

A Checklist: Questions That New Gaming Jurisdictions Need to Consider in Adopting Gaming Laws and Regulations

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Commercial lawyers often use checklists on particular transactions to make sure that they are covering all the points necessary to achieve the best and most comprehensive contract for their client. These checklists are not model contracts, nor do they reflect the result of the negotiations between the parties, but simply identify the points that each interested party to the contract should consider. For example, in a royalty contract, a relevant question on a checklist is whether there are royalties based on any measure tied to a product's sales. If the answer is affirmative, there may be many options for calculation (e.g., a percentage of gross sales vs. net profits), each with their own practical challenges.

The following checklist has a similar function. It sets out the major items that should be considered in crafting a regulatory system. It does not offer a model gaming regulatory system. It is not even the first step of the process of adopting regulations. To explain this point, let's go back to a commercial contract example. Suppose you just came up with a new device to make soft-boiled eggs. You have obtained a patent and have done all the market research to determine that you have a marketable product. At this point, you may consider all your options on how to bring your product to market. For example, you could manufacture it or you could simply license it to a manufacturer. If you decide to license it, you should have some idea of what you want from the relationship with the manufacturer. A smart business person would not approach a potential manufacturer without some idea of the basic structure and terms of the contract that they are seeking. If both the inventor and the manufacturer have mutual interest in the product, they might then agree on the major terms in a letter of intent or a term sheet and then proceed to a full contract. It is at the contract stage, the second part of the process, that the checklists are most valuable.

Surprisingly, the adoption of gaming laws and regulations is a similar process. The creation of a casino industry most often starts from a common starting point. Gambling is illegal, but the government decides to craft exemptions to permit legal casinos because it wants to achieve specific public goals. These can include social goals like protecting the public against dishonest games, or assuring that players get paid if they win. More often, however, the goals are financially driven. The government is often looking for casinos to create taxes, redevelop urban areas, or boost tourism. In this regard, the government may be an equal partner with the casino owners. For example, Pennsylvania has a 55% gross gaming revenue tax on slot machines. In this case, the state is much more than an equal partner in the gaming activity because, unlike the casino, it does not bear the operating expenses.

When the state government looks to maximize tax revenues, like any good business partner, it wants to have certain controls over the business to assure that all revenue is accounted for and its partnership interests are paid. Of course, this is not the same

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dynamic in every jurisdiction; some states may have less of an interest in the gaming revenues and more of an interest in achieving other policy goals, such as minimizing the social impacts of problem gambling. But, it is clearly the trend. The process is a negotiation because the prospective casino licensees also are bargaining for certain things. Most importantly, they are looking for the rights, often exclusive, to conduct legal gambling. They also may look to minimize the controls that the government wants to impose that may inhibit their ability to maximize profits.

Often well before the creation of the regulatory system, the basic perimeters of the relationship between the government and the industry is established through legislative process leading to casino authorization. By this point, the government hopefully has established clear and consistent policy goals regarding what it hopes to accomplish by authorizing a few private concerns to be given valuable exceptions to the general prohibition against gambling. If, for example, the goal is to maximize tax revenues, the government has a clear directive as to what the regulatory process should be designed to accomplish.

In many cases, the casino authorizing laws are much like the Letter of Intent or term sheet of the deal. Here the legislature defines the basic terms of the contract between the industry and the government, such as, the number and location of the casinos and the partnership split. The contract details are more often defined in the regulations.

Regardless of the specific goals, the creation of the regulatory process is often reflective of an arm's length contractual negotiation. With clear objectives, the state is looking to create a controlled casino environment that best allows it to meet its policy goals. The industry is accepting a controlled environment but seek to shape it to best allow it to maintain the advantages of its special government franchise while minimizing the government interferences that can inhibit maximizing revenues. Other interests may come to play in the negotiations of the regulations such as local government interests, labor, other industries that are impacted, and others. Moreover, unlike typical commercial transactions, the negotiations are unlikely to take place face to face in board rooms, but in administrative forums where the regulations are debated and decided.

This checklist contains the basic questions that the parties typically need to decide in drafting the regulations. Once answered, the regulations need to be drafted that reflect the decisions made. The greater the state's interest in the casino industry, particularly financial, the more likely that the regulations will be more detailed. One would expect that a bank loan for \$1 billion dollars to be far more complex than a bank loan for \$20. Gaming regulations are no different. As an example, Nevada has over 700 pages of regulation between its statutes, regulations and required internal controls. This should not be surprising considering that 46% of its state's general fund tax comes from the casino industry.

Several things can diminish the value of this checklist. First, is the failure to understand that regulations should be designed to further carefully considered specific government goals. For example, a government cannot assume that a "gold standard" exists for gaming regulations and that all they need to do is copy it. Otherwise, it would be same as using the same exact contract every time that a bank made a loan, an employee signed an employment contract, or an inventor licensed his or her invention. Every business person knows that this is never the case. Likewise, a government cannot answer each of the questions on the checklist independently, and without reference to the government's clearly defined and consistent goals in authorizing the casino industry government goals. A government cannot, as an example, have the most stringent protections against problem gambling and also hope to maximize casino revenues.

Second, a government may have a clear understanding of what it is trying to accomplish, but may not understand the best ways through regulation to accomplish these goals. Therefore the government may be negotiating for ineffective gaming laws and regulations. The checklist offers only the questions and not the different methods of implementing the answers. For example, if government decides that players should have

the right to self exclude themselves from the casinos, the checklist does not suggest how this should be accomplished or enforced. Very often, many different potential practices exist to address each decision on the checklist. Governments need to understand the options that are available, the effectiveness of those options in meeting the government goals, the economic impact of those options, and the costs of implementing the options, including the government's financial and manpower needed for enforcement.

Third, governments should appreciate that they are often at a decided disadvantage in the negotiations with the casino industry because of their inexperience or lack of sophistication. A government can ask the right questions from the checklist but be easily out negotiated by the casino industry that has a better grasp on the options and their impact.

Admittance Policy

1. What is the age for playing games?
2. Are minors allowed in the casino or in non-gaming areas of the property?
3. Can locals play?
4. Will entrance fees be charged for residents or non-residents?
5. Can owners, officers, key employee or employees gamble in their casino or any casino?
6. What is the process for identification checks? Is identification checked at the door?
7. Can the licensee exclude persons required by the regulators or through self exclusion? If so, are there restrictions?
8. Must casinos exclude certain persons? Will the jurisdiction maintain a list of persons that must be excluded?
9. Must the casino be open to the public? Can there be private gaming rooms?
10. Are firearms allowed in the casino?

Hours of Operation

11. What are hours of operation?

Tax Policy

12. Gaming Gross Revenue?
13. Gaming Net Revenue?
14. Development Fund?
15. Annual fees?
16. Device or game fees?
17. Entertainment tax?
18. Reinvestment requirement?
19. Fees for problem gambling groups or to local charities?

Credit Policy

20. Is credit allowed?
21. Are there mandated procedures for granting credit?
22. Are there mandated procedures for collecting credit?
23. Who can collect credit?
24. Must credit be evidenced by a credit instrument?
25. Are credit or debit cards allowed at the games? In the casino?
26. Is check cashing permitted in the casino?
27. Is uncollected credit deductible from tax calculation?
28. Are gaming debts enforceable?

Alcohol Policy

29. Is alcohol permitted on the casino floor?
30. Can the casino serve alcohol to patrons?
31. Can the casino serve complimentary alcohol to patrons?
32. Are there any restrictions on the service of alcohol?
33. Must the casino stop gambling or serving alcohol for persons who are visibly intoxicated?

Game Restrictions

34. What games are allowed?
35. Are there minimum bets at games?
36. Are there maximum bets at games?
37. Are there any limits on the number of games or gaming devices?
38. Any bet limits?
39. Any loss limits?
40. Maximum or player set time limits?
41. Minimum paybacks on games/slot machines?
42. Maximum paybacks on games/slot machines?
43. Are rules for the games proscribed?
44. Display of rules of the games?
45. Display of payout tables?
46. Must games (side bets) be approved before being offered?
47. Must the casino floor layout be approved?
48. Who owns the unpaid amounts of progressive jackpots?

Problem Gambling Policy

49. Can patrons self-exclude?
50. Can third parties (families) petition for exclusion?
51. What affirmative obligations do the casinos have related to problem gambling? Posting information? Intervening? Exclusion?

Disputes

52. How are disputes handled?
53. Does the casino have an obligation to report disputes? At what level?

Advertising Restrictions

54. Any restrictions on advertising? Signage? Billboards?
 - a. Local vs non-local?
 - b. Honesty?
 - c. Sex/nudity?
55. Any restrictions on complimentary for players?

Entertainment Policy

56. Is entertainment allowed? Are there any restrictions?
57. Are any other businesses excluded on the premises of the resort?

Independent Agents

58. Can junket representatives be used? How can they be compensated?
59. Can junket representatives be compensated based on play loss?

Casino Surveillance

60. Is casino surveillance required?
61. Must the surveillance plan and equipment be approved?
62. Must the regulators be granted remote access to surveillance?

Equipment Testing

63. What equipment must be approved? Gaming equipment, associated equipment and non-gaming equipment?
64. Gaming Equipment
 - a. Gaming Devices?
 - b. Cashless wagering systems?
 - c. Cards?
 - d. Chips/Tokens?
 - e. Dice?
 - f. Shoes?
65. Associated Equipment
 - a. Bill Validators
 - b. Bingo Systems
 - c. Cage and Credit Systems
 - d. Cards
 - e. Cashless Wagering Systems and Kiosks
 - f. Coin Counters
 - g. Currency Counters
 - h. Dice
 - i. Inter-Casino Linked System
 - j. Keno Displays and Systems
 - k. Printers
 - l. Progressive Controllers
 - m. Progressive Sign Controllers
 - n. Promotional Devices
 - o. Remote Access Equipment
 - p. Roulette Wheels
 - q. Shoes
 - r. Shufflers
 - s. Slot Metering Systems
 - t. Slot Monitoring Systems
 - u. Slot Player Tracking Systems
 - v. Soft Count System
 - w. Wagering Communication Technology

Accounting

66. Are bankroll reserves required?
67. Must loans/financing be reported or approved?
68. Are financial reports required?
69. Are there mandated internal controls? For what areas?
 - a. Slots
 - b. Table Games
 - c. Card Games
 - d. Keno
 - e. Bingo
 - f. Entertainment
 - g. Cage
 - h. Credit
 - i. Information Technology
 - j. Internal Audit

Licensing Requirements

70. Who must be licensed?
 - a. Operators
 - b. Owners
 - c. Landlords
 - d. Persons Entitled To Profits
 - e. Lenders/Creditors
 - f. Suppliers
 - g. Junket Operators
 - h. Operators of Private Gaming Areas (if permitted)
 - i. Gaming Device Manufacturers
 - j. Manufacturers of Gaming Equipment
 - k. Manufacturers of Associated Equipment
 - l. Suppliers of Gaming Devices or Equipment
 - m. Suppliers or Owners of Game Rights or Patents
 - n. Suppliers of Non-Casino Goods and Services
 - o. Persons Doing Business on the Casino Premises
 - p. Gaming Schools
 - q. Employees? If so, which?
 - r. Key employees
71. Who within an organization must be licensed?
 - a. Officers
 - b. Directors
 - c. Shareholders
 - d. Does it make a difference if it is a public or private entity?
 - e. Does it make a difference if it is an institutional investor or not?
72. What level of licensing must the category of applicant undergo?
 - a. Full investigation?
 - b. Limited investigation?
 - c. Cursory investigation?
73. What are the criteria for being licensed?
 - a. Good Character
 - b. Integrity, Honesty, and Truthfulness
 - c. Compliance with Law
 - d. Manner of Doing Business
 - e. Criminal History and Prior Convictions
 - f. Associations with Unsuitable Persons
 - g. Conduct During the Investigation
 - h. Competency/Management Abilities
 - i. Financial Capabilities
74. What are the application fees?
75. Who pays for the cost of the investigation? How? Fixed, pay as you go?
76. How long are the licenses good for?
77. Can a person assume a licensable position before being licensed?
 - a. If so, is there a reporting requirement for the hire?
 - b. When must the person file the application?
78. Are there temporary licenses and if so under what circumstances?

Compliance Requirements

79. Must licensees have compliance plans/committees?
80. What is the responsibility of the casino or its compliance committee?
 - a. Vetting vendors and suppliers
 - b. Reviewing litigation
 - c. Reviewing financing and loans
81. Does the casino have an obligation to report suspected criminal violations that occur in the casino?
82. Does the casino have an obligation to report criminal violations regarding any licensed individuals unrelated to the casino?
83. Does the casino have an obligation to report regulatory violations?