



# ICLG

The International Comparative Legal Guide to:

## **Gambling 2016**

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A practical cross-border insight into gambling law

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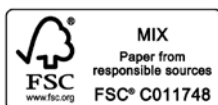
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# USA – New Jersey

Nicholas Casiello, Jr.



Patrick Madamba, Jr.



Fox Rothschild LLP

## 1 Relevant Authorities and Legislation

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

Casino gaming is regulated by the Casino Control Commission (“CCC”) and the Division of Gaming Enforcement (“DGE”). The CCC consists of three members nominated by the Governor and approved by the Senate. The CCC is an independent agency. No more than two members may be of the same political party. The DGE is headed by a Director, who is also nominated by the Governor and is subject to Senate confirmation. The Director of the DGE reports to the Attorney General who reports to the Governor. The CCC issues casino licences and the DGE issues all other types of licences, including Internet Gaming Permits and registrations and licences to persons who provide goods or services to a casino. The DGE is also responsible for investigating all licence applications and for monitoring compliance with and enforcing the requirements for casino gaming. Horse racing is regulated by the Racing Commission. The Lottery Commission regulates the lottery. Bingo and raffles are regulated by the Legalized Games of Chance Control Commission.

### 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 New Jersey Constitution prohibits all forms of gambling unless authorised by a public referendum. Any gambling not authorised by the Constitution and enabling legislation is a crime. For the purposes of the criminal offence of illegal gambling, three elements must exist: consideration; chance; and prize. Chance must be a material element, but need not be the dominant element. For example, a New Jersey court has held that wagering on a backgammon tournament is a crime because chance, in the form of the use of dice, is a material element of the game. However, wagering as a player only is not a crime. Therefore, social games that do not involve all three elements of gambling are not illegal or regulated in New Jersey.

The Casino Control Act authorises casino gambling, including slot machines and table games, and intrastate Internet wagering. The Lottery Law authorises the state to conduct non-electronic numbers and other lottery games. Various statutes authorise pari-mutuel wagering on standardbred and thoroughbred horse racing, simulcasting, off-track betting and account wagering. Bingo is authorised under the Legalized Games of Chance Commission

Law and the Bingo Licensing Law. Raffles are regulated under the Raffles Licensing Law. Only charitable organisations may offer bingo or conduct raffles and only the state can conduct a lottery.

## 2 Application for a Licence and Licence Restrictions

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

With respect to casino gambling, including intrastate Internet wagering, only the owner or manager of an approved casino hotel that contains at least 500 hotel rooms and meets other requirements is eligible to hold a casino licence and conduct gaming. Subject to fulfilling registration or licensing requirements, anyone may provide goods or services to a casino. All suppliers to a casino must register with the CCC and the DGE by providing information regarding ownership, officers and directors. The registration requirements also apply to persons who provide goods or services to an Internet gaming platform provider if such goods or services relate to intrastate Internet gaming in New Jersey. There are then two levels of licensure that may also apply, depending upon the type of product or services provided. Anyone who supplies products or services directly related to casino or gaming activity must be licensed as a gaming-related casino service industry enterprise. This category includes manufacturers and distributors of slot machines, cards, dice and similar products that have an impact on the results of gaming activity or the calculation of gaming revenue. Providers of Internet gaming software, hardware and platforms also fall into this category. Suppliers of goods or services ancillary to gaming, but not included in the category of gaming-related, must be licensed as an ancillary casino service industry enterprise. Providers of products and services not directly related to, or ancillary to, gaming do not have to be licensed.

### 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 directly or indirectly owning 5% or more of a casino and its directors and certain officers must obtain a licence or similar approval. Certain key and other employees of a casino must also be licensed.

Suppliers of gaming equipment and ancillary equipment, including Internet gaming software, hardware and platform providers, must

be licensed as well. Any person directly or indirectly owning 5% or more of such an entity, its inside directors, any outside directors who serve on an executive or audit committee, sales persons and their supervisors, and certain officers must be found qualified.

Owners of 5% or more of an applicant may be waived from the qualification requirement if they qualify as an institutional investor and certify that they will not attempt to influence or affect the affairs of the applicant. ‘Institutional investors’ is a defined term and includes Investment Companies and Investment Advisors registered under United States securities laws, government pension funds, banks and similar companies. Institutional investors may hold 25% or more of the equity of an applicant without being qualified. The applicant does not need to be a publicly traded company in order for an institutional waiver to be available. Owners of 5% or more who are not institutional investors may be waived from the qualification requirement if they demonstrate that they do not have the ability to control the company, but anyone who owns 5% or more of a publicly traded company is presumed to have the ability to control.

Officers may be waived from the qualification requirement if they are not significantly involved in and have no authority over the conduct of business with a casino.

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### 2.3 What restrictions are placed upon any licensee?

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Licences may be conditioned upon many factors, including compliance with various laws. While issued for indefinite periods, licensees must be reinvestigated periodically to ensure compliance with licensing requirements.

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

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For both casino and gaming-related casino service industry enterprise licences, an entity, and certain persons associated with the entity, such as certain 5% or greater owners, directors and officers, and any key employees, must complete comprehensive licence application forms and be investigated. The applicant and any holding companies must file a Business Entity Disclosure Form. This form requires disclosure of information regarding jurisdiction of formation, current and prior addresses, description of the business, classes of ownership interests, current and former directors and officers, profit sharing, bonus and retirement plans, long- and short-term debt and the holders thereof, options, bank accounts, suppliers, stock held by the company, criminal history, violations of anti-trust and securities laws, bankruptcy, litigation, licences, financial statements and tax returns. Individuals must file a Multi Jurisdictional Personal History Disclosure Form. This form requires disclosure of certain identifying information such as date of birth and residences since the age of 18 or the prior 15 years, current and any prior marriages, names and addresses of children and certain other relatives, military service, educational data, employment history for the last 20 years or since the age of 18, licences, criminal history, assets and liabilities, including a current net worth statement, and references. A Supplement to the Multi Jurisdictional Personal History Disclosure Form, which requires the filing of tax returns for the last five years and other information, must also be filed by individuals. The Supplement also requires the execution of a release authorisation that allows the DGE to obtain information from anyone, including banks and taxation authorities. Individuals must also submit fingerprint cards so that criminal record checks can be performed.

After the filing of all required application forms, the DGE will send both entity and individual applicants a letter requesting the applicant to make available for inspection documentation supporting the information in the application forms, such as bank and brokerage statements, bills of sale, deeds, and wills.

The next step in the process is the conduct of a field investigation by the DGE. In a field investigation, the DGE will interview persons associated with the applicant entity and review relevant documentation. Interviews may be informal or under oath and transcribed. The DGE will also contact law enforcement agencies, taxing authorities and other state and federal authorities.

At the conclusion of its investigation, the DGE will issue a written report stating its position on the licence application. In order to be issued a licence, an applicant must demonstrate by clear and convincing evidence that it possesses good character, honesty and integrity and financial stability, integrity and responsibility. If the DGE recommends that the application be denied, the applicant has the right to appeal that determination, initially to the DGE and then to the CCC.

In its discretion, the DGE may permit an applicant for a gaming-related casino service industry enterprise licence to conduct business with a casino prior to licensure.

Ancillary casino service industry enterprise licence applicants must complete similar, but somewhat less extensive, licence application forms.

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

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Generally, licences are issued for indefinite periods, but are subject to suspension or revocation. Licences may be suspended or revoked for violations of regulatory requirements or failure to comply with licensing standards.

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

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All gaming equipment must meet certain minimum standards set forth in the DGE’s regulations. Additionally, gaming equipment must meet certain technical standards established by the DGE’s Technical Services Bureau (“TSB”), and gaming equipment is thoroughly tested by the TSB before it may be used in casino operations.

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### 2.7 What are the tax and other compulsory levies?

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Casinos must pay a tax of 8% of gross gaming revenue on casino games and a tax of 15% on Internet wagering. In addition, a casino must either make investments in certain eligible projects in an amount of 1.25% of gross gaming revenues and 2.5% of Internet gaming revenues, or pay an additional tax of 2.5% of gross gaming revenues and 5% of Internet gaming revenues. Casinos must also pay for the costs of investigation, certain other fees, and business taxes. Gaming-related casino service industry enterprise licence applicants must pay a \$5,000 application fee, an additional fee of \$5,000 if the time spent on processing the licence application exceeds 333 hours, an additional fee of \$5,000 if the time spent on processing the licence application exceeds 667 hours, and an additional fee based on the hourly rates of the regulators if the time spent exceeds 1,000 hours. Applicants for an Internet gaming-related casino service industry enterprise licence must pay the entire cost of the investigation and the processing of the application.

### 2.8 What are the broad social responsibility requirements?

Only persons over the age of 21 may gamble. Persons may voluntarily subject themselves to exclusion from gambling activities. All casino advertising must contain information regarding access to problem gambling programmes.

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

Anti-Money Laundering (“AML”) laws governing casino operations are promulgated and administered by the federal government under the Bank Secrecy Act. Enforcement of AML laws is the primary responsibility of the U.S. Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”). In recent years, FinCEN and the Office of the U.S. Attorney have substantially increased their civil and criminal AML enforcement efforts with respect to U.S. casinos. In 2013, for example, a casino entered into a non-prosecution agreement and agreed to pay approximately \$47 million to conclude an investigation into the casino’s alleged failure to alert authorities that a high-stakes gambler, who was later linked to international drug trafficking, made numerous large and suspicious deposits with the casino.

## 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?

New Jersey only permits intrastate Internet wagering between persons who are physically present in New Jersey and casino licensees holding an Internet gaming permit. Mobile wagering is also permitted anywhere on the premises of a licensed casino hotel facility. All other wagering over the Internet is a criminal offence.

### 3.2 What other restrictions have an impact on online supplies?

New Jersey does not have a “bad actor’s” clause in its law. However, the prior conduct of a licence applicant, including compliance with all laws, is a factor considered by regulators in determining whether to issue a licence.

Additionally, the growth of intrastate Internet wagering in New Jersey has been impaired by the unwillingness of some banks to process credit card transactions to fund Internet wagering accounts because of compliance concerns with the Unlawful Internet Gambling Enforcement Act of 2006 (“UIGEA”), a federal statute that bars the processing of financial transactions for illegal online wagering activities. Although intrastate Internet wagering in New Jersey is a lawful activity and thus the processing of financial transactions for such activity does not run afoul of UIGEA, some banks have nevertheless opted to not process such transactions out of an abundance of caution due to the lack of guidance from federal law enforcement authorities.

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

All types of machine-based gaming are permitted in New Jersey casinos. Local area network linked progressive slot machines, wide area network linked progressive slot machines and electronic table games are permitted in New Jersey.

## 4 Enforcement and Liability

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

The DGE is responsible for enforcing violations of gaming laws by licensees. The DGE may commence a disciplinary action against a licensee by filing an administrative complaint against the licensee. The licensee has the ability to contest the allegations of the complaint in a fact-finding hearing before the DGE. Casinos may not be fined more than \$100,000 per violation. Violations of the gaming laws by non-licensees are prosecuted criminally by state law enforcement authorities.

### 4.2 What is the approach of authorities to unregulated supplies?

The DGE strictly enforces the licensing requirements for suppliers. Only licensed suppliers may distribute gaming equipment, and all gaming equipment must be approved by the DGE prior to distribution.

### 4.3 Do other non-national laws impact upon enforcement?

No non-national laws impact enforcement.

### 4.4 Are gambling debts enforceable in your jurisdiction?

Casinos are authorised to issue credit to patrons. Gambling debts legally incurred by casino patrons are enforceable.

## 5 Anticipated Reforms

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

Currently, casino gaming is limited to the city of Atlantic City. Some legislators support allowing casino gaming in the northern part of the State. The State has also challenged, unsuccessfully so far, a federal law that prohibits sports betting in New Jersey.

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Fox Rothschild's gaming law attorneys guide companies, licensees, suppliers, vendors and investors on regulatory, licensing, compliance, financing and operational issues and disputes. The firm's attorneys are also at the forefront of Internet gaming in the United States and handle promotional sweepstakes, contests, fantasy sport leagues, charitable raffles and other programs.

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