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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 – Mississippi

Jones Walker LLP

Thomas B. Shepherd III



1 Relevant Authorities and Legislation

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

The Mississippi Gaming Commission, and to a much lesser extent, the Mississippi Department of Revenue, regulate all casino gambling. The Commission also regulates the licensing and conduct of charitable bingo. State and local law enforcement assist with enforcing statutes against illegal gambling operations such as “grey market” devices and internet cafes.

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.

The Mississippi Gaming Control Act is codified at Miss. Code Ann. Section 75-76-1 *et seq.* The Mississippi gaming criminal statutes, codified at Miss. Code Ann. Section 97-33-1 *et seq.*, make illegal essentially all gambling activities in the State of Mississippi, unless those activities and games are conducted at permitted locations as described in the statutes and under the auspices of the Mississippi Gaming Control Act.

2 Application for a Licence and Licence Restrictions

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

Any person or entity may apply for a gaming operator licence or a licence to manufacture or distribute gaming devices or a finding of suitability to be associated with a gaming licensee. However, no person may be granted a gaming licence or found suitable who has been convicted of a felony in the courts of Mississippi, another state or the United States; no person may be granted a gaming licence or found suitable who has been convicted of a crime in any court of another state or the United States, which, if committed in Mississippi, would be a felony; and no person may be granted a gaming licence or finding of suitability who has been convicted of a misdemeanour in the courts of Mississippi or another state when such conviction was for gambling, sale of alcoholic beverages to minors, prostitution or procuring or inducing individuals to engage in prostitution.

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 casino gaming operations in Mississippi must apply for a gaming operator licence for a specific location. Any person or entity that wishes to engage in the manufacture or sale of gaming devices and certain associated equipment (as determined by the Commission from time to time) in Mississippi must apply for a manufacturer and/or distributor licence. Any person or entity owning five per cent or more of the securities of a gaming licensee or its holding company must apply for a finding of suitability and/or registration as a holding company or publicly traded corporation. Certain officers and directors of licensees and holding companies must apply for findings of suitability, and gaming employees must apply for work permits. Game testing labs must apply for a testing lab permit. Junket representatives must apply for junket representative approval. Any person or entity (such as a landlord) receiving compensation from a casino licensee based upon a percentage of revenues or profits of the casino must also apply for a finding of suitability.

The Commission generally has exercised its discretion to require a finding of suitability of any beneficial owner of five per cent or more of any class of voting securities of a licensee or its holding companies. However, under certain circumstances, an “institutional investor”, as defined in the Commission’s regulations, which acquires more than 10 per cent, but not more than 15 per cent, of the voting securities of a company may apply to the Commission for a waiver of the finding of suitability requirement if such institutional investor holds the voting securities for investment purposes only. An institutional investor shall not be deemed to hold voting securities for investment purposes unless the voting securities were acquired and are held in the ordinary course of business as an institutional investor and not for the purpose of causing, directly or indirectly: the election of a majority of the members of the board of directors of the licensee or its holding company; any change in the corporate charter, bylaws, management, policies or operations, or any of its gaming affiliates; or any other action which the Commission finds to be inconsistent with holding the voting securities for investment purposes only. Activities which are not deemed to be inconsistent with holding voting securities for investment purposes include:

- voting on all matters voted on by stockholders;
- making financial and other inquiries of management of the type normally made by securities analysts for informational purposes and not to cause a change in management, policies or operations; and

- such other activities as the Commission may determine to be consistent with such investment intent.

2.3 What restrictions are placed upon any licensee?

The Commission usually places on each licence or finding of suitability a set of standard conditions that include: continued compliance with the Mississippi Gaming Control Act and the regulations of the Commission; a date of expiration for the licence (three years) or finding of suitability (nine years); and a requirement that any dispute involving the licence must be adjudicated in courts located within the State of Mississippi.

The Mississippi Gaming Control Act provides for legalised gaming in each of the 14 counties that border the Gulf Coast or the Mississippi River, but only if the voters in the county have not voted to prohibit gaming in that county.

Currently, gaming is permissible in nine of the 14 eligible counties in the state and gaming operations have commenced in seven counties. Traditionally, Mississippi law required gaming vessels to be located on the Mississippi River or on navigable waters in eligible counties along the Mississippi River, or in the waters lying south of the counties along the Mississippi Gulf Coast. However, the Mississippi Legislature amended the Mississippi Gaming Control Act to permit licensees in the eligible counties along the Gulf Coast to establish casino structures that are located in whole or part on shore and land-based casino operations, provided the land-based gaming areas do not extend more than 800 feet beyond the 19-year mean high water line, except in Harrison County where the 800-foot limit can be extended as far as the greater of 800 feet beyond the 19-year mean high water line or the southern boundary of Highway 90. Due to another change in the interpretation of the Mississippi Gaming Control Act, the Commission has also permitted licensees in approved Mississippi River counties to conduct gaming operations on permanent structures, provided that the majority of the gaming floor in any such structure is located on the river side of the “bank full” line of the Mississippi River. This permits river county casinos to be built and operated adjacent to the Mississippi River.

The Mississippi Act permits unlimited stakes gaming on a 24-hour basis and does not restrict the percentage of space which may be utilised for gaming. The Mississippi Gaming Control Act permits substantially all traditional casino games and gaming devices.

There are no limitations on the number of gaming licences that may be issued in Mississippi.

The Commission’s regulations require as a condition of licensure that a project include: a 500-car or larger parking facility in close proximity to the casino complex; a 300-room or larger hotel of at least a three diamond rating as defined by an acceptable travel publication as determined by the Commission; a restaurant capable of seating at least 200 people and a fine dining facility capable of seating at least 75 people; a casino floor of at least 40,000 square feet; and have (or support) an amenity that will be unique to the market, encourage economic development and promote tourism. Such regulations apply to new casinos or acquisitions of closed casinos.

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

Gaming operators and manufacturers and distributors must apply for a licence on the Mississippi Addendum forms available on the Mississippi Gaming Commission website. Persons and entities affiliated with such licensees, such as significant owners

and officers and directors, must apply for findings of suitability on the International Association of Gaming Regulators’ Multi Jurisdictional Personal History Disclosure Form, which is also available on the Commission website, and complete the relevant portions of the Mississippi Addendum. Licence fees and application fees are indicated on the forms and an investigation deposit must be placed with the Commission. A corporate investigation is conducted by the Corporate Securities Section of the Investigations Division, and includes an on-site detailed review of corporate documents and financial statements. A personal finding of suitability investigation is conducted by the Investigations Division, which includes a personal interview of the applicant by Commission agents. Such investigations may take six months or longer to complete. Once the investigations are completed, Commission staff prepare reports and recommendations to the full Commission regarding licensing and suitability. Applicants must make a personal appearance at a scheduled Commission meeting to be approved for licensure or finding of suitability.

The Commission may deny an application for a finding of suitability for any cause that it deems reasonable. Changes in certain licensed positions must be reported to the Commission. In addition to its authority to deny an application for a finding of suitability, the Commission has jurisdiction to disapprove a change in any corporate position or title, and such changes must be reported to the Commission. The Commission has the power to require a licensee or any holding company to suspend or dismiss officers, directors and other key employees or sever relationships with other persons who refuse to file appropriate applications or whom the authorities find unsuitable to act in such capacities. Determination of suitability or questions pertaining to licensing are not subject to judicial review in Mississippi.

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

Licences are generally issued for a three-year period. Findings of suitability are generally issued for a nine-year period. Licences and findings of suitability are subject to suspension or revocation for violations of the Mississippi Gaming Control Act and Commission regulations, subject to due process requirements of notice and a hearing. Revocation is an extremely rare sanction, and most violations result in settlement and payment of an administrative assessment or penalty.

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

Gaming equipment and “associated equipment” must be provided by licensed manufacturers and distributors. Other vendors need not be licensed by the Commission to provide goods or services to gaming licensees. However, the Commission may call for a finding of suitability for any vendor if the Commission has concerns about the vendor or its affiliates.

2.7 What are the tax and other compulsory levies?

The licence fees payable to the State of Mississippi for a gaming operator licensee include an annual licence fee of \$5,000, plus a monthly licence fee based upon “gaming receipts” (generally defined as gross receipts less payouts to customers as winnings), and the maximum tax rate imposed by the State of Mississippi is eight per cent of all gaming receipts in excess of \$134,000 per month. The foregoing licence fees paid are allowed as a credit against

Mississippi income tax liability for the year paid. Additionally, there is an annual licence fee payable to the state equal to \$81,200 plus \$100 for each game in excess of 35 games on the casino floor. Moreover, the Mississippi Commission assesses gaming operator licensees with an annual investigative fee which is based on the number of gaming devices on the property. The fees payable to the city and county in which a gaming operator licensee operates is generally a maximum of four per cent of all gaming receipts in excess of \$134,000 per month and annual licence fees per gaming device.

2.8 What are the broad social responsibility requirements?

The Mississippi Gaming Control Act calls for the employment of Mississippi residents to the greatest extent possible. The Commission regulations address such social responsibility issues as problem gambling, including 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?

Use of credit cards on the casino floor is prohibited. Certain prepaid debit card arrangements are permitted under the regulations.

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?

The Mississippi Gaming Commission takes the position that all online gaming by persons located in the State of Mississippi is illegal and prohibited.

3.2 What other restrictions have an impact on online supplies?

The Mississippi Gaming Commission takes the position that all online gaming by persons located in the State of Mississippi is illegal and prohibited.

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

The Mississippi Gaming Commission takes the position that all online gaming by persons located in the State of Mississippi is illegal and prohibited.

4 Enforcement and Liability

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

The Mississippi Gaming Commission and local law enforcement authorities are both responsible for enforcement of the laws prohibiting gaming in Mississippi. The Commission is responsible for enforcement issues against its licensees for violations of the Gaming Control Act or Commission regulations.

4.2 What is the approach of authorities to unregulated supplies?

Mississippi takes an aggressive stance against unlicensed and unregulated gaming in the state and the possession or play of unlicensed and illegal gaming devices.

4.3 Do other non-national laws impact upon enforcement?

No, they do not.

4.4 Are gambling debts enforceable in your jurisdiction?

Yes, gambling debts owed to a licensed casino are enforceable in Mississippi.

5 Anticipated Reforms

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

No changes to the Mississippi Gaming Control Act are anticipated. No significant changes to the Commission regulations are anticipated.

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With more than 25 years of experience, Tommy Shepherd is a partner in Jones Walker's Business and Commercial Transactions Practice Group. As an accomplished gaming attorney, he is the immediate past President of the International Association of Gaming Advisors (IAGA).

Tommy represents major casino companies, manufacturers, suppliers, and financial institutions regarding all matters relating to the development, financing, licensing and operation of gaming and resort facilities. Mr. Shepherd's clients include many of the largest gaming operators and gaming equipment manufacturers and suppliers in the world, as well as major private equity and investment banking firms and large commercial lenders involved in secured and unsecured lending, and debt offerings and bond offerings in connection with the development of various gaming projects.

Prior to being elected as President of IAGA, he served on IAGA's Board of Trustees. For 2011, Mr. Shepherd was also selected as the "Jackson, MS Best Lawyers Gaming Law Lawyer of the Year", and as "Lawyer of the Year in Mississippi" by the *Mississippi Business Journal*.



Since its inception in 1937, Jones Walker LLP has grown over the past several decades in size and scope to become one of the largest law firms in the United States. The Firm serves local, regional, national, and international business interests in a wide range of markets and industries. Today, the Firm has approximately 390 attorneys in Alabama, Arizona, California, the District of Columbia, Florida, Georgia, Louisiana, Mississippi, New York, Ohio, and Texas.

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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