

DAVID CLIFTON: LICENSING EXPERT – BEWARE THE GAMBLING COMMISSION’S CHANGE OF CORPORATE CONTROL PROCESS

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The **Gambling Commission** has announced on its [regulatory sanctions register](#) that it has revoked the operating licence of a Malta-based remote casino operator, **Maxent Limited** (trading most recently as MaxEnt, with the domain names **betat.co.uk** and **slottyvegas.com**).

Although the Commission states on its [website](#) that “this decision will come into effect on 18 June and therefore from this date MaxEnt will cease to be licensed”, the decision to revoke the licence was taken on 21 May 2019, following a Regulatory Panel hearing. The reason for revocation was that “... the Commission is not satisfied that it would have granted the operating licence to the licensee had the new controller been a controller of the company when the application for the operating licence was made”.

This reasoning reflects the fact that a change of corporate control of the company had previously taken place, necessitating Maxent Limited to apply to the Gambling Commission for its operating licence to continue to have effect. This is known as a change of corporate control application, which must be made within five weeks of the change occurring. This is in addition to the five working days’ “[key event](#)” [notification](#) requirement under **LCCP Licence Condition 15.2.1**.

The need for such an application is triggered when either an individual person or a company (or any other legal entity) either directly or indirectly (a) becomes the owner of 10% or more of the shares in the licence-holding company and/or (b) becomes entitled to 10% or more of the rights to its profits/dividends and/or (c) has 10% or more of its voting power and/or (d) is, or becomes, able to exercise significant influence over its management.

I know that some people have mistakenly assumed that, for gambling licensing purposes, a change of control of a licence holding company only occurs when a majority shareholder is created (for example, in the sense of a new investor holding more than 50% of its shares). That is wrong. The meaning of “controller” in the **Gambling Act 2005** is taken from the definition of that word as it appears in the UK’s financial services legislation. More information about this can be found on the [Gambling Commission’s website](#).

When a change of corporate control application is made, the Commission will look afresh at the licence-holding company in much the same way that it does when first considering a new operating licence application.

This means that the Commission will take into account such matters as (a) the identity, (b) the past and present financial circumstances, (c) the integrity and competence and (d) the criminal record (if any) of all

such shareholders and others with a financial interest in the company. Not surprisingly, when considering a change of corporate control application, the Commission will particularly focus its attention on the new owner or investor.

In the case of Maxent Limited, the Commission has stated that “in particular” it was “not satisfied as to the source of funds used to acquire and support the Licensee at the time of, and following, the change of corporate control.”

It went on to say that it had “also identified concerns relating to the new controller’s suitability, in that it appeared that he had provided conflicting information and had failed to be full and frank in his dealings with the Commission.”

Strictly speaking, under section 102 of the Gambling Act 2005, the Commission has only two options when faced with a change of corporate control application, namely (a) to determine that the licence shall continue to have effect or alternatively (b) to revoke the licence.

That said, it is not unknown for the Commission to make known, at a relatively early stage of the change of control process, any major concerns that it has with regard to the probity of a new owner or investor, allowing a potential opportunity for the transaction to be “undone.”

However, absolutely no reliance should ever be placed on the Commission agreeing to take such an approach because, amongst other things, section 103 of the 2005 Act enables an advance change of corporate control application to be made when a proposed transaction has progressed sufficiently for the parties to expect that a person or entity will become a controller of the licence-holding company (whether directly or indirectly by means of acquiring shares/voting rights etc in its parent company).

In the case of all applicants to the Gambling Commission (whether for a new operating licence, for variation of an existing licence or for a change of corporate control), it is essential that they are fully frank and open with the regulator. For example, this principle is embodied in the Commission’s LCCP which requires licence-holders to “to work with the Commission in an open and cooperative way and to disclose anything which the Commission would reasonably need to be aware of in exercising its regulatory functions.”

In the case of Maxent Limited, the Commission clearly had reason to believe that the “frank and open” principle was not being followed. At a time when AML requirements oblige all casino operators to focus, in appropriate cases, on the source of funds of their customers, it is hardly surprising that the Commission has reacted negatively to the new controller of Maxent Limited providing “conflicting information” in this respect.

Amongst the major lessons to be learned from this episode is that, when selling shares in a licence-

holding company, the vendor should undertake its own full due diligence enquiries on the intending purchaser, including in relation to the origin of the monies to be used for the purchase. It should tread very carefully indeed if it senses that the purchaser is being less than fully transparent on that or any other relevant issue.

It should also bear firmly in mind that its licence will be considerably less at risk of revocation if, instead of application for change of corporate control being made within five weeks after the transaction has completed, an advance such application is made with time allowed for determination of that application by the Commission before the transaction completes.

This is an area in which my company, **Clifton Davies Consultancy Limited**, has had considerable experience, including the provision of advice when an operating licence-holder realises that it has inadvertently failed to submit a change of corporate control application within the required five-week period. This is a potentially extremely serious position for a licence-holder, bearing in mind that section 102(5) of the 2005 Act provides that, if the Gambling Commission becomes aware of any such failure, it “shall revoke the relevant operating licence.”

