ADVISORY BOARD CURACAO

KONSEHO DI KONSULTA K0ASOU

To Her Excellency

Governor of Cura<;:ao Fort Amsterdam 1

Cura<;:ao

RvAno. RAL12-23-LV

Subject: Draft National Ordinance regulating (National Ordinance on Gaming)

(case numbers 2022/041544, 2022/042286 and 2023/5974)

games of chance

A\_dvie-5: With reference to your urgent opinion request dated June 9, 2023 for the opinion of the Advisory Council on the above-mentioned subject and following its consideration on August 21, 2023, the Council informs you as follows.

I. General

1. Emergency Opinion Request

The Council has noticed that the Minister of Finance by letter dated April 21, 2023 (case number 2023/017700) through the intervention of the Governor requested the Advisory Council to issue an urgent advice within six weeks on the draft National Ordinance on games of chance (hereinafter: draft). All this without the relevant draft National Ordinance having been presented to the Advisory Council at the same time as that request. It was only by decision dated June 7, 2023 (case numbers 2022/041544, 2022/042286 and 2023/005974) that the Council of Ministers requested the Advisory Council to issue an urgent opinion on the present draft. Given the scope and complexity of the draft and the fact that the official preparation process and the administrative decision-making process took at least a year and a half, the Council believes that this delay should not be passed on to the Council as the last advisory body of the legislature. After all, an emergency opinion may detract from the quality of the land ordinance under consideration.

Legislation must be of good quality and that requires proper preparation. One must give the Council, as well as the other participants in the legislative process, a reasonable amount of time to do its work responsibly. As a result, the Council has chosen to take the necessary time to conduct a thorough analysis of the draft and the accompanying explanatory memorandum. In doing so, however, given the interests that

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3. Delegation of regulatory authority

a. Review of delegation bases.

1 °. Guidelines for the review of (sub)delegation of regulatory power.

The draft provides several bases that allow (sub)delegation of regulatory power. For the allocation of the power to establish rules (delegation of regulatory power), the Instructions for Regulations Cura9ao (hereinafter: Awr) contain guidelines, against which the Council has reviewed the draft. The guidelines that must be observed in the (sub)delegation of regulatory authority are:

- instruction 15, which stipulates that when elements of a regulation are divided between the National Ordinance and lower regulations, the National Ordinance must contain at least the main elements. Consideration must be given to which elements of a regulation are so important that parliament must be directly involved in its adoption (the primacy of the legislature);

- designation 17, which provides that the main elements are at least the scope and structural elements of a regulation;

- instruction 18, which stipulates that any delegation of regulatory power must be limited as concretely and precisely as possible in the delegating regulation;

- instruction 19, which stipulates that any delegation of the power to adopt generally binding regulations to a minister must be limited to regulations of an administrative nature, elaboration of details of a regulation, regulations that require frequent amendment or regulations that it is foreseeable that they may have to be adopted with great urgency. A choice for (sub)delegation to a ministerial regulation with general effect must also be explicitly justified in the explanatory memorandum (instruction 19, sub a). Delegation to a minister is only allowed if it concerns the incorporation in Cura9ao legislation of international regulations that, except for minor points, do not leave room for the legislator to make choices of a policy nature (instruction 19, sub b);

- designation 25, which provides that a higher regulation is not permitted to provide that it be amended by lower regulation. This does not apply when it concerns adjustments of amounts, rates and percentages according to a fixed system.

2 °. Review of the draft with directions 15, 17, 18, 19 and 25 of the Awr

- Directions 15 and 17 (the primacy of the legislator)

Assessment of article 4.1, paragraph 1, of the draft in relation to directions 15 and 17 shows that as far as the scope and structural elements are concerned, the primacy of the legislator is at stake. The article in question stipulates that non-profit games other than the lottery, bingo and ban ku ne can be designated as games of chance by or pursuant to a national decree containing general measures. This provision is in conflict with directions 15 and 17 because it concerns a main element in which the States, for its determination, must be directly involved.

- Designation 18 (concrete and precise delimitation in delegating legislation)

In a number of cases, the draft does not take into account indication 18 because the regulatory power is delegated imprecisely and not concretely. Examples include:

- article 4.1, twelfth paragraph: by or pursuant to national decree, containing general measures, further rules may be laid down with regard to this article. Article 4.1 contains in addition to this article eleven paragraphs regulating different subjects. The relevant

delegation provision is insufficiently concrete and precise and is therefore not in accordance with instruction 18;

- Article 5.3, paragraph 8: by ministerial regulation with general effect further rules can be

rules in relation to the provisions of this article. The delegation provision is also in this case insufficiently concrete and precise, which results in conflict with instruction 18.

- Designation 19 (sub)delegation to a minister

The draft contains delegation provisions that make it possible to sub-delegate authority delegated to the government to a ministerial regulation with general effect. These provisions have the wording "by or pursuant to national decree, containing general measures. According to the Council, various subjects do not lend themselves to (sub)delegation to a ministerial regulation with general effect because they do not concern (1) regulations of an administrative nature or (2) elaboration of details of a regulation, (3) or regulations that often require amendment or (4) regulations of which it can be foreseen that they may have to be established with great urgency. The choice for (sub)delegation to a ministerial regulation with general effect must also, in accordance with instruction 19, be expressly justified in the explanatory memorandum, which was not done in this case. The aforementioned article 4.1, paragraph 1, opening words, can serve as an example in this respect.

This subsection stipulates, as previously indicated, that other non-profit games than the lottery, bingo and ban ku ne, can be designated as games of chance by or pursuant to a national decree containing general measures. This means that the admission of other non-profit games as games of chance could possibly be determined by ministerial regulation with general effect, which according to the Council is not in accordance with instruction 19.

- Clue 25

The Board observes that in the following cases indication 25 has not been complied with:

- Articles 5.19, ninth paragraph and 5.20, sixth paragraph: the amounts mentioned in these articles can be changed by or by virtue of a national decree containing general measures. This is contrary to instruction 25, unless the change takes place according to a fixed system. This system serves in that case as a basis for the amendment. Since no fixed systematics are included in articles 5.19, ninth paragraph and 5.20, sixth paragraph, these delegation bases are not in accordance with instruction 25;

- article 15.3, part b: this adds a new part, part e, to article 2c of the National Ordinance Identification on Services (hereafter: LID). The last sentence of the newly proposed subsection e reads as follows: "The amounts mentioned in the previous sentence section may be adjusted by ministerial regulation with general effect." This adjustment does not take place according to a fixed system. For this reason, the newly proposed subsection e in Article 15.3(b), in Article 2c of the LID, does not conform to instruction 25.

3 °. Conclusion and advice.

The draft contains delegation bases that are not in accordance with the relevant directions of the Awr.

The Council advises the government to again test the de/egation bases in the draft against directions 15, 17, 18, 19 and 25 of the Awr and to bring the draft and the explanatory memorandum in line with these directions. In doing so, the Council advises the government to include a fixed system for the amendment of the abovementioned amounts in articles 5.9, ninth paragraph, and 5.20, sixth paragraph, as well as in the new part e in article 15.3, subsection b, in article 2c of the LID, or to delete these articles or this part of the article.

b. Nag lower regulations to be adopted

By virtue of various articles in the draft, lower regulations must be adopted. The Council points, among other things, to articles 4.1, first and third paragraph, 5.8, third paragraph and 6.2, eighth paragraph. The request for advice to the Council was not accompanied by drafts of lower regulations.

The Council advises the government not to bring this National Ordinance into force until after the required /agreement/ legislation has been adopted.

4. The gaming authority also an independent administrative body

a. Policy regarding the establishment of an independent administrative body

The draft designates a gaming authority as an independent administrative body (article 12.1, first paragraph, of the draft). That article provides that the CGA has the task of implementing the rules established by or pursuant to this National Ordinance, as well as tasks assigned to it by or pursuant to other national ordinances. However, the explanatory memorandum contains no explanation explaining the considerations underlying the establishment of the independent administrative body. The first consideration in the preamble of the draft mentions an independent expert body that will be charged with the enforcement of the rules regarding games of chance. Having specific expertise regarding games of chance in the broadest sense as well as preventing the independent gaming authority from being (politically) influenced should, according to the Council, be the main reasons for the establishment of this gaming authority.

The Council has advised the government several times to formulate policy for the establishment, organization and management of independent administrative bodies.5 This policy must be unambiguous and should be consistently and uniformly implemented to prevent unwanted differences arising between independent administrative bodies, among other things regarding financing, design, organization and management. The Council notes that no such policy has yet been formulated by the government.

The Council advises the government to once again establish a (legal) framework that serves as an assessment framework for the financing, setting up/ling, organization and management of independent administrative bodies.

b. The establishment of the gaming authority as an independent administrative body in accordance with article 111 of the State Regulation of Cura<;:ao

Article 111, first paragraph, of the State Regulation of Curac;ao (hereinafter: State Regulation) stipulates that an independent administrative body "may be established by national ordinance" and does not stipulate that it is "designated". For an example, the Council refers to article 2.1 of the National Ordinance on Competition.6

The Council advises the government to amend article 12.1 of the draft.

c. The continuation of the Gaming Control Board Foundation as gaming regulator under a new name.

The explanatory memorandum states that the Gaming Control Board Foundation (hereafter: SCI), is currently the regulator of compliance with AML/CFT laws and regulations for all gaming providers, including out-of-state hazard game providers. In addition, according to the explanatory memorandum, with the introduction of this National Ordinance, the GCB will continue these powers under a new name: the Curac;ao Gaming Authorithy (the CGA mentioned earlier in this opinion).

5 Sr, for example, the Council's opinion dated March 25, 2015 (RvA no. RA/21-14-LV) on the ont erplan country ordinance on competition.

s P 2016, no. 16.

The SCI is a privately incorporated organization. The explanatory memorandum states that it has been chosen to continue enforcement and licensing in the field of gaming in private law form as CGA (explanatory memorandum, pages 4, third text block, 8, fourth text block). In the draft, the term "CGA" is defined in Article 1.1(a) as "the Curac;:ao Gaming Authority Foundation.

Both the draft and the explanatory memorandum lack any provision or explanation as to how the CGA will 'continue as CGA' as a regulator, and therefore as an independent administrative body. Apart from this, the Council lacks an explanation for what reason the duties and powers of the CGA are not expanded and the CGA is established as an independent administrative body instead of 'passing into' the GCA.

In response to comments by the Curac;:ao Social and Economic Council (hereafter: SER), the following has been included in the explanatory memorandum (page 13, second text block): At present it has been chosen to maintain the SCI as regulator/supervisor for reasons as mentioned above. The transition from SCI to CGA is less drastic'.

It is not clear to the Council whether the SCI will remain in place after the 'emergence' of the GCA. In the absence of information about this in the draft and explanatory memorandum, the Council believes the following is possible:

i. The draft is modified to rename the SCI as "CGA" in the draft. The adjustments would then be as follows:

Article 1.1(a) of the draft would read as follows:

'a. Curai;ao Gaming Authority, hereinafter CGA: the Gaming Control Board Foundation, referred to in article 12.1, first paragraph;', and

Article 12.1, first paragraph of the draft will read as follows:

'1. The Gaming Control Board Foundation shall be established as an independent administrative body as referred to in article 111, first paragraph, of the State Rege/ing of Curac;;ao and shall have the task of implementing the rules laid down by or pursuant to this National Ordinance, as well as tasks concerning gaming that have been assigned to this independent administrative body by or pursuant to other national ordinances.'

It must be prevented that the CGA will have to carry out, as it were, unlimited implementation of tasks assigned to it by or pursuant to other national ordinances, as currently expressed in article 12.1, paragraph 1, of the draft. The Council believes that this should be limited. The delimitation has already been incorporated in the wording above.

ii. A new foundation will be established, namely the Curac;:ao Gaming Authority Foundation, to which the staff of the SCI will be transferred. In that case, the outline of the organizational structure will have to be known already now, assuming an expansion over the current capacity of the SCI (explanatory memorandum, page 10, third block of text). The Council believes that this should be done on the condition that all SCI staff can transfer to the CGA in their current positions. Indeed, the staff of the SCI have been promised that the existing rights and obligations of the SCI will pass to the CGA by operation of law. This includes the rights and obligations of the SCI then arising from employment contracts with its employees, collective bargaining agreements or legal status regulations, while retaining all rights accrued and acquired for the benefit of the employees, including pay, primary and iecundary conditions, seniority, pension, insurance and the like. According to the 1/Minister of Finance, an explicit transitional arrangement for this would be

included in the National Ordinance.7 The Council notes that no such transitional arrangement was included in the draft and that this should still be done. Also in the event that the SCI is converted into the GCA, the above applies.

The Council advises the government to adjust the draft and the explanatory memorandum.

d. The (financial) independence of the independent administrative body also gaming authority.

1 °. A/General

The structure and composition of the independent administrative authority

Pursuant to article 111, second paragraph, of the Cura 9ao Constitution, not only the powers, but also the organization and composition of an independent administrative body are regulated by national ordinance.8 The draft, however, does not contain anything about this, for which reason the draft is in conflict with the Constitution.

The Council advises the government to amend the draft so that it complies with the requirement in Article 111, second paragraph, of the State Regulation regarding the establishment and composition of an independent administrative body.

Country package and FATF recommendations.

The government's choice of the legal form of a "foundation" as an independent administrative body has implications for its supervision and control because the board must also serve the interests of the legal entity. In this regard, the design and composition of the independent administrative body also known as the gaming authority must also take into account section H.19 of the National Package, which assumes that the gaming regulator must be independent. In the limited review of the LOK by the Ministry of Justice and Security of the Netherlands dated May 19, 2023, reference 4007416, (hereinafter: Memorandum) it has been emphasized that with an independent regulator is meant "independence of the regulator primarily in relation to appointments to the Board of Directors and the Supervisory Board. It is important to note that the Minister does not decide on the appointment or dismissal of one or more directors or the amendment of the articles of association.9 The Memorandum further states that the independence of the supervisor is insufficiently guaranteed in the draft and is not in line with the National Ordinance on Corporate Governance in all respects. The Council endorses this conclusion.

Since both the Memorandum and the FATF recommendations10 assume that the gaming authority is independent, the organization and composition of the CGA as such will have to be regulated by national ordinance, after which it will have to be included in the statutes of the CGA.

The Council advises the government to amend the draft.

Appointment of board members

The Council is of the opinion that profiles should be drawn up for the members of the CGA Board of Directors, as well as for the members of the Supervisory Board. For the appointment of board members, the Council proposes that a binding nomination be made for each member by an independent body. An example can be found in Article 4

7 Letter dated August 26, 2021 from the Minister of Finance addressed to the employees of the SCI (case number 2021/026579).

8 See also Prof. Dr. A. van Rijn, Handboek Caribisch Staatsrecht, Boom juridisch Den Haag 2019 (page 591) and instruction 99, second paragraph, of the Awr.

9 See d Note, page 7, item 5.

,TF- recommendations 1 (being able to operate free of outside influence) and 28, interpretive note to endation 28, focus number 4 (financially independent).

of the articles of incorporation of the Gaming Control Board Foundation dated April 19, 1999 (hereinafter: Articles of Association SCI 1999). According to said article the board members were appointed by the minister after a binding nomination by the Bank of the Netherlands Antilles (read: the Central Bank for Cura<;:ao and Sint Maarten), the Public Prosecutor and the Chamber of Commerce and Industry in Cura<;:ao. In any case it must be provided that if the Minister does not appoint a nominated board member, this will be provided for in another way, so that the board of directors is always manned. Another example can be found in article 2.2 ff. of the National Ordinance on Competition.

The establishment of profiles can be done by national decree containing general measures, for which a legal basis must be included in the draft.

The Council advises the government to amend the draft and the explanatory memorandum. 2 ° The financial (in)dependence

The current financial position of the GCB as supervisor versus its new position as gaming authority

Pursuant to the Island Ordinance Casinowezen Cura<;:ao (hereinafter: ECC) the GCB is charged with levying and collecting license fees and other monies. These are remitted to the Recipient withholding the amount due to the GCB as expense allowance according to the ECC. To this extent, the SCI is financially independent.

The Council refers again to the Statutes of the GCB 1999 (article 3) on the basis of which the deductions from the gaming industry less the remittances to the Island Territory of Cura<;:ao (read: the country of Cura<;:ao) in accordance with legal and contractual regulations, belong to the assets of the GCB. See oak paragraph 1307 of MER 2012 regarding the financial independence of the SCI.11

In the draft, it is not the CGA but the lnspector of Taxes (hereinafter: lnspector) and the Receiver who are authorized to levy and collect the due permit fee and other fees for the benefit of the State Treasury. In this regard, the SER points out that in the past, the collection of the license fee from casinos by the Inland Revenue caused problems and the expected revenues from the gaming sector lagged significantly. After the SCI was charged with the collection of this duty, revenues from the gaming sector increased considerably. The SER also points out that the financial dependence of the CGA on the Minister becomes much greater than is currently the case with the GCB.12 Oak in the Nata has made a comment on this, namely that the CGA does not seem to have an earmarked budget of its own, making it appear that it cannot dispose of its own resources sufficiently independently.13

According to the Council, the method of levy and collection in the draft is designed to ensure that the proceeds go into the general resources rather than making this dependent on a payment or transfer from the CGA to the Country. Subsequently, the costs incurred in carrying out the duties of the CGA will be charged to the budget of the Country, in accordance with Article 12.2, fourth paragraph, of the draft. This choice may entail inefficiencies. For this, the Council refers, among other things, to its comments in this opinion on the levy system and the collection of fees and license fees due.

FATF recommendations

The above-mentioned SER opinion on page 26, last text block, refers to the FATF recommendations which require countries to ensure that supervisors,

11 'The supervisory activities of the GCB are funded through thirty-seven and a half percent (37.5%) of the income that Curac;:ao receives from the casino sector. The GCB is completely independent as to how and where these funds are best used.'

12 See subtitle 'Financial independence' in the SER opinion (pages 26-28).

13 See the Note, page 7, penultimate text block.

including at least supervisors of (online) casinos, have sufficient financial, human and technical resources to be operationally independent and autonomous. The government recognizes the FATF recommendations and, in response to the above-mentioned comment of the SER, has changed the organization of the gaming authority and has chosen to maintain the SCI as regulator/supervisor (explanatory memorandum, page 13, second text block).

The current regulator - the SCI - generates its revenue independently and is not financially dependent (on the government). However, the CGA will be financially dependent on the government which means that the CGA cannot independently determine what work will be carried out with what resources, which is a requirement of the FATF.

- Opinion

The Council advises the government to amend the draft and to supplement the explanatory memorandum. The Council also advises the government to ensure that the FATF recommendations regarding the requirement of financial/e independence of a gaming authority are met.

e. Other

1 °. Provision in the event of serious neglect of duties by the gaming authority.

In order to ensure the proper progress of the work, the Council advises the government to include a provision in the draft in case the independent administrative body also of the gaming authority neglects its assigned task.

2 °. 0transfer of assets and archive documents a/so the settlement of pending procedures in the case of a new foundation to be established

- Assets

Should the Gaming Authority be a newly established foundation, not only the transfer of the staff of the GCB to the new foundation will have to be arranged, but also the other rights and obligations of the GCB and its assets will have to be transferred to this gaming authority.

The Council advises the government to regulate the rights and obligations of the SCI and the transfer of assets to the gaming authority in the event a new foundation is established for this gaming authority.

- Archive documents

The Council draws attention to the fact that the 2007 Archives Ordinance (hereinafter: Archieflv. 2007) applies to the SCI since this foundation is a government body within the meaning of article 1, section b, under 2° of the Archieflv. 2007. It is emphasized that in the event a new foundation is created, article 6, paragraph 1 of the Archieflv. 2007 must be taken into account, among other things. This article stipulates that a provision about the archive records must be included in a regulation whereby a government body is dissolved, merged or divided, or whereby one or more tasks of a government body are transferred to another government body.

The Council advises the government to observe the Archiveslv. 2007 in the event that a new foundation is established for the purpose of the chancellor/authority to be established,

5. Levy and collection system of the licence fee due and other fees

of Articles 5.19 and 5.20 of the draft, various fees and

:s fees payable in the cases specified in those articles. These are

The Council advises the government to lead it there that with the necessary diligence the legislative procedure regarding a national ordinance containing a/general rege/s of administrative law for Cura<;ao be initiated.

9. The financial paragraph

a. Implementation of the National Ordinance and human capacity CGA

In section '2. Curacao Gaming Authority ("CGA")' of the explanatory memorandum, it is stated on page 8 that the GCB has deliberately expanded and updated knowledge, expertise and practical experience within its organization with a view to expanding its duties to the supervision of all types of gaming. In addition, the SCI is investing in staff knowledge. Furthermore, section '4. Advice Social and Economic Council' of the explanatory memorandum on page 12 indicates that, according to the government, an implementation process is underway to strengthen the operational and personnel capacity of the SCI. To this end, a plan of action would have been drawn up as early as media 2022, which serves as a starting point in this regard.

It is essential that from the entry into force of the National Ordinance on Games of Chance (hereafter: LOK) the CGA must have sufficient personnel capacity, all the more so because pursuant to the transitional regulation - article 15.1, third paragraph - existing businesses20 on Curacao already have to apply for a license within three months after the entry into force of the LOK. The latter may create an enormous workload for the CGA.

The Council advises the government to indicate in the explanatory memorandum whether the preparation regarding the filling in of the personnel capacity at the CGA is on schedule and calculated for the expected workload of especially the initial phase.

b. The financial consequences for the Country and the CGA

According to the section '3. Financial consequences' of the Explanatory Memorandum (page 10), the CGA organization will have to be substantially expanded compared to the SCI organization in the light of the present modernization.

The initial costs for the CGA regarding the expansion of the supervision and enforcement of online gaming, extrapolated on the basis of previous budgets of the GCB, are estimated by the GCB at approximately NAf 20 million.

As far as the expected revenues are concerned, the government, based on a conservative estimate, assumes 400 licensees per year which will generate an amount of approximately NAf 40 million annually for the State Treasury.

Since the sum of NAf 20 million relates to the expansion of the tasks performed by the CGA in comparison with the GCB, the Council believes that the regular operating costs of the GCB, which will of course be transferred to the CGA, should also be taken into account. Based on the above, the total costs of the CGA, according to the Council, amount to: NAf 20 million (due to the expansion of its duties) plus the regular operating costs of the SCI to be taken over. According to the Council, it is not clear from the explanatory memorandum whether the costs associated with the expansion of the duties - of NAf 20 million - relate to a whole year or something else. Nor is it clear from the explanatory memorandum which part of the NAf 20 million is a one-off and which part is a structural increase in the annual operating costs of the SCI. The Council wishes to note that if the aforementioned amount includes oak expenses related to investments to be made due to the implementation of new tasks, it is to be expected that the expenses (on an annual basis) will be at a lower level in the following years.

20 Who in the framework of their own operation offer hazard games on the international market on the basis of an agreement with the holder of a license granted pursuant to article 1 of the CAA.

The Council advises the government to clarify the amount of NAf 20 million in the financial section of the explanatory memorandum and also to discuss the expected additional structural costs.

Furthermore, as is generally known, the introduction of the LOK is considered by the government or Minister of Finance as an instrument with great revenue-generating potential for the government. As indicated earlier, the government - with a conservative estimate of the annual income from the LOK for the benefit of the State Treasury - assumes NAf 40 million.

Since the implementation of the LOK will also be accompanied by high costs, the Council advises the government to state in the explanatory memorandum the expected amount that this national ordinance will raise/provide to the National Treasury per sa/do on an annual basis. Furthermore, the Council advises indicating how the (expected net) income from the LOK will relate to the current license fees and other monies collected by the SCI.

c. Financial accountability

Article 111(4) of the State Regulations requires that the supervision of an independent administrative body be provided for in the Institution Ordinance.21 The Council notes that the draft does not provide for this, which is contrary to the State Regulations. In particular, it lacks provisions regarding the financial accountability of the CGA to the Minister of Finance. Such provisions already apply to other government entities and could serve as an example in this regard. For this, the Council refers for example to article 2.23 of the National Ordinance on Competition.

The Council advises the government to adjust the draft in such a way that it complies with the requirement, contained in article 111, fourth paragraph, of the State Rege/ing, that the supervision of an independent administrative body is regulated in the National Establishment Ordinance.

10. Information

The Council draws the attention of the government to the fact that all involved, including the above mentioned stakeholders and citizens, should be informed as timely as possible, before the LOK comes into force, about the content and consequences this National Ordinance will have for them. Stakeholders should be given ample time to prepare for this. The Council advises the government to indicate in the explanatory memorandum when and how the information on the draft will be provided.

11. Previously issued advice of the Council

The Council has previously, on August 19, 2016, issued an opinion on a draft State Gaming Ordinance22. However, the draft currently before it has been assessed on its own merits.

II. lndependent comments.

1. The draft

a. The preamble

In the preamble no consideration is given to the fact that the introduction of new rules for remote gambling is an important motive for the adoption of this

21 See also Prof. A. van Rijn, Handboek Caribisch Staatsrecht, Boom juridisch Den Haag 2019 (page 592) and instruction 9, fourth paragraph, of the Awr.

22 RvA no. RA/ 2-16-LV (case numbers 2015/062171, 054770 and 055771).

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national ordinance (explanatory memorandum, page 2, third text block). The preamble further lacks a recital on the establishment of an independent administrative body.

The Council advises the government to amend the recitals of the draft.

b. Definitions (article 1.1)

1 °. Problematic gambling behavior (part h)

Article 1.1(h)(ii) of the draft stipulates that a person who experiences or exhibits problematic gambling behavior qualifies as a vulnerable person. The Council believes that further definition of what is meant by "problematic gambling behavior" is needed.

The Council advises the government to amend article 1.1 of the draft.

2 °. Financial administration (part h)

Article 1.1(h)(v) of the draft provides, inter alia, that a vulnerable person is a person who is under any type of financial administration. Among other things, a cognizable vulnerable person may not be given the opportunity to participate in games of chance in accordance with Article 1.4(d) of the draft. It is not known what "under any kind of financial custody" means. The explanatory memorandum (page 17, first two text blocks) does not explain this.

The Council advises the government to define the term "financial regime" in article 1.1 of the draft.

3°. Net proceeds related to a nonprofit game (part I).

Pursuant to article 1.1, part I, of the draft, the entire net proceeds of a non-profit game benefit a social, social or ideological purpose. It is not clear whether net proceeds should be understood to mean the difference between the proceeds of the sale of lottery tickets and the prizes paid out, and whether, for example, organizational and promotional costs should also be included.

The Council advises the government to clarify the term "net proceeds" in the explanatory memorandum.

4 °. Non-profit organization (part m)

It follows from the definition of "non-profit organization", read in conjunction with the definition of "non-profit game" in part I of article 1.1 of the draft, that a political party is eligible to organize a non-profit game of chance as referred to in chapter 4 of the draft. However, the definition in the FATF recommendations of "nonprofit organization" does not mention an organization with a "political purpose. "23

The Council recommends that the government consider whether the FATF Recommendations permit political parties to organize nonprofit gaming, within the meaning of Chapter 4 of the Draft, and, if necessary, amend the Draft.

c. The gaming license. sublicenses and sanctions (articles 1.1 and 1.2)

1 °. The definition of "gaming/license

According to part f of article 1.1 of the draft, the term 'gaming license' means a license to organize or give the opportunity to participate in a game of chance. In the opinion of the Council, the hyphen 'or' in relation to 'giving the opportunity to ...' is open to multiple interpretations. For it is not excluded that in addition to organizing a game of chance oneself, there is also the right to give others the opportunity to organize a game of chance.

23 Best practices paper on combating the abuse of nonprofit organizations, June 2015, page 7 (in connection with FATF Recommendation No. 8).

to organize a game of chance to participate in it. According to the Council, there is no certainty that this definition does not allow sublicensing.

The Council advises the government to explain in the explanatory memorandum why it is assumed that, with the definition of "gaming license" in section f of article 1.1 of the draft, no sublicenses will be granted and, if necessary, to amend the draft.

2°. Sublicenses, now and in the future?

Article 3(1) of the current LBH provides that the online gaming license is not transferable. It is common knowledge that a large number of sublicenses exist anyway. On page 18, third paragraph from the bottom, of the explanatory memorandum it is stated that the granting of sublicenses to third parties, under the license to offer remote games of chance, is not allowed pursuant to article 1.2, third paragraph, of the draft. The said article stipulates that it is prohibited to transfer a gaming license, or to conclude an agreement on the basis of which that license is used by a person other than the licensee. In view of existing practice, the Council believes that the supervision of compliance with this provision must be taken up more vigorously in order to prevent the granting of sublicenses. The Council considers it desirable that the explanatory memorandum explain why the government assumes that with article 1.2, third paragraph, of the draft, sublicensing will be a thing of the past and how it will be supervised in practice.

The Council advises the government to supplement the explanatory memorandum.

3 °. Penalties for violation of article 1.2, paragraph 3, of the draft

In case of violation of article 1.2, third paragraph, of the draft, the CGA is authorized to impose an order under penalty or an administrative fine (articles 13.5, first paragraph, and 13.32, second paragraph, of the draft). The Council believes that violation of the said provision should also serve as a basis for revoking the gaming license. To achieve this goal, the second paragraph of Article 2.4 of the draft should be amended.

In addition to the sanction of revoking the gaming license, the Council believes a basis should also be created for penalizing the gaming license holder for transferring or entering into an agreement to that effect. Moreover, the "sublicensee" should also be punishable for transferring or concluding the agreement. To this end, the first paragraph of Article 13.41 of the draft should be amended.

The Council advises the government to amend the second paragraph of Article 2.4 and the first paragraph of Article

13.41 of the draft to be adjusted.

4 °. Opportunities to organize games of chance that are not given on a business basis l Pursuant to article 1.2, first paragraph, of the draft, there is a prohibition to organize or provide opportunities for the organization of games of chance in or from Curac;:ao without a gaming license, or otherwise pursuant to statutory basis. This article paragraph does not apply to occasions that are not open to the public or that are "not given on a business basis. See the fourth paragraph of Article 1.2 for this purpose. What is meant by 'not given on a business basis' is not clear from the draft and the explanatory memorandum. It is also questionable whether or not the word 'given' should be replaced.

Since the explanatory memorandum to article 1.2, paragraph 4, of the draft repeats what is included in this article paragraph (page 18, last text block), the Council advises the government to supplement the explanatory memorandum and, if necessary, to amend the draft.

d. Kanss

Pursuant to article 2.1, fifth paragraph, of the draft, a gaming license is granted for an indefinite period of time, unless otherwise stipulated in the LOK. The explanatory memorandum states

that this reduces the administrative burden for both existing licensees and the CGA. This is because the constant review of a license application is not necessary because the licensees are constantly subject to the supervision of the CGA (explanatory memorandum, page 21, fourth text block).

The Council believes that the rationale for granting gaming licenses indefinitely is not supportable. Because no exception has been made in the draft for remote gaming licenses, they will be issued indefinitely.

The Council believes that gaming licenses should be issued for a fixed period of time as is currently the case. This period of validity need not be three years but could cover a longer period. In any case, each gaming license should be periodically reviewed in full content against the existing regulations. The reasons for this are as follows.

The draft contains new, modernized regulations that all stakeholders will have to deal with and experience for the first time. In the case of a request for a new gaming license, compliance with the set conditions must usually be demonstrated by means of documents. For this reason, the mandatory substantive reassessment of (all aspects related to) a gaming license has a preventive effect compared to the continuous supervision by the gaming authority. Periodic substantive assessment of the gaming license holder and the game of chance it offers is therefore necessary.

As far as remote games of chance are concerned, the explanatory memorandum also explains that remote games of chance involve greater risks than traditional games of chance. In order to reduce the risks associated with online games of chance and other games of chance, the authorization of their operation must be subject to the necessary safeguards (explanatory memorandum page 2, last text block and page 3, fourth text block). The statement in the explanatory memorandum in combination with these new regulations forces a thorough periodic, substantive assessment of the operation of the gaming licensee.

Furthermore, safeguarding the international reputation of Curac;ao as a gaming industry country is one of the objectives that was particularly in mind when the draft was prepared (explanatory memorandum, page 3, fifth text block, last sentence). Also against this background, it is not desirable to issue remote gaming licenses for an indefinite period of time.

The Council advises the government to reconsider article 2.1, fifth paragraph, of the draft.

e. The grounds for refusal {article 2.2).

1°. Terminotogy 's/eutel person' versus 'the person who determines or co-determines the be/eid'.

Part a of the second paragraph of article 2.2 of the draft stipulates that a gaming license will in any case be refused if the identity, existence and involvement of, among others, those who determine or co-determine the policy has not been established. According to the explanation of this article (page 22, first sentence of the penultimate paragraph), the identity, existence and involvement of key persons, among others, must be established.

The term "key person" is defined in section p of article 1.1 of the draft as

'a natural person who, in name or in fact, indirectly or directly controls/or exercises significant influence over the management, assets or the definition or implementation fan the operational policy of the licensee'.

The Council considers that in part a of the second paragraph of article 2.2 of the draft, the term 'key person' can be used to replace the phrase 'those who determine or co-determine the policy'.

The Council advises the government to adjust part a of the second paragraph of article 2.2 of the draft. In doing so, attention should also be given to parts b and f of the second paragraph of article 2.2, to the second paragraph of article 5.1 and to any other articles in the draft in which the term "key person" should be used instead of "those who determine or co-determine the policy". Afthe government is of the opinion that this is not the case, the explanatory memorandum should justify why a term other than 'key person' should be used.

2°. Refusal of permits and offenses committed in other jurisdictions.

According to the explanatory memorandum to subparagraph a of the second paragraph of article 2.2 of the draft, when assessing an application for a gaming license, it may also be of importance whether and for what reasons previous gaming license applications by the applicant in other jurisdictions have been refused. The nature and seriousness of any violations by the applicant of gaming-related rules of other jurisdictions may also be of interest. The question is how this information will be obtained by the CGA, also from the perspective of fundamental rights, such as the right to privacy, and whether, for example, the conclusion of bilateral or multilateral treaties will be necessary.

The Council advises the government to supplement the explanatory memorandum on this point.

3°. The chosen percentage

According to part b of the second paragraph of Article 2.2 of the draft, a gaming license will not be granted to a beneficial owner with an interest greater than 40 percent, to a holder of a qualified participation with an interest greater than 40 percent, or to the person who determines or co-determines the policy, if these persons have been convicted, irrevocably or otherwise, in the ten years preceding the application for any crime committed for the purpose of obtaining unlawful advantage.

It is not clear for what reason a percentage of 40 percent was chosen.

The Council advises the government to supplement the explanatory memorandum.

4°. The beneficial owner and the qualified participation

Part b of the second paragraph of Article 2.2 of the draft stipulates, insofar as relevant, that a license will be refused if a beneficial owner or a holder of a qualified participation who has more than a 40 percent interest in the legal entity has been (irrevocably) convicted of a crime. According to part q of article

1.1 of the draft, a beneficial owner is an individual who ultimately owns or controls a legal entity through directly or indirectly holding more than ten percent of the shares, voting rights or ownership interest in that legal entity. A qualifying shareholding, according to section c of article 1.1 of the draft, is a direct or indirect interest of at least ten percent of the issued share capital or a similar interest or the ability to directly or indirectly exercise at least ten percent of the voting rights or a similar control.

It is not clear to the Council how these two provisions relate to each other. In other words, it is unclear whether a license can be refused if a beneficial owner or holder of a qualified participation holds an interest of less than 40 percent in the legal entity.

The Council adf.,is the government to provide clarity by amending the draft, and if necessary, the memoriJ of explanation.

5°. A conviction in the ten years preceding the application.

A permit is refused, according to subsection b of the second paragraph of article 2.2 of the draft, if any of the persons referred to therein has been convicted of a crime, whether or not irrevocably, in the ten years preceding the application. It is not clear for what reason a ten-year period was chosen. This is in view of the fact that, for example, a criminal record or a criminal card can be deleted or destroyed from the criminal record after no more than eight years24.

The Council advises the government to adjust the draft or to give reasons in the explanatory memorandum.

6°. Licensing rights

Article 2.2, second paragraph, subsection d, of the draft stipulates that an application for a gaming license will be refused if any license fees associated with the application have not been paid in full. The Council assumes that at the stage of submitting an application, a license fee is not yet payable25 but a fee for processing the application for a license in accordance with Article 5.19 of the draft.

The Council advises the Government to consider whether article 2.2, second paragraph (d) of the draft

should be amended.

7°. The obligation to pay taxes and contributions.

The gaming license will be refused on the grounds of article 2.2, second paragraph, subsection e, of the draft if there are outstanding tax and contribution debts with the Ontvanger or a payment schedule in the matter which are not properly fulfilled. This article does not specify to whom the obligation applies. Indeed, in parts a, b, fen j of article 2.2., second paragraph, of the draft, others than the applicant are subject to this article. In contrast, parts g, h, i and k of article 2.2, second paragraph apply only to the applicant for a gaming license. The explanatory notes to article 2.2, subsection 2(e) (page 23, fifth text block, last sentence) state that for practical reasons it was chosen to look only at the legal entity applying for the license in this test. The Council refers to instruction 158 of the Awr pursuant to which this should be apparent from the draft itself, which should still be done.

The draft also fails to state how it must be demonstrated that there are no tax and contribution debts, or that the outstanding tax and contribution debts have not been disputed, because a list of debtors from the Tax Collector's Office is often not conclusive.

The Council advises the government to amend article 2.2 of the draft.

8°. The tax and contribution debts at other institutions.

Part e of the second paragraph of article 2.2 of the draft stipulates, insofar as relevant, that the gaming license will be refused if there are outstanding tax and contribution debts with the Ontvanger. The Council is of the opinion that not only tax and premium debts owed to the Ontvanger but also, for example, to the Social Insurance Bank should be taken into consideration.

The Council advises the government to adjust the draft on this point.

9°. Alternative dispute resolution

Article 2.2, second paragraph, item i, of the draft stipulates that a gaming license will be refused if the applicant does not have a CGA-approved form of

24 See art!cels 4, 5 and 11 of the National Ordinance on the Judicial Documentation and on the Declaration of the ted amount (P.B. 1968, no. 213).

indebtedness of permit fee article 5.20 of the draft.

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alternative dispute resolution. Pursuant to Article 2.4(1)(h), the gaming license may be revoked if the gaming licensee no longer possesses one. Article 5.3, paragraph 7 of the draft requires the gaming licensee to offer participants in certain cases the opportunity to make use of this form of dispute resolution, at the expense of the gaming licensee. Because this form of dispute resolution is not defined or described in the draft, it is not clear to the Council what is meant by this and oak what the procedure is to be followed in case this is used. This is important for both the gaming licensee and the entrapped participant. No explanation is given in the explanatory memorandum. The explanatory memorandum to article 5.3 of the draft (page 32, first text block) states that after a rejection of a claim by the provider, players can choose to make use of Alternative Dispute Resolution (ADR) or go to court immediately.

The Council advises the government to include in the draft what an alternative dispute resolution to be approved by the CGA must (at least) meet and what procedures must be followed. It is also recommended that the explanatory memorandum be supplemented.

f. Suspension of the gaming license (article 2.3)

1 °. Include grounds for suspension in the /rules.

Article 2.3 of the draft stipulates that a gaming license may be suspended in whole or in part based on serious suspicions that grounds exist for revoking the license. The second paragraph of instruction 115 of the Awr stipulates that the grounds that may or must lead to, among other things, the suspension of a decision by way of sanction must be specified in the national ordinance.

The Council advises the government to amend article 2.3 of the draft.

2°. The suspension period

The explanatory note to article 2.3 of the draft indicates that the period of suspension may not be too long. The Council believes that in order to prevent arbitrariness, a period expressed in weeks or months should be included in article 2.3 of the draft.

The Council advises the government to amend article 2.3 of the draft.

g. The withdrawal borders and the absence of a sanction (articles 2.4 and 2.5)

1 °. Violating provisions.

Under Article 2.4(1)(a) of the draft, a gaming license may be revoked if the gaming licensee violates or has violated the provisions under or pursuant to the LOK.

The Council advises the government to mention in article 2.4, paragraph 1, part a, of the draft the concrete

provisions that may lead to the revocation of a gaming license.

2°. The suspicion or serious grounds for suspicion of the CGA.

A gaming license may be revoked pursuant to part c of the first paragraph of Article 2.4 of the draft if the CGA suspects or the CGA has serious reasons to suspect that the gaming licensee or a key person, in short, is suspected of violating the LOK or the Penal Code. The Council lacks justification in the explanatory memorandum about the requirement "a suspicion or serious reasons to suspect the CGA. The explanatory memorandum should address the cases that may give rise to a suspicion and how it should be established that there is a reason for withdrawal.

The Council advises the government to amend the explanatory memorandum.

3°. lntrekkinl/t due to non-compliance with other legislation

offering remote sports betting in addition to remote casino games (explanatory memorandum, page 26, third text block from below). In that case, Articles 2.1, second and third paragraphs, of the draft apply mutatis mutandis, in accordance with Article 2.6, fourth paragraph, of the draft. The latter implies that the permit holder must complete a model application form for the request to amend the permit and, in addition, is obliged to provide all information promptly and truthfully through the application form.

The Council notes that there are no substantive requirements, based on provisions in the draft, for an application to amend a gaming license. The draft does not include oak how the CGA reaches a decision on a request for amendment. According to the Council, this could mean, for example, that the offer of games of chance that has been laid down in a gaming license could be amended at the request of the gaming licensee, without the CGA being obliged under the National Ordinance to verify whether all legal conditions have been met. A gaming licensee can thus request to amend its gaming license by expanding the range of games to include remote gaming. The Council believes that the draft must include substantive grounds for review on the basis of which a request to amend a gaming license will be assessed. It is also possible to declare the relevant provisions or articles included in the draft applicable to a request for amendment.

The Council advises the government to amend article 2.6 of the draft.

i. The register (article 3.1)

1 °. Naming and shaming.

Article 3.1 of the draft shows that the intention is to bring gaming licenses, supplier licenses and irrevocable sanction decisions into the public domain by including them in a register that will be public and accessible to all via the CGA website. Public disclosure of sanction decisions is an increasingly emerging practice of "naming and shaming. "26

Disclosure of the aforementioned decisions can have far-reaching consequences for the companies involved, infringe on the privacy of individuals, and lead to significant economic and reputational damage. For this reason, before allowing publication of sanction decisions or "naming and shaming", the implications and consequences for all parties involved, including the government, must be carefully considered. Account must be taken of the fact that case law exempts certain data from disclosure.27 These include business and manufacturing data that have been confidentially disclosed to the government by natural or legal persons, data subject to professional secrecy, and certain personal data.

Balance of interests in relation to fundamental rights

The Council is of the opinion that the far-reaching nature of the disclosure of sanction decisions in particular implies that the disclosure must be the outcome of a balancing of interests in an individual case that can ultimately be reviewed by the court. 28 In such balancing of interests, the principle that a measure should be proportionate to the breach of standards (proportionality principle)29 must be observed, also in

26 See, for example, the Council's opinion dated July 25, 2018 (with reference RA/17-18-LV) on the initiative draft Ordinance amending the Commodities Ordinance (P.B. 1997, no. 334) (Session 2017-2018-125) (plastic carrier bags).

27 See inter alia ECLl:NL:RBROT:2015:3381, ECLl:NL:CBB:2016:169, ECLl:NL:RBR0T:2016:2338 and

ECLl:NL:CBB 2016:435.

ing 121 of the Awr.

ien instruction 12 of the Instructions for Regulations.

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personal data. That national ordinance stipulates, among other things, that there must be unambiguous consent from the data subject (Article 7) and an appropriate level of security in the retention of data (Article 13).

The Council advises the government to amend the draft and the explanatory memorandum.

4°. The categories of sanction decisions made public

According to the fourth paragraph of Article 3.1 of the draft, only the sanction decision to revoke a gaming license and the decision to impose an administrative fine will be included in the register. In other words, only punitive administrative sanctions will be made public. It is not clear for what reason it was chosen not to make the administrative remedial sanctions public.

The Council advises the government to adjust the draft and the explanatory memorandum.

5°. Establishing regulations

Under Article 3.1 of the draft, the CGA will maintain a publicly accessible register listing all gaming and supplier licenses, as well as irrevocable sanction decisions.

The Council advises the government to consider whether it is desirable to include a legal ground/ag in the draft for the establishment of a regulation, inter alia for the purpose of establishing a procedure for compiling the register, appointing an officer to manage the register and a procedure for removing sanction decisions from the register after a certain period of time.

j. The nonprofit gaming {article 4.1)

1 °. Exempt non-profit games

Article 4.1(1) of the draft sets requirements for non-profit games and the third paragraph of Article 4.1 sets requirements for gaming rules and security requirements. Article 4.1(4) of the draft makes an exception to the latter for "exempt" non-profit games. It is not clear to the Council what is meant by 'exempt' non-profit games because it must be assumed that all non-profit games are 'exempt' games of chance. To this end, see the explanatory note to Article 4.1 (page 27, the last two blocks of text and the accompanying heading). The Council advises the government to consider whether the draft and the explanatory memorandum should be brought in line with e/ each other.

2 °. Maximaa/ number of non-profit games of chance to be organized and the maximum turnover

Article 4.1(1) of the draft allows the same non-profit organization to organize a non-profit game of chance a maximum of ten times per year. A non-profit game of chance may not bring in more than NAf 250,000 in turnover. Assuming a lottery with a 50% redemption rate, this means that a non-profit organization could generate a gross profit of NAf 1,250,000.00 per year, which is very high for a non-profit organization. The Council cannot escape the impression that this could be abused.31 It is therefore oak the question on which the maximum number of ten non-profit games of chance to be organized and a turnover of a maximum of NAf 250,000 are based.

The Council advises the government to supplement the explanatory memorandum and, if necessary, to amend the draft.

31 'Nonirofit organizations are particularly vulnerable, and countries should ensure that they cannot be misused' (The FATF Recommendations: International standards on combating money laundering and the financin of terrorism & proliferation, page 13, at paragraph '8. Non-profi!tgajlisations'). <?\

3°. Costs.

Article 4.1 of the draft establishes rules regarding the organization of nonprofit games of chance. According to the fifth paragraph of that article, institutions that organize nonprofit games of chance must register with the CGA. The eighth paragraph of article

4.1, it is prohibited to offer the opportunity to participate in non-profit games of chance if no notification has been made to the CGA at least four weeks in advance. It is likely that the CGA will have to incur or charge costs for the purpose of at least the registration and notification enter implementation of the supervision of these non-profit games of chance. These types of costs are not identified in Articles 5.19 and 5.20 of the draft, as they refer only to gaming and supplier licenses and accreditation. It is not clear what amounts an institution offering nonprofit gaming must reimburse the CGA in connection with the organization of this type of gaming.

The Council recommends that the government amend the draft.

k. The provisional gaming license(Article 5.1).

It follows from the eighth paragraph of Article 5.1 of the draft, insofar as relevant, that the CGA may decide to issue a provisional gaming license pending the investigation in the second phase of the license application. The explanatory note to this article indicates that the provisions established by or pursuant to the LOK shall apply mutatis mutandis to a provisional gaming license.

The Council believes that declaring rules applicable by analogy to the provisional gaming license in light of instruction 158 of the Awr, should not be done in the explanatory memorandum but in the draft itself.

The Council advises the government to amend atticle 5.1 of the draft.

I. The ownership and control structure of the group (article 5.2)

Part b of the second paragraph of article 5.2 of the draft stipulates that the CGA may require information and documents in order to obtain an insight into, inter alia, the ownership and control structure of the group to which the applicant belongs. According to the explanation of this article, such insight clarifies the relationships and responsibilities within the company. In light of the clarification provided in the explanatory memorandum, the Council asks whether the CGA should not rather obtain insight into the, in terms of hierarchical position higher ranking, holding or parent or holding company.

The Council advises the government to create clarity by amending the draft on this point. If an affirmative answer can be given to the above question, then, for the sake of completeness, part b of the second paragraph of article 5.2 of the draft should also be amended.

m. Vulnerable persons (article 5.4)

1 °. Recognizing vulnerable persons.

Part b of the first paragraph of article 5.4 of the draft stipulates that the gaming licensee must implement a policy to prevent vulnerable persons from participating in games of chance. This policy must at least include the manner in which vulnerable persons are identified. According to the explanatory note to this section of the article, it is not so much a matter of identifying every vulnerable person as having a policy if that person is identified. Since this could involve a violation of fundamental rights, such as the prohibition of discrimination and the right to privacy, enshrined in Articles 8 and 14 of the ECHR and in the Twelfth Protocol to the ECHR, the Council is of the opinion that sufficient safeguards must be included in the LOK to prevent this. Moreover, the general principles of proper administration, such as the prohibition of arbitrariness, must also be taken into account.

The Council advises the government to amend the draft and the explanatory memorandum.

2°. The spe/er profile

According to part c of the first paragraph of article 5.4 of the draft, the gaming licensee must also have a policy indicating what measures are taken to prevent unlawful participation or the threat thereof by the vulnerable person. The explanatory notes to this section of the article cite the establishment of a player profile as an example of this policy. The Council is of the opinion that also in this case sufficient guarantees must be included in the LOK to prevent conflict with fundamental rights and general principles of proper administration, such as the prohibition of discrimination, the right to privacy and the prohibition of arbitrariness.

The Council advises the government to adjust the draft and the explanatory memorandum.

3°. The term for exclusion from participation in games of chance

Pursuant to the second paragraph of article 5.4 of the draft, the gaming licensee will exclude the vulnerable person in the case described in that article from participating in the games of chance for a period of at least twelve months. It is not clear why this term was chosen.

In addition, the Council believes that in order to prevent arbitrariness, it should not be left to a gaming license holder to decide how long the period of exclusion will last. In other words, the LOK should not include a minimum term, but a maximum term.

The Council advises the government to amend the second paragraph of Article 5.4 of the draft.

n. Holding virtual assets and conducting digital transactions (Article 5.7) According to Article 5.7 of the draft, a gaming licensee may hold virtual assets and conduct oak cash, giro and digital transactions. The explanatory notes to this article merely state that the third paragraph of article 2.2 of the LOK must be observed. This paragraph indicates what is meant by a responsible offer of games of chance. The Council is of the opinion that also for the benefit of the consumer (participant in games of chance) sufficient guarantees must be included in a national ordinance (or national ordinances) to prevent improper use, disadvantage and damage or criminal activities. For example, the explanatory memorandum lacks an explanation of the position of the Central Bank of Curac;:ao and St. Maarten regarding the holding of virtual assets and the conduct of digital transactions. The government should indicate in the explanatory statement which measures will be included in (new) legal regulations on this subject and within what time frame these will be established.

The Council advises the government to modify the explanatory memorandum and, if necessary, the draft.

amended.

o. Applicability of the National Ordinance on Accountability 2010 (article 5.8)

In the second paragraph of article 5.8 of the draft, the provisions of the National Ordinance Comptabiliteit 2010 regarding the budget and the account were declared applicable by analogy to the management of the guarantee fund. The rules, included in the National Ordinance on Accountability 2010, mainly concern the budget and the annual accounts of the Country. The determination in the second paragraph of article 5.8 of the draft that "provisions given by or pursuant to the National Ordinance on Accountability 2010 are applicable by analogy to the management of the guarantee fund" is, in the opinion of the Council, for that reason too broad. A further specification of which chapters or provisions of the said National Ordinance apply by analogy is considered necessary by the Council.

The Council advises the government to amend the second paragraph of article 5.8 of the draft.

p. The reports (article 5.11)

1 °. The incident reports.

The sixth paragraph of article 5.11 of the draft stipulates that an incident report must be submitted to the CGA within 24 hours of an incident. It is not clear how the sixth paragraph of article 5.11 of the draft relates to the provisions of the General Time Limits Ordinance if the time limit will fall on a holiday or vacation day.

The Council recommends that the government amend the draft.

2°. The periodicity of reporting on player transactions.

According to the seventh paragraph (last sentence) of article 5.11 of the draft, the CGA decides on the form and periodicity of reporting on player transactions. Pursuant to paragraph 9 (c) of Article 5.11 of the draft, "further" rules on the form, the periodicity of submission of said reports and the periods to which the reports relate can be established by ministerial regulation with general effect. According to the Council, clarity should be created regarding the periodicity of reporting on player transactions. In other words, it should be clear from Article 5.11 of the draft whether the GCA or the Minister of Finance will decide on the periodicity of reporting.

The Council advises the government to eliminate the discrepancy between the seventh and ninth paragraphs of article

5.11 to be removed.

q. Key functions (Article 5.13).

1 °. Substance requirement c.q. (creation of) work opportunity

According to Article 5.13(1)(a) and (b) of the draft, gaming licensees must meet certain requirements with respect to the use of local staff. For example, during the first year of operation, a licensee must provide work to at least one (local) key person. As of the fifth year, the number of key persons - taking into account article 5.13, paragraph 6 - should be increased to at least three. lnasmuch as the LOK also seeks to promote employment, the requirements regarding the deployment of local persons - given the not very high level of education of the labor force in Cura<;:ao, the high unemployment rate32 and the scarcity of specific expertise - should be aligned with the supply on the labor market. lmmers, failure to meet the substance requirements or minimal deployment of local key persons - due to tightness in the local labor market - may result in rejection of the application or revocation of the license, resulting in less employment. To promote employment within the gaming sector, the Council believes it is clear that less onerous substance requirements should be imposed (on positions to be filled by local persons).

In view of the above, the Council advises the government to explain in the Explanatory Memorandum the use of key persons in relation to the promotion of employment, or else to make the requirements more stringent by, for example, using FTEs instead of key persons and also linking the number of required FTEs to the size of the organization.

2 °. Definition of 'key functions'.

Article 5.13, third paragraph, first sentence, of the draft provides that key positions may not be held simultaneously by the same person if these positions are considered incompatible with each other due to their nature. What key positions are is not explained in the explanatory memorandum. However, the Council assumes that with key positions are meant

32 Curai;:aodata.cbs.cw/labour indicates for Curai;:ao an unemployment rate of 13.1% in 2022. For comparison, it may be indicated that unemployment in the Netherlands in the first quarter of 2023 was 3.6% and in Aruba s,s%in20b.

intended positions that key persons in accordance with article 1.1, section p, of the draft (may) hold, namely positions through which said persons:

1 °. indirectly or directly control the management, assets or the establishment

or implementation of the operational policy of the licensee; or

2°. exercise significant influence over the management, assets or determination or implementation of the operational policy of the licensee.

It is not clear to the Board whether Section 5.13(3), first sentence:

prohibits the simultaneous exercise of the functions under 1° and 2° by the same natural person; or

- indicates that there are other functions which by their nature are not compatible with the functions under 1° and 2°; or

- follows the explanatory note to article 1.1, section q (referred to as 'p'), of the draft, in the sense that certain functions mentioned in that note are not compatible with each other, namely: directors, (other) executives and compliance officers who have a key position in the operation of the licensed game of chance.

Concentrations of interests must be prevented. For this reason, the Council believes that the draft must list self functions that in any case fall under Article 5.13(3), first sentence, of the draft. For a proper understanding of (the intent) of this article section, it is important that it be thoroughly explained in the explanatory memorandum or that the term "key functions" be defined in the draft.

The Council advises the government to list in the draft functions to which article 5.13, paragraph 3, sentence 1, of the draft is in any case applicable and to explain this provision in more detail in the explanatory memorandum than we/ define the term "key functions" in the draft.

3 °. Discrepancy between draft and explanatory memorandum.

The second sentence of Article 5.13, paragraph 3, of the draft provides that "further rules" may be set forth regarding the functions that are incompatible with those of key persons. The explanatory memorandum (page 38, fourth text block) states that the third paragraph allows for 'rules' to be established by ministerial regulation with general effect with respect to functions that are incompatible with those of key persons.

The Council advises the government, with respect to article 5.13, paragraph 3, sentence 2, of the draft, to bring the explanatory memorandum in line with the draft.

4 °. The independent expert

Article 5.13(4)(e) of the draft requires a statement from an independent expert confirming that the licensee has not yet reached the gross gaming revenue of less than NAf 20,000,000.

The Council advises the government to explain in the explanatory memorandum who or what should be considered a/s independent expert and, if necessary, to amend the draft.

5 °. Discrepancy between 'minister' and 'CGA'.

In view of the establishment of the CGA a/s gaming/authority also an independent administrative body, the Council 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.

r. The supplier license (Article 5.14}

According to the first paragraph of article 5.14 of the draft, limited liability companies or private limited liability companies incorporated under the laws of Curac,:ao and having their registered office in Curac,:ao ee, may be granted supplier licenses. The Council notes that the grounds for refusal/ g of a provisional or a definitive supplier's license and also the

grounds for suspension and revocation are not (explicitly) included in article 5.14 of the draft. According to the explanatory notes to this article, pursuant to the ninth paragraph, a provisional permit will in any case not be granted if one or more of the cases mentioned in Article 2.2, second paragraph occur.

The provisions of this explanation with regard to a provisional permit are achieved by the declaration in the second paragraph of Article 5.14 of the ninth paragraph of Article 5.1, in conjunction with the second paragraph of Article 2.2, mutatis mutandis.

From the point of view of accessibility and clarity of a rege/ing, the Council recommends that the government explicitly regulate the grounds for refusal of a provisional supplier license in Article 5.14 of the draft. In addition, the Council recommends that the grounds for refusal, suspension and revocation with respect to a (final) supplier license be included in the draft.

s. Accreditation (Article 5.18).

1 °. The granting of accreditation.

Pursuant to Article 5.18(1) of the draft, the CGA may grant accreditations to suppliers. The supplier wishing to be considered for accreditation must, pursuant to Article 5.18, paragraph 2, demonstrate that it has sufficient knowledge, experience and other qualities necessary to provide the service or services for which it seeks accreditation. The ninth paragraph of Article 5.18 provides that the CGA may establish further criteria for this purpose.

The services for which accreditation may be granted are very diverse and are listed in Article 5.18, paragraph 1 of the draft.

Accreditation is granted by the CGA itself and may also be granted to foreign legal entities with a branch in Curac;:ao. The explanatory memorandum (page 8, second text block, first sentence) states that this allows providers to demonstrate that their services meet certain quality requirements. This implies that the CGA must have expertise of a very different nature in order to assess whether a provider meets the requirements of the second paragraph of Article 5.18. The Council is unable to ascertain from the draft and the documents accompanying the request for advice whether the CGA has the required expertise, or in what way the CGA can have it.

The Council advises the government to indicate in the memorandum whether the CGA has or can have the expertise to adequately implement the proposed article 5.18 of the LOK.

2 °. Objections and appeals against decisions ingevo/ge article 5.18

Because the CGA is an administrative body in the sense of article 2 of the National Ordinance on Administrative Justice (hereinafter: Lar), decisions pursuant to the proposed article 5.18 of the LOK could be objected to or appealed pursuant to article 55 in conjunction with article 7 of the Lar. The eighth paragraph of article 5.18 assumes the same. However, the Council points to article 7, second paragraph, subsection j, of the Lar, which excludes appeal and thus also objection against decisions "concerning the assessment of the knowledge and skills of a person who has been examined or otherwise tested in this respect. It should be borne in mind that Dutch practice shows that there are exceptions to this exclusion.33

The Council advises the government to examine whether it is desirable to make it possible to object to and appeal against decisions taken on the basis of article 5.18 of the LOK.

33 M.E.B. qe Haseth c.s, Landsverordening Administratieve Rechtspraak Curai;:ao, Boom juridisch (The Hague 2016), patina 51.

3 °. Further criteria to be established by the CGA.

The question is whether, pursuant to article 5.18, ninth paragraph, of the draft, any further criteria to be established by the CGA should be regarded as policy rules or regulations (i.e. generally binding rules). In the latter case, regulatory authority will have to be granted to the CGA by virtue of Article 111(3) of the State Regulations. In this connection, reference is made to section II. 1. w. '3°. Policy rules' of this advice.

The Council advises the government to complete the explanatory memorandum and, if necessary, to amend the draft.

4°. The model application form.

The third paragraph of article 5.18 of the draft provides that the CGA may adopt a model application form for accreditation. The Council believes that for reasons of legal certainty, the CGA should be required to adopt and publish a model application form. That model should also make clear what information and data are necessary for the application to be considered.

The Council recommends that the government amend the third paragraph of article 5.18 of the draft.

5°. Expiration of accreditation.

According to the sixth paragraph of article 5.18 of the draft, an accreditation expires by operation of law at the beginning of the sixth calendar year after it was granted by the CGA. The explanatory memorandum lacks a justification for what reason an accreditation should expire by operation of law. Furthermore, it is not clear from the explanatory memorandum whether a new application for accreditation or an application to extend the duration of the granted accreditation may be submitted and what the decision period and procedure is for this. In addition, it is not clear for what reason a term of "the sixth calendar year after" the accreditation was granted is chosen.

The Council advises the government to adjust the draft and the explanatory memorandum.

6°. lntrekkengronden

Multiple grounds

The seventh paragraph of article 5.18 of the draft stipulates a grand on which an accreditation can be withdrawn. According to the Council, there may be more grounds on which an accreditation should be withdrawn. Examples include bankruptcy, suspension of payments, irrevocable conviction for crimes related to gaming, acting in violation of other legal regulations related to gaming, at the request of the legal entity and upon the death of a natural person who applied for the accreditation.

The Council advises the government to amend article 5.18 of the draft.

Contradiction

The seventh paragraph of article 5.18 of the draft stipulates that the accreditation may be withdrawn if circumstances arise or facts become known on the basis of which the accreditation would not have been granted if these circumstances or facts had been known. According to the wording of the seventh paragraph, the withdrawal is optional ('may provision'). However, the purport of the ground for withdrawal implies that withdrawal of the accreditation is mandatory. In the opinion of the Council, this provision is inherently contradictory. According to the Council, the draft must make a distinction between optional and mandatory grounds for withdrawal.

The Council advises the government to adjust article 5.18 of the draft.

7°. Failure to cease offering services when an accreditation is withdrawn and sanctions in this regard

- Cessation of offering services.

The LOK introduces a voluntary accreditation system (Article 5.18, paragraph 1 of the draft and its Explanatory Memorandum}. The choice of a voluntary and optional accreditation allows any provider of non-critical services to offer the said services to operators on Cura ao even without a license or accreditation.

According to the eighth paragraph of article 5.18 of the draft, to the extent relevant, the supplier is obliged to cease offering services to operators on Cura ao as soon as the accreditation is withdrawn. However, the explanatory memorandum does not explain why, in case of loss of accreditation, the supplier concerned cannot simply continue its services like other existing suppliers without accreditation.

The Council advises the government to supplement the explanatory memorandum on this point and, if necessary, to delete the eighth paragraph of article 5.18 of the draft.

- Sanctioning conduct that led to revocation of an accreditation

The Council misses in the draft at least a provision for when the supplier does not cease offering services. In other words, the Council believes that a sanction should be imposed on the conduct in question by including the eighth paragraph of Article 5.18, for example, in Articles 13.5, paragraph 1 (order under penalty), 13.17 (order under administrative order) or 13.32, paragraph 2 (administrative fine) of the draft.

In addition, according to the Council, oak should be sanctioned with respect to the conduct that resulted in the withdrawal of the accreditation. According to the seventh paragraph of article

5.18 of the draft refers to circumstances that occur or facts that became known after the accreditation was granted and which, had they been known, would have led to the refusal of accreditation. With regard to this conduct, an administrative fine, for example, could have been imposed. In this connection, reference is made to section II. 1. al, '4 °. Conduct not included in the enumeration' of this advice. The Council advises the government to amend the draft.

t. The fees for processing applications or other authorizations (articles 5.19 and 5.20)

1 °. Levying of authorization fees.

Article 5.19, paragraph 8, of the draft provides that further rules may be laid down by or pursuant to a national decree containing general measures regarding the levy of permit fees. It is noted that fees for processing applications are regulated in article 5.19 and the levying of permit fees is regulated in article 5.20 of the draft. See the explanatory notes to Articles 5.19 and 5.20 (page 41, sixth and seventh text block).

The Council advises the government to consider whether the eighth paragraph of article 5.19 of the draft should be deleted.

2 °. The permit right

Pursuant to article 5.20, paragraph one, of the draft, a permit fee is levied. In accordance with the second paragraph of Article 5.20, this permit fee consists of a fixed fee to Landskas:

a. to cover the estimated costs of monitoring the CGA; and

b. for holding the permit.

The licence fee is payable by both the gaming licensee (Article 5.20, fourth paragraph)Is the supplier licensee (Article 5.20, fifth paragraph).

In accordance with Article 5.20, subsection 4, the gaming licensee may pay the annual fee of NAf 48,000 in monthly installments of NAf 4,000. This possibility of monthly payment of the annual amount due of NAf 48,000, in view of Article 5.20, subsection 5, does not apply to the supplier licensee. This distinction will have to be explained in the explanatory memorandum. Should there be no supportable justification for it, the Council believes the draft should be amended to the effect that equal payment terms apply to both permit holders.

The draft lacks a provision regulating when the amounts referred to under Article 5.20, paragraphs 3 and 5 are due. Nor does it regulate whether the amounts due under Article 5.20(3), (4) and (5) of the draft are due time-proportionately over the remaining months of the year or in full if the license is issued during the year.

Furthermore, in Article 5.20(3) and (4), the license fee payable by the gaming licensee is divided between the fixed fee for the ongoing supervision of the CGA of NAf 45,000 per year and the fixed fee for holding the gaming license of NAf 48,000,

- per year (see Article 5.20(2)(a) and (b)). This distinction has not been made in Article 5.20(5) with respect to what the supplier licensee owes. Therefore, the Council assumes that the supplier licensee must pay a total of NAf. 48,000.00 per year to cover the estimated costs for ongoing supervision of the CGA and for maintaining the license, although this is not apparent from the explanatory notes to Articles 5.19 and 5.20 of the draft (page 41, second to eighth text block). The Council believes that this should still be apparent from the draft.

The Council advises the government to vu/Jen the explanatory statement and amend the draft.

3 °. The amount of the license fee.

The gross gaming revenue as the basis for calculating the license fee.

The Council notes that the license fees payable by licensees are all fixed amounts. These amounts apply, in accordance with Article 5.20(3) to (5) of the draft, to both large and smaller online gaming providers. Use of a percentage of the 'income' could contribute to one of the goals of this National Ordinance, which is to increase the revenue for Cura9ao34. The basis for this could be the gross gaming revenue mentioned in article 5.13, fifth paragraph, of the draft. This means that each gaming licensee would owe relatively the same for license fees.

The Council recommends that the government address the above in the explanatory memorandum and, if necessary, adjust the draft.

- Numerical comparison of fees with other online gaming jurisdictions

In order to determine the most attractive "fee structure," discussions were held with representatives from the online gaming industry (explanatory memorandum, page 41, fifth text block). It was mentioned that a comparison was also made with fees in other jurisdictions, such as Isle of Man, Kahnawake and Malta. However, the explanatory memorandum lacks a numerical comparison (with the most important competitors) showing the strength of Cura9ao's competitive position.

The Council advises the government to include in the explanatory memorandum a numerical comparison with fees in other (important) online gaming jurisdictions.

34 Mem rie van toelichting, page 71, last text block, first sentence, and measure H.2 of the Land Package Curac;ad.

u. Levy of license fee and amounts due (Article 6.1)

1 °. The levy system: levy by means of payment on declaration

Pursuant to Article 6.1, first paragraph, of the draft, the system of levying by means of declaration-based payment is assumed. Under this levy system, the determination of what is due is left to the taxpayer who must pay the amount. It is the responsibility of the taxpayer himself to ensure that the material amount due is calculated and determined at the correct amount, and is also paid in a timely manner. Only when the taxpayer has failed to do so will the lnspector intervene with corrections in the form of an additional tax assessment. This levy system assumes ever-changing amounts due over the periods (in this case, calendar months) for which returns must be filed. Article 6.1, paragraph 4, of the draft therefore reads: "The tax return must be filed within fifteen days after the end of the calendar month to which it relates.

The Council points out that the draft refers to fixed fees and not varying amounts over periods of time (calendar months) that the taxpayer would have to calculate and determine himself through a declaration form. The fixed amounts allow the lnspector to impose an assessment to be paid, possibly in a number of installments. Filing a tax return is not necessary, according to the Council. No declaration forms will then have to be provided and the monthly (declaration) activities at the lnspector and the Receiver will become unnecessary, which will increase the administrative pressure on these bodies. The fixed fees owed pursuant to article 5.19 of the draft are to be paid only once, for which reason they do not lend themselves to levy by means of declaration pursuant to article 6.1 of the draft. May it possibly be the intention to obtain additional information about the licensee and its operation through the declaration forms, such information belongs to the CGA, as the CGA is the supervisor.

Article 6.1(1) of the draft applies to both the license fee under Article 5.20 and the fees payable under Article 5.19. However, paragraphs three through five of Article 6.1 apply only to the license fee payable under Article 5.20. The manner in which the fees due under Article 5.19, paragraphs three through seven, are to be paid is not regulated in the draft.

In addition, Article 6.1, paragraph 2, of the draft makes a separate provision for the payment of fees due under Article 5.19, paragraphs 1 and 2, of the draft. Article 6.1, paragraph 2, of the draft provides that a form established by the Minister must be used, but does not specify the officer or body to whom the amounts due must be paid. These amounts relate to the processing of applications and, for that reason, must be paid at the same time as an application is submitted, or prior to an application.

The Council recommends that the government amend the draft. It also advises to at least explain in the explanatory memorandum why the levy by means of declaration is assumed, although the draft assumes fixed fees for the permit fee and one-time fees.

2 °. The justification for a different provision in article 6.1, paragraph 2, of the draft

In article 6.1, paragraph 1, of the draft, the point of departure for the levying of the permit fee is 'levying by means of declaration-based payment'. There are declaration bills for that in view of article 6.1, paragraph 6, of the draft. Article 6.1, second paragraph differs from the first paragraph for certain fees, in the sense that the payment of the fees takes place in accordance with /}3a form determined by the Minister. The explanatory memorandum does not explainic why this distinction is made.

The Council advises the government to supplement the explanatory memorandum on this point and, if necessary, to amend the draft.

3 °. The issuance of declaration formu/ieren

Article 6.1, paragraph 6, of the draft stipulates that the CGA shall issue the declaration forms. Since the lnspector in the draft is in charge of levying the licensing fees, the Council draws the government's attention to a ruling by the Court of First Instance of Cura<;:ao, dated March 19, 2020 (ECLl:NL:OGEAC:2020:55) in which it was ruled that a taxpayer's obligation to submit a declaration does not arise until the lnspector has invited the presumptive taxpayer to do so. That is, the lnspector must demonstrate that a tax return form has been issued to the presumptive taxpayer (electronically or otherwise) before the lnspector can impose an omission penalty on it. Article 6.1(6) of the draft does not comply with this because it is not the lnspector but the CGA that issues the tax return forms. Furthermore, it is not clear where the forms referred to in Article 6.1(2) of the draft can be obtained.

The Council recommends that the Government amend article 6.1 of the draft.

4 °. Submission of declaration forms.

The third paragraph requires the submission of declaration forms to the Receiver, including alie required documents. However, the explanatory notes to article 6.1 (page 42, second text block) state that the completed and signed declaration form with the required documents may be submitted to the Inspector, among other things, by electronic means. The draft and the explanatory memorandum do not agree on this point.

The Council advises the government to harmonize the explanatory memorandum and the draft.

v. The permit fees (article 6.2)

1 °. The settlement

The second paragraph of article 6.2 of the draft provides that permit fees that have been paid unduly or to an excessive amount will be set off against future permit fees. Given the levy system used and assuming that the lnspector is in charge of levying and the Recipient is in charge of collecting, it will not be possible to implement this article paragraph. This is because the Recipient can only offset a refund against outstanding assessments and not against future amounts that must be paid on return. Since the Receiver has no taxing power, this official cannot assess a refund request. The aforementioned article paragraph should therefore be amended.

In article 6.2, paragraph 2, it should also be stipulated in which form (objection or application) the refund request should be made.

The Council advises the government to amend article 6.2, second paragraph, of the draft.

2°. The assimilation with incomplete payment of the permit fee.

Article 6.2, paragraph 4, of the draft requires explanation in the explanatory memorandum, as the term "withholding" is used in that provision, although here it is a payment tax and not a remittance tax.

The Council recommends that the government supplement the explanatory statement and, if necessary, amend article 6.2, paragraph 4, of the draft.

3 °. Payment of the permit fee stated on the declaration.

According to the eighth paragraph of article 6.2 of the draft, there is a misdemeanor if it is due to intent or gross negligence on the part of the permit holder that the permit fee, which must be paid in the declaration, has not been paid within the period set by or pursuant to the national decree containing general measures.

measures. The Council points out that the said (payment) period has already been established in article 6.1, paragraph 4, of the draft.

The Council advises the government to amend the draft.

w. Representative organizations and policy rules (article 12.1)

1 °. Hearing by the CGA of representative organizations.

According to the third paragraph of article 12.1 of the draft, the CGA will draw up policy rules after the representative organizations have been heard for this purpose. The Council lacks further rules in the draft with respect to the procedure to be followed for the hearing of these organizations as well as the time limits to be applied.

The Council advises the government to amend the draft.

2°. The designation of representative organizations by the CGA

The fourth paragraph of article 12.1 of the draft defines what is meant by a representative organization. According to this paragraph, the representative organizations must in any case be designated by the CGA. The Council lacks further rules in the draft regarding the procedure to be followed in designating these organizations and the possibilities for objections and appeals.

The Council advises the government to amend the draft.

3°. Policy rege/s

Pursuant to the fifth paragraph of Article 12.1 of the draft, the policy rules will include rules to prevent money laundering and the financing of terrorism, as well as rules regarding the technical and organizational nature of the gaming activities, taking into account advice, recommendations and standards of international or intergovernmental organizations. The Council assumes that this is intended to impose obligations on gaming and supplier licensees.

Unlike a generally binding regulation, policy rules are not addressed to citizens but to the administrative body itself. For this reason, they cannot impose obligations on citizens like a generally binding regulation.35 They are not based on a power to regulate but on an administrative power and serve for the weighing of interests, the interpretation of certain rules and how the determination of facts should be made by the administrative body. In view of this, Article 12.1(5) of the draft will have to be amended.

The Council concludes as follows:

Should the subjects in article 12.1, fifth paragraph, fall within the management powers of the CGA, it is possible that the CGA will draw up policy rules for this, namely how the CGA deals with these specific management powers, for which reason this article should be adapted;

should the intention be to draw up binding rules for citizens on the subjects mentioned in Article 12.1(5), the CGA could be granted the authority to issue regulations in accordance with Article 111(3) of the State Regulations. In that case, too, this article paragraph should be amended.

The Council recommends that the government amend the draft.

n', S.E. Zijlstra et al, Kluwer Deventer 2012, page 54.

x. The budget process (article 12.2).

Article 12.2 of the draft addresses the procedure or regulations for the adoption of the budget of the CGA. The Council considers an addition to this article important and with the intention that "if the Minister does not decide within two months after the budget is submitted for approval, the budget shall be deemed approved.

The Council recommends that the government supplement the draft on this point.

y. Deposits in funds (article 12.3)

1 °. Funding of funds through CGA.

According to article 12.2, fourth paragraph, of the draft, the costs incurred for the performance of the duties of the CGA, included in the budget of the CGA, shall be charged to the budget of the Country. Article 12.3, paragraph one, indicates that upon receipt of the income generated referred to in Article 12.2, paragraph two, three percent of the amount received shall be deposited in a sports fund administered by the Ministry of Education, Science, Culture and Sports and two percent of the amount received shall be deposited in a fund for the protection of vulnerable persons. The latter fund is administered by the Ministry of Social Development, Labor and Welfare.

Although Article 12.2 indeed refers to the budget of the CGA, the Council assumes that the contributions to be deposited in the aforementioned funds will not be taken from the budget of the CGA since the budget of the CGA is financed through the budget of the Country. Furthermore, in the opinion of the Council, the draft does not clearly indicate which of the revenues generated by the CGA will be managed by the CGA itself and from which resources the deposit into the funds should be made.

The Council advises the government to indicate in the draft which of the revenues generated by the CGA will remain under the management of the CGA, to clarify article 12.3, paragraph 1, by stating from which resources the deposit into the two aforementioned funds should be made and to clarify this in the explanatory memorandum as well. Furthermore, the Council cannot see from the draft whether the aforementioned construction for financing the sports fund and the fund for the protection of vulnerable people is a new intention or a continuation of existing policy and whether this may mean that expenses that should be borne by the government are passed on to the CGA. It is also unclear with what regularity the intended payments into the funds should take place, for example monthly or otherwise and by whom these payments should be made. The Council advises the government to explain the above in the explanatory memorandum.

2°. The percentages chosen

As indicated above, pursuant to the first paragraph of article 12.3 of the draft, a portion of the generated income of the CGA is deposited in two funds. A sports fund administered by the Ministry of Education, Science, Culture and Sports receives three percent and a fund for the protection of vulnerable persons administered by the Ministry of Social Development, Labor and Welfare receives two percent. The Council lacks an explanation in the explanatory memorandum for what reason these two percentages were chosen.

The Council advises the government to amend the explanatory statement.

3°. The use of monies from the sports fund

The second paragraph of article 12.3 of the draft stipulates that the monies in the sports fund may be used primarily for incurring expenses to finance social sports matters. According to the explanation of this article, only 70% !or the relevant matters can be used from the sports fund. The Council refers to instruction 15 of the Awr, which stipulates that the explanatory memorandum cannot be used to set further rules.

social sports matters, then this should be clear from the national ordinance itself. In addition it should be made clear in what way or for what purpose the remaining money in the sports fund (30%) will be used.

The Council advises the government to amend the draft and the explanatory memorandum.

4°. Social sports matters

The second paragraph of article 12.3 of the draft stipulates that payments to the sports fund may be used primarily for expenses to finance social sports affairs. It is not clear what is meant by "social sports affairs" and what the criteria are for such a designation.

The Council advises the government to amend the draft and the explanatory memorandum.

z. The complaints procedure (article 12.4)

1 °. The obligation to transmit

The fourth paragraph of article 12.4 of the draft provides that the CGA is not obliged to forward a complaint for consideration. However, it is not clear for what reason the CGA should forward a complaint since it will decide on the complaint itself. If the intention is to forward a complaint, it should be made clear to which (administrative) body this complaint should be forwarded.

The Council advises the government to modify the draft.

2°. Making an objection

It follows from part f of the fourth paragraph of Article 12.4 of the draft that the CGA is not obliged to deal with a complaint if the complaint relates to conduct to which the complainant could have objected. In the Awb, a similar provision is contained in Article 9:8, first paragraph, section c. It is explained that this part of the article is intended to prevent improper use of the complaints procedure by people who are late in lodging an objection.36

The Council is of the opinion that this part f should be further substantiated and advises the government to adjust the explanatory memorandum.

3°. Before a court other than an administrative court

It follows from part g of the fourth paragraph of article 12.4 of the draft that the CGA is not obliged to deal with a complaint if the complaint relates to conduct which is or has been subject to the judgment of a judicial body other than an administrative court by the institution of proceedings.

In the Awb, a similar provision is included in article 9:8, first paragraph, subsection e. It is explained that this subsection of the article is intended to prevent interference with the proceedings before these other courts.37

The Council is of the opinion that this subsection g should be further substantiated and advises the

government to amend the explanatory memorandum.

aa. The designation and powers of supervisors (Article 13.1)

1 °. The designation

The first paragraph of article 13.1 of the draft provides that the CGA or persons designated by the CGA shall be responsible for monitoring compliance with the provisions of or under the LOK. The Council misses in the draft a provision specifying the designation of

administrative law', P.J.J. van Buuren et al, Kluwer, Deventer 2015, p. 1069. administrative law', P.J.J. van Buuren et al, Kluwer, Deventer 2015, p. 1069.

failure by the licensee to stipulate that the gaming agreement between it and the player will be governed by the laws of Cura<;:ao and that disputes will be submitted to the courts in Cura<;:ao (Article 5.5 of the draft);

submitting reports that do not comply with the requirements set forth (the seventh paragraph of article 5.11 of the draft);

failure of permit holders to remit premiums for the guarantee fund (the first paragraph of Article 5.8 of the draft);

failure to be registered with the GCA of suppliers providing critical services or goods to licensees (the fourth paragraph of Article 5.17 of the draft);

failure to provide information (the second paragraph of Article 13.3 of the draft); failure to cooperate in the adequate conduct of an investigation (the third paragraph of Article 13.3 of the draft).

ac. The partial enforcement of an order for periodic penalty payments (Article 13.10).

It follows from the second sentence of the third paragraph of article 13.10 of the draft that the amount forfeited may be less than the amount of the order under penalty in the event that the order has been partially executed. The explanatory note to this article paragraph indicates that the legislator considers it desirable that, if the supervision report shows that the violator has carried out only part of the remedial work specified in the order, the CGA should have the possibility to recover a lower amount. This reduction option could erode the remedial sanction charge under penalty. While it is true that the CGA is authorized to reduce the amount, there is no obligation to do so. It must be prevented that in the long run, in respect of all cases in which an order under penalty is imposed that is only partially carried out, the violator will automatically receive a reduction.

The Council advises the government to create clarity in the above by adjusting the draft.

ad. The time limit for issuing a new recovery order(Article 13.11) According to the second paragraph of Article 13.11 of the draft, the CGA is authorized to issue a new recovery order consistent with the amended order under penalty. It is not clear within what timeframe the CGA must issue this recovery order.

The Council recommends that the government amend article 13.11 of the draft.

ae. The conduct for which an order under administrative coercion may be imposed (article 13.17)

1 °. Lack of an appropriation/explanation regarding the enumeration of behaviors.

Article 13.17 of the draft lists the behaviors for which an administrative order may be imposed by the CGA. There is no explanation of this article. As a result, the Council is unable to form an opinion on the government's rationale for designating only the behaviors referred to in that article as behaviors for which an order for administrative coercion may be imposed.

The Council advises the government to amend the explanatory memorandum.

2°. Conduct in respect of which no administrative order should be imposed

Article 13.17 of the draft stipulates that an administrative order may be imposed with respect to the behaviors listed in the first and fourth paragraphs of Article 4.1 of the draft. In short, these paragraphs concern the determination of what constitutes a non-profit game and which rules do not apply to exempted non-profit games. These paragraphs do not deal with conduct of others that should be sanctioned violation of any provision relating to them. The Council is therefore of

view that the relevant !eden of Article 4.1 of the draft should not be included in the enumeration of Article 13.17 of the draft.

The Council recommends that the Government amend the first paragraph of article 13.17 of the draft.

af. Supervisory powers (articles 13.21, 13.22, 13.23 and 13.1)

Articles 13.21, 13.22 and 13.23 of the draft define, in brief, the powers of supervisors in the context of the imposition of an administrative order. Essentially, these include entering all places, sealing buildings and premises with appurtenances, and carrying away and storing things. It is not clear to the Council how these provisions relate to article 13.1 of the draft. After all, that article also regulates (virtually) the same powers for supervisors.

lf the government is of the opinion that special powers should be given to supervisors with respect to the imposition of the order for incremental penalty payments or that any general provision should be deviated from, this should be included in the draft. In addition, a proper justification for this should be included in the explanatory memorandum.

The Council advises the government to amend the draft and the explanatory memorandum.

ag. The time limit for providing a report (Article 13.23)

According to the second paragraph of article 13.23 of the draft, the CGA will make a report of the taking and storage of items and provide a copy of it to the person who had the items under his control. The draft lacks a deadline for the CGA to make and provide this report.

The Council recommends that the government amend the draft.

ah. The duty to caution (articles 13.28 and 13.29)

The third paragraph of article 13.28 of the draft stipulates that the offender is not obliged to make statements with respect to the offense. This is the duty of cautiousness. The first paragraph of article 13.29 of the draft then provides that the offender who has made a statement and is once again asked further questions by the CGA as a result must again be reminded of the cautions. It is not clear for what reason the government believes that the cautions should again be communicated to the offender. After all, when deviating from a general provision such as the third paragraph of Article 13.28 of the draft, the Council believes that there must be a special reason. Moreover, this special reason must be provided with a sound justification in the explanatory memorandum. The Council advises the government to amend the draft and the explanatory memorandum.

ai. The right to privilege (article 13.29).

The second paragraph of article 13.29 of the draft declares articles 251 and 253 of the Code of Criminal Procedure to apply mutatis mutandis to the CGA asking further questions of the offender in response to the statement he has already made. Articles 251 and 253 of the Code of Criminal Procedure regulate the right to family privilege. The location of the right to privilege in the draft raises the question of whether or not the right to privilege should apply to the phase in which the offender may make a statement for the first time and which is regulated in Article 13.28 of the draft. The Council believes that the right to privilege should apply from the beginning of the investigation (if there is already a "criminal charge" within the meaning of Article 6 of the ECHR).

The Council advises the government to amend the draft and the explanatory memorandum.

aj. The decision (article 13.30)

According to article 13.30 of the draft, the CGA will notify the offender in writing when the CGA has made a decision. It is not clear within what timeframe the CGA must decide and then issue the written notice.

The Council recommends that the government amend article 13.30 of the draft.

ak. The statute of limitations (article 13.31).

1 °. The term "a/all punitive sanctions".

The first paragraph of article 13.31 of the draft stipulates that the power to impose punitive sanctions will expire two years after it has been established that the violation has occurred. The explanatory note to this paragraph states that the power of administrative bodies to punish violations should be limited in time. According to the government, this is just like criminal offenses are time-barred by a certain amount of time. The Council believes that the first paragraph of article

13.31 of the draft should make it clear that it concerns "punitive administrative sanctions" and not all punitive sanctions. After all, 'all punitive sanctions' includes criminal sanctions.

The Council advises the government to amend the first paragraph of article 13.31 of the draft.

2°. The limitation period

The limitation period for punitive administrative sanctions is two years according to the first paragraph of article 13.31 of the draft. It is not clear from the explanation of this paragraph of the article for what reason the government has chosen a two-year period. (By way of comparison, reference is made to, for example, the National Regulation on Competition and the Dutch Awb; the limitation period in those statutory regulations is five years).

The Council advises the government to adjust the draft and the explanatory memorandum.

al. The administrative fine (article 13.32)

1 °. The absence of an explanation regarding the enumeration of conduct

Article 13.32 of the draft lists the behaviors for which an administrative fine can be imposed by the CGA. There is no explanation of this article. As a result, the Council is unable to form an opinion on the government's rationale for designating only the behaviors listed in that article as behaviors for which an administrative fine may be imposed.

The Council advises the government to amend the explanatory memorandum.

2°. Imposition of multiple punitive sanctions

The second paragraph of article 13.32 of the draft gives the CGA the power to impose an administrative fine with respect to the provisions listed in that article. An administrative fine may be imposed with respect to some of the conduct listed in the second paragraph of Article 2.4 of the draft. The second paragraph of Article 2.4 of the draft determines the grounds on which a permit is revoked. The revocation of a permit may itself be a punitive or punitive administrative sanction intended to cause distress to the violator. It is not clear whether it is the government's intention to impose two punitive sanctions side by side and for what reason this should be possible. This is in light of the ne bis in idem principle that an offender may not be punished twice for the same offense.

The Council advises the government to adapt the draft.

3°. An administrative fine can be imposed pursuant to the second paragraph of Article 13.32 of the draft with respect to the provisions in the first, fourth and tenth paragraphs of Article 4.1, in the second and third paragraphs of Article 5.11, in the fifth paragraph of Article 5.12 and in the second, fourth, fifth and sixth paragraphs of Article 5.13 of the draft. In all these paragraphs of the article, the Council does not believe that the conduct of anyone other than the CGA should be sanctioned when violated. The Council considers that the relevant !eden of Articles 4.1, 5.11, 5.12 and 5.13 of the draft should not be included in the enumeration of the second paragraph of Article 13.32 of the draft.

The Council recommends that the government amend the first paragraph of article 13.32 of the draft.

4°. Conduct not included in the enumeration.

In contrast to the above, the Council is of the opinion that the behaviors listed below in the draft law should be included in the enumeration of the second paragraph of article 13.32.

13.32 should be included and advises the government to amend the draft in light of this:

failure by the nonprofit organization to send a statement of income and expenses (the eleventh paragraph of article 4.1 of the draft);

failure by the licensee to stipulate that the gaming agreement between it and the player will be governed by the laws of Cura9ao and that disputes will be submitted to the courts in Cura9ao (article 5.5 of the draft);

the non-payment of premiums for the guarantee fund by licensees (the first paragraph of article 5.8 of the draft);

submitting reports that do not comply with the specified requirements (the seventh paragraph of article 5.11of the draft);

failure to be registered with the CGA of suppliers providing critical services or goods to licensees (the fourth paragraph of Article 5.17 of the draft);

withholding circumstances and facts that, had they been known at the time of granting accreditation, would have resulted in the denial of accreditation (the seventh paragraph of Article 5.18 of the draft);

failure to provide information (the second paragraph of article 13.3 of the draft);

- failure to cooperate in the adequate conduct of an investigation (the third paragraph of article 13.3 of the draft).

5°. The entitlement to financial resources.

The third paragraph of article 13.32 of the draft provides that this section (read: title 2) does not apply to the withdrawal or modification of an entitlement to financial resources. The explanatory note to this article indicates that it may happen that a financial entitlement granted by the CGA - for example, a benefit or subsidy - is reduced or withdrawn for non-compliance with the regulations attached to it. This sanction, according to the explanation, has a different character than the administrative fine.

A similar provision appears in the second paragraph of Article 5:40 of the Awb. The Awb is a general regulation in contrast to the present national ordinance which gives specific rules on games of chance. Such an article fits into a general regulation since it applies to several legal regulations. It is not clear whether the third paragraph of article

13.32 should actually be included in the present National Ordinance, which deals only with games of chance. Especially given the fact that nowhere in the draft is the CGA given the task or the authority to grant financial entitlements such as benefits and subsidies

The Council /advises the government to amend article 13.32 of the draft and the explanatory memorandum.

am. The legal obligation of the CGA to declare (article 13.34)

It follows from the third paragraph of article 13.34 of the draft that the CGA has the legal obligation to report, in accordance with article 198 of the Code of Criminal Procedure, offenses detected or suspected to be committed by this administrative body. There is no explanation of this third paragraph. As a result, it is not clear what the government's rationale was for including this provision in the draft and more specifically where the administrative fine is regulated. Especially since article 198 of the Code of Criminal Procedure implies a general duty included in a general regulation. The question arises for what reason this general duty should be referred to in the draft, which deals with games of chance.

lf the government is of the opinion that reference should nevertheless be made to the general duty to report, included in the Code of Criminal Procedure, the Council considers it advisable that reference also be made to article 199 of the Code of Criminal Procedure. Unlike article 198, which refers to specific offenses, this article provides that anyone is authorized to report an offense committed.

The Council recommends that the Government amend the third paragraph of article 13.34 of the draft, and, if necessary, the explanatory memorandum as well.

an. Giving an instruction (article 13.38).

1°. The absence of a toe/ichting.

Article 13.38 of the draft contains rules on the power of the CGA to give an indication to the offender. There is no explanation regarding this article. As a result, it is not clear what the government's rationale was for creating a power to give a direction to an offender.

The Council advises the government to amend the explanatory memorandum.

2°. Relationship between designation and administrative fine.

The placement of the relevant provision in Title 2 "Administrative Fine" of Chapter 13 of the draft raises the question of how the designation relates to the administrative fine. It should be clarified whether the designation should be considered a punitive sanction. Indeed, it follows from the fourth paragraph of Article 13.38 that the designation may be publicized ('naming and shaming') in local newspapers and on the website of the CGA. Regarding the measure of 'naming and shaming', reference is also made to section II. 1. i. "The Register (Article 3.1)" of this opinion.

The Council advises the government to amend the draft and the explanatory memorandum.

3°. Difference with the order under penalty payments.

It follows from the first paragraph of article 13.38 of the draft that an instruction is given if the violator must take the necessary measures within a period to be set by the CGA or if a certain line of conduct must be followed with respect to given points. It is not clear what the difference is between this designation and an order for periodic penalty payments.

The Council advises the government to amend the explanatory memorandum.

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ao. Penal provisions (Article 13.41).

1°. The absence of an explanation regarding the enumeration of punishable conduct Article 13.41 of the draft lists the conduct that constitutes a punishable offense if it is violated. The explanatory memorandum to this article lacks an explanation of the government's reasons for considering only the acts listed in that article as

criminal conduct for which imprisonment, a prison sentence or a fine can be imposed.

The Council advises the government to amend the explanatory memorandum.

2°. Conduct listed in the enumeration but which should not be punishable

A custodial sentence, imprisonment or fine may be imposed under the first paragraph of article

13.41 of the draft may be imposed with respect to the provisions of the tenth paragraph of Article 4.1 of the draft. Article 4.1(10), in the Council's view, is about establishing the content of a model document to be used by a non-profit organization to report the organization of a game of chance to the CGA. Thus, it is not about conduct of others than the CGA that should be sanctioned in case of its violation. The Council considers that the tenth paragraph of Article 4.1 of the draft should not be included in the enumeration of the first paragraph of Article 13.41of the draft.

The Council advises the government to amend the first paragraph of article 13.41 of the draft.

adapt.

3°. Conduct that could be included in the enumeration of criminal offenses The Council considers that the draft contains more provisions that could constitute a criminal offense when acting in violation thereof. Examples include the behaviors listed below, not excluding that there may be others in the draft:

the transfer of a gaming license by the gaming licensee to another (so-called sublicensee) and the acceptance of a (transferred) gaming license by another (so-called sublicensee) (the third paragraph of article 1.2 of the draft);

entering into an agreement on the basis of which the gaming license is used by a person other than the licensee (the third paragraph of article 1.2 of the draft); acting in contravention of the

conditions, regulations and restrictions attached to the supplier's license granted (the second paragraph of article 1.5 of the draft); failing to immediately cease offering games of chance after the gaming license has been revoked (the sixth paragraph of article 2.5 of the draft);

allowing draws of lotteries on behalf of non-profit games to be conducted by institutions not registered with the CGA (the fifth paragraph of article 4.1 of the draft);

failure of a non-profit organization to take measures to secure the funds of participants and their winnings and to keep records (the sixth paragraph of Article 4.1 of the draft);

failure to ensure that games of chance are fair and clear to participants and that vulnerable persons do not participate in games of chance (the seventh paragraph of Article 4.1 of the draft);

the purchase by licensees of critical services or goods from suppliers not registered with the CGA (the fourth paragraph of article 5.17 of the draft).

The Council advises the government to amend the first paragraph of article 13.41 of the draft. ln case the government considers that extending the first paragraph of article 13.41 of the draft is not necessary, this should be justified in the explanatory memorandum.

ap. The duty of confidentiality {article 14.1}

1 °. The grounds for exemption and exemption.

The third paragraph of article 14.1 of the draft shows that the Minister may grant exemption or exemption from the duty of secrecy. It is not clear on what grounds the minister may decide to grant a waiver or exemption.

The Council advises the government to amend article 14.1 of the draft.

2°. The classification to misdemeanor or felony

It is not clear from the draft whether the offences made punishable in the fourth and fifth paragraphs of article

14.1of the draft are to be classified as crimes or offenses.

The Council advises the government to amend article 14.1 of the draft.

aq. The hardship clause (article 14.2)

By virtue of article 14.2 of the draft, the Minister may, for certain cases or groups of cases, accommodate unfairness of a predominant nature that may arise in the application of this National Ordinance. The GCA must implement the minister's decision. This is a so-called hardship clause.

Instruction 105, first paragraph, of the Awr stipulates that no hardship clause shall be included in a regulation unless there is reason to expect that, in view of the purpose and purport of the regulation, the application of the regulation may lead to unfairness of a predominant nature in cases that cannot be precisely foreseen. Furthermore, the third paragraph of instruction 105 provides that the parts of the regulation to which the hardship clause applies must be indicated as specifically and precisely as possible. The Council notes that article 14.2, first paragraph, is not in accordance with indication 105, third paragraph.

The Council advises the government to align article 14.2 of the draft with instruction 105, third paragraph, of the Awr.

ar. Transitional provision: the repeal of the CAA and the validity of permits granted on Article 1 of the CAA (Article 15.1. first. third. and fourth paragraphs)

Since the LBH is repealed by Article 15.7 of the draft, the first paragraph of Article 15.1, first paragraph must be reworded. The rewording will also need to reflect that this transitional provision applies only to operations that have a valid permit at the time of the repeal of the CAA. The commentary on Article 15.1 (explanatory memorandum, page 67, second paragraph, last sentence) also states that the nine-month transitional period applies "as long as their permit is nag valid," which should also be included in the restated provision. This means that if a permit expires in the interim, the operator must apply for a new permit in time, based on the CAA. The Council notes that this should also be reflected in the third and fourth paragraphs of Article 15.1.

The Council recommends that the government amend Article 15.1 of the draft.

as. Evaluation of the National Ordinance(article 15.6)

In accordance with article 15.6 of the draft, within five years of the entry into force of the LOK, the CGA will send a report to the minister on the effectiveness and effects of this national ordinance. Based on the above, the Council believes that it is possible that the report will be sent to the Minister at the end of the fifth year - and not before. Considering the dangerous and complex aspects that this / national ordinance includes, which have significant financial/economic consequences and whose impact may affect the image of Curacao worldwide, the Council advocates an evaluation no later than three years and advises to inform the States of the evaluation. If the government agrees, the Council advises the government to make the necessary adjustments to article 15.6 of the draft.

2. The explanatory memorandum

a. Seizure of a substantial part of the assets (article 5.9)

The explanatory memorandum to article 5.9 of the draft (second bullet point of the first paragraph on page 35) indicates that a gaming licensee must inform the CGA if a substantial portion of its assets is seized. The Council believes that the information obligation of the gaming licensee should extend to all seizures made and not only to seizures of a substantial part of the assets.

The Council advises the government to amend the explanatory note to Article 5.9.

b. The reporting of complaints (article 5.11).

The third paragraph of article 5.11 of the draft stipulates that the reports to be submitted to the CGA by the gaming licensee must in any case consist of a change report, incident report and a report on player transactions. According to the explanatory note (first sentence of the last paragraph on page 36), the reporting in any case also consists of a complaints report. The Council believes that in light of instruction 158 of the Awr, complaint reporting should be included in the text of the third paragraph of Article 5.11 of the draft.

The Council advises the government to amend article 5.11 of the draft.

c. The model financial statements (article 5.12).

According to the penultimate paragraph of the explanatory note to article 5.12 of the draft, the annual accounts of a gaming licensee shall be prepared in accordance with a model established by the CGA. Given the provisions of instruction 158 of the Awr, the Council believes that the obligation of the CGA to adopt a model for the annual accounts should be included in the draft itself.

The Council recommends that the government amend article 5.12 of the draft.

d. Chapters 7 to 11 of the draft.

The draft includes chapters reserved for games of chance mentioned in the heading of those chapters, namely Chapter 7: Lotteries, Chapter 8: Land Lottery, Chapter 9: Casino Games, Chapter 10: Horse Racing and Chapter 11: Other Games of Chance. The explanatory memorandum does not explain these reserved chapters. The Council considers it desirable that the explanatory memorandum indicate the timeframe(s) within which rules on the aforementioned games of chance will be adopted in the LOK.

The Council advises the government to supplement the explanatory memorandum.

e. Publication of policy rules established by the CGA. regulations and restrictions (Article 12.1)

The explanatory note to article 12.1 of the draft states that with respect to its duties within the framework of this National Ordinance, the CGA may establish policy rules, regulations and restrictions. These will be published in the Landscourant as well as on the website of the CGA (explanatory memorandum, page 42, penultimate text block, first sentence). The Council notes that in accordance with Article 12.1, paragraph 3, of the draft, only policy rules are published in this manner. In fact, the draft does not provide that the regulations and restrictions38 established by the CGA will be published in the Land Gazette and on the website of the CGA.

The Council recommends that the government reconcile the explanatory memorandum and the draft.

38 Artik I 5.9 regarding gaming licenses and 5.16 regarding supplier licenses.

f. The choice regarding the imposition of an administrative sanction (Articles 13.4 and 13.16).

Article 13.4 of the draft regulates the order under penalty and Article 13.16 regulates the order under administrative coercion. The explanatory notes to article 13.4 indicate that the system applied in this draft is different from that in the Awb. In the Awb, the order under administrative coercion is regulated first and only then the order under penalty. According to the government, this choice was prompted by the consideration that good governance implies that a violator should first be called to account for his own responsibility with regard to a violation of a statutory provision that can be blamed on him by ordering him to remedy the violation himself.

It follows from the explanation of Article 13.16 that in practice an order under penalty payment will usually be imposed first. The reason for this, according to the government, is because the order under penalty is less intrusive on the rights of the violator than administrative coercion. Moreover, an order for incremental penalty payments is more obvious because there is a greater chance that the costs of the execution of administrative coercion will not be recovered or will be insufficient. Furthermore, the imposition of an order for incremental penalty payments will only be chosen if the government lacks the expertise to rectify a violation.

The Council is of the opinion that the order of inclusion of the relevant sanctions in the draft is not directly decisive for assuming that in practice an order for incremental penalty payments must first be imposed instead of administrative coercion. In order to ensure that in practice the order under penalty is applied before the order under administrative coercion, a provision to that effect must be included in the draft itself - also in view of instruction 158 of the Awr. Since the government refers to the system of the Awb, the Council also refers in this case to article 5:32 of that Act. The first paragraph of this article stipulates that an administrative body authorized to impose an administrative order may instead impose an order for incremental penalty payments on the violator.

The Council advises the government to amend the draft and the explanatory memorandum.

g. The method of sending a sanction decision (Article 13.8)

The explanatory memorandum to article 13.8 of the draft indicates that the second paragraph of article 13.8 of the draft regulates the manner in which the decision containing the order under penalty will reach the violator. However, it is noted that article 13.8 of the draft is not divided into paragraphs, nor does it regulate the manner in which a penalty order will be sent.

The Council advises the government to create clarity by adjusting the draft and/or the explanatory memorandum.

Ill. Comments of a legislative and editorial nature

Comments of a legislative and editorial nature have been included in an annex to this advice and are considered an integral part of it.

IV. Conclusion and {procedural} advice

The Advisory Council has a number of objections to the draft and advises the government not to submit the draft to the States unless it is amended. These objections mainly have to do with the fact that (chapter 12 of) the draft is not in accordance with the spirit and purpose of article 111 of the State Regulations.

Moreover, the Council is of the opinion that - in view of section H.19 of the State package and the FATF recommendations on the requirement of financial independence of a gaming authority - the independence of the (to be established) independent administrative body also being a gaming authority is at stake. Furthermore, it has become necessary to reconsider the system for levying and collecting fees and license fees,

in order to introduce a coherent and conclusive levy and collection system that can be implemented efficiently. The objections can only be overcome by a (radical) adjustment of the (present) design.

Willemstad, August 22, 2023

the Secretary,

Appendix to the advice of the Board of Advles. RvA no. RW23-12-LV

Both the draft and the explanatory memorandum have legislative and editorial imperfections. The Council cites the following examples.

1. The draft

a. The recitals It is proposed that:

in the first recital replace the phrase 'to charge with the enforcement of rules' with 'to charge with the licensing. supervision and enforcement of rules'; in the second recital replace the phrase 'a gaming authority' with 'an independent expert body';

to replace in the second consideration the phrase 'the powers of this National Ordinance' by 'the duties and powers laid down in this National Ordinance'.

b. Article 1.1 It is proposed to:

in part f after the word 'organize' insert the word 'of';

in part g replace the phrase 'services or supplies' with 'services or goods'; in part m replace the word 'on' with 'in';

in part q replace the figure '10' with 'ten' and replace 'of voting rights' with -about'.

c. Article 1.2

It is proposed to insert the words 'at or' after the word 'otherwise' in the first paragraph.

d. Article 1.3

It is proposed to add the word "or" after the semicolon in subsection b and to replace the semicolon with a period in subsection c and to delete the word "or".

e. Article 1.5

It is proposed to delete 'conditions,' in the second paragraph because conditions are the conditions that must be met in order to qualify for a permit, and a permit is subject to 'rules and restrictions' in accordance with directions 101 (page 33) and 101, second paragraph (page 34) of the Awr.

f. Article 2.2

It is proposed to replace the word 'ultimate' with 'ultimately' in subsection (b) and to insert 'of the gaming license' after 'suspension' in subsection (f).

g. Article 2.4 It is proposed to:

in subsection 1(b) replace 'regulations' and 'restrictions' with 'regulation' and 'restriction';

in paragraph 1, part c, after 'national ordinance' and 'punishable' insert the word 'imposed';

in paragraph 1, letter d, insert after 'towards' the word 'a';

replace 'the applicant' in the second paragraph, subsection b, by 'the permit holder' because it concerns the revocation of an existing permit

replace the word 'participant' with 'participants' in subsection (i).

p. Article 5.11 It is proposed to:

in the second sentence of the seventh paragraph, delete the paragraph 'the';

in the ninth paragraph, part c, replace the semicolon with a comma.

q. Article 5.12 It is proposed to:

in the second paragraph replace 'monitoring of compliance' with 'monitoring of compliance' and replace 'by and pursuant to' with 'by or pursuant to';

in the third paragraph replace 'by no later than April 31' with 'by no later than April 30'.

r. Article 5.13 It is proposed to:

in the third paragraph replace 'the same' with 'the same';

in the fourth paragraph, part a, replace 'preceding' with 'prior'; in the sixth paragraph, replace 'Minister' with 'minister'.

s. Article 5.15 It is proposed that:

in the second paragraph, part a, insert the article 'the' before 'statutory';

in the second paragraph, part g, replace 'service services' with 'his services'; replace the numbering '2.' before the text of the third paragraph with '3.

t. Article 5.16

It is proposed to replace in part e the phrase 'of the games to be offered' with 'of the games to be offered'.

u. Article 5.17

It is proposed to replace 'to' with 'to' in the fourth paragraph.

v. Article 5.18

It is proposed to:

include the reference to the statutory regulation mentioned in part e of the first paragraph in a footnote;

in the first paragraph, subsection m, replace "the action" with "that action"; in the eighth paragraph, second sentence, delete "on the first sentence".

w. Article 5.20

It is proposed to replace 'NAf 48,0000,-' in the fifth paragraph with 'NAf 48,000,-'.

x. Article 6.1 It is proposed to:

in the second paragraph replace 'of an application' with 'of an application'; in the second paragraph replace 'determined' with 'determined'.

y. Article 6.2

It is proposed to:

In the first paragraph, replace the reference to the lnvorderingverordening1954 included in footnote 9 with 'P.B. 2023, no. 43 (G.T.)';

in the derqe paragraph, replace 'the not or too little' with 'the not or too little'; in the six e paragraph, after 'in the matter', insert 'the in the';

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It is further recommended that in subsection (b), consideration be given to whether the word 'service provider' or the word 'intermediary' should not be included at the beginning of the new subsection (e) of section 2c.

ar. Article 15.5

Article 15.5, section c, of the draft stipulates that article 13 of the 1999 National Ordinance on Sales Tax shall be repealed. However, according to the explanatory note to article 15.5, only part c of article 13, which does not exist, of that National Ordinance shall expire, For this reason, it is proposed to bring the draft and the explanatory note in line with each other.

as. Article 15.8

It is proposed that in the second paragraph "shall enter" be replaced by "shall enter the".

2. The explanatory memorandum

a. General

In the text of the Explanatory Memorandum, the phrases 'the the CGA' and 'a the CGA' occur frequently. It is suggested that these be corrected to 'the CGA' each time.

It is also recommended that in the article-by-article explanatory notes, the word 'proposed' before 'article' should always be deleted or used consistently in the explanatory notes of alie articles.

b. Page 1 It is suggested that:

in the first sentence of the penultimate paragraph replace 'On Curac;ao' with 'In Curac;ao';

in the first footnote delete the second comma before 'such as', replace '2019' with '2011' and insert a period before 'This Island Ordinance'.

c. Page 4

It is proposed to replace 'the Combating' with 'Countering' in the second sentence of the second paragraph and to include the reference to the legal regulations mentioned therein in a footnote.

d. Page 7

It is suggested that in the second sentence of the second paragraph, the phrase 'the security of that supply is compromised' be replaced with 'the security of that supply is compromised'.

e. Page 9

It is proposed that footnote 7 be deleted since the finding therein is already included on page 1 of the Explanatory Memorandum in footnote 5.

f. Page 10 It is suggested that:

in the fifth paragraph, delete the last 'levied';

in the seventh paragraph replace '5.19' with '5.20'.

g. Page 17 It is proposed to:

In part a of the first paragraph replace 'minors' with 'minor and the comma do a semicolon;

I b of the first paragraph replace the comma with a semicolon;

in part e of the first paragraph replace 'state' with 'stand';

in the last paragraph, replace 'Section q: key person' with 'Section p: key person'.

h. Page 18 It is suggested that:

in the second paragraph replace 'Subsection r: beneficial owner:' with 'Subsection q: beneficial owner';

in the second paragraph replace 'natural' with 'natural';

in the third paragraph, replace 'Chapter 2 Prohibited Acts' with 'Section 2 Prohibited Acts';

in the fifth paragraph, replace 'prohibited' with 'connected';

in the last paragraph, replace 'in respect of occasions' with 'in respect of matters'.

i. Page 19

It is proposed to rewrite the second sentence in the second paragraph.

j. Page 20

It is proposed that in the penultimate paragraph:

in the first sentence delete 'to prevent abuse';

in the last sentence replace 'a small payment' with 'a small amount'.

k. Page 22

It is proposed to replace 'second paragraph' with 'first paragraph' in the second sentence of the fifth paragraph.

I. Page 24 It is proposed that:

in the first sentence of the first paragraph, replace 'Subsection i' with 'Subsection j';

in the second paragraph, replace 'The second paragraph' with 'The third paragraph'.

m. Page 25 It is proposed to:

check the wording of the first paragraph and rewrite this sentence; in the fourth paragraph, replace 'Subsection j' with 'Subsection k'.

n. Page 27 It is proposed to:

in the third paragraph correct the phrase 'published on the website of the CGA'; in the penultimate paragraph replace 'the prohibitions defined in Article 1.2, paragraphs 1 and 2 do not apply' with 'the prohibition defined in Article 1.2, paragraph 1 does not apply'.

o. Page 32 It is proposed that;

in the first paragraph write 'ADR' in full;

in the second paragraph replace 'ministerial regulation' with 'ministerial regulation with general effect'.

e sentence of the second paragraph replace 'The sixth paragraph' with 'The seventh paragraph';

in the fourth paragraph, replace 'The seventh paragraph' with 'The eighth paragraph'; in the first sentence of the sixth paragraph, replace '31' with '30'.

q. Page 38

In the first sentence of the penultimate paragraph, it is proposed to replace 'The fifth paragraph' with 'The sixth paragraph'.

r. Page 42 It is proposed that:

in the first sentence of the fourth paragraph, replace 'The Governing Board' given Article 12.1, second paragraph, of the draft with 'The CGA';

in the first sentence of the penultimate paragraph, replace 'policies, rules and restrictions' given Article 12.1(3) of the draft with 'policies' and delete the second 'draft';

in the last paragraph, replace 'fifth paragraph' with 'fourth paragraph';

in footnote 9, replace 'A.B. 1954, no.2' with 'P.B. 2023, no. 43 (GT)'.

s. Pages 46 and 47

It is proposed to delete the penultimate and last sentence on page 46 that run through to the first paragraph on page 47 since article 13.8 of the draft does not have a second paragraph.

t. Page 50

It is suggested that the title of the legal regulation mentioned in the third paragraph and the title of the legal regulation mentioned in the second paragraph of Article 13.13 of the draft be made consistent with each other and that their location be indicated in a footnote.

u. Page 52

It is proposed that in the fourth sentence of the first paragraph, the phrase "the application of administrative coercion or the issuance of recovery of a penalty" be replaced by "the notification of administrative coercion or the imposition of a penalty".

v. Page 56

It is proposed to replace '70' with '13.16' in the last sentence of the first paragraph.

w. Page 57

It is proposed to replace 'Minister' with

'CGA'.

x. Page 62

It is suggested that in the fourth sentence of the first paragraph, 'In such a case' be replaced with 'In such a case and 'Section 4' be replaced with the appropriate reference.

y. Page 63

It is proposed that, in the first sentence of the second paragraph, 'The third paragraph' be replaced by 'The fourth paragraph'.

z. Page 65

The second sentence of the fourth paragraph refers to literature. It is suggested that the bran da&rvan be listed in a footnote.

aa. Page 70 It is suggested that:

in the last sentence of the sixth paragraph, replace the phrase "article 13, section c," with "section c, article 13.

in the last sentence of the last paragraph, replace the phrase "indispensable to the determination" with "indispensable to the determination".

ab. Page 71

It is proposed to replace 'Article 15.8 provides that' in the penultimate paragraph with 'Article

15. 7 provides that'.