

Part 502

§ 502.5 Collateral agreement.

Collateral agreement means any contract, whether or not in writing, **between a tribe (or any of its members, entities, or organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor) or between a tribe (or any of its members, entities, or organizations) and any other third-party**, that is related, either directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe (or any of its members, entities, or organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor).

§ 502.15 Management contract.

Management contract means any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.

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Part 531

§ 531.1 Required provisions.

Management contracts shall conform to all of the requirements contained in this section in the manner indicated.

(a) *Governmental authority*. Provide that all gaming covered by the contract will be conducted in accordance with the Indian Gaming Regulatory Act (IGRA, or the Act) and governing tribal ordinance(s).

(b) *Assignment of responsibilities*. Enumerate the responsibilities of each of the parties for each identifiable function, including:

- (1) Maintaining and improving the gaming facility;
- (2) Providing operating capital;
- (3) Establishing operating days and hours;
- (4) Hiring, firing, training, and promoting employees;
- (5) Maintaining the gaming operation's books and records;
- (6) Preparing the gaming operation's financial statements and reports;
- (7) Paying for the services of the independent auditor engaged pursuant to §571.12 of this chapter;

- (8) Hiring and supervising security personnel;
 - (9) Providing fire protection services;
 - (10) Setting advertising budget and placing advertising;
 - (11) Paying bills and expenses;
 - (12) Establishing and administering employment practices;
 - (13) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;
 - (14) Complying with all applicable provisions of the Internal Revenue Code;
 - (15) Paying the cost of any increased public safety services; and
 - (16) If applicable, supplying the Commission with all information necessary for the Commission to comply with the regulations of the Commission issued pursuant to the National Environmental Policy Act (NEPA).
- (c) *Accounting.* Provide for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:
- (1) Include an adequate system of internal accounting controls;
 - (2) Permit the preparation of financial statements in accordance with generally accepted accounting principles;
 - (3) Be susceptible to audit;
 - (4) Allow a gaming operation, the tribe, and the Commission to calculate the annual fee under §514.1 of this chapter;
 - (5) Permit the calculation and payment of the manager's fee; and
 - (6) Provide for the allocation of operating expenses or overhead expenses among the tribe, the tribal gaming operation, the contractor, and any other user of shared facilities and services.
- (d) *Reporting.* Require the management contractor to provide the tribal governing body not less frequently than monthly with verifiable financial reports or all information necessary to prepare such reports.
- (e) *Access.* Require the management contractor to provide immediate access to the gaming operation, including its books and records, by appropriate tribal officials, who shall have:
- (1) The right to verify the daily gross revenues and income from the gaming operation; and
 - (2) Access to any other gaming-related information the tribe deems appropriate.
- (f) *Guaranteed payment to tribe.* Provide for a minimum guaranteed monthly payment to the tribe in a sum certain that has preference over the retirement of development and construction costs.
- (g) *Development and construction costs.* Provide an agreed upon maximum dollar amount for the recoupment of development and construction costs.

(h) *Term limits.* Be for a term not to exceed five (5) years, except that upon the request of a tribe, the Chairman may authorize a contract term that does not exceed seven (7) years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming operation require the additional time. The time period shall begin running no later than the date when the gaming activities authorized by an approved management contract begin **and shall include any future amendments that affect the term of the relationship.**

(i) *Compensation.* Detail the method of compensating and reimbursing the management contractor. If a management contract provides for a percentage fee, such fee shall be either:

(1) Not more than thirty (30) percent of the net revenues of the gaming operation if the Chairman determines that such percentage is reasonable considering the circumstances;

or

(2) Not more than forty (40) percent of the net revenues if the Chairman is satisfied that the capital investment required and income projections for the gaming operation require the additional fee.

(j) *Termination provisions.* Provide the grounds and mechanisms for amending or terminating the contract (termination of the contract shall not require the approval of the Chairman).

(k) *Dispute provisions.* Contain a mechanism to resolve disputes between:

(1) The management contractor and customers, consistent with the procedures in a tribal ordinance;

(2) The management contractor and the tribe; and

(3) The management contractor and the gaming operation employees.

(l) *Assignments and subcontracting.* Indicate whether and to what extent contract assignments and subcontracting are permissible.

(m) *Ownership interests.* Indicate whether and to what extent changes in the ownership interest in the management contract require advance approval by the tribe.

(n) *Effective date.* State that the contract shall not be effective unless and until it is approved by the Chairman, date of signature of the parties notwithstanding.

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Part 533

§ 533.1 Requirement for review and approval.

Subject to the Chairman's approval, an Indian tribe may enter into a management contract, **or an amendment thereof**, for the operation of a class II or class III gaming activity.

(a) Such contract **or any amendment of an approved contract** shall become effective upon approval by the Chairman.

(b) Contract approval shall be evidenced by a Commission document dated and signed by the Chairman. No other means of approval shall be valid.

§ 533.2 Time for submitting management contracts and amendments.

A tribe or a management contractor shall submit a management contract and **all collateral agreements** to the Chairman for review within sixty (60) days of execution by the parties. The Chairman shall notify the parties of their right to appeal the approval or disapproval of the management contract under part 583 of this chapter.

§ 533.3 Submission of management contract for approval.

A tribe shall include in any request for approval of a management contract under this part:

(a) A contract containing:

- (1) Original signatures of an authorized official of the tribe and the management contractor and;
- (2) A representation that the contract as submitted to the Chairman is the entirety of the agreement among the parties.

(b) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the management contract.

(c) Copies of documents evidencing the authority under paragraph (b) of this section.

(d) Copies of all Collateral Agreements as defined § 502.5.

(e) A list of all persons and entities identified in §§537.1(a) and 537.1(c)(1) of this chapter, and either:

- (1) The information required under §537.1(b)(1) of this chapter for class II gaming contracts and §537.1(b)(1)(i) of this chapter for class III gaming contracts; or
- (2) The dates on which the information was previously submitted.

(f) (1) For new contracts **and for** new operations, a three (3)-year business plan which sets forth the parties' goals, objectives, budgets, financial plans, and related matters; or
(2) For new contracts for existing operations **or new contracts for an existing management relationship**, a three (3)-year business plan which sets forth the parties' goals, objectives, budgets, financial plans, and related matters, and income statements and sources and uses of funds statements for the previous three (3) years.

(g) If applicable, a justification, consistent with the provisions of §531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years.

(h) If applicable, a justification, consistent with the provisions of §531.1(i) of this chapter, for a fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

(i) A legal description for the site on which the gaming operation to be managed is, or will be, located.

§ 533.4 Action by the Chairman.

(a) The Chairman shall approve or disapprove a management contract, applying the standards contained in §533.6 of this part, within 180 days of the date on which the Chairman receives a complete submission under §533.3 of this part, unless the Chairman notifies the tribe and management contractor in writing of the need for an extension of up to ninety (90) days.

(b) A tribe may bring an action in a U.S. district court to compel action by the Chairman:

(1) After 180 days following the date on which the Chairman receives a complete submission if the Chairman does not approve or disapprove the contract under this part;

or

(2) After 270 days following the Chairman's receipt of a complete submission if the Chairman has told the tribe and management contractor in writing of the need for an extension and has not approved or disapproved the contract under this part.

§ 533.5 [Reserved]

§ 533.6 Approval and disapproval.

(a) The Chairman may approve a management contract if it meets the standards of part 531 of this chapter and §533.3 of this part. Failure to comply with the standards of part 531 of this chapter or §533.3 may result in the Chairman's disapproval of the management contract.

(b) The Chairman shall disapprove a management contract for class II gaming if he or she determines that—

(1) Any person with a direct or indirect financial interest in, or having management responsibility for, a management contract:

(i) Is an elected member of the governing body of the tribe that is party to the management contract;

(ii) Has been convicted of any felony or any misdemeanor gaming offense;

(iii) Has knowingly and willfully provided materially false statements or information to the Commission or to a tribe;

(iv) Has refused to respond to questions asked by the Chairman in accordance with his or her responsibilities under this part; or

(v) Is determined by the Chairman to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements;

- (2) The management contractor or its agents have unduly interfered with or influenced for advantage, or have tried to unduly interfere with or influence for advantage, any decision or process of tribal government relating to the gaming operation;
 - (3) The management contractor or its agents has deliberately or substantially failed to follow the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to the Act; or
 - (4) A trustee, exercising the skill and diligence to which a trustee is commonly held, would not approve the contract.
- (c) The Chairman may disapprove a management contract for class III gaming if he or she determines that a person with a financial interest in, or management responsibility for, a management contract is a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements.

§ 533.7 Void agreements.

Management contracts and changes in persons with a financial interest in or management responsibility for a management contract, that have not been approved by the Chairman in accordance with the requirements of part 531 of this chapter and this part, are void.

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Part 535

§ 535.1 Amendments.

- (a)
 - (1) Subject to the Chairman's approval, a tribe may enter into an amendment of a management contract for the operation of a class II or class III gaming activity.
 - (2) An amendment that causes the previously approved management contract to exceed IGRA's mandated limitations as cited in 25 C.F.R. § 531.1(h) will be processed as a new contract in accordance with 25 C.F.R. Part 533.
- (b) A tribe shall submit an amendment to the Chairman within thirty (30) days of its execution.
- (c) A tribe shall include in any request for approval of an amendment under this part:
 - (1) An amendment containing original signatures of an authorized official of the tribe and the management contractor and terms that meet the applicable requirements of part 531 of this chapter;

- (2) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the amendment;
 - (3) Copies of documents evidencing the authority under paragraph (c)(2) of this section;
 - (4) A list of all persons and entities identified in §537.1(a) and §537.1(c)(1) of this chapter:
 - (i) If the amendment involves a change in person(s) having a direct or indirect financial interest in the management contract or having management responsibility for the management contract, a list of such person(s) and either:
 - (A) The information required under §537.1(b)(1) of this chapter for class II gaming contracts or §537.1(b)(1)(i) of this chapter for class III gaming contracts; or
 - (B) The dates on which the information was previously submitted;
 - (ii) [Reserved]
 - (5) If applicable, a justification, consistent with the provisions of §531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years **inclusive of the time passed since contract approval**; and
 - (6) If applicable, a justification, consistent with the provisions of §531.1(i) of this chapter, for a management fee in excess of thirty (30) percent, but not exceeding forty (40) percent.
- (d) (1) The Chairman shall approve or disapprove an amendment within thirty (30) days from receipt of a complete submission if the amendment does not require a background investigation under part 537 of this chapter, unless the Chairman notifies the parties in writing of the need for an extension of up to thirty (30) days.
- (2) The Chairman shall approve or disapprove an amendment as soon as practicable but no later than 180 days from receipt of a complete submission if the amendment requires a background investigation under part 537 of this chapter.
- (3) A party may appeal the Chairman's approval or disapproval of an amendment under part 583 of this chapter. If the Chairman does not approve or disapprove an amendment within the timelines of paragraph (d)(1) or (d)(2) of this section, the amendment shall be deemed disapproved and a party shall have thirty (30) days to appeal the decision under part 583 of this chapter.
- (e) (1) The Chairman may approve an amendment to a management contract if the amendment meets the submission requirements of paragraph (c) of this section. Failure to comply with the submission requirements of paragraph (c) of this section may result in the Chairman's disapproval of an amendment.
- (2) The Chairman shall disapprove an amendment of a management contract for class II gaming if he or she determines that the conditions contained in §533.6(b) of this chapter apply.

(3) The Chairman may disapprove an amendment of a management contract for class III gaming if he or she determines that the conditions contained in §533.6(c) of this chapter apply.

(f) Amendments that have not been approved by the Chairman in accordance with the requirements of this part are void.

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Part 537

§ 537.1 Applications for approval.

(a) For each management contract for class II gaming, the Chairman shall conduct or cause to be conducted a background investigation of:

- (1) Each person with management responsibility for a management contract;
- (2) Each person who is a director of a corporation that is a party to a management contract;
- (3) ~~The ten (10) persons who have the greatest~~ All persons who have 10 percent or more direct or indirect financial interest in a management contract;
- (4) ~~Any entity with a financial interest in a management contract~~ All entities with 10 percent or more financial interest in a management contract ~~(in the case of any tribe, a wholly owned tribal entity, national bank, or institutional investor that is federally regulated or is required to undergo a background investigation and licensure by a state or tribe pursuant to a tribal-state compact, the Chair may exercise discretion and reduce the scope of the information to be furnished and the background investigation to be conducted);~~ and
- (5) For any of the following entities, or individuals associated with the following entities, the Chair may, upon request or unilaterally, exercise discretion to reduce the scope of the information to be furnished and background investigation to be conducted:
 - (i) Tribe as defined at 25 CFR 502.13;
 - (ii) Wholly owned tribal entity;
 - (iii) National bank; or
 - (iv) Institutional investor that is federally regulated or is required to undergo a background investigation and licensure by a state or tribe pursuant to a tribal-state compact.
- (6) Any other person ~~or entity~~ with a direct or indirect financial interest in a management contract otherwise designated by the Commission.

(b) For each natural person identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

(1) Required information.

- (i) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, and gender;
- (ii) A current photograph, driver's license number, and a list of all languages spoken or written;
- (iii) Business and employment positions held, and business and residence addresses currently and for the previous ten (10) years; the city, state and country of residence from age eighteen (18) to the present;
- (iv) The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the person at each different residence location for the past five (5) years;
- (v) Current business and residence telephone numbers;
- (vi) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
- (vii) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
- (viii) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;
- (ix) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and of the disposition;
- (x) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and the disposition;
- (xi) A complete financial statement showing all sources of income for the previous three (3) years, and assets, liabilities, and net worth as of the date of the submission; and
- (xii) For each criminal charge (excluding minor traffic charges) regardless of whether or not it resulted in a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraphs (b)(1)(ix) or (b)(1)(x) of this section, the name and address of the court involved, the criminal charge, and the dates of the charge and the disposition.

(2) Fingerprints. The management contractor shall arrange with an appropriate federal, state, or tribal law enforcement authority to supply the Commission with a completed form FD-258, Applicant Fingerprint Card, (provided by the Commission), for each person for whom background information is provided under this section.

(3) Responses to Questions. Each person with a direct or indirect financial interest in a management contract or management responsibility for a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) Privacy notice. In compliance with the Privacy Act of 1974, each person required to submit information under this section shall sign and submit the following statement:

Solicitation of the information in this section is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the suitability of individuals with a financial interest in, or having management responsibility for, a management contract. The information will be used by the National Indian Gaming Commission members and staff and Indian tribal officials who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, or foreign law enforcement and regulatory agencies in connection with a background investigation or when relevant to civil, criminal or regulatory investigations or prosecutions or investigations of activities while associated with a gaming operation. Failure to consent to the disclosures indicated in this statement will mean that the Chairman of the National Indian Gaming Commission will be unable to approve the contract in which the person has a financial interest or management responsibility. The disclosure of a person's Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing the information provided.

(5) Notice regarding false statements. Each person required to submit information under this section shall sign and submit the following statement:

A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which I have a financial interest or management responsibility, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, I may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(c) For each entity identified in paragraph (a)(4) of this section, the management contractor shall provide to the Commission the following information:

(1) List of individuals.

(i) Each of the ten (10) largest beneficiaries and the trustees when the entity is a trust;

- (ii) Each of the ten (10) largest partners when the entity is a partnership;
- (iii) Each person who is a director or who is one of the ten (10) largest holders of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the entity is a corporation; and
- (iv) For any other type of entity, the ten (10) largest owners of that entity alone or in combination with any other owner who is a spouse, parent, child or sibling and any person with management responsibility for that entity.

(2) Required information.

- (i) The information required in paragraph (b)(1)(i) of this section for each individual identified in paragraph (c)(1) of this section;
- (ii) Copies of documents establishing the existence of the entity, such as the partnership agreement, the trust agreement, or the articles of incorporation;
- (iii) Copies of documents designating the person who is charged with acting on behalf of the entity;
- (iv) Copies of bylaws or other documents that provide the day-to-day operating rules for the organization;
- (v) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
- (vi) A description of any existing and previous business relationships with the gaming industry generally, including ownership interest in those businesses;
- (vii) The name and address of any licensing or regulatory agency with which the entity has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;
- (viii) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and disposition;
- (ix) For each misdemeanor conviction or ongoing misdemeanor prosecution within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and disposition;
- (x) Complete financial statements for the previous three (3) fiscal years; and
- (xi) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (c)(1)(viii) or (c)(1)(ix) of this section, the criminal charge, the name and address of the court involved and the dates of the charge and disposition.

(3) Responses to questions. Each entity with a direct or indirect financial interest in a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) Notice regarding false statements. Each entity required to submit information under this section shall sign and submit the following statement:

A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which we have a financial interest, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, we may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

§ 537.2 Submission of background information.

A management contractor shall submit the background information required in §537.1 of this part:

- (a) In sufficient time to permit the Commission to complete its background investigation by the time the individual is to assume management responsibility for, or the management contractor is to begin managing, the gaming operation; and
- (b) Within ten (10) days of any proposed change in financial interest.

§ 537.3 Fees for background investigations.

(a) A management contractor shall pay to the Commission or the contractor(s) designated by the Commission the cost of all background investigations conducted under this part.

~~(b) The management contractor shall post a deposit with the Commission to cover the cost of the background investigations as follows:~~

~~(1) Management contractor (party to the contract) — \$25,000~~

~~(2) Each individual and entity with a financial interest in the contract — \$10,000~~

~~(eb) The management contractor shall be billed for the costs of the investigation as it proceeds.; the investigation shall be suspended if the unpaid costs exceed the amount of the deposit available.~~

~~(1) An investigation will be terminated if any bills remain unpaid for more than thirty (30) days.~~

~~(2) A terminated investigation will preclude the Chairman from making the necessary determinations and result in a disapproval of a management contract.~~

~~(dc) Any unpaid bill will processed in accordance with part 513 of this chapter and may result in an approved contract being voided or cause a pending contract to be disapproved. remaining balance of the deposit will be returned to the management contractor when all bills have been paid and the investigations have been completed or terminated.~~

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