

RULES OF THE GAME

Government's Casino policy

Philipsburg, June 2011



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1. INTRODUCTION

Gaming, in its many forms, is a reality both globally as well as on the island of St. Maarten. New gaming offerings, legal and otherwise, are being put on the market including gaming from outside the borders of the island (i.e. electronic gaming, foreign lotteries etc.).

St. Maarten has been, and continues to be, pre-eminent tourism destination in the Caribbean. The existence of beautiful resorts is one of the key assets that draw visitors to the island. In the early years of tourism and resort development, most developers and owners considered the addition of casino facilities at the property to be important as an amenity to draw visitors to St. Maarten. In a sense, this was the policy for casinos that was followed by government for many years. In recent history, so called “stand-alone” casinos have been allowed to establish on the island, most in Philipsburg to serve the ever-present cruise ship market.

At the time of Hurricane Luis in 1995, St. Maarten boasted no fewer than 10 full service casinos, three of which were of the “stand-alone” variety. Presently seven remain in operation. The performance of the industry is best described as being “mixed”, yet there are several requests pending for establishments of new casinos/gaming establishments. This fact, along with the growing concern about resident play, requires a well measured response from government¹.

The point of departure of government is that casinos are an integral part of the tourism economy particularly as an amenity and a form of entertainment. Furthermore, government realizes that with the other gaming forms available on the island, including non-sanctioned/illegal ones, a degree of resident play will have to be accepted. As a result, contingencies will need to be developed to mitigate potential negative consequences to individuals.

It is with this background that government was challenged to develop an approach to deal with gaming on St. Maarten.

A start was made with the contracting of Coopers & Lybrand L.L.P. Early in 1996 to conduct a study of the gaming industry on St. Maarten. Consultants focused on casino issues such as capacity and expansion, fiscal impact, licensing and internal controls.

The completed study, presented to the Executive Council on October 29, 1996, provided government with an overall picture of the gaming industry, specifically the casino sector on St. Maarten. The results are reason for concern in terms of the general health of the industry, its future and the growth of resident play beyond that which was intended originally. Based, in part, on the results and recommendations of the study, government has developed a policy for

¹ In 1994 resident share was 25% and in 1995 the share grew to 55%. Only Curacao's resident share is higher at 60%.

casino operations on the island. In the following sections, both the philosophy as well as the policy for casino operations is presented.

2. PHILOSOPHY

If gaming, specifically casino-gaming, is to continue on the island a policy must be put in place that will allow for the following.

- i. Profitability of gaming establishments;
- ii. Continued and eventually increased tax revenues from gaming;
- iii. Balanced resident participation;
- iv. Avoidance of criminality in the industry.

Ad. 1

Elements that play a role in terms of the health of the industry in general are competitiveness and quality. Competition is directly related to the number of casinos, and to some extent other gaming operations, within a selected area. Although the island is diminutive in geographic size, the C&L study clearly illustrated that the casino industry is differentiating by location, type and target market:

Philipsburg vs. “over-the-hill”;
Resort based casinos vs. stand alone casinos;
Visitor vs. resident.

The Casino policy considers competitive issues to avoid “cannibalization” of markets and putting the entire industry at risk. Issues such as density and casino (game) type are factored in.

Ad. 2

Casino gaming is not an experiment. Once the casino open and the games begin, gambling creates an instant constituency; people depend on it for jobs and governments depend on it for revenues². From the C&L Gaming Industry Study it is clear that the island government is not receiving its “fair share” of gaming activity tax revenue as compared to other competitive destinations. A new system will be developed that meets the needs of government to derived sufficient revenue needed to aid in the socio-economic development of the island, as well as being equitable to the casino operators.

Administration and financial control issues are important in this regard.

Ad. 3

Traditionally, government intended casino gaming to be limited to visitors. To this end, legislation was drafted and implemented restricting resident attendance to a maximum of 4 times per month. To ensure that this law was adhere to casino controllers were posted at the

² Robert Goodman. “Legalized Gambling as a Strategy for Economic Development”. United States Gambling Study, 245 Main Street, North Hampton, MA, March 1994:15.

entrance of casinos. In recent years it has become evident that neither legislation nor the casino control function is effectively limiting resident play. The situation begs the question whether government should even attempt to legislate behavior or morals as this relates to gaming and resident.

Nevertheless, the potential for negative consequences is considered and planned for.

Ad. 4

US statistics show that as gambling increased, so does the crime rate. Although these findings cannot be directly translated to the local situation, they do bear paying attention to. The crime is usually related to players as well as gambling as a business itself. Evidence suggests that pathological gamblers are likely to engage in forgery, theft, embezzlement, drug dealing and property crime to pay off gambling debts³. The huge sums involved in legalized gambling tend to attract organized crime. According to a former Chicago mobster testifying before a US congressional committee, the introduction of legalize gambling in Illinois “created a brand new market for us⁴. Clearly, such problems must be avoided.

3. CASINO POLICY

Government’s casino policy defines minimum requirements in keeping with the points of departure for the gaming industry as outlined in the previous section. This will be the framework for further refinement of legislation governing the activities of the industry.

A. DEFINITIONS

The definition of “stand-alone” casino: the operation needed to be a so-called “full-fledged” casino in the sense that an establishment with a single game, for example slot machines, will be considered as a “stand-alone” operation and therefore subject to the casino permit requirement.

B. Size of the Industry

Stand Alone Casinos

- i. There will be a maximum set for casinos on the island of St. Maarten; three (3) “stand-alone” casino operations will be allowed in addition to the two (2) current establishments thereby setting a maximum of five (5) “stand-alone” casinos in the Philipsburg area;
- ii. Furthermore, three (3) “stand alone” casino operations will be allowed on the ‘strip’ (Simpson Bay) in addition to the two (2) current establishments thereby setting a maximum of five (5) “stand-alone” casinos in the Simpson Bay area;

³ Statement by US Congressman Frank Wolf, September 29, 1995

⁴ J. Joseph Curan.

- iii. Together there will be a ceiling set of ten (10) “stand-alone” casinos; a maximum expansion of six (6) compared to the current four (4).

Casinos located at hotels

The government’s policy in terms of casino operations as part of hotel developments will be limited to hotels with at least Two Hundred (200) Rooms, conditional that the “rack rate” (room price) – as a determinant of the category of hotel – will be determined at a later date.

In the event an existing hotel has started with an expansion of its property and room inventory, to at least the amount of 200 rooms as required in the Casino Policy in order to qualify for a Casino License, and a request for a casino license has been filed, the requested permit could be granted by the Government of St. Maarten. The following must be the case: The necessary financing must be in place to complete the expansion; construction must have started; and at the least 65% of the minimum required 200 rooms must be completed; and the property open or re-opened. The applicant will be given a maximum of two (2) years to complete the construction of the additional 35% of the rooms to arrive at a room count of 200. Failure to comply with these conditions can result in the casino license being revoked.

C. LOCATION

Casino establishments will be subjected to restrictions in terms of location: establishments will not be able to be located within a radius of Fifty (50) meters of sensitive buildings where there are no permanent activities (i.e. schools, churches, etc.). The transition period for pending requests with letters of intent will be exempted from this new requirement for a limited period.

D. APPLICATION PROCEDURE

The application procedure for a casino license will be made more stringent.

Among the requirements for application are:

- i. A criminal and financial background check (to be carried out by competent authorities such as the VNA and policy) will be required for Directors and shareholders prior to handling of a casino application;
- ii. An investigation of the sources of initial capital for the establishment of the casino will be done;
- iii. The financial solvency of the principals has to be presented at the time of submission of the casino application;
- iv. A rule to be used for the granting of the, now limited number of casino licenses will be based on the age of the application/request, i.e. the older a request/application the better chance of being considered subject to meeting the requirements of course.

E. LICENSING

Operators of gaming establishments will be made subject to more stringent background checks to ensure that government is dealing with legitimate business professionals. Issues such as

criminal background, financial means (minimal financial investment), and past experience are to be part of the application procedure.

In addition, government's policy deals with the issue of consortia.

Existing Casino Operations: existing establishments are required to adhere to the conditions as stipulated in their current licenses;

Objective: the objective set forth in the business license will be limited to operating and exploiting games of chance;

Multiple Operations: the number of casino operations/establishments will be involvement of the same person/principal (a/o. Directors and Shareholders) is limited to two (2);

Transferability of License: casino licenses are non-transferable;

Letters of Intent: the practice of government extending letters of intent is abolished, however, those persons currently in the possession of letters of intent will be dealt with preferentially in terms of the granting of licenses but subject to the requirements set forth in this policy for casinos;

Number/Types of Games: licenses will be subject to a limitation on the number and types of games allowed per each individual license;

Special Conditions: special conditions/requirements can be placed, depending on the specific circumstances, on a per case basis (i.e. hours of operation).

F. ENTRANCE REQUIREMENTS

Given the weakened state of the casino industry since the hurricanes of 1995 and the social risks associated with gaming, minimum conditions for players particularly an age requirement is necessary. Such legislation already exists. Minors, those not having reached the age of 18 are not permitted to enter gaming establishments and/or participate in gaming activities. This is a protective measure that relates to the potential for abuse of gaming in society and should be strictly enforced.

Other entrance requirements will be stipulated by government in the future.

G. INTERNAL CONTROL

Government intends to implement a financial control mechanism for all casinos.