
THE GAMBLING LAW REVIEW

EDITOR
CARL ROHSLER

LAW BUSINESS RESEARCH

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THE GAMBLING LAW REVIEW

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EDITOR'S PREFACE

Many years ago, I was interviewed for a job at a very large online gambling company. The incumbent general counsel, who was essentially recruiting his replacement, posed a series of difficult questions about how I would perform the role. One question in particular stuck in my mind – he said:

Our organisation currently takes business from more than 100 countries across the globe. How would you develop a risk strategy in relation to the legality of those operations?

I said that I would like to build a large and interactive map of the world in my office, rather like a general's war room, and periodically review the laws in key jurisdictions as they changed. 'Me too', he replied, 'but my CEO won't give me nearly enough budget for that'. I did not get the job.

However, his observation rang again in my ears when I was first approached to become the editor of this present work. In the intervening years, gambling law in many jurisdictions has changed and evolved significantly, but the essential predicament remains the same: staying on top of the hugely varied and constantly changing corpus of law and regulation.

And so my aim in editing this work is to create a guide that enables a lawyer or executive to swiftly and effectively 'plug in' to the regulatory and legal structure of a wide range of jurisdictions across the world, and understand in a few pages the legal climate, the likely issues that will arise in doing business in that jurisdiction and the overall legal risk. And above all, to remain regularly updated so as to highlight developments in the foreseeable future.

Of course, a book that seeks to cover the law of gambling in 15 jurisdictions can never hope to be a complete answer to many of the questions that will face a business. However, it will hopefully at least point the way and define the parameters of any enquiry. In addition, since its chapters are written by some of the leading lights in gambling law, it also provides an introduction to those individuals and their firms, so that they can no doubt supply a more detailed analysis of particular problems, if called upon.

As an editor, one of the problems that I have faced is choosing the jurisdictions that should be included in the review. Even if it were logistically feasible to cover them all, there

is a practical limit to the number of pages that can be contained within a hardback cover. In selecting the territories, I have sought to include a wide range of different countries across the world. The selection is based on a number of factors, including the advice of clients and practitioners, the importance of gambling activity in the jurisdiction, and even matters as simple as population and GDP. I have, I am sure (through ignorance or prejudice), missed a number of countries that thoroughly merit inclusion. I take full responsibility for (but mean no offence by) those mistakes.

I want to thank three groups of people. First, those notable practitioners who have assisted in the production of this volume and given of their time and expertise as part of this common endeavour. Many are friends and colleagues and all are absolutely excellent practitioners in their field.

Second, I want to thank my 'partners', using that term to encompass both my professional colleagues at Squire Patton Boggs LLP who provide daily support and my family and friends, who have to deal with me the rest of the time.

Finally, and crucially, I would like to thank those clients with whom I have worked over the years in this fascinating field. They know who they are. Clients come in a range of shades, from the generous, loyal and appreciative to the hard-bitten, taxing and sometimes frankly annoying. I am pleased to say, however, that lawyers in the field of gambling are luckier than most. Our clients bring us income, but more importantly they bring us the one thing that makes us feel valued more than anything else – problems to which we have to find solutions. For it is through problems and challenges that the gambling industry has advanced and the law has evolved. Gambling law and regulation remains a fascinating and nuanced field in which gambling operators provide enormous imaginative impetus for change and, for the most part, respect our role in helping them.

It is in that spirit that I hope that lawyers and clients alike find this work a useful addition to their shelves.

Carl Rohsler

Squire Patton Boggs

London

June 2016

Chapter 14

NEVADA

Jennifer Carleton, Andy Moore and Erin Elliott¹

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 the past 85 years, and Nevada and Louisiana are the only two states where gambling is legal state-wide.

The definition of ‘gambling game’ in Nevada is:

...any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value...²

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

In 1949, Nevada began allowing wagering on horse racing and professional sports at ‘turf clubs’, which were independent from casinos. In 1975, the Nevada Legislature authorised race and sports wagering to be offered in Nevada casinos. Nevada sports books offer a variety of wagering options for patrons. Patrons can place parlay wagers, wagers on

1 Jennifer Carleton and Andy Moore are shareholders and Erin Elliott is an associate at Brownstein Hyatt Farber Schreck, LLP.

2 NRS 463.0152.

3 Id.

4 NRS 463.01962.

point spreads and *pari-mutuel* wagers (participants wagering with each other).⁵ Many Nevada sports books offer a mobile wagering application that allows people to place wagers with licensed Nevada race and sports books without the need of going to a betting window in a casino. The registration process for a mobile wagering account must occur in a Nevada race and sports book.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 to poker. The first online poker website went live in Nevada in April 2013. Currently, there are two internet poker operators in Nevada – World Series of Poker/WSOP.com, which is an affiliate of Caesars Interactive, and Real Gaming, which is affiliated with the South Point Casino in Las Vegas. 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.

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

Section 24 of the Nevada Constitution prohibits the state of Nevada from authorising a lottery. Nevada is one of six states in the United States that does not have a state-affiliated lottery. The other five states are Alabama, Alaska, Hawaii, Mississippi and Utah. In Nevada, a lottery is defined as ‘any scheme for the disposal or distribution of property, by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining that property.’⁸ Nevada allows charitable raffles to be offered by ‘*bona fide* charitable, civic, educational, fraternal, patriotic, political, religious or veterans’ organisations that are not operated for profit’ to conduct a lottery, raffle, or gift enterprise for the benefit of charitable or non-profit activities in the state.⁹

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.¹⁰ As such, the gaming industry is heavily regulated at the state level by the Nevada Gaming Authorities to ensure its integrity and longevity.¹¹ Nevada recognises the importance of strict regulation in order to maintain the industry’s significance, stating that the:

5 NRS 464.005.

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

7 NGC Reg. 22.140(1).

8 NRS 462.105(1).

9 NRS 462.125 and 462.200.

10 NRS 463.0129(1)(a).

11 NRS 463.0129(1)(c).

...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.¹²

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 a gathering place, and 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 Gaming Control Act (Chapter 463 of the Nevada Revised Statutes; 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.¹³

iv Territorial issues

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

v Offshore gambling

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

There may be regulatory consequences for companies that have operated illegally in the past and then apply for licensure in Nevada. A few years ago, the Board and Commission indicated its 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

12 NRS 463.0129(1)(b).

13 NGC Reg. 3.070(11).

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.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

The Nevada Act and the Regulations provide the primary legal framework for the regulation of gaming in Nevada. The laws, regulations and supervisory procedures of the Nevada Gaming Authorities are based upon declarations of public policy. These public policy concerns include, among other things: (1) preventing unsavoury or unsuitable persons from being directly or indirectly involved with gaming at any time or in any capacity; (2) establishing and maintaining responsible accounting practices and procedures; (3) maintaining effective controls over the financial practices of licensees; (4) preventing cheating and fraudulent practices; and (5) providing a source of state and local revenue through taxation and licensing fees.¹⁴

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 chairman, 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 chairman, 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.¹⁵ As noted above, there are currently two online poker websites operating in Nevada, so the Nevada Gaming Authorities spend the vast majority of their time and resources on the regulation and licensing of bricks-and-mortar casinos.

14 NRS 463.0129.

15 NGC Reg. 14.010(10).

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.¹⁶ 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 development¹⁷

New gaming establishments in Clark County must be located in a gaming enterprise district (GED).¹⁸ 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 in, but 'the establishment may not increase the number of games or slot machines operated at the establishment beyond the number of games or slot machines authorised for such a classification of establishment by local ordinance on December 31, 1996.'¹⁹ 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.²⁰

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

16 NRS 463.3074.

17 NRS 463.3072(2).

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

19 NRS 463.308(3).

20 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.²¹ A ‘gaming device’ means any object used remotely or directly in connection with gaming, or any game that affects the result of a wager by determining win or loss and that does not otherwise constitute associated equipment.²²

If a particular device is not a gaming device, it may be considered associated equipment in Nevada. ‘Associated equipment’ is any equipment used in connection with gaming or mobile gaming, which connects to progressive slot machines, equipment that affects the proper reporting of gross revenue, computerised systems of betting at a race book or sports pool, computerised systems for monitoring slot machines and devices for weighing or counting money.²³ Any manufacturer or distributor of associated equipment for use in Nevada must register with the Commission pursuant to NRS 463.665.²⁴ The Commission has the discretion to require any manufacturer or distributor of associated equipment to file an application for a finding of suitability.²⁵

Additionally, Nevada has three classes of service provider licensing. A service provider is defined as a person who:

- a* acts on behalf of another licensed person who conducts casino gaming operations, and who assists, manages, administers or controls wagers or games, maintains or operates the software or hardware of games on behalf of such 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.

An interactive gaming service provider is required to obtain a Class 1 licence. Marketing affiliates are required to obtain a Class 3 service provider licence. Other types of service providers are required to obtain a Class 2 licence. These include information technology service providers, location determination providers, patron management providers, and payment processors that facilitate transactions directly between a merchant account associated with wagering and a financial institution, as well as entities that provide authorisation and settlement services.²⁶ Advertising companies, acquiring banks that comply with federal banking regulations, fraud detection service providers, graphics designers, patron interaction service providers, risk assessors, and hardware and software support providers for non-regulated hardware and software are not required to be licensed as service providers.

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

21 NRS 463.650.

22 NRS 463.0155.

23 NRS 463.0136.

24 NGC Reg. 14.020(4).

25 NGC Reg. 14.305(1).

26 Nevada Gaming Control Board Service Provider Licensure Guidelines.

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 controlling²⁷ 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.²⁸ The Commission may require any or all of a privately-held business entities' lenders, holders of evidence of indebtedness, underwriters, key executives, agents or employees, as applicable, to be licensed or found suitable.²⁹ 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 license must be licensed individually.³⁰

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.³¹ 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).³² 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.³³ 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.³⁴

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:

27 '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.

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

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

30 NRS 463.530.

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

32 NRS 463.643(3).

33 NRS 463.643(4).

34 NGC Reg. 16.010(14).

*(i) a person of good character, honesty and integrity; (ii) a person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming..., or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming... or in the carrying on of the business and financial arrangements incidental thereto; and (iii) in all other respects qualified to be licensed or found suitable consistently with the declared policy of this state.*³⁵

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

*(1) he or she has 'adequate business probity, competence and experience in gaming or generally; and (2) the proposed financing of the entire operation is adequate for the nature of the proposed operation and from a suitable source.'*³⁶

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.³⁷ 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.'³⁸ A violation is a category B felony, which is punishable by imprisonment of between one and 10 years and a fine of up to \$50,000, or both.³⁹ 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 \$1,000, or both.⁴⁰

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, the Board 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.'⁴¹ The Commission has the authority to limit, condition, suspend, or revoke a licence or registration.⁴² The Commission may also fine a licensee up to \$250,000 for each separate violation, depending on the nature of the violation.⁴³

35 NRS 463.170(2).

36 NRS 463.170(3).

37 NRS 463.160(1)(a).

38 NRS 463.160(1)(d).

39 NRS 463.360(3).

40 NRS 462.250; NRS 193.150(1).

41 NRS 463.310(2).

42 NRS 463.310(4).

43 NRS 463.310(4).

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

*(a) Prior conviction of a crime which is a felony in this state or under the laws of the United States, a crime involving moral turpitude or a violation of the gaming laws of any state; (b) Violation or conspiracy to violate the provisions...relating to: (1) the failure to disclose an interest in a gaming establishment for which the person must obtain a licence; or (2) willful evasion of fees or taxes; (c) Notorious or unsavoury reputation which would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive elements; or (d) Written order of a governmental agency which authorises the exclusion or ejection of the person from an establishment at which gaming or pari-mutuel wagering is conducted.*⁴⁴

IV WRONGDOING

The Board is required to continually observe the conduct of all licensees and other persons having a material involvement directly or indirectly with a licensed gaming operation or registered holding company to ensure that licenses are not issued or held by, nor is there any material involvement directly or indirectly with a licensed gaming operation or registered holding company, by unqualified, disqualified or unsuitable persons, or persons whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places or locations.⁴⁵

The Board is required to investigate any apparent violations of the Nevada Act and Regulations.⁴⁶ 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.⁴⁷ Responsibility for the employment and maintenance of suitable methods of operations rests with the licensee, and willful or persistent use or toleration of methods of operation deemed unsuitable will constitute grounds for licence revocation or other disciplinary action.⁴⁸

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

44 NRS 463.151(3).

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

46 NRS 463.310.

47 NGC Reg. 5.010(1).

48 NGC Reg. 5.010(2).

of custom, decorum, and decency, or permit any type of conduct in a gaming establishment which reflects or tends to reflect on the repute of the state of Nevada and act as a detriment to the gaming industry.⁴⁹

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.*⁵⁰

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.⁵¹

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.⁵² For establishments operating more than 16 games, the licensee must pay a sum of \$1,000 for each game up to 16 games.⁵³ A licensee must pay an annual excise tax of \$250 upon each slot machine operated.⁵⁴ In addition, casinos licensees must pay a quarterly fee of \$20 per slot machine operated in the

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

50 NRS 463.1405(3).

51 NGC Reg. 5.030.

52 NRS 463.380.

53 NRS 463.380(1)(j).

54 NRS 463.385(1).

establishment, and another quarterly fee based upon the number of games operated.⁵⁵ 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.⁵⁶ 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.*⁵⁷

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.⁵⁸ 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.⁵⁹

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 \$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.⁶⁰ 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 disrepute on the gaming industry in Nevada. Nevada casinos must conduct their 'advertising and public relations activities in accordance with decency, dignity, good taste, honesty and inoffensiveness.'⁶¹ Marketing affiliates are required to obtain a Class 3 service provider licence, while advertising companies are not required to be licensed as service providers.

55 NRS 463.375(2).

56 NRS 368A.200(1).

57 NRS 368A.090(1).

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

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

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

61 NGC Reg. 5.011(1).

VII THE YEAR IN REVIEW AND OUTLOOK

Earlier in 2016, Governor Brian Sandoval convened a meeting of the Nevada Gaming Policy Committee (the Committee). The Committee was created by NRS 463.021 and is comprised of 12 members who meet to discuss matters of gaming policy in Nevada. The Committee last met in 2012 to discuss the regulatory structure for online poker in Nevada. In its first meeting in 2016, the Committee discussed DFS. The Committee also met on 13 May 2016 and primarily discussed eSports and its potential impact on Nevada casinos. It is anticipated that the Committee will meet two or three more times in 2016 to discuss the potential of expanding online gaming in Nevada in advance of the 2017 Nevada legislative session to further discuss the expansion of online gaming in Nevada, which will include a further discussion of DFS, and technology changes affecting the Nevada gaming industry.

During the 2015 Nevada legislative session, 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. The Nevada Gaming Authorities amended the Regulations and the technical standards for gaming devices to allow skill games. It is anticipated that the first gaming devices with elements of skill will be deployed at Nevada casinos at some point in 2016.

New provisions of the Regulations went into effect in 2016 regarding the operations of nightclubs and dayclubs located on the premises of resorts casinos in Nevada. The new provisions require greater oversight of club venues by casinos and club operators and require that certain employees and independent contractors of club venues register with the Board.

On 17 March 2016, the Commission adopted new Regulation 15C, which eliminated the requirement that private equity companies with an ownership interest in a Nevada gaming licensee file financial reports with the SEC.

Appendix 1

ABOUT THE AUTHORS

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Jennifer Carleton is a shareholder in Brownstein's gaming law group. Jennifer counsels clients on corporate and regulatory matters, focusing on the licensing aspects of deal structures and transactions, mergers and acquisitions, reorganisations, and public finance. She has spent the last 19 years of her career in gaming, first as in-house counsel for an Indian casino and for the past decade as an adviser to the premier public and private gaming companies in the United States.

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Andy Moore is a shareholder in Brownstein's gaming law group. Andy is experienced in assisting clients with gaming regulatory matters before Nevada state agencies. Andy has assisted clients with numerous and varied business licensing and liquor licensing matters in local jurisdictions throughout Nevada. He also provides advice related to clients' promotional activities, including sweepstakes and contests.

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