STATES OF CURA AO

LEGISLATIVE YEAR 2023 - 2024 -

Lands Ordinance of the containing rules on games of chance (Landsverordening op de kansspelen)

No. 3 MEMORIES OF EXPLANATION

1 . General Explanation.

This National Ordinance seeks to modernize Curai;ao's gaming legislation.

Historically, the various games of chance have been regulated through separate statutory regulations, which came into effect on different dates.

In Curai;ao, the following games of chance are currently regulated:

a. land-based casinos, pursuant to the Island Regulation on Casinos Curai;ao1;

b. games of chance under the Lottery Ordinance 19092, including:

i. the number lottery, or in Papiamentu the wega di number;

ii. the goods lottery;

c. games of chance under the Land Lottery Ordinance 19493, which are organized by the Land Lottery, in Papiamentu the briechi;

d. games of chance under the Landsverordening Hazard Games 114 1988, including the bon ku ne and bingo;

e. outdoor hazard games, pursuant to the Landsverordening buitengaatse hazardspelen5 (LBH).

This National Ordinance seeks to gradually incorporate the regulation of all games of chance into the same statutory scheme.

1 A.B. 1999, no. 97, as last amended by P.B. 2011, no. 49. This Island Ordinance has acquired the status of Cura ao country ordinance as of 10-10-10.

2 A.B. 1965, no. 85.

J P.B. 1965, no. 122.

4 P.B. 1988, no. 66.

s P.B. 1993, no. 63.

Provisions are hereby introduced that will (gradually) apply to all games of chance offered in or from Curacao, including general provisions pertaining to prohibited activities regarding games of chance, the granting, suspension, revocation or modification of (provisional) gaming licenses, responsible gambling, the appointment of the gaming authority and enforcement and supervision.

Individual games of chance are regulated in more detail in separate chapters.

An integration of the rules for all games of chance existing on Curac;ao will take place in phases. In this draft, the first phase, the goal is to introduce new rules for remote games of chance in particular. Even the general provisions, such as those contained in the first, second and third chapters, unless otherwise expressly provided in this draft, will not immediately apply to games of chance other than remote games of chance with their entry into force. The provisions in Chapter 12, regarding the gaming authority, will apply in full with the entry into force of this National Ordinance.

Remote games of chance are currently regulated under the CAA.

Meanwhile, practice has proven that the online gaming sector can be an important economic pillar for Curac;ao. It can be assumed that this sector has grown over the years to become one of the largest

- possibly even the largest - online gaming jurisdictions in the world. From periodic reports provided to the Gaming Control Board (GCB) by the holders of a license issued under the CAA, it can be deduced that there are currently more than 1,000 operators offering online gaming from Curac;ao on the international market.

This development need not be objectionable. Online gambling is a form of entertainment, in which many players participate as a pastime in order to gamble for fun. In many cases they are observant participants, who can fairly well oversee the consequences of online gambling.

Because of the specific nature that online gambling entails, it may involve greater risks than traditional games of chance.

For example, it generally bears that in the absence of physical contact between the provider of online gambling and the player, the player is in an even weaker and more vulnerable position than in traditional (land-based) gambling. For the player, there is therefore a greater chance that he will have to deal with an unreliable and difficult to trace operator (or fellow player(s)).

The lack of physical contact can thus encourage deception and criminal acts such as fraud and swindling.

Furthermore, the low-threshold nature of participation in online gambling can promote unwanted influence on players. Players can easily participate from their homes or other familiar surroundings. At the same time, there are many operators around the world offering online games of chance. As a result, players are likely to come into contact with providers who seek to entice them into choices that run counter to their interests. The chances of money wasting and gambling addiction are also increased as a result.

Not only players, but also providers of online gambling can be more easily harmed by all kinds of criminal acts, such as money laundering or match-fixing, that malicious players or others commit through online gambling.

In order to reduce the risks associated with online gambling and other games of chance, the authorization of their operation must be done with the necessary safeguards.

In drafting this National Ordinance, the following objectives in particular have always been borne in mind to ensure a healthy gaming offer in or from Curac;:ao:

1. the prevention and combating of criminal activities, including by safeguarding the integrity of the organizer of the game of chance;

2. the protection of the participants in games of chance, which also includes guaranteeing the fairness of the game and ensuring open and fair treatment of the participants in games of chance;

3. preventing and combating gambling addiction and protecting vulnerable persons, including minors;

4. safeguarding the international reputation of Curac;:ao, particularly as a gaming industry.

Safeguards to prevent crime

Certain games of chance can pose high risks for all kinds of crime, such as money laundering, scams, match-fixing and manipulation of gaming software.

In practice, certain games of chance have been found to be particularly prone to money laundering and other forms of crime by financial institutions. This has resulted in the so-called "de-risking" of games of chance, whereby banks, in most cases under pressure from a correspondent bank, decide not (or no longer) to serve gaming providers.

Effective safeguards to prevent crime are therefore necessary. These are already partly reflected in the applicable Anti-Money Laundering and Countering the Financing of Terrorism (hereinafter: "AML/CFT") laws and regulations, in particular the National Ordinance on Reporting Unusual Transactions6 (hereinafter: "LvMOT") and the National Ordinance on Identification when Providing Services7 (hereinafter: "LID"). These national regulations aim to prevent and combat money laundering and terrorist financing in order to safeguard the integrity of the financial markets. Based on this, providers of games of chance are obliged to establish and verify the identity of participants in games of chance, register and monitor financial transactions with participants in games of chance, exclude participants in games of chance in case of suspicion and report unusual transactions to the Financial Intelligence Unit Cura<;ao (hereinafter referred to as: "FIU").

Currently, the GCB is the supervisory authority for compliance with AML/CFT laws and regulations by all gaming providers, including providers of out-of-state hazard games. With the introduction of this National Ordinance, the GCB will continue these powers under a new name, namely the Cura<;ao Gaming Authority (hereinafter "CGA"). On the basis of the LvMOT, the LID and this National Ordinance, the CGA is then authorized to issue separate AML/CFT guidelines for the gaming sector, which relate, among other things, to the identification of participants in games of chance, the manner of dealing with unusual transactions, and reporting obligations in this regard.

Furthermore, with a view to preventing and combating (gambling-related) crime, an investigation into the reliability and suitability of those who determine and co-determine the policy of the gaming operator and other persons in key positions will have to be conducted as part of a license application and when relevant circumstances change. This National Ordinance provides for this in the sense that conditions have been set which the applicant for a license must at least meet in order to be eligible for a gaming license. It follows from Article 2.2(2)(a), for example, that all ultimate interested parties, persons with a qualified participation and persons involved in the operation of the company who determine or co-determine the policy must be fully acquainted with the company. Based on that article, the license will be refused if these persons are not sufficiently known. For the purpose of verifying the reliability and suitability of said persons, the applicant must provide full disclosure of the involvement of these persons. Moreover, the persons mentioned in article 2.2, second paragraph, subsection b, in the past eight

6 P.B. 2017, no. 99.

7 P.B. 2017, no. 92.

years have not been irrevocably convicted of any of the crimes listed therein. Article 2.2(2)(c) entails that at all times the origin of monies used to finance exploitation must be established and that there must be a legitimate origin. Outside these and the other cases mentioned in Article 2.2(2), the CGA can refuse a license on the grounds of Article 2.2(1), in order to guarantee a safe, responsible and reliable supply of games of chance.

With a view to preventing gambling-related crime, the provider of games of chance must further guarantee, among other things, that participants play in a safe and secure environment at all times (Article 2.2(3)(a)).

With regard to the so-called non-profit games, which are exempted from a licensing obligation, a reporting obligation applies in accordance with Article 1.2(5), partly for the prevention of money laundering and terrorist financing.

Consumer protection safeguards

Participants in games of chance are usually in a weaker position than their counterpart. They are often less well informed than the gaming provider and less able to oversee the consequences of their choices. Their lack of knowledge and experience makes them more susceptible to deception and fraud, especially when they are among vulnerable groups, such as gambling addicts or the socially and financially disadvantaged.

In view of this, measures must be taken to protect participants in games of chance, which are reflected in particular in regulations pertaining to the protection of player assets (Article 2.2(2)(g), Article 2.4(2)(c), Article 5. 8, subsection g}, proper provision of information to the participant in games of chance and fair play (Article 2.2, subsection 3, subsection b}, the prohibition of lending to participants in games of chance (Article 1.4, subsection c) and the minimum age for participation in games of chance (Article 1.4, subsection d).

Safeguards against gambling addiction

In principle, participants are responsible for their own playing behavior. The starting point is that they themselves may determine to what extent they play and what amounts they wager each time. However, in order to be able to play responsibly and prevent gambling behavior from getting out of hand, safeguards are needed which, among other things, are expressed in the provision of information about gambling addiction to participants in games of chance and the prevention of participation in games of chance by (potential) gambling addicts (article 1.4, section d, article 2.2, third paragraph, sections b, c and d). Addiction can

lead to serious consequences for the player and his relatives. This client should not only think of serious financial problems that gambling addicts can face, but also of physical and mental consequences as a result of their problematic gaming behavior.

Safeguarding Cura9ao's international reputation

Safeguarding the international reputation of Curac;:ao is particularly important in view of the i-Gaming industry. By i-Gaming is meant any form of online betting in which the player bets on the outcome of a game or event.

It can be expected that improvement of the image through transparency of the i-Gaming industry, through (proven) consumer protection, promotion of responsible gambling and protection of minors, will lead to an increase in interest in the Curac;:aose license.

A good reputation will ultimately also promote the development, continuity and prosperity of the Curac;:ao licensed i-Gaming sector, which is expected to result in a positive stimulus for the Curac;:ao economy.

Such a boost is also needed in light of the harsh impact that the COVID-19 pandemic and the measures taken worldwide to combat the virus have had on Curac;:ao's economy.

Such severe, negative impacts on the fragile Curac;:ao economy emphasize the importance of deploying strategies to enhance its ability to withstand and overcome shocks. One such strategy is economic diversification.

It is therefore important, now more than ever, to give substance to economic diversification as soon as possible in part by strengthening the current economic pillars through the i-Gaming industry.

The current modernization is also a further implementation of the agreements made between the government of Curac;:ao and the government of the Netherlands in the areas of government and finance and economic reform, among others. The agreements include an agreement that the i Gaming sector will be modernized. Section H19 of the Land Package of Curac;:ao includes the following:

"Curai;ao will come up with a graduated plan for the modernization and reform of the offer of online gaming. This plan will also include a realistic timeline with associated milestones. The modernization and reform shall include at least:

1. Laws and regulations providing for an independent regulator of online gambling. It also issues licenses and enforces when necessary, with the possibility of license revocation as a last resort.

2. Ensuring that providers of online gaming from Curac;ao act in accordance with laws and regulations of the countries they target.

3. Measures to collect -via the Curac;ao Gaming Control Board and the Tax Authority- the taxes and license fees owed by licensees."

The Temporary Working Organization (hereinafter referred to as "TWO") is charged with implementing the Land Package. The draft has been extensively reviewed by the TWO against the principles of the Land Package H2/Hl9. From this review the essential points made known by TWO have been incorporated in this design.

It should be emphasized that priority must always be given to maintaining a healthy and responsible gaming offering. There can be no discussion whatsoever about policy makers deliberately compromising the safety of this supply in order to make it more commercially attractive. This does not alter the fact that unnecessary requirements for the organization of an operation must be avoided, in the sense that these requirements do not contribute to the perpetuation of responsible gaming.

Although the introduction of the new system is expected to have a major impact on the economic development of Curaçao, it has been decided not to burden all suppliers with a licensing requirement and to keep the market accessible for both Curaçao-based and non-Nuraçao-based suppliers. This ensures that regulations with which those suppliers are confronted under this National Ordinance are limited. A licensing requirement is introduced exclusively for suppliers who wish to establish themselves in Cura-;ao to provide critical services or goods typically related to gaming in or from Cura-;ao. Suppliers who provide these services and wish to establish themselves here will therefore be subject to supervision under this National Ordinance.

Discussions with representatives from the trust sector have revealed the need for such a license. Furthermore, all suppliers (located in and outside Cura-;ao) that provide gaming-related critical services and goods to Cura-;ao-based remote gaming license holders shall register in a register <lat is maintained by the CGA, in view of the information obligation that will apply to all suppliers. As a starting point, <lat the gaming provider is responsible for providing relevant gaming offerings

related information and records to the CGA for the purpose of effective supervision. This information obligation has been included in particular for situations in which additional information is required from the relevant providers when no complete and proper delivery of the requested information and documents through the gaming provider can be guaranteed, without prejudice to the gaming provider's responsibility in this regard.

Discussions with representatives from the gaming sector have also revealed a need for certain suppliers to be accredited by the CGA. The introduction of the accreditation obligation as referred to in Article 5.17 ensures that the various service providers with whom licensees may do business are brought into focus. This includes, for example, suppliers engaged in the marketing of games of chance, providing courses to people working in the gaming sector, providing financial, legal or AML-related advice to gaming providers. The emphasis, however, is on control from the licensee. Suppliers providing certain critical services will have to meet certain quality requirements in order to qualify for accreditation. The stability and reliability of the gaming offer also depends on these service providers. Since the gaming provider is responsible for its gaming offerings, the choice has been made for an easily accessible accreditation system for these service providers.

The Commission on the Prevention and Combating of Money Laundering and the Financing of Terrorism and Proliferation of Weapons of Mass Destruction, named AML/CFT/CTP Committee, consisting of among others the supervisory institutions, being the Central Bank of Cura<;ao and Sint Maarten, the Financial Intelligence Unit ("FIU") and the Gaming Control Board, have reviewed the draft and provided recommendations. Also, during the legislative process of the present draft, various information sessions and discussions with, as well as presentations to, representatives from the gaming sector were held regarding the content of this draft. As a result, various recommendations were made from the gaming sector. The recommendations have been taken into account as much as possible.

2. Cura ao Gaming Authority ("CGA").

The National Ordinance appoints an independent administrative body, the Cura<;ao Gaming Authority (hereinafter referred to as: "CGA"), which will be engaged in licensing, enforcement and supervision with regard to all games of chance. This will prevent fragmentation

within the supervision of the gaming sector. With supervision by one and the same supervisory body, a uniform working method is guaranteed.

It has been decided that the GCB, an organization set up under private law, which is currently charged with supervision, enforcement as well as licensing in the area of games of chance on behalf of the minister, will continue in private law form as the CGA8.

The CGA is deliberately expanding and updating its knowledge, expertise and practical experience within its organization with a view to expanding its tasks to include the supervision of all types of games of chance. In addition, the GCB is investing in staff knowledge, focusing on updating already existing knowledge and further expanding knowledge with respect to all games of chance, as well as combating money laundering and terrorism financing, and preventing gambling addiction.

Since its establishment in 1999 through February 2017, the SCI has been solely responsible for the regulation of the casino sector. This includes responsibility for the issuance of casino licenses, the supervision of compliance with the regulations under or pursuant to the Island Regulation Casinowezen Curai;ao, the AML/CFT regulations, the promotion of responsible gaming and the levying and collection of gaming license fees and cash out surcharge.

In 2017, an expansion of duties was realized under mandate, whereby the SCI was also charged with the issuance, suspension and revocation of licenses under or pursuant to the Lottery Ordinance 1909 and the Landsverordening Hazard Games II 1988. The possibilities for supervision under the latter national regulations are limited, due to the lack of legal supervision and enforcement instruments. Enforcement of said statutory regulations is only possible through revocation (temporary or otherwise) of the license. The SCI does not currently have other enforcement instruments at its disposal, such as administrative coercion, or the imposition of an order under penalty or an administrative fine. These powers will also be added with the introduction of the present national ordinance.

In February 2019, AML/CFT supervision by the GCB was extended to the entire gaming sector in and from Curai;ao.

As of March 2020, the GCB, on behalf of the Minister of Finance, is charged with licensing, supervision and enforcement with respect to hazard games on

Article 111 of the State Regulation of Cura ao does not preclude the choice of the legal form of private law for the independent administrative body to be established in !even. See A. vanRijn, Handboek Caribisch Staatsrecht, The Hague: Boom Juridisch 2019, p. 591.

the international market as referred to in the Landsverordening buitengaatse hazardspel. In modern speech, the word "hazard games (on the international market)" is no longer used. A license based on the National Ordinance on Out-of-Country Hazard Games is referred to in common parlance as a license for online gambling (! gaming), and currently defined in this draft as a license to offer remote gambling.

Through its work, the GCB has meanwhile built up an extensive international network, necessary for, among other things, the exchange of technical knowledge and the testing of best practices in the field of gambling.

3. Financial implications

Because there are sectors where there is currently insufficient basis to exercise and enforce effective supervision (such as the online gaming sector), or where supervision is not exercised to a comparable extent as the supervision of casino gaming, it is difficult to estimate the financial implications of extending supervision to the other gaming sectors.

Such an estimate can only be made after evaluating the results after three years of uniform supervision of a particular gaming sector. This deadline has been set broadly in order to include the first effects of standardization of supervision in the evaluation.

In the light of the modernization in question, the CGA organization will in any case need to be expanded considerably compared to the SCI organization. Not least because there are strong indications that Cura<;:ao is the i-Gaming jurisdiction with the most licensees in the world.

The initial costs of expanding the supervision and enforcement duties for online gaming for the CGA, extrapolated from previous budgets of the GCB, were generously budgeted at approximately NA£ 20,000,000 per year. These costs relate to additional costs for the supervision of online gaming activities and therefore do not relate to the current costs incurred by the Gaming Control Board in relation to the supervision of land-based activities.

The expansion can be expected to be considerable. Not least because there are strong indications that Cura<;:ao is currently the online gaming jurisdiction with the most licensees in the world.

Good supervision is only possible with sufficient and well-equipped personnel and financial and technical resources.

Additional positions will therefore have to be created. Further increasing the expertise within the organization will also have to be one of the main spearheads. This will enhance the credibility of the Cura<;ao jurisdiction and contribute to reputation restoration. This is essential especially for the realization of the online gaming sector as a renewed economic pillar. The additional personnel costs were therefore estimated at NAf 10,100,000.

A new office building will have to be rented or purchased to accommodate the staff expansion. Housing costs were budgeted at approximately NAf 1,4000,000.

The expansion of tasks requires significant investments not only in "human capital" and housing, but also in matters such as automation. The online gaming sector is a very dynamic sector, where developments, technical and otherwise, follow each other in rapid succession. These progressive technological developments are especially necessary to safeguard the interests of gambling (prevention of crime, protection of players, and combating gambling addiction) and to be in compliance with international standards for anti-money laundering and anti-terrorism. Recurring costs related to automation (ICT) are budgeted at NAf 400,000.

In addition, the budget takes into account general management costs of NAf 2,6000,000 and costs related to information, conferences, advertising on responsible gaming are budgeted at approximately NAf 1,100,000. Unforeseen costs of NAf 350,000 are also taken into account.

The above costs, totaling approximately NAf 16,000,000, represent structural costs that recur annually and thus, in principle, represent a structural increase in the annual operating costs of the SCI. If the supervision of online gaming in the first year begins at a time other than January 1, the variable costs may be reduced proportionately.

In addition, the budget takes into account expenses related to investments to be made for the supervision of the online gaming sector. This includes the purchase of inventory, machinery, ICT hardware as well as ICT software. These investments are in principle one-time and are budgeted at approximately NA£ 2,500,000. This investment is not expected to be less

if the supervision of online gaming begins at a time other than January 1.

In the first year (2024), the total additional costs for the SCI are thus budgeted at approximately NAf 18,500,000, to be divided into NAf 16,000,000 in structural expenses and NAf 2,500,000 in investment.

The budget of NAf 20,000,000 refers to the total of structural costs and initial investment with some room for contingencies and unforeseen investments.

To cover these costs, amounts are payable under this National Ordinance to the National Treasury for the processing of applications for licenses and other authorizations, as well as a license fee levied on the license to cover the estimated costs of ongoing supervision of the CGA.

A permit fee is further levied on the permit and payable to the CGA for holding the permit. This is intended to (significantly) increase direct revenues from the online gaming sector for Curac;ao.

The said fees are established by Articles 5.18 and 5.19.

The deliberate choice was made not to set the fees too high, which makes the Curac;ao license attractive for gambling providers compared to other regimes and also contributes to increasing the channeling rate (the willingness of entrepreneurs to participate 'legally').

Based on a conservative estimate of 400 licensees per year, an amount of approximately NAf 40,000,000 per year will benefit the National Treasury.

On balance, therefore, an additional amount of approximately NAf 20,000,000 is expected in the first year.

It is expected that the modernization, as intended by this National Ordinance, will lead to an increase in employment on Curac;ao especially in the online gaming sector. The requirements in article 5.12, first paragraph of the present draft will contribute to this. These requirements imply among other things that the holder of a remote gaming license in Curacao must provide permanent full-time employment to at least one resident key person at the start of <lien's operation, whether or not in employment, and as of the fifth year after the National Ordinance enters into force to at least three resident key persons.

must provide full-time employment or non-employment. The foregoing has the effect that more income tax will be paid in Cura<;ao by the persons who will be employed here. In addition, these persons will incur expenses here in the country which will also result in more sales tax. This additional income has not been taken into account in the estimate.

4. Advice Social Economic Council

On March 22, 2023, ref. no. 024/2023-SER, the Social and Economic Council (SER) issued an opinion on the draft country regulation on games of chance. The government has studied the SER's opinion. As a result, both the draft and the explanatory memorandum have been adjusted. On a number of points, the government wishes to respond explicitly to the SER's advice.

In Section 2.1 of the advice, the SER states that the effectiveness and success of the National Ordinance on Games of Chance, (hereinafter: "LOK"), in a broad sense, depends on whether the law offers the desired supervision to market participants without too many complicating conditions or aggravating circumstances, yet taking into account international agreements to prevent reputational damage. The SER urges serious consideration of the above.

The government notes here that in drafting the LOK, international requirements regarding games of chance were taken into account. In order to reduce the risks associated with games of chance, the authorization of their operation must take place with the necessary safeguards.

The present National Ordinance aims to create a framework to curb these risks. This is not intended to create unnecessarily high thresholds for providers or suppliers. The aim is to create a sound, transparent and sustainable gaming sector, in order to make the Cura<;aose jurisdiction attractive to providers and players who operate remote games of chance with good intentions and in a responsible manner.

In paragraph 2.1.2, the SER notes that with the proposed substance requirements, the government wants to give substance to the required real presence according to article lC, paragraph 1, subsections a and b, of the Landsverordening op de winstbelasting 1940 for entities that perform activities in the context of organizing games of chance in or from Cura<;ao or give the opportunity to do so. The SER believes that the substance requirements, as proposed in the draft, could potentially hinder the success of the legislation in achieving its objectives, especially in the short term,

because there are not enough qualified and trained personnel on Cura<;ao to meet this substance requirement right from the start of the new supervisory regime. According to the SER, the test for obtaining a license should be done in close cooperation with the Inspectorate of Taxes.

The government would like to emphasize that the requirements included in article 5.12, paragraph 1, are not "substance" requirements as included in article 1C, paragraph 1, of the 1940 National Ordinance on Profits Tax. The considerations underlying article 5.12 can be traced back to the vision and integral policy of the government with a view to improving employment opportunities for all and stimulating the economy. In this regard, the Government notes that the policy of the Government is aimed at strengthening and expanding the macroeconomic foundation of Cura<;ao. The government wants to achieve this, among other things, by including requirements to promote local employment (especially also for the higher educated) in this national ordinance.

It should also be noted that the content of this provision has already been presented to the sector and has been coordinated with them. Indeed, the government has held several presentations for and meetings with the sector. The content of this provision has been adjusted in response to comments from the sector. For example, the current draft has been adjusted to meet the legitimate concerns expressed by the gaming sector regarding the more limited financial capacity of starters and a provision regarding exemption by the Minister has been included in the current draft.

In paragraph 2.2.1, the SER notes that the SER understands from the GCB that the organization is currently already facing shortages regarding staff capacity, but that the capacity needed to implement the LOK depends on how it is introduced.

In this regard, the government notes that in addition to the legislative process, an implementation process is currently underway to strengthen the operational as well as the personnel capacity of the Gaming Control Board Foundation. An action plan has already been drawn up for this purpose in mid-2022, which serves as a starting point in this context.

The SER refers in paragraph 2.2.2 to the FATF recommendations, which state that countries must ensure that supervisors have sufficient financial, human and technical resources. Supervisors such as the CGA should therefore have sufficient operational independence and autonomy to be free from undue influence or interference. The supervisor should carry out its duties using the legal powers and resources granted to it, without undue influence from outside parties. It is often

necessary to make quick decisions where direct or indirect political interference may be detrimental.

The SER also recommends in Section 2.2.2 that a distinction be made between cost-covering fees, to cover the costs of the CGA, and revenue-generating fees, which flow into the country's coffers. Cost-covering fees are the fees for application and renewal of licenses and other authorizations and supervision.

Recognizing the FATF recommendations, the government notes that in order to ensure the independence of the gaming authority, as pointed out by SER, the way the authority is set up has been changed. Initially, the government wanted to establish a new organization, in the form of a legal entity under public law. It has now been chosen to maintain the SCI as a regulator/supervisory authority for reasons as mentioned above. The transition from SCI to CGA is less drastic.

In paragraph 2.3 the SER considers quantitative research in the field of gambling problems on Cura<;:ao indispensable so that a well-considered decision can be made as to whether the ultimate goal of the LOK 2023, that the gaming industry becomes an important economic pillar of the Cura<;:ao economy and, thus, the envisioned expansion of gaming offerings on the local market outweighs possible social problems this entails.

In the first half of 2023 it is planned to start a study on the gaming problems on Cura<;:ao. This study will be conducted by the SCI.

In paragraph 2.3, the SER further notes that there should be a register or self-exclusion database similar to what has been introduced in the Netherlands, article 33h of the Betting and Gaming Act, the so-called CRUKS9. There should also be rules here to prohibit gambling providers from actively approaching vulnerable people (through direct marketing, for example).

The government has taken note of the SER advice and will consider it. Meanwhile, a start will be made with the current legal safeguards to protect the vulnerable.

In paragraph 2.3. the SER sees no reason not to require a license for games of chance for a social, social or ideological purpose, but rather that there are more and weightier arguments to actually require a license. Therefore, the council advocates maintaining the exemption for companies that organize lotteries to promote a product or increase sales, but including in the law that the regulator for this

may issue guidelines and monitor the fairness of the game of chance offered.

In response to this advice from the SER, the current draft has been modified. The exemption now applies only to games of chance that have a maximum turnover of NA£250,000 each time.

In paragraph 2.3, the SER suggests that the minister consider having the regulator keep a register of rogue players so that Cura.;aose gaming providers can keep rogue players out.

The government has taken note of the SER's advice and will consider it.

In section 2.4, the SER notes its serious concerns regarding the current institutional capacity of the Tax and Customs Administration. A precondition for an effective and efficient implementation of statutory regulations relating to license fees is an optimally functioning Tax Administration. However, the SER is hopeful given that optimization and modernization of the Tax Administration is part of the reforms included in the Land Package (C4). The SER urges the Minister to continue to give priority to this component. This in the context of levying and collecting gaming license fees.

The government has taken note of the SER's aforementioned advice, noting that optimization and modernization of the Tax Administration is one of the government's priorities.

In Section 2.5, the SER notes that it is not clear to the SER whether what is meant is the Government Accountants Bureau Foundation (SOAB) or the Tax Accountants Bureau Foundation (SBAB). Nor does the council see a role for either organization given the duties assigned to them and the nature of the audit and possible intervention in this part of the LOK 2023.

The government notes here that the official name of SBAB is the Government Tax Accountants Bureau Foundation. In response to the opinion, this National Ordinance has been amended and only the Gaming Authority is charged with the supervision and enforcement of gaming.

5. Advisory Board.

The Advisory Council (hereinafter referred to as "the BoA") issued its opinion (BoA no. RA/12-23-LV) on the present draft on August 22, 2023.

The advice of the RvA has prompted the government to amend both the draft and the explanatory memorandum in parts. Insofar as

the advice of the RvA has not been adopted, the reasons are given below as fully as possible.

In Chapter I, section 4, subsection d, under 2°, the ACA points to the recommendations of the Financial Action Task Force (FATF), which require countries to ensure that supervisors, including in any case supervisors of (online) casinos, have sufficient financial, human and technical resources to be operationally independent and autonomous. The RvA further indicates that the CGA cannot independently determine what work will be carried out with what resources, which is a requirement of the FATF. The RvA advises the government to ensure that the FATF recommendations regarding the requirement of the financial independence of a gaming authority are met.

In this regard, the government notes that the costs incurred for the performance of the duties of the CGA, included in the budget, are borne by the budget of the Country. However, the CGA can independently determine which activities will be carried out with which resources. In other words, it will not determine how the money will be outsourced. With reference to article 2.22, first paragraph, of the National Ordinance on Competition10, it is noted that also with regard to other organizations qualified as an independent administrative body, such as in this case the Fair Trade Authority Curac;ao, the financial resources are at the expense of the National Treasury. There are no indications yet that this construction influences the functioning of the organization in the sense that it is dependent on the government.

In Chapter I, paragraph 8, the RvA advises the government to lead the legislative procedure with the necessary speed regarding the National Ordinance containing general rules of administrative law for Curac;ao.

The Government hereby notes that a committee has been established to prepare a draft National Ordinance containing general rules of administrative law for Curaçao. In the first phase work will be done on a National Ordinance containing enforcement regulations. A consultation round regarding the content of the draft will start soon.

In Chapter II, paragraph 1, part d, the RvA advises the government to reconsider article 2.1, paragraph 5, as the RvA feels that gambling licenses should be issued for a certain period of time.

In this regard, the Government notes that it is common practice when drafting a National Ordinance to follow established practice, where experience has generally been successfully gained. Thus, when drafting this

10 P.B. 2016, no.16.

national ordinance, other national ordinances in which a licensing system is legally established were consulted, such as, among others, the National Ordinance on the Supervision of Trusts11 and the National Ordinance on the Supervision of Banking and Credit12. These national ordinances stipulate that trust offices and banks may qualify indefinitely for a license by the Central Bank of Cura<;ao and Sint Maarten. This system works well in practice, and it can be noted that supervision in the financial sector is continuous. Ultimate stakeholders, qualified shareholders and key persons are regularly screened by the supervisor, as is also the case for a gaming license. Licensees must comply with periodic reporting requirements, included in Article 5.10(6).

In Chapter II, section 1, subsection e, under 9°, the RvA advises the government to include in the draft what an alternative dispute resolution to be approved by the CGA must (at least) comply with and what procedures must be followed in doing so and also to supplement the explanatory memorandum.

The Government hereby notes that, in accordance with the ninth paragraph of Article 5.3, the rules regarding alternative dispute resolution will be further determined by ministerial regulation with general effect.

In Chapter II, Section 1, subsection g, under 3°, the Board advises that it should be made clear which tax ordinances are relevant in the context of revoking a gaming license and which tax ordinances should be applicable.

In this regard, the government notes that it is customary for a statutory regulation to refer to the tax ordinances mentioned in article 1, paragraph 1, of the General National Ordinance Landsbelastingen (ALL). After all, an amendment of the relevant article of the ALL then automatically affects all national ordinances that have chosen this system.

In Chapter II, Section 1, subsection i, under 5°, RvA advises the government to consider whether it would be desirable to include in the draft a legal basis for the establishment of regulations, inter alia for the purpose of establishing a procedure for the compilation of the register, the appointment of an officer for the management of the register and a procedure for the removal of sanction decisions from the register after a certain period of time.

In this regard, the government notes that that the CGA, as an independent administrative body, is in charge of managing the registry and that it is desirable for the CGA to have the authority to establish procedures regarding the registry.

11 P.B. 2019, no.93 (G.T.).

12 P.B. 2019, no. 59 (G.T.).

In Chapter II, Section 1(m)(1° and 2°), the COA recommends that the Government amend the draft (Article 5.4, paragraph 1(b)) and the Explanatory Memorandum, as the COA believes that in order to avoid conflict with Articles 8 and 14 of the ECHR and the Twelfth Protocol of the ECHR, such as the prohibition of discrimination and the right to privacy, sufficient safeguards should be included in the Lok. Moreover, general principles of proper administration, such as prohibition of arbitrariness, must also be taken into account.

In this regard, the government notes that any rules to be laid down by ministerial regulation with

general effect and the procedures and guidelines to be drawn up and used by the CGA in this regard will be covered by sufficient safeguards, so that there can be no question of conflict with the ECHR, and that the CGA, as an administrative body, must at all times comply with the general principles of proper administration.

In Chapter II, paragraph 1, section m, under 3°, the RvA advises the government to adjust the draft, and not to include a minimum term in the Lok, but a maximum term. Since the BoA is of the opinion that in order to prevent arbitrariness, it should not be left to a gaming licensee to decide how long the period of exclusion will last. Furthermore, it is not clear to the RvA why this term has been chosen.

In this regard, the government notes that the relevant minimum period has been included precisely to protect players (vulnerable persons).

In Chapter II, Section 1, subsection o, the BoA advises the government to adjust the second paragraph of Article 5.8, as in the opinion of the BoA the reference is too broad. A further specification as to which chapters or provisions of said National Ordinance apply by analogy is deemed necessary by the RvA.

The government hereby notes that in the second paragraph of article 5.8 the necessary provision has been included. After all, the provisions regarding the budget and the account of the National Ordinance on Accounts 2010 are applicable to the Guarantee Fund. Furthermore, the Government hereby notes that it is customary to include this reference as regards funds in a National Ordinance.

In Chapter II, paragraph 1, part q, under 5°, the RvA advises the Government to assign the power to waive the obligation to comply with article 5.13, paragraph 6, of the draft, not to the Minister, but to the CGA.

The government notes here that the obligations included in article 5.13, paragraph one, are traceable from the government's vision and integral policy. The government's integral policy is aimed, among other things, at providing

better employment opportunities to all and to stimulate the economy. Therefore, the government is of the opinion that the authority regarding the exemption of obligations contained in the first paragraph should be vested in the minister.

In Chapter II, Section 1, subsection aa, under point 1°, the GoA notes the absence of a provision regarding the publication of the appointment of the supervisors by the CGA in the Government Gazette and possibly on the website of the CGA.

A deliberate choice was made not to publish the names of the supervisors in the Gazette or on the CGA's website. The supervisors of the CGA will carry a credential issued by CGA when conducting supervision and in case of doubt as to whether supervision is legitimate, the CGA can be contacted to ascertain. Disclosure of the names of supervisors leads to an invasion of the privacy of the supervisors involved, especially in a small society such as exists on Cura<;:ao.

In the same paragraph, under point 2o, the council notes that a supervisor should also be authorized to seal business premises and objects.

This power is specifically included in the draft, it is a power that can be applied in enforcement, especially in the application of administrative coercion.

It is further noted that in this draft the enforcement provisions, as they occur in the Landsverordening bestuurlijke handhaving van Sint Maarten, are incorporated.

In Chapter II, paragraph 1, part aq, the RvA advises the government to bring article 14.2 in line with instruction 105, third paragraph, of the Awr, in order to indicate as concretely and accurately as possible to which parts of the regulation the hardship clause applies

In this regard, the Government notes that a hardship is an unfairness of a predominant nature, affecting certain cases or groups of cases, in the application of a statutory regulation. By including the words "of a predominant nature", in the hardship clause formulated in this draft, a restriction is imposed on the cases, in which the present provision can be applied. After all, if every inequity that arises, no matter how minor, were to be accommodated, the implementation of a statutory regulation would become an impossibility.

The hardship clause gives the Minister of Finance the power to intervene if the application of the law 6f is contrary to the spirit and the inner value of the law 6f is manifestly contrary to a principle of reasonableness living in the legal consciousness.

principle of reasonableness and fairness, or if there is an accumulation of obvious unfairness towards a person. These are therefore situations which the legislator did not foresee when the law was drafted, but which later, when applying the law, lead to unintended consequences. However, application of the hardship clause that undermines the system of the law as a matter of principle is not possible.

6. Commentary by articles

Chapter 1 General provisions

Article 1 Subsection a: CGA

As explained above, the GCB will continue in its current private-law form as an independent administrative body as the CGA, whereby the aim is to achieve uniform supervision of all games of chance operated under the statutory regulation of Curacao.

Subsection c: qualified participation

When applying for a license, the CGA must be familiar with all persons who may have influence over the operations of or a particular financial interest in <liens organization. If an applicant or licensee is part of a concern, the policy of the licensee may be determined (in part) by the directors of other legal entities within that concern. This is why a background check must be performed on those who have a qualified participation in the licensee's company.

Comparable financial interests or control are also included under qualified participation. A comparable financial interest may arise if the shares are not equally entitled to profits (for example, through preferred shares). Comparable control may arise through uneven or special voting rights (for example, through priority shares).

Subsection d: game of chance

For there to be a game of chance as referred to in this section, the wagering of money or monetary value must be a condition for participation. This also includes games where the stake in the game takes place indirectly, for example by means of money received through subscriptions or

purchases allocated to the game. If the latter is not the case and participation in a game is free of charge, as is often the case with purely promotional games of chance, there is no question of a game of chance as defined in this National Ordinance.

Also, if no prize in the form of money or monetary value can be won in a game, it cannot be considered a game of chance. A prize in the form of money or pecuniary value is said to exist if the prize represents or may represent a value in economic terms. Such a prize includes in any case cash prizes and prizes in kind. Non-tangible game outcomes that represent a fair market value may also be prizes.

Furthermore, the winner is determined by chance or by a combination of chance and insight or skill on the part of the participants, without the participants being able to exert a predominant influence on the outcome.

The influence of chance is generally determined by random events such as the drawing of a number, the throwing of a die, and the dealing of cards. Participants have little or no influence on the outcome of these random events.

In cases where the degree of insight or dexterity contributes to the designation of winners, the element of chance will have to prevail. Thus, sports betting and poker, in which experience or special knowledge of participants may have some influence on the outcome of the game, also fall under games of chance as referred to here, since in these games there is generally no predominant influence on the outcome.

Subsection e: remote games of chance

Remote games of chance as referred to in this subsection are distinguished from physical games of chance by the absence of physical contact between the gaming provider and the participant. It concerns games of chance offered, for example, via the Internet, television, radio or telephone.

This does not include games of chance that are played using electronic means of communication in, for example, a building made available by the licensee, such as an amusement arcade or casino, or on a boat, even if these devices are essentially terminals connected to the Internet or an intranet, as the participant in the game of chance then has physical contact with (the staff of) the operator in question.

Subsection f: gaming license

A gaming license is granted for organizing or giving the opportunity to participate in a game of chance.

Subsection g: critical services or goods

Critical services or goods include gambling-related services and goods that are indispensable in determining the outcome of a game of chance, or that are so important that any failure in their provision or delivery could have a significant consequence for the holder of the gaming license to meet its obligations under this National Ordinance or obligations determined pursuant to this National Ordinance. This could include the provision of gaming software for the purpose of being able to organize remote games of chance.

Subsection h: vulnerable person

This definition lists persons who are considered vulnerable. In the first place, these are persons who are minors. It also includes persons who do not or insufficiently have their gambling behavior under control, as a result of which they are addicted to one or more games of chance or are at risk of becoming addicted, are experiencing negative consequences in one or more areas of their lives and can therefore cause damage to themselves or their loved ones. Also considered vulnerable are persons who have been forcibly or at their own request denied participation in any game of chance. Finally, they include persons who have been declared bankrupt or have otherwise lost the management or disposition of all or part of their assets.

This definition is important in light of the provisions aimed at contributing to consumer protection and combating gambling addiction. Thus, based on article 1.4, section e, of the draft, it is prohibited to provide an opportunity to participate in games of chance to a person with respect to whom it must be reasonably suspected that he is a vulnerable person. Furthermore, pursuant to Article 5.4 of the Draft, the licensee must implement a policy to prevent vulnerable persons from participating in games of chance, and marketing and advertising activities pursuant to Article 5.6(1)(c) of the Draft may not target vulnerable persons.

Subsection i: supplier

A supplier includes anyone who provides legal, financial or administrative services, management services or gaming-related services or goods to a gaming provider.

Subsection j: supplier license:

The supplier license refers to the license required under this National Ordinance for residents providing critical services or goods in or from Curac;ao.

Subsection 1: non-profit gaming:

A non-profit game of chance is defined as a game whose net proceeds in their entirety benefit a social, social or ideological cause, including a religious, sports, environmental, charitable, health, political, cultural or educational cause. The net proceeds are the total amount wagered by the participants per game to be organized minus the costs associated with organizing the game of chance, such as printing costs, advertising costs, reseller's commission and the like.

Component p: key person

Characteristic of a key person is that this person has control over or can exercise significant influence on the management, including the activities related to the games of chance offered, the assets or the definition or implementation of the operational policy of a licensee. This includes at least directors, but also (other) executives and compliance officers who have a key position in the context of the operation of the licensed game of chance.

Key persons therefore include those who determine or co-determine the policy of the legal entity. These are in fact those who formally or actually act as directors of the legal person. Not all key persons are therefore to be regarded as (co)policymakers.

Subsection q: beneficial owner:

According to this definition, a natural person qualifies as a beneficial owner when that person is the ultimate owner of a company or when that person has control over a company through the direct or indirect holding of more than 10 percent of the shares (irrespective of associated profit and voting rights), the voting rights (irrespective of share ownership) or the ownership interest (such as a right to profit irrespective of share ownership, as applies to holders of depositary receipts).

§2 Prohibited acts

Article 1.2.

The first paragraph of this article contains a general prohibition to organize or provide opportunities for gambling in or from Cura.;ao without an appropriate gaming license or otherwise pursuant to a statutory basis (as, for example, currently applies with regard to games of chance offered by the Land Lottery). This provision implies that persons located on Cura.;ao cannot enter into contracts related to gambling with players, without being authorized to do so by virtue of a license or otherwise in accordance with Cura.;ao law.

In accordance with the second subsection, acting in violation of the regulations and restrictions attached to such gaming license is also prohibited.

The third subsection provides that a gaming license is non-transferable. Furthermore, it is not allowed to conclude an agreement on the basis of which the gaming license is used by another clan than the license holder. Currently, holders of a so-called sublicense, as if they were licensees, offer remote games of chance based on an agreement with the licensee. This practice of (contractually) providing so-called sublicenses to third parties under the license of the holder of a remote gaming license is explicitly not allowed by this paragraph.

The licensee is at all times responsible for the use of the license as well as for compliance with the obligations attached to it.

The fourth paragraph concerns an exception to the prohibition set forth in the first paragraph with regard to matters which are neither open to the public nor conducted in the course of business. Acting commercially means engaging in commercial activities with the aim of making a profit.

For the purpose of supervision by the CGA, Article 1.2(5) prohibits offering the opportunity to participate in a non-profit game of chance if the CGA has not been notified at least four weeks in advance.

Article 1.3

Subsection (a) of this article prohibits a participant from participating in a game of chance if, prior to the start of the game of chance, one is already aware of an event dependent on the outcome of the game of chance. Any form of foreknowledge leads to the game, wrongly, no longer being predominantly dependent on an uncertain event for that participant.

Subsection b of this article prohibits a person who must be regarded as a key person with regard to the exploitation by the licensee to participate in a game of chance in which he is regarded as a key person. This concerns a person whose potential "behind the scenes" of the operator could influence the direction of the policy to be implemented, which applies to that operator as a participant in games of chance. Such a position is not compatible with that of the participant in that same game of chance.

In particular, subsection (c) aims to prevent money laundering through trade in participants' claims.

Article 1.4

The first part of this article prohibits the offering of games of chance whose outcome is partially or entirely dependent on actual events related to human cruelty, animal cruelty, natural disasters or catastrophes, endangering the lives of humans or animals or exploitation of adults or minors.

According to part b, it is prohibited to offer games of chance that by means of an image or object are offensive to the honor as referred to in Article 2:194 of the Penal Code or insulting as referred to in Title XV of the Penal Code.

Subsection c prohibits providing credit to participants. This means that the licensee may not lend money to the player. In order to protect participants, the above implies that in general no negative balance on the gaming account may be allowed. Also, the licensee may not mediate in lending by another financial service provider. This does not mean that the licensee may not accept credit card payments from the player to credit <lien's gaming account.

Protection of gaming participants is one of the main objectives of this National Ordinance. Therefore, in section d the prohibition to give minors the opportunity to participate in games of chance and in section e the prohibition to give a person other than a minor, with regard to whom it must be reasonably suspected that he or she is a vulnerable person, the opportunity to participate in games of chance. Article 2.2(3)(c) speaks of ensuring that vulnerable persons cannot participate in games of chance. If the necessary measures have been taken to this end, this may result in the licensee knowing, or ought to understand, that a person is vulnerable, based on the measures taken. This by no means implies that the operator will be able to recognize every vulnerable person. This is not required here.

Article 1.5

The first paragraph of this article contains a general prohibition to provide critical services or goods in or from Cura ao without a supplier's license prescribed by this National Ordinance. This prohibition therefore only applies to situations in which the National Ordinance, in so many words, requires a supplier's license in order to be able to provide gaming related critical services or goods in or from Cura ao.

In accordance with the second paragraph, acting in violation of the regulations and restrictions prohibited to that supplier's license is also prohibited.

Article 1.6

The prohibition of providing services or goods without accreditation from the CGA is included in this article.

Chapter2 Gambling licenses

Article 2.1.

The first paragraph of this article designates the CGA as the sole administrative body in charge of granting a gaming license.

According to the first paragraph of this article, only a limited liability company or private limited company incorporated under the laws of Curacao and moreover having its registered office in Curacao can qualify for a gaming license.

Limiting the issuance of the license to the aforementioned legal entities prevents the operation from falling directly under the responsibility of a natural person who is located abroad and furthermore has no recourse. Furthermore, it prevents making it attractive for malicious persons to make natural persons responsible for the business as so-called "cat catchers" for a small payment.

The restriction of issuance to only public and private limited companies incorporated under the laws of Curacao and moreover having their registered office and actual place of business in Curacao also prevents participants from having no recourse. In case of disputes, they will always be able to address a local legal entity which, moreover, is located in Curacao's own jurisdiction. Furthermore, this ensures that the relevant legislation on the prevention of money laundering and terrorist financing will apply to that licensee.

The third paragraph requires the applicant to provide all information to the application in a timely and truthful manner.

In order to keep the supervision of games of chance manageable and well-organized, it is important that the government can work with a circle of persons involved with the licensee who are in Curacao and are generally known.

and are generally familiar with local rules and customs. In light of this, the fourth paragraph contains the requirement that the board of directors of the applicant client consist of at least one natural person or legal entity with official residency of Curacao, with a board of directors consisting of at least one natural person. This requirement also promotes that the stringent management obligations associated with the management of the applicant are taken seriously in part because local actual policymakers generally provide easier recourse.

Under the fifth paragraph, a gaming license is granted indefinitely. This reduces administrative burdens associated with repeatedly reviewing new license applications from existing license holders, for both the licensee and the CGA. Recurrent review of a permit application from an existing permit holder is not considered necessary. After all, existing permit holders are subject to constant supervision by the CGA, so that any violations may result in administrative sanctions, including revocation of the permit.

Article 2.2

According to this article, the CGA may refuse the license if it has grounds to believe that doing so could jeopardize a safe, responsible, transparent, verifiable and reliable gaming offer.

'Safe' refers in particular to the security of the game, gaming equipment and gaming system and its sufficient resistance to risks such as theft, viruses and Internet crime.

'Responsible' refers to issues such as open and fair treatment of gaming participants, safeguards against gambling addiction and the protection of other vulnerable persons, including minors. Reference is further made to the explanatory note to the second paragraph of this article, which elaborates on the meaning of responsible supply of games of chance.

The verifiability of the supply guarantees that the supply is accessible and transparent to the regulator and is also properly administered.

With 'reliable', issues such as integrity and confidentiality and the stability and continuity of the gaming provider and its gaming offerings play a role. Keeping out untrustworthy providers of games of chance is essential to prevent fraud and other crime and to protect consumers.

When assessing the provisions of subsection 1, it may also be important to consider whether and for what reasons previous applications for a gaming license from the applicant in other jurisdictions have been refused and the nature and seriousness of any violations by the applicant of gaming-related rules of other jurisdictions.

The second paragraph sets out a number of situations in which the gaming license will not be granted in any event. The consideration here is that failure to meet the criteria formulated in the said paragraph qualifies the applicant now that the gaming offer cannot lead to a safe, responsible, transparent and reliable gaming offer as referred to in the first paragraph, subsection a, of Article 2.2.

This provision is also intended to ensure that the processing of a license application can be discontinued earlier for administrative reasons, now that it has no chance anyway. After all, not all (essential) criteria are met.

Thus, part a implies that at all times the identity, existence, and involvement of all ultimate interested parties, persons with a qualified participation and those who determine or co-determine the policy must be established. The reliability of the applicant client must be beyond doubt for him to be eligible for a license. In the reliability assessment, the CGA will have to be able to include, among other things, relevant antecedents of the aforementioned persons. Full familiarity with these persons is therefore necessary. The key persons are not mentioned here, as not all games of chance involve key persons, or familiarity with these persons needs to be relevant (already) in the context of processing the license application.

Subsection b implies, in addition to subsection a, that persons who determine or co-determine the applicant's policy, ultimate interested parties and persons with a qualified participation with an interest of at least 25%, may not have been convicted, irrevocably or otherwise, of the crimes listed therein during a period of eight years prior to said application in order for the applicant to be eligible for a license. Involvement of persons convicted of such crimes in an operation is undesirable given the gaming-related risks of fraud and other forms of crime. Those who determine or co-determine policy include those who formally or de facto act as directors of the legal entity.

If the relevant ultimate stakeholders or persons with a qualified participation have an interest of 25% or greater, the

permit under this section is generally refused since it may be assumed that such an interest is associated with an (increased likelihood of) significant influence on the activities of the applicant. For smaller interests as referred to here, the permit may still be refused in accordance with subsection 1, depending on such matters as the nature and gravity of the violation that led to the conviction and the nature and extent of the relevant interest in the applicant.

Subsection c entails that at all times the origin of monies with which the operation is financed must be established. It is not sufficient that only the re-profits are established. Of course, it is also stipulated that there must be a legitimate origin.

Subsection d implies that the applicant must have paid any license fees associated with the application at the time the application is submitted. The applicant will have to submit proof of such payment with the permit application.

Subsection e implies that outstanding tax and premium debts must have been paid to the Receiver. It is not desirable to grant a permit to persons who do not deal responsibly with their tax obligations. For practical reasons, it has been chosen in this provision to look only at the legal entity applying for the permit.

Subsection g implies that the applicant for the permit must be able to demonstrate that he has sufficient means to meet the payment obligations to participants. Providing 'proof' of this is in principle free of form.

It should be noted that a gaming licensee can hold virtual assets and conduct cash, giro and digital monetary transactions. This also confirms that the use of crypto-currencies is permitted.

Furthermore, in accordance with part h, the applicant must have policies in place to ensure responsible gaming offerings. With regard to the requirements that the content of the policy client must meet, reference is made to Article 2.2(3).

Subsection j provides that no license can be granted if any key person client is considered to be a vulnerable person. The idea behind this provision is that (known) addiction-sensitive persons cannot be expected to make a balanced judgment about other addiction-sensitive persons. Also

Also, such involvement brings with it concerns regarding the use of liquidities and the client must be prevented from the risk of withdrawals by key persons from the legal person on account of addiction.

The third paragraph further defines what is meant by a responsible gaming offer client.

Article 2.3

This article provides that a gaming license can be fully or partially suspended or revoked if there are serious suspicions to revoke the license.

The investigation into the desirability of revoking a license may take some time. If the information that gave rise to that investigation is such that it is not justifiable to allow the licensee to offer games of chance, it should be possible to suspend the license pending the investigation. The period of suspension may not exceed six months.

Article 2.4

The first paragraph of this article names situations in which the license may be revoked by the CGA.

Thus, according to subsection a, the license may be revoked if the gaming licensee violates or has violated the provisions under or pursuant to this National Ordinance. This occurs, for example, if the licensee does not sufficiently ensure that the games of chance are fair and clear to participants or does not cooperate sufficiently in the supervision of compliance with and enforcement of the regulations set by or pursuant to this National Ordinance.

According to subsection b, violation of a condition, regulation or restriction attached to the license may also lead to revocation of the license, for example when the license defines the games of chance allowed and the licensee offers games of chance other than those allowed.

Parts c, e and g are relevant, for example, in cases in which the regulations for granting the license were met at the time of the application for the license, but the situation has subsequently changed such that those regulations are no longer met. This may occur, for example, where the licensee changes its legal form after the license has been granted, or where such a non-transparent control structure has arisen that efficient and effective supervision is no longer possible, or where the reliability of the licensee has deteriorated.

no longer possible, or where the reliability and expertise of the licensee or <lien policymakers is no longer beyond doubt.

A case as referred to under part d may indicate problems with the continuity of the licensee that may impede a responsible and reliable organization of remote gambling.

The license may also be revoked under subsection g if the decision to grant the license was based on incorrect or incomplete information. Not every inaccuracy or incompleteness justifies the revocation of a license. The inaccuracy or incompleteness must be such that the permit would not have been granted to the permit holder in question if the CGA had had the complete and accurate data at its disposal when granting the permit. Inaccurate or incomplete data may include cases where the licensee has withheld information that was necessary to assess the application.

A case as referred to in subsection j may indicate an unreliable gaming provider since it is apparently offering games of chance illegally in other jurisdictions.

The second paragraph introduces a number of circumstances under which the license must be revoked. In addition to the situation in which the licensee requests revocation, these circumstances are considered so serious that revocation of the client's license must follow. Of course, the general principles of proper administration must always be observed.

A partial suspension or revocation may, for example, occur if the suspension or revocation relates only to one of several permitted games of chance offered by the licensee.

According to the third paragraph, the CGA can attach regulations to the revocation to safeguard the interests of participants or other interests that serve a safe, responsible, transparent, verifiable and reliable supply of games of chance. Thus, the CGA can attach regulations to the revocation, also in the interest of a prompt and full payment of the profits and other assets of participants and safeguarding other interests of participants.

Article 2.5

This article describes the suspension and withdrawal procedure.

The first paragraph includes the right of the licensee to submit a view on an intention expressed by the CGA to suspend or revoke a license. This provision provides "adversarial hearings" for the permit holder, who may submit these considerations - should the permit nevertheless be revoked - to the administrative law judge for review.

Given the nature and seriousness of the consequences that a revocation of a permit may entail and that it can sometimes be considered a punitive sanction, Articles 13.29 and 13.30 are hereby declared to apply mutatis mutandis. These articles entail, inter alia, that the CGA intending to revoke a permit must, at the same time as the communication containing that intention, send a copy of the report in which the violation was found (and therefore not afterwards) to the violator, accompanied by the notice that the violator may submit his views to the CGA regarding the content of the copy.

The second paragraph stipulates that the licensee has the opportunity to submit its views to the CGA within two weeks of notification of the intention.

The third paragraph stipulates that the CGA, taking the view into account, will then decide within six weeks of making the view known. If the opinion is not submitted, the CGA will decide within six weeks after the two-week period referred to in the second paragraph has expired. The General Ordinance on Time Limits13 shall apply to the time limits contained in this National Ordinance.

The suspension or revocation shall, according to the fourth paragraph, be published in the register referred to in article 3.1.

According to the fifth paragraph, the CGA may also proceed with revocation if any direction given pursuant to Article 13.43 is not complied with within the time limit given.

Pursuant to the sixth paragraph, upon revocation, the licensee must immediately cease offering games of chance, subject to the regulations attached to the revocation by the CGA, regardless of any objection or appeal lodged. In accordance with Article 2.4(3), the CGA may attach regulations to the withdrawal, also in the interest of a speedy and full payment of profits and other assets of participants and safeguarding other interests of participants.

13 P.B. 2001, no. 27.

Article 2.6

This article offers the possibility of amending a gaming license at the request of the licensee or ex officio.

An amendment at the request of the licensee may occur, for example, if the licensee wishes to expand its range of games of chance by offering a new type of game, such as remote sports betting in addition to remote casino games.

An ex officio amendment may occur, for example, if the CGA sees grounds to prohibit certain activities offered under the license, such as a certain type of game of chance, for the licensee because he has failed in respect of these activities, <lthough the failure cannot be considered such that the license should be revoked in its entirety.

With regard to a request for amendment, the CGA shall decide within six weeks after submission of the request. This period may be extended by six weeks. Article 2.1, second and third paragraphs, and Article 2.2 shall apply mutatis mutandis to the amendment of a gaming license as referred to in paragraph 1(a).

Chapter3 The Register

Article 3.1.

This article requires the CGA to maintain a register of all gaming licenses, supplier licenses and accreditations. According to the third paragraph, the register is free of charge, public and accessible to anyone through the CGA's website.

The register will include, with respect to all gaming licenses and supplier licenses, the following information of the person on whom the administrative sanction has been imposed: (a) type of license and accreditation, (b) the name of the licensee or the person granted accreditation, (c) the registration number of the licensee or the person granted accreditation with the Chamber of Commerce and Industry, (d) the date on which the license or accreditation was granted and the date on which the license or accreditation expires, and (e) the period of validity of the license or accreditation.

The public availability of this information is essential for maintaining a quality, safe, transparent and reliable gaming offering.

Chapter4

Non-profit gaming

Article 4.1.

This article regulates non-profit games of chance.

This article is motivated in part by the fact that it is well known that for the useful purposes pursued by non-profit organizations there is not infrequently a great lack of funds.

To ensure the fair, orderly, reliable and safe conduct of non-profit gaming, client a number of regulations must be met.

Thus it follows from subsection (1)(a) that the game of chance must be (already) regulated. Currently this applies to bingo, bon ku ne and the goods lottery. Therefore, the non-profit organization cannot itself invent a game with rules that is not yet regulated.

Furthermore, the first paragraph, subsection d, entails that the games of chance in question are not organized by the same non-profit organization more than ten times per year and do not bring in more than NAF 250,000 in turnover each time, or are not organized by the same non-profit organization more than five times per year and do not bring in more than NA£ 500,000 per time. These limits, according to the requirements included in the eighth to eleventh paragraphs have been included in particular to limit the risks of money laundering. These amounts are based on experience figures. Furthermore, they take into account price increases in recent years. In order to provide a certain degree of flexibility, it has been chosen to give the possibility of organizing either a maximum of ten times or a maximum of five times nonprofit games of chance.

Furthermore, regulations have been included in the third, fifth, seventh, eighth, ninth, tenth, eleventh and twelfth paragraphs to ensure a fair and safe supply of games of chance, as well as to prevent fraud or other forms of gambling-related crime.

Rules of play as referred to in subsection 3 include the rules of play included in the existing regulations regarding the game to be offered. They do not include the provision of security to the satisfaction of the government or the payment of license fees or other government levied fees in relation to the game of chance. Nor does it include rules that purport to prescribe a maximum yield or stake per player, without prejudice to subsection 1(d).

The fifth paragraph prescribes that the drawing of lotteries shall only take place by institutions designated for this purpose by the CGA. It is expected

that in the short term the Fundashon Wega di Number Korsou can offer draws of commodity lotteries. Any associated costs will be borne by the non-profit organization since it will have to engage the institution in question to conduct the draw.

For the purpose of supervision by the CGA, according to Article 1.2, fifth paragraph, it is prohibited to offer the opportunity to participate in a non-profit game of chance if the CGA has not been notified at least four weeks in advance, taking into account the provisions of the tenth paragraph. Furthermore, according to the eleventh paragraph, within six weeks after the non-profit game of chance has ended, the non-profit organization must provide the CGA with a statement of income and expenses relating to the non-profit game of chance. The CGA may request further documents and information to ensure compliance with the provisions of this article and to prevent money laundering and the financing of terrorism.

ChapterS Remote gaming

Article 5.1

This article contains provisions relating to the application for a license to organize remote games of chance. The person who organizes remote games of chance is required to obtain a license. In general, this will be the one who manages and controls the participants in the game offered, the player funds and player transactions.

The article makes it possible for the processing of an application for a remote gaming license to take place in two stages, in order to avoid loss of time and unnecessary costs on the part of the applicant and the CGA. It will still be a license that can be issued in response to an application, but the assessment of the application and the decision-making thereon will take place in two stages.

The start of the provision of games of chance can therefore only be commenced once a decision to grant a (provisional) license has been taken in the second phase.

In the first phase, it must be established that the reliability of the provider is beyond doubt. The reliability of the ultimate stakeholders, the persons with qualifying holdings and those who determine or co-determine its policy is of great importance for the integrity and viability of the licensee. There should be no doubt about this.

To assess the financial condition and viability of the applicant, the applicant will have to provide, among other things, a business plan.

The second stage involves assessing all other matters required for the issuance of the license.

Regarding the assessment in both phases, <lat the CGA has eight weeks to make a decision, with the possibility of extending this period by up to four weeks.

The seventh paragraph allows the CGA to give the applicant the opportunity to submit all necessary information and documentation within four weeks of being given notice to do so. This period may be extended by up to four weeks.

The eighth paragraph opens the possibility of issuing a provisional permit for a maximum of six months for the duration of the investigation following the permit application. It may be necessary in practice to be able to issue provisional permits pending the investigation following an application for a permit. In fact, the duration of the investigation may extend especially since it often depends in part on the cooperation of third parties. The applicant may also need a provisional license in order to be able to enter into relations with third parties who require the applicant to have a (provisional) license.

In all cases, however, the priority is to ensure a safe, responsible, transparent, verifiable and reliable healthy gaming offering. Especially in situations where the applicant meets almost all requirements for obtaining a license, it will be possible to qualify for a provisional license more quickly.

According to the ninth paragraph, a provisional license will in any case not be granted if one or more of the cases mentioned in Article 2.2(2) occur.

A provisional authorization may be renewed for up to six months after its issuance at the end of a six-month period.

Since a provisional permit is a permit, the provisions by or under this draft pertaining to a permit shall apply mutatis mutandis to a provisional permit, unless <lit this draft expressly provides otherwise. This therefore includes the provisions dealing with administrative sanctions.

Article 5.2

This article requires the applicant to submit all information and all documents that the CGA considers necessary to assess the application in order to ensure a safe, responsible, transparent and reliable gaming supply.

For example, the information and documents required by the CGA may relate to matters such as the licensee's registered office. After all, according to article 2.1, first paragraph, the license can only be granted to Curacao based public or private limited companies.

Furthermore, access may be requested to the ownership and control structure of the group to which the applicant belongs. Insight into the actual ownership and control structure provides insight into the relationships and responsibilities within the group.

The continu'ity of the operator's organization must also be sufficiently guaranteed. In order to be able to assess the viability of the applicant, the CGA may require the submission of a business plan in which the feasibility of the operator's plans are mapped out by paying attention to matters such as the types of games to be offered and multi-year cost, turnover and profit forecasts.

Ensuring a safe, reliable, responsible and stable supply of games of chance in the interest of consumer protection and combating gambling-related crime implies that information and documents may be required regarding the suitability, acceptability and reliability of the (business) means and methods used for the provision of the games of chance, the reliability and suitability of the suppliers whose services the applicant wishes to purchase, and the suitability of measures to prevent fraud or abuse of the games offered or other forms of crime.

With a view to preventing gambling addiction, the suitability and transparency of the applicant's measures to ensure responsible gambling is important.

Article 5.3

This article provides for the obligation of the holder of a license to maintain a free procedure for handling complaints from players and contains some requirements that the procedure must at least meet.

The sixth paragraph makes it possible to complain against a decision on the handling of a complaint referred to in the fourth paragraph to an institution approved by the CGA that offers alternative dispute resolution.

The seventh paragraph forces licensees to offer a CGA-approved form of alternative dispute resolution for players' financial claims free of charge. Players can then, after a claim is rejected by the provider, choose to make use of the alternative dispute resolution or go directly to court.

Further rules regarding the complaints procedure and alternative dispute resolution may be set by ministerial regulation with general effect.

Article 5.4

With a view to Article 2.2, second paragraph, subsection h, and subsection 3, the licensee must have a policy in place to ensure a responsible offer of games of chance.

This article sets specific requirements for having a policy to prevent vulnerable persons from participating in games of chance. Article 2.2(3) must be observed.

The policy client must first and foremost provide general information about gambling addiction that is made available to players. After all, it is the responsibility of the licensee to adequately and sufficiently inform the player, among other things with regard to the rules of the game, the chances of winning and the manner in which winners are designated, so that players can make a well-considered choice regarding (further) participation in the games of chance offered.

The policy should also pay attention to the way vulnerable persons are identified. Effectively preventing vulnerable persons from participating in games of chance is only possible when the licensee knows who is participating in the games of chance it offers. This by no means implies that the licensee will always be able to recognize every vulnerable person. That is not the requirement here. However, measures must be taken to recognize a vulnerable person and to prevent that person from participating in a game of chance.

The policy must also include measures to prevent excessive participation or the threat thereof. For example

These could include the possibility for players to set a player profile with playing limits prior to playing, so that they can control their own playing behavior.

Finally, the policy should provide for the possibility for players to exclude themselves from participating in games of chance.

The second paragraph provides that a participant who voluntarily identifies himself as a vulnerable person and who requests the licensee in writing to be excluded from participation in games of chance will be denied participation for a period of at least 12 months from the date of the request. Such a request is irrevocable during the period of exclusion.

Further rules may be set by ministerial regulation with general effect regarding the content of the policy referred to in the first paragraph and the exclusion of vulnerable persons from participation in games of chance.

Article 5.5

With a view to protecting participants in possible legal disputes with the licensee, this article ensures that the player can submit a dispute to the Curac;:aose court applying Curac;:aose law.

Article 5.6.

Licensees offering remote gaming are permitted to advertise their services, provided this is done in a responsible and balanced manner.

Recruitment or advertising activities include offering bonuses. A bonus is, for example, free playing credit a player receives upon registration or a doubling of cash prizes won. Bonuses attempt to recruit new players. Bonuses also carry the risk that they encourage players to play improperly or contain misleading information.

Subsection a implies that marketing and advertising activities may not encourage immoderate participation, for example by being too intrusive or aggressive in the context of recruitment. This means that these activities must be restrained and balanced in terms of, for example, form, content, and tenor.

For example, misleading advertising within the meaning of subsection b occurs when an unrealistic or incorrect image of the games of chance on offer is given. This may include the

chances of winning or the costs associated with participation. Advertising shall not make the chance of winning appear greater than it actually is and shall not create the impression that gambling offers a solution to financial or other personal problems.

According to sub c, the activities may not be aimed at vulnerable persons. Therefore, the licensee is not allowed to target its recruitment and advertising activities specifically at these groups and thus also not at persons who have excluded themselves from participating in games of chance organized by it.

According to paragraphs 2 and 3, further rules may be set by national decree containing general measures regarding among other things the content of recruitment and advertising activities, the target groups at which such activities are aimed, the quantity, the duration and the time, and the manner and the place where recruitment and advertising are carried out. This is without prejudice to the provisions of Paragraph 1.

Article 5.7

This article establishes a guarantee fund to ensure payment of prizes won by participants in connection with their participation in games of chance.

The amount of the premium can be determined by ministerial regulation with general effect.

By national decree a legal entity will be designated which will be in charge of the management of the fund.

Article 5.8

The CGA may attach further regulations and restrictions to a gaming license as referred to in article 5.1, first paragraph, which may reasonably contribute to a safe, responsible, transparent and reliable gaming offer.

For example, the rules and restrictions may contribute to reasonably safeguarding the reliability and continuity of the licensee during the term of the license, by requiring new facts or circumstances and updated documents to be provided to the CGA at all times, such as regarding:

- changes in the legal form of the licensee;

- changes in the structure of the group or in the person of the beneficial owner;

- incidents that may pose a serious threat to the integrity or viability of the licensee (e.g., player asset fraud);

- bankruptcy, suspension of payments or seizure of assets;

- the appointment of new executives, compliance officers or other persons in key positions.

Furthermore, the gaming industry is a very dynamic sector, where developments, technical and otherwise, follow each other in rapid succession. The CGA can keep up with these developments and, on the basis of this article, respond adequately by attaching additional regulations and restrictions to the licenses in the interest of a safe, responsible, transparent and reliable supply of games of chance. This will allow a faster response to changes in the gaming sector.

As for component 1, outsourcing of activities can be permitted by the CGA. Motivated by financial motives, in connection with scarcity of qualified personnel or in order to optimally focus on their own core activities, operators may feel the need to outsource one or more parts of their services to specialized suppliers.

Since the outsourcing of activities may entail major risks, in particular through loss of (direct) control over the outsourced parts, and may thus be detrimental to the interests to be safeguarded, rules and restrictions may be attached to the license in this regard.

The starting point will always have to be the safeguarding of player and supervisory interests: outsourcing may not be at the expense of the interests of players and the ability of the CGA to provide adequate supervision. To this end, the licensee remains fully responsible to the players and the CGA for the acts or omissions of its service provider as if they were its own. This means, among other things, that the licensee must be able to directly manage the player base and transactions with players.

Article 5.9

This article introduces a number of obligations for the licensee with regard to the current instructions for use, which must always be present in its administration. The operating instructions client must sufficiently describe the way in which games of chance are offered. These instructions must also guarantee that the operation of the games of chance complies with the provisions laid down in or pursuant to this National Ordinance,

as well as the regulations and restrictions attached to the operating license.

The operating instructions must always be updated by the licensee.

Pursuant to the third paragraph, these must be provided by the CGA within five working days of an initial request to that effect. It should be emphasized that the supervisor may request the operational instructions at any time.

Article 5.10

This article introduces the obligation for the licensee to prepare reports on the organization and operation of the game of chance, which the CGA believes are necessary to ensure a safe, responsible, transparent and reliable supply of games of chance.

To support supervision by the CGA, the licensee has reporting obligations. In a number of cases, this involves periodic reports, such as with respect to changes to the licensee's operational instructions for use. Other reports must be provided to the CGA on an incidental basis, for example in response to serious incidents in the context of the provision of games of chance.

According to the second paragraph, the CGA, may make use of a central control database in which data essential for supervision were stored. The stored data may relate, for example, to payment transactions, changes in the gaming account, and the intervention measures applied. This data can clan (near) real-time warden stored.

Thus, the control database is an effective way to monitor remotely. This is conducive to the task performance of the CGA because it allows them to have immediate access to relevant data. It is also conducive to the efficient performance of reporting obligations by the licensee, as it reduces the need to prepare and provide detailed reports.

According to the third paragraph, the reports in any case consist of a change report, incident report and a player transaction report and a complaint report. The reporting requirement may also include, for example, the number of complaints handled by the licensee, broken down by subject of the complaint with an indication of the outcome of the complaint handling.

The General Deadlines National Ordinance applies to the deadlines included in these national ordinances, thus also the deadline for submitting an incident report as referred to in the sixth paragraph.

The seventh \_paragraph relates to reporting on player transactions. These data serve the interests of consumer protection and the prevention of money laundering and fraud.

The licensee holds player assets that must be available to players at all times and that may not be used by the licensee for other purposes. Monitoring this requires the CGA to be able to reconstruct player assets. For this purpose, every transaction to and from each gaming account must be recorded. Providing this data ensures that it is reliable and that the CGA has complete and accurate data.

The eighth paragraph allows the CGA to provide one or more models for the purpose of reporting.

Article 5.11

According to this article the licensee has to keep an administration with regard to the licensed games of chance in such a way that its rights and obligations and the rights of the player are clear at all times and that it can respond within a reasonable period of time to requests of the CGA with regard to the necessary data for the purpose of the supervision of compliance with the provisions under or pursuant to this National Ordinance.

The licensee is obliged to submit the annual accounts to the CGA no later than April 30 of the following calendar year. The annual accounts must be drawn up in accordance with a model annual account established by the CGA.

If in the opinion of the CGA there is reason to do so, the permit holder is obliged to provide the CGA with interim (financial) reports.

Article 5.12

From the first paragraph, under a and b, it follows that the holder of a remote gaming license shall, upon commencement of its operation, provide permanent and full-time employment to at least one resident of Cura<;ao functioning as a key person whether or not in employment and within five years after this National Ordinance comes into force, provide permanent and full-time employment to at least three residents functioning as key persons whether or not in employment.

The inclusion of a five-year grace period is due to the limited availability of local key persons.

Subsections a and b of the first paragraph promote local employment.

Subsection c of the first subsection concerns the requirement of having its own office space equipped with the usual facilities for carrying out exclusively the business activities in accordance with the gaming license. Having its own office space also means renting office space. However, this requirement is not met if the office space is only rented or otherwise made available without actual use.

The third paragraph makes it possible, by ministerial regulation with general effect, to set rules regarding functions that are incompatible with those of key persons.

Subsections 4 and 5 have been included in order to address legitimate concerns expressed by the gaming industry regarding the more limited financial capacity of start-ups to meet the provisions of subsection 1, as well as the possibility that there will be a scarcity of sufficiently skilled key persons and business premises on the local market.

The fourth paragraph defines when an entity may be considered a starter.

An independent financial expert in the fifth paragraph, also known as a financial consultant, is understood to be a person who advises companies and individuals on their finances, in this particular case on gross gaming revenue. An independent financial expert need not exclusively be a registered accountant as referred to in Section 121 of Book 2, Civil Code.

The sixth paragraph allows the Minister to grant an exemption from the obligation to comply with the provisions of the first paragraph of this article for a period not exceeding two years in connection with special circumstances. Special circumstances include in any case the situation in which the availability of key persons or business premises on the local market is limited.

Articles 5.13 through 5.15.

These provisions introduce a licensing requirement exclusively for suppliers who wish to establish themselves on Cura<;ao to provide critical services or goods in or from Cura<;ao. These are typically

It concerns typical gaming-related goods and services that are indispensable for the provision of the game of chance, such as gaming software provided by a developer who does not manage the player base himself but leaves this to the holder of the remote gaming license.

This licensing requirement does not apply to suppliers located elsewhere who provide these services or goods to Curacao-based remote gaming license holders. Discussions with representatives from the trust sector have revealed the need for such a licensing system. Such providers of critical services wish to establish themselves on Curacao to operate under the supervision of the CGA. They will then have to comply with what applies in this regard by or pursuant to this National Ordinance.

This licensing requirement also does not apply to suppliers who qualify for accreditation since a separate regulation applies to them pursuant to Article 5.17 et seq.

The first paragraph of article 5.13 designates the CGA as the administrative body charged with granting the supplier license. The CGA may attach conditions and restrictions to the permit. Set regulations and restrictions must be able to contribute to a safe, responsible, transparent and reliable gaming offer.

Article 2.2, first paragraph, second paragraph, subsections a, b, c, d, e, f, Article 2.4, first paragraph, subsections a, b, c, e, g, i, second paragraph, subsections a, d, e, f, g, i, j, k, 1, Article 5.11, first, second, eighth and ninth paragraphs, Article 5.12 and Article 5.13, first, second and sixth paragraphs shall apply mutatis mutandis with regard to the supplier's license.

Article 5.16

Pursuant to this provision, all suppliers in and outside Curac;ao who provide gaming-related critical services and goods to Curac;ao-based holders of a remote gaming license are required to register in a register maintained by the CGA, with a view to information obligations that will apply to all suppliers. As a starting point, the gaming provider is responsible for providing relevant gaming-related information and records to the CGA for the purpose of effective supervision. This information obligation has been included in particular for situations in which additional information is required from suppliers when no complete and sound provision of the requested information and documents regarding the core activities via the gaming provider can be guaranteed for the purpose of supervision. This provision implies that game developers who offer their games via so-called

aggregators offer their games to licensees, must also register. Via software connections of aggregators, games from multiple game developers are often supplied to gaming providers. The management of the content of the developed games remains with the game developers.

In addition to the information obligation of the gaming provider, the CGA can also request information from the supplier for verification purposes.

Article 5.17

As explained above, there appears to be a need among suppliers to be accredited by the CGA so that they can demonstrate that their services meet certain quality requirements.

Since the gaming provider is responsible for providing gaming services, a voluntary and simple accreditation system for these providers has been chosen.

for are accessible

The first paragraph lists the types of services for which accreditation should be sought in any case, namely:

a. publicizing a game of chance with a commercial purpose, in other words: advertising;

b. promoting participation in games of chance, in other words: actively approaching natural persons in order to persuade them to participate in games of chance;

c. financial services, in the broadest sense of the word;

d. legal services, in the broadest sense of the word;

e. any service regulated under the National Ordinance on the Supervision of Trusts, otherwise known as management services;

£. professional education services of persons performing activities related to gaming: courses, (further) education and training;

g. payment services;

h. communication services specifically related to the operation, an example of which is an answering service built specifically for websites offering games of chance that answers end users by means of artificial intelligence;

i. consultancy and technical support services aimed at controlling and maintaining the technical infrastructure of exploitations, including the provision of data management and storage;

j. services providing consultancy and support in dealing with participants, such as, but not limited to, responsible gaming and addiction counseling services;

k. services such as, but not limited to counseling, aimed at detecting or combating money laundering or the financing of terrorism: AML services;

I. services related to digital units with their own intrinsic value,

that are exchangeable by means of cryptography, in other words, intermediaries that convert crypto-assets into other assets or currencies in exchange for payment;

m. acting as an intermediary on behalf of persons providing services within the meaning of this paragraph for the commercial purpose of recommending, monitoring, certifying, or coordinating those persons and services to operators, whether or not on behalf of one or more operators, in other words, linking service providers to operators and monitoring that relationship between parties;

n. services in relation to the alternative, extrajudicial adjudication of disputes.

With respect to all services referred to in the first paragraph, an applicant is eligible for accreditation provided that:

a. the identity of the natural persons providing the services or, if a legal entity provides the services, the identity of the natural persons who are members of the management of the service provider has been sufficiently established; and

b. it has been made plausible that the persons referred to under a are of irreproachable conduct.

With regard to suppliers who provide certain critical services, it will apply that they must meet certain quality requirements in order to be eligible for accreditation. For these services, the third paragraph states that the applicant must additionally have sufficient knowledge, experience and other qualities to offer the service or services for which they request accreditation.

The CGA may set further criteria and regulations with regard to the necessary knowledge, experience, other qualities - in particular with regard to the service providers offering services as referred to in the first paragraph, subsection f, g, k, 1 and n - as well as reports for offering the service or services for which they request accreditation.

Articles 5.18 and 5.19.

These articles established the fees that will be charged aah the applicants for a license and the holders of a license.

To cover the costs of the CGA, amounts will be charged under the National Ordinance for processing applications for licenses and other authorizations, such as the approval of new games. A permit fee to cover the estimated costs of the CGA's ongoing supervision will also be charged.

This license fee is payable to the Country. This is intended to (significantly) increase direct revenues from the online gaming sector for Cura<;ao.

In order to arrive at the most attractive "fee structure," several discussions were held with representatives from the online gaming sector as well as online gaming experts from other jurisdictions. Moreover, a comparison was made with the fees in other jurisdictions such as Isle of Man, Kahnawake and Malta.

The fees payable for processing applications for a license or other authorizations is included in Article 5.18.

Article 5.19 regulates the fees payable to cover the costs of ongoing supervision and for holding the license.

The amounts mentioned in Articles 5.18 and 5.19 may be amended by or pursuant to a national decree containing general measures.

Chapter 6

Permit fees and amounts due

Articles 6.1 and 6.2

These articles determine the method of payment and collection of the permit fees and amounts due in accordance with this National Ordinance. These fees and amounts include fees due for services rendered.

Payment of the permit fees and amounts due shall be made on the basis of a digital form determined by the Minister.

The Receiver is in charge of collection. The collection shall be made in accordance with the regulations included in the Collection Ordinance 195414 as well as the regulations included in the National Ordinance of the

14 P.B. 2023, no. 43 (G.T.).

December 31, 1942 regulating the collection of taxes, contributions and fees by means of penalty notices, as well as the administration of justice with regard to taxes, contributions and fees15. In the framework of efficient implementation of the levy and collection system, coordination with the SCI as well as with Recipient has taken place and a1;1 digital payment process for payment of permit fees and amounts due has been established.

Article 6.3

After receipt of the total revenue generated, this revenue is reduced by the amounts received, referred to in Articles 5.18 and 5.19, third paragraph and fifth paragraph. Thereafter, a percentage of three percent of the amount received will be deposited in a Sports Fund, administered by the Ministry of Education, Science, Culture and Sport, and a percentage of two percent of the amount received will be deposited in a Fund for the Protection of Vulnerable Persons, administered by the Ministry of Social Development, Labor and Welfare. Deposits in favor of the sports fund may mainly (being 70 percent) cover expenses for the purpose of financing social sports matters. Expenditures from the contribution for vulnerable persons, may go towards expenditure for the purpose of financing initiatives and programs to promote responsible gambling and combat gambling addiction.

Chapter 7 Lotteries (Reserved)

Chapter 8 Land Lotteries (Reserved)

Chapter 9 Casino games (Reserved)

Chapter 10 Horse Racing.

15 P.B. 1958, no. 164 (G.T.).

(Reserved)

Chapter 11 Other games of chance (Reserved).

Chapter 12

The gaming authority

§1 Tasks and powers

Section 12.1

This provision creates an independent administrative body using the Gaming Control Board Foundation already established by notarial deed of April 19, 1999. This establishment as an independent administrative body therefore does not affect the private law legal status of the Gaming Control Board Foundation. The Gaming Control Board Foundation continues to exist under private law as a foundation, under the name mentioned in the draft, and also becomes an independent administrative body on the basis of this draft.16

It is the task of the CGA to implement the rules laid down by or pursuant to this National Ordinance, as well as any rules laid down by or pursuant to other national ordinances insofar as they assign tasks to this administrative body.

The second paragraph of this article stipulates that the CGA, in carrying out its duties, shall supervise four quality standards applicable to the execution of those duties, namely: (a) timely preparation and execution; (b) the quality of the procedures used; (c) the careful treatment of persons and institutions that come into contact with the CGA; and (d) the careful treatment of objections and complaints received.

The CGA may, within the framework of the provisions in or pursuant to this National Ordinance, establish policy rules with regard to the performance of its duties. These will be published in the Landscourant as well as on the website of the CGA. Among other things, rules for the prevention of money laundering and the financing of terrorism were included, as well as rules for the prevention of the financing of terrorism.

16 See above under note 8.

regarding the technical and organizational nature of gaming activities taking into account opinions and recommendations of international or intergovernmental organizations.

To this end, the CGA, will have to hear the representative organizations. According to the fourth paragraph, a representative organization is one or more Cura.;ao-based associations designated by the Minister that represent the interests of gaming licensees, supplier licensees, as well as gaming participants.

§ 2 Financial matters

Article 12.2

The first paragraph regulates the sending of the budget and the multi-year plan to the Minister.

The second and third paragraphs and the fifth through eighth paragraphs regulate the approval of that budget by the Minister of Finance.

In the budget of the CGA warden all costs of the CGA for the execution of the tasks of this National Ordinance. This budget is approved by the Minister.

The sixth paragraph stipulates that if the Minister of Finance disapproves the draft budget, he must inform the board of directors in a timely manner. Pursuant to the seventh paragraph, the board of directors will have to revise the budget in such a case. During this revision period, the Minister of Finance may decide to provide a temporary (but limited) budget.

The eighth paragraph creates the obligation for the board to report to the Minister of Finance any significant deviations from what has been budgeted by the board.

§ 3 Complaints against CGA

Article 12.3

This article introduces a complaints mechanism which can be implemented and is limited to conduct of the CGA towards the complainant in the implementation of this National Ordinance. The background of the regulation is to channel and handle complaints from the public.

Chapter 13

Supervision and Enforcement

§ 1 Supervision

13.1

This article regulates the designation and performance of duties of supervisors.

The first paragraph provides that the CGA shall appoint the officers who will be charged with supervision pursuant to this National Ordinance.

The third paragraph lists powers of the supervisors.

The fifth paragraph introduces the obligation for everyone, without prejudice to what is stipulated in other legal regulations, to provide all cooperation and information to the supervisor referred to in the first paragraph.

Article 13.2

This article provides that, in derogation of the duty of confidentiality, the CGA may provide data or information to foreign supervisory authorities, to the Inspectorate of Taxes, to the Government Tax Office Foundation and to the Public Prosecution Service to the extent that this is necessary for the exercise of public law duties and powers of these bodies.

Article 13.3

This article regulates that the CGA, may request data and information, investigate or cause an investigation to be made of a licensee.

§ 2 Recovery sanctions

Title 1. Order under penalty

Article 13.4.

This article regulates (together with Articles 13.5 through 13.16) the order under penalty. The present article first defines the nature and scope of this administrative sanction. Incidentally, the system applied in this draft is different clan to that in the Dutch Awb, where the order under administrative coercion is regulated first and only then the order under penalty. This choice is inspired by the consideration that, in the opinion of the government, good governance implies that a violator should first be called to account for his own responsibility with respect to a violation of a statutory provision that can be blamed on him by ordering him to remedy the violation himself. This is the purpose of the order as such. As an additional incentive for compliance with this charge, the possibility of

imposing the more far-reaching sanction of a penalty or even administrative order.

For the time being, the government therefore assumes that the sanction of imposing an order for incremental penalty payments will always be chosen after an administrative body has observed a violation that must be corrected administratively. This only leads to an exception if there is a violation in respect of which, because of the danger to persons or property associated with the consequences of that violation, an immediate response must be given by preventing or terminating those consequences through the immediate application of administrative coercion. Article 13.26 sets further rules with regard to such cases; reference is made to that article and its explanatory notes.

Article 13.5

This proposed article gives the CGA the power to impose an administrative coercive order, also the power to impose an order for incremental penalty payments instead. In this way, the penalty payment power need not be granted separately. Pursuant to this article, the power to impose administrative coercion also gives the power to impose an order for incremental penalty payments, thus allowing a less drastic means to be chosen. The purport of the second paragraph is that an order subject to a periodic penalty may not be chosen if, in view of the interest violated by the violation of a statutory provision, there is a risk that the violation will be continued or repeated despite the order subject to a periodic penalty or the order subject to administrative coercion. This may occur, for example, in the case of serious violations.

Article 13.6

The purport of the second paragraph is that an order subject to periodic penalty payments cannot be chosen if, in view of the conduct that is violated by the violation of a statutory provision, there is a risk that the violation would continue or be repeated despite the order subject to periodic penalty payments or the order subject to administrative coercion. This may occur, for example, with serious violations. The nature of a serious violation may entail that the CGA must ensure that the damage is stopped as soon as possible and its consequences are limited as much as possible. It can then only be ensured with an administrative order that the damage is stopped as quickly as possible and its consequences are limited as much as possible. In such a situation, the public interest is better served by an order under administrative coercion, than by an administrative fine or an order under penalty.

Article 13.7

The CGA's response to a request for administrative enforcement obviously depends on whether the CGA has already taken action with regard to that

has already taken action regarding that violation. If that is the case, this article regulates the situation in which an order for periodic penalty payment has already been imposed and the deadline for its implementation has not yet expired. However, the CGA should notify the applicant of that fact. Furthermore, the applicant is informed that he will be informed whether the order has been carried out by the offender and, if this is not the case, whether the CGA intends to impose an order for administrative coercion or has decided to recover the penalty payment.

Article 13.8

The first paragraph indicates, which modality forms the penalty payment can have, namely a lump sum, an amount per unit of time that the violation continues, or an amount per violation of the charge. The forms listed will be sufficient to achieve the purposes of the CGA.

The second paragraph stipulates that the penalty payment order must also specify the maximum amount to be forfeited. This provision aims to prevent the CGA from allowing an undesirable - but remediable - situation to continue, as more money will be forfeited. After all, financial motives may not play a role for the CGA when applying the sanction in question.

The third paragraph lays down the main rule that should apply when determining the amount of the penalty payment to be forfeited, namely that the CGA may not seek to make a profit. Justice should be done to the principle that a penalty should be in reasonable proportion to the weight of the violation. If a penalty payment forfeited has not proved sufficient to convince the violator of the incorrectness of his actions, another sanction should be applied. Depending on the case, in particular if the illegal situation can still be remedied, an order for administrative coercion will then usually be issued, but the revocation of the permit in question could also be resorted to.

Article 13.9

The statement in this article that by means of the order it is made clear to the violator what the violation committed by him was, and which article of the law he violated as a result, is important. But the order should also indicate what measures should be taken by the person concerned to either completely undo the violation committed or at least prevent further violation of the same statutory provision. These measures should then be carried out in the manner determined by the person concerned. Depending on the seriousness of the violation and the possible danger to third parties, the CGA will also have to include a deadline in the order within which this implementation will have to take place before the person concerned forfeits the penalty payment. To accomplish these requirements, the first paragraph provides.

Article 13.10

This article gives the violator the right, in certain cases, to request the CGA to proceed with the (temporary) lifting or modification of an order under penalty. It is important to note that the "impossibility" mentioned in this article is not intended to refer only to cases of force majeure.

The possibility mentioned in section c to request a reduction of the amount of the periodic penalty payment will be particularly relevant if it is clear that the charge will be reduced because part of the charge is unenforceable or client to be imposed on another. If this is the case, it is considered reasonable that the amount of the penalty payment may also be reduced accordingly.

Article 13.11

The purpose of the first paragraph of this article is to prevent an offender who has not carried out an order under a penalty from unexpectedly being confronted with a bailiff. First of all, the CGA has to establish on the basis of the data that the period for execution of the order has expired, and that - based on a supervision report - the order has not (at least not fully) been executed. If the charge has not or not fully been executed, the CGA will have to decide, whether it will have the forfeited penalty payment recovered. The decision to this effect will then, according to the second paragraph, have to be sent to the offender. Paragraph 3 requires the order to state the amount forfeited. In the event that an order has not been carried out in its entirety, the amount forfeited will be equal to the amount stated as a penalty in the order. However, it is conceivable that the charge has been partially executed. If this is the case, the CGA will have to make a choice to have the total amount of the penalty mentioned in the order recovered or a lower amount. On the other hand, if the supervision report shows, for example, that the violator has carried out only part of the remedial work mentioned in the order, it is considered desirable that the CGA should have the option of recovering a lower amount from him. Even in this case, the general principles of proper administration remain applicable. This is the purpose of the second sentence. The purpose of the fourth paragraph is to prevent an offender from being faced with the recovery of a forfeited penalty payment for years to come. This paragraph stipulates a limitation period of five years after the date of dispatch of the collection decision. The starting point for this period is not the day after the forfeiture of the penalty, because such a wording would refer back to the date of dispatch of the order to the violator.

Neither the offender nor the CGA should be in any doubt as to the date of expiration of the rights of recovery for the administrative body and the Receiver, respectively. For this reason, the lapse of the right of recovery is linked in so many words to the

moment of dispatch of the decision in which the recovery was decided.

Article 13.12

The first paragraph of this article provides, for the sake of clarity, that if it follows from a decision as referred to in Article 13.10 that there is no longer a basis for the collection (whether or not in full) of a penalty imposed, then any order for collection already made in this respect will also lapse. Of course, the first paragraph should not mean that the application of article 13.10 always results in the total lapse of the CGA's power of recovery. Therefore, in the event that an order is changed, for example with respect to the amount of the penalty or if a period for execution is suspended, the second paragraph provides that a new recovery decision may be issued, taking into account the contents of the changed order.

Article 13.13

This article regulates the procedure of recovery of a forfeited penalty. Thus, the first paragraph first determines the period within which a forfeited periodic penalty must be paid. That period is set at eight weeks after the penalty has been forfeited by operation of law. This date is stated in the order referred to in Article 13.9, first paragraph, subsection e. The term set, it may be noted for the record, corresponds virtually to the term to which taxpayers are entitled with regard to the payment of the tax they owe. The contents of the second paragraph are, with regard to the administrative debt in question, intended to correspond to what is regulated in Book 6 of the Civil Code with regard to the default of payment of civil-law debts. If payment has not been made on time and the debtor is thus in default, the administrative body is obliged, pursuant to the third paragraph, before proceeding to issue a writ of execution at the debtor's address, to send him a reminder, in which payment is demanded within two weeks. The primary purpose of the summons is to give the debtor the opportunity to pay the debt. He will also be warned in the reminder about the possible collection measures if he fails to comply with the reminder. These measures include, among other things, that in addition to the penalty payment, the collection costs and dunning costs will also be recovered from the offender, plus the statutory interest due thereon. For the sake of clarity, this is stipulated in so many words in the fourth paragraph.

As previously explained, a forfeited penalty payment belongs to the 's Landskas. The CGA should have no financial interest in the decision whether or not to impose a penalty. After the period of notice has expired, the CGA transfers the actual collection to the Receiver. The Receiver has the authority to

proceed to compulsory collection (see Article 13.14 of these Regulations in this regard). It will depend on the circumstances of the case, whether the Receiver will proceed to collection immediately after the date of expiry of that period or somewhat later. The third paragraph of this article is mandatory in nature, but even without a regulation to that effect, it is customary to first give the debtor notice before proceeding to enforced collection. There may be various - sometimes understandable - reasons why the person concerned has not paid within the set time limit. From the point of view of proper administration, it is therefore desirable for the CGA, when preparing the demand for payment, to once again draw the attention of the person concerned to the fact that he must proceed to payment. As part of the preparation of the reminder, the CGA client should ascertain whether the person in question refuses to pay for reasons that may be well explained. However, this is also advisable for practical reasons, as it is often not efficient to immediately proceed to enforced collection after the regular payment term has expired. Before entering into the costly collection phase, the CGA will want to make sure that the debtor is able to pay.

Therefore, the reminder has no significance for the occurrence of default: on the contrary, a reminder is only possible if the debtor is already in default. This also means that the statutory interest rate has since started to run. The two-week period included in the demand for payment, which still gives the debtor the opportunity to pay his debt, should therefore not be interpreted as a postponement of the time at which the debtor's default commences. The formal notice precedes the more far-reaching collection measures. The Receiver should proceed with the said measures only after the CGA has sent a reminder and has not paid within the period set therein. If the debtor is in default, he should therefore be sent a demand for payment, regardless of whether or not collection is subsequently made by means of a writ of execution.

Paragraph 5 provides that the CGA shall fix the amount of statutory interest due by order. The purpose of this provision is to make it clear that that determination is subject to objection and appeal. The sixth paragraph provides, for the sake of clarity, that the person who is confronted with a demand for payment cannot go to court in connection therewith; he can only do so against the decision referred to in Article 13.11, first paragraph. The Exhortation is not a stand-alone decision aimed at legal effect. However, in order to eliminate any doubt, the fifth paragraph states in so many words that no objection or appeal is available against the reminder.

Article 13.14

This article is intended to ensure that the Ontvanger, after the period stated in the summons has expired, actually proceeds with collection on behalf of the Land. However, should the Receiver fail to do so, article 13.11, fourth paragraph, provides that the

If, however, the Ontvanger fails to do so, article 13.11, paragraph 4, provides that the debtor - for the sake of legal certainty - may count on not being confronted with collection measures after five years from the date of the notification referred to in article 13.11, paragraph 2. However, he may still be confronted - if restoration of the illegal situation is still possible - with an order under administrative coercion or a new order under penalty. After all, an unpaid penalty payment may be followed by a new order under penalty.

The first paragraph provides that the actual collection will be done by the Ontvanger.

The second paragraph stipulates that the Internal Revenue Service shall apply the regulations of the National Ordinance containing provisions for the collection of taxes by means of writs of execution, as well as for the administration of justice with regard to tax contributions and fees17 .

Article 13.15

This article establishes that a forfeited periodic penalty imposed on a person who has since died cannot be recovered from his heirs (insofar as the amount of the penalty has not been paid or recovered), as can be done with a civil law claim. Incidentally, this article does not mean that, in a case such as the one referred to here, the CGA must live with the illegal situation that was the reason for the imposition of the penalty payment. Indeed, the CGA is free to subsequently either re-impose an order for incremental penalty payments on the person who is now responsible for the violation made, or to impose an order for administrative coercion on the new person responsible for the continuation of the violation, in the event that the factual situation gives cause to do so.

Article 13.16

This article includes specific rules on the payment of statutory interest if it is irrevocably established that an obligation to pay a penalty payment was wrongly established by the CGA. As a rule, this will follow after objection or appeal. It is also possible for the CGA to make the correction ex officio. After it has been irrevocably determined that a penalty payment was wrongly decided to be forfeited, the citizen has unjustly suffered loss of interest, while the Country has unjustly disposed of the money. The first paragraph provides that the CGA must pay statutory interest on the overpayment from the time the citizen paid until the time of repayment to compensate for the loss.

17 P.B. 1942, no. 246

The second paragraph deals with the exceptional situation where a citizen has provided inaccurate or incomplete information, or it is attributable to him that inaccurate or incomplete information was provided with the result that the decision establishing the obligation to pay was incorrect. In such a case, the CGA is not liable for statutory interest.

Title 2. Order under administrative coercion

Article 13.17

This article defines the charge under administrative order and determines the scope of the section. The first element, the term "charge," is common to both the charge under administrative order and the charge under penalty. Therefore, this concept is described in the definitions of both sanctions in the same terms: namely, the charge must aim to "remedy the violation." This means that the order will speak either of the complete or partial rectification or termination of a violation, or of taking measures to prevent the repetition of a violation, or of removing or limiting the consequences of a violation.

As explained above, in practice, an order for incremental penalty payments will usually be imposed first. An order under penalty is preferred because it infringes less on the rights of the violator than administrative coercion. An order under penalty is also the obvious choice if there is a good chance that the costs of carrying out administrative coercion cannot be recovered or cannot be recovered sufficiently, or if the government lacks the specific expertise to undo the violation. Administrative coercion includes many forms of actual action. For example, the situation in which an offender acts without a permit, or in violation of the regulations set forth in the permit granted to him. Here too the enforcement deficit makes itself felt, already discussed in the General Section. A company that participates in society without the required license can now only be corrected by means of criminal law. In practice, however, the overburdening of the criminal prosecution system is also evident here.

For this reason, in practice, the enforcement authorities feel the need for the administrative enforcement powers of administrative coercion.

Article 13.18

This article specifies the violations for which the CGA is authorized to impose an administrative coercive order. These are violations in respect of which the CGA itself may enforce the order by actual action, if the order is not carried out or not carried out in time.

Article 13.19

If the CGA decides to apply administrative coercion, the court will, provided that all the requirements for doing so are met, in principle consider it lawful.

Only in special cases, according to Dutch

case law, it may be required that enforcement by means of the application of administrative coercion be abandoned. The main category of special cases is when there is a concrete prospect of legalization of the detected illegal situation. A standard consideration of the courts in the Netherlands in the event of prospects of legalization is: "Barring special circumstances, it is neither incorrect nor unreasonable to deem an administrative body to decide, in the interest of enforcing statutory provisions and preventing precedent from being set, to give notice of administrative coercion or to impose a penalty" (Rb. Zutphen, 7 May 2001, ECLl:NL:RBZUT:2001:AB1548). The application of administrative coercion is therefore only permitted to enforce a prohibition or injunction arising from a statutory regulation; the wording of the definition of an order for administrative coercion in Article 13.17(1) makes this clear.

Therefore, in the interest of clarity for citizens in view of the above, the first paragraph of Article 13.19 explicitly requires that the order imposing the administrative coercive order state which statutory regulation has been or is being violated. The legal protection of the citizen is thus served, in the sense that he can contest in objection or appeal, with reasons, that an obligation to remedy a situation or to pay the costs of administrative coercion arises for him from the mentioned statutory provision.

In view of the case law in the Netherlands, it must be assumed that the failure to state or incorrectly state the legal provision violated will lead to the annulment of the decision containing the order. It can also be deduced from this jurisprudence that the courts will not allow the CGA to mention in the order that a violation of either regulation X or Y has occurred. Even more than when imposing an order for incremental penalty payments, the CGA should be aware, when imposing an administrative coercive order, that there must be a firm intention to put an end to an illegal situation. After all, the CGA will have to enforce the order itself if the violator refuses to carry out the order. In

Article 13.20

The CGA must first issue an order before administrative coercion can be applied. This application order means de facto that the CGA commits itself to effectuate the said remedial measures. For the

it should be noted that pursuant to Article 13.27, paragraph 2, objections and appeals against it must be combined with the handling of the objection and appeal against the order imposing the administrative coercive order.

If the CGA has imposed a sanction but does not subsequently enforce it, a third party may apply to the administrative judge. This strengthens the position of the third party who has requested enforcement. In practice, use may be made of an informal - oral or written - warning that administrative coercion has become possible because the order has not been (or threatens to be) enforced. However, such a warning (or preliminary announcement) is not a decision as meant in this paragraph. Obviously, client oak here must first have established that the order has not, or at least not completely, been carried out. The decision will also have to contain the date on which the CGA proposes to apply the administrative coercion. Often the CGA will need some time to prepare the actual actions that will accompany the application of the administrative coercion. In many cases, third parties will have to be hired, who are not always able to provide the required assistance at short notice. Since the administrative coercion will not be able to take effect immediately after the last execution date mentioned in the order, the violator has a grace period to take the measures mentioned in the order. If he does so, obviously the application of administrative coercion will no longer be necessary, but it does not mean that the costs of preparation incurred in the meantime by the CGA will not be due (see Article 13.21, second paragraph). The second paragraph of the article stipulates that the decision will have to be sent to the person to whom the order is addressed, together with the report from which the non-execution (or incomplete execution) of the order has been revealed. In principle, the order will be sent to the offender, but this can only be done if his name and address are known to the CGA. Unlike the order under penalty, when imposing an order under administrative coercion the offender does not need to be known and can therefore be addressed to another person, for example an occupant or user of the place where the violation occurs.

Article 13.21

This article regulates the compensation due to the violator in connection with the application of administrative coercion. The main rule in this regard is laid down in the first paragraph and entails that the violator must reimburse the CGA client for the costs associated with the application of administrative coercion. These are the costs incurred by the CGA, after the interested party himself has remained passive in implementing the measures mentioned in Article 13.19, first paragraph, under c. These costs are primarily the direct costs of the CGA's actual intervention. He does not need to motivate why the costs will be

the person to whom the order was addressed, because this follows from the article: cost recovery is the main rule. Rather, the decision to make use of an exception to the main rule requires - proper - justification. The generally applicable obligation of administrative bodies to enforce statutory regulations must be weighed against the also generally applicable obligation to deal responsibly with public financial resources. This article stipulates in any case that, in the event that the costs should not reasonably be borne, or not entirely borne, by the person concerned, no costs are to be recovered. This reasonableness must be evident from the decision not to apply the possibility of cost recovery. Dutch case law is reluctant to assume an obligation not to recover costs. In a more general sense, the absence of the possibility of cost recovery will occur in cases where the public interest is involved to such an extent in the enforcement of the administrative order that the costs thereof should not reasonably be borne - at least not entirely - by the person to whom the order was addressed. In exceptional cases, however, there is not only an obligation not to recover costs, but the CGA may even be expected to award compensation in order to prevent the application of administrative coercion from violating the principle of proportionality. A decision determining the costs of administrative coercion is subject to objection and appeal, which, on the basis of article

13.28 of this National Ordinance, will be dealt with together with the objection and appeal against the order in which the administrative coercive order has been issued. The CGA should always warn the person concerned that costs will be recovered by mentioning in the order in which he decides to apply administrative coercion that the costs thereof will be for the account of the person concerned. This can be done simply by referring in that decision to the first paragraph of Article 13.21. It is not necessary to state therein the reasons why the costs will be recovered: that follows.

- it may be repeated - follows from the text of the first paragraph. Moreover, the decision does not necessarily have to state which of the persons addressed is or are considered the offender. It is sufficient that the CGA, in order to be able to effectively recover the costs afterwards, ensures that at least the offender is among the interested parties to whom the decision is made known. Moreover, in the vast majority of cases there will be no doubt as to who should be considered the offender. Finally, with regard to this paragraph, it should be noted that principles of good administration imply that the CGA that outsources the execution of the administrative coercion to one or more third parties must take care that the offer of the chosen third party is reasonable and in conformity with the market. It will often by necessity involve awarding out of hand. The procedure of a public tender usually takes too

much time in relation to the interest to be served by the administrative coercion of a speedy restoration of the violation. The CGA will have to be aware of this in order to prevent the CGA from being held responsible by the court itself for part of the amount paid by the CGA to the (third) executor. The second paragraph of this article makes it clear that the costs incurred by the CGA in preparation for administrative coercion, insofar as they were incurred after the expiry of the period of enjoyment referred to in Article 13.19, first paragraph, under d, also belong to the recoverable costs. Think of the costs of the deployment of officials or antler personnel charged with the preparation of the actual measures. Oat amount may increase, because a lot of time may be needed to conduct consultations with private contractors who will be engaged, and with other official services. The labor hours involved should therefore be considered preparation costs. Moreover, the costs of the contractor to be paid by the CGA, even if that contractor does not have to take action in the end because the violator (or the person entitled to the property in question) puts an end to the unlawful situation himself at the last minute, should be considered preparation costs. This is explicitly stated in this paragraph.

Article 13.22

The first paragraph of this article regulates the power of persons to whom the CGA has given the order to carry out the announced administrative coercion, to enter all locations, even without the consent of the rights holders in those locations. The second paragraph provides that the CGA client shall ensure that persons entering a dwelling or a part of a vessel intended for dwelling are in possession of an authorization from the examining magistrate.

Article 13.23

The first paragraph of this article makes it clear that among the possibilities of administrative coercion is the sealing of buildings or grounds and "anything therein or thereon"; this last addition in the text of this article makes it possible, for example, to seal machinery or computers. The advantage of this power to seal is that a seal is easy to affix. Instead of taking drastic physical measures such as sealing up buildings or removing machinery or other inventory, a more or less symbolic act with legal significance is sufficient. The downside of this is if interested parties are unwilling to comply with the legal status of sealing, further action must still be taken with administrative coercion or the imposition of a penalty. The purpose of the sealing option is to prevent repetition or continuation of the violation, or a new violation. Breaking such a seal is punishable as a crime in article 2:157 of the WvSr. Incidentally, the question may arise, whether a

decision to seal should be seen as a separate decision. Oat is not the case. The sealing is a physical act, which takes place in the context of the actual action referred to in part b of the description of the term "order under administrative order" in Article 13.17, first paragraph.

The second paragraph states that the CGA is authorized to seek the assistance of the strong arm in such acts. That assistance establishes possible recalcitrance, as punishable under Article 2:133 of the Criminal Code.

Article 13.24

This article creates in the first paragraph the possibility of carrying away and storing things, insofar as the application of administrative coercion requires it. The "things" referred to in this article include the things described in Article 2 of Book 3 of the

Civil Code. It therefore includes, for example, the materials released during the demolition of an illegal structure. According to the first sentence of the second paragraph, a report must be made of the removal and storage of goods. The second sentence stipulates that a copy must be provided to the person who had the goods under his control, i.e. the person who had the goods under his control at the time the administrative order was enforced. Usually this person will also be the person entitled to the goods, but it is conceivable that this is not the case. By not using the word "rightful claimant" in the sentence in question, the CGA is therefore prevented from having to delve into the question of whether the person under whose control the goods were found is the rightful claimant, which could seriously delay the execution of the administrative coercion. The third paragraph makes it clear that the items stored within the scope of the administrative coercion must, in principle, be returned to the rightful owner in due course. Until that time, the CGA client to keep the seized items, the first sentence of this third paragraph states. The care for safekeeping that rests on the CGA in this connection includes - it should be stated for the avoidance of doubt - the obligation to take reasonable measures to keep the stored items in good condition and to take care of any livestock that may be carried. If someone demands the release of the stored item or items, he will have to make it plausible that he should be considered the rightful owner. In the opinion of the Government it should be possible to suspend the issue of the goods until the costs connected with the application of administrative coercion (including the costs of storage) have been paid in full; the third paragraph serves to establish this. In the event that the entitled party is a person other than the violator and therefore not liable for the costs of administrative coercion, pursuant to the fifth paragraph the entitled party is only required to pay the costs of preservation of the stored goods. To what extent the entitled party can pass on the paid costs to the violator is a matter of civil law (to which the

present article is not concerned). For the record, if, during the execution of the administrative coercion, it appears that the goods to be transported concern explosive, inflammable or otherwise hazardous substances, the government is of the opinion that the police and/or a public prosecutor should then be called in in order to start criminal proceedings in the event that these substances are held without a license. If the products found are products, then Article 8 of the Commodities Ordinance shall apply. The aforementioned article stipulates that it is forbidden to prepare or market food or drink products which, due to their unsuitability, could endanger human health or safety.

Article 13.25

The first paragraph of this article makes it possible to recover the costs of administrative coercion from the goods transported and stored in accordance with Article 13.24 if they cannot be returned because the person entitled to them is not known or no longer wishes to accept them. The CGA that has applied administrative coercion may not be required to keep the items brought and stored indefinitely. This gives the Minister of Finance the right of immediate execution if the items taken and stored could not be returned to their rightful owner after thirteen weeks. The second and third paragraphs are intended to provide a solution for situations in which there is a disproportion between the costs incurred and to be incurred at the expense of the CGA in connection with the application of administrative coercion, including the costs of storage, and the relatively small value of the items transported or stored. In such cases, it would not be reasonable, in the opinion of the Government, for the CGA to comply with the obligation to store during the period of thirteen weeks mentioned in the first paragraph. The Minister of Finance then oak authorized to proceed to public sale.

However, the fourth paragraph makes application of the third paragraph possible only after a period of two weeks, because the person entitled to the goods transported and stored must have had some time to claim them from the Minister of Finance. But oak this rule will again have an exception, namely in case these goods consist of perishable goods, such as food; after all, then danger to public health may arise as a result of the development of germs and vermin. Another exception relates to dangerous substances, such as explosives. Oak then it is possible to destroy the items without having to wait two weeks for the owner to come forward. The sixth paragraph establishes that for three years the rightful owner of the sold items is entitled to any positive balance of the proceeds after the sale, less the costs, incurred in connection with the application of administrative coercion, and the costs of custody and sale.

If no claim to the balance has been made for three years, it shall accrue to the Land treasury as mentioned in the fifth paragraph. If the Minister also finds no one willing to receive the matter for no consideration, it should be possible, in the opinion of the Government, for him to have the matter in question destroyed; this is made possible by means of the seventh paragraph. Finally, it may also happen that at the public sale no buyer has come forward. In this case, use is made of the alternative transfer of ownership and the property is transferred to a third party free of charge. After all, in such a situation it will always be items of low value, no value or even negative value.

Article 13.26

The first paragraph of this article provides that in urgent cases administrative coercion may be applied without a prior order. It thus opens up the possibility of applying administrative coercion in special situations, without an order to remedy the observed violation having been drawn up and issued. Although this is not expected to occur in many cases, in some situations immediate action by the authorities is required. In such cases, the powers granted in the present article are, in the opinion of the Government, indispensable. They are consistent with a limited number of other existing powers that are necessary to respond immediately to a violation of standards in urgent situations.

However, a decision must still be taken and published, describing the measures to be taken by the CGA. The second paragraph deals with situations that are so urgent that even the drafting of a decision cannot wait. In such cases, the CGA may apply the administrative coercion immediately and impose the order for incremental penalty payments orally, but a written decision must be drawn up afterwards as soon as possible and made known to the offender and the persons entitled to use the property (see the third paragraph). After applying the second paragraph, the CGA concerned shall send to the violator and the persons entitled to the use of the property in respect of which the administrative coercion was applied the decision referred to in Article 13.19, first paragraph, on the understanding that it does not include an order and states the reasons for the immediate application of administrative coercion. This allows the decision to apply administrative coercion to be subsequently reviewed by the administrative court, which may be important in connection with possible claims for damages. The third paragraph requires the CGA to send a copy of the decision to impose administrative coercion to the (legal) persons directly involved in the administrative coercion and to inform them of the reasons for its decision to apply the second paragraph. This allows the administrative judge to review the decision afterwards, if necessary. The formal requirements of a decision to impose an

of an order imposing an administrative coercion should of course apply mutatis mutandis to such a decision formalizing the administrative coercion afterwards.

Article 13.27

Unlike in the case of an order under penalty, the CGA must still prepare the account of all costs involved. This involves an addition of all costs incurred, and the obligation that the person concerned must pay the bill. Because of this consequence, this sum is 'directed at legal consequences', and is therefore a decision. The violator can turn to the administrative judge if he contests the decision imposing the charge, the decision implementing the administrative coercion and the decision determining the costs. This concurrence may lead to an undesirable accumulation of procedures and burden for the citizen, the CGA and the judge. For this reason, it has been proposed in the second paragraph that the court may combine the objections to the various decisions and settle the entire dispute at once. The (first) objection to the order under administrative coercion also includes the right to object to the subsequent orders without having to file a separate objection against them within a certain period of time.

Article 13.28

With respect to the manner of payment, the notice thereof and the recovery after non-payment, the given regulations referred to in Articles 13.13 through

13.16 shall apply mutatis mutandis.

§ 3 Punitive penalties Title 1. Administrative fine

Article 13.29

It should be noted that the nature of punitive sanctions implies that they can only be applied if the identity of the violator is known. Also, the offender should be aware of what has been established by an administrative body with regard to his conduct.

If the CGA considers imposing a fine as referred to here, it should send a copy of the report on the basis of which it has arrived at that consideration to the offender without delay, i.e. at the same time as the notification of the intention to impose the fine (and therefore not afterwards), and give him the opportunity to respond to it.

The offender may make his views known to the administrative body in writing.

The second paragraph of the present article prescribes that, if the violator so requests, the essence of the report and the notification of the intention to impose the fine, including the opportunity to submit views, will be communicated to him in the English or Dutch language.

Article 13.30

The first paragraph makes it clear that the government considers it desirable that the person to whom he wishes to make statements should remind him of the client beforehand.

In the second paragraph, Articles 251 and 253 of the Code of Criminal Procedure concerning the right to privilege in family relationships are made applicable. This is because they may incriminate themselves or a family member. The right to privilege in family relationships is quite broad and extends to relatives by blood or marriage in the collateral line up to the third degree or the spouse or former spouse or the person with whom the person concerned actually cohabits or has cohabited on a permanent basis.

Article 13.31

Just as criminal offenses are time-barred by a certain lapse of time, the government believes that the power of administrative bodies to punish violations should also be limited in time. This is laid down in the first paragraph of this article, where a period of two years has been chosen. With regard to the wording of this paragraph, it should be noted that it speaks - as does article 1:145 of the WvSr - of "the lapse" of the power. The verb "lapse" implies that authority to impose a punitive sanction does not !anger exist after two years. As an aside, it should be noted that through article 13.28, the statute of limitations for the power to recover the administrative fine is regulated in article 13.11, fourth paragraph, namely five years. The second paragraph provides a rule regarding the situation in which an objection or appeal is lodged by the person on whom a punitive sanction has been imposed within the time limits set for that purpose in the LAR. That procedure could lead to the opinion that, for example, the amount of an administrative fine has been set too high. In such a case, the CGA will usually still want to impose an administrative fine, albeit a lower one, but due to the length of the administrative legal process, it could happen that the time limit mentioned in the first paragraph has expired and the authority to impose that fine no longer exists. The present paragraph prevents this, by suspending the expiration period mentioned in the first paragraph by operation of law.

Article 13.32

The administrative fine is defined in this draft as the punitive sanction, containing an unconditional obligation to pay a sum of money by an offender, aimed at <liens punishment. As a punitive sanction, an administrative fine can only be imposed in response to a violation - observed by a supervisor - and recorded in a report, or in other words, conduct prohibited by or pursuant to national ordinance. In this respect, this fine differs from obligations to pay a sum of money, which can be imposed by the Country in respect of conduct that in itself is not in violation of a statutory regulation, such as levies, fees and taxes. An administrative fine is therefore a sanction of a punitive nature; in this it differs from the order under penalty. After all, the purpose of such an order is to prevent, end or reverse an unlawful situation, but it does not aim to punish the person in question outright. This is reflected in the fact that an order under penalty may only be imposed in combination with an order to do or refrain from doing something. In the case of an administrative fine, there is no such order. The fine also does not undo the violation - at most indirectly, by skimming off any economic benefit obtained from the violation - and is only indirectly, namely through its deterrent effect, aimed at preventing further violations. The chosen definition of the term "administrative fine" implies that such a fine cannot be imposed conditionally. Indeed, there is no need for a fine under the suspensive condition that the violator does not commit a new violation within a certain period of time, as it amounts to virtually the same thing as an order under penalty. Other forms of conditional imposition of fines have also not shown to be needed in practice.

Article 13.33

With regard to all punitive sanctions, it is desirable to clearly define the cases in which the imposition of an administrative fine is also nfet client. This article aims in its first paragraph to codify the principle "no punishment without guilt" also for administrative fines. As in the case of criminal offenses, guilt - in the sense of culpability - is generally not a component of the offense in the case of administratively sanctioned offenses. This means that the CGA does not have to prove culpability, but may presume it, provided that culpability is established.

Article 13.34

The first paragraph regulates the concurrence of administrative fines and criminal sanctions. Here too, the principle of "ne bis in idem" applies: after all, if a criminal penalty has already been imposed on someone for a violation, he will not also be punished with an administrative fine for the same violation and vice versa (see HR 12 January 1999, NJ 1999, 289). This

principle is of great importance, because it happens quite often that a national ordinance imposes both a criminal sanction and an administrative fine on violation of a regulation. This is not only a matter of not imposing two sanctions, but also of preventing a person from being needlessly involved twice in a sanction procedure for the same violation, a situation also referred to as the "nemo debet bis vexari" principle. The choice for one of the two procedures must at some point be final; it cannot be the case that if one route ultimately does not lead to the imposition of a sanction, the CGA or a public prosecutor can simply try again via the other route. The first paragraph regulates the so-called "una via" system in the event that the judiciary initiates criminal proceedings, the administrative route is definitively closed as soon as the investigation at the hearing has begun. Thus, any acquittal, dismissal of prosecution or inadmissibility of the prosecution does not revive the power to impose an administrative fine. The second paragraph provides that, in principle, the CGA is required to submit the violation to the public prosecutor. However, the same provision allows the public prosecutor and the CGA to formulate underling criteria for choosing between administrative and criminal punishment. The third paragraph clearly indicates in which case the CGA may still proceed to impose an administrative fine if a violation has been submitted to the public prosecutor. In case the violation has been submitted to the public prosecutor, the authority to impose an administrative fine is suspended. The prosecutor client within a period of thirteen weeks to decide whether criminal action is desirable. If the public prosecutor has informed the CGA that it has waived criminal proceedings, the authority of the CGA to impose an administrative fine revives. This authority also revives, if the public prosecutor has not responded within thirteen weeks. If a third party applies to the Common Court of Justice of Aruba, Cura ao, St. Maarten and of Bonaire, St. Eustatius and Saba (hereinafter: "the Common Court") under article 15 et seq. of the Dutch Code of Criminal Procedure with a complaint for non-prosecution of an offender for a violation, it is possible that this Court is of the opinion that the decision of the Public Prosecutor's Office not to prosecute the violation was incorrect. Therefore, for the case in which an administrative fine has been imposed that has been paid by the offender, an analogous regulation is proposed in the fourth paragraph of the present article. Its content entails that the right to criminal prosecution, which in principle had lapsed as a result of a decision not to prosecute and subsequent settlement by means of an administrative fine, is revived by the order of the Common Court. As a result, the person can still be prosecuted. This does not alter the fact that a situation of "bis in idem," or double punishment, must of course be avoided in this situation as well. Therefore, this paragraph also expressly provides that the order to prosecute

by operation of law has the effect of canceling an administrative fine already imposed. This also applies, if this administrative fine has already become irrevocable. To the extent that the administrative fine has already been paid and, in retrospect, this payment has been undue, the CGA must repay the amounts paid to the offender. Good administration requires that this be done with due speed. This assumes, of course, that the CGA is aware of the Common Court's order. However, it is not necessary to make arrangements for this: after all, that offender himself has every interest in informing the CGA of the order as soon as possible.

Article 13.35

This article is related to the fact that after a report has been drawn up, a penalty decision need not follow in all cases. After all, it is possible that the views of the violator may lead the CGA to decide not to impose a fine. In such a case, the offender should know as soon as possible, that the charge hanging over him has been dropped. The CGA, after the offender has given his views on the supervisor's report sent to him, has three options.

The CGA can consider the defense to be justified (and then decide not to impose an administrative sanction) and it can consider the defense to be insufficient and then decide to submit the violation to the public prosecutor or still decide to impose an administrative sanction if it has been agreed with the public prosecutor that in the case of such a violation submission to the public prosecutor can be waived. The latter is detailed in the second paragraph of Article 13.34. Subsections a and b regulate the settlement of the first two of these three cases in the present article. The person concerned must of course be notified of the relevant decision.

The first, second and third paragraphs of this article regulate the decision period regarding the imposition of an administrative fine. The decision period is set in the first paragraph at six weeks after receipt of the offender's opinion. According to the second paragraph, if no opinion is submitted, the term referred to in the first paragraph applies from the day on which the opinion could have been submitted at the latest. According to the third paragraph, the period referred to in the first and second paragraphs may be extended by up to six weeks.

The fourth paragraph stipulates that the aforementioned period is suspended as soon as the conduct is submitted to the public prosecutor pursuant to the article 13.34, second paragraph, until the day on which, pursuant to the third paragraph of this article, the CGA again becomes authorized to impose a fine. It should be noted, the that the applicable decision deadline, as is often the case with deadlines in administrative law, is a deadline of order. Exceeding the decision period

does not have the consequence that the power to impose an administrative fine expires ipso jure; the longer period of Article 13.31(1), i.e. two years, applies to such expiration. There is of course the possibility that the court will discount any exceeding of the decision period in the amount of the administrative fine, if the imposition or the amount of the fine would be disputed. To avoid repetition of moves, a separate recovery decision for the collection of the administrative fine is not desirable. The government does not consider it necessary, in the actual collection of an administrative fine

- against which objection and appeal are in themselves possible - again to provide legal protection.

Article 13.36

All decisions imposing an administrative fine are subject to the requirements set forth in the first paragraph of this article. For a decision imposing an administrative fine, these requirements are of great importance, because citizens must be able to derive from it the reason and nature of the accusation and the fine to be imposed. These requirements derive, inter alia, from Article 6(3) opening words and (a) of the European Convention on Human Rights ("ECHR")18. It follows from the content of the latter treaty provision that the grounds on which the imposition of the fine is based, with any details, must be communicated to the person concerned no later than the time of imposition of the fine. This aforementioned treaty article does not itself provide a sanction for violating the right enshrined in this provision. The basic principle of the said provision is to enable the person concerned to adequately prepare his defense. This means that violation of the duty to disclose need not automatically lead to the cancellation of a fine imposed. What matters is that the violator's defense is not impaired by the violation.

The second paragraph determines the manner of offering the decision imposing an administrative fine to the violator.

Article 13.37

The first paragraph of this article establishes that the amount of an administrative fine has a maximum. It is proposed to align with the highest amount that can be imposed under a criminal fine; that amount is currently NA£ 1 million.

The second paragraph deals with cases where the law does not prescribe exactly how high the administrative fine should be in a concrete case. The CGA will have to assess the appropriate amount of fine for each concrete violation. The second paragraph therefore mentions clan the main yardstick to be used in imposing

18 Trb. 1951, 154 as last amended by Trb. 2014, 2.

of an administrative fine: the amount of the fine must be tailored to the gravity of the violation and the extent to which it can be attributed to the offender. This so-called principle of proportionality stems from Article 6 of the ECHR.

Title 2. Penalties

Articles 13.40 through 13.42

In addition to administrative enforcement (force majeure, administrative coercion and administrative fine) it has been decided to add criminal law enforcement instruments to this National Ordinance. Criminal law should be seen as an ultimum remedium. This implies that punishment through criminal law is the only possible solution and that no other suitable or feasible options are available. In criminalizing the included prohibitions, the nature and seriousness of the prohibited conduct was considered.

The nature of the prohibited conduct may include the essence of the offense, intent (culpability), causation, unlawfulness and punishability. The seriousness of the prohibited conduct emerges from the facts and circumstances of the case.

Article 13.40 contains the penal provisions that explicitly determine which acts are considered offenses or crimes under the regulations contained in this National Ordinance. The distinction between offenses and crimes is of crucial importance in the legal realm and relates to the seriousness of the offenses committed, the nature of the legal procedure deemed appropriate for its resolution, and the potential consequences for the parties involved.

In determining whether a particular act qualifies as a crime client, the degree of seriousness of the criminal act itself is often considered. This includes factors such as the degree of harm, the potential impact on victims and the broader impact on society. Crimes were generally considered to be more serious than misdemeanors, and therefore crimes often involve more serious legal proceedings, and therefore penalties are more severe.

In addition, the nature of the legal procedure itself plays a role in determining the classification of a crime. Various legal procedures are available, ranging from simple administrative handling to complex criminal prosecution. The type of procedure considered appropriate often depends on the severity of the offense and the legal tools available for enforcement and settlement.

Another important consideration is the real risk of deprivation of liberty in the event of a violation. Crimes are often punishable by custodial sentences, while violations typically result in fines or other non-custodial penalties. This risk of deprivation of liberty weighs significantly in determining whether an act is considered a felony or a misdemeanor.

In addition, consideration is given to whether intent (deliberate acts) or fault (negligence or carelessness) are present as essential components in a crime. Acts involving intent were often considered more serious than those involving fault.

All these considerations are carefully weighed and analyzed in order to determine whether a specific act in violation of the provisions of the National Ordinance should be considered an offense or a crime, with the ultimate goal of promoting justice and appropriate legal responses to criminal offenses.

According to Article 13.41, when administrative enforcement and criminal enforcement concur, coordination with the Public Prosecutor's Office shall take place. This is because the una via principle necessitates making a choice between either administrative enforcement of a violation by imposing an administrative fine or criminal enforcement of that violation. If a violation can be dealt with under both administrative law through the imposition of an administrative fine and criminal law, the client must choose either the administrative or the criminal sanction.

§ 4 Modification

Article 13.43

This article empowers the supervisor to issue a binding instruction in certain circumstances. The binding instruction may, especially where the legal standards of the gaming regulations may leave room for further interpretation and interpretation, serve to further concretize the standards in question. The use of the instruction is therefore not necessarily limited to cases in which there is evidently evidence of acting in violation of the regulations and that a violation has already been established. Even where, in the opinion of the CGA, there is insufficient compliance or desirability of compliance in some other way, a binding designation may be issued. In such cases, the CGA may use the binding instruction to indicate what is necessary in a specific case to comply with the regulation in question. In the case of an order under penalty payment, there is no room for this. This is because the principle of legality precludes the threat of the forfeiture of penalty payments before it is clear to the person concerned what exactly is the purport of the legal standard with which he should have complied. The

binding instruction acts in these cases as an intermediary in the run-up to enforcement of the specified standard, compliance with which can then be enforced. This is an important added value compared to the order under penalty. However, compliance with the standard - concretized with a binding instruction - can later be enforced with, for example, an order for incremental penalty payments.

Chapter 14 Other provisions

Article 14.1

This article regulates the duty of confidentiality that applies to those involved in the implementation of this National Ordinance who receive information of which they know or should reasonably suspect the confidential nature. In addition to the staff of the CGA, this includes any external consultants, temporary hired or contracted employees of the CGA.

Confidentialityirtg by CGA staff, among others, is further guaranteed by Article 2:232 of the Penal Code.

Article 14.2

This article regulates the so-called hardship clause.

The hardship clause is intended to give the Minister the power to intervene if a decision of the CGA is contrary to the spirit and inner value of the law, is manifestly contrary to legal conscience, clan if an accumulation of manifest unfairness occurs with respect to a person. These are therefore situations which the legislator did not foresee when the law was drafted, but which later, when applying the law, lead to unintended consequences.

Application of the hardship clause which undermines the system of the law in principle is not possible. Review of requests for application of the hardship clause is therefore also consistently conducted in a strict manner.

Chapter 15

Transitional and final provisions

Article 15.1

This transitional arrangement is designed to avoid unnecessary disruption of the market and to provide for gradual transition to the new licensing regime.

This article provides transitional arrangements for:

1. those who, at the time this National Ordinance comes into force, hold a license as referred to in Article 1 of the National Ordinance on Out-of-Country Hazard Games, but do not themselves offer hazard games on the international market in the course of their own operation (referred to in practice as "master licensees"},

2. those who, in the course of their own operations, offer hazard games on the international market pursuant to an agreement with the holder of a license granted pursuant to Article 1 of the Outdoor Hazard Games Regulation (in practice referred to as "sub-licensees"}, and

3. those who, at the time this National Ordinance enters into force, hold a license as referred to in article 1 of the Outdoor Hazard Games Ordinance and themselves offer hazard games on the international market as part of their own operation.

According to the first paragraph, persons who, at the time this National Ordinance enters into force, possess a permit as referred to in article 1 of the National Ordinance on Outdoor Hazard Games and who themselves carry out the activities authorized thereby, shall be granted a provisional permit as referred to in article 5.1, first paragraph by operation of law, on the understanding that article 5.13 shall only apply to them as of the sixth month after the introduction of this National Ordinance. Contrary to Article 5.1, sixth paragraph, the decision period for the purpose of the assessment in the second phase is equal to six months. This period may be extended by a maximum of six months.

This provision does not apply to so-called master licensees, who do not themselves carry out the activities licensed under article 1 of the National Ordinance on Outdoor Hazardous Games, but offer a contractual right to third parties to carry out these activities, which third parties are referred to in current practice as sublicensees. This article is important in case, when this bill comes into force, there are licensees who themselves offer the licensed activities within the scope of their own operation.

According to the second paragraph, the Lottery Ordinance 1909 and the Hazard Games II Landsverordening 1988, subject to the provisions of Article 4.1, third paragraph, apply to a commodity lottery, bingo or bon ku ne, which, after the entry into force of this national ordinance, does not meet the condition, mentioned in Article 4.1, first paragraph, under d. For games that do not meet the aforementioned conditions, the aforementioned national regulations apply in full. For games which do meet the conditions, however, account will have to be taken of article 4.1, paragraph 3, on the basis of which the licences for the game of chance in question will be reduced.

which states that the rules of the game of chance and security requirements applicable to the premises where the game of chance is physically offered must be observed.

According to the third paragraph the pending applications for a license in the sense of the National Ordinance on Outdoor Hazard Games that have been submitted in accordance with the provisions laid down in or pursuant to the National Ordinance on Outdoor Hazard Games will be dealt with in accordance with what is applicable in this matter based on the National Ordinance on Outdoor Hazard Games. These are therefore complete applications that comply with the applicable requirements. Current applications that have been submitted prior to the coming into force of this National Ordinance but are not yet complete or that have been submitted thereafter therefore fall fully under the scope of this National Ordinance.

Article 15.3

This article confirms that all persons employed by the Gaming Control Board immediately prior to the coming into force of this National Ordinance shall retain the same position and the same conditions of employment and accrued rights upon coming into force of this National Ordinance. This implies that all rights and obligations of the Gaming Control Board then arising from employment contracts with its employees, collective bargaining agreements or legal status regulations shall continue to exist, retaining all rights accrued and acquired for the benefit of the employees, including wages, primary and secondary conditions, seniority, pension, insurance and the like.

Articles 15.4 through 15.6

These articles amend various national ordinances relevant to gaming.

Article 15.4, part a

In order to also cover the AML/CFT risks associated with the gaming related critical services provided by suppliers located on Curai;ao, it is necessary to ensure that the services provided by these suppliers (in or from Curai;ao) also fall under the application of the LMOT and the LID.

Article 15.4, part b

According to the interpretative note to Recommendation 22 of the FATF, the following applies to the identification requirement for casinos, which according to the recommendations also includes online casinos:

"Casinos should implement Recommendation 10, including identifying and verifying the identity of customers, when their customers engage in financial transactions equal to or above USO/EUR 3,000. Conducting customer identification at the entry to a casino could be, but is not necessarily, sufficient. Countries must require casinos to ensure that they are able to link customer due diligence information for a particular customer to the transactions that the customer conducts in the casino."

With the addition of subsection d to art\_article 2b, it is in line with the aforementioned explanation. This takes into account the distinction between on the one hand gambling transactions that take place in the context of landbased hazard games/games, outside a business relationship, as for example in the case of (incidental) participation in land-based casino games or lotteries, and on the other hand gambling transactions that take place in the context of a business relationship, as in the case of participation in online hazard games/games, whereby the player opens an account and thereby enters into a business relationship. A provider of a land-based hazard game/game of chance must then conduct a customer due diligence if he conducts an occasional transaction on behalf of a customer of at least NA£ 4,000 or there are multiple, interrelated transactions with a combined value of NA£ 4,000 or higher.

If there is a business relationship, the service provider must conduct a client screening as soon as one or more transactions of at least NA£ 4,000 are carried out, regardless of whether there is a connection between these transactions.

A threshold of NA£ 4,000 has been chosen (lower than the FATF recommendation), so that the (currently applicable) reporting obligation for transactions of NA£ 5,000 or more can be met in a timely manner.

Article 15.4, part e

Article 3, first paragraph, second sentence, LID entails that the natural person living or residing abroad must comply with the following:

"a. a photocopy of one of these listed documents, provided that it is accompanied by

a certified copy or extract from the Civil Registry of the place of residence or

residence of the client; or

b. the transmission of any of the said documents by electronic means, provided that the service provider receives a certified copy of the transmitted document within two weeks of its electronic receipt."

No deviation from this is possible, subject to the limited exception contained in Article 3, paragraph 7, LID. This provision is inconsistent with the FATF's risk-based approach, as reflected in, among other things, Recommendation 10 which reads:

"Financial institutions should be required to apply each of the COD measures under

(a) to (d) above, but should determine the extent of such measures using a risk-based approach (RBA) in accordance with the Interpretive Notes to this Recommendationand to Recommendation 1.11

Article 2(4) LID concerns a codification of the said risk-based approach:

"The service provider shall tailor the client due diligence to the risk sensitivity to money laundering, terrorist financing or proliferation financing of the type of client, business relationship, service, product or transaction being provided."

Based on this amendment to Article 3, (as is common practice in other jurisdictions) through regulations and guidelines issued by supervisors, the method of identification and verification of natural persons who are not physically present must be determined.

When drafting regulations and guidelines, the risk sensitivity for money laundering, terrorist financing and proliferation financing of the relevant sector and, among other things, the nature of the related services, business relations, products, transactions, type of clients and the like must be taken into account.

Article 15.6, parts a and c

In this section, the term "casino games" will be replaced with games of chance. This provision will take effect a time to be determined by national decree.

With the introduction of the LOK, the government introduces a different system of levying, namely license fees. This means that all forms of gambling, including casinos, are not subject to sales tax. Therefore, Article 13 of the 1999 Landsverordening omzetbelasting19, is repealed. However, pursuant to article 15.8, second paragraph, this provision will come into effect at a time to be determined by national decree, which may each be set differently for the national ordinances mentioned therein. These national decrees will enter into force at the time provided for the regulation of various games of chance.

Article 15.6, part b

19 P.B. 2013, no. 52 as last amended by P.B. 2019, no. 92.

This section introduces a sales tax facility for suppliers. Supplies of critical goods and provision of critical services are exempted from sales tax from sales tax. The LOK provides that these services and goods are indispensable in determining the outcome of a game of chance, or are so important that any failure in their provision or delivery could have a significant consequence for the holder of the gaming license to fulfill <liens obligations under this National Ordinance or under this National Ordinance.

The services provided by certain sectors to entities holding an exemption pursuant to the Cura and Sint Maarten Foreign Exchange Regulation as well as the foreign-oriented activities of the aforementioned entities and natural persons are exempt from sales tax pursuant to article 7, first paragraph, subsection z, of the 1999 Turnover Tax Ordinance. However, it is also desirable to introduce a sales tax exemption for the supplies of critical goods and the provision of critical services without being dependent on an exemption pursuant to the Cura and St. Maarten Foreign Exchange Regulation. An exemption from sales tax is therefore specifically included in a new section of article 7, first paragraph, of the Landsverordening omzetbelasting 1999

Article 15.8

Article 15.8 provides that the National Ordinance on Outdoor Hazardous Games20 is repealed.

Article 15.9

According to the second paragraph of article 15.9 among other things the prohibition for residents to supply critical services or goods related to games of chance in or from Curacao without a supplier's license required pursuant to this National Ordinance will take effect at a time to be determined by national decree.

20 P.B. 1993, no. 63