

Alderney eGambling Regulations, 2009

PART II - ASSOCIATE CERTIFICATES

CHAPTER I - PRELIMINARY

Types of associate certificate

- 55.** These regulations provide for two types of associate certificate –
- (a) core services associate certificates, issued under section 7 of the Ordinance, and specified in section 17 of the Ordinance; and
 - (b) foreign gambling associate certificates, issued under section 7 of the Ordinance, and specified in section 18 of the Ordinance.

Interpretation of this Part

56. (1) In this Part of the regulations, in accordance with the definition in section 30 of the Ordinance, the term “**associate certificate**” includes, unless otherwise specified or unless the context otherwise requires, both types of associate certificate specified in regulation 55.

(2) The provisions of Chapters IV, V and VI of this Part apply to all associate certificates, unless otherwise specified or unless the context otherwise requires.

CHAPTER II - ASSOCIATES PROVIDING CORE SERVICES

Providers of core services.

- 57.** (1) Subject to paragraph (2), for the purposes of section 17(1) of the Ordinance, an entity —
- (a) with which an eGambling licensee or foreign gambling associate certificate holder contracts directly for the provision to the licensee or certificate holder of gambling specific software, but not including a contract for the outright purchase of that software and all rights associated therewith;
 - (b) with which a customer deposits the funds to pay for gambling transactions effected with an eGambling licensee in accordance with regulation 230; or
 - (c) to which an eGambling licensee or a foreign gambling associate certificate holder has outsourced its management, or any part thereof, as described in its approved internal control system,

is prescribed as a business associate providing the eGambling licensee or foreign gambling associate certificate holder with a core service.

(2) The Commission may determine that, to the extent specified and on the conditions specified in the determination, paragraph (1) shall not apply to –

- (a) an entity which is another company —
 - (i) within the same group of companies as the eGambling licensee or foreign gambling associate certificate holder; or
 - (ii) beneficially owned or, as the case may be, controlled by the same individual who owns or controls the eGambling licensee or foreign gambling associate certificate holder; or
- (b) a Category 2 eGambling licensee in respect of the provision of gambling specific software.

(3) In this regulation, “**gambling specific software**” means computer software requiring approval as gambling equipment in accordance with section 15 of the Ordinance which affects or records the outcome of at least one gambling transaction.

General conditions attaching to core services associate certificate.

58. A core services associate certificate issued by the Commission under section 7 of the Ordinance is subject to the following conditions —

- (a) the core services associate certificate holder must within 48 hours of any serious incident negatively affecting the operations of any service provided to an eGambling licensee or foreign gambling associate certificate holder notify the Commission in writing of the details and consequences of the incident and of the remedial steps, if any, taken;
- (b) the core services associate certificate holder must give notification in writing to the Commission containing full details within seven days of any of the following relevant events —
 - (i) when the status of any licence or permission however described allowing it, or one of its associates, to conduct or otherwise be involved in any form of gambling in another jurisdiction changes, including (without limitation) where the licence or permission is voluntarily surrendered, made subject to different conditions, suspended or revoked or some other sanction in respect of it is imposed on the holder; or
 - (ii) when a material change occurs in the information previously supplied by it to the Commission, whether prior to being granted the certificate or subsequently, to which the Commission would be able to have regard in considering whether or not the certificate holder is a fit and proper person to hold an associate certificate; and
- (c) upon being given reasonable notice, which shall wherever possible be not less than seven days, the core services associate certificate holder shall attend at a meeting of the Commissioners for the purpose set out in the notice.

CHAPTER III - FOREIGN GAMBLING ASSOCIATES

Foreign Gambling Associates

59. (1) A foreign gambling associate is an entity (other than a Category 2 eGambling licensee) to whom a Category 1 eGambling licensee transfers customers, or allows them to be transferred, for the purpose of that entity effecting gambling transactions with the customer or arranging for those customers to gamble with others.

(2) If a foreign gambling associate holds a foreign gambling associate certificate issued under section 7 of the Ordinance, then, with respect to activities related to Alderney certification, the transfer of the customer from the Category 1 eGambling licensee to the foreign gambling associate certificate holder may, as prescribed in section 1(3) of the Ordinance and specified in conditions attached to the eGambling licence or the foreign gambling associate certificate, be made without any notice or warning to the customer.

General conditions of foreign gambling associate certificate

60. A foreign gambling associate certificate issued by the Commission under section 7 of the Ordinance is subject to the following general conditions for activities related to Alderney certification

- (a) in no circumstances may cash be accepted from a customer by, or on behalf of, the foreign gambling associate certificate holder;

- (b) any advertising carried out by, or conducted on behalf of, the foreign gambling associate certificate holder —
 - (i) must be truthful;
 - (ii) must not be distasteful;
 - (iii) must not promote gambling by, with or through persons under the age of 18 years, and this factor must be taken into account when determining media selection and placement of the advertising;
 - (iv) must not encourage people to engage in excessive participation in eGambling that would be socially irresponsible or could result in harm to them or others;
 - (v) must not imply or convey any message that a person's status, general abilities or social success can be attributable to gambling;
 - (vi) must not challenge or dare people to participate in eGambling;
 - (vii) must not, having regard to the expected returns to customers through eGambling, promote or suggest any unrealistic expectation of winning;
 - (viii) must not bring into disrepute —
 - (A) the Island of Alderney;
 - (B) the Commission; or
 - (C) in any broader context, the Bailiwick of Guernsey; and
 - (ix) must comply with any requirements relating to the content or nature of advertising imposed in the jurisdiction covering the target market for that advertising;
- (c) the foreign gambling associate certificate holder must appoint an executive officer to fulfil the duties of compliance officer, who will report to the Commission on all compliance matters;
- (d) the foreign gambling associate certificate holder must appoint an executive officer, who may, but need not be, the compliance officer, to act as its money laundering reporting officer;
- (e) the foreign gambling associate certificate holder must use reasonable endeavours to keep abreast of international developments as they affect the lawfulness of any form of eGambling in order, so far as is reasonably practicable, not to allow eGambling where to do so would constitute criminal activity by its customer;
- (f) the foreign gambling associate certificate holder must within 48 hours of any serious incident negatively affecting the operation of its foreign gambling associate certificate notify the Commission in writing of the details and consequences of the incident and of the remedial steps, if any, taken;
- (g) the foreign gambling associate certificate holder must give notification in writing to the Commission containing full details within seven days of any of the following relevant events —
 - (i) when the status of any licence or permission however described allowing it, or one of its associates, to conduct or otherwise be involved in any form of gambling in another jurisdiction changes, including (without limitation) where the licence or permission is voluntarily surrendered, made subject to different conditions, suspended or revoked or some other sanction in respect of it is imposed on the holder;
 - (ii) when the beneficial ownership of the foreign gambling associate certificate holder, or of any parent company of the foreign gambling associate certificate holder, or of any associated company within the group of companies to which the foreign gambling associate certificate holder belongs, has changed so that a person's shareholding is, or becomes, 3% or more;

- (iii) when the foreign gambling associate certificate holder decides that it will change the auditors it uses for the purpose of regulation 245; or
 - (iv) when a material change is discovered in the information previously supplied by it to the Commission, whether prior to being granted the licence or subsequently, to which the Commission would be able to have regard in considering whether or not the foreign gambling associate certificate holder is a fit and proper person to hold a certificate;
- (h) upon being given reasonable notice, which shall wherever possible be not less than seven days, the foreign gambling associate certificate holder shall attend at a meeting of the Commissioners for the purpose set out in the notice; and
- (i) the foreign gambling associate certificate holder must maintain and operate its gambling equipment in premises that the Commission is satisfied are suitable and secure at all times, and for this purpose if the gambling equipment is not situated in approved premises controlled by the holder of a hosting certificate –
- (i) upon request from a duly authorised officer of the Commission about the level of activity being undertaken by the certificate holder at the premises housing the gambling equipment, the foreign gambling associate certificate holder must, as soon as reasonably practicable, provide the information requested or explain why that information cannot be supplied;
 - (ii) the foreign gambling associate certificate holder must within 48 hours of any serious incident negatively affecting the operations of any service provided to it at the premises housing the gambling equipment notify the Commission in writing of the details and consequences of the incident and of the remedial steps, if any, taken; and
 - (iii) the foreign gambling associate certificate holder must, within seven days of a material change in information previously supplied to the Commission in relation to the premises housing the gambling equipment (whether prior to being granted the certificate or subsequently), give written notice to the Commission containing full details so that the Commission can assess whether or not the gambling equipment is housed suitably and securely.

CHAPTER IV - GENERAL PROVISIONS FOR ASSOCIATES

DIVISION 1 - INITIAL CERTIFICATE APPLICATION

Submission of application.

61. (1) An application for an associate certificate shall be made in writing by completing the application form as set out in Schedule 1 and the notice in the form set out in Schedule 2, signed by the applicant or by a duly authorised officer on behalf of the applicant and delivered to the offices of the Commission.

(2) Before making an application in accordance with paragraph (1), a person intending to apply for an associate certificate, or a person acting on behalf of a prospective applicant, may submit to the Commission, in electronic or paper format, all or part of an application form as set out in Schedule 1 for the purposes specified in regulation 64(2).

Initial deposit of investigation monies.

62. Before, or at the time of, the submission of an application for an associate certificate, the relevant sum specified under Schedule 21 shall be deposited with the Commission by, or on behalf of, the applicant from which the Commission is permitted to draw the costs associated with processing, investigating and determining that application.

Display on Commission's website.

63. Following receipt of an application for an associate certificate, the Commission shall post and thereafter continuously display on its website until the application is withdrawn by the applicant or determined by the Commission a notice in the form set out in Schedule 2 containing the information required therein detailing the application.

Commencement of investigations.

64. (1) When an applicant has complied with regulations 61(1) and 62, the Commission shall make arrangements to investigate the applicant and, where applicable, any associate of the applicant in order to assess whether the applicant appears to be a fit and proper person to hold an associate certificate.

(2) If a person submits all or part of an application form in accordance with regulation 61(2) and complies with regulation 62, at the request of that person, the Commission may make arrangements to commence an investigation in accordance with paragraph (1) insofar as that is practicable from the information supplied, pending compliance with regulation 61(1).

Criteria against which applicant for core services associate certificate assessed.

65. (1) In deciding whether an applicant for a core services associate certificate is a fit and proper person to hold that certificate, the Commissioners shall have regard to the following matters —

- (a) the applicant's character;
- (b) the applicant's business reputation;
- (c) the applicant's current financial position and financial background;
- (d) whether an associate of an applicant satisfies regulation 67;
- (e) whether the applicant has the appropriate business ability to assist an eGambling licensee to conduct eGambling successfully under an eGambling licence.

(2) In deciding whether an applicant for an associate certificate is a fit and proper person to hold that certificate, the Commissioners may have regard to any other licence or permission however described allowing the applicant, or an associate of the applicant, to conduct any form of gambling lawfully in another jurisdiction.

Criteria against which applicant for foreign gambling associate certificate assessed.

66. (1) In deciding whether an applicant for a foreign gambling associate certificate is a fit and proper person to hold that certificate, the Commissioners shall have regard to the following matters —

- (a) the applicant's character;
- (b) the applicant's business reputation;
- (c) the applicant's current financial position and financial background;
- (d) whether the applicant has, or has arranged, a satisfactory ownership, trust or corporate structure;
- (e) whether an associate of the applicant satisfies regulation 67;
- (f) whether the applicant has, or is able to obtain, appropriate resources and appropriate services;
- (g) whether the applicant has the appropriate business ability to conduct eGambling successfully; and
- (h) the manner in which the applicant currently conducts any form of eGambling in any jurisdiction (if at all).

(2) In deciding whether an applicant for a foreign gambling associate certificate is a fit and proper person to hold that licence, the Commissioners may have regard to any other licence or

permission however described allowing the applicant, or an associate of the applicant, to conduct any form of gambling lawfully in Alderney or another jurisdiction.

Criteria against which associate assessed.

67. In deciding whether an associate of an applicant for an associate certificate is a fit and proper person to be associated with the applicant —

- (a) an associate who holds an associate certificate or, as the case may be, a hosting certificate shall without further investigation be regarded as having satisfied the Commissioners that it is a fit and proper person to be associated with another associate certificate holder; and
- (b) where an associate does not hold an associate certificate or a hosting certificate, the Commissioners shall have regard to the following matters —
 - (i) the associate's character;
 - (ii) the associate's business reputation;
 - (iii) the associate's current financial position and financial background; and
 - (iv) where applicable, whether the associate has the appropriate business ability to participate with the applicant in assisting an eGambling licensee to conduct eGambling successfully under an eGambling licence.

Request for further information.

68. At any time before an application for an associate certificate is determined by the Commission, an officer or servant of the Commission may request from the applicant or, with the applicant's prior permission, from some other person such further information or documentation as the officer or servant considers desirable to enable a proper assessment of the application to be made.

Requirement for further information.

69. (1) Whether or not a request in accordance with regulation 68 has been made, a duly authorised officer of the Commission may, by notice in writing given to the applicant, require the applicant to supply to the Commission such further information or documentation as may reasonably be required to make a proper assessment of the application.

(2) Where a notice under paragraph (1) has been given, the Commission –

- (a) is not required to determine the application until the notice has been complied with;
- (b) may, if the applicant fails to comply with the notice under paragraph (1) within a reasonable time, give the applicant notice by email or other means that if it fails to so comply within 7 days, then the applicant shall be deemed to have withdrawn its application pursuant to regulation 72(1).

External consultations.

70. As part of the investigation of an application for an associate certificate, an officer or servant of the Commission may make appropriate enquiries of an officer of police, any gambling regulator operating outside Alderney, any law enforcement agency operating outside the Bailiwick of Guernsey or such other person as he considers can assist him in order to enable a proper assessment of the application to be made.

Supplementary deposit of investigation monies.

71. (1) If, prior to the determination of an application for an associate certificate, the monies deposited with the Commission in accordance with regulation 62 or this regulation have been exhausted, the Commission may by notice in writing to the applicant require that the relevant sum specified under Schedule 21 shall be deposited with the Commission by, or on behalf of, the applicant.

(2) Where a notice under paragraph (1) has been given, the Commission is not required to determine the application until the notice has been complied with.

Withdrawal and lapse of application.

72. (1) At any time before the Commissioners determine an application for an associate certificate, the applicant may, by notice in writing given to the Commission, withdraw the application.

- (2) If an applicant fails to proceed with its application by –
- (a) not taking a required step in furtherance of the application for 3 months; or
 - (b) failing to substantially respond to a relevant enquiry or direction by the Commission within 3 months,

the application shall lapse and be treated as if it had been withdrawn.

(3) Where an applicant withdraws the application or it lapses by operation of paragraph (2), the Commission shall repay to the applicant or, as the case may be, the person who deposited monies on behalf of the applicant any monies not drawn by it from the monies deposited in accordance with regulation 62 or, where applicable, regulation 71.

Report to Commissioners.

73. On completion of an investigation of an applicant for an associate certificate and, where applicable, any associate of the applicant, a report containing details of the application, the investigation and the assessment made of the application shall be prepared by a duly authorised officer of the Commission for submission to the Commissioners for their consideration.

Determination of application.

74. (1) Before deciding whether to grant or refuse an application for an associate certificate, the Commissioners shall consider —

- (a) the report submitted to them in accordance with regulation 73;
- (b) any written representations received as a result of the display of the notice required by regulation 63; and
- (b) such other material or information supplied to the Commission by, or on behalf of, the applicant as they consider appropriate.

(2) Where the Commissioners consider that they have insufficient information on which to decide whether to grant or refuse the application, they shall defer their decision on the application and —

- (a) shall cause an appropriate requirement under regulation 69 to be made; and
- (b) may invite the applicant, or if a company, a representative of the applicant, to attend before them for interview.

Notification of refusal.

75. If the Commissioners refuse to grant an application for an associate certificate, the Commission shall give the applicant written notice of the decision and of the reasons for the refusal.

Form of associate certificate.

76. If the Commissioners grant an application for an associate certificate, the certificate issued under section 7 of the Ordinance shall be in the form set out in Schedule 4.

Payment of investigation costs not deposited.

77. Where the costs payable by an applicant under section 6(1) of the Ordinance exceed the total of the monies deposited in accordance with regulation 62 and, where applicable, regulation 71, the

associate certificate shall not be regarded by the Commission as conferring the benefits to the certificate holder set out in these regulations until payment of the amount by which the costs incurred exceeded the amount deposited, as notified to the certificate holder in writing by the Commission, has been received by the Commission.

Re-allocation or return of surplus investigation monies deposited.

78. After determining an application for an associate certificate, the Commission shall, in respect of the monies not drawn by it from those deposited by the applicant in accordance with regulation 62 or, where applicable, regulation 71 for processing, investigating and determining the application —

- (a) repay the whole amount to the applicant; or
- (b) where the applicant for a foreign gambling associate certificate is granted the certificate and so requests, retain such specific amount as the applicant has indicated it wishes the Commission to continue to hold and apply towards the amount to be deposited in accordance with regulation 260 and repay to the applicant any balance.

Accounting for investigation monies deposited.

79. The Commission shall, whenever requested to do so by an applicant, account to the applicant in respect of the costs as at that time incurred by the Commission in respect of the application.

DIVISION 2 - CERTIFICATE CONDITIONS

Imposition or change of certificate conditions.

80. (1) Where the Commission considers it necessary, expedient or desirable to —

- (a) attach a condition to an associate certificate;
- (b) modify an existing condition attached to an associate certificate; or
- (c) rescind an existing condition attached to an associate certificate,

it shall issue to the certificate holder a notice in writing (a “**condition notice**”) which shall explain the proposed change of condition and set out the Commission’s reasons for the change.

(2) Subject to regulation 81, a change of conditions takes effect on —

- (a) the day on which the condition notice is given to the certificate holder; or
- (b) such later day as is specified in the condition notice.

Challenge to condition notice.

81. (1) If an associate certificate holder wishes to make representations to the Commission about anything in the condition notice, it may do so in writing within seven days of receipt of the condition notice.

(2) Representations under paragraph (1) may include a request that the date from which the change of conditions takes effect be postponed until the Commission has considered the representations.

(3) After consideration of any representations under this regulation, the Commission may confirm, modify or withdraw the condition notice.

(4) The Commission shall give the certificate holder written notice of its decision under this regulation and of the reasons for it.

Return of associate certificate for endorsement of changed conditions.

82. (1) An associate certificate holder shall return its associate certificate to the Commission within seven days of —

- (a) receiving a condition notice; or,

- (b) where the right to make representations in accordance with regulation 81 has been exercised, receipt of a notice from the Commission in accordance with regulation 81(4) confirming or modifying the condition notice.
- (2) On receiving the associate certificate, the Commission shall —
 - (a) amend the certificate in an appropriate way and return the amended certificate to the certificate holder; or
 - (b) if the Commission does not consider that it is practicable to amend the certificate, issue a replacement associate certificate free of charge, incorporating the change of conditions to the associate certificate.
- (3) A change of conditions does not depend on the associate certificate being amended to record the change or a replacement associate certificate being issued.

CHAPTER V - MODIFICATION TO AND SURRENDER OF CERTIFICATE

Modification to associate certificate.

- 83.** (1) An associate certificate holder who wishes to obtain the Commission's approval for a proposed modification to the details contained on its associate certificate shall make application by letter to the Commission setting out the modification for which it seeks approval.
- (2) Without prejudice to the generality of paragraph (1), an application is required within seven days of —
- (a) a certificate holder's name changing; or
 - (b) a certificate holder's registered office changing.
- (3) An application under paragraph (1) shall be accompanied by —
- (a) the certificate holder's associate certificate;
 - (b) where applicable, a certified copy of the resolution of the certificate holder effecting the change in question; and
 - (c) payment of the administration charge specified in Schedule 21.
- (4) If the Commission refuses to grant an application under this regulation, it shall return the certificate holder's associate certificate and give to it written notice of its decision and of the reasons for the refusal.
- (5) If the Commission grants an application under this regulation, it shall —
- (a) amend the certificate in an appropriate way and return the amended certificate to the certificate holder; or
 - (b) if the Commission does not consider that it is practicable to amend the certificate, issue a replacement associate certificate free of charge, incorporating the change of conditions to the associate certificate.

Surrender of associate certificate.

- 84.** (1) An associate certificate holder may surrender its associate certificate by written notice (a "**surrender notice**") given to the Commission.
- (2) The surrender takes effect —
- (a) on the day specified in the surrender notice; or
 - (b) if no day is specified in the surrender notice, one month after the surrender notice is given to the Commission.
- (3) A person who has surrendered an associate certificate must, unless it provides an explanation which is acceptable to the Commission, return the associate certificate to the Commission within seven days after the day on which the surrender takes effect.

CHAPTER VI - SUSPENSION, REVOCATION AND OTHER SANCTIONS

Fit and proper test: associate certificate holder.

85. (1) For the purposes of section 12(1)(a) of the Ordinance, in deciding whether an associate certificate holder continues to be a fit and proper person to hold that certificate, the Commission shall have regard to the following matters —

- (a) the certificate holder's character;
- (b) the certificate holder's business reputation;
- (c) the certificate holder's current financial position and financial background;
- (d) whether an associate of the certificate holder satisfies regulation 86; and
- (e) whether the certificate holder has the appropriate business ability to assist an eGambling licensee to conduct eGambling successfully under an eGambling licence.

(2) For the purposes of section 12(1)(a) of the Ordinance, in deciding whether an associate certificate holder continues to be a fit and proper person to hold that certificate, the Commission may have regard to —

- (a) any changes to the validity of any other licence or permission however described held at the time the associate certificate was issued or obtained since then allowing the certificate holder, or one of its associates, to conduct any form of gambling lawfully in another jurisdiction; and
- (b) any penalties or sanctions however described imposed on the certificate holder, or any of its associates, by gambling or other regulators outside Alderney.

Fit and proper test: associate.

86. For the purposes of section 12(1)(b) of the Ordinance, in deciding whether an associate of an associate certificate holder continues to be a fit and proper person to be associated with an associate certificate holder —

- (a) an associate who holds an associate certificate or, as the case may be, a hosting certificate shall without further investigation be regarded as having satisfied the Commission that it is a fit and proper person to be associated with another associate certificate holder; and
- (b) where an associate does not hold an associate certificate or a hosting certificate, the Commission shall have regard to the following matters —
 - (i) the associate's character;
 - (ii) the associate's business reputation;
 - (iii) the associate's current financial position and financial background; and
 - (iv) where applicable, whether the associate has the appropriate business ability to participate with the associate certificate holder in assisting an eGambling licensee to conduct eGambling successfully under an eGambling licence.

Rectification: Commission proposal.

87. (1) Where the Commission believes that —

- (a) a ground referred to in section 12(1) of the Ordinance exists; and
- (b) it is appropriate to give the associate certificate holder an opportunity to rectify the matter or matters giving rise to the Commission's belief that such a ground exists,

it shall issue to the associate certificate holder a notice in writing (a "**rectification proposal**") which shall explain the proposed direction under regulation 88 and set out the Commission's reasons for proposing to give the direction.

(2) If an associate certificate holder wishes to make representations to the Commission about anything in the rectification proposal, it may do so in writing within seven days of receipt of the rectification proposal.

(3) After consideration of an associate certificate holder's representations, the Commission may –

- (a) confirm, modify or withdraw the rectification proposal; or
- (b) take no further action concerning the rectification proposal indefinitely, or for such period as the Commission considers appropriate.

(4) The Commission shall give the associate certificate holder written notice of its decision under paragraph (3) and of the reasons for it.

Direction to rectify.

88. (1) Where —

- (a) an associate certificate holder elects not to make any representations in accordance with regulation 87(2); or
- (b) after considering an associate certificate holder's representations, the Commission decides to confirm or modify its proposals as set out in the rectification proposal,

the Commission shall, by written notice to the certificate holder (a “**rectification notice**”), direct it to rectify the matter or matters specified in the notice in the manner specified in the notice within the period of time specified in the notice.

(2) A rectification notice shall warn the associate certificate holder of the consequences of failing to comply with the notice as specified in regulation 90(2).

(3) Where the Commission believes that the associate certificate holder has an existing relationship with an eGambling licensee, the Commission shall give a copy of the rectification notice to that eGambling licensee.

(4) During the period of time specified in a rectification notice, its terms may be modified in any way that the Commission sees fit, whether as a result of written representations from the certificate holder or from an eGambling licensee with which the certificate holder has an existing relationship, or of the Commission's own motion.

Written caution.

89. Where the Commission is satisfied that —

- (a) a ground referred to in section 12(1) of the Ordinance —
 - (i) exists, or
 - (ii) existed and has been resolved, whether voluntarily or in accordance with a rectification notice; and
- (b) it is appropriate to give the associate certificate holder formal notice warning it about the consequences of any repetition of the type of act or omission giving rise to the Commission's view,

it may issue to the certificate holder a notice in writing which shall set out the basis for its finding that a ground in section 12(1) of the Ordinance has arisen and warn the certificate holder of the consequences of any repetition of the same or similar type of act or omission.

Regulatory hearing: notice.

90. (1) Where the Chief Executive Officer believes that —

- (a) a ground referred to in section 12(1) of the Ordinance exists; and

- (b) the circumstances are such that it is necessary to convene a hearing of the Commissioners at which the associate certificate holder shall be given the opportunity of making representations in response,

he shall give to the certificate holder a notice in writing (a “**hearing notice**”) which shall explain that the Chief Executive Officer is recommending to the Commission that it should impose a financial penalty or suspend or revoke the associate certificate and set out his reasons for convening the hearing.

(2) Where the Chief Executive Officer believes that a rectification notice has not been fully complied with, he shall give to the associate certificate holder a hearing notice which shall explain that the Chief Executive Officer is recommending to the Commission that it should impose a financial penalty or suspend or revoke the associate certificate and set out the Chief Executive Officer’s reasons for convening the hearing.

(3) A hearing notice shall give at least seven days’ notice of the hearing to the associate certificate holder and appoint a date, time and place for the hearing.

(4) An associate certificate holder may elect not to attend the hearing convened by the hearing notice and confine its representations to any it wishes to make in writing to the Commission prior to the date of the hearing.

Immediate suspension.

91. (1) At the same time as giving a hearing notice, the Chief Executive Officer may, with the approval of at least one Commissioner, suspend an associate certificate under this regulation if he is satisfied on reasonable grounds that —

- (a) a ground referred to in section 12(1) of the Ordinance exists;
- (b) the seriousness and urgency of the matter requires that immediate action be taken ahead of a regulatory hearing;
- (c) the seriousness and urgency of the matter do not permit the taking of action by way of a rectification proposal; and
- (d) the circumstances require that the associate certificate be suspended to ensure that the certificate holder is unable to jeopardise the integrity of an eGambling licensee’s operation.

(2) A suspension under this regulation —

- (a) shall be effected by written notice given by the Chief Executive Officer to the associate certificate holder (a “**suspension notice**”);
- (b) takes effect immediately when the suspension notice is given; and
- (c) is effective until —
 - (i) the Commissioners have reached a determination at the conclusion of the hearing convened in accordance with regulation 90; or
 - (ii) it is cancelled by further notice in writing of the Chief Executive Officer in accordance with regulation 92.

(3) Where the Chief Executive Officer believes that the associate certificate holder has an existing relationship with an eGambling licensee or, as the case may be, an associate, the Chief Executive Officer shall give a copy of the suspension notice to that eGambling licensee or associate.

Cancellation of suspension notice.

92. (1) If an associate certificate holder, eGambling licensee or associate receiving a copy of the suspension notice in accordance with regulation 91(3), wishes to request that the immediate suspension imposed by the suspension notice be cancelled, it may make representations to the Chief Executive Officer in writing at any time whilst the suspension is effective.

(2) After consideration of any representations made under paragraph (1), the Chief Executive Officer, with the approval of at least one Commissioner, may confirm or cancel the suspension notice.

(3) The Chief Executive Officer shall give the associate certificate holder and, where applicable, the eGambling licensee and/or associate written notice of the decision under paragraph (2) and of the reasons for it.

(4) Where, prior to the Commission reaching a determination at the conclusion of the hearing convened in accordance with regulation 90, the Chief Executive Officer considers that it is no longer necessary to continue the suspension of an associate certificate, he shall, with the approval of at least one Commissioner, cancel the suspension notice and give written notice to that effect to the certificate holder and, where applicable, an eGambling licensee and/or associate who have received a copy of the suspension notice in accordance with regulation 91(3).

Conduct of regulatory hearing.

93. (1) At a hearing convened in accordance with regulation 90 —

- (a) the proceedings shall be opened and directed by the Chairman of the Commission or, in his absence, the Commissioner presiding at the hearing, who shall be responsible for the proper conduct of the hearing;
- (b) the Commissioners shall, so far as it appears to them appropriate, seek to avoid formality in their proceedings and shall conduct the hearing in such manner as they consider most appropriate for the clarification of the issues before them and generally to the just handling of the hearing; and
- (c) the associate certificate holder may appear before the Commissioners through any representative.

(2) Without prejudice to the generality of paragraph (1)(b), where the associate certificate holder indicates that it wishes to challenge the allegation set out in the hearing notice given to it, the Commissioners may adopt the following procedure —

- (a) a duly authorised officer of the Commission or any representative of that officer shall first be invited to present the case setting out the ground under section 12(1) of the Ordinance alleged against the certificate holder and may, for that purpose, call unsworn evidence from witnesses and produce documents;
- (b) in the event that a witness gives evidence in support of the duly authorised officer's presentation, cross-examination by the representative of the certificate holder and re-examination by the duly authorised officer or his representative shall be permitted;
- (c) the representative of the certificate holder shall next present its response and may, for that purpose, call unsworn evidence from witnesses and produce documents;
- (d) in the event that a witness gives evidence in support of the certificate holder's presentation, cross-examination by the duly authorised officer or his representative and re-examination by the representative of the certificate holder shall be permitted;
- (e) written representations may be lodged with the Commissioners by, or on behalf of, the duly authorised officer or certificate holder before or during the hearing or in such other manner as the Commissioners may direct;
- (f) questions may be asked at any time by the Commissioners; and
- (g) the Commissioners may proceed to determine whether or not a ground referred to in section 12(1) of the Ordinance has been established before inviting comments from the representative of the certificate holder in relation to any appropriate sanction.

(3) Where the Commissioners proceed in accordance with paragraph (2)(g) and determine that a ground referred to in section 12(1) of the Ordinance has been established, they shall provide an

opportunity for the representative of the associate certificate holder to offer any explanation and make such other comment as he wishes.

(4) Without prejudice to the generality of paragraph (1)(b), where the associate certificate holder indicates that it accepts the allegation set out in the hearing notice given to it, the Commissioners may adopt the following procedure —

- (a) a duly authorised officer of the Commission or any representative of that officer may first be invited to summarise the case setting out the ground under section 12(1) of the Ordinance alleged against the certificate holder;
- (b) the representative of the certificate holder shall be provided with the opportunity to offer any explanation and make such other comment as he wishes; and
- (c) questions may be asked at any time by the Commissioners.

(5) A hearing under this regulation may be adjourned by the Commissioners at any time and for any purpose.

(6) Unless the Commissioners otherwise direct, a hearing under this regulation shall be held in public in Alderney.

Regulatory hearing: Commissioners' determination.

94. (1) During or at the conclusion of a hearing convened in accordance with regulation 90, having taken into account everything said before and lodged with them, the Commissioners shall first determine whether the existence of a ground referred to in section 12(1) of the Ordinance has been accepted by, or established against, the associate certificate holder and —

- (a) if so, shall then determine which of the actions specified in section 12(3) of the Ordinance, if any, to take in respect of the associate certificate holder or, as the case may be, its certificate; or
- (b) if not, shall direct that the allegation against it be recorded as not having been established.

(2) The Commission shall give the associate certificate holder written notice of its decision under this regulation and of the reasons for it (a “**determination notice**”).

(3) Where the Commission believes that the associate certificate holder has an existing relationship with an eGambling licensee, the Commission shall give a copy of the determination notice to that eGambling licensee.

Post-hearing suspension and financial penalty.

95. (1) Where the Commissioners decide to impose a financial penalty or suspend an associate certificate —

- (a) the determination notice shall specify —
 - (i) the date from which any suspension takes effect; and
 - (ii) the period of time during which any suspension shall be effective;
- (b) the amount of any financial penalty shall not exceed £25,000; and
- (c) the determination notice shall direct whether any financial penalty is payable immediately or is to be of suspended effect.

(2) Where a financial penalty is payable immediately, the amount shall be paid to the Commission as agent for the States in the manner specified in the determination notice.

(3) Where the Commissioners direct that a financial penalty shall be of suspended effect, the determination notice shall specify the period, which shall not in any event exceed 12 months, during which the penalty is capable of being activated in accordance with regulation 96 and, at the end of the period so specified, the penalty shall no longer be capable of taking effect.

Activation of suspended financial penalty.

96. (1) Where, during the period of suspension specified in a determination notice, the Chief Executive Officer believes that a ground in section 12(1) of the Ordinance exists, the hearing notice that may be given to the associate certificate holder in accordance with regulation 90 shall also explain that the Chief Executive Officer is recommending to the Commission that it should consider activating the suspended financial penalty.

(2) If, at the conclusion of a hearing convened by such a hearing notice, the Commissioners are satisfied that a ground in section 12(1) of the Ordinance exists, or existed at the time of the hearing notice, having taken into account the representations of the associate certificate holder, the Commission's determination notice shall direct that the original financial penalty of suspended effect —

- (a) shall be payable to it as agent of the States immediately in the manner specified in the determination notice —
 - (i) with the original amount unaltered; or
 - (ii) with the substitution of a lesser amount for the original amount;
- (b) shall be suspended for such further period not exceeding 12 months as the determination notice specifies; or
- (c) shall not be activated on this occasion and shall continue unaltered.

Withdrawal of associate certificate.

97. (1) The Commissioners may withdraw an associate certificate if they are satisfied that any of the grounds specified in section 12(1) of the Ordinance apply, and that unless the certificate is withdrawn —

- (a) the integrity of the conduct of eGambling by an eGambling licensee or a foreign gambling associate certificate holder may be jeopardised in a material way; or
- (b) the public interest or the integrity and reputation of eGambling in Alderney may be affected in an adverse way.

(2) Withdrawal of an associate certificate takes effect when the determination notice is given or, if the determination notice specifies a later day, on the later day.

(3) A person whose associate certificate has been withdrawn shall return the certificate to the Commission within seven days of the withdrawal taking effect.