

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.

whilst maintaining the benefits established in the previous legislation

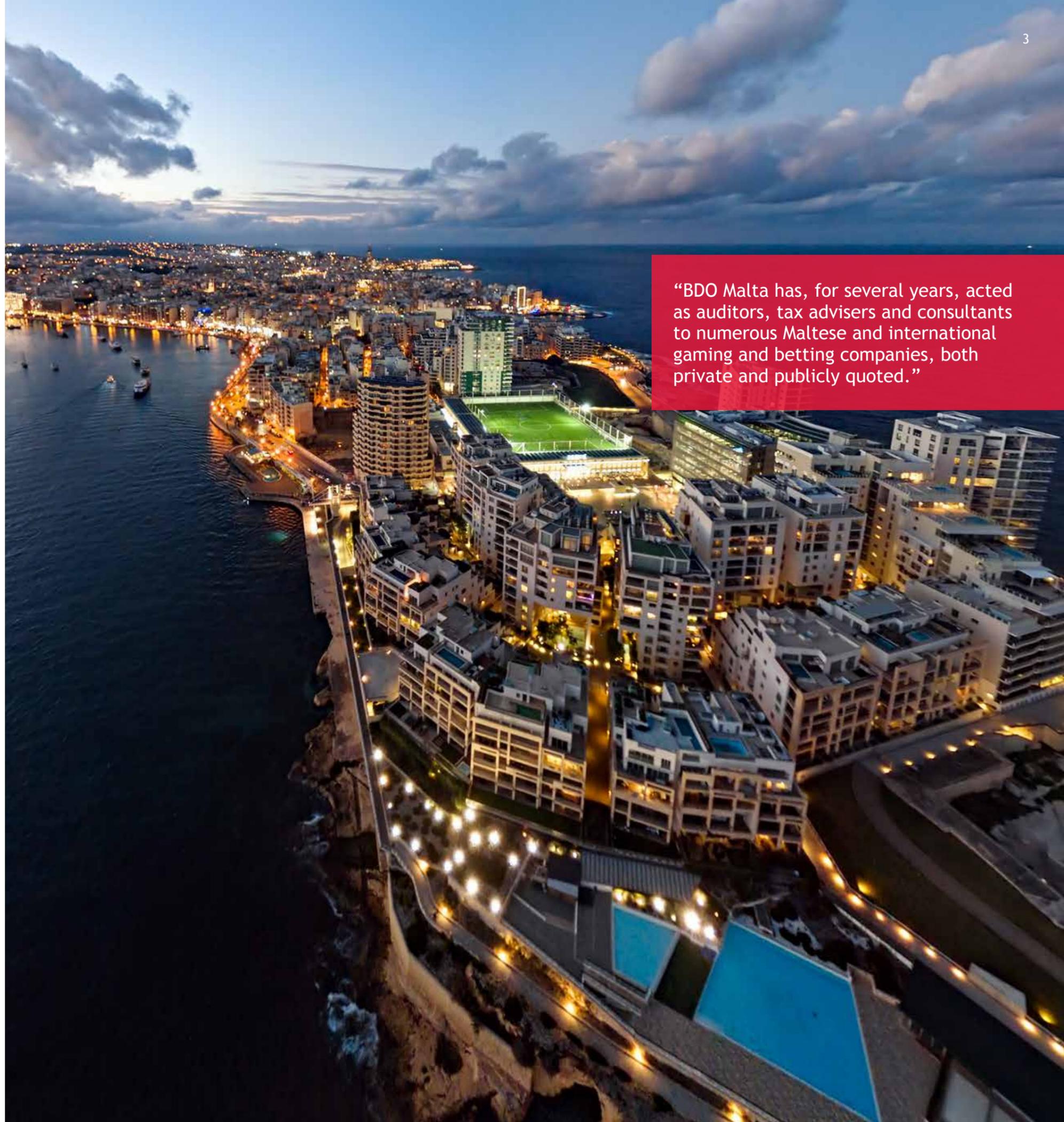
such as attractive gaming taxes and beneficial effective corporate tax rates on gaming operations.

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 auditors, tax advisers and consultants 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 LICENSES

The MGA may issue licences of the following categories:

- (a) **Gaming Service Licence:**  
a business to consumer (B2C) licence to offer or carry out a gaming service;
- (b) **Critical Gaming Supply Licence:**  
a business to business (B2B) licence to offer or carry out a critical gaming supply. A critical gaming supply shall constitute the following supplies:
  - a) supply and management of material elements of a game;
  - b) supply and management of software, whether stand-alone or part of a system, to generate, capture, control or otherwise process any essential regulatory record, or the supply and management of the control system itself on which such 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.

Note that the notice is not applicable for operators which intend to offer services in or through Malta, as this would lead the operator to require a licence. 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.

## 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 by 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.

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 ten (10) to twelve (12) 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 Go Live. If the operation is not completed during this time, the request will be considered as suspended and subject to re-application.



## LICENCE FEE PAYABLE

### Gaming Service Licence

The annual licence fee to be paid by operators providing Type 1, Type 2 and Type 3 gaming services is twenty-five thousand Euro (€25,000). Operators providing only Type 4 gaming services are required to pay a licence fee of ten thousand Euro (€10,000).

### 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.

## 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.



## 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 following roles and responsibilities performed in connection with the gaming activity of a **B2C licensee shall each constitute a key function:**

- a. The Chief Executive role, or equivalent;
- b. Management of the day-to-day gaming operations of the licensee, including the processes of making payments to, and receiving payments from, players;
- c. Compliance with the licensee’s obligations emanating from the licence or licences issued by the Authority;
- d. The administrative and financial strategies of the licensee, including but not limited to the payment of tax and fees due to the Authority;
- e. Marketing and advertising, including bonus offers and promotions;
- f. The legal affairs of the licensee, including but not limited to contractual arrangements and dispute resolution;
- g. Player support;
- h. Responsible gaming;
- i. The prevention of fraud to the detriment of the licensee;
- j. The risk management strategies of the licensee;
- k. The prevention of money laundering and the financing of terrorism;
- l. Adherence to applicable legislation relating to data protection and privacy;
- m. The technological affairs of the licensee, including but not limited to the management of the back-end and control system holding essential regulatory data;

- n. The network and information security of the licensee; and
- o. Internal audit.

**For a B2B licensee, the key functions shall be the following:**

- a. The chief executive role, or equivalent;
- b. The day-to-day gaming operations of the licensee;
- c. Compliance with the licensee’s obligations emanating from the licence or licences issued by the Authority;
- d. The administrative, financial and risk management strategies of the licensee, including but not limited to the payment of fees due to the Authority;
- e. The legal affairs of the licensee, including but not limited to contractual arrangements and dispute resolution;
- f. Adherence to applicable legislation relating to data protection and privacy, where applicable;
- 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;
- h. The network and information security of the licensee; and
- i. Internal audit.

Note that the Internal Audit key individual must be independent of any other key function.



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