

THE GAMBLING LAW
REVIEW

FOURTH EDITION

Editor
Carl Rohsler

THE LAWREVIEWS

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REVIEW

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Editor
Carl Rohsler

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CONTENTS

PREFACE.....	vii
<i>Carl Robsler</i>	
Chapter 1 GAMBLING: A LEGAL AND PHILOSOPHICAL OVERVIEW	1
<i>Carl Robsler</i>	
Chapter 2 GAMBLING AND EUROPEAN LAW	12
<i>Philippe Vlaemminck, Robbe Verbeke and Lidia Dutkiewicz</i>	
Chapter 3 OVERVIEW OF US FEDERAL GAMING LAW	27
<i>Behnam Dayanim, Reade Jacob and Kathryn Harris</i>	
Chapter 4 ALDERNEY	48
<i>Wayne Atkinson and Michael Lyner</i>	
Chapter 5 AUSTRALIA.....	57
<i>Jamie Nettleton, Shanna Protic Dib and Karina Chong</i>	
Chapter 6 AUSTRIA.....	71
<i>Christian Rapani and Julia Kotanko</i>	
Chapter 7 BELGIUM	82
<i>Philippe Vlaemminck and Robbe Verbeke</i>	
Chapter 8 BRAZIL.....	95
<i>Luiz Felipe Maia</i>	
Chapter 9 CYPRUS.....	108
<i>Antria Aristodimou and Marios Christodoulou</i>	
Chapter 10 CZECH REPUBLIC	121
<i>Vojtěch Chloupek</i>	

Contents

Chapter 11	DENMARK.....	132
	<i>Henrik Norsk Hoffmann</i>	
Chapter 12	FRANCE.....	145
	<i>Alexandre Vuchot, Cathie-Rosalie Joly and Rami Kawkabani</i>	
Chapter 13	GERMANY.....	160
	<i>Joerg Hofmann, Matthias Spitz and Jessica Maier</i>	
Chapter 14	GIBRALTAR.....	171
	<i>Andrew Montegriffo and Louise Lugaro</i>	
Chapter 15	HONG KONG	182
	<i>Vincent Law and Alan Linning</i>	
Chapter 16	INDIA	189
	<i>Vidushpat Singhania</i>	
Chapter 17	IRELAND.....	204
	<i>Alan Heuston and Seán Dowling</i>	
Chapter 18	ISRAEL.....	220
	<i>Liran Barak</i>	
Chapter 19	JAPAN	228
	<i>Hitoshi Ishihara</i>	
Chapter 20	MACAO	238
	<i>Pedro Cortés and Óscar Alberto Madureira</i>	
Chapter 21	MALTA.....	248
	<i>Andrew J Zammit, Gayle Kimberley, Amanda Vella and Yasmine Aquilina</i>	
Chapter 22	MEXICO	265
	<i>Carlos F Portilla Robertson</i>	
Chapter 23	NETHERLANDS.....	277
	<i>Alan Littler</i>	
Chapter 24	NEVADA	287
	<i>Sonia Church Vermeys and Erin Elliott</i>	

Contents

Chapter 25	POLAND.....	298
	<i>Piotr Dymowski and Michał Salajczyk</i>	
Chapter 26	PORTUGAL.....	310
	<i>Duarte Abecasis and Leonor Catela</i>	
Chapter 27	ROMANIA.....	319
	<i>Cosmina Simion and Ana-Maria Baciú</i>	
Chapter 28	RUSSIA.....	330
	<i>Alexander Skoblo, Ilya Machavariani and Ivan Kurochkin</i>	
Chapter 28	SPAIN.....	342
	<i>Pablo González-Espejo and David López Velázquez</i>	
Chapter 29	SWEDEN.....	356
	<i>Erik Ullberg, Christel Rockström, John Olsson and Vandad Ahmedi</i>	
Chapter 30	UNITED KINGDOM.....	366
	<i>Carl Robsler</i>	
Appendix 1	ABOUT THE AUTHORS.....	381
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	401

PREFACE

Welcome to the fourth edition of *The Gambling Law Review*.

One of the issues I have been wondering about while reviewing the fourth edition of *The Gambling Law Review* is what might be described as the Sorites paradox in reverse.¹ First editions of books may well be the ones that are the most collectable, but they are probably not the most valuable for the reader. In years two and three, as an edition gathers size and age, it becomes established. But at what point does it stop being a project and become a tradition, an institution or (the ultimate accolade for any legal study) an authority?

I think it would be wrong to say that we are an authority yet. But, there are some very encouraging signs. We have new and notable contributions from Austria, Hong Kong and Cyprus. One must also mention those who have had to perform substantial re-writes, as with Malta, since the legislation there has been subject to considerable change.

This year, therefore, I am pleased again to say that the scope of coverage has increased to 30 chapters. So we may not yet be 'authoritative', but I hope that readers will agree that we are very well established. I am delighted to welcome the new authors and thank them each for their very valuable contributions, as I am also very pleased to thank those who have had found the time and resources to continue contributing to this work.

The primary purpose of this work is to provide a short summary of the gambling law of a wide range of jurisdictions and, so far as possible, to achieve that through a format that is both uniform enough to allow a comparison of the different legal systems but is also flexible enough to recognise that gambling law finds its home in different places depending upon the legal system in question. In some countries, it is founded in the criminal law, in other places it forms part of civil or administrative law. It is sometimes rooted in a common law and sometimes in a civil code tradition.

The second aim is to allow practitioners in the field to be updated on developments over the course of the year – with a section in each chapter dealing with both the main milestones of the last 12 months and the likely developments to come. And last, of course, it is a good way to bring together some of the leading lawyers in this fascinating field, so that they can stay in touch and communicate with each other – forming a network of knowledge and contacts upon which I hope our respective clients will rely.

Looking back, it feels as though the world has been a very busy place over the last 12 months. It is tempting to say that such a statement is just an error of perspective, and that

¹ Eubulides of Miletus is said to have conjectured about taking consecutive grains away from a pile of sand. When does the heap cease to be a heap and become merely a pile? The Sorites paradox takes its name from the Greek word for 'pile'.

in fact every year has its fair share of excitement – but events in America (both in the world of gambling and also more widely in politics), and the chaos of Brexit, which still surrounds me as I write, seem to justify putting 2018/19 into a special category.

But while the political environment seems to have been particularly fraught, political matters are often cyclical, reflecting movements between different ideologies and oscillating social attitudes. The more important changes have actually been technological, since they almost always lead to dramatic and irreversible changes.

So, let us focus on some important statistics. During 2018, the number of internet users in the world exceeded 4 billion (a 7 per cent year-on-year increase). Pausing there, that means that in 2018, more than 280 million people went online for the first time. Those new internet users, if brought together geographically, would form the fourth largest national population in the world.

In the same 12-month period the number of social media users increased by 13 per cent to 3.1 billion. Furthermore, during 2018 the world reached a total of more than 5.1 billion unique mobile phone users, meaning that two thirds of the world's population has access to mobile communication, with more than half of the handsets being smartphones. Mobile use has indeed eclipsed laptops and desktop computers. Internet penetration in Western Europe is at 92 per cent and in North America it is 88 per cent. Soon, everyone will have access to everything. And the everything is being delivered much more quickly. Average fixed internet speeds increased between 2017 and 2018 from 22Mbps to 46.12Mbps, an average of 26 per cent.

The amount of data we produce each year (about 16 zettabytes²) is already much more than would be necessary to record every word ever spoken by our species. In other words, the technology, and the ability to process, manipulate and model the universe mathematically has gone well beyond a tipping point, and is rapidly creating the environment for databases and networks of neurological scale, and a whole new way of thinking – artificial intelligence.

Those changes have created new possibilities in many fields, including the development of the worldwide gambling industry. Distributed ledger technologies and, in particular, bitcoin was first created in 2009. Ten years later, they have already become sufficiently prominent that gambling regulators have been forced to consider and regulate their use. Given that acceleration, it will surely be only a matter of four or five more years before they become a mainstream form of consumer currency. Second, artificial intelligence is beginning to show its worth as a way of automating some of the processes that most concern operators and regulators: social responsibility, player verification and anti-money laundering. To give one example, automated age verification by use of facial recognition technology is likely to become a practical reality in the next 12 months. At present, many operators are still using some fairly crude flags to indicate when a player is gambling unwisely or acting suspiciously and most of these have ultimately to be judged by fallible humans. We can expect, as the number of data points increases and the ways of assessing behaviour become more subtle, that standards will be able to be created through the use of automated tools to make player identification, monitoring and self-exclusion a much more scientific, accurate and objective process.

Another area where technology is creating change is in the environment in which gambling takes place. There was a time when gambling was confined to casinos and other

2 A zetterbyte is a trillion gigabytes, or 1,000,000,000,000,000,000 bytes.

specific premises. Then the internet allowed gambling to become home-based for the first time, and there were increasing attempts using live-dealer experiences and virtual reality to mimic premises-based gambling but with the comforts of home. Next, we saw the diversification of gambling products and a blurring of the whole entertainment space, with social gaming and e-sports creating completely new kinds of experience, and we have also seen a return to premises-based entertainment, but where a fusion of technologies mean that games can be played seamlessly from device to premises, on a single account. In other words, the ubiquity of gambling behaviour has become like the ubiquity of mobile technology and social media itself.

At the same time as these technological changes are democratising access to gambling, the 'grey' markets are drying up. More and more legislators are addressing themselves to the regulation of international gambling and the creation of models for regulation and taxation. The Wild West of 20 years ago has become a tamer place. Also, while the dominance of certain social media technologies is creating opportunities, it is also effectively restricting diversity of approach down into necessary and fewer effective routes to market. In other words, to be effective, gambling operators need not only the approval of their regulators, but also, increasingly, the companies that allow them to deliver their product. Many opinions on the legality of operations are now being drafted not to convince regulators but more to persuade banks and media providers of a product's legality. The industry faces an ongoing challenge to ensure that big business views gambling operators as a legal and acceptable form of entertainment and commerce. The need for the industry to remain a convincing advocate of its own propriety has never been greater.

In the context of these changes, there is surely an important place for an annual review of the world of gambling law. I close by thanking my co-authors and the editorial team at *The Law Reviews*, for their organisation and encouragement. I very much look forward to our fifth edition, with still more content and diversity, by which time I will formally have decided that the *Gambling Law Review* has indeed developed into an authority.

Carl Rohsler

Memery Crystal

London

May 2019

NEVADA

*Sonia Church Vermeys and Erin Elliott*¹

I OVERVIEW

i Definitions

Nevada legalised casino gambling in 1931 when Governor Fred Balzar signed Assembly Bill 98 into law. The Nevada legislature voted to legalise gambling to help lift Nevada out from under the impact of the Great Depression, and undid a ban on casino gambling in the state that had been in place since 1909. Gambling has been legal in Nevada for over 85 years.

The definition of ‘gambling game’ in Nevada is ‘any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value...’²

The definition excludes ‘games played with cards in private homes or residences in which no person makes money for operating the game, except as a player, or games operated by charitable or educational organisations which are approved’ by the Nevada Gaming Control Board (the Board).³ Under Nevada law, a ‘wager’ is ‘a sum of money or representative of value that is risked on an occurrence for which the outcome is uncertain.’⁴

In 1949, Nevada began allowing wagering on horse racing and professional sports at ‘turf clubs’, which were independent from casinos. In 1975, the Nevada legislature authorised race and sports wagering to be offered in Nevada casinos. Nevada sports books offer a variety of wagering options for patrons. Patrons can place parlay wagers, wagers on point spreads and *pari-mutuel* wagers (participants wagering with each other).⁵ Many Nevada sportsbooks offer a mobile wagering application that allows people to place wagers with licensed Nevada race and sports books without the need of going to a betting window in a casino. The registration process for a mobile wagering account must occur in a Nevada race and sportsbook.⁶ Currently, any wagers made via the mobile sports wagering application must be initiated from within Nevada.⁷

In 2011, the Nevada Gaming Commission (the Commission; collectively, the Board and Commission will be referred to as the Nevada Gaming Authorities) adopted regulations for interactive (online) gaming in Nevada. By statute, online gaming in Nevada is limited

1 Sonia Church Vermeys is a shareholder and Erin Elliott is an associate at Brownstein Hyatt Farber Schreck LLP.

2 NRS 463.0152.

3 NRS 463.0152.

4 NRS 463.01962.

5 NRS 464.005.

6 Nevada Gaming Commission Regulation (NGC Reg.) 22.140(7).

7 NGC Reg. 22.140(1).

to poker. The first online poker website went live in Nevada in April 2013. In an effort to increase liquidity for the online poker websites in Nevada, the governors of Nevada and Delaware signed a compact in February 2014 to establish a legal framework for interstate poker between players in both states, and the states began sharing online poker players in March 2015.

During the 2015 Nevada legislative session, Chapter 463 of the Nevada Revised Statutes (the Nevada Act) was amended to allow games of skill and hybrid games of skill and chance to be available on casino floors in Nevada. A 'game of skill' is defined as 'a game in which the skill of the player, rather than chance, is the dominant factor in affecting the outcome of the game as determined over a period of continuous play'.⁸ A 'hybrid game' is defined as a 'game in which a combination of the skill of the player and chance affects the outcome of the game as determined over a period of continuous play'.⁹

In October 2015, the Board issued a notice stating its position that pay-to-play daily fantasy sports (DFS) met the definition of a gambling game under Nevada law and, therefore, anyone offering DFS in Nevada must possess a licence to operate a sports pool issued by the Commission. The Board defined DFS as a gambling game, but did not take a position on traditional season-long fantasy sports.

Section 24 of the Nevada Constitution prohibits the state of Nevada from authorising a lottery. Nevada is one of six states in the United States that does not have a state-affiliated lottery. The other five states are Alabama, Alaska, Hawaii, Mississippi and Utah. In Nevada, a lottery is defined as 'any scheme for the disposal or distribution of property, by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining that property'.¹⁰ Nevada allows charitable raffles to be offered by 'bona fide charitable, civic, educational, fraternal, patriotic, political, religious or veterans' organisations that are not operated for profit' to conduct a lottery, raffle, or gift enterprise for the benefit of charitable or non-profit activities in the state.¹¹

ii Gambling policy

Today, Nevada is home to one of the world's most recognisable skylines – the Las Vegas Strip. The gaming industry is vitally important to the state's economy and the welfare of its residents.¹² As such, the gaming industry is heavily regulated at the state level by the Nevada Gaming Authorities to ensure its integrity and longevity.¹³ Nevada recognises the importance of strict regulation in order to maintain the industry's significance, stating that the:

*continued growth and success of gaming is dependent upon public confidence and trust that licensed gaming ...[is] conducted honestly and competitively, that [licensed gaming establishments] do not unduly impact the quality of life enjoyed by residents of the surrounding neighborhoods, that the rights of the creditors of licensees are protected and that gaming is free from criminal and corruptive elements.*¹⁴

8 NRS 463.15997.

9 NRS 463.15997(4)(b).

10 NRS 462.105(1).

11 NRS 462.125 and 462.200.

12 NRS 463.0129(1)(a).

13 NRS 463.0129(1)(c).

14 NRS 463.0129(1)(b).

To Nevadans, the presence of the gaming industry is a part of daily life. A limited number of slot machines can be found on the bar tops of neighbourhood pubs and taverns and in grocery stores, convenience stores and even airports. Casinos are commonplace, and offer more than just table games and slot machines. Casinos are home to restaurants, theatres, bowling alleys, convention spaces, spas and salons.

iii State control and private enterprise

Unlike other states with state-run lotteries, Nevada does not own any part of the gaming industry. Nevada's gaming industry relies solely on private and public ownership and investment in the operation of gaming establishments. While there is no rule prohibiting the same owner from having an interest in multiple gaming establishments, the Nevada Act and the regulations promulgated by the Commission pursuant to the Nevada Act (the Regulations) are designed to encourage competition. If the same entity or individual wishes to own multiple casinos in Nevada, the Nevada Gaming Authorities consider a number of factors, such as whether such licensing will have an adverse impact upon the public health, safety, morals, good order and the general welfare of the public.¹⁵

iv Territorial issues

As noted above, gaming in Nevada is regulated at the state level by the Board and Commission. In addition, city and county governments also regulate gaming in Nevada. In general, the Board and Commission handle detailed background investigations for casino applicants, while local agencies primarily focus on the regulation and control of liquor sales and issuing ancillary business licences for the operation of various businesses located in a casino. In Las Vegas, for instance, casinos located on the Las Vegas Strip need to receive licences from the Clark County Department of Business Licence and casinos located in downtown Las Vegas need to obtain licences from the City of Las Vegas Business Licence Department.

v Offshore gambling

The Board and Commission have the ability to licence gaming operators in the state of Nevada and individuals affiliated with such companies. Those that operate gaming contrary to the laws of the state are prosecuted by the Nevada Attorney General or the appropriate federal authorities.

There may be regulatory consequences for companies that have operated illegally in the past and then apply for licensure in Nevada. A few years ago, the Board and Commission indicated their likely approach when companies that have operated offshore gambling businesses in the United States come before them for licensing. In 2011, the Nevada Gaming Authorities addressed Caesars Entertainment's application to approve its association with 888 Holdings, a company that had offered online poker in the United States before 2006. When the Unlawful Internet Gambling Enforcement Act (UIGEA) was enacted in 2006, 888 Holdings pulled its operations from the United States. By ultimately approving Caesars' business dealings with 888 Holdings, the Board and Commission indicated a general willingness to allow companies that ceased operations in 2006 upon the passing of UIGEA to be able to operate in Nevada going forward if they came forward for licensing.

¹⁵ NGC Reg. 3.070(11).

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

The Nevada Act and the Regulations provide the primary legal framework for the regulation of gaming in Nevada. The laws, regulations and supervisory procedures of the Nevada Gaming Authorities are based upon declarations of public policy. These public policy concerns include, among other things: (1) preventing unsavoury or unsuitable persons from being directly or indirectly involved with gaming at any time or in any capacity; (2) establishing and maintaining responsible accounting practices and procedures; (3) maintaining effective controls over the financial practices of licensees; (4) preventing cheating and fraudulent practices; and (5) providing a source of state and local revenue through taxation and licensing fees.¹⁶

ii The regulator

The Nevada Act provides for a two-tier state regulatory system. The Board is a full-time regulatory agency consisting of two members and a chairperson, all appointed by the governor. The Board employs staff allocated among divisions, which perform various functions related to the regulation of gaming, including investigations related to applications for licences and findings of suitability. The Board makes recommendations to the Commission as to how licence applications should be handled. The Commission is a part-time body consisting of four members and a chairperson, all of whom are also appointed by the governor. The Commission makes the final determination on licence applications.

iii Remote and land-based gambling

The Nevada Act and Regulations provide for the Board to license and regulate both online and land-based gambling. On 22 December 2011, the Commission adopted regulations for the establishment of a regulatory framework for the state regulation of internet poker pursuant to Assembly Bill 258 enacted by the Nevada legislature. These regulations address the licensure of operators, service providers and manufacturers of ‘interactive gaming systems’, which are currently limited to internet poker. The core components of an interactive gaming system must be located in the state of Nevada except as otherwise permitted by the Board.¹⁷

iv Land-based gambling

While licensed gambling is legal in Nevada, there are some restrictions as to where a gaming establishment may be located. In 1997, the Nevada legislature enacted laws to regulate the location of future casinos in counties with a population of 700,000 or more.¹⁸ As a result, the laws currently only apply to Clark County, where the Las Vegas Strip is located. One of the purposes of restricting the location of future casinos in Clark County is to concentrate:

the next generation of large gaming establishments along the Las Vegas Strip...[to] promote responsible use of financial and natural resources by encouraging urban development in those areas where the transportation systems and infrastructure are best suited for such intensive development¹⁹

16 NRS 463.0129.

17 NGC Reg. 14.010(10).

18 NRS 463.3074.

19 NRS 463.3072(2).

New non-restricted gaming establishments²⁰ in Clark County must be located in a gaming enterprise district (GED).²¹ Clark County publishes a map that indicates where the GEDs are located. Gaming establishments that were not located within a GED when the law was enacted in 1997 are grandfathered, but 'the establishment may not increase the number of games or slot machines operated at the establishment beyond the number of games or slot machines authorised for such a classification of establishment by local ordinance on December 31, 1996.'²² The Commission may approve the placement of a gaming establishment outside of a GED if the petitioner demonstrates that certain enumerated development criteria, such as the enhancement of the local economy and the welfare of the community, have been met.²³

v Remote gambling

The Nevada Act and Regulations authorise casinos to offer mobile gaming to their patrons. For a patron to participate in mobile gaming, he or she needs to go through an in-person registration process at the casino. Once authorised, the patron is provided a device that allows him or her to gamble remotely on the casino property. The mobile devices should not work outside the property. Additionally, Nevada has two online poker operators that offer games to people in Nevada and Delaware, and Nevada's race and sportsbooks allow customers to place bets remotely on games on their mobile sports betting apps (provided the wagers are made in Nevada).

vi Ancillary matters

The manufacture, sale or distribution of gaming devices without a licence is illegal in Nevada.²⁴ A 'gaming device' means any object used remotely or directly in connection with gaming, or any game that affects the result of a wager by determining win or loss and that does not otherwise constitute associated equipment.²⁵

If a particular device is not a gaming device, it may be considered associated equipment in Nevada. Associated equipment is any equipment used in connection with gaming or mobile gaming, which connects to progressive slot machines, equipment that affects the proper reporting of gross revenue, computerised systems of betting at a race book or sports pool, computerised systems for monitoring slot machines and devices for weighing or counting money.²⁶ Any manufacturer or distributor of associated equipment for use in

20 'Nonrestricted license' or 'nonrestricted operation' means: (1) a state gaming licence for, or an operation consisting of, 16 or more slot machines; (2) a licence for, or operation of, any number of slot machines together with any other game, gaming device, race book or sports pool at one establishment; (3) a licence for, or the operation of, a slot machine route; (4) a licence for, or the operation of, an inter-casino linked system; or (5) a licence for, or the operation of, a mobile gaming system. NRS 463.0177.

21 NRS 463.309(1). The map is currently available here: http://gisgate.co.clark.nv.us/gisplot_pdfs/cp/reggaming1711.pdf.

22 NRS 463.308(3).

23 NRS 463.3084(2); 463.3086(6).

24 NRS 463.650.

25 NRS 463.0155.

26 NRS 463.0136.

Nevada must register with the Commission pursuant to NRS 463.665.²⁷ The Commission has the discretion to require any manufacturer or distributor of associated equipment to file an application for a finding of suitability.²⁸

Additionally, Nevada licenses certain service providers. A service provider includes any person who: (1) acts on behalf of another licensed person who conducts non-restricted gaming operations, and who assists, manages, administers or controls wagers or games, or maintains or operates the software or hardware of games on behalf of such a licensed person, and is authorised to share in the revenue from games without being licensed to conduct gaming at an establishment; (2) is an interactive gaming service provider; or (3) is a cash access and wagering instrument service provider.²⁹ The licensing guidelines for service providers vary depending upon what 'class' the service provider's activities fall into. For example, an interactive gaming service provider is required to obtain a Class 1 licence. Other types of service providers are required to obtain a Class 2 licence. These include information technology service providers and location determination providers.³⁰ As of 2016, marketing affiliates are no longer required to be licensed as service providers.

When the Commission issues a licence to a gaming operator, certain individuals affiliated with the casino licensee and the casino licensee's holding companies need to file applications and be investigated and found suitable. Generally, the Commission will impose a condition on a casino's licence requiring the general manager of the casino to file an application as a key employee of the casino.

For privately held businesses, the licensing requirements vary depending on the type of entity involved. No person may acquire a 5 per cent or greater interest in a privately held licensee or a holding company, nor become a controlling³¹ affiliate of such licensee or holding company, nor become a holding company of such licensee or holding company, without first obtaining the prior approval of the Commission.³² The Commission may require any or all of a privately held business entities' lenders, holders of evidence of indebtedness, underwriters, key executives, agents or employees, as applicable, to be licensed or found suitable.³³ For a corporate licensee, in addition to owners of 5 per cent or more of the equity securities issued by the corporate licensee, all officers and directors of a privately held corporation that holds or applies for a state gaming licence must be licensed individually.³⁴ Owners under 5 per cent must register with the Board.

Publicly traded corporations (PTCs) are treated differently under Nevada law than privately held business entities. The Nevada gaming statutes that deal with PTCs focus on voting control rather than on equity ownership. Each officer, director and employee of a PTC that the Commission determines is or is to become actively and directly engaged in the administration or supervision of, or is to have any other significant involvement with, the gaming activities of the corporation or any of its affiliated or intermediary companies must

27 NGC Reg. 14.020(4).

28 NGC Reg. 14.305(1).

29 NRS 463.677(5)(b).

30 Nevada Gaming Control Board Service Provider Licensure Guidelines.

31 'Control' is defined as 'the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.' NGC Reg. 15.482-4.

32 See NGC Regs. 15.1594-6, 15A.060 and 15B.060.

33 NGC Regs. 15.530-3, 15A.160 and 15B.160.

34 NRS 463.530.

be found suitable and may be required to be licensed by the Commission.³⁵ A holder of more than 5 per cent of the voting securities of a PTC registered with the Commission must notify the Commission within 10 days after filing notice with the United States Securities and Exchange Commission (SEC).³⁶ A holder of more than 10 per cent of the voting securities of a PTC must file an application with the Commission for a finding of suitability within 30 days after the chairman of the Board mails written notice to the owner.³⁷ Qualified institutional investors can hold up to 25 per cent of the voting securities of a PTC, but they need to obtain a waiver from the Commission in order to do so.³⁸

In March 2016, the Commission adopted the new Regulation 15C, which created a licensing framework for private investment companies. Regulation 15C eliminates the requirement that private equity companies with an ownership interest in a Nevada gaming licensee must file financial reports with the SEC.

III THE LICENSING PROCESS

i Application and renewal

Under the Nevada Act, the burden of proving qualification to receive a licence is solely on the applicant. Such approvals are privileges under the Nevada Act and no person has any right to receive a licence. Once granted, such approvals are revocable privileges and no holder acquires any vested rights therein or thereunder.

The Nevada Act provides that a licence must not be granted unless the Commission is satisfied that the applicant is:

*(i) a person of good character, honesty and integrity; (ii) a person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this state 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 in the carrying on of the business and financial arrangements incidental thereto; and (iii) in all other respects qualified to be licensed or found suitable consistently with the declared policy of this state.*³⁹

The Nevada Act further provides that a licence to operate a gaming establishment must not be granted unless the applicant has satisfied the Commission that:

*(1) he or she has 'adequate business probity, competence and experience in gaming or generally; and (2) the proposed financing of the entire operation is adequate for the nature of the proposed operation and from a suitable source.*⁴⁰

35 NRS 463.637(1); NGC Regs. 16.410(1) and 16.415(1).

36 NRS 463.643(3).

37 NRS 463.643(4).

38 NGC Reg. 16.010(14).

39 NRS 463.170(2).

40 NRS 463.170(3).

ii Sanctions for non-compliance

Unlicensed gambling is a crime in Nevada. It is unlawful for any person to ‘deal, operate, carry on, conduct, maintain or expose for play in the state of Nevada any gambling game, gaming device, inter-casino linked system, mobile gaming system, slot machine, race book or sports pool’ without a licence issued by the Commission.⁴¹ It is also illegal to ‘receive, directly or indirectly, any compensation or reward or any percentage or share of the money or property played, for keeping, running or carrying on any gambling game, slot machine, gaming device, mobile gaming system, race book or sports pool.’⁴² A violation is a category B felony, which is punishable by imprisonment of between one and 10 years and a fine of up to US\$50,000, or both.⁴³ In addition, a ‘person who contrives, prepares, sets up, proposes or draws any lottery ... is guilty of a misdemeanour,’ which is punishable by imprisonment for not more than six months, or a fine of not more than US\$1,000, or both.⁴⁴

The Board and the Commission have broad authority to investigate and discipline licensees and registrants for violations of the Nevada Act and Regulations. If the Board investigates a licensee and thereafter determines that the licensee should be disciplined, it must ‘initiate a hearing before the Commission by filing a complaint with the Commission ... and transmit therewith a summary of evidence in its possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the Board.’⁴⁵ The Commission has the authority to limit, condition, suspend, or revoke a licence or registration.⁴⁶ The Commission may also fine a licensee up to US\$250,000 for each separate violation, depending on the nature of the violation.⁴⁷

The Board and the Commission also have the authority to exclude individuals from entering a gaming establishment or participating in gambling activity. The Board publishes a list of excluded persons on its website. Often referred to as the ‘black book’, individuals on this list are prohibited from entering any gaming establishment. To determine whether an individual belongs on the list, the Board and the Commission may consider the following factors:

- (a) Prior conviction of a crime which is a felony in this state or under the laws of the United States, a crime involving moral turpitude or a violation of the gaming laws of any state; (b) Violation or conspiracy to violate the provisions...relating to: (1) the failure to disclose an interest in a gaming establishment for which the person must obtain a licence; or (2) willful evasion of fees or taxes; (c) Notorious or unsavoury reputation which would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive elements; or (d) Written order of a governmental agency which authorises the exclusion or ejection of the person from an establishment at which gaming or pari-mutuel wagering is conducted.*⁴⁸

41 NRS 463.160(1)(a).

42 NRS 463.160(1)(d).

43 NRS 463.360(3).

44 NRS 462.250; NRS 193.150(1).

45 NRS 463.310(2).

46 NRS 463.310(4).

47 NRS 463.310(4).

48 NRS 463.151(3).

IV WRONGDOING

The Board is required to continually observe the conduct of all licensees and other persons having a material involvement directly or indirectly with a licensed gaming operation or registered holding company to ensure that licenses are not issued or held by, nor is there any material involvement directly or indirectly with a licensed gaming operation or registered holding company, by unqualified, disqualified or unsuitable persons, or persons whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places or locations.⁴⁹

The Board is required to investigate any apparent violations of the Nevada Act and Regulations.⁵⁰ It is the policy of the Nevada Gaming Authorities to require that all gaming establishments in Nevada be operated in a manner suitable to protect the public health, safety, morals, good order and general welfare of the inhabitants of Nevada.⁵¹ Responsibility for the employment and maintenance of suitable methods of operations rests with the licensee, and wilful or persistent use or toleration of methods of operation deemed unsuitable will constitute grounds for licence revocation or other disciplinary action.⁵²

Regulation 5.011 lists certain acts or omissions that may be determined to be unsuitable methods of operation. These include the 'failure to exercise discretion and sound judgment to prevent incidents that might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry', 'failure to comply with or make provisions for compliance with all federal, state and local laws and regulations and with all commission-approved conditions and limitations pertaining to the operations of a licensed establishment' and 'failure to conduct gaming operations in accordance with proper standards of custom, decorum, and decency, or permit any type of conduct in a gaming establishment which reflects or tends to reflect on the repute of the state of Nevada and act as a detriment to the gaming industry.'⁵³

When satisfied that a licence should be limited, conditioned, suspended or revoked, or a licensee fined, the Board shall initiate a hearing before the Commission by filing a complaint. Before such a complaint is filed, the Board may issue an order to show cause. The purpose of an order to show cause is to aid the Board in deciding whether to seek a fine or the limitation, conditioning, suspension, or revocation of a licence.

The Board has full and absolute power and authority to recommend the denial of any application, the limitation, conditioning or restriction of any licence, registration, finding of suitability or approval, the suspension or revocation of any licence, registration, finding of suitability or approval or the imposition of a fine upon any person licensed, registered, found suitable or approved for any cause reasonable by the Board.⁵⁴

Acceptance of a state gaming licence or renewal thereof by a licensee constitutes an agreement on the part of the licensee to be bound by all of the regulations of the Commission. It is the responsibility of the licensee to keep him or herself informed of the content of all such laws and regulations, and ignorance does not excuse violations.⁵⁵

49 NRS 463.1405(1); NGC Reg. 5.040.

50 NRS 463.310.

51 NGC Reg. 5.010(1).

52 NGC Reg. 5.010(2).

53 NGC Reg. 5.011(1), (8), 10.

54 NRS 463.1405(3).

55 NGC Reg. 5.030.

All PTCs that are licensed by the Commission are required to maintain a gaming compliance programme for the purpose of, at a minimum, performing due diligence, determining the suitability of relationships with other entities and individuals, and to review and ensure compliance by the PTC, its subsidiaries and any affiliated entities, with the Nevada Act, the Regulations, and the laws and regulations of any other jurisdictions in which the PTC, its subsidiaries and any affiliated entities operate. The gaming compliance programme, any amendments thereto, and the members of the compliance committee, one such member who shall be independent and knowledgeable of the Nevada Act and Regulations, must be administratively reviewed and approved by the Board.

V TAXATION

Gaming licensees are subject to taxes and fees. Among the types of taxes and fees to which a licensee may be subject are annual and quarterly taxes and fees, and a monthly percentage fee that is based upon the licensee's gross revenue. Casino licensees must pay an annual fee based upon the number of slot machines operated.⁵⁶ For establishments operating more than 16 games, the licensee must pay a sum of US\$1,000 for each game up to 16 games.⁵⁷ A licensee must pay an annual excise tax of US\$250 upon each slot machine operated.⁵⁸ In addition, casinos licensees must pay a quarterly fee of US\$20 per slot machine operated in the establishment, and another quarterly fee based upon the number of games operated.⁵⁹ Taxes and fees for other licensing categories such as restricted licensees, operators of slot machine routes and manufacturers vary.

Some casinos may also be subject to Nevada's live entertainment tax (LET). The LET is an excise tax imposed on admission to any facility in Nevada where live entertainment is provided.⁶⁰ Resort casinos with concert venues or certain types of nightclubs, bars or restaurants may be subject to this tax. Live entertainment is defined as:

*any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present.*⁶¹

The types of entertainment considered to be live entertainment, as defined in NRS Chapter 368A, include: (1) music, vocals, dancing, acting, acrobatics, stunts, comedy or magic provided by professionals or amateurs; (2) animal stunts or performances induced by one or more animal handlers or trainers; (3) athletic or sporting contests, events or exhibitions provided by professionals or amateurs; (4) a performance by a disc jockey who presents recorded music; and (5) an escort who is escorting one or more persons at a location or

56 NRS 463.380.

57 NRS 463.380(1)(j).

58 NRS 463.385(1).

59 NRS 463.375(2).

60 NRS 368A.200(1).

61 NRS 368A.090(1).

locations in Nevada.⁶² The rate of the tax is 9 per cent of the admission charge to the area or premises (indoor or outdoor) where live entertainment is provided and for which a fee is collected to enter or have access to the area or premises.⁶³

Taxes and fees related to gaming are not just the responsibility of gaming licensees. Gambling winnings are considered income and are therefore taxable. When a player wins US\$1,200 or more from a single slot machine bet, for example, the player is given an Internal Revenue Service Form W-2G – Certain Gambling Winnings to report the winnings to the Internal Revenue Service.⁶⁴ A player can expect a federal tax rate of approximately 30 per cent on gambling winnings. Nevada does not have a state income tax, so for Nevada residents, no additional tax is due to the state.

VI ADVERTISING AND MARKETING

Nevada casinos may advertise their land-based and online offerings in Nevada. However, any advertising must be conducted in a manner that will not bring the gaming industry in Nevada into disrepute. Nevada casinos must conduct their 'advertising and public relations activities in accordance with decency, dignity, good taste, honesty and inoffensiveness.'⁶⁵ Advertising companies are not required to be licensed as service providers.

VII THE YEAR IN REVIEW

In January 2019, the Commission adopted amendments to the Regulations pertaining to race books and sports pools. The adopted amendments provide, in part, clarification on permitted wagers. For example, licensed race books and sports pools may accept wagers on professional sport or athletic events sanctioned by a governing body, Olympic sporting or athletic events sanctioned by the International Olympic Committee, collegiate sporting or athletic events and virtual events.⁶⁶ Wagers may be accepted on other events upon the Chair's approval, so long as the other event has been sanctioned by an organisation included on the list of sanctioning organisations maintained by the Board, or the other event is listed on the list of pre-approved other events.⁶⁷ The Commission is considering requirements for gaming licensees to implement comprehensive plans to address sexual harassment. The Board held workshops in 2018 to receive public input on proposed amendments to the Regulations for sexual harassment prevention, workplace response and related sexual harassment awareness and prevention minimum internal control standards.

62 NRS 368A.090(2)(a).

63 NRS 368A.200(1)(a) and 368A.060.

64 See Dept. of Treas. Reg. Section 7.6041-1(c).

65 NGC Reg. 5.011(1).

66 NGC 22.120 (see NGC Reg. 22.010 for defined terms).

67 NGC Reg. 22.1201.

ABOUT THE AUTHORS

SONIA CHURCH VERMEYS

Brownstein Hyatt Farber Schreck LLP

Sonia Church Vermeys is a shareholder in the Nevada office of BHFS, where she helps clients navigate Nevada's complex regulatory requirements related to commercial development and liquor and gaming licensing. Her practice primarily focuses on commercial transactions with an emphasis on gaming, liquor, real estate and land-use matters.

ERIN ELLIOTT

Brownstein Hyatt Farber Schreck LLP

As an associate attorney in Brownstein's gaming law group, Erin Elliott assists on a broad range of gaming and licensing matters.

BROWNSTEIN HYATT FARBER SCHRECK LLP

100 North City Parkway
Las Vegas, Nevada 89106-4614
United States
Tel: +1 702 382 2101
Fax: +1 702 382 8135
svermeys@bhfs.com
elliott@bhfs.com
www.bhfs.com



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