

3772-29-01

Approval for Debt Transactions.

(A) Definitions: For the purposes of this rule the following definitions shall apply:

- (1) "Casino facility" has the same meaning as set forth in section 3772.01 of the Revised Code.
- (2) "Casino operator" has the same meaning as set forth in section 3772.01 of the Revised Code.
- (3) "Commission" means the Ohio Casino Control Commission or its designee, as allowed by section 3722.033 of the Revised Code.
- (4) "Debt transaction" has the same meaning as set forth in section 3772.28 of the Revised Code.
- (5) "Debt" means, but is not limited to, any bond, loan, mortgage, trust, deed (when committed in any form as collateral), note, debenture, subordination, guaranty, letter of credit, security agreement, pledge, chattel mortgage, or any other form of indebtedness.

(B) A casino operator shall not enter into a debt transaction, without the approval of the Commission. The casino operator shall submit a request, in writing, for approval of a debt transaction. The procedure shall be as follows:

- (1) No sooner than thirty (30) days, unless otherwise waived or modified by the Commission, after all required information and documentation, as outlined in section (B)(4) of this rule, has been submitted to the satisfaction of the Commission, the Commission shall place the request for approval of a debt transaction on the agenda of a Commission meeting.
- (2) A representative of the casino operator shall be present at that Commission meeting to answer any questions posed by the Commission.
- (3) The approval of the debt transaction will be discussed, and a decision issued by the Commission at that meeting of the Commission, unless otherwise extended by mutual agreement of the Commission and the casino operator.
- (4) The request for approval of a debt transaction shall contain, at a minimum, the following information and supporting documentation:
 - (a) The names and addresses of all parties to the debt transaction;
 - (b) The amount of the funds involved;
 - (c) The type of debt transaction;
 - (d) The source of the funds to be obtained;

- (e) All sources of collateral, including but not limited to all assets pledged by the casino operator as security for the debt transaction;
 - (f) The purpose of the debt transaction;
 - (g) The terms of the debt transaction;
 - (h) All filings and documents that must be submitted to any regulatory agency in association with the debt transaction;
 - (i) An executive summary of the debt transaction, including but not limited to: 1) all material terms of the debt transaction; 2) an explanation of the projected debt to equity ratio after entering into the proposed debt transaction; 3) an explanation of the terms and procedures in case of default by the casino operator; 4) an explanation of the process used to select the persons involved in the debt transaction; 5) a list of prior debt transactions between the casino operator and the persons involved in the debt transaction; and 6) an explanation of the due diligence conducted, including supporting documentation, as required by section (C) of this rule;
 - (j) All documents that memorialize the terms, conditions and/or covenants of the debt transaction, including any supporting documents referenced therein;
 - (k) A certification that the casino operator holds a direct or indirect ownership or leasehold interest in the casino facility;
 - (l) Any other information deemed necessary by commission.
- (C) The casino operator shall perform due diligence to ensure that each person the casino operator enters into a debt transaction with has the appropriate reputation, experience, and financial security.
- (D) A casino operator should clearly identify those portions of the request for approval of debt transaction that it deems to be confidential, proprietary commercial information or trade secrets. The request for approval of debt transaction shall be open to public inspection to the extent permitted by sections 149.43 and 3772.16 of the Ohio Revised Code. A casino operator is advised that, upon request by a third party for information that the casino operator has clearly identified as protected from disclosure per Ohio law, the Commission will notify the casino operator and, following such notification, will make a determination whether the information must be disclosed. If it is determined by the Commission that the information is to be disclosed to a third party, the Commission shall notify the casino operator of its decision. Following that notification, the information shall be provided to the third party within a reasonable period of time unless otherwise prohibited from being

released. A casino operator waives any liability of the State of Ohio, the Commission, the employees of the Commission and its instrumentalities and agents for any damages resulting from any disclosure or publication in any manner.

- (E) Commission approval of a debt transaction is a separate and distinct process from licensure, as generally set forth in sections 3772.07 through 3772.112 of the Revised Code, and the Commission's approval of a debt transaction does not insure that a casino operator's initial or renewal license will be approved.
- (F) If the Commission denies approval of a debt transaction, the casino operator may not enter into that debt transaction.
- (G) Upon approval of a debt transaction, the casino operator shall report to the Commission, on a quarterly basis, compliance with the payment terms of the debt transaction previously approved under this rule. Further, any default, breach or acceleration under the terms, conditions, and or covenants of a debt transaction previously approved under this rule shall be reported immediately to the Commission. In the event of a default, any enforcement of a security interest pursuant to the terms and conditions of a debt transaction previously approved by the Commission shall be reported immediately to the Commission by the person enforcing the security interest, the casino operator, and, if applicable, the entity managing the casino facility at the time of enforcement of the security interest.
- (H) The casino operator shall provide the Commission copies of any amendments or proposed amendments to a debt transaction previously approved under this rule, and any material change, as determined by the Commission, to the debt transaction shall be subject to further Commission approval.
- (I) Within fifteen days after closing of the debt transaction and thereafter if requested by the Commission, the casino operator shall file with the Commission the list of the initial lenders and/or noteholders as applicable.
- (J) The Commission may further request information not specifically requested in this rule or in addition to that which is provided in response to this rule. The casino operator shall provide all information, documents, certifications and materials at the casino operator's sole expense and cost.

Effective: 12/27/2011

R.C. 119.032 review dates: 12/16/2016

CERTIFIED ELECTRONICALLY

Certification

12/16/2011

Date

Promulgated Under: 119.03
Statutory Authority: 3772.03(D)(27), 3772.033(M)
Rule Amplifies: 3772.28