

Alert | Gaming/Private Equity



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Private Equity Investments in the Nevada Gaming Industry

The state of Nevada has historically been receptive to establishing the regulatory means for new capital to flow into the state's primary industry.

To foster opportunities for new market entrants to invest in the Nevada gaming industry, the Nevada Gaming Control Act (Act) provides a regulatory approach for private equity funds that started in 2004 and continues to today.

Under the Act, there are different categories of licensure for holders of voting stock and non-voting stock. Generally speaking, the holder of non-voting stock may be able to invest in the industry without having to be fully investigated and licensed by the Nevada Gaming Commission (Commission).

As an example, a Nevada gaming licensee (NevadaCo) would create two classes of securities: voting stock and non-voting stock. The voting stock would have voting rights but no economic benefits, while the non-voting stock would have no voting rights but all the economic benefits of stock ownership. As the holders of the voting stock are in a control position, such individuals would be licensed by the Commission. As the holders of the non-voting stock have no ability to control NevadaCo, the holders of the non-voting stock would not be in a mandatory licensing position.

Using this model in the context of a private equity fund, the fund's principal(s) would nominally purchase NevadaCo's voting stock and the fund would invest in NevadaCo's non-voting stock. Under this structure, the fund's principal(s) would apply to, and be licensed by, the Commission. However, the fund and its investors, would not have to go through the licensing process. This allows for alignment in that the fund's principals will have control through voting stock, which also allows them to oversee the fund's investment in NevadaCo's non-voting stock.

The exact licensing structure will vary given the circumstances, such as whether NevadaCo is privately or publicly held, but each approach is well-established and the route to licensing has been well-tested. Each approach may result in the Commission imposing certain reporting, notification, and/or approval requirements.

In sum, the Act provides flexibility for new market entrants looking to invest in the Nevada gaming industry. Potential investors should work with experienced gaming counsel to explore alternative structures to meet licensing requirements while achieving investment goals.

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