

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 may not, including in the course of a bankruptcy sale or in connection with providing a security interest or collateral in connection with obtaining financing or refinancing, take any of the following actions without prior notification to and approval by the commission pursuant to 205 CMR 129.02:

- (a) transfer any direct or indirect interest in a gaming license or gaming establishment;
- (b) transfer any direct or indirect interest, structure, real property, premises, facility, personal interest or pecuniary interest utilized in a gaming establishment which has received an operation certificate from the commission;
- (c) transfer any direct or indirect interest, structure, real property, premises, facility, personal interest or pecuniary interest in a licensed gaming establishment which has not received an operation certificate from the commission;
- (d) transfer a right or interest in a pending application 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; or
- (e) enter into an option contract, management contract or other agreement or contract providing for a transfer described in 205 CMR 129.01(1) (a)-(d).

(2) Notwithstanding 205 CMR 129.01(1), the following transfers do not require prior notification to and approval by the commission pursuant to 205 CMR 129.01:

- (a) The transfer of any interest in a business which holds or is applying for a gaming license, or a holding or intermediary company of such business, where such transfer directly or indirectly constitutes, or results in the transferee and its affiliates having, less than or equal to a five per cent interest in the gaming license or the business holding the gaming license.
- (b) The transfer of a publicly traded interest in a business which owns a gaming establishment, or which holds or is applying for a gaming licensee, or in a holding, intermediary, or parent company of such a business where such transfer directly or

indirectly constitutes, or results in the transferee and its affiliates having, less than or equal to five per cent of the common stock of such business.

(c) A transfer to a bona fide banking institution, as defined in M.G.L. c. 167A, §1, or a commercial financial institution which results in the institution becoming a substantial party of interest with a gaming licensee pursuant to M.G.L. c. 23K, § 21(b)(i).

(d) An applicant's or gaming licensee's transfer of gaming devices, gaming equipment, or personal equipment utilized or proposed to be utilized in the operation of a gaming establishment unless such transfer directly or indirectly constitutes more than five per cent of the value of all of the personal equipment utilized or proposed to be utilized in the operation of a gaming establishment.

(3). The Commission may waive the requirement for the approval of a transfer of any direct or indirect interest, structure, real property, premises, facility, personal interest or pecuniary interest of the gaming licensee, holding, intermediate or parent company of the gaming licensee if the transfer does not result in a change in control of the gaming licensee, holding, intermediate or parent company of the licensee.

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

(1) Before taking any action requiring approval pursuant to 205 CMR 129.01(1), the transferor shall notify the commission in writing of its intent to take such action and to transfer some or all of its interests and shall identify the intended transferee and the intended transferee's qualifiers in accordance with 205 CMR 116.04: Notification of Anticipated or Actual Changes in Directors, Officers or Equivalent Qualifiers.

(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 commission pursuant to 205 CMR 129.02(1) shall be given at the same time such prior 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 commission may take one or more of the following actions:

(a) refer the matter to the bureau pursuant to 205 CMR 116.04: Notification of Anticipated or Actual Changes in Directors, Officers or Equivalent Qualifiers for 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 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 transferee responsible for the payment of all fees for investigations of the intended transferee and its qualifiers;

(c) where the proposed transfer is of a gaming license for a gaming establishment that has received an operation certificate from the commission, or any direct or indirect

interest, structure, real property, premises, facility, personal interest or pecuniary interest utilized in operating such gaming establishment, require the transferor and transferee to demonstrate that the proposed transfer complies with the waiting period provision of M.G.L. c. 23K, § 23(c), and that the transferee is able to comply with all provisions of and conditions imposed by:

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

(ii) the gaming license for that gaming establishment;

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

(d) hold a public hearing pursuant to M.G.L. c. 23K, § 23(c), to determine whether to grant interim authorization to allow the transferee to operate the gaming establishment pending the approval of the transfer of a gaming license to the 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 any direct or indirect interest, structure, real property, premises, facility, personal interest or pecuniary interest utilized in operating such a gaming establishment, and

(ii) the 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 any direct or indirect interest, structure, real property, premises, facility, personal interest or pecuniary interest utilized in operating such gaming establishment, require the 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) require the transferor or 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, transferees and any qualifiers thereto.; If the transferor or 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 transferee is a new applicant for such gaming license, the commission may also require the 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, transferee, gaming licensee, applicant, member of the public, host communities, surrounding communities, or impacted live entertainment venues, or schedule a public hearing for any such entity 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, § 23(c).

(7) Pursuant to M.G.L. c. 23K, § 20(e), the commission shall not approve the transfer of a category 2 license during the initial five year term 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.

(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 transferee or both to pay any outstanding fees, taxes, fines, payments required pursuant to G.L. cc. 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;

(c) Pursuant to M.G.L. c. 23K, § 21(b) (ii), require the transferor, transferee or both to pay to the commission 50% of the increased value for the transferred licenses, property or interest. In determining the amount of such payment, the Commission shall consider the market value of the gaming license, property or interest when it was initially acquired by the transferor and at the time of the transfer. The commission may require an appraisal by an independent third party of the value of the gaming license, property or interest at the time of the transfer. Such independent third party appraiser shall conduct the appraisal using procedures customarily accepted by the appraising profession.

(10) 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.

(11) Pursuant to M.G.L c. 23K, §17(g), the proposed transferor and 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 of 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 of more than one gaming license.

#### 129.04: 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 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 its capital account as reflected on the books of [name of organization]. 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 receives 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).

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