

BDO

BDO MALTA

REMOTE GAMING



INTRODUCTION TO THE REMOTE GAMING INDUSTRY IN MALTA

The Remote Gaming Industry is one of the most dynamic and the fastest-growing sectors in Malta. In 2004, Malta emerged as the undisputed front-runner in the regulation and facilitation of the online gaming industry when it was the first EU Member State to establish a stable and comprehensive regulatory framework on remote gaming, enabling any operator licensed by the Authority to offer its services to the European market and making Malta the jurisdiction of choice for remote gaming operators.

With the new regulatory framework promulgated on 1st August 2018, Malta aims to continue building on its success in the online gaming industry by:

- ▶ simplifying the licensing process;
- ▶ enhancing consumer protection standards and responsible gaming measures whilst promoting a risk-based approach towards regulation;
- ▶ introducing innovative concepts such as issuing of corporate licences by the Authority; and
- ▶ adopting a forward-looking approach by catering for regulation in connection with virtual currencies and distributed ledger technology in the gaming arena.

The updated regulation continued to maintain the benefits established in the previous legislation such as attractive gaming taxes and beneficial effective corporate tax rates on gaming operations.

By anticipating the industry's growing and changing needs as well as providing the required legislative framework to support such development, Malta can be said to be the ultimate jurisdiction for the licensing and regulations of gaming companies and, consequently, one of the global leaders in this sector.

The concept of establishing an efficient and effective gaming entity in Malta is attractive for an abundant of reasons that would confidently include the facts that Malta is an EU member state, has adopted the Euro as its currency, is geographically positioned at the centre of the Mediterranean Sea and is represented by a diverse, highly-skilled and multilingual workforce driven by a professional work ethic.

BDO Malta has, for several years, acted as consultants, tax advisors and auditors to numerous Maltese and international gaming and betting companies, both private and publicly quoted. We also have extensive experience in advising such businesses during the application process required to obtain a remote gaming licence and accordingly assist with all of the information and documentation required by the Malta Gaming Authority (MGA).

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LICENCE APPLICATION

STAGE ONE SETTING UP OF LIMITED LIABILITY COMPANY

The setting up of a tax efficient vehicle for carrying out gaming activities from Malta. Maltese companies used for remote gaming must clearly state in their Memorandum of Association that their main object is the conduct of remote gaming operations. By virtue of the new legislative framework it is now possible for an applicant to apply for a licence not only for itself but also for its corporate group.

BDO Malta is able to provide all of the services required by the gaming entity in order to fulfil the statutory obligations under Maltese company law. Such service extends to the drafting and completion of the company's business plan and memorandum and articles of association, liaising with the Malta Gaming Authority and/or Malta Business Registry, opening and maintenance of bank account/s, provision of directorship and company secretary services, accountancy services, VAT registration (where required) and tax compliance services.

STAGE TWO LICENCE APPLICATION

The application process is divided into five stages. These being:

i) Fit and proper and business plan review:

- ▶ assessing all information related to persons involved in finance and management and on the business viability of the operation;
- ▶ probity investigations with other national and international regulatory bodies and law enforcement agencies;

ii) Business Planning:

- ▶ in-depth financial analysis of the applicant's business plan;
- ▶ the applicant's business plan is required to have a detailed forecast of the operation, inclusive of marketing and distribution strategies, an HR plan and growth targets.

iii) Operational and Statutory Requirements

- ▶ The applicant is examined on the instruments required to conduct the business.
- ▶ This process includes examining incorporation documents, the games, the business processes related to conducting the games, the rules, terms, conditions, policies, procedures and technical documentation of the gaming and control system.

iv) System Audit

Once all three previous stages are successfully completed, the MGA will inform the applicant that the application was successful and will invite the applicant to implement the operation onto a technical environment in preparation to go live. The applicant will be allowed 60 days to complete this technical roll-out, after which the application will be considered as cancelled and subject to re-application. At any stage within those 60 days, the applicant may appoint a Service Provider approved by the MGA to carry out a system audit. The systems audit will verify the live environment against the proposed application.

At this stage the MGA expects minimal deviation from the application. If there are significant changes to the gaming system, the applicant will have to re-apply by filing a new application.

On successful completion of the certification process, the Authority issues a ten-year licence.

COMPLIANCE AUDIT

After going live, a Licensee must undergo several compliance audits of its operations performed by an approved Service Provider appointed by the Licensee. Such audits need to be completed by the Service Provider within 90 days from the MGA's notice.

The MGA will require the audit to adhere to the following schedule:

1. After the first year of operation after being licensed by the MGA;
2. Any other audit depending on the risk and financial stability of the Licensee and the compliance plan set by the MGA.

Failure of a compliance audit could lead to suspension or termination of a licence.



TYPES OF LICENCES

(a) Gaming Service Licence:

Gaming service licence is a business-to-consumer licence to offer or carry out a gaming service. The following services shall each constitute a gaming service:

- ▶ offering, provision or operation of a gaming service; and
- ▶ hosting by a person in his premises accessible to the public, the operation or making available for use a gaming device or gaming system.

(b) Critical Gaming Supply Licence:

A critical gaming supply licence is a business-to-business licence to provide or carry out a critical gaming supply. The following services shall each constitute a critical gaming supply:

- ▶ Type B licence to provide or carry out supply and management of material elements of a game; and
- ▶ to provide or carry out supply and management of software, to generate, capture, control or process essential regulatory record and/or supply and management of the control system itself on which the software resides.

TYPES OF GAMES

Gaming service or critical gaming supply applicants are required to identify the types of games that will be offered from the following:

Type 1: Games of chance played against the house, the outcome of which is determined by a random generator, and shall include casino type games, including roulette, blackjack, baccarat, poker played against the house, lotteries, secondary lotteries and virtual sports games.

Type 2: Games of chance played against the house, the outcome of which is not generated randomly, but is determined by the result of an event or competition extraneous to a game of chance, and whereby the operator manages its own risk by managing the odds offered to the player.

Type 3: Games of chance not played against the house and wherein the operator is not exposed to gaming risk however generates revenue by taking a commission or other charge based on the stakes or the prize and shall include player vs. player games such as poker, bingo, betting exchange and other commission-based games.

Type 4: Controlled Skill Games. The considerations which the Authority shall take into consideration in determining whether a game is a skill game or a controlled skill is contingent on a number of factors.

In the case of a game displaying elements which may fall under more than one of the types referred to above, the MGA shall have full discretion in categorising the game in the type it believes closest reflects the nature of the game.

ADDITIONAL GAMES

Operators that are already in possession of a Gaming Service Licence or Critical Gaming Supply Licence and wish to offer an additional type of game do not need to go through the full licence procedure. Instead, they would be required to apply with the MGA for the necessary approval.

RECOGNITION NOTICE

The Recognition Notice is a notice issued by the Authority whereby an authorisation issued by another Member State of the EU or the EEA, or a State which is deemed by the Authority to offer safeguards largely equivalent to those offered by Maltese law, is recognised as having the same effect as an authorisation issued by the Authority for the purpose of providing a gaming service or gaming supply in or from Malta. The notification identifies and accepts that the operator has its compliance dues in line with the Maltese jurisdiction.

BDO Malta has assisted many clients with obtaining a recognition notice. Our experience in this field enables us to assist the licensee throughout the entire process in order to achieve such recognition status in Malta.



IMPORTANT CONSIDERATIONS

SHARE CAPITAL

The Authority requires a company applying for a licence to have the following minimum issued paid up share capital when registering the company with the competent authority:

Gaming Service Licence

Type 1 - Minimum of one hundred thousand Euro (€100,000)

Type 2 - Minimum of one hundred thousand Euro (€100,000)

Type 3 - Minimum of forty thousand Euro (€40,000)

Type 4 - Minimum of forty thousand Euro (€40,000)

Critical Gaming Supply Licence

A minimum of forty thousand Euro (€40,000).

Companies with multiple type approvals are required to meet the above share capital requirements cumulatively up to a minimum capping of two hundred and forty thousand Euro (€240,000).

REMOTE GAMING TAXATION & COMPLIANCE CONTRIBUTION

All gaming services are required to pay a gaming tax of 5% of their Gross Gaming Revenue generated where gaming services are offered to any player who is physically present in Malta at the time when the gaming service is provided. Where the gaming service is offered solely be means of distance communications, determination of taxability is whether the player is established, has his permanent address and/or usually resides in Malta.

Where the gaming service is provided by a corporate group holding a licence in terms of Gaming Authorisations Regulations, the entire corporate group shall be subject to the tax.

Apart from the fixed licence fee, operators of B2C businesses are also required to adhere to a compliance contribution based on game type and annual revenue, whilst B2B operators will be exempt from gaming tax and only required to pay a fixed licence fee, which is dependent on the revenue generated.

DURATION OF LICENSING PROCESS

If all the necessary documentation and information is provided to the Authority, the process leading to the provisional licence takes approximately twelve (12) to sixteen (16) weeks.

DECLARATION OF GO LIVE

Once the licence has been issued by the MGA, the applicant will be invited to implement onto a technical environment and will have 60 days' time to inform the Authority when the Licensee will be going live. Failure to submit the Form within the mentioned sixty (60) days shall result in the Authority considering the Go Live date to be the sixtieth (60th) day subsequent to the issuance of the Licence and the according taxes will be applied.

START-UPS

Operators which are approved as "Start-ups" will benefit from a moratorium period of 12 months in which they are exempt from paying compliance contribution and, thus, will only be required to pay the fixed licence fee for the first year.

LICENCE FEE PAYABLE

Gaming Service Licence

Those providing gaming service under Type 1, Type 2 and Type 3 are subject to an annual fee of €25,000. Those providing solely Type 4 gaming services have a fee of €10,000. Gaming service licence holders must also pay a compliance contribution which differs depending on the type of licence.

Critical Gaming Supply Licence

Those providing critical supplies are simply required to pay a licence fee which again varies, depending on the services that are provided. Providers of games (supply & manage material elements of the game) are subject to an annual fee of between twenty-five thousand Euro (€25,000) and thirty-five thousand Euro (€35,000) dependent on the revenue generated during the year. Those providing back end services or a data control system (i.e. supply & management of software) are subject to annual fees of between three thousand Euro (€3,000) and (€5,000), dependent on the annual revenue generated during the year.

Where the gaming service is provided by a corporate group holding a licence in terms of Gaming Authorisations Regulations, the entire corporate group shall be subject to the annual licence fee.



REMOTE GAMING KEY FUNCTIONS

Key functions are important functions within a licensed activity, requiring approval, for direct scrutiny and targeted supervisory controls, thereby raising the bar for persons of responsibility within a gaming operation. The key individuals are required to be of good repute and must demonstrate to the Authority that their intention is to act in an honest and trustworthy manner. They also need to demonstrate to the satisfaction of the Authority that they meet the qualification and/or relevant experience criteria and thus show that they have obtained a number of Continuous Professional Development (CPD) hours in order to fulfil the Minimum Experience and/or Qualifications requirements.

BDO Malta offers several qualified individuals approved by the MGA who can provide substance to your operations by acting as a key individual. Our key individuals are readily available and committed to work with you to have full knowledge of your practices, systems and procedures in order to be able to best fulfill the key role. By studying your operations, we are also able to suggest the right individuals in your company to occupy the applicable key functions.

Every licenced entity shall ensure that the following roles and responsibilities are performed in connection with the licenced activity.

B2B licensee, the key functions shall be the following:

- a. The chief executive role, or equivalent;
- b. The management of the day-to-day gaming operations of the licensee, including but not limited to, the management of the financial obligations of the licensee, such as the payment of tax and fees due to the Authority, and the management of the risk strategies for the operation of the licensee;
- c. Compliance with the obligations of the licensee as may be applicable by virtue of the Act and any binding instrument issued thereunder, including but not limited to obligations relating to sports integrity where these are applicable;
- d. The legal affairs of the licensee, including but not limited to, matters relating to contractual arrangements and dispute resolution;
- e. The adherence to applicable legislation relating to data protection and privacy, where applicable;
- f. The technological affairs of the licensee, including but not limited to, the management of the back-end and control system holding essential regulatory data, and the network and information security of the licensee; and
- g. Internal audit.

B2C licensee that provides remote gaming services shall each constitute a key function:

- a. The chief executive role, or equivalent;
- b. The management of the day-to-day gaming operations of the licensee, including but not limited to, the management of the financial obligations of the licensee, such as the payment of tax and fees due to the Authority, the processes of making payments to, and receiving payments from, players, the management of the risk strategies for the operation of the licensee, and the prevention of fraud to the detriment of the licensee;
- c. Compliance with the obligations of the licensee as may be applicable by virtue of the Act and any binding instrument issued thereunder, including but not limited to, obligations relating to responsible gaming, obligations relating to player support, obligations relating to the rules relating to marketing, advertising and promotional schemes, and where applicable, obligations relating to sports integrity;
- d. The legal affairs of the licensee, including but not limited to matters relating to contractual arrangements and dispute resolution;
- e. The adherence to applicable legislation relating to data protection and privacy;
- f. The prevention of money laundering and the financing of terrorism;
- g. The technological affairs of the licensee, including but not limited to the management of the back-end and control system holding essential regulatory data, and the network and information security of the licensee; and
- h. Internal audit.



RISK ADVISORY

Risk Assessments

An operator's senior management should be fully equipped to easily and efficiently compile accurate reports reflecting their organisation's risk profile, which may be presented for internal and external consumption.

The Business Risk Assessment (BRA) is a regulatory obligation imposed on gaming operators and which has been drawing increased scrutiny by supervisory authorities. However, the BRA should not only be regarded by an operator as a regulatory reporting requirement. Essentially, the BRA enables organizations to develop a thorough understanding of the risks which may impact their customer base, products, delivery channels and services offered. Ultimately, the BRA is a tool that enables organizations identify their enterprise risk profile. BRAs are required to be reviewed annually and submitted to the FIAU as part of the yearly Risk Evaluation Questionnaires.

Gaming operators are required to have documented Customer Risk Assessments (CRAs) which are continually updated throughout the duration of business relationships with players and following termination of the business relationship. CRAs should include a thorough assessment of the risks attached to the player, the jurisdictions involved in the business relationship, gaming products being serviced, and the manner in which transactions are carried out.

AML/CFT Compliance

The MGA requires prospective licensees to submit, as part of their application, well-developed AML/CFT policies and procedures which reflect the operator's commitment in mitigating its ML/FT risks, and which are adopted by its employees and enforced by senior management. Furthermore, prospective licensees are required to nominate senior officers, holding the relevant expertise, to hold the Key Functions specifically focused on managing the prevention of money laundering and the financing of terrorism and the risk management strategies of the licensee.

Evidently, the Authority, at application stage, wants to ensure that the prospective licensee has sufficient resources in place, including an established risk management and AML/CFT framework, to be continually and proportionately developed during the operator's lifetime.

Internal Audit

In light of the amendments made to the Malta Gaming Act (Chapter 583 of the Laws of Malta) in 2018, all MGA-licensed operators and prospective licensees are to nominate an internal auditor as one of their Key Functions. Such a Key Function may be fully or partially outsourced to a specialised and independent internal audit practitioner, incorporating the full spectrum of duties and responsibilities from a fully autonomous position within the structure.

Current legislature mandates that internal audit cycles are to be conducted on an annual basis (following the establishment of an entity-wide risk assessment and internal audit plan) in a bid to bolster the risk-mitigation practices currently expected within the industry.

Whistleblowing

Operators employing 50+ workers are obliged to have in place internal reporting channels for the protection of whistleblowers within the organization. The EU Directive 2019/1937 is directly enforceable in EU Member States and has been fully transposed in Malta's Protection of the Whistleblower Act.

This effectively means that such operators should develop secure internal reporting channels, including a dedicated and independent whistleblower reporting officer or unit, to receive and follow up on reports concerning internal breaches and corrupt practices. Such reports may concern financial services, products and markets, prevention of ML/FT, consumer protection, privacy and personal data and security of network and information systems.

Establishing the required user-friendly and secure reporting channels requires proper training and the development of written as well as practical whistleblowing policies and procedures, easily accessible and understandable by all workers, suppliers and business partners.

BDO can help!

BDO Malta can assist prospective licensees and authorised operators with:

- ▶ Compliance support to the MLRO and Risk Officer;
- ▶ Development of gaming-specific AML/CFT policies and procedures;
- ▶ Development of a whistleblower protection framework;
- ▶ Development of a tailored risk management framework;
- ▶ Provision and update of an operator's business risk assessment (BRA);
- ▶ Provision and update of an operator's customer risk assessment (CRA);
- ▶ Provision and update of an operator's jurisdiction risk assessment (JRA);
- ▶ Provision of gaming-specific, risk and AML/CFT training;
- ▶ Provision of whistleblower protection training;
- ▶ Provision of AML Health Check;
- ▶ Outsourcing and Co-sourcing of the internal audit function.

TECHNOLOGY ADVISORY

Information Security

The MGA requires that hosting locations for technical infrastructure of licensees/applicants should conform to a high level of information security and should be subject to an Information Security Management System (ISMS) throughout the term of a gaming licence. The information security level the MGA seeks is that of ISO/IEC 27001:2013 and CSPs (Cloud Service Provider) are to be guided by ISO/IEC 27002:2013 Information Technology - Security techniques - Code of Practice, for Information Security Management in implementing the Information Security Management System.

Apart from the ISO standards mentioned above, and specifically with respect to credit card or other payment data storage or processing of information, the Authority shall seek PCI DSS Level 1 certification. The PCI Security Standards Council is considered by the MGA to offer robust and comprehensive enough standards and supporting materials to enhance payment card data security. Hosting locations that are certified as per the above standards will facilitate the processing of an application, provided that applicants may be required to provide proof of such certification.

Hosting of critical components on cloud systems

Any decision by operators to utilise a cloud environment for the hosting of all or part of their critical components should follow a risk assessment within the framework and process of risk management described in the ISO 31000:2009. The risk assessment should include the core elements of the risk management process as defined in this standard and should address Appendix A of the MGA's Technical Infrastructure hosting Gaming and Control Systems for Remote Gaming Guidelines.

The basis of the MGA's review consists of the operator's/ applicants risk assessment, primarily with respect to Appendix A, and how these risks will be managed and mitigated. The risks listed in Appendix A have been identified to ensure the attainment of the high-level principles principles listed in the Guidelines. These risks focus mainly on the adoption and use of cloud environments and highlight the fact that operators might face additional risks. This list should therefore not be considered an exhaustive



list of risks and operators should carry out the assessment based on their operational set-up.

The MGA considers that further conditions should apply due to the additional risks that a cloud environment may pose. The Authority will be satisfied that the proposed architecture meets the principles contained in these guidelines when the critical components are hosted on a private cloud environment which is not shared with other tenants on the same cloud. Virtual private cloud environments will be allowed when the Authority is satisfied that the integrity and security of the critical components is not at risk.

MGA Requirements for the Replication of Data

An application submitted to the MGA must include details about the replicated server and the connectivity to the live server. This includes details of the security protocols that are in place. In order to provide assurance that the data is being replicated in real time, details of the replication data and its transmission frequency need to be provided. A procedure needs to be set for the MGA to have access to the replication servers for electronic and physical inspections.

Innovative Technology Arrangements, Virtual Financial Assets and Virtual Tokens

Through the Sandbox Framework, the MGA have accepted the use of Innovative Technology Arrangements, including DLT platforms and smart contracts, and the acceptance of Virtual Financial Assets and Virtual Tokens.

An applicant may apply for its testnet to be included within the sandbox framework, on the condition that the live environment goes live by such time as the MGA may allow, which can be no more than three (3) months after the approval is issued.

It is important to note that the regulatory requirements applicable to the acceptance of VFA's as well as the use of virtual tokens or the leveraging of ITA's by licencees may be changed from time to time even throughout the period of its duration. If the MGA deems it appropriate, the duration of the sandbox may be extended further for a specified period, in whole or in part.

BDO can help!

BDO Malta can assist prospective licensees and authorised operators with:

- ▶ Gaming License Assistance and Advisory;
- ▶ Mock Audits (MGA);
- ▶ Compliance Audits (MGA);
- ▶ System Audits (MGA);
- ▶ Security Audits (UKGC);
- ▶ GDPR / Privacy assessments and advisory;
- ▶ Cyber Strategy, Transformation and Assessments;
- ▶ Cyber Training, Education and Awareness;
- ▶ ISO 27001 Gap Analysis, Risk Assessment, Implementation;
- ▶ Third-party assurance (e.g. ISAE 3402) reports for B2B licence holders;
- ▶ IT Internal Audit co-sourcing / outsourcing / ad-hoc;
- ▶ Policies & Procedures reviews;
- ▶ Information Risk Management.

FOR MORE INFORMATION:

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