

Directive 5 of 2018

Alternative Dispute Resolution Directive

In exercise of the power conferred by article 7(2) of the Gaming Act, 2018 (Cap. 583 of the Laws of Malta), the Malta Gaming Authority is hereby issuing the following directive in order to delineate in further detail the specific requirements in relation to Alternative Dispute Resolution.

Part I – Short Title and Definitions

1. The short title of this directive is the Alternative Dispute Resolution Directive 2018.
2. This directive shall come into force on 3 December 2018.
3. (1) In this directive, save as provided in sub-article (2) of this article, all words and phrases shall have the same meaning as prescribed in the Gaming Definitions Regulations.
(2) In this directive, unless the context otherwise requires:
 - “ADR Directive” shall mean Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes;
 - “B2C licensee” means a person licensed by the Authority to provide a gaming service;
 - “Online Dispute Resolution (ODR) platform” shall mean the Online Dispute Resolution (ODR) Platform provided by the European Commission;
 - “Regulations” shall mean the Gaming Player Protection Regulations (S.L. 583.08).

Part II – Disputes Procedure

4. (1) B2C licensees shall put into effect a written procedure for handling player disputes, and this procedure shall be made readily available to the players, and included within the general terms and conditions.
(2) The procedure shall:
 - (i) be fair, clear and written in intelligible language;
 - (ii) establish the time-scale within which a B2C licensee is expected to settle a dispute, in accordance with regulation 13 of the Regulations;
 - (iii) offer players the possibility of referring any dispute to the ADR entity if the same player feels that the dispute was not resolved to his satisfaction; and

(iv) explain to players the potential consequences of the relevant ADR entity's decision, and the manner in which this will affect the players' right to further legal and judicial recourse.

Part III – Engagement of ADR Entity

5. For the purposes of regulations 13 and 14 of the Regulations and Article 39 of the Player Protection Directive (Directive 2 of 2018), an entity shall not be eligible to provide ADR services unless such entity is established in the European Union or the European Economic Area, and is listed in accordance with Article 20(2) of the ADR Directive.

6. In order for an ADR entity to provide ADR services in terms of regulations 13 and 14 of the Regulations, B2C licensees shall engage an ADR entity that is competent for disputes in the gaming and, or gambling sector.

Provided that the aforementioned ADR services in relation to gaming and, or gambling shall at minimum include: arbitration/ adjudication services, or any other ADR services the outcome of which is binding upon the trader and the consumer, where the ADR entity examines the circumstances of the dispute in order to decide the outcome thereof.

Provided further that the B2C licensees shall ensure that the ADR entity is competent for disputes against traders established in the EU or EEA state where the B2C licensee is established.

7. (1) Upon contracting with an ADR entity, B2C licensees shall notify the Authority of their agreement, detailing the name of the ADR entity, the duration of the agreement, and any other information which the Authority may from time to time require.

(2) B2C licensees shall also notify the Authority upon the termination of any agreement with an ADR entity.

8. B2C licensees may engage more than one ADR entity, however they shall refer customers to the one relevant for their dispute, depending on the nature and subject matter of the dispute.

Dispute resolution must be offered by the B2C licensee as a service free of any charge to any player who would like to refer any matter to an ADR entity engaged by the B2C licensee.

9. In the event that a B2C licensee does not offer players the possibility of referring a dispute to an ADR entity due to the lack of necessary engagement in place, the B2C licensee shall refer the player to an ADR entity listed in accordance with Article 20(2) of the ADR Directive, and which satisfies the requirements of this Directive, within twenty (20) days from the date on which the player has expressed to the operator the fact that the dispute was not resolved to his satisfaction.

Provided that, this article is without prejudice to any enforcement action which the MGA may take in light of a breach of Article 39(3) of the Player Protection Directive (Directive 2 of 2018).

Part IV – Conclusions of ADR entity

10. (1) Without prejudice to sub-article (2) hereof, the conclusions of the ADR entity acting in arbitration/ adjudication capacity, shall be binding upon both the operator and the player who referred the dispute.
- (2) Notwithstanding sub-article (1), in relation to disputes which would fall outside the competence of the jurisdiction of the Small Claims Tribunal in Malta as provided for within the Small Claims Tribunal Act (Chapter 380 of the Laws of Malta), the B2C licensee may opt to offer the player recourse to a form of non-binding alternative dispute resolution services, including mediation.

Provided that this determination, and its consequences, must be clearly communicated to the player upon offering referral of the dispute to the relevant ADR entity. The player shall be informed of the necessary recourse in order to obtain a binding decision.

Provided further that every B2C licensee shall maintain an ADR policy which it is to follow in determining whether or not the decision of the ADR entity is to be binding or not, in terms of the previous sub-article.

Part V – Reporting of ADR proceedings

11. (1) B2C licensees shall notify the Authority that a dispute has been referred to an ADR entity together with the following monthly report on the player funds relating to the B2C operations provided for within Article 38 of the Gaming Authorisations and Compliance Directive (Directive 3 of 2018), and such notification shall be in the format established by the Authority.
- (2) The notification shall include:
- (i) the details of the parties; and
 - (ii) the subject matter of the dispute.

Provided that if the following monthly report is less than three (3) working days away from the date upon which a dispute has been referred to an ADR entity, the B2C licensee may submit the notification within the next monthly report.

12. Upon a decision being taken by the ADR entity, B2C licensees shall notify the Authority of the outcome of the dispute by means of a report which is to be submitted together with the following monthly report on the player funds relating to the B2C operation as provided for within Article 38 of the Gaming Authorisations and Compliance Directive

(Directive 3 of 2018). This report shall include the entire decision of the ADR entity, and shall be in the format established by the Authority.

Provided that if the following monthly report is less than three (3) working days away from the date upon which a decision has been taken by the ADR entity, the B2C licensee may submit the report within the next monthly report.

Part VI – Online Dispute Resolution

13. Without prejudice to the above requirements, all online B2C licensees shall provide information relating to and a link to the ODR platform. Players shall be informed of the existence of the ODR platform and the possibility of using this platform to resolve disputes. This information shall also be included within the general terms and conditions of the B2C licensee.

Part VII – Transitory

14. B2C licensees shall ensure that they have the necessary arrangements in place to comply with the procedural requirements as established within this Directive by no later than 31 March 2019.