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East Meets West

As New Jersey joins Nevada in the authorization of Internet gaming, there is only one law firm that combines online gaming joint venture negotiation and transactional experience with an unparalleled familiarity with Nevada and New Jersey gaming law and regulations.

Internet Gaming in New Jersey

In New Jersey, the only entities eligible to obtain a permit to conduct Internet gaming (“IG Permit”) are holders of existing casino licenses (the “bricks and mortar” casino operators) and Internet gaming affiliates. Consequently, there are two different arrangements by which Internet gaming operations can be structured in New Jersey - first, by a holder of an existing casino license, working with appropriately licensed vendors providing the goods and services necessary to conduct Internet gaming operations; or second, by a company with expertise in Internet gaming that is affiliated with an existing casino licensee that obtains its own casino license and conducts the operations itself. Under either scenario the casino licensee must obtain an IG Permit, and each bricks and mortar casino is eligible for only one IG Permit,

“Internet gaming” is defined in New Jersey as “the placing of wagers with a casino licensee at a casino located in Atlantic City using a computer network of both federal and non-federal interoperable packet switched data networks through which the casino licensee may offer authorized games to individuals who have established a wagering account with the casino licensee and who are physically present in this State.”

Breaking this down to its critical elements, Internet gaming can be conducted if and when:

- The server is located within an Atlantic City casino;
- The game is authorized by the casino;
- The participating players have appropriately established a wagering account; and
- The participating players are within the boundaries of New Jersey.

Beginning on a date to be determined by the regulators (expected to be in August or September), New Jersey will allow any appropriately licensed and IG Permit holding casino licensee to offer not only the games currently authorized in New Jersey, but any authorized games it chooses. This is much broader than Nevada, which currently allows only the game of poker. There is speculation that “social” games that have not been authorized by any U.S. jurisdiction to date could be authorized in New Jersey in the future.

The Division of Gaming Enforcement (“Division”) is expected to promulgate regulations very quickly to implement the permitting process. Among the highlights - accounts may be established utilizing a form approved by the Division, the account holder must provide authentication of age (over 21), and establish

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password protection and other authentication as the Division deems appropriate is mandatory. It is likely that player accounts will need to be established in person in Atlantic City.

The software employed in an Internet gaming system must be capable of assuring that the computer from which the wager is placed is within the state of New Jersey. Further, all “primary equipment” used to operate the Internet game must be physically located in an approved restricted area on the premises of the applicable Atlantic City casino. Back-up equipment, even if needed for temporary operations, may be located on any site approved by the Division. The Division regulations will more specifically define whether back-up equipment can be located outside New Jersey or the U.S.

Licenses and Permits

There are three types of entities that present licensing considerations: (1) casino licensees; (2) Internet gaming affiliates (“IGAs”), a new term, defined as a business entity licensed under the Act that owns or operates an Internet gaming system on behalf of a licensed casino; and (3) vendors who provide Internet gaming related goods and services to casino licensees or IGAs. Existing casino licensees must obtain an IG Permit (from the Division), while IGAs must apply for and obtain a casino license or Interim Casino Authorization (“ICA”) from the New Jersey Casino Control Commission and an IG Permit from the Division. Vendors wishing to provide goods or services related to Internet gaming must obtain a casino service industry enterprise (“CSIE”) license from the Division. Additionally, the software, hardware and related equipment must go through the Division’s lab for testing and approval.

- IG Permits issued to casino licensees or IGAs will be valid for one year;
- IG Permits will be issued upon a finding by the Division that all statutory and regulatory requirements have been met, including internal controls and security precautions;
- All personnel with duties relating to Internet operations will be appropriately licensed;
- An initial permit fee of \$400,000 and \$250,000 for each renewal; costs can go higher based on actual costs incurred by the Division; and
- An additional annual fee of \$250,000 (\$140,000 allocated to Council on Compulsive Gambling, and \$110,000 for compulsive gambling treatment programs).

The agreement between the IG Permit holder and the vendor in the first scenario requires the approval of the Division. Further, the law requires the Division to consult with the U.S. Department of Justice prior to making its recommendation to the Commission on such application for any companies headquartered or doing “significant” business outside the United States. Both the Division and the Commission are directed to “review each Internet gaming affiliate applicant’s past history and its asset utilization in the context of past and current Federal and State law” and thereafter, “impose limitations and conditions upon the granting of the license or the utilization of its assets, or both, with respect to New Jersey operations.”

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Type 1: Casino Licensee and CSIE

- Existing casino licensee applies to the Division for an IG Permit;
- Any vendor with which the casino licensee/permittee wishes to work applies for a CSIE;
- Casino licensee/permit holder enters into agreements with CSIE(s) to conduct Internet gaming operations and share percentages of revenue from Internet gaming operations; and
- Agreements are submitted to the Division for approval.

Type 2: IGA obtains Casino License

- IGA creates New Jersey subsidiary that applies for casino license;
- All requirements for casino license application satisfied;
- IGA applies to the Division for IG Permit;
- Petition for an ICA is filed; and
- If the IGA has all necessary software, hardware and related equipment (including customer lists), and the expertise to administer Internet gaming, no other applications are needed. If IGA plans to work with one or more vendors, the vendors apply for CSIE licenses.

Interstate Considerations

There are lingering questions regarding the potential success of a state-based Internet website because of the relatively small size of the potential player pool. Now that New Jersey has authorized Internet wagering, it would be possible for participants in one state to place or receive wagers from another state over the Internet. Internet gaming in New Jersey “shall be subject to the provisions of, and preempted and superseded by, any applicable federal law.” Nevada’s interactive gaming statutes provide that the Commission “may enter into compacts with other jurisdictions where interactive gaming is not prohibited, setting forth the manner in which the State of Nevada and such other jurisdictions will regulate and share tax revenues from interactive gaming operations between such jurisdictions and enforce criminal laws related to cheating, tax evasion or unlicensed interactive gaming, and authorizing the commingling of games and pots between such jurisdictions. Such compacts may be limited to Internet poker.” If New Jersey and Nevada were to enter into such a compact, they would need to grapple with the regulation and licensing of, and the taxation of the revenues generated from, interstate Internet wagering.

Industry-leading experience with full-featured service

The Gaming Law Group at Brownstein Hyatt Farber Schreck represents businesses and individuals seeking gaming licenses, liquor licenses and related approvals. We render advice on the structuring of major transactions to minimize gaming issues and assist in obtaining necessary approvals for public offerings, financings, business restructurings and merger acquisitions.

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Brownstein Hyatt Farber Schreck offers the largest national gaming practice in the United States, with offices in both Las Vegas and Atlantic City. Our expansion east also allows the Gaming Law Group to better serve its existing clients on a national, multi-jurisdictional platform. To learn more about the Gaming Law Group, visit www.bhfs.com/Practices/GamingLaw

Paul O'Gara, shareholder, has extensive experience representing casinos, casino holding companies, financial institutions and investors, as well as those who do business with casinos before the New Jersey Casino Control Commission and other gaming regulatory bodies both in the U.S. and foreign jurisdictions. O'Gara counsels clients on all gaming-related compliance and securities issues and has been recognized by Best Lawyers in America in gaming law since 2005.

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Frank Schreck, shareholder, is chair of the firm's Gaming Law Group and has personally represented many premier public and private gaming companies. With nearly 40 years of experience, his work revolves around licensing matters and all other aspects of regulatory compliance. In addition to representing his clients' gaming interests in Nevada, he also participates in gaming-related matters in Japan, Macau, Puerto Rico, Spain and Great Britain. Frank is a former member of the Nevada Gaming Commission. <http://www.bhfs.com/People/fschreck>.

Pacifico (Pat) Agnellini, shareholder, concentrates his practice in all aspects of casino gaming law and various commercial transactional matters. His extensive casino gaming experience includes the management of legal and operational responsibilities for Trump Entertainment Resorts, Inc. He guides clients through licensing and compliance matters before the New Jersey Casino Control Commission, the Division of Gaming Enforcement, the Division of Alcoholic Beverage Control, the Department of Labor and Workforce Development, the Department of Community Affairs and the Casino Reinvestment and Development Authority. <http://www.bhfs.com/People/pagnellini>.

Dennis Daly, of counsel, was an attorney for 23 years with the New Jersey Casino Control Commission – most recently as its General Counsel. He possesses a comprehensive knowledge and understanding of gaming law, particularly in the casino regulatory arena. His diverse duties with the Commission also provided him with extensive experience in conducting business with other New Jersey state agencies, particularly the Office of Administrative Law, the Department of Treasury and the Office of the Governor.

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David Arrajj, shareholder, has represented most of our exclusive gaming clients in connection with licensing, regulatory investigations, compliance matters, financings, mergers and acquisitions, and other gaming related issues. Prior to joining the firm, David served as corporate counsel for Caesars Entertainment, Inc., and Hilton Gaming Corp. He also served as vice president and general counsel of Bally's Las Vegas, a Deputy Attorney General for the New Jersey Division of Gaming Enforcement,

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Special Counsel for Licensing and director of the License Division of the New Jersey Casino Control Commission. <http://www.bhfs.com/People/darraji>.

Jennifer Carleton, shareholder, has spent the last 15 years of her career in gaming, first as in-house counsel for an Indian casino and now as an adviser to the premier public and private gaming companies in the United States. She has developed a unique multi-jurisdictional gaming practice, assisting clients with casino operations in numerous U.S. states, advising investors in gaming companies that hold licenses worldwide, and facilitating negotiations with Indian gaming operators.

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Elizabeth Paulsen, shareholder, concentrates her practice on the areas of joint ventures, mergers and acquisitions and general corporate matters. She has extensive experience representing public and private companies, private equity funds, sponsors and entrepreneurs in a wide range of transactions, with a particular focus on negotiating joint venture arrangements across numerous industries. In recent transactions, Elizabeth has represented both foreign operators of online gaming platforms, as well as operators of U.S.-based brick and mortar casinos in high profile joint venture agreements in the emerging U.S. online poker gaming industry. <http://www.bhfs.com/People/epaulsen>.

Kate Lowenhar-Fisher, shareholder, counsels many of the world's preeminent gaming clients on regulatory issues in connection with mergers and acquisitions, corporate restructuring, reorganizations and financings. She also advises many of the firm's clients on issues related to Internet gaming, sweepstakes, contests and promotions. Kate has developed a unique local licensing practice and is well-known for her skill at navigating the complex state and local regulatory processes to obtain gaming licenses, liquor licenses and other privileged and regulated licenses for many of the firm's clients.

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