

Prime Minister

Minister for Economy and Industry

Chairman Malta Gaming Authority

GAMING ACT (Cap.)

Authorised Application Managers Regulations

IN EXERCISE of the powers conferred by article 12 of the Gaming Act, hereinafter referred to as "the Act", the Minister for Economy and Industry has made the following regulations: -

Arrangement of these Regulations

Regulations

Part I		
Part II		
Part III		
Part IV		
Part V		
Part VI		

Part I

Citation and Interpretations

1. The title of these regulations is the Authorised Application Managers Regulations.

Title

2. (1) In these regulations, save as provided in sub-regulation (2) of this regulation, all words and phrases shall have the same meaning as prescribed in the Gaming Definitions Regulations;

Interpretation

(2) In these regulations, unless the context otherwise requires:

“active application” means any application that has been created on the Authority’s dedicated web-portal for which a reference number has been assigned by the Authority.

“application manager” means any person authorised by the Authority in accordance with these regulations to carry out the functions attributed to application managers.

“authorisation” means a licence, approval, certificate, recognition notice or similar instrument issued by the Authority.

“client” means any person that engages an application manager in accordance with regulation 3 of these regulations.

“qualifying holder” means a person that has a holding, whether direct or indirect, in an applicant and, or client, being a legal person, which represents ten per cent (10%) or more of the capital or voting rights, which makes it possible to exercise a significant influence on the administration of the person in which that holding subsists and “qualifying interest” shall be construed accordingly.

“regulations” means these Authorised Application Managers Regulations.

Part II

Requirement of an Authorisation

3. Any person that wishes to obtain an authorisation from the Authority may do so by applying directly or by instructing an application manager to handle the application on that person’s behalf.

Voluntary engagement
of Application Manager.

Requirement of authorisation to act as an Application Manager.

4. (1) Any person that wishes to carry out the functions attributed to application managers shall be required to obtain the relevant authorisation from the Authority.

Provided that a person shall be deemed to be carrying out the role of application manager if such person exercises any of the functions listed in regulations 11, 12 and 13 in relation to an active application, irrespective of whether such engagement is formalised in writing.

(2) An application for an authorisation in terms of sub-regulation (1) shall be made in accordance with the procedures established by the Authority and shall:

- (a) contain or be accompanied by such information and particulars and be in such form as the Authority may require;
- (b) be verified in the manner and to the extent required by the Authority;
- (c) be accompanied by a non-refundable application fee, as may be prescribed by the Authority.

Term.

5. (1) The term of the authorisation referred to in regulation 4, whether original or renewed, shall be of five (5) years.

(2) Any renewal shall, in all cases, be subject to the continued compliance by the application manager, during the preceding original or renewed term of the authorisation, with the provision of the Act and the binding instruments issued thereunder.

Prohibition of exercising the functions attributed to an application manager without an authorisation.

6. (1) No person shall hold itself as providing and, or exercising any of the functions attributed to an application manager, whether in Malta or in another jurisdiction, without being duly authorised by the Authority.

Part III

Eligibility Criteria for Application Managers

Eligibility for authorisation.

7. Without prejudice to the other requirements envisaged in these regulations, in order for a person to be considered eligible for an authorisation in accordance with regulation 4, such person must have suitable expertise to exercise the functions attributed to application managers by means of these regulations and any other binding instrument.

Provided that the Authority may, at its discretion, subject the applicant to any form of assessment which the Authority may deem fit in order to determine and ascertain the eligibility and expertise of the applicant.

8. In order for a person to be considered for an authorisation in accordance with regulation 4, such person shall not:

Grant of authorisation.

(a) hold an authorisation to offer or be in the process of applying to hold an authorisation to offer any gaming service and, or critical gaming supply in terms of regulations 4 and 10 of the Gaming Authorisations Regulations;

(b) hold a recognition notice or be in the process of applying to hold a recognition notice in terms of regulation 22 of the Gaming Authorisation Regulations.

9. (1) If a legal person submits an application in accordance with regulation 4, the applicant shall, at a minimum, designate two (2) persons who shall be responsible for performing the functions of an application manager under these regulations.

Designated Persons.

(2) Designated persons shall be assessed in accordance with the provisions of these regulations and any procedure that may be rendered applicable by the Authority to this effect.

(3) Application managers shall not be allowed to have more than ten (10) designated persons at any point in time.

Part IV

Fitness and Propriety

10. (1) In assessing an application submitted by a person in order to be authorised to act as an application manager, the Authority shall, acting in line with its governing principles and in furtherance of the regulatory objectives established by the Act, assess the fitness and propriety of the applicant and all relevant persons, including but not limited to all persons having an interest in the applicant amounting to twenty-five per cent (25%) or more of the capital or voting rights, where the applicant is a legal person.

Fitness and propriety of prospective application manager.

Provided that it shall be the sole discretion of the Authority to establish which persons involved with the applicant have to be assessed for the purposes of this regulation.

(2) The onus of providing sufficient assurance to the Authority that the person is fit and proper to act as an application manager rests with the person applying for the authorisation:

Provided that the Authority may avail itself of any additional information which may be and, or becomes available to it, including

information that was not provided by the person applying for an authorisation in terms of regulation 4.

Part V

Functions of Application Managers

11. Application managers shall act as a liaison between their clients and the Authority on matters arising in connection with an application for any authorisation in relation to which they are allocated competence by the client.

12. Application managers shall guide their clients on what is expected of them in light of the responsibilities of the client in connection with the authorisation that it is seeking to obtain from the Authority.

13. Application managers shall receive and provide to the Authority, in the manner prescribed by the Authority, all relevant documentation and information that is required in order for their client to obtain the relevant authorisation.

14. (1) Where the application manager is engaged for the purpose of obtaining any of the authorisations listed in the First Schedule, the application manager shall disclose to the Authority any issues and, or concerns relating to the fitness and propriety of the client and, or their qualifying holders, directors or persons holding an equivalent position.

(2) Where the application manager is engaged for the purpose of obtaining the authorisations listed in points (a), (b) and (d) of the First Schedule, the application manager shall disclose to the Authority any issues and, or concerns relating to the legality of the accumulation of wealth and the legitimacy of the source of funds of the client.

Provided that, for the purpose of obtaining the approval listed in point (b) of the First Schedule, the issues and, or concerns regarding the legality of the accumulation of wealth and the legitimacy of the source of funds shall only be identified in relation to any direct or indirect qualifying holder that was not part of the corporate structure of the authorised person that was approved by the Authority.

Provided further, that for the purpose of obtaining the approval listed in point (d) of the First Schedule, the issues and, or concerns regarding the legality of the accumulation of wealth and the legitimacy of the source of funds shall only be identified in relation to the provision of any loan which the authorised person is taking.

Application
managers to be
main contact
point of the
Authority vis-à-
vis
authorisations.

Application
managers to
guide their
clients.

Disclosure of
information to
the Authority.

Client vetting
Function.

(3) In the instance that an application manager is engaged for the purpose of obtaining the authorisation listed in point (c) of the First Schedule, the application manager shall also disclose to the Authority any issues and, or concerns relating to the audited financial statements of the company applying to be included in the corporate group licence.

Provided that, for the purpose of obtaining the authorisation listed in point (c) of the First Schedule, the issues and, or concerns relating to the audited financial statements shall only be identified in relation to the new company that will be covered by the corporate group licence.

(4) Notwithstanding sub-regulations (1), (2) and (3), the Authority shall retain ultimate discretion in relation to any fit and proper determination made for the purposes of an authorisation.

Part VI

Obligations of Application Managers

15. (1) Where the application manager is engaged for the purpose of obtaining any of the authorisations listed in point (a) of the First Schedule, the assessment as to which licence category or categories, and which game type or types, as the case may be, are applicable to the operation of the client shall be made by the application manager.

Assessment of authorisation.

(2) The application manager shall provide the results of the assessment made in terms of sub-regulation (1) to the Authority and such assessment shall specify any assumptions that the application manager has made and any reservations that the application manager may have in relation to such assessment.

(3) The Authority shall retain ultimate discretion as to the determination of the subject matter of the assessment made in accordance with sub-regulation (1).

16. (1) Application managers shall act honestly, fairly and professionally and shall comply with the requirements laid down in the Act and any binding instrument issued thereunder, as well as with other legal and regulatory requirements as may be applicable.

Fiduciary obligations.

(2) Application managers shall be subject to fiduciary obligations in relation to their clients and the Authority as established in the Civil Code, in so far as applicable.

Cap. 16.

Provided that, for the sake of clarity, where the interests of the client and those of the Authority diverge, application managers shall act impartially in accordance with article 1124A of the Civil Code.

17. An application manager shall be bound to:

- (a) act in an ethical manner, taking into consideration the integrity of the industry;
- (b) co-operate with the Authority and disclose forthwith any information or clarification that the Authority may require for the purpose of exercising its regulatory function;
- (c) submit complete and correct information to the Authority;
- (d) support the Authority in carrying out its reviews for the purpose of ascertaining that the applicant is a fit and proper person to hold the relevant authorisation and that the applicant shall comply with and observe the requirements of the Act and any binding instrument issued thereunder;
- (e) disclose to the Authority any information relating to the client of which it has knowledge relating to non-compliance with any of the provisions of the Act and, or any binding instrument issued thereunder;
- (f) maintain sufficient records to be able to demonstrate compliance with its obligations, including but not limited to a record of the services carried out by or on behalf of the application manager for its clients;
- (g) ensure that its personal interests do not conflict with the effective exercise of the functions attributed to the Authority by virtue of the Act and any binding instrument issued thereunder; and
- (h) comply with any other obligations and, or conditions as the Authority may require or prescribe.

18. (1) Application managers shall establish, implement and maintain an effective client vetting policy set out in writing in order to be able to fulfil its functions in terms of regulation 14.

(2) The client vetting policy referred to in sub-regulation (1) shall include, inter alia, the identification of due diligence systems, controls and procedures that will be used by the application manager to guide it in assessing the fitness and propriety of its clients in terms of regulation 14.

19. The application manager shall, prior to onboarding a client, inform the prospective client of the obligations of the application manager and shall obtain confirmation from its prospective client that it has been duly informed of the

Obligations
of application
managers.

Client Vetting
Policy.

Prospective
client is to be
informed of
obligations of
application
manager.

obligations applicable to the application manager in terms of these regulations and any other binding instrument.

20. (1) An application manager shall establish, implement and maintain an effective conflict of interest policy set out in writing and which is appropriate to the size and organisation of the application manager and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its clients and, or the effective exercise of the functions attributed to the Authority by virtue of the Act and any binding instrument issued thereunder.

(2) The conflict of interest policy referred to in sub-regulation (1) shall include, inter alia, the identification of the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one (1) or more of its clients, with reference to the specific services carried out by the application manager, and shall also include the procedures to be followed and measures to be adopted in order to manage such conflicts and to prevent such conflict from damaging the interests of its clients.

(3) Application managers shall assess and periodically review, at least annually, the conflict of interest policy referred to in sub-regulation (1) and shall take all appropriate measures to address any deficiencies.

(4) Application managers shall adopt appropriate and transparent reporting lines within their organisation in order to ensure that issues relating to conflict of interest are given the necessary priority.

(5) Application managers shall establish, implement and maintain effective organisational and administrative arrangements appropriate to the size and organisation of the application manager and the nature, scale and complexity of its business, to prevent conflicts of interest from adversely affecting the interests of its clients and the effective exercise of the functions attributed to the Authority by virtue of the Act and any binding instrument issued thereunder.

(6) The circumstances which should be treated as giving rise to a conflict of interest should include, inter alia, cases where there is a conflict between the interests of the application manager or certain persons connected to the application manager or the group of which the application manager forms part or from the performance of its functions, and the duty that the application manager owes to a client, or between the differing interests of two (2) or more of its clients, to whom the application manager owes in each case such duty.

(7) Application managers shall keep and regularly update a record of the cases or services carried out by or on behalf of the application manager in

which a conflict of interest entailing a risk of damage to the interests of one (1) or more clients has arisen or, in the case of an ongoing service, may arise.

(8) Application managers shall take all appropriate steps to identify and to prevent or manage conflicts of interest between themselves, including their officials, employees, or any person directly or indirectly linked to them by control and their clients, or between the interests of one (1) client and another, including those caused by the receipt of inducements from third parties or by the remuneration of the application managers and other incentive structures.

(9) Application managers shall define, oversee and be accountable for the implementation of governance arrangements that ensure effective and prudent management of the application manager including the prevention of conflicts of interest and where applicable, the segregation of duties within that application manager, and shall do so in a manner that promotes the integrity of the industry and the interest of its clients.

(10) Application managers shall establish, implement and maintain adequate arrangements which prevent any relevant person who is involved in the activities of the application manager which may have a conflict of interest in relation to one (1) or more of its clients, to have access to confidential information relating to such clients.

21. (1) Application managers shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information held by the application manager.

(2) Application managers shall establish, implement and maintain an adequate business continuity process in order to ensure, in the case of an interruption to its systems and, or procedures, the preservation of data and functions, or, where that is not possible, the timely recovery of such data and functions.

22. Application managers shall pay to the Authority such periodic fee, and within such time, as may from time to time be prescribed.

Part VIII

Notification Requirements

23. (1) An application manager may request the surrender of an authorisation in accordance with the procedure outlined in regulation 28 (1) of the Gaming Authorisations Regulations.

(2) Upon a request being made by an application manager in accordance with sub-regulation (1), the application manager shall notify its clients forthwith of its intention to surrender its authorisation.

(3) The Authority may refuse to grant an approval for the surrender of an authorisation and may also require the application managers to delay the surrender of its authorisation in accordance with the conditions that may be imposed by the Authority.

(4) Upon a decision being taken by the Authority for the purpose of accepting or rejecting an application for the surrender of the authorisation in accordance with sub-regulation (1), the Authority shall inform the application manager of its decision.

24. (1) Application managers shall notify the Authority forthwith, and in any case no later than three (3) working days, for the following:

(a) where applicable, the dismissal or resignation of a designated person;

Provided that in such a case the designated person would also be required to notify the Authority forthwith and if the dismissal or resignation affected the only designated person, the application manager shall be required to notify a new designated person to the Authority within fifteen (15) working days from the date of resignation or dismissal;

Provided further that, if the application manager, due to a reasonable and justified reason, is unable to notify a new designated person to the Authority within fifteen (15) working days from the date of resignation or dismissal, the Authority may extend such time period as it deems fit.

(b) any evidence of fraud, dishonesty or conflict of interest by a member of the application manager's staff immediately upon being aware of the matter;

(c) the commencement, in whatever jurisdiction, of material litigation against the application manager and where applicable, the outcome thereof;

(d) any breach of the application manager's information security that adversely affects the confidentiality of information relating to its clients;

(e) any circumstance which arises in relation to the application manager which may render the application manager incapable of meeting one (1) or more of its obligations;

(f) any change in a direct or indirect qualifying holding within the application manager;

Notification requirements.

(g) any material changes in the conflict of interest policy:

Provided that for the sake of clarity, any material change shall be considered to be any change in relation to the circumstances which constitute or give rise to a conflict of interest which may adversely affect the interests of its clients and, or the effective exercise of the functions attributed to the Authority by virtue of the Act and any binding instrument.

(h) the engagement of the application manager by a client in order for the client to make use of its services, including identification of the specific authorisations that the application manager is authorised to handle;

(i) the termination of an engagement, for whatever reason, prior to the closure of the application for which the application manager was engaged to provide its services:

Provided that in such cases, the application manager shall also disclose to the Authority the reason for which the engagement was terminated.

(2) Application Managers shall notify the Authority forthwith and in any case no later than thirty (30) days, the following:

(a) any material changes in the information supplied to the Authority;

Provided that for the sake of clarity, any material change shall be considered to be any change relating to the ownership and, or management structure of the application manager, or any significant change to the information which has been submitted to the Authority in relation to the application manager and any designated person thereof.

(b) a change in the name of the application manager;

(c) matters which significantly affect the financial standing of the application manager in an adverse manner;

(d) any default by the application manager in making the repayment of the whole or part of a loan in a timely manner;

(e) a record of cases or services in which a conflict of interest entailing a risk of damage to the interests of one (1) or more clients has arisen or, in the case of an ongoing service may arise;

(3) Application managers shall obtain prior approval from the Authority before any of the following occur:

(a) a change to the directors or persons holding equivalent position of the application manager;

(b) a change to the designated persons of the application manager.

Part IX

Miscellaneous

Public register.

Authority's power to make rules.

25. The Authority shall establish a public register of all authorised application managers which shall be publicly available for consultation, shall be accessible online and shall be updated on a regular basis.

26. (1) The Authority may issue rules applicable to application managers as may be required for the carrying into effect of the provisions of the Act and of any other regulatory instrument and may, in particular, but without prejudice to the generality of the foregoing, by such rules:

(a) lay down requirements, conditions and criteria for the carrying out of activities by application managers;

(b) lay down the conduct, duties and obligations of application managers;

(c) lay down the responsibilities of application managers towards the Authority and provide for the form of applications, statements or notices to be made or given to the Authority;

(d) lay down the criteria which the Authority shall take into account when determining whether a person is a fit and proper person for the purpose of these regulations, including an indication of the type and nature of academic qualifications and experience as well as the additional areas of expertise which would be acceptable to the Authority when determining whether a person qualifies to be a fit and proper person;

(e) lay down the criteria as to when a person shall be deemed by the Authority to be carrying out the functions of an application manager;

(f) provide for any other matters as the Authority may consider appropriate in relation to application managers and the conduct of their activities.

(2) Such rules shall be binding on application managers.

27. For the purposes of these regulations, the provisions of the Gaming Compliance and Enforcement Regulations (S.L. 583.06) shall be applicable to application managers and any reference to 'authorised person' made therein shall be read and construed as being a reference to application managers.

Applicability of the
Gaming Compliance
and Enforcement
Regulations S.L.
583.06.

Part X
Transitory

28. (1) Any person who, on the date of the coming into force of these regulations, is carrying out the functions of an application manager shall, within _____ months from the date of coming into force of these regulations, submit a full and complete application, accompanied with all required information and documentation, in terms of these regulations.

Transitory provisions.

(2) Any person who, on the date of the coming into force of these regulations, is carrying out the functions of an application manager and is currently engaged to perform such functions in relation to active application shall be allowed to continue performing such functions for a period of _____ months from the date of coming into force of these regulations.

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First Schedule
(Regulation 14)

Authorisations Entailing Client Vetting Obligations.

- (a) an authorisation to offer any gaming service and, or critical gaming supply;
- (b) any change in direct or indirect qualifying interest within the authorised person;
- (c) any change to the corporate structure that indicates which companies within the group shall be covered by the corporate group licence;
- (d) the taking of any loan by the authorised person, where such loan is not from a credit institution licensed in the EU or the EEA;
- (e) any change to persons performing one (1) or more key functions; and
- (f) any change to the director or persons holding an equivalent position;