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The International Comparative Legal Guide to:

Gambling 2016

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A practical cross-border insight into gambling law

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USA – Louisiana

Jones Walker LLP

J. Kelly Duncan



1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Louisiana authorises the following forms of gaming activity:

Land-Based Gaming, Riverboat Gaming, Slots-at-the-Tracks Gaming and Video Poker Gaming:

The Louisiana Gaming Control Board oversees the regulation and licensure of the following gaming activities in Louisiana: Land-Based Gaming; Riverboat Gaming; Slots-at-the-Tracks Gaming and Video Poker Gaming. The Gaming Enforcement Section of the Louisiana State Police is responsible for the enforcement of the rules and regulations governing Land-Based Gaming, Riverboat Gaming, Slots-at-the-Tracks Gaming and Video Poker Gaming. The Louisiana Department of Justice Gaming Division acts as legal advisor and legal representative of the Louisiana Gaming Control Board and the Louisiana State Police.

Indian Gaming:

Indian Gaming is conducted pursuant to compacts between four federally recognised tribes and the State. Pursuant to those compacts, the Indian Gaming Unit of the Louisiana State Police certifies the suitability of gaming employees and vendors and approves games and rules of play and enforces criminal statutes.

Lottery:

Oversight of the Louisiana Lottery Corporation is exercised in varying degrees by the Governor of Louisiana, the Joint Legislative Committee on the Budget, Senate Judiciary B Committee, the House Committee on Administration of Criminal Justice and the Office of the Legislative Auditor; while the Lottery Corporation's Board of Directors and the Louisiana Department of Justice Gaming Division advise the Lottery Corporation on gaming matters including, without limitation, lottery contracts with vendors and lessors, requests for proposals, and invoices.

Horse Racing and Pari-Mutuel Wagering:

The Louisiana State Racing Commission reviews, regulates, governs and supervises all forms of horse racing and pari-mutuel wagering in the State. The Louisiana Department of Justice Gaming Division represents the Louisiana Racing Commission on matters regarding the regulation of the horse racing industry, pari-mutuel wagering, and off-track wagering, including the prosecution of violations of statutes, and rules and regulations governing horse racing.

Charitable Gaming:

The Louisiana Department of Revenue, Office of Charitable Gaming, regulates the charitable gaming industry in the State.

1.2 Specify all legislation which impacts upon any gambling activity (including skill and social games), and specify in broad terms whether it permits or prohibits gambling.

Land-Based Gaming, Riverboat Gaming, Slots-at-the-Tracks Gaming and Video Poker Gaming:

The Louisiana Gaming Control Act, La. R.S. 27:1, *et seq.*, governs Land-Based Gaming, Riverboat Gaming, Slots-at-the-Tracks Gaming and Video Poker Gaming in the State.

Indian Gaming:

Indian Gaming in the State is governed by the Indian Gaming Regulatory Act (IGRA), 25 USC 2701, *et seq.*, and individual compacts between the tribes and the State.

Lottery:

The Louisiana Lottery Corporation Law, La. R.S. 47:9000, *et seq.*, governs the operations of the Louisiana Lottery.

Horse Racing:

The Louisiana Revised Statutes at La. R.S. 4:141, *et seq.* provide for the establishment of the Louisiana State Racing Commission and the regulation of horse racing and pari-mutuel wagering in the State.

Charitable Gaming:

The Charitable Raffles, Bingo and Keno Licensing Law, La. R.S. 4:701, *et seq.*, governs charitable gaming in the State.

“Gambling” is Prohibited:

The Louisiana Revised Statutes at La. R.S. 14.90 *et seq.* make illegal essentially all gambling activities in the State of Louisiana as distinguished from the forms of gaming discussed above. Gambling is the conducting as a business of any game whereby a person risks the loss of a thing of value in order to realise a profit. Furthermore, whether skill or chance determines the outcome of the game is irrelevant. Section 14.90.3 specifically prohibits internet gaming and provides for up to six months' imprisonment for the violation of this section known as the “Gambling by Computer Statute”.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Limiting the balance of the responses to Land-Based Gaming, Riverboat Gaming, Slots-at-the-Tracks Gaming and Video Poker

Gaming (hereinafter collectively referred to as “gaming”), any person or entity may apply for a gaming licence or a permit to manufacture or distribute gaming devices or a finding of suitability associated with the foregoing. However, no person may be granted a gaming licence or permit, nor found suitable, unless the applicant has demonstrated by clear and convincing evidence that he is suitable. “Suitable” means the person is:

- (1) A person of good character, honesty, and integrity.
- (2) A person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of the 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 carrying on of the business and financial arrangements incidental thereto.
- (3) Capable of and likely to conduct the activities for which he has been licensed, permitted, or approved.
- (4) Not disqualified on the basis of the following criteria:
 - (a) The conviction or a plea of guilty or *nolo contendere* for any of the following:
 - (i) Any offence punishable by imprisonment of more than one year.
 - (ii) Theft or attempted theft, illegal possession of stolen things, or any offence or attempt involving the misappropriation of property or funds.
 - (iii) Any offence involving fraud or attempted fraud, false statements or declarations.
 - (iv) Gambling as defined by the laws or ordinances of any municipality, parish or county, State, or of the United States.
 - (v) A crime of violence as defined in La. R.S. 14.2 (B).
 - (b) There is a current prosecution or pending charge against the person in any jurisdiction for any offence listed above.
 - (c) The person is not current in filing all applicable tax returns and in the payment of all taxes, penalties, and interest owed to the State of Louisiana or any political subdivision of Louisiana, excluding items under formal appeal.
 - (d) The failure to provide information and documentation material to a suitability determination, or the supplying of information which is untrue or misleading as to a material fact pertaining to the suitability criteria.

2.2 Who or what entity must apply for a licence and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Any person or entity that wishes to engage in gaming operations in Louisiana must apply for a gaming licence for a specific location. Any person or entity that wishes to engage in the manufacture or sale of gaming devices must apply for a manufacturer and/or supplier permit. Any person who has or controls, directly or indirectly, 5% or more ownership, income, or profit or economic interest in a licensee or permittee, or who receives 5% or more revenue interest in the form of a commission, finder’s fee, loan repayment, or any other business expense related to the gaming operation, or who has the ability or capacity to exercise significant influence (e.g. management and decision-making authority; operational control; financial relationship; receipt of gaming revenue or proceeds; financial indebtedness; and gaming-related associations) over a licensee or permittee, and any officer (subject to certain exceptions as a matter of practice) or director must apply for a finding of suitability. “Economic interest” is broadly interpreted to include: “any interest in a casino operating contract, licence or permit from which a person

receives or is entitled to receive, by agreement or otherwise, a profit, gain, thing of value, loss, credit, security interest, ownership interest or other benefit. Economic interest includes voting shares of stock or otherwise exercising control of the day to day operations through a management agreement or similar contract.” Additionally, a lessor of immovable property forming any part of the complex of a licensed gaming operation is required to submit to suitability.

2.3 What restrictions are placed upon any licensee?

The Louisiana Gaming Control Board (“LGCB”) places on each licensee a set of standard General Conditions, such as: (a) continued compliance with the Louisiana Gaming Control Act, and all administrative rules promulgated in connection therewith; (b) indemnification and hold harmless of the LGCB and all other State employees and agents arising out of the issuance of the licence; and (c) regular submission of certain reports, etc. Additionally, certain other Specific Economic and Procurement Conditions unique to the licensee are imposed that relate to, among other things, hiring and procurement goals or requirements, as the case may be.

2.4 What is the process of applying for a gambling licence?

Gaming operators and manufacturers and suppliers must utilise the application forms required for the specific type of gaming involved; such forms are available on the Louisiana Gaming Control Board website. Persons and entities affiliated with licensees and permittees, who are required to file for findings of suitability, must utilise the Multi-Jurisdictional Personal History Disclosure Form and the Louisiana Supplemental Form which are also available on the Louisiana Gaming Control Board website. Fees associated with licence applications fees appear on the aforementioned forms. These fees help offset the cost of the investigation, failing which an applicant is required to make a deposit to cover the cost of the investigation by the Louisiana State Police.

2.5 Please give a summary of applicable time limits and revocation.

The Casino Operating Contract provides for the term of the single land-based casino. A Riverboat Gaming Licence, Slots-at-the Track Gaming Licence and Video Poker Gaming License are each for a period of five years, as are Gaming Manufacturer and Supplier Permits, while an Indian Gaming certification must be renewed every two years. Findings of suitability are issued for a period concomitant with that of the licence or permit with which it is associated. Licences, permits and findings of suitability are subject to suspension, revocation or having conditions imposed for violations of the Louisiana Gaming Control Act and regulations promulgated thereunder, subject to due process requirements of notice and hearings.

2.6 By product, what are the key limits on providing services to customers?

Gaming equipment must be provided by licensed manufacturers and suppliers. Non-gaming suppliers need to be licensed to the extent that they furnish goods or services to any casino and receive compensation or remuneration in excess of two hundred thousand dollars per calendar year for such goods or services. However, any non-gaming supplier, regardless of the dollar amount of goods or services provided to a licensee, is subject to being called forward at any time for a finding of suitability.

2.7 What are the tax and other compulsory levies?

The licence taxes vary by the form of gaming involved. The tax required of the Casino Operator for the privilege of operating the single land-based casino is provided for in the Casino Operating Contract and has changed from time-to-time. Currently, the tax is \$60 million or 21.5% of gross gaming revenue, whichever is greater.

The tax for Riverboat Gaming licensees is 21.5% of net gaming proceeds and an additional 4% to 6% to local governing authorities under the terms of “local boarding fee” agreements. Slots-at-the-Track Gaming licensees pay: 15% of annual net slot machine revenue to the Horsemen’s Benevolent and Protective Association, 2% to the Louisiana Thoroughbred Breeders’ Association and 1% to the Louisiana Quarter Horse Breeders’ Association; 18.5% of adjusted gross revenue to the State, and 4% to local parishes where the facilities are located. The tax for Video Gaming licensees ranges from 26% to 32.5% of net gaming proceeds, according to the type of establishment in which the devices are located. In addition to the foregoing, a fixed annual fee is paid by a gaming licensee depending on the nature of the licence held.

2.8 What are the broad social responsibility requirements?

The Louisiana Gaming Control Act and the regulations promulgated thereunder are designed to create a controlled gaming industry to promote economic development by employing Louisiana residents and procuring goods and services from Louisiana companies to the greatest extent possible. The regulations promulgated in accordance with the Louisiana Gaming Control Act address problem gambling issues and self-exclusion procedures, and include restrictions regarding underage patrons.

2.9 How do any AML financial services regulations or payment restrictions restrict or impact on entities supplying gambling?

Gaming activities at Land-Based Casinos and Riverboat Casinos are strictly monitored. Use of debit cards and credit cards on the casino floor is prohibited.

3 The Restrictions on Online Supply/Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

All online gaming in Louisiana is illegal and strictly prohibited. The conducting of approved forms of regulated gaming is not considered gambling by computer.

3.2 What other restrictions have an impact on online supplies?

The Gambling by Computer Statute, La. R.S. 14.90.3, strictly prohibits online gambling.

3.3 What terminal/machine-based gaming is permitted and where?

The Gambling by Computer Statute, La. R.S. 14.90.3, strictly prohibits online gambling.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Licensees and permittees are liable for non-compliance with the Louisiana Gaming Control Act and the regulations promulgated thereunder. The Louisiana Gaming Control Board is responsible for enforcement issues involving its licensees and permittees, and does so with the assistance of the Louisiana State Police Gaming Division and the Louisiana Attorney General’s Gaming Division. Violations of laws prohibiting illegal “gambling” operations in the State are enforced by the Louisiana State Police and local law enforcement authorities.

4.2 What is the approach of authorities to unregulated supplies?

Louisiana aggressively prosecutes those involved in unlicensed and unregulated gambling in the State.

4.3 Do other non-national laws impact upon enforcement?

No, they do not.

4.4 Are gambling debts enforceable in your jurisdiction?

Yes, assuming that same are associated with lawful gaming activities.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling legislation/regulations are being discussed currently?

No substantive changes to the Louisiana Gaming Control Act or the regulations promulgated thereunder are currently anticipated. However, a Joint Legislative Committee met in January 2014 to consider internet gaming. As a result of the deliberations of that Joint Legislative Committee, legislation requiring an annual report from the Louisiana Gaming Control Board on the impact of technology advances on the gaming industry was adopted. The report will specifically address the growth of internet gaming in the United States and enforcement issues relating to age verification and geo-location, and other issues of legislative concern, and to make recommendations. This legislation recognises the need for the State Legislature to understand advances in technology that ultimately might support a change in the current prohibition of internet gaming in the State. Other changes being discussed relate to skill-based gaming and statutory and/or regulatory revisions and technical standards that may be required.

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Jones Walker's gaming practice, the largest in the Southeastern United States, provides full-spectrum legal counsel to clients on gaming law. The firm represents all participants in the industry, including casinos, tribes, product manufacturers and suppliers, pari-mutuels, sweepstakes and charities. The firm also represents other parties – such as investors, lenders and vendors – that have gaming-related interests.

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