



Policy on Outsourcing by Authorised Persons

Malta Gaming Authority



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1 Introduction

As the gaming industry continues to specialise, develop, innovate, grow and venture into new geographic and product markets, it is increasingly relying on outsourcing for functions and activities that would otherwise be carried out in-house.

Outsourcing in gaming is so extensive that it has become the norm for the industry to be interdependent on an ever increasing range of B2B services that may be linked or accessed along the whole supply chain to the consumers' (players') end.

The reasons for which a gaming operator (hereinafter referred to as the 'authorised person') chooses to outsource services, functions and, or processes, as part of its operations or product and market development, are many and range from acquiring specific expertise that is not available in-house, to cost control, regulatory compliance, marketing, know-how, or simply outright management decisions to outsource most services (core and non-core) to third parties.

2 Applicability

Persons applying for a licence on or after the 1st August 2018 shall be required to comply with the Policy on Outsourcing by Authorised Persons. All other authorised persons shall be subject to a transitory period ending 31st December 2018.

3 Definitions

“critical gaming supply” or **“critical supply”** means a material supply which is (a) indispensable in determining the outcome of game or games forming part of the gaming service, and, or (b) an indispensable component in the processing and, or management of essential regulatory data;

“material supply” or **“material gaming supply”** means a gaming supply of such importance that any weakness or failure in its provision could have a significant impact on the operator's (a) ability to meet the operator's obligations under the Act and all applicable regulatory instruments or (b) to manage the risks related to such supply; or (c) to continue in business, and the term **“material supply”** shall include a **“critical supply”**;

“outsourcing” shall refer to an authorised person's use of a third party, whether or not forming part of the same corporate group, to perform functions or provide services which would otherwise be undertaken by the authorised person. The third party supplier may itself be an authorised or unauthorised person.

4 Risks Associated with Outsourcing

The use of outsourcing service providers by an authorised person to perform management and operational functions and activities presents, or has the potential to present, various risks to an authorised person.

It is recognised that some risks are inherent to the activity being outsourced in itself, whereas other risks are introduced with the outsourcing of the activity and with the involvement of a third party. If not identified and managed effectively, the use of third party service providers may expose authorised persons to risks that can result in regulatory action and financial loss and in loss of reputation for the authorised person and the jurisdiction, amongst others.

Risks to be considered by the authorised person considering outsourcing include:

Regulatory Risks	These risks may arise when services, products and, or activities provided by a third party fail to comply with the applicable law, regulations and licence conditions governing the authorised person. While this is a broad risk, it is expected that the regulator puts more focus and weighting on 'compliance' failures of the authorised person that may ensue in the areas such as those of business integrity (such as AML measures) and consumer protection measures. The third party service providers are usually out of reach of the sphere of competence of the regulator, either with respect to regulatory remit or jurisdictional competence, or both.
Country Risks	These risks potentially arise when an authorised person engages a service provider located in another jurisdiction, exposing the authorised person to possible economic, political and, or regulatory conditions, events and risks from the jurisdiction where the outsourcing service provider is located (e.g. non-reputable jurisdictions; or different, yet applicable, regulatory requirements).
Operational Risks	Operational risks may arise when an outsourcing service provider exposes the authorised person to losses due to inadequate or failed internal processes/service quality or systems, or from external events or human error.
Reputational Risks	Such risks arise when the actions or poor performance of an outsourcing service provider causes the public and other stakeholders to foster a negative opinion about the authorised person and, or the licensing jurisdiction, i.e. Malta.

The above list of risks is not exhaustive and the MGA recognises that different business models may present a different risk profile, which may or may not include further risks other than those identified above.

While the MGA is aware that the industry recognises the various and multiple risks that may be presented to the authorised person by outsourcing, it concedes that, in principle, the MGA should only concern itself with outsourcing risks that are directly or indirectly material, critical, or key to regulatory compliance and therefore to the effective attainment of gaming policy and regulatory objectives as included in the governing regulatory framework, and, or the reputational standing of the jurisdiction.

While the authorised person is free to outsource services and activities as delineated in this policy, the authorised person cannot outsource the responsibility for regulatory compliance in the outsourcing practices it undertakes, and that responsibility for compliance shall continue to reside solely and at all times with the Board of Directors and senior management of the authorised person.

5 Services and Functions which may be Outsourced

It is generally accepted that the risks of outsourcing can be more pronounced and have a potentially more significant negative impact on the authorised person's standing, operation and compliance performance when the outsourced activities are of 'material', 'critical', or 'key' significance and importance to regulatory processes, performance and compliance of the authorised person.

Within the outsourcing context the MGA should only directly concern itself with such material supplies, critical supplies and key functions. For this reason, authorised persons are not required to obtain approval from the MGA with regards to outsourcing of non-material functions or services. For example, should accounting services be outsourced, such outsourcing does not require the MGA's prior approval, even where this is not limited to specific assignments, this given that such is not deemed a material or critical supply. Notwithstanding this, should the Key Function related to the responsibility for finance be outsourced, such appointment shall be subject to the MGA's prior approval given that such is considered as a Key Function in terms of the First Schedule to this policy.

Moreover, in the event that a secondary lottery provider holding a critical gaming supply or gaming service provider licence engages a third party in order to purchase and/or store the lottery tickets on its behalf, such arrangement shall be governed by a written agency agreement entered into between the authorised person and the agent, which shall be submitted to the Authority for prior approval. In such scenarios, any actions carried out by the agent shall be deemed to be carried out by the authorised person, hence the latter shall bear full responsibility for any action/inaction of the agent.

In order to better target this proposed regulatory intervention and not go beyond what is necessary in order to attain its objectives, material supplies and critical supplies shall be defined in accordance with Section 3 of this document. The material supplies and critical supplies listed under the First Schedule shall be automatically deemed material or critical supplies, as applicable; however, such shall not be considered to be an exhaustive list. Consequently, there may be other services which are deemed 'material' in accordance with the definition under Section 3 which are not necessarily listed under the First Schedule, for example, dispute resolution. With regards to the authorised person's functions which are deemed key, reference should be made to the First Schedule.

Following an assessment of an array of supplies outsourced by authorised persons, the MGA has devised a list of supplies and mapped them against different scenarios (e.g. whether the outsourcing service provider is licensed or whether the outsourcing service provider forms part of the same corporate group). These combinations have been laid out in an outsourcing matrix under the Second Schedule of this policy, which demonstrates which supplies may be outsourced by an authorised person and under which scenarios. In compiling this matrix, the MGA has given due consideration to the potential

regulatory risks in outsourcing certain supplies, in particular the potential risks presented to players. In devising this policy, the MGA has also incorporated the concept of a Corporate Group Licence as well as the concepts of material/critical supplies and key functions to be adopted through the legal overhaul.

6 Regulatory Oversight

The regulatory oversight / intervention by the MGA into outsourcing by an authorised person should be proportionate to the risks posed by outsourcing arrangements, as well as to the nature, scale, and complexity of the business.

In order to address such real or potential risks, the MGA considers that the best approach is to assess the outsourcing risks to which an applicant/authorised person may be subject to, holistically, and as part of the pre-licensing assessment or post-licensing oversight (ad-hoc or routine, as applicable) of the applicant/authorised person. This would correspond with the position that the ultimate responsibility for regulatory compliance should continue to reside wholly and seamlessly on the authorised person's Board of Directors and senior management.

Importantly though, the implementation of such an approach would require that the MGA has full knowledge and comfort that:

- a. The authorised person shall meet its regulatory obligations, irrespective of outsourcing arrangements and risks which must be managed by the authorised person;
- b. The outsourcing arrangement shall not deter the authorised person's orderly conduct of its business; and
- c. The outsourcing arrangement shall not hinder the effective oversight of the outsourced function or service by the MGA, the authorised person's board of directors, senior management and other internal governance bodies.

7 Requirements to be Fulfilled by the Applicant or Authorised Person prior to Outsourcing Material/Critical Supplies and, or Key Functions

7.1 Submission of Information to the Regulator (MGA)

In order for the MGA to be in a position to assess the exposure to regulatory and other risks of the authorised person originating from outsourcing arrangements, the MGA would require the person to submit sufficient and factually correct information. The submission of this information by the applicant would be expected to form part of the presentation of the business model and plan submitted to and discussed with the MGA at the early stages of the application process.

These information requirements may become applicable and due to the MGA at a later stage of the licensing process or throughout the duration of the licence, depending on the time at which the

authorised person considers outsourcing a service or function that would otherwise be carried out in-house:

- a. The name, address and country of registration of outsourcing service providers,
- b. The material and, or critical supplies and, or key functions to be outsourced;
- c. Information and relevant documentation on the regulatory status, if applicable, of the outsourcing service provider in Malta or in a foreign jurisdiction, including any certifications held;
- d. The name and contact details of the person assigned with overseeing the outsourced activity within the authorised person, as well as the name and contact details of the person within the outsourcing service provider responsible for delivering the service (this shall not be applicable in the event that the arrangement relates to outsourcing of a Key Function listed under the First Schedule as the Key Function holder will in any case be the person appointed to oversee the activity);
- e. The proposed agreement between the authorised person and the outsourcing service provider; and
- f. Any other information as the MGA may require in order to ensure that the regulatory requirements are met or will be met effectively and seamlessly by the authorised person.

In the event that the outsourcing service provider is already licensed or holds a material supply recognition issued by the Authority, the authorised person shall not be required to submit the information listed under points a and c above.

Without prejudice to point d above, an authorised person remains fully responsible for all outsourced functions and services. In this regard, the authorised person shall assign an employee with the overall responsibility of the outsourced service who is fit & proper and possesses adequate knowledge and experience with regards to the outsourced service to be in a position to challenge performance. Such employee should be notified to the Authority. Furthermore, the authorised person shall also notify the Authority with the name and contact details of the person within the outsourcing service provider who shall be responsible for delivering the service to the authorised person and who shall be the main point of contact between the authorised person and the outsourcing service provider.

7.2 Authorised Person's Outsourcing Policy

An authorised person shall be required to have a written outsourcing policy irrespective of whether the outsourcing shall take place within the same corporate group. The outsourcing policy shall be regularly reviewed by the authorised person and shall:

- a. Stipulate the frequency at which the outsourcing policy shall be reviewed;
- b. The policy should include the requirement to carry out a risk assessment of the outsourced function/service and the potential effects that outsourcing may have on such function/service (such as operational, reputational and concentration risk);
- c. The policy shall clearly stipulate the identity of the person/s within the authorised person with overall oversight of each outsourced service;

- d. The policy shall identify the fit and proper procedures to be applied to the outsourcing service provider (this may include carrying out internet-based checks on the outsourcing service provider; reviewing its recent audited financial statements; verifying its regulatory status; checking for previous sanctions; obtaining CVs pertaining to the leading employees within the outsourcing service provider who shall be carrying out the function/service; obtaining information from the outsourcing service provider regarding its internal control procedures which are relevant to the outsourcing function/service as well as information regarding its contingency policy);
- e. The policy should ensure that the outsourcing service provider's financial stability and major changes in the ownership structure are adequately monitored by the authorised person at intervals which would reasonably ensure that the authorised person's operations are safeguarded. The Authority understands that in certain cases, it is not possible for the authorised person to independently obtain information regarding the outsourcing service provider's financial stability or changes in ownership, and thus effective monitoring may be impossible. In such cases, the authorised person may adopt measures such as putting in place contractual provisions whereby the outsourcing service provider is required to inform the authorised person of changes in ownership, and the authorised person's right to request the ownership structure of the outsourcing service provider, and information regarding its financial stability;
- f. The policy shall stipulate the standard clauses which are to be included in all outsourcing service agreements;
- g. The policy shall specify the type of monitoring that will be carried out by the person appointed by the authorised person to oversee the outsourcing function/service, as well as its frequency. The system of oversight and internal controls should be commensurate with the type, nature and extent of risks presented by the outsourcing arrangements in which the authorised person is engaged in or intends to engage in. This risk management programme should primarily focus on outsourced services that have a material/critical impact on the authorised person's licensed activities, involve sensitive customer/player data and information; and, or present material compliance risk. The depth and formality of the risk management programme by the authorised person usually depends on the nature, criticality, scale, complexity, dependence/reliance on outsourcing and number of material business activities being outsourced; and
- h. The authorised person shall ensure that its business continuity policy is updated to cater for major changes affecting the outsourcing service provider, such as major changes in ownership, financial stability, service disruptions, expected and unexpected terminations, or an unacceptable reduction in the quality of service by the outsourcing service provider.

7.3 Governance of Relationship between the Authorised Person and Outsourcing Service Provider

The MGA considers that in managing the authorised person's relationship with the outsourcing service provider, the authorised person should ensure that a written agreement is always put in place. The MGA recognises that this is usually the case but it notes that most of these agreements as seen by it cover

solely the commercial terms that govern the relationship between the authorised person and the service provider. However, it considers that from a regulatory perspective, the regulator should not, in principle, be concerned with or get involved in the commercial provisions of the agreement but rather focus on the provisions that may attend to regulatory risk/s emanating from the outsourced function/service or outsourcing service provider.

In this regard, the MGA proposes that as a minimum any outsourcing agreement incorporates the following:

- a. A description of the outsourced function or service to be outsourced;
- b. The performance objectives of the outsourced function/service should be clearly specified;
- c. The respective rights and obligations of the parties to the agreement are to be clearly outlined;
- d. The outsourcing service provider's commitment to comply with all applicable laws, regulatory requirements and guidelines approved by the authorised person;
- e. Cover the protection of personal data. In this regard, authorised persons are to ensure that outsourcing service providers maintain the same level of data protection as the former;
- f. Allow the authorised person's compliance and internal audit departments unlimited access to its data and its external auditors full and unrestricted rights of inspection and auditing of that data;
- g. Include an obligation on the outsourcing service provider to grant the MGA direct access to relevant data and its premises as required;
- h. Include an obligation on the outsourcing service provider to immediately inform the authorised person of any material change in circumstances which could have a material impact on the continuing provision of services, including but not limited to changes in the outsourcing service provider's ownership, and notification in the case of a dire financial situation faced by the outsourcing service provider, in order to provide sufficient time for the authorised person to seek an alternative without disrupting the business and its functions;
- i. Include the terms and conditions according to which the outsourcing service provider may sub-contract any of the outsourced services. Moreover, the agreement shall stipulate that in the case of sub-contracting the responsibilities of the outsourcing service provider shall remain unchanged;
- j. Contain provisions which permit the authorised person to terminate the agreement if so instructed by the MGA, or to cater for eventualities such as the transfer of responsibilities by the outsourcing service provider to another third party provider or the re-domiciliation of the outsourced function/service in-house; and
- k. Contain provisions that the outsourcing service provider can only terminate the agreement with a notice period and that such notice period is adequately long for the authorised person to seek an alternative solution.

It is relatively common practice in some business areas of gaming that an outsourcing service provider, providing its own services to authorised persons, subcontracts part/s of the services provided from third parties in order to offer a bundle of services required by the authorised person. While the MGA considers that this should not present any regulatory obstacles, it recognises that sub-contracting may

present associated risks. In such situations the authorised person should take account of sub-contracting arrangements when entering into outsourcing agreements with providers and in conducting its risk management programme/s.

On its part the authorised person should take appropriate steps to address any risk of any weakness of sub-contracted services having a significant and material effect on the outsourcing service provider's ability to meet its responsibilities under the agreement. The authorised person should also ensure that sub-contractor/s will also fully comply with the obligations existing between itself and the outsourcing service provider; including, where possible, obligations incurred to ensure regulatory compliance.

First Schedule

Critical Gaming Supplies

For the purposes of this Schedule, the following supplies shall each constitute a critical gaming supply:

- a. Supply and management of material elements of a game; and
- b. Supply and management of software, whether as a standalone or as part of a system, to generate, capture, control or otherwise process any essential regulatory record and, or the supply and management of the control system itself on which such software resides:

Provided that for the purposes of this item, the term 'management' means the provision of ongoing active maintenance and support which is indispensable to the provision of the gaming service.

Material Gaming Supplies

Without prejudice to the critical gaming supplies listed above, the following types of gaming supplies shall constitute material gaming supplies:

- a. Manufacturing, assembling, placing on the market, distributing, supplying, selling, leasing or transferring a gaming device;
- b. Providing risk management services for the operation of a licensable game;
- c. Providing events, content and, or odds;
- d. Providing fraud management services for the operation of a licensable game;
- e. Holding and, or managing player funds;
- f. Providing services relating to customer due diligence;
- g. Providing services related to player identity verification;
- h. Providing co-location services and other managed information technology services, including cloud computing services and, or decentralised hosting protocols where the latter do not amount to a critical gaming supply; and
- i. Providing back-up and disaster recovery services.

Key Functions

The following roles and responsibilities performed in connection with the gaming activity of a licensee shall each constitute a key function:

- a. Chief Executive;
- b. Responsibility for gaming operations;
- c. Responsibility for legal affairs and compliance with the applicable regulatory instruments;
- d. Responsibility for data protection;
- e. Responsibility for finance;
- f. Responsibility for marketing and advertising;
- g. Responsibility for player support;

- h. Responsibility for technology, including but not limited to information security and the operation and management of the control system;
- i. Responsibility for the prevention of money laundering and the funding of terrorism;
- j. Responsibility for risk management and the prevent of fraud; and
- k. Responsibility for internal audit.

In the case of a licensee providing a gaming service in gaming premises, the activities constituting a key function shall comprise the activities listed in paragraphs a to j above, as well as the following:

- a. Responsibility for supervising and managing the work of employees carrying out functions in the gaming area;
- b. Responsibility for managing the gaming area, including the supervision thereof to preclude fraud by customers, and the resolution of customer disputes; and
- c. Responsibility for managing the surveillance systems of the gaming premises.

Second Schedule

Type of Supply	Classification	Unlicensed Group company not covered by Corporate Group Licence	Group company covered by Corporate Group Licence	Licensed/Certified Entity (MGA licence/certification or equivalent EU/EEA licence)	Other Third Party
Supply & management of material elements of a game ¹	Critical	X	✓	✓ : provided licensed entity holds a licence for this type of supply	X
Supply and management of software, whether as a standalone or as part of a system, to generate, capture, control or otherwise process any essential regulatory record and, or the supply and management of the control system itself on which such software resides ²	Critical	X	✓	✓ : provided licensed entity holds a licence for this type of supply	X

¹ This includes, amongst other things, active management of online casino games, controlled skill games, virtual sports games and lotteries, live casino streaming, poker, bingo and peer-to-peer betting networks and betting platforms providing bet acceptance (and a recommendation to accept or reject a bet that is automatically taken on board by an operator is deemed to be 'bet acceptance').

² This refers to back-end systems, and the provision of software for the active management of odds and betting risk management. This shall include the software used by authorised persons offering betting on lotteries to establish the juncture at which the authorised person shall be hedging its financial exposure to potential winnings, and provided that players' bets shall not be accepted unless the authorised person confirms that the players' bets have been hedged.

Type of Supply	Classification	Unlicensed Group company not covered by Corporate Group Licence	Group company covered by Corporate Group Licence	Licensed/Certified Entity (MGA licence/certification or equivalent EU/EEA licence)	Other Third Party
Provide risk management services for the operation of a licensable game ³	Material	✓ ⁴	✓	✓	✓ ⁴
Event, content and odds provision for betting ⁵	Material	✓ ⁴	✓	✓	✓ ⁴
Providing fraud management services for the operation of a licensable game	Material	✓ ⁴	✓	✓	✓ ⁴
Holding and, or managing player funds ⁶	Material	✓ ⁴	✓	✓	✓ ⁴
Providing services relating to customer due diligence	Material	✓ ⁴	✓	✓	✓ ⁴
Providing services related to player identity verification	Material	✓ ⁴	✓	✓	✓ ⁴

³ This shall include, but may not be limited to the management of financial risk with regards to the authorised person's financial exposure towards players.

⁴ Provided that i) the outsourcing service provider holds a material supply recognition; or ii) the licensee making use of the outsourcing service provider's services has obtained an ad-hoc approval from the Authority to avail itself of the services offered by the respective outsourcing service provider.

⁵ In the event that the supply goes beyond the simple provisioning of odds, i.e. where the outsourcing service provider is actively managing and adjusting the odds without the active engagement of the authorised person, such supply shall fall under the 'supply & management of material elements of a game'.

⁶ 'Holding' shall refer to the entity in whose name the player funds account at a licensed credit, financial and, or payment institution is held. 'Managing' shall refer to the signatory/ies of the player funds account.

Type of Supply	Classification	Unlicensed Group company not covered by Corporate Group Licence	Group company covered by Corporate Group Licence	Licensed/Certified Entity (MGA licence/certification or equivalent EU/EEA licence)	Other Third Party
Providing colocation services & other managed information technology services	Material	✓ ⁴	✓	✓	✓ ⁴
Providing back-up and disaster recovery services	Material	✓ ⁴	✓	✓	✓ ⁴
Providing payment processing ⁷	Material	X	✓	✓	X
Providing general risk management services ⁸	Non-material	✓	✓	✓	✓
Providing internal audit services	Non-material	✓	✓	N/Applicable	✓
Providing legal services	Non-material	✓	✓	✓	✓
Providing compliance services	Non-material	✓	✓	✓	✓

⁷ This shall refer to the acceptance of deposits from customers, the processing of withdrawals, and in general the control over the relevant payment accounts and the contractual arrangements entered into with credit, financial or payment institutions which process payments on behalf of licensees. Whilst such services should only be obtained from licensed institutions within the EU/EEA or from an equivalent jurisdiction (as may be approved by the Authority from time to time) and subject to the Authority's approval, the services offered by such institutions themselves shall not be deemed as outsourcing given that in the absence of such service, the authorised person would not be in a position to perform the service in-house.

⁸ This shall refer to managing an authorised person's risks such as, but not limited to, regulatory risk, country risk, operational risk and liquidity risk.

Type of Supply	Classification	Unlicensed Group company not covered by Corporate Group Licence	Group company covered by Corporate Group Licence	Licensed/Certified Entity (MGA licence/certification or equivalent EU/EEA licence)	Other Third Party
Providing accounting and/or tax advisory services	Non-material	✓	✓	✓	✓
Providing player support services	Non-material	✓	✓	✓	✓
Providing marketing and advertising services	Non-material	✓	✓	✓	✓
Providing the function of a Money Laundering Reporting Officer ⁹	Key Function	X	✓	X	X
Providing dispute resolution services to players ¹⁰	Material	X	✓	X	X
Player registration ¹¹	Material	X	✓	X	X

⁹ This shall be without prejudice to any laws, regulations, implementing procedures or guidelines issued by the FIAU. In the event that there are any conflicts between the Authority's policy with regards to the MLRO function and any directions issued by the FIAU, the latter shall prevail.

¹⁰ This refers to the responsibility of taking decisions in relation to disputes with players. Providing day to-day customer care/support services shall not constitute 'dispute resolution'. Accredited entities appointed to perform Alternative Dispute Resolution services as required in terms of EU Directive 2013/11/EU and EU Regulation No 524/2013 as well as player support services made available by the Malta Gaming Authority shall not be considered as outsourcing for the purposes of this policy.

¹¹ Player registration shall refer to the final acceptance of a registered player, whether or not the registration process is carried out through an intermediate entity.

