

# ISLE OF MAN GAMBLING SUPERVISION COMMISSION



Guidance for  
On-line Gambling  
Version (v):260911

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These notes are effective from the 26<sup>th</sup> September 2011.

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## **About this document**

This document has been prepared by the Gambling Supervision Commission (GSC) and contains all of the guidance necessary to supplement an application to establish an online gambling operation in the Isle of Man. It encompasses all of the process from the initial approach to the Commission or the Department of Economic Development (DED) through to the point of going live and offering services to clients.

## **The Gambling Supervision Commission**

The application of the gambling legislation to the industry falls to the GSC. The GSC comprises the Inspectorate and the Commission. The Commission comprises five independent members drawn from various professions and backgrounds.

They sit each month and rule on applications prepared by their Inspectorate. The Inspectorate is a division of Treasury and is managed by the Chief Executive.

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## How to contact us:

The GSC is available 9:00am > 5:30pm Monday to Friday  
It can be contacted via phone on +44 (0)1624 694331  
It can be contacted via e-mail on gaming@gov.im

The address is:  
Ground Floor, St. George's Court,  
Myrtle Street, Douglas  
IM1 1ED

The GSC is always happy to advise on all aspects of the application process and on the general regulation of the sector. It also frequently shares its position on items of law and policy with prospective licencees. Companies which are interested in locating on the Island are also advised to contact DED which is responsible for both promoting the industry and assisting companies interested in locating in the jurisdiction.

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Please note that while the GSC and DED have a strong working relationship, they are separate bodies and their mandates (compliance versus business development) are deliberately separated to avoid conflicts of interest.

If an applicant wishes the GSC to be able to discuss aspects of an application with DED, it must give explicit permission either using the application form or in a separate letter to the GSC. In the absence of this, the GSC cannot share application data with DED.

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# 1. Online gambling requirements

## 1.1 The principle legislation: OGRA

The primary legislation regulating the online gambling industry is the Online Gambling Regulation Act 2001, commonly abbreviated to OGRA. A copy of OGRA and its associated regulations can be obtained here:

<http://www.gov.im/gambling/licensing/>  
or from the Tynwald library.

OGRA covers all games where:

- they use telecommunications (phones, internet, servers, etc) and
- they involve players betting money (or money's worth) and
- the games incorporate any element of randomness or chance

The legislation lays particular emphasis on three core principles of the GSC which are the requirements to:

- Keep gambling crime free
- Protect the young and vulnerable; and to
- Ensure that the facilities offered by licencees are fair and that players receive their true winnings

The Commission also has a duty to protect the reputation of the Isle of Man as a well regulated gambling jurisdiction; it must also where possible ensure that the Island's economic interests are protected.

## 1.2 A genuine presence in the Isle of Man

In addition to compliance with OGRA, operators who intend to establish in the Isle of Man must satisfy the following criteria:

- They must establish a Manx company
- They must have at least 2 local directors, who must be individuals and not corporate entities
- They must appoint at least one resident Designated Official (DO), or where that Designated Official cannot reside in the Isle of Man, an Operations Manager (OM)
- They must either register players on Isle of Man servers or they must operate under a network services licence which obliges them to establish the network services in the Isle of Man
- Gambling and trading accounts should be located in a bank in the Isle of Man

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Where the Commission suspects that an operator is coming to the Isle of Man in order to benefit from the advertising privileges the Island enjoys in the UK (the "White List") then it will expect the operator to relocate a significant part of its operation to the Island.

It reserves the right to decline applicants who appear to be creating a nominal Isle of Man presence purely in order to advertise in the UK their parent or sister organisations located elsewhere in the world.

## **2. Determining whether a licence is required**

### **2.1 Types of online gambling which require an OGRA licence**

The offerings below require OGRA licences:

- Sportsbooks
- Betting exchanges
- Online casino games (roulette, blackjack, slots, etc)
- Live dealing
- Peer to peer games (poker, bingo, backgammon, Mah-jong, etc)
- Mobile phone betting
- Fantasy football (or similar)
- Financial trading (but not spread betting)
- Pari-mutuel and pool betting
- Network gaming
- Lotteries<sup>1</sup>
- Certain spot-the-ball style games
- Network services

This list is not exhaustive and the Commission remains receptive to all proposals.

### **2.2 Not all online gambling requires an OGRA licence**

It should be noted that OGRA excludes certain established activities from its scope despite their possible connection with telecommunication-related gambling activity.

While restrictions on the following activities may yet exist in other legislation, an OGRA licence is not required if you are supplying or offering the following:

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<sup>1</sup> See section 3.3 for guidance on lotteries intending to take UK players

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## **:: The UK National lottery**

Offering the national lottery as the official lottery operator does not require an OGRA licence.

## **:: Gambling which is covered by a Betting Office licence**

## **:: Gambling which is covered by a Casino licence**

Offering gambling under the provisions of a betting office licence or a casino licence does not require an OGRA licence in addition – it should be noted however that the products these land-based licences currently cover are strictly controlled by separate regulations and agreements.

## **:: Spread betting**

Spread betting is not currently regulated under OGRA and any moves to introduce spread betting to the Isle of Man would have to first be discussed with the Isle of Man Financial Supervision Commission.

## **:: Activities defined by the Insurance Act 1986**

(See the Insurance Act 1986 for more information:  
<http://www.gov.im/lib/docs/ipa/insurance/InsuranceAct1986.pdf>)

## **:: Offering pure freeplay games**

Where no money or money's worth can be won or lost and where success cannot be translated into gratuitous access to cash games (such as entry fees waived or seats at a tournament), no gambling is deemed to take place and so no OGRA licence is required.

## **:: Marketing, market analysis and marketing services**

Provided the company adheres to the general advertising guidelines (which are reproduced in 3.5.13 later) that apply to operations in the Isle of Man and providing that the company's operations are regulated in another jurisdiction, it may locate and carry out marketing functions or services into the e-gaming market from the Isle of Man without the need for an OGRA licence.

Marketing activities carried out from the Isle of Man may not target a market unless the operator for which the advertising is being conducted has access to that market through licensing or other arrangements.

Likewise, despite its location in the Isle of Man, such an operation would not be able to claim Isle of Man regulation in any form (unless of course the particular activity were being conducted by or for an Isle of Man licensed operator)

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Marketing activities cover such diverse aspects of operation as identifying target markets, creating material likely to stimulate business, the transmission of material to existing or prospective clients, the creation and placement of material in real or virtual environments, the analysis of player behaviour, the procurement and onward transmission of prospective players to a gambling site (so called affiliate activity) and so forth.

### **:: Administration**

Where the activity in the Isle of Man operation is limited to record-keeping, accounting, the processing of money (e.g. players' money, company investments, the day-to-day invoices and credits that accompany regular business, etc.) and/or the monitoring of online gambling by players (e.g. as chat moderators on a peer to peer site, as traders making decisions on betting offers, as a security department verifying player identities, authorising withdrawals and investigating suspected instances of fraud, collusion or abuse, etc) then no OGRA licence is required.

### **:: Web design**

While the operation of a website may or may not require an OGRA licence (see 2.3), its design, construction and maintenance does not.

### **:: Software design**

The design and/or sale of software that is used by gambling operators whether online or in the back office and whether as games or as auxiliary services (such as player accounts and registration software, random number generation (RNG) and so forth) does not require an OGRA licence.

This exclusion extends to the testing, integration and maintenance of leased or sold software whether the maintenance is done on an ad-hoc basis or through a regular series of patches and updates.

### **:: Provision of IT services**

The provision of hardware, operating systems and associated applications (including the hosting of such operations) which enable online gambling to occur does not require an OGRA licence. Likewise the updating and repair of such systems is not a licensable activity.

It is important to note that this activity does however become licensable when the agency which supplies the infrastructure subsequently uses it to:

- Offer the game;
- Register players;
- Strike the bet;

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In other words, the company (e.g. the telecom provider) that hosts online gambling on its servers does not need a licence but the company that operates the software on those servers to offer gambling to players does.

Please note however that while hosting does not require a licence, any disaster recovery hosting that is offered to non-Isle of Man licencees must be noted and approved by the GSC – this is because the law restricts the amount of disaster recovery an overseas operator can consume from the Isle of Man before they must apply for a full licence or have their services terminated. This is covered in more depth in section 3.2.4.

### **:: Protection of player funds**

The value of a registered player's account with an Isle of Man licensed operator is protected at all times by a licence condition. This means that if an operator goes into liquidation, the player's funds can be repatriated to the player.

Agencies which arrange and administer the mechanisms which guarantee the players' monies do not need an OGRA licence to do so. Likewise, agencies which hold the monies (typically banks or trusts) do not need an OGRA licence to do so. It should however be noted that banking in the Isle of Man does fall under the supervision of the Isle of Man's Financial Supervision Commission.

### **:: Provision of IT which just presents the results of play**

The GSC divides any gameplay where RNG is used into two distinct phases: the generation phase and the presentation phase.

In the generation phase, the RNG algorithm is polled for a random number and this number is supplied. This generation phase is licensable if it occurs in the Isle of Man because the GSC insists on knowing that such RNGs are trustworthy (i.e. truly random) and so has them periodically tested.

In the presentation phase, the results of that random number are presented to a player. This presentation phase is not licensable if it occurs in, or is supplied from the Isle of Man.

Consider the following simplified example:

- 1) The player makes a choice then presses the 'SPIN' button.
- 2) The RNG selects the number 16 [this is the *generation* phase].
- 3) The screen shows a virtual ball falling into a virtual roulette wheel, it spins for five seconds and then settles in slot 16. A virtual croupier announces "Red sixteen". [this is the *presentation* phase].
- 4) The player's accountancy is updated according to the success or otherwise of their selection.

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Put another way, a random number could be generated in a jurisdiction other than the Isle of Man, forwarded to the Isle of Man operation (a couple of bytes at most) where the result would then be processed by a game logic and the relevant animations retrieved for display to the user. This significantly larger parcel of traffic could then be delivered to the player's machine in the UK with reduced latency arising from proximity and the sheer size of the Isle of Man's pipeline.

### **:: Provision of call centres and customer support**

Call centres whether they use telephones, e-mail, chat or any other form of communication can be sited in the Isle of Man and do not require an OGRA licence.

### **:: Supply of downloaded software**

Some online gambling uses software which is first downloaded from a server via the internet (or equivalent) and installed on the player's computer. This application then connects to the operator's network or servers and allows play to occur.

The hosting of such software for download does not require an OGRA licence.

### **:: Provision of relay servers**

A server may be maintained in the Isle of Man which functions as a 'relay station' for data originating elsewhere. It may be used to buffer data before onward transmission or it may be used to 'boost' a signal's transmission characteristics. The data may even be stored in the server pending retrieval.

Provided the information of the data that arrives at such a server is not modified in meaning before it is re-transmitted to another destination, it does not require an OGRA licence.

The following list indicates the kind of changes such data can be subjected to without it being classed as modified in meaning:

- The data can be compressed
- The data can be transformed from one protocol to another
- The data can be copied, perhaps into multiples of itself
- The data can be encrypted or decrypted

### **:: Hosting disaster recovery facilities**

Backup facilities for disaster recovery and business continuity can be provided in the Isle of Man to global operators without an OGRA licence.

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It should be noted however that IT providers offering disaster recovery services must be approved by the GSC. Section 3.2.4 provides more information regarding in the provision of disaster recovery services.

## **2.3 A summary of activities**

### **The following activities always attract an OGRA licence**

If an operator performs any of the following functions in the Isle of Man then the operation requires an OGRA licence.

Once an operator becomes licensable, all of the following must be located in the Isle of Man.

#### **Registering players**

Where an operator collects and stores personal details (such as name, age, address, username, password – in effect any information which could be used to identify a living person) for the purposes of gambling it requires a licence.

#### **Striking the bet**

The bet is considered to be struck at the point that the player commits to gamble.

It is not the initial offering of odds, virtual betting slips or forms that harvest details of the bet. Equally, it is not the subsequent storage, settlement or any other processing of the bet.

The Commission considers the bet to have been struck on a server when a player either:

- Commits to the bet on that server by selecting an item on the screen which represents the commitment (such as "spin reels", "submit", "bet now" and so forth); or
- The transaction is first written into the server's database

#### **Offering the game**

The game is considered to be offered when the player and the operator enter into an arrangement or relationship without which the player cannot gamble.

A company which offers downloads of software to the player that allows them to connect to a network or site or server to play the game is not offering the game. The game is offered by the site (network, server, IP address, etc) to whom the player connects with in order to play the game.

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A web page which allows the player to begin gambling is offering the game. A web page may source its games from a variety of providers.

A website that is referring the player does not offer the game. The game is offered by the website that the player is referred to.

The Commission does not consider affiliate activity, software and marketing downloads as offering the game. This list is not exhaustive and the Inspectorate is willing to discuss other activities on a case by case basis.

### **Hosting a network**

Where an operator allows players who have been registered elsewhere in the world to play on its Isle of Man server, it must either re-register those players and assume responsibility for them or it must operate under a network services licence and enter into a contract with each foreign operator which sends its players to the Isle of Man. This contract must include agreements regarding cooperation to combat criminal activity (fraud, collusion, money laundering, etc.) and to detect and mitigate problem gambling.

## **3. The application process.**

### **3.1 How to start the process**

Initially a complete application form and statutory application fee must be submitted to the Inspectorate by an applicant or their representatives. The application package can be obtained from <http://www.gov.im/gambling/applications.xml>: a hard copy must be submitted containing all the necessary signatures.

While representatives, such as lawyers or corporate service providers can perform a lot of the administrative procedure on behalf of the applicant, it is not a statutory requirement for an application to be made by, or through them.

Once the Inspectorate is satisfied that an application has been fully completed and it has received the application fee (which is £1,000 prior to September 1<sup>st</sup> 2011 and £5,000 thereafter), it will typically process the licence within 10-12 weeks. This period officially begins when the Inspectorate issues a letter stating that the application has been accepted and the process is underway.

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It is customary for the inspection process itself to generate a lot of questions. This is to be expected and is an ideal opportunity to explain the model and structures, etc more fully to the mutual benefit of both the applicant and the Inspectorate.

Sometimes these questions can be rapidly resolved by a visit, practicalities permitting.

The Inspectorate will also expect to meet with the Designated Official and Operations Manager (where appointed) to discuss the business model and gain an understanding of the competence these key officials have with regard to the business being proposed and the gambling sector as a whole.

## **3.2 Determining which licence is required**

### **3.2.1 The OGRA licence**

A business undertaking licensable activities (see 2.1.1) will need an OGRA licence. It costs £35,000 per annum and runs for five years.

It permits the full spectrum of gambling activities outlined in section 2 to be undertaken and comes with a set of conditions and other requirements, most of which are generic, some of which may be specific to your particular set up. The full licence grants advertising access into the UK market.

Operators with a full licence can offer technology (games, software, network access to Isle of Man sub-licensees, etc) to sub-licensees under the reduced-fee sub-licence scheme.

An OGRA licence extends to all parts of a business at the licence-holder level and below. A licence cannot however operate 'upward' to cover the gambling activities of a parent or holding company or 'sideways' to cover the operations of sister companies.

Standard licence conditions and other requirements for an OGRA licence are detailed in appendix A. Additional licence conditions may be applicable to particular applicant's circumstances.

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### **3.2.2 “Licences for economic and political DR”**

An OGRA licence can be applied for and approved without there being a need to follow it with the establishment of the operation on the Island although the operator may only claim regulation from the Isle of Man when they activate their licence and transfer their operations to the Island. No operations may run in the Island before the licence is activated except those which have been activated as part of a disaster recovery agreement (see 3.2.4 for more information).

Provided the details of the application (ownership, structure, operations, etc) do not change, the licensee may deploy their services to the Island at their convenience any time within the five year licensed period.

Until it is activated (elements are deployed to the Island and commence operations) this licence runs from its approval date for payment purposes and may be of use to operators who desire a stable economic and political contingency for their existing operations.

Before such a licence is activated, the GSC checks that nothing has changed since the initial application.

Holders of such an unutilised licence would be well advised to periodically report to the GSC that no changes had occurred in their circumstances or conversely that a change had occurred which would require GSC sanction prior to the coming into force of that licence.

There is no difference in cost between a licence that is operated under these provisions and one that is operated by a live operator although duty does not become payable on such a licence until it is activated in the Isle of Man.

### **3.2.3 Sub-licences**

A sub-licence can be obtained if the applicant wishes to operate exclusively with a technology provider with a full OGRA licence regulated by the GSC. An applicant must still apply to the GSC for their sub-licence which costs £5,000 per year.

With the reduced licence fee, the sub-licence lends itself to the smaller operator looking to establish and grow a presence and to the company that has assets to monetise (e.g. a player database) but no established gaming infrastructure.

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Any new operator that wants to use the games offered by a network operator can obtain a sub-licence. The condition will be that the sub-licence holder is tied exclusively to the network operator for its games.

Should the sub-licence holder use the games of another network or create its own games, it would need to upgrade to a full OGRA licence.

If a sub licensee however wishes to switch from one Isle of Man technology provider to another, the GSC allows an agreed period of grace during which the transition can occur and the strict sub-licence requirements to remain with one provider alone are waived (the realities of such a shift would see a wind down period on the old provider and a period of testing and integration by the new). Such intentions to switch must always be notified to the GSC.

There is no less of a requirement to check the competence and integrity of the business because it is requesting a sub-licence. All pre-licensing checks and requirements would remain as stated.

### **3.2.4 Network services licence**

A network services licence must be obtained if the operator wishes to allow one or more foreign registered players on to its Isle of Man server without re-registering the player details.

All of the benefits of a full OGRA licence are available to the holder of a network services licence (for example, a network services licensee could offer games directly to the world market and offering sub-licensing opportunities for its business partners in addition to offering its networks to foreign operators).

A network services licence costs £50,000 per annum and incurs an additional cost upon its annual renewal, equal to £5,000 for every foreign operator (this excludes Isle of Man sub-licensees) into which an agreement was entered in the preceding year which resulted in that foreign operator's players taking part in games on the network provider's Isle of Man server.

*For example: Network A sets up on the Isle of Man and launches with three foreign operators using its services. It pays £50,000 in the first year (as it gains its licence) and it pays £65,000 in the second year (which is £50,000 for the network services licence and 3 x £5,000 for each of the foreign operators supplying players.)*

There is no facility to modify the licence costs based on the proportion of the year that the services have been offered or consumed. Existing OGRA licensees can upgrade to a network services licence but any unused portion of

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their previous licence will not be refunded – for this reason, existing licensees should carefully consider the timing of a move to upgrade and discuss the process with the GSC ahead of time.

Contracts entered into between the Isle of Man network platform and foreign operators must include an appropriate commitment to game fairness, the exclusion of crime and the protection of young and vulnerable people. The foreign operators will be expected to operate Isle of Man (i.e. international) standards of AML/CFT and KYC in respect of any players they supply to the Isle of Man based network.

The operator of a network may advertise the network under the UK white-list agreement but any foreign operators subscribing to the network do not subsequently have access to advertise into the UK market by virtue of their using an Isle of Man network. They may want to consider transferring to the Isle of Man under the sub-licence model in order to gain access to the UK market

While there are established and successful network models which all fall under the network services licence, the format of the network model is deliberately non-prescriptive. While any model that sees foreign-registered players taking part in gambling on Isle of Man servers requires a network licence to be obtained, The Commission will, in principle consider any model that is put forward that can make use of the opportunities provided.

### **3.2.5 Provision of disaster recovery services to off-Island gambling operations using Isle of Man telecommunications infrastructure (servers, routers, phones, etc)**

A data centre providing disaster recovery services to off-Island gambling operations within its facilities in the Isle of Man will need to be accredited by the Commission and added to its list of approved disaster recovery providers. Once accredited the data centre will be added to the list on receipt of the statutory fee of £5,000. This fee is payable annually and the accreditation runs indefinitely.

It must inform the Inspectorate of the names of any gambling company they intend to provide a disaster recovery service for at the point when the contract to provide DR is concluded. In addition, a copy of the client's current licence from its overseas Regulator must be submitted to the GSC.

It should be noted that non-Island operators are limited to 30 days of operations on the Island within any two year window. This can be extended up to 90 days with prior approval of the Commission.

Non-island operators relying on Isle of Man based disaster recovery nearing the end of their first 30 days might want to consider making an OGRA application to the GSC.

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### 3.3 What assistance you can expect

The GSC is available to offer guidance on the process and discussion around the interpretation of the OGRA rules at every stage of the application process. Additionally DED offer supplementary help and support regarding the set-up of any online gambling business in the Island.

The GSC will not provide legal advice.

When considering the legality of an operator's proposed operations (where those activities are likely to extend beyond the UK market under the provisions of the white-list agreement) the GSC has a specific requirement. As part of each licence application the GSC will require to be supplied with a board meeting minute which shows that the board of directors has taken legal advice from a qualified legal professional on the activity that it intends to undertake which demonstrates that the proposed activity is legal. The legal advice itself is not required by the GSC.

In addition, operators that intend to target the UK market with a lottery-style product should be aware that the white-list agreement between the UK and the Isle of Man does not extend the same degree of freedom to lotteries and should ensure that their products remain compatible with UK law.

As an ongoing requirement, the GSC expects its operator's directors to remain vigilant and to refresh their legal advice from time to time and in response to any developments in markets where it operates.

The GSC may offer guidance and opinion on OGRA or other legislation but it should at no time be confused with legal advice or be considered binding.

The Inspectorate will only discuss application details with its Designated Official, Operations Manager or nominated representatives. If an applicant wishes its application to be discussed with other interested parties, such permission must be given explicitly by the applicant to the GSC in writing.

The application form has an opportunity for extra permission to be given at the beginning of the process. This too can be augmented or revoked by contacting the GSC at any stage in the future.

An applicant's nominated representative is the person named on page 1 of the application form.

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## 3.4 The complete application

When sending an application to the Commission, it should contain the following items:

- The application form
- The application fee is £5,000.
- Police Vetting Unit “excepted positions” declarations (‘pink’ forms) for all key officials (directors, shareholders of more than 5%, Designated Officials, Operations Managers)
- A personal declaration form (PDF) for any of the following appointments. If an individual fulfils more than one role, only one PDF is required:
  - ❖ All shareholders of the applicant company with holdings above 5% and any shareholders of the ultimate parent company and any companies in between with holdings above 5%  
(Note that the due diligence required for publically listed companies varies slightly: in these instances, we seek to scrutinise all shareholders with 20% or more stock)
  - ❖ All directors of the applicant company if it is a privately owned entity
  - ❖ The Designated Officials
  - ❖ The Operations Manager (if appointed)
- A list of key officials in the group where the application is from a publically listed company.
- References for the above – please note that a given referee may only be used once per application. This means for example that an application with three PDFs would require a total of six different referees
- A business plan which includes the following chapters (which are defined in detail in section 3.5):
  - ❖ financial accounts
  - ❖ ownership
  - ❖ terms and conditions
  - ❖ game rules
  - ❖ internal control systems
  - ❖ player protection
  - ❖ technical checks on games offered
  - ❖ the business model
  - ❖ payment schematic
  - ❖ the proposed banking arrangements
  - ❖ customer due diligence
  - ❖ website look and feel
  - ❖ infrastructure checks
  - ❖ player registration checks
  - ❖ treasury services
  - ❖ transaction recording for games and lotteries
  - ❖ transaction recording for sportsbook betting

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Two hard copies of the entire application bundle should be supplied to the Commission, together with one electronic copy which has all individual documents saved as separate files.

The Inspectorate's preference is for the business plan to be provided using Microsoft or Microsoft compatible applications.

The GSC has processed a great variety of online applications. Those which have been the most efficient for us to process have mirrored the progression of the points in the following section (3.5) and have sought to explicitly address the points raised in each section.

If it is important that an application be heard by the Commission for a particular date, this should be discussed with the Inspectorate at the time the application is filed.

Similarly, if an application is pressed for time and needs to be processed without delay, then we offer the following pointers to facilitate processing time:

- File the application with all of the documentation mentioned in the list above and highlight any items in a covering letter which are still work in progress;
- Ensure that the documentation that is supplied answers all of the points raised in section 3.5 below;
- Ensure that the application clearly expresses a preferred date or deadline;
- Ensure the application fee has been remitted to the GSC;
- The police vetting forms - available at this link - <http://www.gov.im/lib/docs/gambling//policeexceptedvettingrequestform.doc>) may be submitted ahead of the main body of the application to remove another element of delay. Please note that submission of these forms is treated as the start of the application process and requires the application fee of £5,000 to be paid at the same time.

The internal processes that the Inspectorate uses to process an application largely mirror the areas covered in section 3.5 – if the Inspectorate has to clarify a point or seek information on a point which has not been addressed in the application's documents, unnecessary delay is introduced into the process.

Once an application has been accepted, the GSC will work to complete the process within 12 weeks. During the 2010/11 working year, the GSC typically completed the licensing process within eight weeks although the precise completion date may be determined by the actual dates which are determined some months in advance.

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## 3.5 The checking process

The maintenance of the Island's reputation as a well regulated jurisdiction is paramount. Occasionally, the Commission may decline prospective applicants to protect that reputation regardless of the potential economic benefits.

The Inspectorate's analysis of the application will include an evaluation of the business model to identify any particular threats that could, by association, tarnish that reputation.

Where they feel strongly about a particular issue, they may suggest the business model is altered to remove a risk or indeed they may be minded to decline the licence until such time as the risk is satisfactorily mitigated. In other cases, they may simply append a licence condition to the final approval which allows the Commission to revoke or suspend the licence and publicise this fact, pending remedial action.

### 3.5.1 Due diligence on persons connected with the application

Each person connected with the application is checked to ensure they are both competent in any offices they hold and that they are people of integrity.<sup>O4(2)a</sup>

While we expect PDFs to be supplied with the main application, wherever possible the pink-coloured Police Vetting Unit "Excepted Positions" declaration form (which can be downloaded from our website) should be submitted to the Inspectorate as soon as possible ahead of the main application submission. Note that the GSC currently requires the application fee to have been submitted prior to the checking process commencing.

The Inspectorate does not expect to have to discover issues for itself which should have been declared on the declaration forms. Where there is doubt over whether a sanction is serious enough to warrant declaration, it should be declared. There is no exemption under the rehabilitation-of-offenders legislation for gaming personnel and a very solid explanation will be required from any beneficial owner or key official who fails to declare an issue which later comes to light from the GSC's checks to avoid such a person being excluded from consideration.

Often applications are processed with the assistance of a corporate service provider (CSP) in the Island. If personnel wish us to be able to discuss issues arising from their declaration forms directly with their CSP, they must provide their CSP with a letter outlining this permission. The GSC will always insist on seeing such permission before discussing a person's affairs with a CSP.

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Note however that a signed declaration form automatically grants the GSC permission to divulge personal details to third parties who are connected with the due diligence process.

All information supplied to the Inspectorate is held in the strictest confidence and is held in accordance with the Data Protection Act.

The Commission is committed to preventing a situation where officials on the Island are simply uninformed proxies and nominal officials. Indeed, the Inspectorate will stay in regular contact with Designated Officials and Operations Managers with a view to understanding how the licensee's affairs are progressing and does request specific information as part of the ongoing supervision programme.

### **3.5.2. Due diligence on companies connected with the application**

Companies connected with the application are also checked to ensure that they are a bona fide, legitimate business.

Equally, while most corporate histories tend to be short, if the history behind acquisition and ownership of an operation is particularly complex, the Inspectorate may ask for a timeline which shows each company in the chain and the relationships and transactions between them.

In the case of each company, the company's name, trading name, ownership, incorporation date and place of incorporation will need to be made explicit.

### **3.5.3. Analysis of the financial accounts**

Full analysis of the financial model requires detailed forecasts for a minimum of three years, and for established businesses audited accounts for (up to) the previous two years.

For consistency there is a template provided which must be filled in and included with all applications (this can be as well as, or instead of, the company's own financial figures).

These are submitted to an accountant retained by the Commission which checks them for credibility and robustness. <sup>04(2)d</sup>.

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The applicant is expected to submit financial information covering:

- Plans for future funding to include the values and source(s) of operating/start up capital.
- Forecast profit and loss for the first 3 years of trading, broken down by month for the first 2 years and an annual figure for the 3<sup>rd</sup> year.
- Forecast monthly cash flow for the first 3 years of trading.
- Forecast balance sheet for the first 3 years of trading.
- Terms and origin of any investment and loans (including shareholder loans).
- The level of business that needs to be maintained and achieved to break even.
- Statutory accounts for any operational parent company.
- Information to support all financial assumptions such as traffic volumes, player spend, cost projections, player acquisition and retention costs, return on marketing spend, relocation, etc.

The Commission will also be interested in the company's ability to sustain its business during adverse conditions and will look for evidence that the business model has been subject to a sensitivity analysis.

This analysis should forecast performance where variables such as player growth, acquisition and retention costs, as well as the more traditional fixed costs (IT, rent, wages, etc) have been under-estimated. The inspectorate will pay particular attention to the performance required of the operator to break-even and a robust commentary will be expected to support the assumptions made in the accounts.

Where such analysis demonstrates the potential for financial difficulties, any contingencies that can be used to offset the situation should be outlined.

Please note, all figures must be reported in the same currency.

### **3.5.4 Analysis of ownership**

The Inspectorate is obliged by law to understand who owns and benefits from the company's activities so that it can perform the necessary due diligence on those people.<sup>O4(2)b</sup>

Details of the certificate of incorporation and the memorandum and article of association should be submitted for the applicant company.

The details provided to the Inspectorate should clearly detail the relationships between any companies involved in the application whether their participation is direct or indirect; it should show who controls those companies and detail any shareholdings they have irrespective of the size of their shareholding.

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Any beneficial owner using a nominee company or trust to control the gambling operation must still be notified to the GSC to enable due diligence to be performed. In the case of nominee companies, the GSC will also request sight of the documentation that relinquishes the owner's (usually a CSP or equivalent) control and benefits in favour of the true beneficial owner.

If the Isle of Man registered applicant company is part of a group structure, then we expect to see a comprehensive description of the structure.

This can often be best shown by a diagram, but with accompanying notes.

All companies, trusts or other arrangements in the structure should be fully identified by name, number and jurisdiction of registration.

It should be noted that in most cases, the sources of funding will need to be declared, particularly if funding doesn't arise from the simple sale of shares. These checks are designed to confirm the following:

- That the funds are genuinely available; and
- That the funds have not arisen from illegitimate activity.

### **3.5.5 Analysis of terms and conditions**

The exact Terms and Conditions offered by each licence holder is their own responsibility, having taken appropriate legal or professional advice.

However, there are a number of areas or specific items which the GSC would expect to see covered. The GSC will still review the terms and conditions and game rules (see 3.5.6) that will apply to games for fairness even if the licensee does not intend to register players directly but intends rather to allow the players of foreign operators to use its games under a network services licence.

These can include, but should not be limited to:

- Overview or introduction
- Definitions or explanations of terms used
- A cross reference to consult specific game rules
- A statement that modifications can be made to the Terms and Conditions and that the customer is responsible for periodically checking them
- How disputes will be handled and by whom
- How breaches of the terms and conditions by the customer are dealt with
- Which jurisdictions' Governing Law is applicable
- Agreements on age limits and legality of gambling in jurisdiction from which the player originates
- Rules on self exclusion for problem gamblers

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- A statement saying that by entering into a registration for membership the terms and conditions have been read and agreed to
  - The methods by which player registration can take place and the KYC identification requirements under AML procedures
  - Reference to how abandoned accounts will be dealt with, and in particular what will ultimately happen to abandoned funds
  - How blatant or palpable errors, erroneous pricing, mistakes or omissions are dealt with
  - Account limits, betting limits and maximum payouts

Players must be given the opportunity to review changes to their terms and conditions. Ideally, such changes are notified to customers as they occur and the terms can be re-agreed; the GSC is also comfortable with any mechanism which allows players to review dated changes in terms and conditions as well as the latest version. Such audit trails must be easy to understand and navigate and in all cases, any unresolved gambling performed under one set of terms and conditions may not have its terms and conditions supplanted without the player's explicit consent.

Players may not consent to future changes as part of the terms and conditions (e.g. no player may agree to any terms and conditions which contain the wording "*I agree to any future terms and conditions irrespective of when they are made or what they are*")

### **3.5.6 Analysis of game rules**

There can be two sets of Game Rules.

A licence holder offering a broad range of games or types of games may have a set of general game rules.

These could include details on:

- How bets or games are settled
- What happens in the event of a cancellation of an event or game
- How disputes will be handled and by whom
- How blatant or palpable errors, erroneous pricing, mistakes or omissions are dealt with
- Details of betting limits and maximum payouts
- How breaches of the rules by the customer are dealt with

There should also be a game specific set of rules for each game offered.

These are expected to set out the method of play and rules in a clear and concise manner, and where applicable include pay tables.

Areas within the terms and conditions and the game rules may cross over and be covered in a similar format in both areas.

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### **3.5.7 Analysis of internal controls and systems**

The Inspectorate will be interested in the internal mechanisms the company has to assess, mitigate and monitor risk particularly where it relates to players and player-protection.

It is expected that procedures and manuals detailing internal controls and systems would be submitted with the application.

If the operation is exposed to any particular risk, this should be highlighted.

The Inspectorate will require a demonstration that legal comfort has been obtained. This is typically satisfied by providing the GSC with a board meeting minute that shows the board accepted that the legal advice they received on their activity demonstrated that the activity is legal.

Full compliance with Isle of Man data protection law is expected at all times. In those instances where an operator intends to transact information with a business partner that is not within the European Economic Area, a data protection agreement must be concluded between the operator and the third party. Such an arrangement must be discussed with the office of the data protection registrar.

### **3.5.8 Analysis of the arrangements for player protection**

Under OGRA, the licensee is expected to safeguard the deposits of players registered in the Isle of Man and to ensure they receive their true and fair winnings. <sup>O6(2)(a)</sup>

A method must exist which guarantees that Isle of Man registered players receive their deposits and any accumulated winnings in the event that the operator cannot pay.

During the application, the Inspectorate will review the appropriateness of the selected ring-fencing vehicle.

While the Commission will consider any proposals to safeguard player funds, a number of choices are immediately available to operators. These are:

- Bank guarantees;
- Trust funds;
- Client accounts.

Bank guarantees constitute arrangements between the bank and the operator which specify default conditions which, if satisfied, trigger the pay-out of the guaranteed amount. They usually attract a fee from the bank for setting up and a regular fee for the continued use of the facility.

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Trusts normally maintain their own separate bank account and are controlled by trustees. Sometimes the trust requires the inspectorate's permission before funds can be removed but this is not always a stipulation. Trusts incur costs for being set-up and may specify charges for annual administration, transaction processing and wind-down.

Client accounts are specially designated bank accounts which enjoy the protection of the Online Gambling (Participant's Money) Regulations 2010 which became effective on 20<sup>th</sup> December 2010. An operator who places players' money into a client account with an Isle of Man licensed bank satisfies the OGRA licence condition to protect players' funds. More information relating to client accounts can be found in appendix F.

An operator must at all times ensure that player protection arrangements cover in value the amount of money players have in their accounts plus any monies owed to them by the operator (e.g. unpaid winnings).

Operators may utilise a number of protection mechanisms if desired, so long as the amount of money they can yield at any given time, matches or exceeds the value of player funds recorded on the operators' systems.

This mandate applies to the player's account plus any winnings from those areas of an operator's site which is licensed by the Isle of Man. Where a website offers products not licensed by the Isle of Man, winnings from those products need not be protected. Conversely, where a site is not regulated by the Isle of Man but a discrete product is, any elements of the player's account that can access the Isle of Man licensed product must be protected.

Where an operator uses an OGRA licence to undertake a number of activities, only those activities which register players on Isle of Man servers are required to be covered by player protection mechanisms. Activities offered under a network services licence which do not register players on the Isle of Man (but which, for example offer services to players registered with foreign operators) do not need to cover player funds. Players registering with foreign operators are protected by whatever arrangements they agree to when they first register.

Operators of network services may still wish to create fund protection mechanisms for contractual reasons or as part of their business ethic and so these can still be created notwithstanding they do not require the Commission's approval and are not mandatory.

The GSC is happy to offer advice on player protection mechanisms it has already approved.

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In addition to the financial aspects of player protection, the Inspectorate will look at the processes for handling player complaints and queries. As a minimum they will expect to see a mechanism to record complaints where:

- each complaint is date-stamped (*e.g. 26 July 2010*)
- each complaint includes the player's submission (if available) or a summary of it (*e.g. "A player on the site abused me for betting KK into Trup QQ." My ID is t\*\*\*\_\*\*\*\* and the player's ID is n\*\*\*\*\*."*)
- the resolution of the complaint is recorded (*e.g. "unresolved"*)

It is helpful for the operator to maintain a record of all correspondence it has had with a complainant. If a complaint is escalated to the GSC, it will always begin its investigation with a request for the correspondence to date.

Options for appeals or arbitration should also be made available to players.

Finally, all OGRA licensees are required to make a contribution to a central fund which is used to promote research, support and education in the field of problem gambling. This contribution is mandatory but does not preclude additional voluntary contributions being made by operators under their own programmes of social responsibility.

### **3.5.9 Analysis of technical checks on games offered**

Whether a game is offered to a player directly or via a third party, the game must be certified by a test house approved by the Isle of Man.

A list of approved test facilities can be found on the website at <http://www.gov.im/gambling/atf.xml>

The certification requirements are technical and stringent. For convenience, they are reproduced in Appendix C of this document.

Prospective operators of a network services licence are advised to also familiarise themselves with the modified requirements for network services as detailed in the Online Gambling Regulation (Amendment) (Network Services) Regulations 2011. The Inspectorate can assist in guiding prospective network applicants through the technical requirements.

While many operators may have their games' RNG checked on a more frequent periodic basis, the GSC will have an operator's RNG checked at least twice in a licence's 5 year lifespan.

While a licence can be granted before test certificates are provided, it should be noted that uncertified games may not be offered to the public. A test certificate is need in respect of each game and must be provided to the GSC by the operator (not the test house or software company). Where a game is

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added without a certificate, the GSC will require that game to be put beyond player access until a certificate has been provided.

The GSC will accept a test certificate from any source provided the original certificate originates from an approved test house. If, for example, a software developer were to have all of its games certified to Isle of Man standards at the point of development and were then to pass a copy of this certificate to each operator who purchased the software, the GSC would accept this certificate.

Whenever a new game is added to an operator's portfolio, a test certificate is required unless the operator can prove (usually via the software company) that the new game is simply an existing, approved game (where the RNG and the game logic have been tested) with a new cosmetic appearance (a re-skinned game).

### **3.5.10 Analysis of the business model**

When analysing the business model, the Inspectorate look to identify all of the relevant entities that comprise the model. Entities include operations, companies, supporting structures and so forth as well as banks, CSPs, legal firms etc.

It also analyses the relationships and transactions between these entities as well as the activities each entity undertakes.

When submitting the business model, the lists in 2.2 and 2.3 should be examined.

For each activity, the applicant should determine if that activity is being undertaken. If it is, they should then explain where it is taking place and who it is being undertaken by.

The GSC does not normally allow an operator to split its product offering in such a way that a similar product is licensed in part in two or more jurisdictions. The GSC is comfortable licensing all of one product and none of any others for a given operator although links available on the Isle of Man regulated web page must only link to products that carry the badge of an EEA or UK white-listed regulator. Similarly, the terms and conditions that are supplied to players from these pages may only refer to the GSC, EEA regulators or those regulators that operate under the UK white-list.

As a rule, freeplay models should be discussed with the Inspectorate who will check that no discrepancies exist between freeplay and cashplay modes that are likely to mislead players about their chances if they switch from freeplay to cashplay.

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Freeplay models which offer non-monetary prizes should be discussed with the GSC. If at any stage such a prize can be leveraged to produce money or money's worth, then it will qualify as licensable gambling even if the initial offering is free. Such prizes can include bonuses usable on cashplay sites, free turns on cash websites, advantages which materialise when used on a cash site and even virtual property that might have a value for a non-gambler (e.g. a virtual 'magic sword' that can be used in an online role-playing game).

### **3.5.11 Analysis of the payment schematic**

The payment schematic shows the flow of money around the applicant's business as well as between players and the operator and between the operator and any business partners.

The Inspectorate's analysis of the payment schematic concentrates on the methods of payment that can be used to deposit and withdraw money as well as any proposed conditions attached to these and any other financial transactions (including internal transfers and charges). The GSC must approve all payment methods in a payment schematic before they can be used.

It should be noted that non-refundable elements in gambling (e.g. non-refundable tickets) are not permitted in Isle of Man games without the express permission of the GSC.

The Inspectorate also examines the procedures for measuring the operator's exposure to player funds and ensuring that the correct amount of money is stored in the ring-fenced account or its equivalent.

Finally the banking arrangements of the operation are checked – while these are often in negotiation during the application period it should be understood that banking may not be located outside the Isle of Man unless the Isle of Man Government's Treasury Department has given explicit permission.

### **3.5.12 Analysis of customer due diligence - know your customer/customer due diligence (KYC/CDD), Anti money laundering/countering the financing of terrorism check (AML/CFT).**

The Inspectorate will examine the applicant's AML/CFT procedures and will also look at the staff handbook to ensure that appropriate staff are advised of their obligations.

Evidence will be required that the 2010 AML Code (*Proceeds of Crime (Money Laundering - Online Gambling) Code 2010*) which can be found at <http://www.gov.im/gambling/regulatory.xml> has been obtained and understood <sup>BM(4)1</sup>, as will the appointment of a suitable Money Laundering Reporting Officer (MLRO): the Inspectorate evaluates this person's CV,

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qualifications and previous experience to ensure they are competent in the role.

Applicants will need to make themselves aware of the terror financing code 2011. This is available on the GSC website.

It is important that appointed MLROs have independent and unimpeded access to the board or ownership of a company: this will need to be demonstrated.

The results of KYC/CDD checks performed by the operator must be available to the Commission upon request.

The Inspectorate will also review the screening policy for appropriate staff designed to check their integrity before exposure to player funds or information. Appropriate staff are defined as those who can directly participate in the running or support of the operation or in its management and direction.

It is important to recognise that where the operator intends to devolve elements of its operation to third parties and the GSC feels there may be a player protection implication, the GSC will expect the prospective licensee to negotiate a right of inspection on the GSC's behalf. Such an inspection if notified would only apply to the third party's Isle of Man facing business.

Even where the right of inspection is not required, such as when a new operator joins a licensee using an OGRA network services licence to offer play on its equipment, the GSC will still expect its licensees to only enter into business arrangements with companies that can demonstrate they operate to international (and therefore Isle of Man) standards of AML/CFT.

Likewise, any business undertaken by a third party on behalf of an Isle of Man licensee must also be performed to international (and therefore Isle of Man) AML/CFT standards.

For convenience, appendix E contains the Inspectorate's current internal AML/CFT checklist – this is the list our officers use when assessing the anti money laundering provisions set up by the prospective licensee. Applicants may find it useful to examine this list and compare it to their submission, particularly if they are hoping to have their application processed quickly.

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### 3.5.13 Checks on website look and feel

The applicant company will be required to demonstrate that their planned website complies with regulations. The requirements are summarised below.

On the home page:

- full name and address of the registered office <sup>A2(1)a</sup>
- the date the OGRA licence was originally granted <sup>A2(1)c</sup>
- a statement that the site is regulated in the Isle of Man <sup>A2(1)d</sup>
- the Isle of Man Government crest which can be obtained from the GSC or DED. <sup>A2(1)e</sup>  
This should be linked to: [www.gov.im/gambling](http://www.gov.im/gambling) <sup>A2(1)f</sup>
- hyperlink to a site which assists with problem gambling such as Gamcare or Gambling Therapy (which is suitable for non-English language sites) <sup>A2(1)f</sup>
- links to
  - ❖ a summary of the registration arrangements <sup>A2(1)g(i)</sup>
  - ❖ a statement barring those under 18 years old <sup>A2(1)g(ii)</sup>
  - ❖ a statement that online gambling debts are enforceable in law in the Isle of Man. <sup>A2(1)g(iii)</sup>

Generally available:

- mechanisms which allow a player to self exclude themselves from future participation, future registration and the receipt of marketing material;
- mechanisms which allow players to limit their stakes or play;
- a means by which the company can be contacted at any time by the player (a phone number, an e-mail address, live chat and so forth)

In addition the Inspectorate will check that the games being offered and any proposed advertising planned, do not step outside the bounds of the advertising regulations by being:

- indecent
- offensive
- not based on fact
- deceptive
- misleading

Or by:

- commenting on the legality of gambling elsewhere
- targeting jurisdictions where online gambling is prohibited
- carrying sexual content
- targeting under 18 year olds
- breaching copyright
- not making clear the expected return to player in respect of any game played

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The GSC is able to provide clarification on certain aspects of suitable content if required.

### **3.5.14 Analysis of infrastructure checks**

The Inspectorate will check the model to confirm that the following technical requirements are being met. Depending on the model being offered, these checks may include:

- the servers hosting the games and upon which the bets are struck are located in the Isle of Man
- That backup procedures for the safekeeping of data occur at least daily and that the data is held for a minimum of six years <sup>RA(sch)9(5)</sup>

Where technical systems are mirrored in other parts of the world for non disaster-recovery purposes, the Inspectorate will ask for the reasons behind the maintenance of non-Island facilities.

### **3.5.15 Analysis of player registration checks**

The Inspectorate defines player registration as the gathering of personal details and the issuing of a userID and password or its equivalent to a player in order for them to play a game. Player registration is mandatory for licensees except when the services they offer are being conducted under schedule 4 of an OGRA Network Services licence at which point registration is not mandatory.

Whenever an Isle of Man operator holds a player's registration data on its server, an operator in the Isle of Man must be responsible for the duty of care that is extended by regulations to those players. A sub-licensee may use the registration facilities of its platform provider but it remains responsible for registration and player fund protection and so forth. A foreign operator acting as a network partner may not use the player registration facilities of an Isle of Man network operator – the registration server.

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When checking the player registration process, the Inspectorate ensures that:

- a mechanism exists to exclude those under 18 years old who try to register <sup>RA3.2</sup>
- the name, age and place of residence of the player are collected as a minimum <sup>RA3.3i,ii,iii</sup>
- a mechanism to prevent self-excluded players from re-registering exists <sup>RA3.4</sup>
- the applicant will keep a secure list of open and closed player registrations that the Commission can request at any time <sup>RA3.5</sup>
- players can only gain access to online gambling through the use of a password that is unique to them <sup>RA5.1</sup>
- players will not be able to hold more than one account at any given time <sup>RA(sch)2</sup>
- procedures exist to cover requests for account closure, account detail changes (such as userID, password, corrections to personal data)
- mechanisms exist to prevent accounts being opened by someone other than the registered person
- players whose withdrawals exceed €3,000 are subject to additional identity verification procedures aligned to the AML/CFT code <sup>RA(sch)7(2)</sup>
- procedures exist to prevent players registering anonymously or with obviously fictitious names

### **3.5.16 Analysis of treasury services**

When accepting and processing money from Isle of Man registered players, the treasury or equivalent function within the operator's organisation must make sure that:

- a mechanism is offered to the player to self-limit their participation (e.g. a maximum stake per session, a maximum cumulative wager for a seven day period) <sup>RA5.2(a)(b)</sup>
- gambling can only occur once funds have been received or guaranteed to be received from a card issuer <sup>RA(sch)4(a)(b)</sup>
- a mechanism exists to issue players with a method (e.g. PINs, userID and password) to withdraw their monies <sup>RA(sch)5(a)(b)</sup>
- a mechanism exists that players can access to obtain a history of their financial transactions, including deposits, wins and losses for particular sessions, withdrawals and any charges imposed <sup>RA(sch)8(a)(b)</sup>
- comprehensive logs of all financial transactions are backed up at least daily and retained for at least six years

- All treasury data must be stored in an encrypted or hashed form and PINs related to account numbers must be stored using irreversible encryption algorithms<sup>RA(sch)6,7</sup>
- All financial transactions must be able to be matched to game, lottery and/or betting transactions for the purposes of producing adhoc reports for the Commission upon request and for the calculation of duty for Isle of Man Customs & Excise<sup>SV(sch1)8,9</sup>
- Where chips, tokens and so forth are used in the game that the process for conversion between them and player money is clearly available for scrutiny by the player<sup>SV(sch2)8</sup>
- Where charges are likely to be incurred by the operator or a third party, the player must be able to see that these charges are likely and how they are calculated
- Players have a way to determine that their winnings have been paid
- Certain significant events are captured and recorded, specifically large wins above €3,000, transfers in excess of €3,000 and any material in the previously stated Return to Player<sup>SV(sch1)11(a)(b)(c)</sup>
- Rules relating to the distribution of winnings are clear; that these rules include situations where no winning bet occurs or a discontinuity of service occurs and that the method of claiming winnings is clear<sup>SV(sch2)6</sup>

### **3.5.17 Analysis of transaction recording for games and lotteries**

The Inspectorate will make sure that the applicant is aware of and intends to comply with the following regulations in relation to games, lotteries and/or betting.

The System must maintain information about all Games and/or Lotteries played, including:-<sup>SV(sch1)10</sup>

- the identity of the Participant, if an Isle of Man registered player
- the time the Game began
- the balance on the Participant's account at the start of the Game or the start of the Participant's participation in the Lottery (as relevant)
- the sums placed by Participant placed in the Game (time-stamped)
- the Game status (in progress, complete, etc.)
- the result of the Game and/or Lottery (time-stamped)
- the time the Game ended
- amount won or lost by the Participant
- the balance on the Participant's account at the end of the Game and/or Lottery (as relevant)
- the currency or currencies utilised by the Participant

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### **3.5.18 Analysis of transaction recording for sportsbook betting**

The System must maintain information about all Bets received from Participants, including:- <sup>SV(sch2)5</sup>

- the identity of the Participant, if an Isle of Man registered player
- the time that the Bet was taken
- the balance in the Participant's account at the start of any Betting transaction
- the Bets made by any Participant
- amounts won or lost by the Participant
- the currency or currencies used by the Participant
- large wins (as agreed by the Commissioners from time to time)
- transfers of funds (between Participants or between any Participant and the Operator) in excess of such amount as the Commissioners may from time to time direct in writing to the Operator

A document must be provided satisfying the points above – this can either be drawn up by a company's internal IT department, or an external test house can be used if desired.

### **3.5.19 Understanding of "go-live" procedure**

Towards the end of the application process, the Inspectorate will explain the process that is normal after the Commission have approved an application. In its simplified form, it is:

- After an approval, the operator can elect to go live. If the approval contains conditions, these must be fulfilled and notified to the Inspectorate prior to go live. Prospective licensees will be required to take up (i.e pay for) a licence within three months of gaining approval from the Commission. The Commission's approval lapses after this period and a fresh application is required to obtain the Commission's approval again.
- All test certificates must be in the hands of the GSC before a licence can be issued.
- The operator must understand all of its licence conditions in relation to all of its activities and the importance of making an immediate notification to the GSC if those conditions look likely to be breached.
- During its period of approval and during the period prior to going live with services, operators will be expected to complete quarterly returns and will fall under the compliance regime of the GSC.
- An operator may test their products using hired testers and real money but the following conditions must prevail:

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- No tester may benefit from the gambling directly (although players may be remunerated for their testing services of course) and any monies won or lost must be repatriated after testing.
  - Only testers and administrators may have access to the site (e.g. password protection or equivalent) which must otherwise be strictly inaccessible to the public for gambling purposes.
  - A site may accumulate and register non-testing players prior to go live but these players may not be given access to the site except in the capacity of testers as previously described.
- Once an operator has been issued with the licence, the licence fee renewal date is fixed and the licence is issued; the operator is added to the GSC's website. From this date, the operator has a maximum of nine months to go live.

### **3.6 The OM or DO's meeting with the Inspectorate**

Within a few weeks of the application's acceptance, the Inspectorate may seek to meet informally with the applicant's Designated Official, or with the Operations Manager if one has been appointed.

At this meeting, the Inspectorate will raise any areas that require clarification. It is also an opportunity for the Designated Official or Operations Manager to impress upon the Inspectorate their competence to run the business: the Inspectorate will be interested in a number of facets of the prospective licensee which include, but are not limited to:

- a précis of the business model which touches on each different mode of operation if there is more than one. In particular the Commission is interested in the activities that will be undertaken in the Isle of Man
- details of management and control that will be used to control the licence holder, including the arrangements which the Designated Official or Operations Manager will be using to stay in touch with the day to day affairs of the business
- any peculiarities affecting the organisation, planning, control or operation of the licence holder's business
- An indication of when the licence holder intends to commence operations assuming the licence is approved
- Aspects of the accounts encompassing in particular forecasts, start-up capital and assumptions underpinning the projections of profitability.

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## **3.7 The formal hearing**

Assuming that there have been no delays with the application process, then between eight and twelve weeks after the application process has been accepted (depending on how the monthly Commission hearings fall), the Commission usually aims to advise the applicants of their licensing decision.

The on-Island directors on the board of the Manx company, Designated Officials and the Operations Manager, if there is one, are required to attend this hearing. It is at this meeting that any licensing conditions – which may vary from one application to the next – are discussed and agreed. It is not necessary for off-Island directors to attend the hearing though they will be required to have met with the inspectorate within six months of the hearing.

It should be noted that directors must have been approved by the Commission, either during the hearing or previously by appointment before they can commence their duties.

Successful applicants that have their licences approved receive notification from the Chief Executive or the inspector of the GSC soon after the formal hearing.

While the Commission is not obliged to share its reasons for declining an applicant, <sup>O4(4)</sup> it will indicate the reasons in the formal correspondence that accompanies any rejection. It is of course to be hoped that within the ten week period prior to the formal hearing, any obstructions to licensing have been discovered and remedied.

## **4. The duties of officials before, during and after the application**

The following sections outline the responsibilities of the various officials that must be or may be appointed to control a company's affairs.

### **4.1 Who represents the licence holder on the island?**

The GSC expects a licence holder to be represented by a Designated Official who resides in the Isle of Man. A Designated Official must also be a director of the company.

If the Designated Official is to reside outside the Isle of Man, the GSC will accept the appointment by a licence holder of an Operations Manager, who

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must demonstrate their competence and be approved by the GSC. By default, any Operations Manager must reside in the Isle of Man.

A Designated Official must be appointed before an application can be submitted and evaluated by the GSC. A Designated Official must be approved by the Commissioners before an applicant can be granted a licence.

A Designated Official or Operations Manager must be resident on the Island before operations can commence under a licence.

An Operations Manager can be an employee of an Isle of Man corporate service provider.

## **4.2 What roles exist and what is expected of each role?**

The duties falling to DOs or their nominated OMs are:

- To present an overview of the structure and organisation of the prospective licence holder during the application process and to be able to field questions relating to:
  - ❖ Company Strategy
  - ❖ Business Plan
  - ❖ Corporate and Organisational Structure
  - ❖ Financial Projections
  - ❖ Business models and licensing implications
  - ❖ Banking and flow of funds/monies through the organisation
  - ❖ Player protections method of choice
- To understand the Manx legislation and this guidance and to be able to demonstrate how the licence holder intends to meet the criteria necessary to qualify for the licence
- To understand and comply with any conditions specified in any licence granted
- To understand and retain any legal advice pertaining to the operations of the licence holder in any jurisdictions in which it operates to ensure it is fully compliant in all its activities
- To make available detailed information relating to the licence holder's plans, operations or control as required by the GSC from time to time
- To ensure player accounts are ring-fenced guaranteeing protection of player funds
- To ensure that the licence holder remains socially responsible in its operations by excluding youth, crime, unfairness and problem gambling from its operations
- To respond to requests made by the Commission in a timely manner

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- To ensure that anti-money laundering directives in force at the time are complied with; to provide evidence of this upon request; to report suspicious transactions to the Isle of Man Constabulary Financial Crime Unit as they arise
  - To notify changes in planning, operation or control to the GSC in accordance with the guidance offered in section 4.4 of this guidance
  - To provide for regular audits to the required standard as defined in the licence conditions

Any directors overseeing the business of an Isle of Man licensee are of course subject to the general duties of Isle of Man company directors. The following list expands on those general duties to outline the GSC's expectations of directors appointed to control the affairs of its licensees, and as may be expected these requirements often duplicate those that are expected of the designated official.

- 1) They must have general knowledge, experience and skill appropriate for their post - the GSC does expect directors to have previous experience either as directors of previous businesses or of the gambling industry – preferably both.
- 2) They must understand the company's business - they should understand the business model and how money is generated and spent; they must understand any legal restrictions that apply to the model and they should have access to reports that allow them to assess the health of the model. They must be able to explain the model to the GSC's inspectors if asked.
- 3) They must act honestly - the continuation of a person's involvement in an Isle of Man licensee's affairs does depend on the maintenance of the very highest standards of personal probity. Under Isle of Man law, the Commission can only grant licences where they remain satisfied that the company is under the control of persons of integrity.
- 4) They must act reasonably - this obligation extends to the protection of players who use the company's services. The director must understand the mechanisms the company uses to protect the funds of its players and must ensure at all times that the mechanism contains enough money to cover all player's interests. In addition, the director must ensure that its company protects the young and vulnerable by excluding or allowing to self-exclude respectively these groups. The terms and conditions under which players contract with the company must be fair and transparent.
- 5) They must act in the interests of the company (members or if in trouble, creditors) - given that breaches of the licence conditions and the law can result in the suspension or cancellation of a licence, it is important that directors understand the licence conditions and the Isle of Man's law, their companies' compliance with these and their reporting obligations to the GSC in the event of breaches.

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- 6) They must take steps to understand the affairs of the company they are managing - Directors must be able to report on any aspect of the company's operations within a reasonable timeframe if asked by the GSC to do so. This means that they must have access to all areas of the operation and understand the information that arises from the business when it is obtained. In addition, directors will be expected to pro-actively report to the GSC any exceptional circumstances that potentially put their business in financial or legal jeopardy.
  - 7) They must avoid conflicts of interest or declare them - at the very least, where they operate on behalf of more than one company, they must have discussed this with the respective controlling interests and be able to declare that all companies on whose behalf they act are comfortable with their situation.
  - 8) They must not profit privately from the company's business at the expense of the company
  - 9) They must act independently of intimidation, coercion, influence and so forth
  - 10) They should attend regular board meetings to assist with (6)
  - 11) They should ensure minutes are kept and are drafted promptly at board meetings
  - 12) They should ensure that significant transactions are approved and noted to provide an account of the decision making process - the GSC must be notified in any event if the company intends to significantly reduce its player protection funding, even if the proposed reduction doesn't create a protection shortfall.
  - 13) They should take legal/financial advice if they know their company is in financial difficulty
  - 14) They must not distribute company money in a way that doesn't benefit the company
  - 15) They should apply to the courts for relief if they think they have been negligent, have breached their duty or trust, etc

If further detail is required, we recommend prospective directors visit the Financial Supervision Commission's website and obtain a copy of the "guidance note on the responsibilities and duties of directors under the laws of the Isle of Man".

## **4.3 How many roles can an official perform?**

There is no legal limit to the number of roles an official can perform, or indeed how many organisations for which they can perform those roles. In theory an official can be a Designated Official, director, MLRO and the beneficial owner. Equally, an Operations Manager can represent any number of operators.

In practice, there will be limits to what an individual can do before workload or conflicting priorities erode or destroy their competence.

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So long as the GSC remain satisfied that the required functions are being undertaken by a competent person, they will not intervene to moderate an official's duties. Competence will be measured simply by that official's ability to meet the expectations of their role as outlined in section 4.2 of this guidance.

If the GSC has reason to believe that an official is no longer able to competently discharge their functions they will call upon the licence holder to remedy the situation.

If after a period of time, the situation persists, the GSC may revoke the licence or suspend it pending the removal of the official or realignment of that official's competence.

The GSC does not intend at this stage to formally test competence although it will maintain a working relationship with officials. In some cases however, the GSC mandates this competence formally (such as during licence application); in other cases, it will expect it on an adhoc basis (such as when a problem arises, or the GSC has a query or return for the licence holder).

The Commission view the OM/DO role as having substantial contact with the licence holder's day-to-day operations and not just as a 'middle man' through which to pass queries and requests.

This guidance is separate from the integrity rules which govern the ongoing personal conduct of DOs and OMs.

## **4.4 Events that officials must notify to the GSC**

The GSC must be notified when any of the following occur (DO=Designated Official, OM=Operations Manager, MLRO=money laundering reporting officer):

- An official (DO, OM or MLRO) is convicted in any jurisdiction of a criminal offence
- An article appears in the media that suggests an Isle of Man licenced operation has a legal, financial or operational problem including accusations of player dissent, cheating, suspicions over software and so on
- A Designated Official ceases to be a director of the licence holder
- A new director is appointed to the company. Please note that all on-Island directors must appear before the Commission and be approved before they can assume their duties; at its discretion the Commission may approve non-resident directors in their absence provided they appear before the GSC when next on the island and within a reasonable timescale, usually no later than six months after the Commission's approval has been given.

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- More than 5% of the beneficial ownership changes
  - An official (DO, OM or MLRO) dies
  - An official (DO, OM or MLRO) is likely to spend a substantial period of time either consecutively or in aggregate off the Island
  - The licence holder wishes to extend a sub-licence to a third party either on or off the Island
  - The licence holder is planning to commence or cease operations on the Island
  - The licence holder is close to liquidation or receivership
  - The licence holder is being targeted for a merger or a takeover bid where the beneficial owners or officials are likely to be reviewed or changed
  - The licence holder draws upon deposits and reserves
  - A business partner is given access to Isle of Man based servers under the terms of the OGRA network services licence.

## **4.5 How many officials can a licence holder have?**

There is no limit to the number of Designated Officials a company can have provided multiple Designated Officials do not cause a problem based on mixed accountability or availability.

The GSC will not approve a situation where some queries have to be routed to one Designated Official and other queries to another, based on the nature of the query and will, in such a case, nominate the Designated Official with who it will communicate.

In addition to any number of DOs, an organisation can appoint one Operations Manager. As with Designated Officials, an operator may employ a number of operations managers but only one will be considered the prime contact at any given time.

## **4.6 Who can the Commission call on to attend Commission sessions and who needs to be approved by the Commission prior to commencing their duties?**

When an application is put before the Commission for approval and heard by the Commission (having been prepared by the Inspectorate) key personnel are invited to a hearing. This section details who must attend and who may attend.

Furthermore, throughout the lifetime of the licence, it is possible for key personnel to change. This section also details when those changes must be

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notified to the GSC and whether or not the key personnel must await the Commission's approval.

#### **4.6.1 Personnel who must attend the application hearing**

The following personnel must attend the hearing:

- The Designated Official;
- The Operations manager, if one has been appointed;
- All on-Island directors.

The following personnel are not obliged to attend the hearing but may be requested to visit with the Commission or the Inspectorate within 6 months of the licence being approved:

- Senior representatives of the board as agreed with the GSC

The following personnel may attend, provided the GSC is notified ahead of time:

- The MLRO;
- The beneficial owner(s).

#### **4.6.2 Notifications and approvals when key personnel change**

All changes and potential changes in key personnel must be notified to the Inspectorate as soon as they become known about.

In addition, the GSC must complete certain procedures before certain key personnel can begin their duties. These are detailed below:

##### **:: Changes in beneficial ownership.**

Beneficial owners may not become involved in an Isle of Man licensed gambling operation until the GSC has conducted and concluded its diligence checks. All changes in ownership must be notified to the GSC, who may apply percentage shareholding thresholds to determine the nature of the checks that are required.

##### **:: Changes in Designated Official or Operations Manager.**

New DOs and OMs may not commence their duties until they have been approved by the Commission. The Commission may determine its approval ahead of time (in the case of a person likely to become involved in a licensee's activities in the future).

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In any event, any new DO or OM who has not already been before the Commission must meet with the inspectorate within the following time scales:

- Designated officials : within 6 months of approval;
- Operations managers : within 1 month of approval.

### **:: Changes in directors.**

All directors of an operation must be approved by the Commission before they commence their duties. As with DOs and OMs the Commission may determine its approval ahead of time.

On-Island directors must meet with the Commission before they can become involved with an Isle of Man operator; new non-Island directors who have not already been before the Commission may be approved by the Commission without appearing before it but will be requested to meet with the inspectorate within six months of their approval.

## **5. Costs of holding a licence**

In addition to the application fee of £5,000, payable at the beginning of the application process, the following costs may occur in the acquisition and maintenance of an OGRA licence.

The current annual cost for the five year OGRA licence is:

- £50,000 plus supplementary charges (£5,000 per network partner) for a network services licence,
- £35,000 for a standard licence; and
- £5,000 for a sub-licence.

A sub-licence can be obtained instead if the Isle of Man based business uses the technology platform of an existing Isle of Man full-licence holder.

Particular arrangements may be made with specific applicants to cover the GSC's costs of inspection where special inspection regimes prevail – these will be agreed prior to approval and have traditionally been restricted to the inspection costs associated with auditing live dealing studios.

Currently a levy is charged on operators to fund education, research and support for problem gambling.

In addition, online gambling which registers players attracts online gambling duty on a sliding scale from 1.5% down to 0.1%, except where the online gambling activity is considered pool betting in which case the duty is equal to the UK duty rate (15% at the time of writing).

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Applicants are advised to contact officials within the Isle of Man Customs & Excise if they wish to understand the taxation requirements of an operation that offers mixed services.

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## Appendices

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## **Appendix A: standard OGRA licence conditions (non-network services)**

These licence conditions apply to the holders of an OGRA licence. Those operators wishing to obtain an OGRA network services licence should also review the modifications that pertain to this section when such a licence is obtained – see appendix H.

1. The licensee must ensure that the games, gambling software and financial software offered are demonstrably secure, reliable, and capable of being audited by the retention of detailed audit trails in accordance with the applicable legislation.
2. The licensee must ensure compliance with all applicable legislation including regulations that are in force from time to time and must seek approval for any changes made to the system in accordance with such rules or procedures as the Commission may from time to time require.
3. The licensee shall consider its own legal position in relation to accepting or negotiating bets, stakes or play (“business”) from another jurisdiction in which the licensee wishes to conduct business and shall consult with the Commission in this regard. For the avoidance of doubt the licensee shall not rely on any statement or policy of the Commission in respect of the legal system or laws of any jurisdiction other than the Isle of Man for the purpose of determining whether or not it is legal to conduct the licensed activity in such other jurisdictions.
4. The licensee must either -
  - (a) Hold on deposit in an interest-bearing escrow account in a bank in the Isle of Man or with the agreement of the Commission make alternative arrangements to guarantee any outstanding debts of the licensee owed to players for the duration of this licence;
  - (b) Instruct the bank, or as part of alternative arrangements guarantee, that such sum shall be available to the Isle of Man Government to cover any outstanding debts owed to players in the event that the licensee ceases to operate under this licence, any balance being returned to the licensee; and
  - (c) Furnish the Commission with confirmation by the bank of the above arrangements and subsequently quarterly bank statements or agree with the Commission what documentary evidence must be provided to the Commission as a result of putting alternative arrangements in place.

The licensee may recover the interest on the sum.

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OR

The licensee must establish a formal reserve or insurance policy for gambling as specified and agreed by the Commission. Any such reserve must be sufficient to cover any outstanding debts owed to players and the account must be maintained with a bank in the Isle of Man. Any insurance arrangements must be made with an Isle of Man insurance company under the laws of the Isle of Man or through alternative arrangements agreed with the Commission.

5. The licensee must not operate, or be associated or linked with, online gambling sites not regulated by the Act except with the consent of the Commission.
6. The licensee shall permit all activities permitted by this licence and any associated transactions to be the subject of random audit by or on behalf of the Commission.
7. The licensee must, if so requested by the Treasury, take an active part in any forum or consultative body established by the Treasury relating to the operation and regulation of online gambling in the Isle of Man.
8. On the 1st April of each year the licensee must contribute a sum to the Isle of Man Government's Problem Gambling Fund, such sum being notified by the Treasury.
9. The licensee must commence online gambling pursuant to this licence within 9 months of the licence being granted.
10. The licensee must fully comply with any anti-money laundering provisions that apply to the type of gambling permitted under Schedule 1 of this licence.
11. No general restriction may be imposed by the licensee to exclude residents of the Isle of Man from placing bets or stakes on Isle of Man on-line gambling sites except with the agreement of the Commission.
12. The licensee must if requested by the Commission supply sufficient information from an independent source(s) to demonstrate the probity of suppliers of any gambling or financial software it operates.
13. The licensee must operate through trading account(s) in a bank located in the Isle of Man unless agreed otherwise with the Treasury. In addition any bank accounts for trading or gambling purposes should

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be located in the Isle of Man unless agreed otherwise with the Treasury.

14. The licensee shall maintain accounting systems approved by the Commission and shall conform with such internal and external accounting practices as the Commission may require.
15. The licensee shall as soon as practicable, and in any case not later than six months after the end of every accounting year, deliver to the Commission a copy of its accounts in the form required by the Companies Act 1982 or as defined by United Kingdom G.A.A.P and certified by a qualified auditor.
16. The licensee is required to demonstrate to the Commission that when advertising in the United Kingdom such advertising complies with all Advertising Standards Authority Codes and the United Kingdom Industry self-regulatory Codes or such other Codes as may be applicable from time to time.
17. The licensee is required to provide a hyper-link(s) on its website to any problem gambling organisation that may be specified by the Commission in writing from time to time.
18. In the event that the licensee enters into a business to business relationship with an entity that is not licensed by the Isle of Man Gambling Supervision Commission the licensee shall use its best endeavours to ensure that those entities adhere to the Gambling Supervision Commission's core principles, namely:-
  - To keep the gambling industry crime free
  - To protect the young and vulnerable
  - To ensure that the facilities offered by licence holders are fair and that players receive their true winnings
19. Further the licensee shall not bring the Island or its reputation into disrepute either itself or through its relationship with third parties. This is a condition of the licensee's licence and in the event that the licensee fails to abide by any licence condition, the Gambling Supervision Commission shall be entitled to terminate the licence in accordance with the terms of section 13(4)(b) of the Online Gambling Regulation Act 2001.
20. The licensee's licence, and its right to refer to the Isle of Man as its source of regulation, only applies to those services offered from the Isle of Man and by the party granted this licence.

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Services offered by the licensee from a jurisdiction other than from the Isle of Man and/or by any part of its group shall not make reference either directly or indirectly to the Isle of Man Gambling Supervision or the licence granted hereunder.

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## **Appendix B: Glossary of Terms**

### **COMING INTO FORCE (of licences)**

The defining point in a granted/approved licence when the business first undertakes business that is regulated. There may be a delay between approval and coming into force, explained by any number of factors in the operations needed to establish hardware, offices, staff etc on the Island.

The licence renewal date is the anniversary of the date the licence is granted (when the annual fee has been received and the chairman of the Commission signs the licence).

Coming into force is the same as "go live".

### **DESIGNATED OFFICIAL (commonly abbreviated to DO)**

A person appointed by an applicant or licence holder from amongst its directors to represent that organisation's interests in the Isle of Man. Designated Officials should be resident on the Island. If a Designated Official cannot reside full time on the Isle of Man, they must appoint an Operations Manager to represent them in their absence.

### **GRANTING AND APPROVAL (of licences)**

Approval is the permission given by the Commission for the operator to conduct their business. Approval usually occurs shortly after the Commission's hearing and is notified to the applicant and its representatives by the Inspectorate.

The granting of the licence takes place after approval is given and is always preceded by receipt of the annual fee. The date the licence is granted and issued is used as the renewal date for the annual fee.

The licence is considered to have been granted once it has been signed by the chairman of the Commission.

A licence may be granted on an organisation which has no immediate intentions to operate in the Isle of Man in order to give them comfort that they could establish in the Isle of Man with no further licensing requirements (assuming no changes occur between the granting of the licence and its coming into force). This is called a shadow licence.

### **MONEY LAUNDERING REPORTING OFFICER (commonly abbreviated to MLRO)**

An individual responsible for reporting on anti-money laundering activities undertaken by a licensee. MLROs will only be approved by the Commission if they have experience in the role and have unfettered access to the board of the company.

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#### NETWORK SERVICES LICENCE.

An OGRA licence which carries a schedule which permits an operator to allow a non-Isle of Man licensed business partner's players to use its infrastructure without the requirement to re-register those players.

#### OPERATIONS MANAGER (commonly abbreviated to OM)

A person appointed by an applicant or licence holder to represent the Designated Official on the Island in their absence.

Operations Managers are commonly sourced from corporate service providers (CSPs) whose officials automatically qualify as Operations Managers under section 10A of OGRA but an Operations Manager may be any citizen who is resident on the Island and whom the Commission deems appropriate.

Currently the Commission considers anyone who meets the competency criteria laid out in section 4 of this guidance to be appropriate.

#### OGRA

The Online Gambling Regulations Act 2001 which sets legislative prerequisites for online gambling activity arising in the Isle of Man. OGRA is supported by a group of OGRA regulations, all of which can be accessed via the GSC legislation web page.

<http://www.gov.im/gambling/regulatory.xml>

#### WHITE LIST

The list of jurisdictions that regulate online gambling whose licensees are allowed to advertise in the UK. The Isle of Man is currently on the UK white list and its licensees may advertise in the UK.

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## Appendix C: Summary of technical checks

Extracted from The Online Gambling (Systems Verification) (No. 2) Regulations 2007.

Subject to the terms of these Regulations, the Operator shall, before any Gaming or a Lottery is conducted by a Participant by means of any System, produce to the Commissioners a certificate in writing issued by a party approved for the purpose by the Commissioners (or previously approved by the Department of Home Affairs) that the System by means of which such Gaming or Lottery is conducted complies with the standards specified in Schedule 1.

The obligation under Regulation 2(1) arises:

- prior to the Operator permitting the System to be accessed by any Participant; and,
- on or before the expiry of the periods specified in the Operator's licence under the Act.

The System must:

- follow the rules for Online Gambling published to the Participant or potential Participant prior to its placing any sums with the Operator for participation in Online Gambling
- provide over specified periods no more than the house advantage (if any) agreed by the Commissioners with the Operator
- integrate contingencies for loss of continuity of play
- if utilised in any peer to peer game, ensure that over the specified periods that no one Player has any advantage over any other Player playing the same game

Both the Online Gambling and financial transactions software must be congruent and secure.

The System must satisfy the following criteria for randomness for any Gaming or Lottery (save where different rules apply and have been approved by the Commissioners and published to the Participant or potential Participant prior to its participation), following Schneier:- the data must be randomly generated, passing appropriate statistical non static output results tests of randomness (e.g., Marsaglia's "Diehard" set of tests) uniformly distributed over the set range;

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the data must be unpredictable, i.e. it must not be computationally feasible to predict what the next number will be, given complete knowledge of the algorithm or hardware generating the sequence, and all previously generated numbers; and the series cannot reliably be reproduced, i.e. if the sequence generator is activated again with the same input (as exactly as humanly possible) it will produce two completely unrelated random sequences.

The Operator must disclose [to the accredited test facility] the methodology of any random seeding and any seeding must be proven to result in an unpredictable output.

The outcome of any Game or Lottery, as the case may be, and the return to the Participant, must be independent of the CPU, memory, disk or other components used in the computer or other device used by the Participant.

The Game or Lottery outcome, as the case may be, must not be affected by the effective bandwidth, link utilisation, bit error rate or other characteristic of the communications channel between the System and the computer or other device used by the Participant.

The System must be able to display for each Game or Lottery, as the case may be, the following information on the current page or on a page directly accessible from the current page via a hyperlink:-

- the name and rules of the Game and/or Lottery
- restrictions on play
- instructions on how to play, including a pay-table for all prizes and special features
- the Participant's current account balance and currency or currencies utilised by the Participant to participate in the Game and/or Lottery
- unit and total sums permitted to be played by a Participant in relation to the Online Gambling
- the return to the Participant, disregarding any exercise of skill by him
- Pursuant to the testing of the System, the percentage of total sums returned to Participant in relation to all house Games or Lottery, as the case may be, offered by the Operator

Any software utilised must be capable of providing for congruent and secure betting and financial transactions.

The System must be able to display the following information on the current page or on a page directly accessible from the current page via a hyperlink:-

- 
- the rules regarding the placing of bets, including circumstances in which the Operator will void a bet; the treatment of errors, the treatment of late bets and the treatment of withdrawals and non-runners
  - restrictions on the placing of any bets
  - the Participant's current account balance and the currency or currencies utilised to place bets
  - the means by which a winning bet will be determined

The Operator shall ensure that the integrity of the Betting transactions can be assured and that Participant transactions are not lost through System failures or unauthorized modification or access by a third party.

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## Appendix D: Legislative references

In particular areas of the document, references to legislation have been recorded. These are indicated by a light grey superscript<sup>thus</sup>.

The references are:

- O The Online Gambling Regulation Act 2001
- A The Online Gambling (Advertising) Regulations 2007
- SV The Online Gambling (Systems Verification)(No.2) Regulations 2007
- RA The Online Gambling (Registration & Accounts) Regulations 2008
- BM The Online Gambling (Betting & Miscellaneous Provisions) Regs. 2007

(sch) Schedule to the regulations

(sch1) Schedule 1 of the regulations

## Appendix E: An AML/CFT checklist

This appendix shares the internal checklist the GSC’s inspectors use to assess prospective licensee’s AML/CFT provisions. As it is designed to integrate into the internal systems the GSC use, no particular emphasis has been placed on formatting but the sheet should nonetheless act as a useful guide when preparing the AML/CFT documentation element of an application.

### Check sheet for AML Procedures

<u>Section</u>	<u>Required Procedure</u>	<u>Location in AML Document from Licensee</u>	<u>Yes or No</u>
<u>Identification Procedures</u>	<p><b>Anonymous Accounts</b> Proof that anonymous accounts and/or fictitious names are not allowed</p>		
	<p><b>Risk Assessment</b> Procedure for risk assessing money laundering /terrorist financing that includes</p> <ul style="list-style-type: none"> <li>- Size of funds</li> <li>- Jurisdiction</li> <li>- Source of funds</li> <li>- Other notes</li> <li>- Reference to guidance notes</li> <li>- Legal nature of participant</li> </ul>		
	<p><b>Identity of Prospective Participants</b> Procedure to establish identity after initial contact. If no identity provided, no account is opened, no money can change hands and no gambling will be permitted.</p> <p>Note: this is a requirement for identity, not proof of identity.</p>		

	<p><b>Evidence of Identity for Participants</b></p> <p>Procedure that verifies identity for transactions (In aggregate) of €3000 or more and if no verification then no transaction, participant is blocked and suspicious transaction report is raised.</p>		
	<p><b>Evidence of Identity for Business Participants (*1)</b></p> <p>Procedure which shows that company performs due diligence on business partners, specifically it understands :</p> <ul style="list-style-type: none"> <li>- Company structure</li> <li>- Partner's legal status</li> <li>- Authority to act as partner, incl. evidence of same</li> <li>- Identity of beneficial owner</li> </ul> <p>A business participant is a company that interacts with an operator on a commercial footing (excluding support services as defined in section 2.2 eg. Banks, Hosting Centres, Corporate Service Providers, etc.)</p>		
	<p><b>Enhanced Participant and Business Participant Due Diligence</b></p> <p>Due Diligence procedures in place for participants of higher risk and who is or has a substantial connection with:</p> <ul style="list-style-type: none"> <li>- A politically exposed person.</li> <li>- A person residing in a country which the licence holder believes does not apply the FATF recommendations.</li> <li>- A person or legal arrangement that is the subject of warnings issued by the Isle of Man</li> </ul>		

	<p>Gambling Supervision Commission.</p> <p>Enhanced due diligence:</p> <ul style="list-style-type: none"> <li>- Consideration of additional identification data and on-going monitoring.</li> <li>- Considering whether additional aspects of identification need to be verified and measures to establish source of wealth.</li> </ul>		
	<p><b>Ongoing Monitoring</b></p> <p>Procedures in place where transactions are significantly different (in number and value) to the normal pattern including:</p> <ul style="list-style-type: none"> <li>- Review of participants' identity.</li> <li>- Review of evidence of identity.</li> </ul>		
<p><u>Record Keeping</u></p>	<p><b>Record of Transactions</b></p> <p>Procedures in place for maintaining a record of all participant transactions.</p>		
	<p><b>Retention of Records</b></p> <p>Confirmation licence holder retains the records of participants for at least 6 years when :</p> <ul style="list-style-type: none"> <li>- The person ceases to be a participant.</li> <li>- When the last transaction was undertaken by the former participant.</li> </ul>		

	<p><b>Format and Retrieval of Records (*2)</b></p> <p>Procedures to ensure the licence holder will maintain a record on the island which comprises either a copy of the information, or where this is not practicable, contains detail to enable a copy of the information to be obtained.</p> <p>Hard copies on island must be available without delay. Hard copies outside the island must be made available within 7 days. Records held on a computer system, must be readily accessible from the island and capable of being retrieved without delay.</p>		
	<p><b>Register of money laundering enquiries and reports</b></p> <p>Procedures in place which show the company establishes and maintains on the island :</p> <ul style="list-style-type: none"> <li>- A register of all enquiries made of it by law enforcement.</li> <li>- A register of all reports made to a constable in pursuance of suspicious transactions.</li> </ul> <p>Such registers shall remain separate from all other records.</p>		

<p><u>Internal Procedures</u></p>	<p><b>Recognition and reporting of suspicious transactions</b></p> <p>Procedures in place for an appointed MLRO with:</p> <ul style="list-style-type: none"> <li>- Sufficient seniority within the company.</li> <li>- Right of direct access to management.</li> </ul> <p>Internal reporting procedures in place which will:</p> <ul style="list-style-type: none"> <li>- Ensure all staff are aware of the individual they are to report knowledge or suspicious activity to.</li> <li>- Ensure there is a clear reporting chain.</li> <li>- Ensure reports are submitted to the MLRO.</li> <li>- Require the MLRO to consider all reports.</li> <li>- Ensure MLRO has reasonable access to any other information.</li> <li>- Require information is forwarded to a constable of FCU if MLRO knows or suspects illegal activity.</li> </ul>		
<p><u>Staff, Education and Training</u></p>	<p><b>Staff Screening</b></p> <p>Procedures in place to satisfy the integrity of new directors and appropriate employees.</p>		
	<p><b>Staff Training</b></p> <p>Procedures in place to provide education and training for all Directors, Management, all key staff and appropriate employees to ensure they are aware of:</p> <ul style="list-style-type: none"> <li>- The provisions of the Code.</li> </ul>		

	<ul style="list-style-type: none"> <li>- Their personal obligation.</li> <li>- Established reporting procedures of suspicious transactions.</li> <li>- Company policies and procedures.</li> <li>- Participant and business participant procedures for identification, verification, record-keeping and other procedures.</li> <li>- The recognition and handling of suspicious transactions.</li> <li>- Their personal liability for failure to report information or suspicions.</li> </ul>		
	<p><b>Technological developments (*3)</b>  Procedures in place for the purpose of preventing the misuse of technological developments for the purpose of money laundering or the financing of terrorism.</p>		

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## Appendix F: The Client Account in more detail

Under the Online Gambling (Participants' Money) Regulations 2010, operators may protect player funds to fulfil their obligations to licence condition 4 using a client account.

The client account mechanism does not displace other methods of fund protection and indeed can be utilised in conjunction with other approved methods to provide full protection.

To qualify as a player fund protection mechanism, the client account must:

- be held by a recognised bank (one licensed under section 7 of the Financial Supervision Act 2008);
- include the words "client account" in its title;
- have been created for the purposes of protecting player funds; and
- be kept separate from money that isn't player money or money deemed as player money by the regulations.

The operator is required at all times to maintain sufficient funds in the client account such that if the company became insolvent, there would be sufficient money to refund all players' funds. Any player funds lodged with a third party (eg. payment service provider) and due to the operator but not yet arrived, must be temporarily covered by the operator.

Three different categories of money are protected under the regulations and are deemed player money:

- Players' money;
- Money that the operator has recognised as on the player's account (what a player considers he or she has available when accessing their account online) even though that money may not yet have arrived from a payment service provider with whom the operator has a separate business arrangement regarding the frequency of reconciliation payments, etc. In this case, the operator must make up the shortfall until the money arrives in order to satisfy the requirement to cover all player funds at any given time; and
- Money that the operator may place into the account to anticipate future player funds and to reduce the number of transactions that are necessary to service the account. For example, an operator may lodge £1,000 in the client account, paying a single charge for the transaction, then simply allocate the next fifty deposits of £20 internally using its systems whilst processing those deposits in some way other than transferring them into the client account.

The client account can be frozen under a number of circumstances:

- 
- bankruptcy proceedings are in progress anywhere in the world relating to the licensee;
  - The Commission has directed that the licensee be treated as in default

The Commission has powers under the regulations to notify the banks holding the client accounts of a default situation so that they can exercise their duty of care over the client money.

A copy of the regulations can be found on the GSC's website at:  
<http://www.gov.im/lib/docs/gambling/onlinegamblingparticipantsmoney1.pdf>

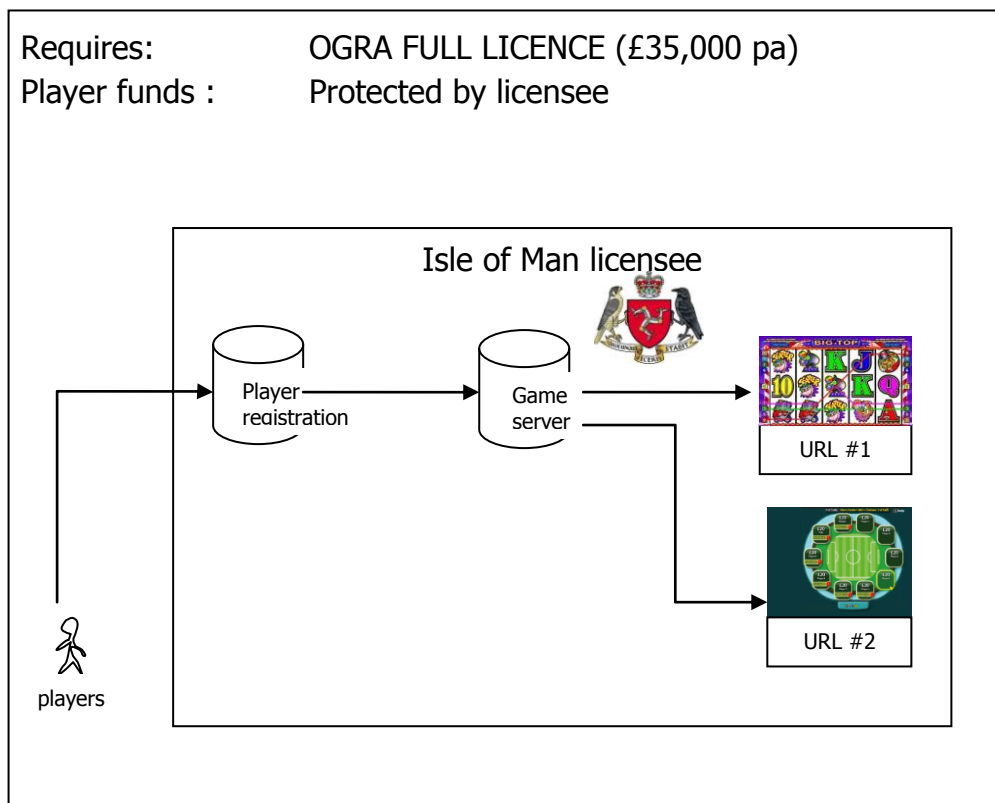
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## Appendix G : A gazetteer of operating structures (including structures possible under the network services licence).

The following diagrams outline the essential operating architectures and licensing options for common gambling operations. Note that the terms "game server", "registration server", etc re not intended to suggest that separate equipment is required.

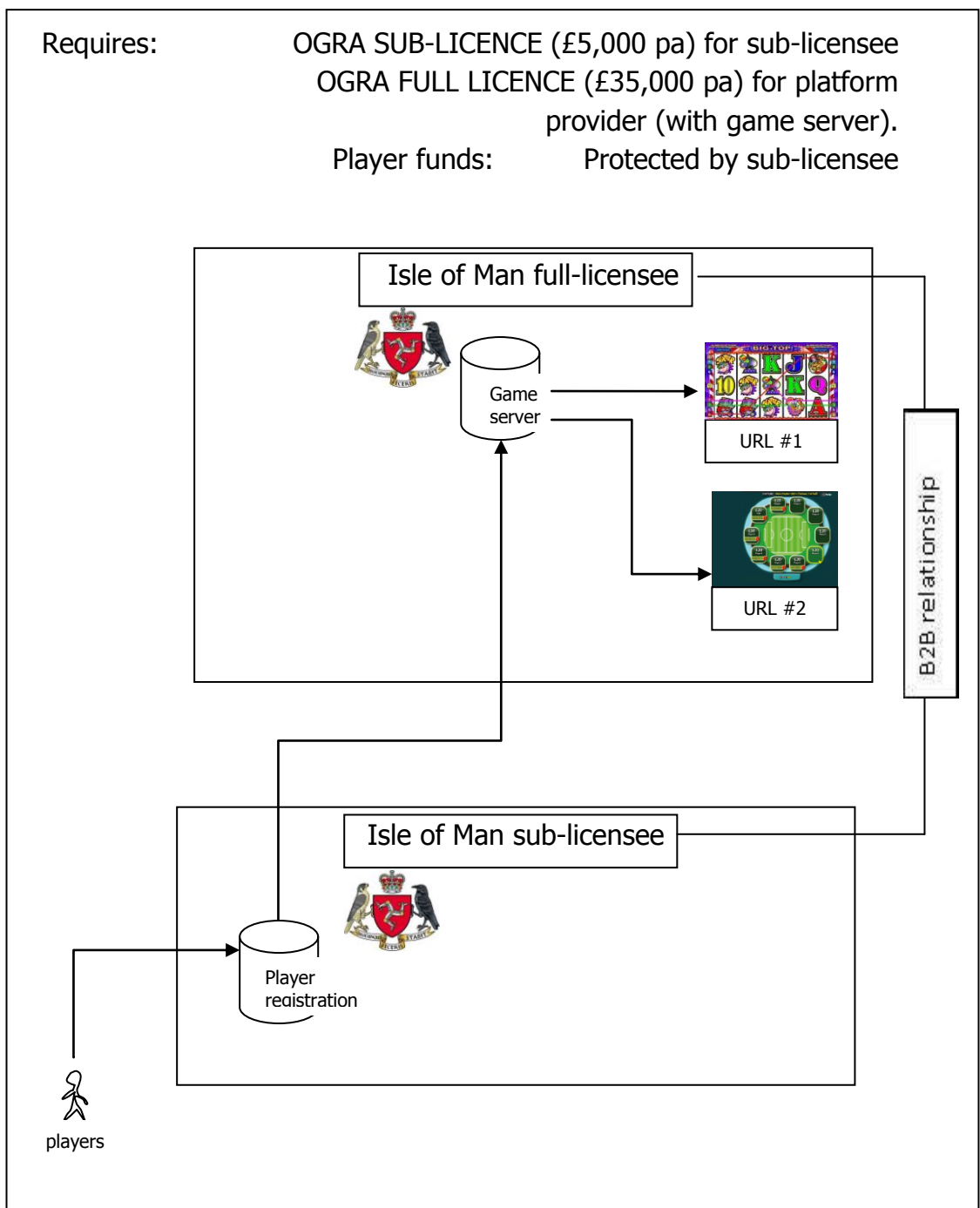
### Standard B2C model

Players on the internet navigate to the licensee's registration page, register with the licensee. They can then access games on the licensee's game server which offers games on any number of URLs.



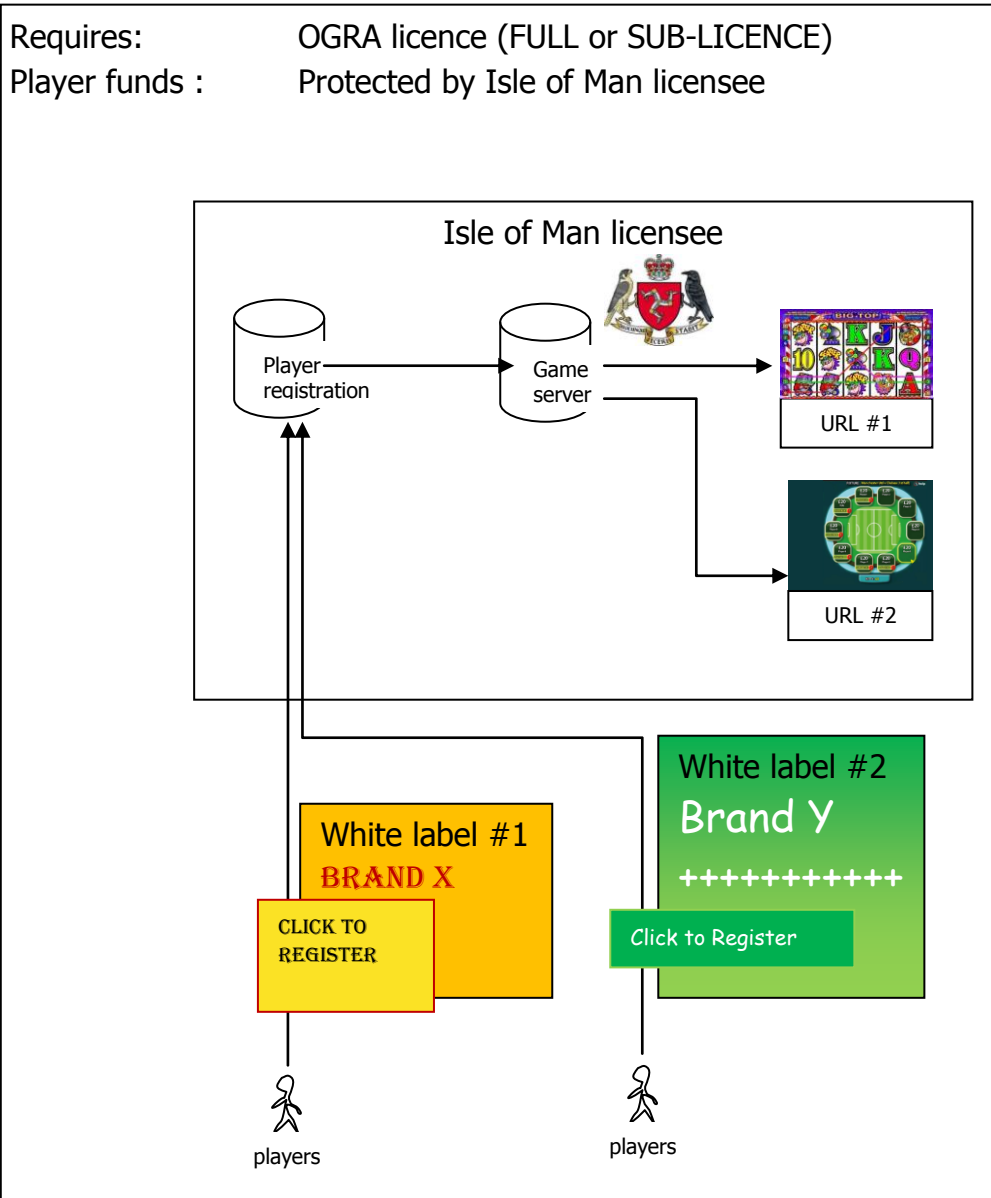
## Sub-licensing

Players register with the sub-licensee. They may then access games provided by the IOM business partner's game server. The business partner must hold a full OGRA licence. To qualify as a sub-licensee, the operator may only use the services of one IOM-licensed software/platform provider at any given time. The full OGRA licensee however can offer its services to as many sub-licensees as it wishes and may register its own players directly as well.



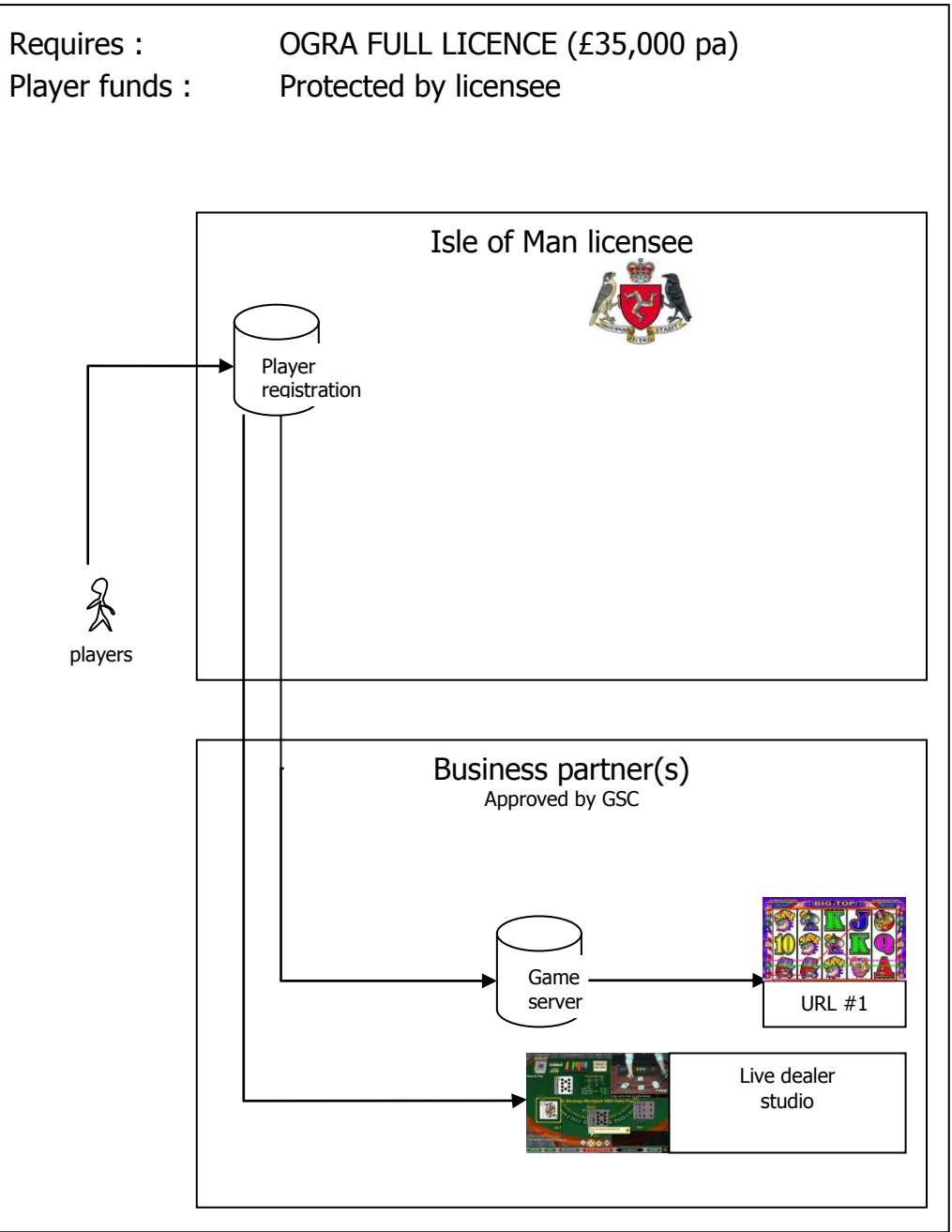
## White labels

Players register with the licensee. The white label sites are treated as though they were different URLs of the licensee even though the control of the URL and its marketing (for instance) may be controlled by a different company and the games may be skinned differently to reflect the brand. The OGRA licence covers any number of white label sites



**Remote game-play (e.g. Live dealing operations, non-Isle of Man game servers/networks)**

Players register with the licensee. When playing certain games, they are transferred to the game server of a business partner which is approved by the GSC. The GSC may seek enhanced player protection and data protection agreements protect players' interests.

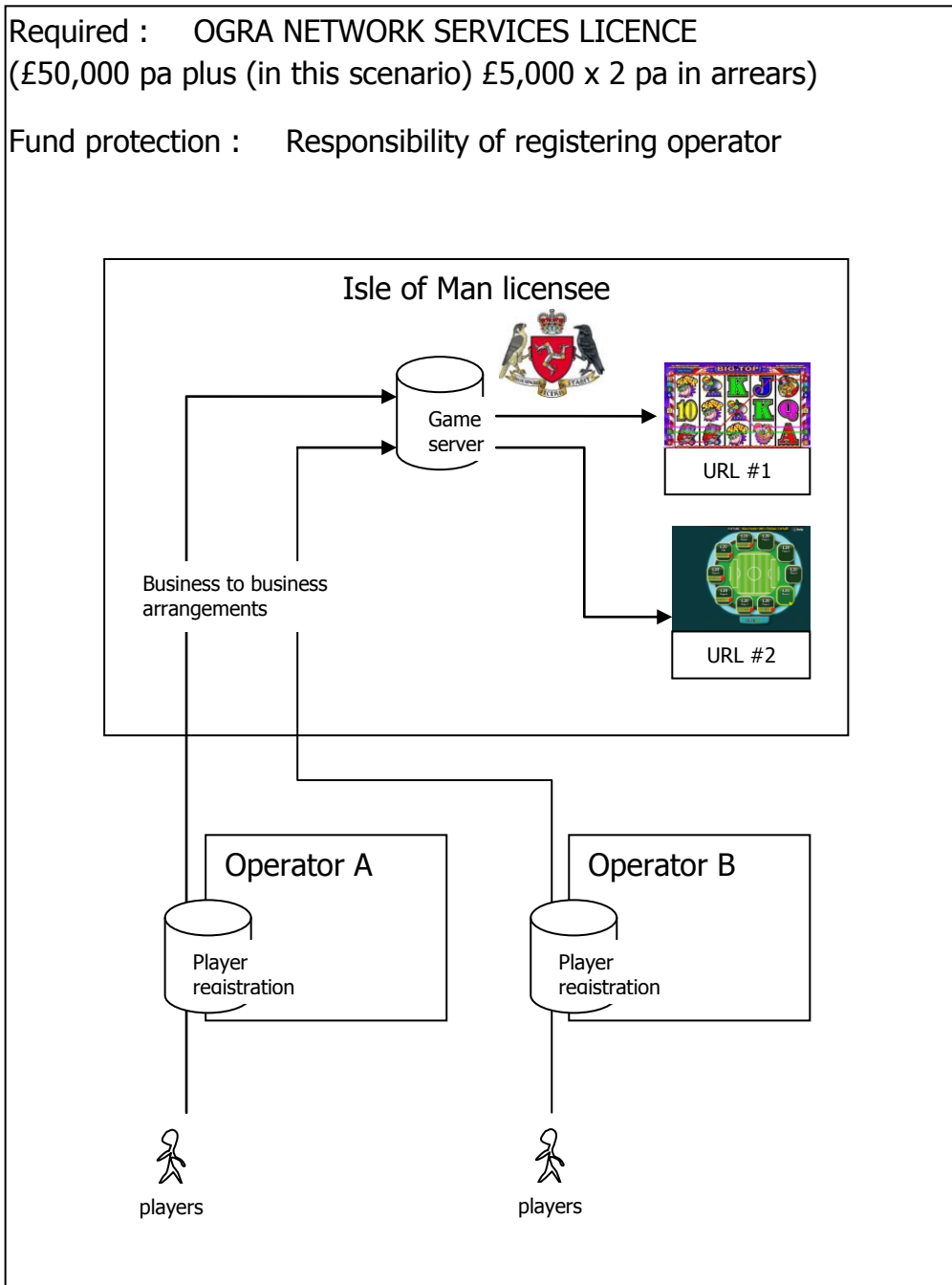


## Operations under a network services licence – non-registered player activity only

Players register with their respective operators. Under a B2B agreement, those players may take part in games on the Isle of Man licensee's game server.

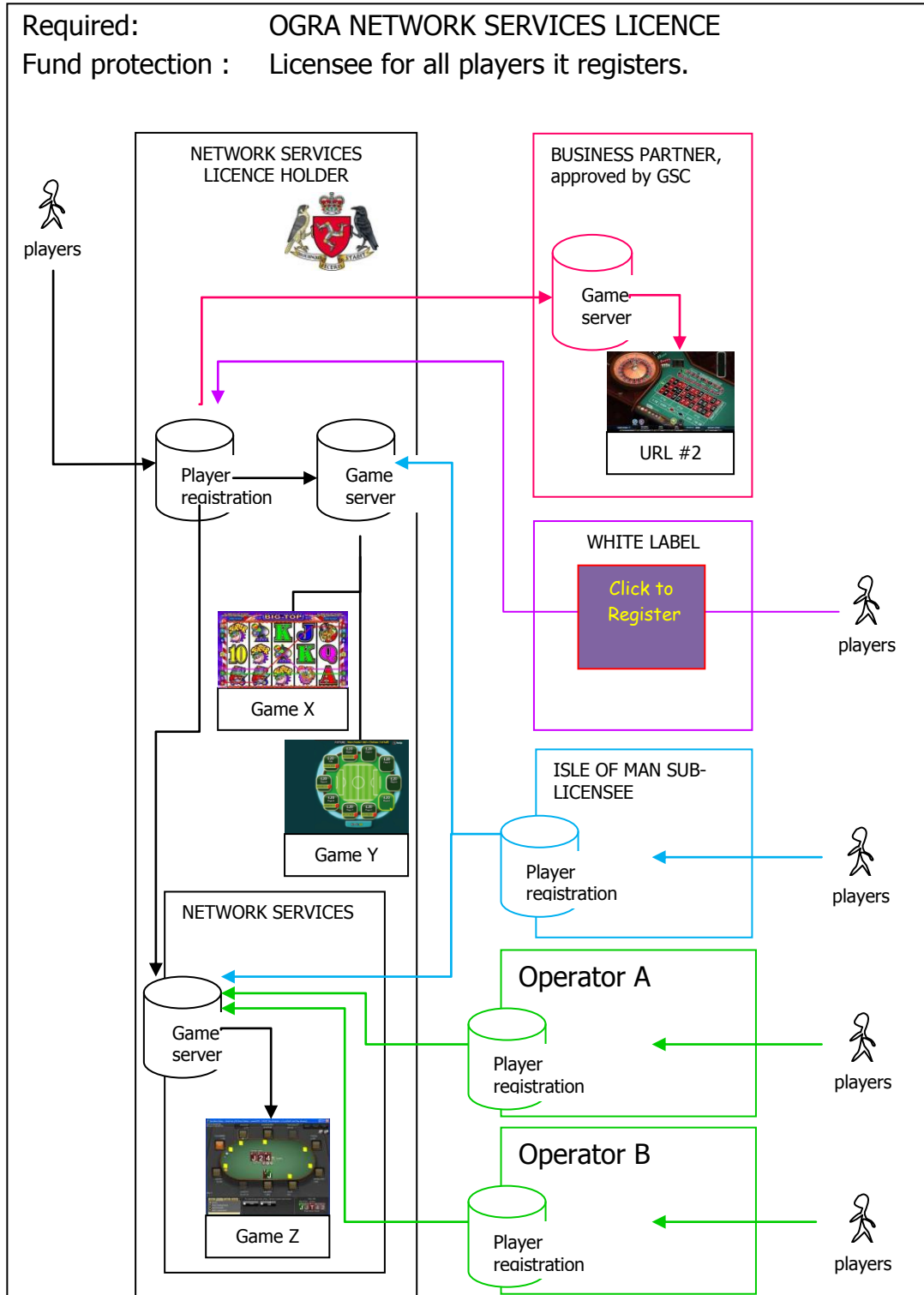
Required : OGRA NETWORK SERVICES LICENCE  
(£50,000 pa plus (in this scenario) £5,000 x 2 pa in arrears)

Fund protection : Responsibility of registering operator



## Combined activities under a network services licence

The diagram below shows the holder of a NETWORK SERVICES licence undertaking many types of activity under the single NETWORK SERVICES licence.



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### **Additional models.**

While this appendix outlines most of the structures that commonly occur, the GSC always remains open-minded about future models. Operators wishing to effect variations or fresh architectures are invited to discuss them with the GSC who will always be happy to explain their consumer protection requirements within any given model.

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## **Appendix H : The network services licence in detail**

### **Introduction**

On July 20<sup>th</sup> 2011, the Online Gambling Regulation (Amendment) (Network Services) Regulations 2011 came into effect.

These regulations make changes to a number of regulatory requirements relating to player registration, the technical specifications of gaming systems and to the fees structure.

This appendix summarises the changes and how they impact operators wishing to obtain the newly available network services licence and may be useful for those seeking to understand the possible models available for licensing in the Isle of Man.

### **Summary of the network services legislation**

Any licence issued which refers to "Network Services" becomes a network services licence. This reference will be noted on schedule 1.

When a network services licence is held, an operator may add a product which allows foreign-registered players to be supplied to the licence holder's server without obliging the licence holder to register those players- this will typically allow a network to be established where it wasn't possible before, but because the structure of a network services operator is not defined in legislation, it may also be applicable to a new set of operating structures which do not conform to the classic or traditional view of networks.

A network services licence costs £50,000 per annum and incurs an additional charge of £5,000 per year, in arrears, for every operator that supplies players to the licence holder.

A new exclusion is added to the exclusion regulations which confirms that the foreign operator supplying players to a network services operator does not require an Isle of Man licence.

Licensees will not be required to protect the funds of non-Isle of Man registered players that take part in games upon their equipment. The network services licence allows all of the privileges of the OGRA full licence and so the licensee will remain accountable for protecting the funds of any players who they do register.

### **The network services licence in detail**

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The current OGRA licence consists of four parts – a front page and three schedules.

- The front page cites the operator's details and carries the seal of the Commission;
- Schedule 1 details the activities the operator may undertake;
- Schedule 2 outlines the general conditions that apply to all activities;
- Schedule 3 outlines any specific requirements the operator must adhere to.

The network services licence will have a different format.

It will consist of five parts – a front page and four schedules.

- The front page will serve the same function as the current front page.
- Schedule 1 will detail the activities. It is the inclusion here of the words "Network Services" which creates the network services licence and which obliges the annual fee to shift from £35,000 to £50,000 plus.
- Schedule 2 still outlines general conditions that apply to all activities;
- Schedule 3 outlines the specific conditions related to non-network games;
- Schedule 4 outlines the specific conditions related to network services offered.

It should be noted that existing OGRA licence holders will continue with their existing licences unless they wish to move to a network services licence, at which point the licence is re-issued.

### **The application process**

The application process will be essentially the same as the OGRA applications that have taken place in the past. There will be some differences in the process to include checks on elements that apply to network services only and to exclude checks that are not relevant.

Where a licensee intends to undertake network and non-network activity, the GSC will examine the new element before allowing it to be added to the licence, just as it does when an operator wishes to add a new product.

In the case of an existing operator upgrading to a network services licence, the GSC will examine the network services to be offered. In the case of a network services operator wishing to add gaming products, the gaming products will be examined.

### **The compliance routine**

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While much of the compliance checks are common to all OGRA licence holders, one of the licence conditions in the new schedule 4 obliges the network services operator to notify the GSC when adding a network services partner (a foreign operator supplying players). The GSC need not approve the partner before it is added but the GSC will use this information to perform periodic sweeps of the internet to ensure that the partner isn't attracting adverse publicity to the Island.

### **The payments schedule**

The annual fee of £50,000 must be paid to the GSC prior to the issuing of a network services licence. The GSC are unable to refund any licence fees and this applies equally to companies who wish to upgrade from a full OGRA licence before that licence has run its twelve months.

After each year of network operations, the GSC will calculate the additional licence fee due and payable in respect of non-Isle of Man business partners who have sent players to the licensee's servers on the Isle of Man. This additional charge will be added to the cost of the licence required by the licensee.

An operator need not continue network services licence if the requirement no longer exists and can 'downgrade' to an OGRA full- or OGRA sub-licence but the additional payment in respect of network use will still be calculated and payable when the licence is refreshed for that year.