

IG Taskforce

From: IG Taskforce <IGTaskforce@acma.gov.au>
Sent: Wednesday, 1 March 2023 3:57 PM
To: info@gcb.cw
Subject: Advice to Gaming Control Board Curacao regarding Formal Warning to Hollycorn N.V. [SEC=OFFICIAL]
Attachments: 2023.03.01 - Advice to regulator re Formal Warning - Gaming Control Board Curacao (Hollycorn N.V.).pdf; 2023.02.28 - ACMA Formal Warning - Hollycorn N.V..PDF; Attachment to Letter - Relevant provisions of IGA.pdf

Dear Sir/Madam,

Please see attached a letter from the Australian Communications and Media Authority issuing Hollycorn N.V. with a Formal Warning for contravening the Australian *Interactive Gambling Act 2001*.

We would appreciate it if you could forward this Formal Warning to Hollycorn N.V. to ensure that it has been brought to their attention.

Yours sincerely,

Interactive Gambling Team

Australian Communications and Media Authority

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1 March 2023

Gaming Control Board Curaçao
Emancipatie Boulevard Dominico F. "Don" Martina 23
Willemstad
Curaçao

By email: info@gcb.cw

ACMA file reference: ACMA2018/141-122

Dear Sir/Madam,

Contravention of the Australian *Interactive Gambling Act 2001* – Hollycorn N.V.

The Australian Communications and Media Authority (the ACMA) is responsible for investigating and taking enforcement action for contraventions of the Australian *Interactive Gambling Act 2001* (the IGA).

The ACMA has recently completed an investigation into the Casino Jax, Mirax Casino and Wild Fortune Casino services (the Services) available at the URLs <https://www.casinojax.com>, <https://www.miraxcasino.com> and <https://www.wildfortune3.io>. The ACMA found that Hollycorn N.V. contravened subsection 15(2A) of the IGA by providing prohibited interactive gambling services to Australian customers.

On 30 January 2023, the ACMA advised Hollycorn N.V. of the ACMA's preliminary contravention findings. The ACMA has received no response from any entity or individual involved in the provision of the Services.

The ACMA finalised the investigation on 16 February 2023. The ACMA issued a Formal Warning to Hollycorn N.V. under section 64A of the IGA on 28 February 2023.

If Hollycorn N.V. continues to provide prohibited interactive gambling services to persons physically located in Australia, the ACMA may take further action.

I have attached a copy of the Formal Warning issued to Hollycorn N.V. as well as the key provisions of the IGA.

We have brought this matter to your attention as we understand that there is an intention to expand the role of the Gaming Control Board Curaçao to the regulation of online gaming in Curaçao. We understand that findings of illegal activity may be relevant to your future consideration of the suitability of a licensee.

If you have any questions on the above, please contact me at

[REDACTED]

Thank you for your engagement in this process.

Yours sincerely,

[REDACTED]

Manager
Interactive Gambling Team

Attached: Formal Warning, Relevant provisions of the IGA

Formal Warning

under section 64A of the *Interactive Gambling Act 2001*

To: Hollycorn N.V.

Of: Scharlooweg 39 U.22
Curaçao

[REDACTED]

Attention:

[REDACTED]

I, Rochelle Zurnamer, delegate of the Australian Communications and Media Authority (ACMA), being satisfied that Hollycorn N.V., has contravened subsection 15(2A) of the *Interactive Gambling Act 2001* (the IGA):

ISSUE Hollycorn N.V. a formal warning under section 64A of the IGA, for one or more contraventions of subsection 15(2A) of the IGA, being a civil penalty provision.

Details of the contravention

Obligations under the IGA

1. Subsection 15(2A) of the IGA provides that a person must not provide a prohibited interactive gambling service that has an Australian-customer link.
2. A 'prohibited interactive gambling service' is defined in section 5 of the IGA and 'gambling service' is defined in section 4 of the IGA. Under section 8 of the IGA, a gambling service has an Australian-customer link if, and only if, any or all of the customers of the service are physically present in Australia.

Investigation

3. Under section 21 of the IGA, on 30 November 2022, the ACMA commenced an investigation into whether the Casino Jax, Mirax Casino and Wild Fortune Casino services (the Services) provided prohibited interactive gambling services in contravention of the IGA.
4. During the period of the investigation the Services were available via the URLs <https://www.casinojax.com>, <https://www.miraxcasino.com> and <https://www.wildfortune3.io>.
5. Hollycorn N.V. is a provider of the Services.

Contravention of subsection 15(2A) of the IGA

6. The Services offered 'gambling services', including casino-style games of chance or mixed chance and skill, played for money where the customer gave consideration to play the game (paragraph (e) of the definition of 'gambling service' in section 4 of the IGA).

7. The Services were provided in the course of carrying on a business and were provided to customers using an internet carriage service (section 5 of the IGA).
8. The Services had an Australian-customer link.
9. The ACMA found that, as a provider of the Services, Hollycorn N.V. has contravened subsection 15(2A) of the IGA by providing prohibited interactive gambling services to customers physically present in Australia.

Dated this 28 February 2023



Rochelle Zurnamer
Delegate of the Australian Communications and Media Authority

Key Provisions of the *Interactive Gambling Act 2001*

4 Definitions

designated interactive gambling service means:

- (a) a prohibited interactive gambling service; or
- (b) an unlicensed regulated interactive gambling service.

gambling service means:

- (a) a service for the placing, making, receiving or acceptance of bets; or
- (b) a service the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets; or
- (c) a service for the conduct of a lottery; or
- (d) a service for the supply of lottery tickets; or
- (e) a service for the conduct of a game, where:
 - (i) the game is played for money or anything or else of value; and
 - (ii) the game is a game of chance or of mixed chance and skill; and
 - (iii) a customer of the service gives or agrees to give consideration to play or enter the game; or
- (f) a gambling service (within the ordinary meaning of that expression) that is not covered by any of the above paragraphs.

Unlicensed regulated interactive gambling service means a regulated interactive gambling service that is provided in contravention of subsection 15AA(3).

5 Prohibited interactive gambling services

(1) For the purposes of this Act, a **prohibited interactive gambling service** is a gambling service, where:

- (a) the service is provided in the course of carrying on a business; and
- (b) the service is provided to customers using any of the following:
 - (i) an internet carriage service;
 - (ii) any other listed carriage service;
 - (iii) a broadcasting service;
 - (iv) any other content service;
 - (v) a datacasting service

Note: This definition relates to the offence provisions and civil penalty provisions set out in section 15 and Part 7A.

(2) Subsection (1) has effect subject to subsection (3).

Excluded services

(3) For the purposes of this Act, none of the following services is a **prohibited interactive gambling service**:

- (a) a telephone betting service;
- (aa) an excluded wagering service (see section 8A);
- (ab) an excluded gaming service (see section 8B);
- (aba) a place-based betting service (see section 8BA);
- (ac) a service that has a designated broadcasting link (see section 8C);
- (ad) a service that has a designated datacasting link (see section 8C);
- (ae) an excluded lottery service (see section 8D);
- (b) a service to the extent to which it relates to the entering into of contracts that are financial products within the meaning of Chapter 7 of the *Corporations Act 2001*;
- (ba) a wholesale gambling service;
- (bb) a trade promotion gambling service (see section 8BB);
- (c) an exempt service (see section 10).

8 Australian-customer link

For the purposes of this Act, a gambling service has an Australian-customer link if, and only if, any or all of the customers of the service are physically present in Australia.

8E Regulated interactive gambling service

- (1) For the purposes of this Act, a **regulated interactive gambling service** is:
- (a) a telephone betting service (see section 8AA); or
 - (b) an excluded wagering service (see section 8A); or
 - (c) an excluded gaming service (see section 8B); or
 - (d) a place-based betting service (see section 8BA); or
 - (e) a service that has a designated broadcasting link (see section 8C); or
 - (f) a service that has a designated datacasting link (see section 8C); or
 - (g) an excluded lottery service (see section 8D); or
 - (h) an exempt service (see section 10);
- where:
- (i) the service is provided in the course of carrying on a business; and
 - (j) the service is provided to customers using any of the following:
 - (i) an internet carriage service;
 - (ii) any other listed carriage service;
 - (iii) a broadcasting service;
 - (iv) any other content service;
 - (v) a datacasting service; and
 - (k) in the case of an exempt service—a determination under subsection (2) is in force in relation to the service.
- (2) The Minister may, by legislative instrument, determine that each exempt service included in a specified class of exempt services is covered by paragraph (1)(k).
- (3) Subsection (1) has effect subject to subsection (4).
- (4) For the purposes of this Act, neither of the following services is a **regulated interactive gambling service**:
- (a) a wholesale gambling service;
 - (b) a trade promotion gambling service (see section 8BB).

15 Prohibited interactive gambling services not to be provided to customers in Australia

- (2A) A person must not provide a prohibited interactive gambling service that has an Australian-customer link (see section 8).
- Civil penalty: 7,500 penalty units.
- (3) Subsections (1) and (2A) do not apply if the person:
- (a) did not know; and
 - (b) could not, with reasonable diligence, have ascertained;
- that the service had an Australian-customer link.

Note: In the case of proceedings for an offence against subsection (1), the defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

15AA Unlicensed regulated interactive gambling services not to be provided to customers in Australia

- (3) A person must not provide a particular kind of regulated interactive gambling service if:
- (a) the service has an Australian-customer link (see section 8); and
 - (b) the person does not hold a licence (however described) under a law of a State or Territory that authorises the provision of that kind of service in the State or Territory.
- Civil penalty: 7,500 penalty units.
- (5) Subsections (1) and (3) do not apply if the person:
- (a) did not know; and
 - (b) could not, with reasonable diligence, have ascertained;
- that the service had an Australian-customer link.

Note: In the case of proceedings for an offence against subsection (1), the defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Key Provisions of the Regulatory Powers (Standard Provisions) Act 2014

92 Ancillary contravention of civil penalty provisions

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision; or
 - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
 - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
 - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
 - (e) conspire with others to effect a contravention of a civil penalty provision.

Civil penalty

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

Note: Section 94 (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to the extent that proceedings relate to the contravention of subsection (1).