To the Minister of Finance Mr. mr. drs. J. Silvania Pietermaai 17

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Social and Economic Council Curac:;ao

Date: Ref. no.: Subject:

Willemstad, March 22, 2023 024/2023-SER

Advice on the draft National Gaming Ordinance (case numbers 2022/041544 and 2022/042286, ref. no. 147/2022-SER)

Excellency,

We hereby draw your attention to the following.

On December 15, 2022, the Social and Economic Council (SER) received a request for an opinion from you, based on the decisions of the Council of Ministers of December 14, 2022 and December 21, 2022, concerning the draft national regulation on games of chance (case numbers 2022/041544 and 2022/042286, ref.no. 147/2022-SER).

The attached opinion was considered and adopted at the regular preparatory and plenary session on March 17, 2023.

For a substantive presentation of the SER's position on the draft amending country regulation, please refer to the said opinion.

On behalf of the Social and Economic Council,

cc.: The Minister of General Affairs

The Fiscal Affairs Sector of the Ministry of Finance

The Legislative and Legal Affairs Implementation Organization (UO WJZ)

Ansinghstraat 15-17

Willemstad, Curac;:ao

T: (+5999) 461-5406/ 5328

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Opinion on the Draft National Regulation on the

Gaming

ISSUED TO THE MINISTER OF FINANCE MARCH2023

REF.NO. 024/2023-SER

Socio-Economic Council

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The guiding principle of the SER's advice is the use of a broad concept of prosperity that not only involves material progress, but also aspects of social welfare and a good quality of the living environment, in short a sustainable development of society.

The SER strives for quality and support: high expertise combined with broad agreement and support in society.

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Social and Economic Council Ansinghstraat 15-17 Willemstad, Curagao

T (+5999) 461 5406 / 5328

E info@ser.cw www.ser.cw

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Opinion of the Social and Economic Council on the Draft State Regulation on Games of Chance (case numbers 2022/041544 and 2022/042286, ref. no. 147/2022-SER), as adopted in plenary on March 17, 2023.

Summary of conclusions and recommendations

- On December 15, 2022, the Social and Economic Council (hereinafter referred to as the SER or the Council) received a request for advice from the Minister of Finance (hereinafter referred to as the Minister) regarding the draft State Regulation on Gambling (hereinafter referred to as the draft State Regulation, the draft, or LOK 2023 for short) and through a decision of the Council of Ministers (CoM) dated December 21, 2022, a request for urgent advice on the draft State Regulation.

- According to the preamble of the draft, it is considered desirable to modernize the legislation on the organization of gambling, or the opportunity to do so, and to entrust an independent expert body with the enforcement of rules regulating gambling and combating and preventing gambling addiction. It is further stated that it is desirable to establish an independent administrative body in this regard. The new gaming authority to be established, named Curac;:ao Gaming Authority (CGA), has the task of implementing the National Ordinance and rules to be established by or pursuant to National Decree containing general measures, as well as tasks assigned to the CGA by or pursuant to other national ordinances.

- The National Ordinance is designed as a framework for the regulation of all games of chance offered in or from Curac;:ao (physical and online gambling sector) and makes it possible to further regulate the various games of chance by national decree containing general measures. This, according to the accompanying explanatory memorandum, does justice to the specific characteristics of the various licensed games of chance and allows for a faster response to the dynamics of the gaming sector.

- The draft replaces the Lottery Ordinance 1909, the Hazard Games Ordinance 1948, the Land Lottery Ordinance, the Hazard Games Ordinance II 1988, the Island Ordinance Casinowezen Curac;:ao and the Outdoor Hazard Games Ordinance. The latter, however, remains applicable eighteen (18) months after the entry into force of the LOK 2023 to the operation of hazard games on the international market by legal persons to whom licenses have been granted pursuant to article 1 of the Landsverordening buitengaatse hazardspel, the so-called master licensees and, according to the second paragraph, for the legal persons operating under the master licensees, the so-called sub-licensees, provided that within three months after the entry into force of the LOK 2023 an application has been submitted for the operation of hazard games on the international market in accordance with the LOK 2023. The remaining laws were replaced at a time to be determined by national decree, which may be set by individual sections.

- In drafting the draft National Ordinance, the following objectives were in the interest of ensuring a healthy gaming offer from Curac;:ao:

1. To prevent and combat criminal activities such as money laundering, fraud, match fixing and manipulation of gaming software by ensuring the integrity of the gaming organizer.

2. The protection of gambling participants (consumer protection), including the guarantee of fair gaming and fair treatment.

3. The prevention and prevention of gambling addiction and the protection of vulnerable persons.

4. Ensuring Cura9ao's international reputation as a gaming industry, especially online gaming.

- By improving the international reputation of the (online) gaming industry in Cura9ao, the Minister expects to provide a positive stimulus to the Cura9ao economy (strengthening the economic base/expansion and diversification of economic pillars, including job creation), and to generate additional income for the government (through the levying of licensing fees).

- In order to realize job creation, requirements have been set for licensees without a location on Cura9ao, namely that at the start of operations permanent and full-time employment should be provided to at least one natural person who is a resident of Cura9ao as key person and that after five years from the start of operations permanent and full-time employment should be provided to at least three key persons who are residents.

- The amount of the permit fees and deadlines for their payment were established by national decree containing general measures.

- On May 28, 2021, the SER advised on an earlier version of the present draft national ordinance, the LOK 2021, and also on the draft national ordinance on the gaming tax (LOKS 2021) submitted to the council for consideration at that time.

- The council notes that the minister has followed the aforementioned SER advice, both the substantive and procedural recommendations made therein, in important respects, which has resulted in an amended bill that, in a general sense, aims to introduce, among other things, a neutral and international licensing regime, according to objective standards, applicable to the entire (physical and online) gambling sector.

- In the opinion of the council, the fact that the Council agreed to an urgent request for advice to the SER at the request of the minister is probably due to the desire to have the LOK 2023 enter into force in the second half of this year.

- It is worth noting that the official preparation process, which is largely based on, or results from, measures H2 and H19 of the Cura9ao Land Package, has been running since media 2021. Against this background, the question is not at all unjustified whether it bears witness to fairness and reasonableness to require the SER to issue a careful and well-considered substantive advice with the greatest possible urgency on a rather sensitive subject that, in terms of scope, complexity and depth, simply requires a meticulous and professional study and in-depth analysis.

- The council considers such a course of events irresponsible with a view to guaranteeing the quality of the legislative process and once again urges the government or the minister to agree on realistic lead times for draft legislation and regulations in preparation in the future and to monitor them closely.

- In light of the latest implementation agenda of the Cura9ao Land Package and the fact that in the National Ordinance establishing the budget of the Country of Cura9ao for the service year 2023, which came into effect on January 1 last, estimated revenues for the country for this year of NAf. 20 million resulting from the LOK 2023, the SER can understand that some urgency is desirable with the implementation of the LOK 2023.

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- The SER further notes that, other than what it specifically recommended in its advisory report of May 28, 2021, neither an established comprehensive vision nor an established policy framework were presented with respect to the online gaming industry in which it is made clear and further motivated and justified how, and if so, in what way the proposed choices elaborated in the LOK 2023 fit within the Cabinet's policy objectives.

- Also, it is not clear from the documents consulted how a sustainable public-private partnership will be used to structurally implement an effective, result-oriented and widely supported strategy regarding the online gaming sector that in the medium and long term can offer real guarantees for the consolidation and further development of the sector into a significant pillar of the Curacao economy.

- Moreover, the SER wonders to what extent the choice for a complete 'overhaul' of the entire gaming sector at once rather than in phases, is justified from efficiency considerations. For the time being, the SER is skeptical of such an approach.

- The LOK 2023 is purely draft framework legislation in which the material standards for the organization of supervision per gaming area are not included in the bill itself, but will be regulated in implementing regulations per gaming area. The SER considers it important, in this context, to draw attention to the fact that, as far as the SER is aware, these implementing regulations have not yet been drafted, nor have they been delivered, as a result of which there is insufficient insight into what licensing, supervision and enforcement will actually look like in practice.

- With a view to the principle of legal certainty and the principle of confidence, the SER considers it wise at this stage, with regard to the structure of the licensing and the scope of supervision and enforcement per gaming area, to create as much detail as possible.

- The SER has also assessed the content of the Memorandum of Understanding and is of the opinion that it is more in the nature of a summary of the draft national regulation than that it provides sufficient clarification or a carefully reasoned explanation of the proposed legal provisions with possible references to concrete (practical) examples, or a consistent detailing or specification of the reasoning underlying the proposed choices.

- The SER fully supports the basic idea of regulating the (online) gaming sector in Curacao through centralization of supervision and introduction of an effective enforcement mechanism. In the opinion of the council, this fulfills some important preconditions that, if well thought out and properly prepared, implemented and enforced, can contribute significantly to the improvement of Curac;ao's international image and reputation and the strengthening of its identity as a mature, reliable and respected online gaming jurisdiction.

- The council may therefore assume, with due caution, that, given the specific characteristics of the sector and the benefits that can be derived from it, it may have the potential to become an even more attractive player in the international market for online gambling with a possible spin-off for the island in fiscal, economic, social and societal terms that should not be underestimated.

- The SER believes that increasing the success rate of the modernization of the gaming sector and a favorable economic impact in real terms is possible if:

(a) the existing economic base (the current group of so-called sub-licensees) is preserved as much as possible;

(b) the majority of licensees are placed under supervision in Cura9ao; and

c) new parties make the decision to establish themselves in Cura9ao.

- In light of this, it is considered important if a careful balance is made between, on the one hand, the introduction of laws and regulations to maintain a healthy and responsible gaming offer on Cura9ao and, on the other hand, the commercial attractiveness of the sector.

- According to information received by the SER, startup online gaming operators like to establish themselves on Cura9ao because of the 'cocktail character' of the current license for online games of chance (no need to apply for a new license per type of game). Furthermore, Cura9ao is still attractive for this specific category of online gaming providers because the current costs for obtaining a Cura9ao sub-license are very competitive compared to other jurisdictions, the current low 'substance' requirements are attractive as well as the tax advantages.

- In addition, the current regime offers Curai;:ao-based providers of online gaming primarily the opportunity to have a 'global (or regional) neutral offering'.

- The SER recognizes that effective supervision is highly necessary because the companies offer an entertainment product that can potentially harm vulnerable persons (minors, gambling addicts) and that is susceptible to financial crime (fraud, money laundering).

- The industry's potential to maintain a substantial market share and thereby contribute to the country's coffers through licensing fees is highly dependent on the extent to which Cura9ao as a jurisdiction remains attractive to gaming providers.

- For the SER, the choice to regulate, through generally binding regulations, specific matters related to the operations of the (online) gaming industry is somewhat understandable and, from the minister's point of view, justifiable, given the complexity, versatility, fierce competition and rapidly changing circumstances that characterize this industry.

- Nevertheless, the SER notes that there are very many other relevant matters that will not yet be regulated by national decree, containing general measures, and whose intention to do so has not yet been made known. The inevitable consequence of this is a great deal of ambiguity and uncertainty in the sector. It is not inconceivable that these ambiguities and uncertainties could lead to companies operating in the international market for the provision of games of chance orienting to other jurisdictions.

- Also, the fact that Cura9ao's online gaming sector was 'wholesale' derisked by the financial sector (correspondent banks) in 2006 means that locally based online gaming companies cannot bank locally. As a result, Cura9ao is not interesting and attractive to the major online gaming operators.

- Consultations with the industry have shown that once another jurisdiction is chosen, the likelihood that gaming operators will later establish themselves (again) in Cura9ao is generally quite low.

- The possible departure of bona fide gaming providers to other jurisdictions poses a real risk to the benefits the Minister envisages to be gained from the online gaming sector.

- In light of the above, the SER strongly advises the Minister to take care of the elaboration of at least the rules, conditions, regulations and requirements related to the granting of licenses, including the application process, and the determination of the amount of the license fees and the fee for applying for a license.

- With regard to the attractiveness of the "cocktail character" of the current license for online games of chance, the SER notes that it is not clear whether it will still be possible for gaming providers to offer multiple types of games of chance under one license. lmmers, the draft states that further rules may be imposed on the approval by the CGA of games or other gaming-related activities, including new or modified games or activities under a gaming license, and the costs associated with processing the request for approval. The Explanatory Memorandum does not elaborate on this.

- It can be inferred from the aforementioned provision that approval and payment will be required for the addition of new games under an already existing license. Because of this, Cura9ao's online gaming regime may lose its 'cocktail character' and give away an important competitive element.

- The revenues that can be obtained for the approval of new type of games of chance under an already existing license are, in the opinion of the SER, disproportionate to the loss of competitiveness in the market of online gaming licensing jurisdictions. The council recommends that the minister consider maintaining the "cocktail character" of the Cura9ao online gaming license.

- Furthermore, the SER wonders what will happen if a master licensee's license expires before the LOK 2023 takes effect. In that case, formally speaking, all sub-licenses issued by the master licensee will also expire. This situation creates legal uncertainty for gaming operators who are already looking for a secondary license from another jurisdiction. The risk of this is that the Cura9ao license will be terminated which will lead to lost revenue for Cura9ao.

- In view of this, it is recommended that the Minister ensure that the licenses of master licensees do not expire before the LOK 2023 has taken effect.

- The LOK 2023 sets as a requirement for online gaming providers to obtain a license that upon commencement of operation there must be at least one key person who is a resident of Cura9ao employed full-time by the licensee. This key person may not be the director. After five years, three key persons who are residents must be employed full-time. The definition of key person is a natural person who actually, indirectly or legally controls or has control over the management, assets or operational policies.

- In addition, the requirement is that the licensee must have business premises equipped with customary facilities for carrying out only the activities for which the license is granted; in short, an actual location in Cura9ao.

- The SER notes that with the proposed substance requirements, the government intends to give substance to the requirement of real presence of the Landsverordening op de winstbelasting 1940 for

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entities that perform activities in the context of organizing games of chance in or from Curai;:ao or give the opportunity to do so.

- The SER finds, however, that the substance requirements, as proposed in the draft, could possibly impede the success of the legislation in achieving its objectives, especially in the short term, as there is not enough qualified and trained personnel on Curai;:ao to be able to meet the substance requirement immediately at the start of the new supervisory regime.

- If experienced and specialized personnel must be brought to Curai;:ao, the process of obtaining an employment and a residence permit could possibly have a restraining effect. The SER therefore urges the Minister to address this issue with his counterparts responsible for the portfolios Social Development, Labor and Welfare (SOAW) and Justice.

- In connection with ensuring legal certainty, the SER also refers to the provisions in the National Ordinance on Profits Tax and urges the Minister to align the substance requirements for the LOK 2023 with the requirements with respect to profits tax, whereby review for obtaining a permit will have to take place in close cooperation with the lnspectorate of Taxes.

- As of LOK 2023, the Curai;:ao Gaming Authority (CGA) will be charged with the licensing, supervision and enforcement of all games of chance. Specifically, the CGA will be charged with conducting various investigations prior to granting license applications, certification of service providers, checks for compliance with relevant legislation (LvMOT, Member, Sanctions Ordinance or the National Sanctions Act), checks for payment of taxes and premiums by gaming providers and Curai;:ao-based providers of critical services and critical services: ao-based suppliers of critical services or goods to gaming providers, issuing warnings or directions regarding the LOK and maintaining a register of all gaming licenses, supplier licenses and sanction orders.

- The entry into force of the LOK 2023 will create a huge workload for CGA because, under the transitional regulation, existing companies on Curai;:ao already have to apply for a license within three months of the law's entry into force.

- The SER deduces from the LOK 2023 that, as of its effective date, the tasks and powers and the legal status of the Curai;:ao Gaming Control Board (GCB) will be continued by the CGA and the personnel of the GCB will be legally offered the possibility to join the CGA. The SER understands from the SCI that the organization is already currently facing shortages regarding staff capacity. The SER is concerned about the institutional capacity of the future gaming authority in the short term.

- The draft sets the maximum number of members of the Supervisory Board (SB) of the CGA at three. The SER considers this proposed maximum number of SB members to be on the low side, given the tasks of the CGA and paragraph 2.3 of the Corporate Governance Code. Account should be taken of the nature and size of the company and its business as well as the desired expertise and background of the supervisory directors, in particular the nature of the business, the degree of internationalization, the size and the specific risks in the medium and long term.

- Furthermore, it is recommended that the CGA's Supervisory Board consist of members with expertise in at least financial, legal, AML/CFT and responsible gaming areas. The Board, therefore, suggests that the Minister consider expanding the number of members of the SB from three to five.

- Persons working in or for or directly or indirectly affiliated with the gaming sector should be excluded from appointment to the Executive Board and the Supervisory Board in view of possible or suspected conflicts of interest. The LOK 2023, in the opinion of the SER, sees enough of this with respect to the BoD but not enough with respect to the SB.

- The SER proposes to formulate the provision regarding possible conflicts of interest with respect to members of the Supervisory Board more sharply, in words of similar purport as the provision with respect to members of the Executive Board and, also, to include in both articles that a (financial) interest of blood or affinity up to the second degree is considered incompatible.

- Based on the current draft of the LOK 2023, all financial resources of the CGA will consist of a contribution from the national budget. In the SER's view, the aforementioned is at the expense of the CGA's independence. The FATF recommendations require countries to ensure that supervisors, including supervisors of (certain) gaming operators, have sufficient financial, human and technical resources.

- Also, the budget of the CGA requires ministerial approval. This means that the CGA cannot independently determine which activities will be carried out with which resources and it is intended that the collection of license fees and other fees will be done by the Receiver.

- The SER understands that the collection of license fees from casinos by the Tax Department has caused problems in the past, so it has been decided to entrust the SCI with the collection.

- The GCB has the necessary expertise and necessary information to effectively collect the fees due and, in the context of especially the licensing process when the LOK 2023 comes into force, will already have relevant knowledge of and contact with licensee/applicant which can be of service in the collection of gaming license fees.

- In order to make the CGA less financially dependent on the Landskas, it is recommended that a timely start be made with taking the necessary measures so that an exception is made to the Land Ordinance Financial Management to give the CGA the authority to collect, under the condition that reasonable sanction provisions are included in case the CGA does not meet its accountability obligation.

- The SER also recommends that a distinction be made between cost recovery fees, to cover the costs of the CGA (application and renewal of a license and other authorizations and supervision), and revenue generating fees.

- The proposal further implies that the CGA will be charged with the collection of cost-recovery fees (to cover its own costs) and that the Recipient will be responsible for the collection of revenue-generating fees for the benefit of the Exchequer, permit fees.

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- The SER further believes that the law should contain the necessary guarantees for a healthy financial start-up position of the CGA. This does not appear to be the case at all at present, given the provision regarding the resources of the CGA, which should be paid into the National Treasury after the LOK 2023 comes into effect. This provision may entail a (temporary) total paralysis of the CGA.

- The CGA should at least have a buffer in order to be able to carry out its tasks immediately after the LOK 2023 comes into effect and to meet the related costs. The most obvious solution to this is for all existing resources of the SCI to be transferred to the CGA.

- According to the LOK 2023, the appointment of the !ers of the Executive Board and the Supervisory Board will end as of the entry into force of the LOK 2023 and the first !ers of the Executive Board of the CGA will be temporarily appointed by the Minister for no more than twelve (12) months. A disadvantage of such a short term of appointment is that it may lead to a loss of expertise, insight and organizational memory, which the CGA could benefit from if the !eden of the BoD and SB were to serve longer terms.

- In order to ensure the continu'ity of the operational activities of the SCI in the context of the transition, the SER suggests that the Minister consider including in the LOK 2023 that the incumbent !eden of the BoD and the SB of the SCI be deemed to be members of the BoD and the SB of the CGA, respectively, under the same conditions.

- The SER questions the extent to which sufficient attention has been paid in the elaboration of the objectives to ensure a healthy supply of games of chance, namely preventing and combating gambling and gaming addiction, protecting vulnerable persons and protecting Cura9ao's reputation as a gaming jurisdiction. It is, finally, of eminent importance that the LOK 2023 enables the goals to be achieved in implementation and execution through frameworks and safeguards included in the law to protect vulnerable persons and prevent and combat gambling addiction, all the more so since it appears that the LOK 2023 enables all forms of gambling to be offered to residents of Cura9ao.

- The SER considers quantitative research in this area indispensable so that an informed decision can be made as to whether the ultimate objective of the LOK 2023 (significant economic pillar and, thus, the intended expansion of gambling offerings in the local market) outweighs possible social problems this may entail. Excluding local participation is not an option as this could damage Cura9ao's international reputation as a gaming jurisdiction.

- The SER also recommends that the definition of "vulnerable person" be formulated more broadly, so that all persons exhibiting or experiencing problematic behavior are covered and thus protected by law. In the opinion of the SER, the provision is too summarily drafted and therefore inadequate to protect vulnerable persons. The licensee should be obliged to take all necessary measures to identify vulnerable persons, to protect them and to proactively exclude them from participating in gambling.

- Ensuring responsible gaming also means that licensees who should have prevented a vulnerable person from accessing and participating in an offered game of chance, but failed to do so, may not keep the vulnerable person's winnings. It can be arranged by law that, for example, the money won is deposited in a fund for the purpose of protection or treatment.

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of vulnerable persons for gambling, conducting research on gambling problems and providing information on responsible gambling.

- According to the draft, games of chance organized by non-profit organizations are exempt from the requirement of a gaming license but the activity must be reported to the CGA four (4) weeks in advance. Furthermore, it is possible to offer non-profit games five times a year, without a maximum revenue, without requiring a license. This choice is not further explained and, in the opinion of the SER, is contrary to the concept of "responsible gaming" because it may encourage gambling addiction. A license should serve as a threshold to prevent the community from being overwhelmed by gaming.

- Moreover, the SER would like to note that the intended exemption, in combination with the absence of a maximum yield or stake per participant and the lack of supervision, is at odds with the fact that the intended modernization also serves to prevent and combat money laundering and terrorist financing. In the opinion of the SER, the possibilities to execute these criminal acts were expanded and the fact that the FATF demands special attention from jurisdictions that their non-profit games are not used for corruption, money laundering, terrorist financing and proliferation is completely ignored.

- The SER, therefore, sees no reason not to require a license for games of chance for a social, social or ideological purpose, but rather that there are more and weightier arguments to require a license.

- A counterpart to a responsible and fair gaming offer is that the gaming provider is also protected from rogue players who try to collect fictitious gaming claims from Cura9ao gaming providers under false pretenses. The SER therefore suggests that the minister consider having the regulator keep a register of rogue players so that Cura9ao gaming providers can keep rogue players out.

- The draft requires licensees to file monthly returns, within fifteen (15) days after the expiration of the calendar month, with simultaneous payment of the amount due in licensing fees. Any subsequent assessments, if underpayment or failure to file a return, will be imposed by the lnspector.

- It seems more logical to the SER to have the GCA report to the lnspector who are liable for taxes. Based on this notification, the lnspector will issue tickets or invite licensees to file electronic returns.

- Furthermore, any offsetting of wrongly or overpaid permit fees is placed in the hands of the Receiver and there is the possibility to file an objection to an imposed post-tax assessment within two months of the date after which the lnspector of Taxes must make a decision on the objection within six weeks.

- Practice often shows that the deadlines are not feasible for the lnspector. The SER requests that the Minister include provisions to monitor the rights of licensees in the event that the lnspector does not respond to the objection in a timely manner.

- The draft regulation states that the CGA, in cooperation with the "Government Tax Accountant's Office Foundation," will be charged with monitoring compliance and intervening in case of violation of the LOK 2023. It is not clear to the SER which body is meant by this. The SER also considers a cooperation between the supervisor and another organization, with respect to supervision and enforcement, undesirable, from the point of view of its implementation in

practice. Consequently, the SER urges the Minister to entrust only the CGA with the supervision and enforcement of the gaming sector.

- From the provisions included in the transitional and final provisions, the council understands that the license of the master licensees will remain valid for 18 months after the entry into force of the LOK 2023 and sub-licensees, for this same time frame, may continue to operate under the license of the master licensees provided that they apply for their own license within three (3) months after the entry into force of the LOK 2023.

- With the exception of the supervision provisions, it is not clear to SER which provisions are valid after existing sub-licensees have applied for a license but the application has not yet been granted.

- The SER unanimously concludes that it is neither desirable nor responsible, in view of the objections and reservations expressed in this opinion, to continue the legislative process without further consideration or consideration of these objections and reservations.

- Since the government (read: the minister) has the ambition to let the Cura9ao online gaming industry grow into the Next Big Thing, from which real economic, fiscal, social and societal benefits can be gained in the sense of among others more income for the country and more highly productive jobs for the local population, it is recommended to continue the initiated modernization process of the (online) gaming sector with the utmost care, transparency and a solid processual embedding.

- A precondition for achieving the intended benefits is coordination with all parties and stakeholders involved. This will have a support-enhancing effect and, if prepared tightly, will certainly not take an unnecessary amount of time.

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1. introduction

1.1 Request for advice

On December 15, 2022, the Social and Economic Council (hereinafter referred to as the SER or the Council) received a request for advice from the Minister of Finance (hereinafter referred to as the Minister), pursuant to article 2, second paragraph, of the National Ordinance of the SER (A.B. 2010, no. 87, annex p, as amended by P.B. 2017, no. 70), regarding the draft National Ordinance on Gaming, hereinafter referred to as the draft National Ordinance, the draft or simply LOK 2023.

On the basis of that request for advice is the decision of the Council of Ministers (hereafter: BoM) of December 14, 2022, with case number 2022/041544, in which it was agreed to offer the draft to the SER for advice and the decision of the BoM of December 21, 2022, with case number 2022/042286, in which, at the request of the Minister, it was agreed to request the SER to issue an advice with speed on the draft national regulation.

1.2 lnhoud and scope of the draft

According to the preamble of the draft, in the context of social and technological developments, it is considered desirable to modernize legislation on the organization of games of chance, or the opportunity to do so, and to entrust an independent expert body with the enforcement of rules regulating games of chance and combating and preventing gambling addiction. It is further stated that in this regard it is desirable to establish an independent administrative body, as referred to in article 111, first paragraph, of the Cura9ao State Regulation (A.B. 2010, no. 86).

The new gaming authority to be established, named Cura9ao Gaming Authority (CGA), as referred to in article 22 of the draft, has the task - pursuant to the proposed article 23, first paragraph - of implementing the National Ordinance and rules to be established by or pursuant to National Decree, containing general measures, as well as tasks assigned to the CGA by or pursuant to other National Ordinances.

The general part of the explanatory memorandum attached to the draft further substantiates that the National Ordinance is designed as a framework for the regulation of all games of chance offered in or from Cura9ao (physical and online gambling sector). The draft National Ordinance contains more general provisions regarding prohibited gaming activities, the granting, refusal, suspension, revocation or amendment of (provisional) gaming licenses, responsible gaming, the establishment of a new gaming authority and enforcement and supervision.

Moreover, the National Ordinance makes it possible to further regulate the various games of chance by national decree containing general measures. This, according to the Explanatory Memorandum, does justice to the specific characteristics of the various licensed games of chance and allows for a quicker response to the dynamics of the gaming sector.

Pursuant to article 107 of the draft National Ordinance it replaces the Lottery Ordinance 19091, the Hazard Games Ordinance 19482, the National Lottery Ordinance3, the National Ordinance Hazard Games II 19884, the Island Ordinance Casino games Cura9ao5 and the National Ordinance Outdoor Hazard Games6.

The latter, however, in accordance with the proposed in article 101, paragraph 1, of the present draft, shall continue to apply eighteen (18) months after the entry into force of the LOK 2023 to the operation of hazard games on the international market by legal persons to whom licenses have been granted pursuant to article 1 of the Landsverordening buitengaatse hazardspel, the so-called

1 P.B. 1965, no. 85

2 P.B. 1948, no. 138

3 P.B. 1965, no. 122 (G.T.)

4 P.B. 1988, no. 66

5 P.B. 1999, no. 97

6 P.B. 1993, no. 63

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master licensees 7 . The above also applies, according to the second paragraph, to the legal entities operating under the master licensees, the so-called sub-licensees, provided that within three months of the LOK 2023 coming into force an application has been submitted for the operation of hazard games on the international market in accordance with the LOK 2023. The remaining laws will be replaced at a time to be determined by national decree, which may be set by individual sections. In drafting the draft National Ordinance, according to the general part of the MoT, the following objectives have been in the interest to ensure a healthy gaming offer from Cura9ao:

1. Preventing and combating criminal activities such as money laundering, fraud, match fixing

and manipulation of game software by safeguarding the integrity of the organizer of the game of chance. This in addition to already applicable laws and regulations for the purpose of Anti-Money Laundering and the Combating of the Financing of Terrorism (AML/CFT laws and regulations), in particular the National Ordinance Reporting Unusual Transactions (LvMOT) and the National Ordinance Identification when Providing Services (LID). CGA, as the new gaming authority on Cura9ao, will be authorized to supervise compliance with AML/CFT laws and regulations by all gaming providers. Already when applying for a license, the CGA will investigate the integrity of all persons who are (co)policymakers or hold other key positions at gaming providers and the legitimate origin of the money with which the operation is financed.

2. The protection of participants in games of chance (consumer protection), including the guarantee of fair play and fair treatment, is reflected in the proper provision of information so that participants are in a good position to oversee the consequences of choices, fair play, a minimum age for participation in games of chance and prohibition of credit to participants.

3. The prevention and prevention of gambling addiction and the protection of vulnerable persons. This is reflected in providing information to gambling participants about gambling addiction and efforts to prevent participation in gambling by vulnerable persons (minors and gambling addicts).

4. Ensuring Cura9ao's international reputation as a gaming industry, especially online gaming, through transparency, consumer protection, promotion of responsible gambling and protection of minors.

By improving the international reputation of Cura9ao's (online) gaming industry, the Minister expects to provide a positive stimulus to the Cura9ao economy by strengthening the economic base/expansion and diversification of economic pillars with the online gaming sector, including job creation. To realize the latter, requirements have been set for licensees without a location on Cura9ao (Article 9, paragraph 10), namely that upon commencement of the operation, permanent and full-time employment must be provided to at least one natural person who is a resident of Curaç,;ao as key person and that after five years after commencement of the operation, permanent and full-time employment must be provided to at least three key persons who are residents. Key persons are defined as natural persons who, in name or in fact, indirectly or directly control or exercise significant influence over the management, assets or the establishment or implementation of the operational policy of a licensee (Article 1).

7 Regarding the role and position of master licensees, footnote 38 of the report "Strengthening the Rule of Law," which describes the results of the policy review of the first article of Chapter IV of the Kingdom's budget on the rule of law in the Caribbean de/en of the Kingdom, notes, "Some twenty years ago, a few so-called master/licensees were issued on a one-time basis to a handful of companies. The master licensees are estimated to have issued over a thousand sub/licenses. These can be thought of as usage rights. The holders of sub-licenses are hardly supervised."; see in this context: Oberon Nauta, Nynke Piepers & Paul van Egmond, Versterken Rechlstaat: beleidsdoorlichtinq artikel

1 Rliksbegroting IV. Kingdom Relations: Amsterdam. December 12, 2022. p. 31: htlps://www.tweedekamer.nl/downloads/document?id=2023D08967. Vide also: https://www.platform investico.nl/article/russian-ukraine-and-belarusian-owners-behind-curacaose-online-casinos/.

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The minister also expects to generate additional revenue for the government because the gaming industry will contribute to the national treasury through the levy of license fees. The amount of the license fees and the deadlines for their payment will be established by national decree containing general measures (Article 51).

The LOK 2023 consists of 110 articles, divided into 12 chapters in which the following topics are regulated:

1. General Provisions (Article 1).

2. Prohibited acts (articles 2 to 7).

3. Gambling licenses (articles 8 to 16)

4. The supplier's license (articles 17 to 18)

5. The register (article 19)

6. Vulnerable person (article 20)

7. Exempt nonprofit games (article 21)

8. Curac;:ao Gaming Authority (articles 22 to 50).

9. Gaming license fees (articles 51 to 54).

10. Supervision and enforcement (articles 55 to 97)

11. Other provisions (sections 98 to 99)

12. Transitional and final provisions (Articles 100 to 110)

1.3 Details regarding the request for advice

Before proceeding to express a substantive opinion on the draft national regulation, the SER considers it appropriate to make some general comments on the request for advice.

On May 28, 2021, the SER advised on an earlier version of the present draft national ordinance, the LOK 2021, and also on the draft national ordinance on the gaming tax (LOKS 2021) (reference number 051/2021-SER)8 submitted to the council for consideration at that time. The council notes that the minister has followed the aforementioned SER advice, both the substantive and process recommendations made therein, in important respects, which has resulted in an amended bill that, in a general sense and moreover, aims to introduce a neutral and international licensing regime, according to objective standards, which is applicable to the entire (physical and online) gambling sector. The SER is of the opinion that with this, to a certain extent, the principle of due diligence has been met and that the Minister, in preparing the LOK 2023, has gathered the necessary knowledge of the relevant facts and of the interests to be weighed. In its aforementioned opinion of May 28, 2021 (with reference number 051/2021-SER), the council drew particular attention to the latter, as evidenced by the specific recommendation made by the council in the concluding paragraph of that opinion to "very carefully and purposefully [... ) to consult extensively with the sector and to actually incorporate the input of the sector, with the help of tax advisors from both inside and outside the government and financial experts, into renewed draft legislation; such in order to obtain broad support for the interpretation and design of the modernization package already designed in 2019. "9 The SER will return to this in the next chapter.

With regard to the request for advice on the present draft national regulation, the SER would further like to make the following comment. O dat de RvM at the request of the minister in the above-mentioned decision of December 21, 2022, with case number 2022/042286, has agreed to an urgent request for advice to the SER is, in the opinion of the council, probably inspired by the desire to have the LOK 2023 still enter into force in the second half of this year. What is striking is that the official preparation process regarding the present draft, which is largely

8 https://ser.cw/wp-contenl/uploads/siles/280/2021/05/051-2021-SER.pdf

9 SER opinion, p. 44.

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based on, or resulting from, measures H2 and H19 of the Cura9ao Land Package10 and, by extension, was and is jointly coordinated by the Temporary Working Organization (TWO) and the National Reform Commission (NHC), has been running since mid-2021. It is reasonable to assume that with the submission of a draft plan of approach (including draft legislation) prepared by Cura9ao on September 22, 2021 and subsequently a revised version of the draft plan of approach on October 13, 2021 to the TWO, the technical-administrative preparation process regarding the LOK 2023 has formally commenced under joint responsibility of TWO and NHC for substantive quality assurance and process direction. 11 The latest implementation agenda of the Cura9ao Land Package (1"10 quarter 2023) shows that there are tight agreements between TWO and the NHC in this regard.

Against this background, in which the official preparation process and the administrative decision-making process have lasted more than a year and a half, the question is not at all unjustified whether it bears witness to fairness and reasonableness to demand from the SER, as the legislator's permanent advisory body, with the greatest possible urgency to issue a careful and well-considered substantive advice on a rather sensitive subject (also because of the cross-border nature of especially the online gaming industry and related image aspects for Cura9ao) that in terms of scope, complexity and depth simply requires a meticulous and professional study and in-depth analysis. The council considers such a course of events, with a view to guaranteeing the quality of the legislative process, not justified and urges the government or the minister once again to agree in the future on realistic processing times for draft legislation and regulations in preparation (taking into account the available legislative capacity12 ) and to monitor these closely.

In the light of the latest implementation agenda of the Curar,:ao Land package, the SER can understand that some urgency is desirable with respect to the introduction of a legally anchored reorganized and modernized gaming regime, regulated by an independent, impartial and expert body with more extensive powers and duties than the current Curar,:ao Gaming Control Board (hereafter: SCI). The Minister's request is all the more understandable if one considers that the National Ordinance establishing the budget of the Country of Curar,:ao for the fiscal year 2023 (P.8. 2022, no. 140), which came into effect on January 1 last, already took into account estimated revenues for the country for this year worth NAf. 20 million resulting from the LOK 2023. However, the question remains whether the request is conducive to adequate, balanced and thoughtful advice to the minister.

With regard to the request for advice and the accompanying documents, the SER further notes that, unlike what it specifically recommended in its advisory report of May 28, 2021 (with reference number 051/2021-SER), neither an established comprehensive vision nor an established policy framework are presented with regard to the online gaming industry in which it is made clear and further substantiated and justified how, and if so, in what way the proposed choices elaborated in the LOK 2023 fit within the Cabinet's objectives in a policy sense; the foregoing apart from the agreements included in the Land Package Curar,: ao included agreements as laid down in H2 and H19 as explained in more detail above. Neither does it appear from the documents consulted how a sustainable public-private partnership will be used to structurally implement an effective, result-oriented and broadly supported strategy with regard to the online gaming sector, which will

10 See Landspakket Cura9ao, pp. 18-19; https://open.overheid.nl/repository/ronl-04af57f9-8672-489d-92df- 43c333131417/1fpdf/onderlinqe-regelinq-landspakket-curacao-en-nederland.pdf

11 See, inter alia, the Country Package Curai;:ao, Implementation Agenda October 1, 2021 - December 31, 2021; https:/fopen.overheid.nl/repository/ronl-e42cbb26-af0d-45ef-81a8-0777f6507f28/1/pdfllandspakket-curacao ultvoerinqsagenda-1-oktober-31-december-2021.pdf

12 The SER recognizes that there is an emstant shortage of legislative lawyers. As a result, legislation is slow in coming into being, consultation with interested parties is often lacking, and, moreover, legislation does not always meet the legal requirements (not to mention the fact that the enforceability of the law is by no means always properly considered).

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is based on the pillars 'Responsible, Respected, Accountable, Proactive & Transparent' (now promoted by the minister for an international audience), and which can offer real guarantees in the medium and long term for the perpetuation and further development of the sector into a significant pillar of the Curac;:aose economy, without detracting from the international image of Curac;:ao.13

In this context, it is therefore remarkable to the SER that a macro-economic impact analysis, conducted by or under the supervision and/or auspices of the Ministry of Economic Development (MEO) or the Central Bank of Curac;:ao and St. Maarten (CBCS), is missing from the dossier submitted to the council for its advice. Although one can understand the need for a proper compliance with the agreements from the Country package Curaca;:ao, which in the context of the agreements H2 and H19 aims to improve the international image of the Country Curaca;: ao as an online gaming jurisdiction - and thereby directly also that of the Kingdom14 - it is the council's firm conviction that in addition to legislation, sufficient attention must also be paid to other aspects and elements that are equally important to the success of the sector's overall modernization plan in support of sustainable socio-economic development. lmmers, the drafting of the legislation is not an isolated goal, it is rather in the service of the socio-economic development of Curac;:ao. The SER will return to this in the next chapter.

In view of the above, the question also arises to what extent the choice for a complete overhaul of the entire gaming sector, which will be carried out in one go and not in phases, is justified from an efficiency point of view. For the time being, the SER is skeptical of such an approach. The fact that there are shortcomings and challenges in the current supervisory regime - especially in the way it is organized and effectively applied - does not detract from the fact that, on the road to the uniform supervision of all games of chance, in the recent past, concrete directions for solutions have been put forward, most recently on June 30, 2020, in the form of proposals for the introduction of amendments to the National Ordinance on Outdoor Hazardous Games (online gaming). Against this background, it could be argued that a complete overhaul and establishment of an entirely new regulator, as designed in the current draft, would put some pressure on the most pressing part of H19 of the National Package. lmmers, the LOK 2023 is purely draft framework legislation in which the substantive standards for the organization of the supervision per gaming area (online gaming, landbased casinos, lotteries, etc.) are not included in the bill itself but will be regulated by delegation in implementing regulations per gaming area. The SER will return to this in chapter 2, but considers it important at this stage to draw attention to the fact that these implementing regulations, at least as far as the SER knows, have not yet been drafted or supplied, so that there is insufficient insight into what the licensing, supervision and enforcement will actually look like in practice when the National Ordinance enters into force. An important question here, seen from the perspective of the rule of law, is how this situation relates to the primacy of the legislature and whether one can justifiably speak of what is referred to as 'framework legislation with a problematic system of delegation'. 15 In essence, the issue is that, according to the legal literature and

13 At the February 2023 ICE London - the annual leading global gaming and gambling event serving the entire industry - the Minister of Finance delivered a keynote address entitled 'The Overhaul of the Curagao Regulatory Jurisdiction'. Leaflets were handed out at the 'Curac;:ao booth'. In them is a further explanation of the new regulatory framework envisioned by the LOK 2023 for the Curac;:ao online gaming industry. The leaflet presents Curac;:ao as an online gaming jurisdiction that upholds the following values: responsible, respected, proactive and transparent; see also https://www.icelondon.uk.com/ice-vox-sessions/curacao-devefopment.

14 The fact is that The Hague is internationally! looked upon for possible abuses within the entire kingdom and therefore closely follows the online gambling sector in Curac;:ao. Modernization and reform of the gambling sector on Curaca;:ao therefore have a heavy juridical dimension within the framework of the Land package which explains why they were prominently mentioned under the sub theme H (Strengthening the rule of law).

15If one googles the word framework law, one gets a multitude of different regulations in which the term appears in the heading, such as the Framework Law on Advisory Bodies, the Framework Law on Independent Administrative Bodies, the Framework Law on the Environment and the Framework Law on Conscription. In addition, however, there are also laws that do not call themselves framework laws, but in fact have their main characteristics. Oat raises the question: what then are those main features?

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science often contains open norms that offer little legal certainty to citizens where, moreover, as a result of too broad a delegation, legislative power can be shifted from the States to the government and the civil service and also to private norm setters. Especially when standards are delegated to private parties (self-regulation), there is a risk that strongly represented interests in a sector will gain too much upper hand. The SER urges the Minister to consider this aspect explicitly.

As a result of the above, the SER requests the Minister to pay attention to the finding that, on the one hand, it is announced that the online gaming industry will undergo a fundamental reform through the LOK 2023, while the necessary regulations focused on that sub-sector, which by the way are not purely implementation issues and or technical details, have not - at least not yet - been drafted or delivered. The failure to deliver drafts of national decrees, containing general measures, draft national decrees and draft ministerial regulations, with general effect, as mentioned in some provisions proposed in the LOK 2023, may - in the opinion of the SER - raise questions such as:

- what counts as a critical service or good?

- what conditions, regulations and or restrictions apply to licensing, - refusal, suspension, revocation or modification?

- for what games of chance will licensing be made possible?

- what conditions will be imposed for obtaining a gaming license?

- what rules will apply with respect to positions incompatible with those of key persons (substance)?

- what requirements apply to an immovable property in which the business activities are to be conducted (substance)?

- what further conditions apply to the total or partial suspension of the gaming license?

- what conditions and further rules apply to the granting of a provisional gaming license for the duration of six (6) months?

- what rules apply with regard to the organization and execution of games of chance?

- what regulations, conditions and restrictions apply to the establishment of a guarantee fund and which authority will be entrusted with its management?

- what periodic reports must licensees submit and within what deadlines?

See in this context: prof. mr. R.A.J. van Gestel and mr. drs. A. Vleugel Hoekema, Recalibrating the primacy of the legislature: the meaning of framework law and delegation, Council of State, May 6, 2009, pp. 4-5. Therein, among other things, it is stated, "Hoekema and Van Manen argue that framework laws usually contain only the main lines of policy and themselves have few substantive norms. They mainly contain generally determined goals (e.g., 'efficient distribution of housing space') in order to further create, by means of delegated regulations, an organization that has to deal with their realization. In practice, this amounts to the legislator formally leaving the interpretation of the legal framework largely to "lower" regulators, such as the government, individual ministers or decentralized authorities. Wintgens, however, defends that framework legislation can also be described as other than "empty in content. In fact, some framework laws contain ethically-normative, principle-based provisions (e.g., 'responsible care' or 'good housekeeping') and, moreover, do not primarily concern the relationship between the legislature and the executive, but the outsourcing of standard-setting to private parties. Self-regulation is used to color the law, as is the case, for example, with the Dutch Care Institutions Quality Act [...]. Eijlander has called the latter form "substantive framework legislation" and characterizes the first category as "procedural framework legislation. More characteristic from a constitutional perspective, however, is that the former involves delegation to the board and the latter involves (deals) leaving the setting of standards to private parties who have no public law authority to regulate. The importance of the distinction lies primarily in the fact that both forms may threaten the primacy of the legislature in different ways." With framework laws that delegate to the administration in a way that does not merely delegate implementation issues and technical details, there is a danger of moving politics from parliament to administration. With "delegation" of standard-setting to private parties (self-regulation) there is especially the risk that strongly represented interests in a sector may gain too much of a foothold; httpsJ/www.raadvanstate.nl/publish/llbrary/13/rapport-kaderwetgeving-vqestel-Vleugel.pdf.

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- what conditions and restrictions apply to the granting, refusal, suspension, revocation or modification of the supplier license?

- what amount is the applicant for the supplier license due to the CGA upon submission of the application?

- what are the requirements for the supplier license?

- what games of chance other than commodity lotteries, bingo and 'bon ku ne' will be designated as non-profit games?

- what rules of play and safety requirements regarding the premises must be observed for non-profit games of chance?

- within what frameworks may the CGA, having heard the representative organizations, draw up policy rules relating to the performance of its tasks, as well as guidelines and regulations, conditions and restrictions?

- what rules of procedure apply with regard to the nomination of members of the board of directors (BoD)?

- what formal requirements must the model complaint letter comply with?

- what is the amount of licensing fees and the time limits for their payment?

- what about the fees for applying for permits?

- what is the amount and method of determining the administrative fine for different types of violations?

- what rules and procedures apply to - at least - the amount and method of determining the administrative fine?

- what requirements apply to the persons who will be charged with investigation by national decree?

- what further regulations apply under the National Ordinance on the Identification of Provision of Services (LID) with regard to the identification and verification of natural persons residing or staying abroad?

With a view to the principles of legal certainty and trust, the SER considers it wise at this stage, with regard to the organization of the licensing and the scope of supervision and enforcement per gaming area, to create the necessary clarity at a detailed level as much as possible. Failing this, it may be assumed that the current lack of clarity regarding, among other things, the structure and organization of the new licensing and supervisory authority will not be removed. Partly for this reason, it is of interest to the SER, for example, to know how the cost estimate for the design and set-up of the CGA, initially NAf. 18 million and then NAf. 8 million, was arrived at. The council urges the minister to be eager to provide further clarification on this. Furthermore, the SER notes that some of the aspects listed here lend themselves to adoption by formal law rather than by delegated legislation.

With regard to the present draft legislation, it is further noted that, despite critical comments by the Legislative and Legal Affairs Directorate (WJZ) in its opinion dated August 25, 2022 (case number 2022/020843, reference no. WJZ'22/0265; case number 2022/024417, reference no. WJZ'22/03 04; case number 2022/022983, reference no. WJZ'22/0305) regarding the content of the attached MoT, these - remarkably - were not incorporated in the version of the LOK 2023 submitted to the SER for consideration. In the opinion of the council, from a legislative technique point of view, WJZ's comments, which are not unjustified, mainly relate to the structure and content of the MoT attached to the draft. The SER has assessed the contents of the MoT and is of the opinion that it has more the character of a summary of the draft national regulation than that it sufficiently clarifies or gives a carefully motivated explanation of the proposed legal provisions with possible references to concrete (practical) examples. Furthermore, the explanatory notes on the articles do not consistently detail or specify the reasoning behind the choices proposed in the relevant provisions.

It is also striking that certain technical terms are used in the LOK 2023 that are not sufficiently defined. The council refers to, among others, the concept of "virtual assets" that gaming licensees (article 15, second paragraph) and supplier licensees (article 18, third paragraph) may hold. It can be inferred from the Explanatory Memorandum that these are so-called crypto-assets. The council wonders whether these crypto-assets offer players sufficient security, especially with respect to payment of won prizes, given their volatility.

In order to achieve a logical and insightful explanation, it is recommended - perhaps superfluously but for the sake of clarity - that the Explanatory Memorandum be divided as follows16:

A. General part of the MoT

Introduction

Implementing legislation

3. Outline of the proposal

4. Relationship to higher law

5. Relationship to national regulations

6. Consequences (other than financial).

7. Implementation

8. Monitoring and enforcement

9. Financial implications

10. Evaluation

11. Advice and consultation

12. Transitional law and entry into force

B. Commentary by articles

C. Annexes to the Explanatory Memorandum

In addition, the SER considers it of great importance that a drafting change be made. In the text of the draft, some disturbing typo's (e.g. in article 54, paragraph 7, "permit right" instead of " permit right") and linguistic omissions have been discovered17. It is therefore recommended that the entire text of the LOK 2023 be critically revised once again.

1.4 Structure of the opinion

This opinion is structured as follows. After this introductory chapter, the SER will give its opinion on the draft in chapter 2. First, its effectiveness in achieving the intended objectives will be examined. Second, the content of the proposed regulations will be tested for consistency, effectiveness, feasibility and enforceability. Finally, a final conclusion will be given.

The judgment in this opinion is based on, among other things, the further oral explanation by the Minister of Finance to the SER on January 20, 2023, extensive consultations and input received from MEO and from various stakeholders, including representatives of the trust offices, the Cura9ao Online

16 See also "Building Blocks for the Explanatory Memorandum" (last modified November 21, 2021; Knowledge Center for Policy and Regulation; https:J/www.kcbr.nl/beleid-en-regelgevlng-ontwikkelen/schrijfwijzer-memorie-van explanatory memorandum/building-blocks-for-the-memorandum.

17 Some illustrative examples: in article 2, paragraph 3, the word "article" is missing after "juncto"; in article 16, sentence 2, the sentence does not run; in article 96, paragraph 2, the word "a" is missing between "with" and "fine"). Because (i) the explanations in the MoT are not always consistent with the respective legislative texts (e.g., the explanations of Articles 4 and 5 and Article 10, paragraph 2, subsections i and j), (ii) references to articles, subsections and subsections are not always correct (e.g., in Article 55, word! erroneously refers in the fourth, fifth and sixth paragraphs to the third paragraph which is actually missing (should be second paragraph)), and (iii) the numbering of sections and subsections respectively are not always correct (article 11, second paragraph, contains two subsections numbered with 'f; in article 55 the third paragraph is missing).

Gaming Association (Goga), the Association of Antillean Tax Advisors (VAB) and the Curayao Gaming Control Board (GCB).

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2. Position of the SER

The SER wishes to state first that it fully supports the basic idea of regulating the (online) gaming sector in Cura9ao through centralization of supervision and introduction of an effective enforcement mechanism. In the opinion of the Board, this fulfills a number of important preconditions which, if well thought out and properly prepared, implemented and enforced, can contribute significantly to the improvement of Cura9ao's international image and reputation and strengthening of its identity as a mature, reliable and respected online gaming jurisdiction. The council may therefore assume, with due caution, that given the specific characteristics of the sector and the benefits that can be derived from it, it may have the potential to become an even more attractive player in the international online gaming market with potentially a not to be underestimated spin-off for the island in fiscal, economic, social and societal terms.

However, the necessary caution remains necessary. After all, the sector is rather volatile and in certain respects even unpredictable in terms of its nature, size and image. The SER therefore considers it important, if the intended goal is to be achieved, that there is a solid and robust policy and legal foundation underlying the organization and regulation of the (online) gaming sector as an integral part of an overarching, visionary, reforming sustainable growth strategy for Cura9ao. With this in mind and in the interest of a modality acceptable to all interests involved, which to a greater or lesser extent can potentially guarantee sustainable returns, the council would like to make some observations and concrete recommendations regarding a number of aspects related to the introduction of the LOK 2023, as submitted to the council for advice.

2.1 Economic contribution of the sector still uncertain

The SER believes that increasing the success rate of the modernization of the gaming sector and a favorable economic impact in real terms is possible if:

a. the existing economic base (the current group of so-called sub-licensees) is preserved as much as possible;

b. the majority of the licensees are placed under supervision in Cura9ao; and

c. new parties also take the decision to locate here.

In light of this, it is considered important if a careful balance is made between, on the one hand, the introduction of laws and regulations to maintain a healthy and responsible gaming offer on Cura9ao and, on the other hand, the commercial attractiveness of the sector. In the opinion of the council, it must be prevented that high demands are made on the organization and operation, which in fact will not, or at least not sufficiently, contribute to the perpetuation of a responsible gaming offer. By extension, a counterproductive effect is not inconceivable. The effectiveness and success of the LOK 2023 depends, in a broad sense, on whether the law offers the desired supervision to market participants without too many complicating conditions or aggravating circumstances, yet taking into account international agreements to prevent reputation damage. The SER urges the Minister to take serious account of the above.

2.1.1 Many rules, conditions, regulations and requirements to be specified

According to information the council has received, startup online gambling providers like to establish themselves on Cura9ao because of the 'cocktail character' of the current license for online games of chance (no need to apply for a new license for each type of game). Furthermore, Cura9ao is still attractive for this specific category of online gaming providers because the current costs for obtaining a Cura9ao sub-license are very competitive compared to other jurisdictions, the current low 'substance' requirements are attractive as well as the tax advantages (low profit tax and no sales tax or VAT or any other type of tax is levied on the deposit).

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In addition, the current regime on Curac;:ao based providers of online gambling mainly offers the opportunity to have a 'global (or regional) neutral offering' as their offerings are often fragmented across multiple markets. This is in contrast to providers of a service specific to a particular market who are supervised in that specific market (e.g., the United Kingdom, the Netherlands and Sweden). The SER recognizes that supervision - and especially effective supervision - is highly necessary because the companies offer an entertainment product that can potentially harm vulnerable people (minors, gambling addicts) and that is susceptible to financial crime (fraud, money laundering). Being under supervision is a necessary prerequisite for providers to gain access to suppliers of gambling and payment services.

According to representatives of a group of trust offices, Curac;:ao currently has a market share of approximately 40%18 in the international market for issuing online gaming licenses. The industry's potential to maintain a substantial market share and thereby contribute to the country's coffers through licensing fees depends heavily on the extent to which Curac;:ao as a jurisdiction remains attractive to gaming providers. On the other hand, Curac;:ao cannot and should not want to persist co0te que co0te in maintaining this market share. A precondition, according to the council, must be that the name of Curac;:ao as a financial services center is not negatively affected and that Curac;:ao realizes sufficient profits from the online gaming industry.

As noted in Section 1.3, the present draft national regulation is designed as a framework for the regulation of all games of chance. General provisions have been introduced that apply to all games of chance offered in or from Curaca;:ao. The policy regarding the specific types of games of chance will be translated into separate national decrees containing general measures (hereinafter: Lbham). Also matters of importance for the business operations of online gaming providers will be further regulated by Lbham. Reference is hereby made to further drafts of Lbhams to be drawn up which will cover, among other things:

The conditions, regulations and restrictions regarding the granting, refusal, suspension, revocation or modification of gaming licenses (art. 8(2) and art. 11); Rules on the procedures for applying for a gaming license, the applicant, the organizational structure and objectives of the organization to which the applicant belongs, the premises, the documents and information provided with an application, the regulations, conditions and limitations to be attached to the gaming license, the period within which a start is made on offering or providing opportunities for gambling (article 8, paragraph 7);

Conditions attached to a provisional gaming license during the investigation of an application for a gaming license (art. 14);

Rules regarding the organization and implementation of games of chance (arlicle 15);

Rules and conditions with respect to reports by the gaming providers with respect to the organization and implementation of gaming (arlikel 16);

Conditions, restrictions and requirements attached to the supplier's license (arlt. 17 and 18); The amount of license fees and deadlines for their payment (arlicle 51), this although in the MoT an amount of NAf 4000,- per month, plus NAf. 500 per month per URL or branded application is mentioned in the financial paragraph. However, in accordance with the MoT, for a period of 12 months after the National Ordinance takes effect, this does not apply to operators who fall under the transitional arrangement;

License application fees (arlike/ 52).

18 The SER has not been able to verify this percentage with one or more official bodies and or sources. After internet research, it appears that this percentage was first! mentioned in an extensive article published on November 10, 2021 on the website of Follow the Money (FTM), a journalistic platform; https://www.ftm.ni/tag/curaca0. That article, which casts the industry in a negative light, reports that the island has over twelve thousand sports betting and casino gaming websites and that this represents forty percent of the global unregulated supply; see also https://riu.cw/2021/11/10/follow-lhe-money-curacao-is-een-paradijs-voor-illegale-online-casinos/.

For the SER, the above choice to regulate, through generally binding regulations, specific matters related to the operations of the (online) gaming industry is somewhat understandable and admittedly justifiable from the minister's point of view, given the complexity, versatility, fierce competition and rapidly changing circumstances that characterize this industry. Nevertheless, the SER notes that there are very many other relevant issues that will not yet be regulated by Lbham and whose intention to do so has not yet been made known. The inevitable consequence of this is a great deal of ambiguity and uncertainty in the sector. It is not inconceivable that these ambiguities and uncertainties may lead companies operating in the international gaming market to look to other jurisdictions.

In addition, it should be considered that some of those online gaming jurisdictions, such as Isle of Man19, offer licensing and protect both the licensee and the personal data of key persons and Ultimate Beneficiary Owners (UBOs). These jurisdictions further have more lenient requirements on how to conduct business and offer banking services, for example.

In particular, the fact that the online gaming sector in Curac;:ao was 'wholesale' derisked by the financial sector (correspondent banks) in 2006 means that locally based online gaming companies cannot bank locally20. So-called Payment Service Providers (PSPs) have since been used. As a result, this sector's money flows outside Curac;:ao, which seriously complicates AML/CFT supervision. As a result, Curac;:ao is not interesting and attractive to the grande online gaming operators. These companies prefer to keep the huge "customer deposits" with reputable financial institutions for security reasons. If grate online gaming operators hold a Curac;:ao license, it is not for their 'core business'. Consultations with the sector have shown that once the choice has been made for another jurisdiction, the chance that gaming operators will later establish themselves (again) on Curac;:ao under a supervisory regime about which they still have question marks.

The possible departure of bona fide gaming providers to other jurisdictions poses a real risk to the intended benefits that the minister thinks can be gained from the online gaming sector, namely generating additional revenue for the country and creating employment for the local population. In light of the above, and as already argued in the previous chapter, the SER seriously suggests that the Minister take care of the elaboration of at least the rules, conditions, regulations and requirements related to the granting of licenses, including the application process, and the determination of the amount of the license fees and of the fee for applying for a license.

Furthermore, and in addition to what has already been noted in the previous chapter on this subject, the SER wonders, superfluously, whether the statutory instrument of an Lbham or Ministerial Regulation, m.a.w., (Article 90) is the appropriate means for the further elaboration of the rules. In other jurisdictions21 one sees that the specialized independent, impartial supervisor is the appropriate body that gives concrete substance to the supervisory framework with further policy rules. The SER believes that this should also be the preference in Curac;:ao. After all, the supervisor is the party with the necessary specialist knowledge and practical experience. Having the government draw up Lbhams takes time and the officials in charge of drafting them or who have to advise on them often do not have the necessary specialist knowledge of the sector.

Regarding the attractiveness of the "cocktail nature" of the current online gaming license, in addition to what has already been emphasized above, the SER would like to make the following points.

19 See https://www.qov.im/media/1349397/online-gamblinq-regulation-act-2001.pdf. According to Section 17 of the Online Gambling Act 2001, the identity of UBOs can only be disclosed to third parties through the intervention of the High Court.

20 This is because correspondent banks do not allow such - in their view - high risk activities because of internal corporate regulations and guidelines regarding risk management.

21 For example, in Malta (see https://legislation.mUeli/cap/583/eng/pdf, Article 7).

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It is not clear whether it will still be possible for gambling providers to be able to offer multiple types of games of chance ender a license. l Pursuant to the article 15, first paragraph (o) proposed in the LOK 2023, further rules may be laid down regarding the approval by the CGA of games or other gaming-related activities, including new or modified games or activities ender a gaming license, and the costs associated with processing the request for approval. The MoT does not elaborate on this. From the aforementioned provision it can be deduced that approval and payment will be required for the addition of new games to an already existing license; Cura9ao's online gaming regime may therefore lose its 'cocktail character'. In doing so, Cura9ao is giving away an important competitive element. The revenues that can be obtained for the approval of new type of games of chance ender an already existing license are, in the opinion of the SER, disproportionate to the loss of competitiveness in the market of online gaming licensing jurisdictions. The council therefore recommends that the minister consider maintaining the "cocktail character" of the Cura9ao online gaming license.

Furthermore, the SER wonders what will happen if the license of a master licensee, before the LOK 2023 takes effect, expires. In that case, formally, all sub-licenses issued by the master licensee will also expire. The council understands from the sector that gaming operators are already confronted with banks and software suppliers asking questions about the status of the sub-licenses after the expiration of the master licensees' licenses, while new legislation with the transitional measure included therein is not yet applicable. The current situation creates legal uncertainty among gaming operators who are already looking for a secondary license from another jurisdiction. The risk of this is that the Cura9ao license will be terminated, resulting in lost revenue for Cura9ao. In view of this, it is recommended that the Minister ensure that the licenses of master licensees do not expire before the LOK 2023 has entered into force. ln the event that nevertheless a situation threatens to arise as briefly described above, it is advisable, from the point of view of legal certainty and efficient administration, in close consultation and in close cooperation with the sector, to temporarily extend the licenses of master licensees and to clearly communicate this proposal) in the hope that this will provide some comfort to the stakeholders.

2.1.2 Proposed substance requirements pose a risk

The LOK 2023 requires online gaming providers to obtain a license that upon commencement of operation there must be at least one key person who is a resident of Cura9ao employed full-time by the licensee. This key person may not be the director. After five years, three key persons who are residents must be employed full-time. The definition of key person is a natural person who actually, indirectly or legally controls or has control over the management, assets or operational policies. In addition, the requirement is that the licensee must have business premises, equipped with customary facilities for carrying out only the activities for which the license is granted; in short, an actual location in Cura9ao. This substance requirement stems from the desire to create highly productive employment in Cura9ao.

The SER notes that with the proposed substance requirements, the government wants to give substance to the required real presence according to article 1C, paragraph 1, subsection a and b of the Landsverordening op de winstbelasting 1940 22 for entities that perform activities in the context of organizing games of chance in or from Cura9ao or give the opportunity to do so. The SER finds that the substance requirements, as proposed in the draft, could possibly impede the success of the legislation in achieving its objectives, especially in the short term, as there is not enough qualified and trained personnel in Cura9ao to be able to meet this substance requirement right from the start of the new supervisory regime.

22 P.B. 2002, no. 54, as last amended by P.B. 2019, no.92.

The SER has been informed that there are currently some 250 persons directly employed in the online gaming sector, of which no more than 5% have the required qualifications, knowledge and experience to qualify as key persons within the meaning of the present draft national regulation. These persons are de facto alien already directors of future licensees and thus will not be allowed to serve as key persons. This requirement, according to the SER, is, by reasonable standards, quite a challenge to fulfill and will therefore, in accordance with the present draft of the LOK 2023, irrevocably lead to rejection of the application or revocation of the license.

The council fully understands the rationale behind setting substance requirements and is very sympathetic to this but feels that in practice this approach could be counterproductive to the minister's ambitions. The sector also shares the same ambition to create as many jobs as possible by modernizing regulation and supervision. However, it should be kept in mind that online gaming providers are international companies that locate their divisions wherever it is most advantageous or the best people can be found. Romania, Hungary and Bulgaria host large numbers of technical teams and Latvia and Estonia, for example, financial teams. The companies that establish themselves on Curac;:ao do so because they want to be ender supervised in a calculated and very deliberate manner, which does not necessarily mean that they necessarily want to move all facets of their operations to Curac;:ao. Moreover, if experienced and specialized personnel are to be brought to Curac;:ao, the process of obtaining an employment and a residence permit may possibly have an inhibiting effect. The SER therefore urges the Minister to address this issue with his counterparts responsible for the Social Development, Labor and Welfare (SOAW) and Justice portfolios.

The SER believes that a healthy macro-economic and socio-economic situation entails that Curac;:ao create the adequate conditions for the smooth establishment of specialized foreign personnel who are experienced and have thorough knowledge of the online gambling industry. This can be done by providing robust and (internationally) credible supervision, stemming from pragmatic legislation and efficient enforcement. An overly complex and non-transparent supervisory apparatus does not provide sufficient legal certainty to the actors and other stakeholders involved. It is recommended to make a comparison with relevant online gaming jurisdictions that have succeeded in carrying out an effective supervisory task and thus gained advantages for the organization of supervision on Curac;:ao.

In connection with ensuring legal certainty, the SER also refers to provisions regarding substance requirements in the Landsverordening op de Winstbelasting23 (Article 1C). In accordance with article 1C of this National Ordinance a number of qualified local full-time employees or an amount of annually recurring local operational costs appropriate to the nature and scope of the activities and, if taxable abroad, in addition a permanent establishment are applicable. The council urges the minister, partly for reasons of legal certainty, to align the substance requirements for the LOK 2023 with the requirements with respect to profit tax. The test for obtaining a license will have to be done in close cooperation with the lnspectorate of Taxes.

2.2 Efficiencies regulator under threat

2.2.1 lnstitutional capacity worries

As of LOK 2023, the Curacao Gaming Authority (abbreviated above as CGA) will be charged with the licensing, supervision and enforcement of all games of chance. Specifically, the CGA will be charged with conducting various investigations, ze:

23 P.B. 2002, no. 54, as last amended by P.B. 2019, no. 92

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- on stakeholders and key persons involved in the operation of gaming and of Curai;:ao-based suppliers of critical services or goods to gaming providers;

- on origin of funds and assets !er financing the operation of these;

- on the policy of gaming providers to ensure responsible gaming and its implementation.

All this prior to granting a license application, as these investigations and checks are conditional for the granting of a license or give rise to the revocation or suspension of already granted gaming and supplier licenses.

The CGA will also be in charge of certification of service providers for offering non-binding alternative dispute resolution services, checks for compliance with the Landsverordening melding ongebruikelijke transacties (LvMOT)24, the Landsverordening identifications bij dienstverlening (Lid)25, the Sanctions Ordinance26 or the Rijkssanctiewet27, checks for payment of taxes and premiums to the receiver by gaming providers and Curai; ao-based suppliers of critical services or goods to gaming providers, in addition to monitoring compliance with LOK 2023 and issuing warnings or directions. CGA is also charged with maintaining a registry of all gaming licenses, supplier licenses and sanction orders. In short, the entry into force of the LOK 2023 will create an enormous workload for CGA because, under the transitional arrangement, existing companies on Curai;:ao already have to apply for a license within three months after the law takes effect.

From the proposed provision as included in article 1DD, the SER attests that, as of the date of

effective date of the LOK 2023, the duties and powers and legal status of the Curai;:ao Gaming Control Board (already abbreviated above as GCB) will be continued by the CGA, and the personnel of the GCB will be offered by right the opportunity to join the CGA. The SER understands from the GCB that the organization is already currently facing shortages regarding staff capacity, but that the capacity needed to implement the LOK 2023 will depend on how it is introduced. lIf the CGA is charged immediately upon the entry into force of the LOK 2023 with only the licensing procedure and only at a later time with monitoring and enforcement, less additional capacity will be needed at once. However, this does not address the SER's concerns regarding the institutional capacity of the future gaming authority in the short term.

2.2.2 Expertise, independence and continuity of supervisor insufficiently guaranteed

The Supervisory Board

In accordance with section 2.3 of the Corporate Governance Code 28 which deals with the subject "Expertise and composition", a supervisory board (hereafter: SB) should be composed in such a way that it is able to perform its duties properly. This composition should be based on a conscious choice of quality for the performance of the supervisory, approval and advisory tasks of the SB. The desired size and composition will take into account the nature and size of the company and its business, as well as the desired expertise and background of the SB members. The profile should also reflect the nature of the company's activities, its degree of internationalization, its size and its specific medium- and long-term risks.

The present draft sets the maximum number of CGA SB members at three. The SER considers this proposed maximum number of members for the SB, given the tasks of the CGA, to be on the low side since

24 P.B. 2017, no 99

25 P.B. 2017, no 92

26 P.B. 2014, no 55 (G.T.).

27 P.B. 2016, no 54

28 P.B. 2014, no 4 (G.T.)

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the SB should consist of members with expertise in at least financial, legal, AML/CFT and responsible gaming areas. According to the current Gaming Control Board profile, the SB consists of five members, with the following profiles of expertise:

1. A financial expert

2. One legal expert

3. An expert on monitoring compliance with laws to combat and limit money laundering

4. A prudential expert

5. An expert in the field of (gambling) addiction.

Following on from the above, the Board strongly recommends that the Minister expand the number of members of the Supervisory Board (Article 35) from three to five.

Operational independence

Members of the Board of Directors (hereafter: BoD) and of the SB are appointed upon nomination by the Minister, after hearing the Corporate Governance Advisor. To ensure the operational independence of the CGA as a supervisory body, any conflict of interest or the possibility of suspicion thereof must be avoided. Therefore, persons working in or for or directly or indirectly affiliated with the gaming sector should be excluded from appointment to the Executive and Supervisory Boards. The LOK 2023 sees, in the opinion of the SER, sufficient for this with respect to the BOD (Article 28) but not enough with respect to the SB. The council proposes to formulate article 39, paragraph 1, more sharply, in words of the same purport as article 28, part a, and furthermore to also include in both articles that a (financial) interest of blood or affinity up to the second degree is considered incompatible.

Financial independence

Based on the current draft of the LOK 2023, the financial dependence of the CGA on the minister becomes much greater than is currently the case with the SCI. Article 47(1) implies that all financial resources of the CGA consist of a contribution from the national budget. Thus, based on the draft, the CGA will be fully financed from the national budget, while the GCB currently receives funds directly through the license fees paid by casinos. In the opinion of the SER, the above is to the detriment of the independence of the CGA. The latter in particular also from an AML/CFT perspective. Indeed, the FATF recommendations require countries to ensure that supervisors have sufficient financial, human and technical resources29 . The SER refers in this regard to the Interpretive note to recommendation 26, focus point number 6 of the FATF recommendations: "Countries should ensure that financial supeNisors have adequate financial, human and technical resources. These supervisors should have sufficient operational independence and autonomy to ensure freedom from undue influence or interference." The above also applies to the supervisors of the so-called Designated non-financial Businesses and Professions (DNFBPs)3°, which include (certain) gaming providers, which in any case include (online) casinos. Supervisors such as the CGA should therefore have sufficient operational independence and autonomy to be free from undue influence or interference. The regulator should carry out its duties using the legal powers and resources granted to it, without undue influence from outside parties. It is often necessary to make quick decisions where direct or indirect political interference may be detrimental.

29 International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations, June 2021, p.98-99.

30 International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations, June 2021, p. 100.

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In accordance with Article 46(4), the budget of the CGA requires the approval of the Minister. Oat then implies that the CGA cannot independently determine which activities will be carried out with which resources. The Minister has the last word in this matter and will decide on the acceptability of the items included in the budget based on the availability of financial resources or other reasons.

Incidentally, according to the LOK 2023, it is intended that the collection of permit fees and other fees will be done by the Receiver. The SER understands that in the past the collection of license fees from casinos by the Internal Revenue Service has caused problems, so it was decided to entrust the SCI with the collection. The reason for this was that the licensees were not remitting and expected revenues from the industry were lagging significantly. The Receiver did not have sufficient manpower to collect the overdue amounts. Moreover, the gaming sector is a sector that requires specific knowledge, so it was not easy for the Tax Authority to impose additional tax assessments. As a result, there was a large backlog of license fees. By leaving the collection to the GCB, the revenues from the gaming sector have increased significantly. After all, the GCB has the necessary expertise and necessary information to effectively collect the fees owed and will, in particular in the context of the licensing process when the LOK 2023 comes into force, already have relevant knowledge of and contact with licensee/applicant which can be of service in the collection of gaming license fees.

In Malta, for example, like the GCB currently in Cura9ao, the regulator, the Malta Gaming Authority (MGA), is in charge of levying and collecting license fees, application fees, compliance contribution, etc31. These are revenues for the MGA. The MGA sets its own budget and may fund it from the revenue it realizes. During the year, transfers take place to the Maltese government, with a final settlement at the end of the year that also allows the MGA to strengthen its equity and/or form reserves for specific capital investments32.

In accordance with legislation, the regulator in Alderney also has collection powers as far as online gaming is concerned33.

Although financial dependence on the regulator, as proposed in the draft, is undesirable, it is not unquestionably possible in Cura9ao to leave collection to the CGA. Finally, according to the Land Regulation on Financial Management34. only the Ministry of Finance may be in charge of cash collection and custody.

In order to make the CGA less financially dependent on the Land Treasury, it is recommended that a timely start be made on taking the necessary measures so that an exception is made, through a ministerial regulation, with general effect, to give the CGA collection authority, provided that a reasonable penalty provision is also included in the LOK 2023 in case the CGA does not meet its accountability obligation of submitting annual accounts with an annual report. The SER also recommends distinguishing between cost-covering fees, to cover the costs of the CGA, and revenue-generating fees, which flow into the country's coffers. Cost recovery fees are the fees for application and renewal of licenses and other authorizations and supervision. Fees should be set to cover the cost of ongoing supervision by CGA. Also, the collection period and timing of these fees should be included in the LOK 2023. The SER recommends that this be done to the third chapter by adding an article with words similar to Article 51, which sets the rates and deadlines for cost recovery fees. The proposed new article should at least state that these fees must be paid directly to the GCA.

31 htlps://legislation.mt/eli/cap/583/enq/pdf (Article 34) and https://legislation.mt/ell/sl/583.3/eng/pdf (Articles 3 to

5).

32 https://legislation.mt/eli/cap/583/eng/pdf (Articles 34 Um 41).

33 https://www.gamblingcontrol.org/wp-conlent/uploads/2022/06/Alderney-eGambling-Ordinance-2009- CONSOLIDATED.pdf (Articles 6 and 8).

34 P.B. 2015, no. 79.

The proposal further implies that the CGA will be charged with the collection of cost recovery fees (to cover its own costs) and that the Recipient will be responsible for the collection of revenue-generating fees for the benefit of the Exchequer, permit fees.

l Pursuant to article 46, second paragraph, of the draft, a budget of the CGA for the following financial year must be submitted annually by the Executive Board to the Supervisory Board for approval as early as March 1. This means that budgets must be prepared by the departments as early as December of the previous year. This makes it challenging for the CGA to adapt to market developments, especially since this is a sector involving rapid technological developments. The SER proposes that Article 46 be amended with the understanding that the current deadlines known to the CGA be retained as much as possible. However, the Minister should set additional regals, taking into account the openness and control prescribed by the National Ordinance on Accountability 201035.

It is also noteworthy that, according to article 100, fifth paragraph, of the draft, within three months after the LOK 2023 comes into effect, after advice from the Government Accounts Office Foundation, all funds of the SCI must be deposited in the National Treasury. This provision potentially implies an unlawful form of expropriation. The SCI is currently a legal entity, with its own rights and obligations. Rights include its ownership of the financial resources it currently possesses. To Iatan these funds into the country's treasury through a national ordinance infringes on the SCI's property rights. An important safeguard for the protection of the right to property is found in Article 1 of the First Protocol to the European Convention on Human Rights (ECHR). In order to justify an interference with the right to property,:

- The interference - with a view to legal certainty and the prohibition of arbitrariness - must be provided for by statutory provision, the provision being sufficiently accessible, precise and foreseeable;

- The interference must serve a legitimate public interest;

- There must be a reasonable relationship between the degree of interference and the public interest served (fair balance).

The Explanatory Memorandum does not address the above criteria at all. It is true that the SCI will no longer be operational when the LOK 2023 enters into force and should then be liquidated, but according to Article 15, fourth paragraph, of the Articles of Association of the SCI, any surplus in the context of the liquidation may only be used for a purpose, which, in the opinion of the Supervisory Board, with the approval of the Minister, corresponds as much as possible to that of the SCI. A reasonable interpretation of this provision implies that the funds should benefit the CGA, since the purpose of the CGA will be virtually the same as the purpose of the SCI.

In addition, the SER believes that the law should contain the necessary guarantees for a healthy financial starting position of the CGA. This does not appear to be the case at all at present. The provision, as currently drafted, may result in a (temporary) total paralysis of the CGA. The CGA should at least have a buffer in order to be able to carry out its tasks immediately after the LOK 2023 comes into force and to meet the related costs. Furthermore, it should be ensured that the CGA will have a healthy financial starting position. The most obvious solution to this is for all existing resources of the SCI to be transferred to the CGA.

Transfer of SCI to CGA

According to Article 100(7) of the draft national ordinance, the appointment of the drawers of the GCB and the SB will end as of the entry into force of the LOK 2023. Furthermore, the tenth paragraph of Article 100 provides that the first members of the BoD of the CGA shall be appointed by the Minister on a temporary basis, for a period not exceeding twelve (12) months. A disadvantage of such a short term of appointment is that it may lead to a loss of expertise, insight and organizational memory, which the CGA could benefit from if the members of the BoD and SB were to serve longer terms.

35 A.B. 2010, no. 87, as last amended by P.B. 2015, no. 50.

In order to ensure the continuity of the operational activities of the SCI in the context of the transition, the SER suggests that the Minister consider including in the LOK 2023 that the incumbent !eden of the BoD and the SB of the SCI are deemed to be members of the BoD and the SB of the CGA, respectively, under the same conditions and that the 12-month probationary period be removed from the article.

2.3 Ensuring responsible and fair gaming offerings

Both the recitals and the Explanatory Memorandum endorse the importance of responsible gaming offerings, in particular preventing and combating gambling and gaming addiction, protecting vulnerable persons and protecting Cura9ao's reputation as a gaming jurisdiction. The SER questions the extent to which in the elaboration of these objectives, sufficient attention has been paid to these issues. It is of paramount importance that the LOK 2023 makes it possible to achieve the goals in implementation and execution through frameworks and safeguards included in the law to protect vulnerable persons and prevent and combat gambling addiction. This otherwise brings unacceptable risks for (problem) players and ensures that Cura9ao suffers further reputational damage because gambling providers with a Curac;:aose license do not comply with internationally acceptable rules and standards in terms of responsible gaming offerings. This is all the more important since it appears that the LOK 2023 will allow all forms of gaming to be offered to residents of Cura9ao. There seems to be no deliberate decision at all to expand the offer of games of chance in the local market, as there is not sufficient insight into the current gambling problems in Cura9ao. The SER considers quantitative research in this area indispensable so that a well-considered decision can be made whether the ultimate objective of the LOK 2023, that the gaming industry becomes an important economic pillar of the Curac;:aose economy and, thus, the envisioned expansion of gaming on the local market outweighs possible social problems this entails. This as excluding local participation is not an option as this could damage Cura9ao's international reputation as a gaming jurisdiction. Especially since remote participation is made possible for residents, the LOK 2023 and the accompanying MoT should pay more attention, at least more explicitly, to ensuring player protection. The Dutch Wet op de Kansspelen 36 (WKS, including articles 4a, 31k and 311) and its implementing regulations37 can be taken as an example in this regard. Here extensive attention has been paid to the prevention and limitation of gambling addiction. In any case, the necessary guarantees to promote responsible gambling should be expressed more clearly and explicitly, such as:

- Including minimum requirements that gaming providers must meet in order to guarantee responsible gambling;

- Including rules regarding the recruitment of participants (marketing, promotion and advertising) with a view to addiction prevention;

- Requiring gaming providers to timely identify red flags that indicate excessive participation or risks of gaming addiction among players;

- Placing the duty and responsibility on gaming providers to inform players in a clear and transparent manner about the games of chance offered and the possible risks of developing gambling addiction by participating in them;

- The inclusion of guarantees regarding the handling of complaints from players related to responsible gambling, including the responsibility placed on gambling providers to handle complaints specifically related to responsible gambling within a very short period of time, as the welfare of people may depend on it.

36 BWBR0002469

37 Regulation on Game of Chance Acquisition, Advertising and Addiction Prevention (BWBR0033412), Regulation on Remote Gaming (BWBR0044767) and Regulation on Game of Chance Acquisition, Advertising and Addiction Prevention (BWBR0033613).

Furthermore, the SER recommends that the definition of "vulnerable person" in Article 1, section h, be formulated more broadly, so that all persons who exhibit or experience problematic behavior (therefore not only gambling addicts) are covered and thus protected by the law. In the opinion of the SER, the provision is too summarily drafted and therefore inadequate to protect the vulnerable. The licensee should be obliged to take all necessary measures to identify vulnerable persons (including their playing behavior) and, in order to protect them, proactively exclude them from participating in gambling. There should be a register or a "self-exclusion database" similar to what has been introduced in the Netherlands, article 33h of the Betting and Gaming Act38, the so-called CRUKS 39. There should also be rules here to prohibit gambling providers from actively approaching vulnerable people (through direct marketing, for example).

Ensuring a responsible gaming offering also implies that licensees who should have prevented a vulnerable person from accessing and participating in an offered game of chance, but failed to do so, may not keep the winnings of the vulnerable person. It can be arranged by law that, for example, the money won is deposited in a fund managed by CGA or FMA, for the purpose of protecting or treating vulnerable persons for gambling, conducting research on gambling problems and providing information on responsible gambling. Specific rules for the use of these prize monies can be included in Article 15, according to the council.

ln accordance with Article 2, third paragraph (b) of the LOK 2023, games of chance organized by non-profit organizations are free from the requirement of a gaming license but, according to Article 21, eighth paragraph, the activity must be reported to the CGA four (4) weeks in advance. The term non-profit is defined with a social, social or ideological purpose. Furthermore, according to article 21, fourth and fifth paragraphs, it is possible to offer non-profit games five times a year, without a maximum revenue, without requiring a permit. This choice is not further explained and, in the opinion of the SER, is contrary to the concept of responsible gaming because it may encourage gambling addiction. A license should serve as a threshold to prevent the community from being overwhelmed by gambling. Conditions and regulations are set by the licensing authority to protect the community from gambling addiction and fraud. The regulator can assess and enforce compliance with licensing requirements. Merely reporting is too low a threshold. Under Lottery Regulation 190940, only companies that organize lotteries to promote a product or increase sales are exempt from applying for a license. No fee may be charged to the participants and thus there is no financial risk for the participant. The intended exemption in accordance with the draft is precisely for organizers who demand a contribution from the participants.

Incidentally, at the moment, charitable games are regulated by the current Lottery Ordinance 1909 (for the benefit of the lottery of goods; article 3) and the Island Resolution, containing general measures, implementing article 1 of the National Ordinance Hazard games II 1988 41 (bingo and 'bon ku ne'). Licensing is mandated to the director of the SCI by the Minister of General Affairs42. Also, the SER considers the term social, social or ideological purpose very broad and that, without restrictions and control, it can be stretched very far by the organizers of these games of chance.

Moreover, the SER wishes to note that the intended exemption, in combination with the absence of a maximum yield or stake per participant and the lack of supervision, is at odds with the fact that the intended modernization also serves to prevent and combat money laundering and terrorist financing. The possibilities for carrying out precisely these criminal acts were, in the opinion of the SER, expanded and it completely ignores the fact that the Financial Action Task

38 BWBR0002469.

39 See also https://cruksregister.nl/.

40 A.B. 1989, no. 13.

41 P.B. 1988, no. 66.

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Force (FATF) precisely demands special attention from jurisdictions that their nonprofit plays not be used for corruption, money laundering and terrorist financing and proliferation.43

The SER sees no reason not to require a license for games of chance for a social, societal or ideological purpose, but rather that there are more and weightier arguments to require a license. Therefore, the council advocates maintaining the exemption for companies that organize lotteries to promote a product or increase sales, but including in the law that the regulator may issue guidelines for this and monitor the fairness of the game of chance offered.

A counterpart of a responsible and fair gaming offer is that the gaming provider is also protected from rogue players who under false pretenses try to collect fictitious gaming claims from Curac;:aose gaming providers. The SER therefore suggests that the minister consider having the regulator keep a register of rogue players so that Curac;:aose gaming providers can keep rogue players out. This will lead to fewer financial risks and unnecessary lawsuits for the gaming providers and licensees and will also contribute to the quality of the Curac;:aose licensing regime. Provisions for setting up and maintaining this register can be placed under the chapter Register (Chapter 5) by adding a new article.

2.4 Levy and collection of gaming license fees

The SER notes that the license fees were levied through submission of a declaration by licensees within fifteen (15) days after the expiration of the calendar month to which they relate and simultaneous payment of the amount due in license fees. It is expected that permit holders will file monthly returns via declaration forms, possibly electronically - although this is not explicitly included in the proposed Article 53 of the draft but is included in the explanation of the Article - along with the required documents. Declaration forms may be requested from the CGA. However, in accordance with Article 54, paragraph 3, the lnspector must impose an additional tax assessment if underpayment has occurred or if no declaration has been made. It seems more logical to the SER to have the GCA report to the lnspector who are liable for tax. Based on this notification, the lnspector will either issue tickets or invite licensees to file electronic returns. Electronic returns can be filed through the Inland Revenue's online portal.

Declarations must be filed with the lnspector of Taxes (and not with the Recipient, as in the draft included in Article 53(3)). The lnspector must, in the case of non-declaration or non-payment, impose an assessment. This is exactly what the lnspector already does with otherwise levies as well. The SER suggests that the Minister consider making the General National Ordinance Landsbelastingen (AIL) applicable by including the levy of permit fees in Article 1 of the AIL and including in the LOK 2023 only provisions that are necessary in derogation of the AIL.

Furthermore, according to the present draft national ordinance, any set-off of undue or overpaid permit fees is placed in the hands of the Receiver and there is the possibility to file an objection to an imposed post-levy within two months of its date, after which the lnspector of Taxes must make a decision on the objection within six weeks. Practice often shows that the deadlines are not feasible for the lnspector. The question arises whether the possibility of appealing to the Court of First Instance (not the Board of Tax Appeals, as included in the draft in article 54, twelfth paragraph) also applies in the event of the lnspector's failure to respond within the aforementioned time limit and whether the failure to respond can be regarded as a negative ruling on the objection. The SER requests the Minister to include provisions that monitor the rights of licensees in the event of the lnspector's failure to respond to the objection in a timely manner.

The council wishes to note that it has serious concerns regarding the current institutional capacity of the Tax Administration. A prerequisite for effective and efficient implementation of legal regulations regarding licensing rights is an optimally functioning Tax Administration. The

43 https://www.fatf-gafi.org/content/dam/fatf/documents/reports/BPP-combating-abuse-non-profit organizations.pdf

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SER is hopeful, however, given that optimization and modernization of the Tax Administration is part of the reforms included in the Land Package (C4). The SER urges the Minister to continue to prioritize this component.

2.5 Supervision and enforcement inefficiently designed

In the draft, the CGA, in cooperation with the "Government Tax Accountant's Office Foundation," is charged with monitoring compliance and intervening in case of violation of the LOK 2023. It is not clear to the SER whether is meant the Government Accountants Bureau Foundation (SOAB) or the Tax Accountants Bureau Foundation (SBAB). Nor does the council see a role for either organization given the duties assigned to them and the nature of the audit and possible intervention in this part of the LOK 2023. The SOAB is the government's internal auditor and the SBAB is charged with advising the Minister of Finance regarding and stabilizing tax compliance and revenue. Regarding the oversight and enforcement of parts of the LOK 2023 that are fiscal in nature, while there is a role for the SBAB, the draft assigns a larger role to the "Government Tax Auditor's Office". The CGA, in cooperation with the foundation, is charged with monitoring compliance with the entire LOK 2023 and deploying and deciding on enforcement tools with respect to:

- the prohibition of organizing or giving opportunity to organize any game of chance in or from Curac;:ao without a gaming license from the CGA (article 2, first paragraph),

- the prohibition of participation in a game of chance by persons who are familiar with the outcome of the event dependent on the game of chance and key persons of the gaming licensee (article 3),

- the prohibition to offer games of chance whose outcome depends on actual events related to natural disasters or catastrophes, or which by means of an image or object is offensive to honor, to provide loans to participants in order to participate in games of chance and to provide opportunities for vulnerable persons to participate in games of chance (Article 5),

- the prohibition of providing services or goods to gaming licensees as suppliers without the consent of the CGA (Article 6), and

- the prohibition on providing critical services or goods to gaming-related critical services or goods in or from Curac;:ao without a supplier license and on violating the regulations, conditions and restrictions attached to the license (Article 7).

The SER questions how the role of the "Government Tax Accountant's Office Foundation" in this relates to that of the CGA. Nowhere in the bill or the Explanatory Memorandum does it appear why the Minister considers this cooperation important. The SER considers a cooperation with the mentioned foundation undesirable. The council wonders whether the foundation has the necessary knowledge and expertise in the field of gaming-related supervision and enforcement, including supervision and enforcement in the AML/CFT field. As a result, the intended cooperation comes at the expense of an operational independence of the CGA. Furthermore, such cooperation raises all sorts of questions regarding its implementation in practice, including the following:

1. Under what principles and rules will the cooperation take place?

2. What should be done if complications arise in the context of decision-making regarding supervision or enforcement? For example, if parties cannot reach an agreement regarding an action to be taken? Can a party take legal action to secure cooperation? What if this causes delay and thus has adverse consequences for a third party, which one or both of the parties claim?

3. In cases of objection or appeal under the National Administrative Procedure Ordinance (Lar), who is considered the administrative body? The two entities separately or in this

be seen in this context as one entity consisting of the CGA and the foundation? How is decision-making in response to an objection and appeal handled? Should it be addressed to one entity or both?

In the opinion of the SER, a cooperation as referred to here leads to complex and unworkable situations and (thus) also to unnecessary extra/double administrative costs (including personnel costs) with regard to the preparatory actions for the actions to be taken as well as their implementation and administrative pressure.

As a result, the SER urges the Minister to entrust only the CGA with the supervision and enforcement of the gaming sector. To give more strength to the supervision, it is recommended to include provisions in the LOK 2023 indicating that the license should be renewed periodically, for example every five years.

2.6 Transitional provisions not entirely clear

The purpose of the Article 101 regulation is to transform the existing economic base to new permit holders. However, the regulation makes some things unclear: the Landsverordening buitengaatse hazardspel (Lbh) continues to apply for eighteen (18) months to the operation of games of chance on the international market by legal entities licensed under Article 1 of the Lbh, but provisions of the LOK 2023 also apply. Even if existing parties already operating under the license of the licensees in accordance with the Landsverordening buitengaatse hazardspel apply for a license in accordance with the LOK 2023 within three months, the Lbh will remain valid for eighteen (18) months after the entry into force of the LOK 2023. The supervisory provisions are deemed to apply to operation of all games of chance upon entry into force of the LOK 2023. From this, the council understands that the license of master licensees will remain valid 18 months after the entry into force of the LOK 2023 and sub-licensees, for this same time frame, may continue to operate under the license of master licensees provided they apply for their own license within three (3) months of the entry into force of the LOK 2023. This is to avoid unnecessary market disruption. Excluding the supervisory provisions, however, it is not clear which provisions are valid after existing sub-licensees have applied for a license but the application has not yet been granted. Do the other provisions in the LOK 2023 or of the Lbh apply with respect to licensing fees? In the MoT, in the section "Financial implications" there is a passage indicating that for twelve (12) months after the entry into force of the LOK 2023, the rates of the license fees will not be valid for gambling providers covered by the transitional regime. The council suggests that the minister include the latter in the LOK 2023 to provide the necessary clarity.

In accordance with Article 109(4), the ban on supplying goods or services to gaming providers without a supplier license is postponed for two years. It is not clear what the rationale behind this is; it is not specified in the MoT. After all, the providers are already on Cura9ao and want to be able to apply for a license immediately. Nor can the SER ascertain from the other provisions in the LOK 2023 whether the possibility to apply for a supplier license will also be postponed. The SER urges the Minister to clarify this further.

2.7 Article-by-article comments

Finally, the SER has some comments regarding the wording of a number of provisions proposed in the current draft. These comment are offered by chapter.

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General provisions (Article 1).

- A concern (b)44 is defined as bodies

1. in which the licensee has at least one-third interest;

2. which have at least one-third interest in the licensee;

3. in which a third party has at least a one-third interest, while that third party also has at least a one-third interest in the licensee.

A reasoned explanation as to why a third interest is chosen as a criterion is lacking. The question also arises as to whether the third part of the definition refers to a natural person and, if so, why the simplified granting of a license has been extended so far. In the opinion of the SER, some explanation in the Explanatory Memorandum, for example on the basis of a case study, is called for.

- A vulnerable person (h) is defined as a natural person either younger than 18 years, or addicted to gambling, has been denied participation in any game of chance, has been declared bankrupt or is under any kind of financial administration. The SER wonders to what extent gaming providers will be able to verify whether a potential participant has been "declared bankrupt" or is "under any kind of financial supervision.

- The definition of premises (k) is a location where participants are given the opportunity to physically participate in games of chance. However, with online gaming, there is no such thing as a location where players can physically gather to participate in games of chance. And certainly not in the context of tax legislation what is envisioned later in legislation. Locality should be defined in such a way that it refers to the actual establishment of the business, not the purchase of services from the licensee.

- The LOK 2023, in the opinion of the SER, incorrectly makes the connection between key persons (r) and substance requirements. The definition of so-called key persons is virtually the same as the definition for co-policymakers would be. The reason for identifying this group separately is due to the desire to include this group in the background check for the purposes of the license. Oat does not mean that the same definition can also be used for the substance requirement to provide employment.

- For the definition of ultimate interested party (s) reference can perhaps be made to the General National Ordinance Landsbelastingen (AIL), partly because the LOK 2023 not only refers to companies but also to non-profit organizations such as foundations and associations for which the current definition "ultimate interested party" is not sufficient (see also Article 21, second paragraph). The Landsverordening identificatie bij dienstverlening (already abbreviated above as Member) speaks, for the beneficial owner, of an interest of at least 25%. The SER asks whether the intention is to adjust the minimum interest to 10% for the Member as well.

- Taking measures to prevent and detect collusion, fraud or money laundering should, according to the council, be removed from the definition of responsible gaming supply (t). The prevention of fraud and other forms of crime is a stand-alone goal, which does not fall under ensuring responsible gaming offerings. Indeed, the latter relates to preventing and countering gambling addiction and protecting vulnerable persons, including minors, as well as other forms of consumer protection, including ensuring fair gaming and ensuring open and fair treatment of players

Prohibited -actions

- Article 2(2) and Article 7(2) have the same content. The Board proposes to delete Article 7, second paragraph.

44 Relates only to Article 8(6) to qualify for simplified application for licensing

- Article 3 regulates the prohibition of participation in a game of chance for certain persons, namely a person who is already familiar with the outcome of an event contingent on that game of chance or a key person of the licensee. In the opinion of the SER, these provisions are drafted too concisely, taking into account that the draft is a framework law for all types of games of chance. The ban on participation cannot be determined in the same way for all types of games of chance. Further clarification is needed, for example whether an employee (not a key person) may participate in a game of chance organized by the employer without prior knowledge of the outcome. Incidentally, there are no penalties for acting in violation of these provisions. This is not included in the definition of an offender, making the prohibition ineffective. It is therefore recommended to remove these provisions from the bill and regulate them per gaming area in the relevant draft national decrees, containing general measures, and also attach sanctions to this prohibition.

- Articles 4 and 5 regulate the prohibition of offering games of chance based on immoral and criminal activities, among others. However, the list is limitative and unnecessarily restrictive. After all, there are more "unsavory" activities that can be the subject of gambling and that do not fit under said categories, such as match fixing etc. The SER advises the minister to use a more general wording that captures the essence and covers the purpose, by building in a cap and citing some examples, and leaving some discretion to the regulator. The council also recommends that Article 5, paragraphs 3 and 4, be included in separate articles. The third and fourth paragraphs are not about a prohibition on offering certain games of chance but about a completely different subject of prohibition, namely loans to participants and a prohibition on allowing the vulnerable to participate in games of chance, respectively. The council also recommends replacing exploitation of adults or minors with exploitation of people in Article 4(d).

- Under the current wording of Article 6, all vendors must in fact be approved by CGA. The SER wonders what the thinking behind this is and how this will be done in practice. The MoT offers no explanation on this. Providers of online gaming services use the services of all kinds of suppliers, such as services in the field of technical support, hardware, software, games, bookmakers, marketing, helpdesk, fraud prevention, player protection, payments, consultancy, et cetera. The global online gaming industry has thousands of companies, small to large, providing services to online gaming providers. In the current situation on Curac;:ao, there are a number of those suppliers with a branch on Curac;:ao. This mainly concerns suppliers of gambling games. These parties currently hold a (sub)license from one of the four master licensees. The sector has insisted that these parties also have a place in the new legislation and therefore the possibility of a supplier's license has been included in the legislation. These are parties that one should like to see established on Curac;:ao because they play an important role in the industry but their activities carry little risk. In the present draft of the LOK 2023, supplier licensing comes up in several places. Article 6 is incomprehensible in this regard. Why should CGA authorize those thousands of suppliers worldwide to do business with licensees? Quite apart from the questionable legal meaning and feasibility of permission and the associated procedure, it is inconceivable that international suppliers would be willing to apply for such permission. This article, in the opinion of the SER, should be deleted (Article 6 LOK 2023).

- According to the industry, there are operators currently located on Curac;:ao with as many as 20+ content providers, 10 or so payment service providers, etc. lnce a supplier is approved for one operator, does this approval also apply to all operators licensed or applying to CGA? Is the approval for a certain period of time, under what conditions, et cetera? This article introduces supplier approval. What is meant by this approval? Suppliers located on Curac;:ao are already subject to an authorization requirement (Article 7).

- It is not clear from the wording of article 7 whether it concerns suppliers that voluntarily establish themselves on Curai;:ao and thus automatically become subject to supervision by the CGA, or whether it concerns suppliers that provide services to a licensed gaming provider established on Curai;:ao (after all, the service occurs fiscally on Curai;:ao). How does having to have a license relate to having to have an approval in accordance with Article 6? How will CGA accomplish this? A payment processor seeking to establish itself on Curai;:ao will, given the nature of the business, be subject to supervision by the CBCS. Will such a supplier be deemed to have a dual license, from CGA and from CBCS?

- According to the SER, not all suppliers need to be supervised. A distinction should be made between suppliers that pose a risk to the prohibitions and the guarantee of fair and responsible gaming. For these suppliers, the council does consider it justified to attach a supplier license to the provision of supplier services in or from Curai;:ao, assuming this means that the supplier is located in Curai;:ao. The MoT should be amended on this point to make this clear.

Gaming licenses

- Article 8, second paragraph is redundant in light of the second sentence of Article 8, first paragraph.

- Article 8(4) refers to personal and to personally responsible. This creates confusion since Article 9 states that only legal entities (NVs and BVs) can be issued a license. The MoT should provide further explanation on this. Moreover, it would be advisable to use different wording in the relevant article of the law.

- What does the simplified application procedure in article 8, paragraph 6, entail? The MoT should provide more explanation on this. The simplified procedure should be applied with caution in actual implementation. There must be sufficient room for the licensing authority to apply or not apply a simplified application procedure through a risk analysis. Without the opportunity for this risk analysis, the effectiveness of the "entry controls" is reduced and the risk of undesirables gaining access to a gaming license is increased. The SER therefore recommends either removing the simplified application procedure from the draft and applying it in implementation, with appropriate caveats, or giving the licensing authority the latitude to determine, based on a risk analysis, whether or not such an applicant, with or without at least a third-party interest, can qualify for the simplified procedure.

- How can CGA set rules regarding the locality (Article 8, paragraph 7(c); see also definition of locality)? Will CGA determine the location of the participant/player? The player does not participate physically in online gambling, but does so digitally. lndien met dit artikel is bedoeld, dat de CGA het onmogelijk of moeilijk maken voor vergunninghouders om op Curayao gevestigd spelers te laten deelnemen, wordt dit sterk afgeraden. lmmers, een van de criteria/arguments for countries to identify the services of, for example, a Curai;:aose operator as illegal, is when the legislation (of Curai;:ao) is deemed to be foreign-facing (offshore/offshore policy, etc.). There should be, in the opinion of the SER, no distinction in the location of the players. By doing so, Curai;:ao validates its legislation and has an advantage by being able to argue that its legislation is sound enough for its own residents as well as those of other countries

- What is meant in Article 9 by the term actually located in Curai;:ao? Is this the tax interpretation of an entity de facto established in Curayao or an administrative law interpretation of de facto established? Attention should be paid to this term in the MoT to this article.

- Companies, which are incorporated under foreign law and want to be de facto established in Curai;:ao or want to be converted to a company under Curai;:ao law, will, with the clause, as currently formulated in article 9, paragraph 1, not be eligible for a

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gaming license. The SER suggests that the clause be worded as companies that are actually fiscally established in Cura9ao or words to the same effect.

- The permit warden strict requirements for both issuance and maintenance. Article 10(2)(b) requires that beneficial owners and key persons have not been convicted of a crime. The SER questions whether this should not be further framed and limited to relevant or serious crimes. After all, in some countries, accidentally not wearing a mouthpiece, chewing gum or adhering to a particular religion is a crime. Further, the council recommends that it be clearly stated whether the provision applies to persons convicted of crimes anywhere in the world or only in Cura9ao.

- What is considered sufficient liquid assets in article 10, second paragraph, section g? Does jackpot insurance factor into this?

- Is it sufficiently clear to an applicant what is meant by policies and procedures in article 10, second paragraph, part h? The advice is to define this more clearly in the explanation.

- Under Article 10(2)(i), a license will not be granted if the applicant does not have a provider certified by CGA to offer non-binding alternative dispute resolution. Such providers, as SER understands, do not (yet) exist in Cura9ao. Will CGA already have certified providers of these services when the LOK 2023 takes effect and the first operators report within three months? What conditions must be met and how does certification take place? Or can there be accredited providers, or approved (foreign) providers of services? For a process that does not yet exist and service providers that are scarce abroad and do not exist in Cura9ao, this provision and the requirement to engage with such a provider is rather onerous. The SER urges the Minister to take the above into account.

- Pursuant to Article 11, second paragraph, subsection g, the CGA can revoke a gaming license if the gaming licensee no longer has a provider certified by the CGA to offer non-binding alternative dispute resolution. According to the SER, this does not adequately take into account that the service provider is an independent private entity or institution and, for example, can unilaterally terminate the contract. That this directly exposes the licensee to the risk that its license could be revoked does not seem realistic to the SER. Such a party should be treated like an auditor. Individuals are free to enter into relationships with each other, but these may also be terminated without directly affecting the other party's right to exist. For example, the licensee may be providing its services in a market that the dispute resolution committee does not support. Oat can be or warden a policy choice and will not have to have a direct impact on the licensee's license.

- By definition, the license for online gaming offerings targets other countries (global neutral offering). Another strict requirement focuses on possible game offerings that, based on information from the regulator in another country, would be in conflict with legislation in that country and it has been sufficiently established that the gaming licensee is acting in conflict with legislation regarding games of chance in that country (Article 11, second paragraph, under i). In the opinion of the Board, great caution is called for here. The mere fact that it does not please another country that a certain economic activity is carried out from Cura9ao is not enough. The bar must be set high. The conditions to be met in order to revoke a license on the basis of information provided by an authority of another country must be severe and well-considered. A licensee is subject to Cura9aos law. Sovereignty must not be compromised here; the right of self-determination must be guaranteed. This must be clear from the legal text, otherwise no confidence will be created among permit holders. The SER suggests replacing the words "to a sufficient degree" with "by court order of that jurisdiction".

- Do the three months included in Article 11(3)(h) apply from the time the license is initially issued? This does not seem realistic since opening

for example, a bank account in itself can sometimes take six months. Only when the operator has a bank account can it operate. To lose a license on the basis of the above seems unreasonable and also unrealistic to the SER. Or does this apply to licensees who are already operating and the license will be revoked if operations suddenly cease for 3 months? In the opinion of the council, this should be more clearly described. The second option seems reasonable and acceptable to the SER.

- In accordance with Article 11, third paragraph, the permit is revoked if the obligations under the AIL are not met (paragraph j) or in the case of paragraph k or I. The SER wonders whether this does not create the risk of "ne bis in idem".

- Article 15, paragraph 1 (g) calls for some caution. lmmers, as already noted in Articles 6 and 7, approval of suppliers is a path that should not be taken. There is a good chance that foreign suppliers will drop out and permit holders will leave Curacao.

The supplier approval

The SER considers the application of various articles that apply to the gaming license to the supplier's license (Article 17, third paragraph) incorrect. Many of those provisions are not applicable for suppliers (among others, Article 10, first and second paragraphs, parts c, g, h and i; Article 11, second paragraph, parts fen i, Article 11, third paragraph).

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- According to Article 26, paragraph one, the Selection Committee makes a recommendation for the Board of Directors and the Minister makes the nomination. In Article 26(10), the wording is probably based on an omission and needs correction: "lnf the Minister fails to make a nomination, [...].

- Is it the intention that the minister makes the nomination of SB members (article 36) or does the selection committee also play a role here, similar to its role with respect to the MB. The eighth paragraph of article 26 refers to timely nomination by the selection committee and creates confusion in who recommends or nominates.

- In accordance with Article 33, the BoD sets the general terms and conditions of employment of CGA with due regard to the provisions of Article 38, second paragraph (d). The reference to article

38 is incorrect; it should presumably be Article 37. Moreover, the general terms and conditions of employment of the SCI cannot be determined unilaterally, but in consultation with the staff/union.

- ln accordance with Article 48(1), the SOAB becomes the external auditor of the CGA, while the director of the SOAB sits on the selection committee regarding the recommendation of candidates for the BoD (Article 27(1)). This, according to the SER, is not compatible with the rules of conduct and professional practice for Chartered Accountants45. This potentially affects the objeclivity and independence of the director of the SOAB. Therefore, he! advice of the council is to leave the CGA free to choose an independent external auditor, which becomes a competence of the Audit Committee of the SB.

- In accordance with the provision in article 48, sixth paragraph, the discharge of the Executive Board for its actions during a financial year takes place upon approval of the annual accounts and the annual report for that financial year, provided that this is evident from the annual accounts and the annual report and to the extent not otherwise provided for in such approval. This while the SB cannot give its approval if the actions of the Executive Board are not apparent from

45 See also the Verordening gedrags- en beroepsregels accountants (https://wetten.overheid.nl/BWBR0034635/2022-01-01/0/informalie).

the financial statements. It does not seem logical to the SER that approval can be given while no discharge is granted.

- The LOK 2023 has two complaint procedures. The first procedure (Article 49) is intended to allow a complaint about the regulator and the second (Article 50) to allow complaints about incidents with licensees. The Article 49 complaint procedure is considered useful by the SER. After all, the supervisor is an institution established by the government and citizens can complain about government actions. However, the way in which this complaints procedure has been fleshed out in the LOK 2023 seems rather strange to the SER. According to Article 49(3), the BoD receives the complaint and forwards it to the SB (by the way, not to the supervisory board, as now stated in the third paragraph). In accordance with the fifth paragraph, the Executive Board is not always obliged to forward the complaint, informs the complainant (sixth paragraph) of the state of affairs regarding the complaint (reasons for not taking the complaint into consideration or final judgment of the Supervisory Board when taking it into consideration). No appeal is possible against a decision on the handling of a complaint, as referred to in the sixth and seventh paragraphs (eighth paragraph). In summary, the Executive Board is charged with filtering and forwarding or not forwarding complaints against itself to the Supervisory Board for handling and otherwise maintains communication with the complainant, with no possibility of objection or appeal. There is, in the opinion of the SER, a deficiency in the control-technical separation of functions.

- It is also doubtful whether the complaints procedure in accordance with Article 50 is of any use. After all, complaints from players will mainly be about payment of prizes or return of deposit. For that, the player must go to the ordinary courts based on a contractual dispute. What the LOK 2023 could add is the licensee's obligation to provide the player with a simpler and cheaper solution by using mediation by an approved party (ADR). After several escalations, a complaint may eventually end up before the regulator for review, but it only looks at whether the formal procedure has been followed. The LOK 2023 does allude to this, but Article 50 should, in the opinion of the SER, be the appropriate place to elaborate on this. Instead, Article 50 now regulates a formal complaint procedure that, the council suspects, will be lengthy, inefficient and of no benefit to the player.

- A notice of complaint cannot be drafted in Dutch or English only, as now stated in Article 50, third paragraph, part c. The SER feels that this sets too high a threshold for a player. A player shares his or her complaint with the licensee in the language of the licensee's services. Each licensee provides services in the language of the country, for example in Turkish to Turkish players, ltalian to ltalian players. If legislation requires that the complaint must necessarily be in Dutch or English, there is a risk that Curac;:ao as a jurisdiction will not be seen as very "player friendly. The right to go to court should not be taken away from a licensee. Especially in this case where it is not clear how the dispute committees will take shape and who will sit on them.

Gaming license fees

- Tax amounts/bases should be in the law and not in a decree as currently proposed in Articles 51 and 52 of LOK 2023.

- Article 51(2) talks about time limits for payment of license fees, while Article 53 clearly talks about monthly payment.

- Regarding Article 54, paragraphs 3, 7 and 8, the SER questions whether the after-tax/correction does not apply to the filing of an incorrect return and whether the filing of an incorrect return does not count as an omission. The SER believes that, in general, it is better to refer to the AIL for these types of formal provisions.

- Article 54(7) proposes a default penalty of up to 20% for non-payment, partial non-payment or late payment of permit fees. In what manner is further

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interpretation of this? Will there be a notification first? Is there a series of defaults? For example, will late payment and underpayment in combination be fined only once? The SER suggests further clarification on these issues.

- The foregoing also applies to Article 54(8), where failure to pay, partially pay or pay on time the permit fees is fined up to 100% of the basis if the licensee intentionally or through gross negligence.

- Specific provisions on directors' liability as far as licensing fees are concerned are lacking, where a disculpation may be included. Directors' liability should not include fines, costs, etc. that are the fault of the company and not the director.

- There are doubts about adequately safeguarding the rights and obligations of licensees. As indicated above, a link with the AIL seems the most obvious, practical and efficient.

Supervision and enforcement

- It is advisable to add a phrase in Article 55, paragraph 2(a), to read: 'and the AIL'.

- The SER further suggests deleting subsections (d) and (e) proposed in Article 55(2). The council considers this a too far-reaching power without further justification in the MoT.

- According to Article 56, first paragraph, part a, the CGA can provide confidential data or information to another supervisory authority or foreign supervisor. According to the SER, this should be handled with extreme care since the exchange of data could potentially endanger licensees or UBOs or key persons involved. It is true that some restraint is included in the LOK 2023 by allowing exchange only for specific purposes. In this regard, the SER refers to the regulations of the Dutch Personal Data Authority regarding this issue46. Personal data may, according to the Dutch authority, be provided only if it is compatible with the purpose for which the data was collected. Moreover, prior notification is a necessary condition. It is therefore necessary, if the government wishes to use these regulations as a standard, that the exchange of information be preceded by a mandatory notification of the licensee, after which the licensee can object and possibly appeal the intention to exchange information according to the normal rules of the administrative complaints procedure. The CGA will then be prohibited from exchanging information until objection and appeal are exhausted. Without such protection for licensees, the SER fears, they will be at the mercy of CGA and foreign regulators. This could possibly even lead parties to refrain from applying for the license in Cura9ao.

- The last sentence of Article 82, paragraph 1, states that the name of the supervisor must be missing from the copy of the report. The SER questions the rationale behind this. After all, the supervisor should have carefully and transparently prepared and fully supported its work and thus the build-up to a punitive sanction. Not including the name on the transcript gives the appearance that the supervisor does not stand behind the content of the report.

- Article 92 introduces a new enforcement instrument: the designation. A new instrument should, in the opinion of the council, be given its own title (Title 3) and should not be

46 https://www.autoriteitpersoonsgegevens.nl/nl/over-privacy/persoonsgegevens/verstrekken-van personal data

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to be included in the middle of the articles dealing with the administrative fine. The SER believes that the following titles should be renumbered.

- Is it correct that the punishable acts as stated in the first and second paragraph of article 96 are offenses (article 96 paragraph 4) and not crimes? The SER would like further clarification on this matter.

Transitional and final provisions

- The SER believes that the legal status of SCI staff in the context of the transition is not clearly regulated. On the one hand, according to article 100, fourth paragraph, of the LOK 2023, all rights and obligations of the SCI transfer. According to the MoT, on this basis, the rights and obligations of the SCI arising from employment contracts with its employees, collective bargaining agreements or legal status regulations at the time of the transition also pass to the CGA by operation of law, with the retention of all rights accrued and acquired for the benefit of the employees (position, salary, seniority, pension, insurance and the like). However, nothing is mentioned about the employees' remuneration and other conditions of employment. Therefore, it is not clear whether these are transferred. Wei states in the MoT under Article 33 that "Since the CGA performs a government task, the terms and conditions of employment of the staff will have to find their orientation in the terms and conditions of employment applicable to the government staff." This could mean that the salaries of current and/or future employees will have to be adjusted so that they are as much as possible in line with the conditions of employment of government personnel. The MoT does not elaborate on this. The desirability of this starting point is not explained and no consideration is given to the possible advantages and disadvantages of this. To the extent that this premise relates to current employees, it runs counter to the minister's letter-confirmed promise that all rights of existing staff will transfer. In view of the above, the SER believes that the LOK 2023 should more clearly reflect whether all terms and conditions of employment of staff will transfer.

- It is not entirely clear to the SER why the granting of those supplier licenses is postponed with two years (article 109, fourth paragraph). lmmers, existing companies on Cura9ao (which were considered important for the economic basis) should not be driven away by not making it easy for them to apply for a license.

2.8 Conclusion

The SER unanimously concludes that it is neither desirable nor responsible, in view of the objections and reservations expressed in this advice, to continue the legislative process without taking these objections and reservations into account. The council recognizes the importance of modernizing the regulation of the (online) gaming sector in Cura9ao by centralizing the supervision and introducing an effective enforcement mechanism. In the opinion of the SER, this fulfills some important preconditions that can contribute significantly to the improvement of Cura9ao's international image and reputation and the strengthening of Cura9ao's identity as a mature, reliable and respected online gaming jurisdiction within the Kingdom in accordance with the agreements as established in measures H2 and H19 of the Cura9ao Land Package. The SER also believes that many advantages can be gained from this and that the online gaming sector has the potential to become an even more attractive player in the international market for online gambling with a possible spin-off for the island in fiscal, economic, social and societal terms that should not be underestimated.

However, the SER notes that the draft version of the LOK 2023 submitted to it for consideration does not, in important parts, adequately meet the purpose of the draft as set forth in the preamble. A sound justification for certain provisions contained in the bill

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proposed choices are often lacking, as well as a comprehensive economic impact analysis and a financial calculation, as a result of which a thorough and critical revision of the text of the current draft version of the LOK 2023 and the accompanying explanatory memorandum is recommended. Following on from this, it is also advisable to coordinate the revised version with all parties and stakeholders involved, preferably under the joint (official technical) supervision of the National Reform Commission (NHC) and the Temporary Working Organization (TWO) on the basis of existing agreements before continuing the legislative process. This will have a support-enhancing effect and, if tightly prepared, will certainly not take an unnecessary amount of time.

Since the government (read: the Minister) has the ambition to let the Cura9ao online gaming industry grow into the Next Big-Thing, from which real economic, fiscal, social and societal benefits can be gained in the sense of among other things more income for the country and more highly productive jobs for the local population, it deserves, From the point of view of safeguarding the integrity of the process, legal certainty and legal protection for all parties involved, it is recommended to continue the modernization process of the (online) gambling sector with the greatest possible care, transparency and a solid procedural embedding.

On behalf of the Social and Economic Council,

cc. The Minister of General Affairs

The Fiscal Affairs Sector of the Ministry of Finance

The Legislative and Legal Affairs Implementation Organization (UO WJZ).