

THE GAMBLING LAW
REVIEW

EIGHTH EDITION

Editor
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PREFACE

*O yes, I know about gambling, and am quite used to living on the edge of one abyss or another.
Incidentally, publishing nowadays is not one of the safer occupations.*

(T S Eliot. Letter to Ormerod Greenwood 1934)

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

In the three prefaces to this work since April 2020, my attention has been distracted by the ‘abysses’ of various world events and their bearing on our social and economic lives. In those editions I tried to assess how those events might impact on the landscape of the gambling and entertainment industry. I offered some predictions on how the covid pandemic would change our world of work, our homes, our social interactions, the way that we spend time on leisure pursuits and our use of public and retail spaces.

Of course, the cultural and economic impact of covid-19 is not the only force that has been bearing down on us recently. The spike in energy and grain prices caused by the conflict in Ukraine has also caused the world’s economies to stumble just at the point where they were trending towards recovery. But just as human folly creates crises, human ingenuity is finding ways of stabilising them, by swiftly moving to having less reliance on energy from a single source and indeed less reliance on fossil fuels in general. Perhaps one day we will look back at 2022 as the year that spurred the western world to achieve a greener fuel economy in years, rather than over decades.

The economic earthquakes of pandemic and war are subsiding (at least for most developed economies). We are now dealing with the aftershocks in the form of problems in the global supply chain, resulting inflation and governments’ answer to inflation; higher interest rates. For some months, the cures being offered by government have seemed almost as painful as the disease itself, but with summer coming, we are beginning to see the inflationary curve flatten. Most economic opinion seems to agree that the leading economies will avoid recession, and that 2023 will end with a return to growth, and a much-awaited re-stabilisation of the economic environment. There are also signs of regrowth in some of our old habits towards going back to work and traditional social pursuits. In other words, we are going back to the way that we used to be, albeit armed with the experience of knowing that it is not the only way of working, living or enjoying life. Rigid life patterns have become more flexible, more hybrid.

So, as we emerge as from between abysses both natural and man-made and with the existential threats to the leisure economy now behind us, it is time to look again at gambling with fresh eyes.

In my jurisdiction at least, review and reform have been the watch words for some years, but can hardly be said to have made swift progress. For almost three years, the UK

government has promised a white paper to review gambling law. Initially described as a once-in-a-generation opportunity to reform the law, the review was widely heralded as a way of addressing changes in the gambling market that could not have been anticipated by the legislation in 2005. In late 2020, the government began the process with a call for evidence from operators and interested parties in response to 50 or so written questions. Around 16,000 separate responses were received. That showed, if nothing else, that the reform of gambling law was something that excites public interest.

Limiting the scope of the review to specific questions was, in my opinion, a suboptimal path. Although asking focused questions is important to give order to a debate, it also effectively means that important areas where reform might be needed were excluded from view. Such a technique may suit the government's agenda, but it presupposes that the government knows what areas of the law actually need reform.

If the approach was imperfect, the execution was (until the very last moment), still more disappointing. In the two years since the call for evidence closed, nothing was forthcoming. Why? In our view there were two factors. First was that government fell into crisis: preoccupied by covid-19, Brexit and its own internal political tensions, three prime ministers stood at the helm in a period of less than six months. The cabinet reshuffles that came with each change meant that the responsibility of managing reform of gambling passed through the hands of no fewer than six different ministers. No one was in post long enough to master the issues. Consequently, the public was consistently promised that the white paper would be published 'within a few weeks' for almost a year.

But political turmoil was not the only cause of the delay. What has become increasingly clear over the past two years is that gambling reform is a battleground between the commercial desires of operators to continue their businesses and those whose focus on opposition to gambling is fundamental and visceral. Those who seek to justify gambling largely base their arguments on statistics about low levels of gambling harm, while those who campaign for greater protections rely increasingly on the social policy tool known as 'lived experience'. Lived experience has the benefit of seeing an issue through the intensity of an individual's actual perception and acquires its power from being personal and 'authentic', but its weakness is that it describes a single viewpoint, not a balanced picture.

It is impossible to know what evidence was provided in response to the call for evidence (it has not been published), but it can be imagined that it was a combination of generalised statistics showing that problem gambling is rarer in society than many other social evils, set against stories of individuals whose lives have spiralled into addiction and ruin. It is very hard for anyone (still less a freshly appointed minister with little experience of the gambling industry) to find a way of reconciling those two very different 'sources of truth'. Consequently, the government faced some very difficult policy choices – to intervene and be accused of acting like a nanny state, interfering in the personal freedom and leisure of adult citizens, or to take a more liberal approach and face heated criticism from opposition politicians and the press, highlighted with the truly tragic stories of those whose lives are ruined or even ended by addiction.

Conference speaking slots came and went, speculation and leaked drafts did the rounds, and nothing turned up. As time passed in 2023, the publishers of *The Gambling Law Review* were asked to extend the deadline for my own contributions, to the very point where the printing presses were about to whirl into action.

Of course, the day after my deadline, the white paper finally arrived, in a flurry of a mere 93,000 words. What were the odds of that?

It happens that I have managed to provide a few paragraphs of commentary on the proposals in the UK chapter (but there will no doubt be much better analysis written by others in the months to come).

The government's response has been pragmatic: ask interested parties what they want, and then deliver a set of compromises, which seek to steer between the two extremes. However, the absence of a white paper for so long forced me to ask myself what the right approach to deciding a regulatory policy should be.

i Understanding what to regulate

For me, there is a very important initial stage to regulation that is often overlooked. The totemic triumvirate of gambling – betting, gaming and lottery – are seen as immovable concepts rooted in history and tradition and forming the foundations of gambling policy. In seeking reform, we look at the existing position, and ask what can be done to improve it. However, anyone with a historical view of gambling will recognise that the current legal position is layered with artificial distinctions, traditions and terminology that are more a product of history and culture than of good sense and principle. There is no reason to think that the way that products dating back at least as far as the 16th century should survive intact and protected in the 21st century. Why should lotteries involve giving to charity? What are the outside limits of the term 'game'? When does betting blend into speculative investment? What new gambling products are coming to the marketplace? How should social games and pastimes be distinguished from sport and gambling? Why do we encourage children to learn chess, but not poker? How does one define the barrier between betting in the course of a business and betting as a hobby? These are all the types of question best addressed before simply adjusting the existing machinery.

The government's given reasoning behind the white paper is that technology has moved on since 2005, changing the public's ability to access gambling. It may be true that smartphones only really became popularised after the launch of the iPhone in 2007, but in fact the change has been more profound than just more accessible computing power. The public is accessing risk-based activities, some of which are new, and many of which are old but have recently been democratised. Society has many different views about risk-taking, most of which are muddled in one way or another based on a misunderstanding of probability compounded by superficial tropes perpetuated in the media. There is a spectrum of risk-based activities and entertainments, from pastimes to speculative investments to sports and gambling, and each tends to come with a predetermined label, from harmless fun through to dangerous addiction, without any real thought about revising the map of regulation to fit the evidence of potential harm. Our current law therefore sometimes draws sharp regulatory distinctions between activities that are barely distinguishable when viewed through a more neutral lens. Here are some examples from the UK:

- a* The UK imposes a legal requirement on lottery operators to donate a minimum contribution of 20 per cent of proceeds to a good cause, protect customer funds in trust accounts and ensure that the software used to generate the random division of prizes is fair. By contrast, free prize draws and 'skill competitions' (which usually determine winners from a chance-based draw) are subject to none of these restrictions. They may target children and be conducted by those who would never pass the tests of suitability imposed on their regulated counterparts. We do not even measure whether addiction or other harms are caused by such products, because they are not treated as gambling.

- b* Nearly identical activities are governed by completely different regulatory protections. Take a bet on a football match, for example. One can place a fixed odds bet or a spread bet on the result (and easily do both with the same organisation at the same time). The fixed odds bet is regulated by the Gambling Commission, which holds the bookmaker to the licence conditions mandating a host of protections including customer self-exclusion, time-outs, a complaint and dispute procedure and a requirement for fairness of contractual terms (and soon, very likely, assessments of affordability or markers of potential harm to be carried out by the operator). The second bet is treated as a contract for difference and regulated by the Financial Conduct Authority. The spread bet is of course the more risky and volatile of the two products, because the gambler's potential loss can massively exceed the deposited stake. And yet, the spread bet is outwith the scope of gambling and not subject to any of the same protections.
- c* The UK views insurance and betting as totally different products. The public is generally encouraged to insure against risk, and is usually warned against excessive betting on it, even though the two activities share almost every attribute. Each is a hazarding of value on a future uncertain event. Each market is operated by a risk manager that seeks to guarantee itself a profit by assessing the actuarial probabilities of an event occurring and then devising a price for customers to pay that means that the organiser will make money at the expense of its customers. In the UK we happily allow the government to operate a form of lottery as an investment entirely outside the rules of gambling regulation in the form of the 86 billion premium bonds currently issued, which are entered into a random draw each month. (Children can own up to £50,000 of premium bonds).
- d* Regulators (rightly) spend much time worrying about the possibility of children and young people gambling on or being influenced into gambling by advertising. At the same time, there is almost no regulation of video games, even where those games include mechanics for chance-based winning that mimic those of slot machine gambling. A child can hone his or her skills playing poker or blackjack, provided he or she is not staking money. He or she can spend money on random draws for prizes so long as those prizes are only valuable in the context of the game and do not have 'real world value'.

We also need to think about whether different gambling products within the same regulatory category should be treated differently. For example, most state lotteries have weekly or daily draws with small stakes, life-changing jackpots and relatively poor returns to players. Consequently, they are thought of as being low-risk products. But if one develops an instant lottery operating online, which pays out 75 per cent of stakes, then it will play and feels more like a slot machine and drive similar behaviours. So why are instant lotteries not regulated like slot gaming? In short, we need to go back to basics on gambling.

ii Being honest about how much we want to regulate

Once one has defined those activities that should be regulated (ignoring whether or not they conform with the historical legal definitions of gambling), the second challenge is to be transparent and honest about what regulation is designed to achieve (and the results that will arise). Some governments will look at gambling from a purely religious perspective, and that is a perfectly proper position to take (albeit one that is based on moral rather than rational

principles). However, most governments seek to regulate based upon either the risk of harm to players or the risk of associated criminal conduct. We know that both of these harms are likely to occur to some extent when gambling is permitted.

In response, it is possible to conceive of a policy based on the principle that the harms caused by gambling are so great that it should be entirely banned. To be clear, my own view is far from that, but I want to acknowledge that it is not an irrational approach: there are plenty of things that our society has decided to ban, because of the perceived risks and harms, even after centuries of use. For example, laudanum (a form of opiate) was freely available for purchase throughout the 18th and 19th centuries in the UK, and was widely used and cheaper than alcohol (and even recommended as a way to calm babies). It was of course addictive and could have very bad side effects, but was seen in working class industrial society as a useful hangover cure. Over time, society decided that it was undesirable for laudanum to be easily available to the public and moved to restrict its availability and (in 1920) ban its sale altogether. Looking back a hundred years, we may find it hard to believe that an addictive and dangerous substance should have been freely available for purchase (even if many used it to 'enjoy it without encountering significant harm'). However, that which was once acceptable to society became impermissible. In the same way, imposing heavy restrictions or a ban on forms of gambling is a possible policy conclusion.

However, once one takes the view that gambling activities are generally to be permitted as part of normal adult activity, then one is implicitly accepting that there will be social costs in terms of addiction and unwise gambling behaviours. That is a price that our society has decided to pay. One must accept the consequences of that decision, and not blame those who provide the product. The political slogan that 'even one problem gambler is one too many' may have a rhetorical flourish to it, but it is intellectually dishonest. When government permits (indeed engages in and itself promotes) an activity that has the potential to give rise to harms, government and society thereby acknowledge that a certain level of harm will inevitably follow and acknowledge that it is an acceptable price. Lest it be said that this is an inflammatory way of looking at the matter, it is no more than our approach to speed limits, ownership of firearms, the purchase of fireworks or the availability of alcohol or high fat foods. We desire the freedom to choose, and accept that there will be resulting harm. Rather than ban, we prefer the possibility of living in a society where state control is exercised by exception only and education and personal responsibility are the general means of control.

iii Making regulation effective

Effective regulation consists of measures that can be shown through evidence as being effective measures against excessive harm and that are no more restrictive than necessary to curtail that harm to the levels that society accepts will exist. That is the test against which all restrictive regulation must be judged. Our current gambling laws and regulations are said to be based upon a principle of risk and, by so saying, we accept that they will not be perfect models. The question must not be 'does this measure reduce the harms of gambling?', because every restrictive measure does that to some extent. The test is rather 'does this measure reduce the harms of gambling without imposing an undue regulatory burden on operators and those parts of the public who do not require protection?'. We must, unfortunately, accept that there is a level of gambling harm that is acceptable, and that any protective policy net will experience failures. Those failures need to be addressed and considered, but they must not (always) be held up as a demonstration that the policy itself is at fault. And since we are balancing the needs of industry with those of its customers, there should be an impact

assessment that evidences the cost of implementing and imposing any particular change to regulation when marked against its benefit. So often, a well-intended change to tighten the law merely leads to an unintended consequence elsewhere. Few would argue, for example, that self-exclusion was a powerful tool to aid the vulnerable. But what of those (foreign) casinos that now actively target customers who have self-excluded? The white paper imposes affordability checks on remote operators, but does that merely encourage those who wish to gamble outside the protective regime to seek out land-based bookmakers who are not subject to the same rules? So innovative solutions may solve old problems, but they tend also to stimulate new ones.

I wish to thank the contributors for their usual careful and detailed analysis of the gambling laws of their individual jurisdictions. I hope that next year's guide will cover still more. In the meantime, it is my great pleasure to present the 2023 review of gambling laws across 23 jurisdictions.

Carl Rohsler

Memery Crystal

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UNITED STATES – NEVADA

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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 a ‘gambling game’ in Nevada is ‘any game played with cards, dice, equipment or any mechanical 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 that 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 sportsbooks 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 sportsbooks 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 or from other states or foreign jurisdictions in which such wagers are legal ‘provided federal law allows such wagers and the transmission of such wagers or information assisting in the placing of such wagers’.⁷

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2 Nevada Revised Statutes (NRS) 463.0152.

3 NRS 463.0152.

4 NRS 463.01962.

5 NRS 464.005.

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

7 NGC Reg. 22.140(1).

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 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 five states in the United States that does not have a state-affiliated lottery. The other four states are Alabama, Alaska, Hawaii 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’ organization[s]’ 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 to maintain the industry’s significance, stating that:

[t]he 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]

8 NRS 463.15997(4)(a).

9 NRS 463.15997(4)(b).

10 NRS 462.105(1).

11 NRS 462.125 and 462.140.

12 NRS 463.0129(1)(a).

13 NRS 463.0129(1)(c).

*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

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. Although 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 licensing of this kind 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 License, and casinos located in downtown Las Vegas need to obtain licences from the City of Las Vegas Business License Department.

v Offshore gambling

The Board and Commission have the ability to license gaming operators in the state of Nevada and individuals affiliated with these 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'

14 NRS 463.0129(1)(b).

15 NGC Reg. 3.070(11).

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.

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:

- a* preventing unsavoury or unsuitable persons from being directly or indirectly involved with gaming at any time or in any capacity;
- b* establishing and maintaining responsible accounting practices and procedures;
- c* maintaining effective controls over the financial practices of licensees;
- d* preventing cheating and fraudulent practices; and
- e* 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

16 NRS 463.0129.

17 NGC Reg. 14.010(20).

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 development.*¹⁹

New nonrestricted 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 authorized 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 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’s race and sportsbooks allow customers to place bets remotely on games and approved events on their mobile sports betting apps (provided that the wagers are made in Nevada). There are also two companies licensed to conduct interactive gaming (poker only) in Nevada. Operators of interactive gaming may pool customers in Nevada, Delaware, New Jersey and Michigan pursuant to a Multi-State Internet Gaming Agreement. Delaware and Nevada entered into this shared liquidity agreement in 2014. New Jersey was added to the agreement in 2017 and Michigan was added in 2022.

18 NRS 463.3074.

19 NRS 463.3072(2)(c).

20 ‘Nonrestricted licence’ 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; or (3) a licence for, or the operation of, a slot machine route. NRS 463.0177.

21 NRS 463.308(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).

vi Ancillary matters

The manufacture, sale or distribution of gaming devices without a licence is illegal in Nevada.²⁴ A ‘gaming device’ is 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 that connects to progressive slot machines, inter-casino linked systems, 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 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 registers certain service providers. A service provider includes any person who:

- a* acts on behalf of another licensed person who conducts nonrestricted 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;
- b* is an interactive gaming service provider; or
- c* is a cash access and wagering instrument service provider.²⁹

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 an interest greater than 5 per cent in a privately held licensee or a holding company, nor become a controlling³⁰ affiliate of such a licensee or holding company, nor become a holding company of such a licensee or holding company, without first obtaining the prior approval of the Commission.³¹ The Commission may require any or all a privately held business entity’s lenders, holders of evidence of indebtedness, underwriters, key executives, agents or employees, as applicable, to be licensed or found suitable.³² For a corporate licensee, in addition to owners of over 5 per cent or more of the

24 NRS 463.650(1).

25 NRS 463.0155.

26 NRS 463.0136.

27 NGC Reg. 14.020(4).

28 NGC Reg. 14.305(1).

29 NRS 463.677(5)(b).

30 ‘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.

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

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

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.³³ Owners of 5 per cent or less of the equity securities 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 be found suitable and may be required to be licensed by the Commission.³⁴ A holder of more than 5 per cent of the voting securities of a PTC registered with the Commission must notify the Commission after filing notice with the US Securities and Exchange Commission (SEC).³⁵ 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 of the date specified by the Commission.³⁶ 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 to do so.³⁷

In March 2016, the Commission adopted Regulation 15C, which created a unique licensing framework for private investment companies. Regulation 15C defines a private investment company as:

any privately held legal entity except a natural person which holds or applies for a license, or owns, directly or indirectly, a beneficial interest in any corporation, firm, partnership, limited partnership, limited-liability company, trust or other form of business organization which holds or applies for a license, and which has the following characteristics: (a) 100% of the economic securities of the company are held, directly or indirectly, by (i) one or more private investment funds that are managed by an investment manager or managers, which investment manager or managers collectively have more than one billion dollars in assets under management or (ii) one or more institutional investors as defined in Regulation 16.010(14) that each has assets of more than one billion dollars; (b) 100% of the voting securities of the company are held by one or more legal entities that is controlled by one or more controlling persons or key executives of the investment managers or institutional investors[.]

A private investment company is regulated similarly to a PTC but does not have the burdensome SEC reporting obligations and can maintain the confidentiality of its proprietary financial information.

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

33 NRS 463.530.

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

35 NRS 463.643(3).

36 NRS 463.643(4).

37 NGC Regs. 16.010(14) and 16.430.

athletic events and virtual events.³⁸ 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.³⁹

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. Licence 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) [i]n all other respects qualified to be licensed or found suitable consistently with the declared policy of this state.*⁴⁰

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:

*(a) The applicant has adequate business probity, competence and experience in gaming or generally; and (b) The proposed financing of the entire operation is . . . (1) Adequate for the nature of the proposed operation; and (2) From a suitable source.*⁴¹

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, mobile gaming system, slot machine, race book or sports pool' without a licence issued by the Commission.⁴² 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, race book or sports pool'.⁴³ 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.⁴⁴ In addition, a 'person

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

39 NGC Reg. 22.1201.

40 NRS 463.170(2).

41 NRS 463.170(3).

42 NRS 463.160(1)(a).

43 NRS 463.160(1)(d).

44 NRS 463.360(3).

who contrives, prepares, sets up, proposes or operates any lottery . . . is guilty of a gross misdemeanour', which is punishable by imprisonment for not more than 364 days, or a fine of not more than US\$2,000, or both.⁴⁵

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'.⁴⁶ The Commission has the authority to limit, condition, suspend or revoke a licence or registration.⁴⁷ The Commission may also fine a licensee up to US\$250,000 for each separate violation, depending on the nature of the violation.⁴⁸

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 authorizes the exclusion or ejection of the person from an establishment at which gaming or pari-mutuel wagering is conducted.*⁴⁹

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 licences 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.⁵⁰

The Board is required to investigate any apparent violations of the Nevada Act and Regulations.⁵¹ It is the policy of the Nevada Gaming Authorities to require that all gaming

45 NRS 462.250; NRS 193.140.

46 NRS 463.310(2).

47 NRS 463.310(4).

48 NRS 463.310(4)(d).

49 NRS 463.151(3).

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

51 NRS 463.310.

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.⁵² 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.⁵³

Regulation 5.011 lists certain acts or omissions that may be determined to be unsuitable methods of operation. These include the '[f]ailure to exercise discretion and sound judgement 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', '[f]ailure to comply with or make provisions for compliance with all federal, state and local laws and regulations and with all conditions and limitations approved by the Commission relating to the operations of a licensed gaming establishment' and '[f]ailure to conduct gaming operations in accordance with proper standards of custom, decorum, and decency, or permit a type of conduct in a gaming establishment that reflects or tends to reflect on the repute of the State of Nevada and act as a detriment to the gaming industry'.⁵⁴

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.⁵⁵

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 the regulations of the Commission. It is the responsibility of the licensee to keep him or herself informed of the content of all applicable laws and regulations, and ignorance does not excuse violations.⁵⁶

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 member of which shall be independent and knowledgeable of the Nevada Act and Regulations, must be administratively reviewed and approved by the Board.

52 NGC Reg. 5.010(1).

53 NGC Reg. 5.010(2).

54 NGC Reg. 5.011(1)(a), (e), (k).

55 NRS 463.1405(3).

56 NGC Reg. 5.030.

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.⁵⁷ For establishments operating more than 16 games, the licensee must pay a sum of US\$1,000 for each game up to 16 games and the sum of US\$200 for each game in excess of 16 games so operating.⁵⁸ A licensee must pay an annual excise tax of US\$250 upon each slot machine operated.⁵⁹ 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.⁶⁰ 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.⁶¹ 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'.⁶²

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 locations in Nevada.⁶³ 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.⁶⁴

Taxes and fees related to gaming are not just the responsibility of gaming licensees. Gambling winnings are considered income and, therefore, are 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.⁶⁵ 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.

57 NRS 463.380.

58 NRS 463.380(1)(j).

59 NRS 463.385(1).

60 NRS 463.375(2).

61 NRS 368A.200(1).

62 NRS 368A.090(1).

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

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

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

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’.⁶⁶ Advertising companies are not required to be licensed as service providers.

VII THE YEAR IN REVIEW

The Board adopted amendments to certain of the Regulations throughout 2022, including several notable amendments to Regulation 5. First, amendments were made to provide for the use of cloud computing services by Nevada gaming licensees and to permit registered hosting centres to be located outside Nevada. More specifically, Regulation 5.240(2) was amended to provide definitions of the terms ‘cloud computing services’ and ‘cloud computing service provider’, and to add the term ‘cloud computing service provider’ to the current definition of a service provider. In addition, Regulation 5.240(3) and 5.240(5) were amended to include cloud computing services and to clarify the exemption for licensed manufacturers and registered manufacturers of associated equipment from having to register as service providers.

The definition of a hosting centre (contained in Regulation 1.137) was amended to remove the requirement that hosting centres be located in Nevada, and to include associated equipment in the list of items that can be housed in a hosting centre. Regulation 5 was amended expressly (1) to allow hosting centres located outside Nevada to house Nevada-regulated gaming equipment (provided that they register with the Board and satisfy certain additional criteria); and (2) to expand the scope of Nevada-regulated gaming equipment that may be housed at hosting centres.

Furthermore, Regulation 5.225 was amended to modify Nevada’s cashless gaming wagering account requirements to allow the identity of the patron to be confirmed remotely. The amendments permit the verification to be completed by means of the patron providing a valid government-issued picture identification credential, coupled with an identity verification method that enables the licensee to form a reasonable belief that it knows the true identity of the patron (such as dynamic knowledge-based authentication). Note that the Regulation does not apply to mobile sports betting accounts.

Regulation 5 was further amended in December of 2022 to create new cybersecurity requirements for certain gaming operators in Regulation 5.260. As amended, the Regulation requires covered entities to perform an initial cybersecurity risk assessment and determine what best practice is necessary to mitigate the risk of a cyberattack. The amended Regulation also imposes certain requirements should a covered entity experience certain cyberattacks. Covered entities are also now required to monitor and evaluate cybersecurity risks to their business operation on an ongoing basis and modify best practice and risk assessments as necessary. In addition, failure to comply with the requirements of the new cybersecurity regulations constitute an unsuitable method of operation pursuant to Regulation 5.260(7).

Finally, various Regulations were amended to reflect the statutory change that a licence will no longer be issued to a new operator of an inter-casino linked system. Rather, persons

66 NGC Reg. 5.011(1)(d).

holding such licences are deemed approved and persons licensed as a manufacturer or licensed to operate a nonrestricted gaming operation may submit a written request for approval to operate an inter-casino linked system.

VIII OUTLOOK

In 2023, the Board will discuss and receive public input regarding Nevada's gaming technology approval process. The Board will be exploring ways in which to streamline new game technology and game modification approvals. Nevada's field trial process will be discussed as part of the analysis. Nevada's casino industry is hopeful that changes to the approval process will allow Nevada to introduce new technology and games more quickly in the future.