



ICLG

The International Comparative Legal Guide to:

Gambling 2017

3rd Edition

A practical cross-border insight into gambling law

Published by Global Legal Group, with contributions from:

Arthur Cox
Brandl & Talos Attorneys at law
Carallian
Cuatrecasas, Gonçalves Pereira
DLA Piper UK LLP
Gaming Legal Group
Hassans International Law Firm
Herzog Fox & Neeman Law Office
Hinckley, Allen & Snyder LLP
Horten Law Firm
HWL Ebsworth Lawyers
International Masters of Gaming Law

Jones Walker LLP
Khaitan & Co
Melchers Law Firm
Miller Thomson LLP
MME Legal | Tax | Compliance
Montgomery & Associados
Nestor Nestor Diculescu Kingston Petersen
Portilla, Ruy-Díaz y Aguilar, S.C.
Rato, Ling, Lei & Cortés – Advogados
Sbordoni & Partners
Sirius Legal



Contributing Editor
Hilary Stewart-Jones,
DLA Piper UK LLP

Sales Director
Florjan Osmani

Account Directors
Oliver Smith, Rory Smith

Sales Support Manager
Paul Mochalski

Editor
Tom McDermott

Senior Editor
Rachel Williams

Chief Operating Officer
Dror Levy

Group Consulting Editor
Alan Falach

Group Publisher
Richard Firth

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

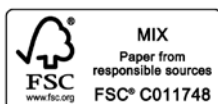
GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
December 2016

Copyright © 2016
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-911367-26-0
ISSN 2056-4341

Strategic Partners



Editorial Chapter:

1	Shaping the Future of Gaming Law – Michael Zatezalo & Jamie Nettleton, International Masters of Gaming Law	1
---	--	---

General Chapters:

2	2016: Post-Brexit Upheaval and Raising the Compliance Bar – Hilary Stewart-Jones, DLA Piper UK LLP	3
3	Update on Fantasy Sports Contests in the United States – Changes Over the Past Year and What May be Ahead in the Future – Mark Hichar, Hinckley, Allen & Snyder LLP	6

Country Question and Answer Chapters:

4	Australia	HWL Ebsworth Lawyers: Anthony Seyfort	16
5	Austria	Brandl & Talos Attorneys at law: Thomas Talos & Nicholas Aquilina	21
6	Belgium	Sirius Legal: Bart Van den Brande	27
7	Brazil	Montgomery & Associados: Neil Montgomery & Helena Penteadó Moraes Calderano	32
8	Canada	Miller Thomson LLP: Danielle Bush	36
9	Denmark	Horten Law Firm: Nina Henningsen	43
10	Dutch Caribbean	Gaming Legal Group & Carallian: Bas Jongmans & Dick Barmentlo	49
11	Germany	Melchers Law Firm: Dr. Joerg Hofmann & Dr. Matthias Spitz	57
12	Gibraltar	Hassans International Law Firm: Peter Montegriffo QC & Nyreen Llamas	63
13	Greater Antilles	Gaming Legal Group: Bas Jongmans & Josefina Reyes Santana	70
14	India	Khaitan & Co: Ganesh Prasad & Sharad Moudgal	83
15	Ireland	Arthur Cox: Rob Corbet & Chris Bollard	89
16	Israel	Herzog Fox & Neeman Law Office: Yehoshua Shohat Gurtler	95
17	Italy	Sbordoni & Partners: Stefano Sbordoni	100
18	Macau	Rato, Ling, Lei & Cortés – Advogados: Pedro Cortés & Manuel Moita Júnior	105
19	Malta	Gaming Legal Group: Bas Jongmans & Stephen Dullaghan	110
20	Mexico	Portilla, Ruy-Díaz y Aguilar, S.C.: Carlos Fernando Portilla Robertson & Ricardo Valdivia González	118
21	Netherlands	Gaming Legal Group: Bas Jongmans	123
22	Portugal	Cuatrecasas, Gonçalves Pereira: Gonçalo Afonso Proença	129
23	Romania	Nestor Nestor Diculescu Kingston Petersen: Cosmina Simion & Ana-Maria Baciu	135
24	Switzerland	MME Legal Tax Compliance: Dr. Andreas Glamer & Dr. Luka Müller-Studer	142
25	United Kingdom	DLA Piper UK LLP: Hilary Stewart-Jones	148
26	USA – Alabama	Jones Walker LLP: Kirkland E. Reid	155
27	USA – Florida	Jones Walker LLP: Marc W. Dunbar	160
28	USA – Louisiana	Jones Walker LLP: J. Kelly Duncan	164
29	USA – Mississippi	Jones Walker LLP: Thomas B. Shepherd III	168
30	USA – Texas	Jones Walker LLP: Nicole Duarte	172

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

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, 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, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

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, any parish or county, any 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 or authorisations 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 which 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 any gambling licence or regulatory approval?

Gaming operators and manufacturers and suppliers must utilise the application forms required for the specific type of gaming involved, which 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 potential for expiry, review revocation and nullification.

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 Licence are each for 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? Please include in this answer the material promotion and advertising restrictions.

Gaming equipment must be provided by licensed manufacturers and suppliers. Non-gaming suppliers, other than those specifically excepted by statute, need to be licensed to the extent that they furnish goods or services to any casino and receive compensation or remuneration in excess of \$200,000 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 4–6% 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 26–32.5% 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? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

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. Virtual currencies are not accepted.

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 Gaming by Computer Statute, La. R.S. 14.90.3, strictly prohibits online gaming.

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

The Gaming by Computer Statute, La. R.S. 14.90.3, strictly prohibits online gaming.

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 liability and 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.

A concurrent resolution has been adopted by the State Legislature for the creation of a Riverboat Economic Development and Gaming Task Force. The Task Force is charged with studying the current law and existing rules and regulations regarding the riverboat gaming industry and receiving public input relative to same in order to present a written report to the State Legislature no later than 60 days prior to the beginning of the 2018 Regular Session. The report is to make recommendations relating to, among other things, changes in current law, rules and regulations designed to generate and promote

increased economic development by riverboat gaming licensees, provide for greater safety for patrons and employees, increase capital reinvestment, improve and enhance the regulation of riverboat gaming licensees and to make Louisiana riverboat casinos more competitive with gaming enterprises in nearby jurisdictions.



J. Kelly Duncan

Jones Walker LLP
201 St. Charles Ave. 48th Floor
New Orleans, LA 70170
USA

Tel: +1 504 582 8218
Email: kduncan@joneswalker.com
URL: www.joneswalker.com

J. Kelly Duncan is a partner in Jones Walker's Admiralty & Maritime Practice Group and head of the firm's gaming practice. He is a Co-Chair of the annual American Bar Association Gaming Law Minefield. Since the early 1990s, he has been integrally involved in the representation of many of the world's largest gaming operators and gaming equipment manufacturers and suppliers, major investment banking and private equity firms, and large commercial lenders in connection with the development, financing and operation of gaming projects. He is a past President of the International Masters of Gaming Law and a member of IAGA, was named the Best Lawyers in America's "New Orleans, LA Best Lawyers Gaming Law Lawyer of the Year" in 2011, 2015, and 2017, and is listed in *Chambers Global Guide*, *Chambers USA* and *Louisiana Super Lawyers*, among other honours. Duncan has an A.B., *cum laude*, from Georgetown University and a J.D. from Tulane University.



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 375 attorneys in Alabama, Arizona, 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.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.co.uk