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.