

Fit and Proper Guidelines

“Ensuring a high level of integrity, efficiency, consumer protection and value in all gaming products and services across all channels of supply...”

Malta Gaming Authority

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1 Applicability

These fit and proper guidelines set out the minimum criteria applicable to all relevant persons falling under all the activities regulated by the Malta Gaming Authority (MGA) under the Gaming Act (Chapter 583 of the Laws of Malta) (the 'Act') and the regulations issued thereunder and any other delegated function under applicable law.

The satisfaction of the criteria explained in this document and forming the basis of a fit and proper assessment provide a degree of assurance to the MGA that the applicants are willing and capable to fulfil their obligations under the legal framework in force. The latter principle also underpins the obligations prescribed by law to ensure that gaming is conducted honestly, fairly and free from any crime in the best interests of all stakeholders and customers.

The onus of proving the satisfaction of the fit and proper standards rests on the subject person and the latter principle shall subsist throughout the licence term falling under the regulatory scope under the relevant legal framework in force. The MGA is cognisant that different roles and functions within a gaming operation, as a regulated activity, require different responsibilities and these guidelines are indicative of the criteria to be adopted in conducting such assessments. Furthermore, this document is not intended to replace or override the legislative provisions in force. The MGA as a governing and supervisory authority may apply the criteria in a manner and to the extent that would be most suitable in the circumstances. The nature and the degree of responsibility resting on the relevant person shall have a bearing on the scrutiny and standards to be expected of the subject person.

In addition to the criteria outlined in this document the MGA may consider other factors that may be relevant particularly past regulatory performance of the individual, where applicable, as at the date of the application in order to assess whether the applicant or the individuals connected thereto enjoy good standing in a function already taken up with any other regulated activity in respect of which the relevant application is submitted, whether local or overseas. Should the relevant applicant fail the fit and proper assessment, the MGA may refuse the application, revoke any approval or licence previously granted to the said person (in the light of new circumstances or fresh evidence produced) or take any necessary action that may be required under law.

These guidelines should be read in conjunction with the provisions of the law, including any directives, codes and guidelines that the MGA may issue from time to time.

2 Aim and Scope

2.1 The carrying out of proper due diligence procedures is a fundamental first step in ensuring that Malta-based gaming operations are fit and proper when granted a licence and to ensure that such operations are not used as a façade for money laundering or terrorist financing, amongst other objectives. Due diligence measures are internal procedures carried out at application stage and thereafter for the identification, verification and investigation of all natural and legal persons involved with a regulated activity to ensure that all steps are taken so that a person is not appointed or does not continue to hold an 'approved person' position or a licence for which they are not fit and proper.

2.2 For the purpose of these guidelines "fit and proper" entails satisfaction of the following criteria:

- i. Honesty, integrity and reputation;
- ii. Competence and capability; and
- iii. Sound financial standing.

The degree of satisfaction of the above listed criteria, particularly relating to competence and good financial acumen, may vary depending on the type of operation as well as to the function within the proposed regulated activity.

i) Honesty, integrity and reputation

All persons involved, including persons with a beneficial interest or a controlling interest in an applicant and or licensee together with any other third parties providing funding, or other responsible persons (defined below) should be of high repute, integral and honest. In determining the latter criteria the MGA shall have regard to all matters that may have arisen relating but not limited to:

- a. Whether the person has been or has reason to believe that he/she may be investigated for a criminal offence or any other proceedings by a competent authority;
- b. Whether the person has been charged for a criminal offence;
- c. Whether the person has been convicted of any criminal offence;
- d. Whether the person has been the subject of any civil suit;
- e. Whether the person has a tainted regulatory performance record with the MGA or any other competent authority whether in Malta or overseas;
- f. Whether the person has been publicly criticised for any function;
- g. Whether the person has been made to resign or has been dismissed during any past employment;

ii) Competence and capability

Relevant persons who are entrusted with the management and oversight of a regulated gaming activity need to have appropriate skills, knowledge and experience as well as to act with honesty and integrity. To this effect the MGA has to ensure that 'responsible persons' placed in positions of responsibility are fit and proper. The prime responsibility of ensuring that responsible persons, are competent and capable to take up the particular function being applied for rests on the applicant/licensee in question, who ultimately bares the responsibility of ensuring that the gaming operation is compliant with the law.

To this effect the licensee shall ensure that all persons holding a position of responsibility under the control of a licensed entity are aware of and understand the provisions of these guidelines.

A **responsible person** shall include:

- i. Ultimate Beneficial owners
- ii. Directors;
- iii. Key Persons;
- iv. MLRO Officer
- v. Third-Party providing funding or control

In determining whether a responsible person and or the operator in question is competent for the function/licence being applied for, the MGA shall consider whether:

The physical person has:

- a. past experience;
- b. any relevant qualifications and training received;
- c. the time at hand to perform such functions;
- d. any other requirement deemed necessary in the light of such function.

The operator (legal person) has:

- a. past experience;
- b. any other licence or approval directly or indirectly related to gaming by any other competent authority;
- c. the capacity and the internal control structures to enable it to comply with the policies and directives in force;
- d. any other requirement deemed necessary in the light of the specific operation.

iii) Sound financial standing

In determining whether an applicant or a licensee enjoys good financial standing, the MGA shall have regard to the current financial position, financial background and business reputation of such persons particularly –

- a. any civil suit in relation to any debt that remained outstanding or is still pending;
- b. any bankruptcy proceedings;
- c. any repayment plans and financial exposure;
- d. any freezing orders or other measures.

3 Supplementary Notes

- a. Pursuant to the Act, together with other applicable laws, the MGA is entrusted with inquiring into the suitability of its licensees, together with their suppliers thereof, and to ensure that all those involved in the regulated activities under its competence are fit and proper persons to carry out their functions relative to such licensed operations.
- b. In the case where the applicant is a legal person, to assess whether the legal person is fit and proper, said legal person should satisfy the MGA that all of its qualifying shareholders, directors and chief executive officer (or equivalent persons) having a controlling interest, as well as its key officials and any other key persons involved meet the criteria of these guidelines;
- c. The MGA may issue specific requirements relating to qualifications/training and or experience for specific functions relating to any regulated activity as may be necessary;
- d. The failure by an applicant to meet the above listed criteria may not necessarily lead to a refusal and the MGA may at its discretion consider the following principles in determining its conclusions:
 - i. the gravity of, and the surrounding circumstances resulting in, the relevant person not meeting the specific criteria;
 - ii. the relevance of the failure by the relevant person to meet the specific criteria to the duties and responsibilities that are, or are to be, performed and assumed by the relevant person; and
 - iii. the passage of time since the failure by the relevant person to meet the specific criteria and any evidence of the individual's rehabilitation.
- e. Should an applicant claim privilege with respect to supplying information or refusing to answer questions, the MGA shall have sufficient grounds to deny a licence or any form of

approval. Furthermore, the onus of proving the above mentioned criteria shall always rest on the applicant/licensee.

- f. Failure by omission to supply any relevant information to the MGA during such an assessment and any time thereafter, may depending on the circumstances constitute a false declaration to a competent Authority and the MGA may take the necessary steps to safeguard its position according to law.
- g. The MGA may organise face to face interviews and or request further information (in addition to that requested via ad hoc declaration/application forms) throughout any assessments and at any time throughout the licence term as may be required.

4 Conclusion

This document outlines the basic tenets of the MGA's fit and proper assessments for all applicants and or licensees. Nevertheless, the MGA adopts a risk-based approach for each application and hence assessments may vary on a case-by-case basis due to the particular characteristics of the applicant and/or activity at hand.

