

IN THE MATTER of the Gambling Act 2003

AND of an application by **SKYCITY HAMILTON LIMITED** to amend the Casino Management Agreement between SKYCITY Hamilton Limited, SKYCITY Casino Management Limited and SKYCITY Management Limited

BEFORE THE GAMBLING COMMISSION

Members: P Chin (Chief Gambling Commissioner)
K M Ford
M M Lythe
P J Stanley
G L Reeves

Date of Application: 23 May 2006

Date of Decision: 21 July 2006

Date of Notification
of Decision: 2 August 2006

DECISION

**ON AN APPLICATION BY SKYCITY HAMILTON LIMITED
TO AMEND THE CASINO MANAGEMENT AGREEMENT BETWEEN
SKYCITY HAMILTON LIMITED, SKYCITY CASINO MANAGEMENT LIMITED
AND SKYCITY MANAGEMENT LIMITED**

Application

1. SKYCITY Hamilton Limited ("**SHL**") applied to the Gambling Commission (the "**Commission**") under section 132(2) of the Gambling Act 2003 (the "**Act**") to amend clause 11.2(b) of the Casino Management Agreement (the "**Agreement**") between SHL, SKYCITY Casino Management Limited ("**SCML**") and SKYCITY Management Limited ("**SML**"). The proposed amendment would remove the requirement to have SHL's financial statements separately audited.

Gambling Act 2003

2. Sections 132 and 133 of the Act are, in part, as follows:

132. Approval of casino venue agreement

- (1) Casino licence holders who propose to enter into a casino venue agreement must apply to the Gambling Commission for approval of the agreement before entering into it.

- (2) A party to a casino venue agreement who seeks to amend that agreement must apply to the Gambling Commission for approval of the amendment before the amendment is made.
- (3) An application for approval under subsection (1) or subsection (2) must be on the relevant form.

133. Consideration of application

- (1) An application under section 132 for the approval of a casino venue agreement or of an amendment to a casino venue agreement must be considered by the Gambling Commission.
- (2) –
- (3) In considering an application, the Gambling Commission must have regard to any suitability requirements specified in section 124 that the Gambling Commission considers relevant.
- (4) The Gambling Commission must not approve a casino venue agreement or an amendment to a casino venue agreement unless it is satisfied that the agreement is conducive to the conduct of responsible gambling in the casino.
- (5) –

Submissions by SHL

3. SHL submitted that the requirement for SHL's financial statements to be separately audited is appropriately deleted from the Agreement for the following reasons:
 - (a) the audit requirement was intended to provide assurance for the minority interests in SHL. SKYCITY Entertainment Group Limited now owns all the shares in SHL and there are no longer any third party interests or directors;
 - (b) the SKYCITY Group does not gain any advantage from having SHL's financial statements separately audited;
 - (c) removal of the audit requirement will save SHL audit fees of approximately \$5,000 per annum;
 - (d) the amendments are consistent with the variation made to the Auckland casino management agreement in November 2001, following the termination of the casino management agreement with Harrah's New Zealand Inc;
 - (e) with the proposed amendments, audit arrangements for Hamilton will be consistent with those applying at SKYCITY Auckland casino, which is also wholly owned.

4. SHL orally submitted that the suitability requirements specified in section 124 of the Act (which the Commission is required to consider) were not relevant as the amendment will not impact on the conduct of gambling in the casino, or the structures, interests and involvement in running the casino.

5. SHL submitted for approval by the Commission a draft variation to the Management Agreement, deleting the existing clause 11.2(b) and substituting a revised clause 11.2(b) as follows:

- (b) Within ninety (90) days after the last day of each Fiscal Year following the commencement of the Operating Term;
- (i) A Statement of Financial Performance showing the results of the operation of the Casino during the preceding Fiscal Year and containing a computation of the Profit in respect of such Fiscal Year and the Revenue, Rent and Outgoings Recovered of the Casino in respect of such Fiscal Year; and
- (ii) A Statement of the Financial Position of the Casino in respect of such Fiscal Year; and
- (iii) A Statement of Cash Flows showing the actual cash flows against the projected cash flows in the Annual Business Plan in respect of such Fiscal Year and a statement of capital expenditure incurred against the budget therefore contained in the Annual Business Plan for such Fiscal Year;

shall be produced by SCCML and copies delivered to RCL and RCL shall be deemed to have waived any objection to such certified statement not specified to SCCML in writing within thirty (30) days of receipt of those statements. Any disputes as to the contents of such statements or accounting matters under this Agreement shall be determined in accordance with paragraph 22.2.

Submissions by the Secretary

6. The Secretary had no objection to the amendments proposed by SHL.

Analysis

7. In considering the application, the Commission was required to have regard to section 133 and to any suitability requirements specified in section 124 that the Commission considers relevant.
8. Section 124 relates to the suitability of persons with significant influence. The proposed amendments do not impact on matters relating to suitability, including management structures for SHL.
9. The Commission was satisfied that a separate audit of SHL's financial statements was no longer required as SHL is now wholly owned by SKYCITY Entertainment Group Limited, and there are no longer any minority interests.
10. The Commission noted that SHL's financial statements will still be audited as part of the SKYCITY Group audit, with the Commission having additional powers to require audits to be undertaken under licence conditions, if necessary.

Decision of the Commission

11. The Commission was satisfied that the amendment complies with section 133 of the Act and decided unanimously to approve the amendment of clause 11.2(b) of the Agreement. The Commission understands the parties will now proceed to execute a Variation to the Agreement, to be sealed by the Commission in due course.



**GAMBLING
COMMISSION**

Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

2 August 2006