

Directive 1 of 2018**DIRECTIVE ON START-UP UNDERTAKINGS**

In exercise of the power conferred by article 76A of the *Lotteries and Other Games Act* (Cap. 438 of the Laws of Malta), the Malta Gaming Authority is hereby issuing the following directive in order to lay down the procedure whereby an entity may be recognised as a start-up undertaking in terms of regulation 9 of the *Gaming Licence Fees Regulations* (S.L. 438.12)

Part I – Preliminary

1. The short title of this Directive is the Directive on Start-Up Undertakings 2018.
2. This Directive is applicable as of the date of entry into force of the Gaming Licence Fees Regulations.

Part II – Definitions

3. In this Directive, unless the context otherwise requires:
 - “Act” means the *Lotteries and Other Games Act* (Cap. 438 of the Laws of Malta);
 - “Authority” means the Malta Gaming Authority established under article 9 of the Act;
 - “Gaming Licence Fees Regulations” means the *Gaming Licence Fees Regulations* (S.L. 438.12);
 - “Remote gaming licence” means a licence issued in terms of the Remote Gaming Regulations;
 - “Remote Gaming Regulations” means the *Remote Gaming Regulations* (S.L. 438.04);
4. All other terms used in this Directive shall have the same meaning that is attributed to them in the Gaming Licence Fees Regulations and, unless there is a conflict with the latter, the Remote Gaming Regulations.

Part III – Applicability

5. Following the coming into force of the Gaming Licence Fees Regulations, a person who is not a remote gaming licence holder, but is applying for a remote gaming licence, may apply to the Authority for said person to be recognised as a start-up undertaking.
6. In order for a person to qualify as a start-up undertaking, a request in writing shall be made by the applicant during the licence application phase. The Authority shall not accept applications for a person to be recognised as a start-up undertaking after a remote gaming licence has been awarded.

7. Where a person has been awarded more than one remote gaming licence on different dates, in assessing the date when the licence was issued for the exemption from the compliance contribution to start running, as per regulation 9(1) of the Gaming Licence Fees Regulations, the applicable date of issuance shall be the earliest date on any of the remote gaming licences awarded to that particular person.
8. For the avoidance of doubt, once the twelve running months during which a start-up undertaking is exempt from the compliance contribution expire, the compliance contribution shall start to accrue in terms of the Gaming Licence Fees Regulations, however, if only the minimum payable amount in terms of the same compliance contribution shall be due, the amount due as a minimum compliance contribution shall be prorated according to the remainder of the non-exempt licence period.
9. For the avoidance of doubt, the status of a start-up undertaking can only be awarded to a person, and not to a licence.
10. A person applying to be considered a start-up undertaking must prove to the Authority that it fulfils the criteria in regulation 9(2) of the Gaming Licence Fees Regulations by providing a written declaration signed by an authorised representative who is a natural person, confirming fulfilment of all the criteria referred to in the aforementioned regulation, and the declaration must list all seven criteria, providing facts and proof, including beneficial ownership information, incorporation documentation, and management or audited accounts, as to how such requirements are met.
11. The Authority has the power to request further information and documentation as may be necessary in order for it to be in a position to make an informed assessment of whether or not such person qualifies as a start-up undertaking.
12. For the avoidance of doubt, the 'acquisition of the business', or the 'taking over of a business' as mentioned in regulation 9(2)(d) and the first proviso to regulation 9(2) of the Gaming Licence Fees Regulations, shall, *inter alia*, refer to the procurement, whether by way of money, equity, service or right in kind, or gratuitously of:
 - a pre-existing brand related to gaming; or
 - a pre-existing customer-base; or
 - the majority of the gaming software, technical equipment, or gaming devices of a pre-existing gaming operation.
13. Without prejudice to any consequences under criminal law, the Authority reserves the right to deem a person involved in providing professional services in relation to the application for a start-up undertaking, or any person involved in providing false or misleading information in relation to the application for a start-up undertaking or the signatory of the aforementioned declaration, to be no longer fit and proper to occupy key positions in relation to regulated gaming business.

14. A person shall only be deemed to be a start-up undertaking upon receipt of a written confirmation, electronic or otherwise by the Authority.

15. The Authority has the power to nullify its own decision deeming a person to be a start-up undertaking, if it is shown that such a decision was acquired by fraudulent or misleading means, and at that point, the relevant compliance contribution for the period during which such a person was deemed to be exempt thereof, becomes due in terms of law.