

STATE OF NEVADA



BRIAN SANDOVAL
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

BRUCE BRESLOW
Director

GEORGE E. BURNS
Commissioner

February 5, 2016

Adam J. Fleisher
Morrison Foerster
2000 Pennsylvania Ave., NW
Washington, D.C. 20006-1888

RE: NRS 671.055 and NAC 671.007 Advisory Opinion Request dated November 30, 2015

Dear Mr. Fleisher:

You have requested an advisory opinion, pursuant to NAC 232.040, concerning the interpretation of NRS 671.055 and NAC 671.007. The opinion has been requested on behalf of TIO Networks Corp. ("TIO").

Facts

The opinion request states that TIO has plans to acquire Softgate Systems, Inc. ("Softgate"), a Chapter 671 money transmitter currently licensed by the State of Nevada. The request also indicates that TIO is a public company whose shares are traded on the Toronto Stock Exchange. TIO plans to acquire Softgate through TIO Networks USA Inc. ("TIO USA"), which is a wholly-owned subsidiary of TIO. It's not clear whether TIO USA will be the U.S. subsidiary that applies for the license or whether "TIO proposes to create a[nother] U.S. subsidiary to apply for and hold only the Nevada money transmission license for Softgate." In any event, it is further stated that "[t]he officers and directors of this U.S. subsidiary will meet the requirements of Nevada Rev. Stat. § 671.055." "Each individual will be at least 21 years of age and either a citizen of the United State or lawfully entitled to remain and work in the United States."

Issue Presented

Whether the requirements of NRS 671.055 can be extended beyond the partners, principal officers, directors or trustees of an applicant?

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Analysis

Applicants can be either natural persons or business entities. NRS 671.055 states:

In addition to any other requirements set forth by specific statute, each person who applies for a license to engage in the business of selling or issuing checks or of receiving for transmission or transmitting money or credits must submit proof satisfactory to the Commissioner that the person:

1. Is at least 21 years of age; and
2. Is a citizen of the United States or lawfully entitled to remain and work in the United States.

NAC 671.007 interprets NRS 671.055 with regard to business entity applicants and it states:

If an application for a license is submitted by a business entity, the Commissioner will not issue a license to the applicant unless each partner, principal officer, director and trustee, whichever are applicable to the business entity, satisfies the requirements of NRS 671.055.


Pursuant to the regulation, “each partner, principal officer, director and trustee” of the applicant must satisfy the requirements of NRS 671.055. This interpretation is further supported by NRS 671.060 which allows FID to investigate the partners, principal officers, directors and trustees of an applicant.

Please be advised, however, that the Commissioner has discretion when issuing Chapter 671 licenses and such licenses are only issued “[i]f the Commissioner determines that the business of the applicant will be conducted lawfully, honestly, fairly and efficiently . . .” NRS 671.060.

Conclusion

Provided the “partners, principal officers, directors and trustees” of the applicant satisfy the requirements of NRS 671.055, the applicant will have satisfied the requirements of NRS 671.055 as interpreted by NAC 671.007.

Sincerely,



George E. Burns
Commissioner
Financial Institutions Division