

● iGAMING BUSINESS

1. THE CURRENT LEGAL LANDSCAPE - WHERE ARE WE AT THE PRESENT MOMENT, AND HOW HAVE WE GOT HERE?

Alderney needs no introduction in terms of its long-standing reputation as a centre of excellence in the remote gambling industry. Due to the robust regime that has been implemented for over a decade by the Alderney Gambling Control Commission ("AGCC"), Alderney has attracted the biggest operators and players in the world.

Alderney is used to leading the way. It introduced progressive regulation and legislation in respect of iGaming and has moved and evolved even quicker than the ever changing iGaming industry. Alderney developed an innovative licensing package with a high level of regulatory control and governance to give players and operators alike the essential level of protection they require. The AGCC remains commercially pragmatic and keeps-step with the ever-changing market, in essence - strikes the much sought after balance.

The AGCC set out to provide a regulatory environment that would meet 'world-class' standards and thereby both protect the reputation of Alderney and attract top-tier operations. These objectives were met and exceeded.

So how has this little island become a world-player? The AGCC has four key objectives, implemented to ensure the highest standards of regulation are adhered to when granting a licence to ensure that:

- funding and management of an operation are free from criminal influence;
- operational systems are secure and auditable;
- gambling transactions are fair; and
- the interests of the young and vulnerable are protected.

Thanks to its track record, regulators from other jurisdictions are comfortable negotiating and liaising with Alderney and often use Alderney as a model framework when implementing new iGaming policies in other jurisdictions. Its policies are renowned for strict conditions of licence, well-defined technical and operational requirements, rigorous due diligence investigations of licensees' applications and continual monitoring of licensees' operations.

By way of example, Andre Wilsenach, the CEO of the AGCC¹, was asked to testify before the Financial Services Committee of the United States House of Representatives to exemplify how consumers can be afforded the highest level of protection through the regulation of iGaming transactions. The AGCC are also in advanced stages of negotiating numerous memoranda of understanding with regulators of EU Member States and more generally world-wide.

Collas Crill's perspective on the success of the Alderney licensing regime has been due to three things:

1. The AGCC have a deep commercial understanding of the remote gambling environment thereby eliminating the requirement for a 'knee jerk' reaction in terms of introducing regulation and legislation governing the industry. The way the regime has grown alongside the market is impressive and the legislation and practical regulation is solid, well tested and appreciated by consumers and operators alike as a system that works in the modern remote gambling world.
2. The technical services, support and capabilities of the Bailiwick of Guernsey are in a league of their own. Alongside a suitable regulatory regime, if a jurisdiction is to become and

remain successful in this market, the availability of appropriate infrastructure is fundamental.

Alderney is part of the Bailiwick of Guernsey, and through the superb facilities on its sister island, is now quite clearly the largest centre for iGaming in the world.

Boasting 14 modern data centres with more being built, 7 fibre optic routes off-island with direct connections to London, Paris and the major transatlantic routes between Europe and the Americas, which pass directly through the island, it is undisputed that there is no rival world-wide to compete with the region in respect of eCommerce business.

Alderney licensees are by law permitted to take advantage of the modern hosting facilities and excellent telecommunication networks on both Alderney and Guernsey. For international network links, Alderney and Guernsey's telecommunications network offers reliable and high capacity links to the UK, Europe, the USA and Asia.

3. Finally, the fiscal benefits are conducive to international operations. Referencing a recent study by a top-tier accountancy firm, Alderney comes out on top in respect of profitability. There is no VAT, gaming tax or corporation tax applicable. An up-and-coming area in respect of the iGaming arena is intellectual property rights protection. IP is an area intrinsically linked to the iGaming industry and Guernsey has a comprehensive legislative structure for protecting and exploiting these rights.

¹ Winner of Regulator of the Year 2005 and 2007 as awarded by the World Online Gaming Law Report and the first online chair of the International Association of Gaming Regulators in 2009

2. LEGAL FRAMEWORK - LEGAL AND REGULATORY REQUIREMENTS, WHERE OFFSHORE LICENCE HOLDERS ARE PERMITTED (CURRENTLY) TO OPERATE IN OTHER EU STATES NOT OPERATING MONOPOLY REGIMES

The licensing regime in Alderney was overhauled in 2009 becoming fully operational in January 2010 with the introduction of new legislation. Prior to introduction the AGCC assessed the new market trends and realised the importance of co-operation between various other Regulators from other jurisdictions involved in the iGaming sector. This legislation was forward thinking and was introduced in anticipation of the changes to the licensing practices of numerous Member States and their adoption and contemplation of new licensing practices going forward.

There are various types of licences and certificates available from the AGCC which allow operators to apply for only those parts that they require in order to operate their business model. A summary of the key changes to these licences are as follows:

1. Category 1 Licence

The Category 1 licence, that governs gambling operations which are primarily business to customer models, has been introduced to cater for an increasing trend that sees operators outsource their gaming and gambling activities. It can be granted in as little as four weeks, which will significantly shorten the licence application phase. It replicates in many ways the country-specific licences appearing across the globe and particularly in Europe. Many of Alderney's licensees are acquiring licences from countries such as France and Italy and retaining the Alderney Category 1 licence to process and register players from outside these territories where no such licensing is currently available.

Holders of the Alderney Category 1 licence are then able to utilise the services of duly authorised gaming platforms (Category 2 licence holders which can be located either within Alderney or in other locations across the globe in approved premises).

2. Category 2 Licence

The Category 2 licence has been tailored to meet the specific demands created by the extraordinary growth in business-to-business services. The Category 2 holder can also include as many different games and activities as they want under the single licence system for which there is a modest fixed annual fee. Holders of a Category 2 licence are also able to take players from licensed operators from other well regarded jurisdictions without the requirement for any further licensing which removes any risk of double taxation on player activities.

The Category 2 licence covers the actual delivery of games and gambling opportunities from a managed platform or platforms. Alderney is the world's largest base for iGaming traffic and the jurisdiction stated that its technical infrastructure 'outclasses its rivals in every respect and is the perfect base to provide fast resilient services across the globe'.

3. Foreign Gambling Associate Certificate

A further major change has been the introduction of certification from the AGCC for non-resident platforms that can still be accessed by Alderney registered players which requires providers of gaming software to allow the AGCC to test the software to assess if it is up to an appropriate standard prior to the certification being awarded. This certification, the 'Foreign Gambling Associate Certificate' is a system that recognises licensed equipment located outside of the jurisdiction, a recognition of equivalence.

In terms of locations where Alderney licensees can operate, an Alderney remote gambling licence holder is expressly permitted to operate in the UK as Alderney is a 'White List' jurisdiction, in accordance with the Gambling Act 2005. However, Alderney licence holders are currently operating in an array of jurisdictions where it is not illegal to operate without a local licence or unlawful in general.

It is widely accepted that the remote gaming industry will be highly regulated in most EU Member States by 2012. This is a positive step forward, provided these regulations are implemented properly and with a full appreciation and understanding of the industry as a whole. There is a fear that regulators are under significant pressure to regulate the industry in their home country for various reasons (player protection is the preferred rationale but also to protect the home market and for fiscal purposes in order to retain the revenue streams and have control over them) and are introducing legislation quickly that will govern an area over which they may not yet have a full or complete grasp.

In respect of the EU Member States opening up their markets to regulated remote gambling, the AGCC has, since the licensing came into force in France in June of this year, seen 4 of their licensees to date obtaining French remote gaming licences with the ARJEL in France. Dependent on the specific market and the type of product the operators offer, other licensees may well consider obtaining additional licences in other EU Member States once their licensing practices are fully formalised (for example Spain, Denmark, the Netherlands, all of which are in advanced stages of implementing their new licensing regimes).

The traditional 'monopoly' approach adopted by various EU Member States stunted, at EU level, the right to freedom of establishment and competition policies and the policy of protecting their local industry is slowly being eradicated, as exemplified by recent European Court of Justice rulings on certain German and Austrian cases and more importantly through greater co-operation between regulators as the realisation that co-operation and a move towards harmonisation of the industry would ultimately do more for the industry than the previous monopoly regime.

On 12 October 2010, the Internal Market Commissioner of the EU, Michel Barnier, spoke publically for the first time since February 2010 in relation to the 'Green Paper' to be submitted to the European Parliament for discussion in the near future on the issue of the remote gambling industry in Europe and the details on a proposal to set some minimum standards across the EU.

The comments were received favourably by industry and operators alike. M. Barnier has taken a balanced view in respect of the sector. It appears that his driving force behind any proposal to legislate the area on an EU level derives from the desire to rid the European market of illegal operators, thereby offering a level of protection to consumers and EU citizens. If Member States themselves implement steps to eradicate this illegal market, which in time prove to achieve the purpose, M. Barnier felt that EU guidance may not be necessary.

Undoubtedly, the industry would welcome a level of harmonisation, certainly in respect of equivalence of standards. There are issues that will take significant time to iron out such as ISP blocking political and social stigmas, anti-money laundering requirements, and financial transaction payment blocking before true harmonisation of the industry can come about. The recognition of well regulated industries such as Alderney would be a good starting point. The iGaming sector is as politically and socially complex as you can get.

3. FUTURE FORECAST - HOW THE CURRENT LANDSCAPE IS LIKELY TO CHANGE/ DEVELOP IN SHORT TO MID-TERM AND HOW IT FITS IN WITH CURRENT AND PROSPECTIVE/IMPENDING REGULATORY DEVELOPMENTS IN THE EU

Alderney has a robust regulatory system which is up to speed with the demands of the modern market. As such, the rules and legislation governing remote gambling in Alderney are unlikely to change substantially in the short to medium term and it will be "business as usual". With the implementation of the new 2009 legislation earlier this year, the regime is well placed to adjust to the changing environment around the globe. As mentioned previously, the legislation was introduced in anticipation of a shake-up of the industry and is the most progressive regime in place in terms of flexibility and practicality of operations.

The 'liberalisation' of the remote gambling sector, as it is described as within the industry, will hopefully become a self-fulfilling prophecy and open up the market. It is imperative for the industry as a whole especially in terms of liquidity flow in the area, certainly in the European area, encompassing non-EU countries, that regulators consult and co-operate with each other and do not exclude well regulated jurisdictions from their plans.

In respect of a harmonisation of the industry, one important area that could be standardised is the area of 'technical standards'. Alderney was one of the very first and is still amongst only a few online gambling jurisdictions to have developed a set of technical standards to which the electronic gambling system of a prospective operator is tested.

On one level it is understandable why the new French regime is somewhat protectionist and at the present time, not entertaining negotiations with regulators outside the European Economic Area. The ARJEL have no previous experience in the sector and are testing out the new regime cautiously. This is how Italy introduced its regime in 2007 and

once the Italian regulator obtained a level of comfort in the sector, they became bolder and swifter in their reactions to moving with the industry, hence the proposed introduction of the amendment legislation (currently on hold). It is Collas Crill's hope that France will follow suit with a more flexible approach in time.

Regulators have the opportunity to learn from each other and set in place a uniform set of standards that are implemented across the board in the industry. The benefits of this strategy are numerous, the operators' software can be tested in one jurisdiction without having to be tested in multiple places thereby, saving significant money, time and resources for operators and regulators alike, however, as the standards are uniform, the regulator has the comfort of knowing the standards are on par and equivalent with the home market standards.

The proposed publication of the Green Paper by the Internal Market Commission will hopefully be a step forward to setting the wheels in motion towards harmonisation and the recognition of the equivalence of standards in other jurisdictions. Operators in industry need to ensure that their voice is heard and co-operate with the regulators in order that they have a better understanding of the sector and as a result, implement appropriate legislation. Industry should implement a proactive instead of reactive approach.

Alderney has been at the forefront of the remote gaming sector for over 10 years. During this time the regulation and legislation has proven to be of a top-tier standard. The experience gleaned by the AGCC in regulating the industry has led to a deep-rooted understanding of the sector that cannot be picked up overnight. It would be foolhardy for regulators to isolate such well regulated jurisdictions from their licensing regimes without a proper understanding of the value that they add to the industry.

iGaming regulation will rely on a complex web of relationships at the regulatory level and Alderney is and continues to be at the forefront of this strategy.

NOVEMBER/DECEMBER 2010

This article was originally published in iGaming Business - The European Legal Outlook Nov/Dec 2010

**FOR MORE INFORMATION,
PLEASE CONTACT:**



SUSAN O'LEARY

ASSOCIATE

t: +44 (0)1481 734246

e: susan.oleary@collascrill.com

Collas Crill **Guernsey**

Glategny Court, PO Box 140,
Glategny Esplanade, St Peter Port,
Guernsey, GY1 4EW

t: +44 (0) 1481 723191

f: +44 (0) 1481 711880

e: guernsey@collascrill.com

w: www.collascrill.com