

**IN THE MATTER** of the Gambling Act 2003

**AND** on an application by **SKYCITY CASINO MANAGEMENT LIMITED** and **SKYCITY AUCKLAND LIMITED** for approval to amend their Casino Venue Agreement

**BEFORE THE GAMBLING COMMISSION**

Members: G L Reeves (Chief Gambling Commissioner)  
R D Bell  
D C Matahaere-Atariki  
W N Harvey

Date of Application: 23 December 2015

Date of Decision: 8 April 2016

Date of Notification of Decision: 26 April 2016

**DECISION ON APPLICATION BY SKYCITY CASINO MANAGEMENT LIMITED AND SKYCITY AUCKLAND LIMITED FOR APPROVAL TO AMEND THEIR CASINO VENUE AGREEMENT**

**Introduction**

1. SKYCITY Casino Management Limited ("**SCML**") and SKYCITY Auckland Limited ("**SCAL**") (together the "**Applicants**") applied to the Commission, pursuant to section 132 of the Gambling Act 2003 (the "**Act**"), for approval to amend their Casino Venue Agreement ("**Agreement**").

**Relevant sections of the Act**

2. The relevant sections of the Act are as follows:

**119 Requirements for casino gambling**

A casino may be operated only by a person who holds a casino operator's licence—

- (a) If the casino gambling occurs at a place for which the person also holds a casino venue licence; or
- (b) if the casino operator has an approved casino venue agreement with another person who holds a casino venue licence.

**124 Suitability requirements**

- (1) A casino operator's licence must not be granted and a casino venue licence must not be renewed unless the Gambling Commission is satisfied that the applicant and persons with a significant influence are suitable.

- (2) In considering whether an applicant or person with a significant influence is suitable, the Gambling Commission must take into account the following matters:
- (a) the honesty of the applicant or person with a significant influence, including—
    - (i) whether the applicant or person with a significant influence has been convicted of a relevant offence; and
    - (ii) whether the applicant or person with a significant influence has been disciplined by a professional body for ethical misconduct; and
    - (iii) whether the applicant or person with a significant influence has been disciplined in any way during previous involvement with a casino; and
    - (iv) any other matters raised in the Police report, and the report of any government agency to which the application is referred, provided under section 125; and
  - (b) the financial position of the applicant or person with a significant influence, including—
    - (i) whether the applicant or person with a significant influence has ever been adjudged bankrupt; and
    - (ii) whether the applicant or person with a significant influence has been directly involved in the management of a company that went into receivership or liquidation; and
    - (iii) whether the applicant or person with a significant influence has sufficient financial resources; and
    - (iv) whether the applicant or person has been prohibited or disqualified from acting as a director or promoter of, or in any way, whether directly or indirectly, being concerned or taking part in the management of, a company under section 382, 383, or 385 of the Companies Act 1993; and
    - (v) whether the applicant or person has been prohibited from acting as a director or directly or indirectly being concerned, or taking part, in the management of a company under section 299 of the Insolvency Act 2006; and
  - (c) the business skills of the applicant or person with a significant influence, including—
    - (i) whether the applicant or person with a significant influence has sufficient business management experience; and
    - (ii) whether the applicant or person with a significant influence has sufficient experience in casino operation or the operation of similar ventures; and
    - (iii) whether the applicant or person with a significant influence has qualifications relevant to the operation of a casino; and
  - (d) the management structure of the applicant, including—
    - (i) whether that structure is suitably arranged for effective compliance with this Act; and
    - (ii) the nature of all relevant interests in the financial and management structure of the applicant; and
    - (iii) whether all such interests encourage the applicant's effective compliance with the Act; and



- (e) any other matter the Gambling Commission considers relevant.

**125 Gambling Commission must investigate application concerning casino licences**

- (1) On receiving an application for a casino operator's licence or for renewal of a casino venue licence, or for approval of a proposed transferee or alienee of a casino licence, the Gambling Commission must investigate the applicant, the proposed transferee or alienee, and persons with a significant influence.
- (2) Without limiting subsection (1), the Gambling Commission—
- (a) may require the applicant, the proposed transferee or alienee, and persons with a significant influence to consent to having their photograph and fingerprints taken; and
- (b) may require the applicant, the proposed transferee or alienee, and persons with a significant influence to provide further information; and
- (c) must refer a copy of the application, and any photographs, fingerprints, or other information obtained in the investigation, to the Police and any government agency (not including the Inland Revenue Department) that the Gambling Commission considers relevant.
- (3) The Police and any government agency to whom the application is referred must inquire into, and report to the Gambling Commission on, the applicant, the proposed transferee or alienee, and persons with a significant influence.
- (4) The Gambling Commission may refuse to grant a casino operator's licence or renew a casino venue licence or approve a proposed transferee or alienee of a casino licence if the applicant, transferee or alienee, or persons with a significant influence fail to provide information requested by the Gambling Commission or refuse to have fingerprints or a photograph taken.
- (5) Fingerprints and photographs provided by the Gambling Commission to the Police or other government agency must be returned to the Gambling Commission for destruction under subsection (6).
- (6) Fingerprints and photographs required by the Gambling Commission must be destroyed immediately after the Gambling Commission has made a decision as to whether or not to grant a casino operator's licence or renew a casino venue licence or approve a proposed transferee or alienee of a casino licence.

**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) The Gambling Commission may require the applicant to provide a copy of the proposed agreement and any other relevant information to assist the Gambling Commission to consider the application.
- (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) A casino venue agreement expires according to its terms or when—
  - (a) a party to the casino venue agreement surrenders the party's casino licence; or
  - (b) the casino venue licence expires and is not renewed; or
  - (c) a casino licence of a party is cancelled; or
  - (d) the Gambling Commission approves a new casino venue agreement; or
  - (e) the casino venue agreement is entered into or amended without the approval of the Gambling Commission.

**Applicants' submissions**

3. In decision GC27/15, the Commission approved significant amendments to the Applicants' casino venue agreement. They now seek approval for further amendments following a review of their banking arrangements.
4. SCML is a reporting entity under section 5 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("AML Act") by virtue of the fact that it holds a casino operator's licence. SCAL is also a reporting entity under section 5 of the AML Act as it carries out "money or currency changing" in the ordinary course of its business by allowing hotel guests to exchange foreign currency into local currency.
5. As a matter of policy, SCAL has determined that it will only conduct money changing transactions of less than \$1,000. Such transactions (subject to certain limited exceptions relating to suspicious transaction reporting) are exempt from the AML Act pursuant to regulation 9 of the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011 ("Exemption Regulations"). As a consequence of this exemption, and on the proviso that it does not carry out any other financial activities, it has not been necessary for SCAL to develop a risk assessment or anti-money laundering programme.
6. Following a recent independent review by EY of the AML obligations attaching to SCML and SCAL, it was recommended that SKYCITY Entertainment Group Limited



("SKYCITY") obtain legal advice on whether SCAL requires its own AML programme and risk assessment. The advice obtained indicated that an AML programme and risk assessment is not necessary in respect of SCAL's money changing services, by virtue of the Exemption Regulations but raised a new issue; namely, that casino deposit account services ("**Deposit Accounts**") ostensibly offered by SCML (and addressed in SCML's AML programme and risk assessment) may, in a strictly legal sense, be operated by SCAL. This is because the bank account into which customers deposit funds to be credited to their Deposit Accounts is a SCAL bank account and that same bank account holds the funds available for draw down by customers via their Deposit Accounts.

7. So, while SCAL has contracted management of the bank account(s) to SCML, the bank account(s) and the funds in them remain SCAL's property and under its ultimate control pursuant to the terms of the Agreement. SCML is SCAL's agent for the purposes of the operation and management of the respective bank accounts.
8. The significance of this for AML/CFT purposes is that, notwithstanding that SCAL may have contracted out some of the relevant operations, it is the legal entity carrying out the financial activity and therefore is required to comply with the AML Act.
9. It seems likely that the operation of Deposit Accounts would constitute one or more of the following financial activities as set out in the definition of Financial Institution under section 5 of the AML Act:
  - accepting deposits or other repayable funds from the public;
  - administering or managing funds or money on behalf of other persons;
  - managing the means of payment.

This being the case, SCAL would be deemed to be a financial institution and reporting entity pursuant to section 5 of the AML Act, requiring its own risk assessment and AML Programme.

10. To address this issue, SKYCITY initially wanted to form a designated business group ("**DBG**") comprising SCAL (and the other casino venue licence holders) together with SCML. This approach would have enabled SCAL:
  - (a) to rely on SCML to conduct customer due diligence on its behalf;
  - (b) to adopt part of SCML's AML/CFT programme to the extent that it relates to record keeping, account monitoring, ongoing customer due diligence and annual reporting and share and use the procedures, policies and controls relating to those parts of the programme; and

- (c) to use SCML's risk assessment to the extent it is relevant to the business of the casino venue licence holder.
11. Although SKYCITY notified the DIA (as the AML/CFT supervisor) of its election to form a DBG on 24 August 2015, it subsequently requested that the matter be put on hold pending consideration of an alternative approach. This involved the possibility of transferring from SCAL to SCML the legal and beneficial ownership of the bank account to which customers' Deposit Account funds are credited, and amending the venue agreements accordingly.
12. Despite having been reluctant originally to disturb the longstanding arrangements involving bank accounts and venue agreements, on reflection SKYCITY now prefers the option of transferring legal and beneficial ownership of the accounts. It considers that responsibility for the operation of the casino properly rests with the casino operator and that extends to the management and operation of customers' Deposit Accounts and seeks approval of new arrangements accordingly.
13. The Applicants argue that the change is more technical than substantive. The changes to the banking arrangements, as set out in the proposed Agreement, will have no bearing on existing operational practices other than to see a change in the name of the relevant bank account. AML obligations and risks in relation to the use of Deposit Accounts are addressed in SCML's AML programme and will continue to be managed by SCML as has always been the case.
14. In terms of the suitability requirements of the parties to the Agreement, the Associated Persons as set out in section 124 of the Act and the responsible gambling requirements set out in section 133(4), the position remains the same as that conveyed to the Commission for decision GC27/15, with the exception of Peter Cullnane, who resigned as a director and is no longer an Associated Person of any SKYCITY casino. Therefore the Associated Persons identified in the application and approved by the DIA are as follows:

	<b>Date approved</b>
Richard Tsiang	12 December 2014
Rob Hamilton	9 December 2014
Matthew Ballesty	16 July 2013
John Mortensen	13 June 2013
Grainne Troute	6 November 2012
Richard Didsbury	19 June 2012
Sue Suckling	9 May 2011
Bruce Carter	11 October 2010
Chris Moller	28 August 2008
Phillip Harman	29 August 2008
Ejaaz Dean	29 August 2008

Peter Treacy  
Nigel Morrison

29 August 2008  
28 May 2008

15. In the event that the application is approved, the parties to the venue agreements at Hamilton, Queenstown and Wharf casinos will consider making similar amendments to their own agreements. In the case of Hamilton and Queenstown casinos, the parties will also take the opportunity to modernise and simplify the agreements in a similar manner to that undertaken by the parties in the casino venue agreement between OCL and SCML (and approved by the Commission in 2013). Further applications to amend those agreements will follow once the Commission has determined its position on this application.

**The Secretary's submissions**

16. The Secretary submitted that he has no regulatory concerns with the proposed amendments, including from an AML perspective.

**Analysis**

17. In December 2015, the Commission approved amendments to the Casino Venue Agreement between SCAL and SCML. Shortly afterwards, the Applicants applied to make further amendments to the Agreement, with the amendments reflecting changes to SKYCITY's banking arrangements.
18. Licence holders who propose to enter into a casino venue agreement, or seek to amend an existing agreement must apply to the Commission for approval pursuant to section 132 of the Act.
19. The process governing the Commission's consideration of such an application is set out in section 133. Section 133 provides that:
- (a) the Commission may require a copy of the proposed venue agreement and any other relevant information to assist it in its consideration of the application;
  - (b) the Commission must have regard to any suitability requirements specified in section 124 that the Commission considers relevant; and
  - (c) the Commission must not approve 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.

*Proposed venue agreement*

20. The Secretary raised no issues in relation to the proposed amendments.

21. The proposed venue agreement is identical to the agreement approved by the Commission in December 2015, except for the proposed banking amendments. The amendments are intended to effect a substantive legal change to the ownership of the casino's operational bank accounts from the licensed casino venue owner to the licensed casino operator. As the licensed operator currently operates those accounts anyway and has in place an AML programme which has aimed to address the obligations to date, there should be no resulting operational change. Rather it is intended to align the substantive legal ownership of the casino bank accounts with the operational responsibility. The Commission agrees with the Applicants that it would have been preferable for the proposed banking arrangements to have been in place from the beginning.

*Suitability requirements*

22. Section 124 of the Act requires the Commission to consider whether an applicant or a person with significant influence is suitable.
23. The application of section 124 in relation to the approval of a venue agreement differs from its application to other sections of the Act. When considering an application for the approval of a venue agreement, section 133(3) of the Act provides that:

The Commission must have regard to any suitability requirements specified in section 124 that the Gambling Commission considers relevant.

That is, the Commission need not consider every matter identified by section 124, but only those matters that it considers to be relevant. Sections 130, 135 and 149 do not contain this discretion and the Secretary or the Commission must be satisfied that the appropriate people are suitable in terms of all of the requirements set out in section 124.

24. Section 124(2) provides that, when considering whether an applicant or person with a significant influence is suitable, the Commission can take into account the following matters:
- (a) the honesty of the applicant or person with a significant influence (including whether they have been convicted of a relevant offence, whether they have been disciplined by a professional body, whether they have been disciplined during previous involvement with a casino, and whether there are any other matters raised by the Police or other government agency);
  - (b) the financial position of the applicant or person with a significant influence (including whether they have ever been adjudged bankrupt, whether they have

been involved in the management of a company that has gone into receivership or liquidation, and whether they have sufficient financial resources);

- (c) the business skills of the applicant or person with a significant influence (including whether they have sufficient business management experience, whether they have sufficient experience in operating a casino or similar venture, and whether they have qualifications relevant to operate a casino);
  - (d) the management structure of the applicant (including whether the structure is suitably arranged for effective compliance with the Gambling Act, the nature of all relevant interests in the financial and management structure of the applicant, and whether all such interests encourage effective compliance with the Act); and
  - (e) any other matter the Commission considers relevant.
25. The Commission considered that the requirements specified in section 124(2)(a) to (d) were all relevant to the application. The Commission did not identify any other matter of relevance under section 124(2)(e).
26. The Commission considered the requirements outlined in section 124(2)(a)-(d) in detail in December 2015, when it approved the application leading to decision GC27/15. The Applicants submitted that, other than the resignation of Peter Cullinane as a SKYCITY director, nothing had changed since that time. The Commission considers that the information before it leads it to the same conclusion as in decision GC27/15; namely that, the Commission is satisfied in relation to the matters outlined in section 124(2)(a)-(d).
27. Section 124(2)(a)(iv) allows the Commission to take into account information provided by the NZ Police and any Government agency. The Commission asked the NZ Police to provide any information of relevance on the abovementioned 13 people and the Applicants. By letter dated 11 February 2016, the Police reported that "there are no adverse comments in relation to the persons disclosed in the application." The DIA (as a Government agency) also raised no issues of concern in relation to the applicants or Associated Persons.

*Conducive to the conduct of responsible gambling in the casino*


28. The Commission was satisfied that approving the Agreement would be conducive to the conduct of responsible gambling at the Auckland casino. As noted in decision GC27/15, the Commission is familiar with SCML's host responsibility practices, having undertaken a considerable amount of work in this area with SCML over the previous 10 years, including having just approved a new Host Responsibility Programme for the Auckland casino in December 2015.

**Decision**

29. The Commission approved, pursuant to section 132 of the Gambling Act 2003, the proposed amendments to the Casino Venue Agreement between SCML and SCAL.

**Right of appeal**

30. Pursuant to section 235 of the Act, a person affected by the decision may appeal that decision to the High Court. An appeal must be made within 15 working days of the date of notice of the Commission's decision, or any longer period that the High Court may allow.



Graeme Reeves  
Chief Gambling Commissioner

for and on behalf of the  
Gambling Commission

26 April 2016

