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Late-banking of Gaming Machine Profits

Do you have a clear understanding of your legal obligations around gaming machine profits?

Venue managers, societies and clubs who operate class 4 gaming have strict legal obligations to fulfil around the banking of gaming machine profits (GMP).

These obligations have been put in place to ensure that GMP is not misused and that all profits from class 4 gaming are promptly received by societies. This enables societies to ensure funding is returned to the community via grants.

We have updated the Department’s policy approach for regulating banking of gaming machine proceeds. We also provide information on the banking of class 4 gambling profits to assist societies, clubs and venue managers to meet their legal responsibilities in relation to GMP.

This is general information only and is not a substitute for independent legal advice.

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What is the law?

[Section 104 of the Gambling Act 2003](#) (“the Act”), and the [Gambling \(Class 4 Banking\) Regulations 2006](#) (the Regulations) set out the legal obligations for venue managers, clubs and societies.

These laws apply to late banking across all operators within the class 4 sector, including clubs. A “late banking” occurs if the venue manager fails to bank GMP into the society’s dedicated bank account within the five days specified by the Regulations.

For clubs, a “late banking” is when there is a failure to bank the correct amount of GMP into the club’s dedicated gaming account within the five-day period.

Venue managers’ obligations

- Venue managers must bank all gaming machine profits (GMP) from class 4 gambling within 5 working days, beginning on the day that the profits are, or ought to be, calculated. GMP is defined in Section 104 of the Act as the turnover of class 4 gambling minus the total prizes paid. ([Regulation 4 of the Regulations](#)).
- These funds must be banked into a dedicated account at a registered bank in the name of the holder of the class 4 operators’ licence (the society). ([Section 104 of the Act](#)).
- Venue Managers must bank GMP as determined by the Electronic Monitoring System as shown on the Weekly Venue Activity Report. The GMP for the previous weekly period must be calculated every Monday. ([Game rules 25 and 26 of the Gambling Act \(class 4\) Game Rules 2016](#)).
- A “late banking” occurs if the venue manager fails to bank GMP into the society’s dedicated bank account within the five days specified by the Regulations.
- A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$5,000, or to an infringement offence notice of \$2,500 for each offence. ([Section 104 of the Act](#))

Societies’ obligations

- The society must notify the Department of Internal Affairs (the Department) of every incident of late banking as soon as possible after becoming aware of it. ([Section 104 of the Act](#))
- These notifications must be sent to the Department’s email address: Lateb@dia.govt.nz
- The society must then take steps to disable all gaming machines at the class 4 venue and advise the Secretary of this (or the society may request the Department do this). ([Section 104 of the Act](#))
- The society must not reconnect the gaming machines at the class 4 venue until the GMP has been banked. ([Section 104 of the Act](#))

Information to be supplied to the Department for each notification of late banking

Societies must provide the following information, as relevant, for each incident of late-banking:

- Venue name
- Name of venue manager
- GMP calculated for week ending (date)
- Date GMP due to be banked (date)

- Total amount due (GMP calculated)
- Amount paid by due date (if any)
- Overdue amount paid subsequent to due date (amount and date)
- Amount outstanding (if any)
- Machines turned off: Y/N (if not, why not?)
- Venue manager's reasons for banking late.

Approach to notified incidents of late banking

Most societies meet their obligations to notify the Department of incidents of late banking immediately. This section sets out the Department's approach to regulating **notified late banking**. Our approach to **non-notified late banking** is set out later.

The Department takes a risk-based approach to incidents of notified late banking, where the risk is the likelihood of a loss or misuse of GMP. This means that the Department will assess each incident of notified late banking against the likelihood of loss or misuse of GMP. The Department's response will be proportionate to the perceived risk to GMP.

When notified of a late banking, the Department will:

- assess each incident of late banking as either "high-risk" or "low-risk"
 - this includes applying the "clean slate" policy to any repeat offence (see below for more)
- investigate all late bankings assessed as "high risk"
- apply the "extenuating circumstance" policy
 - this includes determining whether there has been a bank error
- apply the appropriate sanction – see **Table 1: Sanctions** below.

Assessing late-banking as either "low risk" or "high risk"

The Department will make an initial assessment of a late banking as either "low risk" or "high risk" where the risk concerns a loss or misuse of GMP.

The late banking will be assessed as "high risk" if:

- it is a repeat offence within the last six months. In other words, if it is less than six calendar months since the last late-banking incident occurred (see **clean slate approach** below), it will be assessed as high risk.
- any other risk factors associated with the loss or misuse of GMP are present, as identified by the Department or the society.

“Clean slate” approach

The Department applies a “clean slate” approach to incidents of late banking. This means that if there is at least a 6-calendar month period between incidents of late banking by a venue manager, the sanction process restarts from the beginning. In other words, the Department will treat a second incident of late banking as a first offence, providing it occurred at least six calendar months after the first incident. The sanction process is set out in **Table 1: Sanctions** below, along with several examples.

The “clean slate” approach acknowledges the banking compliance of venues that have had no incidents of late banking within a 6-month period.

Investigating the reasons for a late-banking

All late bankings assessed as “high risk” will be investigated, so that the Department can determine the reasons for the late banking. The purpose of the investigation is to find out if the late banking was due to any action taken or inaction by the venue manager, or alternatively, if it was due to circumstances beyond the control of the venue manager.

Are there any extenuating circumstances?

The Department accepts that occasionally, a late banking occurs which is due to circumstances beyond the venue manager’s control. An investigation by Departmental staff will always be required to assess, on a case-by-case basis, whether there are any extenuating circumstances.

The Department will need to investigate all situations where:

- the late banking is a repeat offence within the last six months
- any other risk factors associated with the loss or misuse of GMP are present
- where there has been a loss (full or partial), or delay in banking GMP, such as in a robbery or fire – please refer to [exceptional circumstances policy](#) .

Extenuating circumstances include:

- Accident or misadventure involving the venue manager
- A serious family event such as accident, sudden illness or bereavement
- A bank error (see section on bank error below).

If the Department is satisfied that an incident of late banking was due to extenuating circumstances, then no sanction will be applied. There will be no warning issued and no further action will be taken. The incident will not be counted as an offence for the purposes of applying sanctions, as set out in **Table 1: Sanctions** below.

Genuine bank error will be treated as extenuating circumstances

When a society notifies the Department of a venue late banking due to bank error, the society should attach all relevant documentation and correspondence to and from the bank.

It will then be necessary for the Department to open an investigation to review these documents and correspondence, so that it can form a view as to either:

- there is sufficient information to conclude it is a case of genuine bank error, or
- more information or clarification is needed from the bank or other parties.

If the Department can be satisfied that the late banking is due to a genuine bank error, this will be treated as “extenuating circumstances” and no sanction will be applied. There will be no warning issued and no further action will be taken. The incident will not be counted for the purposes of applying sanctions, as set out in **Table 1: Sanctions** below.

Sanctions to be applied

The escalating sanctions set out in Table 1 below are designed to ensure that the Department’s response reflects the increasing seriousness of repeated late-banking offences. **However, the Department reserves the right to start at any step in the process depending on the circumstances surrounding the late-banking incident.**

At all times, the relevant date is the date that banking of GMP was due.

Table 1: Sanctions

Step	Where 1st incident is assessed as “low risk”	Sanction*
1	1st incident of late banking of GMP assessed as “Low risk” (not a repeat offence and no other risk factors present).	No further action. Department sends email.
2	2nd incident of late banking within six months of the previous “low risk” incident. Treated as a “high risk” incident (equates to Step 1 of table below).	First warning*
3	3rd incident of late banking within six months of the second incident.	Second warning*
4	4th incident of late banking within six months of 3rd incident.	Infringement notice*
Step	Where 1st incident as “high risk”	Sanction
1	1st incident of late banking assessed as “high risk” (repeat offence within six months and/or any other risk factors associated with the loss or misuse of GMP are present).	First warning *
2	2nd incident of late banking within six months of the 1st incident.	Second Warning*
3	3rd incident of late banking within six months of the 2nd incident	Infringement notice*
4	4th incident of late banking within six months of the 3rd incident of late banking.	2 nd Infringement notice or proposal to cancel the venue licence* (due to the unsuitability of the venue manager.)

* Unless Department is satisfied that late banking is due to extenuating circumstances (see explanation above) after investigating.

Venue managers at multi-venues

An individual venue manager may also be designated the venue manager at one or more other venues. The Department's escalating sanctions approach to late banking incident applies to the venue manager's compliance profile and responsibilities at all venues that a venue manager is responsible for. In other words, the sanctions approach (including the clean slate approach), applies to the venue manager, not the venue.

For example, if two or more venues for which a venue manager is responsible incur incidents of late banking within six months of each other, the incidents will be assessed as repeat incidents for that venue manager for the purpose of applying the appropriate level of sanction.

If the Department is considering a proposal to suspend or cancel a venue licence due to late banking at a venue, the venue manager's suitability for all other venues where he/she is also the designated venue manager will also be affected.

Approach to non-notified late banking

The Department is aware that sometimes societies fail to notify the Department of late banking by their venues. Non-notified or unreported late banking also poses a risk of loss or misuse of GMP. The Department will institute comprehensive auditing of societies' banking practices to detect non-reported late banking.

FAQ

What will happen the first time a venue manager late-banks?

The Department's response depends on whether the late banking is assessed as either high risk or low risk incident. A low risk late banking is where it is the first offence by that venue manager for a period of at least six months, and there are no other risk factors associated with the loss or misuse of GMP present.

If the incident is assessed as low risk, the venue manager will receive an email which explains the law and the consequences for any further incidents of late banking within six months. No further action will be taken.

If the incident is assessed as high risk, it will be investigated, and the sanctions table at **Table 1: Sanctions table** for high risk late banking will be applied.

What happens the second time a venue manager late-banks?

The Department's response depends on how long it is since the last offence.

If the late banking has occurred within six months of a previous late-banking by that venue manager, this will be assessed as high-risk late banking. The Department will open an investigation to find the reasons why that late banking occurred. If the late banking is caused by circumstances which were outside the control of the venue manager, the extenuating circumstances policy will be applied, and no further action will be taken. If not, a warning will be issued.

If the second late banking occurs more than six months after a previous late banking, and no other risk factors associated with the loss or misuse of GMP are present, it will be assessed as low risk and be treated as per **Table 1: Sanctions table** for low risk late banking, as above.

What are the consequences for any further late banking?

When investigating late banking, the Department will consider whether any incident of late banking occurred as a result of events that were beyond the control of the venue manager.

Repeated late-banking offences may result in the Department issuing infringement notices and considering a proposal to cancel the venue licence.

When the venue licence is being renewed, continued late-banking incidents or offences by the Venue Manager will be one of the factors taken into account when the Department is considering the suitability of the Venue Operator and Venue Manager to continue to operate gaming machines.

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