

Significant Influence in Casinos

The Department of Internal Affairs advises casino operators to seek the assistance of a chartered accountant or similar when considering significant influence guidelines and assessing circumstances that may confer significant influence in relation to their casino licence.

Significant influence is primarily an accounting term. It is used for the purpose of determining whether one company should account for another as an associate or not. In accounting, significant influence refers to the holding of a large portion of the equity of a corporation, usually at least 20 per cent, which gives the holder a significant amount of control over the corporation.

The Gambling Act 2003, however, treats 'significant influence' in relation to casinos as a much broader concept than a mere financial interest. For example, the term encompasses senior management and decision making roles. The Act provides some prescriptive guidelines on persons associated with the casino industry who are considered to hold, or who will hold a significant influence. This is set out under section 7 of the Act.

Section 7(1) notes specific circumstances and positions that would result in a person having a significant influence. Section 7(2) is much wider in scope, and includes any influence that the Secretary of Internal Affairs or the Gambling Commission considers to be significant. Following are a set of guidelines to assist you to assess whether a person may have a significant influence under each subsection of section 7.

The Secretary may undertake any investigations considered necessary to determine if a person has, or is likely to have a significant influence in relation to a casino. Subject to those investigations and any other relevant information received the decision as to whether or not a person has a significant influence in a casino rests with the Secretary or the Gambling Commission where relevant.

Section 7(1)

Section 7(1) lists three specific areas where a person is considered to have a significant influence:

- Where a person is, or will be, a director of a company that holds a casino operators or venue licence
- Where a person is employed or engaged by the holder or proposed transferee or alienee, of a casino licence, to be a chief executive, or a senior manager of a casino
- Where a person owns or will own, shares directly or indirectly, in the holder of, or applicant for, or proposed transferee or alienee of a casino licence, that confer control of 20 per cent or more of shareholder voting rights.

Director of a company

The term director with relation to section 7(1)(a) includes persons described in section 126(1) of the Companies Act 1993.

They are:

- A person occupying the position of director of the company by whatever name called;
- A person in accordance with whose directions or instructions, any director or the board of the company may be required or is accustomed to act;
- A person who exercises or who is entitled to exercise or who controls or who is entitled to control the exercise of powers which, apart from the constitution of the company, would fall to be exercised by the board;
- A person to whom a power or duty of the board has been directly delegated by the board with that person's consent or acquiescence, or who exercises the power or duty with the consent or acquiescence of the board;
- Any person in accordance with whose directions or instructions a person referred to above may be required or is accustomed to act in respect of his or her duties and powers as a director.

Chief executives and senior managers

Chief executives are those positions that report directly to the Board of Directors (or equivalent).

Due to the diversity of management structures and titles, senior managers may include, but are not limited to:

- General Managers
- Deputy Directors, or Assistant Directors
- Deputy Chief Executives, or Assistant Chief Executives
- Chief Financial Officers (or equivalents)
- Chief Operating Officers (or equivalents)

- Chief Legal Officers (or equivalents)
- Persons who report directly to the Board of Directors
- Persons who report directly to a person who reports directly to the board
- Persons within three levels of reporting from the board who are concerned or take part in the management of the business
- Persons who manage a principal business unit, division, or function.

Shareholdings that confer control of 20 per cent voting rights

Shareholdings that confer control of 20 per cent or more of the voting rights of the licence holder can be held directly or indirectly, for example indirectly through control of another company or entity.

Section 7(2)

Section 7(2) provides that a significance influence can include any influence the Secretary considers to be significant in the *management, ownership, or operation of a casino*. Therefore, significant influence may exist beyond the circumstances prescribed in section 7(1).

The Department acknowledges that the scope of section 7(2) could be quite wide, and that it is therefore difficult to provide a definitive list of circumstances / positions that would confer significant influence. However the Department asks that you consider the following questions in relation to any person, including a company that has, or may have the ability, directly or indirectly, to materially influence the management, ownership, or operation of a casino. The questions are guidelines only and in most cases a determination will be made on a case-by-case basis.

- Does the person have the ability to *participate in, or materially influence* the casino's management, ownership, or operational policies?
- Does the person have the power to decide, or the ability to *influence* financial policy decisions of the casino?
- Does the person have an *influence* in *establishing* the casino's management, ownership, or operational policies?
- Does the person have an *influence* in *establishing* the casino's financial policies?

- Does the person have the ability to *materially influence* the *economic behaviour* (e.g. decisions relating to pricing, purchasing, distribution, marketing or investment) of the casino or of a part of the casino?
- When a person holds less than the 20 per cent of voting power prescribed in section 7(2)(c), it is presumed that the person does not have a significant influence, unless such influence can be clearly demonstrated.

The following numbered types of situations might demonstrate the existence of significant influence:

1. A person or entity is *represented* on the board of directors or equivalent governing body of the casino.
2. A person or entity *participates* in *strategic* policy-making processes and decisions of the casino.
3. The existence of *material transactions*, acquisitions or dispositions (financial or otherwise) between the person or entity and the casino.
4. The *interchange of managerial personnel* between a person or entity and the casino.
5. The *provision of essential technical information* between a person or entity and the casino.

These persons or entities may be, for example:

- Companies, trusts, partnerships, associations, firms, or joint ventures;
- Directors or senior managers of a parent-company, sister-companies, subsidiaries, affiliated companies etc;
- De facto decision makers with no official position;
- Principals behind 'Shell companies'.