Guidance Communication – Treatment of Intermediaries under the new Gaming Act (Cap. 583 of the Laws of Malta)

With the coming into force of the new legal framework, the regulatory treatment of what previously used to be called 'intermediaries' is to be assessed in light of the *Gaming Authorisations Regulations* (S.L. 583.05) [the 'Regulations'] and the *Gaming Authorisations and Compliance Directive* (Directive 3 of 2018) [the 'Directive'].

In particular, article 28 of the Directive clarifies that:

i. Where the intermediary enters into contractual agreements with players, it is no longer an intermediary but, rather, requires a B2C licence. In such instances, the licensee supplying it with games will most likely require a B2B licence;

ii. Where the intermediary handles registration as well as player deposits and withdrawals – without prejudice to the Outsourcing Policy – it also requires a B2C licence;

The sole caveat is that, although the presumption is that a B2C licence is required in the circumstances envisaged in paragraph (ii) above, this is not the case if it is proven that such functions are being carried solely to facilitate the provision of the B2C licensee's gaming service, for and on behalf of the licensee. This will be reviewed not solely on the basis of the contractual relationship, but also on the basis of the operational interaction between licensee and outsourcing service provider. The presumption at law is that a licence will be required; it is up to the relevant applicant to prove otherwise to the Authority's satisfaction, who retains discretion in determining whether a licence would be required or otherwise.

iii. Where the intermediary handles solely one of the functions mentioned in paragraph (ii) above, but not both, the service may fall to be classified as a material gaming supply in terms of article 27 of the Directive;

iv. Where the intermediary does none of the above – without prejudice to any other services it may provide which amount to material or critical gaming supplies and any other separate obligation stemming from the regulatory instruments – it does not require the Authority's approval. It is treated as an additional URL, and regulatory responsibility for it shall reside with the licensee. The new URL must be notified to the MGA through the relevant form and shall *inter alia* include:

a. The domain name owner, if not the licensee;
b. Proof of permission for the licensee to register the domain under its own operation with the MGA; and
c. A list of the services being provided by the third party (e.g. driving traffic towards the domain).

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The contractual relationship between the licensee and the relevant third party may be reviewed and assessed by the MGA upon request on an *ad hoc* basis, underpinned by a risk-based approach. It is the licensee's responsibility to ensure that the categorisation of the nature of the service provider in terms of points (i) to (iv) above is correct. The licensee is required to take into consideration the guidance provided in the MGA's Outsourcing Policy in concluding contractual arrangements with such third parties.

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