

Sole Proprietary Interest – draft regulation

Add to Compliance regulations, Part 573:

a) In determining whether the sole proprietary interest mandate has been violated, the Chair may take any of the following factors, including only a single factor, into consideration:

1. whether the Tribe received the primary benefit of its gaming revenue;
2. the amount of revenue paid or given to the third party or kept by it;
3. whether the third party received or was entitled to the gaming revenue for no return, service, or asset provided to the gaming operation;
4. whether the amount of revenue given to an approved or unapproved management contractor or kept by it exceeds the statutory cap set forth in IGRA for management contractors;
5. the right of control provided to the third party or exercised by it, including, but not limited to:
 - a. whether the Tribe was excluded from the premises of the gaming operation or part thereof;
 - b. whether the third party operated the gaming operation or part thereof as the proprietor;
 - c. whether the third party possesses the right to seek a judicial appointment of a receiver over the gaming operation;
 - d. whether the Tribe and third party created a joint venture; and
 - e. whether a third party, third parties, or individuals possess stock ownership in a gaming operation.;
6. the term of the relationship between the Tribe and the third party, including, but not limited to, the cost or difficulty in terminating the relationship;
7. the provision or assignment of Tribal rights to the third party, including, but not limited to:

- a. the third party's right to access to records or financial information regarding the gaming operation or part thereof;
 - b. the right to place gambling devices that are controlled by a third party in the gaming operation or part thereof; and
 - c. the grant of a security interest in the gaming operation.
- b) The Chair has discretion to take other factors not listed in (a) into consideration for purposes of determining whether the sole proprietary interest mandate has been violated.
- c) Any enforcement action for a sole proprietary interest violation must specify the factors relied on and the reasons for relying on them.

Discussion Draft