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eGambling Licensing Requirements in Alderney and Guernsey

Purpose

The purpose of this paper is to set out the position on the regulation of activities related to eGambling in Alderney and Guernsey, as understood at May 2015. It is not intended to be advice to existing and potential operators; such operators are encouraged to seek advice from appropriate professionals on the specifics of their operations. The AGCC can only give general guidance on licensing requirements.

In summary: Holding a Licence or Certificate issued by any authority/jurisdiction other than the AGCC does not exempt the holder from requiring an AGCC Licence or Certificate to undertake eGambling activities as defined below in/from Alderney or Guernsey.

Category 1 eGambling Licence

Activities undertaken in Alderney or Guernsey which organise and prepare any customer in any jurisdiction to gamble requiring a Category 1 eGambling Licence include but are not limited to:-

- Entering into an agreement with the customer
- Registration and verification of the customer
- Engaging in financial transactions with the customer and the management of the customer's funds
- Offering or promoting gambling to the customer
- Such other actions as the AGCC determines to be activities that may only be carried out by a Category 1 eGambling Licensee

For the avoidance of doubt, any person or legal entity carrying out any of the above activities in Alderney or Guernsey without a Category 1 licence may be committing a criminal offence. For detailed examples see the AGCC Notice issued on 4th September 2014 [link](#).

Only a company incorporated in Alderney can hold an AGCC Category 1 eGambling Licence but there are no requirements on the location of servers through which Category 1 eGambling activities are undertaken nor on the location of management/staff involved.

Category 2 eGambling Licence or Category 2 Associate Certificate

Activities undertaken in Alderney or Guernsey which effect gambling transactions requiring a Category 2 eGambling Licence include but are not limited to:-

- striking a bet
- housing and recording the random element or gambling transaction outcome; or
- operating a system of hardware and software upon which the gambling transaction is conducted;

For the avoidance of doubt, any person or legal entity carrying out any of the above activities in Alderney or Guernsey without a Category 2 eGambling licence may be committing a criminal offence.

Only a company incorporated in Alderney can hold a Category 2 eGambling Licence and transactions must be undertaken on or through servers located in either Alderney or Guernsey. Because of capacity/resilience limitations on Alderney's infrastructure this effectively means in Guernsey. There are no requirements on the location of management/staff involved.

An entity that wishes to effect gambling transactions for customers of Category 1 eGambling Licensees on servers based outside Alderney and Guernsey "seamlessly" (i.e. without having to signpost that the transaction is being effected and regulated in another jurisdiction) may apply for a Category 2 Associate Certificate. Such entities do not need to be based or incorporated in Alderney or Guernsey.

Appendix A contains some further information on the fiscal and legal relationship between Alderney and Guernsey concerning eGambling activities, tax implications of the location of servers and management / staff, and AGCC requirements for operators targeting the UK market.

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Appendix A – supporting information

Fiscal and Legal relationship between Alderney and Guernsey on eGambling activities

Alderney and Guernsey have a common taxation regime in respect of income tax and property taxes. There is no VAT or capital gains tax nor are there betting duties. Any business activities undertaken in/from Alderney or Guernsey, including activities related to eGambling, are therefore subject to the same taxation regime.

Alderney has its own Gambling legislation which makes it illegal for certain activities related to “effecting a gambling transaction” to be undertaken in/from Alderney except under a Licence or Certificate issued by the AGCC.

Guernsey has its own Gambling legislation which makes it illegal for eGambling (“gambling with strangers”) activities to be undertaken in/from Guernsey except by entities holding a Licence or Certificate issued by AGCC. This legislation also covers “on-island” gambling which is subject to a licensing regime administered and enforced by the Guernsey authorities.

There is a commonality between Alderney and Guernsey on what activities related to eGambling require a Licence or Certificate from the AGCC. However, if such activities are undertaken in/from Alderney without the necessary AGCC Licence or Certificate then it contravenes Alderney legislation, if they are undertaken in/from Guernsey then it contravenes Guernsey legislation and any compliance/enforcement actions need to be undertaken by the Guernsey authorities.

Tax Implications of the location of Servers and Management/Staff

As explained above, Category 1 or 2 eGambling activities undertaken by an entity holding an AGCC Licence or Certificate are subject to the common Alderney/Guernsey tax regime. However, the degree to which the entity may benefit from that regime, and not be subject to tax liabilities in other jurisdictions, may be affected by the degree of server and management/staff presence it has in Alderney/Guernsey.

Further comments on tax issues are made in the Tax section of a document produced in February 2014 under the title of “5 Promises” which can be made available on request

AGCC Licence Requirements for Operators addressing the UK market

Category 1 eGambling licence (B2C)

From 1 November 2014 an entity registering UK based players, advertising into the UK or supplying sites that are doing this requires a licence issued by the Gambling Commission of Great Britain (GCGB). An Alderney company can apply for and hold a UK licence as well as an AGCC licence. (See AGCC August 2014 update for more details at [link](#)).

If an entity based (incorporated and/or physically present) in either Alderney or Guernsey organises and /or promotes eGambling solely for residents of the United Kingdom under a licence issued by the GCGB it will still require an AGCC Category 1 eGambling Licence.

To avoid “double taxation” the calculation of the AGCC Category 1 eGambling Licence Fee Band will exclude Net Gaming Yield arising from UK business.

Category 2 eGambling licence/ Category 2 Associate Certificate/Core Services Associate Certificate (B2B)

From 31 March 2015 GCGB licensed operators are required to only source gambling software from GCGB licensed software businesses.

If an entity based (incorporated and/or physically present) in either Alderney or Guernsey proposes to effect transactions arising solely from residents of the United Kingdom under a licence issued by the GCGB it will still require an AGCC Category 2eGambling Licence. Entities providing software to these Category 2 eGambling licence holders will still require a CSAC. Entities outside Alderney and Guernsey that wish to remain under AGCC regulation can maintain the Category 2 Associate Certificate in addition to their UK licence.

Licence/Certificate Applications and Compliance

The application and vetting process for a “new” AGCC Category 1 eGambling Licences, Category 2 eGambling Licences/ Associate Certificates and CSACs will remain unchanged.

To minimise “double regulation” however the AGCC follows a flexible approach to games testing for Category 2 eGambling/Category 2 Associate Certificate holders that wish to offer their platforms and games mainly to UK players. The AGCC will accept testing reports and recommendations that only fulfil the UK Level 3 requirements in these cases.

AGCC’s compliance monitoring and on-site inspection programme is also revised for both Category 1 eGambling and Category 2 eGambling Licensees/Category 2 Associate Certificate holders that primarily accept UK players. The annual on-site inspection is normally restricted to one inspector day, and the purpose of the on-site inspection is to verify ownership and control of the licensee or certificate holder and associates (fitness and propriety) as well as anti-money laundering (AML/CFT) controls and the accuracy of financial and operational reports (correctly licensed). Similarly, the focus in respect of financial monitoring will focus on the on-going financial solvency of the Alderney entity.

Hosting and games server security guideline requirements will however remain unchanged.