



ICLG

The International Comparative Legal Guide to:

Gambling 2018

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Editorial Chapter:

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

2	UK Gambling Market: Brexit Economic and Political Challenges and the High Cost of Meeting Enhanced Social Responsibility and Regulatory Requirements – Hilary Stewart-Jones, DLA Piper UK LLP	3
3	The U.S. Supreme Court Could Open the Door to Bricks-and-Mortar Sports Betting in the United States – Mark Hichar, Hinckley Allen	6
4	Blockchain: Revolutionising iGaming As We Know It – Rachel Vella Baldacchino & Tiffany Farrugia, WH Partners	11

Country Question and Answer Chapters:

5	Australia	HWL Ebsworth Lawyers: Anthony Seyfort	15
6	Austria	Brandl & Talos Attorneys at Law: Thomas Talos & Nicholas Aquilina	19
7	Belgium	Sirius Legal: Bart Van den Brande	25
8	Brazil	Montgomery & Associados: Neil Montgomery & Helena Penteado Moraes Calderano	30
9	Canada	Miller Thomson LLP: Danielle Bush	34
10	Cyprus	Law Offices Constantinos N. Couccoullis & Associates: Constantinos N. Couccoullis & Alexia C. Couccoullis	41
11	Czech Republic	Petroš Sedláčková Legal: Jan Řehola & Petra Kubáčová	46
12	Denmark	Horten: Nina Henningsen	51
13	Dutch Caribbean	Gaming Legal Group: Bas Jongmans & Dick Barmentlo	57
14	Germany	Melchers Law Firm: Dr. Joerg Hofmann & Dr. Matthias Spitz	65
15	Gibraltar	Hassans International Law Firm: Andrew Montegriffo & Louise Lugaro	71
16	Greater Antilles	Gaming Legal Group: Frederik van Eijk & Josefina Reyes Santana	78
17	Greece	Law Offices Constantinos N. Couccoullis & Associates: Constantinos N. Couccoullis & Alexia C. Couccoullis	91
18	India	Khaitan & Co: Ganesh Prasad & Sharad Moudgal	95
19	Ireland	Matheson: Chris Bollard & Deirdre Kilroy	101
20	Isle of Man	Appleby: Claire Milne	106
21	Israel	Herzog Fox & Neeman Law Office: Yehoshua Shohat Gurtler	112
22	Italy	Sbordoni & Partners: Stefano Sbordoni	117
23	Japan	Nagashima Ohno & Tsunematsu: Masayuki Fukuda	122
24	Macau	Rato, Ling, Lei & Cortés – Advogados: Pedro Cortés & Óscar Alberto Madureira	127
25	Malta	Gaming Legal Group: Bas Jongmans & Stephen Dullaghan	132
26	Mexico	Creel, García-Cuéllar, Aiza y Enríquez, S.C.: Begoña Cancino & Sofía Castañón	140
27	Netherlands	Gaming Legal Group: Bas Jongmans	145
28	Norway	Brækhus Advokatfirma DA: Brede A. Haglund & Alexander Mollan	151
29	Portugal	Luiz Gomes & Associados, Sociedade de Advogados, SP, RL: Gonçalo Afonso Proença	156
30	Romania	Nestor Nestor Diculescu Kingston Petersen: Cosmina Simion & Ana-Maria Baciu	161
31	Slovakia	WH Partners: Robert Skalina	168
32	Spain	LOYRA Abogados: Patricia Lalanda Ordóñez & Fernando Martín Martín	174
33	Switzerland	MME Legal Tax Compliance: Dr. Andreas Glarner & Dr. Luka Müller-Studer	180
34	Turkey	EB LEGAL: Prof. Av. Esra Bicen	186
35	United Kingdom	DLA Piper UK LLP: Hilary Stewart-Jones	192
36	USA – Illinois	Taft Stettinius & Hollister LLP: Paul T. Jenson & Erin Lynch Cordier	199
37	USA – Mississippi	Balch & Bingham LLP: Scott E. Andress	205
38	USA – Nevada	Dickinson Wright PLLC: Kate C. Lowenhar-Fisher & Gregory R. Gemignani	209

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USA – Illinois

Paul T. Jensen



Erin Lynch Cordier



Taft Stettinius & Hollister LLP

1 Relevant Authorities and Legislation

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

The Illinois Gaming Board (the “IGB”) has jurisdiction to regulate every person, association, corporation, partnership and trust involved in riverboat gambling operations and video gaming operations in the State of Illinois, including all persons in establishments where video gaming operations are conducted.

The Illinois Racing Board has jurisdiction to regulate every person who holds or conducts any meeting within the State of Illinois where horse racing is permitted for any stake, purse or reward.

The Illinois Lottery Control Board and the Department of the Lottery are responsible for implementing and regulating the State Lottery.

The Illinois Department of Revenue is responsible for regulating and issuing licences to conduct bingo games, games of chance involving cards, dice, wheels, random selection of numbers and gambling tickets which may be conducted at charitable games events, pull tabs and jar games.

The Raffles and Poker Runs Act grants the governing body of any county or municipality within the State of Illinois the authority to establish a system for the licensing of organisations to operate raffles and poker runs meeting certain minimum criteria.

The Attorney General or State’s Attorney is authorised to enforce the Prizes and Gifts Act, which governs sweepstakes and promotions whereby no payment is required to participate but there remains an element of chance and a prize or gift award.

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.

Gambling is generally prohibited in Illinois unless it falls under one of the exceptions specified in Article 28-1 of the Illinois Criminal Code. Article 28 sets forth a broad definition of what constitutes a gambling offence. Specifically, Article 28 provides that a person commits gambling when he or she knowingly: (1) plays a game of chance or skill for money or other thing of value, *unless such conduct falls within a specific exception as set forth in the statute*; (2) makes a wager upon the result of a game, contest or any political nomination, appointment or election; (3) operates, keeps, owns, uses, purchases, exhibits, rents, sells, bargains for the sale or lease of, manufactures or

distributes any gambling device; (4) contracts to have the option to buy or sell any grain or other commodity under certain circumstances; (5) owns or possesses any book, instrument or apparatus by means of which bets or wagers have been, or are recorded or registered, or possesses any money which he or she has received in the course of a bet or wager; (6) sells pools upon the result of any game or contest of skill or chance, political nomination, appointment or election; (7) sets up or promotes any lottery or sells, offers to sell or transfers any ticket or share for any lottery; (8) sets up or promotes any policy game or sells, offers to sell or possesses or transfers any policy ticket, slip, record, document or other similar device; (9) drafts, prints or publishes any lottery ticket or share, or any policy ticket, slip, record, document or similar device (except as authorised by and conducted in accordance with the laws of the State); (10) advertises any lottery or policy game (except as authorised by and conducted in accordance with the laws of the State); or (11) establishes, maintains, or operates an Internet site that permits a person to play a game of chance or skill for money or other thing of value by means of the Internet or to make a wager upon the result of any game, political nomination, appointment or election by means of the Internet (except as authorised by and conducted in accordance with the laws of the State).

Exceptions to the statutory definition of gambling include: (1) agreements to compensate for loss (i.e., insurance contracts); (2) offers of prizes, awards or compensation to the actual contestant in a *bona fide* contest for the determination of skill, speed, strength or endurance or to the owners of animals or vehicles entered in such contest; (3) pari-mutuel betting as authorised by the laws of the State, including the Horse Racing Act of 1975 (230 ILCS 5/1 *et seq.*); (4) manufacture of gambling devices, including acquisition of essential parts, for transportation to any place outside Illinois when not prohibited by applicable Federal law or as authorised under the Illinois Video Gaming Act (230 ILCS 40/1 *et seq.*); (5) bingo as authorised by the Bingo License and Tax Act (230 ILCS 25/1 *et seq.*); (6) lotteries as authorised by the Illinois Lottery Law (20 ILCS 1605/1 *et seq.*); (7) possession of an antique slot machine that is not used in the operation or promotion of any unlawful gambling activity; (8) raffles and poker runs as authorised by the Raffles and Poker Runs Act (230 ILCS 15/1 *et seq.*); (9) charitable games as authorised by the Charitable Games Act (230 ILCS 30/1 *et seq.*); (10) pull tab and jar games as authorised by the Pull Tab and Jar Games Act (230 ILCS 20/1 *et seq.*); (11) gambling games conducted on riverboats as authorised by the Illinois Riverboat Gambling Act (230 ILCS 10/1 *et seq.*); (12) video gaming terminal (“VGT”) games as authorised by the Illinois Video Gaming Act (230 ILCS 40/1 *et seq.*); (13) games of skill or chance where no purchase is required to participate; and (14) certain other promotion raffles as authorised by the laws of the State and the related rules and regulations promulgated under each relevant Act.

With respect to raffles, the Raffles and Poker Runs Act promulgates authority to the governing body of any county of municipality to establish a specific system for the licensing of organisations to operate raffles in accordance with the Raffles and Poker Runs Act and any additional restrictions set forth by the local governing body.

Finally, the Native American Gaming Compact Act (230 ILCS 35/1 *et seq.*) also requires Illinois' Governor to submit a request for authority to the General Assembly prior to entering into any compact with a Native American tribe authorising such tribe to conduct gaming in Illinois. Illinois does not currently have any Native American gaming activity in operation.

2 Application for a Licence and Licence Restrictions

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

Any qualified person or entity may apply to the IGB for an Owner's licence to conduct riverboat gambling operations or for a Supplier's licence to provide gaming equipment and supplies, including real estate, under the Riverboat Gambling Act. The IGB is authorised to award up to 10 Owner's licences for riverboat gambling operations. There is no restriction on the number of Supplier's licences that can be issued.

Any qualified person or entity may apply to the IGB for a Terminal Operator's licence under the Video Gaming Act for the purpose of maintaining and placing up to five VGTs in Licensed Establishments. A Terminal Operator is prohibited from holding a Manufacturer licence or Distributor licence, or from owning, managing or controlling a Licensed Establishment. Moreover, each Terminal Operator is required to qualify as an Illinois resident. To apply for an establishment licence, an entity must either be a retail establishment that holds a liquor licence allowing for alcoholic liquor to be drawn, poured, mixed or otherwise served for consumption or qualify as a fraternal organisation, veterans organisation or a truck stop (as defined by the Video Gaming Act). Additional restrictions on establishment applicants may apply based on their distance from an organisation licensee under the Illinois Horse Racing Act, a riverboat gambling operation, a school or a place of worship.

The Illinois Raffles and Poker Runs Act restricts the issuance of raffle licences only to *bona fide* religious, charitable, labour, business, fraternal, educational or veterans organisations that operate without profit and have been in existence for a period of five years immediately before making an application for a licence, with certain exceptions.

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?

The Riverboat Gambling Act affords the IGB the discretion to identify which positions must be approved by the IGB and must maintain suitability as a Key Person. Generally, the following individuals are required to be designated and approved as a Key Person for an Owner's licence: any person with an ownership interest or voting rights of more than 5%; the directors, chief executive officer, president, and chief operating officer, or their functional equivalents; and a gaming operations manager or anyone

with influence or control over the conduct of gaming. Certain exceptions are allowed for Institutional Investors (as defined by the SEC) that hold or acquire ownership interests in a licensee. In addition, any employee of the riverboat gambling operation must hold an occupational licence. The following individuals are usually required to be designated and approved as a Key Person for a Supplier's licence: any person with an ownership interest or voting rights of more than 25%; the chief executive officer; and the chief operating officer or their functional equivalents.

The Video Gaming Act similarly affords the IGB the discretion to identify which individuals must be designated and qualify as a Person With Significant Influence or Control ("PSICs") for both Terminal Operator applicants and establishment applicants. Generally, this includes any owner of a Terminal Operator, any person that shares in the video gaming revenue, as well as any other person who holds a position or level of influence or control that is significant to regulatory concerns and obligations (i.e., chief executive officer, chief financial officer, or their functional equivalents). With respect to Licensed Establishments, this includes all officers of the applicant (including the IGB-required video gaming manager), direct and indirect owners of the applicant who meet certain ownership percentage thresholds, any individual or entity who will otherwise share in the video gaming revenue of the Licensed Establishment, and certain other individuals with control over video gaming operations at the applicant's premises as determined on a case-by-case basis. In addition to Terminal Operators and Licensed Establishments, the IGB also issues licences to Manufacturers, Distributors, Suppliers, Terminal Handlers and Technicians to participate in the video gaming industry.

2.3 What restrictions are placed upon any licensee?

While the IGB has the authority to place restrictions or conditions on any licence issued pursuant to the Riverboat Gambling Act or Video Gaming Act, such restrictions are not routinely imposed. All licensees are required to comply with the IGB's rules and the regulations promulgated thereunder and the licences are not generally transferable. In addition, an applicant or Owner's licensee must immediately inform the IGB of certain changes and must receive prior approval for the following changes: Key Persons; type of entity; equity and debt capitalisation of entity; investors or debt holders; sources of funds; economic development plans or proposals; schedule of operations; capacity or design changes to the riverboat gambling operations; gaming positions; anticipated economic impact; and agreements relating to the acquisition or disposition of property of value greater than \$1,000,000.

Raffle licence requirements vary by municipality or county. Generally, there are restrictions on the date, time and location of the event as well as where, and by whom, tickets may be sold and the maximum value of the prize awarded.

2.4 What is the process of applying for any gambling licence or regulatory approval?

Under the Riverboat Gambling Act, the applicant for an Owner's or Supplier's licence is required to complete an application form and submit an application fee. In addition, any individual or business entity that qualifies as a Key Person must also submit a disclosure form and undergo an investigation. The IGB will conduct a thorough investigation of the applicant and each Key Person over the course of several months. In reviewing the application, the IGB considers the applicant's and each Key Person's character, reputation, financial integrity and experience. This involves disclosing an individual's

personal history, including familial relationships, education, employment, criminal background, litigation, and a detailed review of one's financial history. Among other requirements, an applicant for an Owner's licence must also demonstrate it has adequate business competence and experience and that the proposed funding of the entire operation is adequate and from a suitable source. It is the applicant's burden to establish by clear and convincing evidence that it meets all statutory requirements. If the IGB finds an applicant for an Owner's licence or Supplier's licence suitable, it will direct the IGB's Administrator to issue a licence upon payment of the licence fee.

The requirements for any Manufacturer, Distributor, Supplier or Terminal Operator applicant, and any PSIC, are similar under the Video Gaming Act. The application for video gaming establishments applying to host VGTs requires disclosure of all owners and officers of an applicant, and any indirect owners of an applicant subject to certain ownership percentage thresholds. In addition to the applicant itself, all direct owners and officers, as well as certain indirect owners who meet the applicable ownership percentage thresholds, are required to undergo a background investigation. The background investigation requires submission of fingerprints to the IGB and focuses predominantly on the individuals' criminal history and personal history, including compliance with Illinois and Federal tax obligations. Additionally, prior to licensure, the premises whereupon the applicant proposes to host VGTs must be inspected to ensure compliance with regulatory requirements.

An organisational licence is required to conduct horse race meetings. Only an organisation licensee can apply for and obtain an inter-track wagering licence for on-site pari-mutuel wagering. Only an organisation licensee or a person with operating control of a licensed racing facility can apply for and obtain an inter-track location wagering location licence for off-track pari-mutuel wagering. Occupational licences are required for any individual whose work, in whole or in part, is conducted upon an organisation licensee's facilities, with some exceptions. Applicants will be subject to an investigation regarding the applicant's character and financial fitness, and certain individuals associated with each type of applicant will be subject to an investigation of their personal and criminal history. Occupational licence applicants are required to submit fingerprints to the Illinois Racing Board. Organisation licensees or third parties who contract with an organisation licensee to conduct advance deposit wagering ("ADW") must also be licensed by the Illinois Racing Board.

Any individual or entity that wishes to sell lottery tickets at its establishment must obtain a sales agent licence from the Department of the Lottery. Illinois allows online lottery sales by licensed sales agents who are granted online status by the Director of the Department of Revenue and are otherwise authorised to sell online products.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

Under the Riverboat Gambling Act, the initial Owner's licence and Supplier's licence is valid for a period of one year. Thereafter, the IGB has the discretion to renew the licence for up to four years. Each year the licensee, and each Key Person, is required to submit materials to the IGB for its review and the licensee must pay an annual licence fee. In considering the request to renew the licence, the IGB may examine the timeliness and responsiveness of the information submitted, the background, reputation, character and integrity of each Key Person, the continuing ability to maintain the quality of the products, overall compliance with all rules and regulations and any other information the IGB deems appropriate and necessary to maintain the public confidence in the credibility and integrity of gambling operations.

Under the Video Gaming Act, both the initial licence and any subsequent licence are valid for a period of one year. The renewal process for applicants under the Video Gaming Act is similar to the process set forth above for licensees under the Riverboat Gambling Act. With respect to Licensed Establishments, it is critical that the establishment maintain a valid liquor licence and be current with all State and Federal tax obligations to remain qualified to hold a gaming licence.

An applicant and licensee have limited statutory rights in the event of a denial or non-renewal of their respective licence. The IGB has considerable authority to issue disciplinary actions against licensees. All requests for hearings and answers to disciplinary actions must strictly comply with the IGB's applicable rules and regulations. Generally, an applicant or licensee may pursue administrative review of any final decision by the Board in the circuit court in accordance with the Illinois Administrative Procedures Act.

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.

The Riverboat Gambling Act restricts each Owner's licence to a maximum of 1,200 gaming positions for each licence, determined in accordance with IGB rules. In addition, any enhanced payout, tournament or giveaway must be documented in the Owner's licensee's internal control system and must be approved by the Administrator.

Generally, under the Video Gaming Act, Terminal Operators are responsible for conducting advertising and promotional activities in a manner that does not reflect adversely on or that would discredit or tend to discredit the video gaming industry. The advertisement of video gaming is generally not otherwise restricted.

2.7 What are the tax and other compulsory levies?

Currently, under the Riverboat Gambling Act, riverboat casinos are subject to a graduated tax ranging from 15% to 50% of annual gross receipts, dependent upon the total adjusted gross receipts for the period. For purposes of calculating this tax, "adjusted gross receipts" include gross receipts less winnings paid out. Riverboat casinos are also subject to an admissions tax ranging from \$2 to \$3 per admission, dependent on the riverboat's admission totals for the previous calendar year. Applicants for an Owner's licence, Supplier's licence and occupational licence are required to pay an application fee, a licensing fee immediately upon licensure, and an annual fee in connection with each annual licence renewal (or annual update submission, in the case of an Owner's licensee).

Under the Video Gaming Act, net terminal income (defined as the total funds wagered less credits paid out to players) is subject to a 30% tax. Also, the IGB imposes a fee to compensate the provider of the State-wide central communications system linking all VGTs, which was initially set at .7275%. After payment of the tax and central communications fee, the remaining net terminal income is split equally between the Terminal Operator and the Licensed Establishment. Additionally, the Act imposes an annual licence fee of \$100 per VGT. Many municipalities throughout Illinois impose a similar per-VGT or licence fee, as well. Applicants for Terminal Operator, Distributor, Supplier, Manufacturer, Terminal Handler, Technician and Licensed Establishments are required to pay an application fee, a licensing fee immediately upon licensure, and an annual fee in connection with each subsequent licence renewal.

Under the Horse Racing Act, pari-mutuel wagering facilities, including inter-track wagering licensees located at facilities which

are licensed to conduct horse races and offsite inter-track wagering locations, commonly referred to as off-track betting facilities (“OTBs”) are required to pay a flat pari-mutuel tax of 1.5%, plus additional pari-mutuel taxes imposed on ADW, along with an admissions tax and other surcharges. OTBs are also required to pay 2% of their pari-mutuel handle to the host city and county. Applicants for an organisation licence, inter-track wagering licence and OTB licence, as well as applicants for an occupational licence are required to pay an application fee and renewal fee.

Under the Illinois Lottery Law, individuals or entities seeking to obtain a licence to sell lottery tickets are required to pay an application fee, and, once granted, a renewal fee each time the licence is renewed. Additionally, each lottery licensee granted online status pursuant to the Department of the Lottery’s rules must pay a weekly fee in connection with related telecommunications charges incurred by the Department.

2.8 What are the broad social responsibility requirements?

Generally, every person involved in the gambling industry is responsible for maintaining public confidence and trust in the credibility and integrity of all gambling operations and the regulatory process. In addition, the Riverboat Gambling Act requires licensees to post certain signage, including information regarding the availability of resources to address compulsive gambling and the withholding of delinquent child support. The IGB has also developed a robust voluntary self-exclusion programme which allows individuals to acknowledge a gambling problem, commit to not visiting any riverboat gambling operation and remove oneself from all mailing, marketing and promotional lists and databases. The IGB remains committed to promoting responsible gaming in Illinois and making valuable changes to the self-exclusion programme. In addition, the IGB imposes certain contracting goals with minority-owned and female-owned businesses.

The Video Gaming Act similarly requires the posting of signage to promote compulsive gambling resources and 25% of collected licence fees are appropriated to the Department of Human Services for the administration of programmes for the treatment of compulsive gambling.

Participation in the Lottery is limited to individuals that are 18 years of age or older. Similarly, the Illinois Lottery Law provides for individuals to participate in a voluntary self-exclusion programme for Internet lottery sales. Moreover, each lottery sales agent is obligated to post certain signage regarding compulsive gambling resources.

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?

The U.S. Department of Treasury’s Financial Crimes Enforcement Network is primarily responsible for the enforcement of federal anti-money laundering laws governing entities who supply gambling. The Riverboat Gambling Act requires all wagering tokens, chips, and electronic cards to be purchased from a licensed owner or manager at a riverboat or an IGB-approved onshore facility located where the riverboat docks. Licensed owners and managers may, however, provide wagering tokens, chips, and electronic cards to

patrons by extending credit. The IGB’s rules promulgated under the Video Gaming Act prohibit Terminal Operators or Licensed Establishments from extending any form of deferred payment to players. The Illinois Racing Board permits ADW, allowing ADW account holders to deposit by cash, cheque, money order, credit card, debit card, other electronic fund transfers, or any other means permitted by an ADW licensee.

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?

Under Illinois’ criminal laws, a person is prohibited from establishing, maintaining or operating an Internet site that permits a person to gamble or make a wager upon the result of any game, contest, political nomination, appointment or election, with the exception of the Lottery conducted by the State of Illinois in accordance with the Illinois Lottery Law, which allows for the purchase of tickets through the Internet. In addition, pari-mutuel betting is authorised in accordance with the Horse Racing Act.

Illinois law defines “Internet” as an “interactive computer service or system or an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, and includes, but is not limited to, an information service, system, or access software provider that provides access to a network system commonly known as the Internet, or any comparable system or service and also includes, but is not limited to, a World Wide Web page, newsgroup, message board, mailing list, or chat area on any interactive computer service or system or other online system”.

3.2 What other restrictions have an impact on online supplies?

Due to the limited applicability of online sales and wagering, there are no other material restrictions that impact online supplies.

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

The Riverboat Gambling Act allows for approved electronic gaming devices that meet certain minimum standards, subject to the applicable restriction on the number of gaming positions at each riverboat gambling operation.

Illinois has the largest regulated VGT industry in the United States. Each local municipality may elect to “opt out” to prohibit video gaming in their local municipality. The Video Gaming Act allows for up to five VGTs to be placed in Licensed Establishments in participating municipalities. Establishments that are eligible for licensure include (1) any retail establishment where alcoholic liquor is drawn, poured, mixed or otherwise served for consumption on premises, (2) truck stops (as defined in the Video Gaming Act), (3) fraternal organisations, and (4) veterans organisations.

All VGTs in Illinois are connected to a central communication system. The VGTs currently accept only cash, but the Video Gaming Act contemplates the use of an electronic card or other voucher which would allow for ticket-in, ticket-out capabilities.

4 Enforcement and Liability

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

Under Illinois' criminal laws, the participant, the promoter, bookkeeper, operator, and advertiser may be held liable for breaches of the relevant gambling prohibition. Illinois' gambling laws cover individuals, natural persons, public or private corporations, governments, partnerships, unincorporated associations, and other entities. Gambling is a Class A misdemeanour and certain subsequent convictions may result in a felony conviction.

4.2 What is the approach of authorities to unregulated supplies?

It is illegal to own, operate, use, purchase, rent, sell, manufacture, distribute, have in your possession, or even bargain for the sale or lease of a "gambling device". The definition of a "gambling device" is expansive and includes any machine for the reception of money or other things of value on chance or skill, or where money or anything of value is staked, or even any furniture or equipment designed primarily for use in a "gambling place". A "gambling device" is any property used for gambling not authorised under the Riverboat Gambling Act or the Video Gaming Act. Exemptions under "gambling devices" include, but are not limited to, equipment under the Video Gaming Act and certain vending machines and amusement machines. The Illinois Criminal Code authorises the seizure of gambling devices by state police or local authorities.

4.3 Do other non-national laws impact upon liability and enforcement?

No, non-national laws do not have any impact on enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

In Illinois, gambling contracts are void *ab initio* under common law and the Illinois Criminal Code. However, certain contracts that relate to gambling are permitted under the strict oversight of various regulatory agencies pursuant to State statutes, such as the Illinois Video Gaming Act, the Riverboat Gambling Act, and the Illinois Horse Racing Act. The listing of exceptions to what constitutes gambling can be found in Section 28-1(b) of the Illinois Criminal Code. Section 28-8 of the Illinois Criminal Code also provides that any person who loses more than \$50 to another person due to gambling can sue and recover the money and costs from the "winner" by filing a lawsuit in the State's lowest courts. An intermediary who merely facilitates the gambling transaction is not considered a "winner". If after six months the person who lost the money does not file a lawsuit, then any person can file the lawsuit against the "winner" to recover the gambling loss. Finally, although there has been litigation in this matter, Illinois courts will also give full faith and credit to foreign judgments for gambling debts that are registered and sought to be enforced in Illinois.

5 Anticipated Reforms

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

The Illinois legislature regularly considers amendments to Illinois' gaming laws, from minor technical changes to various expansion proposals. In recent years, the legislature has considered amending the Illinois Riverboat Gambling Act to authorise new riverboat casinos in the City of Chicago and at least four other municipalities, additional gaming positions at existing riverboat casinos and slot machines at horse racing facilities. In addition, various bills have been introduced to amend the Illinois Video Gaming Act. These bills include proposals to raise the minimum wager and maximum jackpot amounts, allow progressive jackpots and increase the number of VGTs in truck stops and certain other Licensed Establishments. In addition, the IGB regularly considers and adopts new or revised administrative rules for the riverboat and video gaming industries.

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Paul T. Jenson is an equity partner and co-chair of Taft's Gaming practice. *Chambers USA* included Paul in its nationwide rankings of "Leaders in their Field." He has extensive experience in counseling local, national and international casino owners, terminal operators, manufacturers, suppliers, lenders and institutional investors in all aspects of gaming regulatory law, mergers and acquisitions, financing transactions and corporate governance. Paul has represented some of the world's largest gaming companies, as well as numerous domestic and foreign private equity funds, hedge funds, sovereign wealth funds, governmental entities and other gaming investors in many jurisdictions. In addition, Paul is widely recognised as one of the leading lawyers in Illinois' video gaming industry and other emerging markets.

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