

ARTICLE 6B. INTERIM CASINO AUTHORIZATION

5:12-95.12 Applicability and requirements

a. Except as provided in subsection b. of this section, whenever any person contracts to transfer any property relating to an ongoing casino operation, including a security holding in a casino licensee or holding or intermediary company, under circumstances which require that the transferee obtain casino licensure under section 82 of the "Casino Control Act," P.L.1977, c.110 (C.5:12-82), or qualification under section 84 or 85 of the "Casino Control Act," P.L.1977, c.110 (C.5:12-84 and 5:12-85), the contract shall not specify a closing or settlement date which is earlier than the 121st day after the submission of a completed application for licensure or qualification, which application shall include a fully executed and approved trust agreement in accordance with section 5 of this 1987 amendatory and supplementary act. Any contract provision which specifies an earlier closing or settlement date shall be void for all purposes. Subsequent to the earlier of the report of the division on interim authorization or the 90th day after the timely submission of the completed application, but no later than the closing or settlement date, the commission shall hold a hearing and render a decision on the interim authorization of the applicant. If the commission grants interim authorization, then, subject to the provisions of sections 3 through 7 of this 1987 amendatory and supplementary act, the closing or settlement may occur without interruption of casino operations. If the commission denies interim authorization, there shall be no closing or settlement until the commission makes a determination on the qualification of the applicant, and if the commission then denies qualification the contract shall thereby be terminated for all purposes without liability on the part of the transferor.

b. Whenever any person, as a result of a transfer of publicly traded securities of a casino licensee or a holding or intermediary company or a financing entity of a casino licensee, is required to qualify under section 84 or 85 of the "Casino Control Act," P.L.1977, c.110 (C.5:12-84 and 5:12-85), the

person shall, within 30 days after the commission determines that qualification is required or declines to waive qualification under section 84, under paragraph (1) of subsection d. of section 85, or under subsection f. of section 85, or within such additional time as the commission may for good cause allow, file a completed application for such licensure or qualification, which application shall include a fully executed and approved trust agreement in accordance with section 5 of P.L.1987, c.409 (C.5:12-95.14), or in the alternative, such person, within 120 days after the commission determines that qualification is required or a waiver of qualification is denied, shall divest such securities as the commission may require in order to remove the need for qualification. If such person determines to divest such securities, notice of such determination shall be filed with the commission within 30 days after the commission determines that qualification is required or that a waiver of qualification is denied. No extension of the time for filing a completed application shall be granted unless the person submits a written acknowledgment of the jurisdiction of the commission and the obligations imposed by the "Casino Control Act," P.L. 1977, c.110 (C.5:12-1 et seq.). If a person required by this section to file an application fails to do so in a timely manner, such failure shall constitute a per se disqualification to continue to act as a security holder, and the commission shall take appropriate action under the "Casino Control Act." If a person required by this section to file an application does so in a timely manner, then, subsequent to the earlier of the report of the division on interim authorization or the 90th day after submission of the completed application, but not later than the 120th day after such submission, the commission shall hold a hearing and render a decision on the interim authorization of such person. The pendency of proceedings under this subsection shall not prevent the renewal of a casino license under section 88 of the "Casino Control Act," P.L. 1977, c.110 (C.5:12-88), so long as any person

required by this subsection to file an application has complied with this subsection and has otherwise complied with the "Casino Control Act."

L.1987, c.409, § 3, eff. Jan. 14, 1988.

Amended by:

L.1991, c.182, §32, eff. June 29, 1991.

5:12-95.13 Commission consideration of request for interim casino authorization

a. The commission may grant interim authorization where it finds by clear and convincing evidence (1) that statements of compliance have been issued pursuant to sections 81, 82c., 82d., 82e., 84e., and 134 of the "Casino Control Act," P.L.1977, c.110 (C.5:12-81, 5:12-82, 5:12-84, and 5:12-134); (2) that the casino hotel facility is an approved hotel in accordance with the requirements of section 83 of the "Casino Control Act," P.L.1977, c.110 (C.5:12-83); (3) that the trustee or trustees required by section 5 of this 1987 amendatory and supplementary act have satisfied the qualification criteria applicable to a casino key employee, except for residency; and (4) that interim operation will best serve the interests of the public with particular reference to the policies and purposes enumerated in section 1 of the "Casino Control Act," P.L.1977, c.110 (C.5:12-1).

b. The commission's consideration of a request for interim authorization shall include, but not be limited to, consideration of such relevant information as may be presented to it by the division. In responding to the request and in determining whether to concur, the division shall not be required to disclose any information the disclosure of which, in its judgment, may prejudice or otherwise compromise any continuing investigation.

L.1987, c.409, § 4, eff. Jan. 14, 1988.

Amended by:

L.1995, c. 18, §33, eff. Jan. 25, 1995.

5:12-95.14 Provisions and application of trust agreement

a. (1) Where the applicant is not required to obtain a casino license, the trust agreement filed pursuant to section 3 of this 1987 amendatory and supplementary act shall transfer and convey all of the applicant's present and future right, title and interest in the property described in section 3, including all voting rights in securities, to the trustee.

(2) Where the applicant is required to obtain a casino license, the trust agreement filed pursuant to section 3 of this 1987 amendatory and supplementary act shall transfer and convey to the trustee, if the applicant is a corporation, all outstanding equity securities of the corporation, and, if the applicant is other than a corporation, all outstanding interest in the applicant.

(3) The compensation for the service, costs and expenses of the trustee or trustees shall be stated in the trust agreement and shall be approved by the commission.

(4) The trust agreement filed pursuant to section 3 of this 1987 amendatory and supplementary act shall, in all instances, contain such provisions as the commission may deem necessary and desirable.

b. With respect to applicants described in subsection b. of section 3 of this 1987 amendatory and supplementary act, if the commission denies interim authorization, it shall order that the trust agreement become operative, or take such other action as may be appropriate in accordance with this 1987 amendatory and supplementary act. With respect to all applicants under section 3, if the commission grants interim authorization, it shall thereafter order that the trust agreement become operative at such time as it finds reasonable cause to believe that the applicant or any person required to be qualified in connection with the application may be found unqualified.

c. While the trust agreement remains operative, the trustee shall exercise all rights incident to the ownership of the property subject to the trust, and shall be vested with all powers, authority and duties necessary to the unencumbered exercise of such rights, as provided in sections 31 through 40 of P.L.1978, c.7 (C.5:12-130.1 through 5:12-130.11), except that the applicant

shall have no right to participate in the earnings of the casino hotel or receive any return on its investment or debt security holdings during the time the trust is operative.

d. The trust agreement, once operative, shall remain operative until the commission finds the applicant qualified, or the commission finds the applicant unqualified and the property subject to the trust is disposed of in accordance with subsection e. of section 5 of this 1987 amendatory and supplementary act, except that the applicant may request the commission to direct the trustee to dispose of the property subject to the trust, in accordance with that subsection e., prior to a finding with respect to qualification.

e. If the commission denies qualification to a person subject to sections 3 through 7 of this 1987 amendatory and supplementary act, the trustee shall endeavor and be authorized to sell, assign, convey or otherwise dispose of all property subject to the trust to such persons as shall be appropriately licensed or qualified or shall obtain interim authorization in accordance with those sections. The disposition of trust property by the trustee shall be completed within 120 days of the denial of qualification, or within such additional time as the commission may for good cause allow, and shall be conducted in accordance with sections 31 through 40 of P.L.1978, c.7 (C.5:12-130.1 through 5:12-130.11), except that the proceeds of such disposition shall be distributed to the unqualified applicant only in an amount not to exceed the lower of the actual cost of the assets to such unqualified applicant, or the value of such assets calculated as if the investment had been made on the date the trust becomes operative, and any excess remaining proceeds shall be paid to the casino revenue fund.

L.1987, c.409, § 5, eff. Jan. 14, 1988.

Amended by:

L.1991, c.182, §33, eff. June 29, 1991.

5:12-95.15 Obligations and responsibilities

During the period of interim authorization, the commission and the division shall continue such procedures as are provided by the "Casino Control Act," P.L.1977, c.110 (C.5:12-1 et seq) and the regulations promulgated thereunder as may be necessary for a determination of the qualification of the person granted interim authorization. The obligations and responsibilities incumbent upon an applicant, licensee or person required to be qualified are in no way relieved by the granting of interim authorization.

L.1987, c.409, §6, eff. Jan. 14, 1988.

5:12-95.16 Time for determining qualification

Within nine months after a grant or denial of interim authorization, which period may be extended by the commission for one three-month period, the commission shall hold a hearing and render a decision on the qualification of the applicant.

L.1987, c.409, §7, eff. Jan. 14, 1988.