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Amendment to the Betting and Gaming Act in connection with the modernisation of the gaming casino regime.

We, Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc., etc., etc.

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that it is desirable that regulations be laid down on the modernisation of the gaming casino regime;

We, therefore, having heard the Advisory Division of the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

ARTICLE I

The Betting and Gaming Act is amended as follows:

A

Title IVb will read as follows:

TITLE IVb. GAMING CASINOS

Part 1. Introductory provisions

Article 27g (general)

1. A licence for organising a gaming casino may only be granted in accordance with the provisions of this Title.
2. A gaming casino is understood to be a fixed establishment open to the public or operated as a business, in which participants are given an opportunity as referred to in Article 1(1)(a) through games of chance that are played in a group, and in which gaming machines as referred to in Article 30, opening words and under (a), can be set up and operated.

Part 2. The licence for organising a gaming casino

Article 27h (number, period of validity, geographical distribution, transferability)

1. The Board referred to in Article 33a may grant no more than sixteen licences for organising a gaming casino.
2. The licence referred to in the first paragraph is granted for a definite period and is not transferable.
3. The licence referred to in paragraph (1) is granted subject to a restriction connected with the geographical distribution of the gaming casinos.
4. By or pursuant to a General Administrative Order rules are laid down in respect of paragraphs (1) to (3). These rules will, in any case, relate to:
 - a. the geographical distribution of the gaming casinos;
 - b. the games of chance that may be offered within the gaming casino under a licence for organising a gaming casino, which rules may include the rules of play and other features which these games have to comply with;
 - c. the minimum and maximum scope of the games of chance to be organised;
 - d. the period of validity of the licence;
 - e. the transfer of the licence.

Article 27i (transparent granting of licences)

1. The licence referred to in Article 27h(1) is granted by means of an auction.

2. In order to give potential applicants for the licence referred to in Article 27h(1) the opportunity to submit an application, the Board referred to in Article 33a will publish the intention to hold an auction in a timely and appropriate manner. For this purpose, this intention will, in any case, be announced in the Government Gazette.

3. The Board referred to in Article 33a will only allow to the auction, referred to in paragraph (1), the applicants for a licence whose application complies with the regulations laid down by or pursuant to this Act.

4. If a request for preliminary relief is made in respect of a decision made pursuant to paragraph (3) or Article 27h(1), the decision will only take effect after a decision has been made on this request.

5. In derogation from paragraph (1), no auction will be organised if less than two applications remain after the Board referred to in Article 33a has assessed the applications.

6. By or pursuant to a General Administrative Order rules are laid down in respect of paragraphs (1) to (5). These rules will, in any case, relate to:

- a. the submission and handling of the application for a licence as referred to in Article 27h(1);
- b. the public announcement of the auction referred to in paragraph (2);
- c. the auction;
- d. the period within which a decision is made on the application.

Article 27j (refusal)

1. The application for the granting of the licence referred to in Article 27h(1) will be refused if:

- a. there is insufficient guarantee that the applicant and its business will comply with the regulations laid down by or pursuant to this Act;
- b. there is insufficient guarantee that the gaming casino will be organised in accordance with the regulations laid down by or pursuant to this Act, the Anti-Money Laundering and Anti-Terrorist Financing Act and the 1977 Sanctions Act;
- c. there is insufficient guarantee that the supervision of compliance with and enforcement of this Act, the Anti-Money Laundering and Anti-Terrorist Financing Act, the 1977 Sanctions Act and the Betting and Gaming Tax Act can be conducted efficiently and effectively.
- d. the outcome of the auction referred to in Article 27i(1) gives reason to do so.

2. By or pursuant to a General Administrative Order further rules are laid down in respect of paragraph (1).

Article 27k (amendment, withdrawal, suspension)

1. The licence referred to in Article 27h(1) may be withdrawn if:

- a. the data provided for the purpose of obtaining the licence proved to be incorrect or incomplete to such an extent that a different decision would have been made on the application if the correct and complete data would have been known when assessing the application;
- b. the regulations laid down by or pursuant to this Act, the Anti-Money Laundering and Anti-Terrorist Financing Act, the 1977 Sanctions Act or the Betting and Gaming Tax Act are not or no longer complied with;
- c. a condition attached to the licence or a restriction under which the licence was granted has been violated;
- d. the holder of the licence failed to organise the gaming casino within a reasonable period in accordance with the licence;
- e. the holder of the licence apparently ceased to organise the gaming casino;
- f. insufficient cooperation was rendered in the supervision of compliance with and enforcement of the regulations laid down by or pursuant to this Act, the 1977 Sanctions Act and the Betting and Gaming Tax Act.

2. The licence referred to in Article 27h(1) may be suspended based on serious suspicions that there is a reason to withdraw the licence.

3. By or pursuant to a General Administrative Order further rules are laid down in respect of paragraph (1) and further rules may be laid down in respect of paragraph (2).

Part 3. The holder of the licence for organising a gaming casino

Article 27l (legal form, transparency, continuity)

1. The holder of the licence referred to in Article 27h(1) will have its registered office, its management board or its principal establishment in a State that is party to the Treaty on the Functioning of the European Union or the Agreement on the European Economic Area.
2. The licensee has the legal form of a public company, a private company with limited liability, the equivalent thereof under the law of another State as referred to in paragraph (1) or a European company.
3. The licensee is not affiliated with persons in a formal or actual control structure which:
 - a. pursuant to the law of another state applicable to these persons, or
 - b. due to the obscurity of this structure, may constitute an impediment to the efficient and effective supervision of compliance with the provisions laid down by or pursuant to this Act or the 1977 Sanctions Act.
4. The continuity of the licensee is reasonably guaranteed.
5. By or pursuant to a General Administrative Order further rules are laid down in respect of paragraphs (1) to (4).

Article 27m (business operations)

1. The holder of the licence referred to in Article 27h(1) organises its business operations as such that a responsible, reliable and verifiable organisation of the gaming casino, as well as the supervision of compliance with the regulations laid down by or pursuant to this Act, the Anti-Money Laundering and Anti-Terrorist Financing Act and the 1977 Sanctions Act, and the enforcement thereof, are guaranteed.
2. For this purpose, the licensee will, in any case, use appropriate means, processes and procedures which:
 - a. comply with the technical and operational requirements set by or pursuant to a General Administrative Order and relating to the safety, confidentiality, honesty, continuity, reliability, verifiability and suitability of the business operations, and
 - b. have been approved by an institution accredited by the Dutch Accreditation Council or by another national accreditation body as referred to in Article 4 of Regulation No. 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93 (OJEU L 21).
3. The licensee will, in any case, have the means, processes and procedures fully or partly subjected to an approval by an institution as referred to in paragraph (2)(b), on instructions to that effect from the Board referred to in Article 33a, within the period set in those instructions.
4. The licensee will appoint one or more officers who are experts on the matter and who are responsible and available within its organisation for the implementation and internal supervision of compliance with provisions set by or pursuant to this Act.
5. By or pursuant to a General Administrative Order further rules are laid down with regard to the business operations of the licensee and the approval of the means, processes and procedures. In any case, rules are laid down with regard to:
 - a. cases in which the licensee will have all or part of the means, processes and procedures referred to in paragraph (2) subjected to an approval;
 - b. cases in which the Board referred to in Article 33a may grant a temporary exemption from the requirement referred to in paragraph (2)(b);
 - c. cooperation with third parties in the interest of the responsible, reliable and verifiable organisation of a gaming casino;
 - d. consumer protection;
 - e. outsourcing of parts of the business operations to third parties;

- f. performing activities within the gaming casino other than the games of chance organised under the licence, and
- g. administration of the games of chance organised under the licence.

Article 27n (reliability)

1. The reliability of the holder of the licence referred to in Article 27h(1), and of the persons wholly or partially determining its policy and of its eventual stakeholder is beyond any doubt.
2. The licensee pursues an adequate policy that aims to guarantee the reliability of managers, of persons in key positions and of persons who come into contact with players in the organisation of a gaming casino.
3. The licence may, in any case, be refused in the case and under the conditions referred to in Article 3 of the Public Administration Probity Screening Act.
4. Before the application for the granting of a licence as referred to in Article 27h(1) is refused or such licence is suspended or withdrawn, the Public Administration Probity Screening Agency referred to in Article 8 of the Public Administration Probity Screening Act may be asked for advice as referred to in Article 9 of that Act.
5. By or pursuant to a General Administrative Order further rules are laid down in respect of paragraphs (1) and (2). These rules will, in any case, relate to the manner in which it is determined whether the reliability of the licensee and a person as referred to in paragraph (1) is beyond any doubt and which facts and circumstances are included herein.

Article 27o (expertise)

1. The policy of the holder of the licence referred to in Article 27h(1) is determined by persons who are experts in connection with the responsible, reliable and verifiable organisation of a gaming casino.
2. The licensee will ensure that managers, staff in key positions and staff who come into contact with players in the organisation of a gaming casino are suitably qualified.
3. By or pursuant to a General Administrative Order further rules are laid down in respect of paragraphs (1) and (2).

Part 4. Organising a gaming casino

Article 27p

Reserved for Article I, part H, of the Legislative Proposal for Remote Games of Chance (access to gaming casino)

Article 27q

Reserved for Article I, part I, of the Legislative Proposal for Remote Games of Chance (Central register for exclusion from games of chance)

Article 27r (fair gaming standards of the games)

1. The holder of the licence referred to in Article 27h(1) guarantees fair gaming standards of the games of chance organised within the gaming casino.
2. For this purpose, the licensee will, in any case, exclude persons employed by the licensee and persons employed by third parties who work in the gaming casino from direct participation in the games of chance offered in the gaming casino, as well as from indirect participation in these games through intermediaries.
3. By or pursuant to a General Administrative Order further rules may be laid down as regards the fair gaming standards of the games of chance offered within a gaming casino. Additional categories of persons may be designated who are excluded by the licensee from participation in the games of chance.

Article 27s (internal supervision by licensee)

1. For the purpose of compliance with the regulations laid down by or pursuant to this Act, the holder of the licence referred to in Article 27h(1) will, within the gaming casino, supervise players and persons who come into contact with players in the organisation of a gaming casino.
2. For the purpose of the supervision referred to in paragraph (1), the holder of the licence referred to in Article 27h(1) will use cameras.
3. The processing of personal data under paragraph (2) constitutes a processing as referred to in Article 1(b) of the Personal Data Protection Act.
4. The presence of cameras as referred to in paragraph (2) will be clear to anyone entering the relevant gaming casino.
5. By or pursuant to a General Administrative Order further rules may be laid down in respect of the provisions of paragraphs (1) to (4).

B

Article 30z will read as follows:

Article 30z

1. Divisions (2) and (3) of this Title do not apply to the presence and operation of gaming machines in a gaming casino by a holder of a licence as referred to in Article 27h(1). The holder of the licence referred to in Article 27h(1) is also a holder of a licence for having and operating one or more gaming machines in its gaming casino. The licence for having and operating one or more gaming machines will be cancelled if the licence as referred to in Article 27h(1) is cancelled.
2. By or pursuant to a General Administrative Order, rules may be laid down in respect of the admission of the type of gaming machines in a gaming casino, which differ from the provisions of Division (4) of this Title.
3. By or pursuant to a General Administrative Order rules may also be laid down in respect of:
 - a. having and operating gaming machines in a gaming casino by the holder of a licence as referred to in Article 27h(1); and
 - b. the admission referred to in paragraph (2).

C

Article 35a will read as follows:

PM: reserved for a concurrence provision in order to bring the necessary amendment to Article 35a with regard to the gaming casinos in line with Article EE of the pending legislative proposal for remote games of chance.

ARTICLE II (evaluation)

Within seven years of this Act entering into force, Our Minister of Security and Justice will submit a report to the States General about the effectiveness and effects of this Act in practice.

ARTICLE III (transitional law)

1. This article applies to the first sixteen licences for operating a gaming casino which may be granted after this Act has entered into force.
2. Up until the moment that a licence for operating ten gaming casinos is granted pursuant to paragraph (2), the 1996 Casino Games Decree will be considered to be a licence as referred to in Article 27h of the Betting and Gaming Act, as it will read pursuant to Article I, for operating fourteen gaming casinos.
3. The Board referred to in Article 33a of the Betting and Gaming Act will, immediately after the privatisation of the licensee in conformity with the 1996 Casino Games Decree,

grant a licence for operating ten gaming casinos to the privatised legal entity. As soon as this licence is granted, the 1996 Casino Games Decree will cease to apply.

4. The legal entity that becomes the holder of the licence for operating ten gaming casinos pursuant to paragraph (3) will not be eligible to be granted a licence for the six other gaming casinos.

5. With regard to the granting of the ten licences referred to in paragraph (3) and with regard to the granting of the six remaining licences pursuant to Article 27h(1) of the Betting and Gaming Act, as it will read pursuant to Article I, a procedure may be laid down once by order of Our Minister of Security and Justice which differs from the procedure referred to in Article 27i of the Betting and Gaming Act, as it will read pursuant to Article I. Here, the granting of a maximum of four of the six remaining licences pursuant to Article 27h(1) of the Betting and Gaming Act, as it will read pursuant to Article I, may be subject to the condition that the granting of the licences means that assets or personnel be taken over.

ARTICLE IV (entry into force)

This Act shall come into force on a date to be stipulated by Royal Decree, which date may vary for the different Articles or parts thereof.

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I. GENERAL

1. Introduction

A modernisation of the games of chance policy was announced in the coalition agreement. One of the spearheads of this modernisation is the reorganisation of the casino regime. Under the current Dutch Betting and Gaming Act (*Wet op de kansspelen (Wok)*), only one legal entity is allowed to organise gaming casinos in the Netherlands. Since 1976, the state-owned company Holland Casino (name given in the articles of association: Nationale Stichting tot Exploitatie van Casinospelen in Nederland) has been organising gaming casinos in the Netherlands as sole licensee. Based on the opinion that offering games of chance is not a core task of the government, the government announced that Holland Casino shall be privatised under certain conditions. Not only will the government holding in Holland Casino be terminated, the existing casino monopoly will be abandoned as well.

This legislative proposal serves to modernise the gaming casino regime according to these basic principles. The purpose of the legislative proposal is to channel the existing or future demand for casino games to a legal, responsible, reliable and verifiable supply. The legislative proposal provides for suitable measures in respect of the prevention of gambling addiction, protection of consumers and the combating of fraud and criminality.

2. Dutch games of chance policy

2.1 Games of chance policy objectives

The knowledge that you can win a relatively large amount of money by placing a small bet has offered people pleasure, relaxation and excitement for centuries, and therefore makes games of chance an important form of entertainment. However, games of chance also involve risks that should be controlled. For many years now, the games of chance policy has been in place in order to control these risks. The key objectives of the games of chance policy are the prevention of gambling addiction, the protection of consumers and the combating of fraud and criminality.

2.2 Prevention of gambling addiction

Risks of addiction

Citizens participating in games of chance should be able to do so in a responsible and reliable manner. The prevention of gambling addiction is an essential part of this. A gambling addiction involves negative personal and social consequences. A gambling addiction may cause serious psychological, social, physical and financial problems, such as aggression, relationship problems and debts, which can only be solved with help. Many problem and at-risk players tend to commit offences such as theft and fraud, and problem players usually do this in connection with their gambling addiction. These risks require an active prevention policy.

Various factors may increase the risk of a gambling addiction. Firstly, a player's personal characteristics and personal situation are factors which determine his or her susceptibility to a gambling addiction. Moreover, the type of game and the gambling environment may also contribute to the risk of a gambling addiction. For instance, the shorter the period of time between the game being played and the possibility of placing another bet the more the risk will increase. This also applies to the lapse of time between betting money and seeing the result. If this is a short period of time, the risk will be higher compared to when there is more time between placing the bet and seeing the result.

These last-mentioned factors apply to games of chance usually played in a gaming casino. For instance, it usually concerns types of games which are played at a rather high to very high pace, with relatively little time between placing the bet and seeing the result. As a result, adrenaline levels remain high and players may be more inclined to

play another game. In principle, the risk of a gambling addiction is therefore high when it comes to these types of games. However, the fact that there is direct physical contact between the licensee (the staff) and players and the fact that games of chance offered in gaming casinos are played in a group so that a person's gaming behaviour is subject to a form of social control, may have a slight inhibitory effect.

Framework for addiction prevention

Due to the relatively high risks of becoming addicted to games of chance played in gaming casinos, this legislative proposal provides a framework for addiction prevention. The purpose of addiction prevention is to prevent participants in games of chance, especially vulnerable groups (such as young persons), from developing problems when participating in casino games.

First and foremost, minors are denied access to gaming casinos. Partly for this reason, licensees must carefully determine and verify the identity and age of all visitors before they are allowed access to the gaming casino.

The framework also provides for a number of preventive measures increasing in intensity and successively aimed at:

- a timely detection of high-risk gaming behaviour;
- mitigation of (or exclusion from) participation in games of chance if a player is no longer in control of his gaming behaviour;
- a referral to professional care, if necessary.

The basic principle in the prevention of addiction is the concept of "responsible gambling", with the government, licensees and players each having their own responsibility.

Government

The government wants to avoid gambling addiction as much as possible. For this purpose, the government sets the frameworks within which potentially high-risk games of chance may be offered in the most responsible way and monitors compliance with these frameworks. The government also has a coordinating role in the area of prevention of gambling addiction. For instance, the Gaming Authority which was established on 1 April 2012 organises, among other things, regular consultations between licensees, addiction care services, the Ministry of Security and Justice and the Ministry of Health, Welfare and Sport, within the context of its statutory duty to prevent and limit gambling addiction (Article 33b of the Betting and Gaming Act). Moreover, the pending amendment to the Betting and Gaming Act in connection with the organisation of remote games of chance (hereinafter referred to as 'the legislative proposal for remote games of chance') provides for the set-up of a central register for exclusion from participation in games of chance. This central register to be managed by the Gaming Authority enables players to exclude themselves from high-risk games of chance (remote, in gaming casinos and in amusement arcades), and enables licensees of such games of chance to recognise players listed in the register and to deny them access to these games of chance.

Players

In principle, players are personally responsible for their own gaming behaviour. For instance, they should restrict their gaming time and the money they bet to a responsible limit. In order for players to be able to take this responsibility, they should, however, be provided with general information about, for example, the games of chance offered, the risks of a gambling addiction and the means available in order to keep this under control. Licensees should provide such information within the context of their duty of care. A player's personal responsibility also includes, in principle, that they determine the amount they want to spend on games of chance in a gaming casino for themselves. A player's personal responsibility will come first, also in case of any interventions by a licensee in the player's gaming behaviour. Licensees should have sufficient staff available with expertise in the area of gambling addiction. The staff should detect potentially high-

risk gaming behaviour and, where necessary, inform the relevant players of their gaming behaviour and the dangers of such behaviour and advise them on the options that are available in order to moderate their gaming behaviour. It is primarily up to the players to respond to this and to adjust their gaming behaviour themselves.

However, this does not mean that players are able to take this personal responsibility under all circumstances. In certain situations, this will not be the case and a temporary exclusion from participation in all high-risk games of chance on an involuntary basis - by means of registration in the central register - will be the only possibility to avoid any further negative consequences of problematic gaming behaviour for these players. This is especially true if, after an investigation and intervention, a licensee reasonably suspects that a player's gaming behaviour could cause harm to himself or to those closest to him and this player still does not want to take any measures to regain control over his behaviour.

Licensee

Under Article 4a(1) of the Betting and Gaming Act, licensees have a duty of care to take any measures and steps necessary to prevent addiction as much as possible to the games of chance organised by them. Holland Casino has implemented this duty of care by means of the prevention policy for games of chance developed in cooperation with professional addiction care services. The basic principle of the prevention policy is that players are primarily responsible for their own actions. The prevention policy involves, among other things, detecting (early) problems, holding meetings and offering measures to control the gaming behaviour, such as an entrance restriction or exclusion, which measures may also be imposed on an involuntary basis. Holland Casino considers it its responsibility to point out the risks of games of chance to players, to detect problems, and to show players the possibilities of controlling these risks and to avoid problems. The keystone of the prevention policy is a central registration system that allows for the implementation of any imposed measures in all Holland Casino branches.

In a report published in 2011, the Netherlands Court of Audit concluded that with the prevention policy, Holland Casino properly implements its duty of care in order to prevent gambling addiction as much as possible.

Partly in view of this effective prevention policy, the legislative proposal for remote games of chance further implements the duty (of care) to which licensees of high-risk games of chance are subject in order to prevent gambling addiction as much as possible. This has resulted in a statutory framework for holders of licences for organising gaming casinos, having gaming machines in amusement arcades and organising remote games of chance. For Holland Casino, this further implementation of the duty of care comes down to a codification of the prevention policy which it has pursued for years. For holders of a licence for operating an amusement arcade and for organising remote games of chance, the framework involves a tightening of the duty of care and a new duty respectively.

Central register for exclusion from participation in games of chance

The proposed set-up of a central register for exclusion from participation in games of chance has already been mentioned above. This concerns games of chance (and exclusion from participation in games of chance) involving a high risk of addiction, such as games of chance offered in gaming casinos, amusement arcades and remote games of chance.

The central register enables licensees of games of chance, based on a hit/no-hit system, to recognise players who are entered in the register – and are therefore excluded from participation – and to deny them access to these games of chance. The central register will be managed by the Gaming Authority.

Players can be entered in the central register on a voluntary or involuntary basis. At-risk players, whether or not confronted by licensees about their gaming behaviour, can choose - or be motivated - to be entered in the register on a voluntary basis. Where necessary, players who are presumed to no longer be able to take their own

responsibility, can be entered in the register by the Gaming Authority on an involuntary basis (for a certain period).

2.3 Consumer protection

A second objective of the Dutch games of chance policy is to guarantee a high degree of consumer protection. Games of chance are usually nontransparent products characterised by an information asymmetry. Consumers, i.e. players, must be able to rely on games of chance being played in a fair and reliable manner.

Over the past few years, consumer rights have been harmonised at a rapid pace within the European Union. However, games of chance are often excluded from the scope of EU regulations, due to their special nature and, in principle, the authority of Member States to pursue their own games of chance policy. As far as games of chance are concerned, it is important for Member States to be able to take other (more stringent) measures to protect players from games of chance.

In order to achieve a high level of consumer protection from casino games in the Netherlands, the following basic principles apply:

- (1) Adequate provision of information to consumers.
- (2) Minors are denied access to gaming casinos.
- (3) Guaranteeing fair gaming standards.
- (4) Protection of consumer data.
- (5) A careful and balanced implementation of recruitment and advertising activities.

These basic principles will be elaborated on in more detail in the form of specific measures in paragraph 5.2.

2.4 Combating fraud and criminality

Gaming casinos often deal with large sums of money. Gaming casinos could therefore provide opportunities for fraudulent practices, such as money laundering. Although all visitors are identified and registered at the entrance of a gaming casino and there is physical contact between players and a licensee (its staff) when a game of chance is played, it is impossible to register the players and their winnings for each separate game. So the chances are that visitors buy chips with black money when they arrive and, after some time, want to cash these chips as 'winnings', without having actually won these chips by playing games of chance.

The government believes that the prevention of such money laundering practices is of utmost importance. An important instrument for the prevention of money laundering is the Anti-Money Laundering and Anti-Terrorist Financing Act, which applies to institutions facilitating access to financial markets. This Act will continue to apply in full to gaming casinos. Under this Act, these institutions must, in certain cases, conduct customer due diligence and report unusual transactions to the Financial Intelligence Unit (FIU).

Fraudulent acts may also be performed in the form of a concerted action between a visitor and a casino staff member – a croupier for example – with the aim of dividing the winnings obtained under false pretences between them. In order to prevent such practices, high demands will be placed on the reliability of gaming casino staff in key positions. It is often possible to reconstruct such practices afterwards on the basis of camera footage, for example after signs of such concerted action have been detected. For internal supervision purposes, this legislative proposal therefore provides that licensees use cameras for the purpose of internal surveillance within the gaming casino.

2.5 *Policy vision on games of chance*

By letter of 19 March 2011, the State Secretary of Security and Justice gave his vision on the Dutch games of chance policy. According to the policy vision, the three policy objectives referred to above, i.e. the prevention of gambling addiction, the protection of consumers and the combating of fraud and criminality, which have been the policy's cornerstones for decades, will continue to apply in full. The way in which the government wants to achieve these objectives as best as possible, however, is new. In the government's opinion, a suitable and attractive supply of games of chance can be created by no longer focusing attention on limiting the supply through monopolies in separate segments, but by regulating the market by setting strict rules on the supply, and strictly supervising the supply. Where there is a demand for games of chance, a suitable supply should be regulated and not prohibited. In this way, consumers will be channelled to a legal, responsible, reliable and verifiable supply as much as possible ('channelling'). The basic principle here is that the government is not responsible for offering games of chance. However, the government takes full responsibility for providing a regulatory framework that takes account of the specific risks of games of chance, especially for groups who are particularly vulnerable to these risks, such as young people. In 2012, this was started by including explicit criteria in the Betting and Gaming Act on the advertising and recruitment policy of licensees.

The government is also responsible for combating illegal gaming supply and for supervising providers of games of chance. For this purpose, an independent supervisory authority with enforcement powers was set up: the Gaming Authority.

Apart from the government's responsibility, players and providers are expected to take their own responsibility (insofar as possible). They should be aware of the fact that games of chance involve certain risks.

The described policy vision affects all segments of the gaming industry; from sports betting and remote games of chance to gaming machines and gaming casinos, but also lotteries, which have a special position in society.

In the general modernisation of the games of chance policy, the government does not want to make any rash decisions, but opts for a phased approach, adjusting the implementation where necessary, based on interim evaluations. After establishing the Gaming Authority and the submission of the legislative proposal for the regulation on remote games of chance, this legislative proposal will be the third step in the modernisation process.

3. The necessity of modernising the gaming casino regime

3.1 The gaming casino regime in the Netherlands so far

Until the 1970s, it was prohibited in the Netherlands to offer casino games to the public. This ban resulted in Dutch citizens visiting gaming casinos in neighbouring countries. In the early 1970s, the legislature realised that the ban on casino games had little effect and the general ban on offering casino games was lifted. The legislature considered as follows: "if it appears that so many people cannot satisfy their needs to play casino games in their own country and therefore proceed to finding this satisfaction in other countries – which is, of course, not subject to any regulation on which the Dutch legislature had any effect – it is up to the legislature to meet the wishes apparently existing in this area". In 1974, the Betting and Gaming Act therefore provided for the possibility of issuing an exclusive licence for organising casino games. Holland Casino was set up in order for casino games to be offered exclusively by the government. In 1976, Holland Casino opened its first branch in Zandvoort and in the following two decades, the number of branches increased to fourteen:

- 1976: Zandvoort,

- 1977: Valkenburg a/d Geul,
- 1979: Scheveningen,
- 1985: Rotterdam,
- 1986: Amsterdam,
- 1987: Breda,
- 1988: Groningen,
- 1989: Nijmegen,
- 1993: Eindhoven,
- 1995: Schiphol Airport,
- 2000: Utrecht,
- 2002: Enschede,
- 2006: Venlo and Leeuwarden.

The regulatory framework within which Holland Casino is currently engaging in its activities is, first of all, set in generally binding regulations laid down in legislation. For instance, the Betting and Gaming Act prescribes that persons who have not yet reached the age of eighteen are denied access to a gaming casino and the Betting and Gaming Act and the Betting and Gaming (Recruitment, Advertising and Addiction Prevention) Decree lay down rules on recruitment and advertising activities performed by holders of a licence under the Betting and Gaming Act.

Moreover, Holland Casino's licence (1996 Casino Games Decree) is subject to regulations to be met by Holland Casino in operating the gaming casinos. These regulations pertain to, among other things, the gaming supply permitted and the measures to be taken by licensees in respect of preventing gambling addiction, protecting consumers and combating illegality and criminality. As the licence is an exclusive licence, and there are no other holders of a licence under Article 27h of the Betting and Gaming Act, many provisions of the 1996 Casino Games Decree can *in fact* be regarded as generally binding regulations. So for the regulatory framework in respect of gaming casinos, consulting laws and regulations alone will not suffice, but the 1996 Casino Games Decree and the underlying regulations are also relevant.

3.2 Offering games of chance is not a government task

For decades, the key objectives of the Dutch games of chance policy have been the prevention of gambling addiction, the protection of consumers and the combating of fraud and criminality. These policy objectives continue to apply in full to the gaming casino regime as well, but the government prefers to organise the gaming casino regime differently.

The government believes that offering games of chance is not its core task. The government is convinced that the games of chance policy objectives can also be achieved in a strictly regulated regime in which some – private – casino providers operate side by side. Moreover, the admission of new providers allows for a gaming supply that is better tailored to consumers' wishes, which will allow for the best possible channelling of the existing demand for casino games to a legal, responsible, reliable and verifiable supply. This legislative proposal serves to lift the current government monopoly in the gaming casino market and to allow for a privatisation of the (semi-)state participation in Holland Casino. However, the sale of Holland Casino does not mean that the government washes its hands of the casino market. On the contrary, the lifting of the casino monopoly and the privatisation of Holland Casino will entail strict government regulation. All interested parties will have to meet stringent conditions in order to qualify for a licence and they will be subject to strict supervision by the Gaming Authority during the use of their licence.

3.3 Public monopoly in Europe no rule but exception

By order of the Ministry of Security and Justice and the Ministry of Finance, SEO Economic Research conducted research in 2012 into the country-specific gaming industry (gaming casinos and gaming machines). The research included a comparison of the gaming casino regime in five European countries: Belgium, Austria, the United Kingdom, Denmark and Germany. The comparison shows that, from an international perspective, a public monopoly in the casino market, which is currently the case in the Netherlands, is not a rule but an exception: the Netherlands is the only country with a national public monopoly in the casino market. Where Austria has a private monopolist (Casinos Austria), Belgium, the United Kingdom and Denmark have several private casino operators. In Germany, there are differences between the various states: ten states have a regional public monopoly and the other six states have several private operators in the casino market.

4. The new gaming casino regime

4.1 Activities in gaming casinos

General

In the new casino regime, a gaming casino is understood to be: a fixed establishment open to the public or operated as a business, which provides the opportunity to participate in games of chance played in a group, and where gaming machines can be operated. As a rule, gaming casinos provide the opportunity to participate in table games (such as roulette, poker and blackjack) and gaming machines (games-of-chance machines and skill machines). However, gaming casinos should be distinguished from amusement centres or amusement arcades, which only offer gaming machines and for which a licence is granted at the municipal level.

For casino operators, sound business operations in the area of gaming casinos also require that they perform certain (licensable) activities falling under the scope of the Act on Financial Supervision. It may also be desirable for licensees to offer 'other' activities, such as catering activities and entertainment, within or around the gaming casino.

Table games

Table games are an essential part of the gaming supply in gaming casinos. Subordinate legislation sets out rules with regard to table games (and types of table games) that are allowed to be offered in the gaming casinos, and on any rules of play and other features of these games. The basic principle here is that licensees should be enabled, up to a certain extent, to offer an innovative gaming supply, allowing for some room to innovate this supply (on a regular basis).

The possibility to offer table games is an essential feature of a gaming casino. A gaming casino not offering any table games can therefore not be regarded as a gaming casino, but looks more like an amusement arcade. As the clear demand for table games should be channelled to a legal and reliable supply (the channelling principle), licensees are obliged to offer table games in their gaming casino. Subordinate legislation will provide for a minimum supply of this type of games of chance.

Gaming machines

A national and international trend within the casino industry is that the number of gaming machines compared to the number of gaming tables is increasing per casino establishment. As indicated above, the games of chance offered by gaming casinos must, however, also include table games. This obligation imposed on licensees will be further detailed in subordinate legislation.

Under the current Gaming Machines Title in the Betting and Gaming Act, the presence and operation of one or more gaming machines in a gaming casino requires a separate licence, in addition to the licence for operating a gaming casino. The obligation to apply for two separate licences for these activities will be cancelled in this legislative proposal. In concrete terms, this means that a holder of a licence for operating a gaming casino will, by operation of law, also be a holder of a licence for having and operating gaming machines.

The statutory regime in respect of the admission of a gaming machine model (to be installed in gaming casinos) will continue to apply in full in the new gaming casino regime. This means that gaming casinos are only allowed to install gaming machines that correspond with a model allowed by the Board of the Gaming Authority. Rules on the admission of models will be set in subordinate legislation. It concerns rules, for example, on betting and loss limits and rules guaranteeing fair gaming standards of the games, the coincidence or skill factor of the game, and rules on the prevention of fraud and misuse. Some of these types of rules are now (still) set out in the 1996 Casino Games Decree. In the new gaming casino regime, in which several licensees will operate side by side, such rules will, however, be set by generally binding regulations: a General Administrative Order or a Ministerial Regulation.

Activities falling under the scope of the Act on Financial Supervision

In order to conduct the business of a casino, a gaming casino operator must perform certain financial acts in support of the gaming activities, such as conducting exchange transactions, falling under the scope of the Act on Financial Supervision. Casino operators that want to perform such activities must apply to De Nederlandsche Bank (DNB) for a licence for conducting the business of an exchange institution (in the Netherlands). In certain cases, casino operators will want to keep funds in deposit. However, the Act on Financial Supervision contains a prohibition on keeping callable funds. The operation of a gaming casino, however, requires that funds be kept in deposit. For this reason, licensees will be enabled to keep callable funds by means of an exemption from the prohibition contained in the Act on Financial Supervision.

Secondary activities

In the new casino regime, licensees - more than is currently the case for Holland Casino - will be offered room to engage in 'other' activities (than the main activity: offering the opportunity to participate in games of chance played in a group and on gaming machines). The basic principle is that licensees may, in addition to casino games, organise other types of business activities, as long as these activities do not prevent a proper and reliable operation of casino games. After all, there is no reason why private licensees, unlike the current Holland Casino, would be forbidden to operate, for example a hotel, conference building or nightclub outside the casino entrance (provided that they, of course, have all relevant licences for this purpose).

Restrictions do, however, apply within the casino establishments, i.e. beyond the entrance. Only supportive activities such as catering facilities and, to a limited extent, entertainment, may be offered here. A broader range of services would hinder the implementation of an adequate addiction prevention and fraud policy and is therefore not allowed.

4.2 *From exclusive right to a closed multi-licence system*

Under the current Article 27h(1) of the Betting and Gaming Act, and the 1996 Casino Games Decree granted on the basis thereof, Holland Casino has the exclusive right to operate fourteen gaming casinos for an indefinite period.

This legislative proposal serves to cancel the exclusive right to operate a gaming casino. So in a multi-licence system, several interested parties may be granted a gaming casino licence.

The government proposes a careful approach in the modernisation of the casino market. For instance, it believes that the time is ripe for newcomers in the casino market, but not for fully opening up the casino market by providing an unlimited number of licences for operating gaming casinos. For the exact effects of the introduction of an open licensing system on the achievement of the games of chance policy objectives cannot be estimated beforehand. So the number of gaming casinos (and licences for gaming casinos) will be limited, as in the present situation.

The proposal is to set the maximum number of licences to be granted, and thereby the total number of gaming casinos, at sixteen. This limited expansion (compared to the current fourteen gaming casinos) will keep the supply controllable but, at the same time, offers room for newcomers, partly because Holland Casino will have to surrender four licences. As a result of the entry of newcomers, the existing demand for casino games will be met by several parties in a suitable and attractive way. A suitable and attractive legal supply will keep consumers away from illegal and uncontrolled supply and is therefore necessary for the purpose of channelling the demand for games of chance. The statutory limit of sixteen casino establishments will, in any case, apply to the first licensing period. A new legislative proposal will have to be submitted in order to extend this number, guaranteeing the involvement of both Houses of the States General.

4.3 *Geographical distribution*

Apart from the limit to the number of available licences, the government's careful approach in the modernisation of the casino market is also expressed in the proposal to ensure a certain geographical distribution of the supply of gaming casinos in the Netherlands.

The situation in which the entire casino supply is focused in one part of the country and there is barely any casino supply elsewhere in the country should be avoided. After all, a high concentration of casinos in a specific part of the country is incompatible with the careful approach proposed by the government in the modernisation of the gaming casino regime. Moreover, the absence of a legal casino supply in other parts of the country is incompatible with the channelling principle. For an illegal casino supply could emerge in these other parts, due to the absence of a legal alternative.

The current situation involves an actual geographical distribution of gaming casinos because the 1996 Casino Games Decree determines in which municipalities a gaming casino may be established, spread across the country. In a system in which several casino operators operate side by side, it is logical to use a more flexible distribution policy which enables licensees to look for a business location within a predetermined region. As a result, licensees are not restricted unnecessarily in their freedom of establishment and, with a view to the channelling objective, are better able to cater for the existing demand for casino games. It also prevents the situation in which a licensee is granted a licence for a certain municipality at a national level, but at a local level, is not given permission by this municipality which is required in order to establish a gaming casino. A more flexible distribution policy will give licensees the opportunity to look for a different municipality where they can establish their gaming casino, within the predetermined region. On the one hand, the regions must be large enough in order to provide this opportunity to licensees to a sufficient degree, but, on the other hand, the

regions should not be so large as to create large concentrations of casinos within a specific region.

The proposal is to divide the Netherlands into five regions:

- North region (provinces of Friesland, Groningen and Drenthe)
- North-West region (provinces of North Holland, Flevoland and Utrecht)
- South-West region (provinces of South Holland and Zeeland)
- East region (provinces of Overijssel and Gelderland)
- South-East region (provinces of North Brabant and Limburg)

The number of licences per region is determined on the basis of a number of factors, including population figures and expected population growth, population density and the (consumer) demand for casino games. Based on these factors, the following distribution will be used:

- North region : 2 licences
- North-West region : 4 licences
- South-West region : 3 licences
- East region : 3 licences
- South-East region : 4 licences

A licence will give a licensee the right to establish a gaming casino in a municipality of its choice, provided that the relevant municipality also agrees to this. Moreover, the distribution policy will allow for competition in every region. However, this cannot be achieved under all circumstances. It is possible after all, that only one operator is interested in operating one or more gaming casino in a particular region. If it appears that other operators are not interested in being active in this region, the government does not consider it to be its task to force competition in this region.

4.4 Privatisation and the 1996 Casino Games Decree

Under the current Article 27h(1) of the Betting and Gaming Act, and the 1996 Casino Games Decree granted on the basis thereof, Holland Casino has the exclusive right to operate fourteen gaming casinos for an indefinite period.

In order to allow for competition in a casino market with a maximum of sixteen establishments, the market position of Holland Casino, which is to be privatised, will be limited. If the market position of a privatised Holland Casino is too dominant, with fourteen out of sixteen licences, this will not benefit competition in the casino market and is therefore undesirable. Under the new statutory regime, Holland Casino is therefore granted ten licences for operating gaming casinos. In addition to the four licences for the casino establishments to be sold by Holland Casino, two licences will be granted for entirely new gaming casinos. So a total of six licences will be available for newcomers in the casino market.

The point of departure is that Holland Casino will have to give up one casino establishment in four of the five regions, which will allow for the entry of new operators of gaming casinos in every region.

Immediately after the privatisation of Holland Casino, the Board of the Gaming Authority will grant a licence for organising ten gaming casinos to the buyer of the privatised Holland Casino. As a result, the 1996 Casino Games Decree will cease to apply. This is elaborated on in more detail in the transitional provisions contained in this legislative proposal.

In order to prevent the privatised market from actually being controlled by one party, transitional law provides that the buyer of Holland Casino will not qualify for one of the six other licences.

4.5 Granting of licences

A transparent and non-discriminatory way of granting licences

The legislative proposal allows for the granting of sixteen licences for operating a gaming casino. The Board of the Gaming Authority is charged by law with granting the licences. In a licensing system with a predetermined number of licences, it is possible that the number of applicants exceeds the number of available licences. The licences will be granted in a transparent and non-discriminatory way.

Standard procedure for granting licences

The legislative proposal opts for the auction method as a 'standard' way of granting licences. At an auction, the party with the highest bid will be granted the licence. In order to ensure that the licence – after the winning bid has been made – is granted to a reliable and transparent party with expertise in the matter, the Board will only allow to the auction applicants who comply with conditions that have been set in advance. This legislative proposal prescribes the conditions which interested parties must meet in order to participate in the auction. These conditions will be detailed further in subordinate legislation.

Granting licences under transitional law

Transitional law provides that, during the first round of the granting of licences, i.e. the first time the sixteen available licences are granted, it is possible to use a manner of granting licences other than exclusively at an auction. This possibility is based on the fact that, during the first round of the granting of licences, not only 'basic' licences are granted, but the licences are (or may be) linked to casino establishments and/or staff. It may therefore be necessary to include more aspects other than the amount of the bid in the granting of the licences. A method for granting licences other than a traditional auction will, however, have to be used in a transparent and non-discriminatory way as well.

4.6 Licensing conditions

A licence for organising a gaming casino has a fixed term. The period of validity of the licence will be set in subordinate legislation. A period of validity of fifteen years will be used. On the one hand, this will enable licensees to recoup their investments, in view of the conditions to be met by operators of games of chance. On the other hand, this period of validity will prevent the situation in which the gaming casino market is 'locked' for too long. After fifteen years interested parties are again offered the opportunity to apply for a licence.

At the end of the period of validity of the licence, licensees may become uncertain as to whether they will again be granted a licence for the gaming casino establishment operated by them. This uncertainty will affect their business operations. For instance, it could be that, due to the uncertainty as to whether the licence is granted again, a licensee will be cautious in making any investments at the end of the period of validity of its licence. First and foremost, this uncertainty can never be fully removed in a closed system of licences. Measures may, however, be taken in order to remove this uncertainty as much as possible. For instance, the Gaming Authority will already start preparations for granting new licences a few years prior to the expiry date of the licences. In this way, existing licensees will know what to expect at an early stage, and any new licensees can make preparations for the use of the licence that may be granted to them.

Casino licences are subject to an obligation to be put into use. The situation in which there is no casino supply in certain regions, creating the risk that consumers will turn to an illegal gaming supply, should be avoided. Moreover, if a licence should not be used, this would not create competition among operators which is desired with a view to channelisation. A licensee failing to have a casino establishment operational within a period of two years will lose its licence for this establishment. In that case, the licence will be returned to the Gaming Authority, which may then grant the licence again through an auction.

Licenses are not allowed to transfer licences to third parties. The granting of licences is reserved for the Gaming Authority, in order for it to effectively supervise the capacity of licensees. Subordinate legislation will set out generally binding regulations on other ways of transferring licences, for example as a result of company mergers. Each permitted transfer of licences will, in any case, always require the prior permission of the Gaming Authority, which will, at all times, check whether the games of chance policy objectives continue to be guaranteed by the transfer.

5. Measures based on the legislative proposal

5.1 Prevention of addiction to games of chance

The legislative proposal provides for a number of rigorous measures for the prevention of addiction to games of chance.

Limitation of the number of licences and distribution policy

Addiction to games of chance is first and foremost combated by limiting the number of casino licences to 16, whilst establishing a balanced geographical distribution of gaming casinos. The two measures prevent a (too) high concentration of gaming casinos – established by various licensees – in certain municipalities or regions, which could possibly result in fierce competition among the various licensees to win the favour of players. In such a situation promotional activities could not only expand the customer base of the licensees in question, but also strongly increase addiction to games of chance. The proposed limitation of the number of licences and the distribution policy prevent a situation like that from occurring.

Limitation of games offered in gaming casinos

Not only is the total number of gaming casinos limited, but also the games offered at the individual gaming casinos. For instance, delegated legislation sets limits to the number of gaming tables and slot machines allowed in a gaming casino. This is to prevent large-scale gaming casinos, like the ones found in Las Vegas or Macao, from being established in the Netherlands. As an indication, the largest branch of Holland Casino could possibly be taken as the standard in determining the maximum amount of games.

Duty of care and prevention policy

The new casino regime imposes a duty of care on all casino licensees, which is detailed further by legislation and other regulations, to prevent addiction to games of chance as much as possible. Licensees are also expected to pursue a prevention policy that provides for the following intervention measures:

- A licensee must sufficiently inform a player on the potential risks associated with casino games (inform).
- A licensee must identify at-risk gaming behaviour as soon as possible (observe).
- A licensee must give a player adequate feedback on his gaming behaviour in a timely manner (confront).
- A licensee must take measures, if needed, to moderate a player's gaming behaviour (intervene).
- A licensee must inform a player about possibilities of obtaining professional help (refer).

These intervention measures are increasingly intensified the more at-risk gaming behaviour a casino visitor displays.

Inform

A licensee must provide a player with information about the risks associated with casino games and about responsible gaming behaviour. The opportune time to do so is when the identity check is carried out at the casino entrance, where such information must be

physically available and visible. Moreover, a licensee may make this sort of information available through other channels through which it has contact with players, such as on the licensee's website.

Observe

A licensee must ensure that (emerging) at-risk gaming behaviour is recognised, identified, registered and analysed during a player's visit to the gaming casino. Casino staff must be capable of recognising both objective and subjective indicators of (emerging) at-risk gaming behaviour. In this respect, high standards will be set to the required level of knowledge of casino staff. Indicators of (emerging) at-risk gaming behaviour include a high or increasing gambling frequency, changing gambling times, discourteous behaviour towards other players and staff, placing higher bets (particularly after losses) or a long or increasingly longer gambling time. External signals from relatives, such as a player's family members, are also indicators of at-risk gaming behaviour.

All signs concerning a player's gambling behaviour must be registered, for which a licensee must have a registration and identification system in place. It is vitally important to offer personalised information to the player about his gaming behaviour in order to sufficiently and effectively protect him from the risks associated with addiction to games of chance.

Confront

A licensee who, based on his observation, establishes at-risk gaming behaviour in a player must protect that player against himself. In such cases, a licensee must contact the player and confront him about his findings, for example in a meeting. It is very important to give the player in question personal feedback based on the observed and registered gaming behaviour.

Confronting a player at an early stage may give him insight into his gaming behaviour. This allows the licensee to confront the player in time about his gaming behaviour and the possible consequences. This may cause the player to change his gaming behaviour. By giving him control over his own gaming behaviour, he may be able to improve it.

Intervene

During the meeting, the licensee will provide the player with sufficient tools to enable him to gain control of his gaming behaviour. A licensee has a comprehensive set of far-reaching measures for this purpose:

- entrance restrictions: a licensee may be able to urge a player to request an entrance restriction to all casino establishments of the licensee in question on a voluntary basis. Such an entrance restriction may concern the visiting frequency or visiting times.
- entry ban: a more severe measure. In some cases, a licensee may advise a player to request an entry ban to all casino establishments of the licensee concerned for a specific period of time.
- voluntary exclusion by an entry in the central register: denying access at all operators of casino games, gaming machines, and remote games of chance. The exclusion is recorded in the central register which is administered by the Gaming Authority.
- involuntary exclusion by an entry in the central register: denying access to all operators of casino games, gaming machines, and remote games of chance. A licensee must, on reasonable suspicion of 'excessive gaming behaviour', exclude a player from games of chance. A licensee may also make a recommendation to the Gaming Authority for the player to be involuntarily excluded from participation in games of chance (up to six months) by an entry in the central register.

Refer

If a licensee confronts a player about his gaming behaviour he is obliged to actively inform him about the possibilities of obtaining professional help. For example, regular

addiction care provided by the institutions of the Dutch Mental Healthcare Association, or self-help groups for the treatment of addiction. Online (anonymous) addiction care is also possible.

5.2 Consumer protection

Section 2.3 lists the starting points which contribute to a high level of consumer protection in casino games. These starting points have resulted in taking several measures.

Adequate provision of information to consumers

Both in their gaming casinos and in their (external) channels of communication, licensees must make sufficient information available about the nature and number of games on offer and the amounts of money that can be placed on bets. This duty to provide information and how it is implemented is detailed in subordinate legislation. This duty to provide information at least comprises the composition of the games offered, the way in which the offered games of chance are played, the amounts that can be placed on bets, the chances of winning and the payout percentage.

Minors are denied access to gaming casinos

Potential players may not enter the gaming casino until their identity and age have been established. Minors are never allowed into a gaming casino. Persons who are not deemed capable of freely exercising their will and those who are expected not to abide by the house rules will also not be admitted to the casino.

Ensuring a fair gaming standard of the game

An important aspect of consumer protection concerns the reliability of the games of chance offered in the gaming casinos. Visitors have to be able to trust that the gaming standard of the game in casinos is always fair and reliable. In the first place this means that strict requirements will have to be set on the equipment in gaming casinos, including gaming tables and gaming equipment. This equipment must be safe and reliable and meet objective technical standards. In order to ensure the random character in games of chance as much as possible, the random chance generators, such as roulette cylinders, are periodically checked by an inspection body after prior approval. Secondly, high demands are placed on casino staff: they have to be reliable and sufficiently qualified. These obligations are further detailed in subordinate legislation.

Protection of consumer data

Before visitors are allowed in a gaming casino, their identity and age are established. The ensuing data is entered into the licensee's automated registration systems. In order to prevent and combat addiction to games of chance, these systems also contain data about an individual player's gaming behaviour and about interventions, if any, carried out by the licensee concerned. Strict requirements are set to the licensee's data processing in order to prevent misuse of information. Visitors have to be able to trust that their personal data is handled carefully and in accordance with the Personal Data Protection Act.

A careful and balanced implementation of recruitment and advertising activities

In view of the desired channelling, licensees must be given ample room to inform consumers about the responsible, reliable and verifiable supply. However, licensees have to make responsible use of the option for advertising the games of chance which are offered. It is for this reason that Section 4a(2) of the Betting and Gaming Act determines that licensees carry out recruitment and advertising activities in a careful and balanced manner, with special attention for avoiding excessive gaming. Careful and balanced recruitment and advertising activities at least entail that such activities are not misleading and that the risks associated with participation in games of chance are emphasised. The Betting and Gaming (Recruitment, Advertising and Addiction

Prevention) Decree has more detailed information about the specific meaning of incitement to excessive participation. This Decree also contains other regulations for the protection of consumers.

5.3 Combating fraud and criminality

An important instrument for combating money-laundering in gaming casinos is the Anti-Money Laundering and Anti-Terrorist Financing Act (Wwft). This Act continues to apply in full under the amended casino regime to legal entities that operate a gaming casino. The Act lists various obligations for those gaming casinos.

Firstly, a gaming casino must carry out a client screening. A client screening enables the casino to establish the client's identity, the purpose and nature of the business relationship and to carry out continuous checks of the transactions carried out throughout this relationship.

Secondly, a casino must report any unusual transaction carried out or intended to the Financial Intelligence Unit (FIU) immediately after the unusual nature of the transaction concerned has become known. The Anti-Money Laundering and Anti-Terrorist Financing Act contains indicators for casinos in order to assess whether or not a transaction can be designated as an unusual transaction. This concerns placing coins, banknotes or other values of € 15,000 or more in deposit, money transfers of € 15,000 or more and selling gambling chips with a monetary equivalent of € 15,000 or more (upon surrender of a cheque or foreign currency). In the proposed gaming casino regime, the Gaming Authority, other than is now the case, will monitor compliance with the Anti-Money Laundering and Anti-Terrorist Financing Act by licensees who operate a gaming casino.

5.4 Measures for the purpose of suitability and reliability

In gaming casinos, players regularly play with high stakes for considerable sums of money. Visitors of a gaming casino therefore have to be able to trust that the money entrusted to the casino is properly managed and that the casino is able to meet its payment obligations at all times. This sets high demands on the suitability, operational management, reliability and expertise of operators.

Suitable operators

Only suitable operators are eligible for a licence for organising a gaming casino. Therefore, requirements are set with regard to the legal form, transparency and continuity of the operator.

A licensee must have the legal form of a limited liability company, for instance, a public limited company, a private limited company, or a European company. With the limited liability company requirement, the continuity of the licensee is sufficiently ensured and it is prevented that the (continued) existence of the licensee would depend on the fate or presence of one or more natural persons. Moreover, this requirement provides transparency in the organisation of the operator, as rules concerning limited liability companies are harmonised under European law. This harmonisation entails that limited liability companies have to meet specific requirements, particularly in the area of (financial) reports, accounting and audits.

Continuity of the operator must also be ensured for other reasons. For instance, an operator may not have applied for a moratorium or be in liquidation when applying for a licence. His capital may also not be seized, or one or more of his business assets that form a substantial part of his capital. Threat of bankruptcy, moratorium or attachment may also be cause for doubt about the suitability of the operator in question. The requirements related to the suitability of the operator are further detailed in subordinate legislation.

Operational management

A licensee must organise his operational management to ensure a responsible, reliable and verifiable organisation of gaming casinos, as well as supervision of compliance with

the Betting and Gaming Act, the Anti-Money Laundering and Anti-Terrorist Financing Act and the 1977 Sanctions Act.

Operational management concerns business assets (such as staff, IT, gaming machines, gaming tables and the environment in which parts of the operational management have been housed) and working methods (such as documented processes and procedures) used by the licensee for the organisation of the gaming casino. These business resources and working methods determine whether the operational management of the licensee is geared towards compliance with the Betting and Gaming Act, the Anti-Money Laundering and Anti-Terrorist Financing Act and the 1977 Sanctions Act. For instance, a licensee cannot meet his information obligation if the relevant information is not gathered systematically.

Responsible operational management concerns matters such as proper management, honesty, integrity, confidentiality and security. A licensee is responsible for a properly managed supply of games of chance where a player can rely on the honesty and integrity of the licensee concerned, the game, the other players, and of the confidential handling of his data.

The same expectations, such as honesty, integrity, confidentiality and security, also partially play a role in the reliability of operational management. Here, reliability also concerns continuity, transparency and conformity with the regulations on games of chance. It should be clear to consumers who the licensee is, who also actually has to be accessible in the event of queries and complaints. A licensee must be able to comply with his information obligations, such as offering transparency about the way the games of chance are organised and offered.

Furthermore, a licensee must have his operational management organised in such a way that it can be verified, as without verifiability it cannot be checked whether the relevant parts of operational management are indeed responsible and reliable.

Reliable and professional licensees

The reliability of licensees and of the ones (partly) in charge of determining policy must be beyond any doubt. The manner in which that reliability is determined as well as the associated facts and circumstances are detailed in subordinate legislation. Any operator who wants to be eligible for a licence must prove that his reliability is beyond any doubt. He can do so by providing a certificate of good conduct or, in case of a foreign company, a similar document which proves that he does not have a criminal record. The Gaming Authority may also make use of options provided by the Public Administration Probity Screening Act (BIBOB). In respect of foreign applicants, the effectiveness of such a screening largely depends on the amount of information provided by the foreign country concerned. The burden of proof for reliability rests with the operator concerned.

A licensee is also responsible for ensuring that he recruits and maintains reliable and professional staff (at key positions). The staff concerned will therefore periodically have to be subjected to reliability checks. This includes requesting a certificate of good conduct and obtaining references upon appointment. Expertise should not only extend to the games of chance on offer, but also to compliance with the duty of care resting on the licensee to prevent excessive playing of games of chance as much as possible.

6. Supervision and Enforcement

Supervision by the Gaming Authority

The Gaming Authority was established on 1 April 2012. It is an independent administrative body which has the following statutory duties: issuing, amending and revoking licences, promoting the prevention of addiction to games of chance, providing information, monitoring compliance with applicable legislation and regulations and the licences, as well as enforcing them. In concrete terms, this means that the Gaming Authority monitors the implementation of the Betting and Gaming Act (and subordinate legislation) and, in so far as it concerns supervision of the licensees under the Betting and Gaming Act, the Anti-Money Laundering and Anti-Terrorist Financing Act and the

1977 Sanctions Act. The establishment of the Gaming Authority was in anticipation of the modernisation of the games of chance policy. By entrusting the supervision to this specialist market supervisor, an adequate and independent supervision of the gaming casino market is ensured, a market which is characterised by various operators working alongside each other.

In implementing the supervision of compliance with the relevant legislation and regulations, the Gaming Authority has access to the instruments provided in the General Administrative Law Act. The Gaming Authority thus has the authority to demand data and documents from licensees, including at least visitor registration records and the register in which the interventions in gaming behaviour is kept. This gives the Gaming Authority the information it needs to verify whether the licensees are registering, monitoring and intervening in the prescribed manner.

Enforcement by the Gaming Authority

The Gaming Authority has various enforcement instruments at its disposal pursuant to the General Administrative Law Act: the administrative enforcement order, the order subject to a penalty and the administrative fine. Moreover, the Legislative Proposal for Remote Games of Chance provides for several complementary administrative-law enforcement instruments to give the Gaming Authority more scope for action.

The administrative enforcement order and the order subject to a penalty are remedial sanctions, which are intended to fully or partially remedy a breach. These sanctions allow the Gaming Authority to quickly and effectively intervene in a situation in order to adequately remedy an observed breach. The Gaming Authority may give a licensee a term within which he has to remedy the breach. If he fails to remedy the breach, the Gaming Authority can factually end the breach, such as by sealing off the business premises and objects by means of administrative enforcement. Also in case of an order subject to a penalty, the Gaming Authority may order the breach to be remedied, subject to a payment obligation if the licensee in question fails to remedy the breach in time. The complementary enforcement instruments in the Legislative Proposal for Remote Games of Chance not only provide for supervision of regulations on remote games of chance, but also for land-based games of chance, such as gaming casinos. This gives the Gaming Authority the power to seal off business premises and objects to prevent an operator from destroying or moving evidence or objects. It is also proposed that the Gaming Authority should have the power to enter the home of a person for search purposes, also against the will of the occupant. The Gaming Authority will also have the power to seize relevant objects. These powers may or may not be exercised with the help of the strong arm of the law.

The Gaming Authority can impose sanctions, with administrative fines, for breaches of provisions in the Betting and Gaming Act. This fine could amount up to € 780,000 or, if it is higher, 10% of the licensee's net turnover.

Administrative enforcement is the starting point and criminal law enforcement is the last resort. Criminal law enforcement is generally preferred in cases of (serious) multiple or repeated breaches, of involvement of (other) criminal activities or if there is a need to apply coercive criminal law measures and powers, as well as the imposition of specific criminal law sanctions.

Supervisory role of the ACM

The Gaming Authority is not the only body with supervisory powers. The Authority for Consumers and Markets (ACM) also plays an important role in monitoring consumer protection, one of the three pillar of the games of chance policy. The ACM is the authority in charge of monitoring compliance with the Consumer Protection (Enforcement) Act, an area in which it cooperates with the Gaming Authority and for which both bodies have drawn up a cooperation protocol. The ACM also monitors compliance with the Competitive Trading Act.

Supervisory role of the De Nederlandsche Bank (DNB)

Casino operators, who want to carry out exchange transactions in the course of the casino business, must apply for a licence for carrying out exchange transactions, in accordance with the Act on Financial Supervision. The DNB monitors compliance with the relevant provisions in the Act on Financial Supervision.

7. Financial aspects of the legislative proposal

7.1 General

In the new organisation of the market, various private parties will operate alongside each other, leaving ample room for entrepreneurship. Operators will have to be able to make decent profits under efficient operational management, so that the capital investors can obtain a sufficient return on their investment. A financially healthy casino sector also works to the advantage of the level of channelling - the extent to which the actual demand for casino games corresponds to the legal offer of casino games. The ambition is therefore to keep the costs incurred by a licensee for a responsible, reliable and verifiable supply of casino games at an acceptable level.

The costs for future licensees consist of the amount payable based on the cost price for processing a licence application, the amount payable at auction for (scarce) licences to operate a gaming casino, the levy on games of chance (to finance the costs of the Gaming Authority), costs of the periodic inspection (by an inspection body) of the business assets, processes and procedures, the tax on games of chance, corporation tax and the contribution towards the games of chance prevention fund ("the addiction fund"). This fund, announced in the legislative proposal for remote games of chance, will be used to finance the (anonymous) treatment of gambling addicts and to do research into the prevention and treatment of gambling addiction.

7.2 Taxes

Tax on games of chance

Under Section 1(1)(a) of the Betting and Gaming Tax Act, a direct tax is levied under the name 'tax on games of chance' among those who have the opportunity to participate in domestic casino games. Gaming casino licensees will therefore be subjected to a tax levy on games of chance. In this category of games of chance, tax is levied on the so-called gross score (bets minus the prices available). The tax levied on games of chance is currently set at 29%.

Corporation tax

A direct tax is levied under the name 'corporation tax' on (among others) public companies established in the Netherlands and private limited companies. This tax is levied on the taxable profits gained in one calendar year, minus the losses which may be settled according to law. For taxable amounts over EUR 200,000 the corporation tax rate is 25%.

7.3 Other costs for licensees

Strict regulation in the interest of the Dutch games of chance policy means that gaming casino licensees have to incur costs to meet the conditions. These expenses are kept at a reasonable level, in the interest of channelling in this legislative proposal and the detailing in subordinate legislation, by linking up with existing international standards and practices wherever possible.

Licence applicants who want to be eligible for a licence have to pay an (administrative) charge for the processing of the application. This charge is expected to be set at **PM**. The highest bid (in auction) **PM**

Paying taxes on games of chance (Section 33e of the Betting and Gaming Act) is necessary to finance the statutory duties of the Gaming Authority, which includes

monitoring compliance with the regulations on games of chance and the Anti-Money Laundering and Anti-Terrorist Financing Act, the management of the central register for the exclusion from games of chance, the promotion and prevention and limitation of addiction to games of chance and the provision of information. These costs are necessary for the realisation of the objectives of the games of chance policy. Every gaming casino licensee must pay taxes on games of chance; the tax is calculated based on the number of gaming tables, the number of associated player terminals, and the number of player seats at gaming machines.

Costs associated with periodic inspection of business assets, procedures and processes

PM

Contribution to "addiction fund" **PM**

8. Privacy Impact Assessment

Some sections of this legislative proposal have an impact on the personal privacy of those involved at a gaming casino, like managers, superiors, employees and visitors/players. In order to determine the impact of the measures in the legislative proposal and to take restricting measures, a Privacy Impact Assessment (PIA) has been carried out. The draft bill of the legislative proposal was continuously subjected to analysis in order to establish what the influence of certain measures are on personal privacy, and from a privacy point of view, whether the policy objectives could be realised with less stringent measures.

In order to deal with the privacy of those involved in an appropriate manner, the recommendations from the PIA have been processed in the legislative proposal. Many recommendations from the report are connected with the further elaboration of the legislative proposal in subordinate legislation. These recommendations will be included in the further development and in so doing the ambition, of course, is to maintain as low an impact as possible on the privacy of those involved. For the subordinate legislation a separate PIA will be carried out.

The PIA which was carried out in view of this legislative proposal primarily provides for the data processing in respect of persons, which arises from Articles 27h until 27o and Articles 27r and 27s. The legislative proposal further elaborates a couple of (new) measures which, in the legislative proposal for remote games of chance are provided for (the only) licensee for organising gaming casinos. Amongst other things it concerns the setting up of a central register for excluding participation in games of chance and the granting of additional administrative enforcement authority to the Gaming Authority. The impact on the privacy to which these measures relate has already been detailed in the mentioned legislative proposal and has therefore been excluded in the PIA for this legislative proposal.

On the basis of this legislative proposal a differentiation can be made in the processing of personal data by licensees and by the Gaming Authority.

8.1 Data processing by licensees

The legislative proposal will include prerequisites in respect of the reliability of people involved at a gaming casino, expertise of employees, business operations, honest gaming standards of the game and camera surveillance. The aforementioned prerequisites result in the processing of personal data by licensees for organising gaming casinos. The recommendations that have been made on this point mainly provide for further elaboration in subordinate legislation. A number of examples are given below to sketch an outline of the recommendations.

The legislative proposal gives rise to the processing of personal data by licensees of an extensive circle of people who are involved at a gaming casino. Many obligations arising from the legislative proposal are still being elaborated in subordinate legislation, so it is not possible to show the full picture in this Explanatory Memorandum of the personal

data which, on the basis of this legislative proposal, is being processed by licensees for organising gaming casinos. Yet in paragraph 5.4 the recommendation has been addressed to indicate more clearly in a general sense, what processing of personal data is being considered. In drawing up subordinate legislation a new PIA will have to be drawn up and all intended processing of data must be carefully weighed up. Article 27s, second paragraph, determines that cameras will be used to monitor compliance with the Betting and Gaming Act. The recommendations that clarify the possibilities for utilising camera surveillance - being camera surveillance of both visible as well as concealed cameras - and to clearly inform visitors here, have been taken over in the explanation in Article 27s, fourth paragraph.

8.2 Data processing by the Gaming Authority

For the granting of a license and the execution of its supervisory task the Gaming Authority will process personal data.

The personal data which are processed for the granting of a licence is considered to be the data derived from an application to grant a licence for organising a gaming casino. That personal data can be provided by the applicant of the licence, but it can also reach the Gaming Authority via another route. This, for example, includes personal data derived from applying the Public Administration Probity Screening Act (BIBOB) regarding the handling of an application. In drawing up subordinate legislation in respect of the data processing, the Gaming Authority will draw up a new PIA and all intended processing of data will be carefully weighed up.

In the elaboration of subordinate legislation attention will also specifically be paid to the concurrence with licensing procedures that emanate from other legislation. In addition to the exploitation of the casino, in many cases gaming casinos licensees will also apply for a licence to operate a money exchange agency or to operate a catering establishment. This could mean that various licensing procedures must be undertaken, in which for every procedure in respect of certain people – for example managers and policy-makers – data processing takes place. By carefully matching up the various licensing procedures and by conferring with the administrative bodies involved, duplications and contradictions in the detailed elaboration of the subordinate legislation will be prevented where possible. Aside from this the Gaming Authority will process personal data for the execution of its supervisory duty. Where it concerns the execution of the supervision by the Gaming Authority, this legislative proposal has no impact on the privacy of the people involved at gaming casinos. The legislative proposal on remote games of chance does, however, provide for a number of (generic) additional administrative law instruments for the Gaming Authority. For the impact of those additional measures on the privacy, reference is made to the Explanatory Memorandum of the legislative proposal on remote games of chance.

9. European Law Framework

The giving of an opportunity to participate in games of chance is a 'service' in the sense of Article 57 of the Treaty on the Functioning of the European Union (TFEU) and in respect of suppliers of those services, the provisions regarding the freedom of establishment are applicable, as meant in Article 49 TFEU. Although there are no specific EU regulations with regard to games of chance, the case law of the European Court of Justice (ECJ) has, however, determined a regulatory framework in which Member States are expected to implement their games of chance policy.

The ECJ has determined that the prohibition of supplying games of chance without granting a licence beforehand must be regarded as a restriction of the freedom to provide services. Restrictions imposed on activities in games of chance, for reasons of public order, public security and public health, are permitted on the grounds of Articles 51, 52 and 62 TFEU. According to established case law of the ECJ such restrictions can additionally be justified in compelling reasons of general interest, such as measures

aimed at protecting the consumer, combating fraud, preventing citizens from being encouraged to squander money through gambling, and avoiding social problems in general. In the absence of harmonisation in the gaming regime, Member States have an extensive margin for discretion to determine what is necessary for the protection of the compelling reasons of general interest mentioned. In its case law the ECJ has accepted that on good grounds Member States could be of the opinion that the previously mentioned compelling reasons of general interest are best served by granting an exclusive right to a single provider. The restrictions imposed by Member States must, however, be proportionally applied and in a non-discriminatory manner. A national regulation which allows for a monopoly position by a single provider is then only appropriate to safeguard the realisation of the objective invoked, if such regulation truly pursues that objective in a coherent and systematic manner. The ECJ contends further the need for horizontal consistency, which boils down to the fact that there must be a correlation between the risk of gambling addiction and the degree in which such gambling is regulated. In this way a licensing system in which games of chance with a relatively low risk of gambling addiction such as lotteries, are regulated more stringently than games of chance with a high risk of gambling addiction such as gaming casinos or gaming machines, can be assessed as inadequately consistent under certain circumstances.

If less licences are available than the number of interested parties for those licences, this would mean scarce licensing. From case law by the ECJ it shows that not only in the awarding of assignments and concessions, but also for the distribution of scarce licences, the transparency principle must be taken into consideration. In order to guarantee that all interested parties have an honest chance in obtaining a scarce licence, a starting point would apply that licences are granted in an objective and transparent manner. Effectively that means that the licensing system must be based on objective criteria, which are non-discriminatory and set in advance. Scarce licences can therefore not be granted automatically, nor extended, because other parties must be given the opportunity to compete for the licence.

In the preparation of this legislative proposal account has expressly been kept of the ECJ case law discussed above. Within the EU an equal playing field applies for parties that show an interest in a licence for a gaming casino. Besides, for the restrictions on the freedom to provide services and the freedom of establishment, extensive attention was paid in this Explanatory Memorandum, and for the granting of licences, an objective and transparent regime is proposed.

10. Feasibility and enforceability

PM (Gaming Authority feasibility study).

11. Operational effects

As part of the preparations of this legislative proposal the research agency SIRA estimated the administrative expenses, the compliance costs and the other operational effects as a result of this legislative proposal. Administrative expenses are the costs for the business community and citizens to comply with information obligations emanating from the legislative proposal. Compliance costs are all costs involved with the compliance of obligations of the legislative proposal.

On the basis of interviews with a few gaming casino operators the effects for businesses have been quantified. In this an assessment was made whether this concerns proprietary costs. Proprietary costs are understood to be transactions that emanate from obligations in the regulations, but which businesses would also have undertaken even in the absence of such regulations or were already undertaking prior to these regulations existing. It is for this reason that the proprietary costs are not included in the calculation of the expenses emanating from this legislative proposal. Supervising by means of cameras, the

processing of personal data and the guaranteeing of appropriate expertise and reliability of personnel for example, are noted as being proprietary costs and are therefore not included in the calculation of the compliance costs.

This legislative proposal does not cause any extra expenses for citizens. The expenses for citizens who visit a casino, such as the expenses associated with identification at gaming casinos and – when the occasion arises – on registration in the central register for exclusion of participation in games of chance, do not emanate from this legislative proposal, but from the legislative proposal on remote games of chance. These expenses have already been identified in view of that legislative proposal.

Most of the obligations arising from this legislative proposal concern licensees for organising gaming casinos. Many obligations for licensees already apply to the (only) licensee of gaming casinos, Holland Casino. In addition, a number of the identified obligations for licensees are part of the legislative proposal on remote games of chance. This particularly concerns the obligations in respect of the central register for the exclusion of participation in games of chance. In order to avoid duplication of the expenses, the obligations that already apply for Holland Casino and the obligations that have already been identified in the legislative proposal on remote games of chance, have not been taken into consideration in quantifying the operational effects of this legislative proposal.

The exact number of licensees cannot be determined in advance. After the privatisation of Holland Casino and the granting of new licences there are a maximum of seven licensees. On the basis of interviews conducted, SIRA estimates that the most probable number of licensees is two to four. Regarding the remaining six licences, it could be that there is a single party (other than Holland Casino) who is able to secure a number of these licences. The research is therefore calculated with this range. SIRA expects that foreign parties will also opt for a casino licence in the Netherlands. SIRA estimates that the amendments to the casino legislation will not have a significant effect on the employment opportunities in the sector.

On the basis of interviews conducted with relevant people in the business community a tentative estimate was made of the initial and structural expenses. The initial or once-off expenses are necessary transactions which businesses will only incur on coming into operation. The total initial administrative expenses are projected at a minimum of € 228,000 and a maximum of € 912,000. These expenses emanate entirely from the licence application procedure, assuming five to twenty licence applications. The expenses for the licence application particularly emanate during the time required for the studying of the submission requirements and the gathering of the required information. In addition there are expenses as a result of the auction. The total tentative compliance costs are estimated at € 107,800. The once-off compliance costs emanate from the measures taken for the prevention of gambling addiction. The holders of the two licences for new gaming casino branches will face costs for setting up a central register, the structuring of the location so that access control can be implemented, and for recruiting and training of personnel.

The structural expenses are obligations which occur periodically for businesses.

The total structural administrative expenses are estimated at a minimum of € 114,000 and at a maximum of € 303,900. The largest part of these administrative expenses involves the costs related to the measures for the protection of consumers (€ 89,600 to € 221,300). This concerns the costs for the appointment of a compliance officer and the costs for the purchasing of markings – to be issued by the Gaming Authority – for (types of) gaming machines.

The total structural compliance costs are projected at € 439,400. Holders of the two licences for new gaming casinos will face additional personnel and training costs as a result of the measures for the prevention of gambling addiction.

12. Drafting legislative proposal

PM (discussion on consultation responses).

II. EXPLANATORY NOTES ON INDIVIDUAL ARTICLES

Article I

Part A

Section 1. Introductory provision

Article 27g (general)

Paragraph one

Pursuant to the system of the current Betting and Gaming Act (Wet op de kansspelen (Wok)) paragraph one states that a gaming casino may only be organised with a licence that is issued in compliance with the new proposed Title IVb.

Paragraph two

The second paragraph defines what is understood as a gaming casino. This entails a fixed establishment that is open to the public or is run as a business, where, by means of jointly practising games of chance the participants are given the opportunity as referred to in Article 1(1)(a).

This definition states that games of chance practised jointly that are offered to a closed circle of people and not as a business fall outside the scope of the definition. Games of chance practised jointly that are offered on a business basis to a closed circle of people do however fall under the definition. Such activities therefore require a licence on grounds of the first paragraph. To qualify as a fixed establishment the games of chance must be offered within a physical establishment, which is clearly visible and permanent. It is for this reason that games of chance that are not offered in a fixed establishment, but via the Internet, fall outside the scope of the definition. Games of chance practised jointly are understood to be games of chance in which the opportunity is given to several participants at the same time to compete for prizes or premiums, whereby designation of the winners takes place by a certain chance determination over which the participants can generally exercise no controlling influence. Known examples of such games of chance practised jointly are roulette and blackjack. The possibility of offering games of chance practised jointly is an essential feature of a gaming casino. Therefore a gaming casino that does not offer any games of chance practised jointly cannot be designated as a gaming casino, but instead is more like an amusement arcade. The word 'are' in the determination of the definition therefore makes it clear that offering games of chance practised jointly is not only a possibility, but it is an obligation for licensees. After all it must be guaranteed that the apparent demand for this type of games of chance can be channelled to a legal and trustworthy supply (the idea of channelling). Under or pursuant to a subordinate regulation minimums can be set on grounds of Article 27h(4)(c), for the offer of this type of games of chance.

The supply of games in a gaming casino is not necessarily limited to games of chance that are practised jointly, but may also include gaming machines. The fact that gaming machines may also be set up and operated in a gaming casino is explicitly expressed in the definition. Under or pursuant to Article 30z(3) of the Betting and Gaming Act, rules are set in subordinate regulations about gaming machines in a gaming casino.

Section 2. The licence for organising a gaming casino

Article 27h (number, period of validity, geographical distribution, transfer)

The proposed Article 27h contains provisions relating to the licence for organising a gaming casino.

Paragraph one

On the grounds of the first paragraph the Board of the Gaming Authority may grant up to a maximum of sixteen licences for organising a gaming casino. They refer to paragraph 4.2 of the general part of the Explanatory Memorandum for substantiation of the choice for a closed system of licences with a maximum of sixteen licences.

Paragraph two

The proposed second paragraph determines that the licence for organising a gaming casino will be granted for a limited period of time and that the licence may not be transferred. The period of validity is organised on grounds of the fourth paragraph in the subordinate regulations. It was announced in paragraph 4.6 of the general part of the Explanatory Memorandum that the period of validity of the licence would be set at fifteen years. The licensees are not permitted to transfer the licence to third parties. The right to grant licences is reserved for the Board of the Gaming Authority, so that an effective overview can be maintained of the quality of the licensee. General binding provisions are set out pursuant to the fourth paragraph, part e concerning the transfer of licences by other means, such as through mergers of businesses. Prior permission will always be required in any case from the Gaming Authority for every permitted transfer of licences, so that it will always be checked whether the objectives of the games of chance policy will remain safeguarded under the transfer.

Paragraph three

The third paragraph determines that the licence for organising a gaming casino will be granted under a limitation that relates to the geographical distribution of the gaming casinos. The licence therefore offers the possibility of operating a gaming casino within a particular region.

Paragraph four

On grounds of the fourth paragraph further rules are set out in the subordinate regulations concerning the licence for organising a gaming casino.

Rules are set out on grounds of part a concerning the geographical distribution of the gaming casinos, which is set out in greater detail in paragraph 4.3 of the general part of the Explanatory Memorandum.

Rules are set out on grounds of part b concerning games of chance that may be offered in a gaming casino on grounds of a licence. Obviously licensees will be able to offer the games of chance that may be offered by Holland Casino in the current situation on grounds of the 1996 Casino Games Decree. Gaming rules and other features of those games can thereby also be set out on grounds of part b. The licensee may only offer games of chance in the gaming casino which may be offered in a gaming casino under or pursuant to this Article paragraph. Therefore it follows that a licensee may not offer any remote games of chance to visitors of his gaming casino in that gaming casino, even if he possesses a licence to offer remote games of chance. This delineation can prevent the various games of chance submarkets, within which different provisions apply to different parts, becoming caught up in each other's wake.

Rules are set out on grounds of part c concerning the minimum and maximum size of the games of chance to be organised. Minimums and maximums may be set in various ways on the supply of games of chance in gaming casinos. This may be achieved by the number of gaming machines and gaming tables per establishment, but also, for example, by the number of player seats (the number of seats for participants at gaming tables or gaming machines), by the level of the prize money, by the minimum and maximum stake per person and per chance per game or a combination of these factors.

Rules are set out on grounds of part d related to the validity period of the licence. Further details are set out in paragraph 4.6 of the general part of the Explanatory Memorandum concerning the period of validity of the licence. It is desirable that all sixteen licences should expire at the same time at the end of the period. In order to ensure the simultaneous expiration of the period of the licences, the Board of the Gaming Authority

can also offer the possibility under or pursuant to a General Administrative Order (in any case for the first licence period) to vary the prescribed period of validity of the licence in certain cases. After all, a particular licensee will already have a casino establishment and personnel immediately available after being granted a licence and will more or less immediately be able to operate a gaming casino, while another licensee will 'only' have been able to secure a sole licence and will need time in order to be able to start up a gaming casino. It would not be reasonable to force the licensee that can operate a gaming casino almost immediately to wait until all other licensees are ready to do so. The Board of the Gaming authority could, in this case, change the validity period of the licence of the party that is able to almost immediately operate the gaming casino so it enters into force on a different date, without the licence concerned expiring at a different date from the other licences.

Furthermore rules are defined for the transfer of licenses (Part e). Paragraph two establishes that the licence cannot be transferred, but that other transfer methods, such as a merger between legal entities, will be permitted subject to certain conditions.

Article 27i (transparent granting of licences)

The proposed Article 27i includes provisions related to granting a licence for organising a gaming casino. The fundamental principle is that the licences will be granted in a transparent and non-discriminatory manner. This specifically means that the licensing system is based on objective criteria, which are non-discriminatory and are known in advance.

Paragraph one

Paragraph one establishes that the licence for organising a gaming casino is granted by means of an auction. An auction is a public sale at which the party that offers the highest bid wins. Winning the auction gives rise to an obligation of payment by the winning party to the government.

Paragraph two

To ensure that licences are not granted privately, and that every interested party is allowed sufficient time to communicate its interest in acquiring a licence by submitting an application, paragraph two establishes that the Board of the Gaming Authority shall provide appropriate disclosure of its intention to hold an auction in a timely fashion. The intention to hold an auction is announced in the Government Gazette.

On grounds of paragraph six more details regarding what is understood as a 'timely' and 'appropriate level of disclosure' are provided in subordinate regulations. Moreover, methods of disclosure other than sole publication in the Government Gazette may be prescribed.

Paragraph three

Applications for licences for organising a gaming casino are substantively evaluated in the same way by the Board of the Gaming Authority as if there was an open licensing system with an undetermined number of licences to be granted. The Board determines whether the application satisfies the conditions established under or pursuant to the law. If this is not the case, the Board shall refuse the application. Paragraph three makes it clear that an application which does not comply with the established conditions will be refused prior to the auction taking place. This ensures that only applicants that do comply with the conditions for obtaining a licence are allowed to participate in the auction.

Paragraph four

The (positive or negative) ruling of the Board regarding admission of the application to participate in the auction, is a ruling in the sense of the General Administrative Law Act (Awb). After all, the negative ruling involves a refusal of the application, whereas the positive ruling results in the applicant being allowed to participate in the auction and thus effectively having a chance of obtaining the licence. The (positive or negative) decision

by the Board to ultimately grant a licence following an auction is also a ruling. In accordance with the systematics of the Awb, interested parties may in principle object to and appeal against a ruling. Paragraph four is included to serve the effective legal protection of interested (third) parties in these types of decisions. The aim is to prevent an irreversible situation arising before the court in interlocutory proceedings has ruled. An irreversible situation could arise, for example, if a party objects or appeals against being refused to participate in the auction, or where appropriate, against a direct competitor being allowed to participate in the auction, but the auction is held pending objection or appeal. Moreover situations must be prevented whereby a party participates at an auction and it is established at a later date that the party concerned was mistakenly permitted to participate in the auction. An irreversible situation could also be created if a licence is granted after an auction but the granting of the licence is still being challenged. If the winner has opened his gaming casino, reversal of the granting of the licence will have serious consequences. Without the request for a preliminary injunction resulting in the suspension of operations, in the cases cited, irreversible consequences will soon threaten to come about.

Paragraph five

An auction is organised if the number of suitable applications exceeds the number of licences to be granted. If, however, only one suitable application is submitted for a licence, the latter may be granted without holding an auction. If not a single suitable application is submitted, the granting of the licence is abandoned. It is the number of applications that remain after their substantive assessment by the Board that is decisive. It is conceivable that five applications are submitted for a licence but that the Board refuses three of them. In this case the two remaining applications are permitted to participate in the auction. If, however, the Board refuses four out of the five applications it is not necessary to hold an auction. The Board may grant the licence for organising a gaming casino without holding an auction to the applicant of the only application that was not refused. If a situation arises whereby all the applications are refused no auction is held and no licence is granted. It is logical that the Board of the Gaming Authority then provides a new opportunity for interested parties to submit an application.

Paragraph six

By or pursuant to a General Administrative Order rules are established which in any case relate to the submission and handling of the application for a licence (under a), the public announcement of the auction (under b), the auction (under c) and the period in which a ruling related to the application is made (under d).

Part (a) includes all other rules related to how the application must be submitted, the deadline that applies and the information that the applicant must provide when doing so. This information may relate to data that demonstrates that the applicant will comply with the conditions imposed on the licensee by or pursuant to the law, such as those related to the organisation of the supply of games of chance and the applicant's business.

On grounds of part (b) it is determined what information the announcement of the auction, referred to in paragraph two, must contain. The announcement must, for example, provide adequate clarification about the licence that is being auctioned, when an application can be submitted, to whom the application must be submitted, a possible minimum bid, etc.

To ensure that the applicant also complies with the obligations arising from the auction, on grounds of part (c), the applicant may be requested to provide a financial guarantee before the auction.

The careful assessment of the applications and the organisation of the auction involve a considerable amount of work for the Board of the Gaming Authority. On grounds of part (d) a decision-making period will be established for the application that takes sufficient account of this.

On grounds of Article 4:5 of the General Administrative Law Act the Board of the Gaming Authority can, in certain cases, decide not to handle an application. This applies, for example, to an application that is submitted outside the application period, as specified in

the auction's announcement, referred to in paragraph two. A situation may arise whereby the maximum number of licences to be granted has not yet been reached, but that the Board of the Gaming Authority has not yet announced an auction for the licences on the grounds of Article 27i(2). This may include an application that is submitted the day after a licence for organising a gaming casino has been withdrawn, but before the Board has been able to announce an auction for the vacant licence. The Board of the Gaming Authority must be allowed a reasonable period of time to announce and prepare for an auction and may therefore not consider an application submitted outside the application period.

Article 27j (refusal)

The proposed Article 27j includes grounds on which the application for a licence for organising a gaming casino may be refused by the Board of the Gaming Authority.

Paragraph one

The information and documents necessary for the application's assessment must accompany the application. On these grounds and based on other information which the Gaming Authority may possess, there must be adequate assurance that the applicant and his business will comply with the established requirements imposed by or pursuant to the Betting and Gaming Act (part a), and that after being granted a licence the gaming casino will operate in accordance with the Games of Chance regulations, Anti-Money Laundering and Anti-Terrorist Financing Act and the 1977 Sanctions Act (Part b). Prior to the licence being granted, there must also be adequate assurance that there will be efficient and effective monitoring of compliance with the Games of Chance regulations, Anti-Money Laundering regulations and the 1977 Sanctions Act (Part c). Thus the documents produced must, inter alia, demonstrate that the applicant and his business, for example, comply with the registered office requirement, the form of legal entity requirement, the transparency requirement, the continuity requirement, requirements related to operational management, as well as trustworthiness and competence requirements. If, for example, the applicant's trustworthiness or that of his policymakers is not beyond reproach, the application must be refused. It must also be established that the operational management is organised in such a way that the gaming casino can not only be organised in a sound, reliable and controllable manner but also, for example, that the obligation to supply information to the Gaming Authority will be respected. The available information and documents must also provide sufficient insight into the way in which the gaming casino will be organised after the licence has been granted and sufficient guarantees of adequate monitoring and adequate enforcement must be established before the licence is granted. Not all the conditions will actually have been complied with when the Board of the Gaming Authority assesses whether a licence can be granted. Certain requirements – such as the form of legal entity requirement – may require additional investments, which will first be made once there is certainty relating to the licence being granted. In such cases the information and documents provided must adequately demonstrate that once the licence is granted the licensee will comply with the condition concerned. This can, for example, take the form of drafted resolutions or draft agreements. In such cases, the Board of the Gaming Authority can arrange for the validity of the licence to commence as from the date on which the conditions are actually complied with.

Inherent to a closed licensing system is the possibility that an application may comply with the conditions that are imposed in order to be allowed to participate in the auction, but that the application cannot be allocated following the results of the auction. Such an application can be refused on the grounds of Part (d).

Paragraph two

Pursuant to paragraph two the grounds for refusal can be further elaborated. In this respect rules can be imposed that relate to the cases in which compliance with a particular requirement, such as the requirement that the applicant's trustworthiness must be beyond reproach, is insufficiently guaranteed.

Article 27k (amendment, withdrawal, suspension)

The proposed Article 27k relates to the grounds on which a licence for organising a gaming casino may be withdrawn.

Paragraph one

Pursuant to Part (a) the licence may be withdrawn if the ruling to grant the licence was based on incorrect or incomplete information. Not every mistake or incompleteness justifies withdrawing a licence. The nature of the mistake or incompleteness must be such that the licence would not have been granted to the licensee if the Gaming Authority had had access to the full and accurate information when granting the licence. There may be a case of incorrect or incomplete information if, for example, the licensee withheld information that was necessary for the application to be properly assessed. On the grounds of Part (b) the licence may also be withdrawn if there is a failure to comply with or compliance ceases by or pursuant to the Betting and Gaming Act, the Anti-Money Laundering and Anti-Terrorist Financing Act, the 1977 Sanctions Act or the Betting and Gaming Tax Act. Naturally the licensee must not only comply with the conditions for obtaining a licence at the time of submitting the application but also for the entire period that he is a licensee. Examples include a situation in which the licensee changes the form of legal entity or moves the registered office and thus no longer constitutes a company with share capital with headquarters in an EU/EEA Member State or an approved third country, or a situation in which such a secretive management structure is adopted that efficient and effective monitoring is no longer possible, as well as a situation in which the trustworthiness of the licensee or his policymakers is no longer beyond reproach.

Pursuant to Part (c) the licence may be withdrawn if a requirement linked to the licence or a restriction under which the licence is granted is violated.

Pursuant to Part (d) it is also possible to withdraw a licence if the licensee has not organised a gaming casino within a reasonable time frame in accordance with the licence. Licensees must effectively operate the gaming casino. Consumers must be prevented from being tempted to engage in illegal offers of games of chance, due to the disappearance of casinos. If licensees have not put their granted licence to use within a reasonable time frame the Board of the Gaming Authority may withdraw the licence. The vacant licence may then be granted, by means of the legally prescribed procedure, to a party that will use the licence to operate a gaming casino. It is ultimately up to the Gaming Authority to determine, on a case to case basis, what is constituted to be a reasonable time frame for a licensee for organising his gaming casino, but it is indeed reasonable to allow a newcomer to the casino market adequate time, which equates in any case to two years, to effectively prepare for operating the licence.

Pursuant to Part (e) the licence may be withdrawn if the holder of the licence has apparently ceased organising the gaming casino. The difference with Part (d), whereby the licence may be withdrawn if the licensee does not organise a gaming casino, is that the licence on grounds of Part (e) may be withdrawn if the licensee has organised the gaming casino for a certain amount of time but then decides to cease its activities. This part also stipulates that the consumer must be prevented from resorting to illegal offers as a result of allowing the licence to remain unused.

Pursuant to Part (f) the licence can be withdrawn if the licensee provides inadequate cooperation to monitoring compliance and enforcement of the regulations set by or pursuant to the Betting and Gaming Act, the 1977 Sanctions Act and the Games of Chance Tax Act.

From the applicable provisions in the General Administrative Law Act, it follows that the licensee must be heard by the Board of the Gaming Authority before the licence may be withdrawn. This offers him the opportunity to comply with the established rules or to present any special circumstances that must be taken into consideration in the assessment of whether the licence should be withdrawn.

Paragraph two

On the grounds of paragraph two the licence may be suspended pending the investigation into the desirability of withdrawing the licence. The careful preparation of a ruling related to withdrawing the licence may take some time, especially if an investigation is necessary by, for example, the Public Prosecutor's Office or the Public Administration Probity Screening Act (BIBOB). If the information that led to the investigation is such that allowing the licensee to continue organising a gaming casino would not be responsible, the licence must be suspended pending the preparation of the decision to withdraw the licence. It goes without saying that the suspension period cannot be excessively long. On the other hand a thorough investigation must be possible within the defined period. Further rules may be applied in this respect by or pursuant to the General Administrative Order (paragraph three).

Section 3. The holder of the licence for organising a gaming casino

Article 271 (legal form, transparency, continuity)

The proposed Article 271 contains provisions about legal form, transparency and continuity of the licensees.

First paragraph

The Treaty on the Functioning of the European Union (TFEU) opposes the requirement of having a registered office in the Netherlands. Such a requirement would result in companies incorporated in other Member States being completely excluded from organising a gaming casino in the Netherlands. A foreign company would have to incorporate or acquire another company and cannot limit itself to the cross-border management of the gaming casino organised in the Netherlands. Not only does this constitute a restriction of establishment, but also a direct discrimination of companies with a registered office in a different Member State.

Therefore, paragraph one states as a starting point that the licensee has its registered office, main Board or principal establishment in an EU or EEA Member State.

Second paragraph

Under the second paragraph, the licence may only be granted to a legal entity having the legal form of a public limited company, a private limited liability company, the equivalent thereof under the law of another EU or EEA Member State or a European company. Consequently, the licensee need not be a public limited company or private limited liability company under Dutch law but may also be a public limited company or private limited liability company according to the law of another EU or EEA member state, for instance a Belgian or French *société anonyme* or *société privée à responsabilité limitée*, a Danish *aktieselskaber* or *anpartselskaber*, a German *Aktiengesellschaft* or *Gesellschaft mit beschränkter Haftung* or a British *public company limited by shares*. For European companies, reference is made to Council Regulation (EC) no. 2157/2001 of 8 October 2011 on the European Company Statute (SE). The requirement of a capital company under the law of one of the EU or EEA Member States brings with it the obligations to which these types of companies are subject, especially regarding their internal organisation, accounting and the publication of their annual reports and the inspections to which they may be subjected. Although the application without any distinction according to nationality restricts the free movement of services, this is justified by the objective of the gaming policy to prevent fraud and money laundering, in view of the specific features of the gambling sector and the risks associated with games of chance. As a result of this requirement, a company in, for example, the United States that wants to qualify for a Dutch licence, will have to set up a legal entity under the law of an EU or EEA Member State.

Third paragraph

In order to properly assess applications and adequately monitor compliance with the Betting and Gaming Act and the 1977 Sanctions Act by the licensee, the third paragraph

sets the requirement that the licensee is not associated with natural persons or legal entities in a formal or factual control structure that is so nontransparent that this is or could be an obstruction to adequate supervision. Nor may the law of another State applicable to these natural persons or legal entities affect supervision. This article is derived from the comparable Article 4.13 of the Act on Financial Supervision (Wet op het financieel toezicht).

Fourth paragraph

Paragraph four provides that the continuity of the licensee is reasonably guaranteed. The player who should be guided to a legal, suitable and attractive offer must be able to rely on being able to continue to play the games offered by this licensee throughout the duration of the licence. Furthermore, he must be able to rely on the licensee not violating Dutch regulations in order to save his company, for example in order to prevent imminent insolvency. That is why the continuity of the licensee must be reasonably guaranteed.

This is certainly not the case if the licensee goes bankrupt or into liquidation or if a moratorium has been granted. The requirements for the continuity will be detailed in the subordinate legislation. For the time being, guarantees in the form of capital requirements are not an option.

The Gaming Authority assesses the continuity of the licensee when the licence is granted. After the assessment, this is established, as long as changes in the relevant facts or circumstances do not give reasonable cause for a new assessment. The licensee shall have to provide the Gaming Authority with information that is relevant for its continuity.

Article 27m (operational management)

The proposed Article 27m sets requirements for the operational management of the licensee. The operational management must be suitable for compliance with Betting and Gaming Act, the Anti-Money Laundering and Anti-Terrorist Financing Act and the 1977 Sanctions Act for organising a gaming casino, as well as for the verifiability of the compliance.

First paragraph

The first paragraph requires the licensee to set up its operational management such as to guarantee a responsible, reliable and verifiable organisation of the gaming casino, and to guarantee the monitoring and enforcement in respect of the legislation referred to in the first paragraph.

Operational management concerns the operating assets (including staff, IT, CCTV, gaming machines, gaming tables and the environment in which parts of the operational management are present) and working methods used by the licensee in organising the gaming casino. These operational assets and working methods determine the question whether the operational management of the licensee is designed for the purpose of compliance with the Anti-Money Laundering and Anti-Terrorist Financing Act and the 1977 Sanctions Act. For example, a licensee is unable to comply with an obligation to provide information if relevant information is not collected by the information system. An important part of the operational management involves the matters that are directly related to the organisation of the games of chance in the gaming casino, such as gaming machines and gaming tables. For example, it has to be guaranteed that the randomness in the game of chance is generated in a fair and transparent way.

A sound operational management concerns matters such as reliable management, honesty, integrity, confidentiality and security. The licensee is responsible for a managed supply of games of chance whereby players can rely on the honesty and integrity of the licensee, of the game and of the other players, on their details being treated in confidence, on the security of the environment to which they entrust their money and personal data, and on protection by the licensee against gaming-related criminality. Partly the same expectations, such as honesty, integrity, confidentiality and security, play a role in the reliability of the operational management. Reliability also concerns continuity, transparency and conformity with the regulations on games of chance. It

should be clear to consumers who the licensee is and the licensee must be accessible in the event of queries and complaints. The licensee must comply with obligations to provide information, such as offering transparency about the way the games of chance are organised and offered. Furthermore, the operational management of the licensee must be set up in such a way as to rely on the licensing conditions, used to achieve the objectives of the games of chance policy, being complied with. Moreover, the licensee must take measures to prevent that the games of chance it offers are used for gaming-related criminality. For instance, it must be able to recognise (deviating) patterns in gaming behaviour that indicate, for instance, money laundering and other types of unfair game play. Moreover, it must be able to recognise (deviating) patterns that indicate irresponsible gaming behaviour.

The above requires the operational management to be verifiable as well, because without verifiability it cannot be checked whether the relevant parts of the operational management are indeed responsible and reliable. Therefore, the operational management must be accessible, transparent and moreover, administered properly.

Second paragraph

The second paragraph largely elaborates on the first paragraph. On the basis of the second paragraph, under a, by General Administrative Order, requirements are made for the means used by the organisation of a game casino and the manner in which they are used. These are hereafter referred to as the means, processes and procedures. Under subsection a, requirements are set for the means, processes and procedures in the interest of a reliable, justified and verifiable operational management. Subsection b provides the additional requirement in the interest of the verifiability. The words "in any case" are used to express that this elaboration is not exhaustive.

Subsection a (technical and operational requirements)

To ensure that the operational management is responsible, reliable and verifiable, technical and operational requirements are set for, amongst other things, the security of information processed in a gaming casino and for the means, processes and procedures in a gaming casino. A feature of these technical and operational requirements is that they are verifiable. The details in the subordinate legislation will be in line as much as possible with existing and common international industrial standards. In addition to these generic standards, technical and operational requirements are set that are more specifically focused on the organisation of a gaming casino. The details of this in the subordinate legislation will also be in line as much as possible with the existing international practice in the sector and with the regulations of other European countries. In this context rules are laid down with regard to, amongst other things, the manner in which the randomness of the game is determined and requirements will be set that make certain licensing conditions testable and therefore verifiable.

Subsection b (inspection)

The means, processes and procedures used by the licensees for the organisation of the gaming casino, must comply with the requirements of the Dutch regulations on games of chance both during the granting of the licence and afterwards. For this purpose, a system of inspection by an accredited institution has been proposed. Subsection b requires that the means, processes and procedures are inspected by an accredited institution. The technical and operational requirements can be extensive and detailed and a need could arise to regularly amend these requirements.

The Dutch Accreditation Council may accredit organisations at their request and according to the standards customary for this purpose as inspection bodies, as test laboratories or both. These organisations (inspection bodies) shall be accredited for a certain scope, limited by the rules on the basis of which an inspection body will carry out the inspections. In the context of the Dutch regulations on games of chance these are the conditions (especially the technical and operational requirements) that the licensee must comply with. Based on the principal of mutual recognition, national accreditation

bodies from the other EU and EEA Member States are also authorised to accredit inspection bodies.

Means, processes and procedures must be inspected at the time of the application for the licence - to the extent possible at that moment - before the licence is put into use, in the case of amendments and at the direction to this effect of the Gaming Authority. In order to facilitate this, the licensee will have to be able to make continuous use of the services of one of the accredited inspection bodies. It has to inform the Gaming Authority which inspection body it uses to this end and submit the relevant inspection reports to the Gaming Authority. On the basis of these reports and the other available information, the Gaming Authority assesses whether compliance suffices. A positive inspection report is an important indication that the licensee complies with the licence conditions. The Gaming Authority may also include other factors in its assessment of compliance, such as complaints of players and other external signs, and conduct a further investigation and order a further inspection where required.

Third paragraph

On the basis of the inspection reports, the Gaming Authority may assess whether the means, processes and procedures have been inspected. Additional inspections - aside from the initial inspection carried out in the context of the application, the inspection before the licence is put into use and any later inspections following changes - will be carried out at times determined by the Gaming Authority. Those times will be determined by the Gaming Authority on the basis of a risk analysis and on a random basis. The accredited inspection body engaged by the licensee shall carry out inspections at the expense of the licensee at a time set by the Gaming Authority. Under the third paragraph, the Gaming Authority may determine in this respect that only certain means, processes or procedures must be inspected.

The Gaming Authority shall include in its risk analysis the information available to it including complaints received from players, information from other supervisors and reports of inspections carried out for the purpose of a licence of the licensee in another country.

Additional random inspections will safeguard that licensees which do not display any indications can still expect an instruction to have an additional inspection carried out at any time.

As these additional inspections are not carried out at regular intervals and are announced shortly beforehand, it is expected that this will result into better compliance by the licensee with the regulations on games of chance.

Additional inspections based on random checks and a risk analysis by the Gaming Authority are expected to result in a lower frequency of additional inspections for the average licensee compared to regular (annual) inspections, and thereby in a lower burden and more effective supervision.

Fourth paragraph

In the interest of the internal operational management of the licensee and the compliance of external supervision by the Gaming Authority, the licensee must appoint, under the fourth paragraph, one or more expert officers who are responsible and available within its organisation for the implementation and internal supervision of the regulations on games of chance. In international practice, such internal officers are also referred to as 'compliance officers'. Subordinate legislation may put into detail the further requirements with regard to the knowledge and/or experience of this officer where required.

This officer must be available within the organisation of the licensee and for the Gaming Authority. Thus he will be a link between the employees of the licensee and the Gaming Authority. This officer may, of course, only be responsible for the implementation and compliance within the specific organisation. Thus, the ultimate responsibility for implementation and compliance does not lie with this officer, but with the licensee. The fourth paragraph does not preclude the licensee, for instance in view of the size of its

organisation, from appointing several of these officers, each having their own duties and responsibilities, provided that this is reported to the Gaming Authority.

Fifth paragraph

Under the fifth paragraph, further rules are laid down in subordinate legislation with regard to the parts of the operational management relevant to the organisation of gaming casinos.

Subsection d

The protection of the player as a consumer plays an important role in different sections of the Betting and Gaming Act and the proposed regulation of gaming casinos. Article 4a contains rules with regard to careful, balanced and non-misleading recruitment and advertising activities and measures and provisions to prevent addiction as much as possible. Under subsection d requirements are made in the subordinate legislation for the operational management in the interest of consumer protection. This concerns rules in respect of the accessibility of the licensee to players and rules in respect of the information supply to the player.

Subsection e

It is conceivable that licensees outsource part of their operational management. This may concern, for instance, the development of advertising and recruitment activities and the offer of catering services.

In itself, outsourcing is not problematic, provided that compliance with the regulations on games of chance and the monitoring thereof continue to be guaranteed. Thus, outsourcing does not release the licensee from its obligations and responsibility as a licensee. Even if certain parts of the operational management are actually taken care of by specialist third parties, the licensee continues to be responsible for the compliance with the regulations on games of chance. That is why subordinate legislation will set further requirements for the outsourcing of parts of the operational management. Outsourcing should not stand in the way of internal and external supervision of compliance. Nor may outsourcing result in the circumvention of the requirements set out regarding the reliability and competence of the licensee.

Subsection f

It is almost self-evident that a gaming casino offers not only games of chance, but that players can also obtain food and beverage. Therefore, licensees may develop more activities in the gaming casino than solely offering games of chance. By the same token, there may be activities that are not desirable for a gaming casino, such as activities specifically aimed at young people and other vulnerable groups for which it would be undesirable that they would come into contact with games of chance. Regarding the permissibility of activities other than offering games of chance in a gaming casino, further rules will be prescribed by or pursuant to the General Administrative Order.

Article 27n (Reliability)

The proposed Article 27n specifies the reliability requirements that must be met by the licensee and persons involved in the organisation of the gaming casino.

First paragraph

Both the players who patronise gaming casinos and the government must be able to rely on the integrity of the licensee and the persons involved in the organisation of the gaming casino. The reliability of the licensee, of those involved in the organisation of gaming casinos and of the eventual stakeholder should therefore in fairness be beyond any doubt. The burden of proof of reliability lies with the applicant wishing to be considered for a gaming licence. In this respect there is a link with the reliability assessment under the Act on Financial Supervision.

Second paragraph

Since the licensee is a legal entity, its reliability is partly determined by the reliability of the persons involved in its organisation. Here this applies in particular to directors, managers and staff whose role in the organisation may affect the reliability of the licensee. Effective prevention of gambling addiction and detection of fraud depend on the integrity of the staff entrusted with these tasks.

For these reasons, the second paragraph provides for the obligation of the licensee to implement adequate policy in order to guarantee internal reliability. Obvious examples would be the establishment within the licensee's organisation of organisational rules and procedures that continually monitor the integrity of the staff and other persons involved in the organisation of the gaming casino. Here this applies to managers who can exercise influence on other persons, persons in key positions who are in a functional position in which they can make a significant difference to the reliability of the licensee, and persons who come into contact with players when organising a gaming casino, such as croupiers. The details will be set out in subordinate legislation.

Third and fourth paragraphs

The third paragraph further elaborates on the first paragraph. In assessing the reliability of the (potential) licensee, persons that (help to) determine the policy implemented by the licensee and the eventual stakeholder, the Gaming Authority will, in any case, be able to make use of the set of instruments of the Public Administration Probity Screening Act (Bibob). The Public Administration Probity Screening Act already provides for this set of instruments to be used in the gaming machines sector. The gaming casino sector is also vulnerable to abuse for criminal purposes and money laundering practices. Gaming providers operating in the gaming machines sector who are not granted a licence under the set of instruments of the Public Administration Probity Screening Act may not be granted a licence to operate a gaming casino for the same reasons.

Fifth paragraph

Further rules are set out in the subordinate legislation with regard to the reliability of the (potential) licensee and the persons involved in its organisation. Where possible, these rules are aligned with the requirements set pursuant to Chapter 2 of the Prudential Rules (Act on Financial Supervision) Decree on financial institutions that operate internationally. This allows the Gaming Authority to avail itself of the expertise and experience of the supervisory authorities under the Act on Financial Supervision. In assessing the reliability of the licensee, apart from violations of (Dutch or foreign) regulations on games of chance, a broad range of criminal antecedents, supervisory antecedents, financial antecedents, tax-administrative antecedents and other antecedents is taken into account. The extent to which the licensee has complied with its financial obligations under administrative sanctions and the gaming levy and gaming tax systems is also taken into account. Among other things the gaming provider must submit a Certificate of Good Conduct, or, in the case of a foreign gaming operator, an equivalent document, which confirms the absence of relevant antecedents.

Article 27o (Expertise)

The responsible, reliable and verifiable organisation of gaming casinos is largely determined by the professional quality of the management of the licensee and staff and third parties in key positions. A gaming provider with an incompetent management which outsources (certain aspects of) the organisation of a gaming casino to third parties, will be unable to properly assess the expertise of these third parties, thereby compromising the responsible, reliable and verifiable organisation of the organised games of chance. The licensee may outsource certain activities to third parties, insofar as these third parties comply with the relevant expertise requirements.

The members of the Board of the licensee must therefore possess sufficient expertise to be confident that the policy adopted by the licensee remains within the limits of a responsible, reliable and verifiable organisation of the games of chance.

Managers, persons in key positions and persons who come into contact with players when organising the gaming casino, play an important role in the implementation of this policy. They, too, must possess the necessary expertise, including suitability and knowledge or experience, required in their area. For instance, it cannot be assumed beforehand that, for example, the regulations on the prevention of gambling addiction will adequately be observed, if customer service staff, those who analyse the players' details for evidence of addiction risks and those who confront players exhibiting high-risk gaming behaviour, do not possess the necessary knowledge and/or experience in this area. The licensee must therefore ensure that managers, persons in key positions and persons who come into contact with players when organising a gaming casino possess suitable expertise. Suitable expertise in games of chance does not necessarily need to be possessed by staff who come into contact with players but not directly in relation to the games of chance offered by the gaming provider, as is the case for bar staff.

In principle, the required expertise can be demonstrated in the form of training and experience. Specific training will be required in certain areas. For instance, board members, key personnel and staff who come into contact with players will be required to successfully complete a short training course on addiction prevention. However, especially in the case of managers, more value will be attached to experience and expertise in the specific nature and risks of the organisation of a gaming casino.

Section 4. Organising a gaming casino

Article 27r (fair gaming standards of the game)

First paragraph

One of the central objectives of the policy on games of chance is consumer protection. Under the first paragraph, therefore, licensees have a duty of care in respect of the fair course of the games of chance organised in the gaming casino. The visitor of a gaming casino must be able to rely on the games of chance in a gaming casino being offered in a fair way and that he will be protected against unfair game play.

In respect of table games the first paragraph means for example that the licensee is vigilant in respect of unfair game play by way of unfair activities (or omissions) by a croupier and/or players.

Second and third paragraphs

To guarantee fair gaming standards and to prevent the appearance of unfair gaming standards, the licensee shall exclude certain categories of persons from participating in games of chance in the gaming casino. The second paragraph refers to the persons employed by the licensee and persons employed by third parties who work at the gaming casino. It has to be prevented that these persons would influence the game in an unfair way at the expense of other players due to their association with the gaming casino in which they work, for example by being in cahoots with a croupier they know. This prohibition could be circumvented by the persons working in the casino by having intermediaries play for them. For this reason, the second paragraph provides that this is not permitted either.

Under the third paragraph, additional categories of persons may be designated that are excluded by the licensee from participation in the games of chance and further rules may be prescribed in respect of the fair course of the games of chance within the gaming casino.

Article 27s (internal supervision by licensee)

First paragraph

The licensee is responsible for compliance with the regulations prescribed by or pursuant to the Betting and Gaming Act. The first paragraph prescribes that the licensee carries out 'internal' supervision to this end - i.e. within his gaming casino branch(es) - of

players and of persons who come into contact with players during the organisation of a gaming casino. The last category includes croupiers.

Second paragraph

The licensee shall use cameras for the benefit of the internal supervision of compliance with the regulations on games of chance. The cameras serve as a tool for the supervision referred to in the first paragraph. With the aid of the cameras, the licensee can monitor whether the games of chance are played fairly by players and/or croupiers. Moreover, the cameras may serve as tools for early identification of gambling addiction and for the prevention of money laundering.

Third paragraph

The third paragraph clarifies that the Personal Data Protection Act (Wet bescherming persoonsgegevens (Wbp)) applies to the processing of personal data that is processed using the cameras referred to in the second paragraph. This means, amongst other things, that licensees must report the processing of personal data using such cameras to the Dutch Data Protection Authority (cf. Article 27(1) Wbp) and that the Dutch Data Protection Authority regulates the processing of such personal data (cf. Article 51(1) Wbp).

Fourth paragraph

Camera surveillance cannot take place secretly, but it has to be clear to every visitor - not only players but also for instance persons employed in the casino - that surveillance takes place in the gaming casino by way of cameras. Consequently, on the basis of the fourth paragraph, licensees are obliged to clearly point out the presence of cameras as referred to in the second paragraph to visitors of gaming casinos. . They may do this by placing information in obvious locations at the entrance of the gaming casino, but also elsewhere in the gaming casino. The fact that the use of cameras must be clear to all visitors does not mean that every separate camera in operation must be visible.

Fifth paragraph

By or pursuant to a General Administrative Order, further rules may be laid down in respect of the supervision by the licensee in gaming casinos.

Part B

Article 30z

In the current situation, the licence for organising a gaming casino does not yet constitute the option of the presence and exploitation of one or more gaming machines in a gaming casino. The Board grants a separate licence for this pursuant to Article 30z of the Betting and Gaming Act. The proposed Article 30z links the gaming casino licence in Article 27h to the licence for the availability and operation of one or more gaming machines in a gaming casino. This means that the party that legally obtains a gaming casino licence - so without required mediation of the Board of the Gaming Authority - also obtains a licence for the availability and operation of gaming machines in its gaming casino. Thus, this party does not need to make a new application to the Board of the Gaming Authority. This does not only follow from the proposed first paragraph of Article 30z, but has also been expressed in the amended definition of gaming casino, as provided in the proposed Article 27g(2). Linking the licences in Article 27h and Article 30z also entails that the licence in Article 30z shall be cancelled by law at the same time as the licence in Article 27h is cancelled.

By or pursuant to a General Administrative Order, in respect of the permission of the model of gaming machines in a gaming casino, rules may be laid down that deviate from the provisions in paragraph 4 of Title VA. As in the current context, requirements may be set for the model of a gaming machine intended for operation in a gaming casino that deviate from the requirements set for the model of gaming machines intended for operation in institutions as referred to in Article 30c(1) of the Act.

The third paragraph contains a delegation provision to lay down rules by or pursuant to a General Administrative Order in respect of the availability and operation of gaming machines in a gaming casino, as well as in respect of the permission of a model of gaming machine in a gaming casino.

Article III (transitional law)

This article contains provisions of transitional law. The purpose of the transitional law is the smooth transition in accordance with the objective of the policy of games of chance of the current gaming casino regime to the future gaming casino regime. The transitional law consists of five Article paragraphs.

First paragraph

Paragraph one clarifies that the transitional law is only applicable to the first round of licensing, immediately following the effective date of this Act. Consequently, the transitional law does not apply to the granting of licences at a later moment in time, for instance on expiry of a term of a licence, following withdrawal of a licence or following a licensee having relinquished its licence.

Second paragraph

On the basis of the policy objectives it is desirable that the consumer demand for gaming casinos can be met with by legal supply. For this reason it has to be prevented that a period is created between the current and future gaming casino regime in which no parties have a licence for the operation of a gaming casino, as in that situation, consumers may be inclined to revert to illegal supply. For this reason, the second paragraph provides that the current licence of Holland Casino, the 1996 Casino Games Decree (Beschikking Casinospelen), shall be honoured for the time being, i.e. until Holland Casino is privatised and the Board of the Gaming Authority grants a licence to the acquiring party for the operation of ten gaming casinos.

Third paragraph

The State's ownership of Holland Casino shares will be terminated upon privatisation, i.e. through transfer of shares to a private party. Thus, a private party shall acquire Holland Casino by universal title. The value of the Holland Casino company is for an important part represented by the licence to operate gaming casinos.

The transfer under private law of the Holland Casino shares (by the legal entity the State) shall be linked to the private licensing (by the administrative body the Board of the Gaming Authority). In order to offer all interested parties a fair chance to obtain a (scarce) licence, the process of licensing must be non-discriminatory and transparent. This specifically means that the intention of granting licenses must be well-publicised, so any interested parties are aware of the fact that a licence may be obtained. Moreover, any interested parties must be given sufficient time to submit a licence application and it has to be known in advance which conditions the parties must comply with in order to be eligible for a licence. Moreover, the conditions to become eligible for a licence cannot be directly or indirectly discriminatory.

The third paragraph provides that following the privatisation of Holland Casino, the Board of the Gaming Authority will ensure prompt licensing of the privatised legal entity for operating ten gaming casinos. The word 'prompt' expresses that the moment of licensing should ideally follow as quickly as possible the moment of transfer of the Holland Casino shares, but also provides the Board of the Gaming Authority with some time to carry out the required administrative actions in respect of the licensing. Due to the obligation to grant (scarce) licences through a transparent and non-discriminatory process, the Board of the Gaming Authority must not only satisfy itself that the buyer of Holland Casino would be eligible for a licence but also whether Holland Casino has been transferred to this party through a transparent and non-discriminatory process. Only if this is the case, may the Board of the Gaming Authority grant a licence to this party.

The 1996 Casino Games Decree shall expire as soon as the Board of the Gaming Authority has granted the buyer of Holland Casino a new licence. Therefore, a separate withdrawal decree is not required.

Fourth paragraph

As the privatised Holland Casino is restricted to operating ten instead of fourteen gaming casinos in the future context, room is created for various newcomers (in addition to the party acquiring Holland Casino). To prevent that the privatised Holland Casino will still operate more than ten of the maximum of sixteen gaming casinos, paragraph four provides that the privatised Holland Casino cannot compete for the other licences.

Fifth paragraph

This legislative proposal assumes that the scarce licences for organising a gaming casino shall be distributed by way of an auction. The auctioning of licences entails that the party offering the highest bid at the auction will be granted a licence.

Granting the sixteen licences for the first licence period immediately after the effective date of this legislative proposal shall be different from granting subsequent licences (towards the end of the licence period or in the interim if a licence is withdrawn or returned), as it applies to the granting of the package of ten licences, referred to in paragraph three, that it is linked to the privatisation of Holland Casino. In addition, the fifth paragraph provides that by ministerial regulation the granting of no more than four of the six other licences may be subject to the condition that the licensing entails the taking over of assets or staff. It concerns the licensing in respect of the four current gaming casino branches of Holland Casino that shall not be part of the privatisation referred to in paragraph three.

In order to offer the option for the granting of the first sixteen licences to include other aspects apart from only the highest bid, such as qualitative aspects including the plans an applicant may have in respect of the staff to be taken over, the sixth paragraph provides that by regulation of Our Minister of Security and Justice a once-off procedure for licensing that deviates from the procedure proposed in Article 27i may be established. It goes without saying that the criteria for this (possible) ministerial regulation is that licences will be granted in a transparent and non-discriminatory manner.