



Revision of the Key Official fitness and propriety requirements as a means to achieve enhanced compliance capability of remote gaming licensees - Consultation Document

## 1. Introduction

The Maltese remote gaming regulatory framework has garnered an excellent international reputation since its inception in 2004, having since then attracted a very significant number of operators, including big players in the European and global sphere. This has positioned the Maltese jurisdiction as a leading global player in the regulated remote gaming industry.

Malta's success in this industry can, in its larger part, be attributed to the then (2004) novel specific regulatory framework that focuses on consumer protection, fairness of games, strict compliance obligations and the prevention of money laundering and other crimes. One of the strengths of the Malta's remote gaming regulatory framework, which seeks to ensure that compliance obligations are continually met by the industry, is the particular role of the Key Official, the compliance officer and essentially the guardian of a remote gaming licensee.

Malta is in the process of a complete overhaul of its regulatory framework governing gaming. A wide range of policies are being critically reviewed aiming at, amongst other things, continuously raising standards and reinforcing the supervisory and compliance monitoring of the industry by the Malta Gaming Authority (hereinafter the 'MGA' or 'the Authority'). In the process, the MGA has recognised the necessity to strengthen the requirements that must be met by the person fulfilling the Key Official function. In doing so, the MGA is seeking to strengthen the compliance capability of the licensee that has become a more evident feature of the MGA's fit and proper assessment.

At a higher level, this initiative is part of a closer and holistic review by the MGA of the gaming applicants/licensees' internal systems of governance and risk management that will, amongst other things, include the internal structures, capacity, internal policies and procedures to fulfil the regulatory obligations and mitigate compliance and regulatory risks as much as possible.

While the governance and risk management review and the fit and proper assessment policy and framework address all forms of gaming operations and licensees, including land-based, this consultation deals specifically with the Key Official function of remote gaming operations. Notwithstanding the specificity of this consultation, the MGA is envisaging the adoption of similar requirements for the land-based licensees particularly in the light of an increasing convergence between both gaming platforms across the gaming supply chain.

## 2. The Key Official function in remote gaming: Context and overview of current legal and regulatory framework

The Remote Gaming Regulations (Subsidiary Legislation 438.04) (hereinafter ‘the Regulations’) establish the role of the Key Official (hereinafter, “KO”) in the context of remote gaming as “a person nominated by the licensee who is a director of the licensee....” (Part II, Regulation 2).

The appointment and functions of the Key Official are described in Part IV of the Regulations, which require that, as one of the conditions to be granted and hold, a licensee must appoint at least one Key Official, whose appointment must be approved by the Authority.

At present, the Regulations impose three general conditions which must be met *ad validitatem* for an individual to be approved by the Authority to act as KO, these being that the KO should be a readily available in Malta at all times, be a director of the licensed legal entity and be fit and proper to carry out this function. The MGA approves the KO subject to the fulfilment of all three requirements.

Through the Lotteries and other Games Act (Cap. 438 of the Laws of Malta) and the Regulations the legislator provided the MGA with sufficient latitude and authority in processing and deciding on the fitness and properness of, amongst others, the KO. The latitude provided by the legislation allows for any necessary and appropriate changes that may become necessary as the industry evolves thus requiring suitable regulatory responses.

## 3. What makes a Key Official ‘fit and proper’?

In processing an application for the approval of a KO, the MGA exercises its right to request that an actual or prospective Key Official provides the Authority with sufficient information, documentation and evidence in order to assess and determine that the person is indeed “fit and proper” as prescribed in the Regulations.

Currently, fulfilment of the ‘fit and proper’ criterion for this function, mainly relies upon the information submitted through the official MGA Personal Declaration Form for Key Officials, established by the MGA, focusing mainly on the honesty and integrity of the person, including a clean criminal record.

While the focus on honesty and integrity will remain an integral and essential part of the MGA’s assessment, the MGA further believes that the fitness and propriety of a person to fulfil the KO function depends also, to a significant extent, on a person’s capabilities and competencies including: the applicant’s full understanding of the KO’s function, sound knowledge of KO’s obligations at law and in practice (including those emanating from horizontal, non-gaming legislation), his/her ability to supervise the compliance of remote gaming licensee and the general understanding of the remote gaming operation and its specific challenges.

## 4. MGA's proposal

### Objective:

The Authority's objective in this area is generally to ensure that an operator has sufficient compliance capability and competence allocated to the right official/s that will in turn enhance the systemic compliance performance of its licensees.

As mentioned in the introduction and later in this document, compliance supervision and monitoring is allocated to the KO function. It is also undisputed that the Maltese remote gaming industry has evolved significantly and most operations have become complex and multi-jurisdictional. This may be the reason or indeed the effect of the changes in the global and European regulatory environments. As a primary gaming jurisdiction, Malta is not immune to these changes as it seeks to take a business friendly, transparent, yet proactive, innovative and objective compliance centric approach. On its part the MGA is progressively restructuring its internal processes, strategically aiming at simplifying and reducing avoidable administrative burdens without compromising, but continuously enhancing its jurisdictional standing in the gaming world.

The MGA is cognisant that some changes, such as KO requirements, will bear an impact on the industry, even if the impact may vary in extent depending on the governance structure of the individual licensed operations in Malta. Since the KO function is often insourced by small or start-up operations, the MGA recognises that different segments of the industry, or their service providers, may be impacted differently and may need time to adjust. The aim of this consultation is to seek as much feedback as possible from licensees and other relevant stakeholders in order to garner a fully representative picture that will guide the MGA in deciding on the best approach to reach its objectives.

### 4.1 Proposed Key Official Requirements

- i. The MGA is in the process of publishing its updated Fit and Proper Guidelines. Apart from the assessment into honesty and integrity that applies across the board, the element of 'competence' in the MGA's assessment shall be raised and will depend on the role that the relevant and or qualifying person will be in, or is, fulfilling. With regard to the KO, the MGA is proposing that 'competence' is defined as the person holding professional competences, attested by means of:
  - ii. Certification
  - iii. Relevant Experience
  - iv. Continuing Professional Development

The above three requirements are envisaged to be cumulative and the fulfilment of one does not exclude the other or others.

#### **i. Certification to act as Key Official:**

The MGA is proposing that a Key Official should have a sound understanding and knowledge of his/her legal obligations together with the gaming operation and compliance methodologies, attested by a certificate that can be obtained by means of following an MGA/NCFHE accredited training programme and sitting for an test to certify knowledge and competence in the subject/s thereof. The certificate of competence granted by an approved institution will form one of the MGA requirements and therefore, persons with the necessary knowledge would be able to sit for the test without following training.

### **Consultation Questions**

1. What, in your opinion, are the salient elements which an applicant Key Official should be tested on in an entry-level form of examination required in order for a Key Official to be granted certification to act as such?

#### **ii. Relevant Professional Experience of the Key Official**

The MGA feels that it should be necessary for a Key Official to possess certain directly-relevant experience in the gaming industry to be able to carry out KO duties properly. The MGA proposes to adopt an approach similar to that taken by the MFSA, which requires a certain degree of relevant experience to be shown prior to its approval of a person to act as a regulated entity's compliance officer/KO. The MGA's approach as the upcoming fit and proper guideline shall attest, manifests a more rigorous approach in scrutinising such proposed individuals during such assessments, particularly for first time applicants, and furthermore an approved KO 's regulatory performance shall affect his good standing for existing and or further assessments for any proposed new function.

Notwithstanding the above, the MGA firmly believes that apart from experience, the specific professional competence attested by means of the certificate proposed under (i) above should be forthcoming.

It is the view of the MGA that to satisfy the criterion relating to 'professional experience', a minimum of two years of professional experience, obtained in the five years preceding the KO application, for new entrants in this sector, in any of the following capacities, shall be sufficient: legal, finance or compliance officer of a regulated entity in the financial, and, or gaming sector; and/or

- operational role at mid or senior management with a remote gaming operator;
- an employee of a gaming regulator at least at middle-management level;
- Advising / auditing one or more remote gaming operators on an ongoing/consistent basis as a professional advisor holding any one or more of the following licenses / warrants / certificates or any other warrants/certificates as established by the MGA from time to time: CPA, Advocate, CITA.

This list of qualifications should be construed as referring to the local qualification and any equivalent qualifications in other EEA countries.

### **Consultation Questions**

2. What do you believe constitutes a sufficient level of professional experience in the industry to be required in order to be able to act as a Key Official? (Such as previous roles held, and number of years of relevant professional experience in a similar field)

### iii. Training and Continuing Professional Development of Key Officials:

The MGA is proposing that every approved Key Official must continuously keep himself updated of developments in the regulatory and compliance areas directly or indirectly related to the gaming sector. For this reason the MGA is proposing that an approved KO fulfils a minimum threshold of continuing professional development (hereinafter 'CPD') points every calendar year, with each point being equivalent to one hour's training, and that on an ongoing basis, this aforementioned CPD threshold should be set at a minimum of 16 CPD hours per annum in order to hold his approval by the MGA.

Topics to be covered by the relevant training are to include but not be limited to KO role and functions, KO obligations towards the MGA, KO's duty to monitor licensee's regulatory compliance; KO's obligations as a company director and licensee's anti-money laundering obligations.

As for the certification training under (i), the MGA shall establish what training shall qualify for the CPD requirement with the NCFHE. Any natural or legal person wishing to provide such CPD courses would have to, depending on the training content and structure, accredit the training with the Malta's National Commission for Further and Higher Education to be able to advertise such course as accredited. Any so accredited training will automatically be recognised by the MGA. Any other course may still, at MGA's discretion, count towards a Key Official's CPD hours

Other educational activities may be considered by the MGA as CPD, provided these are relevant to the development of a KO's technical and professional skills and the content is both measureable and verifiable. Such educational activities that may qualify towards CPD requirements will include attending relevant conferences, seminars, as well as authoring articles in relevant and reputable publications, lecturing or training others on topics relevant to KO role.

### Consultation Questions

3. Do you agree that 16 CPD hours annually is sufficient?
4. Do you agree with the activities that MGA proposes to be recognised towards the CPD requirements?
5. Which subject areas, in your view, should contribute towards a KO's CPD?

## 4.2 Supplementary rules and requirements to prove fitness and propriety

The MGA wishes to amend the Personal Declaration Form to require Key Officials to provide additional information comparing to that currently required, including character and professional references and credit reports to prove financial standing and integrity. Moreover, MGA wishes to have meetings with the KO at least once a year to assess the extent of the Key Official's knowledge, involvement and awareness of the licensee's operations and of industry developments. This would allow the MGA to monitor any material changes in the licensee's operations and to be able to question any issues notified to the MGA that require attention from the KO's perspective.

The Authority proposes that the police conduct certificate and a declaration of fulfilment of CPD requirements should be submitted to the MGA on annual basis.

While assessing the suitability of the applicant for the KO function, the Authority will take into consideration any personal licence that the applicant holds from a gaming regulator in an EU/EEA jurisdiction, and will ensure that there are no duplicate requirements in this respect.

The MGA considers that holding of certain operational roles within remote gaming licensees with short-term performance incentives potentially conflicts with the compliance-centric role of the Key Official and his obligations towards the Authority and it is for this reason that the MGA wishes to require applicants to certify that he or she does not have short-term performance incentives for the business for which he or she wishes to act as Key Official.

The MGA believes that once a person is approved as a KO for a remote gaming licensee; he/she does not need to go through the full personal approval process again for an additional or subsequent KO role, subject to fulfilment of certain conditions, including no previous cancellation of the KO approval by the Authority, continuous fulfilment by the person of his/her obligations (yearly submissions of the clean police conduct and confirmation of the fulfilment of the minimum CPD hours); confirmation by the person of no material change in circumstances, his appointment as a director of the licensee. Notwithstanding, the MGA will consider the KO function within both the range of functions of the individual and the governance structure of the licensee/s with a view to ensuring that the function can be actually fulfilled to the performance level required by the MGA.

In order to ensure the responsible and diligent fulfilment of Key Official duties, the MGA is proposing that a Key Official be allowed to act for a limited number of licensed operators. The MGA will retain its discretion in the determination of an applicant's ability to dutifully perform the Key Official role for more than one licensee, and will generally closely scrutinise the ability of an individual to hold more than a limited number of KO roles. The MGA will critically consider an application for a person to hold the role of Key Official for several companies within the same legal or economic group of companies as one Key Official role or not, depending on the system of governance within that same legal or economic group of companies. The MGA will adopt the same approach in scrutinising an applicant's ability to dutifully perform the Key Official role for more than one licensee.

The Authority shall continue to keep a register of key officials.

**Consultation Questions:**

6. What are your views on the MGA's intention to introduce periodic meetings and annual submission of updated information instead of an ad-hoc approach?
7. Which posts, in your opinion, are most likely to create conflicts of interest with the role of the Key Official?
8. What are the particular challenges that are encountered when acting as KO for more than one company?
9. Do you agree that, as a matter of principle, an individual should not be allowed for an unlimited number of licensees? If a person were to be restricted in acting as Key Official for a maximum number of companies, how do you feel that this number should be determined?

**4.3 Transitional period and Key Official involvement**

Following the MGA's consultation with the industry on the introduction of minimum Key Official requirements, the MGA would seek to set a time period within which to adopt measures for the practical implementation of its proposals and for the result of this consultation. It is clearly necessary that a reasonable transitional period would need to be identified in relation to the MGA's recommended changes and ultimate measures to be adopted.

A transitional period of 12 months, from the date of closure of this consultation, is considered to be reasonable prior to the entry into force of the new KO approval requirements. In the mean time, the MGA will be working with the NFCHE and other stakeholders in order to ensure that there is the practical possibility for persons to attain the accredited certification to be required, in time.

**Consultation Question:**

10. Do you agree with the proposed 12-month transitional period?

Due to the foreseen impact on a number of small and start-up operations who may insource the KO function further to the envisaged limitation on the number of KO functions a person can hold, the MGA is proposing that a transitional period of six months is granted from the entry into force of the agreed requirements in order to allow any affected licensees to adequately replace a Key Official without causing unnecessary disruption to their operations.



## Appendix – Summary of consultation questions

1. What, in your opinion, are the salient elements which an applicant Key Official should be tested on in an entry-level form of examination required in order for a Key Official to be granted certification to act as such?
2. What do you believe constitutes a sufficient level of professional experience in the industry to be required in order to be able to act as a Key Official? (Such as previous roles held, and number of years of relevant professional experience in a similar field)
3. Do you agree that 16 CPD hours annually is sufficient?
4. Do you agree with the activities that MGA proposes to be recognised towards the CPD requirements?
5. Which subject areas, in your view, should contribute towards a KO's CPD?
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10. Do you agree with the proposed 12-month transitional period?