

THE GAMBLING LAW
REVIEW

SEVENTH EDITION

Editor
Carl Rohsler

THE LAWREVIEWS

THE
GAMBLING LAW
REVIEW

SEVENTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in May 2022
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Carl Rohsler

THE LAWREVIEWS

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADER
Katie Hodgetts

SENIOR BUSINESS DEVELOPMENT MANAGER
Rebecca Mogridge

BUSINESS DEVELOPMENT MANAGERS
Joey Kwok and Juan Hincapie

BUSINESS DEVELOPMENT ASSOCIATE
Archie McEwan

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Leke Williams

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Martin Roach

SUBEDITOR
Morven Dean

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK
© 2022 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided was accurate as at April 2022, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above.

Enquiries concerning editorial content should be directed
to the Publisher – clare.bolton@lbresearch.com

ISBN 978-1-80449-074-7

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

A KARITZIS & ASSOCIATES LLC

ANDERSON MÖRI & TOMOTSUNE

BIRD & BIRD

BRÆKHUS ADVOKATFIRMA DA

BROWNSTEIN HYATT FARBER SCHRECK, LLP

DLA PIPER

GABNYS LAW FIRM

GVZH ADVOCATES

HERZOG FOX & NEEMAN LAW OFFICE

KALFF KATZ & FRANSEN ATTORNEYS AT LAW

KRIDA LEGAL

LEKTOU

LOBO VILELA ADVOGADO

MCCANN FITZGERALD

MAIA YOSHIYASU ADVOGADOS

MELCHERS RECHTSANWÄLTE PARTNERSCHAFTSGESELLSCHAFT MBB

MEMERY CRYSTAL

MF ESTUDIO – ABOGADOS

PAUL HASTINGS LLP

PLANZER LAW AG

PORTILLA, RUY-DÍAZ Y AGUILAR, SC

RAPANI

SENET

VLAEMMINCK.LAW

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 and Robbe Verbeke</i>	
Chapter 3 OVERVIEW OF US FEDERAL GAMING LAW.....	33
<i>Behnam Dayanim, Jeremy Gordon, Logan Miller and Rachel Miller</i>	
Chapter 4 ARGENTINA.....	57
<i>Tomás Enrique García Botta</i>	
Chapter 5 AUSTRALIA.....	66
<i>Julian Hoskins, Daniel Lovecek, Alexandra Hoskins and Alexander Norrish</i>	
Chapter 6 AUSTRIA.....	92
<i>Christian Rapani and Julia Kotanko</i>	
Chapter 7 BELGIUM	103
<i>Philippe Vlaemminck and Robbe Verbeke</i>	
Chapter 8 BRAZIL.....	115
<i>Luiz Felipe Maia and Flavio Augusto Picchi</i>	
Chapter 9 CYPRUS.....	130
<i>Antria Aristodimou and Marios Christodoulou</i>	
Chapter 10 CZECH REPUBLIC	145
<i>Vojtěch Chloupek, Michaela Růžková and Kristina Kūdeliková</i>	

Contents

Chapter 11	ESTONIA	157
	<i>Andrius Gabnys</i>	
Chapter 12	FRANCE.....	166
	<i>Alexandre Vuchot and Cathie-Rosalie Joly</i>	
Chapter 13	GERMANY.....	182
	<i>Joerg Hofmann, Matthias Spitz and Roman Herpich</i>	
Chapter 14	INDIA	195
	<i>Vidushpat Singhania</i>	
Chapter 15	IRELAND.....	211
	<i>Alan Heuston</i>	
Chapter 16	ISRAEL.....	229
	<i>Liran Barak</i>	
Chapter 17	JAPAN	237
	<i>Hitoshi Ishihara</i>	
Chapter 18	LATVIA.....	247
	<i>Andrius Gabnys</i>	
Chapter 19	LITHUANIA.....	257
	<i>Andrius Gabnys</i>	
Chapter 20	MACAU	266
	<i>Pedro Cortés and António Lobo Vilela</i>	
Chapter 21	MALTA.....	293
	<i>Andrew J Zammit, Jackie Mallia, Ilona Vella, James Bartolo</i>	
Chapter 22	MEXICO	307
	<i>Carlos F Portilla Robertson and Ricardo Valdivia González</i>	
Chapter 23	NETHERLANDS.....	319
	<i>Alan Littler</i>	
Chapter 24	NORWAY.....	329
	<i>Brede A Haglund and Alexander Mollan</i>	

Contents

Chapter 25	POLAND.....	336
	<i>Piotr Dymowski and Andrzej Stelmachowski</i>	
Chapter 26	PORTUGAL.....	349
	<i>Pedro Cortés</i>	
Chapter 27	SPAIN.....	362
	<i>Paula González de Castejón and Alberto Lobato</i>	
Chapter 28	SWITZERLAND.....	373
	<i>Simon Planzer</i>	
Chapter 29	UNITED KINGDOM.....	384
	<i>Carl Rohsler</i>	
Chapter 30	UNITED STATES – NEVADA.....	401
	<i>Sonia Church Vermeys and Erin Elliott</i>	
Appendix 1	ABOUT THE AUTHORS.....	413
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	429

PREFACE

Luck always seems to be against the man who depends upon it.

Ukrainian proverb

A few days ago I took the Tube from my home in London to visit the ExCel centre in Canary Wharf to go to the International Casino Exhibition. It seemed like a long time since I had been to the ICE. In truth, the tone of the conference was somewhat subdued compared with the razzle-dazzle of previous years. Some of the larger land-based games providers had stayed away – an indication perhaps that the casino industry is still in its recovery phase and not yet ready for new investment. But there were few masks to be seen on the tube train, or among the delegates. People were shaking hands again. Although our economy has not returned to normal, and the bill is yet to be paid, it is important also to remember how far we have come: the ExCel centre had been a temporary Nightingale hospital from April 2020 to April 2021, with a capacity of 4,000 beds for covid patients (a precaution that proved fortunately unnecessary). There is no doubting times have changed very quickly – both for the better and the worse: in the Preface to the last edition of this work, I commented that Ukraine was one of the few countries that had undergone significant changes in its gambling law during the course of the previous 12 months. That seems now to be a poignantly irrelevant observation. But however terrible the situation in Ukraine has become, my task is to look elsewhere, and introduce a work on the past year in gambling law, and the predictions for the next.

Last April, I tried to identify some of the key themes that might emerge in a post-pandemic world in order to assess what our ‘new normal’ for leisure and entertainment was going to look like. At that time, it appeared that the pandemic was already coming to its close and that we might very soon enjoy an easing of restrictions. I did not realise that we were only about half way through the process with another full year of lockdowns and restrictions still to come (to say nothing of a further programme of booster vaccines). So it is perhaps only now, in April 2022, that we are able to start perceiving how a world that has to shrug at the continued presence of covid-19 might look.

One of the first points that I raised was that, in the years of the pandemic, Western society had refocused attention on domestic homes, and had made an important social transition to home being a place of work as well as normal domestic life. I venture to say that when seen in terms of an impact on the overall population, that change has probably been the single largest social change so far this century. I am certainly still working mostly from my home and, like millions of others, enjoying a different perspective on what it is to be at work, including differing pressures, changing patterns of social interaction and the extra time that used to be spent on a (usually unpleasant) commute. The average commute to work across the UK is approximately 40 minutes each way (with London having a far longer average

74 minutes each way), and so reducing or eliminating travel to the workplace has probably increased the time available for work or leisure by as much 5 to 10 per cent across large parts of the services economy, as well as reducing that aspect of the cost of living.

Since the winding back of restrictions at the beginning of 2022, we have seen a sharp increase in workplace attendance, but a very large number of businesses have now adopted a 'hybrid model', and employees are increasingly asking for that to become a permanent feature of working patterns. Consequently, from Tuesday to Thursday, life resembles its pre-pandemic rhythm. But Mondays and Fridays have a different feel. Since January, those who operate restaurants and bars have seen a dramatic increase in the normal patterns of attendance, but there have been significant changes that require adaptation. I do not think that I predicted that the enthusiasm for home-working would stratify society by age. Those in their 20s and early 30s heavily favour a full-time return to work, while those over the age of 55 tend to want to work from home permanently. That reflects not only a desire for training (and perhaps also the lack of space available for work in smaller homes) but also more deeply that work is actually a social space – with many singletons looking for friendship and entertainment as much as for professional experience.

I also predicted that the substantial shift from urban living to a disaggregated workforce would be permanent. I think now that this was a hasty prediction and, in any event, it is far too early to tell whether this will happen. The first point is that although there are many renters or flexible workers who can make the move from cities to the countryside (or vice versa), there are plenty of others who are tied by more long-term commitments such as children's schooling to stay put. The other factor is that cities are places not just for work, but concentrations for leisure activities – and the public has shown a very strong desire to get back to enjoying itself in theatres, concert halls, bars and casinos. So while many have reassessed that a life nearer to the countryside is more healthy and cost-effective, any exodus has been nuanced. It seems likely that we will only see the true level of change in three to five years. Let us not forget also that working patterns are not necessarily confined by national boundaries. Several governments have been quick to recognise the advantages of attracting generally affluent desk-based workers to populate sunnier and cheaper living destinations – with countries such as Italy, Spain and Portugal all developing 'digital nomad' visa schemes to allow workers to work for up to a year abroad without becoming liable to the (full) tax implications of residence abroad.

All these complex changes leave a significant question mark over the planning uses of parts of our urban centres. Although there has been a significant return to work, and offices and shops are returning to their pre-pandemic levels of use, there are clearly some long-term shifts in the way that urban space is needed, and that process will continue as retail and office space is reused either for residential projects or entertainment space. Restaurant and entertainment attendance has rebounded – though still not to pre-pandemic levels, and there are a lot of changes to the labour market in those industries that will take time to be solved.

Meanwhile, the rise of the home as a centre of personal entertainment continues unabated. The 5G network and fast broadband continues to level the playing field across the developed world as consumers demand the ability for the whole family to stream entertainment and work from home at the same time. In the UK, a recent survey (namely Bazaarvoice 2021), 55 per cent of UK consumers said that they would prefer to shop digitally rather than in store. At the same time, the same survey gives insights into how our shopping methodology has changed, with more than 75 per cent of US online shoppers saying that they 'always' read reviews before making a purchase. These new 'networks of trust', whether

expressed by influencers, reviewers or affiliate schemes have become some of the most important drivers of customer behaviour. We have seen a rapidly growing sophistication in controlling the authenticity of reviews, social media messages and the news itself. Another change is the move from social media from being a place merely for messaging to a direct place for purchase – with one in three of those surveyed having purchased an item through social media for the first time in the last 12 months. To be clear, these were technological and social trends that were not specifically linked to the pandemic, but they have been accelerated and then cemented in our habits by the necessity of lockdown and the subsequent longevity of our confinement. And, let us not forget, they are also vastly more convenient for us, while allowing retailers and service providers to understand their customer base at a level of detail impossible a decade ago.

What does this mean for land-based gambling? As with shopping generally, we have seen certain types of gambling product transfer substantially from a land-based to an online model. Lotteries and sports betting are both areas of focus, since (apart from track-side betting) the convenience of online betting and lottery tickets is not counterbalanced by any real ‘thrill’ from physical attendance at the licensed premises. However, the more socially focused forms of gambling – casino and bingo to give two examples, are predicted to rebound strongly, though in the case of some casinos, we have yet to see the full return of tourism to pre-pandemic levels.

Speaking of tourism: 2022 seems likely to be the first time that many of us get to have a holiday in a long while – and we can all see that the skies are criss-crossed with vapour trails in a way that we have not seen since 2019. That will provide a very important boost for many countries that rely on summer holidays as an important part of their income. But the future looks somewhat more challenging for a large-scale return to business travel. There will of course be a large increase. But it is harder to justify a marketing budget with business-class flights having managed two years of videoconferences.

Last year, I tried to predict the way that the economic shock of the pandemic would impact on our leisure spending. I think I was probably wrong (twice!). In the first place, the rebound of the world’s economies has been somewhat stronger than many imagined possible – but the combination of money to spend and scarce resources has led to inflationary pressures that have been much worse than predicted – and have been further compounded by uncertainty over energy supply. If there is any good to come out of the current war in Ukraine, it may be that the world will have an even more acute incentive to turn away from excessive reliance on resources that are controlled by a single axis of political power.

What does this mean for leisure spend in the Western world in 2022? It will divide society in unfortunate ways. Many who experienced a long period of economic uncertainty, will have those stresses compounded by a period of sharp price rises. Others, as usual, will have had money to invest in rising markets, and will be feeling as though they have enjoyed ‘a good lockdown’.

Turning to this year’s edition, developments in gambling law and practice have been somewhat muted. As a case in point, the UK’s own government review of the Gambling Act has been postponed twice. The main exception to this slower tempo has been the US market, which continues to grow and expand legally and economically, and upon which much attention has naturally been focused.

I wish to thank my 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. Let us hope that next year we can each report that some of the troubles that have plagued our society in recent times will be closer to resolution, and we can turn our attention more squarely to the regulation of entertainment.

Carl Rohsler

Memery Crystal

London

April 2022

UNITED STATES – NEVADA

Sonia Church Vermeys and Erin Elliott

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 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.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 a senior associate at Brownstein Hyatt Farber Schreck, LLP.

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(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 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 in order 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] 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(4)(a).

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 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 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:

- 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

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:

16 NRS 463.0129.

17 NGC Reg. 14.010(21).

18 NRS 463.3074.

*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 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 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 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’s race and sportsbooks allow customers to place bets remotely on games and approved events on their mobile sports betting apps (provided the wagers are made in Nevada). Currently there are also two companies licensed to conduct interactive gaming (poker only) in Nevada. While one operates only within Nevada, the other pools customers in Nevada, Delaware and New Jersey pursuant to a Multi-State Internet Gaming Agreement. Delaware and Nevada entered into this shared liquidity agreement in 2014 and New Jersey was added to the agreement in 2017.

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

19 NRS 463.3072(2)(c).

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(1).

25 NRS 463.0155.

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 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 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;
- 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 a 5 per cent or greater interest in a privately held licensee or a holding company, nor become a controlling³⁰ 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.³¹ The Commission may require any or all of 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 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.³³ 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

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.

33 NRS 463.530.

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 within 10 days after filing notice with the United States 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 after the chairman of the Board mails written notice to the owner.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 in order 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 similar 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 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

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 Reg. 16.010(14).

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

39 NGC Reg. 22.1201.

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) [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, inter-casino linked system, 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, mobile gaming system, 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 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.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

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).

45 NRS 462.250; NRS 193.150(1).

. . . 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 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

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.

52 NGC Reg. 5.010(1).

53 NGC Reg. 5.010(2).

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 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', '[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 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.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 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.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.⁵⁸

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

55 NRS 463.1405(3).

56 NGC Reg. 5.030.

57 NRS 463.380.

58 NRS 463.380(1)(j).

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 10 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 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.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.

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.

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).

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

VII THE YEAR IN REVIEW

The Board adopted amendments to certain of its regulations throughout 2021. For example, Regulation 6.110 was amended to change the calculations of gross revenue for contests and tournaments conducted in conjunction with a game or gaming device. Regulation 6 was also amended throughout to account for electronic signatures. Regulation 7A was amended to update the procedures for patron disputes, including the addition of a limitations period for a patron to notify the Board of the dispute. Regulation 8.130 was amended to update and increase the monetary threshold for reporting certain transactions to the Board, such as leases. Regulation 22.080 was amended to allow a licensed race book to determine the winners of or payouts on wagers on horse and other animal races based on nationally televised broadcasts under certain circumstances and with the approval of the Board Chair. Regulations 22 and 26C were amended throughout to remove references to entity wagering at licensed race books.

VIII OUTLOOK

As a result of the covid-19 pandemic, the Nevada regulators continue to reconsider in-person-based requirements. Since 2020, appearances before the Board and Commission are more commonly done by video conference. In January 2022, the Commission adopted a regulatory amendment proposed by Sightline Payments that allows for the use of remote registration for wagering accounts. The identity of the patron is confirmed remotely through 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. The identity verification method may include dynamic knowledge-based authentication or other method acceptable to the chair. Note that remote registration is not available for sports wagering accounts.

The Board's recently formed Esports Technical Advisory Committee is scheduled to meet throughout 2022 to discuss the integrity of and best practices for e-sports competitions and wagering.

ABOUT THE AUTHORS

SONIA CHURCH VERMEYS

Brownstein Hyatt Farber Schreck, LLP

Sonia Church Vermeys is a shareholder in the Nevada office of Brownstein Hyatt Farber Schreck, 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

ISBN 978-1-80449-074-7