



10th & 11th November 2014

**KPMG eGaming
Summit Isle of Man
2014**

Report

Kindly sponsored by



Introduction

Since becoming the world's first jurisdiction to introduce legislation specific to eGaming in 2001, the Isle of Man has secured its place as a world leading jurisdiction which is home to the industry's most celebrated licensed brands and most comprehensive suite of ancillary service providers. Today, the Isle of Man stands for constancy in technological innovation and regulatory progress even as it faces changes to its white list status, its nearest onshore neighbour moving to a place of consumption framework, and a raft of complex legislative and regulatory provisions throughout Europe and further afield. It has secured this reputation through an unerring commitment to a series of core principles which place public/private sector cooperation, responsible innovation and consumer protection at its heart.

On 10th and 11th November 2014, KPMG sought, once again, to promote these values and explore the future of this industry with the fifth instalment of its celebrated KPMG eGaming Summit Isle of Man series. This year, KPMG was very pleased to launch the Summit with a first for the Isle of Man as representatives from the celebrated International Masters of Gaming Law joined an exclusive selection of 50 delegates for the first of three IMGL Masterclasses, sponsored by SMP Partners. Moderator Joerg Hofmann, President of IMGL, Germany joined the Isle of Man Gambling Supervision Commission's Steve Brennan, Birgitte Sand of the Danish Gambling Authority, Jenny Williams of the British Gambling Commission and Richard Schuetz of the California Gaming Control Commission at the Claremont for a lively and assured discussion on collaboration, best practice and information sharing between regulators in today's global sector.

Following a wake-up breakfast kindly provided by sponsors Manx Telecom, the Summit proper opened with a welcome address by Minister for the Department of Economic Development, Laurence Skelly, MHK. Minister Skelly provided a brief overview of the success of the Island's eGaming sector, which now accounts for 13% of the Island's GDP, before introducing the day's first speaker Quirino Mancini of SCM Lawyers. Drawing upon a series of examples from his home jurisdiction Italy, Mr Mancini tackled the perennial problem of the controversial image of gaming in the face of media and public opinion. Steve Brennan and the Department of Economic Development's CEO of eGaming Development, Peter Greenhill then delivered a staple of the Summit series, the local sector update, before introducing Eric Benz and Ben Robinson of locally incorporated cryptocurrency payment services intermediary GoCoin. A captivating discussion on the potential marriage between cryptocurrencies and eGaming from Messrs Benz and Robinson perfectly set the scene for the first of the day's panel sessions, during which KPMG's Head of eBusiness, Archie Watt, moderated a discussion between leading representatives of the industry's payments sector in 'Dodging the Brussels Bullets: Payment Processors' Priorities'.

Following lunch, kindly sponsored by PokerStars, the first of the day's IMGL Masterclasses saw moderator Dr. Wulf Hambach and panellists Susannah FitzGerald QC, Andrew Cotton and Paul Davis tackled the significant implications of operating in part-regulated and non-regulated online gaming markets, in a discussion which unearthed some fascinating insights into the role of regulation and its effect upon consumers in such a culturally diverse practice as online gambling.

Paul Leyland of Regulus Partners followed with an erudite and penetrating analysis of point of consumption licensing and the dot com model before KPMG's Head of VAT, Sandra Skuszka, delivered a particularly pertinent presentation on forthcoming changes to place of supply VAT rules for January 2015. Representatives of the International Masters of Gaming Law returned to provide the final presentation of the day in a spirited debate concerning the US regulatory scheme and emerging market issues. Together, moderator Bill Gantz and distinguished panellists Ernest C. Matthews IV, Hilary Stewart-Jones and Bill Mummery addressed the balance between engagement, regulation and investment within emerging markets, with Ms Stewart-Jones arriving at fitting conclusions that: "You're better embracing the industry than alienating it because then you get access to the data. That's how progress is made."

This report seeks to compound and build upon a day's enlivening discussion on the imperative for all stakeholders to work together and share information at a critical phase in the industry's maturation. KPMG would like to take this opportunity to once again thank the Summit's sponsors, speakers and attendees who together demonstrated that the Island's strength lies in its spirit of openness and cooperation. We would also like to offer special thanks to representatives of the International Masters of Gaming Law for contributing to a truly international and seminal installment in the eGaming Summit series. We look forward to seeing you all next year.

KPMG employs a number of eGaming industry specialists both in the Isle of Man and provides expert guidance at every step, and in every aspect of this constantly evolving industry.

A word from the Sponsor

Combining a world class communications infrastructure, responsive public/private sector relationship and harmonious cluster of specialist professionals from all aspects of the industry, the Isle of Man has earned its place amongst the world's premiere jurisdictions for eGaming and, more broadly, e-business.

Today, the Isle of Man is home to some of the world's reputable licensed brands, an ever growing portfolio of ancillary service providers, and the

headquarters of Continent 8 Technologies. Our world class data centre, situated just 500 metres from the Island's power station, is the key to a truly global footprint of facilities which now includes London, Paris, Montreal, Dublin, Milan, Gibraltar, Guernsey, Malta and Singapore.

Continent 8 is proud to offer the world's most secure and reliable services at a complex juncture for the industry, and to sponsor this year's KPMG eGaming Summit 2014 report. We are committed to remaining at the forefront of this exciting industry and look forward to seeing you again next year.

Richard Ebbutt
Continent 8 Technologies



Cross-border Co-operation by Regulators

Moderator: Joerg Hofmann, Senior Partner, Melchers and President, International Masters of Gaming Law, Germany

Panellists:

Richard Schuetz, Commissioner, California Gambling Control Commission, California

Steve Brennan, CEO, Gambling Supervision Commission, Isle of Man

Birgitte Sand, Director, Danish Gambling Authority

Jenny Williams, Commissioner & Chief Executive, Gambling Commission, United Kingdom

"Let me say, personally, that this is an amazing group; Mr Hofmann introduced the Isle of Man's very first IMGL Masterclass. This is for two reasons: first, because this is a truly international group and secondly, because it is one which maintains deep contact with one another, which is at the crux of our discussion title 'cross-border co-operation by regulators'"

"Is there a need for cross-border co-operation and, if so, why?" Mr Hofmann continued, adding that the topic could arguably be divided into two categories. The first, he contended, concerns whether or not a regulator needs to be educated, as might be the case in emergent jurisdictions or one in which an online

gambling market is emerging from an already well established land-based sector. "In this case," he explained, "it is useful to be able to correspond and seek assistance when drafting a new regulatory framework to accommodate online gambling. This is absolutely timely because more and more jurisdictions across the world now face the challenge of online gaming regulation."

The second, he explained, concerns those established regulators which already have existing regulatory frameworks, have experienced good and bad examples, and who could learn the dos and don'ts from an evaluation of their own and other jurisdictions by communicating with other regulators. Similarly, those

working within federal state systems have the potential to learn from neighbouring authorities and improve group regulatory systems by establishing common goals and best practice.

Having thus introduced the day's discussion, Mr Hofmann then invited the audience to contribute to proceedings at any stage before asking Ms Williams to please describe existing models or practices of cooperation between regulators.

Jenny Williams: "When we [the UK Gambling Commission] first opened up online gambling in the UK in 2007, as a modern regulator we had a basic approach. It was principle based regulation, it was for the industry to



Joerg Hofmann

KPMG

pursue the licensing objectives – keeping crime out, keeping gambling fair and safe – but we didn't know an awful lot about it so one of the first things we did was talk to those already doing it; essentially Alderney, Malta and the Isle of Man. All we kept asking was 'why do you do this?' and 'what is this for?'. We set up our licensing codes and conditions based on what we could see made sense and then we hoped that, over the coming years, we would observe good practices which would result in increased requirements and our challenging the industry more and more."

"What then happened, however, was most of our industry went overseas, which left us in the very peculiar situation of having one very large operator in the sector [Bet365], and lots of very small ones. That meant that it was even more important for us to keep plugged in to what was happening internationally." Ms Williams recalled that since she first took over the iGaming working group for the International Association of Gaming Regulators in 2006, the group had published technical guidelines for the domestic industry and a compliance and enforcement toolkit for regulators, and is due to launch a pilot programme for a small group of jurisdictions on the transfer of test results. "So there's a lot of work going on," Ms Williams added.

Moderator: Ms Sand, could you perhaps elaborate on the activities of IAGR, or the International Association of Gaming Regulators, of which you have just become president?

Birgitte Sand: Ms Sand began by reminding delegates that Denmark first introduced gaming legislation to open the online gambling market in January 2012, explaining that Denmark consequently still maintains its monopoly on horse racing, lotteries, scratch cards and bingo. "But when it comes to everything else, including slot machines, land-based casinos and online," she added, "we do have a separate model. When we wrote the legislation, we started off by looking around at who we could learn from.

We adopted the same model as the UK Commission and asked the 'whys'. We went to Italy, France, the UK, Alderney, Malta, Gibraltar, Jersey and the Isle of Man; those were the jurisdictions that had experience already, and it was of high value."

"We didn't always agree on things, but we learned a lot," Ms Sand continued. "We also learned from GREF [the Gaming Regulators European Forum], IAGR, we entered into mutual agreements, we used the knowledge we could get from the EU, we consulted our Nordic colleagues, and we entered into some dialogue with the industry and its advisors. So a wide range of stakeholders in the gambling world helped us get, more or less, the model we were looking for for Denmark. It didn't take us that long to do and it was actually a great pleasure."

"What we ended up with was a model that works. Looking back at the past three years, we seem to have developed a model that keeps the bad guys out and the good guys in. To my knowledge, the reason it is working is because we are keeping this dialogue, we're staying open about what we do, and we lean on very good colleagues to tell us when we're moving in the wrong direction. I believe in fast tracking: we can't just sit on our hands and wait for 28 member states or the US to agree on how to do things. Sometimes we need to be a little bit brave, go out there and form some smaller groups to see if we can take things forward a little faster."

Concerning IAGR, Ms Sand explained that the association had formed a number of knowledge sharing groups which the 59 gaming jurisdictions, being IAGR members, are invited to join. These groups are designed to enable jurisdictions to share views, debate and experiences, as well as ask for help. "I have to admit it takes some time to make these things happen, but my dream will come true when we actually manage to reach out and have staff members travel to learn about how things are done elsewhere in the world. I do hope that we will manage to share some knowledge and I do

hope that we will continue to consult industry advisers as well. I great many of them have more industry experience than the regulators so in that sense I hope to see more cooperation between all stakeholders, not just the regulators."

Moderator: "Yours is an excellent story. Your authority has understood that the key to progress for jurisdictions lies in two things. First, taxation should be moderate and appropriate as well as content. If it is too restrictive, the operators will not license in your jurisdiction. I think I am correct in stating that the Danish Gambling Authority managed to convert over 90% of operators to a licensed regime in 2012. Italy and France, on the other hand, cannot provide this degree of success. So, now, these more established operators should talk to you and ask 'what did you do better with the basic information we provided? How can we now learn from you?'. Does this indeed happen in Denmark? Are you comparing and sharing your practices?"

Birgitte Sand: Ms Sand answered that the Danish Gambling Authority was in contact with around fifteen jurisdictions in 2012, and twenty in 2013 and 2014. "But I would like to stress that it is not only the jurisdictions that approach us which take home information, we learn a lot as well. We need to remember to be humble here. What might work in Denmark may not in the Czech Republic, France Italy or Sweden. We all face different challenges and if we bear that in mind then we'll get somewhere. It's never exactly a duplicate.

Birgitte Sand



Birgitte Sand

“Regardless of the type of regulator, whether its global, state, or local, we’re all in it for the same thing, which is consumer protection. Cooperation has been at the forefront of what we do at the GSC for a number of years now and I don’t see any of that going away any time soon.”

Moderator: At a very early stage, the Gambling Supervision Commission (GSC) came to believe that agreements made sense, and are now expert in forming agreements with other jurisdictions, gaming boards and regulatory bodies. It also has a lot of experience with GREF. Steve, could you tell us a little more?

Steve Brennan: “On the question of why we want to cooperate, it would take a brave regulator to say ‘I know everything about online gambling’. We don’t know what we don’t know, and the only way we’re going to find that out is when an incident happens and there’s no response, or by talking to regulatory colleagues who have already encountered that issue”, Mr

Brennan began. He added that the IOM GSC has always believed in reaching out to fellow regulators and trying to formalize dialogue, nominating Ms Sand and Ms Williams as colleagues who had been instrumental in ensuring cooperation between regulators, either through IAGR, GREF or other forums.

“The context is quite important”, Mr Brennan continued. “In order to understand why we do what we do, the reason for each regulator’s approach, you need to consider the Isle of Man context, the Danish context, the Californian context, and so on. We do also recognise that our agreements are not the panacea that commercial operators are looking for,

but they do start to build the trust, dialogue and the knowledge that is important.”

Mr Brennan went on to explain that the IOM GSC enjoys 5 or 6 agreements with other jurisdictions, many of which had been drawn upon over the past 12 months. Mr Brennan gave the recent example of an issue with a problem gambler in which the GSC was able to share sensitive information across regulators and license holders to ensure that the individual was offered a safer place in which to browse.

Concerning its relationship with GREF, of which Mr Brennan is Deputy Chairman, he explained that the GSC had played host to a number of jurisdictions which had visited in order to understand its approach to licensing operators. Mr Brennan added that since online gambling had become a more attractive proposition to jurisdictions, conversation surrounding the issue had matured such that other, more nuanced, discussions were now dominant within the forum: “Rather than the question of simply how to regulate, issues on the periphery, such as digital currencies, problem gambling, fraud typologies, match fixing and cloud computing, are now of more importance. Regardless of the type of regulator, whether its global, state, or local, we’re all in it for the same thing, which is consumer protection. Cooperation has been at the forefront of what we do at the GSC for a number of years now and I don’t see any of that going away any time soon.”



“they’re not telling us what they want to do; they’re helping us to understand where the industry is going.”

Moderator: The California Gaming Control Commission recently announced that they would like to increase communications with the whole Californian gaming community. What’s the situation in the rest of the United States?

Richard Schuetz – “To briefly survey what’s going on in the United States; we have three states now that enjoy legal online gambling: Nevada, New Jersey and Delaware;” Mr Schuetz reminded the floor. He noted that California had been working very hard to learn from these states since it had first explored the potential of online gambling in 2006 and that, upon his assignment as Commissioner in 2011, Mr Schuetz had immediately set about developing what he termed ‘a literacy in iGaming’. “As such,” he added, “I’ve travelled extensively in the last year – China, Montreal, the Isle of Man, London, Atlantic City and so on – because you have to do that to learn this science. I’ve also been blessed by visits from a number of operators and regulators willing to share their knowledge, and I now know these people. I immediately began assembling a library of legislative packages, regulatory structures, technical standards and internal controls from across the world because we don’t want to have to build this from scratch. I want to learn from others, and when you come across the same technical standards in eight or nine sets of regulatory guidelines, for example, you can be pretty sure that they’re a good thing.”

Moderator: Could you perhaps enlighten us as to the future for Californian online gaming over the next couple of years?

Richard Schuetz: “For a PhD dissertation I wrote on the history of the Nevada regulatory process from 1945 to 1966, and I mention that because I believe that to understand the regulatory model in the United States you have to understand the series of historical events that resulted in that model. I think if there’s been a weakness in European operators’ understanding of us, it’s in our notion of suitability and the reason we think everybody’s involved in the Mafia. We think that because everybody was. During the 1950s and 60s we had really, really bad actors, and that’s important to understand.”

Mr Schuetz continued in explaining that the United States had since developed what might be considered ‘a curious brand of regulation’, but added that, ultimately, the nation is simply trying to launch a player friendly and business friendly jurisdiction against a complex historical context. “Our goal is to get this right,” he concluded “and I borrow from people tremendously in order to do so.”

Moderator: Understanding the role of regulators and the challenges they face in terms of meeting legislative demands, remaining sympathetic to cultural opinion and enforcing action against the bad actors is critical to public perception of the industry. Birgitte, could you enlighten us as to the approaches regulators might take?

Birgitte Sand: “For me it is about respecting people’s differences concerning regulation, but also taking an interest. Richard, for example, made a very wise observation about our interaction with operators and the industry when he explained that if a licensee makes an honest mistake, it is better to focus on how to get them back on track than on how to put them behind bars;” Ms Sand observed. She then added that during the process of its consultation with other regulators, the Danish Gambling Authority had learned that the term ‘police’ meant different things in different jurisdictions. To some, the term meant immediate penalization in the forms of fines or jail-time. To others such as Denmark, the term denoted a two stage process: an official warning to cease illegitimate action, with penalization to follow only as recourse to inaction. “We have to remember that we are so different in where we’re coming from, and we have to remember that some regulators are only just trying to implement the most basic regulatory frameworks. These regulators are not even close to considering the implications of digital currencies, or match-fixing. If we really want to reach out and cooperate, we need to take that into consideration as well.”



Steve Brennan



Jenny Williams

Moderator: It is certainly very good to deal with these differences by signing agreements, but agreements can only provide a formal approach to cooperation. I think it is nearly as important to talk to each other. I would like to know, however, how you approach discussions if two regulators disagree entirely with one another's practices. Jenny, could you tell us more?

Jenny Williams: "The UK is a fairly pragmatic jurisdiction; we don't really go in for many formal agreements and signing ceremonies. We pinch ideas from everywhere, we challenge, we ask, and we try out new ideas – clearly, as we've demonstrated with the change to the Point of Consumption regime. As Birgitte says, a lot of it does depend upon the context in which you're operating. For example, despite what everybody believes, we [the UK Gambling Commission] have no responsibility for tax and we're not driven by it. A lot of other jurisdictions are and that does colour the requirements they have. But for us, it's simply about the risks of the environment in which we operate." Ms Williams added, however, that the gambling environment was itself also changing. "It was the advent of online that really changed the environment for betting, and even today there are trends in concerns within online itself. Three years ago, social gaming was the latest threat to our youth, whereas today everybody is getting very excited about Bitcoin. We tend not to get very excited in the UK about such things, but we look to regulators like Steve with his Bitcoin expertise and we learn the whole time from each other."

Moderator: On a broader basis, technology leads, always. Regulation, slowly, tries to keep up. The Isle of Man is a jurisdiction that has always been very close to development and the progress made by the industry, and there are now technologies that have significant implications not just for online gambling, but for society in general. Steve; how do you deal with these matters and how do you look to the future?

Steve Brennan: "Our office will never pretend to know everything, but what we do know is that there are experts out there who do know their stuff. Our approach has always been to have a good relationship with our stakeholders, whether they're our licence holders or the businesses that support them. Many people say we're being very generous with our time, but actually it's a two way street. We have a very open door policy and a very friendly environment, but the emphasis on that is that they're not telling us what they want to do; they're helping us to understand where the industry is going." Mr Brennan added that from a regulatory perspective, this approach allows the IOM GSC to determine in advance any underlying issues concerning a product or service, and to assess the risks to operators as well as the Isle of Man itself. The result is that the IOM GSC is able to mitigate any risk to its licensees and the Island's reputation overall. "For us, the secret is we haven't got an office full of future technologists, we have an office full of people who are very, very inquisitive, who are open to conversation and will make a real effort to understand a new technology."

Richard Schuetz: "I want to add a comment concerning the reason, as you may all be wondering, why I'm here. I travel and attend these events because this is the future," Mr Schuetz added. "Yesterday I had the privilege of going out to Peel [a coastal town based in the West of the Isle of Man], and sampling some of the history and culture there. I did so under the shadow of the remnants of an old Viking castle, which represents the vestiges of a by-gone era. In the United States we have these gigantic casino complexes, and the people who own them don't want them to become representative of a by-gone era. They're investing heavily to ensure that doesn't happen, which means the information channels with regards to iGaming are terribly muted with bad noise, because apparently being wealthy enables you to create your own facts in this day and age. What is being communicated in the United States is very distorted so to meet these colleagues, for me, is like stepping into the future. My commitment is if California is going to step into this future I want to make that leap as seamless and as appropriate as possible, and these are the people that are going to help escort me into that dimension."

Moderator: How can we attract the regulators who do not already attend meetings such as those organised by GREF, IAGR, and so on?

Jenny Williams: Ms Williams explained that those regulators in jurisdictions that enjoy a large home market automatically enjoy a significant degree of industry dialogue. For example, from the perspective of the UK Gambling Commission, attending conferences would be a largely redundant exercise. This, however, changes for smaller jurisdictions which

are 'hubs' for online gambling commerce and for which the cost of overseas representation is a considerable investment in their future.

Steve Brennan: Mr Brennan agreed, adding that the IOM GSC maintains a 'two-pronged' approach. Core regulatory personnel are charged with representing the Isle of Man amongst overseas regulators and operators, while a dedicated development team is charged with meeting and understanding business that is compatible with the Island's proposition and acts as a first point of contact. "If we can't attend all the conferences, it's because our focus is to build our business and we take clearly defined measures to do so."

Birgitte Sand: "Being a small market, with a population of only 5.7 million, we need to look outwards at the rest of the world. I need to know what's going on globally so I can look ahead at what will be affected by players. I also need to look at our market and what's attractive to players so they don't leave the regulated sector, and I have to understand what makes other jurisdictions attractive."

Richard Schuetz: "One of the things I've learned in business is that it's all about the relationships. The lawyers can draft all the contracts in the world, but it's about the quality of the relationships. I now know I can pick up the phone and ask a question to someone with integrity, and that's the value."

Moderator: On the European side, as we all know gaming is not subject to harmonisation. If it were, we would not enjoy so many agreements. What are the principles behind which these agreements are commonly based?

Steve Brennan: "These are not huge or hugely complicated documents. Their purpose is to ensure that, early on, we have a formal footing on which we can discuss issues of mutual concern. They encompass a whole raft of things that further our understanding of how we can share

best practice and create a conduit between the two regulatory authorities. The general principle is to ensure that we understand the authority that we're dealing with. The agreements are memoranda of understanding; they do not create any new law or change any existing legislation, they're there to establish a trusting relationship which allows for detailed dialogue. They've helped us enormously in the past and I've recently seen a change in attitude between regulators to a much more collegiate environment. In fact, the agreements are probably becoming a little less important because we now know our fellow regulators, we know what they stand for and, within some of the forums and working groups, we're starting to build upon some of the issues that ordinarily would have been broached through these agreements. They're still a good tool but we are starting to make big strides in the international forums."

Birgitte Sand: Ms Sand agreed, and recalled an incident during the period in which Denmark was establishing agreements with Jersey, Malta, Gibraltar and the Isle of Man that she described as a highly valuable process. "Getting together and trying to convince each other that you can be trusted before you sign an agreement is very healthy"; she added. "On the other hand, I've wondered many times since I entered this business why it is we talk about everything being harmonized, that we need more standards and the like. I've been in the world of taxation for a great many years and it didn't enter our minds to harmonise anything. We'd given up on harmonizing taxation. So this was a bit new to me. I realized that we are a little bit special in this business: we do set our bars high and we have high expectations of one another. Looking at the work being done at the minute in the EU; we stopped entering into agreements in Denmark for a little while for the simple reason that the work being done by the expert group in the European Commission has its own value. This is in the sense that we may see some valuable work in

establishing agreements between member states. But at the same time I think it's of value to save some energy for those meetings, and we do meet; 28 member states meet four to five times per year to discuss urgent matters. I believe it's quite an accomplishment that we see quite a lot of decisions being made by the Commission based on advice from the member states. I see it as an effective opportunity. Many of the new member states take advantage of being there with the more experienced regulators and I think there might also be room for the United States to be inspired by this important work."

Moderator: Richard, you don't have the equivalent of the European Commission in the United States; is California left alone to do everything right?

Richard Schuetz: "We have a disaster brewing in the United States with regards to the assimilation of a reasonable and orderly industry being expanded there. We have a federal government that has become essentially dysfunctional devoid of any adult supervision and that has left the responsibility to the individual states. The brick and mortar had all kinds of different rules and they'd be siloed within a state. So you could have a casino but it has to float – which makes total sense if you really think it through – we have other casinos where you have to have horses running around in the back yard in order to be legitimized. Now you have a technology that attaches no importance to borders. It's an incredibly efficient system but we have these old rules. The government could hold the umbrella, but those guys are just beating each other with it. So it's up to the states. Imagine having 28 different types of Microsoft word, one in each city. Then imagine trying to use that software in another city, then imagine trying to conduct a system upgrade. It would be impossible to get anything done. Somehow we need to do this, and we need some guidance both from the regulators and the operators."

Welcome Address

Minister Laurence Skelly MHK

Minister for Economic Development
Isle of Man Government

Laurence Skelly MHK is Minister for Economic Development in the Isle of Man Government and is a Member of the House of Keys (MHK) for the constituency of Rushen. Prior to being elected to the Island's Parliament, Tynwald, in 2011, Mr Skelly was Director of Manx Inspirations, a leading local wholesaler, and Destination Isle of Man, an event management company. Previous to that he lived in California for 15 years, where he owned and operated a chain of travel agencies and also represented Isle of Man Tourism. Maintaining his Manx roots, he joined the North American Manx Association and served as President between 2006 and 2008.

"Personally, I'm delighted and honoured to be given the opportunity to deliver the welcome address for KPMG's fifth annual eGaming Summit, and to see the level of interest that today's event has generated," Minister Skelly opened the day's presentations. "It is a conference that showcases an outstanding success story, the Isle of Man eGaming sector."

Minister Skelly continued in recalling that his predecessor, John Shimmin MHK, at last year's eGaming Summit had expressed his hopes that in 2014 the Island's eGaming sector would continue in its success, creating growth for its businesses, jobs for Island residents and wider economic benefits for the Isle of Man: "I'm delighted to confirm that is the case."

"What we have seen is the sector continuing to thrive. Employment for the sector has grown 10 percent over the past year, with many more vacancies advertised. The latest National Income statistics, as measured by GDP, show that eGaming is now 13 percent of the economy, and when considered together with ICT;

that overall e-business sector is now 20 percent of the Manx economy. Although this economic evolution was forecast in the Isle of Man Government's Vision2020 strategy, it's fair to say this change is happening faster than we imagined. At the top level, the National Income figures also confirmed a 30 year period of continuous economic growth for the Isle of Man."

Minister Skelly continued in explaining that the Manx economy is continuing to grow at a rate of 3-4 percent and that the Isle of Man Government is determined to ensure that eGaming makes a significant contribution to this figure. "The sector's dynamic growth in recent years helped to keep our economy relatively buoyant," he added, "during a period when many other countries were in recession. Our position is regarded as one of strength, high standard of regulation and player protection. This is down to the great work that you as industry do, supported by the team at my Department and the Gambling Supervision Commission."



“As a government we remain committed to driving investment in the Island by providing an environment for business and entrepreneurs to flourish. We remain supportive, approachable and flexible and respond to the needs of our Island to move forward.”

“Our pipeline of leads is looking as strong as it ever has,” Minister Skelly enthused. “We have a compelling proposition that can offer products with real benefit and a commitment to service excellence. However, in spite of our continued success, I want to reassure you that we will not become complacent in what is an ever changing industry.”

The future

Mr Skelly confirmed that the Department of Economic Development is working extremely closely with the industry and related organisations on the Island, including The Manx eGaming Association, The Chamber of Commerce ICT Committee and the eGaming Strategic Advisory Board, to ensure the Island’s proposition remains attractive and world-class. “We are also in discussion with global lawyers, gaming consultants, financiers and accountancy firms who suggest to their clients which jurisdictions to choose.

“Yes, the industry is now more mature, and the year on year growth opportunities for new licences that occurred five years ago may no longer be possible. Any changes we do make, however, will be properly evaluated so that risks are understood and measured against potential economic return. As with any strong community, and particularly on the Isle of Man where government enjoys a productive relationship with the private sector, there will always be a healthy debate about the direction the industry should go in. We certainly can’t please everyone all the time, although we certainly do try our hardest. What we won’t be doing is standing still.”

Minister Skelly confirmed a number of proposals currently under evaluation to ensure the jurisdiction continues to innovate and remain an attractive

home for businesses. “My department has fully supported the initiatives that have been suggested to us in such areas as binary options and lottery messenger services. As a direct result of our having participated in targeted conferences, new licences have been issued in these areas, with a good number of jobs already created and the expectation of more to come.”

Moving on to other developments, Mr Skelly explained that in June, after an intensive period of investigations, the Isle of Man Government announced its plans for a regulatory framework for cryptocurrencies. Just a few months on, the Isle of Man is now home to more than 20 registered cryptocurrency businesses, including CoinCorner, GoCoin and BankToTheFuture. “Cryptocurrency companies relocating to the Isle of Man find the same infrastructure for success as our eGaming sector. This further enhanced the digital diversity of the Island, with participants that can and will create products and services that are not just dependent upon a regulatory and taxation framework, but exist here for both the Island’s clustering and test-bed capabilities.”

Conclusion

“As a government we remain committed to driving investment in the Island by providing an environment for business and entrepreneurs to flourish. We remain supportive, approachable and flexible and respond to the needs of our Island to move forward. Further innovation on our Island within the eGaming sector can only be achieved by working together. Demonstrating enterprise, innovation and independent spirit has stood the Isle of Man in good stead for many hundreds of years. We would like to thank you again for your contribution to the Island’s economy, and KPMG for hosting this important event.”

The Controversial Image of Gaming in the Face of the Media and Public Opinion: What, if Anything, is the Industry Doing to Redress It?

Quirino Mancini

Partner, SCM Lawyers

Mr Mancini is a senior partner at SCM Lawyers, where he heads the Sports, Media & Gaming practice. Over the past fifteen years Mr Mancini has developed an almost unique know-how and vast experience in national/EU gaming & gambling law acting on behalf of several foreign-based operators in connection with their Italian market entry plans as well as advising them on joint-venture and acquisition deals, sponsorship arrangements and contract matters in general. He also advises market analysts, investment houses and venture capital funds involved in the Italian gaming business. Mr Mancini is a regular speaker at gaming conferences and sits in the editorial board of various sector reviews and magazines. He is the Secretary of the IMGL and a member of its Leadership Committee. He was awarded Top Rank (Band 1) status by Chambers Global as the leading lawyer in Italy in the gaming and gambling field for five consecutive years (2009-14) and rated by Who's Who Legal as one of the Italian leading sports & entertainment lawyers. He is a co-founder and editor of gaminglaw.eu, a pan-European information and commentary portal focusing on legal and regulatory issues under European and national gaming laws.

"I would like to apologise, first of all, for not bringing with me any Powerpoint slides. There are two reasons for this. The first is I gave up using Powerpoint long ago; I'm simply not good at it. The second is if I wanted to show you a few slides containing Italian online gaming statistics, I would be in serious trouble"; Mr Mancini opened the first presentation of the Summit.

"The reason for this is, when it comes to providing statistics about gaming in my country - which is a good benchmark because Italy was one of the first European countries to regulate

in a consistent and comprehensive way - they are simply no longer available. Statistics used to be published on a monthly basis on the Italian regulator's website until the first quarter of this year. Then something happened, and they were suddenly no longer available. Of course we wondered why and started to investigate, only to find that the reason these figures have disappeared is because of the topic I want to discuss today: the image of online gaming in the face of the media and public opinion."

“Gaming is the second or third largest business sector in Italy and when combined as online and offline contributes more than €6billion in taxes annually to the Dipartimento Del Tesoro, or department of treasury.”

In recent months, a series of accidents had occurred which suggested that the spotlight be taken off online gaming and its importance to the Italian economy, Mr Mancini explained. Gaming is the second or third largest business sector in Italy and when combined as online and offline contributes more than €6billion in taxes annually to the Dipartimento Del Tesoro, or department of treasury. “Strangely, an industry that contributes this amount is still not considered proper. The image and reputation of operators, or anyone associated with gaming, is constantly in a bad light, and this is due to a number of factors. Firstly, Italy is a strongly Catholic country and the church is not so keen on gambling. In Italy, as elsewhere in the world, there have also been cases of gambling addiction and bankruptcy, with the result that these situations were systematically used by the media to feed the negative reputation which is now attached to gaming.”

He continued: “To provide an example, we have a number of operators conducting perfectly legal, licensed and compliant activities, but in one case where an individual attempted to attack the Prime Minister outside his house and injured the responding police officers, the press decided to focus on the fact that this guy was a gambling addict. The story did not

reference his list of other convictions totally unrelated to his gambling habits, but instead mounted a story around this topic. One would have expected, given gaming’s importance to the Treasury, that the industry would have rallied in defence. But it did not. Add to that the €105million in annual advertising spend the industry contributes to the Italian media, and the position seems even more unjust. Nevertheless, when the televised news reported the attack the reporter’s background happened to be a licensed, perfectly legal land-based video lottery provider. To me, this association between an attacker and gambling was unfair. Those on the other side of the screen received the wrong message.”

Mr Mancini provided a second example which surrounded the bestselling 2006 book Gomorrah by Roberto Saviano, which tells the story of the Neapolitan Mafia. The book was adapted by Sky into a well-known television series and shows a group of criminal youths who despite being engaged in a range of crimes consistently met in a gaming outlet. “This is yet another example of how biased the image of gaming is. This creates another improper association between gaming and crime. Yet, again, where is the industry? Even in the case of a deliberate media misconfation of raided illegal gambling premises and a licensed betting shop,

they are nowhere to be seen. So although the media is doing a disservice to the industry, the industry is doing nothing to redress that.”

Taking other common addictions and their symptoms such as smoking, alcoholism and obesity, Mr Mancini observed that still more emphasis is placed by the media upon gambling, and that this is true all over the world. “So I did a very simple exercise and took an excerpt from the number one Italian newspaper, Corriere della Sera. In it, I found a story concerning the fact that the administrative court of Milan had upheld a petition filed by a licensed video lottery gaming operator to host machines across Milan. The regulatory conditions concerning opening hours, age limits and verification were, of course, stated and adhered to and everything was fully by the book. Yet the Milan City Council and others decided this was a very serious issue and that the municipalities should do something about it. So they came up with further restrictions on the opening hours and issued them at municipality level. The operator immediately filed a challenge to the ruling and the court, again, upheld his challenge and restored opening hours to the regulator’s original specifications.”

A photograph of Quirino Mancini, a middle-aged man with short grey hair, wearing a dark suit, white shirt, and patterned tie. He is standing behind a podium with a microphone, speaking. The background is a dark blue curtain. The entire image has a blue color cast.

Quirino Mancini

“From a legal viewpoint, this was an easy case to address. Yet the next day the news coverage, rather than reporting that the Italian First Instance Administrative Court had redressed the issue introduced by the municipality decree, instead reversed the concept. The media reported that the Italian First Instance Administrative Court had ruled out the municipality as if by doing so the Court had acted unfairly. ‘Court Rules Out the Council’ was the headline news and what the journalists did was say that reasons of public order, public safety and health were totally disregarded by the Court. So, even in a case where the law was correctly applied, the media did a very poor job, and one that was disproportionately unfair to gambling.”

In closing, Mr Mancini explained that he could only draw one conclusion from such incidences; that the industry was not communicating, or very poorly communicating, with the media on one hand and the public and consumers on the other. “If we can entertain a system in which the country’s number one newspaper can report on online gambling in such a manner, an industry that contributes millions to the state coffers every year, yet ignores almost every other less contributing sector – namely smoking and alcohol – then there’s something wrong. To me, that’s down to the lack of effective public relations and this

applies all over the world, with the sole notable exception of the lotteries. The rest of the gaming industry seems to be unable to pull itself together, to speak with one voice and act with two hands. I realise there are internal fights at association level, I won’t argue with that. But your business is not taken care of properly when it comes to relationships with the media, and with your consumers. I don’t have a readily available solution, but what I would like to say is if you take your cumulative advertising spend, divide it among all the gaming stakeholders and use it to tell the people who you are – that you hold a licence, pay taxes, and play by the book – it will have been spent a lot more effectively.”

KPMG



Sector Update - IOM Specific

Peter Greenhill

CEO, eGaming Development, Isle of Man Government
Department of Economic Development

Following a very successful career in banking and banking systems with Credit Lyonnais, GE and Unisys, Peter has spent over 20 years in executive management positions in the gaming sector. He has provided solutions to lotteries worldwide whilst with EssNet AB and Betex; and to the major European casino and betting operators whilst MD of both Cyberview UK and TCS John Huxley Europe. As an executive consultant, Peter has advised a number of companies in the mobile and E-Gaming sector on their B2B operations and has also worked for the board of Camelot on strategic issues. Peter has a BA (Hons) in Banking & Finance from Birmingham City University and is an Associate of the Chartered Institute of Bankers.

Steve Brennan

Chief Executive, Isle of Man Gambling Supervision Commission

Steve Brennan has been the Chief Executive (formerly Director) of the Isle of Man Gambling Supervision Commission since June 2008. The Gambling Supervision Commission was initially established in 1962 and consists of an independent panel headed by a Chairman and four members. Steve's primary responsibility within the Commission is for the development and maintenance of the regulatory framework to licence and supervise all forms of gambling in the Island. Prior to his appointment to the Gambling Supervision Commission he held senior positions within Isle of Man Treasury.

Mr Brennan introduced what is now a staple of the KPMG eGaming Summit series by outlining his and Mr Greenhill's presentation as an overview of the previous 12 months from a regulatory and development perspective, as well as a look to the future for 2015.

An introductory snapshot of the Island's eGaming industry followed and found that the number of domestic licensees for November 2014 remained buoyant at 56 against the same number for November 2013. 12 new licenses had also been issued over that same period. "Just to give a flavour of who those licensees are:" Mr Brennan added, "obviously, we're a reputable jurisdiction that attracts start-ups so a number are new companies arriving on our shores. We've also recently licensed a major lottery reseller and a binary options operator, which reflects some of the work we've been doing in attending and speaking at various industry seminars and conferences."

"For total licence numbers to remain static, however, means we've had some casualties along the way. We've conducted some analysis this year on business' reasons for handing their licences back and found that most of it is down to difficult trading conditions: it's not an easy time to be a start-up in a competitive market. A number of operators have gone through their startup capital a lot quicker than

anticipated, however, some have recognised the impact of these conditions and moved into activities that don't require a licence, such as software provision."

Mr Brennan told that from a jurisdictional perspective the market remains competitive, with the result that one or two licensees had also opted to relocate their operations, to which Mr Greenhill added that the same is true for other jurisdictions. Alderney, for example, an established jurisdiction and key competitor, had lost 10 percent of its licensed operators over the previous 12 months. "But it's not just licensed operators that are of interest to us", Mr Greenhill reassured the Summit. "We're picking up a lot of interest from software houses around the globe who are setting up their operations on the Island. It's important from an economic perspective to look at that wider e-business contribution."

Mr Brennan continued in observing that a further 19 licence applications had also been approved or were then being considered, three of which had the potential to launch by early 2015. Typically, he explained, the applicant will approach the GSC for qualification before independent commissioners approve the licence. The applicant is then subject to a three month window following approval to launch their licensed operations.

A look back

"Dominating everything is the UK's change in position regarding the place of consumption regime," Mr Brennan explained, "as are the resultant White Listing changes that have impacted the Island. After much talk, the changes have finally now arrived and the GSC has been working hard to minimise the impact of those on the licence holders who will also be seeking licences in the UK. We've been looking at what the UK requires of our licensees, whether there's a cost attached, and what we can do to mitigate that."

"When licensing in the UK, operators are expected to acquire and contract dispute resolutions services. This is something we already offered as part of a licence on the Isle of Man, and we have been talking to the UK Gambling Commission asking whether the IOM Gambling Supervision Commission can still provide that service for them. The UK Gambling Commission has agreed our terms and our licensees can now use the GSC if applying for a continuation licence."

Mr Brennan added that because the Isle of Man is not part of the EU and therefore not covered by the Mutual Asset Recovery Directive, any Isle of Man licensee taking a licence would expect to appoint a fiscal representative in the UK. A fiscal representative is joint-liable for any taxes unpaid by the Isle of Man licensee. "Obviously, finding an organisation or individual to take on this potential liability would not come cheap so what we were able to do, because of our relationship with the UK, is negotiate with Her Majesty's Revenue and Customs an agreement that did not require a fiscal representative in the UK for Isle of Man licence holders."

One additional item that the Isle of Man and the UK had both been keen to achieve was to cut down on the duplication of paperwork resulting from continuation licence applications. Mr Brennan confirmed that the GSC had

been able to provide regulatory agreements with the UK which limit the duplication of high-level documentation needed to apply for a continuation licence.

"We do try to be as helpful as possible and we've recently fielded a whole raft of questions from our operators about the UK's intentions. We've sought to act as the liaison between our licensees and the UK Gambling Commission and I'm really quite pleased that we've got to where we are now that the application process has been concluded."

Legislation changes

"Legislation never stands still," Mr Brennan remarked, "we're constantly updating not just online legislation but also land-based. For online, we have the Miscellaneous Provisions Bill, which is almost a standing agenda item now. It has taken quite a long time to move forward, not because it's particularly complicated but because we're constantly adding bits of legislation to it. Once we can determine a slot in the legislative timetable we'll look to progress and move that into law." Mr Brennan explained that the key consideration within the Miscellaneous Provisions Bill was the licensing of a second casino on the Isle of Man, the process of transferring a licence to alternative premises and the depositing obligations it requires. Mr Brennan also alluded to an overhaul of the gambling machines law, the flexibility of disaster recovery provisions, the extension of gambling services into the cloud, and creating sanctions to meet international regulatory best practice."

Sports betting integrity was described by Mr Brennan as likely to feature at most online gambling conferences over coming years. "It is a big issue and something I think the sector is going to have to sit up and take notice of. There're more and more headlines each year about the corruption of sport and we all have a role to play in trying to combat that."

“The Crypto Valley Summit was a tremendous success” Mr Greenhill confirmed. “A tremendous buzz was created and 20 companies have since registered on the Island, with more arriving as we speak.”

The national risk assessment and money laundering

Mr Brennan reminded the Summit that the Island will receive the Committee of Experts on the Evaluation of Anti-Money Laundering Measures, or MoneyVal in 2016, whose evaluations will predominantly focus upon the Island’s anti-money laundering provisions. “We’ve revised our AML guidelines to make sure it’s very, very clear what the obligations of our licensees are. This year, our focus is going to be on our compliance programme. We will be approaching the sector during Q1 and Q2 2015 to visit our licensees and make sure they know exactly what their AML obligations are, and making sure that their processes, procedures and reporting are carried out.”

Player fund protection

Player fund protection was described as a core requirement of the GSC and a source of both political and industry pride on the Isle of Man. A long-standing problem with access to banking for the protection of these funds does remain, however, and had led the GSC to spend a large portion of the previous year searching for alternative means to provide customer protection. Mr Brennan was pleased to confirm that two alternative options were in the mature stages of their negotiation, and that an announcement would be made in due course. “We have also changed the requirement to bank in the Isle of Man. A fundamental part of the protections here was that funds were banked with banks licensed by the Financial Services Commission, but we have been able to amend our legislation to enable operators to bank in GSC approved jurisdictions while at the same time being afforded the same levels of protection.”

Department of Economic Development

Moving on to the past 12 months from the perspective of the Department of Economic Development, Mr Greenhill first affirmed that the Island had certainly seen more quality than quantity in terms of companies considering the Island as a gaming jurisdiction. “The whole market is maturing, and the way we now tend to see new companies and applications coming in is either by direct request from them or, more importantly, from our attendance at various conferences around the world. These are approved by our eGaming Strategic Advisory Board: we agree a list to attend and invite companies to travel with us and support the Island at those events. The next stage is often a site visit and, as many of us here know, once an individual visits the Island we’re much more likely to secure their investment.”

“We were also joined recently by some of the rest of the sector in Israel for binary options and lottery reseller conferences and I’m pleased to say that as a result of our efforts two companies have signed up as full licensees. We’ve also attracted our first fantasy football licensees this year and managed to get the entire application process clear in time for the World Cup, so a major achievement.”

“Elsewhere on the non-licensed side we’re also seeing a lot of movement. We’re seeing a lot of software houses and game development firms setting up here, which is helpful for the sector’s future.”

UK double-duty relief

The issue of the Island’s double-duty relief which was precipitated by the UK’s point of consumption regime had represented a source of consternation for Island licensees. Mr Greenhill confirmed that the issue had been taken up by IOM Customs and Excise,

the Department of Economic Development and the GSC such that a paper had then recently been accepted by the UK Treasury and was awaiting a response.

“But things don’t stand still. It’s important that we recognise that things as written can’t be held in stone and that strategy moves with the market. We are constantly evaluating our position and adapting our strategy as an economy to meet changing conditions;” Mr Greenhill assured the Summit.

Digital currencies

In listing a selection of conferences attended by Department of Economic Development representatives over the year, Mr Greenhill pointed out three in particular which related to the digital currencies sector: Bitcoin Finance 2014, or ‘BitFin’, Inside Bitcoins, and the Isle of Man inaugural Crypto Valley Summit, of which it was a key supporter. Mr Greenhill confirmed that it had done so due to significant interest from eGaming operators concerning the potential applications of crypto currencies, had reacted quickly to the opportunity and created major awareness globally of the Island’s proposition. “We were the first to move worldwide in what we offer to crypto businesses and are amending the Proceeds of Crime Act to meet our AML standards and expectations as we speak. We’ll move on to the Designated Businesses Act during the first half of next year to allow for registration.”

“The Crypto Valley Summit was a tremendous success” Mr Greenhill confirmed. “A tremendous buzz was created and 20 companies have since registered on the Island, with more arriving as we speak. Our own Manx Digital Currency Association has over one hundred members already. But it’s not just about crypto currencies, but the whole heap of technology built around the blockchain. There’s so much

more to come and we're already seeing the clustering effect of businesses coming together on the Isle of Man in a manner very similar to what we saw with eGaming just a few years ago. We really see this as a major opportunity."

Key Performance Indicators

Mr Greenhill confirmed that over the last fiscal year employment within the Island's eGaming industry had grown by 10.1 percent, income generated by licence fees had risen by 6.3 percent and income generated by gaming duty by 11.8 percent, resulting in a combined total contribution of duty plus fees of £6.16million. Putting those figures in context, Mr Greenhill drew a comparison between the IOM and Malta, another successful jurisdiction, which had enjoyed only a 1.3 percent increase in revenue over the same period. Online gaming was also shown to contribute 13.5 percent to the Island's gross domestic product, a figure which when added to the e-business contribution amounts to 20 percent overall.

The next 12 months

Mr Brennan confirmed that the next 12 months would feature a regulatory and legislative focus as player fund protection, anti-money laundering procedures and the Miscellaneous Provisions Bill dominate the eGaming agenda. "We'll still be working with the industry to provide our operators with the protections and flexibility needed to continue to grow their businesses here," he said. "We're open and receptive as we've always been and would welcome any ideas our licensees have. Our door is always open. The final point is our sector strategy, formed by the DED. The GSC does try to be as helpful as it can be and works together with the government, the Manx eGaming Association (MeGA) and the eGaming Strategic Advisory Board to do what we can."

The old order changeth

"Things are changing, however, and they're changing dramatically," Mr Greenhill warned. "The White List closing and duty coming in with the UK's point of consumption regime will have a major effect on the way businesses react. A number of licensees around the world will fall by the way-side. As the industry matures, we do need new ideas and it's interesting that it's those companies that are looking to come to the Isle of Man for our support."

"We will lose licensees over the years to come. Some of those that left us this year simply couldn't make the numbers they were expecting to. As we see new licensees arrive we have to be aware of that and adjust to adapt. Mergers and acquisitions are also taking place, as we've seen in the acquisition of one of our largest operators. In the UK and rest of the world we're going to see major mergers and acquisitions take place, not just in operators but in systems suppliers as well."

"As new countries come through they'll create new regulations and, perhaps, a new environment for our operators. Some may need to take out licences in multiple jurisdictions and that's something we need to be aware of to keep our position and grow the number of people here."

The future

Looking to the future, Mr Greenhill noted that the Island continues to operate holistically as a jurisdiction, and that there is generally no unique selling proposition. "When decisions are made to locate, they're made holistically. They're generally made by international advisors, lawyers, and accountants, all of whom still rate the Island highly. This regard encompasses everything. It's not just the way our regulator works with companies; there is something about the way we all do things here which is right."

"Success is a difficult one to monitor and to judge because it means different things to different people," Mr Greenhill continued. "It's a major debate with significant implications and we need to test some radical ideas, but ideas that still have to work for everybody."

Strategy 2.0

In concluding, Mr Greenhill reiterated the imperative for the Island to protect its existing commercial base, whilst supporting the sector to help it to grow and attracting new business. "To protect the base we're going through specific interviews with our top operators, data service providers, corporate service providers, telecoms providers and the unlicensed businesses to get their feedback on what they see is the way forward and how we can help to action that. There is a tremendous public private relationship here on the Island and we need to further develop that. We can't rest on our laurels and we need to work together. It's the only way forward."

"Then we need to look to new business. Certainly we are seeing a resurgence, particularly in Asian operators that are looking to potentially move to us. That's very interesting news. We're also seeing some very focused work from lotteries, binary options and messenger services as well as some new ideas from elsewhere."

"To summarise, the world is changing dramatically. We've got a lot of work to do, but we can only do that work with the support of the sector here. You need to work with the government to give you what you need to thrive. That's what will create growth."

Gaming Operators and Cryptocurrencies

Eric Benz

Operations Director EMEA, GoCoin

Eric has been involved in the payments technology sector for almost a decade and continues to lead innovative solutions for the digital currency and mobile wallet markets. Eric's expertise is vast in both European and emerging markets. Currently, Eric is a founding member of the UKDCA (UK Digital Currency Association) and consults for companies like GoCoin, ChangeTip, XBTerminal, and others.



Eric Benz

Ben Robinson

Sales & Marketing Director EMEA, GoCoin

Ben has over 15 years' sales and marketing experience across the technology and media sector. For the last six years Ben has been deeply embedded in the online gambling sector having headed up all commercial aspects of eGaming Review, the industry's leading businesses information and events company. Ben is also the Co-founder of RB Capital, a boutique capital advisory firm focusing on companies within the disruptive technology space and subsequently sits on a number of advisory boards within the 'FinTech' space.

"The last six months have been absolutely incredible, both in terms of our technology and our industry", Mr Benz began a lively and engaging presentation. "As you are all aware, we have a lot going on in this sector, particularly on the Isle of Man, so I'd like to give you a little state of the union as well as provide operators with an understanding of why they might want to begin to reach out to understand the potential of these technologies."

Mr Benz continued in explaining that he had personally been liaising with the UK Government for the previous 18 months and had helped found the UK Digital Currency Association because he had recognised a lack of understanding and education surrounding the digital currencies industry. Popular focus, he explained, centred upon the price volatility of Bitcoin in particular as well as its perceived role in the dark web, both of which presumptions misconstrue not only what the industry is about but also its application within finance and other industries.

On behalf of the UKDCA, Mr Benz had worked closely with HM Revenue and Customs, the UK Treasury Advisory Committee, as well as the major banking groups to help them understand, as he remarked, "that blockchain technology is the future, and that if they're going to leverage the opportunity to make an impact with financial technology, then they're going to have to look at this very closely."

Concerning the Isle of Man's celebrated entrance into the Bitcoin space, Mr Benz described his experience as phenomenal. "The Isle of Man put themselves out there, rolled out the red carpet, and gave our industry the ability to scale, setup and showcase the technology, and bring companies here without fear of being shut down. It's the first country in the world to really give us an opportunity to make major impacts in other markets, provide jobs and grow economies. It's a major play, it started here and I really appreciate that."



Ben Robinson

“The operator benefits are compelling.”

GoCoin

Mr Benz described GoCoin as an international crypto-payments processor that provides a bridge for companies who wish to accept cryptocurrencies and settle in fiat. In essence, the GoCoin platform enables companies to take all major cryptocurrencies, including Bitcoin, Litecoin and Doge, and transfer them to cash without ever ‘touching’ cryptocurrencies. In return for a 1% transaction fee, GoCoin then assumes responsibility for all risk as well as anti-fraud obligations. The company was formed just over 12 months previous at its headquarters in Santa Monica, California, with its global headquarters in London and its financial, development and technological operations based in the Isle of Man.

He continued in reminding the Summit that Bitcoin is a brand which joins close to 500 alternative coins, or altcoins, in the cryptocurrency market. “Will Bitcoin be around in another five, ten years? I don’t know. But what I do know is that the blockchain technology is here, and it’s here to stay,” he enthused. “It is an incredible tool that a lot of companies can leverage in order to grow their businesses.”

What’s all the hype about?

“What concerns us are your pain-points as operators and how we can alleviate those with blockchain technology. We also want to know what scares you guys away, whether it’s the volatility, your liquidity concerns, the risk of cannibalisation, reputational risk or security. There’re a lot of things scaring people away at the moment, but because the technology is so new, our job is also to remind people that the technology is still evolving. What we’re looking at right now is just a bunch of guts; we’re still waiting to find that blanket that will really fuel consumer and merchant adoption, but I guarantee you that the technologies are on the way and they will do just that. Like the internet in 1993, if you’re a merchant, or a financial service provider or operator, if you do not have a crypto-strategy I would strongly recommend you correcting that.”

“What really fuels adoption at merchant level is the fear of missing out,” Mr Benz continued. “Who wants to be the first, the innovator, the one who really makes this technology successful? Operators are very aware that they do not want to miss out. They know what crypto can do and they will take full advantage of it to alleviate friction. And that’s because operators encounter a lot of friction.”

Mr Benz explained that operators encounter a series of obstacles in payments processing which would largely disappear with the adoption of a crypto-framework. 3-4 percent transaction fees are drastically reduced, 20 percent fees on prepaid cards are lost, and credit card charge-backs no longer apply. Similarly, merchant category code friction of the kind experienced in the US, in particular, is negated as is the significant cost of developing models to monitor and track fraudulent behaviours: “And where do those savings go? Back to your consumers.”

“You’ll also give customers a reason to buy Bitcoin. The one industry that is going to create the marketplace for Bitcoin is eGaming, just like eGaming helped revolutionise the internet. The operator benefits are compelling.”

“We’re doing everything and anything in our power to work with regulators, banks, jurisdictions around the world to help them understand that money is the first application to crypto, just like email was the first application for the internet. I would like to reiterate, these technologies are not going anywhere, there are a lot more applications to come. Think of it as big B and little b: big B is the currency, little b is the platform.”

Moving briefly on to a pie chart depicting Bitcoin usage so far, Mr Benz demonstrated that 80 percent of the 40.7 million total Bitcoin transactions have been gambling related, followed by speculation, and other purchases. “You have a lot of opportunities now to engage with these communities; communities in Asia, South America, Europe, dependent on your licences. This creates new models for operating,

new acquisition strategies and retention programmes.”

Jurisdictional comparison

A jurisdictional comparison of the Isle of Man, Malta, Gibraltar, Jersey and Guernsey which took into account qualities of gaming regulation, government clarity, access to government, access to a skills-pool, tax rates and Bitcoin acceptance levels found that “the Isle of Man is absolutely the best place to be. Now that it has its partnership with the Isle of Man, crypto is going to be the next big thing. This is the next industry that will create jobs, grow the economy, provide a whole raft of international attention, and create a leader in this space in the Isle of Man.”

Regulatory update

By working with the IOM Gambling Supervision Commission and the IOM Department of Economic Development, Mr Benz confirmed that GoCoin had set about understanding the legacy issues surrounding KYC compliance, player protection and operator licensing on the Isle of Man. It had done so in order to find out how best to insulate operators from exposure to the perceived risks of dealing with cryptocurrencies. Mr Benz assured the Summit of GoCoin’s ability to bridge operator KYC procedures with player verification and wallet custodianship, that player deposits are secured and banked in fiat and that player withdrawals can be converted at a spot rate at the time of the request.

“We’re also working on new onboarding technologies and I guarantee that within the next few months, know your transaction (KYT) will be something we’re all talking about. We’ll be able to identify an anonymous crypto-user and give them an identity behind their wallet, so you know who those customers are. We can’t tell regulators what the sources of those funds are, but what we can do is give real useable data as to who these people are, how old they are, where in the world they are and, most importantly, whether they’re a good or bad actor.”

Mr Benz explained that the GSC has also announced the ability for gaming companies to take digital currencies as an approved form of payment through service intermediaries such as GoCoin and reminded the Summit that the Island’s current position on money laundering is that it requires intermediary service providers to report any suspicion or knowledge of money laundering to the Financial Crimes Unit. The GSC anticipates that this latter measure will come into effect with the introduction of revised proceeds of crime legislation, giving crypto-companies an official reporting standard and requirement.

Mr Robinson then took over from Mr Benz to explore the synergies between gaming and cryptocurrency. Cryptocurrencies, he explained, enable operators to enter emerging markets with high levels of cryptocurrency uptake, do so at minimised costs, and represent a fantastic public relations opportunity for first movers in the market.

“But what does a Bitcoin customer look like?” he continued. “We look at them in phases. We have the early adopters; those who purchased, mined or were gifted coin during the early stages. These guys are tech savvy and young, usually between 25 and 35, which is the exact same demographic operators look towards, at least for casino and poker. But, of course, there are other coins out there. Doge coin, interestingly, has a more female demographic, so there’s the potential to introduce Doge coin to bingo sites, for example. Whilst Bitcoin presents the opportunity of a new breed of bitcoin only casinos, we are particularly interested in the regulated market, those sites that have worked very hard on their customer services and want to offer more. There’s also, at the moment, a low cost barrier to entry into these markets. We have enthusiast sites like CoinDesk and Coin Telegraph which offers advertising opportunities the existing Bitcoin community.”

“Crypto is also a great opportunity to target declined customers. Promoting Bitcoin as a more cost effective method is a great reactivation tool, as are a series of other fantastic marketing campaign. We have crypto-gift card initiatives, for example, which are a great way to attract new or dormant users.”

Mr Robinson described emerging markets as holding the most exciting potential for cryptocurrency use in eGaming. Emerging markets account for over 90 percent of the global population aged under 30, and many have skipped today’s legacy in terms of technological and communications infrastructure, moving straight to mobile. Increasingly affluent communities in Nigeria, China, India and Indonesia also represent an exciting prospect.

The addressable market is also forecast to increase fourfold over coming years. In Indonesia, for example; a country of 250 million individuals, just 10 percent hold bank accounts. In 2013, however, 85 percent owned mobile phones: “so the ability to tap in to these markets is paramount to help grow your businesses.”

How to take crypto-currencies

“Whether you’re going through a payment gateway or have your own platform to integrate, the process is remarkably simple,” Mr Robinson affirmed. “You can look at a simple i-frame, or go for full integration. Sign-up is as simple as visiting the website, although we do of course require company KYC documentation as part of our due diligence obligations. You then choose the coin you want to accept, although we advise considering demographic splits that you not limit yourself to one currency. You then determine your fiat/crypto split, although this is obviously down to the permissions of your specific regulatory body. We then run a rigorous testing programme before the merchant is able to go live. It’s that simple.”

Panel 2:

Dodging the Brussels Bullets: payments processors' priorities

Moderator: Archie Watt

Head of eBusiness, KPMG Isle of Man

Archie joined KPMG Isle of Man from KPMG London, where he was recruited as an IT Advisory Director in the Information, Communication and Entertainment practice, with a particular focus on online gaming clients. Archie worked on the bwin/PartyGaming merger and a number of acquisitions in the gaming sector. He was also instrumental in the public listings of 888, Playtech and PartyGaming, amongst others. Archie is a regular contributor to sector publications, including working as co-author on the report *Online Gaming: A Gamble or a Sure Bet?*, and was recently consulted for the Remote Gambling Association report on the UK Government's planned changes on taxation of online gaming.

Panellists:

Justin Gaisford Martin, Payment Processing Consultant, Counting House

Audrey Ferrie, Legal Director, Pinsent Masons

Moderator: The EU Fourth Money Laundering Directive (4MLD) seems to have almost stalled. Audrey, could you enlighten us as to why this appears to be so and can you explain what the directive will bring to the sector?

Audrey Ferrie: To first provide context to the European Union's proposals, Ms Ferrie explained that in April 2012 the European Commission adopted a report on the application of the current third AMLD. They obtained comments from stakeholders and conducted an impact assessment which analysed the potential consequences of money laundering and terrorism financing. This process identified a number of inadequacies and loopholes, and led the Commission to conclude that in order to improve the existing situation, it was necessary to broaden the scope of the Directive beyond casinos to cover the gambling sector as a whole, or more specifically, providers of gambling services. Ms Ferrie added that there remains a concern that the gambling sector is being used to launder the proceeds of criminal activity and in order to mitigate those risks, the draft directive provides that there should be an obligation for all providers of gambling services to conduct customer due diligence for single transactions of €2,000 or more. It has also been suggested that this threshold should be applied to the collection of winnings as well as the stake. "There's no real explanation as

to how that's intended to operate," Ms Ferrie remarked, adding that the term 'gambling services' in this context is widely defined and does encompass services within the eGaming sector.

A second objective to the directive in relation to gambling service providers is for competent authorities to ensure that the persons who direct the business, and the beneficial owners, are fit and proper persons: "and perhaps it's also worth mentioning that the directive will require member states to ensure that providers of gambling services are authorised and they will also look to competent authorities to have what they refer to as 'enhanced supervisory powers', although they don't give any explanation as to what those might be, other than referring to the possibility of conducting on-site inspections."

Justin Gaisford Martin: Mr Gaisford Martin added that the lower threshold of €2,000 for customer due diligence on gambling transactions appears to be prevalent on linked transactions. "It's irrelevant whether it's deposits, wagers or withdrawals; they're all essentially linked. The limit is applied across the board.

Moderator: Audrey; you mentioned that lotteries are also covered. Does that include lottery messenger services? This is a growth area in the Isle of Man and is of concern.

Audrey Ferrie: Ms Ferrie noted that the term 'lottery messenger' is not explicitly referred to in the directive, but that 'lotteries' is. "At a distance, lottery messenger services could be encompassed within that definition, but is not specifically mentioned.

Moderator: Steve Brennan and the Isle of Man Gambling Supervision Commission have already taken on the spirit of the 4MLD before it has gone live. Is that fair?

Audrey Ferrie: "The UK Gambling Commission has indicated in a consultation document published in August 2014, that they are starting to look at amending the license code and conditions of practice in late 2014/ early 2015 to take account of the 4MLD. I also know that some operators have voiced their suspicion that perhaps the spirit of the directive is being employed at the moment. There have been a couple of public statements made by the UK

Commission concerning certain weaknesses in fraud and anti-money laundering controls, and although these do relate to land-based operators I think there are some lessons for eGaming operators as well."

Ms Ferrie observed that the UK Gambling Commission want operators to ensure that commercial imperatives do not crowd out the management of regulatory risk. This means that where commercial information concerning customer spend is available and could be used for anti-money laundering purposes, this is something the operators should have been doing rather than focus purely on a commercially driven framework. They also expect operators to ensure that information services are appropriate and effective, and are acted upon in terms of customer behaviour. A third, very important lesson is that information should be shared across services, products and platforms. For example, there should be provisions in place to actively monitor and reconcile customer spend. There was also a concern expressed about the identification of player risk. It was felt that the focus of many risk assessment may be disproportionately focused on high value customers, which may mask risks arising from customer who are not considered to be high value. "Then there's the issue of managing anti-money laundering controls – taking advantage of opportunities, being alert, verifying the identity of the customer and beneficial owner, checking suspicious transactions and monitoring on an ongoing basis. It's also very important that there is a very clear audit trail."

Moderator: You mentioned due diligence for high rollers; are we now also focusing on the medium and medium to high rollers? Is this where we're going?

Audrey Ferrie: "I think the response to that would be that operators should be looking at all customers as a potential source of money laundering. That's what I'm picking up from the UK Gambling Commission. If you think about the €2,000 threshold, this could potentially include the sum of a series of small transactions over an extended period."

Justin Gaisford Martin: Mr Gaisford Martin added that of the four primary acquirers he works with and which work with licensed eGaming companies – one based in the UK, one in Germany, and two in central Europe – all four are subject to the fourth directive. "However, each of the banks treat the KYC we have to perform for the operators slightly differently. I think one thing that seems to be coming out of the fourth directive is a harmonisation of the amount of KYC and due diligence that the acquiring banks have to do on the operators on the way in. If we look through some of the issues that are coming up now; the fourth directive is placing more emphasis on beneficial ownership of companies and there is an increased emphasis on politically exposed persons."

Mr Gaisford Martin continued: "We've talked briefly on the customer due diligence. The acquirers will be looking at the KYC policies that operators place on their site and they will be delving further in to the ways that operators are adhering to the directive. There's also an inclusion now of tax crimes, although I don't see that as having a huge impact on the sector. Interestingly, they're now allowing due diligence to be outsourced, but only within the group. So if you have a large group you can almost set up a subsidiary that can concentrate purely on KYC. Worryingly, there seems to be now an increased requirement for keeping records, specifically on fund transfers both on the way in and way out. That traceability seems to be on where funds are sent, where they're going and come from, although the requirement seems to be for a lower amount of only €1,000, and that record will need to be kept for five years. So, we shall see how the various countries adopt and enforce the issues that the fourth directive has put in place."

Moderator: The fourth directive should have arrived in Q3 2014, but now looks more likely to arrive in early 2015, although there's no sign of that happening. Could you tell us more?

Audrey Ferrie: Ms Ferrie observed that the fourth directive is required to be brought in by the member states within two years of European Commission adoption, adding that the expectation is that adoption is expected in Q1 2015. "This will mean

that it will have to be active across member states by 2017, although that may slide of course", she added.

Moderator: The second area I wanted to address is the Payment Service Directive 2, or PSD2, could we elaborate a little on this?

Justin Gaisford Martin: "This is a relatively new phenomenon that is gaining increasing importance at the moment. At a very high level, it is essentially seeking to regulate third party payment service providers. It is not just now acquiring solutions providers or the members of the various card schemes; PSD2 seems to enlarge the definition of a payments provider to include e-wallets, loyalty cards, prepaid voucher cards and so on. In the outlines, it seeks to standardise and regulate the way the financial information outside of the more traditional schemes and methods of payment are handled. It also enables other participants in the industry to consider becoming a PSP. There is talk of retailers holding a payment service provider licence and being able to deal with transactions with the customer directly."

"That brings with it its own headaches – obviously once you're within the confines of the PSD2, you're also within the confines of AML. So, if you go to Marks and Spencers and spend over £2,000, which I regularly do at Tesco anyway over the year, are they going to have to conduct AML on me? Am I going to have to go in with my passport and a recent utility bill and prove who I am? The PSD2 is in consultation, so it's unlikely to really hit home for another 12 to 24 months, although we are seeing some of the underlying factors coming into force sooner than that."

Mr Gaisford Martin added that within PSD2 is also the concept of regularizing interchange fees - the base fees that card schemes, acquirers and issuers pay each other. He explained that in the US, these companies are working at around 1.79 percent per transaction, whilst in Europe they run at close to 0.9 percent. The PSD2 aims to standardise that down even further to close to 0.2 percent for debit cards and 0.3 percent for credit cards. "The interchange is not the only rate that an issuer or acquirer uses, but it's certainly the base of its costing structure. What we've found in other

Archie Watt



countries that have tried to minimise interchange fees is that the acquirers and issuers have tried to make up those costs elsewhere. In Australia they tried and it basically just killed free banking for everyone, so the consumer ended up paying in the end.”

“Finally, there’s the potential introduction of a new regulator, the UK Payment Systems Regulator. There isn’t a lot of information available on this, but it’s going to be here and regulating us in the UK by April 2015.”

Moderator: Is there going to be much of a change where the operators are concerned?

Justin Gaisford Martin: Mr Gaisford Martin answered that, should the operator decide to become more directly involved in the transaction, a lot of additional work will be necessary in terms of record keeping and the technology employed to manage transactions. “Something the PSD2 goes into is the relatively new concept of ‘strong authentication’”, he added, “which takes transaction verification well beyond the realms of 3D Security and AVS. Even with 3D security, this is fine in the UK, but in other countries with very low penetration of this technology, particularly the US, this won’t really work.”

Moderator: What impact will increased requirement to hold transaction records have on operators? Is the PSD2 raising the bar? Are they going to start asking for more and more information?

Audrey Ferrie: “I think the operators will be required to keep an audit trail, either in relation to PSD2 or 4MLD. The onus to keep that information will rest very much with the operators.”

Moderator: Are there people around trying to harmonise the need to keep those records?

Justin Gaisford Martin: “There are technologies that allow you to take a ‘selfie’ if you like, together with your ID, which can be scanned. If that is then taken away by a third party and processed then a message is sent back which confirms it is an originally issued passport. But the question is does that meet the standards of the independent acquiring officer. We don’t yet know. You can also look at address verification, but an AVS match with a billing address does not qualify.”

Moderator: Is there something that the industry could and should be pushing to try to get the regulators to understand what the issues are and how technology can help them? Are they listening?

Justin Gaisford Martin: “The definitive answer is ‘yes, they are listening’, which is a good thing. This is particularly true of the Gambling Supervision Commission, although less so of the Financial Supervision Commission. The FSC kind of sits on the fence a little bit and says ‘yes, go ahead with a definitive method and we’ll let you know’, which doesn’t give us as a regulated entity very much comfort. Regulators need to spend the time to understand what is going on behind the scenes of the new technological services that are out there. In terms of player adoption, particularly in the crypto world, we’re here with state of the art technology, the new form of money. It’s the usual balance between technological innovation, and legislation and regulation. They will always be trying to catch up.”

Moderator: To summarise then, what does all this mean for the sector?

Audrey Ferrie: “In essence, I think this means more record keeping, maintaining an audit trail, knowing your customer and being able to show the regulator how you assess risk and how you balance risk in terms of the regulatory and commercial aspects of your business. You need to be able to persuade the regulator that you’ve taken the right decisions and be able to show that you’ve taken the right decisions.”

Panel 3:

Implications of operating in part-regulated and non-regulated online gaming markets

Moderator: Wulf Hambach

Partner, Hambach & Hambach, Germany

Dr. Wulf Hambach is one of the founding partners of Hambach & Hambach and a regular contributor to national and international legal media. Furthermore, he is a co-publisher and one of the authors of the legal commentary *Gambling and Sweepstakes Law in the Media*. In the ranking, Dr. Hambach is listed as a leading expert in Gaming Law for 2008 - 2014. In 2012, he received an award from Chambers as the leading expert in his area. He is also ranked as a "Most Highly Regarded Individual in the Gaming & Gambling section" in *The International Who's Who of Sports & Entertainment Lawyers 2014*. Dr. Hambach is one of the founders of the European portal *Gaminglaw.eu* as well as being a member of the International Association of Gaming Advisors (IAGA) and General Member of the IMGL. He is also a member of the advisory committee of the Research institute for Gambling and Betting at the Bonn-Rhein-Sieg University.

Panellists:

Susanna FitzGerald, Q.C., Barrister, Lord Grabiner's Chambers

Andrew Cotton, Jeffrey Green Russell

Paul Davis, Counting House

Moderator: "What I want to discuss today are not the usual issues pertaining to operating within part and non-regulated markets", Dr Hambach opened the second IMGL Masterclass. "Instead, I would like to draw upon the extensive experience of our panellists to provide an evaluation of where we are in Europe, with a special focus on the UK and Germany, and what's changed over past months. To begin, could you outline what is really happening with the UK Gambling Commission's new legislation and Gibraltar?"

Andrew Cotton: Mr Cotton reminded the Summit that Gibraltar had launched two distinct challenges against the UK Government's point of consumption based taxation regime one of which, at the time of writing, remains unresolved. "The hearing that took

place on 23rd and 24th September, which I did attend, was set down for an expedited hearing, so two days was probably two weeks' worth of hearing", he recalled. "On the 10th October, the judge delivered a 96 page judgment, which I find is a most amazing piece of work because it basically reviews the whole of the European jurisprudence on gambling, and some other elements. The judge rejected the challenge that the legislation offends Article 56 of the treaty on the freedom to provide cross border services, so the regulatory challenge was dismissed on all fronts. On the tax challenge, however, there is still an outstanding application for leave, although we're still not aware that there is a leave hearing due."

Mr Cotton continued: "What's happening with the regulatory case is it was granted 'paper leave'. The hearing was set down within a week because the judge who looked at the papers said there was a matter of national interest and there had to be a hearing before the implementation date of, what was then, 1st October. The implementation date of the point of consumption tax is 1st December 2014, so we wait to see whether there'll be another High Court hearing on that."

A man in a dark pinstriped suit, white shirt, and patterned tie stands behind a clear acrylic podium. He is wearing glasses and has a lanyard around his neck. The podium features the KPMG logo, which consists of four vertical bars of varying heights above the letters 'KPMG' in a bold, italicized font. The background is a dark blue curtain. The entire image has a blue color cast.

Wulf Hambach

Mr Cotton added his opinion that the case was particularly important due to that fact it reviews so many of the leading European cases on online gambling. He then read to the Summit a selection of excerpts from the judgment, which effectively demonstrated that because of the nature of gambling, EU member states "can really almost do what they like, without having to produce a huge amount of evidence to justify what they're doing." The excerpts read as follows:

'In my judgement, the documentary evidence from 2010 onwards records a strong and consistent justification based on upon consumer protection and the protection of public order. These are objectives the government and parliament are entitled to pursue. Indeed, the statutory licensing objectives set out in the Gambling Act and the nature of the conditions contained within the licensing conditions and codes of practice effectively compel the [UK] Gambling Commission and Secretary of State to operate the regime in a manner which is focused upon consumer protection and the preservation of public order. The [European] Court of Justice has repeatedly endorsed the principle that member states can pursue the objective of bringing operators providing services to consumers within their jurisdiction in to a licensing regime.'

"So, I don't think that bodes very well for people who may wish to challenge root and branch the whole regime," Mr Cotton noted. "But what was interesting was that the judge was very critical of the Gibraltar Betting and Gaming Association for using the nuclear option. He does say within the judgment that it would be a matter for another day whether any specific conditions or specific requirements are the subject of a separate challenge. Basically, what it enforced was that the

government and the UK Gambling Commission were entitled to take a precautionary approach, having introduced legislation which opened up the market without having to justify why they want to shut then shut the door without having to re-regulate, as it were. I think it will be interesting to see which state does it next. Even though it's only a national decision, it clearly has huge importance.

In concluding, Mr Cotton reminded the Summit of an Austrian case entitled *Pfleger*, in which there was a decision made by the European Court of Justice on 30th April. Royal assent on the Gambling Act was deferred to on 13th May. "I do suspect that the decision to defer royal assent was to await that decision in the European Court of Justice, which basically came to the same conclusion. So, you've got a European Court case and now the national application of European jurisprudence fairly close together. I think we're likely to see that regulation is going to be the flavour of the day."

Moderator: When we ask ourselves about the implications of operating within part and non-regulated markets, you can also see the prospective question of what those licence holders can expect from the UK Gambling Commission. Are they going into a dialogue with the Commission? Is their position clear? To understand the UK Gambling Commission I think it's important to understand what they had in mind when they shaped the new law and the basis upon which new licences have been issued. Could you enlighten us further?

Susanna FitzGerald: "I would be tempted to put a little sound bite in and say 'if it moves, regulate it. Or if you can't necessarily do that, condition it.' I am being a little unfair to the Commission, but only a little unfair. You have to appreciate the perspective that

"The attitudes in the UK and US towards licensing online gaming are very, very different."

I come from. I'm a senior barrister. I only get given the tricky cases or the ones that have gone wrong. So that might taint my perspective about the Commission and its attitude to what goes on." Ms FitzGerald expressed her opinion that the UK Gambling Commission's oversight of the industry has become increasingly all encompassing. Its approach, she explained, was now to control, to regulate, and to ask difficult questions.

"If they know you have a connection to or have spoken with a jurisdiction, whether you want a licence there or not; they will go and they will check it out with that other jurisdiction. One of the important things to remember is what that jurisdiction may say about you is not necessarily what you would expect them to say."

Ms FitzGerald added that in her experience, clients had come into difficulties with the UK Commission because they had submitted disingenuous or incomplete answers as part of their licence applications. Applicants are required to show they understand the spirit behind, rather than simply the literal answer to, the questions asked. "One slightly feels that they're almost getting close to dictating how you should run your business. The attitude that I heard this morning, with the Isle of Man saying 'we welcome new, radical ideas; how can we help you? How can we create more jobs', is not the attitude of the UK Gambling Commission. On the land based side, they're already saying, 'this is what a casino looks like, this is what a betting shop looks like, we are expecting you to conform to that'. How that is going to feed through as far as eGaming is concerned, when they'll experience an influx of licensees from all over the world, does make me a little nervous."

Moderator: For a regulator, payment is one of the most complex issues to handle. Is the relationship between the regulator and payments sector something that needs to be improved?

Paul Davis: "I believe my answer is that there is a dichotomous train of thought that needs to occur between the regulator and any operator," said

Mr Davis. "It's incumbent on regulators today to understand the payment process. If you can't get the money on to your site and if you can't pay your players then there isn't a business, so payment processing is the fundamental element of what we do. At the same time, the law of unintended consequences can kick in pretty quickly if the regulator gets too involved in payment processing." Mr Davis provided two stories from two different hemispheres to demonstrate his observation both of which, he remarked, "curiously complete the circle in two different ways".

"I would like to proffer that one of the long term implications of operating in grey markets is that if your business is successful and you go into a large growth mode you unintentionally feed your competitors with fodder with which to attack you. One of the methods of attack that unhappy competitors will always use is feeding stuff to the regulator and telling nasty stories about you. It's a dog eat dog world out there, particularly at the top. There's intense competition and lots of dirty tricks."

Mr Davis continued: "The attitudes in the UK and US towards licensing online gaming are very, very different. To a large extent, Americans are unashamedly iconoclastic; they look inwards at the United States and some, though by no means all, are not terribly interested in what goes on in the rest of the world. So, US licensing decisions tend to be about what the operator has done in the US before."

Our own, domestic PokerStars has had a real skin-full of problems in this regard because as we all know they operated until Black Friday with full legal support until the US Department of Justice took a very different point of view. Then came Nevada, Delaware and New Jersey which opened up the potential of licensing privileges, and I stress the word 'privileges' because in the US a licence is not a right. You get a licence if you tick all the boxes and the regulator likes the look of you and decides it's in the public interest for you to operate in their state."

"PokerStars is one of the best platforms in the world. It has massive market knowledge, great resources, massive interest in the US and huge experience there. So, it went along to those states when they opened up with a view to partnering with the casinos, the local lottery in the case of Delaware, and wanting to bring all the good that it could bring to help develop the poker market. In all three states they were turned down on the basis that they had operated allegedly illegally prior to Black Friday."

"Now, I think it's fair to say the states probably wanted PokerStars in there. They wanted the tax revenues so it's hard to think that the states, the Governors' offices, or anyone in a policy making position was really pushing the regulators to block PokerStars. So, who was? It was the competition. It was Caesars, it was 888, it was those who already had an interest in those states and who had a vested interest in not being competed with by the behemoth PokerStars."





Paul Davis

Moderator: Should the regulators interfere with competition?

Paul Davis: “In the states, I don’t believe regulators are above political influence, and a big part of that is because licensing in the states is a privilege and not a right. There’s no statutory obligation to admit the qualified candidate. So, having operated in the United States when it was a grey market, that available fodder and the fact that political pressure could be brought, doomed PokerStars in the US when it opened up for licensing.”

Turning to the UK Mr Davis expressed his opinion, although he stressed that he is not a UK lawyer, that the Commission has a statutory obligation to issue a licence should an applicant meet the prerequisite qualifying conditions. Ms FitzGerald added, however, that the Commission has to aim to permit gambling provided it is reasonably consistent with licensing objectives, though the term ‘reasonably’ might seem, on occasions, to be forgotten. “It is requiring that an applicant be consistent down to the nth degree with what the UK Commission says is consistent with the licensing objectives;” said Ms FitzGerald, to which Mr Cotton added: “and with its codes of practice, so consistent with quite a lot.”

Mr Davis continued: “In the UK environment, you have a great deal of discussion about the public interest, as we heard in the Gibraltar judgments and so on - and you could have a lengthy discussion about whether the

UK’s decision was really in the public interest or whether it was motivated by revenue - but the law of unintended consequences has kicked in again. So, as the UK Gambling Commission romped through its powers and started looking at licensing and adding additional boxes to be ticked, something that came to their attention was operators’ activities elsewhere; whether they did more than 3 percent of their business in overseas markets.”

“Then they got involved in payments processing and started off with the wonderful notion that they were only going to allow UK operators to have their payments handled by processors who had a European licence, which wouldn’t have got the operators very much money in in places like India, Russia, South Africa, even Australia or New Zealand, because the payment processors there don’t have licences. So then they decided that instead maybe they would just require an equivalent licence. That probably got them somewhere in Australia and New Zealand, but not so far in Russia, India or South Africa because processors there don’t have an equivalent. It certainly didn’t get them anywhere in South Korea, China or Vietnam, so quite important markets, because the payment processors there are ‘well organised private individuals with large families who use various interesting means to collect gambling debts.”

“But the UK Gambling Commission got stuck into all this, started asking operators to tell them about their business in India, South Africa, China and so on, and tell them all about how

they collect money there. Now, do you think the UK Commission got into all this because they’re experts on payments processing and have a deep rooted understanding of the critically important Chinese football and Indian cricket markets? Or do you think perhaps, that somebody a bit jealous, like William Hill in Gibraltar for example, saw this as an opportunity to slap a UK licensed operator like Bet365 really hard?”

“There is no doubt in my mind that the offshore British businesses that moved to Gibraltar for tax reasons some years ago took this as an opportunity to deal a competitive blow to Bet 365. And the UK Commission, in a single stroke by coming up with these rules and laying additional pressure, succeeded in persuaded Bet365 – the best known, the most iconic British gambling company with an economy bigger than the Isle of Man’s – to move all of its international business to Gibraltar so it didn’t have to answer those questions and didn’t have to pay any corporate tax, or employ any people in Britain who would also pay tax, to conduct the business. They basically drove this source of tax revenue offshore from the UK by feeding foreign operators with the ability to compete. So, at root, by playing in these grey markets, Bet365 had unintentionally fed their competitors with fodder to be thrown back at them as the licensing environment changed.”



Data ions

tion at

.com

W2

A world of your



www.w2.com

For products or more info



“The Gambling Act 2005 was very permissive in many ways, especially compared to some of the legislation issued before.”

Mr Davis concluded by stating that the Isle of Man’s, by contrast, remains the world’s best regulatory environment and entertains an approach to payments processing which is also absolutely correct. He explained that the Isle of Man regulator insists that domestic operators have good legal advice and provides good information about where and how they operate, and also insists that they are commercially responsible for how they operate in respect of players’ money: “but it doesn’t get involved by meddling with the detail, and by not getting involved it insulates itself as a regulator from being abused for competitive influence. I think that’s a very good thing.”

Moderator: It seems like there’s a lot of tension developing, particularly with regards to cooperation and harmonisation on issues such as money laundering and anti-fraud. Is the EU Commission the right commission to step in on this front?

Andrew Cotton: Mr Cotton explained that the judge’s conclusion concerning the Gibraltar Betting and Gaming Association’s challenge to the point of consumption tax makes clear that one of the reasons for the ruling was that there was no existing harmonisation. It was concluded, therefore, that regulators are not entitled to have regard for what another regulator does. “So I think harmonisation is crucial. In a common market, it’s an area where there really is no common approach.”

Susanna FitzGerald: “I think it would be extraordinarily difficult because it is gambling and so many countries have different attitudes towards it.”

Paul Davis: “I’m afraid I’m something of a Eurosceptic on this one. I think one of the problems with Brussels today, and the European Commission in general, is that when it ventures into a regulated area it spawns an industry, an army and a bureaucracy of people, many of whom are marginally informed. I think that too much regulation is a bad thing and there are some things that can’t be harmonised because of the cultural differences that Susannah mentions.”

Andrew Cotton: Concerning money laundering and anti-fraud, Mr Cotton reminded the Summit of an amendment to the 4th European Money Laundering Directive to give member states the ability to make representations to the European Commission to exclude certain sectors. “I think it’s going to be very interesting to say how the individual states use this ability. There will be a huge difference, I think, between member states as to whether they put forward a risk based approach for excluding, say, lotteries. We’re expecting the directive to come in to force by early 2017 and, for the UK, the Treasury are publishing their guidance on the treatment of exclusion of sectors before the end of the year.”

Paul Davis: "I would like to add that no one should ever leave a conference like this with the impression that internet gambling is rife with fraud and money laundering. It simply isn't. There are lots of very erudite papers, particularly by German and Austrian scholars, demonstrating that the risk of money laundering in licensed internet gaming is really negligible; it's really, really hard to launder money in internet gaming sites. There are no cash transactions, there is an audit trail. The money laundering discussion is very much to do with the reachability of defendants, and very little to do with what's actually going on in our world."

Moderator: Thinking ahead five years; what are the next steps on the regulatory and the business side?

Paul Davis: "I think the quick answer to that question is if the regulatory pendulum swings as far to the right as it is going at the moment, it will exert a very negative market force on new entrants and smaller enterprises. It will also have a profound impact on consolidation of larger enterprises. The lighter the touch of regulation in the areas that the free market will regulate itself, the more healthy the economy with a wider diversity of businesses you'll have."

Susanna FitzGerald: "The Gambling Act 2005 was very permissive in many ways, especially compared to some of the legislation issued before. The industry grabbed it with both hands with the result that the Commission, pushed by the media – never

underestimate the power of the media – is forced now to keep the pendulum swinging in that direction. It is well known, however, that if you over-regulate then people get out of the regulated market and into the black market. Eventually the politicians realise and rein in the regulation,, but that pendulum has some way to go yet."

Andrew Cotton: "It's certainly going to continue into next year. There is a review of social responsibility and some of the feedback I've had indicates that a lot of these new conditions are going to be imposed. It looks like UK applications are all going to have to be updated in the next six months so it would appear that the pendulum is still definitely swinging in that way."



Extra territorial issues from Point of Consumption regime
... difficult or impossible
"I feel the colour in my cheeks rising again. I must be
...

KPMG

50 Shades of Grey: Point of consumption licensing and the future of the dot com model

Paul Leyland

Regulus Partners

Paul Leyland is a founding partner of Regulus Partners, a strategic consultancy focused on the gambling and related sectors. Prior to this he was Corporate Development Director at William Hill, from April 2012 to October 2013. Paul started in the City and was an equity analyst focused on the gambling sector for over a decade. He worked for a number of investment banks including Investec and Collins Stewart Cannacord.

"I'd like to continue with the grey market theme by looking at the differences between dot com and point of consumption licensing regimes and by looking at the future of the dot com model in an increasingly point of consumption environment," began Mr Leyland, a now regular and very well regarded presenter at the Summit series. "But I thought I'd begin by looking at some of the key differences between dot com and point of consumption. They are legion, and this is only a few of them."

Tax represented the first and most obvious difference. In a dot com environment it tends to be limited and on a point of supply basis. It can be shared across all markets and broadly speaking hardly touches operators' profit and loss. With point of consumption, tax is much more market specific, and can often be politically set. Available markets and products in the dot com model are, broadly speaking, unlimited. In many PoC markets, however, there are a number of restrictions, which significantly distorts those markets and creates a need for a black market, particularly around slots and exchanges. Regulation in a point of supply environment is light touch and designed to encourage business, which is imperative because businesses have the option to move. No such option exists in a point of consumption environment. The regulation is highly jurisdiction specific and is designed to protect: "Although I'll leave it up to you to decide exactly what it's designed to protect," Mr Leyland added.

Marketing in a dot com environment was described as very flexible, whereas in a PoC environment it tends to be much more expensive and centred on brand building. "Payments, however, seem to be the only one going in the other direction. In grey, dark grey or even anthracite markets they are complex, specialist and therefore tend to be expensive. In a PoC environment, in theory, they should be cheaper because a bank should regard what you're doing as safe, sensible and regulated. Finally competition, which in a dot com environment tends to be limited to grey market fellow travellers. The offer tends to be relatively similar and the battleground tends to land on marketing and customer service. Competition in a PoC environment changes dramatically. Large domestic operators and brands that have hitherto not been able to address the online market suddenly can. You get new entrants that understand their market and, importantly, also have a lot of lobbying power."

Can it add up?

"This is the big problem and this is why dot com can't go away as things stand. When you chop up the dot com model for a standard operator in a point of consumption environment, you suddenly increase tax and your marketing cost increases because you have to make yourself known. Payment processing goes down because you can share your software costs, but this is limited mitigation. Your operating costs go up, however, because of your extra regulatory

requirements and your free cash flow is negative. This happens in a lot of jurisdictions to a lot of companies, and it's causing a lot of pain."

What are the real risks for dot com?

Dividing risks classes into legal, regulatory, operational and reputational, Mr Leyland observed first of all the importance to distinguish the legal and regulatory issues. "The two are different, though they're often combined," he explained. "An uncertain legal status creates all sorts of problems. It typically means the people you do business with can be limited, which can be scary. Exposure to jurisdictions with an uncertain rule of law can be an issue in grey markets. Grey issues can also get highly politicised: as soon as you're in an uncertain environment it allows people to lobby against you."

"From a regulatory standpoint, it's not just about gambling. Money laundering, although not prevalent, is a concern that can be used to go after dot com companies quite effectively. Many grey markets have restricted currencies and breaking currency laws is something operators might do quite by accident, though the implications are very serious. Advertising is very difficult because the companies you would want to spend on advertising with in a grey jurisdiction probably want to stay clear of what you're doing, and there are also issues around intellectual property. What are becoming increasingly clear from a PoC basis are these extraterritorial issues. They're most pronounced in



“Once you’re in a domestic supply market, however, your key stakeholder is government and the regulators, whether you like it or not.”

the US, but the UK Gambling Commission is getting quite a reputation as well. Lobbying in a grey jurisdiction is also very difficult, if not impossible. One of the problems with the dot com model is when you’re trying to persuade a given jurisdiction to regulate in a way that is sensible, the typical view amongst the politicians and commentariat is ‘you’re operating illegally, why should we listen to you?’. That’s a huge problem, because you’d probably have a lot of sensible things to say.”

“From an operational perspective, dot com also implies some travel, staff and market exposure risks. There are also all sorts of temptations once you’ve decided to go down the grey markets route to adopt your operational model, payment being your most obvious and most scary. Also, your supply chain can be limited. Some of the larger land-based operators may not want to deal with you because of your grey market exposure.”

From a reputational perspective, Mr Leyland explained that access to finance can be limited to nil and that stock market conditions can also be shaky for PLCs. Political grounds can also become uncertain should a company become successful because the jurisdiction realises how much money is leaving its shores and may decide to legislate to tax that income, and feel they ought to regulate it.

It isn’t black and white

“This is the reason they’re called grey markets”, Mr Leyland explained. “There are some very significant positives to dot com which means it isn’t going away it just needs to be better understood from a risk standpoint. Most obviously, dot com revenue comes with strong cash-flow, which is contrary to revenue for most PoC jurisdictions. Operations management also represents a key driver, a point that many remote companies are now beginning to realise. It’s great if you can just run your company well, get on with it and that will have an impact on

your company’s performance. Once you’re in a domestic supply market, however, your key stakeholder is government and the regulators, whether you like it or not. They decide, more than anything else, what the profitability of the company is going to look like.”

“It’s hard to gain dominant market share in a dot com environment, which means there is room for many profitable operators. This has contributed towards the resilience of the dot com model hitherto. The negatives are already very well rehearsed: from a legal and regulatory standpoint they’re obvious. Access to the supply chain in grey, dark grey and anthracite can be limited and access to capital can also be a problem.”

Point of consumption: the positives and negatives

Mr Leyland added that there are obvious positives to the point of consumption model. Operators enjoy a clear legal framework in which to operate, which gives companies more certainty to invest and grow. Dominant players also enjoy more protected markets, and can rely on that dominance as a base to develop. Companies also enjoy full access to a range of staff and capital. “But the point of consumption also has some pretty significant negatives”, he warned. “There is a dangerous assumption, sometimes, that the legal and regulatory environment is more stable. If anything, it isn’t. In a dot com you have a small likelihood of very large and very upsetting change. In a PoC environment you have a high likelihood of lots of constant, niggling change, often with a political motive. This can sometimes make running a company, from an operations management standpoint, very difficult indeed.”

Probably the biggest negative from a corporate profit and company management point of view is that government becomes the key stakeholder, Mr Leyland continued.

“And this cannot be stated more strongly. Whether or not you like the UK Gambling Commission, whether or not you trust HM Revenue & Customs or Treasury to be sensible, they do get to call the shots, they do have the political mandate, and there’s nothing the operator can do about it. We can all complain, but we must comply.”

High costs also prevent profitability for the majority, a critical point for the PoC environment. The vast majority of dot com companies do not have a clear, regulated base from which to build out of a point of consumption regime profitably. Instead, they tend to use dot com cash flow which, Mr Leyland explained, “tends to be under different strains at different times. So there can be a quite significant reduction in profits for those companies exposed to point of consumption regimes.”

The future of dot com

“Cash is king, but it now shares its throne with compliance,” Mr Leyland warned. “That’s the thorny problem. Point of consumption regimes are going to increase in size and spread, but importantly that doesn’t mean dot com is shrinking, particularly in terms of profit. On an absolute basis there will be more PoC regimes, and on an absolute basis there will be more dot com revenue. But on a relative basis, it’s quite likely, given emerging markets, that dot com will be growing faster and particularly dot com cash flow will be growing faster yet.”

“Dot com cash flow is still critical to many remote gambling companies with point of consumption revenue aspirations. That is an issue that needs to be juggled, but it’s dangerous to think that this will ever impact government policy. There aren’t very many levers that can be pulled in a PoC environment. It’s fair to say that in a point of supply environment you can have a negotiation with your regulator and government, in PoC the power is much more one sided.”

“Point of consumption issues have been largely disguised so far by point of supply, dot com cash flow. On a company by company basis, however, there is a tipping point. Where that tipping point comes will have a dramatic impact on the way the industry is structured and is seen. Very dark grey, combined with point of consumption could also have very dark fallout, and containment of that is critical. So on that basis, we think the most profitable companies will be either artfully dark grey, albeit that’s a short term issue, or have a very strong market share in a large regulated jurisdiction, which is not something that can be built overnight and has been typically decided already.”

In concluding, Mr Leyland explained that on an industry wide basis it is not possible to ignore dot com. This is because it is propping up the profitability of most of the market. Point of consumption, meanwhile, enjoys lower legal risks but burdens companies with greater compliance obstacles: “so in either scenario you don’t get any certainty. Simplistic assumptions are no longer going to work. Every jurisdiction in which an operator does business is going to have to be understood thoroughly and a plan developed to mitigate any risks should laws or regulation change or the scrutiny of any other jurisdiction changes. In short: the world is getting a lot more complicated.”

“Dot com cash flow is still critical to many remote gambling companies with point of consumption revenue aspirations. That is an issue that needs to be juggled, but it’s dangerous to think that this will ever impact government policy.”

VAT: changes to place of supply rules in 2015

Sandra Skuszka

Head of VAT Services, KPMG Isle of Man

Sandra joined KPMG in November 2007 after 4 years with Customs and Excise as a VAT visiting officer. Having qualified as a certified accountant, Sandra now heads up the VAT team overseeing the VAT compliance function and providing VAT advisory services to a number of industry sectors, including gaming, property, yachts and aircraft and the funds industry.

"What I want to talk to you about today are the changes to VAT rules which will come into effect on January 1st, 2015. I've been looking at the ways in which these changes will affect online gaming for the past three months or so, and I can say it's quite complex," Ms Skuszka warned the Summit. "This is because it incorporates all 28 of the different European jurisdictions, which means we need to think about the regulations in each."

The 2015 changes represent the final phase of a series which came into effect on 1st January 2010 and concern VAT charges on goods and services supplied on a business to consumer, as opposed to a business to business, basis. The changes mean that certain services provided by EU suppliers to EU non-business customers will soon be charged on the basis of where the customer is located, as opposed to where the business is located: "So it's becoming point of consumption."

The underlying reason for these VAT changes, Ms Skuszka elaborated, is to bring VAT treatment to where it is accrued i.e. the member state in which the goods and services are consumed. Although the changes are in direct relation to EU suppliers, they will still affect non-EU suppliers, particularly business to consumer telecommunications providers, broadcasters and e-services providers. "Telecommunications suppliers will be affected in a big way," Ms Skuszka explained. "Telecommunications includes fixed and mobile telephone

services, video phone services and access over the internet. Broadcasting services includes radio and television programmes transmitted over the network and live internet, so it includes Sky for example. But the category that we need to look at here is e-services, which includes downloads of applications, downloads of games, web-hosting, distance learning, downloads of music, films and downloads of e-books."

Does eGaming fall into e-services?

The EU Commission's general definition for electronically supplied, or e-services is: 'services which are delivered over the internet or an electronic network, and the nature of which renders their supply essentially automated, involving minimum human intervention and impossible to ensure in the absence of information technology.'

"So you can see how eGaming potentially falls into this category. In fact, even more recently, the EU Commission has provided a list of what they consider to be electronically supplied services and one of the items on that list is 'accessing automated online games, which are dependent on the internet or other similar electronic networks where players are geographically remote from one another'."

What are the changes going to be?

Currently, VAT rules dictate that when supplying electronically supplied services they are considered to be supplied from where the supplier belongs. A supplier belonging in the UK, for example, can supply into other jurisdictions, but the VAT rules for the supply of those services are the UK's and the supplier pays UK rates to the UK authorities.

From 1st January, 2015, however, that will no longer be the case. From that date, the place of supply is where the customer belongs. A supplier belonging in the UK but providing services to customers in France, for example, will be required to understand the VAT rules of France, pay at French VAT rates and to the French authorities. "Now you might think we all operate within the EU so we should all operate under the same rules, but unfortunately that's not the case. The case is, each member state has to interpret the EU VAT Directive, with the result that things get lost in the interpretation. This is particularly so with VAT exemption for gaming."

What about non-EU suppliers?

Since 2003, place of supply for non-EU suppliers has been defined as the place in which the customer consumes electronically supplied services. If gaming falls under electronically supplied services there is, therefore, already an obligation for a non-EU supplier to know what the regulations are in the different jurisdictions their customers are based. If they are supplying into the



Sandra Skuszka

EU their suppliers are taxable, and they are taxable according to the rates of the countries in which the customer belongs.

The system for paying this form of VAT is known as VOES, or VAT on e-Services. Non-EU suppliers of services that are taxable in the EU can register in one country and pay the VAT in different countries and at different rates, all through one portal.

“So the obligation is already there, but it has to be said that, to date, there has been very little appetite in some countries to enforce these regulations. I think this will change, however. When the change comes in to effect, I think local authorities are going to wake up and start looking for the TV dinner behind the sofa, never mind the cash.”

Legislation

“Some of you here may be thinking, ‘well, there’s an exemption for gaming supplies’ and in some countries there is. The EU Directive does say that there’s a VAT exemption applicable to different countries, but it also says that ‘betting, lotteries and other forms of gambling are exempt from VAT subject to limitations laid down by each member state’. So it can be interpreted into the local legislation differently.”

Ms Skuszka explained that in the UK that exemption is quite wide, which is the reason operators assume that eGaming is VAT exempt. In the UK VAT Act the provision of facilities used for the placing of bets, or the playing of any games of chance is exempt, as is the granting of the right to take part in a lottery. In the UK, VAT is not linked to the Gambling Act and it is not linked to any other legislation. However, this is not the case in other jurisdictions.

Luxembourg’s VAT Act, for example, provides that bets on sporting events and gambling games are covered by Article 4 and 5 of the law of 20th April 1977, meaning the VAT is intrinsically linked to the gambling laws subject to conditions.

“In other countries, there are monopolies that apply, so you can’t get a licence, but their VAT act says the VAT exemption doesn’t apply unless you comply with the legislation. So where do you stand? The default is that you’re subject to VAT, but that makes life very, very difficult for you.”

“What this means is you need to know what the VAT legislation is in every member state your customers are based in.”

Issues for gaming companies

Are the services I provide electronically supplied services?

“Based on the definition we examined earlier, we can see that, yes; technically gaming services do fall into electronically supplied services. I do know, however, that some companies have been talking to the Government of Ireland Revenue and HM Revenue & Customs, and they are considering that sports betting has a high factor of human intervention in there. Potentially, if both authorities say sports betting is not an electronically supplied service for this reason that will take us back to the existing situation where the place of supply is where the supplier belongs. The Germans and French may not agree, however, in which case we’ll see both systems implemented. Whether or not this helps in the long-run is, therefore, uncertain.”

How do I determine where my customer is located?

Ms Skuszka explained that the simplest method is to visit www.europa.eu to find guidance on how to determine where your customers are. Lists of methods are provided for electronically supplied services as well as for telecommunications. Two confirming pieces of evidence of where your customer is located are required which, due to their existing compliance obligations, should not be difficult for gaming companies to obtain.

How do I know what the regulations are in each country?

Guidance is, again, available through the europa.eu, although heavily caveated. Ms Skuszka reiterated that this undertaking will represent a challenge for gaming companies. In most cases, gaming will be marked as exempt, but a company is required to understand member states’ individual conditions for exemption.

How do I pay VAT due?

“You have two options,” Ms Skuszka explained. “The first is to register for VAT in the country where you are liable to pay it. There are a lot of companies that will provide VAT registration services for you.—. The alternative is to use the MOSS system, or mini one-stop shop. The authorities in each jurisdiction are going to be setting up these MOSS systems and these will enable you to register with your domestic jurisdiction and pay VAT in each of the 28 member states. You will have to pay at the rate of each member state, and you will have to tell your domestic authority what that rate is. You cannot use the MOSS system if you have an establishment in another

“The risks are the same as with any other form of tax: non-payment of VAT can result in fines and penalties.”

jurisdiction; you have to register in that jurisdiction separately. The Commission does recognise that this is going to be an issue and they are trying to facilitate payments.”

What are the risks?

“The risks are the same as with any other form of tax: non-payment of VAT can result in fines and penalties. In this case, however, VAT legislation is linked to licensing legislation which, in terms of risks, is something you need to think about.”

Is there anything we can do as an industry?

“If there is anything you can do, it needs to be done collectively”; Ms Skuszka said in closing. “What I would do is collectively contact the EU Commission and ask for consideration to confirm the exemption on gaming. It’s too wide, it’s too different. In each jurisdiction, in fact, it’s different and that’s not how it’s supposed to be. VAT legislation is all about harmonisation and making it easier to provide services into different jurisdictions. That’s not the case with gaming, and that’s something that can be addressed.”

Questions from the floor: On the issue of enforcement: if I were to sell, say, my distance learning courses in Bulgaria from the Isle of Man and not pay VAT; who would come after me on the Isle of Man?

Ms Skuszka answered that if a company was to owe VAT in, for example, Bulgaria, it would be the Bulgarian authorities’ responsibility to collect it through one of several means. If that company was to register with the MOSS system, Bulgaria could contact Customs & Excise on the Isle of Man and request an examination of the company’s records. If the company was not registered through the MOSS system, the Bulgarian authorities could contact the Manx authorities, or contact the company directly. “On a practical level, I think it may well take a couple of years for authorities to wake up and begin full detection. But you have to remember there’s no threshold in most countries, so even if a single customer registered on your site from elsewhere the home authorities could request an examination of your records. The other thing to remember is that VAT liability on gaming is the default in most countries; it is not by design. Whether they would actually go after the VAT is, therefore, another question, but they may be more inclined to go after licensing and duty, which is a greater risk.”

Panel 4:

US Regulatory Scheme and the Emerging Market Issues

Moderator: Bill Gantz

Dentons US LLP, Massachusetts

Bill Gantz is a trial lawyer with diverse experience representing manufacturing, technology, Internet, online gambling and entertainment clients in litigation, licensing and intellectual property matters nationwide. Bill has actively represented the Internet gambling sector since 2002 in patent infringement, commercial litigation and compliance matters (including the Unlawful Internet Gambling Enforcement Act). He is a former co-chair of the American Bar Association Gaming Law Section Subcommittee on Internet and Mobile Gaming. In March 2011, in the first patent infringement case tried to verdict by the online gambling industry, Bill obtained a jury verdict in favour of sportsbetting.com against the Lottotron '865 patent in the US District Court for the District of New Jersey. Bill also regularly advises businesses offering Internet-based sweepstakes and retail product promotions, lottery tickets, subscription or play-for-free gaming, as well as charitable fundraising activities involving games, contests or auctions. With respect to land-based gaming, Bill is currently actively involved in numerous litigation matters arising within the Video Gaming Terminal (VGT) industry in Illinois.

Panellists:

Ernest C. Matthews, IV, President/General Counsel, ISI

Hilary Stewart-Jones, DLA Piper

Bill Mummery, Celton Manx

Moderator: "We have a very diverse set of panellists with us here today and that's appropriate because one of our themes here is emerging markets"; Mr Gantz introduced the day's final panel session and IMGL Masterclass. "To begin, I would like to talk about my own emerging market; the United States. Many people in this room remember 2006 and the UIGEA [Unlawful Internet Gambling Enforcement Act], and really to my mind the biggest obstacle to understanding and investing in the emerging market - which is all of the United States not just the states that are projected to open - is the consequent uncertainty surrounding the interplay between the federal government and our interstate system."

"We're 50 states plus some territories, plus some tribal lands and we're all under the umbrella of a federal law"; Mr Gantz continued. "Currently, as we've seen with states like New

Jersey, Nevada and Delaware, the states do control their own destiny in determining what forms of gaming will be allowed, and they can regulate that. Essentially, those state rights fall under the 10th Amendment, and the case law goes back to the 1800s so that tradition in our jurisprudence goes back a long way. However, our federal government, under the Commerce Clause, has the right to regulate activities that impact interstate commerce. So, in terms of evaluating the market, what we have here is a schism between where states' rights end and where interstate commerce starts, or conduct that would affect the commerce, starts, and it's often difficult to determine where the boundary is."

Mr Gantz explained that in terms of existing laws, it would be a perhaps appropriate but incomplete observation to make the popular remark that UIGEA 'didn't make anything illegal that wasn't already'. "If you look at the UIGEA, it does have

minimum standards and it does impose minimum standards on states for reasonable age and location verification – there are no regulations and what that reasonableness means, nobody really knows, but age and location verification is a given – and it also requires appropriate data standards"; he responded. "So the UIGEA allowed and expressly acknowledged that we would have intrastate gaming on a state-by-state basis, but it also didn't back off and just say 'well, if it's ok with the state then it's ok with the federal government'.

Mr Gantz added that the US's interstate horse racing act should provide appropriate guidelines in this regard. Even in 1978, the year of its enactment, it expressly observed the right for a state to regulate its own gaming. In 2000, it was expressly amended to make sure that the definition of interstate wager included those that were placed electronically. "Moving forward, you get to the

“There are still all these odd national quirks which have turned licensing into a full time job and probably will result in most operators being in breach of most of their licences most of the time because the obligations are too complex.”

Bill Mummery



December 2011 Department of Justice Opinion, which everyone thought was an early Christmas because it stated, somewhat gratuitously, that the Wire Act did not apply to gaming but was instead limited to sport.”

“Going to where our federal government may be headed, however, you need to look at that advisory opinion for saying one very important thing: that the transmission of data that was necessary to accomplish off-track betting or the placement of an intrastate wager on horse racing did not create interstate commerce. That DOJ Opinion had nothing to do with online gaming, it was the state asking if it used payment processing and support for its intrastate lottery sales but sent data outside of the state; whether that invoked the Wire Act or brought us into federal jurisdiction.”

Mr Gantz explained that this issue was critical to any evaluation of the United States as a market, adding that the big question surrounded whether or not the federal government would become involved in the event that a state transmits data to another state with which it has established a compact, as with Nevada and New Jersey. “I believe, based on precedent and what we’ve seen from the federal horse racing act, that it will be very difficult for the federal government to say that that constitutes activity that will affect interstate commerce. So what we have here really is a federal rubric that is limited to areas that intersect and affect interstate commerce. So it is my view that, although anything is possible, legally there is not a very good case for the spectre of waking up one day to a ban on Internet gambling in the United States. It would be heavily challenged and would succumb to that challenge. What is more likely is a model such as that in the EU whereby states have federal standards but operate on a local basis. I personally believe the US is an

excellent emerging market. There is very little chance of a federal ban and an even lower likelihood that we’ll have overarching federal legislation. I think it will continue to open on a state-by-state basis, and I think the next state will be Pennsylvania.”

Having thus introduced the US market, Mr Gantz turned to the panellists, asking Mr Mummery: **where do you think the opportunities for sports betting are globally, online or otherwise?**

Bill Mummery: Mr Mummery expressed his opinion that, for the next three to five years, revenue growth for sports betting will tend to come out of Asia, adding that a truly emerging market which nevertheless has its challenges is also Africa. “I think the most successful model there will be based on micropayments and the ability to use the mobile telephone system as a mechanism.”

“In relation to the US; prima facie as a sports betting operator one would say it will be a long time before there is a possibility of entering that market,” he continued. “However, under the provisions of UIGEA and the so-called carve out for the Horseman’s Guild and interstate pari-mutuel markets, there is an opportunity there for an operator to contract with the Intellectual Property holders, the horse racing tracks, to have the technology in place whereby the foreign operator is taking wagers, not from US citizens, which are then transmitted directly to the host tracks with which they’re contracted. Those revenues are welcome, not least in part because of the effect of UIGEA on payment systems. They are struggling so the injection into those pools is welcome. I think there is an opportunity, certainly when set alongside the traditional model for sports betting where margins are low and you’re participating in risk, to use the pari-mutuel model to provide a risk



Hilary Stewart-Jones

Ernest Matthews

free, higher margin revenue which gives you a more favourable blended margin and takes out some of the volatility. In the case of the US, it's the one legitimate way we [SBOBET] as a business could begin to build relationships as a business and engage legitimately with the US. It's something that I'm personally quite keen on pursuing this coming year."

Moderator: In Asia we've had some markets close precipitously. Is there a bright outlook for any particular Asian markets?

Bill Mummery: Mr Mummery acknowledged that the current debate in this respect is focused on Singapore and Malaysia, adding his opinion that in the medium term, to the extent that SBOBET is able to engage with those jurisdictions, the goal is to try to work with government and regulatory entities to reach a point in which the company is seen as a trusted partner, to pursue a tax and regulatory route and to bring liquidity to state activities, as opposed to deferring to prohibition. "It's inevitable that that regulatory change will form a large part of our time as management over the next three to five years. So I think there are some opportunities in the medium term but barriers in the short term."

Moderator: With all of these changes afoot in the EU; is there any progress towards standardisation and ease of access to different markets for the operators?

Hilary Stewart-Jones: "I think in this case we can actually say that emerging markets are not always emerging economies. An emerging market can be an established economy where the licensing regime is very new," Ms Stewart-Jones explained.

"There is a lot to talk about Europe, of course, as a consequence of successive decisions by the European Court of Justice. These allow quite a

large margin of discretion in relation to the refusal by another court to accept that what is actually fiscal protectionism is not just dressed up as consumer protectionism. This, as well as the fact that the UK Government also had to do a u-turn and justify a different position only a few years after it had adopted a provision in the Gambling Act 2005 to allow people to freely market into the UK. So, in terms of applying European Law, the ECJ is still being rejected in the UK and abandoned by the European Commission, who elected not to push for harmonisation."

"So we've now got a situation where, on a number of levels, you have a hugely complex compliance obligation for operators who have to hold licences in multiple jurisdictions. The downside of all of that is not just the obvious cost in relation to licensing fees; you also have the costs in relation to the individual compliance quirks in every jurisdiction. Although we may get to a point where there is, say, a sensible view taken on harmonisation of testing, there are still all these odd national quirks which have turned licensing into a full time job and probably will result in most operators being in breach of most of their licences most of the time because the obligations are too complex."

Ms Stewart-Jones also emphasised the problems UK operators currently face surrounding double-taxation, explaining that there is an added complexity in the UK not only in terms of the potential for double-taxation of the same transaction, but also in terms of the complexity of tax buffers. "In the UK, there is a test for whether you need a licence that is different from the test for whether you need to pay tax," she remarked.

"So you've got that issue, and coming down the sidelines are other issues of compliance that operators really have yet to grapple with. The 4MLD will broaden obligations massively in terms of extending the regulated sector, and when the next data protection directive comes in that's going to be a huge wake-up call for operators. In some affiliate activities, data is not generally ethically sourced or ethically exploited. As a consequence of that, when a directive comes in with the potential for unlimited fines, it again becomes another burden of compliance."

In terms of other markets, Ms Stewart-Jones urged caution. "On a global scale, if there's one thing that has become clear after recent events it's that there still remains a plethora of unlicensed operators that customers are choosing because they get better products and a better consumer experience. Governments have wrestled and are also still wrestling with the whole issue of enforcement. That's one of the big problems with creating barriers to entry which are too high, because you can't persuade operators to accept that it's better to simply bow to the inevitable and get the licence."



ker
ars
.com

CELTON

CONTINENT 8
technologies
reliable innovation

SMP Partners



Microgaming

Isle of Man
Post Office
ON POSTAGE FROM POSTAGE



W2 Global Data Solutions

Henry Stewart Jones

Bill Mummery

Moderator: How would one enter an emerging market of whose government you enjoy support, but which does not have a regulatory framework?

Ernest C. Matthews, IV: Mr Matthews began by noting that his organisation, ISI Sports, tends to do business with brick and mortar locations, as opposed to online. He explained that in such a scenario, and in a legal capacity, he first attempts to talk to the regulator if there is one or the government official who inhabits the nearest thing to a quasi-regulatory role and explain how it might benefit the customer and economy. Following that first step, he then assumes the role of the businessperson and approaches the casinos to address any risk management concerns. "What I've found, with respect to what we do on the online gaming side in places like Peru, some of the Caribbean and Mexico, is since we're owned in part by two Nevada licensed operators my marching operators are to remain very conservative. This is so our operators don't have to worry about getting arrested in the US because a US customer has broken through a service in a casino on one of the Caribbean islands to place an online bet. So we don't do online wagering."

"There is a lot going on in South America, particularly on the West coast where the economy seems to be stronger and more functional compared to, say, Brazil or Argentina. Throughout the entire 2000s, Peru has had an average growth rate of about 9 percent per annum. They're backing off this year, because of the drop in commodities prices, to about 5.7 percent, but I can't think of a western economy that wouldn't still enjoy that growth rate. The middle class there is exploding. People are moving immediately into smartphones and

internet connectivity, and online gaming can take place without cannibalising land-based. In Peru, there's no law against online gaming; the law presumes that if it's not prohibited it's allowed. There is also a strong brick and mortar regimen of regulations, so Peru represents a very attractive market."

Mr Matthews continued in explaining that Chile recently tried to implement a new law whereby, if a company had a licensed brick and mortar location, it could engage in the same services online. He added that the status quo there is going to remain and that, once again, the attitude there is if it's not prohibited, it's accepted: "so within Chile online gaming is a possibility."

"Brazil is a territory I don't understand just because of the sheer volume of money that's coming in through both licensed and non-licensed activities. I saw some stats from last year which stated that whereas licensed gaming activities generated about \$5 billion of handle, the unlicensed activities generated around \$8.3 billion. They're leaving an awful lot on the table. There have been some meetings to address this issue but they still haven't been able to get it together, so Brazil is losing a lot of revenue."

"In Argentina, there is a new Act being talked about by one of the associations there which is proposing to take a European Union regulatory template to superimpose in Argentina. The one thing this would do that the other South American countries don't have is put a penalty in for online gaming operators that don't license themselves appropriately. I think the status quo will remain, however, until a new, more stable government comes in there."

"Columbia is the only one with a really strong regulatory scheme for both

online and brick and mortar. It's also a growth market. Since there's no prohibition against it, there's no penalty for operating in those markets. Looking at risk-reward there's no reason why a company shouldn't consider exploring that whole continent."

Moderator: Do you see countries such as Brazil or Chile all of a sudden desiring to have a taxed and regulated online industry?

Ernest C. Matthews, IV: Mr Matthews explained that the Chilean political climate has recently pushed online gambling out of the policy making arena, adding that by contrast he expects Peru to implement a full regulatory framework within 18 months. "In fact, that's one of the things the Isle of Man regulators could help with. There are two or three countries with no experience in the online sector. There are a few local online companies that do business, but for the most part all of the activity is coming from here and regulators don't really know how to proceed in setting up a suitable regimen."

Moderator: Turning to Asia, are there markets there that are similarly open for business but not regulated that may soon turn to a regulatory regime?

Bill Mummy: "I think what Ernest has just demonstrated is that because of the barriers to entry, the cost of entry, the resource that you need to commit and the complexity of these markets, individual operators are best suited those markets they already have expertise in. As far as Asia is concerned, two that come to mind are Cambodia and Vietnam, both of which have shown significant growth in a mixture of landbased casino and online sports betting. At this moment in time, neither has a regulatory regime in place."

Moderator: How is the Romanian regulatory regime fitting in and is there any progress in terms of operating there?

Hilary Stewart-Jones: “Romania illustrates the interesting dilemma that arises when you create a stand-alone system for each individual territory. It becomes a fine line between whether it’s worth engaging with a licensing process against the cost of engaging that process and, hopefully, keeping the competition out. We heard earlier today about how operators will drip poison in the ears of regulators, and particularly where the operators hold a licence they want to feel that it is worth something. If the enforcement process is pretty lacklustre that’s not a huge incentive for operators to then go in and secure a local licence. If there’s a better price, better incentives and a better product, there are not many disincentives for a customer using a non-licensed operator if they get their money at the end. Some regulators will swing a stick and claim customer peace of mind when working with licensed operators, but I simply can’t see the consumer caring if they’re getting a better product elsewhere.”

Moderator: I’m afraid the United States is heading toward a state-by-state or federal regime; is there any hope that will change for the EU?

Hilary Stewart-Jones: Ms Stewart-Jones stated that she could not see it happening and that, had there been any hope of cooperation, it would have

surrounded the issue of pooled liquidity for casino games and poker. “European harmonisation has been successively kicked out, though the European Commission has recently issued a recommendation for member states to think about harmonisation on consumer rights.”

Bill Mummery: “I think it’s right to say that some of the activities of jurisdictions, be it in regulation or taxation, are often presented as a mechanism to protect the consumer when patently what they’re in fact doing is simply exposing their citizens to risk by driving them to non-regulated underground operators. I agree with Hilary; I think the consumer doesn’t think about, or really care, whether or not an operator is licensed until they get hurt, so more and more there is a danger of putting consumers at risk.”

Closing Words

Russell Kelly

Director, Audit & Advisory



Mr Kelly concluded the day's events with a closing address which offered his reflections on the day's discussions. "Just to reflect on the day, we've heard an awful lot on regulation, an awful lot on VAT, but we've also heard an awful lot about the opportunity that comes despite these challenges"; he enthused. "Looking at the marketplace both globally and here on the Isle of Man, we still have a very strong sector, we still have a great position in the global industry and it's that first mover advantage that we had in the early 2000s that has really put us where we are today."

Mr Kelly continued: "We've learned from extensive experience that innovation is not a choice if we are to sustain our position and reputation. But we've also learned that this needs to be approached with a sense of responsibility to our regulators and legislators, and with a constant eye towards improving the experience of the customer both in terms of entertainment, experience and care. As we've heard today, if we in the industry are to head in the right direction and maintain a future in which we all have a place, we need to direct from the inside. We need to work together and share information, and particularly as a jurisdiction, we need to strive to continue to be at the front of the pack when people are looking for a home in which to live and invest."

Mr Kelly then took the opportunity to thank the Summit's sponsors – Continent 8 Technologies, PokerStars, Manx Telecom, Microgaming, Celton Manx, Isle of Man Post Office, ILS Fiduciaries, SMP Partners, Affinity, and W2 Global Data Solutions – as well as media partners iGaming Business and

Gambling Insider for their continued help and support in creating what has become a key event in the industry calendar.

"Also thank you to all the speakers"; Mr Kelly added, "you've shown tremendous commitment in enduring this tempestuous weather to join us on the Isle of Man today. Thank you to Ashgrove Marketing for your support in putting the Summit together, and thank you to the International Masters of Gaming Law for bringing such great speakers both yesterday afternoon and throughout today. You've provided a truly international selection of experts and we're very pleased to welcome you all to the Isle of Man. KPMG will be holding the seventh installment of the KPMG Summit series in Gibraltar on 23rd April 2015, followed by next year's Isle of Man edition the following November. We look forward to seeing you there."



KPMG LLC
Heritage Court
41 Athol Street
Douglas
Isle of Man
Tel: (01624) 681010
Fax: (01624) 681098

www.kpmg.co.im

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2014-2015 KPMG LLC, an Isle of Man limited liability company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.