

Remote Gaming

1. Why Malta for Remote Gaming?

Introduction

- Malta's Remote Gaming Regulations strike a fine balance by taking a commercially realistic approach towards regulation without compromising player's rights.
- The new Regulations define 'Remote Gaming' as a technology-neutral term that encompasses any type of gaming using a means of distance communication. This includes all forms of interactive games offered through the Internet, mobile phones, telephone and fax.
- The regulatory framework provides you with the 'right fit' for any structure of operations, while affording you all the advantages accruing to being licensed in an EU member state.
- Detailed procedures relating to control systems and the financial protection of players mean that you can work in an environment which enhances the trust of your customers.
- The licensing process is efficient and relatively low cost.
- Gaming tax rates are enticing for start-ups and highly rewarding for established operators, given that the maximum amount of tax payable per annum is capped.
- Availability of excellent financial services (including payment gateways), support services and reasonably priced office space.
- Availability of a skilled workforce at competitive salaries. Dedicated professional services companies can be outsourced to carry out the back-office function.
- Bandwidth is relatively inexpensive and available through fibre linked with the European mainland. There is also a 155Mbps backup carrier grade microwave link in operation. Actually bandwidth is one of our disadvantages – it is relatively slow and expensive.

Regulatory Framework

Remote gaming in Malta is regulated by the Remote Gaming Regulations 2004 (L.N. 176/04) issued under the Lotteries and Other Games Act 2001 ("LOGA"). The regulatory body in Malta supervising remote gaming operations is the Lotteries and Gaming Authority.

The Lotteries and Gaming Authority is a single regulatory body that is responsible for the governance of all gaming activities in Malta.

The remote gaming sector is the most dynamic and the fastest growing gaming sector in Malta and around the globe.

The sector dynamics of remote gaming coupled with the technological convergence created the need for a remodelled regulatory framework. The first on-line betting regulations in Malta in year 2000, was established under the Public Lotto Ordinance (L.N. 34 of 2000), to regulate offshore betting offices. Since then the LGA has developed its methodologies to regulate the

procedures of remote gaming operations, and in April 2004, revamped Remote Gaming Regulations were published. Malta became the first EU member state to regulate Remote Gaming.

The LGA regulatory regime aims to be both technology neutral and game neutral – encompassing any type of gaming using a means of distance communication (including internet, digital TV, mobile phone technology, telephone and fax). Any remote game which can be securely managed under the LGA regulations will be considered for licensing.

The Malta Remote Gaming Council

In March 2005, the Malta Remote Gaming Council (MRGC) was launched. This Council brings together all our remote gaming licensees, giving them a great opportunity to meet new challenges backed by the inherent advantages of collective effort. The LGA also launched an on-line forum aiming to create an on going discussion between all stakeholders, ISP providers, legal and financial representatives in the Malta remote gaming industry.

The key success factors for Malta’s remote gaming industry can be summed up in three words: Responsible, Responsive and Reliable. Malta took a bold step from the out-set to introduce remote gaming regulations that were far superior than any other jurisdiction in terms of strict licensing procedures, strong monitoring controls and player protection mechanism. Malta did not become a nation of convenience for unscrupulous operators and in the long term this position paid well since as the industry grew, operators realised that their success was dependent on their regulatory jurisdiction’s reputation a serious regulator.

Licenses are now available for online casinos, casino-style games, online betting, tele-betting, betting exchanges, online bingo and online lotteries, and with over **180** applications for a remote gaming license of which around **100** having already established their business, it is clear that this industry is here to stay.

2.0 The corporate vehicle

Maltese companies remain one of the most popular vehicles in Europe for the purposes of international trade. A Maltese company is a normal limited liability company that would be charged to tax at the rate of income tax applicable at the time (currently 35% on its chargeable income or net profits) and both Malta residents and non-residents may hold any amount of shares in this company.

The shareholders of the company may be entitled to **refunds of tax** as applicable to their particular circumstances. In particular, any resulting dividends to non-resident shareholders may qualify for treaty relief in the receiving jurisdiction. Incidentally, Malta has double taxation agreements in place with most of the major European states and a number of other states around the world as will be seen later.

Moreover, Malta recognizes the fact that certain dividends would generally represent income generated outside of Malta. Consequently, where this income is paid out to non-resident shareholders, the dividend distribution will trigger off a refund of tax to the said non-resident shareholders.

Furthermore, Malta has favourable double-taxation agreements with key countries (46 at present), most of which based on the OECD model convention.

Maltese service companies also secure various ancillary services such as provision of a registered office, fiduciary (confidential) shareholding, directors, company secretary and key official.

So long as the beneficiaries have submitted all the documents and information from them (namely, positive identification, bank reference, certified true copy of passport, completion of a personal/business questionnaire and the signing of a fiduciary services agreement) fast-track incorporations is guaranteed and incorporation is usually completed in a day or two.

As from 2002, subject to the satisfaction of certain conditions, foreign companies may continue or be re-domiciled to Malta. This continuance procedure is a simple and straightforward one.

3.0 Licensing process

The Lotteries and Gaming Authority applies a rigorous process prior to granting a remote gaming license. The application process to obtain a license is divided into three stages.

The first stage is to conduct a fit and proper exercise on the applicant. The Authority analyses all information related to persons involved in financing and management and on the business viability of the operation. The Authority conducts probity investigations with other national and international regulatory bodies and law enforcement agencies. It also carries out a financial analysis of the business plan.

On successful conclusion of the first stage 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 remote games, the rules, terms, conditions and procedures of the games, the application architecture and system architecture of the gaming and control systems.

Normally the first stage is completed within 2 weeks and the second stage within 3 weeks, depending on the correctness and completeness of the information submitted to the Authority.

At the end of the second stage the applicant is given a letter of intent to operate remote gaming with the intent of obtaining a certification of compliance within six months.

The applicant may then establish the business in Malta, conclude all agreements and carry out testing of the set-up.

A formal license is issued when the Authority obtains approval from the compliance certification entity. A normal compliance certification procedure takes two weeks to be carried out.

- First Stage: Fit and Proper

To start the process for a Remote Gaming License the applicant must fill an Application for Remote Gaming License (Form LGA/51/2004-1) and a Personal Declaration Form (Form LGA/51/2004-2) for each person with five per cent (5%) or more interest. In the case that one or more of the parties is another business entity, ownership and incorporation details need to be submitted. Applications may be submitted manually or electronically. With the application form you also need to submit the following signed documents:

- Affirmation and Consent;
- Authorisation to Release Information.

The following information and, or documents must be attached, if applicable:

1. For each qualifying shareholder appearing on the ownership structure form and key management personnel:

- 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;
- 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.

2. A copy of the business-plan must be submitted. The business plan should outline in detail the following:

- The objectives of the operation;
- The proposed company structure including business functions and human resources to be employed (e.g. Risk managers, odds compiler, financial officers, etc.);
- The nature of games to be offered (e.g. betting, pool betting, betting exchange, casino, leagues, etc);
- The technologies to be used to conduct remote gaming (e.g. Internet, telephone, fax, mobile, etc);
- An overview of the application software to be used as gaming and control systems;
- A three-year business plan including:
 - Marketing and sales plan;
 - Forecast balance sheets;
 - A financing plan showing sources of finance, distinguishing between shareholder funds and other funds.

- **Second Stage: Business and Technical Ability Assessment**

On successful completion of the first stage, the Authority shall inform the applicant to proceed to the next stage. The following documentations have to be submitted at this stage:

- A Maltese Company Registration Certificate (including an International Trading Company Certificate if applicable);
- Memorandum and Articles of Association;
- Business Entity Information Form (LGA/51/2004-3);
- 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 system/s and its provider/s;
- Agreements with business partners, affiliates, agents.

– **Third Stage: Compliance Audit**

- A Service Provider Authorisation Form (LGA/51/2204-4) if applicable, including the agreement with the equipment hosting provider in Malta outlining clearly the functions and responsibilities to be carried out by such provider. A site plan of the data floor indicating the location of the equipment must be attached to the agreement. Serial numbers for all equipment installed are to be attached.
- Details or copies of agreements with all third parties which may impact the licensee's gaming or control systems are also required by LGA (these are the gaming software provider, all payment service providers, any odds/results provider used, any other software partners)
- Before certification, the Control System submission will be reviewed and tests made on the live data and procedures. Samples reports from the live system will be requested to show how the management of the betting system is conducted.
- An assessment of the information management in the operations will be made; recommendations may be made to improve security of the players' data.
- The backup and disaster recovery procedures will be reviewed. Change management procedures will also be reviewed.
- The online website will be reviewed via a test account to see that the site operates in accordance with the Regulations and with the operator's declared procedures (including notifying changes). The Player Protection measures required by LGA will be confirmed.
- Bank account balances will be compared with online player account balances to ensure that the liabilities are sufficiently covered.
- Routine data submitted on a monthly basis to LGA will be reviewed. Any anomalies will be investigated with the operator to ensure that correct data is available to LGA and rules relating to test data are observed. Spot checks on the odds, payout ratios and randomness as applicable may be made.
- Any agents acting for the operator will be scrutinized for probity. Copies of all relevant agreements and national licenses will be required by LGA for review and filing.
- Staff lists and duties will be checked against the records held at LGA.

The license is then issued for a period of five years.

4.0 Business planning

As seen above, a business plan must be submitted during the first stage of the application process. Our organization offers professional assistance in the compiling of this document.

5.0 Application & License Fees

A non-refundable application fee is to be submitted with the application. The annual license fee is to be paid within fifteen days from the formal grant of the license and is to be paid annually. Payments can be done by a cheque drawn in Maltese Currency or bank transfer in favour of the Lotteries and Gaming Authority.

The Remote Gaming license fees are:

- a. **Application fee:** The application fee for a new license of any class is €2,330. This fee is payable together with the submission of an application for the license.
- b. **Annual fee:** The annual license fee, for any class of license, is €7,000.

6.0 Classification & Duration of Licenses

Under the Remote Gaming Regulations, 2004 there are four classes by which an operator may be licensed.

Online gaming operators in Malta are licensed under the Remote Gaming Regulations (LN176/2004). Every operator undergoes a stringent probity before granted the license.

Licenses are classified according to manner they assume game risk:

Class 1: Operators who partake in the gaming risk based on games based on repetitive events (Random Number Generators). This class covers casino-type games, skill games and online lotteries.

Class 2: Operators who partake in gaming risk on markets based on singular events (betting). Operators who manage their own risk on events based on a matchbook. Under this class falls fixed odds betting, pool betting and spread betting.

Class 3: Operators who promote games and in return get a commission. Normally this includes multiplayer games and betting exchanges. This class includes P2P, poker networks, betting exchange and game portals.

Class 4: Operators who run a software platform to host the service of any of the above classes. Such operators are not involved in player management functions and is intended for software vendors who want to provide management and hosting facilities on their platform.

A license of any class is granted for the period of five years and may be renewed thereafter for periods of five years. A company may apply for more than one class of license, but the applicant must be a Maltese registered company.

7.0 Taxation

The gaming tax is differentiated according to the type of gaming / betting operations as follows:

Class 1: €4,600 per month for the first six months, subsequently €6,900 per month.

Class 1 under Class 4: The gaming tax payable by casino operator is €1,150 per month. The gaming tax payable by the host platform is NO TAX for the first 6 months of operation, €2,300 per month for the subsequent 6 months and subsequently €4,600 per month for the entire duration of the license.

Class 2: Fixed-odds betting: 0.5% on the gross amount of bets accepted. On betting exchanges: 0.5% on the sum of all net winnings calculated per player per betting market. (In cases where the exchange is involved in the risk)

Pool betting: 0.5% on the aggregate of stakes paid.

Class 3: Tax is a percentage of net takings. Percentage amount depends on nature of operation.

8.0 Tax Capping

a. The maximum gaming tax payable annually by one licensee in respect of any one license shall not exceed €466,000.

b. However, in case where casino operators (under Class 1) operate from the host platform (under Class 4 license) the tax cap is applicable to the total tax payable by all licensees in this 'cluster' together. In this case, the tax cap is reached when the sum of tax payable by all casino operators licensed under Class 1 and their common host platform reaches €466,000.

9.0 Compliance with Regulatory Regime

- Ordinary Reporting:

Annually

- a signed copy of the annual audited financial statements within 60 days from the financial year-end;
- a signed copy by the key official of the interim accounts within 30 days at the middle of the financial year;
- a copy of the insurance policy.

Monthly

- gaming records within 21 days of the end of the previous month (in the case of a class 1 on Class 4 license, the class 4 key official is responsible for the gaming records);
- gaming tax calculation.

- Extraordinary Reporting:

- incident report within 24 hours of incident;
- gaming equipment report within 24 hours of changes;
- customer complaints are to be forwarded immediately;
- player records on request by the Regulator.

- Notification:

The Regulator would need to be notified every time there is a change in:

- shareholding or amongst directors;
- name;
- capital;
- the control system;
- games played;
- payment gateways or methods;
- affiliates, skins, operators, white labels etc.

Key Official

Every licensee must have one **key official**, whose role is to personally supervise the operations of the licensee and to ensure that the licensee complies with the applicable laws, regulations, license conditions and any directives. The key official must be a director of the licensee and be resident in Malta.

10.0 Operational & technical set-up

Assisting in establishing an operational set-up of the client's choice may include sourcing of commercial property for setting up of betting offices and call centres, where required, procurement of office furniture and equipment, negotiation of service agreements with suppliers, recruitment of personnel, finding residential properties to let or purchase and any other service that will ensure that the clients settle into the new business as quickly and smoothly as possible.

For the past four years Malta has been working hard to improve the critical key drivers of this business. In 2000 Internet connectivity, a crucial factor for online gaming, totalled 20Mbits.

Now capacity is greater than 1Gbit with international links to provide redundancy and additional capacity. Internally, Malta has a full digital telecoms network with residential connection reaching 2Mbps. International call rates are at European levels. Whereas before operators had to set-up their own data-centres, nowadays they may use hosting service providers offering competitive packages.

Technical assistance is also provided in respect of installations (networks and hardware), banking and payment gateway arrangements, negotiation of terms with ISP's as well as with equipment providers amongst others.

11.0 Technical standards

Testing of the Gaming and Control System

A basic feature in the Regulations is the requirement that the core part of the online gaming/betting operations must be physically located in Malta. Other components of the system, for example, front-end of the games or customer support operations, may be situated outside Malta, at the location of choice of the licensee.

The online gaming system (which is defined as a computer system deployed by the licensee and including all its components, the operating system and the application software) must be certified for compliance to the satisfaction of the Authority.

Certification is only necessary for those components of the system the functioning of which directly impacts the operation of the games or the reporting of gaming and financial transactions.

Certification also involves audit as to whether the gaming system is compliant with the requirements of ISO -17799:2000 Information Technology – Code of Practice for Information Security. An "ISO-17799 gap analysis" audit will be carried out by experts approved by the Gaming Authority. Certification costs are chargeable to the licensee and may vary depending on whether the system is a standard one and also on the adequacy of the documentation of the gaming system.



Specifications of the Control System

The Malta Remote Gaming regulations provide that an applicant for a license shall submit in writing to the Authority for the purposes of approval, the specifications of the control system he intends to use during operation.

The law also provides that the licensees whose gaming system is hosted by a Class 4 licensee shall be exempted from this requirement.

The system of internal controls, reporting and accounting procedures used by the licensee constitute their Control System which must be approved by the Gaming Authority.

Any gaming/betting offered by the licensee should only be conducted under the approved control system. The licensee will set up the Control System in the live environment prior to audit and may be permitted to run operations, under a provisional license, during this period subject to scrutiny by the Gaming Authority.

The proposal to be submitted to the LGA for such internal controls shall be a system document which shall include detailed information relating to:

- (a) the operation of remote gaming;
- (b) general procedures to be followed for the operation of remote gaming;
- (c) computer software where applicable;
- (d) procedures for recording and paying prizes won in remote gaming;
- (e) accounting systems and procedure;
- (f) procedures to be followed to play a game;
- (g) procedures and standards for the maintenance, security, storage and transportation of equipment to be used to conduct remote gaming;
- (h) procedures for the setting up and maintenance of security facilities including general compliance and internal controls relating to access to critical systems;
- (i) a disaster recovery plan;
- (j) an adequate system of data backup;
- (k) any other information that the Authority may require.

The above provisions also apply when a licensee intends to change a control system which had been already approved by the Authority.

The Regulations also provides that the Authority may at its sole discretion, submit or direct the applicant or licensee to submit the proposed control system or an approved control system, to an audit. This takes place in the third stage of the process, that is, after the issue of the letter of intent but before the issue of the final license certificate.

In considering whether to grant the approval of the control system the Authority gives due regard to the following matters:-

- (a) whether the proposed control system or the proposed changes to the control system satisfy all the requirements of the Maltese Gaming laws and regulations;
- (b) whether the proposed control system or the proposed changes to the control are capable of providing satisfactory and effective control over the operation of remote gaming.



The Authority shall by written notice inform the applicant or licensee of its decision and where approval has not been granted, the Authority shall give reasons for its refusal to grant approval. Where approval is granted, the Authority shall have the right to direct the applicant or licensee, by means of a directive, to change or modify the approved control system in any manner whatsoever, within a period of time which shall not be less than thirty days from the date on which the directive is served on the applicant or licensee. Failure to comply with such directive shall constitute sufficient grounds for the Authority not to issue a license or to suspend the license as the case may be. The law further provides that all remote gaming shall be conducted under the control system which has been approved by the Authority.

Specifications of the Gaming System

The "gaming system" is a computer system or system of computers by means of which remote gaming is conducted, and shall include all its associated components, its operating system and applications software.

The Regulations provide that an applicant for a license, or a licensee, shall, in respect of a new gaming system, and before any such system becomes operational, provide adequate certification that may be required by the Authority. This certification must show that the gaming system has been found within the previous six (6) months to comply with each and all the technical specifications laid down in the law.

The certification submitted to the Authority for approval must, where the system is based on computer software, include the following information:-

- 1) the name of the owner of the software;
- 2) the name of the organization which did the testing required by the Authority;
- 3) all companies and organizations involved in the process and their credentials;
- 4) all individuals involved in the process and their professional credentials;
- 5) the processes, rules and parameters of the games;
- 6) the server protocols, communication protocols and other specifications which are part of the gaming system architecture;
- 7) information about the security of the system;
- 8) which modules affect processes, rules and parameters of the game if the source-code is changed;
- 9) any other information that is of material importance to the specific software;
- 10) a detailed description of the setup and functionality of the application architecture and system architecture.

Notwithstanding that the system may be approved for operation, the Authority may at any time direct the licensee to submit, at the licensee's cost, the system's software for further testing, checking or verification.

Gaming Equipment

No gaming equipment may be used in the operation of an authorized game pursuant to an online betting or online gaming license, without the prior approval of the Authority.

The Authority may, by written notice, require that the gaming equipment be submitted for certification by an approved company or organization.

The Authority may at any time after these regulations come into force publish a list of approved certification companies and organizations.

12.0 One-stop shop

Back office, banking & admin services are offered, ensuring a one stop shop situation that goes beyond standard bookkeeping but a comprehensive back office solution. Tailor made solutions and different service levels matching client needs and resources to ensure that the relationship makes business sense for all parties involved. This is extremely attractive for start up companies until economies of scale make it worth their while in investing in an administrative infrastructure and all the costs that this brings with it (such as personnel, office space, computers and technology etc).

Book keeping and preparation of financial statements, together with liaison with external auditors is a main function. The back office function takes care of the issuing of invoices, credit and debtor control, purchasing and any other administrative requirement. Similarly, the administration of bank accounts, from opening an account, whether personal or corporate to managing the account, transfers, deposits, reconciliation's, letters of credit or other banking instruments

Services also include the handling of all VAT and tax related issues as well as Payroll Management services and handling all the needs of the employer.

All this ensures that clients comply with policies and regulations issued by the local institutions and regulatory authorities.

13.0 Conclusion

Due to a thriving gaming industry on the island, one will find a sizeable skilled workforce trained in game risk management, odds compilation and call centre support as well as many professional services companies which now specialise in remote gaming.

In May 2004 Malta joined the European Union. This means that operators having their business in Malta can take advantage of the freedom of movement for goods and services within the community. The new regulations were published after extensive consultation with the operators.

The end result is a flexible legislative instrument that sets down the fundamental principles, but leaves ample space and scope to deal with future requirements.

The term 'remote gaming' has become the hallmark of technology neutral/game neutral regulation.