

## ● REMOTE GAMING AND BETTING (MALTA)

### 1. INTRODUCTION

Remote gaming and betting is regulated in Malta in terms of the Remote Gaming Regulations, 2004 (“the Regulations”). Since their issue they have generated substantial interest from a number of online betting and gaming operators of international caliber.

By way of background information, the local regulator of on-line betting and gaming is the Lotteries and Gaming Authority (“LGA”) with whom we have built a strong relationship in view of our involvement with projects of a similar nature.

The LGA is flexible in its approach in the processing of applications and each application is handled on a case by case basis in order to ensure the rapid processing of applications for the comfort and the benefit of the applicant. Although the LGA’s in principle approval of a license application is normally issued within around 3 months from submission of Application Forms, the final operational licenses are normally issued by the LGA within 6-9 months from the submission of complete and correct information by the applicant. All licenses are issued by the Board of the LGA which meets once a month.

The following categories of licenses are catered for by the Regulations:

**Class 1 license** – this applies to remote gaming of all types of games of chance and games of skill namely games for money whose results could either depend on the skill of the players and/or could be totally accidental. These would typically be casino type games such as black jack, roulette and poker (excluding p2p network poker) ;

**Class 2 license** – this applies to operators wishing to operate through a remote betting office or through an online betting exchange office. This license applies to operators intending to offer betting games to players such as fixed odds betting, pool betting and spread betting;

**Class 3 license** – this license would authorise an operator to promote and/or abet remote gaming from Malta. This license applies to operators of peer to peer networks, poker networks, betting exchanges, bingo sites and game portals;

**Class 4 license** – this license is required by operators intending to offer hosting platform and software management services to other gaming operators.

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The rates of gaming or betting tax applicable to each class of license are explained in further detail below under the sub-title “LGA Gaming and Betting Taxes”. Licenses are issued for periods of five years renewable for further periods of five years each at the discretion of the LGA although the LGA would only refuse to extend a license period if it has a just cause for doing so.

An LGA license would authorise the operator to offer its gaming or betting services through any means of distance communications which may take the form of unaddressed or addressed printed matter, press advertising with an order form, telephone with or without human intervention, radio, videophone, videotext with keyboard or touch screen, electronic mail, fax, television and any other means of communication, transmission, conveyance and receipt of information by wire, radio, optical means, electromagnetic means or by any electronic means.

### 2. HOSTING PLATFORMS

An issue which the operator would have to decide upon is whether it will have a fully fledged operation in Malta with employees and an office or, alternatively, whether it will be engaging a company in Malta to host its servers and act as the operator’s hosting platform in Malta but with the actual operation being conducted overseas. If the operations in Malta will be limited to hosting of servers with a local company the „Control System“ requirements of the Malta Regulations would not apply (see below under sub -title „The Application Process“ for further detail on the “Control System” requirements) thus making the process more straightforward. There are a number of companies which are acceptable to the LGA to act as hosting platforms.

*Further information can be provided on request.*

It is however imperative that whatever the type of hosting platform chosen, the Gaming Server and the Player Database have to be present in Malta.

### 3. THE APPLICATION PROCESS

From our experience in handling license applications, the application process can be divided into three phases as follows:

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### PHASE 1 – *Fit & Proper*

During this phase the licensee would collate documentation to be submitted to the LGA. This is the most important phase of the licensing process which would require constant input by the operator and coordination with service providers in Malta.

As a first step we would recommend that representatives of the operators visit Malta prior to submitting any applications in order for them to have an informal meeting with the LGA in order to discuss their intentions with the LGA in further detail. Nevertheless we can also follow up on the application process on the operator's behalf and meet the LGA ourselves.

Licenses are only issued to limited liability companies which are registered in Malta. During the first phase of the Application process we would commence drafting of the memorandum and articles of association of the operating company in order to have in place the necessary corporate structure prior to issue of the license by the LGA. The Maltese corporate entity can be incorporated once the LGA issues its letter of intent (see below).

For the purposes of incorporating the company, the operator would have to open a bank account (ideally with a Maltese bank) where the shareholders of the operator will deposit the initial share capital of the company.

The following matters have to be addressed in the First Phase of the Application Process:

**1. Completion of License Application Form:** in the Application Form the applicant would disclose certain information as required in the Application Form. The applicant would also be required to submit the latest annual audited accounts of its parent company and any other information which may be made available on the parent company of the applicant.

For each qualifying shareholder appearing on the ownership structure form and key management personnel the following information and, or documents must be attached to the application:

- A true copy of the birth certificate;
- A true copy of the passport;
- Passport size photo;
- A conduct certificate, or a relevant document, issued by a law enforcing authority in the country of origin of the applicant;

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- Statement of Affairs;
- Credit and/or financial references;
- Bookmaker licenses if issued in other countries;
- A document issued by a legal entity stating that all documentation submitted is a true copy of the original.

*NB: Please note that all documents must be translated into English.*

**2. Deciding on who will be the licensee's Key Official in Malta once the license is issued by the LGA:** identifying the key official at this stage may appear pre-mature however this is critical since the LGA gives a lot of importance to the operator's key official who would also be expected to coordinate the application process together with legal advisors in Malta. The key official is personally responsible to supervise the operations of the licensee and is also in charge of all compliance matters of the licensee. The key official is also required to be resident in Malta (in other words and in theory he should be prepared to spend at least six months – which need not be consecutive - in any given year in Malta; ultimately the LGA must be satisfied that the company is under the direction and control of the key official who is supervising the Maltese operation whether in Malta or from his offices abroad). The key official has to be appointed as director of the licensee and must be a fit and proper person. The LGA decides whether a key official is fit and proper on the basis of the information disclosed to it by the key official in a **personal declaration form** which he is bound to file with the LGA. The LGA carries out an in - depth due diligence on the key official.

**Personal Declaration forms**, apart from that of the Key Official, have to be filed by the other directors of the applicant, by persons holding more than 5% of its shares and by its other prospective key operating officers.

**3. Preparation of Business Plan:** together with its application, the applicant is also expected to submit a business plan indicating, inter alia:

- the economic activity which will be undertaken by the operator (which should include a brief description of the games which will be available to players and the relevant target market of the operator);
- the start-up costs and expenses which will be involved for instance, cost of hardware, software, general administration, marketing costs, travelling expenses, bank charges, office furniture;

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- employment matters (the operator should specify the number of junior and senior employees who will be employed with the company including managers, secretaries and clerks. Where the operator intends to have a call centre in place (to address any complaints/queries made by players from time to time), the LGA would have to ensure that this call centre facility is adequately manned during those times as may be specified by the operator);
- a development plan spanning the first three years of business – this should specify the time periods required for the installation of any equipment, the testing of the equipment, expected expansion of the business (if any is projected), any increases in the company’s workforce, the premises which will be used by the company, the amount of telephone lines installed;
- Financial projections for the first three years of business – this will include the projected turnover, net profits generated from sales of tickets, any sales commissions, depreciation, contingency fund, variable operational costs, telecommunications costs, the gaming and/or betting taxes payable to the Authority, the corporate tax payable by the company and any value added tax which the company will pay to its service providers in Malta or overseas for, for instance, its internet connections, telephone lines all to be included in a Balance Sheet and a Profit and Loss Account;
- Management Structure (specifying the responsibilities of the operator’s employees and the supervisory checks which will be in place) together with details on the managing director/CEO of the company and the key official (if different from the managing director/CEO);
- Whether or not the company intends renting office space in Malta. On successful completion of Phase 1 the LGA would inform the applicant that it has accepted the application and that he may consequently proceed to the second phase.

### **PHASE 2 – Business & Technical Ability Assessment**

At this second phase, the applicant would then be expected to submit further detailed information on its operations such as a detailed operational manual outlining the application architecture, the system architecture, the software developer, security and control procedures, back-up and disaster recovery procedures, the payment methods, the payment systems and relative providers. During this phase the applicant would also be expected to conclude agreements with business partner s, affiliates and agents.

During this Phase 2 we would complete the drafting of the Memorandum and Articles of Association of the company and set in place the corporate structure.

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At the end of Phase 2 the Applicant would also be expected to submit a **Business Entity Information Form**.

At the end of this second phase, the LGA would give an applicant a letter of intent to operate remote gaming with the intent of obtaining a certification of compliance within six months.

### **PHASE 3 – Compliance Audit**

This is the final phase of the process when the operator would start to set systems in place for commencement of operations. At the end of this Phase 3 the LGA would issue its license to the operator. Licenses are only issued once the applicant's systems have been certified by an independent certifying agent. This certification also involves an audit as to whether the gaming system is compliant with the requirements of ISO -17799:2000 Information Technology – Code of Practice for Information Security.

Before the certification is issued the applicant's submissions on its control systems would be reviewed and tests made on the live data and procedures. Sample reports from the live system will be requested to show how the management of the system is conducted.

During Phase 3 the applicant would be expected to submit to the LGA a "Service Provider Authorisation Form". This form is only necessary if the "Services" (as defined on the form itself) are not located at the operating address of the applicant.

Another document which has to be submitted at the end of Phase 3 of the Application Process is the „Compliance Questionnaire“ disclosing several details on the applicant/licensee.

## **4. LICENCE AND APPLICATION FEES, GAMING AND BETTING TAXES**

### **LGA License Fees**

One-off Application Fee of Euro 2330 per license.

An annual licence renewal fee of Euros 7000 is also payable upon the renewal of each license issued by the LGA

### **LGA Gaming and Betting Taxes**

Apart from the corporate tax which is payable by the company on its distributable profits (the corporate tax is of 35% on distributable profits but with a system of tax refunds in the hands of the shareholders of the company this tax liability is effectively reduced from 35% to around 5%. (more

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detail on the current taxation system, is available upon request) the operator would also be bound to pay the LGA:

- a betting tax of 0.5% on the gross amount of bets accepted for the (Class 2) operations;
- a betting tax of 5% on the sum of all net winnings calculated per player per betting market on the betting exchange operation (Class 3);
- a tax of such an amount as may be agreed upon with the LGA on any commissions received by the operator from its peer to peer operations;
- in case of the gaming operation (Class 1):
  - (i) if the gaming operation is conducted as a standalone (without the use of a Class 4 software) , the gaming tax would amount to Euro 5000 per month for the first six months after the issue of the license and subsequently Euros 7500 per month for the entire duration of the license;
  - (ii) if the gaming operation is operated with a Class 4 operator (1 on 4) then the gaming tax would amount to Euro 1250 per month for the whole duration of the license.

In all cases the total maximum of tax payable per annum by one licensee in respect of any one license shall not exceed Euro 466,000.

### 5. CORPORATE ASPECTS

#### ESSENTIAL CORPORATE ASPECTS

A gaming/betting operator can only conduct business from Malta through a limited liability company which has to be registered with the Registry of Companies in Malta.

A limited liability company can be public or private, exempt or non -exempt. A company has a legal personality distinct from that of its members. The members' liability is limited to the amount, if any, unpaid on the shares respectively held by each of them. The governing law is the Companies Act, 1995 (the "Act") which was enacted in 1995 and totally overhauled the earlier 1962 legislation on commercial partnerships. Any person authorised by the shareholders can register a company. The actual delivery and registration of the company documents can be made by one of the subscribers to the Memorandum and Articles of Association or the authorised agent of such subscriber. There are no restrictions (other than the general rules on legal capacity) as to who can act as the promoter of a company. It is usual for a company to be registered through lawyers or accountants.

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### Share Capital

The authorised share capital of a licensed gaming company must be:

- not less than 40,000 euro for a Class 3 license company and not less than 100,000 euro for a Class 1,2 and 4 licensed company subscribed to by at least two (2) persons in the case of a private company; in this case, the nominal value of each share has to be fully paid up;
- where the authorised share capital is equal to the minimum aforesaid, it has to be fully subscribed in the Memorandum and where it exceeds such minimum, at least that minimum has to be subscribed in the Memorandum.

### Registered Office:

The company's registered address must be located in Malta. A company incorporated in Malta on or after the 1<sup>st</sup> July 1994 is deemed to be resident in Malta. Any change of the registered office in Malta may be effected by a resolution of the directors.

*The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained.*