



# ICLG

The International Comparative Legal Guide to:

## Gambling 2019

**5th Edition**

A practical cross-border insight into gambling law

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## Introductory Chapter:

1	<b>Shaping the Future of Gaming Law</b> – Jamie Nettleton, International Masters of Gaming Law	1
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## General Chapters:

2	<b>U.S. States May Now Legalise Sports Betting – But the Federal Wire Act Affects State Implementation</b> Mark Hichar, Greenberg Traurig, LLP	3
3	<b>Nothing is Permanent Except Change: A Commentary on the State of Global Online Gambling Regulation</b> – Dr. Joseph F. Borg & Dr. Samuel Gauci, WH Partners	8
4	<b>Money Laundering and the Gaming Industry in Macau SAR</b> – Pedro Cortés & Óscar Alberto Madureira Rato, Ling, Lei & Cortés – Advogados	11

## Country Question and Answer Chapters:

5	<b>Australia</b>	Senet Legal Pty Ltd: Julian Hoskins & Matt Zaba	16
6	<b>Austria</b>	Brandl & Talos Attorneys at Law: Thomas Talos & Nicholas Aquilina	25
7	<b>Belgium</b>	Sirius Legal: Bart Van den Brande	31
8	<b>Brazil</b>	LenziAdvocacia / BetConsult: Edgar Lenzi & Marcelo Munhoz da Rocha	36
9	<b>Bulgaria</b>	DD Consultus Limited: Denitza Dimitrova	41
10	<b>Canada</b>	Miller Thomson LLP: Danielle Bush	48
11	<b>Cyprus</b>	National Betting Authority of Cyprus: Filippos Kamenos & Spyros Tsakonitis	55
12	<b>Denmark</b>	Horten: Nina Henningsen	60
13	<b>Dutch Caribbean</b>	Gaming Legal Group / GLG Compliance: Peter Muller & Xavier Rico	66
14	<b>France</b>	Startlaw: Cloé Si Hassen & Marine Travailot	74
15	<b>Germany</b>	Melchers Law Firm: Dr. Joerg Hofmann & Dr. Matthias Spitz	80
16	<b>Gibraltar</b>	Hassans International Law Firm: Andrew Montegriffo & Louise Lugaro	87
17	<b>Greater Antilles</b>	Gaming Legal Group / GLG Compliance: Frederik van Eijk & Pedro Batista	93
18	<b>India</b>	Khaitan & Co: Ganesh Prasad & Surbhi Kejriwal	105
19	<b>Ireland</b>	Matheson: Chris Bollard & Deirdre Kilroy	111
20	<b>Isle of Man</b>	Appleby (Isle of Man) LLC: Claire Milne & Sophie Corkish	117
21	<b>Israel</b>	Herzog Fox & Neeman Law Office: Yehoshua Shohat Gurtler	123
22	<b>Italy</b>	Grimaldi Studio Legale: Giorgio Gallenzi & Marco Della Croce	128
23	<b>Japan</b>	Nagashima Ohno & Tsunematsu: Masayuki Fukuda	133
24	<b>Macau</b>	Rato, Ling, Lei & Cortés – Advogados: Pedro Cortés & Óscar Alberto Madureira	139
25	<b>Malta</b>	Gaming Legal Group / GLG Compliance: Leo Rodenburg & Frederik van Eijk	145
26	<b>Mexico</b>	Creel, García-Cuéllar, Aiza y Enriquez, S.C.: Begoña Cancino & Sofía Castañón	150
27	<b>Montenegro</b>	BDK Advokati: Luka Popović	155
28	<b>Netherlands</b>	Gaming Legal Group / GLG Litigation: Bas Jongmans & Samantha Andriess	161
29	<b>Norway</b>	Brækhus Advokatfirma DA: Brede A. Haglund & Alexander Mollan	167
30	<b>Philippines</b>	Romulo Mabanta Buenaventura Sayoc & de los Angeles: Herminio S. Ozaeta, Jr. & Marie Antonette B. Quiogue	173
31	<b>Poland</b>	WH Partners: Bartosz Andruszaniec	178
32	<b>Portugal</b>	Luiz Gomes & Associados: Gonçalo Afonso Proença	183
33	<b>Romania</b>	Nestor Nestor Diculescu Kingston Petersen: Cosmina Simion & Ana-Maria Baciu	189
34	<b>Singapore</b>	Rajah & Tann Singapore LLP: Lau Kok Keng & Daniel Quek	196
35	<b>Slovakia</b>	WH Partners: Robert Skalina	205
36	<b>Spain</b>	LOYRA Abogados: Patricia Lalanda Ordóñez & Fernando A. Martín Martín	211
37	<b>Sweden</b>	Nordic Gambling: Maria McDonald	217

Continued Overleaf →

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Country Question and Answer Chapters:

38	<b>Switzerland</b>	MME Legal   Tax   Compliance: Dr. Andreas Glarner & Dr. Alexandra Kömer	223
39	<b>United Kingdom</b>	Wiggin LLP: Jason Chess & Chris Elliott	228
40	<b>USA – California</b>	Ifrah Law PLLC: Jeff Ifrah & Jessica Feil	233
41	<b>USA – Illinois</b>	Taft Stettinius & Hollister LLP: Paul T. Jenson & Erin Lynch Cordier	237
42	<b>USA – Indiana</b>	Faegre Baker Daniels: Elizabeth K. Cierzniak	243
43	<b>USA – Mississippi</b>	Balch & Bingham LLP: Scott E. Address	249
44	<b>USA – Nevada</b>	Dickinson Wright PLLC: Kate Lowenhar-Fisher & Greg Gemignani	254
45	<b>USA – New Jersey</b>	Ifrah Law PLLC: Jeff Ifrah & Jessica Feil	260
46	<b>USA – New York</b>	Ifrah Law PLLC: Jeff Ifrah & Jessica Feil	264
47	<b>USA – Pennsylvania</b>	Ifrah Law PLLC: Jeff Ifrah & Jessica Feil	268

# USA – New Jersey

Jeff Ifrah



Jessica Feil



Ifrah Law PLLC

## 1 Relevant Authorities and Legislation

### 1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	New Jersey Division of Gaming Enforcement.	New Jersey Division of Gaming Enforcement and Casino Control Commission.
	Poker		
	Bingo		New Jersey Division of Gaming Enforcement.
Betting	Betting	Does Not Apply.	Does Not Apply.
	Sports/horse race betting (if regulated separately to other forms of betting)	New Jersey Division of Gaming Enforcement.	New Jersey Division of Gaming Enforcement and New Jersey Racing Commission.
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	New Jersey Division of Gaming Enforcement.	Does Not Apply.
Lotteries	Lotteries	New Jersey Lottery.	New Jersey Lottery and Division of Gaming Enforcement.
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	New Jersey Division of Gaming Enforcement.	Does Not Apply.
	Skill games and competitions with no element of chance	New Jersey Division of Gaming Enforcement.	New Jersey Division of Gaming Enforcement.

### 1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

While New Jersey now has some of the most expansive gaming laws in the country, the state only recently began the legal changes and reforms that have made it a gaming destination.

Although racetrack wagering was originally legal, all forms of gambling were made illegal in New Jersey from 1894 to 1939. In 1939, racetrack wagering was relegalised; however, other forms of gambling remained illegal for several more years.

It was not until 1976 that a voter referendum approved a constitutional amendment to allow for casino gaming in the state. However, that amendment specifically mandated that casinos are only permitted in Atlantic City. This amendment also ushered in the Casino Control Act, which is the authorising and implementing state legislation that lays out the specific framework for the state's casinos. The Casino Control Act is now the main legislation governing gaming in the state, and it is further supported by regulations issued by the Casino Control Commission and Division of Gaming Enforcement.

Online gaming was legalised in 2013, after a handful of prior attempts blocked by then-Governor Chris Christie. The bill ultimately signed amended the Casino Control Act to allow for online gaming as long as the gaming server is located in Atlantic City. The Division of Gaming Enforcement ("DGE") acted quickly to implement regulations surrounding online gaming requirements. New Jersey now has some of the most sophisticated online gaming laws and regulations in the country.

Sports betting – after many years of legal wrangling – was finally made legal in New Jersey in 2018. When the United States Congress passed the federal ban on sports betting in 1992 – the Professional and Amateur Sports Protection Act ("PASPA") – the law left a brief window for New Jersey to legalise sports betting. However, at that time, the state failed to act. Nonetheless, New Jersey returned to the issue in 2012 and attempted to legalise sports betting, but the professional and collegiate sports leagues sued the state under PASPA to stop the legalisation. Six years of legal challenges followed, culminating in a hearing before the United States Supreme Court in December 2017. In 2018, the Court ruled that PASPA was unconstitutional, paving the way for New Jersey – and other states – to legalise sports betting. New Jersey acted quickly, and Governor Phil Murphy signed Assembly Bill 4111, legalising sports betting at casinos, racetracks, and online on June 11, 2018. The first sports bets were placed in the state on June 14, 2018.

## 2 Application for a Licence and Licence Restrictions

### 2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, “Licences”) are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?

New Jersey has a robust licensing process for casinos, online gaming, racing, and related personnel.

For land-based casinos, the business entity operating the casino must be licensed, along with any applicable holding, intermediary, or related business entities as identified by DGE during the investigation process. In addition, key personnel and corporate leadership, including investors with greater than a 5% share and control over the business activities (“qualifiers”), must undergo suitability determinations. In some instances, institutional investors or other passive investors can secure a waiver from the suitability determination.

Online gaming operators are subject to similar licensing requirements: the relevant business entity must apply for an internet gaming permit and all relevant intermediary, holding, and other related business entities within the organisation are also subject to investigation. Further, key personnel, corporate leadership, and investors over the 5% ownership threshold with control over business operations are subject to suitability determinations.

Further, other gaming suppliers, online marketers, and gaming-related businesses that provide services to the gaming industry are subject to certain licensing requirements. New Jersey offers a Casino Industry Service Enterprise (“CSIE”) licence and Ancillary Casino Service Enterprise (“Ancillary CSIE”) licence. The CSIE licence is for gaming-related businesses, and the Ancillary CSIE licence is for junket enterprises. In both instances, the applicant entity – along with the applicable intermediary, holding, and other related business entities – must undergo an investigation, and key personnel, corporate leadership, and qualifiers are subject to a suitability determination. Businesses subject to such licensure include affiliate marketers, gaming platform providers of non-customer facing technology, and sports betting data services. Skill-based gaming operators are also subject to CSIE licensing requirements.

Businesses that provide services to casinos or gaming businesses but do not directly implicate gaming (e.g., janitorial services, cleaning services, uniform companies), along with some gaming-services companies that are not compensated through any form of revenue sharing agreement, must register as vendors with the state.

The New Jersey Lottery has just released a new registration and investigation process for courier lottery services. The registration and investigation are conducted in conjunction with DGE.

The New Jersey Racing Commission handles licensing for racetrack personnel and for off-track wagering licences, account wagering licences, and exchange wagering licences. For state racetracks that wish to offer sports betting, the Racing Commission handles the relevant licensing process.

### 2.2 Where Licences are available, please outline the structure of the relevant licensing regime.

New Jersey currently has nine casinos in Atlantic City. Several additional sites in Atlantic City are available for casinos and relevant licensing.

Online gaming operators must be partnered with one of the state’s land-based casinos to secure an internet gaming permit and offer

internet gaming. When New Jersey launched online gaming in 2013, DGE originally permitted only one skin (that is, one branded website) per land-based casino, but the regulators have since expanded this limit to five skins per land-based casino. At this time, the majority of skins have been secured but with two new recently opened casinos (Ocean and Hard Rock), along with several other available skins, there are still opportunities for online operators.

For online sports betting, the state has authorised up to three skins per underlying land-based operator. Further, online sports books can partner with one of the state’s casinos or racetracks to offer online sports betting.

### 2.3 What is the process of applying for a Licence for a Relevant Product?

For all forms of licensing – casinos, internet gaming, sports books, CSIE, and Ancillary CSIE – the applicant entities must complete a Business Entity Disclosure form and qualifiers must complete the Multi-Jurisdictional Personal History Disclosure and related state supplement. Upon initiating the process, the corporate officers handling the licensing process meet with DGE or other applicable licensing body to review the initial application paperwork and other details. The state then conducts all relevant investigations, including on-site evaluations, product testing at the state laboratory, and interviews with all qualifiers.

For CSIE applicants, businesses can initiate the licensing process while still securing the necessary casino commercial partners. However, the vendor registration can only be submitted by a sponsoring commercial casino partner.

Once DGE completes its investigation, it reports the results to the Casino Control Commission, which holds final authority in issuing licences.

Courier lottery registration with the state lottery is a similar process, where the applicant must complete the relevant paperwork and then submit to background investigations and interviews as determined by the New Jersey Lottery and DGE.

The Racing Commission follows similar processes for licensing wagering products. For racetrack officials, the Commission participates in the Association of Racing Commissioners International multi-state licensing and fingerprinting programme, which allows applicants to submit one application for multiple states.

### 2.4 Are any restrictions placed upon licensees in your jurisdiction?

There are no general restrictions placed on licensees, beyond specific gaming requirements as outlined for each type of product.

### 2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.

Casino licences and casino key employee licensees are valid for five years. Internet gaming permits must be renewed annually. CSIE and Ancillary CSIE licences are valid for five years.

In all instances, licences are a privilege and are held based on the continued compliance and good conduct of the licence holder. They can be revoked by the Casino Control Commission, DGE, or the Racing Commission for a number of reasons, but licence holders are entitled to due process prior to any suspension or revocation action being taken.

DGE has been assertive in requiring the ongoing good conduct of its operators, including monitoring licensees for activities in black or grey markets around the world. For example, the agency has issued letters to licence holders advising them that activities in unregulated markets may be grounds for revocation of their New Jersey licence.

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**2.6 By Relevant Product, what are the key limits on providing services to customers? Please include in this answer any material promotion and advertising restrictions.**

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Patrons must be 21 years of age to wager in New Jersey, except for *pari-mutuel* wagering which allows customers from 18 years of age. New Jersey observes general advertising rules which provide that advertising must not be deceptive or target minors. DGE also has a robust process for approving online marketing materials, including both advertisements and promotional items. All such items must be approved by DGE prior to use. To help streamline this process, DGE has approved “templates” for operators to submit, which allow for quick approval.

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

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New Jersey land-based casinos are subject to an 8% tax on gross gaming revenue. Internet gaming is taxed at 15% on gross gaming revenue. Sports betting is taxed at 8.5% for in-person wagers and 13% for online wagers. There is an additional tax of 1.25% for land-based and 2.5% for online gross gaming revenue that is remitted to the Casino Reinvestment Development Authority.

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

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New Jersey imposes some social responsibility requirements, particularly on problem gaming. Information on problem gaming resources, including websites, phone numbers, and the availability of self-exclusion, must be prominently displayed in both land-based facilities and online platforms.

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**2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?**

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New Jersey does not have any state-level AML, financial services regulations, or payment restrictions specific to gaming. Casinos and gaming operators are obligated to adhere to federal AML, financial services, and payment laws and regulations.

At this time, New Jersey does not permit gaming with virtual currency.

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### 3 Online/Mobile/Digital/Electronic Media

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**3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?**

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New Jersey law requires that gaming servers must be located in Atlantic City. Therefore, operators located outside the jurisdiction must secure locations and resources to establish and operate servers in the city limits.

Further, the federal Wire Act prohibits the transmission of sports betting information across state lines. Therefore, online sports betting operators have federal requirements to ensure the servers are located within New Jersey.

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**3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?**

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Beyond server location, online operators must comply with other restrictions, including using appropriate geoblocking services and know-your-customer protocols to protect customers. Further, DGE has promulgated regulations regarding minimum customer data privacy requirements.

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

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New Jersey has promulgated regulations for skill-based gaming that allow such games to be placed on casino floors. The regulations set forth requirements including theoretical pay-out rates and fair gaming standards. The skill-based gaming terminals are subject to similar licensing and registration requirements to those of standard slot machines.

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## 4 Enforcement and Liability

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**4.1 Who is liable under local law/regulation?**

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New Jersey imposes liability on gaming operators and businesses for violations of gaming laws. Further, in instances of unlawful and illegal gambling operations, the game operators or promoters are liable, but not game participants.

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**4.2 What form does enforcement action take in your jurisdiction?**

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DGE, while an arm of the state attorney general, refers criminal matters to the criminal bureau within the attorney general’s office. DGE, the Casino Control Commission, and the Racing Commission handle civil enforcement and monetary penalties.

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

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No other non-national laws impact upon liability and enforcement.

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

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Gambling debts, in the form of credit issued by casinos or through private parties, are enforceable in New Jersey.

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## 5 Anticipated Reforms

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

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As New Jersey has the most expansive gaming industry in the country, there are not any significant reforms on the horizon. With the advent of online gaming and sports betting, the state is the first

in the nation to offer a full compliment of land-based and online casino, poker, and sports betting products.

There have been recent attempts to expand the casino industry beyond Atlantic City. In 2016, the state put the question to the voters through a state-wide referendum that would have allowed for new casinos to be developed in the northern part of the state. However, this referendum failed and is unlikely to be put on a ballot any time soon.

Now, New Jersey remains focused on refining the state's regulations for sports betting to ensure it is a national leader in quality land-based and online sports betting products. This includes working with operators to create a sophisticated market that allows for in-demand styles of wagering such as spread wagering, in-play wagering, and wagering on esports events.



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Considered one of the world's foremost attorneys in online gaming law, Jeff Ifrah is nationally ranked by *Chambers USA*, which states he "is noted for his sophisticated gaming and licensing practice that emphasises novel areas of the sector [like] cryptocurrency issues, internet sports betting and social media integration". His firm Ifrah Law has been at the centre of most of the important prosecutions and lawsuits in the iGaming industry.

Jeff leverages his decades of experience in betting and wagering law to counsel established gaming companies and startups throughout the business cycle, focusing on compliance with state and federal legislation and avoiding future litigation. He has also gained a strong reputation in other related internet-based industries such as payment processing and money transmission. Jeff is a founding member of iDevelopment and Economic Association (IDEA), a non-profit association seeking to grow jobs and expand online interactive entertainment business through advocacy and education.



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A rising star in the area of online gaming law, Jessica Feil of Ifrah Law works with all sectors of the industry from sports books to online marketing agencies to platform providers. She advises online gaming companies on the sports betting and online gaming licensing process, and counsels international gaming companies on requirements for money transmitter licensing and compliance with federal and state laws in relation to cryptocurrency.

Jessica is frequently asked to present at industry events around the country and has published extensively on the blog, *Ifrah on iGaming* on cutting-edge topics like initial coin offerings (ICOs) and skin betting. She is a member of the Video Game Bar Association and the Esports Bar Association.



Ifrah Law has represented online gaming clients since the inception of the industry, and now represents many of the largest iGaming companies and industry associations around the world. The firm was instrumental in the creation of the legislative and regulatory frameworks in three U.S. states which currently permit online gaming.

Ifrah Law advises online casino operators, poker and fantasy sports sites, and payment processors on class action lawsuits, mergers and acquisitions, vendor and supplier issues, government investigations and criminal matters. Its attorneys are known for representing clients in cases involving progressive areas of the gaming industry, such as sports betting, social gaming, skins betting, iGaming, online sweepstakes and lotteries, peer-to-peer betting and mobile gaming.

Ifrah Law publishes the blog, *Ifrah on iGaming*. The firm also submitted an *amicus* brief to the Supreme Court in the groundbreaking case which finally led to legalisation of sports betting across the U.S.

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