

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

**AND** on an application by **SKYCITY AUCKLAND LIMITED** and **SKYCITY CASINO MANAGEMENT LIMITED** for approval to open an overseas bank account and to vary licence conditions

**BEFORE THE GAMBLING COMMISSION**

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

Date of Application: 21 August 2014

Date of Decisions: 10 October 2014, 7 November 2014

Date of Notification  
of Decision: 19 November 2014

**DECISION ON AN APPLICATION BY SKYCITY AUCKLAND LIMITED AND SKYCITY CASINO MANAGEMENT LIMITED FOR APPROVAL TO OPEN AN OVERSEAS BANK ACCOUNT AND TO VARY LICENCE CONDITIONS**

**Introduction**

1. SKYCITY Auckland Limited ("**SCAL**") and SKYCITY Casino Management Limited ("**SCML**") (together referred to as the "**Applicants**") applied to the Commission:
  - (a) for approval, under condition 22 of SCAL's venue licence and condition 37 of SCML's operator's licence for the Auckland casino, to open a bank account in Australia; and
  - (b) to revoke licence condition 36 and vary condition 37 of SCML's operator's licence for the Auckland casino.
2. The relevant licence conditions are as follows:

**SCAL venue licence**

22. The Licence Holder shall not open any bank account to facilitate, or in connection with, the operation of the Casino without the approval of the Commission.

**SCML's operator's licence (Auckland)**

36. The Licence Holder shall keep and maintain a bank account or bank accounts as approved by the Commission at a bank or banks in New

Zealand for use for all banking transactions relating to the operation of the Casino. The bank account(s) shall be used exclusively for the operation of the Casino.

37. The Licence Holder shall not open any bank account overseas to facilitate, or in connection with, the operation of the Casino without the approval of the Commission.

### Submissions by the Applicants

3. The Applicants submitted, in summary, that:

- (a) SCAL wants to establish a foreign holding account in Australia similar to the accounts it already holds in Singapore, Hong Kong and Malaysia. These accounts are designed to enable visitors from these jurisdictions to deposit funds in their own currency before visiting SKYCITY's New Zealand casinos and wagering, using the funds held in the foreign accounts. This eliminates both foreign currency exposure risk for SKYCITY and bad debt risk which might otherwise arise through a cheque cashing facility. Foreign holding accounts also ensure that funds are available for wagering purposes from the time they are deposited. Such immediacy is not always assured when funds are telegraphically transferred to New Zealand as bank processing timeframes can result in significant delays.
- (b) The Applicants have traditionally relied on bank accounts operated by SKYCITY Darwin and SKYCITY Adelaide for Australian foreign holding account purposes, but they want to open their own AUD bank account to reduce unnecessary administrative burden.
- (c) In the course of preparing this submission they identified an issue which relates to an inconsistency in the licence conditions for the Auckland casino. Condition 36 of SCML's operator's licence for the Auckland casino provides that:

The licence holder shall keep and maintain a bank account or bank accounts as approved by the Commission at a bank or banks in New Zealand for use for all banking transactions relating to the operation of the casino. The bank account(s) shall be used exclusively for the operation of the Casino.

- (d) In fact, in accordance with the approved Management Agreement between SCML and SCAL, the bank account used for banking transactions relating to the operation of the Auckland casino is in the name of the venue licence holder (SCAL), but is managed in trust by the casino operator (SCML). The same position applies at SKYCITY's other casinos where the account used for banking transactions relating to the operation of the casino is in the name of the venue licence holder.

- (e) While the operational position in relation to banking arrangements is the same at each SKYCITY casino, the licence conditions applicable to those arrangements for the Auckland casino differ from those in place at its other casinos.
- (f) It appears that amendments to SCAL's venue licence conditions, approved by the Commission in decision GC08/06, have been replicated in the licence conditions attached to the venue and operator licences for New Zealand's other casinos, with these amendments taking place following the Commission's general review of licence conditions for each casino. The consequence of this is that the bank account licence conditions attached to SCML's operator's licence for the Auckland casino are inconsistent with the licence conditions attached to the licences for the other casinos. To address this inconsistency, they want to revoke condition 36 and to amend condition 37, which will ensure that the relevant licence conditions are aligned as follows:

~~36. The Licence Holder shall keep and maintain a bank account or bank accounts as approved by the Commission at a bank or banks in New Zealand for use for all banking transactions relating to the operation of the Casino. The bank account(s) shall be used exclusively for the operation of the Casino.~~

3637. The Licence Holder shall not open any bank account overseas to facilitate, or in connection with, the operation of the Casino without the approval of the Commission.

#### The Secretary's submissions

4. The Secretary submitted, in summary, that:
- (a) He has discussed the application to open an Australian bank account with the Financial Intelligence Unit ("FIU") of the NZ Police. The FIU has not advised of any concerns with the application, and he has no regulatory concerns of his own.
- (b) He also has no regulatory concerns with the proposed deletion of condition 36 and variation to condition 37 of SCML's operator's licence.

#### Analysis

5. The Applicants sought Commission approval for SCAL to open a bank account in Australia in order to cater better to patrons from that country.
6. The Commission has previously approved the Applicants opening bank accounts in a number of foreign jurisdictions, including Singapore, Hong Kong, Malaysia and Indonesia. The current application raised no issues for either the FIU or the Secretary. It raised no issues of regulatory concern for the Commission. The Commission has no difficulty in granting approval for the opening of the proposed account.

7. The second part of SKYCITY's application was to revoke condition 36 and vary condition 37 of the licence conditions attached to SCML's operator's licence for the Auckland casino. The Applicants sought the amendments in order to align SCML's bank account licence conditions with those in place for SCAL's venue licence and with those in place at the other five casinos, and to align its licence conditions with the banking requirements of the approved Management Agreement between SCAL and SCML.
8. In the course of its consideration of the application, the Commission reviewed its earlier final decision resulting from its general review of the licence conditions of both the venue and operator's licences at the Auckland casino, decision GC08/06 (that separately amended the bank account licence conditions attached to SCAL's venue licence), and the subsequent decisions in which the Commission reviewed the conditions of both the venue and operators' licences at each of the five non-Auckland casinos.
9. Decision GC08/06 was made following the general review of licence conditions for the Auckland casino. In its Final Decision on this general review, the Commission observed that SCAL's submissions regarding variations to the bank account licence conditions for the Auckland casino had apparent merit. SCAL had submitted that banking arrangements approved by the Casino Control Authority ("CCA") in the Management Agreement between SCAL and SCML were in conflict with condition 22. Further, SCAL advised that it did not maintain a bank account for banking transactions relating to the operation of the casino. Rather, pursuant to the abovementioned Management Agreement, all transactions relating to the operation of the casino were banked into an account kept and maintained by SCML. SCAL submitted that licence conditions should accurately reflect current, approved, circumstances.
10. Although it noted that SCAL's submissions had merit, the Commission recorded that it was prevented from making the amendments suggested in the Final Decision because of section 140 of the Gambling Act 2003 (the "Act") which required all parties to be notified of proposed changes to licence conditions before they were approved. It indicated that, rather than further delay the Final Decision it would address those matters in a subsequent decision which would follow notification of a proposal by the Commission.
11. The Commission then notified parties of a proposal to amend SCAL's venue licence by deleting condition 22 and amending condition 23, by deletion of the word "overseas". Conditions 22 and 23 of SCAL's venue licence were identical to conditions 36 and 37 of SCML's operator's licence which the Commission did not propose to change. The Commission's notified proposal was based upon the submissions made by SCAL in the Auckland general review.



12. In submissions on the proposal, SCAL supported the proposed amendments, while the Secretary had no objection, submitting "that the amended condition 23, together with licence conditions 36 and 37 of SCML's operator's licence, would provide an adequate basis for regulatory oversight of bank accounts relating to the operation of the Auckland casino." In decision GC08/06, the Commission approved the proposed amendments to conditions 22 and 23 of the SCAL venue licence.
13. Subsequent to decision GC08/06, the Commission continued with its review of licence conditions for the other five casinos. In all five reviews, the bank account licence conditions for the venue licences were amended to be identical to SCAL's licence condition. That is, the equivalent of licence condition 22 was revoked and the equivalent of licence condition 23 was varied to delete the word "overseas". In addition, and for reasons which are not now apparent, similar changes were made as well to the operators' licences for the other casinos. That is, the equivalent of licence condition 36 was revoked and the equivalent of licence condition 37 was varied to delete the word "overseas" (although no such changes had been made to SCML's Auckland casino conditions). The consequence of these amendments was that the requirement for each casino to "keep and maintain a bank account or bank accounts as approved by the Commission at a bank or banks in New Zealand for use for all banking transactions relating to the operation of the casino" was removed from licence conditions for all of the non-Auckland casinos.
14. With the benefit of hindsight, the revocations of this requirement for the non-Auckland licence conditions should not have been made because it is important that each casino has a licence condition requirement to keep and maintain a New Zealand bank account for use for all banking transactions for the casino. In Auckland, after decision GC08/06, that requirement was found in condition 36 of SCML's Auckland casino conditions.
15. SCML's current application is to revoke condition 36 of the conditions attached to its operator's licence for the Auckland casino in order to be consistent with other operators' licence conditions, but the Commission's view is that the requirements reflected in condition 36 of SCML's Auckland casino conditions should in fact be retained, and that it is the conditions attached to the other casino licences that should be amended to align with Auckland's. As submitted by the Secretary in decision GC08/06, appropriate regulatory oversight of the bank accounts was intended to be provided by the amended venue licence condition, **together with** the two conditions attached to the operator's licence.
16. In the course of reviewing the submissions on this application and the submissions made on the earlier decisions discussed above, it also became clear to the Commission that there was a further issue with the licence conditions and their consistency with the approved Management Agreement. As is recorded in paragraph 9 above, SCAL informed

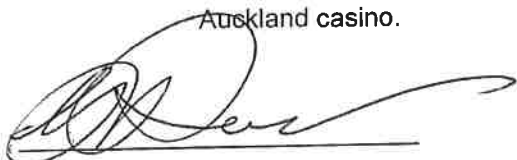


the Commission that the bank account approved for the exclusive use of all banking transactions for the Auckland casino was an SCML bank account, not a SCAL bank account. As a result, the requirement, in the former condition 22, for SCAL to keep and maintain a bank account for all casino banking transactions was deleted from SCAL's venue licence and retained in SCML Auckland's licence conditions (as condition 36). However, the true position appears to be that the bank account is in SCAL's name, although the account is operated and controlled by SCML. This is what is provided for in the Management Agreement between SCML and SCAL.

17. The current banking arrangements were approved when the CCA approved the Management Agreement and there is no reason to doubt that they remain appropriate. In those circumstances, the Commission's primary concern is to ensure that the licence conditions reflect the actual approved arrangements. The current licence conditions do not do so accurately, nor do those proposed by the Applicants in the current application.
18. For these reasons, the Commission declines to vary conditions 36 and 37 of SCML's operator's licence in the manner proposed.
19. Further, subsequent to the release of this decision, the Commission will propose on its own initiative, under section 139(1)(e) of the Act, to amend the licence conditions for the venue and operator's licences for the Auckland casino, to attach licence conditions which accurately reflect approved arrangements and provide the Commission with the necessary level of oversight. The Commission will also propose similar amendments to licence conditions for the five non-Auckland casinos.

#### **Decision of the Commission**

20. The Commission:
  - (a) approved, under condition 22 of SCAL's venue licence and condition 37 of SCML's operator's licence for the Auckland casino, the Applicants' application to open a bank account in Australia; and
  - (b) declined to amend conditions 36 and 37 of SCML's operator's licence for the Auckland casino.



Graeme Reeves  
Chief Gambling Commissioner

for and on behalf of the  
Gambling Commission

19 November 2014

