

Amending the 37.12% Minimum Authorised Purpose Percentage

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37.12% Minimum

- Almost all clubs have a licence condition requiring their gaming account to make a 37.12% profit each year, and requiring this profit to be promptly applied or distributed to authorised purposes.
- Breach of the licence condition is grounds for licence cancellation.
- Operating gaming in breach of a licence condition arguably amounts to conducting illegal gambling.

37.12% Can be Difficult

- Level 3 and 4 Covid 19 Alert – Zero gaming income, while gaming costs continue.
- Level 2 – Covid-19 social distancing can reduce gaming revenue.
- Taking a more proactive harm minimisation stance can reduce gaming revenue.
- It is hard for clubs to compete with nearby commercial venues who have new gaming machines regularly installed by their large society.

Club Gaming Licence Loss

- March 2004: 552 clubs held gaming licences.
- June 2020: 189 clubs held gaming licences.
- The main reason for club gaming licence loss is “not being financially viable”, namely a failure to make a 37.12% gaming profit.

Covid-19 Relief – Non-clubs

- Non-club gaming societies have a 40% profit/authorised purpose requirement.
- The non-club requirement is set by regulation (not by licence condition).
- The 40% minimum was waived for 2020 and 2021.

Covid-19 Relief – Clubs

- The 37.12% profit/authorised purpose requirement was not waived for clubs.
- Instead, the Department provided a letter to clubs suggesting they could use their gaming money for items outside their specified authorised purpose to “keep the lights on”.

Covid-19 Relief – Clubs

- Using gaming money for non-authorized purposes does not help with the requirement to apply 37.12% for authorized purposes.
- Using gaming money for non-authorized purposes is a criminal offence. A conviction results in instant gaming licence cancellation with no right of appeal.

Covid-19 Relief – Clubs

- I asked DIA (three times) if they would give clubs the same relief they had given all non-club gaming societies, namely a waiver of the 37.12% requirement for 2020 and 2021.
- The answer was no, no, no.
- The Department continued to issue licences with the 37.12% requirement, even immediately after Auckland went into its second level 3 lockdown.

Gambling Commission Appeal

- I appealed the Department's decision.
- At the hearing, the Department accepted it had acted unfairly and unreasonably (thus unlawfully) in not reducing/waiving the authorised purpose return licence condition.
- The Gambling Commission ordered the gaming licence be amended to waive the 37.12% requirement for 2020 and 2021 due to Covid-19.

Action Required

- If your club is unlikely to make a 37.12% gaming profit due to Covid-19, the club should immediately apply to have its licence condition amended to waive the 37.12% requirement for 2021.
- GC2A Class 4 Operator's Licence Amendment Request – Part G.
- It is not acceptable to leave the licence condition in place and subsequently seek to have it amended when the DIA takes licence cancellation action.

Non-Covid Relief - 2022

- Even without the Covid-19 disruption, it can be difficult for clubs to make a 37.12% gaming profit.
- Clubs can request a lower percentage. The percentage must be set on a case-by-case basis and be fair and reasonable having regard to the club's unique circumstances.
- 31 clubs have an authorised purpose percentage set between 25% and 36%.
- As low as 10% may be possible.

Non-Covid Relief - 2022

- The standard 37.12% is changed by:
 - Seeking a licence condition amendment – GC2A ; or
 - Appealing the 37.12% standard condition to the Gambling Commission within 15 days of a new licence being issued as part of a licence renewal.

Seek Information

- Don't be bullied into surrendering your gaming licence.
- Don't assume that 37.12% is a universal requirement that must apply to all clubs.
- Seek support and information:
 - No information on reducing the 37.12% requirement will be found on DIA's website or in Gambits.
 - Use your Clubs New Zealand contacts.
 - Give me a call or send me an email.
 - Obtain a copy of the New Zealand Gambling Law Guide (www.gamblinglaw.co.nz).
 - Obtain a copy of the Gambling Commission decision *Youthtown Inc GC26/20*.

Working Capital

- The recent Gambling Commission decision also confirmed that clubs may hold a larger amount of their gaming cash back and retain this as working capital.
- Clubs can apply to retain gaming proceeds up to a maximum working capital ratio of 1.5 to 1 (calculated as current assets divided by current liabilities).
 - \$100,000.00 in gaming current liabilities (gaming creditors, loan repayments due in 12 months etc.)
 - \$150,000.00 can be held as current assets (gaming cash, gaming accounts receivables).

Working Capital

- Being able to hold a larger amount of gaming cash gives greater flexibility.
- Holding a larger amount of gaming cash ensures the gaming account is solvent.
- Holding a larger amount of gaming cash enables gaming funding to continue (from reserves) during future periods of no gaming revenue, such as future lockdowns.
- Holding a larger amount of gaming cash may be appropriate if the club has a large project coming up in the future that it wishes to fund from gaming.

Working Capital

- Licence amendment required – GC2A.
- More detail on the working capital ratio can be found in the New Zealand Gambling Law Guide – www.gamblinglaw.co.nz

Questions Welcomed

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