

TRIM ID: CD/23/8717

22 August 2023

Clive Weston
Director
Givtu Limited
225a Victoria Street,
Darlinghurst NSW 2010

By email only: cliveweston@gmail.com

Dear Mr Weston,

Re: Appeal against decision to refuse the application of Givtu Limited as a Community or Charitable Organisation under section 8.3.3 of the *Gambling Regulation Act 2003*

For the reasons set out in this letter, the Victorian Gambling and Casino Control Commission (**the Commission**) has determined to confirm the decision of the authorised delegate to refuse the application made by Givtu Limited (**the Applicant**) to be declared a community or charitable organisation (**CCO**).

Background

On 2 February 2023 the Applicant applied to the Commission to be declared a CCO under section 8.3.1 of the *Gambling Regulation Act 2003* (Vic) (**the Act**).

On 25 May 2023, an authorised delegate of the Commission wrote to the Applicant and advised that they had determined to refuse the application under section 8.3.3(3)(a)(ii) of the Act, as they did not consider the Applicant to have met the requirement that the organisation be conducted in good faith for any philanthropic or benevolent purpose (**Decision**).

On 1 June 2023, you wrote to the Commission seeking to appeal the Decision under section 8.3.4 of the Act (**the Appeal**).

The Appeal

On appeal, the Commission stands in the shoes of the original decision maker and arrives at a decision having considered all information, material and evidence available. For this matter, the Commission has received and considered all materials that were submitted to the original delegate as well as the information contained in the Appeal letter.

Having reviewed the materials provided, section 8.3.5 of the Act allows the Commission to:

- a. confirm the decision of the delegate to refuse to declare the Applicant to be a CCO; or
- b. make a declaration under the Act in favour of the Applicant to be a CCO.

Relevant legislation

A person must not conduct minor gaming (which includes raffles) other than in accordance with Chapter 8 of the Act. In accordance with section 8.3.12 of the Act, an organisation that is a CCO (or has applied for a declaration as a CCO) may apply to the Commission for a minor gaming permit to enable them to lawfully conduct minor gaming.

Section 8.3.3 of the GR Act empowers the Commission to make a declaration that an applicant is a CCO. Relevantly, this section states:

- (1) *The Commission, by instrument, may declare an organisation to be a community or charitable organisation if the Commission is satisfied that the organisation is conducted in good faith for—*
 - (a) *any philanthropic or benevolent purpose, including the promotion of art, culture, science, religion, education or charity...*
- (2) *In determining whether to make a declaration under subsection (1), the Commission may have regard to any matter which it considers relevant, including but not limited to—*
 - (a) *the conduct of fundraising or minor gaming activities by the applicant;*
 - (b) *the conduct of any person directly or indirectly associated with the applicant.*

The objectives of the Act concerning community and charitable gaming, and relevantly for this Appeal, are contained in section 1.1(2) which states, amongst other things:

- ...
- (2) *The main objectives of this Act are—*
- ...
- (e) *to ensure that-*
 - (i) *community and charitable gaming benefits the community or charitable organisation concerned;*
 - (ii) *practices that could undermine public confidence in community and charitable gaming are eliminated...*

After consideration of an application under section 8.3.3(1) of the Act, the Commission must, pursuant to section 8.3.3(3), either:

- a. declare the applicant to be a CCO for the purposes of the Act; or
- b. refuse the application.

Decision

Having considered the matters set out above and the information submitted by the Applicant, the Commission has determined to confirm the original Decision of the delegate and refuse the application for declaration under section 8.3.3(3)(a)(ii) for the reasons to follow.

Proposed operating model

Information provided by the Applicant revealed that they intend to conduct raffles on behalf of other charities. In email correspondence with the original delegate, you wrote:

Givtu Ltd is currently developing an online fundraising application in the form of a game of chance (raffle) to support existing charities in Australia. We aim to provide 40% of ticket sales to Australian and state charities of great interest to the participant playing. We're developing the software to comply with each state's community gaming acts and regulations, aiming to maximize the return to both participants and charities.

Please note that Givtu has not yet commenced trading as the software is still under development.

There is no information currently before the Commission regarding the operation of the Applicant and how the organisation is conducted in good faith for any philanthropic or benevolent purpose. The Applicant has provided information on their intentions and proposed future plans but has been unable to provide any material to demonstrate that they are formed for a philanthropic or benevolent purpose. Indeed, the Appeal letter acknowledges that the Applicant is currently in its formative stages. Rather, the Applicant has indicated that they intend to operate to conduct raffles on behalf of other organisations that have a philanthropic or benevolent purpose.

Other considerations – Commercial Raffle Organiser

The Act operates in a way that permits declared CCOs to conduct minor gaming, including raffles, provided that the proceeds are distributed for the philanthropic or benevolent purposes of that CCO. In this instance, the Applicant is proposing to conduct raffles on behalf of other entities, who would then be provided a portion of the proceeds to distribute to their charitable cause. The Commission is of the view that the business model you are proposing – where you organise and conduct a raffle on behalf of others – is aligned with the operation permitted under a Commercial Raffle Organiser (**CRO**) licence.

Section 1.3 of the Act defines a CRO as a person, other than an employee of the holder of a minor gaming permit, who is retained on a commercial basis to conduct a raffle, in whole or in part.

Pursuant to section 8.5A.2 of the Act, a CRO is required to hold a CRO licence to conduct these activities on behalf of the holder of a minor gaming permit which, under the Act, needs to be held by a declared CCO.

The Commission is also of the view that the way in which the Applicant proposes to conduct raffles on behalf of other entities and to retain up to 60% of sales falls within the type of operation permitted under a CRO licence, not a minor gaming permit held by a CCO.¹

If the Applicant was to conduct raffles on its own behalf – which is not what is proposed in this Appeal application – it would need to be a declared CCO and would need to distribute the money in accordance with its benevolent purpose. If the Applicant proposes to conduct raffles to assist other charities in fundraising, which is what it appears the Applicant is seeking to do, it would be conducting raffles on behalf of others, and to do so lawfully, will need to hold a CRO licence.

Please contact April Corker, Solicitor on 03 9297 8570 or by email at April.Corker@vgccc.vic.gov.au if you have any queries.

Yours sincerely,



Fran Thorn
Chair

¹ See email dated 11 April 2023 from Clive Weston to VGCCC delegate providing additional information, including the proposed operating model. It states, “We aim to provide 40% of ticket sales to Australian and state charities of great interest to the participant playing”.