

To: General Public

From: Bermuda Gaming Commission

Date: Friday the 28th of July 2023

Re: **Consultation Notice- Regulations for the Gaming Amendment Act 2023**

Introduction

The Gaming Amendment Act 2023 provided the Bermuda Gaming Commission with the power to modify or vary a regulatory obligation imposed upon a casino operator, provided the obligation did not relate to AML/ATF and RG, was unduly burdensome, and did not result in undue risk. Section 199A(3) requires there to be accompanying regulations support the amendments.

Jurisdictional Review

The Bermuda Investment Funds Act 2006 and Investment Business Act 2003 outline frameworks for modification or waiver of rules by the BMA in a manner similar to the discretionary power enacted by the Gaming Amendment Act 2023. The United Kingdom's Financial Conduct Authority and Prudential Regulation Authority have a similar power to waive, and under the Financial Services and Markets Act 2000. In both these instances, the power to make modifications is largely dictated by guidance notes issued by the relevant body.

Policy Proposal

Combining a risk-based approach to regulatory affairs and the experience of other regulatory bodies, the Bermuda Gaming Commission has deliberated internally and has designed a potential starting point for underlying policy to be enacted in regulations. Such regulations would be accompanied by industry guidance notes to be issued by the Commission:

(1). A casino operator may apply to the Commission, requesting approval to modify or vary an obligation or requirement that is or would otherwise be imposed on a casino operator under section 199(a) of the Casino Gaming Act 2014.

(2). An application shall be made in writing in such form as the Commission may require, and shall include—

- a. the name of the applicant*
- b. a description of the Regulatory obligation*
- c. Is the application for a modification or a variation*

- d. any timing consideration (is it urgent or time sensitive)*
- e. Information on how the obligation is unduly burdensome*
- f. The risk analysis of the requested modification/variation by the licensee is to be included*

If you wish to provide a submission on these proposed regulations, please do so by the 25th of August 2023.

Submissions and any questions can be emailed to the Bermuda Gaming Commission at legal@bgc.bm.

To: General Public

From: Bermuda Gaming Commission

Date: Friday the 28th of July, 2023

Re: **Guidance Notes for Modifications and Variations under s. 199A of the Gaming Act 2014**

1. Application and purpose

- 1.1 This Guidance Note applies to persons wishing to apply for a modification or variation of obligations under 199A of the Gaming Act 2014.
- 1.2 The purpose of these notes is to explain how the regime for a modification and variation regime works.
- 1.3 The Gaming Act 2014 implemented a framework for gaming in Bermuda for land-based operators. The accompanying Gaming Regulation 2018 contribute to the goals of the Act by ensuring operators possess sound operational and financial controls. The Gaming Amendment Act 2023 and subsequent regulations seek to provide flexibility to the Commission in regulating the sector and enforcing regulator obligations..

2. Definitions

- 2.1 For the purposes of these guidelines "modification" means a change that is minor or results in the obligation being adhered to in a different way.
- 2.2 For the purposes of these guidelines "variation" means a large departure from an obligation.

3. Applying

- 3.1 An applicant wishing to apply for a waiver must complete the Commission approved application form found in Appendix 1. Completed applications are to be sent to a secured link provided to you by the BGC.
- 3.2 Before sending in a modification or variation application, the applicant may find it helpful to discuss the application with an appropriate person at the Commission.
- 3.3 Any examples of modifications or variations from the Commission should not be construed as exhaustive or indicate that the Commission will automatically grant its approval in the specified circumstances. The Commission will consider each application on a case-by-case basis and be guided accordingly.

- 3.4 The Commission will acknowledge an application promptly and if necessary, will seek further information from the applicant.
- 3.5 The time taken to determine an application will depend on the issues it raises. An application should make it clear if the application is urgent and if a decision is required within a specific time.
- 3.6 The Commission will treat an application as withdrawn if the applicant does not respond to a request for additional information within 7 business days of the requests.
- 3.7 If the Commission decides not to grant the application, it may give reasons for the decision.
- 3.8 An applicant may withdraw its application at any time up to the giving of the modification or variation. In doing so, an applicant should give the Commission its reasons for withdrawing the application.

4. Alteration of Circumstances

- 4.1 Substantive changes in Gaming Act 2014, the Gaming Regulations 2018 and other relevant statute may affect existing modifications or variations, changing their practical effect and creating a need for a change to the original modification or variation.
- 4.2 The applicant or holder of an existing modification or variation must notify the Commission immediately if it becomes aware of any matter which could affect the continuing relevance or appropriateness of an application or existing modification or variation.
- 4.3 An applicant must notify the Commission immediately if false, misleading, incomplete, or inaccurate information has been provided in an application for a modification or variation.

5. Revoking Modifications or Variations

- 5.1 The Commission may revoke a modification or variation at any time. In deciding whether to revoke, the Commission will consider whether the statutory test in 199A of the Gaming Act 2014 still applies and whether the modification or variation is otherwise no longer appropriate.
- 5.2 If the Commission proposes to revoke a modification or variation or revoke a modification or variation with immediate effect, it will
 - (a) Given the modification or variation holder written notice either of its proposal or its action giving reasons;
 - (b) State in the notice a reasonable period (usually 28 days) within which the modification or variation holder can make representations about the proposal or action.
 - (c) After considering any representations, in the case of a proposed revocation, provide written confirmation of its decision to revoke or not; or, in the case of a revocation that has already taken effect, either confirm the revocation or seek the consent to a new modification or variation.

Modification and Variation Under S. 199A of the Gaming Act 2014 – Application Form

Waiver Application number (for BGC use only)

Casino Gaming Licence Holder

Address

Before completing this form, you may find it helpful to discuss your application with the Bermuda Gaming Commission. However, you must still ensure you include all relevant information in this form. If you do not, your application will be delayed while you answer further questions from us.

Before completing this application form please read the notes at the end of the form as they explain or give help for many of the questions.

Applications are to be sent to a secure link that will provided to you by the BGC.

1. Personal details

Contact for this application

1.1 Contact name for this application

Title	
First names	
Surname	

1.2 Contact details

Business address			
Postcode			
Position			
Daytime telephone number			
Email address			
Special Employee licence number, if applicable			

1.3 Does the applicant have any timing considerations that it would like us to consider?

Yes ▶ Please enter date required and the reason why

No

<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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Additional details

2. Obligation to which the application relates

If you are applying for a modification or variation of more than one obligation, you should copy this section as appropriate and attach the copies to this application.

2.1 Please state the Gaming Act 2014 section or Gaming Regulation 2018 regulation to which the application relates

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2.2 Proposed modification

Please describe modification you require

Unmodified text

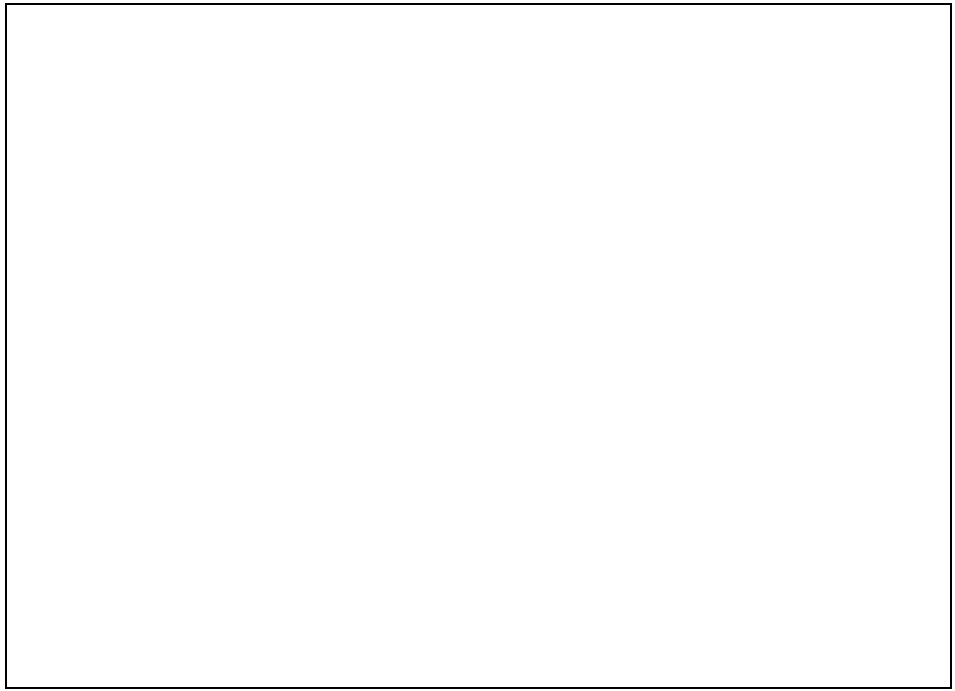
Draft of modified text

2.6 Are you applying for a variation of an existing modification which has previously been granted to the Casino Gaming Licence Holder

- Yes ▶ Please give reference number
 No

3. Precedents

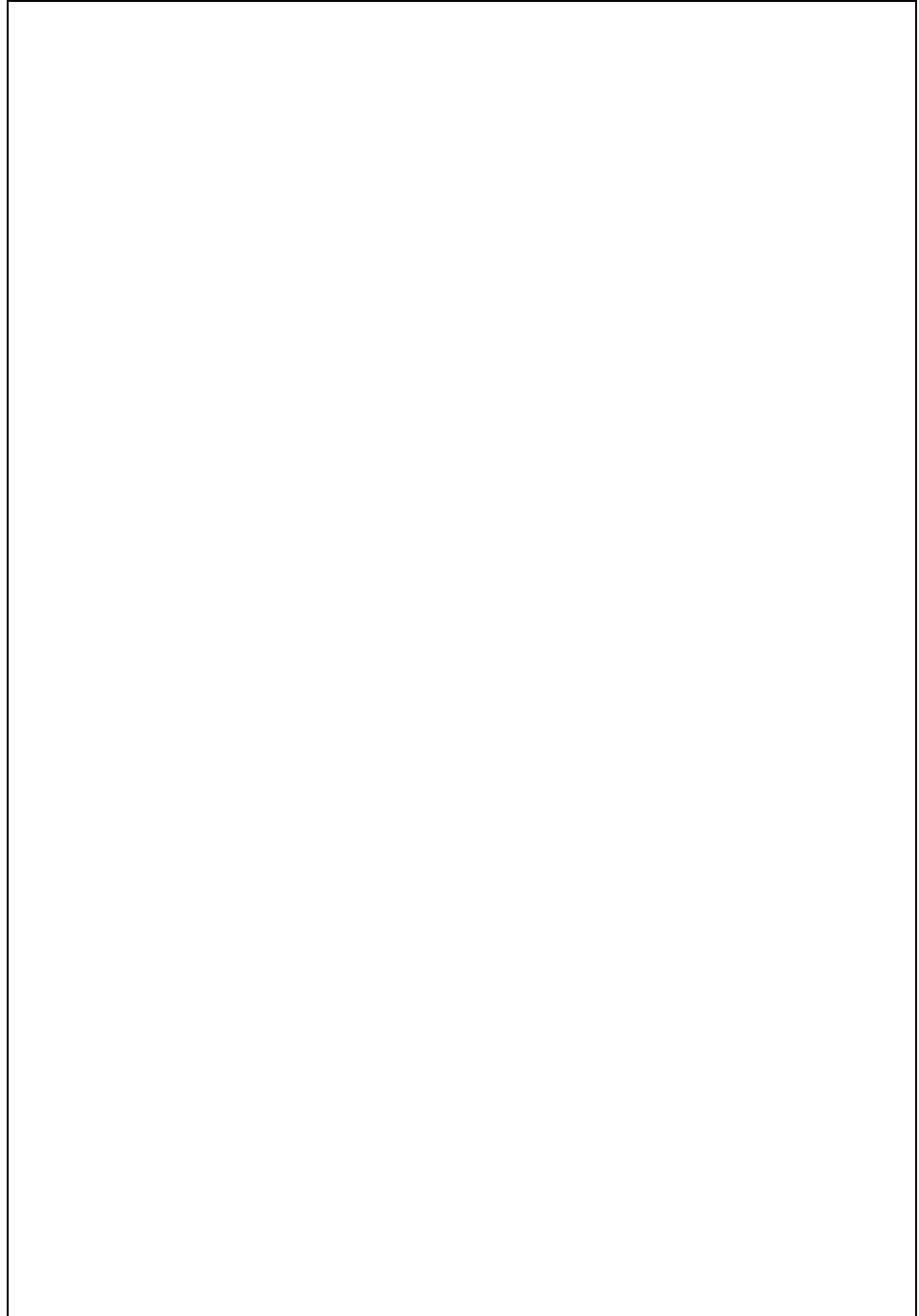
- 3.1 If your application is based on a precedent, please give a reference number and preferably highlight the similarities and differences with your application.**



4. Additional details

4.1 Please give a full and clear explanation of why you are applying for the modification or variation. You may attach any documents that you wish to submit with this application.

4.2 Please give a full and clear explanation of why you think you satisfy the statutory tests:



5. Supporting documents

5.1 Indicate the required supporting documents to accompany this form.

Documents	Sent via secured link? If not, how?

Other information (please specify)

6. Declaration and signatures

Warning

Knowingly or recklessly giving the BGC information, which is false or misleading in a material particular, may be a criminal offence. The applicant must take reasonable steps to ensure the accuracy and completeness of information given to the BGC and to notify BGC immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the BGC. It should not be assumed that information is known to the BGC merely because it is in the public domain or has previously been disclosed to the BGC or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Declaration

By submitting this application form:

- I/we confirm that this information is accurate and complete to the best of my knowledge and belief and that I have taken all reasonable steps to ensure that this is the case.
- I am/we are aware that it is a criminal offence knowingly or recklessly to give the BGC information that is false or misleading in a material particular.
- Some questions do not require supporting evidence. However, the records, which demonstrate the applicant's compliance with the rules in relation to the questions, must be available to the BGC on request.
- I/we will notify the BGC immediately if there is a significant change to the information given in the form. If I/we fail to do so, this may result in a delay in the application process or enforcement action.

Date (dd/mm/yyyy)

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Name of first signatory ¹

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Position of first signatory²

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If applicable, special employee number

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Signature*

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Name of second signatory

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Position of second signatory

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If applicable, special employee number

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Signature*

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Declaration and signature if a third party is named

If the modification or variation will name a third party, please check the box below to confirm that you have the agreement of the third party and enter the third party's name below.

I confirm the information in this form that concerns my circumstances is accurate and complete to the best of my knowledge and belief.

Signature of named Third Party *

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Name and date

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7. Notes on completing the application form

Please note that defined terms used in the text are shown in italics.

Question Number	Notes
Section 2 Question 2.2	Your draft modification or variation set out the modification or variation sought in its entirety.
Section 4 Question 4.1	<p>We expect you to provide (where applicable):</p> <ul style="list-style-type: none">• relevant background information about the Casino Gaming Licence Holder and the context in which you are applying for a modification or variation.• details of any relevant correspondence with former or other regulators• details of any relevant correspondence with us• details of any changes in an: obligation, circumstances, or market condition that has affected the applicant or prompted your application;• details of the anticipated benefits that may be received if the application was granted (and, when arguing the 'unduly burdensome' argument, what the estimated impact on the firm and its customers would be if the application was not granted), and• an explanation of why the modification or variation is required <p>This list is not exhaustive. You should include any other information that you think is relevant.</p>
Section 4 Question 4.2	We cannot give a modification or variation unless the statutory tests are satisfied. The tests are set out in section 199A of the Gaming Act 2014. You need to address all elements of the legal test before the BGC can process the application. Unless there are satisfactory responses to these matters, we may reject the application, or we may need more information.