GC07/14

IN THE MATTER	of the Gambling Act 2003
AND	of an application by **SKYCITY MANAGEMENT LIMITED** for approval to offer or provide credit to customers under section 15(4) of the Gambling Act 2003

BEFORE THE GAMBLING COMMISSION

Members:	G L Reeves (Chief Gambling Commissioner) L M Hansen R D Bell A K Foote
Date of Application:	26 March 2014
Date of Decision:	13 June 2014
Date of Notification of Decision:	19th June 2014

DECISION ON AN APPLICATION BY SKYCITY MANAGEMENT LIMITED FOR APPROVAL TO OFFER OR PROVIDE CREDIT TO CUSTOMERS UNDER SECTION 15(4) OF THE GAMBLING ACT 2003

Introduction

1. SKYCITY Casino Management Limited ("**SCML**") applied to the Gambling Commission on 26 March 2014 seeking approval, pursuant to section 15(4) of the Gambling Act 2003 ("**2003 Act**"), of an amended set of circumstances in which casino operators can offer or provide credit to their customers.

2. The application sought an expansion of the circumstances approved by the Commission in decision GC04/10 (11 March 2010). The decision GC04/10 approval covered arrangements whereby a casino could hold a patron's cheque unbanked for a period, essentially allowing the continuation of a practice authorised by the Commission's predecessor, the Casino Control Authority ("**CCA**"), in the course of individual approvals of casino credit policies.

3. The application proposed amendment (by extension) of the March 2010 approval in the following terms (which indicate the proposed changes):

APPROVAL OF THE COMMISSION
UNDER SECTION 15(4) OF THE GAMBLING ACT 2003

Pursuant to section 15(4) of the Gambling Act 2003, the Gambling Commission approves, in relation to each holder of a casino operator's licence;

(i) the retention of a patron's cheque ~~by the holder of a casino operator's licence~~ in circumstances where the patron has arranged with casino management for the cheque to be retained; and

(ii) the granting of a credit facility to a patron on the terms agreed between casino management and the patron.

The commission's approval does not extend to any cheques dated after the date of acceptance.

The Commission's approval does not extend to company cheques, trust account cheques of partnership cheques.

The casino is required to monitor the activities of any customer whose cheque it is holding unbanked by arrangement and any customer to whom a credit facility has been granted for indications of potential problem gambling harm.

The critical addition is sub-paragraph (ii) which would approve the granting of credit to any casino patron on any terms which the casino and patron agree.

Relevant Law

4. The application arises from s15 of the 2003 Act which provides:

> **15 Providing credit for gambling prohibited**
> (1) A person conducting gambling must not offer or provide credit if the person knows or ought to know that the credit is intended to be used for gambling.
> (2) Every person who commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding $10,000.
> (3) Subsection (1) does not apply to credit offered or provided by the holder of a casino operator's licence to a person in circumstances that have been approved by –
> the Authority under section 66 of the Casino Control Act 1990; or
> the Gambling Commission under subsection (4).
> (4) The Gambling Commission may approve circumstances in which an offer or provision of credit may be made by the holder of a casino operator's licence to a person.

By way of comparison, the predecessor section, section 66 of the Casino Control Act 1990 ("**1990 Act**") provided:

> **66. Casino operator shall not accept credit wagers**
>
> No holder of a casino operator's licence, or an agent or employee of a holder of a casino licence, shall, in connection with gaming, -
>
> (a) Accept a credit wager from any person; or
> (b) Make a loan to any person; or
> (c) Advance anything of value to any person; or
> (d) Provide cash or chips to any person in consideration for a cheque or in respect
> (e) of a credit card transaction; or
> (f) Release or discharge in whole or in part a debt owing by any person, -
>
> other than in accordance with regulations made under this Act, or in the absence of any such regulations, with the approval of the Authority.

Following invitations from the Commission to do so, submissions on the application were received from Problem Gambling Foundation ("**PGF**"), Salvation Army ("**SA**"), the Department of Internal Affairs ("**DIA**") and the Ministry of Health ("**MoH**"). Christchurch Casinos Limited and Dunedin Casinos Limited were also invited to file submissions, but did not do so.

Background

5. Decision GC04/10 arose from an application by Dunedin Casinos Management Limited ("**DCML**") for approval of credit policy for the Dunedin casino. The original credit policy had been approved by the CCA under section 66 of the 1990 Act when the casino opened in 1999. The approval continued to have effect under section 15(3) of the 2003 Act.

6. In decision GC04/10, the Commission noted the change in the statutory regime that had occurred with the commencement of the 2003 Act. Section 66 of the 1990 Act had prohibited a larger number and wider range of transaction types than were subsequently prohibited, albeit subject to an approval exception, under section 15 of the 2003 Act. Specifically the prohibitions in section 66 of the 1990 Act included the use of cheques or credit card transactions to obtain cash or chips for gambling but those transaction types were not prohibited by section 15 of the 2003 Act. The Commission held that the general prohibition, in section 15 of the 2003 Act, against the provision of credit by those conducting gambling did not extend to credit card or normal cheque transactions as any credit was being provided by a party other than the gambling operator, such as a bank.

7. The Commission recognised however that an arrangement by which a patron provided a signed cheque for cash or chips which the gambling operator agreed to hold unbanked for a period would amount to the provision of credit; the arrangement would be unlawful unless undertaken in circumstances approved by the Commission. In submissions, the Secretary had argued that the receipt of cheques under such an arrangement was similar to the acceptance of "markers". The Commission noted fundamental differences between cheques and markers (namely that cheques are negotiable payment orders against a bank while markers were mere debt instruments recording an extension of credit by a casino) which meant that the normal acceptance of a cheque in payment could not be said to constitute the provision of credit. However, acceptance of a post-dated cheque or acceptance of a currently dated cheque on the understanding that it would not be banked would constitute the provision of credit and, for the purposes of section 15, would resemble acceptance of markers.

8. The Dunedin Casino credit policy dealt with ATM, EFTPOS and payments by cheque, none of which were prohibited by section 15 of the 2003 Act and for which no approval

was required. The Commission declined to approve the proposed policy. It doubted that the former approvals of individual credit policies continued to be necessary or even appropriate, having regard to the fact that the 2003 Act provided for approval of circumstances, rather than of individual casino credit policies. It indicated that it had not been apprised, in the DCML application, of any circumstance which might require approval and which it had any reason to approve. It proposed accordingly to terminate the credit policy approvals given by CCA and sought submissions on that proposal from all casino operators.

9. The casino operators identified cheque retention arrangements as an existing facility that continued to require approval, that the CCA had earlier approved in individual casino credit policies and that they wished to retain as a service component of their businesses especially for the premium overseas players who expected such facilities to be offered. Submissions from the casinos indicated that not all casinos utilised the practice and that, of those that did, it was overwhelmingly for overseas patrons (the largest casino, at Auckland, having active facilities with only 2 local patrons).

10. The Commission decided that it should approve nationally a set of circumstances covering arrangements to hold cheques unbanked so long as the terms of approval made adequate provision for harm minimisation. The terms of the approval granted were:

(a) exclusion of post-dated cheques, and cheques drawn on company, partnership or trust accounts; and

(b) an obligation to monitor the gambling activities of any customer using such facilities for potential harm effects, with a view to future incorporation of that obligation into the harm minimisation policy called a Host responsibility Programme ("**HRP**"), required at each casino.

SCML's submissions

11. SCML made the following submissions in support of the application:

(a) It had fielded an increasing number of requests from its international customers to introduce credit markers. A credit marker is a simple debt instrument recording the advance of credit to a patron. Unlike a cheque, it is not a negotiable payment order.

(b) There was very little difference between accepting a cheque and providing a credit marker facility in terms of business risk. Both would involve similar risk assessments of applicants. Although a cheque is a negotiable payment order

against a bank, when a cheque was dishonoured, SCML pursued the debt directly with the customer. The situation would be no different for a customer defaulting on a credit marker facility.

(c) Customers seeking to use the credit marker facility would be required to fill out an application form. A sample application form was included as part of SCML's submissions.

(d) As proposed, the approval would be incorporated into the existing section 15(4) approval concerning the retention of cheques.

(e) As was the case with customers whose cheques are held by arrangement, it was intended that anyone granted a credit facility would also be monitored for indication of potential problem gambling harm.

(f) In contrast to the cheque retention facility, it was intended that the credit marker facility would be limited to international players (although the proposed approval contained no such restriction).

Submissions by PGF

12. The submission from PGF made the following points:

(a) Section 15 of the 2003 Act imposed a general prohibition on the provision of credit for gambling by gambling operators. The purpose of the credit prohibition was to minimise harm caused by enabling people to gamble beyond their means. Liberalisation of the credit prohibition would therefore increase the risk of harm from gambling.

(b) Any approval should be limited to international players only and should exclude New Zealand residents.

(c) All cheques should be excluded except personal cheques of which the patron holder is the sole signatory. (This amounted to a submission that the current cheque retention approval should be tightened in its terms.)

(d) The obligation to monitor for harm was important. PGF wished to be consulted on the future changes to HRPs in order to reflect the obligation.

Submissions by SA

13. The SA made the following submissions:

(a) In decision GC04/10, the Commission held that credit card and standard cheque transactions did not come within the section 15 prohibition because they involved provision of credit by a bank, not the gambling operator. This was not the case with what was now proposed – it would be the provision of credit directly by casinos for the purpose of gambling.

(b) It queried how, if limited to international customers, the latter would be defined. Using the holding of a foreign passport or foreign bank account would not exclude the international student population, many of whom live close to the Auckland casino. They are isolated and disconnected from their families and particularly vulnerable to harm.

(c) The proposal contains neither parameters limiting the scope of the potential credit facilities to be offered nor the steps which may be taken to recover the resulting debt, including the exercise of security over residences.

(d) In addition to monitoring harm indicators, consequent steps taken (stopping the credit facility, offering support) should be recorded.

Submissions by DIA

14. The DIA submitted that approval of markers would be a significant policy extension to the current approval and that it was difficult for the Commission to have a proper appreciation of the operating environment which would be affected by the proposal for several reasons:

(a) In its role under the Anti-Money Laundering and Countering Terrorism Financing ("**AML/CTF**") Act 2009, it had existing concerns about junket operations, the status of junket participants as "customers" under that Act and the general lack of transparency of junket operations.

(b) While the Commission did not have a role under the AML/CTF Act, a purpose of the 2003 Act was limitation of the opportunities for crime and dishonesty. Overseas, criminal clients have taken advantage of the provision of credit by casinos.

(c) The DIA was currently investigating aspects of the operation of the presently approved cheque retention facility at the Auckland casino. The investigation may result in a proposal by the DIA regarding the terms of the present approval; by implication, to restrict it.

15. For those reasons, the DIA suggested that consideration of the application be deferred until the ramifications of the foregoing were clearer. In the alternative, it opposed the application on a precautionary basis, namely that the risks arising from the foregoing were not sufficiently clear and manageable to justify the approval sought.

Submissions by MoH

16. The MoH limited its submission to the observation that problem gamblers tend to "chase their losses" and that credit facilities facilitate such harmful behaviour. It considered that extension of credit facilities should only occur in circumstances where application of a HRP clearly prevented casino credit from exacerbating harm.

Submissions by SCML in reply

17. SCML filed submissions in reply to the foregoing.

18. With regard to PGF's submission:

(a) It acknowledged the prohibition in section 15(1) but pointed to the provision made for approval by the Commission.

(b) It considered the business risk to casinos under marker facilities to be materially similar to that under cheque retention arrangements.

(c) It considered the risk of harm to be likewise materially the same (but did not set out a basis for this view).

(d) It would not object if the approval were limited to "international players".

(e) PGF appeared to have misunderstood the proposal as markers did not involve the use of cheques of any kind.

19. With regard to SA's submission:

(a) It acknowledged the need for harm minimisation. It considered that the current monitoring processes under its HRP adequately mitigated potential harm. This point also answered MoH's submission.

(b) It had not regarded it as necessary to define an international customer as the characteristics of an international customer are "self evident". Notwithstanding that, it suggested a definition (which is discussed below).

(c) It emphasised the business risk that attaches to a marker facility, which meant that it was in the interests of casinos to undertake a risk assessment of the capacity of a patron to repay the debt. It suggested that such assessments

would be particularly thorough as the credit extended would be unsecured (although the proposed approval contains no restrictions on taking security).

(d) Because current cheque retention arrangements are not subject to any constraining parameters, none are proposed for markers. The effective parameters would be set by customer demand and SCML's assessment of credit risk (capacity to repay).

(e) It did not expect introduction of markers to change its debt recovery strategies, as bad gambling debts were rare, SCML had a range of recovery means available and, to date, these had never taken the form of seeking a charge on a patron's house. (This was a curious submission in the light of the current prohibition on the provision of credit to customers and the very limited exception currently approved, namely the limited credit element present in delay in lodging a negotiable payment instrument.)

20. With regard to the DIA submissions, it made the following points:

(a) It disputed that allowing markers was a significant policy extension to cheque retention arrangements and saw no difference between them.

(b) It could not see how the status of junket participants was relevant to the application, but it could not comment further on the point until it had seen DIA's final report.

(c) DIA had not explained how criminal elements took advantage of casino credit facilities. It had been providing credit to customers in accordance with regulatory approvals since the casino opened. The Commission noted that approved credit has been limited to the approved cheque retention arrangements.

(d) It acknowledged that the DIA was investigating the cheque retention facility offered to a high roller at the Auckland casino but said that the investigation was at an early stage. In the course of the investigation, DIA had asked it for a list of those with a cheque retention facility and those who had an outstanding debt to the casino but it considered that it was unreasonable for the Commission to defer consideration of its application until the Commission had that information.

(e) If a DIA investigation did raise issues about any credit circumstances approval granted, the Commission could later revisit that approval. The Commission

should therefore restrict its consideration of the application to information which it currently had and should not concern itself with information not before it.

(f) It would be unfair to defer consideration of its application until DIA completed its assessment of its AML programme and the operation of its current cheque retention facility when DIA has not indicated when those investigations would be completed and how the outcome of those investigations might affect the outcome of the application.

Analysis

21. The Commission observed that the statutory starting point is a complete prohibition on gambling operators offering or providing credit to gamble. The prohibition is a sufficiently serious one to result in breach constituting a summary offence punishable by a fine of up to $10,000. It is not a situation where the *status quo ante* is freedom to provide credit, subject only to the Commission's power to restrict it in certain circumstances but rather the reverse – a general prohibition subject only to the Commission's power to "approve circumstances in which an offer or provision of credit may be made" by an operator. In contrast to other circumstances previously considered (such as whether to introduce a prohibition on gambling in open areas – an effective prohibition on smoking while gambling), the precautionary principle is much more readily applicable to granting exemptions from a general prohibition aimed at prevention of harm.

22. SCML presented the application as being an immaterial extension of the present approval but, in the Commission's view, that is not the case. As decision GC04/10 records, under section 15 of the 2003 Act, most matters contained in the earlier approved credit policies no longer required approval because section 15 was concerned solely with credit provided by gambling operators whereas section 66 of the 1990 Act had restricted a wider range of activities.

23. In decision GC04/10, the Commission initially proposed to revoke the earlier approvals as being unnecessary. The current approval was given in order to retain an existing facility, which was used in only limited circumstances. Granting the approval also provided a degree of protection to operators from potential liability arising at the margins (the risk that if a cheque were not banked on the date of receipt, the operator would be in danger of being held to have breached section 15(1)). Because payment by cheque did not normally involve the provision of credit, the approval applied only to the marginal sense in which it might involve credit in certain limited circumstances. In contrast, the present application is for approval of a pure credit arrangement of the kind clearly

prohibited by section 15. In the Commission's view, DIA was correct to submit that the application seeks a major policy shift.

24. The Commission has reservations about using the power conferred on it to approve specific exempt circumstances to effect what would amount to a reversal of the section 15 prohibition by approving the offer or provision of credit in all circumstances. In fact, an extension of the current approval to "the granting of a credit facility to a patron on terms agreed between casino management and the patron" would remove any need for continued separate approval of a cheque retention facility because providing credit to any patron by any means, whether involving use of cheques or not, would be included in the extension. The sole proposed condition, monitoring gambling activity under the HRP, applies to all gambling activity already although the terms of the approval would require the casino to monitor credit customers specifically.

25. Statutory discretions given to the Commission are required to be exercised in pursuit of the purposes of the 2003 Act. The purposes relevant to the approval of credit policies would seem to be:

(a) prevent and minimise the harm caused by gambling, including problem gambling (section 3(b))

(b) facilitate responsible gambling (section 3(d)); and

(c) limit opportunities for crime and dishonesty associated with gambling (section 3(f)).

26. No other purpose was suggested as relevant to the application in the submissions received.

Harm minimisation/responsible gambling

27. SCML accepted that harm minimisation was a material consideration for the Commission. SCML submitted that the current monitoring requirements applicable to cheque retention facilities would be adequate for credit marker facilities. The current Auckland casino HRP requires all cheque retention arrangements to be notified to the casino's Host Responsibility section and requires that section to monitor and record the activities of customers whose cheques are being retained. However, the application provided no information about the monitoring and recording activity to date, such as its extent and results.

28. Other parties raised various difficulties, such as ensuring that a vulnerable group, international students residing in central Auckland, was not included in the approval; the

lack of any restrictive parameters on the extent of the facilities to be offered and or the recovery actions able to be undertaken; and potential issues with the operation of the current limited facility.

29. As indicated above, section 15 is indicative of a legislative policy against the provision by casinos of uncontrolled credit and suggests that relaxation of the prohibition should be confined to circumstances in which the Commission is confident that the relevant risks can be minimised. Sometimes those circumstances might be sufficiently narrow and unlikely to raise risk concerns that they can be approved by way of a general, nationally applying approval (as was the case with cheque retentions). In other cases, the risks posed might require something more tailored, either to a particular patron or to a clearly defined class of patrons, with special conditions not necessarily of general application.

30. In the course of the hearing on the papers, SCML accepted that approval should be restricted to "international players". Although suggesting initially that the term did not need to be defined, it proposed the following further restriction which contains a definition:

> The Casino operator may offer a credit marker facility to a person who is not ordinarily a resident in New Zealand or, to an organiser representing a person/group not ordinarily resident in New Zealand to enable the person/group to participate in:
>
> > An approved group commission programme; or
> > An individual commission programme.

Because the restriction was not proposed in the application, but suggested only in its submissions in reply, none of the other submitting parties had the opportunity to comment on it.

31. The proposed terms of the restriction raises several issues:

(a) It does not deal with the objection (raised in anticipation by SA) to a definition which includes international students living in the Auckland CBD. In the Commission's view, they would come within the words "is not ordinarily a resident in New Zealand" as they are temporary residents on short term student visas. It is also not clear how a residency restriction would be effected operationally or policed by DIA.

(b) The effect of the proposed extension to organisers representing persons or groups not ordinarily resident in New Zealand to enable participation in "an approved group commission programme" or "an individual commission

programme" is unclear, because those terms themselves are not defined (and do not have an ordinary meaning).

(c) In seeking approval of the provision of credit to representative organisers, it is unclear how, in those circumstances, individual gambling patrons could be the subject of harm monitoring. On the face of it, only the representative organiser would receive credit and be identified, not the patrons utilising the credit for gambling. Providing credit to an intermediary for use by others seems likely to obscure the detection of harm and identification of consequences to individual patrons.

(d) No restriction is proposed on debt recovery activities, including the taking of security. As a result, none of the incidental third party protections that apply to approval of cheque retention (personal cheques only, no company, partnership or trust cheques) would apply to satisfaction of the resulting credit marker debt.

(e) Even if there were restrictions on recovery, the only relationship regulated by the approval would be the relationship between the casino and the organising representative, leaving the relationship between the organiser and the gambling patron uncontrolled by the Commission.

32. SCML's primary focus, the business risk to casinos, is not a relevant concern to the Commission under the 2003 Act. It would be relevant only if management of the business risk to casinos were tightly aligned with managing harm to patrons. However, the alignment is only partial at best; it is relatively easy to conceive of circumstances in which a patron could manage to pay a casino debt under pressure while experiencing harm.

33. Ultimately, SCML sought approval for essentially unregulated credit facilities, constrained only by customer demand and its own assessment of credit risk. The underlying assumption is that no increased harm would occur within those broad parameters but no reasoned basis for this view was advanced.

34. Further potential issues arise as a result of particular concerns raised about the Auckland casino and the lack of supporting information provided by SCML. It did not disclose the extent to which the current cheque retention facility is used, the results of monitoring to date or the extent to which there have been defaults and resulting debt recoveries. In circumstances where a casino seeks a significant extension to a current approval, it should make full disclosure of its experience with the current approval.

35. SCML did not explain how the facilities that it proposes to provide to organising representations would work or what an "approved... commission programme" is. The

DIA has notified the Commission that it had concerns about the operation of the existing facility that are the subject of a current investigation. SCML conceded that an investigation is under way but suggests that the Commission should extend the approval before it knows whether problems with the existing approval will be revealed because the matter can always be revisited later.

36. As earlier indicated, the legislation supports a precautionary approach in cases such as this (ie lifting the prohibition by approval only to the extent that the Commission is satisfied that it is safe to do so). The SCML submission advocates the opposite approach; namely that blanket approval should be given now, despite potential concerns, because of the possibility of imposing such exclusions later as turn out to be necessary to deal with problems after they have arisen. The Commission does not consider that proceeding with the lack of caution urged by SCML would be in accordance with the purpose of the power conferred.

Opportunities for crime and dishonesty

37. DIA also raised the interaction between casino gambling, the operation of credit facilities by casino operators and anti-money laundering regulation. Although SCML says that it is not clear what connection there might be between gambling and crime and dishonesty, the purpose expressed in section 3(f) indicates clear legislative recognition that gambling provides opportunities for crime and dishonesty (which the 2003 Act aims to limit).

38. As is the case in relation to harm minimisation and responsible gambling, SCML's submission incorrectly presumes that approval should be granted unless an adverse effect on a statutory purpose is clearly established. SCML should have addressed the particular statutory purpose in its application and demonstrated that the proposal provides no opportunities for crime and dishonesty. Rather than attempting to do so, it argues that an unconstrained approval should be granted because the Commission can later constrain it if found to be necessary. If that had been the approach intended by Parliament, it would have imposed no general prohibition on credit and merely made provision for its regulation as and when the Commission considered it necessary to do so.

39. It is not too difficult to grasp in concept the anti-money laundering concerns that arise from junket operations in which there is low transparency about the identity of the participants. It offends the core principle of anti-money laundering, namely knowledge of one's customer.

Conclusion

40. The Commission declines to approve the provision of credit in the terms sought in the application. The Commission doubts that the width of the proposed approval would be consistent with the purpose for which the approval power was conferred or the general purposes of the 2003 Act. It doubts that it has sufficient information on which to conclude that the risks of a major liberalisation of the provision of casino credit can be reasonably mitigated and managed.

41. The application sought the exercise of a discretion given to the Commission to create exceptions to a general statutory prohibition on operators providing credit to gamble by approving specific circumstances in which such credit can be extended. Unlike the approval given in decision GC04/10, the current application was not for the maintenance of a formerly approved credit facility, but sought an effective unqualified reversal of the prohibition. The application lacked information about its likely scope of application, debt recovery steps would be unconstrained and the extent of, and the nature of issues attaching to, the operation of the current limited facility were not disclosed.

42. In the course of the hearing on the papers, the possibility of restricting the marker facility to international players was raised. It was not clear to the Commission how that limitation would mitigate the concerns raised about the statutory purposes. None of the relevant statutory purposes are limited to New Zealand residents only. In addition, the Commission did not consider that the proposed limitation (and its accompanying definition) dealt adequately with the concerns expressed about international students. The definition itself created doubts about the adequacy of the proposed harm minimisation response in the case of credit extended by the casino to organisers for use by unidentified patrons. Nor was it clear how easily an "international customer" limitation could be applied by the casino and policed by DIA.

43. The Commission considers that adopting a precautionary approach to approvals under section 15 is appropriate and consistent with the purpose for which the approval power was granted and with the general purpose of the 2003 Act. Extensions of the current limited approval will require applications which address the relevant risks comprehensively and which set out in detail all relevant information on the experience of the current limited approval. The present application falls well short of what is required.

Decision

44. For the above reasons the Commission declines to approve the proposed amended set of circumstances in which casino operators can offer to provide credit to their customers. The approval given in decision GC04/10 remains in place.

Right of appeal

45. Pursuant to section 235 of the 2003 Act, a person affected by this 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

19th June 2014

GAMBLING COMMISSION