in terms of regulation 18(2)(b), a one-time non-refundable fee of €70 per other amusement machine.

3. The annual fee payable by a person carrying out an activity listed in regulation 3(1)(d) in respect of an other amusement machine is €100 per other amusement machine hosted in such premises in which the said activities are carried out.
