



Remote Gambling Licence

Guidance to the Application Process

The Jersey Gambling Commission (“JGC”) deals with every Remote Gambling application independently, applies a rigorous process and assesses every application on its own merit.

The following information is aimed to help you decide whether to pursue a formal licence application, how to apply and explain the range of requirements placed on the operator by a licence.

Fees apply to a formal application, primarily for due diligence, the initial fee is £5,000 and this should accompany the completed application form. It should be noted that the Commission may require further tranches of £5,000 dependant on the complexity of the application e.g. if the initial application is used up half way through the probity investigation. You should be aware that these fees are not refundable if the Commission finds it cannot award a licence to the applicant.

Governing Legislation:

Gambling Commission (Jersey) Law 2010

The Commission Law creates the Jersey Gambling Commission (JGC) and Article 4 provides the guiding principles the regulator must apply to gambling regulation and licensing regime and policies, namely:

- Gambling services should be conducted responsibly and with safeguards necessary to protect children and vulnerable people
- Gambling services should be regulated in accordance with generally accepted international standards to prevent fraud and money laundering, and should not be permitted to be a source of crime; and
- Gambling services should be verifiably fair to consumers of those services.

While the law also makes it a duty of the JGC not to place undue burdens on the industry, it also mandates key functions under Article 7, for example:

- protect and enhance the reputation and integrity of Jersey in commercial and financial matters in relation to the conduct and regulation of gambling
- reduction of the risk to the public of financial loss due to dishonesty incompetence or malpractice by, or the financial unsoundness of, providers of gambling services.

Gambling (Jersey) Law 2012

Definition of Gambling.

Rather than categorising by licence types the differences between betting and gaming, a remote operator’s licence is a single licence designed to capture all commercial gambling facilitation. Naturally the form of gambling offered is prescribed on the licence such as remote betting activities along with, if applicable, the various games operator wishes to offer.

NOTE: The following only applies if the applicant includes casino games as part of their (online) offering.

Remote Gambling Operators (B2C) applications that include any **Casino** style games must also register with the Jersey Financial Services Commission (JFSC) under the above named law. Details of applying and/or contacting the JFSC can be found by following the link below:

http://www.jerseyfsc.org/anti-money_laundering/forms/specified_schedule_2/index.asp

Jersey presence and incorporation

To operate remote gambling from Jersey it is necessary to incorporate in the Island. Companies established in other jurisdictions wishing to relocate to Jersey or have a Jersey arm to their business must firstly apply to the Jersey Gambling Commission (JGC) for a licence. As this approval process progresses the JGC will notify the applicant of the likelihood of grant and this should trigger company incorporation. Domestic legislation does not require a company to move wholesale to Jersey, but it must genuinely operate gambling from a server based in the Island.

Independent Testing

Article 12 (3)(i) maintains the requirement for the independent testing of equipment and software that has influence over the outcome of the gambling (ensuring games are verifiably fair and in line with guiding principles). However, the Commission Law mandates the Commission not to apply unnecessary burdens on the industry. Therefore the Commission does not take a blanket approach to the testing requirement for all equipment (employed as mentioned) by an independent person. The Commission will accept recent testing accreditation/game certification from a Jersey approved independent testing house.

The Commission does not obligate the operator to retest the same Random Number Generator (RNG) or games supported by the RNG if this system has already been thoroughly scrutinised by an approved testing house. Naturally, the Commission requires copies of all equipment and software approval (e.g. certificates) for validation.

Determining whether a licence is required

The Business Model

Before submitting a completed application to the Commission, an operator should first supply the outline of a proposed business model. The Commission will then advise the operator whether the proposal suits the form of licence they were initially considering pursuing.

Once the Commission and operator are agreed on the correct form of licence to pursue, a detailed business plan is required as an accompanying document to the main application. This business plan should include the general outline of the proposed business and include a description of the operation, the gambling product or service the applicant intends to offer or manage, the target market, a corporate family tree if applicable, forecasts, an outline of the proposed management team, along with the chain of command, and a financial/financing overview.

The Application Process

How to start the process

The process commences once the Commission has received a complete application form and this includes all requisite supplementary information detailed on the application documentation. A completed application must include the proscribed application fee. Application forms may be obtained from www.jgc.je. A hardcopy must be submitted containing all the necessary signatures (e.g. waivers, criminal record check requests, personal and corporate application sections).

There is nothing to prevent an applicant hiring the services of agents such as law firms or consultants to compile and administer the application process.

The duration of the due diligence process is dependant on the timely provision and quality of the application; and the Commission will only commence processing the application once it has received all of the pertinent information and the application fee.

The Commission will work closely with the applicant to resolve questions as they arise during the course of the due diligence examination. If the operator is regulated elsewhere, Commission officials will likely visit the offices of external operation as well as the domestic regulator. The applicant should expect compliance and management personnel to be interviewed and in cases where the main beneficiary is active in the running of the operation these individuals should also be available for interview.

Application Check List

The full application to the Commission should contain the following documentation:

- The corporate application form.
- The corporate waiver.
- Personal waivers for those persons submitting personal declarations.
- The application fee of £5,000 (cheque made out to The Jersey Gambling Commission).
- Police Vetting Unit - declarations for all key officials e.g. directors, shareholders – if individuals - of more than 5%, Designated Officials, Operations Managers.
- A personal declaration form for any of the positions listed above.
- If the company is a subsidiary the JGC require personal declarations for the principals of the parent company and full details of the corporate family tree.
- Details of 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%.
- If the applicant is a publically listed company, then supply details of all shareholders with a 20% or more holding.
- 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 (Referees must be unique)
- a full business plan containing defined headings (revert to the Commission's technical requirements for guidance):
 - 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 structure, presentation, map (if relocating links to live websites)
 - infrastructure checks
 - player registration checks
 - treasury services
 - transaction recording and retention policy.

The Commission requests one bound and one loose hard copy, plus an electronic copy of the submission. The Commission would ask the applicant wherever possible not to PDF submitted documents.

Reputational Integrity

As highlighted earlier, Article 7 of the Gambling Commission (Jersey) Law 2010, mandates the Commission to ensure that gambling does not adversely affect Jersey's reputation as a well regulated jurisdiction, especially as centre of excellence for finance. The Commission is not compelled to grant a licence if there is doubt that in doing so the Island's reputation may be placed at risk. The Commission will pay particular regard to the compliance history of an operator licensed in other jurisdictions. Where such a licence is under investigation, or in jeopardy of revocation by an allied gambling regulator any JGC application may be suspended pending the outcome of another jurisdictions investigations.

Probity on Individuals

The applicant should be aware that the Commission has no influence over the Police Vetting Unit and cannot request priority searches. The Commission would recommend that in cases where the applicant is collating further documentation forming the application package, police checks should take priority for all identified key individuals. Payment for criminal record checks is deducted from the application fee.

Individual due diligence is necessarily intrusive, and the Commission strongly recommends that the individual applicant is candid from the outset on their personal declaration form. The applicant should understand that there is no exemption under the rehabilitation-of-offenders law (Regulation 7, Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002) for gambling personnel in Jersey and that a full declaration of all offences is required. A failure

to disclose information on both individual and corporate level, which is subsequently discovered by Commission officials during the course of the investigation, may adversely affect the outcome of the application.

When identifying key personnel the applicant should consider those persons who make and control corporate decisions, facilitate the gambling, benefit from it (at the prescribed percentages) or have any direct influence over the gambling product. Moreover, key personnel must be competent to discharge these functions with integrity.

Individual waivers are required to discuss the application with any third party connected with the due diligence process. However, all information supplied to the Commission is considered confidential and managed in accordance with the Data Protection (Jersey) Law 2005 and associated legislation.

Company Structure (Corporate Tree)

All companies connected with the applicant must be declared and scrutinised to ascertain that they are genuine and legitimate entities. The applicant must provide the Commission with a full corporate family tree and information including company name, trading name (if any), beneficial ownership, incorporation details (date and place of incorporation) and purpose of each entity. Complex, corporate trees must also state operational relationships, including any inter-company loans.

Details of the Certificate of Incorporation and the Memorandum and Articles of Association should be submitted for the applicant company.

The application should 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.

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

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 are not sourced from illegitimate activity.

Beneficial Ownership

In line with the mandate to keep gambling crime free and protect the Island's reputation, the Commission is obligated to ascertain and vet the owners and beneficiaries of the business.

Provision of accounts and financial forecasts

To enable the Commission to analyse the applicant's financial model detailed forecasts for a minimum of three years are required. Established businesses should supply audited accounts for the previous 2 years, or in the case where audited accounts are not made, sets of management accounts for the previous 2 years.

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 3rd 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 contingency strategies e.g. ability to sustain its business during adverse conditions and will look for evidence that the business model has been subject to some form of 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 Commission will pay attention to the proposed performance levels required for the operator to break-even and substantiated commentary will be expected to support the assumptions made in the accounts. Where scrutiny of these forecasts produces the potential for financial difficulties, the operator must detail what contingencies will be used to compensate the business in such situations.

Technical Requirements

A Code of Practice regarding Minimum Standards for remote gambling operators is available on the Commission's website, and applicants should undertake a comparative exercise to assess whether the proposed business functions meet these minimum requirements.

Technical requirements apply to the licensee's operations and the Commission will use these standards to evaluate the suitability of the gambling equipment, which includes both hardware and software. However, the Commission may make written exception for meeting a technical requirement upon sufficient justification. Guidelines are included and the applicant must outline compliance with the technical element in addition to mitigating risks with procedural controls. These should be detailed within the operator's own Internal Operational Controls (IOC).

Transaction Recording

A system is required to maintain information about all **(wagers/bets)** received from Customers and in particular the methods of placing **(wagers/bets)** used to contract with your company. This would include mechanisms to capture:

- the identity of the customer
- the time that the bet was taken
- the event on which the bet was made
- the balance in the customer's account at the start of any betting transaction
- the bets made by any customer
- amounts won or lost by the customer
- the currency or currencies used by the customer
- transfers of funds (between customers and the operator or third parties).

A document must be provided explaining how these points can and will be met; whether produced internally by the internal IT department or provided by an external test house. This is left to the discretion of the applicant.

Licensing Hearing

Technical, corporate, individual due diligence culminates in a report to inform the Commissioners during a Licensing Hearing. The Commissioners will require the attendance of some key personnel, generally to discuss points of the application and the imposition of any supplementary licence conditions. Directors domiciled outside of Jersey, having already met Commission officials do not necessarily have to attend the hearing; however, this is dependant on the nature of the application.

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

Commencing Operation

While the Licensing Hearing decides whether to grant a licence, the successful applicant must not immediately commence operation without first paying the Commission the requisite licence fee (please refer to Fees Statement). In cases where the applicant is a start-up company systems testing may be required, but these must be dummy runs in that prior to the award of a licence no commercial gambling may take place. Close liaison between the operator and Commission is anticipated during the initial weeks of operation, but this does not reduce the requirement for quarterly reporting.

Applications: general requirements

The Commission may at its own discretion request further information or documentation from the licensee/applicant in determining whether to grant a licence.

Certain conditions apply to the grant of a licence and remain conditions after it has been granted. For example, once a licence expires any unfulfilled duties in respect of a condition still apply. In considering an application for any licence the Commission must ensure that in granting it there is no contravention of the Guiding Principles (as outlined above) and that the application and award of a licence conforms to the requirements set out in this policy.

The onus is always placed on the applicant to satisfy the Commission that they are fit and proper persons to hold a licence and that the gambling activity they seek to conduct would not bring the Island into disrepute.

Change of Circumstances During the Application Process

A duty is placed on the applicant to inform the Commission in writing of any change of circumstances pertinent to an application. For instance if the applicant is subject to criminal or civil proceedings arising after the application was made. Any intervening circumstances would understandably alter the veracity of the original statements made to the Commission by the applicant. Once the applicant is aware of any material change he or she must inform the Commission as soon as reasonably possible and before the licence is issued; failure to do so may result in the revocation of that licence on the grounds of providing false or misleading information.

[Art. 11(5)]

Withdrawing an Application

It remains the right of the applicant to withdraw an application at any time before it is granted or refused. The applicant must supply a written notice to the Commission stating the intention to withdraw the application. [11 (6)]

Applying for the Right Licence?

In examining the application the Commission must consider whether the licence applied for is the correct form of approval required or whether the applicant would require another type of approval.

[Art. 12 (1)(f)]

Grant of a Licence (Article 12)

It should be noted that the Commission is not compelled to award a licence just because someone has applied for one. The Commission may only grant a licence if it has examined and is satisfied of the applicants:

- **integrity**
- **competence**
- **financial standing**

All points satisfied, the applicant may then be considered a fit and proper person to hold a licence.

The Commission is also bound to determine whether the grant of the licence will not be harmful to the reputation and integrity of Jersey in gambling matters along with commercial and financial matters.

[Art. 12(1)(d)]

Sufficient Connection Test

The Commission cannot grant a licence to any applicant whose operations are outside of the Island. However, the significant connection requirement does not mandate an overseas applicant to locate wholesale its worldwide gambling operations on the Island. [Art. 12(1)(e)]

Matters the Commission Must Take into Account

Without limiting the matters that the Commission may take into account in determining whether to grant a licence to an applicant, the Commission must take into account the following matters:

- financial standing (e.g. has the applicant such systems in place to honour all stated wagers or prizes);
- whether the applicant has at any time been subject to adverse findings, in either the provision of any professional service or gambling related services by a regulatory / law enforcement agency situated in a country or territory outside Jersey (e.g. good governance and compliance with the rules of racing and effecting bets on that racing);

- whether the applicant has at any time (whether or not in relation to the application) in any case where information was required under Gambling (Jersey) Law 2012:
 - failed to provide any information, or
 - provided to the Commission information which was untrue or misleading in any material particular.

[Art. 12(3)]

Convictions

Remembering that one of the Commission's key licensing principles is to keep gambling crime free, this necessarily extends to all applicants for licences. The Commission must take into account any convictions, and this includes convictions outside of Jersey the applicant or applicant company has. Convictions include:

- an offence under this Gambling (Jersey) Law 2012, Gambling (Ancillary Services and Miscellaneous Provisions)(Jersey) Regulations 2012 or the Gambling Commission (Jersey) Law 2010,
- an offence under the anti-money laundering and counter-terrorism legislation;
- an offence under the Data Protection (Jersey) Law 2005, the Supply of Goods and Services (Jersey) Law 2009 or the Distance Selling (Jersey) Law 2007;
- an offence of perjury or conspiracy to pervert the course of justice, or any other offence involving fraud or other dishonesty,
- any offence, under the law of a country or territory outside Jersey. [Art. 12(3)(h)]

Applying for a New Licence

If an application is received for a licence before the expiry of a current licence for the same or similar activity, the Commission may not necessarily need to require the same degree of information accompanying the application form if the applicant has a good compliance record. In considering the application for a new licence, the Commission must consider whether it holds any relevant information previously obtained by it in connection with the expiring licence; and it may rely on that information unless it has any reason to believe that the information may not still be current. [Art. 12(5)]

Compliance History of Licensees

The compliance history of the licensee will always be reviewed when considering any application for a new licence. These matters are prescribed in the Law and are as follows:

The Commission must consider whether the applicant has at any time failed, in any material respect, to comply with a condition on a current or previous licence, a code of practice or direction given to the person at any time.

[Art. 12 (3)(f)]

The Commission must consider whether:

- at any time a direction has been given on the basis of any default by the applicant;
- an injunction has been issued under Article 36(2) on the applicant
- or an order has been made under Article 36(4) on the basis of any contravention by the applicant
- the applicant has been the subject of an order for intervention under Article 37
- a licence held by the applicant or any gambling promotion has managed has been revoked under Article 38
- the applicant has been served with a final notice of a civil financial penalty under Article 39.

[Art. 12 (g)]

Duration of Licence

A licence is valid for 5 years from the date of issue and subject to a yearly fee (see Fees Statement). A failure to pay the yearly fee will result in suspension, leading to the revocation of the licence. It is recommended that applications for a new Licence from existing Holders be submitted 6 weeks prior to the expiry of a current licence. **Please Note:** A licence is not transferable.

Grounds for refusal or revocation of a Licence

In accordance with the matters the Commission *must* consider when assessing an application, the following matters – which are not exhaustive - may compel the Commission to revoke or refuse an application for a licence:

- the applicant has held a licence previously and proved to be incompetent or negligent or dishonest [Art. 38 (3)(b)]
- the licensee fails to pay fees [Art.38 (c)]
- the licensee or applicant produced misleading and inaccurate information when applying for a licence or subsequently under the reporting conditions applied to a licensee [Art. 38 (3)(d)(ii)]
- the licensee has breached such conditions of a licence without taking remedial action required and set out in notices from the Commission [Art. 38 (3)(a)]
- on application the person is found not to be bona fide or indeed would require another form of commercial gambling licence [Art. 38 (3)(e)]
- the licensee holder requests it [Art. 38 (2)(a)]
- Jersey's reputation is imperilled [Art. 38 (3)(f)]
- if the Commission has issued a direction under Art.16(4).

The Commission must articulate reasons for refusing and revoking a licence in line with Article 43 (notification of decisions) and the right of appeal must be applied under Article 45. [Reg. 4 (1)(j) & Art. 38]

Article 43: Notification of decisions

The Commission must notify the applicant or licensee (where applicable) of:

- the decision to grant a licence and the conditions applied to that licence
- the decision to refuse a licence and the reasons leading to this decision
- any remedial action required by the applicant to obtain a licence
- the revocation of a licence and the grounds for that revocation
- the effective date of any of these notifications.

NB: A licensee has the right to appeal any enforcement decision pursued by the Commission.