



LEGAL OPINION

To: Rust Clash Entertainment Ltd
From: Mihhail Šerle, Senior Partner, Lawyer at Gofaizen & Sherle
Date: 07 May 2023

1. INTRODUCTION

- 1.1. This legal opinion (hereinafter – LO) is prepared and reviewed by lawyer Mihhail Šerle (employee of Gofaizen & Sherle OÜ, company incorporated in Estonia, registry code: 16295888), who has LL.M at Tallinn University (Republic of Estonia).
- 1.2. This LO is based on received documents, information and publicly available sources (incl. legislation) last reviewed on **07.05.2023**.
- 1.3. This LO is done on request of Rust Clash Entertainment Ltd, registry code (CY): HE 439425 (hereinafter – the Company).
- 1.4. Gofaizen & Sherle OÜ or its employees are not responsible for the correctness, completeness and accuracy of data contained in checked public websites, databases, information systems, registers, received documents and other information. Our liability for any damage for which we are responsible shall be limited to the amount of the fees paid by the Company to us for the preparation of this LO. We shall be liable for deliberate and grossly negligent conduct only. No third party can bring a claim against Gofaizen & Sherle OÜ or any of its partners or employees.
- 1.5. The Purpose of this LO is to clarify, how the Company's business activity shall be qualified in the meaning of Estonian legislation and does it have any additional requirements for conducting commercial activities as described below.

2. DEFINITIONS

- 2.1. **Contests** - game modes with specific rules which the User may participate.
- 2.2. **Company** means the company Rust Clash Entertainment Ltd.
- 2.3. **Gems** means the currency used to participate in Contests provided by the Company, as well as for the use of other Services.
- 2.4. **Service** - online games and marketplace services provided by the Company.
- 2.5. **User** - entity which intends to acquire the Services and to participate in Contests.
- 2.6. **VASP** means Virtual Assets Service Provider
- 2.7. **Virtual currency** means a value represented in the digital form, which is digitally transferable, preservable or tradable and which natural persons or legal persons accept as a payment instrument, but that is not the legal tender of any country or funds for the purposes of Article 4(25) of Directive (EU) 2015/2366 of the European Parliament and of the Council on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, pp 35–127) or



a payment transaction for the purposes of points (k) and (l) of Article 3 of the same Directive.

2.8. **Virtual currency service** according to the sections 9¹ and 10-10³ § 3 of MLTFPA means (non-exhaustive list):

2.8.1. **virtual currency wallet service** a service in the framework of which keys are generated for customers or customers' encrypted keys are kept, which can be used for the purpose of keeping, storing and transferring virtual currencies.

2.8.2. **virtual currency exchange service** means a service with the help of which a person exchanges a virtual currency against a fiat currency or a fiat currency against a virtual currency or a virtual currency against another virtual currency (virtual currency exchange service).

2.8.3. **virtual currency transfer service** means a service that allows a transaction to be conducted electronically at least in part through the virtual currency service provider in the name of the initiating party with the aim of moving the virtual currency to the recipient's virtual currency wallet or virtual currency account, regardless of whether the initiator and the recipient are one and the same party or whether the initiator and recipient are using the same service provider.

2.9. **Website** – the websites of the Company (clash.gg and Rustclash.com).

3. QUESTIONS

3.1. How shall the Company's free to play activity be qualified in accordance with Estonian legislation?

3.2. If the Company's activity in Estonia shall require any licenses or authorisations?

4. APPLICABLE LEGISLATION

4.1. Though, there is no obligation of mutual recognition of authorisations or licenses to provide gambling services granted by an authority in an EU country, according to the Company's request the LO shall be based on the Estonian legislation.

5. DESCRIPTION OF THE SERVICES PROVISION PROCESS

5.1. The User shall perform the following steps:

5.1.1. The User creates an account on the Website;

5.1.2. The User gets access to different functionality on the Website such as a personal balance which the User collects with free daily bonuses. The bonuses shall be credited with the relevant number of Gems to the User's balance.

5.1.3. In order to participate the Contests the User is obliged to fill the KYC form.

5.1.4. The User is allowed to participate different Contests and only the Gems received by the User may be used for the participation.



- 5.1.5. The result of User's participation in Contests shall be the Gems and/or digital items. In case the winning is a digital item, it shall be placed in the User's inventory on the Website and its price in Gems shall be credited to the balance.
- 5.1.5.1. The winnings do not depend on the User's skills and are decided using a random number generator. The more detailed description is provided in clauses 5.2-5.8 of this LO.
- 5.1.6. The User chooses the way to receive the prize achieved in the result of participation in Contests.
- 5.1.6.1. The User may withdraw the Gems from their wallet in virtual currency;
- 5.1.6.2. The User may transfer the digital item from their inventory on the Website to their [Steam account](#).
- 5.1.6.3. The User may purchase digital item on the Website with Gems and transfer it from their inventory on the Website to their Steam account.
- 5.1.7. The Company transfers to the User due prize in the way the last did choose.

Types of Contests¹

- 5.2. **Case opening:** User purchases the right to open a case for a set price and is thereby eligible to receive any of the items within the case. All of the prices and odds of winning any of the individual items within the case are displayed prior to entry into the Contest. The individual item that is won is automatically credited to the User's account balance.
- 5.3. **Case Battles:** This is a player vs player game mode, which involves between two and four Users. The User pre-purchases several cases and another User "joins" the contest by purchasing the same number of cases. All Users then open the cases simultaneously. The User that unboxes the more valuable items from their cases gets to keep their case and all the other User's cases.
- 5.4. **Upgrader:** This is a game mode where the User selects an item which they would like to obtain for an "upgrade"- this can be any of the virtual items offered by the Company. They also select how many Gems they are willing to risk, and, the percentage chance (i.e. the odds) they will have to win the desired upgrade item is displayed. The odds selected determines the cost to enter the game. If they do win the item, then the value of the item is credited to their balance or they can have the item sent directly to their Steam account.
- 5.5. **Jackpot:** this is a game where Users can put credits into a pot, and they receive a percentage of any winnings based on the proportionate value that they put into the pot. This is a player vs player game mode and the Company takes a small percentage of the pot.
- 5.6. **Roulette:** The Company offers a simple and standard roulette game mode, where a user has the option to wager on either black or red.

¹ The description is based on the legal opinion provided by Ifrah Law PLLC, dated 31.03.2023



- 5.7. **Mines:** Users can select the amount of credits they would like to wager and the amount of mines in a 5x5 grid. The user then selects tiles, and, if the tiles do not have a mine, then they receive a payout. If the user selects a tile that has a mine on it, they lose the game.
- 5.8. **Plinko:** User has an option to purchase Plinko balls. The balls are then dropped down a column, where the balls fall and bounce through a board. Each ball can land on multipliers that range between 0.2x and 500x, which determines the payout.

6. ANALYSIS OF GAMBLING LEGISLATION

- 6.1. In accordance with [chapter 1, §2 of Estonian Gambling Act](#) gambling is a game that meets all the following criteria:
1. it is a precondition for participating in a game that the player makes a bet;
 2. the player may win a prize as a result of the game;
 3. the outcome of the game is partly or fully determined by an activity based on chance or depends on the occurrence of a previously unknown event.
- 6.1.1. A bet within the meaning of Estonian Gambling Act is a sum of money paid for participating in a game or a monetarily appraisable obligation undertaken for obtaining the right to participate in gambling. A bet is not a fee for using means of distance communication if it is not received by a gambling operator and does not exceed the amount usually paid for the use of such means of distance communication.
- 6.1.1.1. As a definition for the bet in Estonian Gambling Act is set out in broad terms, for the better understanding we shall provide the extracts from Explanatory Report for the mentioned Act:
- 6.1.1.2. “a wager is also a financially valued obligation undertaken in exchange for the right to participate in a game of chance, such as an obligation to purchase a service or good, where the wager forms part of the price of the good or service, but the contribution to that price need not be clearly distinguishable.”.
- 6.1.1.3. “The contribution as payment for participation in gambling must be made knowingly. For example, it must be clear to the player, before deciding to acquire a good or to use a service, that it is precisely that good or service that will provide the opportunity to participate in gambling.”.
- 6.1.1.4. “The wager must be received directly or indirectly by the gaming operator.”.
- 6.1.2. A prize within the meaning of Estonian Gambling Act is the right of a player, obtained as a result of gambling, to acquire money or another benefit with a monetarily appraisable value.
- 6.1.2.1. As a definition for the prize in Estonian Gambling Act is set out in broad terms, for the better understanding we shall provide the extracts from Explanatory Report for the mentioned Act;



- 6.1.2.2. "Paragraph 3 defines the concept of gambling winnings. A prize is the right of a gambler to acquire money or another object of monetary value as a result of gambling. The wording is based on the definitions in the General Civil Code Act. Objects are all things, rights and other benefits that can be the subject of a right, so the concept of a prize includes, for example, the acquired right to participate in a new game, to continue playing, to obtain a discount on the acquisition of another service or good, or to receive gifts or other benefits."
- 6.2. In accordance with [chapter 1, §3 of Estonian Gambling Act](#) the types of gambling are:
- 6.2.1. games of chance – games, the outcome of which depends on chance and which are played by means of a mechanical or electronic device or by mediation of the organiser of the game;
- 6.2.2. lotteries – games, the outcome of which depends on chance, whereas the prize pool constitutes up to 80 percent of the selling price of the circulation of the lottery tickets, and the outcome of the game is not determined more than three times per twenty-four hours or it is determined by opening the ticket field on the lottery ticket;
- 6.2.3. totos – games, the outcome of which depends on whether an event bet on by the player occurs or does not occur or how it occurs, whereas the event bet on by the player is beyond the control of the gambling operator, the winning of a prize depends on whether the bet turns out to be true or not and the amount of the prize depends on the amount of the bet and the winning coefficient determined before the making of the bet (betting) or percentage of the total amount of the bets as determined by the gambling operator, the number of people who bet correctly and the amount of their bets (totaliser);
- 6.2.4. games of skill – games, the outcome of which depends predominantly on the physical skills or abilities or knowledge of the player, and which are played by means of a mechanical or electronic device.

Company's Services

- 6.3. In accordance with the Service provision process described in chapter 5 of this LO, the User is obliged to pay Gems to participate in the Contests. Though, the Gems have a set value of 0.68 USD for 1 Gem (current as of 29.04.2023) and the User may withdraw Gems to their virtual currency wallet with the mentioned exchange rate, should be considered that the User obtains the Gems for free with daily bonuses. Therefore, the described precondition for participation in Contests does not match the first criteria for the gambling definition in Estonian Gambling Act: the User are not making any contribution in money or by means similar to money.
- 6.3.1. In order to understand how the Estonian authorities define the concept of "bet", we provide the extract from the Tallinn Administrative Court decision on the case number 3-11-2220.



- 6.3.2. „The defendant has analysed the rules of the game of OÜ Mäng, from which it follows that, in order to play for free, a player must purchase a billiards ticket. The defendant has therefore reasonably concluded, having regard to the rules of the game of Spiel OÜ, that it is necessary to buy a billiard ticket, that is to say, to bet, in order to play. Since for the player it is a bet, if it is obligatory to acquire a service/good in order to participate in the game, there was no need to analyse in a prescriptive manner whether the bet (acquired goods/services) corresponded to the market definition of the use of the pool game.“
- 6.3.3. The mentioned Tallinn Administrative Court decision confirms the conclusion that the precondition for participation in Contests shall not be considered as a bet because the User obtains Gems for free (without making monetary or similar contribution).
- 6.4. In case when the winning in the result of participation in Contests shall be Gems, they shall be credited to User's balance. In case when the winning is digital item it shall be added to the User's inventory, and the number of Gems relevant to the price of digital item shall be credited to the User's balance. As Gems have set value, therefore, the winning shall be considered as a prize in meaning of Estonian Gambling Act and the Services shall match the second criteria for the gambling definition in Estonian Gambling Act.
- 6.5. Following the description of Contests provided in clauses 0 - 5.8 of this LO, the Contests do not require skills from the User to win the certain prize but fully depend on the random number generator. This condition matches the definition of games of chance described in the clause 6.2.1 of this LO and therefore the Services also match the third criteria for the gambling definition in Estonian Gambling Act.
- 6.5.1. In order to understand how the Estonian authorities define the concept of "gambling", we provide the extract from the Tallinn Administrative Court decision on the case number 3-11-2220.
- 6.5.2. “Thus, one of the essential characteristics of gambling was that the gambling participant risks losing the stake he has placed for the right to participate in the game. The current HasMS² does not include in the definition of gambling as a characteristic feature of gambling the feature that the random action to determine the winner results in a reduction of the stake holder's assets. Such a conclusion cannot be drawn from the legal definition of a bet in § 2(2) of the HasMS, cited above. It follows from the foregoing that the appellant's reliance on the interpretation of the definition of 'contribution' given by the Criminal Chamber of the Supreme Court in criminal case 3-1-1-7-0 6 until 31.12.2008 pursuant to Paragraph 3(1) of the HasMS is erroneous, according to which the characteristics

² Hasartmänguseadus - Gambling Act in Estonian



of a contribution are met only by a pecuniary performance the making of which entails the risk that random action taken to determine a win result in a reduction in the contributor's assets. On the basis of the legal definition of 'contribution' in the current version of the HasMS, it is also incorrect for the appellant to argue that there is no basis for the view that a transaction is a contribution in itself, even if a person obtains goods or services of equivalent value and his subjective decision to carry out the transaction was influenced by the desire to acquire not only the goods or services but also the right to participate in the prize draw.”.

6.5.3. The mentioned Tallinn Administrative Court decision confirms the conclusion made in clause 6.5.

6.6. To conclude, in the meaning of Estonian Gambling Act the Services shall not be considered as gambling.

7. ANALYSIS OF THE VASP RELATED LEGISLATION

Virtual currency exchange service

7.1. Activities mentioned in clause 5.1.2 shall not be considered as Virtual currency exchange service.

7.1.1. The Company does not allow Users to freely convert Virtual currency against another Virtual currency and/or fiat currency and vice versa. The User may exchange for Virtual currency only the Gems acquired as a result of participation in Contests.

Virtual currency wallet service

7.2. Activities mentioned in clause 5.1.2 of shall not be considered as Virtual currency wallet service.

7.2.1. The Company uses only their Virtual currency wallet and does not provide related services to the Users.

Virtual currency transfer service

7.3. The Services shall not be considered as Virtual currency transfer service.

7.3.1. When the User intends to withdraw their Gems as the Virtual currency the Company transfers the corresponding amount of Virtual currency from their wallet to the one specified by the Client. This procedure shall be performed on the name of the Company, thus shall not be considered as a Virtual currency transfer service.

7.4. To conclude, in the meaning of MLTFPA the Company shall not be qualified as VASP.

8. CONCLUSION

8.1. To summarize the analysis, we shall provide the answers for the Company's questions.



8.2. How shall the Company's free to play activity be qualified in accordance with EU legislation?

8.2.1. The Company's Services shall not be defined as gambling in accordance with Estonian as the User participates the Contests for free, without obligation to pay contribution. Although, this LO was composed within the scope of Estonian legislation only, the brief review of the other EU countries acts and cases indicates that most of them shall also not qualify Services as gambling. Regard to be notice, though the loot boxes related regulation is still in the development, some countries such as Belgium, Finland and Netherlands already qualify loot boxes as illegal gambling, and the Company should be aware of such restrictions while providing Services in these countries.

8.3. If the Company's activity in Estonia shall require any licenses or authorisations?

8.3.1. At the current state, for providing Users with free to play Contests in Estonia the Company is not obliged to get the authorization in accordance with the Gambling Act. Though virtual currency is involved in the Company's activity, it's not required for the Company to have VASP authorization in order to provide Services in the Estonia.

With respect
Mihhail Šerle