

I. GENERAL PROVISIONS

MINISTRY OF ECONOMY AND FINANCE

15092 Order EHA/2528/2011, of 20 September, which establishes the requirements and the procedure for appointing independent entities who carry out the evaluation and certification of gaming software and gaming operator security.

Section 1 of article 16 of Law 13/2011, of 27 May on the regulation of gaming, states that the entities responsible for the organisation, operation and development of gaming activities regulated by said Law should have the duly authorised software, equipment, systems, devices and general instruments.

Section 2 of said article states that the National Gaming Commission is responsible for authorising the technical systems of each of the operators operating in the gaming sector.

The authorisation of gaming software and security is an essential instrument for guaranteeing the reliability of the offer of gaming services and thereby protecting participants in said games from any fraudulent acts that may occur in the event of manipulation of the technical system.

To exercise this power, the Directorate General for the Regulation of Gambling of the Ministry of Economy and Finance, as the body that temporarily carries out the duties of the future National Gaming Commission, requires the collaboration of certain independent certification authorities who are responsible for evaluating gaming software and security, appointed by the competent body to issue a report certifying compliance with the requirements relating to the technical systems used by gaming operators when undertaking their activities and relating to the security of the information systems of gaming operators.

In the licence award procedures referred to in chapter III of Law 13/2011, the only reports that will be considered valid by the National Gaming Commission will be those issued by the entities responsible for the certification of gaming software and information system security who have previously been appointed to carry out this duty in accordance with the procedure established by this Order. For this purpose, the Order creates a procedure through which all certification entities responsible for certifying gaming materials and information system security that meet the requirements set forth in this Order, can be duly appointed.

The requirements established in this Order aim to guarantee the impartiality and independence of the designated entities in relation to the gaming operators, the confidentiality and security of gaming system data and operations and the legal, technical, professional and financial capacities of the legal entities appointed by the National Gaming Commission.

The National Gaming Commission will publish the list of certification authorities and entities responsible for certifying information security systems appointed to carry out auxiliary evaluation and certification tasks.

This regulatory provision was passed by the Ministry of Economy and Finance in accordance with temporary provision one of Law 13/2011, of 27 May on the regulation of gaming.

By virtue thereof, with the prior approval of the Vice President of the Government for Territorial Policy and Minister of Territorial Policy and Public Administration, I hereby declare that:

Article 1. *Object.*

The purpose of this Order is to regulate the requirements and the procedure for appointing Certification Authorities for certifying that the gaming software and information system security comply with the requirements for technical systems used by the entities that organise, operate and develop the games regulated by Law 13/2011, of 27 May on the regulation of gaming, and that require a licence, as stated in chapter III of the aforementioned Law.

Article 2. *Definitions.*

1. For the purposes of this Order, gaming software certification authorities are understood to be any individual or entity, regardless of their legal status, that is established in a European Union member state or in a state that forms part of the European Economic Area, whose activity consists of evaluating and certifying, prior to their authorisation, the equipment, systems, instruments and devices that comprise the technical gaming systems used by gaming operators to organise, manage, operate and market the gaming activities regulated by Law 13/2011, of 27 May on the regulation of gaming.

2. Information system security certification authorities are understood to be any individual or entity, regardless of their legal status, that is established in a European Union member state or in a state that forms part of the European Economic Area, whose activity consists of auditing, evaluating or certifying products, procedures and information technology systems used by gaming operators and which are required to organise, manage, operate and market the gaming activities regulated by Law 13/2011, of 27 May on the

regulation of gaming.

Article 3. *Requirements.*

1. Interested parties may apply to be appointed to carry out the evaluation and verification of gaming software or to evaluate the security of information systems, or both of the activities referred to in article 1. They must provide evidence of the following:

a) Sufficient legal, professional, technical and financial capacity to carry out the evaluations needed to certify the technical systems used by gaming operators, and the security of said systems.

To recognise their professional capacity as a Certification Authority for certifying the security of information systems, the personnel carrying out the evaluation and certification of the technical systems must have, at least the following, or equivalent, certifications:

1. ° CISA (Certified Information System Auditor).
2. ° CISM (Certified Information Security Manager).
3. ° SSCP (Systems Security Certified Practitioner).
4. ° CISSP (Certified Information Systems Security Professional).

b) Independence and impartiality in relation to the gaming operators, and may not be subject to any conflict of interest that could affect the result of their evaluation and certification work.

c) Confidentiality with regard to the evaluations, the results of these and any other matters of which the Authority has knowledge due to any needs pertaining to the evaluations. This requirement only applies to non-public information.

2. Applicants may prove that they fulfil these requirements by submitting any documentation on the technical, professional or financial capacity of companies within their business group with whom they hold service provision agreements covered by this Ministerial Order and which guarantee that these are carried out under conditions identical to those required by this regulation.

Article 4. *Verification of requirements.*

1. In order to verify compliance with the requirements, the applicant must provide the following documentation along with their application:

With regard to legal capacity.

a) Articles of association and, where applicable, corporate bylaws. If it is a business association, the articles of association must be duly entered in the Business Register or an equivalent body in the case of foreign companies, in which case they must be translated into Spanish.

b) Notarial copy or duly apostilled copy of the powers awarded by the company to contract obligations on their behalf.

c) Synopsis or organisational chart of the entity or company. With regard to professional and technical capacity.

d) Document providing evidence of professional experience and national and international references detailing any work carried out in the field of approving technical gaming systems and information security systems.

e) List of employees and the certifications demanded in article 3.1.a) of this Order of the professionals charged with carrying out the work.

f) Detailed description of the methodology used to approve or verify technical systems, adapted to international regulations.

g) Report form used for documenting the technical system evaluation work carried out, the reports on the results of use cases and intrusion tests where applicable.

h) Description of the procedures and measures adopted by the Certification Authority or security certifier in order to guarantee that both the information handled and the results obtained whilst undertaking their work are kept securely in the strictest confidence.

With regard to financial capacity.

i) Updated report on the last year's financial statements. With regard to independence and impartiality.

j) Statement of liability signed by the legally responsible person from the entity declaring that they do not maintain relations and are not dependent on any other companies, private entities or bodies that have an interest in the results of the verifications.

With regard to confidentiality.

k) Statement of liability signed by the legally responsible person from the entity declaring that they uphold the confidentiality of the results of the verifications.

2. If it is a public institution or university applying to be appointed a Certification Authority, the accreditation

demanded in letter i) of article 4.1 of this order should not be included.

3. Public documentation on companies established outside Spain should be submitted duly translated into Spanish and with the corresponding apostille.

Article 5. *Obligations of the certification authorities.*

The entities designated as certification authorities must:

1. Facilitate, for the competent administrative body, the supervision and control of evaluation and certification activities in order to verify compliance with the criteria established for said activities.

2.- Issue reports in accordance with the model established by the National Gaming Commission.

3. Provide an email address or physical address in Spain for notifications.

4. Inform the competent administrative body of any events that could in any way affect the results of the evaluation conducted, regardless of their origin.

5. Abstain from conducting evaluations on the technical systems used by a gaming operator if this entails a conflict of interest with the operator.

6. Inform the competent administrative body of the identity of the people authorised to sign the evaluation reports and of any changes in personnel assigned to this task.

7. Inform the competent administrative body of any changes in the legal or organisational structure of the company, providing the necessary documentation.

8. Comply with the corresponding obligations regarding the confidentiality of data provided by the gaming operators, implementing for this purpose any security measures deemed necessary.

Article 6. *Initiating the designation procedure.*

1. The designation application can be submitted at the register of the National Gaming Commission or any other place provided for in article 38.4 of Law 30/1992, of 26 November on the Legal System for Public Administrations and Common Administrative Procedure. Said designation application can also be submitted by electronic means through the electronic office of the National Gaming Commission.

2. The designation application, addressed to the National Gaming Commission, must contain:

A) Identification of the applicant or their representative, indicating the preferred means and place to which notifications should be sent.

B) Application which clearly specifies that the applicant wishes to be designated a Certification Authority for gaming software or as a certifier of information system security, or both.

C) Place and date.

D) Signature of the applicant or proof of the authenticity of their wish, expressed by any means.

3. The documentation indicated in article 4 of this Order should be submitted together with the designation application.

Article 7. *Correcting and improving the application.*

1. If the designation application does not meet the requirements or does not include the documents indicated above, the interested party will have ten working days in which to make any corrections or provide the required documents and will be informed that if they do not, their application will be cancelled under the terms established in article 71 of Law 30/1992, of 26 November on the Legal System for Public Administrations and Common Administrative Procedure.

2. During the application procedure, the interested party may be required to provide additional information or documentation needed to reach a decision.

Article 8. *Completion of the procedure.*

1. The National Gaming Commission, through a resolution passed by the Chairman of the Commission, will make a decision on any designation applications submitted and will grant the designation once it has verified that the applicant meets the requirements established in this ministerial order. The maximum period for reaching a decision and notifying the applicant of said decision is six months from the date the application is entered in the Register of the competent body for processing. The application to be designated a certification authority will be considered favourably accepted if, following the deadline for reaching a decision on said application, the Chairman of the National Gaming Commission has not expressly announced his decision regarding said application.

2. Said decision will put an end to the administrative route and will be subject to the appeals system provided for in article 23.3 of Law 13/2011, of 27 May on the regulation of gaming.

3. The decision designating the applicant a Certification Authority will contain, at least, the following specifications:

- a) Name, tax identification number or code and registered office of the designated entity.
- b) Scope, gaming and betting activity and material to be evaluated and verified.
- c) Date of designation.

4. The National Gaming Commission will publish on its website the list of certification authorities that have been designated as such.

Article 9. *Validity.*

The designation as a certification authority, granted by the National Gaming Commission, will be for an indefinite period of time, unless there is any reason to withdraw the designation.

Article 10. *Withdrawal.*

1. The designation as a certification authority may be withdrawn under the following circumstances:

- a) At the express request of the interested party.
- b) Through a resolution from the Chairman of the National Gaming Commission which expressly indicates that any of the following reasons for withdrawing the designation apply:

1. The dissolution or closure of the company designated as a certification authority.
2. Declaration of insolvency in any other procedure.
3. Failure to comply with the obligations established for entities certifying gaming software and certifiers of information system security.
4. Obtaining the designation by submitting false documentation, following a hearing, where applicable.
5. Loss of the conditions that led to the granting of the designation.

2. The interested party must be personally notified of the resolution to withdraw the designation, notwithstanding its publication on the web page of the National Gaming Commission. The maximum period for reaching a decision and providing notification of said decision is three months from the date the reason for the withdrawal is confirmed. Said decision will put an end to the administrative route and will be subject to the appeals system provided for in article 23.3 of Law 13/2011, of 27 May on the regulation of gaming. Failure to pass an express resolution will result in the termination of the procedure, as provided for in article 44.2 and 92 of Law 30/1992, of 26 November on the Legal System for Public Administrations and Common Administrative Procedure.

Single additional provision. *Authorisation of the National Gaming Commission.*

Pursuant to article 23 of Law 13/2011, of 27 May on the regulation of gaming, the National Gaming Commission will be authorised to pass as many provisions as required to implement and execute this Order.

Single temporary provision. *Exercising administrative powers.*

1. Until the National Gaming Commission is established, the powers and duties attributed to the National Gaming Commission relating to the appointment of independent entities to carry out the certification and evaluation of gaming software and the security of gaming operators will be carried out and implemented by the Directorate General for the Regulation of Gambling of the Ministry of Economy and Finance. The powers expressly attributed to the Chairman of the Commission will be exercised by the head of the Directorate General for the Regulation of Gambling.

2. An appeal for review may be filed against the decision reached by the Directorate General for the Regulation of Gambling within a period of one month, before the body that is hierarchically superior to the one that made the decision.

Single final provision. *Entry into force.*

This order will enter into force the day after its publication in the "Official State Gazette".

Madrid, 20 September 2011.–Vice President of the Government for Economic Affairs and Minister of Economy and Finance, Elena Salgado Méndez.