



BERMUDA

GAMING (CASINO LICENCE APPLICATION) REGULATIONS 2017

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SCHEDULE 1
Conditions Attaching to a Casino Licence

WHEREAS it is expedient to make Regulations governing the application for a casino licence.

The Minister, in exercise of the power conferred by sections 34,43,185 and 196 of the Gaming Act 2014, makes the following Regulations:

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PART I PRELIMINARY

Citation

1 These Regulations may be cited as the Gaming (Casino Licence Application) Regulations 2017.

[Regulation 1 amended by 2021 : 23 s. 51(2) effective 1 August 2021]

Interpretation

2 (1) In these Regulations, unless the context requires otherwise—

“the Act” means the Gaming Act 2014;

“application form” means such form as may be provided from time to time by the Commission to be submitted as part of an application for a casino licence;

“attorney” includes barristers, solicitors, legal executives or other equivalent regulated professionals practising law;

“casino licence” means a licence granted under section 38 of the Act and casino licensee shall be construed accordingly;

“Casino Licence Application Fee” means the fee payable upon an application for a casino licence;

“Casino Licence Issue Fee” means the fee payable upon the issue of a casino licence;

“designated site” has the meaning given in section 2 of the Act;

“licence” shall mean a casino licence or a provisional licence as the context permits unless otherwise stated and licensee shall be construed accordingly;

“Multi-Jurisdictional Form” means the Multi-Jurisdictional Business Form published by the International Association of Gaming Regulators, as amended by any supplementary forms that the Commission may from time to time provide;

“Multi-Jurisdictional Personal History Disclosure Form” means the form of the same name published by the International Association of Gaming Regulators, as amended by any supplementary forms that the Commission may from time to time provide;

“provisional licence” means a licence granted pursuant to section 32A of the Act and provisional licensee shall be construed accordingly;

“Provisional Licence Issue Fee” means the fee payable upon the granting of a provisional licence and in accordance with the Gaming (Casino Fees) Regulations 2017;

“relevant official” has the meaning given in section 187A(1) of the Act;

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“Response to the RFP” means the documents submitted by an applicant providing the applicant’s response to the RFP Document which shall be in such form as the Commission shall determine;

“RFP Document” means the document issued by the Commission from time to time as part of the RFP Process under Part III of these Regulations;

“RFP Process” means the request for proposal process set out in Part III of these Regulations;

“special employee” means the holder of a special employee licence issued by the Commission under Part 5 of the Act;

“suitability” means a finding that an applicant is a suitable person to be concerned in or associated with the management and operation of a casino in accordance with section 33 of the Act and Part V of these Regulations;

“unspent” means those convictions—

- (a) in Bermuda not treated as ‘spent’ under the Rehabilitation of Offenders Act 1977; or
- (b) in any other jurisdiction which is the equivalent of such.

(2) For the purposes of these Regulations—

- (a) unless otherwise stated or the context otherwise requires, terms used in these Regulations shall have the meanings set out in the Act; and
- (b) reference to a person’s interest in any asset, whether tangible or intangible, shall include a beneficial interest, irrespective of any legal interest.

[Regulation 2 paragraph (1) definition "the Act" and "Provisional Licence Issue Fee" amended by 2021 : 23 s. 54 effective 1 August 2021]

Goals of the Commission

3 (1) The Commission shall have the following goals in respect of applications made pursuant to these Regulations—

- (a) that all owners, vendors, managers, employees, and sources of finance should be free from any inappropriate past or present associations and behaviours, and uphold high ethical standards;
- (b) that casinos should possess sound operational and financial controls, including all appropriate Anti-Money Laundering/Anti-Terrorist Financing policies and controls;
- (c) that all games offered should be fair, honest, and operate with a high level of security and integrity;
- (d) that all fees, taxes, and related payments, should be appropriately accounted for and paid; and
- (e) that controls should be in place to protect the vulnerable.

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(2) The Commission shall at all times consider its goals in assessing an application for a casino licence.

PART II

APPLICATION AND GENERAL CONDITIONS

Application for Casino Licence

4 (1) An application for a casino licence under section 32 of the Act shall be made by the owner of a designated site or, with the approval of the Commission, by a person nominated by that owner in the form approved by the Commission.

(2) The application for a casino licence shall—

- (a) consist of such documents as the Commission shall from time to time set out by way of publication on the Commission's website or in such other manner as the Commission shall see fit;
- (b) be delivered to the Commission in such form and accompanied by such forms as may be approved by the Commission from time to time; and
- (c) be accompanied by the Casino Licence Application Fee set out in the Gaming (Casino Fees) Regulations 2017.

(3) The Commission is not obligated to take any action on an application unless the fee has been paid in full.

[Regulation 4 amended by 2021 : 23 s. 54(5) effective 1 August 2021]

Nominee of owner of designated site

5 With respect to any person nominated under Regulation 4(1), the Commission—

- (a) may give such approval to a nominee in its sole discretion; and
- (b) shall not be required to provide reasons for any refusal of such approval.

Application filing period

6 (1) The application procedure set out in these Regulations shall be initiated by the publication of a filing period for the submission of a casino licence application.

(2) The Commission may initiate the application procedure pursuant to paragraph (1) at such times as it may determine.

(3) The filing period shall be published on the Commission's website and any other means of general publication as may be deemed appropriate no less than 10 calendar days before the start of the filing period.

(4) Written notice of the filing period shall be sent to each owner of a designated site.

(5) The filing period shall be no less than 90 calendar days from the published start date.

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(6) Upon the expiry of the filing period the Commission may refuse to consider any application that is incomplete or otherwise not validly submitted in accordance with the application process set out in these Regulations.

Fees; Reimbursements

7 (1) An applicant shall be liable to pay to the Commission the Casino Licence Application Fee as set out in the Gaming (Casino Fees) Regulations 2017 and an application shall be incomplete unless the Commission has received the Casino Licence Application Fee in cleared funds.

(2) Upon submitting an application for a casino licence, an applicant shall become liable to reimburse the Commission for the costs of any investigation undertaken by the Commission pursuant to section 35 of the Act and the provisions of the Gaming (Casino Fees) Regulations 2017 shall apply accordingly.

[Regulation 7 amended by 2021 : 23 s. 54(5) effective 1 August 2021]

Two-staged determination of applications

8 An application for a casino licence shall be determined in two stages, being—

- (a) the evaluation of the proposed integrated resort and casino pursuant to section 34 of the Act, which may result in the granting of a provisional licence pursuant to section 32A of the Act; and
- (b) the assessment of suitability pursuant to section 33 of the Act.

Determination of application

9 (1) The Commission may refuse to consider an application if—

- (a) the application fee is not paid; or
- (b) any other requirement under the Act or these Regulations has not been complied with.

(2) Any document filed with the Commission under any provision of the Act or any regulations made thereunder, may—

- (a) be considered by the Commission as part of the application for a casino licence; and
- (b) be used by the Commission in any subsequent application or investigation.

Provisional licence: further provisions

10 Upon the grant of a provisional licence the applicant shall be required to file further documentation including, but not limited to, the Multi-Jurisdictional Form and the Multi-Jurisdictional Personal History Disclosure Form.

Confidentiality of application process

11 (1) Without prejudice to the performance of its statutory functions and to the ability of the Commission to share information with the bodies listed in Schedule 2 of the

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Act, the Commission and each and all of its employees and agents shall use reasonable efforts to maintain the confidentiality of all documents filed with the Commission.

(2) Without prejudice to paragraph (1) the Commission shall be entitled to provide documentation and information held by the Commission to third parties, including third parties outside of Bermuda, as part of the evaluation or assessment of an application for a casino licence.

(3) The obligation in paragraph (1) shall not apply to those documents disclosed at any public hearing at which the casino licence application is considered, and the applicant agrees that documentation or information provided to the Commission may be made public as part of that public hearing.

Consent to investigation

12 (1) By submitting an application for a casino licence the applicant shall be deemed to consent to any and all such investigations as the Commission shall see fit and the applicant shall be deemed to have acknowledged and agreed that any investigation into matters of a personal, private or confidential nature are reasonable and proportionate to the needs of ensuring the suitability of an applicant and of the applicant's associates.

(2) The Commission may refuse an application for a casino licence where the applicant, or any other person whom the Commission reasonably believes is required to be investigated, refuses to submit to any and all investigations required by the Commission for the purposes of assessing suitability.

Casino operator other than natural person

13 (1) Unless otherwise authorised by the Commission in writing, no corporation shall be eligible to apply for or hold a casino licence unless that corporation has its registered office in Bermuda.

(2) Where an applicant is a—

- (a) person other than a natural person; or
- (b) corporation with a corporate director,

the requirements and obligations set out in the Act and in any regulations made thereunder shall apply *mutatis mutandis* to any natural persons with *de facto* or *de jure* control of the applicant including any directors and officers, shadow directors, and shareholders.

(3) Each director and officer of a corporate casino licensee shall be required to apply for and hold a special employee licence unless otherwise agreed by the Commission.

Persons prohibited from applying

14 (1) Notwithstanding the provisions set out in Regulation 4(1) above, the following persons shall not be eligible to apply for a casino licence—

- (a) any person under the age of 18 at the time of submitting the application for a casino licence;

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- (b) any person with an unspent conviction in any jurisdiction for any offence—
 - (i) involving dishonesty;
 - (ii) involving violence or threats of violence;
 - (iii) involving forgery, fraud, bribery, corruption, perjury or the assistance in any such offence;
 - (iv) involving the distribution of any controlled substance;
 - (v) involving the use of firearms, imitation firearms, or other prohibited or dangerous weapons;
 - (vi) involving sexual assault;
 - (vii) motivated by racial, sexual, or other prejudice;
 - (viii) related to gambling; or
 - (ix) related to money laundering or terrorist financing;
- (c) an undischarged bankrupt;
- (d) any person who has been refused a casino licence by the Commission or has had a casino licence revoked by the Commission in the 3 years prior to the proposed application for a casino licence.

(2) Where an applicant is a corporation, that applicant shall be ineligible if any director or officer would be ineligible if applying in his personal capacity, unless the Commission waives such ineligibility in writing.

(3) Where there is a current or pending charge in any jurisdiction the accused person shall not be ineligible under paragraph (1), however the Commission may stay an application for a casino licence until the determination of such charges.

(4) Where an application for a casino licence is stayed under paragraph (3), the Commission shall be entitled to determine any other application for a casino licence without reference to the stayed application.

General conditions

- 15 (1) By filing an application for a casino licence, an applicant agrees to—
- (a) abide by the provisions of the Act and any rules, regulations, codes or policies made pursuant to the Act;
 - (b) waive any liability of the Commission, its members, employees and agents for any and all claims arising out of or in connection with the application for a casino licence process, including any disclosure or publication of materials or information in any manner other than a wilful unlawful disclosure or publication of material that the person knew was privileged;
 - (c) provide all information and execute all releases as required by the Commission;

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- (d) provide a bond or letter of credit as required by the Act or these Regulations; and
- (e) accept any and all risks of adverse publicity, embarrassment, criticism or other action, or financial loss which may result from such action, with respect to an application for a casino licence and agrees to waive any claim for damages against the Commission, its members, employees and agents as a result thereof.

(2) Upon the written request of the Commission an applicant shall provide such further or supplemental information within such time period as may be set out in the written notice.

(3) Where any application for a casino licence is found to be deficient, the Commission may, but shall not be required to, notify the applicant and the applicant shall remedy such deficiencies within the time period prescribed by the Commission.

Duty to notify of material change

16 (1) An applicant for a casino licence shall have an ongoing obligation to inform the Commission of any change in circumstances that may render the applicant ineligible, unqualified or unsuitable to hold the casino licence or may impact the opinion of the Commission in its assessment of the proposed casino or integrated resort.

(2) Any failure to update the Commission as required by paragraph (1) shall be grounds for the refusal of an application for a casino licence or, where a casino licence has been granted, shall be grounds for disciplinary action.

Prevention of corruption provisions etc.

17 (1) No applicant for or holder of a casino licence may give or provide, or offer to give or provide, directly or indirectly, any compensation or reward or any percentage or share of the money or property played or received through gaming, eGaming or bookmaking, to any relevant official for purposes of—

- (a) influencing or attempting to influence any act or decision of the relevant official in his official capacity;
- (b) inducing or attempting to induce the relevant official to do or omit to do any act in violation of the lawful duty of such relevant official;
- (c) securing or attempting to secure an improper advantage; or
- (d) inducing or attempting to induce the relevant official to use his influence with the government or instrument of government to affect or influence any act or decision of such government or instrument of government in relation to gaming.

(2) For the purposes of paragraph (1), compensation or reward shall include offering or delivering to a relevant official any complimentary services that are other than a service or discount that is offered to members of the general public in like circumstances.

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(3) During the period in which a relevant official holds office and for 2 years after his retirement from office, no casino licensee may accept the provision of any goods or services by that relevant official other than in the ordinary course of the relevant official's duties.

(4) For the purpose of paragraph (3) "casino licensee" shall include an applicant for a casino licence, a provisional licence holder, or any affiliate, intermediary, subsidiary or holding company thereof.

(5) Without prejudice to any other provision of law, any applicant or licensee who contravenes paragraph (1) or (3), shall—

- (a) be refused a casino licence, if no casino licence has been granted; or
- (b) be subject to disciplinary action if a casino licence has been granted.

(6) The prohibitions set out in paragraph (3) may be permitted by the Commission at its sole discretion by prior notice in writing provided that the applicant or licensee is able to satisfy the Commission that in the particular circumstances, the proposed prohibited activity is not, and does not appear to be, inconsistent with the policy of transparency and the prevention of corruption and bribery.

Certification of documents

18 (1) An applicant should not provide originals of documents unless the document was created to be provided to the Commission as part of the application for a casino licence or an original is specifically requested by the Commission.

(2) Where original documents are provided the Commission shall be entitled to retain such documents for such period as it shall see fit.

(3) When providing certified copies of documents—

- (a) the person certifying the document must be an attorney with a valid practising certificate in the jurisdiction in which the certification takes place, and the attorney—
 - (i) must certify that he has been provided with the original document and that the copy document is a true copy of the original document; and
 - (ii) must provide his full name and contact details and must sign and date the document.
- (b) if the document is not in English an applicant must also provide an English translation and the translation company must certify—
 - (i) that it is a true and accurate translation of the original document;
 - (ii) the date of the translation; and
 - (iii) the full name and contact details of the translation company or if an individual the full name and contact details of that individual.

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Privileged documents or information

19 (1) No applicant may refuse to disclose any document or information on the grounds that such document or information is privileged.

(2) Refusal of disclosure of any document or information based on privilege may result in the refusal of a casino licence.

Grounds for refusal

20 Without prejudice to the obligation of an applicant to satisfy the requirements of the Act and these Regulations, and without prejudice to any other grounds for refusal, it shall be grounds for refusal of a casino licence if an applicant—

- (a) submits any information which he knows or ought reasonably to know is false, inaccurate or misleading;
- (b) encourages or permits any person to submit information which the applicant knows or ought reasonably to know is false, inaccurate or misleading; or
- (c) fails to inform the Commission as soon as practicable upon discovering that any information submitted to the Commission is false, inaccurate or misleading.

Amendment to application for a casino licence

21 (1) An application for a casino licence may be amended, with the permission of the Commission, in relation to—

- (a) the RFP Process, at any time prior to the conclusion of the licensing hearing; or
- (b) any other matter, at any time prior to the grant or refusal of a casino licence under section 38 of the Act.

(2) When seeking permission to amend, the applicant must provide full details of the proposed amendment.

(3) Where the amendment relates to information available prior to the submission of the application for a casino licence, the applicant must provide full details as to why that information was not included in the original application for a casino licence.

Withdrawal of application for a casino licence

22 (1) An application for a casino licence may be withdrawn with the permission of the Commission.

(2) An application to withdraw under paragraph (1) shall be made by providing the Commission with a written request to withdraw along with an explanation as to the reason for the withdrawal in such form as the Commission may from time to time provide.

(3) The Commission may grant permission to withdraw, and may do so with or without prejudice and upon such terms as it sees fit.

(4) Permission to withdraw shall be provided by notice in writing and such notice shall state the date upon which the application for a casino licence shall be deemed withdrawn.

(5) The applicant shall continue to be liable to pay such fees or costs payable pursuant to the Act or any regulations until such date as the application for a casino licence is deemed withdrawn.

Third party agents

23 Any person engaged or instructed by the Commission shall be entitled to the benefit of any release, waiver or other immunity enjoyed by the Commission and shall have such powers as are granted to the Commission for the purposes of the engagement.

PART III RFP PROCESS

Request for Proposal

24 (1) As part of the application for a casino licence the Commission shall invite applicants to provide such information as the Commission shall see fit in order for it to form an opinion pursuant to section 34 of the Act, and such invitation shall be in the form of a Request For Proposal ("RFP") document.

- (2) The RFP Document issued by the Commission may—
- (a) stipulate essential minimum requirements to be complied with by applicants for a casino licence;
 - (b) set forth the evaluation criteria to be applied in considering applications for a casino licence and the weight to be attached to each criterion; and
 - (c) contain specific conditions or requirements which shall be binding on the applicants and the Commission may, upon failure to comply, refuse to consider an application for a casino licence.

Response to Request for Proposal

25 (1) An applicant for a casino licence shall respond to the RFP Document referred to in Regulation 24 by submitting a Response to the RFP in the form set out in the RFP Document.

(2) It shall be incumbent on the applicant to provide any and all information necessary for the Commission to form an opinion on the proposed integrated resort and casino.

(3) The Commission shall not be required to request information from the applicant in order to remedy any deficiencies in the application for a casino licence.

(4) The applicant shall ensure that its proposal includes sufficient material to satisfy the Commission that the proposed integrated resort and casino meets all requirements set out in the Act and in any regulations.

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Commission opinion on Integrated Resort

26 The Commission shall cause to be undertaken any such investigations as it deems necessary for it to form an opinion on the proposed integrated resort and casino.

Licensing hearing

27 (1) At such time and place as the Commission shall determine, there shall be a hearing or hearings in accordance with these Regulations.

(2) A hearing shall take place at which an applicant for a casino licence shall be invited to provide submissions and answer questions in relation to the application for a casino licence by way of a presentation.

(3) A notice of the hearing shall be provided to the applicant in writing, shall set out the time period allowed for the presentation, and shall inform the applicant of any information to be submitted prior to the hearing.

(4) At the hearing, the applicant—

- (a) shall be allotted a specified time to present its application for a casino licence and each applicant for a casino licence shall be allotted the same length of time for its presentation;
- (b) may, subject to the approval of the Commission, be entitled to be represented by counsel or by any other person; and
- (c) may be examined by the Commission or any person on behalf of the Commission.

(5) Members of the public shall be permitted to attend at the discretion of the Commission, shall not be entitled to be heard at the hearing, but shall be entitled to submit written submissions to the Commission within 7 days of the conclusion of the hearing.

(6) The Commission may consider any written submissions received from the public in its determination of the application for a casino licence.

(7) The Commission may make such rules for their own guidance and the conduct and management of the hearings held pursuant to this Regulation, and the hours and times and places for such hearings, as they may from time to time think fit, and may from time to time adjourn for such time and to such place as they may think fit.

Determination of opinion on Integrated Resort

28 (1) Within 30 days of the conclusion of a hearing held pursuant to Regulation 27 the Commission shall form an opinion on the proposed casino and shall determine whether to refuse the application for a casino licence or whether to grant a provisional licence.

(2) The Commission may, where necessary, extend the time period set out in paragraph (1) by notifying the applicant in writing of the extended timeline.

(3) The Commission shall write to each applicant informing it of its decision.

PART IV
PROVISIONAL LICENCE

Grant of a provisional licence

- 29 (1) Upon the granting of a provisional licence, the—
- (a) applicant for a casino licence shall become liable to pay to the Commission the Provisional Licence Issue Fee as set out in the Gaming (Casino Fees) Regulations 2017 at such time and in such manner as may be directed by the Commission; and
 - (b) Commission shall proceed to the final stage of the application for a casino licence and shall investigate suitability pursuant to section 33 of the Act.
- (2) A provisional licence, whether granted following the RFP Process or otherwise, may be granted subject to such conditions as the Commission sees fit.
- (3) The granting of a provisional licence shall be confirmation that a casino licence will be granted to the applicant subject to—
- (a) compliance with any conditions imposed on the provisional licence pursuant to section 32A(4) of the Act;
 - (b) a finding of suitability pursuant to section 33 of the Act and as set out in Part V below; and
 - (c) payment of the Provisional Licence Issue Fee, the Casino Licence Issue Fee, and all other costs and fees for which an applicant for a casino licence is liable pursuant to the Act or regulations made thereunder.
- (4) A provisional licence is not a casino licence for the purpose of section 31(1) of the Act.

[Regulation 29 amended by 2021 : 23 s. 54(5) effective 1 August 2021]

Failure to obtain casino licence

- 30 (1) Without prejudice to any other grounds for revocation of a provisional licence under the Act or regulations made thereunder, the Commission may revoke a provisional licence by service of notice in writing upon the applicant in the event that the holder of a provisional licence—
- (a) is unable to satisfy the Commission as to suitability pursuant to section 33 of the Act;
 - (b) fails to pay the Provisional Licence Issue Fee in full; or
 - (c) fails to comply with a condition imposed on the provisional licence.
- (2) Where a provisional licence has been revoked, the Commission may reopen the RFP Process and the provisions of Part III of these Regulations shall apply accordingly.

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(3) Any person who has had a casino licence or a provisional licence revoked shall not be eligible to apply for a casino licence in any subsequent RFP Process for a period of 3 years after the revocation unless such ineligibility is waived by the Commission in writing.

(4) Where the RFP Process is reopened pursuant to this Regulation it shall be limited to the number of provisional licences available as at the date of publication of the filing period pursuant to Regulation 6.

PART V SUITABILITY

Suitability

31 (1) Without prejudice to the generality of section 33 of the Act, no person may be granted a casino licence unless that person has satisfied the Commission through the provision of clear and convincing evidence that the applicant, the special employees, and each associate of the applicant, is a suitable person to be concerned in or associated with the management and operation of a casino and in gaming generally.

(2) The requirement to satisfy the Commission as regards suitability is an ongoing requirement and does not cease upon the granting of a casino licence.

(3) For the purposes of this Part the Commission may require the applicant, any associate of the applicant, and any other person as the Commission shall specify, to complete the Multi-Jurisdictional Form, the Multi-Jurisdictional Personal History Disclosure Form, and any other form, release or waiver as the Commission may from time to time require.

Investigation of Suitability

32 (1) The burden of satisfying the Commission that the applicant is a suitable person to be concerned in or associated with the gaming industry shall at all times be on the applicant.

(2) Without prejudice to paragraph (1) or to the powers of the Commission as set out in the Act, the Commission shall be entitled to—

- (a) hold a meeting or hearing at which the applicant, and any other such person as the Commission sees fit, may be required to give evidence;
- (b) require the applicant or any other such person as the Commission sees fit to provide evidence by way of affidavit or testimony under oath;
- (c) authorise or instruct third parties to undertake such investigations and to provide information or documentation to the Commission as the Commission in its sole discretion sees fit;
- (d) invite or request third parties including law enforcement agencies in Bermuda and elsewhere to provide an opinion on the suitability of the applicant;

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- (e) require any person forming part of the investigation to consent to having his photograph, finger prints, palm prints or other biometric measures taken;
 - (f) by notice in writing, require an applicant for a casino licence or any other person whose association with the applicant is, in the opinion of the Commission, relevant to the application for a casino licence to do any one or more of the following—
 - (i) provide, in accordance with directions in the notice, any information or testimony that is relevant to the investigation of the application for a casino licence and is specified in the notice;
 - (ii) produce, in accordance with directions in the notice, any records relevant to the investigation of the application for a casino licence that are specified in the notice and to permit examination of the records, the taking of extracts from them and the making of copies of them;
 - (iii) furnish to the Commission any authorisations and consents that the Commission directs for the purpose of enabling the Commission to obtain information (including financial and other confidential information) concerning the person and his associates;
 - (g) consider, notwithstanding the Rehabilitation of Offenders Act 1977 or any other provision of law, all aspects of criminal behaviour including all convictions, whether spent, expunged or otherwise removed from any records and all arrests whether or not charges were brought.
- (3) Where any person is required to attend any hearing or interview he shall not be entitled to be accompanied at such interview without the express permission of the Commission.
- (4) If any requirement made under this Regulation is not complied with, the Commission may refuse to consider the application for a casino licence concerned.
- (5) The Commission shall not be required to provide an applicant or any other person with any information or documentation obtained or received by the Commission in the course of investigating suitability.
- (6) Subject to paragraph (4) and prior to making a final determination, the Commission may at its sole discretion provide the applicant with an opportunity to address any concerns that the Commission may have regarding suitability which may be by way of hearing and such hearing may be held in public.
- (7) The Commission shall be entitled to refuse an application for a casino licence if an applicant or any other person fails to comply with, refuses to allow, or obstructs, the investigations of the Commission under these Regulations.

Notification of third party issue

- 33 (1) If an applicant is unable to satisfy the Commission that he is suitable under these Regulations as a result of any—

- (a) person who holds a direct or indirect interest in the applicant, or in an affiliate, intermediary, subsidiary or holding company of the applicant, failing to satisfy the Commission as to suitability; or
- (b) affiliation or commercial or other relationship with any person,

the Commission may provide the applicant with such time as it sees fit to divest that person of his direct or indirect interest, or to terminate that affiliation or commercial or other relationship (whichever the case may be).

(2) The decision of the Commission to provide the applicant with time to divest or terminate in accordance with paragraph (1) shall be entirely at the discretion of the Commission.

(3) Where time is given to divest in accordance with paragraph (1)(a) the applicant shall be under an obligation to satisfy the Commission that there has been a valid and lawful divestiture and that the relevant person no longer has any direct or indirect interest in the applicant or in an affiliate, intermediary, subsidiary or holding company.

(4) The Commission shall be entitled to require the divested person to provide proof of his divestiture in such manner as it sees fit.

(5) Where time is given to terminate an affiliation or commercial or other relationship in accordance with paragraph (1)(b) the applicant shall be under an obligation to satisfy the Commission that there has been a valid and bona fide termination.

(6) The Commission shall be entitled to require the person with whom the relationship or affiliation has been terminated to provide proof of such termination in such manner as it sees fit.

Institutional Investor Suitability Waiver Application

34 (1) For the purposes of this Regulation “institutional investor” means—

- (a) an institution licensed as a bank or deposit-taking entity under the Banks and Deposit Companies Act 1999;
- (b) an investment business within the meaning of the Investment Business Act 2003;
- (c) an operator of an investment fund within the meaning of the Investment Funds Act 2006;
- (d) an insurer within the meaning of the Insurance Act 1978;
- (e) any other similar entity regulated in a jurisdiction other than Bermuda that would fall within subparagraph (a), (b), (c) or (d) if such entity were registered in Bermuda; and
- (f) any other person as the Commission may determine.

(2) An institutional investor who would otherwise have to satisfy suitability requirements under the Act or these Regulations may apply to the Commission in such form

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as the Commission may from time to time provide for a waiver of all suitability requirements under the Act and these Regulations.

(3) An application made under paragraph (2) shall be endorsed by the casino operator or applicant for a casino licence with whom the institutional investor is or is intending to do business.

(4) An institutional investor shall only be granted a suitability waiver pursuant to paragraph (2) where that institutional investor is able to satisfy the Commission that he will maintain only a passive role in the operations of the casino and will not attempt to assert influence or control over the management and affairs of a casino.

(5) Without prejudice to paragraph (4) and irrespective of the terms of any agreement between the casino operator and the institutional investor, an institutional investor shall not be entitled to exercise any managerial powers in relation to the casino operations, including appointing any person in a position that would otherwise require a special employee licence.

(6) Upon an application for a suitability waiver under paragraph (2) the Commission may undertake such investigations as it sees fit, the costs of which shall be payable by the applicant for a casino licence or casino licence holder endorsing the application (as the case may be).

(7) An institutional investor granted a suitability waiver shall not enforce security over any shares in the casino licence holder without the permission of the Commission.

(8) The Commission may grant a suitability waiver subject to such conditions as it sees fit.

(9) The Commission shall not be required to give reasons for any denial of a suitability waiver and the decision of the Commission on an application under this Regulation shall be final.

(10) The Commission shall be entitled to revoke any waiver granted under this Regulation at any time by giving notice in writing to the institutional investor and the casino operator that endorsed the application.

PART VI

GRANT OF CASINO LICENCE

Granting of a casino licence

- 35 (1) Upon the Commission—
- (a) having granted a provisional licence; and
 - (b) being satisfied that any conditions attached to the provisional licence have been complied with; and
 - (c) having completed its investigation into suitability pursuant to section 33 of the Act and in accordance with these Regulations,

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the Commission shall determine an application for a casino licence, in accordance with the provisions of section 38 of the Act, by either granting or refusing the application and shall notify the applicant in writing of its decision.

(2) Upon the granting of a casino licence the applicant shall be liable to pay to the Commission the Casino Licence Issue Fee as set out in the Gaming (Casino Fees) Regulations 2017.

(3) Without prejudice to any other conditions applicable to a casino licence, a casino licence shall not become effective prior to the payment of the Casino Licence Issue Fee.

[Regulation 35 amended by 2021 : 23 s. 54(5) effective 1 August 2021]

Conditions attaching to a Casino Licence

36 (1) In addition to any conditions to which a casino licence may be subject pursuant to section 38(2) of the Act, a casino licence shall be subject to the conditions set out in Schedule 1, unless otherwise stated in the casino licence.

(2) Failure to comply with a condition of a casino licence shall be grounds for disciplinary action.

Notification of Events

37 (1) A licensee shall disclose to the Commission any fact or matter that the Commission would reasonably need to be aware of in exercising its regulatory functions including any matter that is likely to have a material impact on the licensee's business or on the licensee's ability to lawfully conduct the casino operations.

(2) Without prejudice to the generality of paragraph (1) a licensee shall be under an obligation to notify the Commission as soon as practicable—

- (a) of any arrests, charges and criminal convictions in any jurisdiction against the licensee or any of the officers or directors of the licensee;
- (b) of the appointment of a liquidator, administrator, receiver, trustee or similar officer, or the issuing of any proceedings or other legal procedures or steps being taken in relation to such appointment, in any jurisdiction, against the licensee or any parent or subsidiary of the licensee or of any director or officer of the licensee;
- (c) of any act which the licensee believes would constitute a breach of the Act or of any of the regulations, codes or standards made pursuant to powers in the Act by the licensee, a special employee with managerial functions, or any associate or other licensed person with whom the licensee deals;
- (d) of any material change to the licensee's banking arrangements, in particular the termination of such arrangements generally or a particular facility and the basis for termination;
- (e) of any breach of a covenant given to a bank or other lender;

- (f) of any court judgments (in any jurisdiction) against the licensee or any affiliate of the licensee where such judgment remains unpaid 14 days after the date of judgment;
- (g) of any qualification to an auditor's report and any change of auditor;
- (h) of any material deficit in the reconciliation of patron funds;
- (i) of the grant, withdrawal, refusal, revocation or other sanction in relation to any application or grant of a gaming licence to the casino operator or any affiliated entity in any jurisdiction;
- (j) of any investigation by any foreign casino regulatory body or any law enforcement agency in any jurisdiction where the subject of the investigation, if found to be true, could reasonably be expected to raise doubts about the licensee's continued suitability to hold a licence in Bermuda;
- (k) of the taking of disciplinary action by the licensee against any of its special employees with managerial functions;
- (l) of the termination of employment for any reason of any special employee with managerial functions;
- (m) upon the casino operator having a reasonable belief that an individual or group of people have or have attempted to cheat; and
- (n) upon the casino operator entering into any standstill agreement or equivalent agreement with any creditor.

Security Deposit

38 (1) The security provided pursuant to section 185 of the Act shall remain valid and enforceable at all times during the term of the casino licence and for a period of 6 months after termination of the casino licence.

(2) The security provided pursuant to section 185 of the Act must aggregate to such amount as may be set by the Commission.

PART VII MISCELLANEOUS

Variation of conditions of licence

39 (1) An application to amend conditions of a licence shall be made in writing in such form as the Commission may from time to time require.

(2) Where the Commission intends to amend conditions of a licence of its own volition it shall inform the licensee and invite the licensee to respond to the proposed amendment.

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(3) Upon an application under paragraph (1) the Commission shall have available to it all of the powers set out in the Act and these Regulations.

(4) The Commission shall provide notice in writing to the licensee of any amendment to the conditions of a licence.

Suspension of licence during investigation

40 (1) Where the Commission reasonably believes that a casino licensee is not a suitable person under section 33 of the Act it may during the period of any investigation suspend any casino licence or suspend any terms of that casino licence, and give any consequent directions if, in the opinion of the Commission, the circumstances are such that the licensee should not continue to operate the casino or any part of the casino operations during the investigation period.

(2) Where a casino licence has been suspended the Commission may appoint a temporary manager of the casino for the duration of the suspension.

Revocation of licence following investigation

41 (1) Where the Commission has commenced an investigation into the suitability of a licensee pursuant to these Regulations the burden shall be on the licensee to satisfy the Commission as to suitability in accordance with section 33 of the Act and Part V above by the provision of clear and convincing evidence.

(2) Where the licensee is unable to satisfy the Commission as to his suitability the Commission shall be entitled to take the following steps—

- (a) revoke the licence by serving on the licensee a notice of revocation;
- (b) amend the conditions of the licence;
- (c) appoint a temporary manager and suspend the licence pending—
 - (i) further investigation;
 - (ii) the taking of such steps by the licensee as may be directed by the Commission.

(3) Service of a notice of revocation may be effected by personal service on the licensee or on any special employee in a managerial position at the casino premises.

(4) The revocation of the licence shall be effective immediately upon service in accordance with paragraph (3) unless otherwise stated in the notice.

(5) The taking of any step permitted by this Regulation shall not prohibit the Commission from taking any further or additional steps as may be appropriate in all of the circumstances.

(6) Upon the revocation of a licence the Commission shall be entitled to appoint a temporary manager.

Surrender of Licence

42 (1) Subject to paragraph (2) a licensee may request that the licence be surrendered by giving notice in writing to the Commission in such form as the Commission may from time to time provide.

(2) A licensee against whom disciplinary proceedings have been commenced shall not, without the permission of the Commission, be entitled to surrender a licence until such time as the disciplinary action has concluded.

(3) Upon receiving notice pursuant to paragraph (1) the Commission may require the licensee to comply with such terms and conditions as it deems appropriate.

(4) Upon satisfying any terms and conditions required under paragraph (3) the Commission may accept the surrender and may provide a date upon which the licence will be deemed surrendered.

SCHEDULE 1

(Regulation 36)

CONDITIONS ATTACHING TO A CASINO LICENCE

1. A licensee shall be under a duty to—
 - a. provide any assistance or information or documentation required by the Commission and must cooperate fully and in good faith in any investigations conducted by the Commission;
 - b. resolve all patron disputes by way of such dispute resolution procedures as may be set out in regulations made under the Act and the licensee shall be deemed to have consented to enter into arbitration in the event of an appeal arising out of those procedures;
 - c. provide the Commission with a security deposit in such form, at such time, and in such sum as may be required by the Commission;
 - d. provide all information, data, and documents requested by the Commission within such period as may be prescribed and shall also provide an executed release upon demand which would enable the Commission to receive information where such release is required;
 - e. provide notice to the Commission as soon as reasonably practicable following the licensee being aware of any, or the likelihood of any, restructuring, refinancing, share issue, material changes to capital or equity, or other material changes to the financial information provided in the application for a casino licence; and
 - f. comply with the requirement to notify the Commission of specified events under Regulations 16 and 37, and section 56 of the Act.
2. A casino shall not open to the public until the Commission has provided written approval permitting gaming, eGaming or bookmaking (as the case may be), and such approval shall not be granted prior to the—
 - a. Commission undertaking a physical inspection of the integrated resort and casino premises;
 - b. licensee satisfying the Commission that there have been no breaches of any of the conditions attached to the licence.
3. A casino licence shall not be transferrable without the written permission of the Commission.
4. A licensee is responsible for third parties with whom they contract for the provision of any aspect of the licensee's business and must ensure that all contracts with third parties are in compliance with the any rules or regulations governing contracts.
5. A licensee is responsible for the conduct and well-being of patrons at the casino premises.

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Made this 28th day of March 2017

Acting Minister of Tourism, Transport and Municipalities

[Amended by:
2021 : 23]