

INTERNATIONAL

## JAMAICA: The Legalization of Resort Style Casino Gambling

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In May 2010, resort style casino gaming was legalized in Jamaica pursuant to The Casino Gaming Act, 2010 (the “Act”). The Jamaican Parliament is currently in the process of adopting regulations to implement the legislation. The Act permits the development of a maximum of three integrated resort developments (“IRD”) consisting of one or more hotels, casinos, restaurants, entertainment facilities and shopping centers.<sup>i</sup> The three IRD limit is only in effect for twelve years following the approval of the first IRD.<sup>ii</sup> Under the Act, an IRD may be permissibly located anywhere in Jamaica. The only express minimum facilities requirement in the Act to qualify for one of the casino gaming licenses is that the IRD, when completed and fully built-out, must be comprised of one or more hotels providing in the aggregate at least two thousand newly constructed hotel rooms.<sup>iii</sup> Phased

development of an IRD is permitted, and casino gaming may commence within the IRD as soon as one thousand newly constructed hotel rooms are ready for occupancy.<sup>iv</sup>

Under both Section 9 of the Act and the first set of regulations recently approved by Parliament, a developer seeking to construct an IRD must first apply to the Minister of Finance for an order approving the proposed IRD (“Section 9 Order”).<sup>v</sup> As part of the application process, the developer must identify the location of the proposed IRD and describe in detail the scope, scale and timetable for completion of the project, including the submission of a master plan and narrative describing the major components of the proposed IRD (*e.g.*, hotels, casinos and other entertainment and recreation facilities), development phases, total project investment, and the estimated timing for making major installments of the

investment.<sup>vi</sup> In its application, the developer must demonstrate the financial feasibility of the proposed IRD and the availability of adequate financing.<sup>vii</sup> The developer must also describe the anticipated overall economic effect of the proposed project, including jobs creation, the economic benefits to the local community where the proposed IRD is to be developed as well as to Jamaica as a whole, and the projected generation of tax revenues.<sup>viii</sup> The non-refundable application fee for a Section 9 Order is (U.S.) \$150,000.<sup>ix</sup>

The Minister has substantial discretion as to whether to grant a Section 9 Order to a developer. The Act simply requires the Minister to be satisfied that: (a) the IRD will have at least two thousand newly constructed hotel rooms when complete and fully built-out (one thousand of which shall be available for occupancy before casino gaming commences in the IRD); (b) the development and operation of the IRD is likely to be successful having regard to the manner in which it is proposed to be operated, the availability of adequate financing, and the economic effects of its operations; and (c) there is no public interest ground to refuse to make the order.<sup>x</sup>

In granting a Section 9 Order, the Act also authorizes the Minister



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to grant exclusivity status to the developer for a particular geographic area within Jamaica. Exclusivity status entitles the developer or its nominee to be the only person to whom a casino gaming license may be granted for the operation of a casino in the exclusive geographic area.<sup>xi</sup> If a developer desires exclusivity status, the developer is required to describe the proposed exclusive geographic area and submit an economic justification therefor as part of the developer's application for a Section 9 Order.<sup>xii</sup> The Minister may grant exclusivity status on such terms and conditions as the Minister thinks fit.<sup>xiii</sup> In determining whether to grant exclusivity status, the Minister is to consider all relevant factors, including: (a) the scope and size of the IRD; (b) its anticipated overall economic effects; (c) total project investment; and (d) the period necessary for the developer to earn a reasonable return on its investment.<sup>xiv</sup> If granted, exclusivity status shall be for a period of not less than twelve years starting from the date of commencement of the Section 9 Order.<sup>xv</sup>

If a Section 9 Order is granted, the approved developer or its nominee must then apply to the Casino Gaming Commission (the "Commission") for a casino gaming license.<sup>xvi</sup> The Commission is currently comprised of five members: Dennis Lalor (a businessman), who serves as the Chairman, Mark Roberts (a businessman), Afeef Lazarus (an attorney), Dennis Edmunds (an attorney) and Raphael Gordon (an accountant). Under the Act, the Commission is responsible for comprehensively regulating all aspects of Jamaica's casino gaming industry to ensure the integrity of casino gaming operations, compliance with the Act and the regulations promulgated

thereunder, and adherence by casino gaming licensees with their approved systems of administrative and accounting internal control procedures.<sup>xvii</sup> The Commission's specific duties and functions include the issuance of casino gaming licenses and casino employee licenses, the approval of slot machine manufacturers and suppliers, and the approval of gaming equipment.<sup>xviii</sup> The Commission, through its inspectors, is also responsible for the day-to-day regulation of casino gaming operations.<sup>xix</sup>

The Act envisions a vigorous probity review process for casino gaming license applicants and persons associated with the applicant. Upon receiving an application for a casino gaming license, the Commission is required to carry out itself or cause to be carried out all investigations and enquiries as are necessary to enable the Commission to determine whether the "applicant, and each associate of the applicant . . . is a fit and proper person to be concerned in or associated with the management or operation of a casino."<sup>xx</sup> In conducting the requisite investigations and enquiries, the Commission may call upon the Commissioner of Police or any member of the Jamaica Constabulary Force or the Island Special Constabulary Force so authorized by the Commissioner of Police, to inquire into and report to the Commission on such matters concerning the application as the Commission requests.<sup>xxi</sup> The application fee for a casino gaming license has not, as yet, been established by the Commission. In addition to the application fee, the Act authorizes the Commission to charge the applicant such fees as are necessary to recover the costs of all investigations and enquiries related to the application.<sup>xxii</sup>

In determining whether an applicant or any associate of the applicant for a casino gaming license is a "fit and proper person," the Commission is required to consider, among other licensing criteria, whether:

(a) the applicant or associate has good character, honesty and integrity;

(b) the applicant or associate is of sound and stable financial background;

(c) the applicant holds or is able to obtain adequate financial resources to ensure the financial viability of the proposed casino;

(d) the applicant has or is able to obtain the services of persons who have sufficient experience in the operation of a casino;

(e) the applicant has sufficient business ability to operate a successful casino;

(f) the applicant or associate has any business association with any person, body or association who or which, in the opinion of the Commission, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial resources;

(g) each director, partner, trustee, executive officer, secretary and any other officer or person determined by the Commission to be associated or connected with the ownership, administration or management of the operations or business of the applicant is a suitable person to act in that capacity; and

(h) any person proposed to be engaged or appointed to manage or operate the casino is a suitable person to act in that capacity.<sup>xxiii</sup>

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If the Commission approves the grant of a casino gaming license, an annual license fee is payable to the Commission upon approval and then annually thereafter.<sup>xxiv</sup> The amount of the annual casino gaming license fee has not, as yet, been established by the Commission. Under the Act, a casino gaming licensee is authorized to offer table games and slot machines and conduct sports and proposition betting.<sup>xxv</sup> One other point worth noting is that the Act also provides for the issuance of a temporary casino gaming license under certain circumstances and, arguably, during the term of the temporary casino gaming license the developer or its nominee may conduct casino gaming operations outside of the IRD.<sup>xxvi</sup>

The class of persons requiring an employee license (called a “personal license”) to work in a casino is broadly but loosely defined by the Act. An employee license must be obtained by any person who is either (a) in a position of management or is authorized to make decisions involving the exercise of his/her discretion concerning the operation of a casino or (b) performs certain functions within a casino.<sup>xxvii</sup> The functions enumerated in the Act

include those related to the conduct of gaming, the exchange, movement or counting of money or chips, security and surveillance, the operation, maintenance, construction or repair of gaming equipment, and the supervision of any of the foregoing activities.<sup>xxviii</sup> Given the broad but loosely defined class of persons requiring employee licenses under the Act, the Commission will undoubtedly have to provide casino operators, through the promulgation of regulations or otherwise, greater clarity as to who exactly must be licensed.

The Act does not establish a particular licensure scheme for gaming equipment vendors. However, casino gaming licensees are prohibited from purchasing slot machines from anyone other than a manufacturer or supplier approved by the Commission.<sup>xxix</sup> The use of gaming equipment other than slot machines is also subject to the Commission’s review and approval.<sup>xxx</sup> Again, rulemaking or some other further direction of the Commission is required to flesh out the approval process for manufacturers and suppliers of gaming equipment, and the approval of the equipment they desire to provide to Jamaica’s casino industry.

Based on our dealings with the Commission and other members of the Government, Jamaica clearly intends to adopt a best practices scheme of regulation for its new casino gaming industry. With the recent adoption of a first set of regulations, applications for Section 9 Orders are expected to be filed and acted upon this year. Two of the companies expected to apply are The Fiesta Group of Hotels and a public-private partnership between Harmonisation Limited, a development vehicle of the government of Jamaica, and Tavistock Group, a privately-held diversified investment company. ♣

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<sup>i</sup> Sections 2 and 9 of the Act.

<sup>ii</sup> Section 9(5) of the Act.

<sup>iii</sup> Section 9(3) of the Act.

<sup>iv</sup> Section 9(3) of the Act.

<sup>v</sup> Section 9 of the Act; The Casino Gaming (Application for Declaration of Approved Integrated Resort Development) Regulations, 2011.

<sup>vi</sup> Section 10 of the Act; The Casino Gaming (Application for Declaration of Approved Integrated Resort Development) Regulations, 2011, Schedule, Part I, Part C.

<sup>vii</sup> The Casino Gaming (Application for Declaration of Approved Integrated Resort Development) Regulations, 2011, Schedule, Part I, Part D.

<sup>viii</sup> The Casino Gaming (Application for Declaration of Approved Integrated Resort Development) Regulations, 2011, Schedule, Part I, Part E.

<sup>ix</sup> The Casino Gaming (Application for Declaration of Approved Integrated Resort Development) Regulations, 2011, Regulation 2(1)(e).

<sup>x</sup> Section 9 of the Act.

<sup>xi</sup> Section 12 of the Act.

<sup>xii</sup> The Casino Gaming (Application for Declaration of Approved Integrated Resort Development) Regulations, 2011, Schedule, Part I, Part F.

<sup>xiii</sup> Sections 9(4) and 12 of the Act.

<sup>xiv</sup> The Casino Gaming (Application for Declaration of Approved Integrated Resort Development) Regulations, 2011, Schedule, Part I, Part F.

<sup>xv</sup> Section 12 of the Act.

<sup>xvi</sup> Section 14 of the Act.

<sup>xvii</sup> Section 6 of the Act.

<sup>xviii</sup> Sections 12, 57 and 59 of the Act.

<sup>xix</sup> Sections 44 - 46 of the Act.

<sup>xx</sup> Section 15(1) of the Act.

<sup>xxi</sup> Section 16 of the Act.

<sup>xxii</sup> Section 16(3) of the Act.

<sup>xxiii</sup> Section 15(2) of the Act.

<sup>xxiv</sup> Section 19 of the Act.

<sup>xxv</sup> Section 18(4) of the Act.

<sup>xxvi</sup> Section 26 of the Act.

<sup>xxvii</sup> Section 2 of the Act.

<sup>xxviii</sup> Section 2 of the Act.

<sup>xxix</sup> Section 59 of the Act.

<sup>xxx</sup> Section 57 of the Act.