

205 CMR 111.00: PHASE 1 APPLICATION REQUIREMENTS

Section

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111.01: Phase 1 Application Requirements

(1) The requirements set forth in 205 CMR 111.00 apply to the Phase 1 determination of suitability issued by the commission unless otherwise noted.

(2) Commission Consultation. The commission or its designees may conduct one or more consultation meetings to provide guidance on Phase 1 standards and procedures and answer any appropriate inquiries.

(3) Applicants must use the appropriate application forms issued or adopted by the commission. Each application shall be prepared and submitted in accordance with the applicable provisions of M.G.L. c. 23K and 205 CMR 101.00 through 117.00 and the instructions on the commission's forms. Applicants for a Category 1 license or a Category 2 license shall, at a minimum, submit the following completed forms to initiate RFA-1 review under 205 CMR 111.02: *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/ Intermediary Companies*; 205 CMR 111.03: *Multi-jurisdictional Personal History Form*; and 205 CMR 111.04: *Massachusetts Supplemental Form*.

(4) At a minimum, the application must contain:

- (a) all the relevant information required in 205 CMR 111.00;
- (b) the license fee pursuant to 205 CMR 114.00: *Fees*; and
- (c) disclosure of payments or contributions to local governments pursuant to 205 CMR 108.02: *Mandatory Disclosure of Political Contributions and Community Contributions*.

(5) Applicants have an affirmative responsibility to submit a complete Phase 1 application in the forms specified under 205 CMR 111.01(3) by the deadline established by the commission. The commission shall have no obligation to accept or review an incomplete application submitted by the established deadline.

(6) The commission may, in its discretion, extend the time for filing a complete application to enable an applicant to cure a deficiency in its application, provided that the application was submitted and the applicable fee was paid before the established deadline, or to provide reasonable additional time for filing in cases in which extraordinary circumstances prevented a timely filing.

111.02: Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/ Intermediary Companies

(1) A BED shall be in the format prescribed by the commission and may require the applicant to provide the following information and such additional information as the commission may, in its discretion, determine:

- (a) The name, title, phone number and e-mail address of a person to be contacted in reference to the application;
- (b) The current or former official trade names used by the business entity, and the dates of use;
- (c) The name of the license applicant and, if the applicant is other than the applicant business entity, the nature of the applicant's business entity's relationship to the license applicant;
- (d) The date of incorporation or formation;
- (e) The current or former business addresses and website of the business entity with relevant time frames;

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(f) A description of the present and former businesses engaged in by the business entity and its holding companies, subsidiaries and intermediary companies, including, but not limited to:

1. Competitive conditions in the industry;
2. The principal products produced, services rendered and methods of distribution;
3. Information about raw materials essential to the business entity's operation;
4. Information relating to intellectual property rights;
5. A description of any material changes to the business entity's mode of conducting business;
6. A description of any former business the business entity was engaged in during the last ten years and the reasons for the cessation of such business, including relevant time frames;
7. The name, last known address, occupation and date of birth of each incorporator or founding member;
8. The name, home address, business address, date of birth, occupation, race, gender, ethnicity and title of current and former directors, and trustees and the dates such position was held during the ten years and reason for leaving;
9. The name, home address, business address, date of birth, race, gender, ethnicity and title of current officers of the business entity, and the dates of office;
10. The name, last known home address, current business address, date of birth and occupation of former officers for the business entity for the last ten years, and the dates of office;
11. The annual compensation of officers;
12. The name, business address, date of birth and position of each person, other than an officer, who receives annual compensation of more than \$250,000.00 and the length of time employed and amount of compensation;
13. A description of all bonus, profit sharing, pension, retirement, deferred compensation or similar plans;
14. A description of the nature, type, number of shares, terms, conditions, rights and privileges of all classes of securities or other ownership interest issued or to be issued including the number of shares of each class authorized or to be authorized and the number of shares of each class outstanding;
15. The name, home address and date of birth of each shareholder, the class held, number of shares held and the percentage of outstanding voting or non-voting securities or other ownership interest held;
16. A description of the nature, type, terms, covenants, conditions and priorities of all outstanding debt and security devices utilized by the business entity;
17. Other than for a publicly traded corporation unless specifically required by the commission on the bureau, the name, address and date of birth of each person holding the debt or security devices in 205 CMR 111.02(1)(f)16., the type of debt instrument held, the original debt amount and current balance;
18. A description of the nature, type, terms and conditions of all securities options, including the title and amount of securities subject to option, the name and address of each option holder and the market value at the time of issuance;
19. The following information for each account or the last ten years held in the name of the business entity or its nominee, or otherwise under the direct or indirect control of the business entity:
  - a. The name and address of the bank, savings and loan or other financial institution;
  - b. The type of account;
  - c. The account number; and
  - d. The dates held;
20. Other than for a publicly traded corporation unless specifically required by the commission on the bureau, the name and address of all persons with whom the business entity has contracts or agreements of \$250,000.00 or more in value, including employment contracts of more than one-year duration or who have supplied goods and services within the past six months, and the nature of such contract or the goods and services provided;
21. The name and address of each company in which the business entity holds securities or other ownership interest, type of securities or other ownership interest held, purchase price per share or interest, number of shares held, and percentage of ownership, if more than 5%;

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22. Information regarding any transaction within the last five years involving a change in the beneficial ownership of the business entity's equity securities on the part of any current or former director, officer or beneficial owner of more than 10% of any class of equity security;
23. A description of any civil, criminal, administrative and investigatory proceedings in any jurisdiction, for the business entity and each director, trustee or officer as follows:
  - a. Any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;
  - b. Any criminal proceeding in which such person has been a party or has been named as an unindicted co-conspirator;
  - c. Existing civil litigation to which the business entity is a party, if damages are reasonably expected to exceed \$250,000.00;
  - d. Any judgment, order, consent decree or consent order entered against the business entity pertaining to a violation or alleged violation of the Federal antitrust, trade regulation or securities laws or similar laws of any jurisdiction; and
  - e. Any judgment, order, consent decree or consent order entered against the business entity pertaining to a violation or alleged violation of any other state or Federal statute, regulation or code which resulted in the imposition of a fine or penalty of \$50,000.00 or more within the past ten years;
24. For the business entity and any holding or intermediary company, information regarding any judgments or petitions for bankruptcy or insolvency and any relief sought under any provision of the Federal Bankruptcy Act or any state insolvency law; and any receiver, fiscal agent, trustee or similar officer appointed for the property or business of the business entity or any holding or intermediary company within the last ten years;
25. During the last ten years, whether the business entity has had any license or certificate denied, suspended or revoked by any government agency in Massachusetts or any other jurisdiction, the nature of such license or certificate, the agency and its location, the date of such action, the reasons therefore and the facts related thereto;
26. During the last ten years, whether the business entity or any director, officer, employee or any person acting for or on behalf of the business entity has made any payments, bribes or kickbacks to any employee, company, organization or government official, foreign or domestic, and regardless of whether such incident or incidents was lawful in the jurisdiction of its occurrence, to obtain favorable treatment or to obtain a competitive advantage;
27. During the last ten years, whether the business entity, its parent, any subsidiary or related entity or individual has:
  - a. Donated or loaned the business entity's funds or property for the use or benefit of or in opposing any government, political party, candidate or committee either foreign or domestic;
  - b. Made any loans, donations or disbursements to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions, either foreign or domestic; or
  - c. Maintained a bank account or other account, either foreign or domestic, not reflected on the books or records of the business entity, or maintained any account in the name of a nominee of the business entity;
28. The names and addresses of any current or former directors, officers, employees or third parties who would have knowledge or information concerning 205 CMR 111.02(1)(f)27.c.;
29. A copy of the following:
  - a. Annual reports to shareholder for the last five years;
  - b. Any annual reports prepared within the last five years on Form 10K pursuant to the Securities Exchange Act of 1934, §§ 13 or 15d;
  - c. An audited financial statement for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of sources and application of funds, and all notes to such statements and related financial schedules;
  - d. Copies of all annual financial statements prepared in the last five fiscal years, any exceptions taken to such statements by an independent auditor retained by the business entity and the management response thereto;

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- e. The most recent quarterly unaudited financial statement prepared by or for the business entity which, if the business entity is registered with the Securities Exchange Commission (SEC) may be satisfied by providing a copy of the most recently filed Form 10Q;
  - f. Any current report prepared due to a change in control of the business entity, acquisition or disposition of assets, bankruptcy or receivership proceedings, changes in the business entity's certifying accountant, or other material events, which, if the business entity is registered with the SEC, may be satisfied by providing a copy of the most recent filed Form 8K;
  - g. The most recent Proxy or Information Statement filed pursuant to the Securities Exchange Act of 1934, § 14;
  - h. Registration Statements filed in the last five years pursuant to the Securities Act of 1933;
  - i. All reports and correspondence not otherwise submitted in the last five years by independent auditors for the business entity which pertain to the issuance of financial statements, managerial advisory services or internal control recommendations;
  - j. The name, address and telephone number of the current outside auditor(s);
30. A certified copy of the articles of incorporation, charter and bylaws, and all amendments and proposed amendments thereto;
31. If a business entity:
- a. A current ownership organization chart of the business entity, its parent company and each subsidiary of the business entity;
  - b. A functional table of organization for the business entity, including position descriptions and the names of persons holding such positions;
32. If a corporation: copies of Internal Revenue Service Forms 1120 (Corporate Income Tax Return) and 941 (Employer's Quarterly Federal Tax Return) filed for the last five years;
33. If a partnership, copies of Internal Revenue Service Forms 1065 (Partnership Return Form) and 941 (Employer's Quarterly Federal Tax Return) filed for the last five years;
34. If a limited liability company, copies of its Federal returns for the last five years; and
35. A listing of any records, documents or other information submitted as appendices to the BED

(2) In addition to the information in 205 CMR 111.02(1), a completed BED shall include the following documents, which shall be dated and signed by the president, chief executive officer, partner, general partner or sole proprietor, and notarized:

- (a) A release authorization directing all courts, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions and all governmental agencies, Federal, state, and local, both foreign and domestic, to release any and all information pertaining to the business entity as requested by the commission, the bureau, and their agents and employees;
- (b) A waiver of liability as to the Commonwealth of Massachusetts and its instrumentalities and agents for any damages resulting from any disclosure and publication of information acquired during the license or investigation process;
- (c) Consent to inspection, searches and seizures and the supplying of handwriting exemplars; and
- (d) A signed, dated and notarized affidavit.

111.03: Multi-jurisdictional Personal History Disclosure Form

- (1) A PHD-MA shall be submitted by each Category 1 and Category 2 qualifier and shall be in a format prescribed by the commission and may require the qualifier to provide the following information and such additional information as the commission may, in its discretion, determine:
- (a) Name, including maiden name and any aliases or nicknames and applicable dates of use;
  - (b) Date of birth;
  - (c) Physical description;
  - (d) Current address and residence history;
  - (e) Social Security Number, which information is voluntarily provided in accordance with 5 U.S.C. § 552a;

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- (f) Citizenship and, if applicable, information regarding resident alien status, including information regarding passports;
- (g) Marital history, spouse, dependents and other family data;
- (h) The gaming licensee or qualifier, gaming vendor licensee or qualifier or holding company, as applicable, with which the qualifier is affiliated, and the nature of the qualifier's position with or interest in such entity;
- (i) Telephone number at the current place of employment;
- (j) Employment history of the qualifier and qualifier's immediate family;
- (k) Education and training;
- (l) Record of military service;
- (m) Government positions and offices presently or previously held, and the offices, trusteeships, directorships or fiduciary positions presently or previously held with any business entity;
- (n) Trusteeships or other fiduciary positions held by the qualifier and the qualifier's spouse, and any denial or suspension of, or removal from, such positions;
- (o) Current memberships in any social, labor or fraternal union, club or organization;
- (p) Licenses and other approvals held by or applied for by the qualifier or, where specified, the qualifier's spouse, in the Commonwealth of Massachusetts or any other jurisdiction, as follows:
  1. Any professional or occupational license held by or applied for the by the qualifier or the qualifier's spouse;
  2. Motor vehicle registrations and operator licenses held by or applied for the by the qualifier or the qualifier's spouse, and any revocation or suspension thereof;
  3. Possession or ownership of any pistol or firearm, or any application for any firearm permit, firearm dealer's license, or permit to carry a pistol or firearm;
  4. Any license, permit, approval or registration required to participate in any lawful gambling operation in the Commonwealth of Massachusetts or any jurisdiction held by or applied for by the qualifier; and
  5. Any denial, suspension or revocation by a government agency of a license, permit or certification held by or applied for by the qualifier or the qualifier's spouse, or any entity in which the qualifier or the qualifier's spouse was a director, officer, partner or any owner of a 5% or greater interest;
- (q) Any interest in or employment presently or previously held by the qualifier with any entity which has applied for a permit, license, certificate or qualification in connection with any lawful gambling or alcoholic beverage operation in the Commonwealth of Massachusetts or any other jurisdiction; and any current employment or other association by the qualifier's family with the gambling or alcoholic beverage industries in the Commonwealth of Massachusetts or any other jurisdiction;
- (r) Civil, criminal and investigatory proceedings in any jurisdiction, as follows:
  1. Arrests, charges or offenses committed by the qualifier or any member of the qualifier's immediate family;
  2. Any instance where the qualifier has been named as an unindicted party or co-conspirator in a criminal proceeding or held as a material witness;
  3. Any appearance before, investigation by or request to take a polygraph examination by any governmental agency, court, committee, grand jury or investigatory body, and any refusal to comply with a request to do so;
  4. Any pardons, dismissals, suspensions or deferrals of any criminal investigation, prosecution, or conviction;
  5. Lawsuits to which the qualifier was or is a party;
  6. Any citation or charge for a violation of a statute, regulation or code of any jurisdiction, other than a criminal disorderly persons, petty disorderly persons or motor vehicle violation; and
  7. Any use, distribution, or possession of any narcotic, hallucinogenic, drug, barbiturate, amphetamine or other substance listed in M.G.L. c. 94C other than pursuant to a valid prescription issued by a licensed physician;
- (s) Any exclusion or barring from any casino, gaming establishment or gambling/gaming related entity in any jurisdiction; and

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(t) Financial data, as follows:

1. All assets and liability of the qualifier, and the qualifier's spouse and dependent children as indicated on the net worth statement and supporting schedules in a format prescribed by the commission, including cash, bank accounts, notes payable and receivable, real estate and income taxes payable, loans, accounts payable and any other indebtedness, contingent liabilities, securities, real estate interests, real estate mortgages and liens, life insurance, pension funds, vehicles and other assets;
2. Bank accounts, including any right of ownership in, control over or interest in any foreign bank account, and safe deposit boxes;
3. Real estate interests held by the qualifier or the qualifier's spouse or dependent children;
4. Businesses owned;
5. Copies of Federal tax returns and related information;
6. Judgments or petitions for bankruptcy, insolvency or liquidation concerning the qualifier or any business entity in which the qualifier held a 5% or greater interest, other than a publicly traded corporation, or in which the qualifier served as an officer or director;
7. Any business entity in which the qualifier was an owner, director or officer which has been placed under some form of governmental administration or monitoring;
8. Any garnishment or attachment of wages, charging order or voluntary wage execution, including the amount, court, nature of the obligation and the holder of the obligation;
9. Any repossessions of real or personal property;
10. Any guarantees, co-signatures or insuring of payments of financial obligations of any persons or business entities;
11. Status as executor, administrator or fiduciary of any estate;
12. Life insurance policies on the qualifier's life which name someone other than the qualifier's family as a beneficiary;
13. Positions held, assets held, or interest received in any estate or trust;
14. Whether the qualifier has ever been bonded for any purpose or been denied any type of bond, including the nature of the bond and if applicable, the reason for denial;
15. Insurance claims in excess of \$100,000.00 by the qualifier or the qualifier's spouse or dependent children;
16. Referral or finder's fees in excess of \$10,000.00;
17. Loans in excess of \$10,000.00 made or received by the qualifier, the qualifier's spouse or dependent children;
18. Gifts in excess of \$10,000.00 given or received by the qualifier or the qualifier's immediate family;
19. Brokerage or margin accounts with any securities or commodities dealer;
20. Currency exchanges in an amount greater than \$10,000.00;
21. Information regarding any instance where the qualifier or any entity in which the qualifier was a director, officer or holder of a five percent or greater interest has traded in foreign currencies or in a foreign commodities exchange, sold or purchased discounted promissory notes or other commercial paper, or been a party to any leasing arrangements in excess of \$50,000.00; and
22. Information regarding any ownership interest or financial investment by the qualifier in any entity which holds or is an applicant for a license issued by the commission, or in any gambling venture which does not require licensure by the commission, including persons providing or reasonably anticipated to provide the qualifier with support in the financing of such investment or interest; the extent and nature of the qualifier's involvement in the management and operation of the entity; whether the qualifier has or has agreed to assign, pledge or hypothecate such interest or investment, the nature and terms of any such transaction and a copy of any such agreement.

(2) In addition to the information in 205 CMR 111.03(1), a completed PHD-MA shall include the following:

- (a) The name, address, occupation and phone number of persons who can attest to the qualifier's good character and reputation;

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- (b) A waiver of liability as to the Commonwealth of Massachusetts and its instrumentalities and agents for any damages resulting from any disclosure and publication of information acquired during the license or investigation process;
- (c) Consent to inspection, searches and seizures and the supplying of handwriting exemplars; and
- (d) A signed, dated and notarized affidavit.

111.04: Massachusetts Supplemental Form

A PHD-MA-SUPP shall be submitted by each Category 1 and Category 2 license qualifier in a format prescribed by the commission and may require the qualifier to provide the following information and such additional information as the commission may, in its discretion, determine:

- (a) Name, including maiden name and any aliases or nicknames and applicable dates of use;
- (b) Date of birth;
- (c) Physical description, including a color photograph taken within the past six months;
- (d) Current address, mailing and home, if different;
- (e) Home and work telephone numbers;
- (f) Social Security Number, which information is voluntarily provided in accordance with 5 U.S.C. § 552a;
- (g) The gaming license applicant or holding company, as applicable, with which the qualifier is affiliated, and the nature of the qualifier's position with or interest in such entity;
- (h) Citizenship and, if applicable, resident alien status, including any employment authorization with expiration date; country of which the qualifier is a citizen, place of birth, port of entry to the United States, and name and addresses of sponsor(s) upon the qualifier's arrival;
- (i) Whether during the last ten years any entity in which the qualifier has been a director, officer, principal employee or a holder of 5% or more interest has:
  - 1. Made or been charged with (either itself or through third parties acting for it) bribes or kickbacks to any government official, domestic or foreign, to obtain favorable treatment or to any company, employee or organization to obtain a competitive advantage;
  - 2. Held a foreign bank account or has had authority to control disbursements from a foreign bank account;
  - 3. Maintained a bank account or other account, whether domestic or foreign, which is not reflected on the books or records of the business or which is in a name other than the name of the business;
  - 4. Donated, loaned or used funds or property for the use or benefit of or in opposing any government, political party, candidate or committee either domestic or foreign;
  - 5. Compensated any of its directors, officers or employees for time and expenses incurred in performing services for the benefit of or in opposing any government or political party domestic or foreign; or
  - 6. Made any loans, donations or other disbursement to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions whether domestic or foreign;
- (j) Copies of Federal and foreign tax returns and related information for the last five years; and
- (k) A signed, dated and notarized release authorization which shall direct all courts, probation departments, military organizations, selective service boards, employers, education institutions, banks, financial and other institutions and all governmental agencies, Federal, state and local, both foreign and domestic, to release any and all information pertaining to the qualifier as requested by the commission, the bureau or a contractor investigator.
- (l) A completed PHD-MA-SUPP shall include the following:
  - 1. The name, address, occupation and phone number of persons who can attest to the qualifier's good character and reputation;
  - 2. a waiver of liability as to the Commonwealth of Massachusetts and its instrumentalities and agents for any damages resulting from any disclosure and publication of information acquired during the license or investigation process; and
  - 3. a signed, dated and notarized affidavit.

111.05: Withdrawal of Application

(1) Except as provided in 205 CMR 111.05(2), a written notice of withdrawal of an application or renewal papers may be filed by an applicant, qualifier, licensee or registrant at any time prior to final commission action thereon.

(2) A withdrawal request submitted in accordance with 205 CMR 111.05(1) shall be permitted without the need for commission approval except under the following conditions, in which cases no withdrawal will be allowed without express commission approval upon a finding of good cause:

- (a) If a hearing on an initial application or renewal has been requested by a party or directed by the bureau or commission;
- (b) If the application or renewal matter has been transmitted to a bureau presiding officer;
- (c) If the application or renewal matter has been assigned to any other hearing examiner authorized by law to hear such matter; or
- (d) If the commission has made a determination to hear the application or renewal matter directly.

(3) If the commission agrees to grant withdrawal under any of the circumstances in 205 CMR 111.05(2), the commission may condition that withdrawal with appropriate terms it deems necessary, including, but not limited to, a period of time within which the applicant may not re-apply.

(4) Any person or entity holding a credential issued by the commission, including, without limitation, a license or registration as a key gaming employee, a gaming employee, a gaming vendor, gaming service employee, or a non-gaming vendor may offer to surrender such credential by written request signed by the credential holder or a person authorized to sign on behalf of an entity. Surrender shall be for a term of five years from the date the request is granted by the commission. No refund of any kind shall be authorized or granted in connection with the surrender of a credential. Surrender shall be granted at the sole discretion of the commission.

REGULATORY AUTHORITY

205 CMR 111.00: M.G.L. c. 23K, §§ 4(37), 5, 9, and 12.