

VIRTUAL ROUND TABLE

GAMING LAW 2016

CORPORATE *LiveWire*



MEET THE EXPERTS



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Jamie Nettleton enjoys a global reputation as a gambling law expert. He advises Australian and international gambling operators on Australian legal issues, as well as in relation to investments overseas. Clients include gaming machine manufacturers, wagering operators, casinos and other gambling service providers. Jamie also has extensive specific expertise and knowledge in the field of online gambling and social media.

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The Bingo Project (<http://www.kent.ac.uk/thebingoproject/>) is a research project based at Kent Law School (University of Kent, Canterbury). It is funded by the Economic and Social Research Council – one of the UK's main academic research funders. It uses four case studies of bingo regulation around the world to explore the governance of risk, welfare, and gambling in law, politics, and political economy. The case studies are of bingo regulation in England and Wales; Canada; Brazil; and online in the European Union. NB: These answers to the questions below relate only to the England and Wales case study.

The Principal Investigator was Dr Kate Bedford (Reader in Law). Her academic research is on law and political economy. Kate is interested in bingo because it is a key site of working class women's gambling, and because it often mixes charity and commerce. It can offer important lessons to academics and policymakers about gender, class, and the regulation of speculation. She has played bingo since she was a child.



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Paul Voigt is a member of Taylor Wessing's German Technology, Media and Telecommunications practice. He has an excellent track record in dealing with the legal aspects of e-gaming, e-commerce, IT contracts and data protection. Paul is counsel to some of the biggest online poker and casino providers. He is a specialist solicitor for information technology law, regularly publishes on a variety of technology-oriented topics in all relevant German legal magazines and regularly lectures on technology issues



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Kim has defended the City of Chicago and the Chicago Police Department in multiple class actions alleging due process violations based on the purported deprivation of money and other personal property. Kim has achieved successful resolutions of these cases at the district court level, involving issues which have been appealed and affirmed by the United States Supreme Court.

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Joerg is the immediate Past President of the International Masters of Gaming Law (IMGL) and group leader of the Gaming & Betting Law Practice Group of MELCHERS law firm. He has been practicing gaming law since the mid-90s and MELCHERS' legal advice is highly valued by global market leaders in all sectors of the gaming industry. A highly recognised expert in the field, Joerg has been consistently ranked as a "Leading Individual" in Gaming & Gambling by Chambers Global since 2011 and is the only German Lawyer listed among "Germany's Best Lawyers" in the category "Gaming Law" by BestLawyers and Handelsblatt in 2014 and 2015. In 2015, Joerg further received the award "Gaming Law – Lawyer of the Year in Germany – 2015" from Global Law Experts. He has also repeatedly been listed in Who'sWhoLegal for sport and entertainment in Germany.



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Gaming Law 2016

The Gaming Law Roundtable 2016 is an essential tool for better understanding the recent regulatory changes and current trends. Highlighted topics include: the responsibilities of the licensee to tackle the issue of gambling addiction, a discussion on how mobile devices are revolutionising the gaming industry, and an outlook on the gaming industry from the perspective of bingo operations in the United Kingdom. Featured countries are: United Kingdom, Germany, Denmark, Australia and the United States.

1. Who are the main regulators and what are the key legislations that apply to the gaming industry in your jurisdiction?

H. Hoffman: The only regulator of the gambling industry in Denmark is the Danish Gambling Authority, which is an independent public authority. With effect from 1 January 2012 all previous gambling related legislation and regulations were combined in a single Danish gambling act, and the market went through a partial liberalisation allowing privately owned operators to offer betting and online casino.

The Danish Gambling Act is supported/ regulated in detail by a number of Executive Orders, where the most important ones are the Executive Orders on i) Online Betting, ii) Land Based Betting, iii) Online Casino, iv) Land Based Casino and v) Slot Machines.

Nettleton: As a Federation, the legislative power in Australia is divided between the Federal Government and the eight constituent States and Territories. Traditionally, the power to regulate gambling activities in Australia is reserved to the States and Territories.

In 2001, the Federal Government enacted the Interactive Gambling Act (IGA), which prohibits the provision of 'interactive' (or online) gambling services with an 'Australian customer link' (Operational Prohibition), subject to express exemptions in respect of wagering services (with the exception of in-play sports betting services provided online) and lottery services (with the exception of instant lotteries). The IGA also prohibits the advertising in Australia of interactive gambling services (Advertising Prohibition). The IGA imposes liability on entities involved in the supply and promotion of interactive gambling

services, but does not make liable Australian residents who access these services.

Whereas the IGA targets the supply of interactive (or online) gambling services, State and Territory legislation continues to regulate land-based gambling activities. Different regulatory frameworks exist for different types of gambling, including casinos, sports betting, gaming machines and lotteries. Separate regulatory bodies exist in each State/Territory.

Each State and Territory regulator is responsible for granting licences, monitoring compliance and enforcing the relevant gambling legislation in its jurisdiction. The leading licensing jurisdictions for online gambling in Australia are the Northern Territory (Northern Territory Racing Commission (NTRC)) and Norfolk Island (Norfolk Island Gaming Authority (NIGA)).

Bedford: Gambling regulation in United Kingdom is driven by the Gambling Act 2005 (the Act). This aimed to modernise gambling regulation, reflecting a New Labour desire to encourage the leisure sector as a crucial part of the UK economy. It replaced a law and policy approach characterised by a reluctant tolerance of gambling. The 1968 Betting and Gaming Act, which reflected that approach, employed a prescriptive, 'command and control'-style of regulation in which operators had little flexibility in interpreting rules and procedures. The 2005 Gambling Act aimed to move to a more self-regulatory approach, where operators had more freedom to decide how they could best comply with standards laid down by the new national regulator, the Gambling Commission.

The licensing principles of the Act are threefold:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime,
- ensuring that gambling is conducted in a fair and open way, and
- protecting children and other vulnerable persons from being harmed or exploited by gambling.

The Act covers both commercial and non-commercial bingo operations.

Commercial bingo operators include traditional bingo halls, seaside bingo arcades, holiday parks, commercial sports and social clubs, and adult gaming centres. These require an operating license for the company and a personal license for key staff, both issued by the Gambling Commission. They also require a premises license from the relevant local authority.

Non-profit making bingo operators include ex-services clubs, miners' welfare institutes, politically-affiliated clubs; working men's clubs; non-profit making sports and social clubs; village halls; community centres; and churches. Proceeds are donated or used for the benefit of members. When bingo was first legally enabled in United Kingdom, in 1934 via the Betting and Gaming Act and then more explicitly in 1956 via the Small Lotteries and Gaming Act, legislators intended to support these sorts of activities. Bingo can be run – without a license – to raise money for a good cause, so long as the players are informed where the money is going and all the money raised is donated to the good cause (minus reasonable costs for organising the event). If played for cash prizes (to a maximum of £600 in any event), participation fees of up to £8 can be charged. They must be donated.

Under the 2005 Act, all operators (commercial and non-commercial) offering bingo with aggregate stakes or prizes of over £2,000 in any seven day period must hold an operating license from the Gambling Commission. Bingo games are allowed in pubs, members' clubs, miners' welfare institutes and commercial clubs (where proceeds can be taken as profit) without an operating license, so long as they do not exceed the £2,000 threshold or involve links with other premises. Members' clubs (commercial and non-commercial) and miners' welfare institutes can charge limited participation fees of £1 per person per day. Pubs cannot charge participation fees.

To charge higher participation fees, of up to £3 per person per day, members' clubs and miners' welfare institutes require a local authority permit. To qualify for a club gaming permit, members' clubs must be genuine members' clubs, with participation in gaming restricted to members and their bona fide guests but open to them all. The rules around this are extensive. The Act outlines minimum numbers of members required to establish a members' club and waiting periods to play, and the Gambling Commission has offered guidance to local authorities on determining whether a club is a genuine members' club, and whether there is "substantial evidence of activities other than gaming." [1] Clubs can only be established for gaming if established for whist or bridge, a long-standing class-based distinction that continues to impact bingo.

J. Hofmann: Traditionally, gambling law in Germany is considered to be part of the law of public order and is therefore regulated at state level.

¹ Gambling Commission. 2012. *Guidance to Licensing Authorities*, 138.

el, i.e. by each of the federal states ('Laender') of Germany.

The respective authorities in each of the 16 German federal states are therefore in charge of the execution of the relevant gambling laws – there is no "main" regulator as such. Often, the competent authorities will be the respective Ministries of the Interior (e.g., with regard to the land-based casino sector). In the slot machine gambling sector, however, local gaming halls are supervised by the respective municipal offices.

Some other, nationwide, competences have been assigned to specific regulators pursuant to the Interstate Treaty on Gambling (the 'Interstate Treaty'), the main legal framework in gambling law, which is implemented by the Gambling Acts of the individual states. Among these regulators are the Hessian Ministry of the Interior and Sports (responsible for conducting the sports betting licensing process as per the Interstate Treaty), the authorities of North Rhine Westphalia (responsible for granting permissions to operators of lotteries and sports betting for TV advertising and advertising on the internet) and the authorities of Lower Saxony (responsible for payment blocking against unlawful gambling on the internet).

Licences for online gambling and sports betting issued under the Gaming Act of Schleswig-Holstein (repealed in 2013, but still applicable for Schleswig-Holstein licensees) are supervised by the Ministry of the Interior in Schleswig-Holstein.

Other states have been assigned to regulate specific types of lotteries on behalf of all German states, e.g. the Free and Hanseatic City of Hamburg regulates so-called class lotteries and Rhineland Palatine regulates other national lotteries operated across all German states.

One further body worth mentioning is the Gambling Committee consisting of representatives of each of the 16 German states, who are appointed by the head gambling supervisory authorities of the respective states. The Gambling Committee, despite having been criticised for being unconstitutional by German courts, still must be understood to have a fairly strong influence on the German gambling regulation. It, however, may not be compared to bodies such as the UK Gambling Commission which act as the main regulator for gambling.

Walberg: Casinos and Video Gaming in Illinois are regulated by the Illinois Gaming Board (IGB"), a five-member board, appointed by the Governor and confirmed by the State Senate. The IGB administers a regulatory and tax collection system for riverboat casino gambling and video gaming in Illinois, and oversees gaming operations; the licensing of suppliers to casinos and employees of casinos; and the licensing of video gaming manufacturers, distributors, suppliers, terminal operators, locations and individuals who service video gaming terminals.

Donald Tracy is the current Chairman of the IGB. The IGB holds a meeting at least once each quarter of the fiscal year. The IGB's Administrator performs all duties assigned by the IGB, including the daily administration of the IGB's responsibilities. The current IGB Administrator is Mark Ostrowski.

The primary pieces of legislation are the Illinois Riverboat Gambling Act, 230 ILCS 10/1, et seq., and the Illinois Video Gaming Act, 230 ILCS 40/1, et seq. The Riverboat Gambling Act was enacted in 1990 and made Illinois the second state in the nation to legalise riverboat gambling. Currently, there are 10 casinos operating throughout Illinois. The Video Gaming Act, which incorporates the Riverboat Gambling Act, was enacted in 2009 and authorised the placement of up to

five video gaming terminals in licensed retail establishments, truck stops, veteran and fraternal establishments. The video gaming terminals are all connected to and monitored by a Central Communications System. The Video Gaming Act grants the IGB "jurisdiction over" and authority to "supervise all gaming operations governed by [the] Act," including the power to issue regulations regarding the operation of video gaming and the licensing of video gaming. See 230 ILCS 40/78. The IGB has promulgated a set of rules to implement the Riverboat Gambling Act and the Video Gaming Act.

Voigt: Germany consists of 16 Federal States. Each of them has a gaming regulator responsible for lotteries, sports betting, casino and poker games in their respective territory. Nevertheless, the legislation is basically the same all over Germany, as the Federal States all agreed upon an "Interstate Treaty on Gambling" that applies in all of the Federal States, and nationwide laws apply with respect to land-based slot machines and horse racing.

Only the small Federal State of Schleswig-Holstein is a peculiarity in this aspect. From 2012 to 2013, Schleswig-Holstein had its own Gaming Act in place, under which more than 50 gaming licenses have been awarded to private providers. With these licenses, providers may lawfully offer (online) gaming services within Schleswig-Holstein (but not within the remaining parts of Germany); respective licenses are still valid even though in the meantime Schleswig-Holstein joined the Interstate Treaty on Gambling and the Schleswig-Holstein Gaming Act does no longer apply.

2. Can you explain how the current tax regime in your jurisdiction works?

H. Hoffman: For all online gambling a gambling duty of 20% on Gross Gaming Revenue (wagers

minus winnings) is due. This is technically not a tax but a duty which can be deducted from the corporate taxes as a business expense, when calculating the tax base for corporate taxes liable in Denmark. However, no deductions of bonuses etc. are allowed when calculating the tax base, and a negative GGR in one period cannot be setoff in previous or future positive GGR.

For Land Based casino and slot machines the gambling duty depends on the size of the GGR and is 30-75% of GGR.

Gambling duty must be calculated and paid on a monthly basis.

Nettleton: The Australian taxation regime in respect of gambling operators can be divided into two categories; (i) those taxes imposed generally in relation to all Australian businesses, and (ii) those taxes which directly target companies conducting gambling activities.

All Australian companies, including gambling operators, are required to pay corporate income tax (currently 30%) and goods and services tax (GST) of 10% on all sales.

A number of additional taxes are imposed specifically on gambling operators. These taxes, which represent a significant source of revenue for State and Territory governments, include a combination of:

- direct gambling taxes paid to the licensing authority and calculated by reference to gambling revenue of the company. The method by which these taxes are calculated will be set out in the operator's licence conditions and the relevant legislation;
- licence fees paid to the licensing authority, either yearly or as a one-off payment (depending on the licence held). In the case of exclusive licences such as retail totalisators, this is usually

a one-off fee payable on grant of the licence; and

- race fields/sports fixture fees are charged by sports or racing control bodies to betting operators in consideration for their use of race fields and sports fixtures information. This fee is calculated by reference to a percentage of gross revenue from betting activities or betting turnover.

The nature and extent of these taxes vary quite significantly and depend on the type of gambling service provided and the licensing jurisdiction.

J. Hofmann: Taxation of gambling products in Germany largely depends on the product type and the regulations in the respective federal state. Accordingly, tax rates with regard to some gambling sectors vary throughout Germany.

Land-based casino operators are exempt from corporate taxation but must generally pay taxes on gross gaming revenue (i.e. the amount by which the total of all stakes exceeds the total of all winnings paid out, "GGR") or are subject to a combination of gross gaming revenue and profit taxation. Tax rates range between 20% and 80% per state. Some states impose additional levies or apply progressive tax rates depending on the economic capability of the casino operator.

Operators offering licensed or unlicensed sports or horse race betting to German customers, throughout Germany, are subject to a 5% federal tax on stakes.

Since 1 January 2015 all online casino operators, not only the non-EU-based online casino operators, have been subject to VAT. It has so far not been clarified by the tax authorities what they consider the applicable tax base to be. Strong arguments, in particular the comparison to the land-based casino sector and jurisprudence of the Court of Justice of the European Union sup-

port the assumption that the tax base is GGR and not stakes.

Slot machine operators, in addition to the regular corporate taxes, have to pay municipal amusement tax ranging between 12-20%, depending on the law of the respective municipality. The tax base for this amusement tax is the gross income generated from the slot machines.

Walberg: The Riverboat Gambling Act, 230 ILCS 10/21, provides that licensees shall not be subjected to any excise tax, license tax, permit tax, privilege tax, occupation tax or excursion tax which is imposed exclusively upon the licensee by the State or any political subdivision thereof, except as provided in the Act. With regard to Video Gaming, the State of Illinois imposes a 30% tax on net terminal income. See 230 ILCS 40/60. The tax is collected by the IGB. Revenues generated from the play of video gaming terminals are deposited by the terminal operator, who is responsible for tax payments, in a specially created, separate bank account maintained by the video gaming terminal operator to allow for electronic fund transfers of moneys for tax payment. The State's percentage of net terminal income is reported and remitted to the IGB within 15 days after the 15th day of each month and within 15 days after the end of each month by the video terminal operator. Each video terminal operator keeps a record of net terminal income. All tax payments not remitted when due are assessed a penalty on the unpaid balance at a rate of 1.5% per month. A terminal operator who falsely reports or fails to report the amount due is subject to criminal prosecution and the termination of its gaming license. The IGB's rules provide for additional penalties for non-payment of taxes, including the disabling of all video gaming terminals operated by the terminal operator until all overdue amounts plus fines are paid in full.

Notwithstanding the Riverboat Gambling Act's prohibition on taxing outside of the Act, local Illinois municipalities and counties have attempted to impose their own taxes on gaming and gambling machines. For example, Cook County enacted the Gambling Machine Tax Ordinance on 9 November 2012, which imposes registration and tax requirements on "Gambling Machines" displayed for play or operation by the public within Cook County. Although the Tax Ordinance applies to both gambling devices operated in casinos (e.g., slot machines) and video gaming terminals (e.g., video poker machines) operated in licensed establishments under the Video Gaming Act, the machines are taxed at different rates. For gambling devices, the Tax Ordinance imposes an annual tax on the owner of \$1,000 per gambling device and \$200 per video gaming terminal. Before any gambling machine is made available for use by the public, the owner is required to remit the tax due to the Cook County Department of Revenue, after which the director issues a tax emblem to be affixed to the gambling machine as evidence of the payment. The operation of a gambling machine without a tax emblem will subject the owner and the person displaying the gambling machine to substantial daily fines. The Cook County Ordinance was challenged in two separate pieces of litigation by a Cook County based casino and the Illinois Gaming Machine Operators Association. The Illinois Appellate Court rejected both challenges and sustained the validity and constitutionality of the tax, in part, because Cook County is a home rule unit whose taxing authority was not pre-empted by the Riverboat Gambling Act. See *Midwest Gaming & Entertainment, LLC v. County of Cook*, 2015 IL App (1st) 142786; *Illinois Coin Mach. Operators Ass'n v. Cty. of Cook*, 2015 IL App (1st) 150547.

Voigt: For sports betting, horse racing and lotteries there are specific tax stipulations in the "Race Betting and Lottery Act". For example,

sports betting is levied with a specific sports betting tax of 5% of the players' stakes. Regarding online casino and poker games, no specific taxation rules exist. Accordingly, a general VAT of 19% applies. Even though this appears much higher than the 5% sports betting tax, the VAT is generally not levied from the stakes but from the gross gaming revenue of the casino and poker games, and such gross gaming revenue will often be around 3-10% of the stakes. Thus, the tax burden for online casino and poker games is generally lower than the one for sports bets.

3. Have there been any recent regulatory changes or interesting developments?

H. Hoffman: In December 2015, the Danish parliament passed new legislation to amend the Danish Gambling Act.

The most significant changes were that a new type of license was introduced, which in terms of revenue and compliance requirements is designed to accommodate operators who offer Fantasy Sports. The license fee is lower, and the maximum on GGR within this limited license was increased significantly from the limit on the so-called revenue limited licenses.

Further, the weekly calculation and payment of gambling duty for betting and online casino was changed to monthly calculation, which in effect will reduce the effective gambling duty, since the likelihood of a negative GGR over a month of operation is very much smaller than the case was with the weekly calculations.

Talks are going on in political circles that Danske Spil should be sold off to private operators and the Danish market opened completely. This was one of the announcements made by the sitting government before the general election in June 2015, and at least this is still being considered.

Nettleton: There have been a number of significant developments in the Australian regulatory landscape this year.

From a licensing perspective, the status of Norfolk Island as both an external territory of Australia and a leading licensing jurisdiction remains a matter of uncertainty. From 1 July 2016, Norfolk Island will lose its right to self-govern and will become, in effect, a regional council of New South Wales. As a result of this process, a number of Norfolk Island statutes will be repealed.

At the time of writing, the Norfolk Island gambling laws have not been expressly repealed. Unless and until this happens, we consider that the NIGA will continue as a regulator and existing licences will remain in full force and effect. However, the Federal Government is in the process of conducting a performance review of the NIGA. Pending the outcome of this review, the ability of the NIGA to grant and renew licences has been restricted. As at the time of writing, it remains unclear what recommendations will be made, and how this might affect the NIGA and the exercise by it of its functions.

Another noteworthy development is the introduction of the Australian Association of National Advertisers Wagering Advertising & Marketing Communication Code (AANA Code). The AANA Code is a self-regulatory framework for advertising and marketing of wagering services and will come into effect on 1 July 2016. The AANA Code will facilitate consumer complaints and enforcement.

Finally, the High Court handed down recently its decisions in claims brought by Tabcorp and Tattersalls relating to the change by the Victorian Government of the licensing regime relating to gaming machines. Those claims – which were in excess of \$1 billion in total – were unsuccessful and confirm the principle of sovereign immuni-

ty in connection with the grant by governments of gambling licences.

Bedford: There are currently 615 commercial bingo premises in the UK, the overwhelming majority of which are profit-making businesses. However commercial bingo has been in decline in United Kingdom when measured by the number of licensed clubs, the duty paid to government, and the money staked. The smoking ban, implemented in 2007, had a particularly significant impact on attendance.

There is poor data on the scale of non-commercial bingo in the UK. Most bingo fundraising does not require a license, and most providers of bingo in members' clubs require neither an operating license nor a local authority permit. However our research shows that non-commercial bingo is in decline, with falling attendance and loss of institutional memory about how to organise games. The number of new club bingo permits issued by local authorities – required for higher participation fees to be charged for bingo games – is at a five year low. In one part of South Wales visited for fieldwork there had been 400 working men's clubs attached to the regional branch in the 1980s. Most of those were thought by local experts to have offered bingo. In May 2014 there were 116 clubs left, and many of those were in danger of closing. Most still offered bingo.

We see from the Hansard record an intensified sense that bingo provides a safe, respectable outlet for elderly working class women's leisure – a framing evident among some (but not all) lawmakers when bingo was first explicitly debated in Parliament in the 1950s. Now many politicians contrast bingo halls with betting shops, pay day lenders, and pawn shops as sites of sociality, community, and harmless fun. The Mary Portas review on high street regeneration actively promotes them. In 2014 the Chancellor

announced a 10% duty cut on commercial bingo – double what the industry had requested.

J. Hofmann: Gambling regulation in Germany for many years now has become almost famous for its constant changes and continues to be an issue of debate. Since 2005, already two attempts at regulating gambling have failed due to the respective laws having been found to violate European law and the current main regulatory framework, the Interstate Treaty 2012, is destined to follow a similar path.

The Interstate Treaty 2012 introduced a licensing process for 20 sports betting licences intended to be applicable for a seven-year experimental phase as of entry into force of the Interstate Treaty. Thereby, in theory, private operators were allowed to obtain a sports betting licence. The sports betting licensing process initiated in 2012, however, was flawed from the start and has meanwhile been held to violate EU law due to its non-transparent and discriminatory characteristics by courts. It came to a total halt in September 2014 and to date none of the 20 sports betting licences have been issued. The CJEU in its recent judgement in the Ince case (C-336/14) established that this situation effectively upholds the monopoly, which was found to be unlawful and made the introduction of the current Interstate Treaty necessary in the first place.

The German states are currently trying to solve this dilemma through minimalist amendment to the Interstate Treaty. As per the most recent drafts for such amendments, the total number of available licences is to be increased to a 40 and the 35 applicants who in the licensing process of 2012 demonstrated that they fulfil the licensing requirements are to receive a preliminary license once the amendments take effect, currently intended for 1 July 2017.

In June 2015, the European Commission initiated a so-called pilot process, i.e. a pre-stage to formal infringement proceedings against Germany. It is likely that the current endeavours of the German states are an attempt to react to the European Commission's criticism.

Judging by the fact that the amendments proposed so far raise multiple practical and legal issues, it can, however, be questioned whether the German states will be successful in preventing the European Commission from initiating formal infringement proceedings. An important aspect relating to this is that the European Commission not only criticised the failures of the sports betting licensing process, but also questioned the total ban on online casinos provided for in the Interstate Treaty. The current proposals for amendment do not take this into account. There are, however, strong arguments to support that the total ban is unlawful.

Walberg: After the passage of the Illinois Video Gaming Act in 2009 but before video gaming went live in Illinois in 2012, terminal operators and establishments entered into "pre-licensure agreements" granting the operator the exclusive right to place video gaming terminals at the establishment for the term of the agreement after both parties had become licensed. Entry into pre-licensure agreements was an industry wide practice. In the 2013 case of *Triple 7 Ill., LLC v. Gaming & Entm't Mgmt.-Ill.*, LLC, 2013 IL App (3d) 120860, the Illinois Appellate Court for the Third District upheld the validity and enforceability of these pre-licensure agreements. Triple 7 remains the only appellate opinion in Illinois which addresses the validity of pre-licensure agreements on the merits. Illinois circuit courts confronting this issue have consistently adopted the holding in Triple 7.

On 7 August 2015, the Illinois Appellate Court for the Fifth District in *J&J Ventures Gaming*,

LLC and Action Gaming, LLC v. Wild, Inc., 2015 IL App (5th) 140092, a dispute over the validity of an assignment of a pre-licensure agreement, held for the first time in more than three years of litigation surrounding pre-licensure agreements that the court did not have jurisdiction to decide the case because the legislature intended the IGB to have “exclusive authority” over agreements affecting the placement and operation of video gaming terminals in Illinois, including pre-licensure agreements. Importantly, the question of jurisdiction was raised *sua sponte* by the court, and all parties agreed that the court had the requisite jurisdiction to decide the merits of the case. J&J Ventures is currently on appeal before the Illinois Supreme Court and a decision is expected in autumn 2016. This decision is expected to have far-reaching implications on the future role of the IGB and the video gaming industry in Illinois.

Voigt: The regulatory gaming regime in Germany is in turmoil at the moment. Various national courts as well as the European Court of Justice recently decided that the German sports betting licensing process, which started in 2012 and according to which 20 private providers were supposed to receive sports betting licenses, is intransparent and a breach of European freedoms. Respective court decisions make it difficult for gambling regulators to enforce the prohibition of unlicensed sports betting offers of providers that are licensed in other European countries.

As a result of respective court decisions, the Federal States are planning on amending the German gambling law and allow up to 40 sports betting providers in Germany, with interim licenses being provided to 35 providers that have already taken part in the sports betting licensing proceedings that started 2012 and fulfil certain minimum criteria. Respective law changes are likely to be agreed upon in June.

As the – relatively important – Federal State of Hesse, which is responsible for the on-going sports betting licensing proceedings, believes the envisaged law amendments to be insufficient and unlawful from a European perspective, there is a chance that Hesse will go its own way and no longer form part of the Interstate Treaty on Gambling applicable in the rest of Germany.

Furthermore, the European Commission is likely to commence infringement proceedings against Germany in the near future as it regards German gambling law as incoherent and unlawful from a European perspective.

4. Are there any compliance issues or potential pitfalls that companies need to be cautious about?

H. Hoffman: The Danish system is actually pretty straight forward and the compliance programs etc. do not contain many potential pitfalls.

There is an on-going non-resolved issue regarding the funds on the set-off free account, which is a bank account where the player funds are placed, and where the bank has signed a declaration that it will not set off a positive balance on this account in other accounts with a negative balance held by the same operator in that bank. However, the DGA is currently interpreting the Executive Orders in a way, where they demand that balancing between this account and the total balance of all player accounts takes place every single day even on bank holidays and weekends.

It surprises many operators and it is a fairly heavy administrative burden, which ultimately does not serve to secure the wanted protection for the players in case of the operator’s bankruptcy.

Further, the Danish marketing rules are generally

very lenient, but there are some very strict rules and practises that are enforced with a close to zero tolerance approach – particularly in regard to marketing of bonuses and direct marketing.

Nettleton: When considering entering the Australian market, gambling operators should be aware of various prohibitions and restrictions which are unique to the Australian regulatory landscape in respect of gambling.

The key issue to note when considering Australia as a potential gambling market is the total prohibition on online gaming contained in the IGA. However, the IGA, which contains the prohibition on online gaming, expressly excludes from the scope of that prohibition the provision of online bookmaking services.

Legislation at the Australian State and Territory level includes provisions which require approvals to be obtained to use race fields information/sports fixture information (see above).

Finally, in-play betting is very popular with punters and is routinely offered by betting operators in many jurisdictions (for example, the United Kingdom). By contrast, the IGA prohibits the provision of online in-play betting services in respect of sporting events (In-Play Prohibition). In other words, Australian licensed operators are able to offer in-play betting online in respect of racing events. While certain Australian licensed operators have sought to address the In-Play Prohibition through “click-to-call” technology, recent comments by the Australian Federal Government indicate an intent to clarify the scope of the In-Play Prohibition. This issue is considered in greater detail in our response to questions 7 and 8 below.

Bedford: The definition of the game has long been contested. In fact the issue of whether bingo should have a statutory definition was

debated by the 1977 Rothschild commission on gambling. This was in response to what the Gaming Board (the then national regulator of bingo) considered objectionable game innovations where high participation fees were being charged to players. However the issue of the game’s boundaries is especially significant now. In part because bingo premises licenses offer access to lucrative games machines entitlements – including up to 20% of the total gaming machines being B3 machines (with a £2 stake and £500 prize) – and in part because bingo machines are explicitly defined by the 2005 Gambling Act as not gaming machines (meaning that they do not count towards the quota of total machines allowed on a premises) there has been an attempted expansion in the type of operators and premises offering bingo. Some operators have developed new, variant forms of bingo, often called electronically, and not requiring players to stop the game by shouting out. Membership has also been removed as a criterion for commercial bingo operators, meaning that bingo has expanded into non-member environments such as adult gaming centres. As a result there has been a growing need for regulators to rule on boundary disputes between bingo and other forms of gaming.

In 2009 the Gambling Commission issued a document on ‘key characteristics of bingo’, intended to help clarify the game’s boundaries.^[2] This focused on stakes and participation fees in bingo machines. Most recently, in 2014 the Commission published a guidance note on ‘What constitutes bingo’.^[3] This guidance is intended ‘to help bingo operators avoid creating and offering products that we consider to be casino games, lotteries or fixed odds betting’ (s.1.1). It identifies 3 ‘fundamental principles of bingo: that the game is an equal chance game; that it must in-

² Gambling Commission. (2009). *Key characteristics of bingo*. (London: Stationery Office).

³ Gambling Commission. (2014). *What constitutes bingo?* (London: Stationery Office).

volve a degree of participation, and that it must have a clearly defined end point (s. 3.3).

Most commercial operators we interviewed welcomed this guidance, with some seeing profit potential in more automated forms of the game that resemble electronic lotteries. However one industry insider contended that any game definition could be reversed by the Commission in the absence of a statutory definition, leading to uncertainty in product development.

J. Hofmann: Despite the tumultuous legal situation and the fact that in the online casino and sports betting sector (with the exception of Schleswig-Holstein licences) no licences are truly available/have been issued and unclear situation as to the exact license terms resulting therefrom, it would be a clear mistake to assume that compliance is not an of relevance in Germany. In fact, regulators even demand certain compliance from operators, despite finding them to violate the written law. They claim that certain KYC standards have to be in place in order to ensure the protection of minors and consumers. It is also advised to comply with the Federal Anti-Money-Laundering Act, which applies to online gambling operations.

Voigt For about a decade, Germany has been prohibiting most kinds of gambling offers to private providers. According to the very strict wording of the law, private entities are generally prohibited from offering sports betting, casino or poker games to German players; the provision of online games of chance is generally forbidden regardless of the types of gaming. Thus, private providers offering (online) gaming services to German players are in a difficult situation.

However, the validity of respective strict gaming prohibition stipulations has been disputed from the start. In a number of decisions by national and European courts, various aspects of Ger-

man gaming law have been considered to be in conflict with the German Constitution as well as with European law.

As the question to what extent German gaming law shall be liberalised is a highly political one, strict German gambling requirements are not likely to change very soon. However, to the extent that the legislator is not able to draft a bulletproof gaming law, attacks on the prohibition stipulations will continue, and enforcement of the strict German requirements will remain difficult.

5. Are you noticing any particular trends in M&A activity?

Nettleton: For a period of time, the Australian market experienced an influx of leading overseas bookmakers acquiring local, online bookmakers to enable an Australian operation to be launched with their international brand.

More recently, the Australian market has experienced an increase in parties seeking to engage in backdoor listings or reverse mergers between dormant, mining companies listed on the Australian Stock Exchange (ASX) and emerging technology or gaming companies. The Australian Securities and Investment Commission (ASIC), Australia's corporate regulator, and the ASX have expressed concerns regarding these proposals. Accordingly, proposed listings of this type should be approached with caution.

J. Hofmann: Indeed. It has long been expected that consolidations would take place in the gambling sector and we have been noticing an increased interest of private equity companies to get involved in the market. Some of the most recent mergers (2015) include the merger of Betfair and Paddy Power and the merger of Ladbrokes and Coral. Further, GVC acquired the total share capital of bwin in 2015 and private

equity group CVC Capital Partners only a few weeks ago signed a deal to take over the majority share of Malta-based operator Tipico, one of the leading sports betting operators in Germany and sponsor of football clubs FC Bayern Munich and Hamburg's HSV. We consider it likely that this trend in M&A activity will continue.

6. How is technological innovation shifting the landscape in the gambling industry?

H. Hoffman: With tablets and smartphones becoming more and more popular the landscape in the gambling industry is changing rapidly from land-based and web-based to mobile. The strongest operators in future customer acquisition will be the ones with the best mobile solutions.

The customers of tomorrow have grown up with a smartphone and hardly ever used web-based services or even go to a brick and mortar establishment.

The type of operators that are suffering the most at the moment are the horse tracks/horse betting operators and land-based slot machine operators. They have real difficulties attracting new and even maintaining existing customers.

Further, the higher complexity in many social gaming products seem also to attract younger players much more than many of the more traditional gambling games of the casino industry. This is clearly indicated by the large revenues in social gaming where no prices are paid out.

Nettleton: Over the past year, the Australian market has seen an increased interest in gambling products utilising new and emerging technologies, such as daily fantasy sports and e-sports. Australia's regulatory regime relating to online gambling is complex, outdated and ultimately ineffective in regulating emerging gam-

bling technologies. As a result, gambling products utilising emerging technologies have been incorporated into the existing legislative framework (often with surprising results).

These emerging technologies often demonstrate the inadequacy of Australia's current regulatory regime and, over time, may become a catalyst for reform of the Australian gambling regulatory landscape.

J. Hofmann: Clearly, technology drives the industry. One of the best examples to illustrate this and the shift in the landscape in the gambling industry are mobile devices. Mobile devices, unlike other devices used to access remote gambling products or traditional brick-and-mortar casinos and gaming halls, allow customers to access gambling products from wherever they are and at any time they wish. Also, the increased popularity of social games associated with mobile devices provides for some interesting developments. There is a trend of gambling operators combining gambling products with other forms of gaming or introducing social games into their product portfolio. These developments and the constant technological innovation challenge regulators to adapt. Unfortunately, however, one must conclude that, in general, regulation is considerably lacking behind in its attempt to catch up with the constant innovations and the new means of distribution used by an increasing number of operators.

Walberg: As discussed, the Video Gaming Act requires that all video gaming terminals in Illinois be connected and monitored by a Central Communications System. In 2011, the IGB awarded the contract to Scientific Games Corporation, which implemented a system designed to support up to 16,000 video gaming sites and approximately 60,000 video gaming terminals from its Illinois operations centre. The system was certified in 2012 by Gaming Laboratories

International, the gaming industry's leading independent gaming testing laboratory and technical consultant. The system, which satisfied the standards established by regulators in gaming jurisdictions worldwide, enables real-time communication and control between every licensed video gaming terminal in Illinois. The system is expected to become the largest video gaming network in the United States. This brand of innovation promotes the integrity and security of the Illinois video gaming industry.

In addition, numerous smartphone applications have developed to assist gamers in locating and evaluating establishments which host video gaming terminals. For example, the "Illinois Video Gaming Locator" app identifies the nearest video gaming terminals in your vicinity, provides the name address and telephone number of the establishments and displays ratings of the machines by other gamers. Establishments are also developing apps to contact their customers with relevant information, including the placement of new machines, deals and promotions.

Voigt: In Germany, there is a general state monopoly in place with respect to most types of gambling. Apart from land-based slot machine casinos, which currently face a hard time but are permissible to a certain extent and continue generating high revenues, it is comparatively risky and difficult for private providers to offer land-based gambling services to German players. Thus, the online sector is extremely important for (in particular international) private providers. In addition, online services have a better scalability than land-based casinos. Pre-existing software from other markets can – with some adaptations – also be used in Germany. Thus, the online sector is getting more and more important in particular for international companies aiming at German players.

7. Can you outline the challenges and op-

portunities relating to the evolution of the gambling industry from land-based to online?

Nettleton: In Australia, the key challenges relating to the evolution of the gambling industry from land-based to online exist largely at the regulatory level. As alluded to above, the Australian regulatory regime was developed at a time when the development of new technologies and the market disruption this would cause was not fully appreciated.

The inadequacy of the Australian framework for gambling regulation was recognised in the Report relating to the Review of Illegal Offshore Wagering – conducted by the Hon. Barry O'Farrell, the former premier of New South Wales – that was released at the end of April (O'Farrell Report).

The O'Farrell Report presented a significant opportunity to review and update the IGA to address the challenges posed by new technologies. However, the singular recommendation concerning new technology, that is, the recommendation that the Federal Government consider relaxing the In-Play Prohibition in the IGA, was rejected by the Government in its response to the O'Farrell Report. The Government has indicated its intention to "clarify" the IGA by amending the IGA to ensure that "click-to-call" services are prohibited.

While clarity in the law is required, there remains opportunity for online gambling businesses to be licensed and provided in Australia (subject to various restrictions)!

Bedford: The Gambling Commission's recent guidance on the definition of bingo encompasses online play. Although many land based operators had at first seen online bingo as a threat to their business, most now either see synergies between the products, or feel that online bingo has little impact on in-hall play. Many land-

based operators in the UK said in interviews that they do not consider online bingo to be an equivalent product. This is in part because many online gambling companies that offer bingo lack an understanding of the game's distinctive culture and demographic. Some land-based operators also argued that online bingo was used as a gateway to get customers to play casino style games, and slots, which were more profitable. However gaming machines are central to land-based bingo revenues as well: from October 2014 to September 2015 gaming machine revenue accounted for 46% of gross gaming yield in licensed (land based) bingo facilities in United Kingdom.

J. Hofmann: I consider the challenges and opportunities to be fairly closely intertwined with one another. For gaming halls, the increased interest of customers in online operations may be considered a threat to their business. However, it will also likely provide opportunities and a new focus of business. This is particularly important considering that – at least in Germany – the number of gaming halls have drastically fallen as a result of regulatory changes (such as distance requirements which have caused certain gaming halls that are considered to be too close to another gaming hall or a youth institution to shut down).

I may also add, that we do not only witness a trend from land-based gambling to online gambling. The Spielbank Berlin – the casino of Berlin – increased its interest in online poker during the first years of the new millennium as a sign to expand their land-based poker offering and has been rewarded for this move. The Spielbank Berlin meanwhile is part of very popular poker series such as the European Poker Tour (EPT) and is renowned for its poker offering, which obviously translates into profits and an increased GGR.

8. Are there any exciting technological developments on the horizon?

Nettleton: There is increased interest in new forms of bookmaking, daily fantasy sports, social games and eSports (among others). Some of these new platforms are already conducting business in Australia; others are in the early stages. What is clear is that Australian developers are at the forefront of creating new gaming products.

9. What measures are being implemented to tackle the issue of gambling addiction?

H. Hoffman: All licensees holding either a betting or an online casino license are under an obligation to have, maintain and comply with a pathological/problem gambling policy. The basic legal requirements are that each operator must offer both a 24 hour cool off period as well as both temporary and permanent self-exclusion options. Further, the licensee must offer access to a gambling addiction self-test and have links to recognised gambling addiction treatment facilities. In case a player chooses to self-exclude then the gambling website must automatically offer the contact details to such a treatment facility.

The Danish Gambling Authority also offers a central self-exclusion database known under the name ROFUS. The login procedure of all licensed web-sites and mobile access must cross check with the ROFUS database before the player attempting to log in can be allowed to access the gambling offer and his/her player account. This way it is possible for anyone to self-exclude in one central place and be denied access from gambling from all licensed operators.

Also worth noticing in this regard is a case where the Danish Gambling Authority initiated police investigation against a licensee due to the fact

that the licensee had allowed a player to play for more money than the player could actually afford. However, the player never used the self-exclusion options available. It is indeed a very controversial case where the Danish Gambling Authority is linking the source of fund examination connected with the Anti-Money Laundering requirements also to the problem gambling.

The legal authority for this is to be found in the introductory provisions of the Danish Gambling Act, where some of the more policy-like provisions require that the gambling offered is offered responsibly. The Danish Gambling Authority seems to be taking the position that if your source of funds research should lead you to conclude that a player is spending more than he can reasonably afford to spend on gambling services, then at the operator should not only react from an AML point of view but also take action in regard to problem gambling. At the very least, refrain from tempting such a player with special offers and bonuses.

Nettleton: A significant proportion of the recommendations made in the O'Farrell Report were directed at achieving greater and more uniform harm minimisation for Australian consumers of licensed Australian online operators. This reflects general public concern about the harms associated with gambling.

Importantly, the O'Farrell Report recommends a series of minimum standards that should be developed and included in a national consumer protection framework within the next 12 months by agreement between the Federal Government and the States/Territories. This recommendation was accepted by the Federal Government in its response. Among the matters to be addressed are:

- consistent nationwide research into problem gambling;

- a national self-exclusion scheme;
- a voluntary pre-commitment scheme;
- a prohibition on credit betting;
- training by licensed online operators of staff in the responsible conduct of gambling;
- the provision of activity statements to customers;
- a reduction in the period in which customer verification must be conducted; and
- consistent messaging and a single national gambling hotline that operates consistently nationwide.

In December 2015, the Victorian Government introduced a voluntary pre-commitment scheme in relation to the playing of gaming machines. However, a recent media release from the Minister for Consumer Affairs, Gaming and Liquor Regulation in Victoria revealed a registration rate of 8,130 in the first 6 months of operation.^[4] This was viewed as low^[5] and casts doubt on the effectiveness of this pre-commitment scheme as a means of achieving harm minimisation resulting from the playing of gaming machines.

Bedford: A key operational challenge in law and policy around harm prevention in gambling is over where to strike the balance between a standardised approach across all gambling sectors, versus distinctive approaches to distinctive sectors which may have varying harm potential. The challenge for bingo specifically is that while it has comparatively low levels of problem gambling they almost always relate to the ancillary product (gaming machines) rather than the core offering (main stage bingo). Almost unanimously, when we asked interviewees from the licensed sector about problem gambling in bin-

⁴ Victorians Pre-Commit On YourPlay, 20 May 2016: <http://www.premier.vic.gov.au/victorians-pre-commit-on-yourplay/>

⁵ Willingham, Richard '8000 Victorian pokies punters push the button on pre-commitment' *The Age*: <http://www.theage.com.au/victoria/8000-victorian-pokies-punters-push-the-button-on-precommitment-20160519-goz4r2.html#ixzz49YOaQPo5>

go they said that it was rare, and that it was normally relevant to machines. That is supported by the latest data on problem gambling rates across different sectors from the 2010 Prevalence Study

Some commercial operators felt that there were several features of bingo's distinctiveness that made it relatively low risk. These included the fact that the game is popular with older women (younger people, and men, are more likely to be at-risk gamblers according to relevant 2012 health surveys for England and Scotland^[6]); the social nature of the game and the fact that groups of friends or family often came together; the close bond between players and staff in traditional hall environments (leading, some argue, to better monitoring of potential gambling problems); the nature of the traditional, paper-based main stage game itself (involving time-bound, sessional play and built-in breaks, and where stakes are limited by the physical capacity of the player to mark off tickets); and the fact that not all players regard the game as a form of gambling.

That said, most hall managers had encountered customers who, in their view, gambled too much. There had long been mechanisms for dealing with this, including 'having a chat,' calling up family members; telling someone to go home or to only come in with a group of family or friends; barring someone from the premises as a whole, or from the machine section; refusing to serve alcohol to someone with a gambling problem; and 'letting someone know you are keeping an eye.'

These mechanisms are being eclipsed by more formalised measures laid out in the Gambling Commission's Licensing Conditions and Codes of Practice (LCCP), to which all licensed operators **must adhere**. In 2015 a revision was undertaken

⁶ Wardles et al. 2014. *Gambling Behaviour in England and Scotland*, p 2-3.

that made problem gambling far more central to the regulations. For example the new social responsibility codes require licensed bingo operators to put in place measures for sector-wide self-exclusion (where individuals who request to be excluded from a licensed bingo premises are subsequently excluded from licensed bingo facilities run by other operators), and for 'customer interaction.' This requires staff to identify and intervene effectively "where they have concerns that a customer's behaviour may indicate harm (or risk of harm) as a result of their gambling behaviour" (3.4.1). In the light of such guidance, some staff we interviewed were anxious about being held responsible for identifying problematic gambling behaviour.

J. Hofmann: Pursuing the goal of ensuring a high standard in player protection, in particular in relation to the protection of minors and the prevention of compulsive gambling, is key in any sensible gambling regulation and preventing the development of gambling addiction also forms one of the main objectives of the Interstate Treaty. As per the Interstate Treaty regulations and the regulations set out the Gambling Acts of the respective states, which implement the Interstate Treaty, gambling operators are obliged to encourage players to gamble responsibly and to implement suitable measures to tackle gambling addiction. To this end, they must develop a so called Social Concept, i.e. a comprehensive written documentation of the companies policy towards problem gambling and the specific measures in place to prevent problem gambling e.g. customer support hotlines, specific information on the risk of addiction and the exact chances of winning or losing, advice on how to recognise a problem (e.g. by means of a self-test), opportunities for the player to determine individual limits or exclude himself/herself from gambling etc. Operators further have to train their staff in the early detection of problematic gambling behaviour and must have a suitable

referral system to help agencies in place.

Walberg: In 2002, the IGB launched a Statewide Voluntary Self-Exclusion Program for Problem Gamblers that allows persons who have determined they are problem gamblers to self-exclude themselves from all Illinois casinos. The process requires self-excluded persons to agree not to enter the area within the admission turnstiles of any casino and agree to be removed voluntarily from all mailing, marketing and promotional lists and databases. Individuals may enroll in the Self-Exclusion Program at various enrollment sites throughout the state, including at the IGB offices located at all riverboat casinos. Enrollment sites are not compensated by the IGB for participating in the Self-Exclusion Program, and no fees are charged for enrolling in the program. Once a person enrolls in the Self-Exclusion Program, their name must be removed from all mailing lists and marketing databases used by Illinois casinos. The effect of Self-Exclusion is not limited to Illinois casinos. Casinos operators in Illinois can request they be allowed to ban Self-Excluded persons from all their properties and operations throughout the United States. Currently persons who enroll in the IGB's Self-Exclusion Program are excluded from all Illinois casinos as well as all casinos and operations owned by Caesar's Entertainment Inc., Boyd Gaming Inc. and Penn National Gaming Inc. The records generated by IGB's Self-Exclusion Program are strictly confidential, and shared only with the IGB, the state's casinos and the enrollee. Because Self-Exclusion is voluntary, a person cannot be enrolled by another person, such as a friend or significant other.

In addition, the Video Gaming Act provides that 25% of all license fees collected shall be paid, subject to appropriation by the General Assembly, to the Illinois Department of Human Services for administration of programs for the treatment of compulsive gambling. See 230 ILCS

40/50.

10. What key trends do you expect to see over the coming year and in an ideal world what would you like to see implemented or changed?

H. Hoffman: Now where the Danish system has been in operation for almost five years there seems to be a trend to loosen up some of the administrative requirements that brings only very limited contribution to higher transparency and security for the players but causes major costs and resources for the operators in an attempt to accommodate the operators need for a smoother and more competitive operation. In particular there is a growing awareness that the licensed operators still need to consider the competition from non-licensed operators, since they are ready to enter the market, if the licensed market loses too much of its competitiveness.

In an ideal world the Danish legislator will go through with a full liberalisation of the Danish gambling market and abolish the remaining state owned monopolies. The first five years of operation that the state owned monopoly operator is not in any way more compliant or responsible than the private operators rather on the contrary the state owned monopoly operator has had some very serious cases on non-compliance and violation of Danish law in the first five years of operation. A full liberalisation would take the Danish market the last step to creating a levelled playing field for all operators.

Such a scenario is not unlikely, and it is indeed realistic that further steps to full liberalisation are going to be taken within the next year.

Another threat that the legislators and regulator in a small market like the Danish need to take very seriously is the fact that more and more

European jurisdictions are implementing new legislation that allows online betting and online casinos. However, every jurisdiction seems to implement slightly different requirements and compliance rules making it necessary for the operators to develop specific systems and procedures for each jurisdiction in which they have a license. This combined with the licensee fees and license application fees leads to considerable costs for an operator for each jurisdiction. At some point in time the operators will have to look critically at their return of investment and for small markets like Denmark with its lack of volume compared to markets like Germany, Poland and France Denmark needs to make itself more attractive on costs or join other countries and accept mutual recognition to create a larger market for the same amount of costs. The most obvious first step would be for Scandinavian countries or even the Nordic countries to make a multijurisdictional license system. This however, is unfortunately not likely to happen in the near to midterm future.

Nettleton: Consistent with the growing international interest in alternative virtual gambling models, the Australian market has also seen growing interest in these products. We expect to see this interest continue into the next year. As contemplated earlier, Australia's regulatory regime relating to online gambling is outdated and thus ill-served to regulate gambling services utilising new and emerging technologies. In this regard, we would hope to see greater clarity in respect of how these emerging gambling models will be treated under existing gambling laws.

Bedford: The role of the Gambling Commission in decisions about premises licensing will continue to be debated. The Gambling Commission have sought to shape local authority decision making about premises licensing, especially through the concept of 'primary gambling activity.' This intends to address two concerns:

keeping gambling largely within establishments focused on gambling (a key concern of lawmakers in debates leading up to the 2005 Act), and ensuring that a premises seeking a license for one form of gambling in fact intends to focus its operations on that form, rather than using the license as a 'flag of convenience' to offer other, harder gambling forms.

The regulatory concern with the suitability of operators, and the suitability of the premises within which they plan to offer bingo, is key to the current debate over whether licensed bingo should be allowed in pubs. Pubs can already run low-stakes bingo, subject to conditions: there are no participation fees allowed, and stakes are limited to £5 per person per game. But if they able to offer licensed bingo pubs could run games with higher stakes and prizes, with links, and – crucially – with the entitlement to higher stakes gaming machines. In a recent legal case, the Gambling Commission had its authority to deny an operator license to a pub chain upheld based on concerns about the environment within which it sought to offer the game.^[7] However the jurisdictional question over who decides what gambling premises can be present in a local area will likely rumble on.

J. Hofmann: A key aspect which will continue to keep regulators and operators busy over the coming year, in particular in the US, in relation to product types clearly will be fantasy sports and virtual betting and the question of how to regulate them. Further, I expect there to be further M&A activity among operators in the gambling sector which is likely to provide for some interesting new alliances. In relation to Germany I may add that, since Germany desperately requires a sensible regulation, I would like to see the German states creating a completely new regulation covering all sectors of gambling and taking other European states, which already

⁷ *Gambling Commission v Greene King* [2016] UKUT 0050 (AAC)

have experience in regulating gambling successfully, as an example when drafting the laws. At the moment such an extensive reform being enacted within the immediately foreseeable future remains wishful thinking. Going forward, if the positive trends continue, this may be realised.

Walberg: As discussed, above, the Illinois Supreme Court will likely rule in the J&J Ventures case by the end of 2016. Should the Court affirm the Fifth District Appellate Court and find that the IGB has exclusive jurisdiction to adjudicate contract disputes between terminal operators and establishments, it will have pervasive effects of the industry. First, it has the potential to create uncertainty and resulting chaos in the marketplace. Whereas Terminal Operators and Establishments previously operated under the settled law of Triple 7 regarding the validity of pre-licensure contracts, this decision may give Establishments and competitor Terminal Operators a platform to challenge the holding in Triple 7 that pre-licensure contracts are valid. Establishments may improperly view this decision as "carte blanche" to disregard and breach their current location agreements with Terminal Operators whose contracts were entered into and, in some cases, assigned pre-licensure. There are hundreds, if not thousands, of contracts currently in place at operating video gaming Establishments that may fall into this category. Second, whereas Triple 7 appeared to have a chilling effect on litigation, promoting widespread resolution of disputes between Terminal Operators

and Establishments as to the validity pre-licensure contracts, this decision will likely serve to re-open the proverbial floodgates to litigation on this topic, and will fuel even more challenges regarding renewal agreements. Third, most significantly for the IGB, this decision holds the jurisdiction and authority to adjudicate contract disputes between Terminal Operators and Establishments lies squarely with the IGB, not with the courts. Interpreted literally, it appears to cast a wide net over the types of disputes that fall within the IGB's purview, and may extend far beyond adjudicating the validity of pre-licensure agreements to any dispute concerning any aspect of a location contract at thousands of licensed locations in Illinois. The administrative burden on the IGB implicated by this decision would be astounding, requiring the IGB to expend substantial resources to hearing and adjudicating issues of pure contract law which require no agency expertise and are properly within the province of the courts.

For all of the above reasons, the Illinois Supreme Court should reverse the Fifth District's decision in J&J Ventures, find that the court, not the IGB, has jurisdiction to hear and decide contract disputes between Terminal Operators and Establishments, including those involving pre-licensure agreements. Ideally, the Illinois Supreme Court would also rule on the merits of the case, upholding the validity of the pre-licensure agreement at issue, thereby creating a unified precedent in Illinois on the enforceability of pre-licensure agreements.



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