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FEATURE STORY ON AMENDMENTS TO THE BETTING, GAMING AND LOTTERIES ACT

GLOBAL TRENDS, LOCAL RESPONSE: THE BETTING GAMING AND LOTTERIES (AMENDMENT) ACT 2010

After a considerable amount of debate and representations made by various stakeholders, the Betting Gaming and Lotteries (Amendment) Act 2010 ('the Amendment Act') came into force in Jamaica on June 22, 2010.

The Amendment Act is designed to try to meet the demands of an industry that has seen substantive changes in its economic, social and technological landscape, both in Jamaica and worldwide.

It is important to note that the entire industry makes an important contribution to the government coffers through the levy and contribution schemes in place. For the financial year 2009/2010, gaming taxes, together with statutory contributions to CHASE, BGLC and Jamaica Racing Commission amounted to \$3.1 billion.

The Betting Gaming and Lotteries Act of 1965 ('the BGLA') was mainly geared towards regulating the horse racing industry. However, the foresight of the legislators at the time ensured that there was mention of "gaming and lotteries" in the Act, which subsequent piecemeal amendments have sought to define. However, the gaming industry had undergone such dramatic changes that, despite the subsequent amendments to the Act, there was a need for substantial overhaul of the legislation to ensure effective regulation by the Betting, Gaming and Lotteries Commission ('the BGLC'), the regulatory body established by virtue of section 4(1) of the BGLA. The following is a synopsis of the major changes effected by virtue of the Amendment Act.

SPORTS BETTING AND NEW GAMING VENUES

The global appeal of sporting events such as World Cup Football and Cricket has been followed by the growing popularity of sports betting. Recognising this, the Amendment Act incorporates 'sports betting' and its accompanying tax structure so as to secure to government revenues from the activity. Section 2(1) of the BGLA defines sports betting

as, 'the making of a wager on the outcome of a sporting event'. A gross profit tax of 7% applies to those who negotiate bets on sports.



Sports Betting Room in Las Vegas - Image by JaviC

Closely related to sports betting is the emergence and popularity of the sports bar where persons can meet and watch their favourite sporting events while they enjoy refreshments. Accordingly, Sections 20C and 46B of the BGLA, speak to the emergence of two new entities, the 'betting lounge' and the 'gaming lounge'. These all-inclusive entertainment entities are designed to cater to persons who wish to engage in gambling whilst socialising and will be licensed by the BGLC to negotiate bets on sporting events, horse races and races of other approved species of animals, to sell lottery tickets, cooked meals and alcoholic beverages, as well as, provide other forms of entertainment. While the betting lounge will be licensed to operate a maximum of 19 gaming machines, the gaming lounge may be licensed to operate between 20 and 150.

TECHNOLOGY ISSUES

The technology of gaming machines has changed considerably over the years. The classic mechanical designs have been replaced almost completely by sophisticated computer-controlled machines. This has posed new challenges for auditing and regulation. The Amendment Act has sought to meet these challenges in several ways.

Previously under the BGLA, only operators of gaming machines required a licence from the BGLC. However, under section 43A of the Amended Act *'no person shall manufacture, test, sell, supply, repair or operate gaming machines or any component thereof unless that person is the holder of a licence under this Act...'* Thus the entire gaming industry, vertically and horizontally, as well as its hardware and software components, are now the subject of regulation.

Technology has also facilitated the growth of multi-station gaming machines such as roulette. By virtue of section 43(1) of the BGLA, where a gaming machine has more than one playing station, each playing station shall be deemed to be a machine. This has had tax implications for the operators of such machines as they are now required to pay contributions and levy payments based on the total number of playing stations, as opposed to per apparatus. In addition, a moratorium has been placed on the issuance of gaming lounge licences throughout the island.



The Amendment Act also empowers the BGLC to authorise the negotiation of bets by 'electronic means' by a licensed bookmaker¹, racing promoter and 'non-promoter'². Section 2(1) of the BGLA defines 'electronic' as *'relating to technology, having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities'*. Thus the possibility of online or telephone betting is facilitated.

Similarly the Amendment Act has amended the definitions of 'lottery' and 'lottery ticket' to include the words 'electronic game' and 'electronic ticket' respectively to take account of changes in technology in the lotteries sector.

¹ Ibid 1

² Section 18(3) BGLA

It is recognised that stakeholders in the industry will be looking to make significant investments in technological advancements to enhance the efficiency and profitability of their businesses. In order to facilitate such investments, particularly the financial support that this requires for the same, the Amendment Act gives the BGLC the authority to grant certain permits or licenses for up to five years, subject to annual reviews.

CHANGES TO THE LICENSED BETTING OFFICE

Patrons will also notice changes to the licensed betting office ('LBO') itself since the Amendment Act sanctions the sale of pre-packaged food, non-alcoholic beverages and lottery tickets and the operation of up to two gaming machines at the LBO.³ LBOs will now also be able to advertise in the print and electronic media.⁴

The restrictions that previously existed on opening hours of the LBO have been relaxed to a certain degree meaning that the LBO can open all day, every day except Sundays, Good Friday and Christmas Day and must ensure that they are closed by 11.59pm on the day before a mandatory closure day.



Crowd at Caymanas Park, on RJR St. Leger Raceday, July 2008

³ Second Schedule BGLA

⁴ Section 22(3) BGLA

RECOGNITION OF THE CASINO GAMING ACT (CGA)

The Betting, Gaming and Lotteries (Amendment) Act, 2010 was a companion bill to the Casino Gaming Act, 2010. Throughout the Amendment Act one will see references to the CGA as the legislators have sought to take into account the provisions of that Act and ensure congruency with the BGLA. Therefore, gaming machines operated by a casino operator pursuant to a licence under the CGA are not subject to licensing by the BGLC and the BGLC shall not, for the duration of the exclusivity period, issue new licenses to operate gaming machines within the exclusive geographic area, except in limited circumstances. 'and 'Exclusive geographic area' and 'exclusivity period' are terms found within the CGA and refer respectively to the area of the island, which the Minister shall designate by way of order, within which no casino gaming licence shall be granted except to an approved developer or his nominee, and the specified period that such a prohibition exists.

GREATER RESPONSIBILITY AND ACCOUNTABILITY

Another global trend which has had an impact is that of greater responsibility and accountability of those involved in an industry that remains largely cash-based, and where the potential for scams and money laundering is real. To address this, section 7(2) of the BGLA now requires the Commission to satisfy itself that an applicant is a 'fit and proper' person before it issues a licence or permit.

The popularity of the CashPot lottery game has been accompanied by a rise in the number of illegal CashPot operations. The BGLC has thus been strengthened by section 49A of the BGLA, which provides that those who wish to sell lottery tickets as agents of a lottery promoter must be authorised in writing by that promoter, over eighteen years of age, with no criminal record and must be licensed by the BGLC so to do.

In a similar vein, operators of Off Track Betting Parlours must be over eighteen years of age, with no criminal record and licensed by the BGLC as agents of the racing promoter, who has given his authorization in writing.

The Amendment Act also introduces some new offences including:

1. Prescribed premises licensees will now have the responsibility of ensuring that all gaming machines on their premises are licensed, and failure to do so will constitute an offence;

2. Section 20B of the BGLA makes it an offence for anyone to permit a minor to bet, negotiate or otherwise participate in any betting, gaming or lottery activity or even to be in a room where gaming machines are located.;
3. Failure to place current licence, permit, approval of authority in a conspicuous place on the premises constitutes an offence
4. Failure to obtain licence to manufacture, test, sell, supply, repair or lease gaming machines constitutes an offence
5. Operating as an agent of a racing promoter without a licence.
6. Operating as a lottery agent without a licence.

Section 14 of the BGLA institutes a new fixed penalty regime where, in the case of certain offences, which are specified in the Seventh Schedule of the BGLA, offenders may be issued with a Fixed Penalty Notice, similar to a traffic ticket, providing for the payment of a fine within a stipulated time frame. The offender may otherwise elect to contest the charge in the Resident Magistrates Court, which, in the event of a conviction, may result in a higher penalty being imposed.

LOOKING FORWARD

As with any significant amendment to legislation, a host of regulations are expected to follow, which will address the mechanics of the amendments and give them practical effect, and it will be interesting to see how the changes to the law enable this dynamic industry to develop even further.

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