

205 CMR: MASSACHUSETTS GAMING COMMISSION  
205 CMR 129.00: TRANSFER OF INTERESTS

Section

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129.01: Transfers Requiring Commission Approval

(1) A gaming licensee, ~~or~~ applicant for a gaming license, ~~or~~ **respective parent, holding company or intermediary company thereof**, may not grant a security interest in or transfer or assign all or a portion of its interest in, or in an application for, a ~~category 1 or category 2~~ gaming license ~~granted under M.G.L. c. 23K~~ **or a gaming establishment** without prior notification ~~to~~ and approval ~~as may be required herein by the commission~~ **in accordance with 205 CMR 129.00. For purposes of 205 CMR 129.00, the term ‘transfer’ is as defined by M.G.L. c.23K, §2, but shall be construed so as to include both the gaming establishment and the gaming license. Nothing in 205 CMR 129.00 shall be interpreted so as to preempt the requirements of 205 CMR 116.00: *Persons Required to be Licensed or Qualified.***

(2) **For purposes of 205 CMR 129.01, ~~T~~transfer, assignment and granting of a security interest shall include, but ~~are~~ not ~~be~~ limited to:**

- (a) transfer of any direct or indirect interest in a gaming license;
- (b) transfer of any direct or indirect interest, including the granting of a security interest, **in a gaming establishment including the real property, premises, and facilities, ~~or personal property utilized in a gaming establishment~~ either before or after the issuance of an operation certificate ~~from the commission~~ pursuant to 205 CMR 151.00: *Requirements for the Operations and Conduct of Gaming at a Gaming Establishment.***
- (c) transfer of any right or interest in a pending application **or application for renewal** for a gaming license, ~~including an application for which a determination of suitability has been made by the commission pursuant to 205 CMR 115: Phase 1 Suitability Determination, Standards and Procedures.~~
- (d) entering into an option contract, management contract or other agreement or contract providing for a transfer identified in 205 CMR 129.01(2)(a) through (c) in the present or future;
- (e) transfer of an interest in a parent, holding company or intermediary company of a gaming licensee that results in a change of control over the gaming licensee.

(3) Except for the transfers listed in 205 CMR 129.01(4), ~~below,~~ a gaming licensee or an applicant for a gaming license shall notify the ~~commission's investigation and enforcement bureau (the "bureau") of~~ **in accordance with 205 CMR 129.02 prior to or, where applicable, promptly when it becomes aware of,** any ~~proposed transfer of a direct or indirect interest in a category 1 or category 2 gaming license or the transfer of any direct or indirect interest in real or personal property used or to be used in a licensed gaming establishment prior to entering into such transfer,~~ **assignment, or granting of a security interest as described in 205 CMR 129.01(2).**

(4) Notwithstanding 205 CMR 129.01(1) and (2), **in accordance with M.G.L. c.23K, §21(b),** the following transfers do not require prior notification to the ~~IEB~~ **bureau** and/or approval by the commission pursuant to 205 CMR 129.01:

(a) The transfer of any interest in ~~the holder of a category 1 or category 2 a gaming licensee or in an applicant or qualifier who is applying for a category 1 or category 2 gaming license, or a holding, parent or intermediary company of the holder of a category 1 or category 2 gaming license or an applicant or qualifier who is applying for a category 1 or category 2 gaming license~~ **of a gaming licensee,** where such transfer directly or indirectly constitutes, or results in the proposed transferee and its affiliates having less than or equal to a five per cent interest in ~~the holder of the gaming license or in the applicant or qualifier applying for a category 1 or category 2 gaming license or in the holding, parent or intermediary company of the holder of a category 1 or category 2 gaming license or of the applicant or qualifier applying for a category 1 or category 2 gaming license~~ **thereof.**

(b) The transfer of a publicly traded interest in ~~the holder of a category 1 or category 2 gaming license or in an applicant or qualifier who is applying for a category 1 or category 2 gaming license, or a holding, parent or intermediary company of the holder of a category 1 or category 2 gaming license or an applicant or qualifier who is applying for a category 1 or category 2 gaming license~~ **of a gaming licensee** of the holder of a category 1 or category 2 gaming license or an applicant or qualifier who is applying for a category 1 or category 2 gaming license provided, however, **that there is not a change of control in the gaming licensee** that if such transfer results in a change in control of the holder of a category 1 or category 2 gaming license or in an applicant or qualifier who is applying for a category 1 or category 2 gaming license, or a holding, parent or intermediary company of the holder of a category 1 or category 2 gaming license or an applicant or qualifier who is applying for a category 1 or category 2 gaming license, the category 1 or category 2 gaming licensee or applicant or qualifier for a category 1 or category 2 gaming license shall notify the bureau as soon as allowed under applicable securities laws.

(c) The granting of a security interest in return for financing to a bona fide banking institution, as defined in M.G.L. c. 167A, §1, ~~or a commercial financial institution as defined in M.G.L. c.63, §1,~~ so long as the bona fide banking institution or the commercial financial institution does not, by virtue of its security interest, exercise control over ~~the holder of the category 1 or category 2 gaming licensee or applicant or qualifier for a category 1 or category 2 gaming license.~~

**(d) The purchase of up to a 15% interest in the gaming licensee or holding or parent company thereof, by an institutional investor, as defined in M.G.L. c.23K, §2, or qualified institutional buyers (including, but not limited to, entities that fall within the accredited investor category as defined in United States Securities and Exchange Commission Rule 501**

of Regulation D) shall require notice to the bureau, but not approval by the commission in accordance with 205 CMR 129.00 unless otherwise determined in accordance with 205 CMR 116.00: *Persons Required to be Licensed or Qualified*.

(d) ~~the holder of a category 1 or category 2~~ A gaming licensee's transfer of ~~or granting of a security interest in slot machines,~~ gaming devices, gaming equipment, or personal property utilized or proposed to be utilized in the operation of a gaming establishment ~~in the ordinary course of business; provided that, in the case of a security interest, such interest is granted to the manufacturer or supplier or affiliate thereof of such slot machines, gaming devices, gaming equipment, or personal property.~~

(e) ~~All other transfers of a direct or indirect interest in the holder of a category 1 or category 2 gaming license or in an applicant or qualifier who is applying for a category 1 or category 2 gaming license, or a holding, parent or intermediary company of the holder of a category 1 or category 2 gaming license or an applicant or qualifier who is applying for a category 1 or category 2 gaming license or the granting of a security interest in a category 1 or category 2 gaming license, gaming licensee or real or personal property used in a gaming establishment shall require prior notification to the commission and may require commission approval after review by the bureau.~~

(5) The ~~C~~commission may waive the requirement for the approval of a transfer of any direct or indirect interest in the ~~holder of a category 1 or category 2 gaming license or in an applicant or qualifier who is applying for a category 1 or category 2 gaming license, or a holding, parent or intermediary company of the holder of a category 1 or category 2 gaming license or an applicant or qualifier who is applying for a category 1 or category 2 gaming license~~ thereof, or in the real property or personal property used in a gaming establishment and the requirement for a public hearing under 205 CMR 129.02 if the transfer does not result in a change in control in the ~~holder of a category 1 or category 2 gaming license or in an applicant or qualifier who is applying for a category 1 or category 2 gaming license, or a holding, parent or intermediary company of the holder of a category 1 or category 2 gaming license or an applicant or qualifier who is applying for a category 1 or category 2 gaming license~~ thereof or does not result in a change in control of the real property used in the gaming establishment.

(6) If a transfer results in a change in control of the gaming licensee, the transferee shall, as a condition of the transfer, unless otherwise allowed by the commission, agree to assume all obligations of the transferor including commitments made in the RFA-2 application, all terms and conditions contained in the gaming license, operation certificate, host community agreement, surrounding community agreements, impacted live entertainment venue agreements, and any other associated agreements, and all permits, licenses, and other approvals issued by any federal, state, and local governmental agencies concerning the construction and operation of the gaming establishment.

#### 129.02: Process for Commission Approval of Transfers

(1)

(A) Before taking any action requiring approval pursuant to 205 CMR 129.01, **or as otherwise required, or promptly upon becoming aware of such action,** the transferor shall notify the bureau in writing of ~~its intent to take~~ such action, and shall identify the proposed transferee and the proposed transferee's qualifiers in accordance with 205 CMR 116.04: Notification of Anticipated or Actual Changes in Directors, Officers or Equivalent Qualifiers **and shall set forth all material facts relating to the transaction and be accompanied by copies of the documents evidencing the transaction.**

(B) In accordance with M.G.L. c.23K, §22, the sale, assignment, transfer, pledge or other disposition of any security issued by a person which holds a gaming license shall be conditional and shall be ineffective if disapproved by the commission. Further, the transferor shall not surrender possession of any securities requiring prior approval for transfer without the approval of the commission. Without leave granted by the commission, no money or other thing of value constituting any part of the consideration for the transfer or acquisition of any interest identified in 205 CMR 129.01(2) shall be paid over, received or used until complete compliance has been had with all prerequisites set forth in M.G.L. c.23K and 205 CMR 129.00 for the consummation of such transaction; but such funds may be placed in escrow pending completion of the transaction.

(2) Where prior notice of a transfer is required by the United States Securities and Exchange Commission or its equivalent in a foreign jurisdiction, notice to the bureau pursuant to 205 CMR 129.02(1) shall be given at the same time such notice is provided to the United States Securities and Exchange Commission or its equivalent in a foreign jurisdiction.

(3) Upon receipt of a written notice of ~~intent~~ pursuant to 205 CMR 129.02(1), the bureau may take one or more of the following actions:

(a) pursuant to 205 CMR 116.04: Notification of Anticipated or Actual Changes in Directors, Officers or Equivalent Qualifiers take appropriate action including, but not limited to, a notice to new qualifiers requiring the filing of an appropriate application and the subsequent investigation of that application;

(b) require the proposed transferee to file with the commission an RFA-1 application pursuant to 205 CMR 111.00: Phase 1 Application Requirements or an RFA-2 application pursuant to 205 CMR 119.00: Phase 2 Application, and hold the licensee, applicant, or proposed transferee responsible for the payment of all fees for investigations of the ~~intended~~ proposed transferee and its qualifiers;

(c) where the proposed transfer is of a gaming license ~~for a gaming establishment~~ whether or not the **gaming** licensee has received an operation certificate from the commission, or for the transfer of any direct or indirect interest in ~~real property or personal property utilized in operating such~~ the gaming establishment, require the transferor and proposed transferee to demonstrate that the proposed transfer complies with the waiting period provision of M.G.L. c. 23K, § 23(c), and that the proposed transferee is able to comply with all provisions of and conditions imposed by:

(i) **M.G.L. c. 23K and 205 CMR;**

(ii) the gaming license for the gaming establishment and all of the conditions to the that license;

(iii) all permits, licenses and approvals issued by any federal, state, and local governmental agencies concerning the construction and operation of the gaming establishment;

(iv) the host community agreements, surrounding community agreements, and impacted live entertainment venue agreements concerning the gaming establishment; and

(v) any other additional reasonable conditions required by the commission. If the proposed transferee cannot comply with the conditions required by this section or any other conditions required by the commission the proposed transferee shall file with the commission a petition describing the conditions with which the proposed transferee cannot comply, the reasons why such compliance is not possible and the relief requested by the proposed transferee. The commission may hold a public hearing on such petition or may review such petition as part of the hearing held under 205 CMR 129.02 (3)(d).

(d) The bureau may request that the Commission hold a public hearing to consider the proposed transfer. **If a person contracts to transfer any property relating to an ongoing gaming establishment, including a security holding in a gaming licensee or parent, holding or intermediary company, under circumstances which require that the transferee to be qualified in accordance with 205 CMR 116.02 and/or M.G.L. c.23K the commission shall hold a hearing and render a decision on the authorization of the transfer.** As part of the hearing, pursuant to M.G.L. c. 23K, § 23(c), the commission may determine whether to grant interim authorization to allow the proposed transferee to operate the gaming establishment pending the approval of the transfer of a gaming license to the proposed transferee where:

(i) the proposed transfer is of a gaming license for a gaming establishment that has received an operation certificate from the commission, or the transfer of any direct or indirect interest in real property or personal property utilized in operating such a gaming establishment, and

(ii) the proposed transferee has requested interim authorization to continue to operate the gaming establishment pending the commission's approval of the transfer of the gaming license or the award of a new license for the gaming establishment;

(e) where the proposed transfer is of a gaming license for a gaming establishment that has not received an operation certificate from the commission, or the transfer of any direct or indirect interest in real property or personal property to be utilized in operating such gaming establishment, the commission may require the proposed transferee to demonstrate its ability to comply with all provisions of and conditions imposed by:

(i) 205 CMR 129.02(3)(c); and

(ii) construction schedules, deadlines, and goals for the completion of construction of and commencement of operation at the gaming establishment.

(f) The commission may require the transferor or proposed transferee to pay to the commission a nonrefundable fee equal to the costs associated with the processing of the notice of ~~intent to transfer~~ pursuant to 205 CMR 129.02 and the investigation of the proposed transfer, proposed transferees and any qualifiers thereto **in accordance with 205 CMR 114.04**. If the transferor or proposed transferee fails to pay the fee to the commission within 30 days after notification of the amount of such fee, the request to approve the transfer may be rejected. ~~Where the transfer constitutes a complete transfer of a gaming license and the commission determines that the proposed transferee is a new applicant for such gaming license, the commission may also require the proposed transferee to pay a non-refundable application fee pursuant to 205 CMR 114.01: Application Fees.~~

(4) After reviewing the materials submitted in support of a request to approve a transfer pursuant to 205 CMR 129.01 and 129.02, the commission may approve or reject the request, request additional information from the proposed transferor, proposed transferee, gaming licensee, applicant, members of the public, host communities, surrounding communities, or impacted live entertainment venues, and may schedule one or more public hearings to address issues concerning the request. The commission may solicit comments from host communities, surrounding communities, impacted live entertainment venues, and the public in advance of or at such public hearing.

(5) The commission shall reject any transfer requiring approval pursuant to 205 CMR 129 to a person that it finds unsuitable pursuant to G.L. c. 23K or 205 CMR 115: Phase 1 Suitability Determination, Standards, and Procedures.

(6) The commission may reject any transfer that does not comply with the provisions of M.G.L. c. 23K.

(7) Pursuant to M.G.L. c. 23K, § 20(e), the commission shall not approve the transfer of a category 2 **gaming** license ~~during the initial five year term of the license~~ **for 5 years after the initial issuance of the license** unless one of the following has occurred:

- (a) the gaming licensee experiences a change in ownership;
- (b) the licensee fails to maintain suitability; or
- (c) a majority of the commission determines that other circumstances exist which affect the gaming licensee's ability to operate the gaming establishment successfully.

(8) The commission may reject any transfer requiring approval pursuant to 205 CMR 129.01 that it finds would be disadvantageous to the interests of the ~~Commonwealth of Massachusetts~~. **A transfer shall be considered disadvantageous to the interests of the commonwealth if the commission determines that the transferee does not satisfy the applicable considerations set forth in M.G.L. c.23K, §§12(a), 15, 18 or any other applicable provisions of M.G.L. c.23K or 205 CMR, and/or the transferee does not agree to assume an obligation(s) described in 205 CMR 129.01(6) or any other condition imposed by the commission without the commission's prior approval.**



(9) If the commission makes a positive determination concerning any proposed transfer requiring approval pursuant to 205 CMR 129.01, the commission may:

(a) place any additional conditions or restrictions on that transfer;

(b) require the transferor or proposed transferee or both to pay any outstanding fees, taxes, fines, or payments required pursuant to M.G.L. c. 23K, 128A and 128C, or any other payments owed by the transferor to the Commonwealth of Massachusetts, the commission, host communities, surrounding communities, impacted live entertainment venues, patrons, employees, contractors, and other persons and governmental entities.

(10) **[See attached options]** Pursuant to M.G.L. c. 23K, § 21(b) (ii), if the interest being transferred is an interest in the category 1 or category 2 gaming license, the commission may require the transferor, proposed transferee or both to pay to the commission a share of the increased value of the category 1 or category 2 license. In determining the amount of such payment, the commission shall assume that the initial value of the category 1 license is equal to \$85 million and the initial value of a category 2 license is \$25 million (“Initial Value”) and that the value of the category 1 or category 2 license has increased during the period between the award of the license and the date of the proposed transfer by an amount equal to the Initial Value times the Consumer Price Index (“CPI”) for the Greater Boston region or such other comparable index if the CPI index is no longer published for the period minus the Initial Value. The commission shall receive a transfer fee equal to 25% percent of the increase in the value of the category 1 license or 49% of the increase in value of the category 2 license. For purposes of this section, the category 1 or category 2 license consists of the gaming license and does not include the value of real or personal property or good will associated with the gaming establishment. The gaming licensee may submit evidence to the commission as to the calculation of the CPI and the value of the gaming license and the commission shall consider such evidence as part of its determination of the transfer fee.

(11) ~~The approved transfer of an interest in a gaming license or all interests in a gaming establishment shall divest the transferor of such authority, influence, control, rights and benefits associated with the transferred interest.~~

(12) Pursuant to M.G.L. c. 23K, § 17(g), the transferor and proposed transferee shall not be entitled to any further review of the commission’s determination regarding a transfer requiring approval pursuant to 205 CMR 129.01.

#### 129.03: Restriction of Interest in Multiple Gaming Licenses

~~(1) Except as provided in 205 CMR 129.03(2), no person or its affiliate shall be permitted to hold, indirectly or directly, an interest constituting more than a five percent interest of the value in more than one gaming license.~~

~~(2) An institutional investor as to which the commission has waived licensure or qualification may be permitted to hold more than a five percent interest of the value in more than one gaming license.~~

#### 129.0403: Required Provisions: Articles of Organization

(1) The Articles of Organization of any entity that receives a ~~Category 1 or Category 2~~ gaming license shall contain the following language:

“Notwithstanding anything to the contrary expressed or implied in these articles, the sale, assignment, transfer, pledge or other disposition of any interest in [name of organization] is ~~ineffective unless approved in advance~~ **conditional and shall be ineffective if disapproved** by the Massachusetts Gaming Commission (“Commission”). If at any time the Commission finds that any person owning an interest in [name of organization] is unsuitable to hold the interest the Commission shall immediately notify the [name of organization] of that fact. The [name of organization] shall within 10 days from the date that it receives the notice from the Commission return to the unsuitable person the amount of his, her or its capital account as reflected on the books of [name of organization] or the initial investment of the unsuitable person, whichever is less. Beginning on the date the Commission serves notice of a determination of unsuitability pursuant to the preceding sentence upon [name of organization] it is unlawful for the unsuitable person to receive any share of the distribution of profits or cash or any other property of, or payments upon dissolution of [name of organization] other than a return of capital as required above; to exercise directly or through a trustee or nominee any voting right conferred by such interest; to participate in the management of the business of [name of organization]; or to receive any remuneration in any form from [name of organization].”

REGULATORY AUTHORITY

205 CMR 129: M.G.L. c. 23K, §§ 2, 4(37); 5; 14(c), 19(c), 20(e), 21(b), 22, 23(c), 23(d), 31(e).