

# REGULATORY CHALLENGES FOR A GLOBAL INDUSTRY

By John Maloney and Samuel Weaver

In order for the gaming industry to continue to grow and attract those entities that can be found suitable in what we call a “privileged” industry, gaming jurisdictions must be efficiently and properly regulated. How do we know if a gaming jurisdiction is creating that proper balance between efficient and proper regulatory oversight on the one hand, and free-flowing commerce on the other hand?

While not perfect, the state of Nevada does understand gaming regulatory investigations and how to conduct such investigations. Nevada has been, and still is, the jurisdiction that most other gaming jurisdictions rely upon; it is the benchmark jurisdiction in gaming regulation. The reasons are many, but one very apparent reason is that the regulation of gaming is a number one priority in Nevada, not an afterthought. Nevada understands how to properly regulate gaming, from licensing investigations to ongoing oversight and review of existing licensees. It is one of the few gaming jurisdictions that requires self-reporting, from the creation of approved compliance plans to the formation of formal compliance committees.

When looking at other gaming jurisdictions, a good indicator and measure of how a gaming regulatory jurisdiction operates is to review how the regulatory investigation is conducted. It will not take long to figure out the capabilities of each respective jurisdiction if there is any complexity to the licensing/suitability investigation.

The following is a review of different licensing scenarios and what to expect based on certain criteria, such as domestic or international investigation, public company or closely held company, Nevada licensee or not. The different fact patterns are meant to be a guide for those gaming attorneys who are representing gaming clients and attempting to move through the investigative process in North America outside of Nevada.

### U.S.-Based Client with Prior Approval in Nevada

#### **Public Company or Closely Held Company**

A suitability or licensing approval in Nevada as either a U.S.-based public company or closely held company are best-case

scenarios. There is no better foundation if there is a business need to move into other gaming jurisdictions with your client. For example, certain vendors (such as gaming manufacturers) will want to sell their products in multiple gaming jurisdictions. Normally, if the vendor has approval in Nevada, the investigative process is much easier and much quicker in the vast majority (if not all) of the other gaming jurisdictions.

Many gaming jurisdictions allow gaming vendors to sell product in their gaming jurisdiction once an application is deemed complete and prior to conducting a complete regulatory investigation. The catch here is that a temporary certification is much more difficult to obtain if there is no prior approval in Nevada.

Based on experience, all too often the first question a gaming regulator will ask is whether the gaming applicant is approved in Nevada. If not, the second question is “Why not?” The luxury of an approval in Nevada means the investigative process in most gaming jurisdictions is form over substance, without the long, unnecessary delays.

However, the process of obtaining the Nevada approval is challenging and can be costly, time consuming and frustrating. There is a reason other gaming jurisdictions look to and rely on Nevada, and that reason is the extensive investigation that is conducted there. An approval in Nevada brings instant credibility in the gaming world.

### U.S.-Based Client Without Prior Approval in Nevada

#### **Public Company**

This is the next-best-case scenario. The good news is that gaming regulators will have access to U.S. law enforcement sources, U.S. regulatory sources such as the Securities and Exchange Commission, and public financial information such as 10K reports and audited financial statements. Public financial documents are an excellent basis for further review of the gaming applicant or for the gaming regulator to rely on. Finally, there is some comfort level that another regulatory body has conducted a review of the applicant and

will continue to provide oversight of the applicant. This is important because of not being able to rely on a prior Nevada approval.

#### **Closely Held Company**

This scenario is more problematic because of the lack of public information and the inability to rely on another large regulatory body such as the SEC in the case of a public company. However, because there is access to U.S. law enforcement sources and the ability to review accounting records in English, some concerns will be alleviated. Information under this scenario will need to be researched, analyzed and developed, and thus cause delays. If the applicant is well-organized and has a transparent accounting review in place, things will be much easier.

Under both aforementioned scenarios, without the comfort level of a prior approval in Nevada, the investigative process will take much longer. The reasons might vary — lack of a gaming regulatory infrastructure, lack of resources to efficiently and effectively address an investigation of any complexity or, in many cases, reluctance on the part of the regulator to take any action out of fear of being embarrassed at a later date. This might sound harsh, but this is reality. All too often the fact that a company might need the regulatory approvals to conduct business is clearly overlooked. Most gaming regulators do not appreciate or understand the commercial implications of delays because very few have ever experienced the harsh realities of the private sector and having to meet such things as payroll.

Many of the emerging gaming jurisdictions or smaller gaming jurisdictions today do not have the infrastructure and experience that Nevada has in conducting investigations. Thus, the existence of a separate gaming

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regulatory body whose sole function is gaming regulatory oversight does not exist. In Nevada, the casino industry is vital to the state and a key source of revenues. It is in the best interest of the gaming industry in Nevada to be as efficient and diligent as possible in processing new applications and bringing resolution to those investigations. One only has to look at the Strip in Las Vegas to understand that Nevada is doing something right.

Again, the aforementioned comments are not meant to be critical, but are intended to point out what is reality. The small business operator who depends and survives on gaming regulatory approvals is at the arbitrary whim of the gaming regulator.

The foregoing statement does not include many of the Tribal Gaming agencies in California, Arizona, New Mexico and Michigan. Most of these agencies understand the commercial realities and are able to move much more quickly and efficiently than many of the large state bureaucracies.

#### **International-Based Client with Prior Approval in Nevada**

##### **Public Company or Closely Held Company**

The issue under this scenario is not whether the company will receive approvals in other gaming jurisdictions (because of the Nevada approval). Rather, it is a timely approval from each respective gaming jurisdiction once the Nevada thresholds are met. *[Note: If the international client has received an approval from Nevada, you can be assured that it was an exhaustive approval process. The Nevada review during an international investigation can take a year or more and hundreds of thousands of dollars. The point is that no other gaming body is willing or capable of conducting this strict level of review, especially if this review is conducted in a consolidated period of time.]*

The issue here, then, is the attraction to foreign travel and the delays this can cause in jurisdictions that do not grant temporary certification. Unfortunately, a common term among gaming regulators is “investivacation.” This is a term that refers to a vacation that overlaps with an investigation. With the comfort level that a Nevada investigation provides, regulators are able to free more time up for non-investigative review, confident that all of the important issues have already been covered. This is a harsh reality and can be viewed as a cost of conducting business.

#### **International-Based Client Without Prior Approval in Nevada**

The international investigation is almost always a challenge to even the most sophisticated gaming regulatory bodies, such as those in Nevada. There are often language issues, different accounting and legal structures, cultural differences, time zones that leave you upside down, and even different cuisines that can leave the stomach very unhappy.

If there are language issues, most likely there will be issues of translating financial and legal documents. There is a further issue of what specifically to translate because it is not possible to have every document translated. It will then be necessary to identify specific documents that need translation, and this can only be accomplished if there is an understanding of the accounting and legal framework. Bottom line, the international investigation cannot be accomplished with a superficial overview of the applicant and cannot be accomplished unless a well-thought-out infrastructure is in place to deal with the many challenges.

##### **Public Company**

In order to conduct a review of a public company, it would be best to start with the regulatory structure in place that oversees public companies. How is this regulatory body viewed by advanced Western financial institutions? A “white” paper on the regulatory system in advance of any regulator’s review is strongly recommended. Additionally, gaming regulators in Nevada from the Corporate Securities

Division could be a great help here because there is a very good chance Nevada would have had prior dealings with the respective regulatory bodies that oversee public companies.

The fact that there will be public financial documents available to review will also alleviate some of the concerns, even if some of the documents need to be translated. In all likelihood, the applicant has a credible accounting firm in place, which reports to the regulatory body overseeing public companies.

The best approach in this situation is to proactively educate the gaming regulators on the oversight of the public company and, to the extent possible, create similarities or equivalents between oversight of public companies in the foreign jurisdiction and the U.S. SEC. The operative term is “educate,” because if it is easy to understand upfront, it will save time and cost in the long term and will greatly assist in the approval process.

If the applicant is an existing gaming company and a manufacturer of gaming devices, the public filings might

If the applicant is an existing gaming company, it will be necessary to review the credibility of gaming jurisdictions, and the prior and current sales to such gaming jurisdictions. The first area to address is whether a compliance review is in place and how effective and reliable it is. Without any public scrutiny, as in the case of a public company, attention to detail here is critical. An effective compliance infrastructure could mean the difference between being granted an approval or not. If it is determined sales are being made to problematic gaming jurisdictions, it is essential to proactively address this and to stop such sales.

In the case of a private company that has not previously been reviewed by Nevada, a very organized, clear, systematic approach is mandatory. As already stated, this means everything from reviewing possible criminal issues and determining if cooperation with local law and federal law enforcement officials is possible, to understanding the accounting framework, and any compliance efforts expended by the applicant. Depending on the results of the above, a game plan should be created on how to effectively and efficiently proceed. It will be a challenge.

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state where the company is making gaming sales. It will be necessary to conduct a review on all gaming jurisdictions where sales have been or are currently being made to ensure they are recognized gaming jurisdictions. A good test here is to determine whether licensees in Nevada are making sales to the respective gaming jurisdictions. This is a very good, reliable indicator because sales to illegal gaming markets by a Nevada licensee will mean the loss of a gaming license.

Without prior Nevada approval, it is an uphill battle, but in the case of a public company, many of the prior suggestions can mean goodwill with the regulators, which can mean positive results.

#### **Closely Held Company**

This is the worst-case scenario, especially if there are language issues. There will be very little public information to access and very little regulatory oversight — if any — to rely upon. The gaming regulator will have to start from a zero level of understanding of the applicant, and this is where a lot of proactive work is necessary. An infrastructure will need to be in place to address both criminal issues (to include business associations) and financial issues (to include tax and reporting requirements). The gaming regulator will need to gain an understanding of the accounting and legal system, and with a well-thought-out infrastructure in place, this will be possible. For example, are generally accepted international accounting standards recognized and followed? Are local or federal law enforcement sources going to be helpful and cooperate with a “regulatory” investigation?

#### **Conclusion**

The integrity and thoroughness of the gaming regulatory investigation must be respected. This is not at issue here. What is at issue is the efficiency of this process and the ability to more effectively address issues and get on with business. Gaming companies file applications and expect to be investigated. Gaming companies need gaming approvals in order to conduct business in the respective gaming jurisdictions. Without such approvals, sales are not made, leaving companies with staying power to wait it out while smaller companies without staying power either leave the jurisdiction, lay off employees, go out of business, or all of the above.

If the applicant is not suitable, then the applicant does not belong in this “privileged” industry. On the other hand, if it is just a matter of not wanting to or not being capable of making a decision, then what is the purpose of the gaming regulatory body other than to invite applicants to the jurisdiction and then turn them away due to the inability to perform the job properly? Crawl out from underneath the desk and make a decision. ◻

*John K. Maloney is the Founder and Principal Attorney of Maloney & Tabor Inc. He formerly served with the Nevada Gaming Control Board and the Casino Control Division in Queensland, Australia.*

*Samuel G. Weaver is Chief Compliance Officer for Elektroncek d.d., a company based in Menges, Slovenia. He previously served with the Mississippi Gaming Commission and the Nevada State Gaming Control Board.*