THE GAMBLING LAW REVIEW
SECOND EDITION

Editor
Carl Rohsler

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Welcome to the second edition of *The Gambling Law Review*.

Last year I said that my aim in editing this book was to try to fulfil an ambition that I had held for nearly a decade – namely to develop a structured summary of the corpus of gambling laws across a wide variety of different jurisdictions. I hoped that it would be a useful book for the busy in-house counsel seeking to understand the structure of the law in a particular country, and for the academic studying the growth and development of law, as well as a useful case study in the field of comparative law.

All such projects take time and cooperation. Last year, in our first edition, we surveyed the law of 15 different jurisdictions – enough to demonstrate a ‘proof of concept’, but still somewhat smaller than my aspirations. This year, I am pleased to say that we have 10 more chapters, covering countries as diverse as Japan, Russia and Alderney, as well as two useful overviews of the EU and the federal US positions. Of course, 22 jurisdictions and three overviews does not yet make the guide comprehensive, still less an ‘encyclopaedia’, but I think that it is clear that we are well on the way to realising our aim of compiling a valuable resource in collecting and analysing the world’s gambling laws. I am all the more pleased now that the contents will be fully available online as well as in printed form.

As always, I am extremely grateful to those busy lawyers (all lawyers are busy, but gambling lawyers more than most!) who have agreed to spend their time and effort in distilling their knowledge and experience into a chapter. Distillation is a tricky science, and I am reminded a little of the line of Blaise Pascal who, writing to his friend, apologised as follows: ‘Je n’ai fait celle-ci plus longue que parce que je n’ai pas eu le loisir de la faire plus courte’ (‘I wrote you a long letter, because I did not have the time to write a short one’). It is indeed a skill to decide what one can say about a complex area of law in a short space, to be both compact and comprehensive. Generally speaking, we have tried to maintain the same form for each of the chapters in order to ensure a degree of conformity of style and subject matter – but it is true that there is such a spectrum of different approaches to gambling law, that we also have to exercise flexibility in order to make sense of the subject matter.

In selecting the territories for this review, I have sought to include a wide range of different countries across the world. The selection is based on a number of factors, including the advice of clients and practitioners, the importance of gambling activity in the jurisdiction,

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1 I am going to propose M Pascal as the patron saint of gambling lawyers. A powerful thinker and logician he was also a persuader and mathematician who, with Fermat, essentially created the science of probability. His research into the possibility of a perpetual motion machine gave rise to his invention of the Roulette Wheel, and he even applied the logic of wagers as a basis for rationalising belief in God.
and even matters as simple as population and GDP. I have, I am sure, missed a number of countries that thoroughly merit inclusion. I take full responsibility for (but mean no offence by) those omissions. I should very much like to achieve a little more coverage in Asia and Europe, as well as a foray into Africa, which would provide some welcome diversity – and I am happy to receive suggestions and volunteers.

Looking back at my preface to the first edition, I am struck very much by how far the world has changed in a single year. Writing in June 2016, I would have bet against both a Trump presidency and the British exit from the EU. Weighing up the implications of these events and shifts in public feeling is tricky: will the new US administration take a more liberal position on gambling, given that the president is a champion of individual choice (and a noted casino owner)? Will the UK’s withdrawal from the EU spell a change in Gibraltar’s status as an international gambling hub? We cannot yet know. Perhaps when we have finished the 10th edition of this work (no doubt covering by then, 50 jurisdictions) we will be able to look back across the editions as legal historians and chart how different political forces have impacted on the sector.

Before we get started, I want to express my sincere gratitude to all those who have helped bring this second edition together – contributors both old and new, for their time and commitment as well as the editorial team at The Law Reviews, for their good organisation and encouragement. Thank you all. This is very much a team effort, and I am extremely grateful to you for bringing this project to its next stage.

Carl Rohsler
Squire Patton Boggs
London
June 2017
Chapter 1

GAMBLING: A LEGAL AND PHILOSOPHICAL OVERVIEW

Carl Rohsler

I INTRODUCTION

The following chapters of this book set out a comparative analysis of the laws relating to gambling across a variety of states and jurisdictions. It is hoped that subsequent editions will include still more jurisdictions and build a complete reference point for lawyers and practitioners interested in this fascinating and complex field. The objective of such a work must necessarily be limited to providing a general guide to the laws in each individual state. However, bringing together these summaries also affords a different opportunity: the chance to compare and contrast different legal approaches. Comparative analysis is important because it helps us to understand rather than simply know the law, by explaining and demonstrating the different cultural contexts in which law has developed to mirror and control the societies in which those laws operate.

Gambling law is an apt topic for such an analysis for a number of reasons. First, compared with some legal disciplines (such as financial regulation, digital copyright, competition or telecoms law) gambling has a very long history and deep roots in human culture and legislation. To give two examples, until 2007, UK gambling law included contributions from the Gaming Acts dating back as early as 1710 and 1738. The current law relating to gambling in India (the Public Gambling Act), dates from 1867. There are many other examples.

Second, gambling is often considered to be a distinct field of human activity, subject to a discrete set of rules all of which address some fairly basic legal problems about controlling human conduct. Consequently, the corpus of available materials is thankfully quite limited, but the subject matter is a topic that affects and interests the public in general, involving consumers’ basic rights and desires, and also social dangers, the potential for criminality, addiction and so on, as well as having moral and religious resonances. In short, anyone who wishes to understand gambling law needs to keep in mind two principles: that all gambling law is local and, more importantly, that the attractions of and risks associated with gambling are universal.

A further reason why gambling law is one of the most interesting areas for academic study is that, in the past two decades, the advent of the internet has caused the availability of and social attitudes toward gambling to change considerably. This in turn has forced national governments to reconsider how the law should change and adapt to deal with these new technological and cultural developments. Gambling is therefore not only a field of diverse legal approaches, but an example of law undergoing rapid evolution. Currently, no fewer than 10 different EU Member States are considering changes to their laws on gambling regulation.

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1 Carl Rohsler is a partner at Squire Patton Boggs (UK) LLP.
As a result, one of the unusual challenges that faces gambling lawyers is the need to advise not only on what the law is in a particular jurisdiction, but also to assist gambling operators (and sometimes regulators) to understand how to predict future developments in the law. Businesses involved in gambling (be they operators, or those who provide ancillary services to operators) often have an obsessive focus on the way that the law might develop – how different countries may liberalise (or restrict) access to gambling, how they are likely to tax it, and regulate it, and their attitude to foreign interference in a local market. In such activities there is always a significant tension between the desire to capitalise on changes to the law (or uncertainties in its enforcement or interpretation) and the overall desire to remain compliant and operate within the licences that have been granted to the operator.

In making those judgements one has to understand the underlying attitudes and pressures on lawmakers, and the different solutions and models that might be developed. So it is worth spending time considering the wider contexts and characteristics of gambling in order to develop what might be described as an ‘instinctive feel’ for how a particular jurisdiction or government will deal with the issues involved. First, therefore, let us look (albeit very briefly) at some of the cultural influences that have shaped attitudes to gambling.

II CULTURAL CONTEXTS

Gambling is one of those activities that has an essentially universal appeal. Wherever we look in the world and in whatever culture, we find humans competing, protecting families and bonds of kinship, engaging in commerce, involved in conflict and, when time allows, creating art and playing. The urge to hazard and to play is something found in all cultures and at all periods in history after man as a species developed a sufficient sophistication to have time for some kind of leisure. We find gaming tokens in Ancient Egypt, Meso-America, across the Roman Empire and deeply ingrained in Asian culture. In short, gambling as an activity is as ubiquitous as art or music.2

The question for the student of gambling, as for the anthropologist, is not whether people will gamble, but how gamblers, governments and wider society view and control such conduct. Although gambling is a human constant, the way in which society views such conduct has varied widely over the centuries. Very often, the basis of the treatment of gambling is religious or cultural. But as with many religious or cultural ideas, the ideas that lie behind such religious or cultural notions are pragmatic. Let us isolate some of these.

In many cultures, we find gambling frowned upon because at its heart is a conflict between players, which leads to one person giving up his or her possessions to another unwillingly as a result of losing. One can trace the roots of such a belief back into the very earliest societies when resources for survival were scarce and required a group effort to deliver a harvest capable of sustaining the community through the winter seasons. In such circumstances, spending time in a pursuit in which people redivided those resources (rather than creating new ones) was essentially counterproductive – and so should be an activity either banned altogether or at least heavily restricted to those times and places when there was true leisure to be taken. It was, in essence, a waste of precious time and something that brought people into needless conflict – so a number of societies condemn gambling on the

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2 An excellent recent study of the history of gambling is Random Riches: Gambling Past and Present, Edited by Manfred Zollinger (Routledge, 2016).
basis that it is socially divisive and unproductive. In that respect it can be distinguished from sports, which might be said to increase stamina, strength or skill, and therefore have some element of social utility.

III RELIGIOUS CONTEXTS

Apart from the lack of social utility in gambling, one widespread religious concept is that in order to be close to the divine, man must disassociate himself from material desires. Christianity has strong views on the need for poverty and simplicity of life, as well as the importance of giving away material possessions. In Buddhism, the desire for things is seen as the central barrier to the attainment of enlightenment, and in Hinduism the ideals of living simply, without luxury, and of working hard are central to the ‘dharma’, or duty that each individual undertakes in life. The excitement and worldliness of gambling for monetary winnings seem contrary to all of these ideals. The contrast between the divine and the material could not be more clearly juxtaposed than in the image (recorded in all four gospels) of Roman soldiers casting lots for Christ’s garments at the very point of his crucifixion.3

Another way in which gambling comes into conflict with religious observance is that it emulates certain aspects of religious practice. One important function of the priestly classes of many early religions was the prediction of the future (success in battle, times of flood and times of harvest or the will of God more generally) by interpreting an act of nature or of random chance. In ancient Rome, the interpretation of entrails (‘haruspication’) was a relatively mainstream part of religious practice (from which we have the more common word ‘auspices’). There are many other forms of divination that play on the random, including numerology and ceromancy (the dropping of hot wax into water). Prominent among these are ‘sortilege’ (the drawing of lots) ‘osteomancy’ (the casting of bones) and ‘cartomancy’ – the prediction of the future using cards such as the tarot. In each of these three practices one can see immediate parallels with gambling behaviour, where marked knuckle bones are transformed into dice, the drawing of lots mirrors the selection of lottery tickets and the shuffling and turning of the tarot deck is transformed into the card games that we know so well today.

In case this is thought to be a somewhat slender and theoretical basis as a cultural foundation for gambling, it is worth noting that there are more than 70 references in the Old Testament to the drawing of lots to determine God’s will (including, for example, the decision to throw Jonah into the whale and David’s decision to start battle against the Philistines). The tools of divination (the stones of ‘Urim and Thummim’) were literally attached to the breastplate of the priest in the Book of Exodus. In the New Testament, following the death of Judas, the apostles decided upon the identity of the new apostle (Matthias) by a similar process, and in a completely different religious context, the choosing of the identity of the Dalai Lama is revealed by random selection of names spun round in bowls of barley meal.

So at the heart of gambling behaviour we find practices that emulate important sacred rites. It is literally an act of playing with ‘the wheel of fortune’ or calling upon the ‘Fates’ or ‘Lady Luck’. Gambling may therefore be seen as a misuse of religious tools for worldly purposes. All these factors create feelings of suspicion (perhaps even superstition) in relation

to gambling. To be clear, gambling and religious divination are not the same, and do not necessarily spring from the same origins, but they do tap into the same deep human beliefs about fate, luck and predicting the future.

IV SOCIAL PERCEPTION AND SOCIAL RISKS

One of the difficulties of legislating for gambling is that it encompasses a wide variety of different social activities with completely different social perceptions and risk factors. In considering the gambling landscape of a particular jurisdiction and the way that gambling is likely to be regulated, it is important to have an overall grasp of what is popular, and why. This includes a consideration how gamblers are perceived (and how they perceive themselves), the types of gambling that are popular and the risks arising to players as a result. This is a very complex topic, well beyond the scope of an introduction such as this, but suffice it to say that to understand legal systems designed to control gambling, one requires an understanding of the role and character of different forms of gambling within that society.

One may start with the types of gambling that are actually popular. Poker is a very popular game in the USA, but in India it is largely unknown, with rummy being the more popular card game. Sic bo and Pai gow are not popular in the West, but form a mainstay of Asian gambling. Backgammon only has wide appeal in Turkish, North African and Arab societies while Pachinko is a curiously Japanese phenomenon.

Another way of dividing the landscape is to categorise gambling by demographic and social risk. High-stakes casino games may often be regarded as pastimes reserved for rich tourists and James Bond-esque characters who can afford to lose and require little in the way of social protection. However, a government considering the regulation of gaming machines in working men’s bars or cash betting on cricket by millions of citizens on the Indian sub-continent might quite properly focus on the social harm that gambling can cause in societies where disposable income is low. Other forms of gambling, such as bingo, have a completely different social connotation and function – being primarily a ‘risk-free’ activity enjoyed as part of friendly sociability (and may therefore actually act as a form of ‘social service’ rather than a social risk). Still other forms, such as lotteries, actually form a mainstay of charitable giving (and may not even be regarded as a form of gambling by many of those who buy tickets).

V GOVERNMENT AS GAMBLING OPERATOR

Even if gambling is treated simply as a morally neutral economic activity, it requires some form of legal control in the same way as other commercial activities. There needs to be a degree of regulatory oversight to ensure fairness and consistency (all the more so in relation to an act that is inherently unpredictable and prone to manipulation). Consequently, as a matter of public order, governments have often intervened in order to ensure a measure of consistency and fairness.

However, and almost inevitably, the involvement of government in gambling has not been restricted to its control or suppression. For many centuries, different types of ruling authority have recognised that there is much to be gained from organising and permitting gambling as a valuable means of deriving state revenue. There are many historical examples of governments appropriating control of gambling. Lotteries have been used to fund military
expenditure, cultural monuments and to raise funds to help with disasters. State lotteries remain one of the most ubiquitous forms of gambling (and in some jurisdictions is the only form of gambling allowed).

The intervention of government in gambling gives rise to a sometimes uncomfortable conflict of interest. Once a government organises and profits from gambling through taxation, it cannot by the same token condemn it as illegal or morally inappropriate. National lotteries may help many good causes, but the net economic effect of such state-based gambling is nearly always a redistribution of wealth away from the poor (who proportionately spend more of their disposable income on lottery tickets than the rich) in favour of the better off (who tend to enjoy the type of educational, cultural and sporting activities that lotteries often fund). Further, governments that regulate gambling have to tread a careful balance between criticising the social harm that gambling can cause to a small minority of players, and accepting and acknowledging government’s own involvement as a gambling operator.

VI  MODELS OF REGULATION

Academics⁴ have distinguished five different generic models for describing the different regulatory approaches to gambling, which exist along a spectrum. They may be summarised as follows:

a  Some governments (mostly those that have a strong religious component – such as some Arab and Asian regimes) regard gambling as a sin. Since such governments regard part of their duty to eradicate sin within the population, these states take the view that gambling should be subject to a near or total ban. The criminal law is used to prevent gambling, but also to prevent the advertising of gambling or access to online gambling sites located abroad.

b  There are governments that take a highly paternalistic approach towards social freedoms of their populace, and seek to impose tight controls on gambling. Such societies may have a limited state lottery or other state-owned gambling, but will not usually allow gambling to be operated by private enterprise. Such governments may also permit casinos to exist in tourist destinations, but ensure that access is restricted to the foreign population only and that local people are barred. Examples of this type of approach (expressed generally) include India, Vietnam and North Korea.

c  There are governments that recognise the social dangers of gambling, but also the freedoms of their own citizens to make a choice about their forms of entertainment. These governments generally restrict access to gambling but also take a pragmatic view that prohibiting gambling is extremely difficult (and may not be morally justifiable in a democratic society) and therefore permit most forms of gambling, though subject to careful regulation. Most continental European governments used to fall within this category, though a number have now moved to greater liberalisation of the market.

d  There are governments who treat gambling as being merely another form of commerce and who provide a liberal regime for operators. In these jurisdictions, one is likely to find gambling opportunities integrated within normal retail environments. Such jurisdictions still have rules designed to protect children and the vulnerable from

⁴ For example, as discussed in Professor Peter Collins’ Gambling and the Public Interest (Praeger, 2003).
exposure to gambling and will normally have a blend of private enterprise-led gambling of all forms as well as some state-controlled gambling (such as a national lottery). The UK is an example of such a liberal regime.

Finally, are those jurisdictions that actively encourage gambling within the state as a means of generating tax revenue and employment for the local population. Formerly, such states were interested primarily in encouraging tourism using the inducement of gambling and entertainment. Destinations such as Macau and Las Vegas exemplify this approach. However, more recently the prevalence of online gambling has created new ‘hot spots’ of activity (Gibraltar, Malta, the Isle of Man, Alderney, Kahnawake and Curaçao being obvious examples). In such jurisdictions, governments seek not to attract tourists, but gambling operators with favourable tax regimes and promises of robust technology and flexibility of approach.

VII THE ‘DNA’ OF REGULATORY REGIMES

Aside from the overall intention of regulation, there is also the question of the historical perspective of the relevant regulator. In certain jurisdictions, regulation has developed in an environment where the principal function of the regulator was to ensure that those who were involved in gambling had no connections with organised crime. In such jurisdictions, the level of due diligence on potential licensees can be extremely extensive and issues of ultimate beneficial ownership, source of funds and affiliates and other related third parties are often the subject of very detailed investigation. Other jurisdictions where criminal involvement in gambling is or has been less common are inclined to take a more ‘risk-based’ approach, targeting resources in proportion to the perceived social harms of types of gambling. Finally, there are those jurisdictions that might be said to provide a more ‘light-touch’ regulatory approach. This can manifest itself in a number of ways – either in allowing ownership structures to be permitted that are more or less opaque, imposing less rigorous reporting obligations, imposing less strict rules in relation to account ownership/know-your-customer checks and so on. It may be harsh (but it may also be fair) to say that at the end of the spectrum are regimes designed to provide a badge of respectability to operators who wish to enjoy the benefits of a largely toothless regime.

VIII LEGAL CONTROL OVER GAMBLING

The traditional way of controlling gambling activity was (1) to restrict those individuals who could offer gambling services and (2) to control the premises from which gambling could legally take place. For many years, this approach worked perfectly well and provided a good measure of control for government as well as defining in clear terms where the gambling was taking place and therefore which authority should regulate (and if appropriate, tax) its conduct. Indeed, that method still provides a perfectly workable mechanism for the control of much gambling activity around the world.

However, with the advent of freely available long-distance telephony and, subsequently, remote communication such as the internet, new questions arose about ‘where’ gambling was taking place and therefore which government should or could control its regulation as a matter of law.
At this point, it is important to emphasise that there is no ‘right’ answer to the issue of jurisdiction. Different governments have taken different approaches, each of which is essentially legitimate. All models operate by reference to the basic ‘building blocks’ of a gambling transaction.

The first of these is the customer. Normally, one considers the customer to be an individual interested in enjoying gambling services. Of course, in some cases, the individual customer may itself be a gambling operator seeking to offset or ‘hedge’ its risk. However, irrespective of whether the customer is in the business of gambling itself, one can still recognise it as a distinct counterparty.

The next building block is the gambling operator, which may be defined in a variety of different ways but, for present purposes, can be said to be the organisation that is in the business of offering gambling services.

In addition to these building blocks, there are one or two other key activities that might be used as a point of control. The first of these is the location of the provider of the financial services that enables the gambling to take place. The provider of financial services is not itself in the business of gambling, but it may be said to be an accessory involved in assisting, aiding or abetting the gambling to take place. The other activity normally associated with gambling is advertising – essential to the process of bringing the customer to the gambling operator.

In order to demonstrate how these building blocks can be arranged to create a coherent legislative strategy (and one that can change), it is probably best to provide some examples.

IX THE UK POSITION ON JURISDICTION – A STORY OF CHANGE

In English law, the general test for determining whether the English criminal courts have jurisdiction over a particular matter is known as the ‘last act test’. In summary, one analyses each of the acts that constitute the criminal offence (the *actus reus*) and then determines whether the last of these occurs within the UK borders. Where this is the case, the English courts will have jurisdiction to prosecute the accused party. However, where the ‘last act’ takes place outside the United Kingdom, the offence is deemed to take place abroad and is normally beyond the power of the courts. Applying that test to the concept of unlicensed gambling, the consensus view is that the ‘last act’ that constitutes the offence of ‘providing facilities for gambling’ takes place when a betting or gaming instruction is received by the gambling operator and acted upon (i.e., a bet is accepted or a decision to partake in the game is acknowledged). Until that point, no gambling has taken place at all. Based upon that analysis, the offering of gambling by an operator outside the United Kingdom could not create an offence justiciable by the English courts. However, and by contrast, were there to be an offence of advertising foreign gambling (as indeed there was until 2014) then that offence would be completed at the point that the advertisement was effective within the United Kingdom (i.e., published and available to UK citizens) and therefore would be justiciable by the English courts even in circumstances where the operator was based outside the UK.

This approach had a number of advantages. First, it created legal certainty and showed due deference to principles of international comity. It also allowed for a measure of control because although UK citizens could freely gamble with operators abroad, there was still a measure of control in relation to advertising of those services in the UK. However, the approach also had shortcomings. It created a ‘two-tier’ regime, with operators both within and without the UK being able to access the UK market despite operating at different tax
regimes, placing UK-licensed operators at a competitive disadvantage. Also the law did not fully achieve the policy objective of protecting the UK public from illegal or unregulated gambling offered from abroad.

The regime changed by virtue of the passing of the Gambling (Licensing and Advertising) Act 2014. Under that legislation, the test of whether a licence was required changed from being based upon the location of the relevant gambling equipment (i.e., the locus of the gambling) to the location of the customer. In doing so, the new law sought both to level the competitive playing field from a fiscal and regulatory point of view, but also to increase the level of protection for the UK consumer. However, in taking that step, the law necessarily created a difficulty: how can one practically compel an operator who ignores the new law, and who may not have assets or individuals within the jurisdiction that can be the subject of a prosecution by the English courts? Gambling offences are not the type of offence that are normally prone to calls for extradition proceedings, partly because they are not inherently serious enough criminal offences to fall within the ambit of most international treaties that cover extradition, and also because the normal rule in such matters imposes an obligation on the country seeking extradition to show that the conduct complained of is actionable both in the law of the prosecuting state and in the state where the accused is located (the ‘double actionability’ test). So each approach to jurisdiction has its advantages and shortcomings.

X THE US POSITION – A FEDERAL APPROACH

The same types of problems can be seen with the evolution of the law in the US. The US legal position is complicated by the interaction of federal and state law. These topics are covered in more detail in chapters 3 and 18, and so the arguments are not rehearsed here in any detail. However, the federal government has specific powers set out in the US constitution and other law-making powers are expressly retained by individual states under the constitution in order to provide those separate jurisdictions with a power to legislate on matters for their own citizens. It is for this reason that the prevalence of gambling in Nevada is at the opposite end of the spectrum from that allowed in states such as Utah. Indeed, one of the roles of federal government is to protect the autonomy of individual states to be self-governing in such matters. Indeed, one of the first pieces of federal legislation to deal with gambling was the Interstate Wire Act of 1961, which was specifically designed to prevent betting transactions being conducted across state borders. For a number of years, a debate raged as to the interpretation of the Wire Act and whether it prohibited all forms of gambling on an interstate basis or only sports betting. To oversimplify a highly complex story, that ambiguity was largely resolved by the passing of the Unlawful Internet Gambling Enforcement Act 2006 (UIGEA). That legislation led the large majority of online gambling operations outside the United States to cease any activity within the USA. UIGEA specifically targeted not only those offering services to US citizens but also ancillary service providers such as financial services providers.

Subsequently, a number of states (notably Nevada and New Jersey, but there are others) have legislated separately for online gambling activity and a number of foreign operators

5 18 USC, Chapter 50, 1084.
6 31 USC5361–5367.
have applied for licences to conduct online gambling within those states. But the position still remains a ‘patchwork’, with the chances of any federal legislation dealing with gambling remaining a distant and theoretical possibility.

XI PROBLEMS ARISING OUT OF INTERNATIONAL TRADE AGREEMENTS

The ability of national governments to determine their own gambling policies has also fallen into conflict with international trade agreements. These agreements once again highlight one of the difficulties in dealing with gambling law – namely whether gambling should be considered a form of commerce to be treated like any other supply of goods and services or whether the special considerations that we have highlighted in this chapter mean that it is more apt to be regulated on the basis that national governments should be entitled to determine the best policy in line with the social, political and religious landscape prevalent in the state concerned.

One such international trading agreement is the General Agreement on Trade in Services, and during the past decade we have seen challenges to the US regime described above based upon the fact that it distorts international trade by effectively creating a barrier to those states wishing to act as exporters of gambling services to the rest of the world.7

Another example of the interrelation of trade law with social protection and fiscal and penal law is to be found in the many battles that have been fought on gambling policy in Europe. The European Treaty guarantees the rights of persons in EU Member States to enjoy free movement of goods and services, and freedom of establishment. National governments may create laws that derogate from those overarching freedoms, but only to the extent that they are proportionate, necessary and actually intended to achieve the effect of protecting local populations from social harm or criminal activity. Many EU Member States traditionally controlled gambling activity using laws that were directly contrary to the principles of free movement and freedom of establishment, and these laws were subject to a number of different challenges either by the European Commission or by individual operators who sought to show by one means or another that those laws were actually designed for the protection of national gambling interests (often controlled by the state) or for the protection of fiscal revenue. Over the past 10 years, those challenges have largely been successful and, as a result, we have seen significant shifts in gambling policy across a multitude of European states. It is likely that that process will continue for at least the next decade.

XII CONCLUDING COMMENTS

The comments above are necessarily a highly simplified analysis of gambling law and policies across the world. They are by no means designed to be a complete summary of the legal position in any state. However, the aim is to show that common issues and policies directed towards common problems created by the nature of gambling can be identified. Many states are still struggling with the challenges created by online gambling and shifts in the social acceptability of that industry. This book demonstrates how wide the spectrum of responses can be. Nevertheless, over the past 20 years, remote communication, particularly in the form of online gambling, has caused immense structural changes. The next decade will no doubt

7 In particular, see the challenge brought by the government of Antigua and Barbuda under the TRIPs Agreement.
be full of similar changes and challenges, but it might be said that we have moved a long way in our understanding of the types of approach that are possible in dealing with this complex social and legal phenomenon. Increasingly, regulators are cooperating and discussing problems of common interest – be they issues of money laundering, player protection or tax. We can expect differences to persist. But if there is a theme for the future it is that gambling has become truly international, and governments of all types are moving to accept and address the challenges that globalisation creates, by a cooperative approach.
Chapter 2

GAMBLING AND EUROPEAN LAW

Philippe Vlaemminck, Robbe Verbeke, Beata Guzik and Justine Van den Bon

I THE CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

In 1992 the Member States of the European Union discussed, for the first time, the issue of gambling in the internal market following a report prepared by Coopers & Lybrand for the EU Commission. At the European Council meeting of 11–12 December in Edinburgh they agreed not to pursue any harmonisation at European level of gambling activities.

As a result of this decision, the EU gambling debate shifted, to a large extent, towards the Court of Justice of the European Union (CJEU). Gambling services were addressed in a few directives, but were mostly excluded from the scope of application.

Today the CJEU has provided rulings in more than 40 cases and new cases are regularly referred from national courts throughout the EU.

Looking at the abundant case law, two main lines of discussion can be distinguished. One is concerned with the question of restrictive gambling policies and the consistency with EU internal market rules on free movement. The other concerns the CJEU looking into the way that licences and concessions are allocated.

There is also gambling case law regarding the Notification Directive and regarding taxation but this will not be discussed in this chapter.

i National restrictive gambling policies and consistency with EU law

The first landmark gambling case was referred in 1992. Schindler concerned lottery tickets for the German Lottery sent by mail by a German agent to citizens living in the UK that were seized by the Customs authorities since, at the time, no lottery activity was permitted.

Several Member States disputed the competence of the EU, arguing that gambling was not an economic activity within the ambit of the Treaty on the Functioning of the European
Union (TFEU) and as a consequence did not fall under the free movement principles. The ruling of the CJEU was therefore extremely important in the development of the internal market issue on gambling. The CJEU considered gambling to be an ‘economic activity’ within the meaning of the TFEU that falls under the free movement of services of Article 56 of the TFEU. Nonetheless, it is an economic activity of a particular nature. Given the moral, religious and cultural aspects of lotteries, like other types of gambling, Member States can maintain restrictions to the free movement insofar as it is applied in a non-discriminatory and proportionate manner in order to protect consumers and public order.

In Läärä the question was raised as to whether national legislation that gives a public body the right to operate slot machines in the territory of the Member State concerned is compatible with free movement principles. Although Schindler related to the organisation of lotteries, the CJEU found the considerations of that case to be equally applicable to other comparable forms of gambling. The CJEU further clarified the Member States’ power to determine the extent of the protection to be afforded on its territory with regard to lotteries and other forms of gambling. It falls under the national authorities’ power of assessment.7

Even if the national legislation at issue forms a restriction of the free movement of services, the CJEU found the conferral of exclusive rights to a single public body to be a proportionate measure in order to reach the objectives of limiting exploitation of the human passion for gambling, and to avoid the risk of crime and fraud related to games of chance.8

This case law was confirmed in the Anomar9 and Zenatti10 cases. The CJEU added that a limited authorisation of gambling on the basis of special or exclusive rights granted or assigned to certain bodies must reflect a concern to bring about a genuine diminution in gambling opportunities. A levy on the proceeds of authorised games can only constitute an incidental beneficial consequence and cannot be the real justification for the restrictive policy adopted.11 In Gambelli, the CJEU again confirmed its previous jurisprudence but gave the national judge a number of guidelines to assess whether the Italian betting legislation infringes the TFEU. Restrictions on gaming activities must not only reflect a concern to bring about a genuine diminution in gambling opportunities but they must also serve to limit betting activities in a consistent and systematic manner. Member States’ authorities cannot invoke public order concerns relating to the need to reduce opportunities for betting in order to justify restrictive measures, while at the same time inciting and encouraging consumers to participate in lotteries, games of chance and betting to the financial benefit of the public purse.12

In Lindman, the CJEU found that Article 56 of the TFEU precludes a Member State from applying rules under which winnings from games of chance organised in other Member States are treated as income of the winner chargeable to income tax, whereas winnings from

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8 Ibid., paragraph 42.
9 Judgment of the CJEU of 11 September 2003 Anomar e.a., C-6/01, EU:C:2003:446.
11 Ibid., paragraph 36. The CJEU previously observed in paragraph 60 of Schindler, even if it is not irrelevant that lotteries and other types of gambling may contribute significantly to the financing of benevolent or public-interest activities, that motive cannot in itself be regarded as an objective justification for restrictions on the freedom to provide services.
games of chance conducted in the Member State in question are not taxable. In this context, the CJEU investigated the appropriateness and proportionality of the Finnish restrictions and declined to accept the Finnish public interest related to public health as no evidence was submitted regarding the risks connected to playing games of chance, or on the existence of a particular causal relationship between such risks and the participation by Finnish nationals in lotteries organised in another Member State.

The theory of ‘controlled expansion’ was developed in Placanica. A policy of controlled expansion in the betting and gaming sector may be entirely consistent with the objective of drawing players away from clandestine betting and gaming to activities that are authorised and regulated. Authorised operators must therefore represent a reliable, but at the same time attractive, alternative to a prohibited activity. Advertising on a certain scale and the use of new distribution techniques can fall within the ambit of a controlled expansion policy.

In Ladbrokes, the EFTA Court added that this theory of controlled expansion could also be applied when the objective of the state, in this case Norway, was to protect consumers. The CJEU later confirmed the possibility of controlled expansion in gambling with a view to protecting consumers (and not just fighting crime and fraud related to illegal gambling).

The EFTA Court provided further guidance regarding the marketing of gaming services from abroad in this case. Taking into account the margin of discretion for the contracting parties, different levels of protection may exist throughout the European Economic Area (EEA). To the extent the national judge would find the exclusive rights system in place to be a lawful restriction, the host state has the right to prohibit the provision and marketing of games of chance from abroad, irrespective of whether these are lawful in their state of origin. Even if the restrictions are unlawful, the state can still require a licence in view of possible differences in the level of protection throughout the EEA. The EFTA Court thereby clearly dismissed the application of the principle of mutual recognition in the field of gambling. Even if the legislation and practice in the home state of the operators ensures a high level of protection in relation to the sociological features characterising that state, this may not necessarily amount to the same level of protection with respect to the features characterising the state where the services are to be provided.

In ESA v. Norway, the EFTA Court found that a monopoly operator in the field of gaming machines presumably serves the aim of fighting addiction better than a licensing system with commercial operators. The monopoly on gaming and gambling was compatible with the EEA Agreement.

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15 EFTA judgment of 30 May 2007, case E-3/06, Ladbrokes v. Norway, available at www.eftacourt.int/uploads/tx_nvcases/3_06_Judgment_EN.pdf, paragraph 87. In this case, the EFTA Court was asked to formulate an advisory opinion on the Norwegian sport betting market. An advisory opinion of the EFTA Court is comparable to a preliminary ruling of the CJEU, except that an advisory opinion is not binding upon the national court that referred the question concerned to the EFTA Court.
16 Judgment of the CJEU of 3 June 2010 Sporting Exchange (Betfair), C-203/08, EU:C:2010:307; judgment of the CJEU of 3 June 2010 Ladbrokes, C-258/08, EU:C:2010:308.
18 The European Economic Area Agreement applies to Norway, Iceland and Liechtenstein and the free movement rules laid down in the agreement are comparable to the principles of the TFEU.
On 8 September 2009, the CJEU provided its landmark ruling in the *Liga Portuguesa* case that follows the line of the previous case law related to gambling services. The ruling was a victory for the EU Member States as the CJEU clearly recognised the Member States’ right to regulate and control their national online gambling markets, thereby also explicitly denying the application of the principle of mutual recognition in this field. With this ruling, the CJEU established the core principles of the discretionary power of the EU Member States in the field of online gambling.

A key element in the reasoning of the CJEU is that games of chance accessible via the internet involve different and more substantial risks of fraud by operators against consumers compared to the traditional markets for such games. The CJEU thus found internet games to be more dangerous than physically offered games, even when regulated and controlled by the competent authorities of the Member State of residence of the consumer. Member States are therefore allowed to impose proportionate and necessary restrictions on the offer of online gambling services.

In the *Dutch Betfair* and *Ladbrokes* cases of 3 June 2010, the CJEU confirmed the findings of *Liga Portuguesa* that there is no mutual recognition in the gambling sector. As mentioned, it expanded the scope of application of the theory of controlled expansion from being limited to public order concerns to also comprising the objective of general consumer protection related to gambling. Furthermore, the CJEU made it clear that passive provision of games of chance can be prohibited or restricted, meaning that the mere accessibility of online gambling products from a Member State can be sufficient to be regarded as providing services there. Member States are hence allowed to block all unauthorised websites of operators offering online gambling services accessible to its consumers.

In the joined cases *Sjöberg and Gerdin*, the CJEU found the Swedish gaming legislation that prohibits advertising for gambling activities by private operators who aim to make profit, to be consistent with EU law. Member States can reserve the right to organise gambling services only to licensed operators who do not seek to make any profit. However, EU law does not allow a factual difference in the punishment for promotion of illegal gambling activities organised by a Swedish operator on the one hand, and the promotion of illegal gambling activities organised by operators of another Member State on the other. Sanctions for illegal domestic and illegal foreign operators can be covered under different formal legislation but the sanctions cannot be discriminatory as a consequence.

On 8 September 2010, the CJEU issued its judgments in the *Markus Stoss*, *Carmen Media* and *Winner Wetten* cases. The Court questioned the state of the Germany monopoly and emphasised that a national court may consider a monopoly not suitable for guaranteeing achievement of the objective set if at the same time: (1) advertising measures emanating from the holder of such a monopoly and relating to other types of games of chance that it also

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22 Judgment of the CJEU of 8 July 2010 *Sjöberg and Gerdin*, C-447/08 and C-448/08, EU:C:2010:415, paragraphs 56 and 57.
23 Judgment of the CJEU of 8 September 2010 *Markus Stoss and others*, joined cases C-316/07, C-358/07, C-359/07, C-360/07, C-409/07 and C-410/07, EU:C:2010:504.
offers are not limited to what is necessary in order to channel consumers towards the offer emanating from that holder, (2) other types of games of chance may be operated by private operators holding an authorisation, and (3) the competent authorities tolerate policies of expanding supply of other types of games of chance not covered by the said monopoly that, moreover, represent a higher risk of addiction than the games subject to that monopoly.

This signified the end of the German monopoly on lotteries and sports betting as it existed at the time but the CJEU did not rule against the existence of a monopoly for games of chance as such. In general, the CJEU was of the opinion that a monopolistic approach is better than a competitive environment. However, a measure as restrictive as a monopoly must be accompanied by a legislative framework suitable for ensuring that the monopolistic operator will pursue the determined objective in a consistent and systematic manner.

The CJEU here again addressed advertising and repeated its previous case law, according to which advertising must remain measured and strictly limited to what is necessary to channel consumers towards authorised channels. Aggressive advertising does not fit within a consistent approach.26

Since online gambling carries more risks in the area of consumer protection, a stricter approach is required and a prohibition measure covering any offer of games of chance via the internet may, in principle, be regarded as suitable for pursuing the legitimate objectives determined such as the protection of young persons, even though the offer of such games remains authorised through more traditional channels.27 The responsibility for an effective enforcement system and tackling illegal online gambling lies with the Member States. The CJEU thereby – indirectly – emphasises the need for a gambling regulator.

Further guidance regarding state gambling monopolies was given by the CJEU in Zeturf, and Dickinger and Ömer.

In Zeturf28 the CJEU confirmed the discretionary power of the Member States to decide to grant exclusive rights to a single body that is subject to strict control by the public authorities. However, operators holding exclusive rights over the organisation of horse races as well as over the betting on those races are in a very favourable position to increase betting activities, by organising more events on which bets can be placed. It is for the national court to determine whether the commercial policy pursued by the monopoly operator is part of a policy of controlled expansion.

In order to be consistent with the objectives of combating criminality and reducing gambling opportunities, national legislation establishing a gambling monopoly must be based on a finding that criminal and fraudulent activities linked to gambling and gambling addiction constitute a problem in the Member State in question, which the expansion of authorised and regulated activities would be capable of solving. A restriction on the activity of collecting bets should be examined independently of the medium through which they are made since the internet constitutes a simple channel through which games of chance may be offered and again the CJEU recognises the particularities of an online offer.29

26 Markus Stoss and others, C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, paragraph 103.
27 Carmen Media, C-46/08, paragraph 105.
29 Ibid., paragraphs 72 and 75.
In Dickinger and Ömer, the CJEU acknowledged once again the legality of a monopolistic gambling model, in particular for online gambling, as being an efficient and appropriate way to ensure control over gambling activities and to prevent and combat gambling addiction, and fraud and crime.\(^{30}\)

In Stanleybet and Others, the CJEU ruled that it is within the jurisdiction of the national courts to determine whether a monopoly carried out in an EU Member State complies with the requirements provided for by the case law of the CJEU (i.e., non-discrimination and proportionality, including consistency). In case a national law would be considered non-compliant with EU law, the CJEU ruled that the refusal to allow a transitional period in the event of incompatibility with Articles 49 and 56 of the TFEU does not necessarily lead to an obligation for the Member State concerned to liberalise the market in games of chance if such a liberalisation is incompatible with the level of consumer protection and the preservation of order in society which that Member State intends to uphold.\(^{31}\)

In Pfleger the CJEU reaffirmed its long-standing case law under which free, undistorted competition in the market of games of chance can have severely detrimental effects. Each Member State can assess whether, in the context of the legitimate aims it pursues, it is necessary to prohibit betting and gaming wholly or in part, or to lay down restrictions and supervisory rules that live up to the conditions in the CJEU’s jurisprudence.\(^{32}\) A global assessment by the national court of the circumstances in which restrictive legislation was adopted and implemented is therefore necessary. The CJEU reiterated that stand-alone fiscal objectives pursued by the Member State, without a consistent and protective regulatory framework, do not suffice to justify a limitation of free movement. Another important aspect highlighted in this case is that if a restrictive system is considered incompatible with EU law, it cannot give rise to penalties for an economic operator.

Digibet and Albers concerned the consistency of the German online gambling regime and, specifically, whether different types of regulatory regimes can coexist alongside each other in a federal state (such as Germany). Although it could be alleged that the existence of a more liberal gambling policy in one German state could damage the consistency of the entire German gambling policy, the CJEU considered that, in the case at hand, the impact on the overall consistency is both limited in time as well as geographically.\(^{33}\)

In Stanley International Betting, the CJEU strengthened the discretion of the Member States relating to the non-harmonized gambling sector. If, in the future, the national authorities wanted to reduce the number of licenses granted or exercise stricter control over activities in the field of betting and gambling, such measures would be facilitated if all the licenses were awarded for the same duration and expired at the same time.\(^{34}\)

In general, the main issue that the CJEU must assess is whether a national gambling policy meets the proportionality requirement, which implies that it seeks to attain the legitimate objectives pursued in a ‘consistent and systematic manner’. In Admiral Casinos, the CJEU clarified that this means that the legislation concerned must meet the concern to reduce opportunities for gambling or to fight gambling-related crime not only at the time of

\(^{30}\) Judgment of the CJEU of 15 September 2011 Dickinger and Ömer, C-347/09, EU:C:2011:582.

\(^{31}\) Judgment of the CJEU of 24 January 2013 Stanleybet and Others, C-186/11, EU:C:2013:33, paragraph 46.

\(^{32}\) Judgment of the CJEU of 30 April 2014 Pfleger e.a., C-390/12, EU:C:2014:281, paragraph 45.


\(^{34}\) Judgment of the CJEU of 22 January 2015 Stanley International Betting, C-463/13, EU:C:2015:25, paragraph 54.
its adoption, but also thereafter. It hence found that a dynamic approach must be adopted by the national judge in reviewing the proportionality of restrictions laid down in gambling legislation.\footnote{Judgment of the CJEU of 30 June 2016 \textit{Admiral Casinos}, C-464/15, EU:C:2016:500, paragraphs 34 and 36.}

When it comes to financial requirements imposed on gambling operators, the CJEU accepted that the requirement for a share capital of a certain amount may prove to be of use in order to reduce criminality linked to betting and gambling by ensuring economic and financial standing of operators.\footnote{\textit{Dickinger and Ömer}, C-347/09, paragraph 77.} The CJEU also found that the obligation of providing statements from two banks is manifestly capable of ensuring that the economic operator has an economic and financial standing enabling him or her to fulfil the obligations he or she may contract towards winning gamblers.\footnote{Judgment of the CJEU of 8 September 2016 \textit{Politanò}, C-225/15, EU:C:2016:645, paragraph 46.}

Several other cases are still pending before the CJEU and it can be assumed that several more will follow. In the \textit{GBGA} case, Advocate General Szpunar issued an opinion and found that the United Kingdom and Gibraltar are to be considered as a single Member State for the purposes of the application of Article 56 of the TFEU.\footnote{Opinion of Advocate General Szpunar of 19 January 2017 in case C-591/15 \textit{The Gibraltar Betting and Gaming Association Limited and the Queen}, EU:C:2017:32.}

In \textit{Online Games} the referring judge asked clarification on the proof to be provided by Member States required to make the assessment of the proportionality of a gambling regime (which implies assessing whether it was genuinely put in place to achieve the objectives it claims to pursue). Advocate General Sharpston is of the opinion that the task of putting forward a justification underlying the measure before adopting it, should remain a matter only for the Member State concerned.\footnote{Opinion of Advocate General Sharpston of 9 March 2017 in case C-685/15 \textit{Online Games}, EU:C:2017:201, paragraph 53.}

In \textit{Global Starnet} (C-322/16) the referring judge questioned whether a national law laying down new requirements and obligations for concession holders in the online gambling market, including for existing concession holders, by means of an addendum to the existing agreement and without any period for gradual compliance, is compatible with EU law.\footnote{Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 7 June 2016 – \textit{Global Starnet Ltd v. Ministero dell'Economia e delle Finanze, Amministrazione Autonoma Monopoli di Stato} (C-322/16), OJ C 343/24, 19 September 2016.}

In \textit{Sporting Odds} (C-3/17) the referring judge raised 16 questions regarding the Hungarian gambling legislation.\footnote{Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 3 January 2017 – \textit{Sporting Odds Limited v. Nemzeti Adó- és Vámhivatal Központi Irányítása} (C-3/17), OJ C 112/16, 10 April 2017.}

\textbf{ii The allocation of licences and concessions}

In \textit{Placanica}, the CJEU ruled on the issue of getting access to a licence through a tendering process. The Italian legislation at stake excluded all operators listed on the stock market from participating in a concession tender procedure for reasons of combating criminal involvement in gambling. According to the CJEU, sufficient alternative and less restrictive means were available to check the accounts and activities of such operators regarding the

\begin{thebibliography}{10}
\bibitem{AdmiralCasinos} Judgment of the CJEU of 30 June 2016 \textit{Admiral Casinos}, C-464/15, EU:C:2016:500, paragraphs 34 and 36.
\bibitem{DickingerAndOmer} \textit{Dickinger and Ömer}, C-347/09, paragraph 77.
\bibitem{Starnet} Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 7 June 2016 – \textit{Global Starnet Ltd v. Ministero dell'Economia e delle Finanze, Amministrazione Autonoma Monopoli di Stato} (C-322/16), OJ C 343/24, 19 September 2016.
\end{thebibliography}
argument invoked that the shareholders of such companies were not always identifiable. This condition as such constituted an unjustifiable restriction of the free movement principles.\textsuperscript{42} It is not compliant with EU law to apply criminal sanctions against the concerned operator for not abiding by the administrative formalities linked to the concession system.\textsuperscript{43} In other words, if an operator did not have the possibility to acquire a licence, and this was because of a restriction that is not compliant with EU law, this operator cannot be sanctioned for offering gambling services without a licence.

In \textit{Commission v Italy} the CJEU found that the renewal of old licences without putting them out to tender was not an appropriate means of attaining the objective pursued by the Italian state, going beyond what was necessary in order to preclude operators in the horse race betting sector from engaging in criminal or fraudulent activities.\textsuperscript{44} But a licensing system that limits the total number of operators in the national territory can be justified as such in the light of considerations of public interest, if it fulfils the proportionality test.\textsuperscript{45}

In \textit{Betfair} the CJEU further acknowledged that restrictions regarding the procedures for the grant of a licence to a single operator or for the renewal thereof, may be regarded as being justified if the Member State decides to grant a licence to, or renew the licence of, a public operator whose management is subject to direct state supervision or a private operator whose activities are subject to strict control by the public authorities.\textsuperscript{46}

As mentioned above in the German \textit{Markus Stoss} and \textit{Carmen Media} cases, the CJEU seems to favour a monopolistic approach over a competitive licensing system in the gambling sector, although both can be in conformity with EU law. Member States may take the view that granting exclusive rights to a public body whose management is subject to direct state supervision or to a private operator over whose activities the public authorities are able to exercise tight control, is likely to enable them to tackle the risks connected with the gambling sector and pursue the objectives more effectively than in a system that authorises operators to carry on their business in the context of a non-exclusive legislative framework.\textsuperscript{47}

In \textit{Engelmann} the CJEU ruled on 9 September 2010, only one day after the German rulings. Here the CJEU required an open procedure for the allocation of gambling licences in a multiple licensing system. A limitation of the number of concessions can be justified as it enables a limitation of the gambling opportunities and thus allows to attain a public interest. A licence duration of 15 years can also be justified having regard to the concessionaire’s need to have a sufficient length of time to recoup the investments required by the setting up of a gaming establishment.\textsuperscript{48}

However, the obligation of transparency implies that competent authorities must ensure, for the benefit of any potential tenderer, a degree of publicity sufficient to enable the service concession to be opened up to competition and the impartiality of the award procedure to be reviewed.\textsuperscript{49} The CJEU thereby makes a distinction with the sole licensing

\textsuperscript{42} Placanica, joined cases C-338/04, C-359/04 and C-360/04, EU:C:2007:133, paragraph 62.
\textsuperscript{43} Ibid., paragraph 71.
\textsuperscript{44} Judgment of the CJEU of 13 September 2007 \textit{Commission v Italy}, C-260/04, EU:C:2007:508, paragraph 34.
\textsuperscript{45} Judgment of the CJEU of 31 January 2008 \textit{Centro Europa 7}, C-380/05, EU:C:2008:59, paragraph 100.
\textsuperscript{46} \textit{Sporting Exchange (Betfair)}, C-203/08, paragraph 59.
\textsuperscript{47} \textit{Markus Stoss and Others}, joined cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, paragraph 81.
\textsuperscript{48} Judgment of the CJEU of 9 September 2010 \textit{Engelmann}, C-64/08, EU:C:2010:506, paragraphs 45 and 48.
\textsuperscript{49} Ibid., paragraph 50.
system (see the Dutch Betfair case) in which the transparency principles do not call for a mandatory licensing procedure, if the exclusive right is granted to an operator under strict state control.

In Costa and Cifone, the CJEU found the Italian rules establishing a state monopoly and a system of licences and authorisations to be discriminating where a minimum distance requirement for the establishment of new licence holders discriminates against operators excluded from the 1999 tendering procedure.\(^5\) Regarding the justification for the said discrimination, the CJEU recalls that grounds of economic nature (such as the objective of ensuring continuity, financial stability or a proper return on investment for operators) cannot be accepted as overriding reasons in the public interest to justify a restriction to the freedom provided by the TFEU. The objectives of reducing betting and gaming activities as well as the fight against criminality may justify restrictions on fundamental freedoms but this was not the case here.

In Biasci and Rainone the CJEU confirmed that Member States are allowed to set out the obligation to be granted a concession and a police permit in order to open betting agencies in Italy.\(^5\) Nevertheless, a licensee is allowed to have certain activities on servers outside Italy provided that they are subject to control in Italy and that there is direct contact between the operator and the consumer.

On 4 February 2016 the CJEU issued an important judgment in the Ince case. The Court reiterated that as a consequence of the principle of primacy of directly applicable EU law, national legislation concerning a public betting monopoly that violates free movement cannot continue to apply during a transitional period.\(^5\) Member States, however, remain free to undertake reforms of existing monopolies in order to make them compatible.\(^5\)

II POLITICAL AND REGULATORY DEVELOPMENTS AT EU LEVEL

Over the past couple of years, the EU institutions have increased their involvement in shaping the gambling policy. The way EU secondary law developed or did not develop in this area has shown how sensitive this matter is for governments. Today, all three political EU institutions (the European Parliament, Council and Commission) actively take part in the political debate regarding gambling services.

In the second half of 2008, the French presidency initiated the first formal discussions on gambling between the Member States in the Establishment and Services Working Group. This resulted in a constructive dialogue, reflecting on the very specific nature of gambling services that reflects differences between the Member States’ approaches.\(^54\) Under the Swedish presidency (second semester 2009), the formal discussions focused on the social cost of gambling and responsible gaming measures.

\(^{50}\) Judgment of the CJEU of 16 February 2012 Costa and Cifone, C-72/10 and C-77/10, EU:C:2012:80.
\(^{51}\) Judgment of the CJEU of 12 September 2013 Biasci and Rainone, C-660/11, EU:C:2013:550, paragraph 27.
\(^{52}\) Winner Wetten, C-409/06, paragraph 69.
\(^{53}\) Judgment of the CJEU of 4 February 2016 Ince, C-336/14, EU:C:2016:72, paragraph 54.
The March 2009 European Parliament Resolution on the integrity of online gambling (also known as the ‘Schaldemose Report’)\(^{55}\) called for wide-ranging EU actions that would have a direct impact on the sector.\(^{56}\) The report addressed crucial issues such as transparency of the online gambling markets, the combating of fraud and crime, consumer protection, establishment of a code of conduct, and research, control and supervision. Member States are further advised to document the extent and growth of their online gambling markets. The report also urges the Commission to undertake an impact assessment of the effects of national regulation in relation to integrity, social responsibility, consumer protection and matters relating to taxation.

During the Spanish presidency (first semester of 2010), the Member States agreed on a shared definition of illegal gambling and significant attention was paid to the sanctions Member States can impose to fight illegal gambling. Online gambling could be defined as ‘gambling in which operators do not comply with the national law of the country where services are offered, provided those national laws are in compliance with EU Treaty principles’. Malta opposed this definition during the Competitiveness Council of May 2010.\(^{57}\)

The Belgian presidency (2010) focused on actual problems generated by cross-border gambling services, the role of the national (or regional) public authority and the sustainable contributions by lotteries to society. During the Competitiveness Council of 10 December 2010 the ‘Conclusions on the framework for gambling and betting in the EU Member States’ were adopted with unanimity. To ensure effective regulation of gambling services, the Council agreed that the Member States need to be given the responsibility to supervise the provision of gambling services in their territories through regulatory public authorities, established according to national legislation. These authorities may have various tasks.

All EU Member States have different types of state lotteries or lotteries licensed by the competent state authorities. Contributions of lottery and related services play an important role for society, for example for the funding of good causes, directly or indirectly where applicable. This specific role needs to be recognised in discussions at the European level.

The importance of the Council conclusions cannot be emphasised enough. Although they do not create a legally binding framework, they express the common political view shared by all EU Member States and oblige the Commission to deal with the issues directly.

Two other reports were adopted by the European Parliament during 2011 and 2013.\(^{58}\) They did not fundamentally change the scope of the discussion.

On 23 December 2012 the Commission adopted the Communication ‘Towards a comprehensive European framework for online gambling’. Among the priorities, as outlined, were the adoption of the consumer protection recommendation, the Fourth Anti-Money Laundering Directive (the AML Directive), the infringement cases, the match-fixing problems and the standardisation of gambling equipment. The last point has been replaced by a request for standardisation on reporting.


\(^{56}\) European Parliament Resolution of 10 March 2009 on the integrity of online gambling (2008/2215(INI)).


\(^{58}\) European Parliament Resolution on online gambling in the internal market (10 September 2013), European Parliament resolution on online gambling in the internal market (15 November 2011).
While numerous infringement cases seem to be processed, none of them went up to the CJEU until now. We therefore believe that it is premature to comment on these procedures. The question of match-fixing has currently been addressed by the Macolin convention of the Council of Europe, but no further EU measures have been taken.

Two last issues are of importance: the AML Directive and the European Commission recommendation.

The final text of the future AML Directive was adopted on 20 May 2015. The Directive will apply to all offline and online gambling service providers, while the Third AML Directive only addressed casinos. However, with the exception of casinos, and following an appropriate risk assessment, Member States may decide to exempt, in full or in part, providers of certain gambling services from national provisions transposing this Directive on the basis of the proven low risk posed by the nature and, where appropriate, the scale of operations of such services.

Finally, there is the recently adopted European Commission Recommendation on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online.\(^59\) In principle, a recommendation is a non-binding legal instrument available under the TFEU.

This Commission initiative is highly contentious with certain Member States. According to Belgium, the European Commission exceeded its competence by adopting a recommendation without precise legal basis and in disrespect of the institutional balance.\(^60\) Belgium therefore initiated an annulment procedure against the recommendation at the General Court. The General Court declared the case inadmissible. An appeal is pending before the CJEU.

\(^{59}\) Commission Recommendation of 14 July 2014 on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online, OJ L 214/38, 19 July 2014.

\(^{60}\) Order of the General Court of 27 October 2015 Commission v. Belgium, T-721/14, EU:T:2015:829. Appeal against this decision was brought before the CJEU, known as case C-16/16 P. An oral hearing will take place on 2 June 2017.
Chapter 3

OVERVIEW OF US FEDERAL GAMING LAW

Behnam Dayanim, Kathleen K Sheridan and Noah N Simmons

I KEY TERMS

US statutes, jurisprudence and academic literature often refer to several types of gaming, each with a distinct meaning and often with distinct legal implications, regulatory requirements and penalties for non-compliance.

On one end of the spectrum are traditional gambling games such as lotteries, table games and sports betting. Gambling games vary widely but, with few exceptions, share three fundamental characteristics: consideration, prize and chance. These are among the most highly regulated forms of gaming in the United States and are detailed below:

a Lotteries, bingo and other house-banked games are the quintessential gambling games. All involve payment of consideration and award prizes based in whole or in part on chance. Lotteries, roulette, most slots and similar games typically depend entirely on chance. Other games, such as blackjack and craps, include elements of skill but still incorporate sufficient amounts of chance to warrant treatment as gambling.

b Poker and other peer-to-peer games, where the players compete against one another and not the casino operator or ‘house’, are a second type of gambling game. As these games are viewed as involving chance, they too are considered to be gambling.

c Sports betting and horse race wagering involve — as their names imply — wagering on the outcome of live sporting and horse racing events. Horse racing (and, in a few states, dog racing) is treated differently from other sports betting; as a result, the legal strictures involving each will vary.

On the other end of the spectrum are games whose legal status is unclear. These games (or their earlier forebears) were not traditionally considered gambling, but their meteoric rise in popularity (made possible by the internet) and the substantial revenues they generate have led regulators — and zealous plaintiffs’ attorneys — to question whether they belong under the rubric of gambling laws.

i Skill games

Skill games are games that require payment to play and that award valuable prizes, but in which outcomes are determined by the skill of the participants rather than by chance events.

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2 Some states will find a game to be gambling even if it lacks one of these criteria — most often, chance. A review of state laws lies outside the scope of this chapter.
outside of their control. How much skill is required to avoid designation as gambling will vary from state to state, and some states would include at least some forms of skill games as gambling even if no chance is present.

ii Fantasy sports

Fantasy sports competitions take a variety of forms. Traditional fantasy sports revolve around a small group of people drafting a roster of real-world athletes from various real-world teams so as to create a ‘fantasy’ team. Participants compete against one another by comparing the ‘fantasy’ points earned by their fantasy teams. Fantasy points are awarded based on the statistical results of the underlying athletes in real-world sporting events, like passing yards, receptions and touchdowns. Participants often play for bragging rights or for side wagers, and contribute a nominal entry fee in order to participate. The biggest distinction between traditional fantasy sports and their modern cousin – daily fantasy sports – is that they take place over the course of a full season of the underlying sport. Daily fantasy sports (DFS), as their name implies, take place over a much shorter time frame. Participants still draft rosters of fantasy athletes to compete against other participants, but over the course of a week, a weekend or even a single day. Many other variants have emerged as the competitive landscape expands, such that now DFS also includes other non-roster styles of game, such as head-to-head competitions, ‘pick ‘ems’, question-and-answer predictions and many more.

iii Social casino games

Social casino games are online or mobile games, often offered on social networks or similar platforms. They recreate casino games such as poker, slot machines and bingo. These games recreate the sounds and images of a casino but differ from the actual casino games in one important respect – the player need never pay to participate and (in most variants) can never win a prize of any real-world value. These games typically award credits or virtual ‘coins’ to extend gameplay or allow for purchase of special virtual features, and most operate on a ‘freemium’ model. ‘Freemium’ games are free to play, but players have the ability to use real money to purchase additional ‘credits’ or features that would otherwise be earned through extended gameplay. Very few social games award cash prizes to players; those that do typically employ a ‘sweepstakes’ model to ensure that paying players are not given an advantage over free players. Social games that award monetary prizes lie outside the scope of this chapter.

Outside the purview of the gambling laws are certain speculative or hedging financial transactions, such as binary options or commodity futures trading. Those types of transactions are often expressly carved out from statutory gambling prohibitions and fall outside the scope of this chapter.

II GENERAL LEGAL BACKGROUND

Gambling is regulated at the federal, state or tribal and local levels in the United States. States serve as the primary regulators, taking a lead role in defining the scope of permitted and unlawful activities, enforcing criminal gambling prohibitions and licensing legal gambling
operators. The federal government mainly plays a supporting role in enforcing state laws and prosecuting multistate enterprises, although the federal ban on sports betting is a prominent exception.

### Relevant federal statutes

This subsection outlines the nine federal laws that address gambling most directly and includes a brief discussion of certain additional ancillary laws that may play a role in certain cases. Most of these statutes define prohibited gambling conduct by reference to state law. In other words, the activity does not violate the federal statute unless it violates an underlying state prohibition. The statutes provide a tool through which federal law enforcement authorities can pursue such unlawful conduct and impose enhanced penalties for that conduct. Congress often enacted these statutes in recognition of the fact that sophisticated criminal enterprises often do not respect state boundaries and can be difficult for state authorities to pursue.

#### The Wire Act

The Wire Act is an exception to the rule. Unlike most other federal statutes dealing with gambling, the Wire Act does define what it prohibits. More particularly, the statute prohibits anyone ‘in the business of betting or wagering’ from:

...knowingly using a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers.  

The Wire Act exempts from liability any transmission:

...of information assisting in the placing of bets or wagers on a sporting event or contest from a state or foreign country where betting on that sporting event or contest is legal into a state or foreign country in which such betting is legal.  

The only federal courts of appeals to have considered the question concluded that the Wire Act applies only to gambling on sporting events or sporting contests. After years of disagreement with that holding, in September 2011, the Office of Legal Counsel for the Department of Justice issued a memorandum concurring with that appellate decision.

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4. 18 USC Section 1084(a).
5. Id.
The Professional and Amateur Sports Protection Act
The Professional and Amateur Sports Protection Act of 1992 (PASPA) purported to prohibit states from authorising betting on sporting events, but included three ‘grandfathering’ clauses. These clauses authorised continued sports betting in those states in which it was already legalised and operated, or that enacted permissive legislation within one year of PASPA. Only those forms of sports betting in effect in that state were permitted to continue; new forms were not authorised.

Four states qualified for the exception: Delaware, Montana, Nevada and Oregon. Oregon, which had allowed betting on National Football League (NFL) games in 1989, outlawed it after the 2006–2007 NFL season. New Jersey – for whom the one-year-after-enactment grandfather clause was ostensibly written – failed to enact permissive legislation in 1993. As a result, New Jersey (not to mention all other states) is barred from legalising sports betting, despite several failed attempts to do so.

The Illegal Gambling Business Act
The Illegal Gambling Business Act (IGBA) is more typical of federal gambling statutes. It attaches liability to anyone who ‘conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business’. ‘Illegal gambling business’ includes a gambling business that, inter alia, is a violation ‘of the law of a state or political subdivision in which it is conducted’.

This statute also requires an assessment of where the gambling business ‘is conducted’ and of who is considered to be ‘conduct[ing], financ[ing], manag[ing], supervis[ing], [or] direct[ing]’ the business.

The Travel Act
The Interstate and Foreign Travel or Transportation in Aid of Racketeering Act (the Travel Act) makes it unlawful to ‘travel’ or ‘use…any facility in interstate or foreign commerce…with intent to…distribute the proceeds of any unlawful activity; or…otherwise to promote, manage, carry on, or facilitate the promotion, management, establishment or carrying on of any unlawful activity’. Under the Travel Act, an ‘unlawful activity’ is defined specifically to include ‘any business enterprise involving gambling…in violation of the laws of the state

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8 28 USC Section 3702.
9 28 USC Section 3704(a).
10 28 USC Section 3704.
11 Nat'l Collegiate Athletic Ass'n v. Christie, 926 F Supp 2d 551, 556 (DNJ 2013) ('PASPA's 'grandfather clause' resulted in exceptions for four states: Delaware, Oregon, Montana and Nevada.').
13 18 USC Section 1955.
14 Id.
15 18 USC Section 1952.
in which [the unlawful acts] are committed or of the United States'. The underlying state crime need not be a felony. A violation of a state gambling law that is a misdemeanour is sufficient.

In essence, the Travel Act creates a federal scheme to punish enterprises that use interstate or foreign facilities in violation of state law. It is, therefore, like the IGBA, fundamentally a federal reinforcement of state law. As a result, the applicability of the Travel Act turns largely on the nuances of the applicable state law and what, precisely, it defines as unlawful. Simply put, without a violation of state law, there can be no violation of the Travel Act.

**Wagering Paraphernalia Act and Johnson Act**

The Wagering Paraphernalia Act precludes the transportation in interstate or foreign commerce of any:

> …record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing or other device used, or to be used, or adapted, devised or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game. 18

A similar statute prohibits the transport in interstate or foreign commerce of any ‘gambling device’. 19

**Anti-Lottery Act**

The Anti-Lottery Act prohibits the carrying (or mailing) in interstate or foreign commerce of:

> …any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance. 20

Contraband further includes advertisements of such lotteries and lists of prizes drawn or awarded. The Anti-Lottery Act also dictates that if businesses purchase lottery tickets in-state for out-of-state buyers, it is a criminal activity, unless the two states have agreed to allow such purchases.

The statute contains several exemptions from its prohibitions, including state-run lotteries, 21 charitable fishing contests 22 and savings promotion raffles, which award prizes to those who make qualifying deposits in savings accounts or other savings vehicles. 23

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16 Id. at Section 1952(b). The statute encompasses a variety of other state crimes as well. In fact, it has figured prominently in the news of late as the basis for the much-publicised indictment of Atlanta Falcons quarterback Michael Vick in connection with unlawful dog-fighting.


18 18 USC Section 1953.

19 15 USC Section 1172.

20 18 USC Sections 1301 and 1302.

21 18 USC Section 1307.

22 18 USC Section 1305.

23 18 USC Section 1308.
Indian Gaming Regulatory Act

Tribal gaming falls under the Indian Gaming Regulatory Act of 1988 (IGRA). The IGRA grants federally recognised Native American tribes the:

...exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a state which does not, as a matter of criminal law and public policy, prohibit such gaming activity.\(^\text{24}\)

The IGRA established the National Indian Gaming Commission (NIGC), whose role is to monitor gaming on Indian lands, inspect Indian gaming premises, conduct background investigations, examine and audit books and records, promulgate regulations and guidelines, and collect fees and fines. As a practical matter, the NIGC typically plays an oversight role, leaving principal regulatory authority to individual tribal gaming regulators.

The IGRA divides gaming into three categories, or classes (appropriately designated I, II and III). Class I gaming is social (non-commercial) gambling with small prizes. Class II gambling encompasses bingo and other non-banking card games\(^\text{25}\) that are either expressly authorised within the particular state or not expressly prohibited by the state and played in conformity with any state laws governing card rooms. Class III gambling includes all other forms of gambling and may not be operated in the absence of a tribal–state compact.\(^\text{26}\)

Tribal–state compacts may contain provisions relating to the applicability of the state’s criminal and civil laws to the licensing process, the allocation of criminal and civil jurisdiction between the state and tribal lands, comparable taxation provisions for the tribal gaming activity and standards related to licensing and operation of gaming activities.\(^\text{27}\)

To date, compacts have been formed with Arizona, California, Colorado, Connecticut, Florida, Idaho, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Washington, Wisconsin and Wyoming.\(^\text{28}\)

By some accounts, tribal gaming accounts for approximately one-third of total lawful commercial and tribal gambling in the United States.\(^\text{29}\)

\(^{24}\) 25 USC Section 2701(5).

\(^{25}\) A 'banking' (or 'banked') card game is one in which the player is playing against the 'house'. Blackjack is an example of a banking card game. Non-banked card games, by contrast, are played against other players, and the operator typically makes its revenue by collecting a percentage or 'rake' of the pot of player funds. These games are thus commonly called 'percentage' games. Poker is a classic example.

\(^{26}\) 25 USC Section 2710(d)(1)(C).

\(^{27}\) 25 USC Section 2710(d)(3)(C).


**Interstate Horseracing Act**

The Interstate Horseracing Act (IHA) was enacted in 1978:

> …to regulate interstate commerce with respect to wagering on horseracing, in order to further the horseracing and legal off-track betting industries in the United States.\(^{30}\)

It provides that:

> …[n]o person may accept an interstate off-track wager except as provided in this [Act].\(^{31}\)

The IHA was amended in 2000 to clarify that it permits remote wagering over the phone, internet or other electronic media.\(^{32}\) The statute now defines an ‘interstate off-track wager’ as a:

> …legal wager placed or accepted in one state with respect to the outcome of a horserace taking place in another state and includes pari-mutuel wagers, where lawful in each state involved, placed or transmitted by an individual in one state via telephone or other electronic media and accepted by an off-track betting system in the same or another state.\(^{33}\)

Thus, an interstate pari-mutuel wager placed or transmitted by an individual customer is an ‘interstate off-track wager’ permitted under the IHA if it meets two requirements:

- \(a\) it must be ‘lawful in each state involved’; and
- \(b\) it must be accepted by an ‘off-track betting system’.

Such systems must be ‘conducted by the state or licensed and otherwise permitted by state law.’\(^{34}\)

The IHA also sets forth a framework for the agreements that are required with host racetracks in order to permit simulcasts of the races and the acceptance of wagers on those races.\(^{35}\) The IHA requires the consent of five different parties for any off-track wagering agreement.\(^{36}\)

There has been much discussion in the academic literature and among gaming lawyers as to the relationship between the IHA, which permits interstate off-track wagers, and the

\(\text{\tiny 30} 15\text{ USC Section 3001(b).}\)

\(\text{\tiny 31} 15\text{ USC Section 3003.}\)

\(\text{\tiny 32} \text{Conference Report on HR 4942, 146 Cong Rec H11265, 11271 (2000); see also 146 Cong Rec H11230, 11232 (2000) (remarks of Rep. Frank Wölf (R-VA)) (explaining that the amendment was intended to 'codify [the] legality of placing [horseracing] wagers over the telephone or other electronic media like the internet').}\)

\(\text{\tiny 33} 15\text{ USC Section 3002(3).}\)

\(\text{\tiny 34} 15\text{ USC Section 3002(7).}\)

\(\text{\tiny 35} \text{For a more detailed explanation of how these agreements operate, see Churchill Downs Inc, 605 F Supp 2d at 874–75.}\)

\(\text{\tiny 36} \text{Those parties are: (1) the applicable authorised horsemen's group; (2) the host racing association; (3) the host state racing commission; (4) the off-track racing commission; and (5) all currently operating tracks within 60 miles of any off-track betting office, or, if there are none, then the closest such track in an adjoining state. 15 USC Section 3004.}\)
Overview of US Federal Gaming Law

Wire Act, which prohibits them (as a species of sporting event). The US Department of Justice has taken the position – although only in public statements, never in an actual prosecution – that the Wire Act prohibition continues to apply, notwithstanding the IHA.

By contrast, the consensus of most scholars and practitioners in the space – and that of the authors – is that the IHA, as both the more specific and more recent statute, trumps the Wire Act ban, so long as the wager complies with the IHA’s requirements. Indeed, for quite some time, the advance-deposit-wager industry has broadly accepted online horse race wagers pursuant to the statute on precisely that premise, and the federal government has taken no steps to stop that activity.

The Unlawful Internet Gambling Enforcement Act

Congress enacted the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) to attack the perceived problem of internet gambling by targeting the processing of the financial transactions necessary for the gambling to take place. The UIGEA created a federal crime – being aware of the receipt by a person ‘in the business of betting or wagering’ of monies in connection with participation of another person in ‘unlawful internet gambling’. It also directed the issuance of regulations designed to require financial transaction providers to identify and block payments involving unlawful internet gambling.

Moreover, the statute defined ‘unlawful internet gambling’ to mean a ‘bet or wager [that] is unlawful under any applicable federal or state law in the state or tribal lands in which the bet or wager is initiated, received, or otherwise made’. That was the first (and remains the only) time that the term has been defined as a matter of federal law. In turn, ‘bet or wager’ is defined to mean:

…the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.

The UIGEA provides an express safe harbour for fantasy sports competitions, excluding them from the definition of a ‘bet or wager’ under the statute if they satisfy three criteria:

\[ \begin{align*}
\text{a} & \quad \text{‘All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.’} \\
\text{b} & \quad \text{‘All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.’} \\
\text{c} & \quad \text{‘No winning outcome is based (i) on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams; or (ii) solely on any single performance of an individual athlete in any single real-world sporting or other event.’} 
\end{align*} \]

37 31 USC Section 5363.
38 31 USC Section 5362(10)(A).
39 31 USC Section 5362.
40 31 USC Section 5362(1)(E)(ix).
If the fantasy or simulation sports game or educational game or contest involves a team or teams, then it must also be true that 'no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organisation.' 41

The statute also excludes interstate off-track wagers that are permissible under the IHA from its prohibition, 42 along with intra-state internet gambling that is:

- initiated and received within a single state;
- expressly authorised by the laws of the state; and
- does not violate any other federal gambling laws. 43

The regulation issued pursuant to the statute, known as Reg GG (12 CFR 233), expands on the statutory requirements, most notably by requiring financial transaction providers to implement procedures that are designed to determine whether their commercial customers are internet gambling businesses and, if they are, to ascertain whether that gambling activity is unlawful. The regulation suggests that the provider require the customer to supply evidence of state or tribal licensure of its activities or, failing that, a reasoned legal opinion explaining why no such licensure is required.

The regulation also makes clear that participants in automated clearing house systems, card systems, check collection systems, wire transfer systems and certain types of money transmitting businesses 'may rely on a written statement or notice by the operator of that...payment system', and that the system's 'policies and procedures' are designed to identify and block unlawful internet gambling transactions. 44

ii Ancillary criminal laws

Several other criminal statutes can be invoked in the gambling context:

- Money laundering statutes, 18 USC Sections 1956 and 1957, prohibit knowingly engaging in certain financial or monetary transactions, or international transportation or transmission of funds, with the 'proceeds' of a wide range of predicate crimes or 'specified unlawful activities', including gambling in violation of the Wire Act or state law. 45 Penalties for violation of either statute include civil and criminal penalties, forfeitures of bank assets or debtor collateral used to facilitate the offence, imprisonment and, in the case of a financial institution, possible collateral civil sanctions.

41 Id.
42 31 USC Section 5362 (10)(D).
43 31 USC Section 5362 (10)(B).
44 12 CFR Section 233.5.
45 The statute defines the term 'financial transaction', in part as '(A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree.' 18 USC Section 1956(c)(4).
b The Racketeering and Corrupt Organizations Act (RICO) imposes substantial criminal penalties where there is a ‘pattern of racketeering activity’.46 ‘Racketeering activity’ is defined to include any ‘act or threat involving…gambling…which is chargeable under state law and punishable by imprisonment for more than one year’ or any act or threat involving a litany of federal offences, including violations of the Wire Act, Wagering Paraphernalia Act, Travel Act, Illegal Gambling Business Act or money laundering.47

Other potentially relevant statutes include conspiracy and bank or wire fraud.48 In all of these cases, liability arises only if the defendant is violating some other federal or state statute.

iii State laws

State laws with respect to gambling vary widely. Generally, however, gambling is prohibited unless the state passes legislation expressly permitting such conduct. Three states – Delaware, New Jersey and Nevada – expressly permit and license internet gambling.49 The remaining 47 states and the District of Columbia do not allow online gambling – other than in a few cases some form of online lottery – although many permit gambling at bricks-and-mortar establishments or on riverboats.

In Delaware, only the state Lottery Commission is authorised to conduct internet gambling, and it has contracted with suppliers to that end. In New Jersey and Nevada, licences are restricted to bricks-and-mortar casino licensees, and Nevada – unlike Delaware and New Jersey – only permits internet poker.

Georgia, Illinois, Kentucky and Michigan allow online sales of lottery tickets, while Kentucky and Michigan allow online game play.50

In those states where gambling is legalised, regulatory schemes are complex and comprehensive. State licensing requirements – whether for brick-and-mortar casinos or online gambling operators – are typically intrusive and require deep scrutiny of the licensee applicant and its key employees. Even certain categories of service providers are subject to scrutiny, although typically at a lesser degree of intensity. The purpose of suitability review is to ensure that licensees are honest, and of good character and integrity. In addition to determining whether a licensee’s past history and associations indicate that the person will not undermine effective regulation and control of gaming, suitability review also ensures that licensees possess the qualifications necessary to run a gaming operation. For example, in Nevada, casino licences are not granted unless applicants show that they possess adequate business acumen, competence and experience, and that they have secured adequate and appropriate financing.51 Other states adopt a similar approach.

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46 18 USC Section 1962.
47 18 USC Section 1961.
48 18 USC Sections 371, 1344, 1843.
49 29 Del Code Section 4826; NJ Stat Ann Section 5:12–95.17 et seq; Nev Rev Stat Section 463.745 et seq.
51 Nevada Revised Statutes, Section 463.170(3).
iv Sanctions

Illegal gambling can be sanctioned at both the state and federal level, with the type of punishment varying by state. While generally the federal statutes do not criminalise mere play (that is, they will not punish the actual gamblers), some states do criminalise gambling, often making it a misdemeanour. By contrast, both states and the federal government apply criminal penalties against those who offer or promote gambling, often as felonies. The penalties can be severe, ranging from five years’ imprisonment under the Wire Act, to as many as 20 years under RICO and the federal anti-money laundering statutes.

III CURRENT STATUS AND RECENT DEVELOPMENTS

Gambling has achieved mainstream acceptance of some form in nearly every state, with some form of gambling currently permitted in 48 states. The type of gambling permitted by the states varies widely. Some states only permit state-sponsored lotteries, while others have racetracks, casinos or sports wagering.

Recent developments in gambling regulation have focused on sports betting and non-traditional gambling games. The latter includes skill games, fantasy sports competitions, social casino games and internet sweepstakes cafes. Outside of the regulatory context, e-sports have gained momentum in the United States and appear on the cusp of mainstream awareness. Whether their growth trajectory will lead them into legal difficulties like those experienced by DFS (discussed in subsection iv, infra) remains to be seen.

i Sports betting

New Jersey has twice attempted – and twice failed – to legalise sports betting within its borders in recent years. Its first attempt was a 2012 statute that confronted PASPA’s sports wagering ban head on by affirmatively authorising state regulators to license casinos and racetracks to conduct sports betting. The state’s position was that PASPA was unconstitutional. The courts disagreed, invalidating New Jersey’s law.

Smarting from that defeat, New Jersey’s second attempt was less direct. Rather than affirmatively authorising sports betting, New Jersey simply repealed its criminal prohibition against sports betting so that engaging in such activity would no longer be considered unlawful, but only if the betting took place at a licensed casino venue. That law was also challenged and invalidated, a decision affirmed by the Third Circuit en banc. A petition for review by the Supreme Court was sought in late 2016, and is currently pending. (Such review is discretionary; the Court may decline to hear the case.)

Outside of New Jersey, sports wagering proponents have stepped up lobbying efforts in Washington aimed at overturning the federal ban itself. Advocates argue that legalisation and regulation is necessary to protect the integrity of sports, as prohibition has simply driven sports betting underground where it cannot be monitored. Importantly, the sports leagues (which have been staunch opponents of sports betting for a long time) are starting to modify their views. Most notable is National Basketball Association commissioner Adam Silver, who

53 Id.
has vocally supported repeal of the federal ban. In February 2017, Major League Baseball commissioner Rob Manfred expressed his willingness to look into embracing sports betting as a ‘form of fan engagement’. Other professional leagues remain more circumspect, but it is noteworthy that both the National Football League and Major League Baseball have inked deals with companies that provide statistical support services for legalised sports wagering outside the United States.

ii Internet sweepstakes cafes

Internet sweepstakes cafes operate in a number of ways – most often, by selling internet time to patrons and sometimes by offering other copying, faxing and related services. Along with the purchase of internet time, patrons receive entry into sweepstakes. In most cases, patrons can obtain a limited number of free sweepstakes entries on a daily basis, either upon request in person or by mailing a form. (This feature is designed to remove the element of consideration from the transaction, and therefore to take the activity outside the purview of most state gambling laws.) Patrons often play simulated gambling games on their computer terminals to reveal winning sweepstakes entries.

When these cafes are prosecuted under standard gambling law principles, they are generally convicted as mere subterfuges for unlawful gambling activity, since evidence shows that patrons’ primary motivation in purchasing internet time is to play the sweepstakes, rather than to use the internet and other available services. Indeed, the purchased time often goes unused – not surprisingly, since wi-fi and other forms of internet access are broadly available, often without charge or fee. Nonetheless, state legislatures, alarmed by the proliferation of these cafes, in many states have passed legislation specifically targeting them. At times, those statutes are worded quite expansively and may carry with them unanticipated consequences for other, more innocuous activities.

iii Skill games

Skill games that require payment to play and that award prizes meet two of the three traditional elements of gambling under most state laws: consideration and prize. In order to avoid the reach of gambling prohibitions, these games rely upon the fact that they have arguably eliminated the third traditional element: chance. As states differ in the legal tests they apply when evaluating the chance element, each game requires a state-by-state analysis to determine its legality.


60 Hest Technologies, Inc v. State ex rel Perdue, 749 SE2d 429 (NC 2012) (upholding a state law that prohibited the operation of an ‘electronic machine or device’ to conduct a sweepstakes through the use of an ‘entertaining display’).
Three main tests have emerged in the states to determine the quantum of chance that will distinguish lawful games of skill from unlawful games of chance. The ‘predominance’ or ‘dominant factor’ test asks courts to assess which of the two elements – skill or chance – is ‘the dominating factor in determining the result of the game’.

The predominance test is used in the plurality of the states and is the most commonly invoked standard. The second most prevalent legal standard is known as the ‘material element test, where ‘gambling occurs even if skill is the dominant factor, as long as chance is a material element’. Still other states deem games unlawful if they entail ‘any chance’. A few states prohibit even pure games of skill if they require placement of a bet or wager and award a prize. In those states, absent extenuating circumstances, skill games will be considered unlawful.

Unfortunately, there is very little case law dealing with the types of skill games that are most prevalent online today, and therefore it is unknown how these tests would apply to those games if challenged.

iv Fantasy sports

The legality of fantasy sports has been hotly contested in the past two years. Although the UIGEA provides a safe harbour for fantasy sports, the safe harbour provides sanctuary only from the proscriptions of the UIGEA itself; it cannot absolve from liability those competitions that run afoul of state or other federal laws. Moreover, today’s DFS models, with their head-to-head competitions and variation in game play and rules, at times face difficulty in fitting within the contours of the statute’s safe harbour.

Beginning with New York in late 2015, 2016 saw a number of state attorneys general issue written opinions asserting DFS to be illegal gambling under state laws, and that DFS operators were in violation of state law. New York’s attorney general went so far as to initiate civil suits alleging false advertising and unlawful gambling, and seeking to enjoin the operation of the two most prominent DFS operators – FanDuel and DraftKings – in that state. (FanDuel and DraftKings later settled the gambling aspects of those suits in March 2016, and the false advertising aspects in October 2016 for $6 million each.) These negative opinions usually claim that DFS are not contests of skill within the meaning of their

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61 In re Allen, 377 P2d 280, 281 (Cal 1962).
63 Tenn Code Ann Section 39-17-501(1).
64 See, for example, Town of Mount Pleasant v. Chimento, 737 SE2d 830 (SC 2012) (‘Whether an activity is gaming/gambling [under South Carolina law] is not dependent upon the relative roles of chance and skill, but whether there is money or something of value wagered on the game’s outcome.’); see also Ark Code Ann Section 5-66-113 (prohibiting ‘bet[ting] any money or valuable thing on any game of hazard or skill’).
respective state laws, since outcomes are ultimately determined by the athletic performance of others, over whom the participants exert no control. By contrast, only a handful of attorneys general have taken the opinion that DFS is legal under state gambling laws.68

Since then, however, a number of states have moved to regulate fantasy sports, including through licensing, taxation and consumer-protection-focused disclosures; even New York, whose attorney general was one of the earliest opponents of DFS, legalised and now regulates DFS.69

Notwithstanding 2015’s flurry of attorney-general activity, there is little case law addressing the legality of fantasy sports. At the time of writing, a multi-district consolidated class action litigation against FanDuel and DraftKings (also alleging, in part, that DFS constitute unlawful gambling) remains pending. The action consolidates nearly 80 individual putative class cases and remains in early stages. Aside from that current activity, only two pre-existing federal district court decisions address fantasy sports in any detail – Humphrey v. Viacom, Inc et al., No. 06-2768, slip opinion, 2007 WL 1797648 (DNJ 20 June 2007), and Langone v. Kaiser, No. 1:12-cv-02073, slip opinion, 2013 WL 5567587 (ND Ill 9 October 2013).

Humphrey is the more significant of the two, as it reinforced the centrality of ‘risk’ in evaluating whether consideration for purposes of gambling is present. The plaintiff in Humphrey sought civil recovery under the qui tam laws of several states, which required him to show that money had been lost by a wager, bet or stake upon a game of chance.70 He pointed to the entry fees and prizes as evidence of money lost in a wager upon a game of chance. Without deciding whether fantasy sports are games of skill or chance, the New Jersey court noted three central elements common to the fantasy leagues at issue:
a. the entry fee was paid unconditionally;
b. prizes (of predetermined amounts, not dependent on the fees received) were guaranteed to be awarded; and

c. the operators of the leagues did not compete and could not win the prizes themselves.71

Together, those factors led the court to conclude that the entry fees were not bets or wagers that would violate the gambling laws of the identified states.72 The fact that the operator did not participate in the contest – and, in fact, was indifferent to the outcome – was central to the Humphrey court’s analysis.

The Langone court principally involved a claim under Illinois’s gambling loss recovery statute to recover ‘losses’ suffered by participants on an online fantasy sports site operated by a major fantasy sports provider, FanDuel. The court ruled for FanDuel after finding that plaintiff was unable to identify purported losers and amounts of loss with sufficient

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69 N.Y. Racing, Pari Mutuel Wagering and Breeding Law, Section 1400 et seq.; Va Code Section 59.1-556 et seq.; Ind Code Section 4-33-24; see also Mont Code Section 23-5-801 et seq. (authorising limited forms of fantasy sports but expressly prohibiting play online).

70 Humphrey, 2007 WL 1797648 at *5.


particularity, and because FanDuel’s role in hosting contests and collecting entry fees did not make it a ‘winner’ in any particular wager. The court did not reach the question of whether FanDuel’s contests would be considered ‘gambling’ or otherwise in violation of state laws.

Whether the Humphrey analysis would apply squarely to today’s DFS variants may yet be determined in the context of the New York litigation or other potential, future cases. At the same time, state moves to clarify fantasy sports’ legal status will likely result in a very different landscape for fantasy sports over the coming years.

v  Social casino games

Legal disputes over social casino games also erupted for the first time in 2015, with a spate of litigation, brought predominantly by one particularly active plaintiffs’ firm, alleging that the games are unlawful. Each game challenged relies on the above-described ‘freemium’ model whereby players can play for free or opt to spend real money to play more quickly or for other in-game perks, but not one of the games offers monetary or other ‘real-world’ prizes. The suits were all predicated upon plaintiffs’ purported ‘losses’ stemming from amounts voluntarily spent to play the games. Claims were brought under gambling loss recovery statutes, for common law unjust enrichment, and sometimes under the auspices of consumer protection laws. All have been dismissed, although at least one appeal remains pending.73

vi  Internet gambling

Almost since the Department of Justice reversed its position on the applicability of the Wire Act to internet gambling, efforts have been underway to try to reverse the impact of that ruling and to prohibit states from regulating internet gambling. Those efforts have encountered difficulty in the face of objections that such legislation would intrude upon state prerogatives and of the general paralysis that has gripped Congress in recent years.

In 2016, however, Republican Senator Lindsey Graham of South Carolina reportedly caused to be inserted into a committee report for an unrelated Senate funding bill language that implicitly rejected the Justice Department’s interpretation (ignoring the fact that the Department’s memorandum accords with the highest federal courts to have considered the issue).74 Although the funding bill to which the committee report was attached was not enacted, Senator Graham remains focused on the issue. During the January 2017 Senate confirmation hearing of current Attorney General Jeff Sessions, Senator Graham asked for Sessions’ view on the 2011 Department of Justice Office of Legal Counsel memorandum, which (in his description) ‘allow[s] online video poker, or poker gambling’.75 (Notably, he similarly questioned Obama Attorney General Loretta Lynch during her confirmation hearing

in 2015. Sessions responded that he was ‘shocked’ at the memorandum and ‘criticized it’ at the time, and he expressed his willingness to ‘revisit it and… make a decision about it based on careful study’. Sessions did acknowledge that ‘some justification or argument... can be made to support the Department of Justice’s position’ and admitted that he hadn’t studied the issue enough to articulate a firm view during the hearing.

As a result of that exchange and Sessions’ own prior opposition to internet gambling while a senator, observers are closely watching for a reversal of the 2011 Office of Legal Counsel memorandum. Meanwhile, there is every reason to believe that Senator Graham, along with Representative Jason Chaffetz (R-Utah) and perhaps others, will continue pressing for legislative reversal, as they have previously.

vii E-sports

As their name implies, e-sports are competitive games played with the aid of computers, video game consoles or other electronic means. In robust markets such as South Korea, e-sports are played by well-compensated professional teams with corporate sponsors, and tournaments attract thousands of spectators. E-sports have gained traction more slowly in the United States, although they appear poised to enter mainstream consciousness. Streaming platform Twitch.tv, where players livestream their game play, ranks number four in peak internet traffic in the US (behind Apple, Google and Netflix, and ahead of Facebook). Las Vegas has played host to a number of e-sports tournaments in recent years. Indeed, in March 2017, a dedicated e-sports arena opened at the Neonopolis complex in downtown Las Vegas.

But with recent prize pools reaching as high as $20 million, and the staggering revenue earned from ancillary products such as advertising and streaming subscriptions (Amazon acquired Twitch in 2014 for nearly $1 billion), e-sports may soon be on the radar of state and federal regulators. At least one recent lawsuit reveals that it is already in the crosshairs of plaintiffs’ attorneys and concerned parents. Whether e-sports promoters, players, fans and video game makers will learn from the daily fantasy sports experience is an open question.

One issue that has already arisen is ‘skin gambling’. ‘Skins’ do not affect game play but are collectible in-game items that affect the look and feel of the game, and can be bought, sold and traded. This transferability makes them ripe for use as virtual currency to facilitate gambling – both on e-sports tournaments and more traditional forms of online gambling such as casino games. In 2016, game developer Valve, which owns popular game Counter

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78 Id.

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Strike: Global Offensive and operates online trading platform Steam, was the subject of two civil lawsuits alleging that it facilitated an unlawful gambling market. Soon after, the Washington State Gambling Commission also demanded that Valve take steps to prevent skin gambling through the Steam platform or face civil or criminal repercussions. Valve prevailed in the civil suit and has thus far resisted Washington regulators’ demands to disable features of Steam that would prevent skins from being traded on third-party sites.

Beyond the skin gambling issue, e-sports are susceptible to other potential hurdles, including cheating. Because the stakes involved in winning e-sports continue to rise, the consequence of cheating has grown, as have the incentives to make the attempt. The nature of most e-sports games also can make cheating more difficult to detect. Riot Games recently achieved some success in pursuing organised cheating, extracting $10 million from a software developer whose product purportedly enabled cheating in League of Legends.

Separately, unlike fantasy sports, where the underlying athletic competitions themselves are widely accepted as skill-based, the skill-chance ratio in the video games underlying e-sports – games like League of Legends and StarCraft – is not as well-understood or established. That creates complications for those hoping to replicate the DFS model in which observers are able to win prizes of real value based on the performance of e-sports participants and can even have ramifications for contests that limit prizes to the participants.

Because much of the revenue in e-sports comes from non-controversial streams such as advertising, sponsorships and streaming subscriptions, the e-sports industry may be able to avoid the interstices of gambling law in which DFS has been caught up, but the experience of Valve shows that it is worth monitoring developments in this space in the months and years ahead.

IV OUTLOOK

If the recent past is any indication, we expect that 2017 and beyond will continue the trend toward expansion of commercial and tribal gambling at the state level. We also think the debate over sports betting will gain momentum in Congress, with greater movement toward elimination of the federal prohibition. Nonetheless, we envision that as a multi-year effort and doubt we will see repeal of the ban this year.

The debate over internet gambling continues, with a few states – notably, California, New York and Pennsylvania – actively considering its legalisation, and opponents in Congress pressing for a nationwide ban. The new Trump administration remains a wild card. On the one hand, President Trump’s past involvement with the gaming industry (having owned a casino in Atlantic City and with prior casino relationships in Nevada) may predispose him
to sympathy with gambling proponents. On the other hand, one of his more prominent election supporters, Sheldon Adelson (himself a prominent gambling magnate), vociferously opposes internet gambling, and the president’s attorney general has also been antagonistic.

DFS and other fantasy sports will continue to garner much attention – through litigation, enforcement and legislative activity – and even Congress is considering stepping in. In a similar vein, we expect e-sports to continue to grow and to encounter inevitable legal and regulatory growing pains as an incident to that growth.

Although we doubt we will see any congressional legislation of consequence on these subjects this year, we do think 2017 will witness additional states taking action on fantasy sports and possibly some moves toward legalisation of internet gambling. Federally, we expect support for repeal of the federal ban on sports betting to grow but not quite reach fruition this year. At the same time, we are sure there will be additional litigation surrounding the plethora of new forms of games that are offered to fascinate and entice new players.

In sum, we expect a busy year ahead in gaming law.
I OVERVIEW

i Definitions

The definitions for most gambling concepts are set out in the Gambling (Alderney) Law, as amended (the 1999 Law). The 1999 Law provides that:

a Gambling is defined as all forms of betting, gaming and wagering, and any lotteries.
b Lawful gambling means any form of gambling made lawful under Section 6 of the 1999 Law.
c Gaming means the playing of a game of chance for winnings in money or money’s worth, regardless of whether any person playing the game is at risk of losing any money or money’s worth, but does not include the making of bets by way of pool betting.
d Game of chance includes a game of chance and skill combined, and a pretend game of chance or of chance and skill combined, but does not include any athletic game or sport.
e Pool betting is specifically defined as follows (and will fall within the definition of gambling):

bets made by a number of persons:

(a) on terms that the winnings of such of those persons as are winners shall be, or be a share of, or be determined by reference to, the stake money paid or agreed to be paid by those persons, whether the bets are made by means of a totalisator, or by filling up and returning coupons or other printed or written forms, or in any other way, or

(b) on terms that the winnings of such of those persons as are winners shall be, or shall include, an amount (not determined by reference to the stake money paid or agreed to be paid by those persons) which is divisible in any proportions among such of those persons as are winners, or

(c) on the basis that the winners or their winnings shall, to any extent, be at the discretion of the promoter or some other person.2

These definitions have the effect that, in Alderney, games of pure skill and competitive sports for prizes are excluded from the definition of gambling. However, sports betting, including fantasy sports, does fall within the Alderney regulatory regime.
The 1999 Law specifically excludes from its application contracts entered into by way of business, the making or performance of which involve dealing in any way with an investment (or making arrangements for another person to deal in any way with an investment, or offering or agreeing to do so). The definition of investment is necessarily wide and includes rights under an insurance contract, rights under a contract for differences, options and futures contracts.

ii  Gambling policy

‘Except as may be provided by the provisions of any Ordinance made under [the 1999 Law], all forms of gambling are unlawful.’ The lawfulness of gambling in or from within Alderney is therefore provided for by a series of ordinances that legalise gambling only when conducted from within a set regulatory framework.

Gambling is an industry in Alderney and the Alderney Gambling Control Commission (AGCC) has been in operation since 2000 to regulate it by way of the granting of licences and the supervision of licensees. Alderney is considered one of the world’s leading jurisdictions for the regulation of remote gambling and the island works hard internationally to encourage the development of the industry, while the AGCC set supervisory standards that are both appropriate to the industry and ensure the reputation of the island is protected.

iii  State control and private enterprise

Beyond the regulatory requirements imposed on gambling under the 1999 Law there are no state controls on gambling and the Alderney regime does not favour the state over private enterprise.

Alderney law does exempt securities issued by the States of Alderney or the States of Guernsey, or by or under the authority of the UK government, by reason of any use or proposed use of chance to select particular securities for special benefits, if the terms of the issue provide that the amount subscribed is to be repayable in full in the case of all the securities.5

No limits apply to the number of licences available from the AGCC.

iv  Territorial issues

Gambling is uniformly regulated across Alderney with no territorial distinctions made on the island. However, while Alderney forms part of the Bailiwick of Guernsey, Alderney is a separate legal jurisdiction. Alderney laws in respect of gambling do not apply on Guernsey, Sark or Herm, all of which are subject to laws made by the States of Guernsey. The Bailiwick of Guernsey regulates a range of financial services businesses and, depending upon the manner in which remote gambling operators conduct their businesses, parts of this financial services regulation may apply either to the operators themselves or to their directors and service providers.

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3  Section 19(3), the 1999 Law.
4  Section 5, the 1999 Law.
5  Section 19(1), the 1999 Law.
v  Offshore gambling
The States of Alderney has a permissive attitude towards the provision of gambling services, and there is no general restriction in relation to foreign operators providing gambling products to Alderney citizens. The AGCC is very much a global citizen in this regard and has worked with a number of other gambling regulators to sign memoranda of understanding around the sharing of information relating to licensees including with the Nevada Gaming Control Board in January 2011; the Casino Regulatory Authority of Singapore in October 2012; and the British Gambling Commission in February 2013.

This is in the context of remote gambling only. Any foreign operator who wants to provide land-based gambling would need to apply and obtain the relevant licences locally.

II  LEGAL AND REGULATORY FRAMEWORK

i  Legislation and jurisprudence
Alderney is the northernmost of the inhabited Channel Islands and politically it is part of the Bailiwick of Guernsey, a British Crown dependency. As stated above, Alderney is a separate legal jurisdiction.

The States of Alderney is the legislature of the island, although Alderney sends two representatives to the States of Guernsey as well. While Alderney enjoys full autonomy in law (except in matters of foreign affairs and defence, like the other Channel Islands and the Isle of Man), under the provisions of a formal agreement entered into between the governments of Alderney and Guernsey, certain matters have been delegated to Guernsey. These transferred services include policing, customs and excise, airport operations, health, education, social services, childcare and adoption. Immigration is the responsibility of the UK (UK law applies), with day-to-day operations carried out by the Guernsey Border Agency. In addition to the transferred services, both the UK and Guernsey may legislate on other matters with the consent of the States of Alderney.

Gambling legislation was first put forward in Alderney in 1975 in the form of the Gambling (Alderney) Law 1975. The 1999 Law is now the primary legislation regulating gambling within Alderney.

The significance of remote gambling to the island’s wider economy and its global status unsurprisingly have led to a deep pool of subsidiary legislation in this regard, with no fewer than 39 separate pieces of subsidiary legislation relating to gambling on the statute book. Of these, the Alderney eGambling Ordinance 2009 (the 2009 Ordinance) and the Alderney eGambling Regulations 2009 (the 2009 Regulations) are the most significant pieces of legislation for remote gambling operators.

ii  The regulator
The AGCC was established in 2000 under the 1999 Law. The AGCC is the regulatory authority tasked with the responsibility of ensuring and maintaining the integrity of the online gambling industry in Alderney.

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6  Section 1, the 1999 Law.
The AGCC’s stated primary objective is to protect and enhance the reputation of Alderney as a first-tier regulatory jurisdiction by seeking to ensure that:

- all electronic gambling is conducted honestly and fairly, and in compliance with good governance;
- the funding, management and operation of electronic gambling remains free from criminal influence; and
- electronic gambling is regulated and monitored so as to protect the interests of the young and the vulnerable, and without compromising this primary objective, to work with other agencies in the development of eGambling activities regulated by the AGCC.

The duties of the AGCC are to keep under review the extent and character of gambling on the island of Alderney and, in particular:

- to grant such licences to an applicant as may be necessary for the purpose of providing and operating any form of gambling;
- to supervise and control, including by way of inspection and the imposition of conditions, the conduct and operation of any form of gambling so licensed;
- to investigate the character and financial status of any person applying for, or holding, a licence or otherwise concerned with the provision, operation or management of any form of gambling;
- to ensure that all fees, royalties and other monies payable to the States by a person providing or operating any form of gambling are duly paid and accounted for; and
- to perform such other functions as are assigned to the AGCC by the 1999 Law or by Ordinances made under it.7

The AGCC’s responsibilities are therefore effectively related to the licensing of new applicants as well as the supervision of existing licensees and gambling more generally.

The licensing process involves the review of all applicants to determine their fitness and propriety as well as a review of a licensee’s gambling equipment and systems, internal controls and operating procedures.

Licences and certificates are not subject to time-based renewal but granted indefinitely and the number of licences the AGCC is able to grant is not subject to any kind of cap.

iii Remote and land-based gambling

Both remote and land-based gambling are permitted in Alderney. Notwithstanding this, the island’s small population size and worldwide stature in the field of remote gambling has meant that the focus of almost all regulation is remote gambling.

iv Land-based gambling

Alderney does have specific and separate legislation in respect of land-based gambling.8 Owing to the island’s small population, land-based bookmaking has, however, been negligible to non-existent over the past decade.

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7 Section 2, the 1999 Law.
v Remote gambling
The legal operation of online gambling in Alderney was the creation of a number of ordinances dating back to 2001 that allowed for applications to be made to the AGCC for the issuance of remote licences.9

Following the 2001 regulation by Alderney of online gambling, commonly referred to by the AGCC as ‘eGambling’, Alderney became one of the first non-European Economic Area jurisdictions to be white-listed by the UK. This allowed Alderney licensees (and those of other white-listed jurisdictions) to advertise and offer gambling services in the UK without obtaining a Gambling Commission operating licence, until the white-list regime was ended by the Gambling (Licensing and Advertising) Act 2014.

The legislation was overhauled by the States of Alderney in 2009 and the 2009 Ordinance is now the most significant piece of legislation for the purposes of remote gambling, and is intended to be as future-proofed as possible in a technology-driven industry. The 2009 Ordinance provides the current framework for the legal provision of remote gambling from within Alderney. eGambling is defined in the 2009 Ordinance as where the gambling transaction with an eGambling licensee or Category 2 associate certificate holder is effected remotely by a customer by means of a telecommunication device.

Licences available are:

a the Category 1 or business-to-consumer (B2C) licence, for an operator that has the direct contractual relationship with the customer (using either its own platform or someone else’s); and

b the Category 2 or business-to-business (B2B) licence, for an operator that manages the platform and any games approved to run on that platform without the direct customer relationship.

Alderney has positioned itself as a global leader in the regulation of remote gambling, particularly in the B2B space. Its licensees hold a significant proportion of the global market.

vi Ancillary matters
An eGambling licensee or a Category 2 associate certificate holder may exercise its eGambling licence or Category 2 associate certificate only if: every person that performs functions identified by the licensee or certificate holder in its approved internal control system as those of a key individual holds a current key individual certificate; or if every person designated as a key individual by the AGCC in accordance with regulations made under Paragraph 19 of the 2009 Ordinance holds a current key individual certificate.10

A person who is a key individual and who does not, without reasonable excuse, hold a key individual certificate is guilty of an offence and is liable, on conviction, to a fine not exceeding £25,000.

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10 Paragraph 19(1), the 2009 Ordinance.
III THE LICENSING PROCESS

i Application and renewal

As outlined in Section II.v, supra, there are two types of licence available in Alderney, distinguished on the basis of the two distinct functions of eGambling with licences covering the player relationship, and the provision of games and betting activities: Category 1 or B2C licence; and Category 2 or B2B licence.

A single entity may choose to hold either or both licences. The application process is identical irrespective of whether an application is made for one or both types of licence.

In addition to the licences above the following certificates may be required in Alderney:

a a Category 2 associate certificate (formerly known as a foreign gambling associate certificate) for B2B activities, for foreign-based operators equivalent to a Category 2 eGambling licensee but based outside Alderney;

b a core services provider associate certificate for third parties providing gambling software to a licensee or Category 2 associate certificate holder; and

c a hosting certificate for the physical accommodation of gambling equipment, which must meet the AGCC’s technical standards.

The Alderney licence application process can be considered to have three constituent parts: suitability, fair games and adequate process.

The first stage of the application process requires applicants to submit a completed application form with supporting documents as well as key individual certificate applications in respect of all key individuals who don’t already hold a key individual certificate. A ‘key individual’ is an associate, someone who occupies or acts in a managerial position, someone who carries out managerial functions, or someone who exercises significant influence over the operations of the applicant. A deposit of £10,000 must be paid in respect of the AGCC’s expenses in investigating and processing the application.

After receiving an application, the AGCC will typically seek a meeting with the applicant to talk through the business plan and intended remote gambling operations as well as the staff and corporate entities involved in the application.

Successful completion of the first stage will result in a licence being issued on payment of the applicable licence fee, and the licensee will proceed to the second stage of the process.

Stage 2 requires the AGCC to assess licensees as being adequate with regard to their internal control system, gambling equipment and capitalisation. The application process is suggested by the AGCC to have a time frame of six months, though this is necessarily influenced by the timelines in which applicants supply required information.

Licensees are required to submit regular financial and operational reports, which include information relating to player activity, suspicious transactions and significant player deposits or losses in addition to their broader anti-money laundering reporting obligations.

Licensees are subject to an annual audit requirement in respect of their financial accounts.

ii Sanctions for non-compliance

Contravention of any provision of the 1999 Law (or any ordinance made under it) is an offence.\textsuperscript{11} Additionally the 1999 Law creates specific offences of cheating by fraud or

\footnote{11 Section 13, the 1999 Law.}
unlawful device or practice in any gambling transaction\textsuperscript{12} – the penalties for which include imprisonment for up to five years – and inciting young persons (i.e., those under eighteen) to gamble.\textsuperscript{13}

Penalties for offences that are not specified (i.e., that do not relate to a specific offence) are as follows:
\begin{itemize}
  \item[a] in the case of a first offence, a fine not exceeding £25,000 or imprisonment for a term not exceeding six months, or both; and
  \item[b] in the case of a second or subsequent offence under the same provision, a fine not exceeding £50,000 or imprisonment for a term not exceeding two years, or both.
\end{itemize}

In addition to the criminal offences contained in the 1999 Law, the 2009 Ordinance sets out a number of offences specifically in relation to remote gambling. Sanctions applicable to these offences include requiring rectification of a specific issue by the relevant licensee or certificate holder, issuing a formal caution, fines and suspension, or revocation of a licence (or suspension or withdrawal of a certificate).\textsuperscript{14}

The most well-known use of the AGCC’s sanction powers remains the suspension and subsequent revocation of the licences held by a number of companies trading as Full Tilt Poker following investigations by the AGCC. In that case, the AGCC found its investigation showed a shortfall of funds in the group caused by third-party theft and by covert seizure of funds by US authorities, both of which it stated had been concealed from the AGCC.

\section*{IV \textsc{Wrongdoing}}

Alderney, as part of the Bailiwick of Guernsey, is subject to the anti-money laundering regime established by the States of Guernsey under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999 and ancillary legislation.

Owing to Guernsey’s status as a leading international finance centre, it is highly focused on compliance with international standards (as represented by the Financial Action Task Force and Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism) in respect of the application of sanctions, prevention of terrorist financing and prevention of money laundering. The Guernsey legislation and guidance in this regard is regularly updated to reflect international best practice.

The 2009 Regulations make clear the standards licensees are expected to meet in respect of these issues and impose a modified form of the customer due diligence and transaction reporting requirements that financial services businesses in the Bailiwick are expected to meet.\textsuperscript{15}

Licensees are required to appoint a money-laundering reporting officer to report suspicious activity. Failure to report, where appropriate, may result in criminal prosecution. Licensees are assessed in respect of their processes in this area as part of the licensing process and on an ongoing basis.

\textsuperscript{12} Section 11, the 1999 Law.
\textsuperscript{13} Section 12, the 1999 Law.
\textsuperscript{14} Section 12, the 2009 Ordinance.
\textsuperscript{15} Schedule 16, the 2009 Regulations.
V TAXATION

For taxation purposes, Alderney is part of the Guernsey taxation regime and treated as part of Guernsey. There is no corporate tax, VAT or other tax or duty applicable to gambling licensees in Alderney. The corporate tax regime for Guernsey and Alderney companies has been approved by the EU. Under this regime (‘zero-10’) companies with non-resident shareholders are not liable for any corporate tax, so the effective rate for a foreign-owned company is zero per cent.

In order to benefit from the zero per cent corporate tax regime, licensees must demonstrate that (1) they are resident in, and managed and controlled from, the Bailiwick; and (2) the main permanent establishment that generates all or the majority of their group profits is in the Bailiwick.

Guernsey income tax for individuals is set at 20 per cent with a maximum charge of £220,000 per year on Guernsey-sourced income and a maximum charge of £110,000 on non-Guernsey income. More than 90 days in Guernsey will establish residency and 180 days will establish sole or principal residency. Social security is set at 6 per cent for employees and is capped at annual earnings of £120,000.

VI ADVERTISING AND MARKETING

Advertising and marketing are regulated under the 2009 Regulations, which simply state that advertising carried out by, or conducted on behalf of, a Category 1 eGambling licensee:

- must be truthful;
- must not be distasteful;
- must not promote gambling by, with or through persons under the age of 18 years, and this factor must be taken into account when determining media selection and placement of the advertising;
- must not encourage people to engage in excessive participation in eGambling that would be socially irresponsible or could result in harm to them or others;
- must not imply or convey any message that a person’s status, general abilities or social success can be attributable to gambling;
- must not challenge or dare people to participate in eGambling;
- must not, having regard to the expected returns to customers through eGambling, promote or suggest any unrealistic expectation of winning;
- must not bring into disrepute:
  - the island of Alderney;
  - the Commission; or
  - in any broader context, the Bailiwick of Guernsey; and
- must comply with any requirements relating to the content or nature of advertising imposed in the jurisdiction covering the target market for that advertising.¹⁶

Similar requirements extend to advertising by temporary eGambling licensees, Category 2 eGambling licensees and Category 2 associate certificate holders respectively.¹⁷

¹⁶ Regulation 4(c), the 2009 Regulations.
¹⁷ Regulations 8(1)(c), 6(c) and 60(b), the 2009 Regulations.
VII THE YEAR IN REVIEW

Alderney continued to welcome new licensees in 2016, and also saw a number of merger and acquisition transactions involving remote gambling operators. These trends have continued in early 2017.

VIII OUTLOOK

It is to be expected that Alderney will continue to grow as a remote gambling jurisdiction looking to access newly opening markets and continuing to build its relationships with other gambling regulators. New licence applications are still being processed notwithstanding international political upheaval and Alderney continues to market itself as a remote gambling jurisdiction to a range of different global market places.

One area where industry as a whole may need to adapt is the impact of the General Data Protection Regulation on internal procedures, data processing and usage. While Alderney is outside the EU it is expected that the Bailiwick of Guernsey (and hence Alderney) will put in place an equivalent regime and that those processing or controlling personal data (such as Category 1 licensees) will therefore need to meet European data protection standards.

At the time of writing, the Bailiwick of Guernsey’s law introducing the new regime has not been published and so it is impossible to be certain on the scale or scope of its impact; however, as the regime will seek to be equivalent to that put in place by the General Data Protection Regime (and as operators may interact with European clients in any event) it can be anticipated that data subject rights such as portability, subject access requests and the right of erasure will be applicable to many, if not all, licensees when processing personal data.
Chapter 5

AUSTRALIA

Jamie Nettleton, Nicola Austin, Mia Corbett and Shanna Protic Dib

I  OVERVIEW

i  Definitions

In general terms, for an activity to be classified as gambling in Australia, it must involve the staking of money or other valuable consideration of real-world value on the outcome of an event determined in whole, or in part, by chance and with the objective of winning a prize.

Where an activity does not satisfy these criteria, it is not generally considered to be gambling under Australian law.

‘Trade promotions’, being free-to-enter competitions for the promotion of trade, are also regulated under gambling legislation in each jurisdiction. These competitions are subject to specific restrictions and, in certain jurisdictions, are only able to be conducted where a permit has been issued by the relevant regulator.

Fantasy sports operators have existed in the Australian market for some years. Initially, they were regulated as a form of trade promotion, whereas now they are treated by regulators as a form of bookmaking. This regulatory treatment may be subject to change as more fantasy sports operators enter the Australian market.

No specific regulation of ‘pool betting’ exists in Australia. Traditionally, newspapers offered ‘soccer pools’; however, these are regulated as a form of lottery and have since been superseded in popularity by various forms of betting products.

In respect of the conduct of a totalisator, exclusive licences are granted to totalisator operators in all Australian jurisdictions. These operators are licensed to accept bets relating to a contingency (generally, the outcome of a racing or sporting event), which are then contributed to a pool that is paid out by reference to successful bets (after the operator deducts a percentage of the pool as commission, as well as various fees and taxes).

Spread betting and betting on financial products are regulated by the Corporations Act 2001 (Cth). To be conducted legally, operators must obtain an Australian Financial Services Licence. These products are regulated under a different regulatory regime to gambling products; however, in certain circumstances a sports betting licence may also be obtained.

1 Jamie Nettleton is a partner, and Nicola Austin, Mia Corbett and Shanna Protic Dib are solicitors, at Addisons Lawyers.

2 It is possible for the purchase of a product or service to be a condition of entry.
ii Gambling policy

In Australia, there is a general prohibition in all jurisdictions on the conduct and promotion of gambling. Legislative exemptions exist for gambling activities that are conducted under a licence. These activities include:

\[a\] lotteries (both in venue and online);
\[b\] wagering and sports betting (both in venues and online);
\[c\] slot machines, or ‘pokies’ (just in venues); and
\[d\] land-based casinos where casino games, including poker, baccarat and blackjack (among others) can be played.

The paternalistic approach to the regulation of gambling services by the state and federal governments is a response to the concerns that arise from the adverse social consequences associated with gambling.

However, gambling has long been a part of Australia’s culture and identity and, together with racing and sport, is well established in the national consciousness. State and territory-based regulation of gambling in the early 20th century marked the beginning of the legislative regime in place today. With the introduction of online wagering in the late 20th century, the industry continues to flourish, despite the continuing conflict between the economic returns provided by the gambling sector to the state and territory governments, and the pressure for governments to take action to minimise problem-gambling behaviour.

iii State control and private enterprise

Historically, all the lottery and totalisator operators were government-owned entities. Almost all states and territories (Western Australia being the exception in respect of its totalisator and lottery) have corporatised and privatised their gambling operators. Almost all leading gambling businesses in Australia (most of whom are listed) conduct business under a licence granted by a state or territory government (or regulator).

The principal companies that hold gambling licences are:

\[a\] Tatts Group Limited (Tatts),\(^3\) which has the exclusive right to conduct lotteries through retail outlets in Queensland, Tasmania, New South Wales, Victoria, South Australia, the Australian Capital Territory and the Northern Territory, and the exclusive right to conduct totalisators (and off-course betting) in Queensland, South Australia, Tasmania and the Northern Territory;
\[b\] Tabcorp Holdings Limited (Tabcorp), which has the exclusive right to conduct totalisators and off-course betting in New South Wales, Victoria and the Australian Capital Territory;
\[c\] The Star Entertainment Group Limited, which operates casinos in Sydney and in South East Queensland;
\[d\] Sky City Pty Ltd, which operates casinos in Adelaide and Darwin; and
\[e\] Crown Resorts Limited, which operates casinos in Melbourne and Perth (and Sydney from 2021).

\(^3\) At the time of writing, a merger proposal has been made by Tabcorp to acquire Tatts. This is being considered by the Australian Competition Tribunal (see Section VIII.ii, infra).
In Western Australia, the totalisator and lottery is conducted through state-owned corporations, respectively operated by Racing and Wagering Western Australia and LotteryWest. However, the Western Australian government is expected to follow the lead of the other states and territories and to conduct a tendering process in the near future in respect of the exclusive licence to operate the state’s totalisator.

Separate exclusive licences are also issued in each state and territory in respect of the conduct of Keno games in land-based retail venues.

Save for Queensland, the right to operate a casino has been the subject of an exclusive licence in the relevant jurisdiction. The recent issue of new casino licences in New South Wales and Queensland is discussed further in Section II.iv, infra.

Wagering services are not only provided by totalisator operators (who also provide fixed-odds betting services) but also by on-course bookmakers (some of whom also operate online) and corporate bookmakers (mostly licensed in the Northern Territory).

iv Territorial issues

As mentioned in subsection iii, supra, licences to conduct gambling are issued by the relevant state or territory government (or regulator), including those listed in Section II, infra. Traditionally, gambling was conducted solely in venues. However, as a result of new technologies and the challenges posed by gambling monopolies in most Australian states and territories, a number of gambling businesses (particularly in the wagering sector) are licensed to conduct gambling remotely. This includes corporate bookmakers, most of whom are subsidiaries of the leading European online betting companies.

However, it is generally understood under principles of Australian constitutional law that gambling services provided under a licence issued in any state or territory of Australia are able to be provided to residents of other Australian states and territories. This principle was confirmed by the decision of the High Court of Australia in Betfair Pty Ltd and Another v. Western Australia (2008) 244 ALR 32.

Each licensing jurisdiction imposes different licence conditions on its licensed operators, by reference to the relevant legislation. Most online corporate bookmakers, for example, are licensed in the Northern Territory, by the Northern Territory Racing Commission.

v Offshore gambling

In 2001, the federal government enacted the Interactive Gambling Act 2001 (Cth) (IGA), which prohibits the provision of ‘interactive’ (or online) gambling services with an ‘Australian customer link’.

Broadly speaking, the IGA prohibits the provision of ‘interactive gambling services’ to persons present in Australia (the Operational Prohibition). Specific exemptions exist in respect of wagering services (with the exception of in-play sports betting services provided online) and lottery services (with the exception of instant or scratch lotteries). In addition, the IGA prohibits the advertising of ‘interactive gambling services’ in Australia (the Advertising Prohibition).

The IGA targets the supply of online gambling to residents of Australia by offshore operators, but does not prevent Australian residents from accessing those offshore services, or the provision of services by Australian operators to customers in other countries.

A defence to the Operational Prohibition is available where the operator did not know, or could not reasonably have known, that their service had an ‘Australian customer link,’ that is, that any or all of the customers of the service were physically present in Australia.
The IGA is enforced by the Australian Communications and Media Authority (ACMA) and the Australian Federal Police. However, since its introduction, the IGA has been criticised as an ineffective means of preventing unlicensed offshore gambling services from being offered online to Australian residents. In response to these criticisms, late last year the federal government introduced the Interactive Gambling Amendment Bill 2016 (IGA Amendment Bill). Broadly, the aim of the IGA Amendment Bill is to clarify the existing law, increase penalties for infringement and give greater enforcement powers to the ACMA. The IGA Amendment Bill has been debated by both Houses of Parliament and is likely to be passed later in 2017.

II  LEGAL AND REGULATORY FRAMEWORK

i  Legislation and jurisprudence

Australia is a federation. In practice, this means that legislative power is divided between the federal government and the eight constituent states and territories. This is no different for gambling. Traditionally, the power to regulate gambling activities in Australia was reserved to the states and territories.

This changed in 2001 with the enactment of the IGA. Save for legislative reform proposed by the federal government in 2012 to regulate the sale and use of poker machines (which is no longer in effect, save to a limited extent), and the IGA, the government has recognised that the regulation of gambling is a matter within the jurisdiction of the states and territories.

The IGA prevails over state and territory legislation to the extent of any inconsistency. That is, even where certain conduct does not contravene the IGA, it may nonetheless be in breach of state and territory gambling laws.

Whereas the IGA regulates interactive (or online) gambling services, state and territory legislation continues to regulate land-based gambling activities and sets out different regulatory frameworks for different types of gambling, including casinos, sports betting, gaming machines and lotteries.

Even though the federal government’s proposal of poker machine regulation in November 2012 was unsuccessful, there remains the possibility that the government may intervene in the future to regulate further land-based gambling, particularly gaming machines.

In addition to regulating the manner in which land-based gambling is conducted, legislation in each state and territory also establishes separate regulatory bodies.

ii  The regulator

The key responsibilities assigned to the state and territory regulators include granting licences, monitoring compliance of gambling operators and enforcement of legislation where necessary. The key regulators in each jurisdiction are:

a  New South Wales: Liquor and Gaming NSW;

b  Victoria: Victorian Commission for Gambling and Liquor Regulation and the Department of Justice and Regulation;

c  Australian Capital Territory: ACT Gambling and Racing Commission;

4  There is also specific state and territory legislation regulating interactive gambling, for example, Chapter 7 of the Gambling Regulation Act 2003 (Vic).
Northern Territory: Northern Territory Racing Commission (NTRC);
Western Australia: Department of Racing, Gaming and Liquor;
South Australia: Independent Gambling Authority;
Tasmania: Liquor and Gaming Commission;
Queensland: Office of Liquor and Gaming Regulation; and
Australia: the ACMA.

In certain states and territories, a different regulator is responsible for the regulation of the casino. For example, the Independent Liquor and Gaming Authority is responsible for determining the regulatory arrangements that apply to the operation of casinos in New South Wales.

### Remote and land-based gambling

The Australian legislative framework for the gambling sector distinguishes between remote and land-based gambling; both are regulated at the federal and state and territory levels.

As indicated in subsection i, supra, interactive (or online) gambling services are regulated at the federal, and state and territory levels, while land-based gambling is regulated mostly at the state and territory level.

At the state and territory level, the distinction is due in part to the different regulatory frameworks that exist for the different types of gambling services, such as casinos and gaming machines. In addition, the distinction can be attributed to the rapid evolution of the market and the often outdated legislation at the state and territory level. For example, in New South Wales, the Unlawful Gambling Act 1998 (NSW) (NSW UGA) does not contemplate online gambling. However, the preferred position of Liquor and Gaming NSW, the New South Wales regulator, is that the NSW UGA applies equally to both online and offline forms of gambling.

### Land-based gambling

Land-based gaming is regulated largely by state and territory legislation, which is principally directed at gambling products or services that are venue-based. These include operators of wagering and lottery terminals, and gaming machines. However, certain federal laws apply to land-based gambling, such as the laws relating to anti-money laundering and counter-terrorism financing (see Section IV, infra).

Generally, an exclusive licence has to be granted in each state or territory to conduct off-course betting in retail venues. Similarly, an exclusive licence has to be granted to provide lottery products (which are available for sale by retailers, principally in newsagents).

Further, licensed venue operators are permitted to conduct land-based machine gaming (such as slot machines, known in Australia as poker machines). These venues include casinos, pubs and clubs. The sole exception to this principle is in Western Australia, where gaming machines are only permitted in casinos. Certain restrictions are imposed on the operation of gaming machines by licensed venue operators, such as caps on the total number of machines in any particular venue, locality or in the jurisdiction as a whole. The regulatory regime in respect of gaming machines differs substantially from jurisdiction to jurisdiction with Victoria, for example, having a mandatory pre-commitment system in place (which players can opt out of).

Until recently, there was a limited number of casino licences granted in each state and territory. However, in recent years, this exclusivity has been relaxed. Previously, in New South
Wales, the exclusive casino licence was held by Echo Entertainment Group Ltd (now The Star Entertainment Group Ltd). In 2015, the New South Wales state government granted a licence to Crown Resorts Limited for the construction and operation of Crown Casino at its new Barangaroo development in Sydney (which is due to open in 2021). Similarly in Queensland, the government has granted additional casino licences to various private entities.

Various restrictions exist at the state or territory levels that apply to licensed online wagering operators (even where based in another state or territory). These restrictions set out mandatory requirements relating to advertising, warning messages and pre-commitment as well as a requirement to pay a product fee in respect of races and some sporting events that take place in that state or territory.

v Remote gambling
The IGA prohibits the supply of online gambling services to persons resident in Australia. However, this prohibition does not apply to other types of gambling services provided online.

Generally speaking, licensed operators may offer remote or online gambling services and no distinction exists between the online platforms or devices on which a gambling product may be offered to customers.

The exception that exists under Section 8A(1) of the IGA in respect of online wagering does not extend to online in-play sports betting. That is, the ability of wagering operators to provide in-play sports betting is restricted to bets placed over the telephone via a voice call or in licensed venues only. However, in 2015, the concept of ‘click-to-call’ services was introduced by various corporate bookmakers to facilitate in-play betting on sports through the use of synthetic voice technology. This technology allowed customers to place in-play bets from their smart phone and other devices via a telecommunication connection. The IGA Amendment Bill proposes to prohibit these services by clarifying that the use of a recorded or synthetic voice in a communication means that communication will not amount to a ‘voice call’ and therefore that bets made in this manner will not considered to be a bet placed over the telephone.

The IGA Amendment Bill also introduces the concept of a ‘place-based betting service’, which will allow online in-play betting on sporting events when placed using ‘electronic equipment’ at the venue of a licensed operator.

Licences granted to Australian operators to provide gambling services online often impose restrictions on the location and manner in which the licensed operator may conduct its gambling business. For example, gambling operators licensed by the NTRC are required to locate various aspects of their gaming operations in the Northern Territory. In addition, the conditions of the licence has the effect that bets are deemed to be placed, received and accepted in the Northern Territory for the purposes of the licence, irrespective of where the customer placing the bet is located.

vi Ancillary matters
Depending on the gambling service, ancillary licences may be required in addition to the principal licence granted to the operator to conduct the gambling business.

For example, in addition to those operators that conduct gambling activities in a casino or other land-based venue, separate licences are required to be held by manufacturers and suppliers of poker machines, as well as testing agents.

In most cases, key employees or close associates of licensed operators are required to hold a separate licence, or at least be approved by the regulator prior to commencing their role.
III THE LICENSING PROCESS

i Application and renewal

The process involved in applying for a licence to conduct a gambling business in Australia depends on the type of licence and the jurisdiction in which it is sought. For example, in respect of remote wagering, the Northern Territory is the leading licensing jurisdiction in Australia and licences are granted by the NTRC. Until recently, the Norfolk Island Gaming Authority (NIGA) was a popular licensing jurisdiction for online gambling operators wishing to operate in the Australian market. However, because of the events discussed in Section VII,infra, the NIGA was dissolved and all licences issued by the NIGA expired on 31 March 2017. While other states and territories have their own licensing regimes, these regimes have not been ‘tried and tested’ in the same way as the Northern Territory regime.

There are a number of licensing options, depending on the nature of the gambling service to be provided. Licences may be granted to conduct bookmaking and online lotteries. For simplicity, we have limited our response to the process relating to the grant of sports bookmaking licences.

In order to be eligible to obtain a licence, applicants must be registered in Australia as a corporate entity under the Corporations Act 2001 (Cth). The company and key personnel must also meet suitability and probity requirements prescribed by the relevant licensing authority.

In addition to satisfying the eligibility requirements, an applicant will generally need to provide the following information:

a the applicant’s certificate of registration and a copy of its constitution;
b police check documentation for each key employee;
c a business plan;
d prescribed financial and personal information, both for the applicant and key employees;
e the current prescribed licence fee; and
f a Deed of Release and Authorisation to enable the regulator to conduct all necessary inquiries.

The licensing process will typically last for up to six months. The probity process involving land-based casino licences may involve a period of over a year.

The duration of the licence will depend on the nature of the gambling service being provided and the agreement reached between the licensing authority and the operator, as set out in the licence conditions.

In light of the investment required in respect of land-based gambling operators, exclusive totalisator and casino licences typically remain in effect for a term exceeding 10 years.

ii Sanctions for non-compliance

Restrictions on the type of activity that can be conducted or the manner in which a gambling business may be conducted are usually contained in the terms and conditions of a licence and the underlying legislation. Failure to comply may lead to sanctions for breach of the licence, contravention of prohibitions set out in the relevant legislation, or both.

This most frequently arises as a result of periodic reviews conducted in connection with the operation of a casino. In many cases, the casino may be found not to have complied fully with the terms of its licence, resulting in the imposition of a fine and other penalties.
As it is beyond the scope of this chapter to outline the full framework for liability, our analysis is set out in general terms. Offences and sanctions in respect of non-compliance with licence conditions and the relevant laws vary between the states and territories.

At the federal level, the Operational Prohibition under the IGA carries a penalty of 2,000 penalty units, which is the equivalent to A$1.8 million for a corporation. The penalties proposed by the IGA Amendment Bill for the breach of the Operational Prohibition will be 5,000 penalty units for a criminal offence (equivalent to A$4.5 million for a corporation) and 7,500 penalty units under the new civil penalty provision (equivalent to A$6.75 million for a corporation).

**Individuals**

Generally, liability is placed on the operator of a prohibited gambling service rather than the customer for the participation in such services. However, liability may be placed on individual users of gambling services in limited circumstances. For example, the gambling legislation in New South Wales and Western Australia prohibits the placement of a bet on an Australian race with an unlicensed wagering operator. Notwithstanding these prohibitions, we consider it unlikely from a policy perspective that authorities will prosecute individuals under these provisions.

**Overseas operators**

An overseas operator may be found liable where an offence provision is expressly stated to have extraterritorial effect. The offence provisions in the IGA are expressed to apply extraterritorially. However, the practical difficulties that exist in enforcing Australian legislation against overseas operators has previously inhibited enforcement activity under the IGA. This problem is addressed in the IGA Amendment Bill by extending liability for the provision of unlawful gambling services to an operator’s directors and officers, as well as to persons involved in aiding or abetting the commission of the offence.

**Directors and officers**

There is no general principle extending liability to directors or officers of a gambling operator for the acts of a company. However, in cases where there is a prohibition on certain activities, certain state and territory legislation extends these prohibitions to the directors and officers of the company in line with the aiding and abetting provisions of Australia's criminal laws. For example, Section 53 of the NSW UGA stipulates that a director of a corporation that is in breach of the NSW UGA will commit an offence where the director ‘aids, abets, counsels or procures the commission of the corporate offence’. At the federal level, the IGA Amendment Bill will introduce civil aiding and abetting provisions for breaches of the IGA (in addition to the existing operation of criminal aiding and abetting provisions).

The IGA Amendment Bill also proposes to confer notification powers on the ACMA that will allow it to provide information relating to illegal services to Australia’s border protection agency and place directors on the ‘Movement Alert List’ (MAL) maintained by the Department of Immigration and Border Protection. A person named on the MAL may be prevented from entering Australia.
Agents
As a general principle, various parties may be found liable under the aiding and abetting provisions of Australia’s criminal laws. The broad language of the advertising prohibition also extends liability to marketing affiliates.

The IGA Amendment Bill proposes to increase the potential to prosecute for ‘aiding and abetting’ an offence under the IGA. Under the IGA Amendment Bill, parties such as a business-to-business (B2B) service provider, may be considered to have ‘aided and abetted’ the commission of either civil or criminal offences under the IGA.

Payment processors and internet service providers
Although the statutory prohibitions do not extend liability expressly to entities involved in money transfers where money is used for gambling purposes, payment processors need to be aware that there is risk in certain circumstances that liability may arise under the aiding and abetting provisions of Australia’s criminal laws, as set out above.

There is no legislative requirement placed on internet service providers (ISPs) to implement technical measures (such as geo-blocking) to prevent Australians from accessing a site permitting access to prohibited gambling content (including services provided by an illegal, unlicensed offshore operator).

In 2015, the federal government ordered a review of the IGA (the O’Farrell Review). In its response to the recommendations of the O’Farrell Review, the government indicated that it would discuss with banks and ISPs options for the introduction of payment blocking and ISP blocking technologies as a means of restricting the access of persons located in Australia to illegal interactive gambling services. It is envisaged that these discussions will take place as part of the final stage of a three-stage plan proposed by the federal government in implementing the recommendations of the O’Farrell Review.

IV WRONGDOING
i Money-laundering
Under the Anti-Money Laundering and Counter-Terrorism Financing Act (Cth) (2006) and corresponding regulations (AML/CTF Law), gambling operators in Australia are required to comply with a number of strict reporting and procedural obligations, including, but not limited to:

a verification and ongoing due diligence of the identity of all customers who open an account with the operator;

b maintaining an anti-money laundering and counter-terrorism financing programme (AML/CTF programme), which outlines how they will comply with their obligations under the AML/CTF Law;

c regular reporting to the Australian Transaction Reports and Analysis Centre (AUSTRAC), the body responsible for enforcing the AML/CTF Law, of all suspicious matters, threshold transactions, compliance reports and international fund transfers; and

d keeping records of all transactions, electronic funds transfers, customer identification procedures, AML/CTF programmes and due diligence assessments.

Penalties for non-compliance with the AML/CTF Law are significant. In 2015, AUSTRAC filed an action in the Federal Court against three Tabcorp Group companies for ‘extensive,
significant and systemic non-compliance’ with AML/CTF Law. In March 2017, the Federal Court approved a settlement agreement under which Tabcorp agreed to pay to AUSTRAC a A$45 million penalty (and costs) for contravention of AML/CTF Law.

ii Organised crime and match-fixing

In Australia, match-fixing is dealt with under relevant criminal legislation in most jurisdictions, (e.g., in New South Wales, Part 4ACA of the Crimes Act 1900 (NSW)). Under legislation in most Australian jurisdictions, wagering operators are required to enter into integrity agreements with each relevant racing controlling body and the leading sporting bodies on which they offer betting products. These agreements allow the operator to use the statistical information relating to the sporting or racing events (and participants) in return for a fee and on the condition that they agree to cooperate with these bodies by providing information about their customers’ betting patterns and behaviour to assist in the investigation of match-fixing.

V TAXATION

All Australian companies, including gambling operators, are required to pay corporate income tax (currently 30 per cent6) and goods and services tax of 10 per cent on all sales. It is proposed that goods and services tax will apply after 1 July 2017 to overseas suppliers of goods and services to Australian customers. These proposals are likely to apply to offshore gambling services supplied to persons in Australia.

In addition, a number of additional taxes are imposed specifically on gambling operators. These taxes are imposed by the relevant licensing jurisdiction and represent a significant source of revenue for state and territory governments. Taxes include:

\( a \) direct gambling taxes calculated by reference to the gambling revenue of the company (as set out in the licence conditions);

\( b \) licence fees paid initially or on a periodic basis (depending on the licence held). In the case of exclusive licences such as retail totalisators, there is usually a sizeable upfront fee payable; and

\( c \) fees charged by sports or racing control bodies to wagering operators in consideration for the use of race field and sports fixture information. This fee is generally calculated by reference to a percentage of gross revenue or turnover of the wagering operator in connection with the relevant sport or racing event.

The nature and extent of these taxes vary significantly depending on the type of gambling service provided and the relative market share of the operator.

Recently, legislative changes on a state level have imposed further taxes on gambling operators. In July 2016, the Treasurer of South Australia announced the introduction of a ‘place of consumption’ tax (PoC Tax) of 15 per cent of net revenue derived from customers located in South Australia. This is due to come into effect on 1 July 2017.

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5 Generally, these agreements are entered into by wagering operators with the leading sporting bodies on a national basis.

6 It is proposed that this will be reduced to 25 per cent for businesses whose annual turnover is less than A$50 million by 2026–27.
In early 2017, the federal government discussed the possibility of introducing a point of consumption tax for gambling operators that will apply federally. No legislative proposals introducing this tax have been released to date.

VI ADVERTISING AND MARKETING

The extent to which advertising of gambling is prohibited depends on the type of gambling in question, the form of the advertising and the jurisdiction in which the advertising is conducted.

There is a complex arrangement of rules that regulate the advertising of gambling, including in state and territory legislation, which varies from jurisdiction to jurisdiction. In addition, there are industry codes (such as the Australian Association of National Advertisers Wagering and Marketing Communication Code), as well as more broadly applicable laws, such as federal consumer laws (which prohibit misleading and deceptive conduct).

For example, overlapping requirements under state and territory laws make it an offence to publish or otherwise advertise wagering services that, among other things:

a. encourage a breach of the law;
b. depict children under the age of 18, or target children under the age of 18;
c. suggest that winning will be a definite outcome of participating in gambling activities, or exaggerate claims relating to winning;
d. suggest that participation in gambling activities is likely to improve a person’s prospects;
e. promote the consumption of alcohol while engaging in gambling activities;
f. are offensive, or are not published in accordance with decency, dignity or good taste; or
g. offer an inducement to participate, or participate frequently in a gambling activity, including an inducement to open a betting account (the Inducement Prohibitions).

Strict laws apply specifically to advertisements published in traditional media, such as on print, television and radio advertising. Recently, the federal government has proposed to undertake a reform of Australia’s media laws, which will include further restrictions relating to the advertising of sports betting in the course of live sports broadcasts. Land-based advertising in pubs, clubs and hotels where retail betting is offered is also subject to restrictions.

There are also strict requirements relating to the display of responsible gambling messages, which vary greatly from jurisdiction to jurisdiction. These messages are required to be included with all advertising material that is published by a gambling operator, including at physical and virtual points of sale.

Recently, regulators have shown an increasing willingness to enforce compliance with advertising prohibitions, particularly the Inducement Prohibitions. In the past 12 months, the New South Wales regulator, Liquor and Gaming NSW, has brought court actions against a number of Australian-licensed wagering operators for unlawful advertising. In February 2017, Tabcorp was convicted and fined A$16,500 and ordered to pay legal costs of A$100,000; while in April 2017, Ladbrokes was convicted and fined A$35,000 and ordered to pay legal costs of A$50,000. Both were found to have published illegal advertisements that offered NSW residents inducements to participate in gambling or to open a betting account.
The Australian Competition and Consumer Commission has also previously brought a successful action against an Australian online wagering operator for advertising that was deemed to be misleading and deceptive by the Federal Court.  

VII THE YEAR IN REVIEW

i Dissolution of the Norfolk Island Gaming Authority
For many years, Norfolk Island was a leading licensing jurisdiction for online gambling in Australia. On and from 1 July 2016, Norfolk Island lost its right to self-govern and became, in effect, a regional council of New South Wales.

As a result of both this process and an independent report into the performance of the NIGA commissioned by the federal government in February 2016, the NIGA was dissolved on 31 March 2017. All licences granted by NIGA expired on that date.

This has caused many pre-existing Norfolk Island licensees to re-licence in the Northern Territory, where most Australian online gambling operations are now domiciled.

ii Crown charges in China
In October 2016, 18 Crown Resorts employees were arrested in China. The Crown Resorts employees, who have been detained in Shanghai, are expected to face court this year in relation to as yet undisclosed ‘gambling crimes’ that appear to be associated with the promotion of gambling activities and recruitment of Chinese nationals to gamble in Crown’s Australia-based casinos. These developments have signalled an increased focus on the activities of Australian casinos in sourcing VIP customers from overseas (particularly in China).

iii CrownBet and ClubsNSW digital partnership
In February 2017, CrownBet and ClubsNSW (a wagering operator that is 62 per cent owned by Crown Resorts) announced that it had entered into a 10-year, A$300 million deal that will allow CrownBet customers to bet on a specially designed app and withdraw cash from terminals in ClubsNSW venues. Tabcorp, which holds the exclusive licence to offer betting services from retail venues in NSW, has announced that it has entered into a similar arrangement with the Australian Hotels Association.

iv Market interests
Over the past year, the Australian market has seen an increased interest in daily fantasy sports products. At this stage, these products have been incorporated into the existing legislative framework for sports bookmaking. However, should interest in these products continue to grow, existing legislation may be amended to specifically deal with this new form of gaming. Consistent with the growing international interest in virtual gambling models, the Australian market has also seen growing interest in e-sports betting and betting on the outcome of lotteries.

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VIII OUTLOOK

i  IGA Amendment Bill and National Consumer Protection Framework

The proposed changes to the existing federal legislation that regulates the provision of gambling services to Australian residents have been discussed throughout this chapter. However, owing to the developing public interest in the industry, it is possible that further debate will give rise to additional changes to the measures proposed by the IGA Amendment Bill. For example, in January 2017, Senator Pauline Hanson of One Nation introduced an amendment to the Bill, which proposed to ban betting on the outcome of lotteries. This amendment was not passed. We expect that further amendments to the IGA Amendment Bill will be proposed before it is passed by both Houses of Parliament.

The federal government has also announced that a National Consumer Protection Framework will be implemented to introduce consistent harm minimisation measures across all Australian jurisdictions. It is expected that this framework will come into effect later in the year. At the time of writing, a consultation paper has been released to obtain feedback in relation to the framework.

ii  Proposed merger of Tabcorp Holdings Limited and Tatts Group Limited

In October 2016, Tabcorp announced that it had made a takeover offer for all of the issued shares in Tatts. Authorisation of this merger has been sought by Tabcorp from the Australian Competition Tribunal. At the time of writing, the Tribunal has not made a determination. The determination, once made, will alter materially Australia’s wagering and lotteries sector.
Chapter 6

BELGIUM

Philippe Vlaeminck and Robbe Verbeke

I OVERVIEW

i Definitions

Most of the definitions are provided for in the Act of 7 May 1999 on games of chance, betting, gaming establishments and the protection of players (the Act on games of chance), as amended in 2010 and implemented by multiple royal decrees.

Games of chance are defined in Article 2 of the Act as any game by which a stake of any kind is committed, the consequence of which is either loss of the stake by at least one of the players or a gain of any kind in favour of at least one of the players, or organisers of the game and in which chance is a factor, even if only ancillary, for the conduct of the game, or for determining the winner or his or her gains. It follows from case law from the Council of State that games played in a social network whereby players can pay to receive additional play money are also considered games of chance, even if the player cannot win money in them.2

Certain games of chance under the definition laid down in Article 2 above also benefit from specific definitions. This is the case for betting (or ‘bet’), fixed-odds betting and mutual betting. Betting is defined in general terms as game of chance where each player pays a stake and that results in gain or loss that is not dependent on the acts of the player but on the occurrence of uncertain events that occur without intervention of the players. Fixed-odds betting refers to a bet where the player bets on the result of a particular fact and where the amount of the winnings is determined depending on certain fixed or conventional odds, and where the organiser is personally liable for paying the amount of the gain to the players. Pool betting is defined as a bet where an organiser acts as intermediary between the different players who play against each other, where the stakes are pooled and distributed among the winners, after deduction of a percentage meant for paying the taxes on games and bets, to cover the organisation costs and a profit margin. Additionally, the Belgian Gaming Commission issued a notice explaining that spread betting (without benefiting from a specific definition under the Act on games of chance or any royal decrees) qualifies as betting as outlined above.3

1 Philippe Vlaeminck is a partner and Robbe Verbeke is a senior associate at Pharumlegal.
2 Judgment 232.752 of the Council of State of 29 October 2015 (Gamepoint). The fact that players can win (unlimited amounts of) play money, which gives the opportunity to keep on playing, makes this type of game fall within the ambit of the definition of games of chance, read together with the exclusions provided in Article 3 of the Act on games of chance.
All games and activities that fall under the definition provided for in the Act on games of chance qualify as gambling activities subject to either a licensing regime or a strict prohibition.

In general, poker and other card games, dice games, slot and other types of gaming machines as well as other table games offered within casinos, gaming halls or betting shops fall within the definition of a game of chance and are subject to the rules set out by the Act on games of chance and its implementing royal decrees.

Lotteries are defined in broad terms in Article 301 of the Belgian Penal Code as any operation provided to the public and aimed at providing winnings based on chance. However, it is commonly agreed that ‘lotteries’ refer to the games provided by the National Lottery operator under the Act of 19 April 2002 on the rationalisation of the functioning and management of the National Lottery (the National Lottery Act) and its implementing royal decrees defining the rules for all types of lottery game. From a general perspective, lottery games refer to lottery draw-games, such as Lotto games and Bingo, as well as to the lottery game coordinated among multiple lottery operators from the EU (i.e., EuroMillions), and to scratch cards.

Finally, it must be stated that binary options are defined as unconventional financial instruments that predict whether the market price of the underlying asset (e.g., shares, resources, inflation, interest decisions) will increase or decrease. The Gaming Commission stated that although such instruments could meet the criteria to qualify as games of chance, under Belgian law they are treated as financial instruments and subject to the related regulations.4

Moreover, to date, Belgian law neither defines nor qualifies (as games of chance) fantasy sports and social gaming.

ii Gambling policy

Belgian gambling policy is based on two pillars.

The first pillar is composed of the monopoly regime for public lotteries offered by the state-owned National Lottery operator (with small exceptions for charity lotteries and raffles that receive a prior authorisation and are subject to limitations).

The second pillar is based on a prohibition of all activities that qualify as games of chance under Article 2 of the Act, unless the operator has obtained a licence granted by the Belgian Gaming Commission.5

As regards online gambling, the National Lottery is authorised to provide its lottery games online under the National Lottery Act, while any other games of chance may be offered online provided that operators hold the required licences pursuant to the Act on games of chance.

Belgium carries out a regime of controlled expansion6 in order to attract players towards a safe and regulated gambling market, through the establishment of a monopoly and the granting of a limited number of licences.

5 Article 4 of the Act on games of chance.
iii  **State control and private enterprise**

As outlined in subsection ii, *supra*, all public lottery games (offline and online) may only be offered by the National Lottery operator (i.e., a public undertaking fully owned by the state and subject to the direct control of the government).

The operation of other games of chance is open to competition through the attribution of a limited number of licences.

iv  **Territorial issues**

Games of chance are regulated and licensed at federal level.

The competence granted to municipal authorities is limited to their approval for the establishment and operation of new land-based casinos[^7] and gaming halls[^8] within the perimeters granted to these authorities by the Act on games of chance.

v  **Offshore gambling**

The Belgian Gaming Commission is competent to monitor illegal gambling in Belgium and to take subsequent action.[^9] It adopts a stringent approach in relation to illegal offshore gambling operators directing their activities to Belgian residents.

The powers of the Gaming Commission are very broad. It can issue warnings against illegal operators but also issue administrative fines.[^10] In first instance, however, the Gaming Commission will not act as prosecuting authority but will only note infringements and transfer the file to the public prosecutor. If the latter takes action on the basis of the file handed to him or her, the illegal operator may be subject of criminal prosecution (see Section III.ii, *infra*). Several international operators have already been sanctioned on that basis.

The Gaming Commission also has a mechanism in place to prevent Belgian residents from accessing illegal (offshore) gambling websites. This mechanism involves the drafting of a blacklist which is available on the Gaming Commission website. This blacklist includes all websites found by the Gaming Commission that offer gambling to Belgian residents without the required licence. Through a cooperation between the Gaming Commission, the special police IT-crime unit and internet service providers (ISPs),[^11] the Gaming Commission informs the police of the name and details of the illegal websites; those data are then transferred to the ISP that will block the access to the website. The website will then be inaccessible to Belgian residents and will display a special webpage with the different logos of the enforcement authorities stating that the website is no longer accessible owing to infringement of Belgian law. This system has been contested by some remote gambling operators before different courts. Rulings in those cases were unanimously in favour of the government.[^12]

[^7]: A concession agreement must be concluded with the municipality in which the casino premises will be operated (Article 31 of the *Act on games of chance*).
[^8]: The operation of gaming halls must be performed based on the agreement to be entered into, at the own discretion of the authorities, between the operator and the municipal authorities of the territory in which the gaming halls will be operated (Article 34 of the *Act on games of chance*).
[^9]: Article 20 of the *Act on games of chance*.
[^10]: Article 15/2 and 15/3 of the *Act on games of chance*.
[^11]: ISPs committed to cooperating voluntarily through the conclusion of an agreement – the majority of ISPs are parties to this agreement.
[^12]: See judgment of the President of the Court of Commerce of Brussels (Flemish Chamber) of 13 June 2012 (*Bwin* case), and judgment of the Civil Court of First instance of Brussels (Flemish Chamber)
II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

The legal and regulatory framework is essentially built around the two pillars of the gambling policy: one set of rules applies to lotteries and another to games of chance (in the strict sense of the word).

Games of chance are regulated by the Act on games of chance, which is further implemented by a number of Royal decrees. The Gaming Commission also issues notes in which policy standpoints or other types of clarifications that it deems necessary are communicated.

Lotteries fall outside of the scope of the Act on games of chance. The National Lottery holds a monopoly for public lotteries, and this is regulated by a specific law. In addition, each game of the National Lottery is regulated by a specific Royal decree. The National Lottery is also subject to a management agreement with the Belgian state. Other charity lotteries offered by non-profit organisations are licensed under an old and succinct law.

ii The regulator

The Belgian lottery and private gambling sector are governed in separate ways.

The sector of games of chance is regulated by the Belgian Gaming Commission, which resorts under the Ministry of Justice. The Commission itself is composed of representatives of various Ministers (most notably Justice, Finance, Public Health, Economic Affairs, Interior Affairs), and in general meets once per month. The gaming commission also comprises a secretariat, which runs the day-to-day activities of control and that advises the commissioners. The Gaming Commission as such is established by Chapter II of the Act on games of chance and is defined as ‘an advisory, decision-making and regulatory body in respect of games of chance’.

Second, the National Lottery operator (and its national lottery games) is supervised by the government through the competent Minister, who has direct control through two government commissioners. They are competent to assess the compliance of the National Lottery’s activities and operation with the applicable laws, its obligations of public service, its by-laws and the management agreement concluded with the Belgian state. Moreover, both commissioners attend all the meetings of the National Lottery operator’s board of directors and executive committee in an advisory capacity. The commissioners hold inspection and monitoring powers allowing the government to directly control the national lottery operator.

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13 The law and its underlying policy were contested before the Constitutional Court, which however decided in 2011 that the Belgian gambling regime based on controlled expansion is effectively pursuing consumer protection objectives, and that this regime is compliant with the case law of the CJEU. See Constitutional Court, judgment of 14 July 2011, No. 128/2011.
14 Law of 19 April 2002 on the rationalisation, functioning, and management of the National Lottery.
15 Latest version as agreed by Royal decree of 30 August 2016.
16 Law of 31 December 1851 on lotteries.
17 Under Chapter V of the National Lottery Act.
iii Remote and land-based gambling

Before the entry into force of the Act of 10 January 2010 that amended the Act on games of chance to regulate all types of games of chance, including online gambling, only the National Lottery operator was allowed to offer its games online. At that time, the Constitutional Court found that the particular situation of the National Lottery company regarding the provision of its activities online was in line with the case law of the Court of Justice of the European Union, considering, among other things, the characteristics of the operator and its missions of public service.18

However, with the entry into force of the newly amended Act on games of chance in January 2011, all games of chance, the operation of which is allowed under the Act, can be offered online. Nonetheless, the mere fact that operators are duly licensed to provide games of chance offline is not sufficient. The same operators have to apply for and be granted an online gambling licence, corresponding to their offline gambling licence (qualified as ‘plus licence’) to provide online games of the same nature as their authorised land-based activities.

In general, all games of chance are subject to specific rules in addition to the rules already applicable to their offline equivalent. Moreover, specific rules are also in place, such as a specific solvency ratio of 40 per cent for operators of online gambling under the Royal Decree of 21 June 2011,19 as well as distinct security and technical requirements. The Gaming Commission has in addition issued a number of information notes.

iv Land-based gambling

The Act on games of chance defines four categories of gambling premises (the operation of which is subject to the prior granting of a specific and distinct licence).

Class I venues, or casinos, are subject to the prior granting of an ‘A licence’ (duration of 15 years in principle – renewable – but potentially shorter if the (remaining) concession duration for the casino is shorter). Those venues are allowed to offer games of chance, automatic or not, in addition to sociocultural events. The number of casinos is strictly limited to nine by the Act on games of chance and the municipalities where those casinos may be operated are enumerated in the Act.20 No casinos can be operated in other locations unless the law was first amended to include a new location.

Class II venues, or gaming halls, are subject to the granting of a ‘B licence’ (duration of nine years, renewable). Those venues are only allowed to offer automatic games of chance. They are gaming establishments with only gaming machines (no table games) but without slot machines, which can only be placed in casinos. Moreover, their number is strictly limited to 180 throughout the country. Finally, gaming halls must not be located close to hospitals, prisons, schools, churches and other religious temples or places where young people regularly meet.

Class III premises refer to pubs and bars, and require a ‘C licence’ to operate a maximum of two gaming machines (low-scale gaming machines, e.g., Bingo-type gaming machines). Duration of the C licence is five years and is renewable.

19 Royal Decree of 21 June 2011 regarding qualitative conditions to be fulfilled by additional licences applicants. This ratio enables the Gaming Commission to ensure the applicant/operator does benefit from sufficient financial means to guarantee the payment of winnings to players, and differs from one type of game to another.
20 Article 29 of the Act on games of chance.
Class IV venues are betting shops the purpose of which is exclusively to engage bets. Betting shops may either be fixed (i.e., permanent venue) or mobile (i.e., temporary betting shop operated at the occasion of a specific sporting events, at the place of the event and for its duration only). The operation of betting shops requires an ‘F2 licence’ (i.e. a bookmaker licence allowing to take bets on behalf of a betting organiser). F2 licences have a duration of three years and are renewable. However, F2 licensees have the obligation to take bets on behalf of a betting organiser (i.e., a F1 licence holder). F1 licences are required to organise betting activities and are granted for periods of nine years, and are renewable. The number of betting organisers (hence F1 licences) is limited to 34. In addition, the number of fixed betting shops is limited to 1,000, and mobile betting shops to 60.21 Moreover, the distance between each betting shop operated after 1 January 2011 must be 1,000 metres (door-to-door walking distance). However, this rule does not apply to betting shops in operation before that date and that have never discontinued their operation since then.22 F2 licences can also be granted to press shops, which can then offer betting as an ancillary activity.

All games provided by the National Lottery company (i.e., lottery games and sports betting) can be offered via its retail agents who concluded retail agreements with the National Lottery. However, in order to offer betting on behalf of the National Lottery, its agents must hold the required F2 licence. Finally, there is no limitation on the number of retailers for the National Lottery; nevertheless, the operator must ensure a reasonable cover of the whole Belgian territory, without presenting an offer regarded as excessive, in order not to infringe the objectives pursued by the controlled expansion policy (namely, player protection, fight against addiction, fight against fraud).23

v Remote gambling

First, online public lottery games, like land-based lottery games, fall under the monopoly of the National Lottery and therefore cannot be offered by any other operator. Second, as regards other games of chance allowed under the Act on games of chance, a land-based presence is required in order to be allowed to provide games of chance online (through ‘information society instruments’ to be precise24). Indeed, only land-based licensees may apply for online gambling licences (namely, A+ licence – online casino games; B+ licence – online gaming machines; and F1+ licence – online betting). Online licences only authorise operators to provide, via information society means, games of the same nature as the games they are allowed to offer based on their land-based licences. The ‘plus licences’ have the same duration as their related land-based licences.

In addition, Article 43/8 of the Act on games of chance requires that the servers of Belgian gaming are located in a permanent establishment located in Belgium. This rule is

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21 Article 1 of Royal Decree of 22 December 2010 setting the maximum number of fixed and mobile betting shops, the criteria aimed at ensuring a spread of those venues, and the treatment procedures for applications when a licence is released due to a withdrawal or a waiver.

22 Article 2 of Royal Decree of 22 December 2010 setting the maximum number of fixed and mobile betting shops, the criteria aimed at ensuring a spread of those venues, and the treatment procedures for applications when a licence is released due to a withdrawal or a waiver.

23 This stems among other things from Article 4 of the Royal Decree of 30 July 2010 approving the management contract between the National Lottery and the Belgian state.

24 This includes most notably internet (via pc, smartphone, tablet) but other distribution channels are possible.
applied in conformity with the EU case law and in practice it is therefore only required that certain data are stored on the Belgian server (for control purposes), and that the gaming website can be taken offline through the Belgian server (for sanctioning purposes).

vi Ancillary matters

The provision, renting, selling, putting at disposal, import and export, production or any services of reparation and maintenance of gambling equipment require the possession of a specific licence granted by the Gaming Commission (i.e., the E licence). This licence is granted for renewable periods of 10 years. Furthermore, any equipment put on the market or supplied to an authorised operator must also receive a certification from the services of the Gaming Commission or another accredited body.\(^{25}\) It is important to note that Article 27 of the Act on games of chance strictly prohibits cumulating any gambling licences (required to operate, e.g., a casino, a gaming hall or a betting shop) with an E licence, either directly or indirectly (by means of subsidiaries or branches).\(^{26}\)

Furthermore, people working in a casino, gaming hall or a betting shop must hold a personal D licence. This type of licence is granted by the Gaming Commission for an undefined duration.

Directors or persons who occupy managing or executive positions of a gambling operator must not obtain any licences. Nevertheless, the details as well as a copy of their criminal records are requested during the application process, and these people must be deemed by the Gaming Commission to be apt for the position they hold.

### III THE LICENSING PROCESS

#### i Application and renewal

Applications for any type of gambling licence must be submitted with the Gaming Commission through registered mail or, when available, online. Specific forms are made available through applicable royal decrees.

The eligibility criteria for any type of licence are the following: as an individual, be a citizen of one of the EU Member States or, as a legal person\(^{27}\) be incorporated under the laws of any EU Member State; provide the proof of the necessary solvency (including compliance with the required solvency ratio); description of the shareholding structure; proof that the company has no outstanding debts in relation to the tax authorities of any EU Member State; copy of the criminal records of the directors of the applicant; list and rules of games to be offered; and other requirements depending on the type of licence, such as addresses of the place where the server is located in Belgium (online gambling licence), name and details of the bookmaker or betting organiser (F1 and F2 licences), responsible gaming policies, advertising policy to be implemented, map outlining the structure of the future website, description of the security and technical measures to be implemented to protect players, avoid breaches, protect payments, and so on.

\(^{25}\) Article 52 of the Act on games of chance.

\(^{26}\) However, in practice, the Gaming Commission usually accepts such a double possession when a gambling licensee holds as well an E licence via one of its subsidiaries, provided that a certain threshold relating to the shares held by the gambling licensee within that subsidiary is not met.

\(^{27}\) It must be noted that non-profit associations are not allowed to apply for gambling licences.
Renewal of licences follows the same principles. However, when one of the (34) available F1 licences becomes available, a transparent, competitive and non-discriminatory award procedure is put in place by the Gaming Commission. Furthermore, concession agreements, the conclusion of which is required to be granted an A licence, are allocated under the rules of service concessions, which requires a transparent, non-discriminatory award procedure. This also applies to renewals of concession agreements.

For certain licence applications, the Gaming Commission must decide within a preset deadline (A and B licence applications must be decided within six months after submitting a complete application file).

Applicants must also pay a security prior to receiving any licence. The amount of this security can go up to €250,000 depending on the type of licence sought. The operational costs of the Gaming Commission are paid by the operators through an annual licensing fee.

ii Sanctions for non-compliance
Any licensee that breaches the terms of its licence can be subject to different sanctions, varying from simple warnings to administrative fines, a prohibition to operate one or more games of chance, suspension or withdrawal of its licence, (temporary) closure of the gambling venue, and even criminal prosecution, which in its turn can lead to fines and even imprisonment sentences. Administrative or criminal fines (as well as imprisonment) can also be applied to non-licensees in breach of the law on games of chance. In any case, before issuing an administrative fine or any other sanctions of administrative nature, the Gaming Commission must give the offender the possibility to be heard.

The criminal sanctions applicable to illegal (offshore) operators also apply to anyone who promotes the illegal operation of gambling activities or who facilitates in any way whatsoever that operation, or who advertises those activities or recruits for those operators, and even to players who participate in illegal gambling activities.

For the unlicensed organisation or operation of a game of chance or a gaming establishment, for illegally cumulating or transferring gambling licences, for the unlicensed provision of services requiring an E licence and breach of rules applicable to D licences, a person found guilty may be sentenced to between six months’ and five years’ imprisonment or fined between €800 and €800,000, or both.

For the advertising of illegal games of chance or gaming premises, the participation in games of chance known to be illegal, the recruitment of players for illegal gaming establishments or games of chance, for breach of rules on betting or breach of the obligation to identify anyone entering a casino or gaming hall, and breach of rules relating to complementary gifts to customers, a person found guilty may be fined between €208 and €200,000 or be sentenced to between one month’s and three years’ imprisonment, or both. These sanctions

28 Royal Decree of 22 December 2010 setting the maximum number of betting organisers and the procedure for applications when a licence is released because of a withdrawal or a waiver.
29 Directive 2014/23/EU of 26 February 2014 on the award of concession contracts, as implemented by the law of 17 June 2016 regarding concession agreements. See also case law of the CJEU, e.g., CJEU, judgment of 16 February 2012, Costa and Cifone, joined cases C-72/10 and C-77/10, EU:C:2012:80, paragraphs 54-57.
30 For the amounts, see Royal Decree of 20 December 2016 on the contribution to the functioning, personnel and organisational costs of the Gaming Commission due by holders of licences A, A+, B, B+, C, E, F1, F1+, F2, G1 and G2 for the civil year 2017.
31 Article 4 of the Act on games of chance.
may be doubled in case of second offence within five years of a first conviction or when the offence has been committed in relation to minors (i.e., under 18 years old). Moreover, judges may seize the funds, materials, tools, machines and any other means used to perform the illegal activity. Finally, judges can also order the closure of the gaming premises or the withdrawal of a licence by the Gaming Commission.32

As regards breaches of the National Lottery’s monopoly, they are subject to the following sanctions under the Criminal Code.

Individuals or directors of companies found guilty of organising illegal lotteries may be sentenced to between eight days’ and three months’ imprisonment, and a fine of between €400 and €24,000. Any remaining prize money, facilities and materials linked to the illegal lottery game are forfeited to the state. If any real-estate property was offered as a prize, it will be seized by the state and the operator will be fined between €800 and €80,000. The distributors, promoters and any person who placed advertisements in any form and by any means whatsoever may be fined between €400 and €24,000 or sentenced to between eight days’ and one month’s imprisonment. All remaining lottery tickets would also be seized and destroyed.33

IV WRONGDOING

Until the future adoption and entry into force of the national Act implementing the EU Fourth Anti-Money Laundering Directive34 subjecting all gambling and lottery operators to its due diligence obligations, the current Belgian act implementing the Third AML Directive35 only applies to land-based casinos. Land-based casinos are consequently subject to due diligence obligations, such as identification of players and final beneficiary, permanent monitoring of the transactions above €1,000, etc.36 The Gaming Commission functions as the controlling and supervisory authority, in cooperation with the Belgian Financial Intelligence Unit. Similar obligations under the AML regime will apply to all gambling operators through the implementation of the Fourth AML Directive.

However, the current gambling and lottery regime already puts in place measures to detect and report suspicious gambling patterns, and identify players in certain situations. For instance, the National Lottery operator identifies players for any payments of winnings above €2,000. In addition, any betting operator must register players who place bets for an amount of €1,000 or above. All those measures already follow the purpose of fighting against an illegal gambling pattern (including match-fixing), money laundering and terrorist financing.

Finally, match-fixing as such is not a criminal offence under Belgian law. However, match-fixing falls within the scope of the provisions sanctioning private corruption and corruption of persons exercising public functions,37 and is subject to criminal sanctions.

32 Chapter VII of the Act on games of chance.
33 Articles 302 and 303 of the Belgian Criminal Code.
36 See amongst others, Articles 4 and 9 of the Act of 11 January 1993 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
37 Articles 246, 504 bis and 504 ter of the Criminal Code.
accordingly. In addition, the Act on games of chance prohibits participation in any game of chance (which includes betting) where the participant can exert a direct influence on the outcome.

V TAXATION

Winnings from lotteries or any other games of chance are exempt from taxes.

There is, however, a gaming tax, which is levied by the regional authorities and hence differs (somewhat) depending on which region is competent. The applicable tax rates also vary between different types of gambling. This tax is, in principle, levied on the gross gaming revenue (i.e., profits obtained by the operator after deduction of the winnings paid out to players). However, gaming machines are subject to a gambling tax in the form of a fixed amount per machine per year (differing as well per region and type of gaming machine). There is a different tax rate for online gambling.

The National Lottery operator does pay gambling taxes on its sports betting activities licensed under the Act on games of change. On its public lottery activities the National Lottery is obliged to pay a monopoly rent, the amount of which is calculated annually and published in a royal decree, as well as ‘subsidies and special contributions’.

Belgium installed VAT on online gambling in the course of 2016. Following this new measure, VAT is levied on online games of chance (including betting) but not on lotteries. The legality of this additional taxation is contested by some operators and a case in which the annulment of the law is requested is currently pending before the Constitutional Court.

VI ADVERTISING AND MARKETING

As outlined in Section III.ii, supra, offering gambling services without the appropriate licence as well as advertising for unlicensed gambling activities is illegal and can lead to criminal sanctions. As such, any operator not duly licensed under Belgian law, or anyone else promoting the products or services of unlicensed operators may be subject to sanctions.

However, licensed gambling operators and the National Lottery operator are both allowed to advertise for their activities, albeit with a certain restraint in order not to undermine the consistency and the objectives pursued by the whole Belgian gambling policy.

Further, more detailed rules on advertising for (online) gambling are likely to be introduced in the future. Currently, during the application process for an online licence, the Gaming Commission assesses the advertising policy sought to be implemented by the future operators of online gambling and may raise objections or ask to make modifications should the policy be deemed too aggressive. In addition, gambling advertising must adhere to the general rules as laid down in the Belgian Economic Code (e.g., not mislead players).

The National Lottery follows the same rules and principles, and has in place a Code on ethical advertising. In any case, the National Lottery must advertise for its activities in a responsible manner and with a certain restraint, taking into account its mission of public service as laid down in the management agreement between the National Lottery and the Belgian state.

38 For information, Belgium is divided into three economic Regions, namely the Flemish Region, the Walloon Region and the Region of Brussels-Capital.
39 Their infringement could lead to action for damages before commercial courts.
VII THE YEAR IN REVIEW

An important recent change was the implementation of VAT on online gambling. The federal structure of the Belgian state with tax competencies for the regions (VAT is levied at the federal level) raised questions as regards the legality of the VAT measure and certain online operators. The Walloon government challenged the law imposing VAT on online gambling. It therefore remains to be seen whether this additional taxation will stand after scrutiny by the Constitutional Court.

In an ongoing dispute between certain casino operators (i.e., land-based and online as per the Belgian licensing system) and a gaming hall operator (again also land-based and online) the scope of certain provisions in the law on games of chance were put under scrutiny. In January 2016 a peculiar judgment was issued by a Brussels court40 in which it was ruled that offering betting and casino games on the same website is illegal, and that offering to directly participate in betting online is also illegal. This judgment cannot be seen as prohibiting online betting in Belgium as it is only valid between the parties in those proceedings and the appeal case is currently still pending. Moreover, the Council of State (the highest administrative court) has – following that judgment – ruled the exact opposite, but it also referred a question to the Constitutional Court to know whether a difference of treatment between land-based venues (prohibition to offer betting and casino games in one venue) and online websites (provision of both activities on the same website) is compliant with the Belgian Constitution. The wave of legal proceedings in which the law on games of chance must be interpreted by the courts, has until now led to more uncertainty rather than to clarification, but it can be expected that this will be resolved with the final judgments in the cases still pending.

The year 2016 also saw the Cour de Cassation (the highest court) rule that it is against the law on smoking in public places to create designated smoking areas in casinos where gambling machines are available to visitors. Although this prohibition rests on a rather dubious legal basis, operators of casinos and gaming halls are now warned that this practice (which was rather common) is punishable. Given the risks associated with breaching the rules on smoking in public places, it can be expected that operators will no longer put gaming machines in designated smoking areas in its venue.

VIII OUTLOOK

In the context of the infringement proceedings ‘reactivated’ in November 2013 by the European Commission, Belgium received an official request for information targeting the transparency of its gambling system as regards, especially, the rules relating to the legal conduct of online gambling businesses; the required physical presence in order to be granted an online gambling licence; and the granting to the National Lottery of a betting licence (F1 licence). At the time of writing, the European Commission has not replied to the extensive submission made by the Belgian government. In practice, the regulatory framework in place has provided a relatively stable legal environment for the past years (both land-based and online), but there is still work to be done. Several new royal decrees are under discussion, while new games, requiring proper regulation, are emerging.

40 Commercial Court of Brussels (Flemish Chamber), judgment of 27 January 2016.
Chapter 7

BRAZIL

Luiz Felipe Maia

I OVERVIEW

Brazil is the largest and most populated country in Latin America, with a total area of 3,265,080 square miles and a population of more than 207 million people (it is the fifth-largest country in the world with regards to size and population). Brazil is a federation divided into 26 states, one Federal District and 5,570 municipalities.

Since 2012, owing to the depreciation of the real against the US dollar and the economic recession that began in 2015, Brazil’s GDP has decreased and the country is now the world’s ninth-largest economy, having formerly been the sixth-largest in 2011.

Almost all gambling activities have been prohibited in Brazil for over 70 years. Since the general ban on games of chance in 1941, the only legal gambling activities are the lotteries under the state monopoly, and horse race wagering. According to Brazilian law, poker is a game of skill and is therefore not illegal.

With the economic turmoil, it has been said that gambling regulation (and taxation) may help the government to raise revenues. A bill of law is currently under discussion in the Congress, and a final decision on the matter is expected in 2017.

i Definitions

Gambling, in general, is not regulated in Brazil. In fact, since the 1940s, Brazil has been a closed market for gambling, with only state-owned lotteries and horse race wagering. For a brief period in the 1990s, bingos and slot machines were permitted, but they were banned in the mid-2000s.

As a consequence, Brazil’s gambling regulation is still incipient. ‘Game’ is a contract type expressly nominated, but not defined, by the Brazilian Civil Code. Its definition is provided by jurisprudence.

Luiz da Cunha Gonçalves defines a game contract as ‘a commitment, agreed as for hobby or as for desire for money, between two or more individuals, in which each player

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1 Luiz Felipe Maia is founding partner at FYMSA – Franco, Yoshiyasu, Maia, Simões & D’Alessio Advogados.
agrees to pay a certain sum of cash or something else to the other party(ies) if he/she loses, based on some future event, which implementation depends, at least in part, on the activity of the players’.

Clóvis Beviláqua,⁵ the author of the previous Brazilian Civil Code, defines a game contract as a random contract, in which two or more people promise a certain sum, among the contractors, to the person for whom the result of chance is most favourable. In the same vein, Pablo Stolze Gagliano and Rodolfo Pamplona Filho⁶ provide a very detailed explanation on game contracts:

In fact, the contract game can be defined as a legal transaction whereby two or more people hold a particular promise (usually with pecuniary content) in favour of the person who achieves a favourable result in the performance of an act in which everyone participates.

Note that the game (and thus the success or failure of each party) necessarily depends on the performance of each party (called a player), either by his intelligence, or by his skill, strength, or simply luck.

The bet contract, in its turn, is a legal transaction in which two or more people with different opinions on a certain event, promise to perform a particular action (in general, with monetary content) to the benefit of the party whose opinion prevails. Hence, in the bet, there is not the requirement for the active participation of each party (called a bettor) to influence the outcome of the event, but rather only the expression of her/his personal opinion.

The difference between a ‘game’ and a ‘bet’ is that the result of a ‘game’ will depend on the action of the parties, while the result of a ‘bet’ depends on facts unrelated to the parties’ will. It is important to highlight that these definitions have been created by jurisprudence and are not expressly set forth by law, although they are widely accepted and applied by the courts.

‘Games of chance’ are defined by Article 50 of Decree-Law 3,688/1941 (the Misdemeanour Law or Criminal Contravention Act) as:

a. a game in which winning or losing depends exclusively or principally on chance;
b. bets on horse races outside the racetrack or other authorised venues; and
c. bets on any other sport competition.

‘Public place’ is defined as:

a. a private house in which games of chance are held, when those who usually take part are not members of the family that lives at the house;
b. a hotel or collective residence where the guests or residents are offered games of chance;
c. the headquarters or premises of a company or association where games of chance are held; and
d. an establishment intended for the operation of games of chance, even if its purpose is disguised.

Games of chance are treated as misdemeanours, which are recognised by law as offences punishable by minor penalties (Article 61 of Law No. 9,099/95). In other words, a misdemeanour is a less offensive crime when compared to a criminal violation of Brazilian

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⁵ Clóvis Beviláqua, Direito das Obrigações, third edition (1931).
law. The purpose of using the term ‘misdemeanour’ is to implement the ‘moral police’, which, according to Professor Humberto José da Nova, includes ‘safeguarding morality’ in order to ‘prevent certain illegal and vicious acts, or defend certain moral sentiments regarded as indispensable to harmonious social coexistence, the effects of which are harmful to the interests of the collectivity’.7

Contrary to this, ‘games of skill’ are those whose results depend on ability of the player, more than on luck. These are legal. ‘Lotteries’ are defined by Article 51 of the Misdemeanour Law as the operation of payment of prizes depending on the result of the draw of tickets, lists, coupons, vouchers, signs, symbols or similar means.

Article 51 of the Law prohibits the operation or promotion of unauthorised lottery games in Brazil, including the distribution of foreign lottery tickets in the country. The Brazilian numbers game Jogo do Bicho (‘the animal game’), which is similar to a lottery, is also prohibited.

Horse race betting is regulated by Law No. 7,291 enacted on 19 December 1984 and its 1988 regulation, Decree No. 96,993.

Finally, contest regulation is subject to federal jurisdiction in Brazil. Therefore, there is equal legal treatment in all of the 26 states and the Federal District. In Brazil, whenever a contest is held to promote the sale of products or to promote brands, it is deemed as a prize promotion, subject to Law No. 5,768, of 20 December 1971 and Decree No. 70,951 of 9 August 1972. The following ordinances also apply:

a Ordinance MF 422 of 18 July 2013 establishes the cases in which contests are not deemed as exclusively artistic, cultural, sportive or recreational for free prizes or awards distribution purposes.
b Ordinance MF No. 41 of 19 February 2008 regulates the free distribution of prizes for advertisement purposes, when performed by raffle, gift certificates, contests or similar operations.

The four types of free distribution of prizes to consumers are outlined in more detail below:

a Raffle: raffling elements are distributed, numbered in series, and those to be awarded are defined based on the results of the extraction of the Federal Lottery or on a combination of numbers from such results.
b Gift certificates: gift certificates are randomly hidden inside a product or the product’s respective package. The gift certificate will be exchangeable for the prizes in the exchange stations.
c Contests: contests are based on forecasts, calculations, intelligence testing, games of skill or competitions of any nature.
d Similar operation: type conceived from combination of factors suitable to each one of the other types of prize promotion, preserving the original concepts for qualifying competitors and verifying the winners. It may be presented as ‘Similar to Contest’, ‘Similar to Gift Certificate’ and ‘Similar to Raffle’.

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Contests for advertising purposes must be authorised by the Ministry of Finance, either by Caixa Econômica Federal (Caixa), Brazil's largest state-owned public bank that is under the supervision of the Ministry of Finance, or by the Secretariat of Economic Monitoring (SEAE), depending on the company's activities.

In order to avoid fraud or confusion between cultural contests and prize promotions, the Brazilian Ministry of Treasury has defined some procedures to assess whether a contest is considered to be a prize promotion or not. Ministerial Ordinance No. 422 of 18 July 2013 sets forth the cases in which a contest loses its exclusive artistic, cultural, sportive or recreational aspect and becomes a prize promotion (subject to the applicable rules and previous authorisation):

Article 2. If least one of the following elements is present, to the extent it sets the aim of commercial promotion, the contest shall not be deemed as exclusively artistic, cultural, recreational or sportive:

I – advertising of the sponsors, of third parties, or of any of their products or services, on the disclosure materials by any channel or means, except for the mere identification of the contest sponsor;

II – trademark, name, product, service, activity or other identification element of the sponsor or of any third party in the material to be produced by the contestant, on the mechanics of the contest, or in the name or advertising of the contest;

III – presence of any element of chance or any payment by the contestants, at any stage of the contest;

IV – mandatory acquisition or use of any good, right or services by the contestants or winners;

V – contestant or winner exposure to products, services or brands of the sponsor or a third party, in any media;

VI – guessing;

VII – promotion of the contest on the sponsor’s third parties’ product packaging;

VIII – mandatory data filling, poll answering or any kind of advertising acceptance;

IX – award that involves the sponsor’s product or service;

X – contest held in social network, permitted only its advertising in that media;

XI – contest held on TV, pursuant paid enrolment; and

XII – linking to events and commemorative dates, as sports championships, Mother’s day, Christmas, Valentine’s day, Father’s day, Children’s day, Anniversary of State, Municipality, or the Federal District and other similar hypotheses.

Contests are equally not deemed as exclusively artistic, cultural, sports or recreational when the registration or participation is:

I – made through phone calls or Short Message Service-SMS offered by a mobile phone operator;

II – subject to the due payment of any product or service offered by the sponsor or a third party; or

III – restricted to the sponsor’s or third party’s clients.

ii Gambling policy

As a rule, gambling has been prohibited in Brazil since 1946, when the last casino permits were cancelled. A number of scholars believe the gambling prohibition in Brazil was a reaction to the industrialisation of the country, because of the need to make free men dedicate their time to work and not to leisure. This, together with the religious belief that ‘in the sweat of thy face shalt thou eat bread’, caused gambling to be seen as something negative. However, this belief is no longer socially widespread in Brazil.
There is, however, a general perception that gambling activities in Brazil are a cover for money laundering, and that gambling activities are operated by criminal organisations. This derives from the fact that, despite the general prohibition currently in place, bingo halls, slot machines and Jogo do Bicho can be easily accessed in Brazil.

iii  State control and private enterprise

Poker and other games of skill, as well as social games, can be operated by private entities. These activities do not require any specific licence.

Horse race wagering is restricted to non-profit entities that own the racetracks, duly authorised by the Ministry of Agriculture, Livestock and Food Supply. These entities may appoint agents to facilitate wagering on their behalf, and can also hire private suppliers, which are not subject to licensing or any specific regulation.

Lotteries can only be state-owned. Caixa was granted the control of the lotteries as a result of Decree No. 50,954 of 14 July 1961, which cancelled all lottery licences granted to the private sector.

In addition to Caixa, only the states that had their own lotteries running when Decree-Law No. 204 of 27 February 1967 was enacted are authorised to run their own lotteries. These lotteries are:

a  Loteria de Paraíba – Lotep;
b  Loteria de Rondonia – Lotoro;
c  Loteria de Ceará – Lotece;
d  Loteria do Pará – Loterpa;
e  Loteria de Rio de Janeiro – Loterj;
f  Loteria do Rio Grande do Sul – Lotergs;
g  Loteria de São Paulo;
h  Loteria Social de Alagoas;
i  Servico de Loteria do Estado do Paraná – Serlopar;
j  Loteria de Minas Gerais – Loteria Mineira;
k  Loteria do Estado do Distrito Federal;
l  Loteria do Estado do Mato Grosso do Sul;
m  Loteria do Estado de Pernambuco;
n  Loteria do Estado do Piauí;
o  Loteria do Estado de Goiás; and
p  Loteria do Estado do Mato Grosso – Lemat.

Federal and state lottery operators (i.e., Caixa and the state’s equivalent entities) may contract suppliers by means of public procurement. There is not any specific licence requirement for these suppliers. The federal government is in the process of organising the public bid for privatisation of instantaneous lotteries (sweepstakes).

iv  Territorial issues

Starting in 1993, when bingo and slot machines were legalised, the state lotteries started to develop new gaming products, issuing authorisations for bingo venues, slot machine parlours and even online gaming based on state laws that allowed such activities in the territory of each state. Only in 2007 did the Brazilian Supreme Court definitely rule that states and municipalities could not legislate on gambling. For this purpose, a Binding Decision (Binding
Decision No. 2) that has to be followed by lower courts established that: ‘Any state or district law or legislative act that regulates raffles and consortiums, including bingo and lotteries, is unconstitutional.’

In 2009, however, when faced by a claim that the State Lottery of Rio de Janeiro’s expansion towards keno-style gaming was unconstitutional, one judge from the same Supreme Court declared that state lottery regulations enacted before Binding Decision No. 2 of 6 June 2007 are valid.

v Offshore gambling
A legal loophole currently allows offshore operators to offer their gambling products to Brazilian citizens. One of the general rules about contracts in the Brazilian Law is that a contract by and between absent parties is deemed executed in the place of the proponent. This is set forth by Article 9, Paragraph 2 of the Law of Introduction to the Brazilian Rules of Law (Decree-Law No. 4,657 of 4 September 1942) and repeated in Article 435 of the Brazilian Civil Code.

As a consequence, if an offshore operator’s website is hosted in another jurisdiction where gambling is authorised, the contract between the Brazilian client and that operator is valid and subject to the operator’s jurisdiction’s law. This has some legal consequences in Brazil regarding consumer protection laws and money evasion, the latter with potential criminal aspects. So far, however, there have not been any attempts by the Brazilian government to bring any action against foreign operators.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence
According to the Criminal Contravention Act, games of chance are prohibited in Brazil. Any form of gambling activity that has not been expressly legally authorised may be considered illegal under the scope of the Act and, therefore, anyone carrying out such an activity may be prosecuted. Decree Law No. 50,954 of 14 July 1961 establishes Caixa’s monopoly on lotteries, and Law No. 7,291 of 19 December 1984 and Decree Law No. 96,993 of 17 October 1988 regulate horse race betting.

ii The regulator
Caixa holds the monopoly on the regulation and operation of federal lotteries. State lotteries must comply with the gaming standards set forth by Caixa, and may not create new gaming products.

The Ministry of Agriculture, Livestock and Food Supply is the entity responsible for the regulation of horse racing.

Poker, recognised as a sport by the Ministry of Sports, is not regulated. Neither are social games nor any other kind of games of skill.

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The free distribution of prizes is regulated by the Ministry of Finance and is subject to previous authorisation by Caixa or by the Secretariat for Economic Monitoring (SEAE), depending on the operator.

iii Remote and land-based gambling
There is not any distinction between online gambling and bricks-and-mortar gambling for horse racing, provided that the general wagering plan expressly states the possibility of both. For the lotteries, Caixa does not allow their points of sale to accept remote bets.

iv Land-based gambling
Land-based gambling in Brazil is restricted. Caixa has licensed over 13,000 lottery points of sale that are privately operated with permission (small venues that also operate as bank assistants, accepting payments of general services bills). Jockey clubs have their own agencies and agents (around 200), that are authorised to accept wagers on local and international races. Poker has become very popular in Brazil and there are many poker clubs open in the largest cities.

v Remote gambling
Brazil’s federal legislation does not contain any provision related to online gambling, specifically. Horse racing entities already offer bets online in Brazil and Caixa only offers online betting for their account holders. The majority of the remote gambling activities in Brazil involve offshore operators, mainly sports betting and bingo.

III THE LICENSING PROCESS

i Application and renewal
The application for a horse racing gambling licence should be made before the Ministry of Agriculture. The applicant must be a non-profit entity legally incorporated in Brazil, in ownership of a racetrack, and also needs to demonstrate the technical and economic viability of the weekly racing schedule and the floor plan of the race field. That entity must present the draft of a general betting plan (which includes the rules applicable for each game to be run by the operator, such as prize, ticket value, minimum and maximum betting amounts, and payout).

Horse racing entities must also apply for their agents’ licences before the Ministry of Agriculture, Livestock and Food Supply. This application must be made by the authorised horse race entity, which must be entirely responsible for any and all acts of the agent. The agent licence is granted to the agent (person or company) to facilitate wagering only at the specified venue. Horse racing personnel and suppliers do not need to apply for licences and are not regulated.

Both authorisations, for the horse racing entities and their agents, are valid without any time limitation. Revocation may occur when there is a non-observance of rules and procedures after the due administrative process.
ii Sanctions for non-compliance

Article 22 of Law No. 7,291 of 19 December 1984 and Articles 91–97 of Decree-Law No. 96,993 of 17 October 1988 define the penalties applicable to horse race betting operators in breach of those regulations:

- a penalty;
- b fine; and
- c revocation of licence.

Article 50 of the Misdemeanour Law establishes that the operation of games of chance in a public place or in a place available to the public is subject to imprisonment, from three months up to one year, and a fine. In addition, introducing foreign lotteries in Brazil with the objective of sale, results in a penalty of a prison term of between four months and one year, and a fine (Article 52).

Taking part as a player in illegal gambling may result in a fine. As Article 50 of the Misdemeanour Law has been recently amended by Law No. 13,155 of 4 August 2015, it is now the case that players and affiliates involved with online or offline illegal gambling are subject to a fine ranging between 2,000 reais and 200,000 reais.

The penalty for advertising unlicensed lotteries is a fine. According to Article 50 of the Advertising Self-Regulation Code of the National Council for Advertising Self-Regulation (CONAR), any advertising that ‘induces to criminal or illegal activities’ is subject to penalties that may include a warning, a recommendation to modify the advertisement and a recommendation to suspend it.

Those who operate international payments to offshore gaming companies without the due reporting to the Brazilian Central Bank (and consequent payment of taxes) may also be held liable for unreported remittance of funds, according to Article 22 of Law No. 7,492 of 16 June 1986, subject to imprisonment from two to six years and a fine, plus the payment of all due taxes.

IV WRONGDOING

The Brazilian Civil Code classifies bets as contracts, therefore only those over 18 years of age are legally allowed to gamble. This is also set forth in the Brazilian Child and Adolescent Protection Statute, which rules that venues where billiards and snooker are played, and venues where bets are made, should not permit children and teenagers to enter.

Although they are not specially aimed at gambling activities, general advertising rules in Brazil that may have an impact on gambling are included in Decree-Law No. 57,690 of 1 February 1966 and Decree-Law No. 4,563 of 31 December 2002, and anti-money laundering rules in Law No. 9,613 of 3 March 1998 and Law No. 12,846 of 1 August 2013.

Article 1 of Law No. 9,613/1998 defines the crimes related to laundering or concealment of assets, rights and valuables as:

Concealment or dissimulation of the nature, origin, location, availability, handling or ownership of assets, rights or valuables directly or indirectly originated from criminal activities.
Brazil

According to Article 10 of the same law, all companies that pay prizes are obligated to identify their clients and keep records for at least five years. Brazil has been a member of the Financial Action Task Force since 2000. Brazil has also been a member of the Financial Action Task Force of South America since 2000.

Law No. 12,846/2013 is the anti-corruption law in Brazil, which focuses on companies (either Brazilian or foreign) with operations in Brazil. This law created civil and administrative responsibilities, as well as criminal responsibilities, and may be compared to the UK Bribery Act.

V TAXATION

Lotteries are not taxed, since they are owned and operated by the state. Their revenues, however, have pre-established social destinations set forth by law, such as funds for sports, education, health, culture, etc.

Jockey clubs, as non-profit entities, pay the ordinary corporate taxes (with exception to the taxes on income), and the contribution to the Coordination Commission for National Horse Breeding of 1.5 per cent of the adjusted net win (wagers minus prizes for winning bets minus prizes for horsemen).

The gamblers are also taxed. As per Article 676 of Decree Law No. 3,000 of 26 March 1999, all prizes paid for lottery and horse racing winnings are subject to an exclusive withholding income tax of 30 per cent of the prize amount. Poker prizes, on the other hand, are subject to a different income tax withholding. If there is a labour relationship between the winner and the legal entity promoting the event, or if the winner is not resident in Brazil, the income tax to be withheld is 25 per cent. If there is not any employment bond and the winner is resident in Brazil, the witholding tax will be 15 per cent.

VI ADVERTISING AND MARKETING

Article 57 of the Misdemeanour Law expressly rules that publishing, even if indirectly, the operation or results of unauthorised lotteries in newspapers, radio or any other format is a contravention, punishable by a fine. As to other forms of gambling, there is no express reference to advertising restrictions in the criminal law.

Decree-Law No. 57,690 of 1 February 1966 and Decree-Law No. 4,563 of 31 December 2002 regulate advertising in Brazil and, according to the latter, all advertisement in Brazil must comply with the rules set forth by the Standard Rules Executive Council (CENP). This council is responsible for regulating the commercial relations between advertisers and agencies, while CONAR is responsible for ensuring ethics in advertising content.

Both CENP and CONAR are non-governmental organisations formed by members of the advertising industry to define their own statutes and codes. CONAR’s Self-Regulation Code also includes a general rule that advertisements should not contain anything that ‘induces criminal or illegal activities’ (Article 21).

Based on this general rule, many gaming and poker companies have faced difficulties trying to advertise in Brazil. In 2009, CONAR prohibited Full Tilt Poker from advertising...
on the Discovery Channel. That decision was based on the assumption that poker was a game of chance, illegal in Brazil. After deliberation, CONAR decided that poker is a game of skill, and allowed its advertising. In that same year, CONAR also prohibited Sportingbet from advertising in Brazil. This prohibition was upheld by the Brazilian courts after it was challenged by Sportingbet.

As a rule, there has not been any restriction for advertising social gaming websites (the ‘.nets’), since their activity is legal in Brazil.

VII THE YEAR IN REVIEW

As far as the regulation of gaming in Brazil is concerned, 2015 was probably the busiest year for over a decade, since the shutdown of the industry in 2004. 2016, on the other hand, was a great disappointment.

After five months of lengthy discussions, Law No. 13,155 was approved on 4 August 2015 by Congress, authorising the operation of fixed-odds sports betting (run by Caixa) by licensed horse racing entities and by licensed private companies.

The former president, Dilma Rousseff, however, vetoed the articles of the aforementioned law that authorised sports betting, arguing that ‘the creation of this fixed-odds lottery would require a more comprehensive regulation in order to ensure legal and economic security, appropriate levels of fraud prevention and tax evasion control. Furthermore, the law did not provide any mechanism to prevent negative social impact.’

Despite the veto, and mainly because of Brazil’s pressing need to find additional sources of revenue for the government, the president held a meeting with a number of Congress leaders on 14 September 2015 in order to assess if, from a political standpoint, gaming regulation could be reconsidered and made viable. This meeting was widely published in the media and the result was surprisingly positive.

As a result, the government communicated its openness to regulate the gaming industry to Congress, which started working on the basis of pre-existing bills of law on the matter.

On 30 September 2015, the President of the Senate, Renan Calheiros, included Bill of Law 186/2014,\(^\text{10}\) drafted by Senator Ciro Nogueira, among the topics discussed by the Special Commission for National Development (CEDN), which led to a fast-track procedure to obtain approval for strategic bills, which are needed for the overall improvement of the economy (the ‘Agenda Brazil’).

On 28 October 2015, the Chamber of Deputies created another Special Commission to draft the Brazilian Gaming Regulatory Framework. Since then, the Commission has been holding weekly meetings and hearings.

On 9 December 2015, the CEDN Commission approved the substitutive Bill of Law presented by Senator Blairo Maggi and on 10 March 2016 the Bill of Law received five new amendments, which means it can be voted on in the Senate.

After extensive discussion, on 30 August 2016, the Commission of the Deputies approved the report on the new draft of Bill 442/1991, which was sent to the Chamber of Deputies’ plenary to be scheduled for vote. Also, in August, Bill of Law 186/2014 was returned to the Senate and its draft was replaced by a new version, presented by Senator Fernando Bezerra, its new rapporteur.

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Senator Fernando Bezerra presented several versions of the draft, the latest on 4 November 2016. On 9 November, the Commission of the Senate finally approved Bill of Law 186/14, and on 14 December a request from Senator Magno Malta was approved. The Bill will now be analysed by the Constitution and Justice Commission (CCJ) of the Senate.

On 13 December 2016, several experts were invited to speak at the General Commission of the Chamber of Deputies about gaming regulation.

During the ICE Totally Gaming Conference in London in February 2017, the SEAE confirmed that officials were drafting a Bill of Law to be presented by the government during the first half of the year, to regulate sports betting.

In the state of Rio Grande do Sul, in the south of Brazil, a court decision has stated that gambling is not prohibited in that state because the prohibition set out in Article 50 of the Misdemeanor Act of 1941 would be unconstitutional. The public attorney has appealed that decision and now the case is pending judgment by the Federal Supreme Court,\(^\text{11}\) where it has been granted ‘general repercussion’ effects, which means that the decision of this case will be binding to all other similar cases in the country.

Until the judgment is released, the effects of the prior decision from the Rio Grande do Sul court remain in force. As a result, many bingo halls are opening in the state, without any regulation. This lack of regulation may result in political pressure on the state, but depending on how the operators behave, it may create the opposite effect.

Once a bill of law is approved in the floor of one of the houses, it will have to be approved by the other house. If amended, it will need approval by the house of origin before being subject to the President’s sanction. We do not expect this process to be completed until the end of 2017. This delay is a consequence of the unprecedented political crisis that has arisen from the corruption scandals involving several important politicians, including the former and the current presidents. The current President, Michel Temer, was trying to push the social security, labour and tax reforms for legislative approval in the first semester of 2017 and the gaming bill was supposed to be voted on in the second semester. Now, because of the latest scandal involving the President and several congressmen, there may be another impeachment process that could delay the gaming regulation even further.

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<tbody>
<tr>
<td><strong>Origin</strong></td>
<td>Chamber of Deputies</td>
</tr>
<tr>
<td><strong>Status</strong></td>
<td>Approved by the Special Commission</td>
</tr>
<tr>
<td><strong>Next steps</strong></td>
<td>Voting in the Chamber to be scheduled</td>
</tr>
<tr>
<td><strong>Modalities</strong></td>
<td>• Casinos • Bingos • Fixed-odds sports betting • VLIs • Online gaming • Lotteries • Jogo do Bicho</td>
</tr>
</tbody>
</table>

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\(^{11}\) Extraordinary Appeal 966.177 RG/RS.
<table>
<thead>
<tr>
<th>Licences</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Casinos: public bid for concession – 30-year term, renewable for equal terms</td>
<td>• Operator must be a company incorporated under the laws of Brazil, with headquarters and management in the country</td>
</tr>
<tr>
<td>• Bingos: authorisation for 20 years, renewable for one equal term</td>
<td>• Technical capacity</td>
</tr>
<tr>
<td>• Jogo do Bicho: 5 million reais minimum paid-up capital</td>
<td>• Fiscal regularity</td>
</tr>
<tr>
<td>• Unlimited time licence</td>
<td>• Financial and economic integrity</td>
</tr>
<tr>
<td>• Lotteries: states may have bids for concession of lottery services with a 20-year term</td>
<td>• Final individual shareholders must be identified</td>
</tr>
<tr>
<td>• Online gaming: not defined</td>
<td>• Shareholders, directors and managers shall not have a criminal record</td>
</tr>
<tr>
<td>• VLT: 20 million reais minimum paid-up capital. Type of licence not defined</td>
<td>• Gaming incorporations shall not be shareholders, managers or directors</td>
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<table>
<thead>
<tr>
<th>Casinos</th>
<th>Bingos</th>
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</thead>
<tbody>
<tr>
<td>• One casino in states with a population of up to 15 million; two casinos in states with population between 15 and 25 million; and three casinos in states with population larger than 25 million</td>
<td>• Allowed at bingo halls, jockey clubs and soccer stadiums</td>
</tr>
<tr>
<td>• Only one licence per state for each economic group and up to five licences in the national territory</td>
<td>• Minimum size and paid-up capital requirements based on the population of the city</td>
</tr>
<tr>
<td>• Minimum size and number of rooms requirements based on the population of the state</td>
<td>• Only video-bingo machines are allowed, with a minimum payout of 80%. Slots are not permitted</td>
</tr>
<tr>
<td>• Bid for licences, valid for 30 years, renewable for equal terms</td>
<td>• Up to 500 machines per bingo hall and 300 in soccer stadiums and jockey clubs</td>
</tr>
<tr>
<td>• Slot machines must have a minimum payout of 80%</td>
<td>• Licences valid for 20 years, renewable for equal terms</td>
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<tr>
<th>Fixed-odds sports betting</th>
<th>VLTs</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Licensing subject to further regulation</td>
<td>• Called BR1 machines</td>
</tr>
<tr>
<td>• Central server must be in Brazil</td>
<td>• Minimum payout of 80%</td>
</tr>
<tr>
<td></td>
<td>• Minimum paid-up capital of 20 million reais</td>
</tr>
<tr>
<td></td>
<td>• Minimum of 2,000 machines in stock</td>
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<td></td>
<td>• Maximum 10 machines per agency or five machines in other venues</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Online gaming</th>
<th>Lotteries</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Licensing subject to further regulation</td>
<td>• Only federal and state-owned lotteries are authorised</td>
</tr>
<tr>
<td>• Central server must be in Brazil</td>
<td></td>
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<thead>
<tr>
<th>Jogo do Bicho</th>
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<tbody>
<tr>
<td>• Minimum paid-up capital requirement</td>
<td>• Subject to further regulation</td>
</tr>
<tr>
<td>• States will authorise and control</td>
<td></td>
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</tbody>
</table>
Bill of Law 442/1991

<table>
<thead>
<tr>
<th>Poker</th>
<th>• Classified as a game of skill</th>
<th>• Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>AML</td>
<td>• Classified as a game of skill</td>
<td>• Not subject to the law</td>
</tr>
<tr>
<td></td>
<td>• Not subject to the law</td>
<td>• All operations must be identified</td>
</tr>
<tr>
<td>Taxation</td>
<td>• PIS/COFINS social contributions:</td>
<td>• PIS/COFINS social contributions:</td>
</tr>
<tr>
<td></td>
<td>- 3.65% on gross gaming revenue (GGR)</td>
<td>- 9.25% on GGR</td>
</tr>
<tr>
<td></td>
<td>- Ordinary corporate taxes (±34% of the net profit)</td>
<td>- Increased corporate taxes (±45% of the net profit)</td>
</tr>
<tr>
<td></td>
<td>• Inspection fee (±0.5% of payout)</td>
<td>- Services tax (2%-5% on GGR)</td>
</tr>
<tr>
<td>Tax on player's</td>
<td>• 15% withholding tax on actual gains at the time of the withdrawal or payment</td>
<td>• 30% withholding tax on net prizes at the time of the withdrawal or payment, which must be made within 72 hours</td>
</tr>
<tr>
<td>winnings</td>
<td></td>
<td>• Subject to further regulation</td>
</tr>
<tr>
<td>Responsible</td>
<td>• Obligation to create a responsible gaming plan</td>
<td>• Not included. The control, regulation and inspection will be performed by the Ministry of Finance</td>
</tr>
<tr>
<td>agency</td>
<td>• National Registration of Problem Gamblers</td>
<td></td>
</tr>
<tr>
<td>Regulatory</td>
<td>• The federal government must to enact another law creating the agency</td>
<td></td>
</tr>
<tr>
<td>agency</td>
<td></td>
<td>• Not included. The control, regulation and inspection will be performed by the Ministry of Finance</td>
</tr>
</tbody>
</table>

VIII OUTLOOK

Hopes are high for gambling regulation in Brazil in 2017. Unfortunately, political turmoil, resulting from the impeachment of President Dilma Rousseff and several corruption scandals involving politics, has complicated matters.

As it is a sensitive matter, gambling provokes passionate discussions and any decision on its regulation, especially at this point in time, will take into consideration not only the financial aspects but also the political repercussions. As the social security and labour reforms are now a priority for the government, it will probably not sponsor any controversial matters, including gambling, until those reforms are approved.

Lotex, an instant lottery, was created by Law No. 13,155 of 4 August 2015, and Law 13,262 of 22 March 2016 redefined the object of Lotex to include events of great popular appeal, commemorative dates, cultural references, licensing of brands or characters, and other graphic and visual elements in order to increase its commercial appeal. This change was significant and represents a major advance for instant lotteries in Brazil.

In Brazil, an instant lottery is limited to the so-called ‘scratch card’ sector. However, instant lotteries encompass various types of games and bets that are common in other countries, but non-existent in Brazil. The aim of the government is to encourage these other modalities that are still unexplored, in order to further increase the profitability of this economic activity.

The first step for the privatisation of Lotex was the issuance of Law No. 13,262 of 22 March 2016, which authorised Caixa Econômica Federal to set up Caixa Instantânea S/A, a wholly owned subsidiary, to manage and operate Lotex throughout the country.

The second step was the designation of the Brazilian Development Bank (BNDES) as responsible for executing and monitoring the privatisation process of Lotex – replacing Banco do Brasil, which had originally been assigned to this task. In this context, BNDES issued a bidding notice at the end of 2016 for the contracting of specialised technical services necessary for the privatisation of Lotex. The purpose of this procurement process was (1) economic and financial evaluation of Caixa Instantânea S/A, (2) analysis of the regulatory framework of the lottery sector, (3) elaboration of the privatisation model, (4) preparation of the business plan,
(5) proposition of the regulatory model, and (6) legal advice and other services necessary for
the privatisation process. The bidding was completed and the BNDES signed an 18-month
contract with the Consortium led by Ernst & Young.

At the time of writing, the privatisation of Lotex is pending economic and financial
evaluation, the number of licences has not been defined and the design of the bidding process
has not been established. The expectation of the government and the operators of the sector is
that in 2017 the bidding notice for the privatisation of Lotex will be launched.

In the meantime, several international companies are trying to position themselves in
Brazil.
Chapter 8

CZECH REPUBLIC

Vladimír Krasula and Vojtěch Chloupek

I  OVERVIEW

i  Definitions

The Czech Act No. 186/2016 on Gambling (the Gambling Act) defines gambling as a game of chance, betting or a lottery in which a participant wagers a bet while no return of such bet is guaranteed, and the win or loss is entirely or partly subject to chance or unknown circumstance.

The Gambling Act further differentiates gambling into ‘types of gambling’, as set out below. Any other game that meets the general gambling definition but does not meet the requirements of one of the below listed types of gambling is prohibited. Therefore, when intending to operate a new game, it is crucial that it meets the definition of the relevant type of gambling.

<table>
<thead>
<tr>
<th>Type of gambling</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lottery</td>
<td>A numerical lottery, cash prize lottery, in-kind prize lottery or instant lottery.</td>
</tr>
<tr>
<td>Odds betting</td>
<td>A game where a win is subject to guessing of a betting event (in particular a sport result or event of public attention). The prize is determined based on the winning probability (odds).</td>
</tr>
<tr>
<td>Totalisator game</td>
<td>See definition for odds betting; however, the prize depends on the number of winners, since at the end the total amount of wagered bets is distributed among all who correctly guessed the betting event.</td>
</tr>
<tr>
<td>Bingo</td>
<td>A game in which a win is subject to achieving the full predetermined pattern of numbers on the betting ticket. Such pattern on the ticket is marked off by the better based on the randomly drawn numbers that are called out in succession, while neither the number of the better nor the payouts are determined in advance.</td>
</tr>
<tr>
<td>Technical game</td>
<td>A game operated through a technical device directly handled by the player (including, without limitation, reel slot machines, electromechanical roulettes and electromechanical dice).</td>
</tr>
<tr>
<td>Live game</td>
<td>A game in which the players play against the house or one another at the live game tables, while the number of betterers and bets at one spin (round of betting) are not determined in advance.</td>
</tr>
<tr>
<td>Raffle</td>
<td>A game where wins are determined based on a draw that includes only the betting tickets that have been sold.</td>
</tr>
<tr>
<td>Small-size tournament</td>
<td>A knockout type of a card game tournament, in which the number of the game participants has been agreed in advance and the total deposits by one gambling participant wagered in one tournament do not exceed 500 koruna per 24 hours.</td>
</tr>
</tbody>
</table>

1 Vladimír Krasula is a junior associate and Vojtěch Chloupek is a partner at Bird & Bird sro advokátní kancelář.
Given that the types of gambling in the above table are the only forms allowed by the Gambling Act to be operated in the Czech Republic, it is important to consider whether the Gambling Act allows for fantasy league, pool betting, spread betting, skill competitions (e-sports) and free prize draws to take place.

We understand a free prize draw to be quite similar to the Czech equivalent of ‘consumer lottery’ or ‘consumer game’ and, as such, to be permissible. Some forms of consumer lotteries were heavily restricted and even prohibited before the adoption of the Gambling Act. The Gambling Act itself does not limit consumer lotteries from being hosted as they are deemed to be a business practice (Directive 2005/29/EC) and not within the scope of the Act (i.e., they are not a type of gambling).

Pool betting (pari-mutuel betting) is essentially the same as totalisator games as defined under the Gambling Act and, therefore, is allowed.

Spread betting is not currently being offered by any one of the major licensed Czech gambling operators. In theory, such a game could be operated under the definition of a live game, but this, along with the game’s rules, would have to be discussed with the licensing authority, which is the Ministry of Finance (the Ministry).

Fantasy league is not specifically regulated by the Gambling Act as a separate type of gambling, but its operation should be allowed under the Gambling Act as long as its rules meet the criteria of a live game or a technical game.

Skill competitions, such as e-sports, are hard to pinpoint from a regulatory standpoint, since the term is wide ranging. Mere betting on an outcome of an e-sports match (or any other skill competition) is allowed, but would require an odds betting licence. However, a game, where one might bet on one's own performance (pay participation fee) and where a win or prize is paid out at the end based on the participant's results, might fall under the category of a live game as defined by the Gambling Act and, therefore, could require a gambling licence in order to be operated in compliance with the Gambling Act. The amount of luck or unknown circumstance in such a game is crucial when assessing whether or not a skill game requires a gambling licence.

Hedging financial products (e.g., insurance) and gambling have a lot in common, since the outcome in both is dependent on luck or an unknown event. According to the Czech Civil Code, both fall under the category of aleatory (risky) contracts. The Civil Code further makes hedging financial contracts enforceable, unlike obligations from bets concluded between individuals (natural persons), which are not enforceable under the Civil Code. Note that bets made between a licensed gambling operator and individuals (consumers) are enforceable.

**ii Gambling policy**

Gambling is generally allowed and under the Gambling Act with the number of licences not being limited. Each applicant for a gambling licence is entitled to obtain it, provided that the regulatory requirements are met. However, on a local level, individual municipalities may decide to restrict gambling within its city limits. Municipalities are only able to restrict land-based operations of technical games, live games, bingo and small-size tournaments. Municipalities have no influence on the operation of online gambling.

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2 See Section 1 of Act No. 202/1990 on Lotteries and Other Like Games.
iii  **State control and private enterprise**

The gambling market is opened to anyone who meets the Gambling Act’s requirements. The Czech Republic neither owns nor operates any form of gambling.

The only exception is the ‘receipt lottery’, which is planned to be launched towards the end of 2017. This is not, however, a real ‘lottery’ according to the Gambling Act, since the participation in it will be free of charge and open to anyone who submits a tax receipt obtained while purchasing goods or services. The intention behind the introduction of the receipt lottery is to increase tax revenues and not to compete with other gambling operators.

iv  **Territorial issues**

Gambling in the Czech Republic is predominantly regulated on a national level with some regional aspects. Generally, each person applying for a gambling licence has to obtain a ‘basic licence’ from the Ministry. For certain types of land-based gambling (technical game, live game and bingo), the applicant needs to obtain an additional licence to ‘place a gambling venue’ from each city in which the gambling venue is planned to operate. Municipalities may decide to ban operation of technical games, live games, bingo and small-size tournaments within their city limits on a non-discriminatory basis. If a certain city bans gambling within its limits, the applicant won’t be able to operate in this city. Nonetheless, the basic licence would still be valid and the gambling operator would have the option to move its venue to another city.

Additionally, small tournaments and raffles (if the prize pool is higher than 100,000 koruna) must be notified to a city in which they are supposed to be hosted, so that the city has the option to prohibit them.

v  **Offshore gambling**

One of the intentions of the Gambling Act was to give the Ministry effective means of stopping offshore gambling operators from offering their services to Czech citizens. The Ministry was granted with the power to place a gambling operator without a Czech licence (e.g., a Maltese licence would not suffice) on a blacklist. Once blacklisted, payment and internet connection providers are obligated to block payments and internet connection to such entities.

The Ministry’s ability to place entities on the blacklist is new, which means that whether it will be effective remains to be seen. To this date, the Ministry has already initiated several proceedings to place illegal gambling operators on the blacklist. Apart from the blacklist provisions, most of the illegal gambling operators that used to operate in the Czech Republic prior to the effective date of the Gambling Act have voluntarily decided to withdraw from the Czech market or cease their operation until they obtain a Czech gambling licence.

The blacklist provisions of the Gambling Act may be interpreted rather broadly and even web hosting entities, and potentially other service providers, which enable illegal gambling may be placed on the blacklist.

II  **LEGAL AND REGULATORY FRAMEWORK**

i  **Legislation and jurisprudence**

The relevant gambling legislation in the Czech Republic is as follows:

- Act No. 186/2016 on Gambling, which sets out the basis for gambling legislation;
b Act No. 187/2016 on Gambling Tax, specifying the gambling tax obligations of gambling operators (tax rate, tax calculation, tax period, etc.);
c Act No. 280/2009 on the Tax Code, which covers all tax related proceedings (gambling, income, VAT, etc.);
d Act No. 500/2004 on the Administrative Code, specifying the rules for administrative proceedings (e.g., licencing, emplacing on the blacklist);
e Act No. 586/1992 on Income Tax;
f Act No. 40/2009 on the Criminal Code (operation of unlicensed gambling constitutes a criminal offence);
g Act No. 40/1995 on Regulation of Advertising;
h Act No. 253/2008 on Anti-Money Laundering; and
i individual decrees issued by municipalities restricting gambling within their city limits.

ii The regulator
The Ministry is the gambling supervising authority. Some gambling aspects are also supervised by the Czech Customs Administration (Customs) and by the local, relevant municipalities.

Customs not only supervises land-based gambling operations but it is also the entity with exclusive powers to impose fines for violations of the Gambling Act with respect to land-based gambling. The Ministry supervises both land-based and online gambling, but it is only authorised to impose fines with respect to online gambling violations. Last but not least, municipalities grant, change or withdraw licences for gambling venues.

iii Remote and land-based gambling
The Gambling Act distinguishes between remote and land-based gambling. The most significant difference is that only a one-step licence process is required (basic licence) for operation of online gambling. In addition to the basic licence, land-based gambling operators need to obtain a gambling venue location licence (second step). Some municipalities may decide to exclude gambling within their territory, which means that the gambling venue location licence cannot be obtained for that particular location. Online gambling may be carried out within the whole territory of the Czech Republic and cannot be restricted on a local level.

The aim of the Gambling Act is, however, to treat both online and land-based gambling equally and, therefore, the differences between the two are insignificant and usually originate from the nature of land-based gambling (e.g., no internet blocking) or online gambling (e.g., no video surveillance requirements).

iv Land-based gambling
The number of land-based gambling venues is not limited by any national or local quota. A municipality may, however, decide to prohibit land-based gambling within its city limits. Such restrictions have to be carried out in a non-discriminatory way. Municipalities are not allowed to choose one specific gambling operator.

With respect to types of gambling venues, there are only two types in the Czech Republic: casinos and gambling rooms (sometimes also referred to as gambling parlours).

The differences between the two are mostly seen in the legally permissible scope of gambling offerings, number of slot machines and venue opening hours.

Casinos may offer live games, technical games, bingo or a combination of live games with either technical games or bingo, and may be open for 24 hours. The number of technical
game devices (slot machines) is, however, limited. If a casino intends to offer technical games, then at least 30 slot machines must be operated. For each live game table, a casino may operate an additional 10 slot machines. If 10 live game tables are operated throughout the day, then a casino may operate an unlimited number of slot machines, provided that at least 30 are already in operation. There is a minimal tax associated with the number of slot machines as stated in Section V, infra.

Gambling rooms may only offer technical games and must operate at least 15 devices. A gambling room’s opening hours are limited to between 10am and 3am. Municipalities may further restrict the opening hours of gambling venues by a decree.

Betting shops (venues offering sports betting or totalisator games) are not considered as gambling venues and, therefore, do not have to meet the same regulatory requirements. Lottery tickets may also be sold without any venue-specific restrictions and, therefore, lottery tickets are normally sold at post offices, tobacco shops, etc. Not even municipalities are empowered to restrict land-based sports betting, totalisator games and sales of lottery tickets within their city limits.

v Remote gambling
Remote (online) gambling is generally allowed and the same regulatory obligations as for land-based gambling apply. Only raffles and small tournaments may not be provided online.

Gambling operators need to obtain a basic licence for the operation of online gambling (lotteries, odds betting, totalisator games, technical games, bingo or live games).

Online gambling operators are prohibited from providing any devices (tablets, etc.) to players enabling them to play an online game of chance on such device. If this restriction would not be in place, the secondary licence to place a gambling venue that grants municipalities the power to decide whether or not to allow gambling within their city limits would lose its purpose, since online gambling licences are valid within the whole territory of the Czech Republic.

vi Ancillary matters
Gambling operators are not required to purchase gambling equipment from licensed entities and are free to choose from a variety of national or even foreign suppliers. However, in order to use a gambling device in a gambling venue, the gambling operator has to get the gambling device certified and obtain a professional assessment and approbation of service worthiness for such device. Certifications may be issued only by professional entities appointed by the Ministry. According to the list of appointed professional entities maintained by the Ministry (last updated on 8 February 2017) only three entities are able to issues certifications.

Individuals holding a managerial or similar position within a gambling operator do not require any specific personal licence. An applicant for a basic gambling licence must, however, demonstrate to the Ministry that he or she possesses extensive experience, including dealing with personnel and in an organisational capacity, to operate gambling. According to Ministry’s guidance note on the basic licence application, an applicant needs to cooperate with at least five individuals who have more than three years of experience with gambling operation and provide the Ministry with excerpts of their CVs.

With respect to video surveillance of gambling venues, the Gambling Act requires the gambling operators to make a back-up copy of their surveillance footage, and to store the original and back-up footage for two years.
III THE LICENSING PROCESS

i Application and renewal

As outlined in Section II.iii, supra, the licensing process is different for online and land-based gambling licence applications.

The land-based gambling licensing process has two steps (basic licence and venue location licence), while the online gambling licensing process has only one step (basic licence). The difference between the land-based and online licensing processes is not significant, as it mostly reflects the nature of the type of gambling.

ii Basic licence

A formal application for a basic licence has to be filed with the Ministry. The application has to be submitted with all the necessary documents specified in the Gambling Act. The documents consist of:

a lists of executive directors, statutory and supervisory board members and beneficial owners of the applicant (and other corporate bodies if applicable) (the management);

b proof that a ‘surety’ has been provided – according to the Gambling Act, the applicant has to deposit a monetary surety either in cash with the Ministry or in the form of a bank’s letter of credit. Surety is required for each type of gambling, and is paid in order to cover potential unpaid winnings, unpaid taxes and other operator's duties (basic licence surety). The surety is paid separately for each type of gambling, and each type of gambling may consist of multiple ‘games’ – for example, online technical games may consist of various games based on a random number generator (RNG) but also include online roulette, blackjack, baccarat and so on, provided the player only plays against the house. Therefore, only one surety of 50 million koruna would be required;

c proof of debt-free status of the applicant and his or her management (a declaration from the Czech tax and customs authorities and from Czech national social security and healthcare agencies serves as a proof of debt-free status). If an applicant or his or her management members have stayed or developed activities for more than three months in the five years preceding the submission of the application in a country other than the Czech Republic, then corresponding documents for such countries are required along with their certified translations;

d a ‘game plan’ for each type of gambling the applicant intends to operate. The game plan shall describe the rules of each game, the drawing or winning determining process, winnings or methods of their calculation, payment methods and payout terms;

e certification (as specified in Section II.vi, supra); and

f a document on the location of the gambling servers if a game uses RNG.

Other documents may be required for specific types of gambling, for example, an applicant applying for land-based live games has to provide the Ministry with a sample of the casino chips set.

The documents may not be older than three months at the time of submission of the application.

The Ministry issued a guideline on how to properly file and fill out a gambling licence application (available only in Czech).
The basic licence may be issued for a period of up to six years and may not be transferred from one entity to another. According to the Gambling Act, a prolongation of a basic licence is not possible.

Licence fees are relatively low in the Czech Republic – for example, the fee for a basic licence is only 5,000 koruna.

The process of granting a basic licence should, according to the Code of Administrative Procedures, take 30 days (or 60 days in difficult cases). The reality, however, may be different, as the time for awarding the initial licences by the Ministry has taken longer than this.

### iii Licence to place a gambling venue

For a land-based gambling operation, a subsequent licence for a gambling venue has to be obtained from a territorially relevant municipality. The application for a gambling venue licence also needs to be accompanied by the following documents required by the Gambling Act:

- **a** a basic licence;
- **b** proof that ‘a surety’ has been provided. This is an additional surety and is not to be mistaken with the basic licence surety. This surety is calculated based on the number of gambling venues that the gambling operator intends to operate, and is different for casinos and gambling rooms. The surety for placement of each gambling room is 1 million koruna; however, the Gambling Act requires 10 million koruna as a minimum regardless of the number of gambling rooms. On the other hand, 50 million koruna is the maximum surety for placement of gambling rooms, regardless of the number of gambling rooms of one operator. Surety for each placement of each casino is 10 million koruna per casino; however, the Gambling Act requires 20 million koruna as a minimum regardless of the number of casinos of one operator. As with the gambling rooms, there is a maximum amount of surety of 50 million koruna. Sureties secure the payment of players’ winnings, taxes and other duties of the gambling operators;
- **c** a certificate for each specific slot machine to be operated in the gambling venue;
- **d** a legal title to use the gambling venue (e.g., lease agreement); and
- **e** a scheme of the video surveillance system. This means a one-page scheme that will demonstrate that the locations of individual cameras are sufficient (specific technical requirements are not set by the Gambling Act for video surveillance systems).

The licence for a gambling venue may be granted for the term of the legal effects of the basic licence, but for no longer than three years.

The scope of both the basic licence and the licence for a gambling venue may be altered upon application.

### iv Notification

Small tournaments and raffles (with prize pools higher than 100,000 koruna) have to be notified to the territorially relevant municipality, which may decide to prohibit them from taking place. The notification is administratively less demanding.

### v Sanctions for non-compliance

Both natural persons and legal entities may be sanctioned for non-compliance with the Gambling Act and related gambling legislation. The Czech legislation defines two types of
breaches of the law based on their severity and associated sanctions: administrative offences (less severe, usually sanctioned by a monetary fine) and criminal offences (more severe, often sanctioned by imprisonment).

Since gambling entails overlays to other respective fields, such as employment, advertising, tax, anti-money laundering and data protection, it is quite impossible to enumerate all possible breaches of gambling-related legislation. Usually, breaches of ancillary legislation (advertisement, data protection, employment, etc.) will constitute only an administrative offence, which might be sanctioned by a monetary fine.

Breach of the Gambling Act might also be punished by monetary penalties, but if the breach is severe enough, then an injunction of gambling operation might also be used as a sanction. Additionally, if the gambling operator ceases to comply with the licensing terms, the gambling licence might be withdrawn.

Illegal operation of gambling constitutes a criminal offence in the Czech Republic. Usually, the criminal proceedings are led against Czech nationals (natural persons) who operate unlicensed land-based slot machines. It is just a matter of time until criminal proceedings will be initiated with natural persons operating illegal online gambling.

Generally, even legal entities are criminally liable in the Czech Republic. Therefore, a legal entity may be criminally liable for illegal gambling operation, tax evasion or money laundering.

IV WRONGDOING

Gambling operators must take steps to prevent crime and other wrongdoing. As of 1 January 2017, an amendment of the Anti-Money Laundering Act has become effective, newly requiring gambling operators to carry out identifications of players and know-your-customer processes similar to those carried out by payment and credit institutions. Anti-money laundering legislation is, however, very complex and outside the scope of this chapter.

V TAXATION

Gambling is subject to a special sector tax under the Gambling Tax Act. The tax basis of the gambling tax is the difference between the total value of accepted bets or wagers and the total value of paid winnings (the tax base). The gambling tax rate is 23 per cent of the tax base, with the exception of technical games that are subject to a 35 per cent tax rate. Additionally, land-based operators of technical games have to account for a ‘minimum tax’ per each slot machine, which is 9,200 koruna per calendar quarter. The gambling tax is paid on a quarterly basis. Each gambling operator (even an illegal operator) is subject to gambling tax regardless of the location of its registered seat or main office.

If a gambling operator has a registered seat or main office within the territory of the Czech Republic, then it is subject to corporate income tax. The corporate income tax is 19 per cent of the net income of a company.

If a land-based gambling operator serves drinks, beverages, meals or cigarettes in the gambling venue, then it also has to pay value added tax, which is currently 21 per cent. Gambling operators are prohibited from offering free beverages or cigarettes to players.
Players’ winnings are not subject to any additional taxation, provided that the players’ winnings come from a game held by a licensed gambling operator with a licence from an EU or European Economic Area Member State. Winnings from a gambling operator with a Maltese licence are, therefore, not subject to any personal income tax.

VI ADVERTISING AND MARKETING

Advertising of gambling is permitted in the Czech Republic. However, this is only true for gambling operators with a basic licence.

On 1 January 2017, the Act on Advertising was amended and introduced new gambling advertising restrictions, which specify that gambling advertisements:

- must not target people under the age of 18 (minors);
- must not give the impression that gambling can serve as a source of income;
- must clearly state that minors are excluded from gambling; and
- must include the text: ‘Ministry of Finance cautions: Participation on gambling may lead to addiction’.

Natural persons and legal entities that ordered, manufactured or spread advertising in breach of the above-mentioned advertising restrictions are liable under the Act on Advertising and may face monetary fines. Advertising of illegal gambling may, depending on its volume, constitute a criminal offence as well.

Additionally, a gambling venue must not use any advertising, or display any message or any other gambling promotion for winning opportunities (including through text or audiovisual means) on the exterior of the gambling venue. A casino or a gambling room may only indicate that the premises is a ‘casino’ or ‘gambling venue’ on a sign that is near the entry to the venue (only one sign is required). Windows and displays of gambling rooms must not allow anyone to see the venues’ interior from the outside. Such promotional restrictions are contained in the Gambling Act and may therefore be punishable by monetary fines or even by injunctions of gambling operation (for up to two years).

VII THE YEAR IN REVIEW

As mentioned in this chapter, a number of changes have been made to the Czech gambling legislation (new Gambling Act, amendments to Anti-Money Laundering Act, Act on Advertising, and the new Act on Gambling Tax just to name a few).

With respect to case law, the placement of an illegal online gambling website on the list of illegal gambling operators (blacklist) and the related internet provider (IP) blocking provisions have been contested on a constitutional level by a group of 21 senators who filed a motion with the Constitutional Court to declare the relevant IP blocking sections of the Gambling Law unconstitutional, claiming they could be a form of unconstitutional censorship. The Constitutional Court, however, upheld the wording of the Gambling Act and kept the relevant provisions intact. No additional gambling case law has been published.
VIII OUTLOOK

There are quite a few interpretational issues with respect to the Gambling Act and especially gambling advertising (use of trademarks, sponsorships, etc.). We are hoping that the Ministry or Customs will decide to issue some additional guidelines that would help the gambling operators navigate through the interpretative issues, especially with respect to advertising.

Furthermore, the Gambling Act does not expressly provide any e-sports or social gaming provisions. Nonetheless, the legal definition of a game of chance under the Gambling Act is quite wide and may even include e-sports. This issue has not yet been addressed by either the Ministry or the courts of law. The Ministry is currently preoccupied with the licensing procedures, but when those are finished it is expected that the Ministry will pay more attention to e-sports regulation owing to its increasing popularity.
Chapter 9

DENMARK

Henrik Norsk Hoffmann

I OVERVIEW

i Definitions

Danish gambling legislation provides the following definitions of games and their different categories.

Games

Lottery, combination games and betting:

a lottery: an activity where a participant has a chance to win a prize, and where the odds are based exclusively on chance;

b combination games: activities where a participant has a chance to win a prize, and where the odds are based on a combination of skill and chance; and

c betting: activities where a participant has a chance to win a prize, and where bets are taken on the outcome of a future event or the occurrence of a future event.

Class lottery

A lottery that is divided into several classes, with separate prize draws for each class.

Pool betting

Bets where all or part of the prize depends on the size of the total pool of bets or is split between the winners.

Slot machines

Mechanical or electronic machines that can be used for games where the player can win a prize.

Online games

Games concluded between a player and a gambling operator using remote communications.

Land-based games

Games concluded between a player and a gambling operator or a gambling operator’s dealer who meet in person.

1 Henrik Norsk Hoffmann is the founding attorney of Nordic Gambling ApS.
Contrary to most gambling regulations, Danish gambling legislation does not distinguish between online poker and other online casino games. Poker is considered a casino game and is not subject to specific regulations, and is consequently regulated under the same rules as any other online casino game.

**Definitions in law**

Fantasy league games are considered and regulated as pool betting and require a licence to be offered. This allows an operator to offer daily fantasy leagues as well as the more traditional season fantasy leagues.

Spread betting is considered a financial product and cannot be offered under a betting licence. The offering of spread betting is restricted to registered financial companies and is regulated under the Danish Financial Services Act LBK No. 182, 18 February 2015.

Competitive sports for prizes are not considered betting or gambling, and can be offered without a gambling licence. The same is ultimately true for skill competitions, but skill competitions often have an element of chance, for example, a drawing between correct answers in a quiz where more than one participant has the correct answer, but only one can be the winner, and consequently are close to the legal definition of combination games. However, if the questions are not simple to the extent that the average person would get everything right with little or no effort, such competitions are not considered to be gambling and therefore do not require a licence.

Free prize draws are considered gambling as they fulfil the definition of a lottery under Danish law. However, since the element of a wager is not present in a free prize draw, a licence is not required to offer such draws legally, but a gambling duty on the prize must be paid by the operator.

**Distinction between speculative and hedging financial products**

Article 2 Section 3 of the Danish Gambling Act excludes betting on the future value of financial instruments that lie outside the scope of the Gambling Act, and such betting, for example spread betting, is consequently regulated by the Financial Services Act.

This does not exclude all betting on financial products, and it is generally considered inside the scope of the Gambling Act and legal under a betting licence to offer fantasy league-style games on publicly noted shares, bets on which share will perform best on a given trading day, etc.

**ii Gambling policy**

The structure of Danish gambling legislation is that the offering of gambling is generally prohibited unless the operator has a licence to offer gambling.

On the offering of betting and online casino, there is no limitation to the number of licences that can be granted, and anyone who fulfils the legal requirements and satisfies the Danish Gambling Authority that the operation can be run responsibly and will be sufficiently funded will be granted a licence.
iii State control and private enterprise

The offering of lotteries as defined in the Gambling Act (except for games positively exempted as allowed casino games) is restricted to state-owned operators. Denmark has three different types of class lotteries, and Danske Spil A/S holds the monopoly to offer any other kind of lottery.

All other types of gambling have been opened up to privately owned operators who have obtained a gambling licence.

iv Territorial issues

In Denmark, gambling is regulated and licensed nationally. With regards to Greenland and the Faroe Islands, the local governments have full jurisdiction and autonomous authority regarding regulated gambling. Currently, Greenland allows gambling on the same premises as offered in the Gambling Act and the Faroe Islands have continued with a complete ban.

v Offshore gambling

The key element with regards to offshore gambling is whether or not an offshore gambling operator is targeting the Danish market.

Under the Gambling Authority's current interpretation and enforcement of the Gambling Act, accepting wagers from players located in Denmark without having a Danish licence is not contrary to Danish law provided that the operator accepting such wagers is not targeting its offering of gambling products at the Danish market.

An operator is considered to be targeting the Danish market if one or more of the following conditions are fulfilled:

a the gambling website is offered in a Danish-language version;
b the operator offers customer services in Danish;
c games are offered that are considered to only be of interest to Danish players. For example, betting on lower-ranking Danish sporting events, betting on the outcome of Danish parliamentary elections, or slot machines with the theme of a Danish TV show, movie and similar screenings unknown outside of Denmark;
d Danish kroner are accepted or offered as a currency on the gambling website;
e there is acceptance of payment services such as the Danish debit card payment system DanKort, which is exclusive to the Danish market;
f there is marketing and advertising in the Danish media;
g marketing and advertising is in Danish; and
h there is direct marketing targeting Danish consumers, where the operator sender is aware that the recipient is based in Denmark.

If an operator targets the Danish market without a Danish licence, the Gambling Authority has shown great commitment to having such offering shut down. So far the Gambling Authority has had a great deal of success doing this, and in most cases cease-and-desist letters have proven sufficient.

Article 65 of the Gambling Act provides the Gambling Authority with the legal authority to block payment services to an operator offering gambling in Denmark without a licence. The same provision allows the Gambling Authority to block access from Denmark to the violating operator's website or websites.

Further, Article 59 places a complete ban in Denmark on advertising of unlicensed gambling.
In all cases where cease-and-desist letters have proven insufficient to stop the unlicensed offering, the Gambling Authority has successfully gained court orders to force internet service providers (ISPs) to prevent access to certain websites where unlicensed gambling was offered and targeted at the Danish market.

For all the time that the Gambling Act has been in force (currently, more than five years), the Gambling Authority has not made use of its legal authority to block payment services.

After an initial period with a substantial number of cease-and-desist letters and ISPs blocking access to websites, the letters and advertisement ban, combined with critical mass in terms of number of operators with a licence to offer gambling, seems to be sufficient to keep most unlicensed gambling out of the Danish market.

The Gambling Authority estimates the unlicensed offering of gambling in Denmark to represent 5 per cent or less of the total Danish gambling market. The operators are less optimistic but still estimate that approximately 85 per cent of the Danish market is licensed and compliant.

The Gambling Authority has not yet had to pursue enforcement, including fines for violation of the Gambling Act, outside Denmark, so the enforceability of the Gambling Act against a foreign operator has not yet been identified.

The Gambling Authority is pursuing and developing cooperation with as many foreign gambling regulators and gambling commissions as it can, in order to improve its chances of receiving assistance if a foreign operator violates Danish law, and to promote a higher degree of uniformity and mutual recognition of standards within, in particular, the online gambling industry.

The Gambling Act does not restrict the number of licences that can be granted in any way, and is therefore in compliance with EU law, at least in terms of the types of games that have been liberalised as a result of the law reform. The EU-wide enforcement of Danish law against a foreign EU-based entity can therefore not be excluded.

However, regarding games that are still part of Danske Spil A/S’s monopoly, the legality of the Gambling Act from an EU law perspective is unclear. The government has given no justification for maintaining a state monopoly on the offering of, for example, bingo, scratch cards or horse race betting, and consequently the enforcement of this part of the legislation outside of Denmark is questionable at best.

II 法律和法规

i 法律和司法解释

丹麦赌博立法建立在18世纪的全面禁止任何赌博活动的背景下。随着时间的推移，一系列法案被实施，对全面禁止赌博作出了一些例外。这些例外包括对提供、参与和推广赌博的禁止。

2010年6月4日，新的赌博法在丹麦议会一致通过，并于2012年1月1日生效。在此之前，主要例外是国家独占运营商，一家公共有限责任公司Danske Spil A/S，被授予独家博彩、彩票和在线博彩的许可，该公司还拥有博彩、彩票和在线博彩的独家垄断地位。
from the administrative practice of the Danish tax authorities it could be concluded that, unless a game was expressly excluded from the licence through legislation, then Danske Spil A/S was licensed to provide the game.

The new Gambling Act was intended to serve two purposes: to open the market for privately owned national and international betting and online casino operators; and to clean up the complex web of regulations, executive orders and unclear jurisdictional issues between local police, local government and national government regarding the offering of gambling.

The Gambling Act is now the main legislation, and it governs all gambling in Denmark whether it is land-based or online, for profit or charity.

The Gambling Act can be characterised as framework legislation, and was drafted to be applicable in the future and to withstand the rapid technological development related to remote gambling in particular.

One measure that makes this possible is that the relevant minister (currently the Minister of Taxation) has been granted the legal authoritative powers to issue specific regulation on certain areas.

In this regard, these powers are granted to the Gambling Authority, which has now issued a number of executive orders on land-based betting, online betting, online casinos, land-based slot machines, land-based casinos and lotteries for the common good.

Since the enactment of the Gambling Act, it has been the philosophy of the Gambling Authority to seek dialogue with all stakeholders, including players and operators, to develop the market for the mutual benefit of all stakeholders.

As a result of this approach, any issues thus far have been resolved without involving the Danish courts, and consequently there is no case law available that has shaped the law or offered any interpretations of the law that differ from those enforced by the Gambling Authority.

The Gambling Authority has published several guidelines of interpretation regarding various specific topics including sales promotions, advertisement for bonuses, anti-money laundering rules, etc., but although these guidelines specify the Gambling Authority’s interpretation of the gambling legislation, they are not law and do not express the view of the Danish courts. Ultimately, only the courts are competent to interpret Danish law with binding effect.

ii The regulator

With the law reform expressed by the enactment of the Gambling Act on 1 January 2012, all powers regarding the regulation of gambling in Denmark have been combined and the Gambling Authority now has sole jurisdiction of all regulatory and compliance matters related to gambling.

Before the law reform, the Gambling Authority had the status of a department within the Danish Tax Administration (SKAT). With the reform, the Gambling Authority was detached from the administration and responsibility area of SKAT and converted into an independent authority with its own management and budgetary responsibilities.

iii Remote and land-based gambling

Danish gambling legislation differentiates between land-based casinos and online casinos. Land-based gambling is defined as games concluded by a player and a gambling operator, or
the gambling operator’s dealer, meeting physically. Online gambling is, on the other hand, defined as games that are concluded between a player and a gambling operator using remote communications.

While online gambling is not restricted as regards the number of possible licensed operators, there are restrictions regarding land-based gambling.

The current regime allows for eight land-based casinos, and consideration to geographic location is given when granting a licence, thereby creating a sort of geographical competitive protection for land-based casinos.

Similarly, the geographic location of slot machine halls and similar venues is considered when granting a licence. However, with regard to slot machine halls, there is no limit to the number of operational licences that can be granted, and consequently the geographic protection from competition is typically not available, and there is far less protection than is given to land-based casinos.

Another major difference is the tax rate. While the land-based industry is taxed depending on the gross gambling revenue (GGR) achieved (between 40 per cent and 75 per cent), the online gambling duty is set at 20 per cent of GGR regardless of the size of the GGR.

For a land-based operator, all personnel involved in the gambling operation must, as a main rule, be approved in writing by the Gambling Authority. Part of the approval proceeding is a thorough background check of the person in question. The approval is considered a personal licence as such, but resembles a premises licence in many ways.

### iv Land-based gambling

The primary venues for land-based gambling are casinos, slot machine halls and outlets for lottery games and betting.

Secondary venues are poker tournaments organised by licensed poker associations or poker tournament organisers.

There are currently eight onshore casino licences and two offshore casino licences available for ‘land-based’ casinos in Denmark.

A land-based casino licence allows the operator to offer casino games. Although there is no exhaustive definition as to what constitutes a casino game, a casino licence allows the casino to offer baccarat, punto banco, blackjack, roulette and slot machines.

Any other game, including poker, can only be offered by the land-based casino if an additional approval has been granted by the Gambling Authority to the casino.

A land-based casino can be allowed to operate in a specific location. Among the criteria for approval of the geographic location are:

- **a** it must be in a place or area frequented by tourists;
- **b** it cannot be in the immediate vicinity of a school, or any other building where children are present; and
- **c** the location must be approved by local police and the city council.

Similar criteria are applied when considering an application for a licence to operate slot machines.

Slot machines operated under a different licence than the land-based casino licence are allowed only smaller maximum wagers and smaller maximum prices than those slot machines operated inside the casino.
With regard to outlets for lottery and betting (including betting shops), there are no defined geographical restrictions and, similar to slot machine halls, there are no limitations in numbers.

The operation of the outlet requires that the person in charge be approved by the Gambling Authority, but the offering of the games themselves does not require an additional licence for a land-based outlet other than the licence granted for offering and operating the game in question. In other words, the offering of Danske Spil A/S’s scratch-card games does not require a licence to offer scratch-card games for a land-based outlet. The only licence required is Danske Spil A/S’s licence to offer the game.

**v Remote gambling**

Operators holding a Danish online licence can offer remote gambling without restrictions as to media. In other words, gambling can be offered via the internet, mobile phones, tablets, television and any medium suitable for remote communication. However, under Danish law, a computer set up in a public place that can only access one particular online casino is considered to be a land-based casino offering and requires a land-based casino licence.

Danish gambling legislation allows open liquidity and thereby allows Danish players to be active in games where players from other jurisdictions also play. This is particularly important with regards to poker and jackpot pools.

A licence to offer online gambling only grants the operator a licence to offer gambling in Denmark. Taking wagers from non-Danish players is not covered by the Danish licence and the legality will, from a Danish legal point of view, depend entirely on the laws in the country from where the wager is placed.

The main rule regarding servers under Danish law is that servers on which the gaming software and other operational software are run must be located in Denmark. The exceptions are if the servers are placed in a jurisdiction with which the Gambling Authority has a cooperation agreement in place; in such cases, the server and the equipment do not need to be in Denmark.

Finally, as a last resort the Gambling Authority has the power to accept that a server can be placed in any jurisdiction in the world if the Authority is of the opinion that its power to enforce Danish law and secure compliance is not jeopardised by its physical location.

**vi Ancillary matters**

The responsibility for compliance with Danish law is placed solely with the operator that holds the licence. The licensed operator is free to choose its suppliers, affiliates, white-label operators and other contracting partners. However, regardless of who is at fault, if a violation of the licence or the law occurs, the licensed operator is liable.

Consequently, there is no licence granted to manufacturers or software suppliers, as it is the licensed operator’s sole responsibility to secure 100 per cent compliance throughout the entire supply chain.

Certification of technical standards and functionality, including business practices, must be completed by a testing lab that fulfils the requirements defined by the Gambling Authority. However, it is also the licensed operator’s responsibility to make sure that the chosen testing lab has the required skill and experience to conduct testing and certification in compliance with Danish law.
An individual does not need a personal licence, but a licensed operator must be prepared at any given time to prove to the Gambling Authority that key individuals involved in technical set-up, finances, anti-money laundering, operation, etc., are sufficiently skilled and experienced to hold these positions.

Particularly with regard to land-based gambling operations, all staff must be approved by the Gambling Authority. This approval is mainly a background check and cannot be compared with the due diligence check that is conducted on individuals in some jurisdictions.

III THE LICENSING PROCESS

i Application and renewal

The phrase ‘gambling operators’ is commonly used as a collective term for natural persons and legal entities that provide gambling activities.

As a rule, licences to provide and arrange gambling can be granted to natural persons and legal entities. An exception is made for licences for the provision and arrangement of local pool betting on local cycle racing on tracks, dog racing on a racecourse and pigeon racing, since such licences can only be granted to legal entities that are organisers of such types of racing and that are members of the relevant sport’s central organisation or association.

Moreover a licence for local pool betting on horse racing can only be issued to associations that have held such a licence for a number of years, and licences to arrange charitable lotteries can only be granted to associations, institutions or committees composed of at least three persons.

Since provision of lotteries, betting on horse and dog racing is still subject to a monopoly, a licence to provision hereof can only be granted to Danske Spil A/S.

A licence to provide and organise gambling can only be issued to operators who:

a have not filed for reconstruction, bankruptcy or debt restructuring or are not under reconstruction, bankruptcy or debt restructuring;

b have not been convicted of a criminal offence that gives reason to believe that there is a clear risk of abuse of the access to work with gambling; and

c do not have unpaid, outstanding debt to the public sector.

In addition to the above requirements, a gambling licence may only be granted to natural persons above the age of 21 who are not under guardianship and for whom a surrogate decision maker has not been designated.

If a natural person or a legal entity is resident or established outside Denmark or any Member State of the EU or the EEA, a licence can only be issued to the operator if it has appointed a representative who has been approved by the Gambling Authority.

The representative can either be a natural person or a legal entity. The representative should be resident or established within Denmark and must fulfil the same requirements as the applicant itself. Moreover, the representative should be authorised to represent the operator in relation to the public authorities and in legal proceedings as well as criminal proceedings.

Along with the licence application form, the applicant must provide documentation that the operator is sufficiently funded and is in possession of the skills and experience necessary to run a gambling operation professionally and compliantly.

This documentation should be submitted in the form of annual accounts, budgets, business plans, CVs of key individuals, various policies and reports on compliance, corporate
governance, security, anti-money laundering, licences in other jurisdictions, statements from accountants and possibly guarantees issued in favour of the applicant by third parties such as a bank or a mother company.

Further, the applicant needs to submit documentation of the technical setup, including system security and integrity. Standard records should show that the required data vault in the Danish system, referred to as SAFE, is fully functional and compliant, and grants the Gambling Authority remote access to all relevant data on game and money transactions involving Danish players.

The final part of the application material is the certification of the gambling system including game software, random number generator, report generators and the backend system including anti-money laundering surveillance, financial transaction systems, know-your-customer procedures and storage of personal information.

The processing of an application typically takes from three to six months for the Gambling Authority, but in most cases the processing time is closer to three months than six months.

The licence application fees for 2017 are:

- a single licence (a distinction is made between a betting licence and an online casino licence) – 267,500 kroner;
- b double licence (application for both betting and online casino at the same time) – 374,500 kroner; and
- c income limited licence – 53,500 kroner.

Both the betting and the online casino licences are limited to five years, and in addition to the application fee and the gambling duty a licensee must pay an annual licence fee, which is calculated on the basis of the realised GGR. With effect from 1 July 2016 the annual license fees were changed. The reason behind the change was to reduce the annual fee for small and medium-sized operators and to increase the fee for the largest operators. In addition, more GGR intervals were added. The annual fee in 2017 varies from 53,500 kroner to 4,815,000 kroner.

Since the first licences were issued on 1 January 2012, none of the existing licences have been renewed under the Gambling Act. The renewal fee for an application of renewal of an existing licence is 133,800 kroner.

It was originally announced by the Gambling Authority that due diligence connected with the reapplication was going to be considerably reduced compare to that of a new applicant. However, for an operator the difference is difficult to identify at least in regards to the financial and corporate due diligence. Because of the technical change management system of the Gambling Authority and the regular reporting requirements on technical issues the reapplication process is almost entirely focused on financial and corporate matters. The reapplication procedure takes approximately three months.

### ii Sanctions for non-compliance

The most common sanction for violation of Danish gambling law is a fine. A fine is always determined on the basis of the facts of each individual case, but is usually not settled at less than 10,000 kroner. The fine for violation of Danish law regarding unsolicited direct marketing using remote communication media is 100 kroner per message sent, but no less
than 10,000 kroner. In other words, if a marketing email is sent to 10,000 individuals who have not given their consent to receive such marketing material, the fine will be at least 1 million kroner.

In severe cases, the sanction for offering unlicensed gambling can be set at up to one year of imprisonment.

For licensed operators that operate in violation of either their licence or the gambling law, change of licence conditions, suspension and revocation of the licence are sanctions that the Gambling Authority can use to enforce gambling law, and compliance with legislation and regulation.

For payment service providers and ISPs, criminal liability only comes into play if the provider in question disobeys, disregards or ignores a court order to block payments to or from an operator, or if access is granted to the operator’s website despite a court order to block it.

For advertisers, the same sanctions apply as those applicable to operators who offer gambling without a licence.

IV WRONGDOING

A licensed operator has an obligation to have the necessary anti-money laundering proceedings in place, including conducting a source of funds investigation, politically exposed person checks, suspicious activity reporting, etc. It is the operator’s responsibility to ensure that such measures and proceedings are working and that they are sufficient to comply with applicable legislation and regulations.

Operators are obliged to report suspicious activity to the district attorney for special financial and international crime.

Further, betting operators have an obligation to have necessary and sufficient measures in place to identify and combat match-fixing.

V TAXATION

The Danish gambling duty is calculated on the basis of GGR, which is defined as wagers minus winnings.

For betting and online casinos, the gambling duty is 20 per cent of GGR. Regarding peer-to-peer games such as poker and betting exchanges, the calculation base of the gambling duty is the commission charged by the operator to facilitate the game.

For land-based betting, the rate of the gambling duty depends on the realised GGR in a certain period, and it varies from 45 per cent to 75 per cent of GGR.

The gambling duty on prizes awarded in prize draws and games without wagers is 15 per cent of the prize exceeding 200 kroner for cash prizes and 17.5 per cent of the value (market value) exceeding 200 kroner for non-cash prizes.

Winnings from licensed gambling are tax-free for the player, but winnings from non-licensed gambling are personal income and are taxed as such with tax rates of up to 62 per cent.

Gambling is exempt from VAT in Denmark, which also means that a Denmark-based operator cannot deduct VAT expenses when purchasing goods and services.

With regard to corporate taxes, the gambling duty is seen as a tax-deductible business expense, which can be deducted in the operator’s corporate taxes.
VI  ADVERTISING AND MARKETING

As a rule, marketing of licensed games is accepted under Danish gambling legislation. However, the licensee must take necessary measures to ensure that sales promotion is not sent to players who have excluded themselves from participation in gaming temporarily or permanently.

Furthermore, Danish legislation prohibits offering and marketing to persons under the age of 18. There are only a few exceptions in this regard. The first exemption to this rule is charity lotteries where the age restriction does not apply. The second exception is the offering of land-based lotteries by Danske Spil A/S and class lotteries, which can be marketed and offered to everybody above the age of 16.

The licence holder must ensure that all relevant information of the games offered under the licence is easily accessible to the players and the Gambling Authority.

Furthermore, the marketing for gambling has to give a realistic impression of the chances of winning, and cannot display those chances as being greater than they actually are. Celebrities can only be used in the marketing for gambling operations if the message of the marketing campaign or advertisement does not portray the celebrity as being successful because of gambling, unless this is actually the case.

Finally, games offered under a licence must be described as amusement activities and the marketing cannot describe gambling as a way to solve economic problems or a way to gain social status.

Marketing of unlicensed gambling is prohibited and sanctioned with fines and imprisonment for up to one year. For those that advertise for unlicensed gambling, the sanction is a fine.

The Gambling Authority has launched a new service that will allow Danish residents to opt out of all gambling-related direct advertisement with one registration. The new database will be run parallel to the register of self-excluded persons, and operators are encouraged to cross reference their mailing lists immediately before sending out marketing material. There are still some important potential issues with this service in terms of personal data protection and timing, and it is unclear if the Gambling Authority has legal authority to make the use of this service mandatory.

VII  THE YEAR IN REVIEW

The period of the end of 2016 and beginning of 2017 was the first time that the existing operators in the Danish market had to renew their licences. There was some confusion as to the extent of the documentation requirements and due diligence scope for renewal applications. The reapplication fee and communication from the Gambling Authority suggested that the reapplication process would be reduced in scope and detail.

However, now that most Danish licence holders have been through this process it seems that finding noticeable differences in the scope of the due diligence and the documentation requirements between a new application and an application for the renewal of an existing licence is very difficult indeed. Owing to the regular reporting and the change management programme, the technical issues when applying to renew a licence are close to non-existent, but therein lies the only difference between the application for a new licence and the application for renewal of an existing licence.
The change from weekly to monthly reporting, calculation and payment of gambling duty seems to have eliminated most of the problem with *de facto* gambling duty in excess of 20 per cent, which means the change of law has proven itself to be a good and welcome improvement for the operators.

The year 2016 was the fifth consecutive year with considerable growth in GGR on the open gambling markets, thus underlining the perception that the new Danish gambling legislation is working well, and that business is growing and is generally positive for licensed operators in Denmark.

**VIII OUTLOOK**

The ongoing considerations regarding a possible sale of Danske Spil A/S to private operators have quietened considerably. However, currently the Danish parliament is working on an additional opening of the Danish markets. Consequently it is expected that online bingo and horse race betting will be added to the list of games that can be offered under an online casino licence or a betting licence. This will make the Danish market more interesting for a number of operators and hopefully result in more licensed operators in the Danish market, making it even more difficult for unlicensed operators to attract business outside of Denmark.
Chapter 10

GERMANY

Joerg Hofmann, Matthias Spitz and Jessica Maier

I OVERVIEW

i Definitions

In contrast to other jurisdictions where ‘gaming’ or ‘gambling’ might serve as useful terms to distinguish between products that will be subject to specific gambling regulation, in Germany, a product must qualify as a ‘game of chance’ to fall under the scope of the Interstate Treaty on Gambling (the Interstate Treaty), the main legal framework of relevance in this context. This is the case whenever valuable consideration is given in exchange for a chance to win and the determination of winnings is entirely or predominantly a matter of chance in the context of a game. In this chapter, such games of chance will also be referred to as ‘gambling’.

Bets are also considered games of chance as per the Interstate Treaty, yet a licensing regime open to private operators was only established for fixed-odds sports betting offerings. Horse race betting offerings are also licensable. Betting on events other than sports (and horse races) – such as political events or financial products and tradings (including spread betting, FX trading, binaries, contracts for difference, etc.), sometimes also referred to as ‘social betting’ – is impermissible as per German gambling laws and may be subject to other regulation, namely financial services and banking regulation, rather than gambling regulation. Pool betting offerings are reserved for the state monopoly, since such offerings are commonly classified as a kind of lottery.

Lotteries in general are defined as games of chance that are directed at a majority of persons, involve a certain payment, a specific game plan and the chance to win money as opposed to other prizes of monetary value (this would be referred to as a draw in Germany).

Games that do not fall under the Interstate Treaty’s definition of a game of chance and, consequently, are not subject to specific gambling regulation (but may likely still be subject to other rules and regulations that are aimed at ensuring consumer protection), depending on the element of a game of chance they lack, are commonly either referred to as skill games (no predominant element of chance) or free-to-play games (no consideration paid to participate, free prize draws acting as an example). Although ultimately subject to a case-by-case analysis, where German jurisprudence may, but only to a limited extent, provide some guidance, so-called social games will mostly classify as skill games. In the absence of specific regulation, the legal classification of fantasy league games offered to German players

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2 For example, the Act Against Unfair Competition; Act for the Protection of Minors; Interstate Treaty on Broadcasting; Interstate Treaty on the Protection of Minors in the Media; and Sweepstakes Ordinance.
will depend on the specifics of the product (i.e., its overall design and structure), and the question of whether, with this design and structure, the game qualifies as game of chance as defined in the Interstate Treaty.

Against this background, skill competitions and competitive sports for prizes also do not typically fall within the scope of gambling regulation in Germany.

ii Gambling policy
Consumer protection, in particular the prevention of gambling addiction and protection of minors and other vulnerable persons, the channelling of players towards the regulated market, the guarantee of an orderly and fair gambling offering, combatting of fraud and other gambling-related crimes as well as the protection of the integrity of sports are the declared goals of German gambling regulation. While Germany has been known to take a fairly restrictive position towards gambling, gambling – with the exception of online casino gambling – is neither generally prohibited nor particularly encouraged through licensing in German gambling laws. The protectionist approach of the German states over their lottery (and sports betting) monopoly and years of continued criticism under EU law (which go hand in hand), however, must be seen to be characteristics of German gambling regulation. As a result, gambling regulation in Germany is constantly undergoing some kind of reform usually triggered by a decision from the Court of Justice of the European Union (CJEU) or national courts or intervention on the part of the European Commission confirming that the European fundamental freedoms are not sufficiently ensured, and the regulatory goals cannot be achieved by means of the current regulation and licensing opportunities. Although the German states are in the process of implementing another reform, it can be expected that further reforms will have to follow in order to ensure that gambling regulation in Germany is functioning and compliant with EU law.

iii State control and private enterprise
The principal German legal framework on gambling allows, only to a limited extent, for gambling to be operated by private enterprises rather than the state. For example, in most German states land-based casinos are owned by the state and the operation of lotteries is exclusively reserved for the state-owned lottery companies, which the German states are very protective of. With regard to lotteries, private operators may only apply for brokering licences, which allow them to sell lottery tickets on behalf of the state lottery companies to promote their products, (i.e., the traditional lotteries). In the sports betting sector, as prominently confirmed by the CJEU in the Ince case (336/14), an unlawful de facto state monopoly persists despite the state monopoly having already been held to contravene EU law in 2010. The sports betting licensing process that was introduced by and initiated under the current Interstate Treaty, and was supposed to allow for the issuance of 20 licences, was confirmed to have been unlawfully designed and conducted, and could never be completed because of multiple legal flaws.

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iv Territorial issues

Within the German federal system, gambling law is traditionally regulated at state level. This means that, in principle, gaming is regulated by the respective state law of each of the 16 states. In order to achieve some uniformity, the states agreed on common principles and regulations for certain fields of gambling law in terms of the Interstate Treaty. This includes the sports betting sector, for example, where the state of Hesse was empowered to act on behalf of all 16 German states. Under the Second Treaty Amending the Interstate Treaty on Gambling (the Amendment Treaty), which is due to enter into force on 1 January 2018, this responsibility is to be assumed by the state of North Rhine-Westphalia.

In Germany, there are no particular localities that have a favoured status for gambling in terms of, for example, tourist islands or reservations where particular groups have autonomy. From January 2012 until February 2013, the state of Schleswig-Holstein pursued its own gambling policy, which allowed for online casino and sports betting licences to be issued, instead of joining the other 15 states in the Interstate Treaty. However, after a change in government, Schleswig-Holstein ultimately joined the Interstate Treaty. Consequently, with the exception of Schleswig-Holstein licensees (i.e., operators who obtained a licence under the Schleswig-Holstein gaming regime), in relation to whom the former Schleswig-Holstein regulation continues to apply, the Interstate Treaty restrictions also apply in Schleswig-Holstein.

v Offshore gambling

The attitude of German gambling supervisory authorities to offshore gambling operators (i.e., those who offer gambling products to German citizens but are based outside of Germany) can be considered to be problematic as the German states continually fail to strike a lawful balance when selecting the operators that they intend to enforce against. Ignoring the main goal of German gambling regulation (i.e., to ensure consumer protection), the enforcement activity of German states with regard to offshore operators tends to be targeted at EU-licensed operators for reasons of practicality rather than at operators that do not have adequate licensing or sufficient consumer protection measures in place. Irrespective of the question of how, in light of the fundamental European freedoms, enforcement taken against EU-based and licensed gambling operators can be legally justified in the current situation, the proportionality and consistency of such an enforcement practice can be questioned – an aspect that certain German administrative courts have also identified as a problem.

German authorities would derive the legal basis for acting against foreign operators from the Interstate Treaty, which, as per Section 9, allows them to make investigations into alleged violations of the Interstate Treaty and to interdict the respective offering or advertising therefor. They may also resort to payment blocking measures under this provision. However, payment blocking raises a number of legal questions, namely connected to data protection laws that still have to be resolved, which is why German authorities tend to act behind the scenes speaking to payment service providers rather than strictly imposing payment blocking measures.

5 A list of all Schleswig-Holstein licensed online casino and sports betting operators may be found at: www.schleswig-holstein.de/DE/Fachinhalte/G/gleicksspiel/genehmigungs inhaber.html;jsessionid=67BD3786BAE76ED967285D78A5C9BFF1.
II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

As mentioned in Section I.i, supra, the basic legal framework for gambling in Germany is the Interstate Treaty of 2012 – the third attempt of the German states in recent years to create a uniform and EU-law-compliant gambling regulation.

The current Interstate Treaty entered into force on 1 July 2012 following a legislative process that had to be initiated as a result of the CJEU finding that the state monopoly on sports betting that was provided for in the Interstate Treaty of 2008 (which was itself introduced because the former state monopoly stipulated in the then applicable Interstate Treaty\(^6\) was held to be unlawful for lacking justification by the Federal Constitutional Court)\(^7\) contravened EU law.

The current Interstate Treaty has been subject to criticism from the time it entered into force and the failure of the sports betting licensing process, which was introduced by the current Interstate Treaty and confirmed by national courts and most prominently by the CJEU in the Ince case to be unlawful, finally triggered the reforms that are currently being undertaken (see Sections VII and VIII, infra).

Alongside the Interstate Treaty, gambling law is regulated by other state legislation, for example the Gambling Acts implementing the Interstate Treaty, Casino Acts and ordinances. For historic or general reasons, some federal laws also influence gambling, such as the Race Betting and Lottery Act, the Trade Regulation Act, the Criminal Code and Fiscal Code.

ii The regulator

In a gambling regulation context, Germany has more than one regulator, which makes the question of which authority will be responsible very complex. As a general rule, the type of gambling offered and where it is offered will be influential factors for which regulator will be responsible. The responsibilities range from individual municipalities acting as regulators (e.g., in the land-based gaming hall sector) to the respective ministries (or subordinate authorities) of the German states (e.g., in relation to brick-and-mortar casinos or in relation to coordinating enforcement actions against suspected unlawful gambling operators or violations of the Interstate Treaty and the applicable state Gambling Act) to authorities that have assumed a central responsibility for a certain sector and, as such, act on behalf of all German states in relation to this sector.

Again depending on the product, and specifically the relevance of products that do not qualify as ‘games of chance’ (see Section I.i, supra), other authorities, such as the Federal Financial Supervisory Authority, may occasionally be considered the responsible regulator.

iii Remote and land-based gambling

The Interstate Treaty generally prohibits the operation and brokerage of online games of chance. The only exceptions made by the Interstate Treaty in this context concern sports betting, horse race betting and lotteries. Online casinos therefore are not currently licensable. Although the criticism under EU law, also in relation to the online casino ban, is increasing, the reforms that were initiated by the German states at the end of 2016 (and are referred to as

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7 Federal Constitutional Court, judgment of 28 March 2006, File No.: 1 BvR 1054/01.
‘minimalist reforms’) only concern sports betting. In contrast to online gambling, land-based gambling is widely permissible. While the operation of traditional lotteries is covered by the state monopoly, the operation of other types of gambling can generally be licensed.

iv  Land-based gambling

Land-based gambling is only permissible in certain venues. Such venues have to fulfil certain requirements. Details will either be stipulated in the law, detailed in the application requirements or form part of the licence.

Casino games can only be operated in casinos. The operation of casinos in some states is reserved for the public authorities, other states provide a limited number of licences for private operators. The number of casinos allowed per state will, however, always be limited and will vary between the states. In Baden-Württemberg, for example, three land-based casinos are allowed whereas in Mecklenburg-Western Pomerania six casino locations are provided for in the respective Casino Act.

The current Interstate Treaty provides for a maximum number of 20 sports betting licences to be issued – a restriction that has supposedly been lifted under the Amendment Treaty. The Amendment Treaty does not limit the number of licences; however, it is likely that, going forward, German states will continue to pursue the approach of a limitation on the number of available licences. It is also yet to be determined how this change will impact the limitations on the number of permissible betting shops per operator that are set out in the current state Gambling Acts or other acts transposing the Interstate Treaty, and vary considerably depending on the state in question. Like the limitations on licences, the limitations on the number of permissible betting shops have been criticised for having been arbitrarily determined. For example, Brandenburg allows for 18 betting shops per licensee, Lower Saxony provides for 2,400 shops with a maximum of 500 per licensee and Baden-Württemberg provides for a maximum of 600 shops. The limitations raise further questions when compared with the number of existing lottery ticket sale venues (e.g., about 3,250 in the state of Baden-Württemberg), which the states may be expected to want to protect.

Concerning gaming halls, there is no statutory limit on the number of available licences, but this sector is undergoing some major changes. The strict minimum distance requirements that gaming halls must adhere to (i.e., between other gaming halls, and between gaming halls and institutions such as schools or addiction centres) and the requirement that gaming halls may not be operated in the same building as land-based casinos or betting shops, effectively limits the number of permissible gaming halls in practice.

v  Remote gambling

The Interstate Treaty imposes a general ban on online gambling. As per the law, exceptions only apply for licensed traditional lotteries, horse racing and sports betting. The Interstate Treaty does not provide for a licensing system for online casino offerings. This situation is criticised by experts of the industry as well as the European Commission. In a pilot process initiated in 2015, the European Commission made clear that it considers the ban ineffective in achieving the goals set out by the Interstate Treaty. Infringement proceedings may still be initiated but, at the time of writing, it is unlikely this will happen before autumn 2017.

Interestingly, at least one German state, Schleswig-Holstein, has in the past allowed for online casino licences to be issued. These licenses are still valid but they are limited in scope to the territory of Schleswig Holstein and are supposed to expire in 2018.
vi Ancillary matters
Operators applying for a licence will, as part of the licensing process, have to prove that any equipment used has been approved as per the requirements that will be set out in the respective licensing process, including that operators must provide certificates or other documents on their business-to-business (B2B) partners. There is no specific licensing process for gambling-related B2B services.

In relation to persons acting in key positions, it will again have to demonstrated in the licensing process that these persons are sufficiently qualified and have the necessary expertise to conduct the business reliably and responsibly. There is no specific licensing process (e.g., for personal licences) that employees of gambling operators would have to undergo.

III THE LICENSING PROCESS
i Application and renewal
In terms of general requirements that apply throughout all gambling sectors, gambling operators are usually required to demonstrate individual reliability and capability, as well as the transparency and security of their business. A peculiarity of licensing procedures in Germany is the requirement to submit ‘concepts’ (i.e., comprehensive descriptions of the gambling operation to be licensing that cover these aspects), such a security concept (covering IT security and data protection), social concept (describing protection of minors and responsible gaming measures), business concept (detailing the viability of the operation and projected development over the licence term), sales or marketing concept (of particular relevance for franchising in land-based gambling operations) as well as a payment processing and AML concept (which overlaps with the requirement for internal AML policies under the federal AML Act).

With regard to the individual reliability of managerial staff, German gambling law neither prescribes nor provides for obtaining personal licences, such as in the UK. Hence, the operator applying for a licence will have to provide evidence in the form of, for example, criminal records, CVs and qualifications of the relevant individual. The reliability of the applicant has to be proven by disclosing details on shareholders and, if applicable, on trustees. Capability involves being able to properly conduct gambling both from a financial and an operational perspective.

Although the Interstate Treaty provides an overarching framework for the regulation of gambling in Germany, additional laws may apply to the licensing process dependent on the gambling product:

a Operating licences are reserved for the state lottery companies but privately owned lottery brokers may apply for a licence to distribute the state lottery products online and offline. Licensing requirements to retail outlets are included in the local Gambling Acts.

b Casino gaming, including slots and table games such as poker, baccarat and black jack, is licensed under the Casino Acts of the 16 states. Licences may either be issued by the respective state government or a city, but the number of available licences is usually limited by the law.

c Slot machine gaming in gaming halls, bars and restaurants is subject to a plethora of licensing conditions and product restrictions under the Interstate Treaty and the federal Trade Regulation Act, specifically minimum distance requirements between gaming hall premises, limits to stakes, payouts and winnings.
Horse race betting may be licensed online and offline by the gambling regulators of the states to bookmakers and the horse racing associations (totalisers), which may exclusively offer race track betting. The number of licences for bookmakers is not limited under the federal Horse Race Betting and Lottery Act, although stringent licensing conditions have in fact reduced the interest of bookmakers in such licences.

The licensing of sports betting under the Interstate Treaty is subject to a complex licensing regime that the German states have so far failed to implement because of a lack of transparency in the process. As per the Amendment Treaty, the limitation on the number of licences will be removed with effect from 1 January 2018 and it is intended that interim licences will be issued to operators who in the former licensing process demonstrated that they are eligible for a licence. The extent to which (interim) licences will be available to other operators is currently unclear. The responsible regulator of North Rhine Westphalia has yet to publish licensing conditions. It is expect that the German states will insist that online casino operations are closed by multi-product operators upon activating the licence, which is most likely to be challenged by the operators in court.

ii Sanctions for non-compliance

Since regulators are subject to the principle of proportionality, breaching licence conditions in the first instance is unlikely to immediately trigger fines or revocation but an order will be given demanding the licensee to explain the breach and remedy it within a deadline of a few weeks. If the order is not adhered to it will usually be followed by a fine, which may range from a few thousand euros to tens of thousands of euros depending on the size of the gambling operation and the severity of the breach, and may be imposed in case of non-compliance within the given deadline. The regulator may also attempt to enforce compliance by suspending the licence, reducing its term or revoking it (Section 4e(4) of the Interstate Treaty).

Unlicensed gambling operations are subject to the general means of enforcement outlined under Section 9 of the Interstate Treaty, where the administrative enforcement cycle usually consists of (1) a hearing letter, (2) delivery of an interdiction letter, failure of which would result in a fine, and (3) subsequent court proceedings involving a principal lawsuit on the lawfulness of the interdiction and its legal basis (the Interstate Treaty) as well as a claim for interim legal protection to suspend the interdiction. As a consequence, it may take years for interdiction letters to become legally executable.

Although the Interstate Treaty provides a legal basis for payment blocking, no such blocking order has officially been issued to banks or payment processors by the responsible regulator at the Lower Saxony Ministry of the Interior. Instead, over the past years, this regulator has resorted to a ‘harassment strategy’, which means contacting banks or payment processors with unsolicited information of alleged non-compliance of gambling operations with German regulations.

Internet service provider blocking was removed from the German gambling regulations in 2012 and is highly unlikely to be included in the regulations in any future reform as it failed to satisfy expectations in the area of enforcement of media regulators against illegal pornography on the internet.

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8 CJEU, judgment of 4 February 2016, C-336/14 (Ince).
IV WRONGDOING

Participating in money laundering is a crime for any individual in Germany and land-based casinos as well as operators of online gambling under the current AML Act are required to take risk-adequate measures to prevent money laundering in their respective operations. Failure to do so may amount to liability for an administrative offence, which may be sanctioned by a fine of up to €100,000 or skimming of gross profits. In case of gross negligence, it may even incur criminal liability resulting in punishment by a fine or imprisonment.

At the time of writing, the legislative process to include the criminal offence of ‘sports betting fraud’ (i.e., match-fixing) into the Criminal Code has almost been concluded. Manipulating sports competitions as an athlete or coach – whether related to sports betting or not – may incur criminal liability for a fine or imprisonment up to three years (Section 265c and 265d of the Criminal Code).

V TAXATION

The type of taxes imposed on gambling operators heavily depends on the gambling product in question and to what extent state legislation will be of relevance. The land-based casino sector acts as a good example in this context. While online casino offerings in some states will be subject to a combination of gross gaming revenue and profit taxation, operators in other German states will have to 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) while being exempted from corporate taxation. Tax rates range between 20 per cent and 80 per cent depending on the respective state. Additional levies may be imposed or progressive tax rates that depend on the economic capability of the casino operator applied. Similarly affected by state legislation, slot machine operators are subject to municipal amusement taxes (tax rates vary from 12–20 per cent and the tax will be based on the gross income generated from the slot machines) that they have to pay in addition to regular corporate tax.

Other gambling offerings are subject to federal taxes. Any operator offering licensed or unlicensed sports or horse race betting to German customers, for example, is subject to a 5 per cent federal tax on stakes. Online casino operators targeting German customers are subject to 19 per cent VAT.

VI ADVERTISING AND MARKETING

Advertising and marketing of gambling overall must be considered to be subject to a very restrictive regime and influenced by a number of laws and regulations including, for example, the Interstate Treaty, the Gambling Acts of the individual states, the Advertising Guidelines, the Act Against Unfair Competition and specific laws for the protection of children and minors.

In general, advertising of gambling offerings – irrespective of where the operator is based – is only allowed for games of chance that can be legally offered in Germany. German authorities interpret this to mean that only German-licensed operators may legally advertise the licensed products. Arguably, in the current situation and on the basis of the Ince case, exceptions apply in relation to EU-licensed sports betting operators. Online casino operators, with the exception of Schleswig-Holstein licensees, will have more difficulties in arguing that their advertising activities are legal given the total ban on online games of chance that is stipulated in the Interstate Treaty.
Any advertising of unauthorised games of chance, misleading advertising or advertising that is directed at minors or other risk groups, or does not comply with basic advertising standards, is regarded as being unlawful advertising and as such is prohibited, as is most online and TV advertising. Online and TV advertising, in principle, is prohibited, but may be allowed for licensed sports betting, horse race betting and lottery operators subject to these operators obtaining a permit from the responsible authority.

In terms of possible penalties for unlawful advertising, Section 284(4) of the Criminal Code provides for a fine or imprisonment for up to one year to be imposed. However, state prosecutors have been very reluctant to prosecute gambling operators for advertising, most likely because of the legal uncertainty and criticism under EU law, and the constitutional requirement to ensure consistency of criminal statutes.

VII THE YEAR IN REVIEW

In 2016 and during the first months of 2017, the legal landscape for gambling regulation in Germany was affected by several important court decisions, as well as by the impact of some significant criticism of the European Commission and efforts by the Prime Ministers of the German states to amend the Interstate Treaty with ‘minimalist reforms’.

On 4 February 2016, the CJEU handed down a landmark decision in which it confirmed that private operators offering sports betting in Germany who can rely on the fundamental freedoms under EU law are faced with a situation that violates EU law. The court held that a prohibition or sanction imposed for operating a (German) unlicensed sports betting offering in Germany would be unlawful in the current situation where the state-owned sports betting monopoly de facto unlawfully persists. The Ince case changed the practice of enforcement as well as the jurisprudence of German administrative courts regarding the sports betting sector and was one of the reasons why modifications to the Interstate Treaty were considered. The Federal Administrative Court, for example, adopted the jurisprudence of the CJEU and confirmed that the interdiction of sports betting operations cannot simply be based on the absence of a German licence. The Higher Administrative Court of North Rhine Westphalia further continued the positive trend in jurisprudence regarding sports betting operations in Germany within the meaning of the Ince decision.

The annual conference of the Prime Ministers of the German states, held on 26–28 October 2016, initiated the legislative process towards an Amendment Treaty via the ‘minimalist reforms’ (i.e., reforms that concentrate only on sports betting) and an interim licensing system for sports betting rather than a broad reform that also tackles the online casino ban. Some of the key points agreed by the states shall enable Germany to issue

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9 For more details on the basic advertising standards, see the Advertising Guidelines that were issued by the Gambling Committee, a body consisting of representatives of the highest gambling supervisory authorities in the 16 states. Although the Bavarian Constitutional Court held the Advertising Guidelines to be incompatible with the Bavarian Constitution in a decision of 25 September 2015 (File Nos.: Vf. 9-VII-13; Vf. 4-VII-14; Vf. 10-VII-14), these standards must still be considered relevant for advertising content. In relation to the Advertising Guidelines, the Bavarian Constitutional Court had mainly criticised that these were issued by the Gambling Committee, which arguably is an unconstitutional body.

10 CJEU, judgment of 4 February 2016, C-336/14 (Ince).

11 Federal Administrative Court of 15 June 2016, File No: 8 C 5.15.

12 Higher Administrative Court of North Rhine Westphalia, judgment of 23 January 2017, File No.: 4 A 3244/06.
(interim) sports betting licences soon.\footnote{13} The original experimental phase of seven years was extended and the limitation on the number of sports betting licences seemingly removed. It is highly questionable whether these reforms will suffice in achieving a gambling regulation in Germany that is in line with EU law. In particular the interim licensing has also already been called into question by German courts, namely the Higher Administrative Court of North Rhine Westphalia.\footnote{14} This is particularly interesting as North Rhine Westphalia under the Amendment Treaty shall assume responsibility for sports betting licensing and supervision.

**VIII OUTLOOK**

Following the notification process, and despite the fact that the European Commission (yet again) expressed concerns against the intended reforms and called into question the fact that the reforms do not extend to online casinos, the amendments were signed by the Prime Ministers of the German states on 16 March 2017 and now have to be implemented by the states over the course of this year in order to enter into force on 1 January 2018.

Since the new law will result in for unequal treatment of up to 35 predefined sports betting operators (i.e., the operators who passed the former licensing process) compared to the rest of the market, a legally questionable situation of significant competitive disadvantages appears to lie ahead. It is extremely likely that this will give rise to excessive lawsuits. This is even more pertinent in light of the fact that operators can be expected to be required to shut down their (non-German-licensed) online casino operations as a condition of the sports betting licence.

It can therefore be expected that the Amendment Treaty will follow the destiny of its predecessors and collapse in years of litigation, making further reforms necessary. This means that the status quo of operating without a valid German licence regarding sports betting and online casinos in Germany is likely to continue for a while longer.

\textsuperscript{13} Up to 35 operators who met the minimum requirements for a licence in the former (failed) sports betting licensing process conducted by the state of Hesse shall be eligible to receive an interim licence with effect from 1 January 2018.

\textsuperscript{14} Higher Administrative Court of North Rhine Westphalia, judgment of 23 January 2017, File No.: 4 A 3244/06.
Chapter 11

GIBRALTAR

Nyreen Llamas and Andrew Montegriffo

I  OVERVIEW

i  Definitions

The Gibraltar Gambling Act 2005 (the Gambling Act) is the principal legislative instrument regulating gambling activity in Gibraltar. The statute not only makes provision for the licensing and regulation of land-based gambling, but also gambling services through remote means (such as the telephone and internet). This legislation is partly modelled on the UK Gambling Act 2005.

The legal definition of ‘gambling’ is contained in Section 2(1) of the Gambling Act to include:

a. betting (including pool betting) and bookmaking;
b. gaming; and
c. promoting or entering a lottery.

Furthermore, ‘betting’ is defined as:

…making or accepting a bet on –

a. the outcome of a race, competition or other event of any description;
b. the likelihood of anything occurring or not occurring; or
c. whether anything is or is not true.

However, this does not include any bet made or stake hazarded in the course of, or incidental to, any gaming, and the expressions bet, betting and bookmaking shall be construed accordingly.

‘Gaming’ is defined in the Gambling Act as: ‘the playing of a game of chance for a prize’ and a ‘game of chance’ includes:

a. a game that involves both an element of chance and an element of skill;
b. a game that involves an element of chance that can be eliminated by superlative skill;
c. a game that is presented as involving an element of chance; or
d. a game where a computer generates images or data taken to represent the actions of another participant or participants in the game.

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Finally, a ‘lottery’ is defined as:

…any scheme for the distribution of prizes by chance or lot in which the participants or a substantial number of them make a contribution for the purposes of participation in the chances of the lottery and includes tombola, but does not include any gaming.

With regard to free prize draws, the proposed offering will need to be considered carefully to determine whether it is licensable or not. In gaming it is possible that a player playing a game for a prize does not necessarily (unlike in lotteries) make a bet or stake on the game. This analysis becomes important when looking at social gaming or free play games that might still be regarded as requiring a licence. Such offerings would definitely not require a licence if there is no prize.

ii Gambling policy

Gibraltar’s first gambling statute was enacted in the 1950s and covered the provision of land-based gambling services. The legislation did not envisage the provision of gambling services through remote means.

However, in the 1990s, Gibraltar saw the first remote providers of gambling in the jurisdiction, most notably Victor Chandler and Ladbrokes, which commenced their telephone betting operations from here. The jurisdiction’s reputation as a centre for remote operator business was consolidated in the early 2000s when the first internet gambling service providers were established in Gibraltar. These initial licence arrangements were extended under the terms of the old legislation, which did not provide for gambling through remote means. Therefore, specific and bespoke arrangements were granted pursuant to individual licence agreements on terms contractually agreed between the operators and the Gibraltar government as the Licensing Authority.

The increasing numbers of internet gambling providers relocating and establishing their business in Gibraltar, and the commercial pressures of some of the larger businesses who wished to list their shares on the stock exchange, gave rise to the enactment of the current Gibraltar Gambling Act 2005. This legislation is significantly modelled on the UK Gambling Act 2005. The statute not only makes provision for the licensing and regulation of land-based gambling, but also gambling services through remote means (such as the telephone and internet).

The Gibraltar government has therefore, for a number of decades, supported and encouraged the industry, in particular the remote gambling industry, in a regulated environment with reputation being of paramount importance to the jurisdiction.

iii State control and private enterprise

All types of gambling products can be commercially offered in Gibraltar with the exception of lotteries. In relation to the latter, the only lottery permitted under the Gambling Act is the Gibraltar Government Lottery and small bazaars, fêtes and fairground-style lotteries (of the types identified in Schedule 2 of the Gambling Act). The Gibraltar Government Lottery is a small lottery not offered remotely, and is based on printed tickets.
iv Territorial issues

Gibraltar as a geographical jurisdiction is very small, and there is a common licensing and regulatory framework for the entire jurisdiction. There is no sub-delegation of authority to other municipalities as there are none, and the administration of these matters are handled by the relevant authority, being the Gibraltar Licensing Authority, for the jurisdiction as a whole.

v Offshore gambling

The government of Gibraltar has a permissive attitude in respect of the provision of gambling matters, and there is no general restriction in relation to foreign operators providing gambling products to citizens of the jurisdiction. However, this is in the context of remote gambling. Any foreign operator who wants to provide land-based gambling would need to apply and obtain the relevant licences locally.

There is a general provision on control of advertising in the Gambling Act, which empowers the Minister for Gambling to prescribe rules governing the advertising of gambling activities authorised under a remote gambling licence after due consultation with the Gambling Commissioner, the Licensing Authority and individual remote gambling licence holders. Although to date no such rules have been published, these may prohibit under penalty advertisements that are:

- indecent, pornographic or offensive;
- false, deceptive or misleading;
- intended to appeal specifically to persons under the minimum permitted age, currently 18 years of age; or
- in breach of copyright laws.

However, it should be noted that copyright and intellectual property rights are specifically safeguarded by other legislative instruments. It should also be noted that these advertising rules are also applicable in respect of licensees in Gibraltar. It is difficult to prohibit advertising from foreign operators through the various media. Enforcement will necessarily have to go through the appropriate legal channels in the jurisdictions involved and, depending on the treaty arrangements between Gibraltar and those jurisdictions and the nature of the infringement, the process of enforcement will be different (either through police cooperation or court process).

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

As highlighted in Section I.ii, supra, the principal legislation governing gambling activities in Gibraltar is the Gambling Act. The Gambling Act sets out a licensing and regulatory framework for both land-based gambling and remote gambling. The definitions of gambling and gaming are set out in Section I.i, supra. The different categories of gambling include betting (such as pool betting) and bookmaking, gaming and lottery. The ‘gaming’ element includes all types of casino games, poker, slots, machine gaming, bingo and all other number games without limitation.

Competitions based purely on skill are not subject to any licensing or regulatory framework in Gibraltar, but the Gambling Act does cover games of chance that can be eliminated by superlative skill (the most obvious of these being poker).
Financial spread-betting offerings are required to operate under a dual-licensing system pursuant to both the Gambling Act and the Financial Services (Markets in Financial Instruments) Act 2006. While primarily regarded as an offering that is regulated by the Financial Services Commission (the Gibraltar financial services regulator), the Gambling Commissioner acts as a secondary regulator.

ii The regulator

All licensing and regulatory matters are determined by the Licensing Authority. The Licensing Authority, pursuant to the Gambling Act, is the Minister for Gambling. All regulatory aspects (post-licensing) are within the remit of responsibility of the Gambling Commissioner and his or her regulatory team. Although the roles are distinct and separate, the personnel and infrastructure organisations of both departments are merged into one. This ensures a more streamlined approach whereby the licensing and regulatory teams work closely to complement each other. This results in a more efficient exercise of their duties, which benefits licence holders.

Part VIII of the Gambling Act contains the enforcement provisions in relation to compliance by licence holders to the terms of their licences. Section 42 of the Gambling Act grants extensive powers of investigation, reporting and powers of entry where a licence holder is suspected of carrying on activity contrary to the provisions and terms of their licence, the Act or in a manner which is otherwise prejudicial to the public interest, the interest of any customer or potential customer or to the reputation of Gibraltar. This part of the Gambling Act also sets out the powers of the Licensing Authority to suspend or revoke a licence and enables a Justice of the Peace, if satisfied with the information laid before him or her, to grant the Gambling Commissioner or the police with a warrant to search premises.

iii Remote and land-based gambling

The Gambling Act provides for both land-based and remote gambling. While both are catered for in the legislation, the respective licensing regimes and requirements are different, as set out in Sections II.iv and II.v, infra.

Each licence holder, whether offering remote or non-remote gambling services, is, however, obliged to:

a publicise its rules so that persons entering premises or accessing a website, as the case may be, can readily see them;
b establish and at all times maintain in operation an effective system of internal controls and procedures to monitor the activities authorised under its licence and for it to comply with its obligations under the Criminal Justice Act in respect of any transactions that may give rise to suspicions of money laundering on the part of the participants;
c take all reasonable steps to prevent an underage person from participating in the gambling activities offered;
d nominate a place for the safekeeping of transaction records, and keep true and fair annual financial records, which have to be audited (these are to be kept for at least five years) and that are to be provided annually to the Gambling Commissioner;
e maintain approved banking and payment processing arrangements;
f promptly inquire into complaints; and

g pay all such charges, fees and gaming taxes as are prescribed by the Licensing Authority.
iv  Land-based gambling

The Gambling Act carefully prescribes the licensing regime applicable to land-based operators. Essentially, five different licence categories are available to those seeking to provide land-based, bricks-and-mortar services within Gibraltar. The following is a brief overview of the form of activity that an operator may seek to provide under each licence:

- **Bookmaker’s licence:** this allows the holder to undertake, either on his or her own account or as agent, the business of receiving or negotiating bets. Furthermore, it should be noted that it shall be an offence for any person to keep or use any premises, or cause, or knowingly permit any premises to be used as a place where persons resorting thereto may effect any betting transactions without having previously obtained a bookmaker’s licence.

- **Pool promoter’s licence:** this allows the holder to run pool betting operations. Strict restrictions are imposed on the use of premises for the provision of pool betting services where the owner of such premises does not hold a pool promoter’s licence.

- **Gaming operator’s licence:** this allows the holder to conduct or provide gaming facilities (this includes the provision of games of chance for a prize, such as casino games). Restrictions are also imposed on the use of premises to conduct gaming operations.

- **Lottery promoter’s licence:** this allows the holder to promote or operate lotteries.

- **Gaming machine licence:** this allows the holder to keep on his or her premises gaming machines for the purpose of land-based gaming services.

Land-based gambling in Gibraltar occurs primarily in casinos (of which there are currently two licensed). Certain bars and restaurants also have single, stand-alone machines under gaming machine licences. Non-remote gambling licensees must conduct their business from approved premises and must maintain their licence in accordance with the conditions upon which it is issued.

The government conducts a lottery. The Gambling Act prohibits land-based lotteries operating in Gibraltar other than the Gibraltar Government Lottery and other small bazaars, fete and fairground style lotteries (of the types identified in Schedule 2 of the Gambling Act). No similar restrictions apply when conducting online lotteries from Gibraltar targeted at end users located outside Gibraltar.

v  Remote gambling

Under the Gambling Act ‘remote gambling’ is defined as:

> …gambling in which persons participate by means of remote communication, that is to say, communication using –

  - the internet;
  - telephone;
  - television;
  - radio; or
  - any other electronic or other technology for facilitating communication.

The Gambling Act establishes a licensing and regulatory framework for the provision of gambling services through remote means.

However, the first ‘remote gambling’ licences issued in Gibraltar predate the enactment of the 2005 legislation. There are currently only 34 licensed remote gambling operators in Gibraltar.
the jurisdiction given that the government has applied a very restrictive and selective policy towards the licensing of operators in the jurisdiction by requiring a substantive presence resulting in real accountability to the regulator, constant monitoring of operations and ensuring that gambling services are provided responsibly with appropriate measures to protect the young and problem gamblers.

Although there is no limit to the number of licences that may be issued in Gibraltar, given the current licensing policy, which requires a bricks-and-mortar operation with key equipment in the jurisdiction (including servers), the number of licensees is selectively kept low and the increase in licences will be steady and controlled. There should nonetheless be a steady rise of licensees in Gibraltar as opportunities develop for medium-sized businesses with niche markets and products that have not partnered with other complementary operations or otherwise merged.

While the legislation envisages that anyone can apply, there are various criteria applied by the authorities in determining whether to license an operator. The principal criterion is that described above: real presence with senior individuals managing the business and with key technical equipment in the jurisdiction.

**Business-to-business and business-to-consumer**

The Gambling Act only envisages one type of remote gambling licence: the operator licence. There are, however, sub-categories of this licence depending on the nature of the services provided, which are ‘casino’ (including poker, bingo, slots), ‘betting’ and ‘lottery’.

Notwithstanding the single type of licence, the Licensing Authority recognises the business-to-business (B2B) model and will extend a licence for such operations pursuant to the current Gambling Act and contractual arrangements agreed between the parties. There are numerous B2B operators in the jurisdiction who provide hardware, software and operational or platform support and solutions to business-to-consumer (B2C) gambling operators. We are seeing a very steady increase in the number of B2B providers applying for and obtaining Gibraltar licences who recognise opportunities for their business in the local market and in using Gibraltar as hub for provision to operators in other regulated jurisdictions.

Most of the larger B2C operators also provide, as a significant element of their business, B2B services. The majority of these are white label services pursuant to which the operator provides the core gambling services, as well as customer services, registration and account handling, to a third party that owns a brand and websites. All white labels entered into by Gibraltar operators require prior Licensing Authority approval, which in most cases is a relatively straightforward procedure involving the submission of due diligence documentation on the white label partner.

**vi Ancillary matters**

The government of Gibraltar announced a general review of the gambling licensing and regulatory framework, given that the principal legislation was passed in 2005 and the online gambling industry and third-party suppliers have developed significantly since.

Although the proposed legislative changes are still, at the time of writing, a matter of consultation, we envisage that the reform will include the appropriate licensing of the different types of businesses in this sector, such as the B2B operator or supplier (hardware or software providers) and white label partners.
III THE LICENSING PROCESS

i Application and renewal

See Section II.ii, supra.

Licensing application and processing will depend on the type of licence being sought (non-remote or remote). In general terms, the applicant will need to prove their reputation, provide a business plan and demonstrate their skills in the sector. The investment in the jurisdiction and local plans will be very relevant in the assessment to be made by the Licensing Authority.

Given the territorial limits of the jurisdiction, there is little movement on land-based gambling operations. There are currently two licensed casinos locally and a number of betting shops. Most applications therefore arise in the context of remote gambling operators.

Although there is no limit to the number of remote gambling licences that may be issued in Gibraltar, given the current licensing policy, which requires a bricks-and-mortar operation with key equipment in the jurisdiction, the numbers of licensees are selectively kept low and it is not anticipated that there will be a sharp increase in licences.

While the legislation envisages that anyone can apply, there are various criteria applied by the authorities in determining whether to license an operator. The principal criterion is that described above: real presence with senior individuals managing the business and with key technical equipment and infrastructure in the jurisdiction. Paragraph (4) of Schedule 1 to the Gambling Act provides that in determining whether the applicant for a licence is a ‘fit and proper person’, the Licensing Authority shall take into account, to the extent appropriate:

a the person’s character, honesty and integrity;
b his or her business reputation, current financial position and financial background;
c the business plan in respect of the activities;
d his or her experience of conducting the gambling activity to which the proposed licence would relate;
e his or her conduct, or that of any person associated with him or her, under any similar licence granted by the appropriate authorities in any comparable jurisdiction outside Gibraltar;
f the actual or proposed ownership and the structure of the business;
g the ability to maintain a minimum required reserve so as to ensure that all winnings or prizes, as the case may be, are paid;
h the technical infrastructure and ability to conduct the gambling that would be authorised under the proposed licence;
i the proposed control measures to ensure that any internet website proposed to be operated by the licence holder contains no obscene or indecent content, or any links to such content;
j the proposed control measures to ensure that, so far as is reasonably practicable, compulsive gamblers and persons under the minimum permitted age are not able to gain access to any of the gambling facilities that would be authorised under the proposed licence; and
k the proposed control measures and procedures to seek to identify money laundering and other suspicious transactions.

The application for an online gambling licence is a two-stage process. It involves an initial approach to the Licensing Authority for an in-principle response on whether an application would be favourably considered before progressing to the second, formal application stage.
Once an in-principle favourable approval is received, the formal licence application is prepared and submitted and includes, *inter alia*, an application form, business plan and due diligence of the group and its partners and core gaming suppliers.

There is a £10,000 fee payable on application and a £2,000 annual renewal fee. Quite separately, there are gaming charges applicable (see Section V, *infra*).

**ii Sanctions for non-compliance**

With regard to non-remote betting and betting offices and gaming and gaming establishments, the licensee must conduct its business from approved premises and must maintain its licence in accordance with the conditions upon which it is issued. In the case of remote gambling, the licensee must ensure it complies with the provisions of the Act, its licence terms and the Codes of Conduct issued by the Licensing Authority, in particular the Remote Technical and Operating Standards for the Gibraltar Gaming Industry.

Quite apart from the specific obligations and conditions that a licence holder needs to comply with depending on whether it is offering remote or non-remote gambling services, each licence holder is obliged to follow the same rules (a–g) as provided in Section II.iii, *supra*.

Part VIII of the Gambling Act contains all the enforcement provisions in relation to the compliance by licence holders to the terms of their licences. Section 42 of the Gambling Act grants extensive powers of investigation, reporting and powers of entry when a licence holder is suspected of carrying on activities contrary to the provisions of his or her licence, the Act or in a manner which is otherwise prejudicial to the public interest, the interest of any customer or potential customer or to the reputation of Gibraltar. This part of the Gambling Act also sets out the powers of the Licensing Authority to suspend or revoke a licence and enables a Justice of the Peace to grant the Gambling Commissioner and or the police with a warrant to search the premises.

The Gambling Act imposes significant penalties on those persons providing remote gambling services without having previously sought and obtained the relevant approvals and licences (these penalties apply equally to B2B and B2C operators). On summary conviction, the penalty may include a fine of up to £5,000 or a maximum of three months in prison, or both. On conviction or indictment, there may be a fine or imprisonment for a term not exceeding one year, or both.

**IV WRONGDOING**


**i Consequences for unlicensed operators**

The Act imposes significant penalties on those persons providing remote gambling services without having previously sought and obtained the relevant approvals and licences – see Section III.ii, *supra*.

**ii Anti-money laundering (AML)**

Gibraltar has enacted legislation to comply with the EU’s Third Money Laundering Directive (the Directive). The primary piece of legislation in this area is the Crime (Money Laundering and Proceeds) Act 2007 (CMLPA) together with the Crime (Money Laundering and Proceeds) Amendment Act of 2010. The Act also contains a number of sections relating to AML, and the Terrorist Asset-Freezing Regulations 2011 are also applicable in the jurisdiction.
In particular, Section 33 of the Gambling Act 2005 stipulates that all remote and non-remote gambling licensees must comply with the provisions of the CMLPA. In addition, the licence conditions for remote gambling operators provide that remote gambling licensees need to ensure compliance with the Financial Service Commission (FSC) Guidance Notes on AML and related matters (in addition to the separate Codes of Practice issued by the Gambling Commissioner).

Under Section 36 of the Act, which is applicable to all licence holders in Gibraltar, all licensees need to establish and maintain an effective system of internal controls and procedures in respect of any transactions that may give rise to a suspicion of money laundering. Gibraltar's Financial Intelligence Unit (GFIU), which, together with the FSC ensures money laundering compliance and vigilance within the financial services industry, has recourse against relevant financial businesses, which includes casinos and other online operators. They require that systems and training are in place to prevent money laundering, including know-your-client procedures, record-keeping and internal reporting procedures.

Under the CMLPA, the Licensing Authority is designated as the supervisory body for AML in the gambling industry. The Gambling Commissioner is empowered to issue guidance notes and to monitor the gambling industry's compliance regarding anti-money laundering and terrorist financing.

The Gambling Commissioner has also issued a comprehensive Anti-Money Laundering Code of Practice (the Code) for the gambling industry. This is a detailed document that sets out the standards and thresholds required by the Gambling Commissioner from all Gibraltar remote gambling licensees.

Broadly, the Code provides:

a guidance on the identification of the methods used to launder money, including conversion, disguising or disposing of illegally obtained funds;
b key provisions for operators to adhere to the different types of due diligence, training, record-keeping, anonymous and multiple accounts, politically exposed persons and suspicious activity; and
c additional considerations for both remote and non-remote gambling operators.

iii Suspicious transaction reporting

Pursuant to the Gambling Act, a licence holder is required to give written notification to the Licensing Authority of all the facts known in relation to a suspicious transaction within 24 hours or as soon as is practical. The licence holder may take all reasonable and proportionate steps in closing or suspending the account of the suspicious registered participant.

The Anti-Money Laundering Code of Practice provides a detailed procedure relating to making and submitting suspicious activity reports (SARs). Section 3.23 states that where the conduct or activities of a customer gives rise to the knowledge or suspicion that the customer is or is attempting money laundering, an internal suspicious activity report should be made by the relevant staff member to a nominated manager or officer at the earliest opportunity. These SARs will then be provided directly to the Licensing Authority and the GFIU (by hand). The Commissioner will also liaise directly with the GFIU on any technical aspects relating to the SAR.
V  TAXATION

The taxation of companies and individuals in Gibraltar is governed by one piece of primary legislation, the Income Tax Act. This is supported by subsidiary legislation enabled by the provisions of the Income Tax Act.

Previous legislation allowing for tax-exempt companies (providing a zero per cent rate) has been phased out with all exempt companies having expired in December 2010. The new corporate tax system was introduced on 1 January 2011 to provide a seamless transition for these companies into the new 10 per cent headline rate, though it may be possible to mitigate this significantly under the appropriate circumstances.

In this regard, Gibraltar also transposed the EU Parent Subsidiary Directive under the Parent Subsidiary Company Rules 1991. Under these provisions, a parent company is not liable in certain circumstances to tax in respect of dividend income paid by a subsidiary to its parent. Likewise, a Gibraltar company making a dividend payment out would not have to withhold tax.

Separately, gambling operators in Gibraltar are also subject to a gaming duty charge. This is levied at a rate of 1 per cent of turnover in respect of betting services and 1 per cent of gaming yield in relation to gaming services (casino and poker), but is subject to a minimum of £85,000 a year and a maximum of £425,000 a year.
Chapter 12

INDIA

Vidushpat Singhania

I  OVERVIEW

i  History of gaming in India

India has a complicated and lengthy history with gaming. Archaeologists have found dice made from cubes of sandstone and terracotta that date back to the Indus Valley civilization in 3300 BC, and there is evidence that the Indus Valley people engaged in cockfighting and betting. Some of the ancient Indian mythologies also have a strong reference to gaming.

Gambling during Diwali (an Indian religious festival of India) has religious connotations and is considered auspicious. The courts in India recognise gambling on Diwali, provided it takes place among friends and not in a public place. In the case of Nimmagadda Raghavalu & Others v. Unknown, the Madras High Court held that:

*Gambling is not an offence and it becomes one only when it takes place in a common gaming house or a public place. The mere fact that occasionally people used to play cards and perhaps for money does not necessarily make it a common gaming house. The presumption of gambling on Diwali is not so strong as the gambling at other times….A person simply allowing the use of his house to gamblers during Diwali festival without any idea of demanding rent etc, cannot be said to be keeping a common gaming house. Gambling on Diwali day should not be considered to be an offence.*

ii  British India and gaming

Prior to the promulgation of the Constitution of India, gambling in India was governed by the Public Gambling Act 1857. The Public Gambling Act 1857 was likely derived from the Gaming Act 1845 and the Betting Act 1853, enacted by the parliament of the United Kingdom. The British Acts of 1845 and 1853 sought to make wagering contracts unenforceable but repealed the Unlawful Games Act 1541, where games of skill such as bowling and tennis were deemed unlawful. This approach seems to be reflected in the Indian Public Gambling Act 1857, which prohibited public gambling and the keeping of the common gaming houses, but made an exception for games of skill.

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1 Vidushpat Singhania is a partner at Krida Legal.
4 *Nimmagadda Raghavalu v. Unknown*, AIR 1953 Mad 243.
Prior to the promulgation of the Constitution, horse racing in India was licensed in the Bombay Presidency under the Bombay Race-Courses Licensing Law 1912. Similarly, in the Bengal Presidency, Act VIII of 1867 allowed for subscription, prizes and staking on horse races. Besides this, the British government in India used to run lotteries and used funds from the lotteries fund, to develop towns.\(^5\) It can thus be stated that while public gambling was prohibited during the British rule in India prior to the Independence of India, horse racing and lotteries were largely permitted.

### iii Independent India and gaming

After the promulgation of the Constitution of India and it coming into effect on 26 January 1950, the issues pertaining to gaming were divided. Betting and gambling were listed under Entry 34 of the State List (i.e., List II of the Seventh Schedule). This means that only the state legislature has the power to make laws pertaining to betting and gambling. Lotteries are mentioned in Entry 40, List 1 of the Union List, meaning that parliament of India is the appropriate body to make laws pertaining to lotteries. In addition, the state legislature has the power under Entry 62 of the State List to make laws pertaining to taxation of betting and gambling.

After the Constitution of India came into effect, most states adopted the principles of the Public Gambling Act 1857 with certain amendments, and each state has its own act on gambling.

### iv The Indian gaming market

A perception exists worldwide that gaming in India is illegal or unregulated. However, this is not true. The gaming industry in India is estimated to be worth US$60 billion – this includes regulated and unregulated gaming. The gaming industry of India can broadly be classified into the following:

- **lotteries**;
- **horse racing**;
- **prize competitions**;
- **sports betting**;
- **games of skill**; and
- **games of chance**.

### Lotteries

Lotteries are specifically excluded from the ambit of gambling through the states’ gambling acts. Until 1998 there was no law with respect to regulation of lotteries. Parliament enacted the Lotteries (Regulation) Act 1998 with the object of regulating lotteries, and to provide for matters connected therewith and incidental thereto. On 1 April 2010, the government of India issued the Lotteries (Regulation) Rules 2010, further regulating the lotteries in the country with regards to number of draws, minimum prize payout, etc.

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‘Lottery’ has been defined in the Lotteries (Regulation) Act 1998 under Section 2(b), as follows:

…‘lottery’ means a scheme, in whatever form and by whatever name called for distribution of prizes by lot or chance to those persons participating in the chances of a prize by purchasing tickets.

**Horse racing**

Most states have adopted the Public Gambling Act 1867 with an amendment pertaining to horse racing, whereby it has been specifically excluded. Under the amended gambling acts of the states, the following definition of gambling is given:

‘Gaming’ includes wagering or betting on any figures or numbers or dates to be subsequently ascertained or disclosed, or on the occurrence or non-occurrence of any natural event, or in any other manner whatsoever except wagering or betting upon a horse-race when such wagering or betting upon a horse-race takes place:

(a) on the day on which such race is to be run; and

(b) in any enclosure where such race is to be run, and sanction of the Provincial Government set apart from the purpose, but does not include a lottery.

In the case of *Dr KR Lakshmanan v. State of Tamil Nadu*, the Supreme Court of India recognised that horse racing, football, chess, rummy, golf and baseball are games of skill. It further held that betting on horse racing was a game of skill as it involved judging the form of the horse and jockey, and the nature of the race, among other variables.

The exception created in the gambling acts and the Supreme Court case of *Dr KR Lakshmanan v. State of Tamil Nadu* have crystallised the legal position of horse racing and wagering on horse racing. The 11 states that allow horse race betting are Andhra Pradesh, Assam, Delhi, Haryana, Karnataka, Maharashtra, Meghalaya, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal. However, active horse racing currently takes place at the turf clubs in Bangalore, Chennai, Delhi, Hyderabad, Kolkata, Mumbai, Mysore, Pune and Ooty.

**Prize competitions**

Prize competitions in India are regulated under the Prize Competitions Act 1955. ‘Prize competition’ has been defined under Section 2(d) of the Act:

‘Prize competition’ means any competition (whether called a cross-word prize competition, a missing-word prize competition, a picture prize competition or by any other name) in which prizes are offered for the solution of any puzzle based upon the building up, arrangement, combination or permutation, of letters, words, or figures.

The Prize Competition Act’s applicability extends to the following states: Andhra, Bombay, Madras, Orissa, Uttar Pradesh, Hyderabad, Madhya Bharat, Patiala and East Punjab States Union, and Saurashtra, all erstwhile Part C states, and Pondicherry, Dadar and Nagar Haveli, Goa, Daman and Diu.

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Sports betting

The status of sports betting, whether it is a game of skill or a game of chance, has not been clarified by the Supreme Court of India or a high court of a state. In the absence of a judgment on the same, a grey area exists pertaining to the legal status of sports betting in India. Sikkim has taken the initiative of legalising online sports betting within the state, with the promulgation of the Sikkim Online Gaming (Regulation) Act 2008. Under this Act, a licence for placing bets on sports games such as football, cricket, lawn tennis, chess, golf and horse racing can be issued.

In Meghalaya, the sport of Teer (a form of archery) has been excluded from within the ambit of the state’s Gambling Act, and betting on it is licensed.

Games of skill

Games of skill are identified as a separate category because various states in India (excluding Assam and Orissa) have gambling acts that exclude games of skill from the ambit of gambling. In the absence of a legislative definition of a game of skill, the Supreme Court in Dr KR Lakshmanan v. State of Tamil Nadu,7 State of Andhra Pradesh v. K Satyanarayana8 and State of Bombay v. RMD Chamarbaugwala9 has laid down that a game of chance is where the element of chance predominates over the element of skill, whereas a game of skill is where the element of skill predominates over the element of chance. The card games of rummy and bridge, along with other sports like golf and chess, have been classified as games of skill. In R Shankar Creation Association v. State of Karnataka,10 the Karnataka High Court classified poker, darts, carom and chess, among others, as games of skill.

The government of Nagaland under the Prohibition of Gambling and Regulation and Promotion of Online Games of Skill Act 2015 (the Nagaland Act) has defined games of skill as:

Games of skill shall include all such games where there is preponderance of skill over chance, including where the skill relates to strategizing the manner of placing wagers or placing bets or where the skill lies in team selection or selection of virtual stocks based on analyses or where the skill relates to the manner in which the moves are made, whether through deployment of physical or mental skill and acumen.

All games enumerated in Schedule A of the Nagaland Act will be classified as games of skill. Schedule A includes games such as chess, sudoku, quiz, bridge, poker, rummy, nap, virtual sports, virtual games like monopoly or racing, and virtual fantasy games.

Games of chance

Games of chance for stakes fall within the ambit of the gambling acts of the states and are largely prohibited. Some states, for example Goa, have created exceptions within their gambling acts, allowing for authorised gaming. Thus licences are issued in the state of Goa.

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7 See footnote 6, supra.
for games of chance in casinos, which are operated on land as well as offshore. The state of Sikkim has also promulgated the Sikkim Casino Games Act 2004, which allows for casino operations within the state.

**v State control and private enterprise**

**Lotteries**

Under the Lotteries (Regulation) Act 1998, it is the state governments that have the power to organise, conduct and promote lotteries, subject to the conditions prescribed. The lotteries department of each state, generally established under their revenue departments, are in charge of running lotteries. States have appointed agents that are private companies, to operate and promote lotteries on their behalf within the state and to other states. Lotteries in India\(^\text{11}\) are permitted in the following states: Maharashtra; Mizoram; Bodoland Territorial Council;\(^\text{12}\) Goa; Sikkim; Andhra Pradesh; Nagaland; Kerala (only paper lottery); Punjab; and West Bengal.

In addition to the above, the national lottery of Bhutan is also sold in India. This has been allowed through the Trade, Commerce and Transit Agreement between the Republic of India and the Royal Government of Bhutan.\(^\text{13}\)

**Horse racing**

Horse racing in India is primarily controlled by the six turf clubs, namely:

- the Royal Calcutta Turf Club;
- the Royal Western India Turf Club Ltd;
- the Madras Race Club;
- the Bangalore Turf Club Ltd;
- the Delhi Race Club; and
- the Hyderabad Race Club.

These turf and race clubs lay down the rules of racing, as well as control their enforcement. The licences to conduct horse races were issued to them by their respective state governments. The totalisator and the bookmakers at these race clubs, including for off-course betting, are licensed under the respective state’s act on entertainment and betting tax. In Delhi this is the Delhi Entertainments and Betting Tax Act 1996, and in Andhra Pradesh it is the Andhra Pradesh (Telangana Area) Horse Racing and Betting Tax Regulation 1358F.

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11 As of 30 November 2015.
12 The Bodoland Territorial Council is not a state as per the Indian constitution. This is an area in the north-eastern region of India, which was created recently by carving out areas from eight districts of Assam, namely, Kokrajhar, Dhubri, Bongaigaon, Barpeta, Nalbari, Kamrup, Darang and Sonitpur within the state of Assam. It is an autonomous administrative unit constituted under the Sixth Schedule of the Constitution of India covering an area of 8795km\(^2\) (provisional).
13 Reference to Article 1 of the Agreement: ‘For the purpose of this Agreement, the term ‘free trade and commerce’ in Article I shall be understood to include within its scope the sale of Bhutan lottery tickets in India and the sale of Indian government and state lottery tickets in Bhutan, subject to the relevant laws which may be in force in the territories of the Kingdom of Bhutan and India, as the case may be.’
**Prize competitions**

Prize competitions in India are offered under a licence issued by states under the Prize Competition Act 1955. A prize competition can be offered by a person who has procured the licence from the state, provided that the maximum prize that can be offered in such a competition does not exceed 1,000 rupees and there are not more than 2,000 entries.

**Sports betting**

The legal status of sports betting (i.e., whether it is a game of skill or a game of chance) is not clear in India. The only state where sports betting can be offered is Sikkim. Licences have been issued to private operators to offer sports bets.

In Meghalaya, bets can be placed on teer (a traditional game of the state) under a licence. These licences are issued under Section 14A of the Meghalaya Amusement and Betting Tax (Amendment) Act 1982.

**Games of skill**

Games of skill are outside the ambit of states’ gambling acts. Whereas games of skill for stakes, like horse racing and teer, require a licence from state governments, other games of skill like rummy and bridge can be offered without a licence in most states.

Nagaland has sought to regulate and license games of skill throughout India, through the Nagaland Act. The Nagaland Act contemplates the regulation and promotion of games of skill through the issuance of licences. A licence can be procured by a person, firm, company or limited liability company incorporated in India that is substantially held and controlled in India. A licensee is allowed to offer games of skill across India, in states where such games are not classified as games of chance and in states where an exception for games of skill exists in the state’s gambling act.

**Games of chance**

Games of chance like casino games can be offered in Goa and Sikkim under a licence. Licences have been issued to private entities within these states.

**vi Offshore gambling**

Foreign direct investment (FDI) in India is governed by the Foreign Exchange Management Act 1999 (FEMA) and the regulations made thereunder. FDI is subject to the Foreign Direct Investment Policy (FDI Policy), as amended. The FDI Policy was formed by the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, and is implemented by the Reserve Bank of India (RBI). The DIPP has a practice of issuing a consolidated version of the FDI Policy encompassing the contents of all the press notes, press releases, circulars and clarifications issued by it from time to time.

Under the FDI Policy, FDI remains prohibited in certain sectors, including lottery business, gambling and betting. Besides FDI, any form of foreign technology collaboration, such as licensing for franchise, trademark, brand name, management contract, etc, for lottery business, gambling and betting activities has also been prohibited under the prevailing FDI Policy. The rationale of prohibiting FDI and technological collaboration in the aforesaid sectors is to discourage foreign investments in lottery, gambling and betting businesses that have been judicially held to be mere ‘games of chance’, as opposed to ‘games of skill’. Thus,
while FDI for games of chance and lotteries is prohibited, there is a lack of clarity on whether the same prohibition applies for games of skill, sports betting, horse racing, teer and prize competitions.

Under FEMA, the Foreign Exchange Management (Current Account Transactions) Rules 2000 (the Current Account Rules) were framed to impose reasonable restrictions for current account transactions. The Current Account Rules provide that transactions included in Schedule I are prohibited. Remittance from lottery winnings, racing or riding, purchase of lottery tickets, football pools, sweepstakes, etc, are included within Schedule I, which essentially means that all foreign exchange gaming transactions are prohibited. Thus, an offshore gaming operator is unlikely to be able to offer his or her services from outside India within India.

If the public has access to a foreign gaming website within India, then the courts would be able to exercise jurisdiction as per the principle in *Banyan Tree Holding (P) Limited v. A Murali Krishna Reddy and Anr.*\(^{14}\) This jurisdiction would be exercised on the basis that the site is an interactive website and seeks to target website users in India. The authorities could look at initiating action for violation of the applicable Indian laws (a website offering a game of chance would be in violation of a state’s gambling Act). Under Section 69A of the Information Technology Act 2000, the government has the power to direct its agency or an intermediary to block access to the infringing website. Intermediaries under the Information Technology (Intermediaries Guidelines) Rules 2011 and the registrar accredited with the Internet Corporation for Assigned Names and Numbers have blocked access to gaming websites coming from outside India.

II LEGAL AND REGULATORY FRAMEWORK

i Jurisprudence

**Lottery**

The Supreme Court of India in *BR Enterprises v. State of UP*\(^{15}\) has held that a lottery is a game of chance and is not a business or trade; rather, it is in the nature of *res extra commercium*. The Supreme Court also held, while interpreting Section 5 of the Lotteries Act 1998,\(^{16}\) that a state could not exclude other states from its own lottery. Either the state had to declare itself as a lottery-free zone or permit lotteries from other states. In a subsequent judgment, in *All Kerala Online Lottery Dealers Associations v. State of Kerala*,\(^{17}\) the court distinguished from the principle of the earlier judgment (the *BR Enterprises* case) and held that paper lotteries and online lotteries fell in different classes. Therefore a state would be permitted to ban online lotteries and allow paper lotteries or vice versa, without violating the provisions of Section 5 of the Lotteries Act 1998.

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\(^{14}\) 2011 (5) RAJ 255(Del); CS (OS) No.894/2008 decided on 23 November 2009.


\(^{16}\) Section 5, Lotteries Act 1998: ‘A state government may, within the state, prohibit the sale of tickets of a lottery organised, conducted or promoted by every other state.’

\(^{17}\) Civil Appeal Nos. 3518–3520.
Horse racing

Horse racing and betting on horse racing has been classified as a game of skill by the Supreme Court in Dr Lakshmanan v. State of Tamil Nadu, therefore it is considered outside the ambit of gambling. Horse racing and betting on horse racing is permitted in licensed premises.

Prize competitions

In News Television India Ltd v. Ashok Waghmare, the Bombay High court held that prize competitions do not include skill games, and even popular TV quiz shows like Kaun Banega Crorepati (a version of ‘Who Wants to be a Millionaire’) are excluded from its ambit.

Sports betting

The status of betting on sports, and whether it is a game of skill, has not been addressed by the High Courts of the states or the Supreme Court.

Games of skill

The issue of games of skill for stakes, and whether they fall within the ambit of a state’s gambling act, has not been adjudicated upon by the Supreme Court. In absence of an express judgment of the Supreme Court, contrary opinions exist among the High Courts of the states. In the case of D Krishna Kumar v. State of AP, the Andhra Pradesh High Court held that since games of skill fall outside the ambit of Andhra Pradesh’s Gaming Act, games of skill for profits and stakes would therefore also fall outside the Gaming Act. However, the Madras High Court in DG of Police, State of Tamil Nadu v. Mahalakshmi Cultural Association, held that while games of skill at physical premises fall outside the ambit of the state’s gambling act, games of skill for stakes and profit fall within its ambit and are therefore prohibited. An appeal against this decision was filed by the Mahalakshmi Cultural Association in the Supreme Court. This appeal was withdrawn by the appellants on the ground that the criminal case against them had been dismissed, thus the appeal had become infructuous. The government of Tamil Nadu, however, took a stand that the state government had not initiated any action against the online operators, as it had not taken a decision as to whether an online game of rummy fell foul of the law or not.

ii The regulator

Lotteries are regulated by the Directorate of Lotteries under the Finance Department of each state. Horse racing, and betting on horse racing, is regulated by the relevant turf authority or club. The entertainment tax inspector performs a limited role of inspecting the books for detecting tax evasion, if any.

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18 See footnote 6, supra.
22 SLP Civil No. 15371/2012.
For prize competitions, states have formulated rules where the manner of procuring the licence has been laid down. Applications are to be made to the authorities designated by the states.

The licensing and regulator under the Sikkim Online Gaming Act 2008 is the officer designated by the Lotteries Department (government of Sikkim).

The regulator for casinos in Sikkim is the authorised officer, appointed by the Department of Tourism (government of Sikkim). However, in Goa, a gaming commissioner is to be appointed under Section 13C of the Goa Public Gambling (Amendment) Act 2012.

The regulator for the online games of skill under the Nagaland Act is the Finance Commissioner or any other authority designated and empowered on his or her behalf.

iii Remote and land-based gambling
Lotteries are offered in a paper format as well as online, across states where lotteries are permitted. Paper lotteries are generally offered through lottery shops and stalls. Kerala has made a distinction between paper lotteries and online lotteries, prohibiting online lotteries within its territory.

Horse racing and betting on horse racing is permitted only in licensed premises. Betting on horse racing takes place at the race clubs, for the races held at that particular track, as well as races broadcast from other tracks. Certain states like Maharashtra, Tamil Nadu and Andhra Pradesh have also allowed off-course betting shops.

The Prize Competition Act 1955 does not make a distinction between paper-based and online prize competitions. These competitions are generally conducted through dailies and posts.

Online sports betting offered through parlours on an intranet network is permitted in Sikkim.

The principle law that governs gaming is the Public Gambling Act 1867. This Act does not make a distinction between premises-based and online gaming. The states that have permitted casinos allow the offering of casino games only at the premises, whether they are on land or on ships or cruises.

Online games of skill can be offered across India under the Nagaland Act.

III LICENSING PROCESS
i Application and renewal
Lottery
Lotteries are operated and promoted by state governments. States invite private enterprises to partner with them to promote and market the state’s lottery through a tendering process. The Request for Proposal document is generally released on a payment basis by each state for such tendering. Some of the tender conditions are:

a operations must continue in India for five years;
b the applicant must have been a profitable vendor for three years;
c the applicant must a minimum experience of one year in the past three years;
d the applicant must have a state government certificate supporting the experience of the vendor;
e there must be a deposit of earnest money; and
f there must be an advance payment of sale proceeds.
India

**Horse racing**

No new licences for horse racing have been issued in the past two decades. Thus, the opportunity to procure a horse racing licence is limited. Punjab has enacted the Punjab Horse Race (Regulation and Management) Act 2013. The tender on a design, build, operate and transfer basis for a proposed race course was floated, but no bids were received for it.23

**Sports betting**

Licences for sports betting are issued in Sikkim. An application for a licence needs to be made to the government of Sikkim. The designated authority, as per the notification of the Sikkim government dated 11 June 2009, is the Secretary to the government of Sikkim (Finance, Revenue and Expenditure Department). The application needs to be made using Form 1 accompanied by a bank draft of 500 rupees in favour of the director, Sikkim State Lotteries. After examining the application and making due enquiries (no time period is provided), the government can grant a provisional licence on the payment of fee of 100,000 rupees in Form 2. The provisional licence is granted to enable the licensee to set up the infrastructure and comply with other licensing requirements. Subject to compliance with the licensing terms, a regular licence in Form 2A is issued for a period of five years on the payment of a fee of 10 million rupees.

Licences for teer bookmakers can be issued under Section 14(3)A of the Meghalaya Amusement and Betting Tax Act. Further, under Section 14A(1)m, terms and conditions for a licence are to be prescribed. Details pertaining to the licensing conditions and the process to be followed for licensing, are not readily available.

**Prize competitions**

Under the prize competition rules of states,24 the application for running a prize competition needs to be made in Form A and should be submitted personally or sent by registered post to the licensing authority. The licence is effective throughout the state. The fee for granting a licence is 25 rupees where an entry fee is charged, and 10 rupees where no such fee is charged. The fee for renewal is half of the initial fee.

**Games of skill**

No licence is required to operate a game of skill outside the state of Nagaland. Licences have been issued under Section 7 of the Nagaland Act. Licences for a period of five years can be issued to individuals, firms or companies provided:

- they are not engaged in gambling;
- they do not have a criminal history;
- the controlling stake and exercise of executive decisions is within India; and
- the technology and support platforms are within India.

Under the Nagaland Act, rules have been formulated to govern the licensing process. Under Rule 4(3) an application needs to be made accompanied by documents supporting the credentials of the promoters, audited financials, note on software technology platform, business plan and financial projections. A non-refundable application fee of 50,000 rupees

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through a demand draft also needs to be deposited. The details are then forwarded to the empanelled firm, which then makes an enquiry and issues a certification or recommendations for compliance. If a certification is issued by the empanelled firm, the licensing authority is bound to issue a licence within 14 days. In the event that recommendations are received from the empanelled firm, the recommendations shall be referred to an ad hoc committee or expert committee formed under the Nagaland Act for its recommendations, which are not binding on the licensing authority.

Under the Nagaland Act licences can be issued for a game or bouquet of games (three or more games). An annual licence fee of 1 million rupees per game per annum or 2.5 million rupees for a bouquet of games per annum for the first three years is payable. For the subsequent two years, 2 million rupees per game per annum or 5 million rupees for a bouquet of games per annum is payable. In addition, the licensee is required to pay an amount of 0.5 per cent of the gross revenue generated as royalty to the state government.

**Games of chance**

Under Section 13A of the Goa, Daman and Diu Public Gambling Act 1976, the government may authorise any electronic amusement games or slot machines in five-star hotels (and such table games and gaming on offshore vessels as may be notified) subject to certain conditions, including payment of recurring and non-recurring fees. The validity of licences granted by the government of Goa is generally five years. The annual licence fees for onshore Goan casinos are as follows:

- **a** up to $100m^2$ – 40 million rupees (hiked by 5 million rupees in the Goa Budget 2017);
- **b** $100m^2$ to $300m^2$ – 50 million rupees (hiked by 5 million rupees in the Goa Budget 2017);
- **c** $300m^2$ to $500m^2$ – 55 million rupees. (hiked by 5 million rupees in the Goa Budget 2017); and
- **d** over $500m^2$ – 70 million rupees. (hiked by 5 million rupees in the Goa Budget 2017).

For offshore casinos (passenger capacity-based), the fees are:

- **a** up to 100 passengers – 80 million rupees;
- **b** 100 to 200 passengers – 100 million rupees (hiked by 15 million rupees in the Goa Budget 2017);
- **c** 200 to 400 passengers – 110 million (hiked by 15 million rupees in the Goa Budget 2017); and
- **d** over 400 passengers – 112 million rupees (hiked by 10 million rupees in the Goa Budget 2017).

The renewal fee for both onshore and offshore casinos is 3 million rupees as outlined in the Goa Budget Speech 2017.25

Under the Sikkim Casino Games (Control and Tax) Rules 2007, an application for a licence needs to be made through Form A. Provisional licences under these Rules are granted for a period of five years and can be renewed. A licence fee of 50 million rupees is payable for a casino licence.

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IV TAXATION

i Lottery tickets can be subject to a lottery tax or charge. The states of Kerala, Punjab, West Bengal and Maharashtra have imposed lottery taxes. Maharashtra imposes a tax of 50,000 rupees per draw for online lottery companies. Provisions under the Maharashtra Tax on Lotteries Act 2006 are applied while assessing lottery tax, which is to be paid in advance every Monday before playing. In addition, as per Section 115BB of the Income Tax Act, winnings on lotteries are taxed at 30 per cent.

ii Horse racing
Different states have different rates of taxes on horse racing. In Delhi and Andhra Pradesh, an entertainment tax of 15 per cent is levied on all money paid to the totalisator and the bookmakers. In addition, all winnings of a player are taxed under Section 194BB of the Income Tax Act at 30 per cent.

In Maharashtra, the rate of taxation is 10 per cent on the investment in the case of the totalisator and 20 per cent on the investment in the case of the bookmaker.

iii Prize competitions
Under Section 194B of the Income Tax Act, all winnings from prize competitions, such as crossword puzzles, are taxed at 30 per cent.

iv Games of skill and games of chance
Under Section 194B of the Income Tax Act, all winnings from card games and other games of any sort, betting and gambling are taxed at 30 per cent.

V ADVERTISING AND MARKETING
The regulatory framework with regard to TV shows and advertisements, and possible electronic dissemination of material projecting gaming, is envisaged in the Code for Self-Regulation in Advertising (the Code), the Cable Television Network Rules 1994 and the Consumer Protection Act 1986.

The Advertising Standards Council of India issues the Code for specifically dealing with various issues regulating advertisement content. The Code permits advertisements pertaining to prize competitions and lotteries, wherein it requires that all material conditions should be stated for the consumer to obtain a true and fair view of their prospects in such activities.

Under the Cable Television Network Rules 1994, advertisement of gambling is prohibited, but the advertisement of games of skills, such as horse racing, rummy and bridge, is not prohibited.

28 Example (f), Chapter 1 of the Code.
Under the Consumer Protection Act 1986, unfair trade practices are prohibited. This would include the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.

VI THE YEAR IN REVIEW

Owing to the Indian Premier League’s betting and fixing scandal, the Supreme Court formed a Committee under the aegis of Justice Mukul Mudgal to determine the facts. This Committee recommended to the Supreme Court that betting in sports should be legalised and regulated. The Committee formed under the aegis of the former Chief Justice of India, Justice RM Lodha, confirmed this recommendation. The Supreme Court in its judgment dated 18 June 2016 in *BCCI v. Cricket Association of Bihar*\(^\text{29}\) has made a reference to the Law Commission of India to consider legalisation of sports betting. The Law Commission in this regard is seeking opinions from stakeholders and has also engaged with the UK India Business Council to understand the legislative framework and governance by the UK Gambling Commission and the Isle of Man Gambling Commission.

In the lottery segment, the Supreme Court created a distinction between online lotteries and paper lotteries in the *All Kerala Online Lottery Dealers Association* case, and thus prohibited online lotteries from other states, in states where online lotteries were not offered by the state itself.

The Nagaland Act was promulgated in March 2016. Six licences have been issued under the Act as of March 2017.\(^\text{30}\)

In order to give the gaming sector in India a voice, the All India Gaming Federation (AIGF) was launched in August 2016 with headquarters in Mumbai. The AIGF has undertaken discussions pertaining to the challenges that the gaming industry in India will face in the future.

A new indirect tax structure called the Goods and Services Tax (GST), to subsume service tax and other state tax, has been promulgated by the government and is expected to be implemented from 1 July 2017.\(^\text{31}\) While the rate of taxation for the gaming industry has not been fixed yet, as per comments of the Revenue Secretary, Hasmukh Adhia, GST on gambling and betting could be at a higher rate than 18 per cent.\(^\text{32}\)

VII OUTLOOK

There has been much debate on the regulation of sports betting in India. With the support of the Supreme Court, the Law Commission of India is likely to submit its report on legalisation of sports betting in July 2017. Once submitted, the report is likely to cause debates on its content.

\(^{29}\) Civil (Appeal 4235 of 2014 with Civil Appeal 4236 of 2014).


The Nagaland Games of Skill Act 2016 has been promulgated and seeks to license games of skill from Nagaland for the entire country. It is not yet clear whether this Act survives the constitutional test of a state’s power to legislate on this aspect. The Sikkim online gaming licences have been issued and the coming year will be key in determining its commercial success.

A 1976 notification issued by the state of Kerala exempted games such as rummy, darts, cup and coin contests from the ambit of gambling. Based on the notification, the government has been advised to include games of poker and bridge in the list of exempted games, it remains to be seen whether this is accepted. There is an ongoing litigation in the High Court of Gujarat on the classification of poker with stakes as a game of skill.

The government of Puducherry has expressed its will to legalise offshore casinos in the state.33 The government of Andhra Pradesh is also considering the development of a casino strip, similar to the strip in Las Vegas, within the state.34

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34 ‘Offshore casino in Vizag, AP may have first mover advantage’, 11 September 2015, The Hindu.
Definitions

Many forms of gambling have been regulated in Ireland for centuries. Irish law distinguishes primarily between three main forms of gambling: betting, gaming and lotteries.

**Betting**

Betting is governed by the Betting Act 1931, as amended by the Betting (Amendment) Act 2015 (the Betting Acts).

The word ‘bet’ is not defined in Irish law. Instead, the Betting Acts state that ‘…the word bet includes wager…’. The scope of what constitutes a bet has fallen to be determined at common law by the courts, although case law is rare. In *Mulvaney v. The Sporting Exchange Ltd trading as Betfair*, Clarke J stated that:

> While bookmaking is not defined in that legislation it seems to me that the term bookmaker derives from a person or body ‘making a book’ on an event. In other words, the person or body concerned offers odds on all or a significant number of eventualities arising in respect of the same event (for example, offers odds on each horse winning or offers odds on either team winning a football game, or, indeed that game resulting in a draw). Thus, a person carrying on the business of bookmaking is someone who habitually offers to cover a range of possible eventualities on future uncertain events. Two private individuals entering into a wager on the same future uncertain event could not remotely be said to be engaged in the business of bookmaking.

Accordingly, the general consensus arising from case law is that betting encompasses a bookmaker setting fixed odds against a future event, taking bets on that event and paying out winnings.

**Gaming**

Gaming is governed primarily by the Gaming and Lotteries Acts 1956-2013 (the Gaming and Lotteries Acts).

Gaming is defined in the Gaming and Lotteries Acts as ‘playing a game (whether of skill or chance or partly of skill and partly of chance) for stakes hazarded by the players’. A stake is
defined as including ‘any payment for the right to take part in a game and any other form of payment required to be made as a condition of taking part in the game but does not include a payment made solely for facilities provided for the playing of the game’.4

Lotteries

Lotteries are permitted by the Gaming and Lotteries Acts, but are heavily regulated and there are restrictions on their operation. As per the Gaming and Lotteries Acts, a lottery ‘includes all competitions for money or money’s worth involving guesses or estimates of future events or of past events the results of which are not yet ascertained or not yet generally known’.5

The Irish National Lottery falls outside the scope of the Gaming and Lotteries Acts and, instead, is regulated by the National Lottery Act 2013 (the 2013 Act), which repealed and replaced the terms of the National Lottery Act 1986. In 2013, following a competitive tender process, the Irish government awarded a 20-year licence to operate the Irish National Lottery to a consortium involving An Post (the Irish post office) and led by the UK national lottery operator, Camelot. The most notable feature of the 2013 Act is the establishment of a new office, the Regulator of the National Lottery, whose primary functions are to ensure that the Irish National Lottery is run with all due propriety, to ensure that participants’ interests are protected and to ensure that the long-term sustainability of the Irish National Lottery is safeguarded.

Tote/pari-mutel betting

The Totalsator Act 1929 provides for the establishment and regulation of the Totalisator6 by the Irish Revenue Commissioners. The Irish Horse Racing Industry Act 1994 provided that the Irish Horse Racing Authority could apply for and hold a totalisator licence. This was later transferred to Horse Racing Ireland by the Horse and Greyhound Racing Act 2001, and the licence is currently held by a subsidiary of Horse Racing Ireland called Tote Ireland. Tote Ireland’s current licence is due to expire in 2021. Bord na gCon (the national greyhound board) is licensed to operate a totalisator at greyhound tracks.

Financial spread betting

Spread betting on financial instruments is governed by the Markets in Financial Instruments Directive (2004/39/EC) and regulated by the Central Bank of Ireland.

Prize bonds

Irish Government Prize Bonds are regulated separately from other forms of gaming and lotteries. They are described in the Finance (Miscellaneous Provisions) Act 1956 as non-interest

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4 Ibid.
5 Ibid.
6 Defined in the Totalisator Act 1929 as ‘an apparatus or organisation by means of which an unlimited number of persons can each stake money in respect of a future event on the terms that the amount to be won by the successful stakers is dependent on or to be calculated with reference to the total amount staked by means of the apparatus or organisation in relation to that event but not necessarily on the same contingency, and the said word includes all offices, tickets, recorders, and other things ancillary or incidental to the working of the apparatus or organisation’.
bearing securities that are ‘subject to such conditions as to repayment, redemption or otherwise as [the Minister] thinks fit and in relation to which chance may be used to select particular securities for prizes’.

**Pool betting**

There is no equivalent in Ireland to the types of pool betting licences (non-remote and remote pool betting licences) that can be obtained from the UK Gambling Commission and that can be used by operators to provide pool betting or fantasy sports products. Instead, if an operator in Ireland wishes to provide a pool betting or fantasy sports product in which the amount of money won by the successful customers is calculated by dividing the total pool (minus commission) by the number of winners, it would be necessary to analyse the characteristics of the product to determine whether it could be characterised as a bet or a game under Irish law.

**ii Gambling policy**

Although gambling has a long history in Ireland, the Irish authorities have recognised that the legislation governing gambling in Ireland requires modernisation. As currently drafted, betting (remote, non-remote and intermediary) is permitted where a licence has been issued under the Betting Acts. Gaming and lotteries (except for the National Lottery) are primarily governed by the Gaming and Lotteries Acts. However, under the Gaming and Lotteries Acts, gaming is prohibited unless it falls under one of the exemptions contained in the Acts.

Those exemptions broadly relate to gaming that takes place in circuses, carnivals and amusement halls, and gaming that is operated in a certain way. The Gaming and Lotteries Acts have not been updated to take account of internet gaming. It is, however, common for operators that are lawfully licensed overseas to offer online gaming services to Irish customers provided that the gaming contracts are not governed by Irish law.

There is a political desire to modernise Irish gambling law and the government has published the heads of the Gambling Control Bill 2013 (the Scheme), which, if enacted, will modernise Ireland’s legislative framework for all types of online and land-based gambling. See Section VIII, *infra*, for further information.

The Irish National Lottery is designed to raise money for charities and good causes.

**iii State control and private enterprise**

For the most part, gambling in Ireland is the subject of private enterprise and the normal principles of free competition apply. Private citizens and companies, whether based in Ireland or abroad, are entitled to apply for a betting licence subject to fulfilling the various requirements to obtain a licence. The main exception to this policy is the Irish National Lottery, which is the subject of the 2013 Act, under which a single licensee is chosen to operate the Irish National Lottery following a competitive tender.

**iv Territorial issues**

Where regulated, gambling is generally regulated nationally. There are generally no special states, municipalities or localities in Ireland that have separate gambling legislation. Northern Ireland is part of the United Kingdom and its gambling laws are separate to those of the Republic of Ireland.

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7 Department of Justice and Law Reform, Options for Regulating Gambling (December 2010) 3.
v Offshore gambling

Offshore gambling operators who offer betting services or betting intermediary services by remote means to Irish citizens are required to obtain either a remote bookmaker’s licence or remote betting intermediary’s licence from the Irish authorities under the Betting Acts. Remote in this context is described as meaning, in relation to a communication, any electronic means including the internet, telephone and telegraphy (whether wireless or not). It is clear from the list of operators who have obtained the necessary licences that there is a significant number of offshore gambling operators offering betting products to Irish citizens.

Online gaming products (e.g., casino, slots, bingo) are governed by the Gaming and Lotteries Acts, although the legislation has not been updated to take account of online internet gaming. The focus of the Gaming and Lotteries Acts is on gaming carried out in amusement halls, arcades, funfairs, carnivals, travelling circuses and slot machines and therefore quite how it is to be applied to the type of games offered online is unclear. However, it is common for operators who are licensed in other jurisdictions to offer online products to Irish customers. It is important in such circumstances that the contract between the operator and the Irish customer is not governed by Irish law. Operators should also be aware that the Gaming and Lotteries Acts prohibit the promotion, advertising and the provision of unlawful gaming products so it is important that operators are familiar with these provisions.

The Irish Revenue Commissioners actively monitor compliance by remote operators with the licensing regime that applies for remote bookmakers and remote betting intermediaries. We are aware that the Irish Revenue Commissioners have actively pursued operators who have not registered as remote bookmakers and remote betting intermediaries. In addition, we are also aware that the Irish Revenue Commissioners actively follow up with operators if they are not registered and paying remote betting tax, remote intermediary duty and VAT on e-gaming activities, and have wide-ranging powers in order to ensure compliance.

Under the Betting Acts, the Irish Revenue Commissioners have the power to issue compliance notices to third parties who provide facilities or services (e.g., advertising, internet service provider (ISP), telecommunications, payment services) to unlicensed remote betting and betting intermediary operators requesting them to cease supplying such services to unlicensed operators. Failure to comply with a compliance notice is an offence and can lead to a fine of up to €50,000. In addition, various civil and criminal sanctions may also apply.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

There are a number of different, parallel legislative regimes that control and regulate gambling in Ireland:

a the Betting Acts, which govern betting in Ireland;
b the Gaming and Lotteries Acts, which govern gaming, lotteries and other similar activities;
c the National Lottery Act 2013, which governs the Irish National Lottery; and
d the Totalisator Act 1929, which governs the Totalisator.

8 Betting Act 1931 Sections 1 and 7C.
9 Available from the website of the Irish Revenue Commissioners.
These legislative regimes are currently under review by the Irish legislature and significant reform is expected in 2017 and 2018 (see Section VIII, *infra*).

### ii The regulator

There is no Irish equivalent to the UK Gambling Commission, although it is proposed under the Scheme that almost all forms of betting, gaming and lotteries would be brought under a single legislative and regulatory umbrella, the Office of Gambling Control Ireland (OGCI), which it is proposed will be funded from licensing fees.

The bookmaker, remote bookmaker and remote betting intermediary licences are granted by the Irish Revenue Commissioners, who administer the licensing process and maintain public registers of those who have been granted a licence. As part of the process of obtaining a licence, the applicant (or the relevant officers of the applicant where the applicant is a company) must first obtain certificates of personal fitness. The Department of Justice and Equality is charged with awarding certificates of personal fitness to overseas applicants. Applicants who are based in Ireland may apply for a certificate of personal fitness from a superintendent of the Irish police.

The Irish National Lottery is regulated by the Regulator of the National Lottery, whose primary functions are to ensure that the Irish National Lottery is run with all due propriety, to ensure that participants’ interests are protected and to ensure that the long-term sustainability of the Irish National Lottery is safeguarded. Small lotteries (which must be carried out for a charitable purpose) may be carried out under a permit granted by a superintendent of the Irish police or a licence granted by a district court.

The licensing of amusement halls and funfairs may be determined by a local authority or local district court. Certain very limited (and low-stakes) gaming may take place in these venues with the appropriate licence. The Irish Revenue Commissioners also licenses low-stakes gaming machines.

The Totalisator is governed by the Totalisator Act 1929, which provides that the Minister for Finance awards the relevant licence to operate the tote.

Spread betting on financial instruments is governed by the Markets in Financial Instruments Directive (2004/39/EC) and regulated by the Central Bank of Ireland.

### iii Remote and land-based gambling

The Betting (Amendment) Act 2015 (the 2015 Act) brought remote bookmakers (e.g., internet and mobile betting providers) and remote betting intermediaries (e.g., betting exchanges) within the scope of the existing licensing regime that applied to bricks-and-mortar betting shops in Ireland. The 2015 Act extended the existing 1 per cent turnover on a bookmaker’s activities to online and mobile operators and introduced a 15 per cent commission tax on betting exchanges.

‘Commission charges’ are defined in the Finance Act 2002 (as amended) as ‘the amounts that parties in the State to bets made using the facilities of a remote betting intermediary are charged, whether by deduction from winnings or otherwise, for using those facilities’.

Under the 2015 Act, a traditional land-based bookmaker’s licence permits a limited amount of remote betting without the need to obtain an additional remote bookmaker’s licence. The value of remote betting on a standard bookmaker’s licence may not exceed the lower of €200,000 or 10 per cent of that bookmaker’s yearly turnover.

The Gaming and Lotteries Acts apply to all forms of gaming, but have not been updated since the introduction of remote gaming. See Section VIII, *infra*, for details of the reform that is anticipated in this area.
iv Land-based gambling

While the Betting Acts envisage the business of bookmaking being carried out in registered bookmaker’s premises,\textsuperscript{10} the Gaming and Lotteries Acts provide for a number of different locations in which forms of gaming can take place (e.g., amusement halls,\textsuperscript{11} carnivals,\textsuperscript{12} and circuses\textsuperscript{13}). Depending on the type of gambling to be performed, there are a range of restrictions. There is no formal limit on the number of gambling premises of a particular type that can be granted.

Casinos are illegal in Ireland if they promote or provide facilities for any kind of gaming that is deemed ‘unlawful gaming’ for the purposes of the Gaming and Lotteries Acts. This includes gaming in which, by reason of the nature of the game, the chances of all the players, including the banker, are not equal, or gaming in which any portion of the stakes is retained by the promoter or is retained by the banker other than as winnings on the result of the play. Private arrangements are excluded from the scope of the Gaming and Lotteries Acts. This has given rise to the operation of private members’ clubs as casinos and card clubs, which it may be argued fall outside the prohibitions on gaming contained in the Gaming and Lotteries Acts. Aside from the requirement to become a member, a process that is not standardised, the opening hours, age restrictions and general operation of such clubs are not regulated.

The Totalisator Act 1929 provides for the establishment and regulation of the Totalisator\textsuperscript{14} by the Irish Revenue Commissioners. The Irish Horse Racing Industry Act 1994 provided that the Irish Horse Racing Authority could apply for and hold a totalisator licence. This was later transferred to Horse Racing Ireland by the Horse and Greyhound Racing Act 2001 and the licence is currently held by Tote Ireland. As stated in Section I, \textit{supra}, Tote Ireland’s current licence is due to expire in 2021. Bord na gCon is licensed to operate a totalisator at greyhound tracks.

v Remote gambling

Remote betting and the provision of remote betting intermediary services are generally permitted in Ireland, meaning that an operator that is licensed by the Irish Revenue Commissioners in Ireland may provide betting services to Irish citizens in Ireland by remote means\textsuperscript{15} using equipment which may be located in Ireland or abroad.

As stated in Section I.v, \textit{supra}, online gaming products such as casino, slots and bingo are governed by the Gaming and Lotteries Acts, although that legislative regime has not been updated to take account of online internet gaming. The focus of the Gaming and Lotteries

\begin{footnotesize}
\begin{enumerate}
\item Defined in Section 1 Betting Act 1931 as ‘premises for the time being registered in the register of bookmaking offices kept by the Revenue Commissioners under this Act’.
\item Gaming and Lotteries Act 1956 Section 14.
\item Gaming and Lotteries Act 1956 Section 7.
\item Gaming and Lotteries Act 1956 Section 6.
\item Defined in the Totalisator Act 1929 as ‘an apparatus or organisation by means of which an unlimited number of persons can each stake money in respect of a future event on the terms that the amount to be won by the successful stakers is dependent on or to be calculated with reference to the total amount staked by means of the apparatus or organisation in relation to that event but not necessarily on the same contingency, and the said word includes all offices, tickets, recorders, and other things ancillary or incidental to the working of the apparatus or organisation’.
\item Defined in Section 1, Betting (Amendment) Act 2015 as meaning ‘in relation to a communication, any electronic means, and includes (a) the internet, (b) telephone and (c) telegraphy (whether or not wireless telegraphy)’.
\end{enumerate}
\end{footnotesize}
Acts is on gaming carried out in amusement halls, arcades, funfairs, carnivals, travelling circuses and slot machines, and therefore it is unclear how it is to be applied to the type of games offered online. It is common, however, for operators who are licensed in other jurisdictions to offer online products to Irish customers. It is important in such circumstances that the contract between the operator and the Irish customer is not governed by Irish law. Operators should also be aware that the Gaming and Lotteries Acts prohibit the promotion, advertising and the provision of unlawful gaming products so it is important that operators are familiar with these provisions.

vi Ancillary matters
Suppliers of key equipment (e.g., manufacturers of gambling equipment or software suppliers) are not currently required to obtain licences in order to supply to operators. This is set to change when the Scheme is enacted (see Section VIII, infra).

III THE LICENSING PROCESS
i Applications
The Betting Acts make provision for three types of betting licences:

a a bookmaker’s licence;
b a remote bookmaker’s licence; and
c a remote betting intermediary’s licence.

A licensed bookmaker may accept bets by remote means without a remote bookmaker’s licence, provided that the total value of the remote bets accepted is less than €250,000 or 10 per cent of the turnover derived from the operations covered by the bookmaker’s licence for the year concerned.16

Under the 2015 Act, a licence can now be taken out by a body corporate as well as an individual.17 The application process for the three types of licences essentially involves two stages. The applicant (or in the case of an application by a body corporate, each ‘relevant officer’18 of the body corporate) must first obtain a certificate of personal fitness (COPF). Applications for COPFs from remote operators must be made to the Minister for Justice and Equality, following the placement of an advertisement in two daily, national newspapers.19 Applications for COPFs from terrestrial bookmakers ordinarily resident in the state must be made to a superintendent of the Irish police.20 The superintendent or Minister for Justice has up to 56 days to either grant or refuse an application.21

18 The Department of Justice will generally require Certificates of Personal Fitness for at least two Relevant Officers with one of the those Relevant Officers having to come within Section 1(a) Betting (Amendment) Act 2015.
20 Ibid.
21 Betting Act 1931 Sections 4(6), 5(5) and 5A(5).
Once COPFs have been obtained, the operator has a 21-day window within which their licence application form must be submitted to the Irish Revenue Commissioners.\textsuperscript{22} The fully completed application form must be accompanied by the COPF, a valid tax clearance certificate and payment of the licence duty.\textsuperscript{23} A licence will be issued by the Irish Revenue Commissioners where the application meets all requirements and on payment of the appropriate licence duty.\textsuperscript{24} The licence duty payable on the first application and renewal of a bookmaker's licence is €500. The licence duty payable on the first application for a remote bookmaker's licence and remote betting intermediary's licence is €10,000, and the duty payable on renewal is based on turnover and commission charges.\textsuperscript{25} The licence may be paid in full at the time of application or renewal or in two equal instalments.\textsuperscript{26}

Application forms must be completed online using the Revenue Online Service (ROS). Not all ROS services are available automatically so it may be necessary to first register for ROS with the Irish Revenue Commissioners. As a practical point for operators, this process of registering for ROS can take a number of weeks.

The standard duration of a licence is two years.\textsuperscript{27} Bookmakers' licences will expire on 30 November of every second year.\textsuperscript{28} Remote bookmakers' licences and remote betting intermediaries' licences will expire on 30 June of every second year.\textsuperscript{29} The requirements and processes that apply to the first licence application also apply to applications for licence renewal.\textsuperscript{30}

For retail bookmakers, if the bookmaking business is only being conducted on-course, the holder of the licence must apply for a separate authorisation to accept bets on-course. If the bookmaking is being conducted from a premises, a certificate of registration of premises is required.

There is no licensing regime contained in the Gaming and Lotteries Acts.

\textbf{ii Sanctions for non-compliance}

It is an offence to act as a bookmaker, a remote bookmaker or as a remote betting intermediary without a licence.\textsuperscript{31} The penalty for acting without a licence is a class A fine (maximum fine of €5,000) on summary conviction or, on conviction on indictment, a maximum fine of €150,000 or imprisonment for up to five years, or both.\textsuperscript{32} Where a further offence is committed, conviction on indictment carries a maximum fine of €300,000 or imprisonment for up to five years, or both.\textsuperscript{33}

\begin{itemize}
\item\textsuperscript{22} McCann FitzGerald Briefing ‘Betting & Gaming Update. Licence renewal date fast approaching. Are you ready?’ (April 2017).
\item\textsuperscript{24} Ibid.
\item\textsuperscript{25} Ibid, footnote 23.
\item\textsuperscript{26} Ibid, footnote 23.
\item\textsuperscript{27} Ibid, footnote 23.
\item\textsuperscript{28} Ibid, footnote 23.
\item\textsuperscript{29} Irish Revenue Commissioners, ‘Remote bookmaker’s Licence and Remote Betting Intermediary’s Licence’ www.revenue.ie/en/tax/excise/excise-licensing/remote-bookmakers-licences.html.
\item\textsuperscript{30} Ibid.
\item\textsuperscript{31} Betting Act 1931 Section 2(1).
\item\textsuperscript{32} Betting Act 1931 Section 2(6).
\item\textsuperscript{33} Betting Act 1931 Section 2(7).
\end{itemize}
It is an offence to represent oneself as a bookmaker, a remote bookmaker or as a remote betting intermediary without a licence.\(^{34}\) The penalty for this offence is a class A fine on summary conviction or, on conviction on indictment, a maximum fine of €100,000.\(^{35}\) Where a further offence is committed, conviction on indictment carries a maximum fine of €250,000.\(^{36}\)

The 2015 Act allows the Irish Revenue Commissioners to serve a ‘compliance notice’ on persons who provide unlicensed operators with certain services and facilities, for example, providing internet services for the purpose of carrying on a remote bookmaking operation or advertising a remote bookmaking operation carried on by an unlicensed operator.\(^{37}\) In addition, payment services or advertising could potentially be the subject of a compliance notice. It is an offence to fail to comply with a compliance notice. The penalty for failure to comply is, on summary conviction, a class A fine or imprisonment for up to six months or both, or, on conviction on indictment, a maximum fine of €50,000 or imprisonment for up to two years or both.\(^{38}\)

It is an offence to make a bet or engage in a betting transaction with a person under the age of 18 years.\(^{39}\) The offence carries a penalty of a class A fine or imprisonment for up to six months on summary conviction, or, on conviction on indictment, a maximum fine of €50,000 or imprisonment for up to two years or both.\(^{40}\)

There is also a range of sanctions for non-compliance with the Gaming and Lotteries Acts. In practice, the most potentially serious of these sanctions is that any gaming instruments used in the commission of an offence under the Gaming and Lotteries Acts can be the subject of a forfeiture order. It has been publicly acknowledged by the Department of Justice that ‘there are serious problems with the enforcement of laws governing gaming’.\(^{41}\)

IV Worongdooing

The Fourth Anti-Money Laundering Directive (AMLD4) is due to be implemented in Ireland in 2017 with the aim of further strengthening the EU’s defences against money laundering and terrorist financing, and ensuring the soundness, integrity and stability, and confidence in the financial system as a whole. Draft national legislation has not yet been published.

AMLD4 requires providers of gambling services, upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to €2,000 or more (whether the transaction is carried out in a single operation or in several operations that appear to be linked), to apply customer due diligence measures. It provides that, with the exception of casinos, Member States may decide to exempt certain gambling services from some or all of the requirements laid down in AMLD4 in proven, low-risk circumstances. Recital 21 states that the use of such an exemption should be considered only in strictly limited and justified circumstances and where the risks of money laundering or terrorist

\(^{34}\) Betting Act 1931 Section 2A(1).
\(^{35}\) Betting Act 1931 Section 2A(2).
\(^{36}\) Betting Act 1931 Section 2A(3).
\(^{37}\) Betting Act 1931 Section 32B(1).
\(^{38}\) Betting Act 1931 Section 32B(10).
\(^{39}\) Betting Act 1931 Section 23(1).
\(^{40}\) Betting Act 1931 Section 23(3).
financing are low. The Department of Finance is currently carrying on a review of the risk profile of the betting and gaming industry, which will determine the criteria and whether an exemption will be introduced.

V TAXATION

Bookmakers in Ireland are subject to betting duty at 1 per cent of turnover. Remote bookmakers must also pay this duty on bets entered into with persons resident in Ireland.

Remote betting intermediaries are subject to a betting intermediary duty that is currently 15 per cent of their commission charges. ‘Commission charges’ are defined in the Finance Act 2002 (as amended) as ‘the amount that parties in the State to bets made using the facilities of a remote betting intermediary are charged, whether by deduction from winnings or otherwise, for using those facilities’.

Unlike most other European jurisdictions, gaming services are not specifically exempted from VAT in Ireland. As a result, online providers who are licensed overseas but who are providing e-gaming services to Irish customers should be registered and charging Irish VAT at 23 per cent on play from Irish customers. Generally speaking, the amount on which VAT is charged is the consideration actually received by the operator from Irish customers. For non-pooled gaming (e.g., slots, casino), this will typically be the net revenue (i.e., after free bets/plays) that the operator receives. For pooled gaming (e.g., poker), the consideration that will be subject to VAT is the rate that the e-gaming operator receives, which is applicable to Irish customers.

Casinos that operate in Ireland as private members’ clubs must all register and charge VAT on customers’ winnings.

VI ADVERTISING AND MARKETING

For retail bookmakers, Section 20(1) of the 1931 Act prohibits a retail bookmaker from setting up or maintaining in or outside his or her shop:

any attraction (other than the mere carrying on of his business of bookmaking) which causes or encourages or is likely to cause or encourage persons to congregate in or outside such premises.

Section 20(3) contains a prohibition on a bookmaker from:

proclaim[ing] or announc[ing] or permitt[ing] any other person to proclaim or announce in such premises to the persons there present the terms or odds on or at which he is willing to take bets in relation to any particular race, match, or other contest, or in respect of any competitor in any such contest.

Section 20(4) prohibits a retail bookmaker from exhibiting (or permitting to be exhibited) in or outside his or her shop (or that is visible from the street):

any lists or statements of the terms or odds on or at which he is willing to take bets in relation to any particular race, match, or other contest, or in respect of any competitor in any such contest, or lists or statements of the competitors entered for or withdrawn from or taking or likely to take part in any such contest, or statements of facts, news, or forecasts in respect of any such contest, or any other incitement or inducement to bet.
The Broadcasting Commission of Ireland is an independent statutory organisation responsible for some of the key aspects of television and radio services in Ireland. Its General Commercial Communications Code (the Code) addresses standards with regard to all forms of commercial communication, including advertising, sponsorship and teleshopping. Section 8.8 of the Code covers gambling and provides that commercial communications that seek to promote services to those who want to bet are acceptable.

Section 8.8 of the Code also provides that such communications may contain the address of the service provider and factual descriptions of the services available but may not contain anything that could be deemed to be an ‘encouragement to bet’. Information detailing special offers, discounts, inducements to visit any betting establishment (including online), references to betting odds available or any promotional offer intended to encourage the use of services of this nature are not permitted.

A revised version of the Code that governs commercial communications such as advertising, sponsorship and product placement on Irish licensed television and radio stations, which will take effect from 1 June 2017, includes enhanced provisions, such as prohibitions on advertising of remote bookmaking operations without a remote bookmaker’s licence, and certain portrayals of gambling (e.g., children gambling or that gambling can be a solution to personal or professional problems, or financial concerns).

In addition, recent decisions of the Advertising Standards Authority of Ireland (ASAI) provide useful guidance for the betting and gaming industry as to where the lines between permitted and non-permitted advertising of promotions are drawn. In particular, care should be taken if using phrases such as ‘risk-free bet’ or ‘money-back special’. In addition, advertised headline offers must be consistent with any restrictions or clarifications in the applicable terms and conditions.

**Risk-free bet**

In 2016, the ASAI considered an email sent by a bookmaker advertising a risk-free bet for customers who downloaded a new app. A recipient of the email complained to the ASAI that he did not think the offer was risk-free. It required punters to place a bet for £5; if they lost this bet they could then receive another free £5 bet. The complainant argued that the label ‘risk-free bet’ implied that his initial £5 would be refunded if he was unsuccessful.

In its response to the ASAI denying the complaint, the advertiser claimed that risk-free bet was a term frequently used in the sector and commonly understood to have the meaning given to it (i.e., that a punter who lost would receive another bet, rather than be refunded their stake). The advertiser highlighted that the offer was described in three steps in the body of the email and the details were not hidden in the terms and conditions. It also stated that as the customer had chosen to receive its marketing emails, he would be familiar with the language used in the gaming industry.

Upholding the complaint, the ASAI determined that ‘risk-free’ could be understood by some consumers to mean that if they lost their initial bet, their stake would be refunded to them. While the ASAI acknowledged that the body of the email explained the terms of the offer clearly, it still found the advertisement to be in breach of three sections of the ASAI Code relating to honesty, misleading advertising and misleading promotions.

Consistency with terms and conditions

In other recent decisions involving the gambling sector, the ASAI has emphasised the need for headlines or text in promotional offers to be consistent with the terms and conditions. For example, in a decision delivered in January 2016, the ASAI held that an advertisement that contained headline text that was subject to an important clarification contained in a footnote was not compliant as there was no asterisk in the headline to draw attention to the footnote. In a previous decision given in 2015, advertisers were reminded that it was not compliant to make a headline offer if it was subsequently meaningfully restricted by the terms and conditions.

The ASAI is a self-regulatory body set up by the advertising industry in Ireland to promote standards in commercial advertising in compliance with a Code of Standards for Advertising. While the ASAI Code does not have a legislative basis, commercial marketing communications found to be in contravention of the Code by the ASAI Complaints Committee must be amended or withdrawn by organisations who agree to abide by the Code. In addition, decisions of the ASAI may be taken into account when applicable advertising or consumer protection legislation is being considered. For example, an advertisement that breaches the ASAI Code could, in certain circumstances, also be deemed to constitute a ‘misleading commercial practice’ for the purpose of the Consumer Protection Act 2007 and give rise to civil and criminal liability.

VII THE YEAR IN REVIEW

Unlike in the United Kingdom, gambling debts in Ireland are unenforceable. This position was challenged in a recent Circuit Court case involving an action brought by a gambler against a small amusement centre. He claimed that it had refused to pay him €11,713 he had won after he placed several bets on an automated roulette machine.

The plaintiff alleged that on 2 and 3 March 2015, he first won about €7,500. When he sought to cash it out, he was given €2,500 in cash and €5,000 worth of chips, before being told to play more and that he would be paid at the end of the night. The court heard that after he won a further €6,713, the plaintiff was told by a manager to cash out. When he went to the cashier counter, he was told the casino had no more cash for the night but that he would be paid the following day. He had also been told that an engineer would later check the roulette machine. The plaintiff claimed the amusement centre refused to pay him despite multiple requests.

In reaching his decision and reaffirming the position in Ireland that gambling debts are unenforceable, the Circuit Court judge stated that he had to rely on the 1956 Act, which states that ‘no action shall lie for the recovery of any money or thing which is alleged to be won’. The judge went on to say that ‘[i]f you happen to be too lucky while placing a bet or gambling, the person can simply say “no you’re not entitled to the money”. That is simply the law in Ireland’.46

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45 Gaming and Lotteries Act 1956 Section 36.
VIII OUTLOOK

The Minister for Justice announced plans in 2011 for new legislation on gambling in Ireland. In presenting his plans, the Minister noted that ‘the present laws are not adequate to deal even with aspects of gambling which they were intended to cover’.47

The heads of the Scheme were published on 15 July 2013.48 The intent of the Scheme was that it would, if enacted, provide a comprehensive overhaul of Ireland’s outdated gambling laws and would result in most forms of gambling being regulated by a single piece of legislation.

Since the initial publication of the Scheme in 2013, limited progress has been made. However, a number of recent high-profile cases involving prominent sportspeople and gambling addiction, coupled with increased public concern about children under 18 engaged in gambling activities, has led to an increased political desire to implement legislation to give effect to the Scheme. If legislation is enacted to give effect to the proposals outlined in the Scheme, it will result in a fundamental change in gambling law and regulation in Ireland.

The Bill is currently being considered and drafted by the Office of the Parliamentary Counsel and the current government is keen to proceed with the Bill ‘…at the earliest feasible opportunity’.49 In Irish parliamentary debates in December 2016, the Minister of State for Justice David Stanton hinted that the Bill would be published ‘later in 2017’.

Outlined below are a number of the headline changes proposed by the Scheme.

i OGCI

The Scheme provides for the creation of the OGCI (see Section II.ii, supra). The OGCI will control all gambling in Ireland and will have responsibility for issuing licences and ensuring compliance with the Bill. The OGCI will be established as a unit of the Department of Justice and Equality and will be funded from licensing fees (amounts to be determined by OGCI).

ii Complex licensing system

The Scheme seeks to regulate everything from retail and online betting and gaming, to gaming on cruise ships and in catering outlets. Although the Scheme outlines six broad categories of licence ( betting, gaming, remote gaming and betting, temporary, hybrid and personal licences), there are a total of 43 separate licences that operators could potentially require. In addition, there are a number of entities that, while not requiring a licence, may be required to register with the OGCI. Regulating for all forms of gambling in the one Bill potentially makes the legislation more complex and could lead to delays in finalising the Bill. Several submissions that were made to the Department of Justice and Equality in response to the publication of the Scheme have called for the streamlining of the proposed licensing system and there may be merit in the government seeking to deal with the main forms of gambling first (e.g., retail and online) and then separately bringing in legislation at a later date to deal with other areas.

47 Department of Justice And Equality, 'Minister Shatter announces the preparation of a new Bill on Gambling' (21 September 2011), www.justice.ie/en/JELR/Pages/PR110000178.
49 Per written parliamentary response of the Minister of State for Justice David Stanton in response to written query from Fianna Fail TD Anne Rabbitte on 16 December 2016.
Gaming to be allowed in betting shops

In what will be a welcome development for most land-based bookmakers, for the first time the Scheme would allow betting shops to have gaming content, provided that turnover from the gaming content does not exceed 15 per cent of total turnover. Clarification will be required as to the treatment of ‘virtual’ products as currently the definitions of ‘gaming’ and ‘betting’ both include virtual events. For the most part, betting on virtual events will be regarded as a fixed-odds bet by operators and therefore confirmation that this treatment will continue will be required to ensure that ‘virtual’ content in shops is not indirectly caught by the 15 per cent restriction on turnover that will apply to gaming content.

The Scheme prohibits fixed-odds betting terminals (FOBTs) in all circumstances and sets out a number of offences for the supply, maintenance and repair of FOBTs.

Restrictions on advertising, promotions and sponsorship

Of particular relevance to operators will be the fact that the Scheme proposes significant restrictions on the ability of operators to advertise or promote their services in Ireland. Specifically, the Scheme proposes that:

a) only licensed operators may advertise gambling services to Irish players;
b) the Minister for Justice and Equality will have the power to ban advertising before the watershed;
c) advertisements may not feature people considered to be ‘idols’ by young people;
d) where operators are allowed to advertise around sporting events, then only advertisements that are specific to that sporting event are allowed;
e) restrictions will apply to the type of promotions that operators may offer to customers;
and
f) operators will not be allowed to sponsor events or teams ‘…who predominantly appeal to people below the age of 18 years’.

Enhanced player protection measures

The Scheme contemplates increased player protection measures including the following:

a) increased obligations on operators to prevent underage gambling;
b) credit facilities cannot be extended to customers;
c) bets are to be treated as enforceable contracts save where the bet is entered into by a minor;
d) the Minister can prohibit or restrict certain games, or classes of game, or a particular machine or piece of equipment, where justified by public policy;
e) it will be a licence condition that all staff are properly trained and key personnel will require a ‘personal licence’;
f) a social fund is to be established and paid for based on an operator’s turnover. The social fund would be used to provide public education and awareness-raising programmes, the commissioning or undertaking of research, and assistance in establishing and operating treatment programmes for individuals affected by irresponsible gambling; and
g) a voluntary self-exclusion register will be established whereby a person with a gambling concern can have themselves excluded from specific gambling venues, or from accessing gambling products provided by particular providers. The OGCI would maintain a register of all persons who have entered into self-exclusion arrangements. The
mechanics of how such a scheme will work will need to be worked through carefully as the enforcement of such a register by operators could create serious challenges for operators particularly in the retail environment.

vi Scheme legislates for land-based casinos and new categories of lotteries

The Scheme legislates for casinos and casino games, thereby addressing the currently ambiguous position of ‘private members clubs’. However, the Scheme will not permit supercasinos in Ireland. The Scheme provides for a maximum limit of 40 casino licences that can be in operation at any one time in Ireland and limits the number of tables in casinos to a maximum of 15, and gaming machines to 25. Criteria will be established by the OGCI on the distribution of casinos geographically (nationally and regionally) to ensure reasonable access and choice for consumers. Planning permission will also be required for each premises and the location of casinos will be subject to public policy restrictions. Normal liquor licensing requirements and bar hours will apply. In addition the Scheme allows the OGCI to specify that certain games that are played on machines or by remote means can only be paid via a ‘player card’. The practicalities of how this will work are unclear from the Scheme.

The Scheme does not affect the Irish National Lottery but does introduce several new categories of licences for lotteries that apply at least 25 per cent of their proceeds to charitable or philanthropic causes.

In summary, the Scheme demonstrates Ireland’s intention to move towards a more robust and modern regulatory regime for all forms of gambling in Ireland. The Scheme requires significant additional work before the government is in a position to publish the Bill. However, there appears to be an increased political desire to implement legislation to give effect to the Scheme and the government is working to get the Bill published, and subsequently enacted, ‘at the earliest feasible opportunity’.
I OVERVIEW

i Definitions

Gambling in Israel is defined primarily through its prohibition. The Israeli Penal Law 5737-1977 (the Penal Law) contains the only definition under Israeli law of the types of activities that constitute gambling and betting, by reference to the following categories:

‘Prohibited game’ – a game at which a person may win money, valuable consideration or a benefit according to the result of a game, those results depending more on chance than on understanding or ability;
‘Lottery’ – any arrangement under which it is possible – by drawing lots or in another manner – to win money, valuable consideration or a benefit, more by chance than by understanding or ability;
‘Betting’ – any arrangement under which it is possible to win money, valuable consideration or benefit, by guessing something, including lotteries based on the results of sports matches and contests.

These definitions are intentionally broad and, as a result, they overlap somewhat. From an academic perspective, the legislator’s intention was to distinguish lotteries and betting from prohibited games – the former two are based on a specific arrangement or contract between an offeror and offeree, whereas the latter involves an activity defined by the predetermined rules of a particular game.

While the Penal Law does not use the terms ‘game of chance’ or ‘game of skill’, the statutory definitions (and the subsequent interpretation of them by Israel’s courts), are predicated on the ‘predominance test’ (as captured by the phrase ‘more by chance than by understanding or ability’). In other words, activities in which skill or knowledge outweigh chance or randomness in determining the outcome will be excluded from the scope of ‘prohibited game’ and ‘lottery’ under Israeli law.

Notwithstanding, Israeli courts have added a ‘twist’ to the aforementioned predominance test. In a 2011 ruling, the District Court of Tel Aviv determined that where a particular betting game consists of both skill and chance, the ‘social interest and utility’ of the game in question should also be taken into account before considering its legality. In
the matter at hand, the court ruled that the hybrid activity was, in fact, a form of prohibited gaming (rejecting an expert opinion stipulating the predominance of skill in determining the outcome of the activity).

Furthermore, in a ruling issued in May 2017 (as yet unpublished) the Tel Aviv Magistrate’s Court ruled that when determining whether a particular game is one of chance or skill, the game must be assessed in relation to an amateur player playing a single hand. This ruling is subject to appeal, and does not itself constitute a binding precedent but it is demonstrative of the restrictive view Israeli courts take towards gambling.

Against that backdrop, and though the matter has not been addressed to date by Israeli courts, it is the author’s view that Israeli courts are likely to consider activities such as ‘fantasy sports’ as a form of prohibited gambling. While Israeli authorities tolerate true competitions of skill played for prizes, an activity with monetary prizes predicated on the outcome of an external sporting event (or multiple events) is likely to be considered by Israeli courts as falling within the definition of betting, an area exclusively reserved under Israeli law to Israel’s sports-betting monopoly.

The Israeli Ministry of Finance has issued a blanket permit for the conduct of promotional draws and sweepstakes, conditional on these being free to enter. Businesses may conduct a promotional draw no more than twice per calendar year, and at least 120 days apart. Other conditions (such as oversight by a lawyer or accountant) apply as well.4

Binary options, contracts for differences, spread betting and other speculative activities related to financial instruments, currencies, securities and the like, are not considered a form of gambling under Israeli law. These activities are regulated under Securities Law 5728-1968. The Tel Aviv District Court ruled in 2016 that trading in binary options does not constitute a form of prohibited gambling.5 However, the Israeli Securities Authority (the Authority) has prohibited Israeli licensed trading platforms to offer binary options to Israeli retail customers.6 Furthermore, despite the aforementioned judicial finding, explanatory notes accompanying a draft bill circulated by the Authority, seeking to further restrict the involvement of Israelis in binary options trading, make reference to the Authority’s position regarding the ‘gambling-like’ characteristics of binary options trading.

ii Gambling policy

Israel is notoriously conservative with respect to gambling. An intersection of religious and socialist values has resulted in Israel banning most forms of gambling.

While the laws related to gambling have scarcely changed in recent years, the existing law contains a relatively broad prohibition. The Penal Law prohibits organising ‘lotteries, betting and prohibited games’ (Section 225) and participation in prohibited games (Section 226). Section 225 provides that a person organising or conducting a prohibited game, lottery or betting is liable to a penalty of up to three years’ imprisonment or a fine of up to 452,200 shekels. Section 226 provides that a person playing a prohibited game is liable to a

4 Announcement Regarding General Permit for the Conduct of Lotteries for Commercial Promotion Under the Penal Law 5737-1977 (in effect as of 1 January 2010).
5 Class Action 25717-10-13 Bar-Or et al v. ETrader Ltd et al.
penalty of up to one year’s imprisonment or a fine of up to 29,200 shekels. Oddly, Section 226 does not refer to betting or lotteries. In other words, the sanctions on participation are triggered only by playing a ‘prohibited game’.

Israeli courts have expanded upon the language of the Penal Law, most notably by ruling that online gambling and betting available to Israeli consumers violates Israeli law (despite the fact that the law predates the internet). The Israel Police has taken enforcement action against online gaming (focusing primarily, but not exclusively, on operations with an Israeli nexus). After an Israeli court refused to uphold a police order requiring internet service providers (ISPs) to ban access to foreign online betting sites, members of Israel’s parliament tabled a bill to introduce such measures into the Penal Law (the bill did not, eventually, become law). The Bank of Israel has prohibited the transmission of funds related to gambling by Israeli financial institutions, and the State Comptroller has called on all Israeli authorities to take action to curtail the availability of internet gambling in Israel. In short – Israel’s authorities are actively seeking to uphold the gambling ban, both offline and online.

Reports have suggested that various Israeli governments have considered a limited liberalisation of the blanket ban on bricks-and-mortar gambling, by allowing the construction of a small number of casino resorts in Eilat, a resort destination on the Red Sea. However, in the face of widespread criticism, no such initiatives have progressed.

In 2017, the Israeli Minister of Finance revoked the permit granted to the National Lottery to operate a limited number of video lottery terminals (VLTs). This revocation has been judicially challenged by Lottery concessionaires and as of May 2017 the matter remains pending before the High Court of Justice.\(^7\) Statements made by the Ministry of Finance suggest that the Ministry further wishes to revoke the permission granted to the Israel Sports Betting Board to conduct horse race wagering.

### iii State control and private enterprise

The only forms of legal gambling in Israel (other than a very limited exemption for purely social gambling activities) are the national lottery and a limited sports betting service operated by the state.

These services are regulated as follows:

\(a\) The National Lottery was established in 1951. It offers several weekly draws, scratch cards, a weekly subscription lottery, and various other lotteries and raffles. The operations of the National Lottery are supervised and regulated by the Ministry of Finance.

\(b\) The Israel Sports Betting Board (ISBB) was established in 1967 under the Law for the Regularisation of Sports Betting 5727-1967. The ISBB has the exclusive right to organise and regulate sports betting in Israel. It offers betting on football and basketball games, as well as a limited horse race wagering service.

### iv Territorial issues

The regulation of gambling in Israel is entirely on the national level (local authorities have no jurisdiction on gambling-related matters). Notwithstanding, there have been proposals (none of which have progressed) to carve-out Israel’s prime resort location, the city of Eilat, from the general prohibition on terrestrial gambling.

\(^7\) HCJ 239/17 Haim Tal et al v. Minister of Finance.
v Offshore gambling

With respect to online gambling, Israeli courts have ruled that Israeli law applies to online gambling conducted by foreign operators, when it is made available to Israeli players. In other words, when a party to the gambling transaction is located in Israel, the entire activity would be viewed as a violation of the prohibition on gambling. Enforcement has focused on operators specifically targeting the Israeli market (i.e., advertising to Israelis, using the Hebrew language, etc.).8 To date, Israeli authorities have never taken enforcement action against foreign operators with no presence in Israel, and that have not specifically targeted the Israeli market.

As noted, the police have attempted to order Israeli ISPs to block access to a specific list of online gambling sites, however the blocking orders were appealed by the ISPs and struck down by the Israeli Supreme Court for lack of explicit legal authority.9 A bill that would empower police to issue orders aimed at preventing those in Israel from accessing websites offering online gambling services was presented to Israel’s legislature, but was not passed into law.

To foil financial transactions related to online gambling as well as other illegal online activities, the Bank of Israel (which regulates financial and credit institutions in Israel) has issued regulations imposing certain restrictions on financial transactions involving online gambling.10

Furthermore, in 2010 the Israeli State Comptroller published a comprehensive analysis of the illegal online gambling market in Israel. The report covered a broad spectrum of governmental agencies. The State Comptroller has urged Israeli enforcement authorities to implement the necessary measures to disrupt gambling-related transactions and block access to illegal gambling websites from within Israel.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

The primary piece of legislation regulating gambling in Israel (i.e., the prohibition on gambling) is Chapter 12 of the Penal Law. The Penal Law defines the types of activities that constitute gambling and betting, the prohibitions applicable to such activities, and the limited exemptions available under law.

Additionally, the Law for the Regularisation of Sports Betting 5727-1967 governs the activities of the ISBB.

ii The regulator

The only forms of regulated gambling in Israel are the National Lottery, regulated by the Ministry of Finance, and the ISBB (which is a self-regulating statutory corporation).

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8 Regarding the classification of foreign entities offering services in Israel see, Class Action (Tel Aviv) 30284-01-10 Simon Davoud v. Connective Group Ltd and Special Requests (Tel Aviv), 908617/07 Carlton v. The National Unit for the Investigation of Fraud.
9 Administrative Appeal (Supreme Court) 3782/12 The Commander of the Tel Aviv-Jaffa District Israel Police Israel v. The Israel Internet Association.
10 Bank of Israel, Supervision of Banks Division, Conduct of Banking Business Procedure No. 411.
iii Remote and land-based gambling

Israeli law does not separately regulate remote and terrestrial gambling. In fact, the law does not specifically refer to remote gambling. The application of the Penal Law to remote gambling was the result of a judicial interpretation of the scope of the law.

iv Land-based gambling

Land-based gambling (other than the National Lottery and the national sports betting offering) is illegal under Israeli law.

v Remote gambling

With the exception of the online betting services offered by the ISBB, online gambling is illegal under Israeli law.

III THE LICENSING PROCESS

Commercial gambling is illegal in Israel, so this section is not applicable.

IV WRONGDOING

Israeli law enforcement agencies have taken action against unlawful gambling operations. The police have raided unlawful gambling houses and venues used for gambling, and have also taken action against individuals and businesses involved in unlawful online gambling. To date, direct enforcement action has focused primarily on gambling operations conducted by organised crime or from within Israel itself.

Gambling offences are considered source offences under the Prevention of Money Laundering Law 5760-2000. Therefore, unlawful gambling activity may also constitute a money laundering offence. Indeed, individuals involved in unlawful gambling activity have been indicted and convicted of money laundering offences in addition to primary convictions for unlawful gambling offences.

V TAXATION

Since commercial gambling is unlawful in Israel, and the only lawful forms of gambling are conducted by the state, the only relevant tax is the tax on gambling winnings.

The winners of prizes (including prizes from lotteries and betting organised by the ISBB) may be subject to taxation.

Prizes in excess of 50,000 shekels are subject to withholding tax at source. Tax rates are incremental for prizes between 50,000 shekels and 100,000 shekels and are set at 30 per cent for prizes above 100,000 shekels.
VI ADVERTISING AND MARKETING

Section 227 of the Penal Law specifically prohibits the advertising of illegal gambling and betting. It reads:

If a person offers, sells or distributes tickets or anything else that attests to a right to participate in any lottery or betting, or if he prints or publishes an announcement of a lottery or betting, he is liable to one year imprisonment or a fine of 150,600 shekels.

The law does not distinguish online advertising from traditional advertising, nor does it distinguish advertising for foreign gambling operations from advertising of local operations. Historically, the police have taken action against advertisers specifically targeting Israeli customers, both online and offline.

In 2017 the Ministry of Finance imposed strict limitations on the advertising of gambling activities by the National Lottery.

VII THE YEAR IN REVIEW

The most significant development over the past year has been the decision by the Ministry of Finance to revoke the permit previously granted to the National Lottery to operate a limited number of VLTs. The revocation occurred as part of the renewal of the National Lottery’s licence. The Ministry’s decision to revoke the permit was strongly opposed by Lottery concessionaires as well as by local government (which is a major recipient of Lottery revenue). The decision to revoke the permit has been judicially challenged and the matter remains pending before the High Court of Justice (as of May 2017).

In addition, the Ministry of Finance has announced that it intends to further restrict the availability of gambling in Israel by disallowing the offering of horse race wagering by the ISBB.

VIII OUTLOOK

As noted, Israel is notoriously conservative with respect to gambling. It is unlikely that the coming year will, therefore, bring any liberalisation to the market. In fact, it is more likely that the coming year will see the introduction of bills intended to further restrict the availability and proliferation of online gaming (e.g., through ISP blocking measures) and additional restrictions on the activities of the National Lottery and ISBB.
I INTRODUCTION

On 15 December 2016, the Act Promoting Implementation of Specified Integrated Resort Areas (the Act) was enacted in the Japanese Diet session with an aim to legalise gambling to be operated by private entities in Japan, which is the latest development in a long-standing debate on whether to legalise and permit casinos in designated areas of the country.

II CURRENT STATUS AS TO THE LEGALITY OF GAMBLING IN JAPAN

Under the current Japanese legislation, gambling, in general, is prohibited under Article 185 of the Penal Code, with the exception of betting on something for momentary amusement or specific events or sports permitted under special laws. These are:

- the four public sports – horse racing, bicycle racing, powerboat racing and motorcycle racing – all of which are run by local governments or government corporations;
- the public lottery; and
- Japanese Football Pools.

Licences are required to operate these forms of gambling activities, which under the current legislation, have been granted only to local governments or government-related entities.

In this context, Article 185 of the Penal Code provides that a person who gambles shall be punished by a fine or a petty fine of not more than ¥500,000, unless the item that is placed on the bet is that of momentary amusement. The term ‘gamble’ is understood as ‘an act where more than two persons bet on an outcome of a contest of chance to contend for a prize in the form of property or asset’ (Tokyo High Court, 28 November 2006).

The ‘outcome of a contest of chance’ means an outcome that is something unpredictable or out of the contestants’ control. The Old Supreme Court case of 13 November 1911 found that if the outcome of a contest depends upon an element of chance to any degree, the outcome shall fall under the ‘outcome of a contest of chance’, even if such outcome depends on certain skills of the contestants (except when the outcome is evident in advance on the basis of any gap between the contestants’ skills).

Accordingly, Japanese court precedents have found that the outcomes of games of ‘igo’ (Old Supreme Court case of 10 June 1915), mah-jong (Old Supreme Court case of 28 March 1935) and Japanese chess (shogi) (Old Supreme Court case of 21 September 1937) all fall under the category of ‘outcome of a contest of chance’.

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To ‘bet to contend for a prize in the form of property or asset’ means the winner wins and the loser loses a prize in the form of property or asset. If one of the contestants does not lose any property, that is, he or she has no risk of losing his or her property, the contestants are not contending for a prize in the form of property or asset (Old Supreme Court case of 30 April 1917 et al).

Article 186 Section 2 of the Penal Code further prescribes that a person who, for the purpose of profit, runs a place for gambling or organises a group of habitual gamblers shall be punished by imprisonment not less than three months but not more than five years. The term ‘running a place for gambling’ is understood to mean providing, as a host, a certain place for gambling that is under the host’s control (Supreme Court Case of 14 September 1950). In this context, ‘certain place for gambling’ is understood to mean that a physical location or actual gathering of the players to such location is not required (Supreme Court case of 28 February 1973).

The crime of running a place for gambling also requires running a place for gambling and ‘obtaining profit’ (Article 186, Paragraph 2) and the term ‘obtain profit’ is understood to mean having the intention of obtaining illegal financial benefit (in the form of fees, commissions or others) in consideration.

The Penal Code has a certain carve-out stating that gambling will not constitute a violation of the Penal Code, if the ‘item which is placed on bet is that of momentary amusement’. This term is understood to be something of very low value that will not unduly stimulate a person’s passion for gambling. The Supreme Court of Japan, however, has found that cash does not, regardless of its amount, fall under the definition of ‘momentary entertainment’.

Thus, gambling that is legally permitted under the current Japanese law is limited to gambling facilitated by licensed public entities, and interpretations of gaming and gambling regulations to date have been consistent with this general rule. For example, in September 2005, the Osaka District Court found the Japanese operators of a website offering gambling services regarding baseball game results guilty and sentenced them to suspended jail terms.

### III OFFSHORE GAMING SERVICES

There is no court precedent in which the operator of an offshore online gaming service provider was convicted of violating the prohibition of gambling.

However, on 1 November 2013, a deliberation concerning the legality of online gambling was conducted in the Japanese Diet and, upon such deliberation, the government presented its view concerning online gambling, which is that participating in online gambling operated outside Japan through the internet from Japan (or participating in casinos outside Japan airing live through the internet from Japan) will constitute gambling in Japan if a part of such gambling was conducted within Japan, such as participating through the internet from one’s home in Japan (i.e., the person in Japan was not physically present at the gambling house overseas).

Accordingly, in 2016 there was a case where several players located in Japan who were playing an online gambling game distributed by an offshore online gaming service provider (Smart Live Casino) through a server located outside of Japan (United Kingdom) were convicted of illegal gambling. In this case, it was reported that the relevant gambling website
had descriptions written in Japanese since September 2014 and was open from early evening to after midnight Japan time and, in addition to that, the dealer was Japanese and the users were able to talk with the dealer in Japanese.

It is considered that these factors formed the grounds for the website to be considered as providing services that were targeted to Japanese people. It should be noted, however, that this case was dealt with under the summary proceedings, which are not a formal trial at a summary court. A trial in these proceedings takes place only with an examination of documents submitted (no public trial including witness examination takes place) while parties are not present. Therefore, it is unclear whether the court would come to the same conclusion in a formal trial.

With regard to operators not located in Japan (not necessarily being the operators of online gaming services) but that have a connection to Japan, there have been two cases to date that are relevant to the issue of liability of a foreign company: the first one was against Manning in 1992, and the second was against SSP in 1996.

i Manning
Manning, a UK bookmaker, appointed a booking agent in Japan whose role was to act as a liaison, accepting and relaying bets to Manning in the UK (or otherwise outside Japan). The National Police Agency (the agency that formulates police systems and undertakes the administration of matters that form the foundation of police activities, and also conducts police operations regarding cases involving national public safety) gave an oral warning to the booking agent to the effect that even if bookmaking took place outside Japan, customers in Japan would be punished for gambling along with the booking agent for the crime of habitual gambling. The National Police Agency further warned that if the booking agent accepted any funds in Japan from customers it would commence a criminal investigation.

ii SSP
SSP was also a UK booking agent. According to a press report, SSP operated a website directed at Japanese residents whereby they could place bets via the internet, with all funds transferred through bank accounts located in the UK. The National Police Agency stated that even if the solicitation was made over the internet, the offer to accept bets made by the bookmaker via the internet to residents of Japan would be deemed to constitute an offer made in Japan. In this case, SSP had no presence in Japan, and to the best of our knowledge no action was taken against customers who placed bets with SSP.

Although the Manning and SSP cases were not tried in court, they demonstrate a certain willingness (which is quite rare) of the National Police Agency to investigate gambling activities occurring in Japan involving a foreign company or individual.

IV CURRENT STATUS OF THE LEGALISATION ON CASINOS IN JAPAN
In light of the general prohibition on gambling, official discussions on whether to legalise casinos in Japan have been taking place for some time now, dating back to 2006 when the Liberal Democratic Party (LDP) produced a report entitled ‘Japan’s Basic Policy concerning the Introduction of Casino Entertainment’. These discussions have continued since then, and in 2013, the LDP and certain other members of a cross-party group called the ‘Alliance for the Promotion of International Tourism’ (the Alliance), including as its members Shinzo Abe,
the current Japanese Prime Minister, and Taro Aso, the current Treasurer and former Prime Minister, submitted the bill to legalise casinos to the Japanese Diet, which was subsequently passed at the Japanese Diet session on 15 December 2016.

i  The Act

The Act aims to carry out a two-stage legislative process by (1) passing an act to facilitate the development of integrated resorts and (2) passing subsequent acts to actually implement integrated resorts.

Since the Act focuses only on facilitating the development of integrated resorts, it contains only 23 articles, which describe the basic policy and the process for the introduction of casinos in Japan. Thus, the passage of various subsequent series of bills will be necessary in order to actually legalise the operation of casinos in Japan. Subsection ii, infra, gives a brief explanation of the Act’s key points.

ii  The Act’s aim to legalise only land-based casinos

Article 1 of the Act provides that:

[i]n light of the fact that promoting implementation of Specified Integrated Resort Areas contributes to the development of tourism and local economies... the purpose of this act is to set out the fundamental principles, fundamental policies and other fundamental matters relating to the promotion of the implementation of Specified Integrated Resort Areas…

Article 3 of the Act further provides that:

The implementation of the Specified Integrated Resort Areas shall be promoted on the basis of achieving international competitiveness and attractive extended stay sight-seeing visits.

As indicated above, Articles 1 and 3 illustrate that the Act in its current form is only contemplating legalising casinos that people physically visit, thereby promoting tourism, and is not necessarily aiming to legalise online casinos.

In response to the passage of the Act, an official discussion has started at a cabinet meeting to establish a consolidated measure to address gambling and gaming addiction in general, which not only addresses gambling (i.e., casinos, lotteries and public sports) but also certain financial commodities (such as foreign exchange transactions), or pachinko and other gaming.

Therefore, it is possible that during the course of the discussion to address gambling and gaming addiction problems, further discussions may arise with regard to legalising online casinos through different legislation.

iii  Private entities as casino operators; foreign operators permitted

Article 2.1 of the Act expressly provides that a specified integrated resort will have ‘casino facilities (limited to those established and operated in the Specified Integrated Resort Areas by private entities…), convention facilities, recreation facilities, exhibition facilities, lodging facilities and other facilities accepted to contribute to the promotion of tourism operated by a private entity’, thereby opening the doors for private entities to become casino operators. On the other hand, the Act expressly excludes public entities from establishing and operating casino facilities.
The Act includes no provision restricting the operator to an entity incorporated in Japan; thus, it is possible that there may be foreign casino operators. In fact, Takeshi Iwaya, Secretary General of the Alliance, suggested that ‘since there should be no Japanese company that is actually operating a casino in Japan, the experience, knowledge and customer list [with respect to casino operations] of a foreign company is necessary’; therefore, foreign operators should be very much welcomed.

iv Multiple layers of the selection process

Article 2.2 of the Act provides that a specified integrated resort area should be ‘an area certified by the competent minister as an area where a Specified Integrated Resort can be established, based on the application of the local government’.

The wording in Article 2.2 indicates that there will be at least two layers of the selection process: (1) selection by the competent minister of the local government where the integrated resort would be established; and (2) selection by the local government of the operator to operate the casino.

The Act is silent as to which selection procedure will precede the other (the Act is also silent as to which ministry will be in charge, since Article 11 of the Act provides that the ‘Casino Control Committee shall be established as an external organ of the Cabinet Office’, it is widely assumed that the head of the Cabinet Office (i.e., the Prime Minister) would be the competent minister in question); however, it has been reported that the government has come to an agreement that, in principle, the selection of an operator by the local government will come first since the competent minister would not be able to select the local government where an integrated resort is to be established by the location alone, and without knowing the actual plans contained in the application of the local government. As such, an applicant operator must propose a plan that is appealing and attractive to the local government, so that the local government will prepare the application to be submitted to the competent minister adopting such plan. The local government’s application adopting the applicant operator’s plan must then be selected by the competent minister as the location that is appropriate to be designated as a specified integrated resort area.

A frequently asked question is where the first location for integrated resorts will be; however, since there will be a selection process for the locations, while the mass media speculate and try to predict, the actual location will be chosen based on numerous factors including the political conditions at the time.

V THE SELECTION CRITERIA OF A CASINO OPERATOR AND THE EFFECT ON POTENTIAL FOREIGN APPLICANTS

The Act is virtually silent regarding the selection criteria of the operators, but there are certain matters that can be surmised from the wording of the bill and the remarks made by the legislators and members of the Alliance.

The Act provides first that the specified integrated resort areas shall be promoted ‘by taking advantage of regional characteristics and the innovation and vitality of the private sector’s ability to contribute to the development of the regional economies and redistribute to the community the proceeds of the healthy casino facilities’ (Article 3), and also that ‘[t]he government shall take necessary measures so that the Specified Integrated Resort Areas will have the features central to establishing genuine internationally competitive and attractive tourist destinations while utilising regional characteristics’ (Article 6).
Additionally, Mr Iwaya has suggested that local governments should take the lead in the selection of the operators. Similarly, he stated that ‘it is important that the local government have a concrete idea of what kind of facility it wants to establish from the beginning and to select the best project/operator’.

Based on these provisions in the Act and the remarks by Mr Iwaya, it can be surmised that a foreign operator considering whether to participate in the selection process needs to prepare a proposal that is appealing to the local government, not only from a financial perspective, but also from the perspective of understanding the regional characteristics and the needs of the community.

Having to include this level of specificity in an application could be one of many cross-border difficulties that a potential foreign operator may face, since the regional characteristics and the needs of the community, especially in Japan, may be quite different from that in the operator’s own country and other regions of operations. Additionally, the needs of the community and regional characteristics in Japan are different between regions that qualify as an ‘urban-type’ integrated resort where the number of citizens and infrastructure are well established, compared to ‘suburban-type’ regions, which are tourist destinations for vacation purposes.

Further, Article 7 of the Act provides that:

\[
\text{[t]he government shall utilise the funds, management skills and technical skills of the private sector,}
\]
\[
\text{and take other necessary measures so that the implementation of the Specified Integrated Resort Areas}
\]
\[
\text{will strengthen the international competitiveness and stimulate other areas of the economy, such as by}
\]
\[
\text{improving the country’s tourism industry and increasing job opportunities.}
\]

Therefore, although there is no nationality requirement for a casino operator, a foreign operator applicant must prepare a proposal that is not only financially feasible, but that can also improve Japan’s tourism industry and increase job opportunities.

In this context, Mr Iwaya has said that ‘in Japan, it is undesirable for a ‘Gulliver’ to disembark in our country’ and that his vision of how things should work is ‘a world-class operator jointly collaborating in a project with a first-section listed Japanese company’. Further, Mr Koichi Hagiuda, Deputy Chief Cabinet Secretary, mentioned earlier this year that he believes it to be essential that the applicant will form a joint venture, and will not allow an operator to ‘cherry-pick’ certain portions of the integrated resort.

While it is extremely premature to reach any conclusions with respect to the implementation of the Act, these remarks indicate that a plan designed where a foreign operator applicant aims to operate an integrated resort independently may suffer certain disadvantages in the selection process (although it should not be totally impossible for the applicant to win the bid), and that a plan in which a foreign operator applicant collaborates with Japanese partners might be viewed more favourably in the selection process.

VI CONCLUSION

This chapter makes clear that Japan is at a very early stage of discussion regarding the legalisation of casinos, and the Act is not sufficient to permit the operation of a casino, for the law itself states that the ‘necessary legislative measures for this purpose should be taken with
the intent of doing so within one year after the enforcement of this act’ (Article 5). Therefore, various legislative measures need to take place to actually implement the establishment of integrated resorts.

While the Act provides that these measures should take place within one year, and the government currently intends to submit the subsequent implementation bills to the Diet in the summer of 2017 with the aim to pass these bills by the end of the year, it is possible that debates on how to implement the law might delay such measures, particularly because the actual details and mechanisms for implementing the law, including the measures to be taken against gambling addiction problems, would be set forth in subsequent legislation and regulations, which at the time of writing are yet to be made public.
Chapter 16

MACAO

Pedro Cortés and Óscar Alberto Madureira

I OVERVIEW

i Definitions

There are several types of gaming permitted in the Macao Special Administrative Region of the People’s Republic of China (Macao), including animal races, lotteries and sports betting. Legal gaming is essentially divided in two major types of activity:

a Lotteries, sports betting (football and basketball only) and pari-mutuel betting, which comprises bets on animal racing (horses or greyhounds) and where the total amount that was bet in one session is subsequently divided between the winners after deduction of commission and taxes in proportion to the betted amount.

b Games of chance and fortune in casinos, the results of which depend exclusively, or principally, on the luck of the player. In Macao, the operation of these games is restricted to areas classified as casinos by the law.

ii Gambling policy

The operation of gaming activities in Macao (land-based casinos, lotteries, sport betting and animal races) is subject to the prior authorisation of the government, which is granted under the form of a concession, and, in the case of land-based casinos, following an international public tender to be set by Macao.

iii State control and private enterprise

The operation of gaming activities is restricted to Macao (i.e., it is considered a forbidden activity, which may be pursued through a concession (or subconcession) granted by the government to private companies). All existing concessionaires and subconcessionaires (gaming operators) for the operation of games of chance and fortune in casinos in Macao are private companies incorporated in Macao and are subject to Macao laws and regulations.

iv Offshore gambling

Macao authorities do not actively engage in activities to stop offshore gambling operators. However, there are certain control mechanisms in place. The advertising of gaming activities (onshore or offshore) is prohibited and is subject to administrative fines.

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II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

The legal framework for lotteries and pari-mutuel betting comprises the following:

a Ordinance No. 27/86/M, dated 1 February 1986;
b Law No. 12/87/M, dated 17 August 1987 (instant lottery);
c a concession contract between Macao and the Wing Hing Lottery Company for the operation of Chinese lotteries, dated 24 August 1990 and extended to 31 December 2017 (Chinese lotteries);
d Ordinance No. 163/90/M, dated 27 August 1990 (horse racing);
e Ordinance No. 138/98/M, dated 5 June 1998 (sports lottery – football);
f Chief Executive Order No. 62/2000, dated 27 April 2000 (sports lottery – basketball); and
g a concession contract between Macao and Companhia de Corridas de Galgos Macau (Yat Yuen) for the exclusive operation of greyhound races in Macao. The concession contract has been consecutively renewed by the Macao government and its current term was extended in December 2016 to 20 July 2018.

The following legislation is applicable to games of chance and fortune in casinos:

a Article 8 of Law No. 4/89/M (the Advertisement Law) prohibits the advertising and publicising of games of chance and fortune.
b Article 1171 of the Macao Civil Code establishes that gaming and betting are sources of civil obligations, as opposed to the previous regime where they were only natural obligations (valid and enforceable in Macao courts) if certain legal requirements are fulfilled (e.g., the activities must occur in authorised gaming areas and must follow approved gaming formats and specific rules). If the legal requirements are not fulfilled, the gaming and betting will be considered illegal, and gaming debts will not be enforceable.
c Law No. 16/2001 (the Macao Gaming Law) sets the general framework for the operation of games of fortune or chance in (land-based) casinos.
d Administrative Regulation No. 26/2001 provides the terms and conditions of the public tender organised to grant concessions to operate games of fortune or chance in land-based casinos.
e Administrative Regulation No. 6/2002 establishes the rules for the licensing of gaming promoters (junkets). This regulation was amended by Administrative Regulation No. 27/2009, dated 10 August 2009, which established a new set of requirements for the payment of commission or another type of remuneration owed to gaming promoters;
f Administrative Regulation No. 34/2003 establishes the Gaming Inspection and Coordination Bureau (DICJ), which is the regulatory authority responsible for monitoring and supervising gambling activities in Macao.
g Law No. 5/2004 (the Gaming Credit Law) establishes the legal framework for the issuance of credit facilities for gaming in Macao casinos.
h Law No. 10/2012 establishes the legal framework for entering, working in and gambling in Macao casinos and gaming areas. It also establishes the procedure for exclusion and self-exclusion from Macao casinos and gaming areas.
i Administrative Regulation No. 26/2012 sets the technical standards of slot machines and other related gaming equipment, as well as the legal framework for the registration of gaming machines suppliers.
DICJ Guidelines – occasionally, the DICJ releases instructions and guidelines on certain specific issues related to casino operations. The DICJ has released guidelines on topics such as anti-money laundering, responsible gaming, gaming promoters’ commission cap and accounting requirements, technical specifications of gaming machines and casino internal risk control measures. These instructions and guidelines are mandatory and applicable to all gaming operators in Macao and, despite the fact that they do not carry the same weight as applicable laws, penalties may be enforced if they are infringed.

Concession contracts – casino gaming concession contracts detail the rights and obligations of the gaming operators in accordance with the applicable legal framework, and the existing contracts (three concessions and three subconcessions) establish the general and specific obligations that gaming operators must perform. One of the most relevant clauses established in the contracts is that all legal disputes arising from the contracts shall be exclusively governed and resolved under Macao law and in Macao courts – the Macao legal system cannot be bypassed by the laws and courts of other jurisdictions.

The regulator

In Macao, the official entity with powers to provide guidance and assistance to the Chief Executive on the definition and execution of the economic policies applicable to the operation of casino games or other ways of gaming, such as pari-mutuel betting, is the DICJ.

As established under the law defining and setting the DICJ legal framework (Administrative Regulation No. 34/2003), its main responsibilities include:

- examining, supervising and monitoring the activities of gaming operators, especially regarding their compliance with legal, statutory and contractual obligations;
- examining, supervising and monitoring the eligibility and financial capability of the gaming operators or any other parties defined under applicable laws;
- collaborating with local government in the process of selecting locations and issuing authorisations and classifications of casino games or any other types of gaming-related operations;
- authorising and certifying all the gaming equipment and utensils used by gaming operators under each concession contract;
- issuing licences and guidelines for casino gaming promoters;
- inspecting, supervising and monitoring the activities of the gaming promoters, especially regarding their compliance with the legal, statutory and contractual obligations, and other responsibilities stipulated under applicable legislation;
- inspecting, supervising and monitoring the suitability of the gaming promoters (individuals or corporations), as well as their partners and principal employees and collaborators;
- investigating and sanctioning any administrative breaches by any gaming operator, gaming promoter or any other relevant entity or individual, in accordance with the applicable legislation or guidelines;
- ensuring that there is a good working relationship between the major gaming industry stakeholders (i.e., gaming operators, the government and the public), making the best efforts to ensure that they are all in compliance with the existing regulations that protect the interests of Macao; and
executing any other guidelines and duties of a similar nature to those outlined above according to the Chief Executive’s orders or legal provisions.

**iii Remote and land-based gambling**

Online gaming is not allowed to be operated in Macao. Gaming in casinos is restricted to land-based venues.

**iv Land-based gambling**

The operation of games of chance and fortune is restricted to land-based casinos and slot-machine parlours. Betting and lottery shops are operated outside casino premises, and greyhound races are installed in appropriate venues.

**v Remote gambling**

The existing gaming concessions and subconcessions do not grant the gaming operators the right to operate any form of online game as they are exclusively granted for the operation of games of fortune in land-based casinos. Furthermore, despite the limitation imposed by the concession (and subconcession) contracts, Law No. 16/2001 also establishes under Article 4 that online gaming licences (which are also granted by means of a concession contract to be entered into between the government and a selected concessionaire) are autonomous and separated from of the concessions for the operation of games of chance and fortune in land-based casinos. Until now, this possibility had not been regulated and there is no government authorisation to operate online games.

Despite the restrictions mentioned above with regard to operating online games in Macao, residents are permitted to register themselves on online gaming platforms or websites located overseas. There are no current plans to implement measures to block residents’ access to such platforms or websites.

**vi Ancillary matters**

Manufacturers and suppliers of gaming machines and all related equipment doing business in Macao and to be operated in Macao casinos must obtain proper authorisation from the DICJ, which will conduct suitability and technical assessments under the requirements established by Administrative Regulation No. 26/2012.

The legal framework setting the technical standards and supply requirements of gaming machines and related equipment to be installed in Macao casinos (or other authorised gaming venues) is established under Administrative Regulation No. 26/2012. Under this regulation, the gaming machine suppliers and manufacturers, and their shareholders and directors, are also subject to a suitability assessment to be carried out by the DICJ. Licensed manufacturers from specific major gaming jurisdictions (Nevada, New Jersey, Mississippi, Australia, New Zealand, United Kingdom and Singapore) may submit a formal request to waive such procedure.

There are no laws and regulations establishing a legal framework for any forms of remote supply, technology support or machines.
III  THE LICENSING PROCESS

i  Application and renewal

According to the current legal framework, the candidates to the public tender for granting a gaming concession must be companies incorporated in Macao with a permanent Macao resident as managing director, who must own at least 10 per cent of the share capital of the candidate company.

As there are already three concessionaires and three subconcessionaires, unless Law 16/2001 is amended, it is currently not possible to open any public tender for casino gaming concessions, which means that it is not possible to apply for any sort of gaming licence concession or subconcession in Macao. That said, the requirements outlined below refer to the only international public tender opened in 2001 by the Macao government for the issuance of existing gaming concessions.

According to the law, the candidates to the public tender for granting a gaming concession must be companies incorporated in Macao with a permanent Macao resident as managing director, who must own at least 10 per cent of the share capital of the candidate company.

In addition, the main shareholders of the tender candidates (holding 5 per cent of more of the share capital), their directors and main employees (holding relevant positions in operations) must be subject to an official procedure to verify their suitability for the role.

Another critical aspect is the demonstration of the financial capacity of the tender candidates. This must be established by proper guarantees of sufficient financial coverage of the financial investment by tender candidates, which may be provided either by financial institutions or by the candidate’s main shareholders. This financial capacity must be maintained throughout the period of the gaming concession and, therefore, is subject to the continuous control and supervision of the DICJ.

Suitability requirements are important restrictions for candidates placing a bid under a public tender for a gaming concession, but they are not limited to the tender stage – successful candidates must continue to meet the requirements for the duration of the concession (20 years). Articles 14 and 15 of Law No. 16/2001 state that experience, reputability and suitability are mandatory requirements for all concession holders, as well as their financial capacity.

Likewise, all directors and shareholders holding at least 5 per cent of the gaming operator’s share capital, as well as its key employees, will be continuously subject to suitability monitoring by the DICJ. Besides, the scope of activity of the gaming operators shall be restricted to the operation of games of chance and fortune in casinos. Gaming operators are, therefore, prevented from carrying out other types of activities.

Moreover, according to Law No. 16/2001, gaming operators are not allowed to operate with capital that is below 200 million patacas.

Competitive restraints are also placed upon gaming operators, which, among other things, prohibit anticompetitive agreements and practices among the gaming operators or companies from the same groups, as well as the abuse of dominant position and the control of shareholdings. As a consequence of the latter, gaming operators and the shareholders holding at least 5 per cent of the corporate capital cannot, directly or indirectly, hold 5 per cent or more of the capital of other operators.

Law No. 16/2001 also defines Macao as a ‘continuous gaming zone’ jurisdiction, which means that its casinos are supposed to operate 365 days a year, 24 hours a day and suspension of activity can only occur in very exceptional cases that require prior government approval. The operation of games of chance and fortune should only take place in an authorised land-based
casino, despite the possibility of such activity being carried out on-board ships or aircraft duly registered in Macao after obtaining necessary government approval. Another exception would be having government approval to operate gaming activities at the customs-cleared area of Macao International Airport, though this has not happened yet.

Unless the current legal framework is amended by the relevant authorities, the granting of casino gaming licences (concessions and subconcessions) is subject to an international public tender process to be put forward by the government. The public tender for casino gaming concessions is mainly regulated by Administrative Regulation No. 26/2001, as amended. This Regulation held particular significance when it was enforced because it stated the casino gaming concessions’ tender rules and the requirements of the tender bids of the 2001–2002 tender process. The Regulation is still in force and the rules established by it are applicable to the new international public tender process.

With regard to public tenders, Regulation No. 26/2001 establishes the basic rules for granting a casino gaming concession, creating certain legal requirements regarding the suitability and financial capacity of the candidates, as well as the legal procedure to check and evaluate the technical quality and financial soundness of the gaming investments and development projects submitted. Further, the regulation has also established that the concessionaires would have to pay a premium in exchange for the granting of each casino gaming concession, which would have to take in account the size of each gaming operation and investment.

Eligible candidates must be Macao-incorporated companies with a minimum capital share of 200 million patacas and with Macao permanent residents as managing directors.

At the time of writing, there is no information about if and when a new tender may occur but it is known that current concessions and subconcessions are going to expire in 2020 (SJM and MGM) and 2022 (Galaxy, Venetian Wynn and Melco Resorts).

In terms of concession time limits, Article 13 of Law No. 16/2001 states that the term of a gaming concession shall be set under the concession contract entered into between each concessionaire (and subconcessionaire) and the government, provided that the term does not exceed 20 years.

In cases like SJM (and MGM) in which the gaming concession and subconcession has been granted for a shorter period of time –18 years only – the government may, at any time and up to six months’ prior to the term of the concession and subconcession, allow one or more extensions, provided that the extensions do not exceed the 20-year period.

However, concession and subconcession contracts may, in exceptional circumstances, be extended for an additional period of five years upon justifiable grounds and duly substantiated by the Chief Executive. This extension may also result in amendments to other clauses in the concession and subconcession contract.

The termination of the gaming concession and subconcession may occur by way of government initiative in cases of severe breach of concession agreement provisions and in cases of severe infringement of any other legal provisions governing the underlying activity, such as applicable rules, regulations and DICJ Guidelines or for reasons of public interest.

ii Sanctions for non-compliance

Article 29 of the Macao Basic Law and Article 1 of the Macao Criminal Code establish the ‘principle of legality’, which means that in Macao every criminal offence must be stated in legislation. Gaming-related crimes are not an exception and the legislation setting out the criminal offences strictly related to or arising from gaming activities is set out below.
a Law No. 8/96/M (the Illegal Gambling Law) sets the punishments for a significant number of gaming-related activities.

b Law No. 9/96/M (the Law on Criminal Offences in Animal Racing) sets the punishments for activities related to animal race betting.

c Law No. 6/97/M (the Law on Organised Crime), partially revoked, defines what shall be considered as criminal association and sets the punishments applicable to activities carried out by individuals who are part of criminal organisations.

d Law No. 2/2006 (the Anti-money Laundering Law) sets the legal framework and the punishments applicable to individuals involved with financial operations related with money laundering crimes.

e Law No. 3/2006 (the Anti-terrorism Financing Law) sets the legal framework and the punishments for individuals involved in financial operations related to the financing of terrorism.

f Administrative Regulation No. 7/200 sets the Preventive Measures for the Crimes of Money Laundering and Financing of Terrorism in Macao.

g Law No. 6/2016, on the enforcement of freezing of assets, sets the legal framework to enforce UN Security Council sanctions involving the freezing of assets and funds of identified terrorists.

h Guideline No. 1/2016 – the DICJ instruction on anti-money laundering and combating of the financing of terrorism for the gaming sector – sets the procedures to be applied under casino-related financial operations and the procedures to be followed by casino cages and Macao licensed gaming promoters.

IV WRONGDOING

Over the years, continuous efforts have been made to combat money laundering in Macao. Aside from the main anti-money laundering framework, which consists of Law No. 2/2006 (the Anti-Money Laundering Law) and Administrative Regulation No. 7/2006 (preventive measures for the crimes of money laundering and financing of terrorism), since 2015, the DICJ has set higher standards for anti-money laundering compliance by introducing new accounting requirements to be observed by gaming promoters and new guidelines (Guidelines No. 1/2016) applicable to gaming operators and promoters, and introducing a risk-based approach and enhance customer due diligence procedures, requiring, among others, the identification of patrons and reporting of suspicious and high-value gaming-related transactions – equal to or greater than 500,000 patacas.

It is widely known that money laundering is a very serious concern worldwide and based on the recent approach and declaration of Macao officials it has became an important objective to local authorities. Therefore, with the enactment of new guidelines and legislation intended to be implemented by gaming operators and gaming promoters, an important step has been taken for stricter compliance with the recommendations made by the Asia/Pacific Group on Money Laundering in the last review of Macao legislation, which occurred in November 2016.

Virtual currencies cannot be used for gaming activities in Macao.
V TAXATION

A tax obligations and compulsory levies regime is established under the applicable laws (for gaming operators and promoters) and under the concession and subconcession contracts.

Article 27 of Law No. 16/2001 provides that gaming operators are required to pay the government a special gaming tax corresponding to 35 per cent of the gross gaming revenue, which shall be paid on a monthly basis up to the 10th day of each month.

In addition to the special gaming tax, gaming operators are required to pay the government an additional 1.6 per cent of their gross gaming revenue to the Macao Foundation, a local public foundation that promotes cultural, scientific, social, economic and educational development of the region. Gaming operators are also required to pay an amount equivalent to 2.4 per cent of their gross gaming revenue for urban development, tourism promotion and social security purposes. This percentage is mandatory for all gaming operators, with the exception of SJM, which also pays the same 1.6 per cent to the Macao Foundation, but only 1.4 per cent goes to urban development, tourism promotion and social security purposes because of other obligations entered under the concession contract.

Moreover, pursuant to Article 20 of Law No. 16/2001, concession and subconcession agreements provide for the obligation of paying the government an annual premium for the concession and subconcession that it is divided into two different amounts: a fixed amount of 30 million patacas for all gaming operators; and a flexible amount that varies in accordance with the number of table games and electronic gaming machines operated by each gaming operator.

Gaming operators are therefore required to pay 300,000 patacas annually for each VIP table in addition to the fixed amount of 30 million patacas referred to above, as well as 150,000 patacas for each table game allocated on the mass market floors and 1,000 patacas for each gaming machine installed on the relevant gaming floors (including slot-machine parlours separately operated by some gaming operators).

Theoretically, the gaming operators would be also subject to the payment of corporate taxes up to a maximum of 12 per cent of their annual profits (complementary tax). However, because of the considerable amount that has been paid to Macao as special gaming tax and additional contributions to entities such as the Macao Foundation, gaming operators have been gradually released from paying corporate tax on their profits.

Gaming promoters are also subject to pay a special tax that is calculated based on the commission paid to them by the gaming operators. This tax corresponds to 5 per cent of the amount received as commission or other compensation paid to gaming promoters by the gaming operators.

VI ADVERTISING AND MARKETING

Under Law No. 16/2001 gaming concessionaires must carry out games of chance and fortune in casinos.

Thus, concession (and subconcession) holders can only provide the services described by Law No. 16/2001 and stated in the concession agreement. Therefore, table games and game machines (e.g., slot machines) can only be offered inside land-based casinos and other authorised venues (such as slot-machine parlours duly authorised by the DICJ), whereas horse racing, greyhound racing and sports betting are offered outside these authorised venues.

In fact, under the provisions of Macao laws and regulations, sports betting, pari-mutuel betting and animal racing do not qualify as games of chance and fortune. According to
Law No. 16/2001 it is not legal to offer pari-mutuel betting or operations offered to the public (lotteries) in a casino environment (i.e., in duly authorised gaming areas, although this prohibition does not extend to the building where the casino is installed), even though the same piece of legislation provides that lotteries may be exploited by casinos upon the authorisation of the Secretary for Economy and Finance, provided that the relevant concession contract has been amended accordingly.

Essentially, gaming operators are able to offer, without exception, all table games referred to under Law No. 20/2001 as well as other games duly authorised and regulated by the government, and several types of gaming machine, which shall be also subject to the government’s prior approval. The type of games not covered by casino concessions and subconcessions are: pari-mutuel betting (horse racing and greyhound racing); operations offered to the public (sports betting and lotteries); and interactive casino games (i.e., online games), which are not regulated in Macao.

With respect to gaming promotion and advertising, Macao authorities have a very conservative approach. Under the Advertisement Law (enacted in 1989), games of chance and fortune cannot be advertised if the game is the main focus of the advertisement. This would, in principle, allow gaming operators to advertise providing that this is not the case. However, in practice, local authorities strongly discourage all gaming operators and promoters from launching advertising and promotional campaigns outside authorised gaming areas. For example, it would be allowed within the integrated resort area where the casino is located, but not elsewhere.

This appears to be in conflict with some of the concessions and subconcessions entered into between gaming operators and the government, which require operators to conduct advertising and marketing campaigns both in Macao and abroad.

VII THE YEAR IN REVIEW

Pursuant to the official ban on the use of mobile phones at betting tables, the government plans to introduce tougher penalties for violations of legislation in the gaming industry in the near future. The DICJ announced that it will ‘complete supplementary laws for violations and related penalties that weren’t previously included, amend outdated rules, and bring in new regulations’.

The government is also trying to pass some amendments that, despite not being exclusively related to gaming, will have a significant impact on the Macao gaming industry. For example, in early 2016, the government announced the possibility of imposing a total smoking ban in local casinos. This would make Macao the only major gaming jurisdiction in the world where smoking in casinos would be completely forbidden. The proposal includes casino premises and the existing airport-style smoking lounges. However, Macao gaming operators and some members of the legislative assembly believe that this could strongly harm the gaming industry. According to the latest version of the proposed amendment, the government will allow the casinos to install smoking lounges on their premises but smoking outside these lounges will be strictly forbidden.
VIII OUTLOOK

At the time of writing, there are no records of any legislative changes to be implemented by the relevant authorities. Nevertheless, the expiry of the term of the concession and subconcession contracts is approaching and therefore it is expected that some changes to the existing legal framework may occur in the medium term.

The following are possible outcomes:

a. Very conservative approach: Law No. 16/2001 is not changed and a new international public tender opens in 2020 for the remaining concession (of SJM).

b. Conservative approach: the SJM concession (and MGM subconcession) is extended for an additional two years so that expiry occurs in the same year. The government extends all concessions and subconcessions for a sole period of five years.

c. Mildly conservative approach: conversion of the three subconcessions into concessions, as effectively there are no material differences between the terms of these gaming contracts. If this occurs, Law No. 16/2001 will have to be amended accordingly.

d. Liberal approach: Macao gaming law changes to a licensing regime.

Other legislation related to the operation of gaming promotional activity may also be enacted, continuing the authorities’ efforts to set international operating standards for such activity and for entities performing such business.

Additionally, it is also expected that legislation setting up a list of penalties to be applicable in case of breach of applicable laws and concession contracts, as well as a more detailed legal framework on matters involving corporate social responsibility or the use of gaming chips, may be also enacted in Macao after the granting of the new gaming concessions.
Chapter 17

MALTA

Andrew J Zammit, Martina Borg Stevens, Nicole Attard and Yasmine Aquilina

I OVERVIEW

i Definitions

Maltese law permits both online and land-based gambling, and the following forms of gambling are catered for: amusement games, casino gaming, commercial tombola games, commercial communication games, gaming devices, remote gaming, sports betting, the National Lottery and other lotteries, and non-profit games. These types of gambling fall under three categories – gaming, betting and lotteries.

Betting

The Lotteries and Other Games Act (LOGA) defines betting as the playing of a bet; a bet is defined as a game in which the player is required to forecast any result or outcome in respect of one event or a set of events. Betting may be divided into remote and land-based categories.

Land-based betting may be classified under one of two broad categories, namely:

a. racecourse betting, which is a bet on a horse or dog race conducted on a racecourse; or
b. sports betting, which is a bet on a sport event or a set of sport events.

Remote betting is defined as ‘the negotiation or receiving of any bet by a means of distance communication’. Fixed-odds betting, pool betting and spread betting would fall under this definition.

Lotteries

The National Lottery is Malta’s main lottery. The licence for the operation of all the National Lottery games is exclusive and was awarded to Maltco Lotteries Limited in 2012 for 10 years. By way of general information, the games that form part of the National Lottery are Super 5, Lotto, Scratchers Instant Tickets, U*Bet, Quick Keno and Bingo 75.

A remote gaming licensee may also provide online lotteries.

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1 Andrew J Zammit is a managing partner, Martina Borg Stevens and Nicole Attard are associates, and Yasmine Aquilina is a trainee, at GVZH Advocates.
2 Chapter 438 of the Laws of Malta.
3 Remote Gaming Regulations (RGR’s) Article 2.
**Gaming**

The Remote Gaming Regulations (RGRs)\(^4\) define ‘gaming’ as an agreement, scheme or arrangement between two or more parties to play a game of chance together in which a prize or reward consisting of money or some other item of value, worth, advantage or opportunity is offered or can be won, and becomes the property of the winner under defined conditions established for the purpose of the game. In this regard, the game’s result is totally accidental and therefore the player’s skill is not required.

On the other hand, a game of chance and skill is a game for money or prizes with a monetary value, the results of which are not totally accidental but depend, to a certain extent, on the skill of the participant. For example, poker would generally be deemed to be a game of chance and skill.

‘Remote gaming’ is defined in the RGRs as ‘any form of gaming by means of distance communications’. The same regulations specify that ‘means of distance communication’ includes:

> …any means which may be used for the communication, transmission, conveyance and receipt of information (including information in the form of data, text, images, sound or speech) or for the conclusion of a contract between two or more persons without the simultaneous physical presence of those persons.

The Skill Games Regulations (SGRs)\(^5\) define a ‘skill game’ as ‘a game for money or money’s worth and through means of distance communication, the result of which is determined by the use of skill alone or predominantly by the use of skill and is operated as an economic activity, but does not include a sport event’.\(^6\) Such skill games are exempt from the licensing requirement. Additionally, a ‘controlled skill game’ means a skill game that is subject to a licensing requirement in terms of the SGRs.

From the above analysis, ‘fantasy league’ (which offers a prize of money or money’s worth) may be classified as a game of chance and skill. According to a ruling\(^7\) given by the Malta Gaming Authority (MGA), ‘fantasy sports’ are defined as controlled skill games and would require a licence in terms of the SGRs.

Skill competitions and competitive sports for prizes would fall under pure skill game as there is no monetary prize to be won. Furthermore, gaming devices, which offer the possibility of winning a prize, are primarily regulated under the Gaming Device Regulations (GDRs).

Bingo and tombola halls are also regulated under Maltese law.

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\(^{4}\) Chapter 438.04 of the Laws of Malta.

\(^{5}\) Chapter 438.11 of the Laws of Malta.

\(^{6}\) SGRs Article 2.

\(^{7}\) Ruling in terms of Regulation 6 of the SGRs (27 January 2017) – Ruling Reference: SGR/001.
A few years later Malta sought to regulate gambling further by enacting the Kursaal Ordinance, which regulated casino activity. Said Ordinance was subsequently superseded by the Gaming Act, which sought to provide further controls and reinforcement of the regulatory framework for casinos.

In 2001, the Maltese legislator enacted the LOGA, which created and established the regulatory body – the MGA. The LOGA incorporated all gambling legislation into one single instrument, with the exception of casino gambling, which continued to be regulated by the Gaming Authority.

Remote gaming has been regulated in Malta since the year 2000, through amendments to the PLO. These regulations remained effective until the RGRs were promulgated in 2004. The new regulatory regime became both game-neutral and technology-neutral (applicable to all types of technologies, namely the internet, mobile and other types of remote gaming).

Today, Malta has established itself as a regulatory hub having issued hundreds of licences to various betting companies, making it one of the leading and most highly regarded European jurisdictions for the regulation of remote gaming. In fact, the European Court of Justice has referred to Malta’s gaming law framework as being sophisticated.

iii State control and private enterprise
Gambling operations are not owned or operated by the state; however, the National Lottery may be conducted under ministerial authority, or by any person in whose favour a concession is granted.

iv Territorial issues
Gambling is regulated and licensed nationally.

v Offshore gambling
The LOGA provides that a game of chance, or a game of chance and skill, cannot be operated, promoted or sold by any person in Malta unless it is authorised to be operated under any law in Malta.

An exception to this rule is if the game is authorised to operate under any law enacted by a Member State of the EU, by a Member State of the European Economic Area (EEA) or by any jurisdiction or territory approved by the MGA. Therefore, Malta employs a ‘recognition’ regime in terms of which a gaming licence issued by another EEA Member State is permitted to offer its games in Malta, and also to enter into business-to-business (B2B) agreements with Malta-based licensees.

Malta also recognises a licence issued in respect of a remote gaming operator by a jurisdiction that falls outside of the EEA zone, but which is approved by the MGA.

The MGA requires the terms and conditions of the licensee to state that it is the player’s responsibility to establish whether their gaming activity is legal.

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8 Chapter 400 of the Laws of Malta.
10 Case C-347/09 (Preliminary Ruling from the Bezirksgericht Linz) [2011] 98.
11 Section 2.7.1.5 of the MGA’s system documentation form, which must be submitted at the licensing stage.
II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

The LOGA caters for all types of gambling besides land-based casinos, which are regulated by the Gaming Act. The LOGA provides for the following:

a a general prohibition of games as outlined in Section i.v, supra;

b definitions as to what constitutes a ‘game’, a ‘game of chance’ and a ‘game of chance and skill’;\(^\text{12}\)

c the structure of the MGA;

d racecourses and racing clubs, and the structure and functions of racecourse control boards;

e the way the National Lottery and other games such as non-profit games and commercial tombola games are licensed; and

f offences and penalties incurred for violating the provisions of the Act or regulations made thereunder.

The RGRs regulate remote gambling in Malta, whereby the main issues that are covered are the following:

a the way online operators are licensed;

b the criteria that a gaming system is required to have in order to be approved by the MGA; and

c the requirements with respect to, among other matters, player registration, handling of funds, payout of winnings to players and advertising.

ii The regulator

The MGA is the primary regulatory body that is responsible for the governance of all gaming activities in Malta – both land-based and remote. Its main functions are to issue licences and to monitor the conduct of operators. Moreover, the MGA is also responsible for preventing, detecting and combatting criminal activity in gaming activities, ensuring that games are operated and advertised fairly and responsibly.

iii Remote and land-based gambling

As mentioned in subsection ii, supra, Maltese law regulates both remote and land-based gambling.

iv Land-based gambling

Casino

As a general rule, there is no limitation with regard to the number of licences that can be issued; however a concession must be obtained from the Minister of Finance. There are currently four licensed casinos operating in Malta: Dragonara Casino, Oracle Casino, The Casino at Portomaso and Casino Malta.

\(^\text{12}\) See Section I, supra, for definitions.
In April 2015, the MGA launched the Cruise Casino Regulations, wherein cruise liners are now able to operate their on-board casinos solely for registered passengers while berthing in Malta or Gozo overnight and within territorial waters.\textsuperscript{13}

**Lottery ticket sale venues**

No person may sell games forming part of the National Lottery without a valid permit issued by the MGA. As of January 2016, there are around 230 Maltco Lotteries points of sale around the Maltese islands.

**Betting shops**

In order for gaming parlours (betting shops) to be issued with a licence (which is valid for 12 months) they have to be at least 75 metres away from the following premises:

\begin{itemize}
  \item[a] educational establishments (in 2015, language schools were removed from the list of establishments);\textsuperscript{14}
  \item[b] senior citizens care facilities;
  \item[c] places of worship;
  \item[d] general venues or infrastructure covering M.U.S.E.U.M, SATU, SEDQA, APPOGG, Caritas, and sports and training facilities; and
  \item[e] playgrounds and playing fields.\textsuperscript{15}
\end{itemize}

**Remote gaming**

No person shall operate, promote, sell or abet remote gaming in or from Malta unless such person is in possession of a valid licence issued by the MGA, or is in possession of an equivalent authorisation by the government or competent authority of an EEA Member State, or any other jurisdiction approved by the MGA.

The RGRs establish four classes of licence as follows:

\begin{itemize}
  \item[a] Class 1 licence (examples include casino-type games and online lotteries) whereby operators manage their own risk on repetitive games. It is also possible to have a Class 1 on 4 licence whereby the Class 1 licensee operates its games on the software and in certain cases through the equipment of a Class 4 licensee;
  \item[b] Class 2 (examples include fixed-odds betting), whereby operators manage their own risk on events based on a matchbook. It is possible to have a Class 2 on 4 licence whereby the Class 2 licensee operates its games on the software and in certain cases through the equipment of a Class 4 licensee;
  \item[c] Class 3 – a licence to promote or abet remote gaming in or from Malta (examples of a Class 3 licence include poker networks, peer-to-peer (P2P) gaming and game portals). It is also possible to have a Class 3 on 4 licence whereby the Class 3 licensee operates its games on the software and in certain cases through the equipment of a Class 4 licensee; and
\end{itemize}

\textsuperscript{13} Chapter 400.03 of the Laws of Malta.
\textsuperscript{15} MGA Locations for Gaming Parlours Directive 2011.
Class 4 – a licence to host and manage remote gaming operators, excluding the licensee itself, whereby software vendors provide management and hosting facilities on their platform. In essence this is a B2B gaming licence.

A controlled skill game shall not be organised in or provided from Malta unless it is licensed according to the terms of the SGRs, is in possession of an equivalent authorisation by the government or competent authority of an EEA Member State, or is exempt from the requirement of a licence under the LOGA or any other law.

The SGRs establish a ‘controlled skill game service licence’ that is available for operators transacting directly with players (B2C) and a ‘controlled skill game supply licence’ that is available for B2B service providers offering the gaming platform to controlled skill game service licensees. Licensees are to provide all the geographic locations and addresses of the premises where the technical infrastructure hosting gaming systems, control systems and regulatory data will be located.

In the event that a licensee has the intention of maintaining systems in a cloud environment, said applicant must provide the MGA with a complete list of all geographic locations and addresses of premises where the infrastructure may or will be used.

When assessing a proposal or application, the MGA will take into account the geographic location of the critical components. A component of an operator’s system is considered to be ‘critical’ when an increased regulatory or business integrity, safety, privacy and compliance risk is present.

Furthermore, the MGA requires that the infrastructure must be located in Malta, any EEA Member State or in any other third-country jurisdiction wherein the MGA is satisfied that the same regulatory principles can be applied.

vi Ancillary matters

The licensing or sale of remote gaming software does not create the requirement for a Maltese licence unless the vendor is managing the software for the gaming operator.

With respect to gaming devices (which offer the possibility of winning a prize), the relevant licence is required in order to manufacture, assemble, service, supply, use or operate such device. In this respect:

a a Class 1 licence is required for the purposes of manufacture, assembly and repair of gaming devices;
b a Class 2 licence is necessary for the purposes of supply, lease, sale or transfer of gaming devices;
c a Class 3 licence is required for a person to make gaming devices available for use, or for the host or operation of gaming devices; and
d a Class 4 licence is required for a person to administer a central system for gaming devices.

It should be noted that the above-mentioned classes pertain to land-based operations and should not be confused with the classes pertaining to remote-gaming operations.

Personal licence

A licence must be issued to any person who intends to work as a receptionist, dealer, chef de table, cashier, supervisor, watcher, machine engineer, manager or any person who, in view of the MGA, is involved in the gaming operations of a casino.
Prior consent must be obtained from the MGA with respect to any person who intends to work within key roles with remote gaming operators.

III  THE LICENSING PROCESS

i  Application and renewal

Remote gaming

An applicant must be a body corporate established in Malta under the terms of the Companies Act, and as a general rule, know-your-customer (KYC) information must be submitted as part of its application process.

For individuals involved with the applicant entity, particularly shareholders, directors, and key employees, information would generally take the form of personal background and financial information; criminal record information; information relating to pecuniary, equity and other interests in the applicant entity; and interests in any other commercial activity.

This information is generally substantiated by the submission of birth certificates, passport copies, passport photos, police conduct certificates, and bank and professional references. Where a body corporate is a shareholder of the applicant, the MGA generally also requires the memorandum and articles of incorporation, a certificate of good standing, and bank and professional references in relation thereto.

The MGA conducts probity investigations with other national and international regulatory bodies and law enforcement agencies. An applicant must also submit evidence of possessing the financial means and expertise available to carry out the operations in respect of which his or her application was submitted, and to fulfil all obligations under the law. As a matter of the MGA’s policy, a business plan should also be provided by the applicant.

The various laws also provide that the licensee may be obliged to obtain (and maintain) a bank guarantee in favour of the MGA, which would generally be required to secure players’ funds and winnings, payment of fees, taxes and any administrative penalties or other sums that may be due and payable by the licensee. This is done in order to protect player funds, whereby the mentioned bank guarantee shall be in such amount and for such period of time as determined by the MGA, and if the licensee fails to comply with such order within three working days, the MGA has the right to suspend the licence.\(^{16}\)

Depending upon the type of licence required, other information will be requested by the MGA such as specific details in relation to the gaming systems and control systems of the applicant. Examples of such information would include details relating to the games, the manufacturer of such games, certification by third parties, rules of the game, terms, conditions procedures that players must abide by and the system architecture.

If the audit is successful, the MGA will issue a licence with a validity period of five years, which is renewable after the licensee is submitted to further audits. In granting a licence, the MGA always retains the discretion to impose such conditions as it deems appropriate, and may from time to time after the granting of the licence, vary or revoke any condition so imposed, or impose new conditions.

The application fee for a remote gaming licence is €2,300. A further system review fee of €2,500 must be paid in advance for the execution by the MGA’s approved third-party

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\(^{16}\) SL 438.04, Article 40(4).
certifiers, and a compliance review fee of €3,500 must be paid for the execution by the MGA’s approved third-party certifiers and auditors. Moreover, an annual licence fee of €8,500 is due. The licence renewal application fee is €1,500.

**Land-based**

As a general rule, there is no limitation with regard to the number of licences that can be issued in relation to a particular product. However, the National Lottery, as mentioned in Section I.iii, *supra*, can only be operated by one person at any given time, and is granted through a competitive process.

The licensing procedure is (with the exception of the National Lottery), in principle, similar to that described in Section II.v, *supra* in relation to remote gaming, and requires the submission of KYC documentation, financing and information regarding the control system and gaming system of the activities being licensed.

Licences may, in most circumstances, be renewed. On the other hand, the licence to operate the National Lottery is only renewable for a limited period and given the subsistence of specific circumstances.

In relation to the duration of licences granted, licences under the GDRs are granted for one year; a casino licence remains in force for up to 10 years; the National Lottery licence is issued for such term as the MGA, after consultation with the Minister of Finance, may specify in the licence; and licences for tombola halls can be issued for six months or one year, depending on the type of licence required.

Where the licensing process entails the licensing of a premises, information such as a description of the nature, location and dimensions of the premises, architectural plans, relevant diagrams and development permits issued by the Malta Environment Planning Authority in respect of the premises to be licensed, may be required.

With respect to casino licence fees, the law stipulates that the MGA determines the said fee based on the costs incurred by the casino in carrying out its functions under the licence. Changes in the amount cannot be implemented before a 12-month interval has passed.

The fees of gaming devices are as follows:

- Class 1 and Class 2 – an application fee of €2,000 and an annual licence fee of €2,000;
- Class 3 – an application fee of €500 and €125 per relevant gaming device per month; and
- Class 4 – an application fee of €2,000.

With respect to tombola, a one-time licence fee of €1,164.69 should be paid together with the submission of an application for the issuing of a licence, and is applicable to all classes of tombola (bingo) hall.

**ii Sanctions for non-compliance**

As a general rule, the MGA may impose an administrative fine or sanction upon a licensee who contravenes a condition of the licence, including the suspension or cancellation of a licence. Generally this would occur in the following situations:

- a shareholder or director of the licensee is convicted of a crime or of an offence, or ceases to be a ‘fit and proper person’;
- if the licensee has failed to discharge financial commitments when such commitments become due and payable;
the licensee has failed to comply with any material term or condition of the licence (unless reasonable cause is shown);  

where the licensee knowingly or negligently supplies the MGA with false or misleading information; or  

where the MGA reasonably deems it necessary in the national interest to cancel or suspend a licence.  

In most cases, it is an offence to engage in any form of gaming that is not duly licensed under the relevant laws. Further details in relation to specific games are detailed below.  

**Casino**  
The Gaming Act provides that any person who is deemed guilty of an offence against the said Act, will be liable to a fine of not less than €6,988.12 and not more than €232,937.34. Alternatively, they may be liable to imprisonment of not more than two years, or to both the fine and imprisonment.  

**Gaming parlours**  
The GDRs prescribe that failure to comply with any of the regulations under the same GDRs is considered an offence, punishable by a fine of €3,000 to €235,000 in respect of every single contravention. Furthermore, the law applies the concept of vicarious liability in this situation if the contravention comes into being because of the act or omission of an employee or a person in the licensee's service.  

**Racecourse betting**  
The RBO\(^\text{17}\) states that any person committing an offence against the Ordinance shall be liable to a fine not exceeding €1,164.69, or to a term not exceeding three months’ imprisonment.  

**Remote gaming**  
Any contravention of the RGRs is considered an offence against the LOGA and any person so guilty of an offence shall be liable to a fine of not less than €6,988.12 and not more than €232,937.34, or to imprisonment for a term of not more than two years, or to both such fine and imprisonment.  

### IV WRONGDOING  
The prevention of fraud and money laundering has been described as one of the main aims of the Maltese remote gaming regime.\(^\text{18}\) \n
Regarding the prevention of match-fixing, the MGA has implemented certain preventive measures, whereby as part of its licensing process it requires applicants to submit specifications of their control system and gaming system, which include *inter alia*, the general procedures to be followed in remote gaming and in playing a game, the processes, the rules and the parameters of the games.  

\(^{17}\) Racecourse Betting Ordinance, Chapter 78 of the Laws of Malta.  

\(^{18}\) Joseph F Borg, ‘The Basis of the Maltese Regulation of Remote Gaming and the ongoing supervision of the Authority on its licensees’.  

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Furthermore, one of the conditions laid down in the RGR requires that the licence applicant must provide information on risk management, management of live betting and risk management in terms of odds compilation.19

In an effort to increase collaboration, the MGA has entered into MOUs with various other regulators and entities. Furthermore, the MGA, on its own initiative or upon a complaint, or a request for information by any of the parties with whom a MOU is present, or by any other enforcement agencies such as the police, may investigate and collect information from betting licensees.

As mentioned in Section III.i, supra, when evaluating an application for a gaming licence the MGA will take various aspects into account, namely, the financial background of the applicant, and whether the applicant has followed policies, and will take affirmative steps to prevent money laundering and other suspicious transactions.

Furthermore, licensees are not allowed to accept cash directly from players,20 and money may only be remitted by the licensee to the player, to the same account from which the funds paid into the player’s account originated.21 Moreover, a licensee shall not make a payment in excess of €2,329.37 out of a player’s account until the player’s identity, age and place of residence have been verified.22

V TAXATION

i Land-based

Regarding casinos, gaming taxes are paid to the MGA on a monthly basis and are calculated by the MGA based on the gross earnings of the casino. These can be set off against gross losses over two-month periods. In all cases, the gaming tax must be paid within seven days from the end of the previous month. Furthermore, there is a tax payable on the income derived from the entrance fees of the casino.

Taxes to be paid related to gaming parlours depend on the licence. A Class 3 licence must pay €200 per relevant gaming device per month where the gross gaming revenue of each relevant gaming device does not exceed €1,000 for that relevant month; or 20 per cent of the monthly gross gaming revenue generated by every relevant gaming device where the gross gaming revenue of each relevant gaming device exceeds €1,000 for that relevant month.

With respect to tombola halls, the Commercial Tombola (Bingo) Regulations23 provide that a licensee shall pay the MGA 10 per cent of the value of every scoresheet or 30 per cent of the total revenue on entrance fees, or both. Where bingo is being offered by a non-profit organisation, a licensee must tender a duty of €34.94 in respect of each session.

The licensee for a non-profit lottery must, through the MGA, pay the Ministry of Finance 25 per cent on the aggregate retail value of all prizes that can be won in such game.

19 RGRs Regulation 9.
20 Ibid, Regulation 35(4).
21 Ibid, Regulation 37(2).
22 Ibid, Regulation 36.
23 Subsidiary legislation 438.05 of the Laws of Malta.
Remote gaming

The gaming tax as applicable by the MGA is as follows:

a. Class 1 – €4,660 per month for the first six months and €7,000 per subsequent month;
b. Class 1 on 4 – €1,200 per month;
c. Class 2 – 0.5 per cent on the gross amount of all bets accepted;
d. Class 3 and Class 3 on 4-5 per cent of real income;
e. Class 4 – the gaming tax payable by a hosting platform is nil for the first six months of operation, €2,330 per month for the subsequent six months (month seven to month 12) and €4,660 per subsequent month (month 13 onwards) for the entire duration of the licence; and
f. controlled skill game service licence – 5 per cent of real income.

The maximum gaming tax payable annually, per licensee in respect of any one licence, is €466,000.

Moreover, besides gaming, tax operators are also subject to corporate taxation at the applied rates.

Regarding winnings from gambling, these do not qualify as income in terms of the Income Tax Act and therefore are not taxable.

VI  ADVERTISING AND MARKETING

The Code of Advertising, Promotions and Inducements (the Code), which applies to all types of gaming, lays out the restrictions imposed on a licensee. The Code states generally that a licensee must not engage in advertising that:

a. encourages anyone to contravene a gaming law;
b. exposes people who are under 18 years of age to gambling;
c. encourages or targets people under 18 years of age to gamble;
d. is false or untruthful, particularly about the chances of winning or the expected return to a gambler;
e. suggests that gambling is a form of financial investment;
f. suggests that skill can influence games that are purely games of chance;
g. promotes smoking or the abuse of consumption of alcohol while gambling;
h. implies that gambling promotes or is required for social acceptance, personal or financial success or the resolution of any economic, social or personal problems;
i. contains endorsements by well-known personalities or celebrities that suggest gambling contributes to their success;
j. exceeds the limits of decency; or
k. tarnishes the goodwill and privilege that is associated or related in any manner whatsoever with being a licensee, or tarnishes the image or reputation of another licensee.

Furthermore, promotions (except junket gaming and tournaments) must not commit people to gamble for a minimum period of time, or to gamble a minimum amount in order to qualify for player rewards. When a licensee publishes any advertising or conducts a promotion that encourages people to engage in any activity other than gambling, he or she must not refer, directly or indirectly, to the licensee’s gambling facilities.
In relation to casinos, the Gambling Act sets out four forms of advertising that are prohibited as follows:

a. informing the public that a premises in Malta is being used as a casino;
b. inviting the public to take part as players in any gaming that takes place in a casino or to apply for information about facilities for taking part as players in a casino;
c. inviting the public to subscribe any money or money’s worth to be used in gaming in a casino, or to apply for information about facilities for subscribing any money or money’s worth to be so used; or
d. inviting the public to take part as players in any gaming that takes place, or is to take place, in any casino outside Malta, or to apply for information about facilities for taking part as players in any gaming that takes place, or is to take place, outside Malta.

The RGRs prohibit a licensee from engaging in advertising that:

a. implies that remote gaming promotes or is required for social acceptance, personal or financial success or the resolution of any economic, social or personal problems;
b. contains endorsements by well-known personalities that suggest remote gaming contributed to their success;
c. is specifically directed at encouraging individuals under 18 years of age to engage in remote gaming; or
d. exceeds the limits of decency.

Additionally, a licensee must not engage in any activity that involves the sending of unsolicited electronic mail, whether it is through its own operation or by the intervention of third parties.24

The penalties imposed of are those mentioned in Section III.ii, supra.

VII THE YEAR IN REVIEW

As a result of an overwhelming response from gaming industry non-governmental organisations and government agencies in Malta, on 30 January 2017 the Maltese government issued the SGRs, which seek to regulate such skill games and to guarantee that the highest standards are maintained by operators through ensuring that games are conducted in a fair and transparent manner, and are free from crime or other irregular activity.

Recent amendments to the RGRs have added further obligations for licensees, including a minimum ‘return to player’, whereby a licensee offering games using random selection for determining winning combinations to players shall ensure that, in accordance with the way in which the game is designed, the licensee shall pay out, on average, a prize amounting to 92 per cent or more of the money or money’s worth wagered.25 This is further clarified by the Return to Player Directive 2016 issued by the MGA.

A licensee is now obliged to disclose and make available to players information relating to any commission or any fee held by the licensee, or any other fee charged to the player, and

24 RGRs Article 60.
25 RGRs Article 46A.
such information shall include the amount of such commission or fee held by the licensee or charged to the player by way of service rendered to the player. By way of example, the operator would charge a 5 per cent commission fee on the player’s poker winnings.  

Following consultation with the licensee, the MGA shall have the right to require a licensee to connect any of its systems to a monitoring system operated by the Authority, and to maintain such connection at all times.  

With regard to the Poker Tournament (Locations) Regulations, which came into force in November 2016, the MGA may approve the temporary use of an area adjacent to a casino for the purposes of the operation of a poker tournament upon an application being made by the casino licensee. These regulations are expected to accommodate the ever-popular poker tournaments being held in Malta within hotel venues that currently accommodate licensed casino facilities.

VIII OUTLOOK

The MGA will be proposing an overhaul of gambling legislation to the Maltese government within the next few months. Upcoming proposals include an enhanced automated reporting system for both land-based and remote gaming, an educational body called the Gaming Academy and, most importantly, a new Gaming Act, intended to harmonise regulatory principles and create more efficient governance. The scope of competence of the MGA is expected to be widened, and licensing structures will become more streamlined by being classified into B2B and B2C licenses, a development that has been widely welcomed by the industry.
I OVERVIEW

i Definitions

The Regulations of the Federal Law of Gambling and Raffles (the Regulations) establish four types of gambling permits:

a permits for the opening and operation of gambling profit collection in horse and greyhound race tracks and jai alai\(^2\) frontons, and for the installation of remote betting centres (sports books) and betting centres or rooms for drawing numbers (casinos);
b permits for the opening and operation of gambling profit collection in fairs;
c permits for the opening and operation of gambling profit collection in horse racing in temporary scenarios and cockfighting; and
d permits for profit collection in lotteries.

Online gaming and drawing of numbers and symbols through machines are included in permit type (a) described above.

This chapter will not address fairs, horse racing in temporary scenarios or cockfighting.

For the purposes of this chapter, and as it is defined in some cases in Mexican legislation, the relevant definitions related to gambling are outlined below.

Bet

Any amount of money (always in Mexican pesos) risked in a game allowed by the Regulations, with the chance of obtaining or winning a prize, the amount of which must be bigger than the amount risked.

Games of skill

Games where the outcome is determined mainly by mental or physical skill, rather than by chance. Games of skill are not regulated under gambling legislation.

Gambling profit

The revenue of any individual of the income resulting from bets and raffles.

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1 Carlos F Portilla Robertson is a managing partner at Portilla, Ruy-Díaz y Aguilar, SC.
2 jai alai is a sport involving a ball bounced off a walled space (fronton) by accelerating it to high speeds with a hand-held device. The game is called zesta-punta in Basque.
**Lotteries**

The sporadic activity in which the holders of any ticket obtained through the preselection of any number, combination of numbers or any other symbol, have obtained the right to participate, for free or by payment, in any proceeding previously determined and authorised by the Gaming and Lottery Office, according to which one or more winners of some prize are determined through a number or combination of numbers, or a symbol or symbols, drawn at random.

**Machines for the drawing of numbers and symbols**

Devices of any kind through which a participant randomly places a bet by inserting a tab, ticket or any means of payment in order to get a prize. These are equivalent to slot machines.

**Online gaming**

A betting game that is performed through the web, in real time, through the use of any electronic device that can be connected to the internet, and in which there is no physical contact between the participant and the concessionaire. Online gaming should not be confused with the collection of bets through the internet, telephone or mobile at the remote betting centre also known as Sportsbook.

**Permit holder**

Any individual to whom the Department of the Interior, through the Gaming and Lottery Office, issues a permit to carry out any activity in the field of gambling permitted by the Regulations.

**Sportsbooks**

A physical establishment authorised by the Gaming and Lottery Office to collect and operate bets on events, sports competitions and games, conducted in Mexico or abroad, broadcast in real time and simultaneously in audio and video.

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**ii Gambling policy**

On 31 December 1947, President Miguel Aleman Valdes published the Federal Law of Gambling and Raffles (the Federal Law), which has not been amended in over 70 years. Such Federal Law, consisting of only 17 articles, expressly sets forth that ‘gambling and raffles are prohibited throughout the national territory, in terms of this Act’, which for years represented a regulatory gap that the authority has intended to remedy through interpretations, public policies and regulations.

This uncertainty was not fully addressed until the ruling of President Vicente Fox Quesada, when the Regulation of the Federal Law of Gambling and Raffles was published in the Federal Official Gazette on 17 September 2004, which was recently modified with important amendments in order to make it compatible with historical realities, the needs of the emerging industry and technological advances. However, there is still a lot more to be done in matters such as training, live gambling, online gaming, responsibilities and secure gambling.
In recent years, policies against illegal gaming have been strengthened, causing many closures of unregulated casinos and the revocation of permits. Miguel Ángel Osorio Chong, Secretary of the Interior, in an appearance before the Mexican Senate, declared ‘the ones that currently exist are enough’, regarding the casinos and Sportsbook permits. However, some premises have been granted permits since then.

On 27 November 2014, the Special Commission to Investigate the Performance of the Entities of the Federal Government related to the Granting of Permits for Gambling and Raffles submitted a new bill. The purpose of this bill is to regulate gambling with betting and raffles so that they may be carried out in a responsible and safe way to guarantee the rights of participants, concessionaires and operators, and set the guidelines and limits for authorisation, control, surveillance, inspection and penalties of behaviour on the matter.

This Federal Law (referred to in this chapter as ‘the new bill’) was approved on 3 December 2014 by a majority of the members of the Chamber of Deputies, and was sent to the Senate for review and approval, which at time of writing has not happened.

iii State control and private enterprise

Even before Mexico became an independent country, the state has been directly involved in several national lotteries, including New Spain’s Royal General Lottery (1771), which made the first contribution to public charity, channelling it to New Spain’s Hospice for the Poor. As a result of its success, many other lotteries and raffles took place at the same time at convents, parishes and schools, in order to obtain resources.

Currently, the main purpose of the National Lottery for Public Assistance, which is a decentralised organ of the federal government, is to economically support the federal executive branch’s public welfare activities, obtaining for such purpose any resources obtained thereby through lotteries.

On the other hand, there is no prohibition whatsoever in Portuguese legislation against the organisation of lotteries through private parties; in other words, any private party that meets the corresponding regulatory requirements (established by the Federal Law of Gambling and Raffles and the Regulations) may organise lotteries that may compete with those organised by the National Lottery for Public Assistance (ruled by the Organic Law of the National Lottery for Public Assistance and its regulations).

Lastly, even though the tickets to participate in the National Lottery for Public Assistance lotteries may be bought through the internet, the state does not participate in online gaming.

iv Territorial issues

In terms of the Mexican Constitution, gambling and raffles legislation corresponds exclusively to the Federal Legislative Power, through Congress. Likewise, the Federal Executive Branch has the power to issue regulations on every law issued by Congress, in terms of Section I of Article 89 of the Constitution.

On the other hand, local congresses of each one of the states are authorised to allow or prohibit the opening of establishments where gambling and lotteries take place, as they have the authority to legislate on urban development matters.
Therefore, although it is true that local authorities are not authorised to prohibit gambling and lotteries, it is also true that they may indirectly prevent and veto the installation of casinos, for example through zoning prohibitions. The Constitution of the state of Guanajuato provides for the following prohibition:

*Article 5. The owner of one thing may enjoy and sell it with the limitations and modalities established by the laws. Zonings and buildings to be used as casinos, gambling centres, lottery rooms, gaming houses and similar establishments, as well as for the establishment of show centres featuring naked or semi-naked people are prohibited.*

In Mexico, there are no places or territories that are legally favoured for the opening of casinos. However, there are projects that favour the opening of this kind of establishment in the country’s key or preferred tourist zones, such as the Mayan Riviera in the state of Quintana Roo, Loreto in Baja California Sur, etc.

v Offshore gambling

Currently, the authority’s efforts are concentrated on the sector’s internal regulation and control in Mexico. It is forbidden for Mexicans to participate in websites with offers abroad, but there are no effective systems or means of control that may directly combat the attracting of bets from operators from other countries, or products that exist beyond Mexican borders (specifically online gaming products). Under law, the only prohibition against the offer or making of bets is whenever such bets accumulate in *pari-mutuel* systems, established in Article 82 of the Regulations.

However, and as mentioned below, in order to promote, advertise through any means or publicise any lottery, game or establishment in Mexico where betting takes place, it is essential to prove that the Ministry of the Interior has authorised the petitioner to carry out the corresponding activity, otherwise such activities may not be publicised in any way whatsoever.

Notwithstanding the above, the new bill confers powers to the regulating authority to implement mechanisms to effectively prevent, control or combat offshore gaming activities in Mexico.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

The following are the governing gaming and lotteries laws:

- the Political Constitution of the Federal Mexican United States;
- the Regulations, published in the Federal Official Gazette on 17 September 2004; and

In addition, the following branches of law also apply to the subject of gambling: (1) administrative law, for the installation and operation of gambling and lottery establishments; (2) criminal law, for combating illegal gaming and money laundering; (3) corporate law, for the fulfilment of the corresponding administrative law in the incorporation
of licence holders and operators, such as good governance provisions; (4) tax law, for the payment of taxes and contributions; (5) health law, to avoid irresponsible gaming and ensure health measures; (6) consumer protection, for the protection of the participant’s rights; and (7) anti-money laundering, regarding activities associated to the practice of betting games, contests or lotteries. Jurisprudence does not play yet a central factor in gaming regulation.

To date, the area of gambling and lotteries has been regulated by a law dated in 1947 and by regulations dated in 2004, which means that there is very little relevant jurisprudence. However, as a result of a constitutional claim (114/2013) filed by the House of Representatives of Congress, demanding the invalidity of the amendments to Articles 2, 91 Section IV, 137 bis, 137 ter and 137 quater of the Regulations, the constitutionality of such legal provisions that allow lotteries of numbers and symbols through the use of machines were analysed, and the Supreme Court of Justice, as Mexico’s highest court, established their validity and lawfulness, which is considered a triumph because it ended a dispute regarding the question of whether or not such machines are included in the prohibition established in Article 1 of the Federal Gaming and Lotteries Law.

ii The regulator

Ministry of the Interior

The Ministry of the Interior, through the Gaming and Lottery Office, is in charge of issuing the corresponding licences in order to hold gambling and lotteries, provided that the requirements established in the Regulations are met.

Attorney General

The Attorney General assists the Ministry of the Interior (Gaming and Lottery Office) in the confiscation of all gaming tools and objects, as well as of all goods (machines) or money that constitute any crime.

Department of Health

This federal agency, through the National Council Against Addictions and in coordination with the National Centre for the Prevention and Control of Addictions, is in charge of carrying out actions for the attention of pathological ‘gambling addiction’.

Tax Administration Service

The Tax Administration Service (SAT) is the federal authority in charge of collecting taxes resulting from gambling or lotteries (tax credits).

iii Remote and land-based gambling

It is undeniable that in recent years people’s lifestyles have changed as a result of the constant and sudden progress of technology, means of communication and trends. One such feature of progress in technology refers to installation, operation and profit collection through gambling on the internet or on mobile phones, as well as participation in online gaming. Regretfully, such changes are not reflected in Mexican legislation, since its main focus is on the regulation of physical establishments (casinos).

The lack of proper regulation regarding remote gambling is evident in the Regulations, which addresses, only in a limited number of articles (specifically Articles 85, 86, 87 and
104 of the Regulations), the bets made via telephone, the internet and electronic devices. Naturally, such a limited provision left a hole that needed to be filled by several criteria or policies from the authorities, issued through official communications and permits.

Currently, several authorisations for the offering of remote bets by remote betting centres or online sportsbooks, as well as for the operation of online gaming through the internet or mobile phones, have been granted through the Gaming and Lottery Office.

### iv Land-based gambling

Regarding land-based gambling activities, regulations establish and define the following:

- **Betting centres, drawing numbers rooms or both:** physical establishments in possession of an operator or licence holder, where the lottery of symbols or numbers takes place through the use of machines. These rooms may be installed together with the remote betting centres or Sportsbook.

- **Remote betting centres or Sportsbooks:** establishments authorised by the Ministry of the Interior to attract and operate bets on events, sports competitions and games allowed by the gambling profit collection, carried out abroad or within national territory, broadcast live and simultaneously in both video and audio, as well as for number lotteries. The foregoing is in accordance with Article 76 of the Regulations.

Prior to the recent reforms to the Regulations, there was no limit to the number of establishments allowed per licence holder (remote betting centres, and number and symbol lottery rooms), therefore the authority had discretion in determining such number. However, in order to end this practice there is currently a limit of one establishment per licence holder (Article 20 of the Regulations).

### v Remote gambling

Taking into consideration that the Ministry of the Interior authorises the development and operation of various games through the internet or mobile phones, the concessionaires are required to seek for and obtain the approval of their internal control systems for the transactions, procedures and rules that ensure no infringement to them and prevent any manipulation of betting systems over the internet or mobile phone, so that these online casinos may be reliable and legal, based on behaviour related to honesty, including towards the users.

A way to achieve this is by using modern software algorithms, as are used for slot machines, which are based on random number generators, which should ensure the inviolability of betting systems and prevent their manipulation.

Moreover, and taking into account that online gambling has been legalised in several countries, given that the same have shown positive effects and results on the community, in order to continue with this image, online gambling providers must have the necessary controls, filters and tools to establish and develop responsible gambling, such as:

- **Protection of those who are under-age.** Given that this is a matter of utmost gravity, teenagers under 18 years old should be prevented from having access to and playing at online casinos, through vigorous prevention and monitoring measures, and discouragement. This is accomplished through software containing filters that monitor profiles and behaviours, to verify if an under-aged person is accessing an online game.
b  Responsible gambling. Users will be taught to gamble responsibly at all times so that the same may only be considered as a form of entertainment, conducting activities of education, information, prevention and control for compulsive gamblers addicted to or dependent on betting games.

vi  Ancillary matters

During the past years, the trend has been to establish strong control on slot machines, in the understanding that the authority has transferred to licence holders the burden to prove: (1) the lawful import of the machines into the country (through import rules); or (2) otherwise prove their domestic manufacture through the corresponding invoice, and that such documents meet the corresponding Mexican Official Standards such as NOM-001-SCFI-1993 (electronic devices for domestic use fed by different sources of electricity – safety requirements and testing methods for type approval) and NOM-024-SCFI-2013 (commercial packaging information, instructions and warranties for electronics, electrics and appliances).

In addition, licence holders are obligated to file monthly reports regarding their inventory of slot machines, informing the Gaming and Lottery Office about any registrations and cancellations of, or changes to, the machines from one establishment to another and the final destination of the machines, as well as a quarterly report including the machines in each establishment as of the date of the corresponding report. This is in order to have a full record of the machines that enter and are operating in the country, and to avoid any illegal gaming.

Moreover, the new bill, which is pending authorisation by the Senate, contemplates the obtaining of a registration by all companies engaged in the import, distribution, sale and lease of machines, as well as the obligation to certify or homologate all number or symbol slot machines, in the understanding that those that have not been certified by the authority may not operate in the country.

III  THE LICENSING PROCESS

i  Application and renewal

The requirements for the opening and operation of bets at horse and greyhound race tracks, frontons, and for the installation of remote betting centres and betting centres or drawing numbers rooms are established in Articles 21 and 22 of the Regulations.

In addition to the above requirements, and in order to obtain such licence, the information and requirements established in Article 22 of the Regulations must be met.

Article 33 of the Federal Law of Gambling and Raffles establishes a minimum duration of one year and a maximum of 25 years for such premises. The duration may be extended for subsequent periods of up to 15 years provided that the licence holders are up to date in the fulfilment of all of their obligations.

Once the application is filed before the Ministry of the Interior, the Gaming and Lottery Office will analyse whether or not the applicant meets the requirements established by the Regulations. Otherwise, it shall require the applicant to clarify or file the missing information within a period of 10 business days.

In the event that the requirement is omitted, the application will be dismissed. However, if the requirement is fulfilled, the Gaming and Lottery Office will review that the provided information complies with the applicable law.
Once the submitted information and documentation has been analysed, the Gaming and Lottery Office shall issue a resolution in which it may grant the licence, or as the case may be, deny it, duly grounded in law.

The Federal Gaming and Lottery Law and the Regulations do not establish a time frame for the licence granting process. However, in practice, and in our experience, it takes between six and 12 months to do so. Application is free of charge.

As for the requirements for lotteries: all individuals and legal entities incorporated in accordance with the laws of the Mexican United States that wish to organise lotteries should comply with the information and documentation established in Article 26 of the Regulations. The duration of this premises shall be a maximum of one year.

ii Sanctions for non-compliance

Article 17 of the Federal Law of Gambling and Raffles and Article 147 of the Regulations provide the sanctions and infractions applicable to persons defaulting on the law, regulations or the terms and conditions of the licence issued by the Gaming and Lottery Office. The administrative sanctions given below may be applied jointly or separately, depending on the nature, seriousness and frequency of the infraction, taking into consideration the individual circumstances of each case:

a fine: ranging from 100 pesos to 10,000 pesos;
b detention: up to 15 days’ imprisonment;
c suspension of duties: suspension for up to one year for players, referees, bookies or any other person who performs any duty in the corresponding show, game, establishment or lottery, from performing their respective activity;
d licence revocation: this is a serious sanction and may be applied whenever infractions are frequent, in other words, whenever they are committed two or more times during one year; and
e closure of establishment: this is a serious sanction and may be applied whenever infractions are frequent, in other words, whenever they are committed two or more times during one year.

Article 151 of the Regulations provides the scenarios of serious infractions by the licence holder.

In order to impose any kind of sanction, the Ministry of the Interior must previously notify the offender about the beginning of the corresponding administrative procedure, in order for the latter to be able to provide the evidence it deems pertinent and to assert the corresponding legal arguments, in accordance with Article 152 of the Regulations.

The Ministry of the Interior’s authority to impose the corresponding administrative sanction expires in five years, counted as of the day in which the default has been committed or administrative infraction, if consummated, or as of the date in which it ended, in the case of having been continuous. The foregoing is in accordance with Article 133 of the Regulations.

Whenever the infraction is committed by the players, referees, bookies or by any other person who performs any duties in the corresponding show, game, establishment or lottery, the Gaming and Lottery Office may sanction them with suspension for up to one year, or permanent disqualification from performing the respective activity or duty.
Lastly, in accordance with Article 14 of the Federal Law of Gambling and Raffles, the penalty of confiscation of all gaming tools and objects, and of all goods or money that are of interest thereof shall be applicable, and the dissolution of the business or company that supported the perpetration of the crime may be declared.

**IV WRONGDOING**

Anti-money laundering regulation is relatively new in Mexico. On 17 October 2012, the Anti-Money Laundering Law was published in the Federal Official Gazette, and became effective nine months later on 17 July 2013.

The Anti-Money Laundering Law has been complemented by the issuance of the Anti-Money Laundering Regulations published on 16 August 2013, as well as by the Anti-Money Laundering Rules published in the Federal Official Gazette on 30 August 2013.

The main factor that leads to the application of the Anti-Money Laundering Law is for an individual or legal entity to carry out what the Law has specified to be a ‘vulnerable activity’. Regarding gaming activities, the Anti-Money Laundering Law establishes the following modalities (for transactions higher than a pre-established amount) as vulnerable activities: (1) the sale of tickets, chips or any other kind of similar receipt for the practice of betting games, contests or lotteries; and (2) the delivery or payment of prizes.

Some of the most relevant obligations of those who carry out vulnerable activities are:

\( a \) to register as ‘performer’ of the vulnerable activity referred to in Section I of Article 17 of the Anti-Money Laundering Law, before the SAT;

\( b \) to identify clients, players or buyers, verifying their identity, based on credentials or official documentation, gathering copies of the documentation supporting such identification (in online gaming, such obligation will have to be fulfilled before the sale of tickets or game credit);

\( c \) to ask its clients whether they have knowledge about the existence of the owner or beneficiary and, in any case, to exhibit the corresponding official documentation that allows clients to identify the owner;

\( d \) to hold, protect, safeguard and avoid the destruction or hiding of information and documentation that serves to support the vulnerable activity, including information identifying its clients or users;

\( e \) to file notices regarding their respective reportable vulnerable activities before the SAT in the time frames and in the form provided in the regulations; and

\( f \) to refrain from receiving payments in cash for the purchase of tickets that allow participation in betting games, contests or lotteries, as well as the delivery or payment of prizes (for transactions higher than a pre-established amount).

**V TAXATION**

The following taxes are applied to gambling operations in Mexico:

\( a \) Income tax: for tax purposes, such as Mexican corporations, Mexican residents must pay an income tax called ‘profit tax’ at a rate of approximately 29 per cent. This is applied to their entire income (regardless of its origin) minus authorised deductions (expenses). Casinos shall also pay an income tax called ‘tax on production and services’. 
b Licence fees: a licence fee has to be paid by permit holders to the Ministry of the Interior in an amount of 1 per cent or 2 per cent of their income, depending on the origin of the bet and their permit. Generally, the fee is 2 per cent on horse and greyhound races, tracks, and 1 per cent on national and international sporting events.

c Local and state taxes: some Mexican states impose additional taxes to be paid by casino users (like value added tax). The tax applies to the amount of the prizes received by the users or for each machine installed.

VI ADVERTISING AND MARKETING

Advertising and publicity for gambling and raffles by any means may only be done once a gambling permit has been received from the Ministry of the Interior, and always in accordance with the following rules:

a permit holders shall not explicitly promote the gambling activities authorised by their permits;

b gambling advertising and publicity must be expressed clearly and precisely in order to prevent inducing the public to an unsuccessful outcome, deception or confusion of the services offered;

c gambling advertising and publicity must always include the permit number;

d advertising should include messages that indicate that the gambling games are prohibited for minors; and

e advertising and publicity should include messages that invite people to play responsibly and with the main purpose of entertainment, fun and recreation.

VII THE YEAR IN REVIEW

Owing to the relevance and importance of the case of drawing of numbers and symbols through machines (slot machines), a brief summary of this matter is below.

On 18 January 2016, the plenary session of the Mexico’s Supreme Court of Justice supported the use of slot machines in casinos, considering them to be lawful as lottery games and not as games of chance or skill.

By unanimous vote, the judges validated five articles of the Regulations (among them being Articles 2, 91 Section VI, 137 bis, 137 ter and 137 quater), considering that the president, upon amending such articles, did not exceed the provisions in the applicable law.

The central argument is that the Federal Law of Gambling and Raffles establishes a closed list of betting games permitted in Mexico, lotteries among them, and, therefore, number or symbol lotteries with the use of machines are permitted. The following may be highlighted among the arguments:

a The drawing of numbers and symbols through machines share the essential characteristic of all other lotteries regulated by the Regulations. In other words, the result is determined by chance; they are not games of skills or dexterity, but are simple lotteries such as those provided by the law.

b The Federal Law of Gambling and Raffles does not establish a definition of games and raffles, therefore it cannot be said that the regulations contravene the law on this point.

c The President exercised his regulatory power in order to regulate the content of Article 2, Section II of the Federal Law of Gambling and Raffles, by establishing the rules of operation of the ‘drawing of numbers and symbols through machines’.
Finally, the Supreme Court considered:

*If the Federal Law of Gambling and Raffles admits the possibility of the existence of raffles without any restriction whatsoever; then, it is clear that 'drawing of numbers and symbols through machines', being a species of such genus, is permitted by the law itself.*

**VIII OUTLOOK**

The new bill, which is waiting to be approved by the Senate, contains some innovations, such as the fact that permit holders may only be able to operate their game online (in opposition to authorised operators). Therefore, there would not be any possibility of supporting or delegating such activities or transactions to third parties.

The legal entities obtaining a permit for online games should fulfil the following obligations:

- **a** publish on the website the identification data of the permit allowing operation of the site, as well as the applicable law on the matter at hand;
- **b** provide information to the participant on the development of its selection of betting and how to recover it in the event of any communication problems;
- **c** establish the necessary controls to prevent access to persons referred to in Article 7 of the bill;
- **d** offer participants chances of restraint with respect to the time of playing the game or the betting amounts;
- **e** implement alert protocols that enable the detection of people suffering from addiction to gambling;
- **f** publish contact details of the National Council Against Addictions and other institutions involved in the prevention and treatment of addiction to gambling;
- **g** refrain from offering free or sample gambling to any person;
- **h** provide support equipment that may process on a daily basis and consistently any questions and requests of participants in all languages in which the online service is provided, as well as to give assistance to the participant;
- **i** have available the means of monitoring and control established in the Regulations;
- **j** ensure the correct speed in carrying out site transactions, and be confident in performing the same;
- **k** comply with homologation processes established by the Gaming and Lottery Office in relation to any format, server, support, hardware, software, website, digital mechanism, connection or bet online game mode;
- **l** ensure operational capacity and information security to guarantee data protection, as well as the confidentiality and integrity of communications;
- **m** ensure uninterrupted connection of any server, connection or online support with the computer server of the Gaming and Lottery Office, allowing it to have control of the activities developed by the concessionaires and to monitor the same in real time, regardless of their original location;
- **n** ensure that each payer has a single account and implement ways of communication or guidance by phone and online for the participant, as well as tests to verify its identity;
- **o** prevent players from betting or paying bets directly between them and implement the necessary controls so that the payments of bets may only be made with credit or debit cards issued by financial institutions recognised by national authorities on the matter;
without prejudice to the provisions of other laws, preserve detailed information about the transactions performed electronically for at least 180 calendar days, in terms provided for in the Regulations;

refrain from transferring, leasing, assigning or delivering the permit to a third party to offer online game for exploitation. Consequently, the permit shall be exploited directly by the concessionaire or, in the event of having the corresponding authorisation, by its operator;

refrain from installing physical modules for the uptake of betting;

refrain from offering or granting loans and credits to the participant, or otherwise increase the purchasing power of the same;

the website must have the ‘com.mx’ ending;

the concessionaire shall install a computer system on national territory to fully support the information provided for in the Regulations in real time; and

operators shall not be allowed for online gambling. For this reason the concessionaire shall directly operate and exploit it.

The Secretary of the Interior has urged the Senate to approve the new bill. However, other reforms have taken priority in the legislative chamber.
Chapter 19

NEVADA

Jennifer Carleton, Andy Moore and Erin Elliott

I Overview

i Definitions

Nevada legalised casino gambling in 1931 when Governor Fred Balzar signed Assembly Bill 98 into law. The Nevada Legislature voted to legalise gambling to help lift Nevada out from under the impact of the Great Depression, and undid a ban on casino gambling in the state that had been in place since 1909. Gambling has been legal in Nevada for the past 85 years. The definition of ‘gambling game’ in Nevada is:

…any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value…

The definition excludes ‘games played with cards in private homes or residences in which no person makes money for operating the game, except as a player, or games operated by charitable or educational organisations which are approved’ by the Nevada Gaming Control Board (the Board). Under Nevada law, a ‘wager’ is ‘a sum of money or representative of value that is risked on an occurrence for which the outcome is uncertain.’

In 1949, Nevada began allowing wagering on horse racing and professional sports at ‘turf clubs’, which were independent from casinos. In 1975, the Nevada Legislature authorised race and sports wagering to be offered in Nevada casinos. Nevada sports books offer a variety of wagering options for patrons. Patrons can place parlay wagers, wagers on point spreads and pari-mutuel wagers (participants wagering with each other). Many Nevada sports books offer a mobile wagering application that allows people to place wagers with licensed Nevada race and sports books without the need of going to a betting window in a casino. The registration process for a mobile wagering account must occur in a Nevada race and sports book. Currently, any wagers made via the mobile sports wagering application must be initiated from within Nevada.

1 Jennifer Carleton and Andy Moore are shareholders, and Erin Elliott is an associate, at Brownstein Hyatt Farber Schreck LLP.
2 NRS 463.0152.
3 NRS 463.0152.
4 NRS 463.01962.
5 NRS 464.005.
7 NGC Reg. 22.140(1).
In 2011, the Nevada Gaming Commission (the Commission; collectively, the Board and Commission will be referred to as the Nevada Gaming Authorities) adopted regulations for interactive (online) gaming in Nevada. By statute, online gaming in Nevada is limited to poker. The first online poker website went live in Nevada in April 2013. In an effort to increase liquidity for the online poker websites in Nevada, the governors of Nevada and Delaware signed a compact in February 2014 to establish a legal framework for interstate poker between players in both states, and the states began sharing online poker players in March 2015.

During the 2015 Nevada legislative session, Chapter 463 of the Nevada Revised Statutes (the Nevada Act) was amended to allow games of skill and hybrid games of skill and chance to be available on casino floors in Nevada. A ‘game of skill’ is defined as ‘a game in which the skill of the player, rather than chance, is the dominant factor in affecting the outcome of the game as determined over a period of continuous play’. A ‘hybrid game’ is defined as a ‘game in which a combination of the skill of the player and chance affects the outcome of the game as determined over a period of continuous play’.

In October 2015, the Board issued a notice stating its position that pay-to-play daily fantasy sports (DFS) met the definition of a gambling game under Nevada law and, therefore, anyone offering DFS in Nevada must possess a licence to operate a sports pool issued by the Commission. The Board defined DFS as a gambling game, but did not take a position on traditional season-long fantasy sports.

Section 24 of the Nevada Constitution prohibits the state of Nevada from authorising a lottery. Nevada is one of six states in the United States that does not have a state-affiliated lottery. The other five states are Alabama, Alaska, Hawaii, Mississippi and Utah. In Nevada, a lottery is defined as ‘any scheme for the disposal or distribution of property, by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining that property.’ Nevada allows charitable raffles to be offered by ‘bona fide charitable, civic, educational, fraternal, patriotic, political, religious or veterans’ organisations that are not operated for profit’ to conduct a lottery, raffle, or gift enterprise for the benefit of charitable or non-profit activities in the state.

Gambling policy

Today, Nevada is home to one of the world’s most recognisable skylines – the Las Vegas Strip. The gaming industry is vitally important to the state’s economy and the welfare of its residents. As such, the gaming industry is heavily regulated at the state level by the Nevada Gaming Authorities to ensure its integrity and longevity. Nevada recognises the importance of strict regulation in order to maintain the industry’s significance, stating that the:

…continued growth and success of gaming is dependent upon public confidence and trust that licensed gaming...[is] conducted honestly and competitively, that [licensed gaming establishments] do not unduly impact the quality of life enjoyed by residents of the surrounding neighborhoods, that the rights of the creditors of licensees are protected and that gaming is free from criminal and corruptive elements.
To Nevadans, the presence of the gaming industry is a part of daily life. A limited number of slot machines can be found on the bar tops of neighbourhood pubs and taverns and in grocery stores, convenience stores and even airports. Casinos are commonplace, and offer more than just table games and slot machines. Casinos are home to restaurants, theatres, bowling alleys, convention spaces, spas and salons.

iii State control and private enterprise

Unlike other states with state-run lotteries, Nevada does not own any part of the gaming industry. Nevada’s gaming industry relies solely on private and public ownership and investment in the operation of gaming establishments. While there is no rule prohibiting the same owner from having an interest in multiple gaming establishments, the Nevada Act and the regulations promulgated by the Commission pursuant to the Nevada Act (the Regulations) are designed to encourage competition. If the same entity or individual wishes to own multiple casinos in Nevada, the Nevada Gaming Authorities consider a number of factors, such as whether such licensing will have an adverse impact upon the public health, safety, morals, good order and the general welfare of the public.15

iv Territorial issues

As noted above, gaming in Nevada is regulated at the state level by the Board and Commission. In addition, city and county governments also regulate gaming in Nevada. In general, the Board and Commission handle detailed background investigations for casino applicants, while local agencies primarily focus on the regulation and control of liquor sales and issuing ancillary business licences for the operation of various businesses located in a casino. In Las Vegas, for instance, casinos located on the Las Vegas Strip need to receive licences from the Clark County Department of Business Licence and casinos located in downtown Las Vegas need to obtain licences from the City of Las Vegas Business Licence Department.

v Offshore gambling

The Board and Commission have the ability to licence gaming operators in the state of Nevada and individuals affiliated with such companies. Those that operate gaming contrary to the laws of the state are prosecuted by the Nevada Attorney General or the appropriate federal authorities.

There may be regulatory consequences for companies that have operated illegally in the past and then apply for licensure in Nevada. A few years ago, the Board and Commission indicated its likely approach when companies that have operated offshore gambling businesses in the United States come before them for licensing. In 2011, the Nevada Gaming Authorities addressed Caesars Entertainment’s application to approve its association with 888 Holdings, a company that had offered online poker in the United States before 2006. When the Unlawful Internet Gambling Enforcement Act (UIGEA) was enacted in 2006, 888 Holdings pulled its operations from the United States. By ultimately approving Caesars’ business dealings with 888 Holdings, the Board and Commission indicated a general willingness to allow companies that ceased operations in 2006 upon the passing of UIGEA to be able to operate in Nevada going forward if they came forward for licensing.

15 NGC Reg. 3.070(11).
II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence
The Nevada Act and the Regulations provide the primary legal framework for the regulation of gaming in Nevada. The laws, regulations and supervisory procedures of the Nevada Gaming Authorities are based upon declarations of public policy. These public policy concerns include, among other things: (1) preventing unsavoury or unsuitable persons from being directly or indirectly involved with gaming at any time or in any capacity; (2) establishing and maintaining responsible accounting practices and procedures; (3) maintaining effective controls over the financial practices of licensees; (4) preventing cheating and fraudulent practices; and (5) providing a source of state and local revenue through taxation and licensing fees.\(^{16}\)

ii The regulator
The Nevada Act provides for a two-tier state regulatory system. The Board is a full-time regulatory agency consisting of two members and a chairman, all appointed by the governor. The Board employs staff allocated among divisions, which perform various functions related to the regulation of gaming, including investigations related to applications for licences and findings of suitability. The Board makes recommendations to the Commission as to how licence applications should be handled. The Commission is a part-time body consisting of four members and a chairman, all of whom are also appointed by the governor. The Commission makes the final determination on licence applications.

iii Remote and land-based gambling
The Nevada Act and Regulations provide for the Board to license and regulate both online and land-based gambling. On 22 December 2011, the Commission adopted regulations for the establishment of a regulatory framework for the state regulation of internet poker pursuant to Assembly Bill 258 enacted by the Nevada legislature. These regulations address the licensure of operators, service providers and manufacturers of ‘interactive gaming systems’, which are currently limited to internet poker. The core components of an interactive gaming system must be located in the state of Nevada except as otherwise permitted by the Board.\(^ {17}\)

iv Land-based gambling
While licensed gambling is legal in Nevada, there are some restrictions as to where a gaming establishment may be located. In 1997, the Nevada Legislature enacted laws to regulate the location of future casinos in counties with a population of 700,000 or more.\(^ {18}\) As a result, the laws currently only apply to Clark County, where the Las Vegas Strip is located. One of the purposes of restricting the location of future casinos in Clark County is to concentrate:

\[\ldots the next generation of large gaming establishments along the Las Vegas Strip\ldots\text{[to]} promote responsible use of financial and natural resources by encouraging urban development in those areas where the transportation systems and infrastructure are best suited for such intensive development\text{].}\(^ {19}\)

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16 NRS 463.0129.
17 NGC Reg. 14.010(10).
18 NRS 463.3074.
19 NRS 463.3072(2).
New gaming establishments in Clark County must be located in a gaming enterprise district (GED). Clark County publishes a map that indicates where the GEDs are located. Gaming establishments that were not located within a GED when the law was enacted in 1997 are grandfathered, but ‘the establishment may not increase the number of games or slot machines operated at the establishment beyond the number of games or slot machines authorised for such a classification of establishment by local ordinance on December 31, 1996.’ The Commission may approve the placement of a gaming establishment outside of a GED if the petitioner demonstrates that certain enumerated development criteria, such as the enhancement of the local economy and the welfare of the community, have been met.

v Remote gambling

The Nevada Act and Regulations authorise casinos to offer mobile gaming to their patrons. For a patron to participate in mobile gaming, the patron needs to go through an in-person registration process at the casino. Once authorised, the patron is provided a device that allows the patron to gamble remotely on the casino property. The mobile devices should not work outside the property. Additionally, Nevada has two online poker operators that offer games to people in Nevada and Delaware, and Nevada’s race and sports books allow customers to place bets remotely on games on their mobile sports betting apps (provided the wagers are made in Nevada).

vi Ancillary matters

The manufacture, sale or distribution of gaming devices without a licence is illegal in Nevada. A ‘gaming device’ means any object used remotely or directly in connection with gaming, or any game that affects the result of a wager by determining win or loss and that does not otherwise constitute associated equipment.

If a particular device is not a gaming device, it may be considered associated equipment in Nevada. ‘Associated equipment’ is any equipment used in connection with gaming or mobile gaming, which connects to progressive slot machines, equipment that affects the proper reporting of gross revenue, computerised systems of betting at a race book or sports pool, computerised systems for monitoring slot machines and devices for weighing or counting money. Any manufacturer or distributor of associated equipment for use in Nevada must register with the Commission pursuant to NRS 463.665. The Commission has the discretion to require any manufacturer or distributor of associated equipment to file an application for a finding of suitability.

Additionally, Nevada licenses certain service providers. A ‘service provider’ includes any person who: (1) acts on behalf of another licensed person who conducts non-restricted gaming operations, and who assists, manages, administers or controls wagers or games.

20 NRS 463.309(1). The map is currently available here: http://gisgate.co.clark.nv.us/gisplot_pdfs/cp/reggaming1711.pdf.
21 NRS 463.308(3).
22 NRS 463.3084(2); 463.3086(6).
23 NRS 463.650.
24 NRS 463.0155.
25 NRS 463.0136.
27 NGC Reg. 14.305(1).
or maintains or operates the software or hardware of games on behalf of such a licensed person, and is authorised to share in the revenue from games without being licensed to conduct gaming at an establishment; (2) is an interactive gaming service provider; or (3) is a cash access and wagering instrument service provider. The licensing guidelines for service providers vary depending upon what ‘class’ the service provider’s activities fall into. For example, an interactive gaming service provider is required to obtain a Class 1 licence. Other types of service providers are required to obtain a Class 2 licence. These include information technology service providers and location determination providers. As of 2016, marketing affiliates are no longer required to be licensed as service providers.

When the Commission issues a licence to a gaming operator, certain individuals affiliated with the casino licensee and the casino licensee’s holding companies need to file applications and be investigated and found suitable. Generally, the Commission will impose a condition on a casino’s licence requiring the general manager of the casino to file an application as a key employee of the casino.

For privately held businesses, the licensing requirements vary depending on the type of entity involved. No person may acquire a 5 per cent or greater interest in a privately-held licensee or a holding company, nor become a controlling affiliate of such licensee or holding company, nor become a holding company of such licensee or holding company, without first obtaining the prior approval of the Commission. The Commission may require any or all of a privately-held business entities’ lenders, holders of evidence of indebtedness, underwriters, key executives, agents or employees, as applicable, to be licensed or found suitable. For a corporate licensee, in addition to owners of 5 per cent or more of the equity securities issued by the corporate licensee, all officers and directors of a privately held corporation that holds or applies for a state gaming license must be licensed individually.

Publicly traded corporations (PTCs) are treated differently under Nevada law than privately held business entities. The Nevada gaming statutes that deal with PTCs focus on voting control rather than on equity ownership. Each officer, director and employee of a PTC that the Commission determines is or is to become actively and directly engaged in the administration or supervision of, or is to have any other significant involvement with, the gaming activities of the corporation or any of its affiliated or intermediary companies must be found suitable and may be required to be licensed by the Commission. A holder of more than 5 per cent of the voting securities of a PTC registered with the Commission must notify the Commission within 10 days after filing notice with the United States Securities and Exchange Commission (SEC). A holder of more than 10 per cent of the voting securities of a PTC must file an application with the Commission for a finding of suitability within

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28 NRS 463.677(5)(b).
29 Nevada Gaming Control Board Service Provider Licensure Guidelines.
30 ‘Control’ is defined as ‘the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.’ NGC Reg. 15.482-4.
31 See NGC Regs. 15.1594-6, 15A.060 and 15B.060.
32 NGC Regs. 15.530-3, 15A.160 and 15B.160.
33 NRS 463.530.
34 NRS 463.637(1); NGC Regs. 16.410(1) and 16.415(1).
35 NRS 463.643(3).
30 days after the Chairman of the Board mails written notice to the owner.\textsuperscript{36} Qualified institutional investors can hold up to 25 per cent of the voting securities of a PTC, but they need to obtain a waiver from the Commission in order to do so.\textsuperscript{37}

### III THE LICENSING PROCESS

#### i Application and renewal

Under the Nevada Act, the burden of proving qualification to receive a licence is solely on the applicant. Such approvals are privileges under the Nevada Act and no person has any right to receive a licence. Once granted, such approvals are revocable privileges and no holder acquires any vested rights therein or thereunder.

The Nevada Act provides that a licence must not be granted unless the Commission is satisfied that the applicant is:

\[(i) \text{a person of good character, honesty and integrity; (ii) a person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming,... or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming... or in the carrying on of the business and financial arrangements incidental thereto; and (iii) in all other respects qualified to be licensed or found suitable consistently with the declared policy of this state.}\textsuperscript{38}

The Nevada Act further provides that a licence to operate a gaming establishment must not be granted unless the applicant has satisfied the Commission that:

\[(1) \text{he or she has `adequate business probity, competence and experience in gaming or generally; and (2) the proposed financing of the entire operation is adequate for the nature of the proposed operation and from a suitable source.}\textsuperscript{39}

#### ii Sanctions for non-compliance

Unlicensed gambling is a crime in Nevada. It is unlawful for any person to ‘deal, operate, carry on, conduct, maintain or expose for play in the state of Nevada any gambling game, gaming device, inter-casino linked system, mobile gaming system, slot machine, race book or sports pool’ without a licence issued by the Commission.\textsuperscript{40} It is also illegal to ‘receive, directly or indirectly, any compensation or reward or any percentage or share of the money or property played, for keeping, running or carrying on any gambling game, slot machine, gaming device, mobile gaming system, race book or sports pool.’\textsuperscript{41} A violation is a category B felony, which is punishable by imprisonment of between one and 10 years and a fine of

\begin{footnotesize}
\begin{itemize}
  \item[36] NRS 463.643(4).
  \item[37] NGC Reg. 16.010(14).
  \item[38] NRS 463.170(2).
  \item[39] NRS 463.170(3).
  \item[40] NRS 463.160(1)(a).
  \item[41] NRS 463.160(1)(d).
\end{itemize}
\end{footnotesize}
up to $50,000, or both. In addition, a ‘person who contrives, prepares, sets up, proposes or draws any lottery...is guilty of a misdemeanour,’ which is punishable by imprisonment for not more than six months, or a fine of not more than $1,000, or both.

The Board and the Commission have broad authority to investigate and discipline licensees and registrants for violations of the Nevada Act and Regulations. If the Board investigates a licensee and thereafter determines that the licensee should be disciplined, the Board must ‘initiate a hearing before the Commission by filing a complaint with the Commission... and transmit therewith a summary of evidence in its possession bearing on the matter and the transcript of testimony at any investigatory hearing conducted by or on behalf of the Board.’ The Commission has the authority to limit, condition, suspend, or revoke a licence or registration. The Commission may also fine a licensee up to $250,000 for each separate violation, depending on the nature of the violation.

The Board and the Commission also have the authority to exclude individuals from entering a gaming establishment or participating in gambling activity. The Board publishes a list of excluded persons on its website. Often referred to as the ‘black book’, individuals on this list are prohibited from entering any gaming establishment. To determine whether an individual belongs on the list, the Board and the Commission may consider the following factors:

(a) Prior conviction of a crime which is a felony in this state or under the laws of the United States, a crime involving moral turpitude or a violation of the gaming laws of any state; (b) Violation or conspiracy to violate the provisions...relating to: (1) the failure to disclose an interest in a gaming establishment for which the person must obtain a licence; or (2) willful evasion of fees or taxes; (c) Notorious or unsavoury reputation which would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive elements; or (d) Written order of a governmental agency which authorises the exclusion or ejection of the person from an establishment at which gaming or pari-mutuel wagering is conducted.

IV WRONGDOING

The Board is required to continually observe the conduct of all licensees and other persons having a material involvement directly or indirectly with a licensed gaming operation or registered holding company to ensure that licenses are not issued or held by, nor is there any material involvement directly or indirectly with a licensed gaming operation or registered holding company, by unqualified, disqualified or unsuitable persons, or persons whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places or locations.
The Board is required to investigate any apparent violations of the Nevada Act and Regulations.49 It is the policy of the Nevada Gaming Authorities to require that all gaming establishments in Nevada be operated in a manner suitable to protect the public health, safety, morals, good order and general welfare of the inhabitants of Nevada.50 Responsibility for the employment and maintenance of suitable methods of operations rests with the licensee, and willful or persistent use or toleration of methods of operation deemed unsuitable will constitute grounds for licence revocation or other disciplinary action.51

Regulation 5.011 lists certain acts or omissions that may be determined to be unsuitable methods of operation. These include the ‘failure to exercise discretion and sound judgment to prevent incidents that might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry’, ‘failure to comply with or make provisions for compliance with all federal, state and local laws and regulations and with all commission-approved conditions and limitations pertaining to the operations of a licensed establishment’ and ‘failure to conduct gaming operations in accordance with proper standards of custom, decorum, and decency, or permit any type of conduct in a gaming establishment which reflects or tends to reflect on the repute of the state of Nevada and act as a detriment to the gaming industry.’52

When satisfied that a licence should be limited, conditioned, suspended or revoked, or a licensee fined, the Board shall initiate a hearing before the Commission by filing a complaint. Before such a complaint is filed, the Board may issue an Order to Show Cause. The purpose of an Order to Show Cause is to aid the Board in deciding whether to seek a fine or the limitation, conditioning, suspension, or revocation of a licence.

The Board has full and absolute power and authority to recommend the denial of any application, the limitation, conditioning or restriction of any licence, registration, finding of suitability or approval, the suspension or revocation of any licence, registration, finding of suitability or approval or the imposition of a fine upon any person licensed, registered, found suitable or approved for any cause reasonable by the Board.53

Acceptance of a state gaming licence or renewal thereof by a licensee constitutes an agreement on the part of the licensee to be bound by all of the regulations of the Commission. It is the responsibility of the licensee to keep him or herself informed of the content of all such laws and regulations, and ignorance does not excuse violations.54

All PTCs that are licensed by the Commission are required to maintain a gaming compliance programme for the purpose of, at a minimum, performing due diligence, determining the suitability of relationships with other entities and individuals, and to review and ensure compliance by the PTC, its subsidiaries and any affiliated entities, with the Nevada Act, the Regulations, and the laws and regulations of any other jurisdictions in which the PTC, its subsidiaries and any affiliated entities operate. The gaming compliance programme, any amendments thereto, and the members of the compliance committee, one such member who shall be independent and knowledgeable of the Nevada Act and Regulations, must be administratively reviewed and approved by the Board.

49 NRS 463.310.
50 NGC Reg. 5.010(1).
51 NGC Reg. 5.010(2).
52 NGC Reg. 5.011(1); (8). 10.
53 NRS 463.1405(3).
54 NGC Reg. 5.030.
V TAXATION

Gaming licensees are subject to taxes and fees. Among the types of taxes and fees to which a licensee may be subject are annual and quarterly taxes and fees, and a monthly percentage fee that is based upon the licensee’s gross revenue. Casino licensees must pay an annual fee based upon the number of slot machines operated.\(^{55}\) For establishments operating more than 16 games, the licensee must pay a sum of $1,000 for each game up to 16 games.\(^{56}\) A licensee must pay an annual excise tax of $250 upon each slot machine operated.\(^{57}\) In addition, casinos licensees must pay a quarterly fee of $20 per slot machine operated in the establishment, and another quarterly fee based upon the number of games operated.\(^{58}\) Taxes and fees for other licensing categories such as restricted licensees, operators of slot machine routes and manufacturers vary.

Some casinos may also be subject to Nevada’s live entertainment tax (LET). The LET is an excise tax imposed on admission to any facility in Nevada where live entertainment is provided.\(^{59}\) Resort casinos with concert venues or certain types of nightclubs, bars or restaurants may be subject to this tax. Live entertainment is defined as:

\[\ldots\text{any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present.}\]\(^{60}\)

The types of entertainment considered to be live entertainment, as defined in NRS Chapter 368A, include: (1) music, vocals, dancing, acting, acrobatics, stunts, comedy or magic provided by professionals or amateurs; (2) animal stunts or performances induced by one or more animal handlers or trainers; (3) athletic or sporting contests, events or exhibitions provided by professionals or amateurs; (4) a performance by a disc jockey who presents recorded music; and (5) an escort who is escorting one or more persons at a location or locations in Nevada.\(^{61}\) The rate of the tax is 9 per cent of the admission charge to the area or premises (indoor or outdoor) where live entertainment is provided and for which a fee is collected to enter or have access to the area or premises.\(^{62}\)

Taxes and fees related to gaming are not just the responsibility of gaming licensees. Gambling winnings are considered income and are therefore taxable. When a player wins $1,200 or more from a single slot machine bet, for example, the player is given an Internal Revenue Service Form W-2G – Certain Gambling Winnings to report the winnings to the Internal Revenue Service.\(^{63}\) A player can expect a federal tax rate of approximately 30 per cent on gambling winnings. Nevada does not have a state income tax, so for Nevada residents, no additional tax is due to the state.

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\(^{55}\) NRS 463.380.

\(^{56}\) NRS 463.380(1)(j).

\(^{57}\) NRS 463.385(1).

\(^{58}\) NRS 463.375(2).

\(^{59}\) NRS 368A.200(1).

\(^{60}\) NRS 368A.090(1).

\(^{61}\) NRS 368A.090(2)(a).

\(^{62}\) NRS 368A.200(1)(a) and 368A.060.

\(^{63}\) See Dept. of Treas. Reg. Section 7.6041-1(c).
VI ADVERTISING AND MARKETING

Nevada casinos may advertise their land-based and online offerings in Nevada. However, any advertising must be conducted in a manner that will not bring disrepute on the gaming industry in Nevada. Nevada casinos must conduct their ‘advertising and public relations activities in accordance with decency, dignity, good taste, honesty and inoffensiveness.’ Advertising companies are not required to be licensed as service providers.

VII THE YEAR IN REVIEW AND OUTLOOK

In March 2016, the Commission adopted the new Regulation 15C, which created a licensing framework for private investment companies. Regulation 15C eliminates the requirement that private equity companies with an ownership interest in a Nevada gaming licensee must file financial reports with the SEC.

New provisions of the Regulations came into effect in 2016 regarding the operations of nightclubs and dayclubs located on the premises of resort casinos in Nevada. The new provisions require greater oversight of club venues by casinos and club operators, and require that certain employees and independent contractors of club venues register with the Board.

The Nevada Gaming Policy Committee was created by NRS 463.021 and is comprised of 12 members who meet to discuss matters of gaming policy in Nevada. The Committee met four times during 2016 to primarily discuss fantasy sports, e-sports and the future of online gaming in Nevada. It is anticipated that similar discussions will continue in 2017.

The 79th (2017) Session of the Nevada Legislature began on 6 February 2017. Among the proposed legislation that the Nevada Legislature is considering is Senate Bill 240, which would amend the Regulations to provide that existing laws governing pari-mutuel wagering on a race or sporting event apply to pari-mutuel wagering on ‘other events’, which is defined as ‘any event other than a horse race, dog race or sporting event’. Such an amendment would authorise sportsbooks to offer pari-mutuel wagering on events such as e-sports and poker.

64 NGC Reg. 5.011(1).
I OVERVIEW

i Definitions

The Act of 19 November 2009 on Gambling Games (the Act), which is the main act regulating gambling activities in Poland, specifies four forms of ‘gambling games’: games of chance, betting, card games and slot machine games. Each of these forms is further defined in the Act.

Games of chance cover all ‘games, including games organised via the internet, for cash or in-kind prizes, the result of which depends in particular on chance, and the rules of which are specified in the terms and conditions of a given game’. It is often difficult to distinguish whether a game involving both elements of skill and chance should be considered a ‘game of chance’ (and therefore regulated by the Act). It is widely understood that even a minor element of chance is sufficient for the game to be considered a ‘game of chance’, although not all court judgments follow this principle. Skill games are not expressly defined in Polish law; however, it is understood that competitions in which exclusively the skill of participants is assessed (competitive sports included) do not constitute an act of gambling and are not bound by the Act’s restrictions.

In practice, games of chance cover lotteries, roulette, dice games and bingo. The Act further regulates various subtypes of most of these games.

Lottery-style games include:

a ‘number games’ – lotteries where the participants choose specific numbers or other marks and the prize is related to stakes paid (e.g., the national lottery);

b ‘cash lotteries’ and ‘raffle lotteries’ – similar to number games, but where purchase of coupons or other game tickets is required, with cash or in-kind prizes offered;

c ‘promotional lotteries’ – where a purchase of a specific product or service is required to participate, but the participation in the lottery itself is free of charge; and

d ‘audiotele lotteries’ – held via paid phone calls or SMS messages.

Roulettes (or ‘cylindrical games’ under the Act) are defined as games where the ‘participation consists of choosing numbers, signs or other distinguishing marks, the value of the prize

1 Piotr Dynowski is a partner and Michał Salajczyk is an associate at Bird & Bird Szepietowski i wspólnicy spk.
2 Article 1(2) of the Act.
3 For definitions of all games, see Article 2 of the Act.
4 Article 2(1) of the Act.
depends on a predefined ratio of the stake and prize, and the result of the game is determined by a rotary device'. Cylindrical games, as well as ‘dice games’ – not further defined in the Act – may only be held in casinos.

Finally, among games of chance there is bingo, in three variants: cash bingo, raffle bingo (depending on the type of prizes) and telebingo (with the draw broadcasted via television).

Betting constitutes another form of gambling regulated by the Act. Betting only occurs when cash or in-kind prizes are offered. Bets that do not involve such prizes are outside the scope of the Act. There are two subtypes of betting available in Poland: totalisator systems and bookmaking.

Totalisator systems are a form of pool betting, where the winnings depend on the sum of stakes paid by all participants. Totalisator systems are only available for results of sports competitions.

Bookmaking, on the other hand, may cover betting for the occurrence of any events. These may or may not be related to sports; a recent amendment to the Act even introduced bookmaking for so-called ‘virtual events’ – computer-generated results of sports competitions. Bookmaking is a form of betting in which there is no ‘pool’ of bets (as in totalisator systems); instead each prize is calculated on the basis of a fixed ratio of the stake paid (fixed-odds betting). Polish gambling law does not recognise spread betting systems, where prizes are adjusted depending on the scale in which the result exceeds a specific value.

A recent amendment to the Act introduced card games – limited to games of blackjack, poker, and baccarat – as a separate category of gambling games. Previously these were among games of chance. Only card games for cash or in-kind prizes are regulated in the Act – other forms are outside the scope of gambling and permitted.

Slot machine gaming constitutes the final major form of gambling as understood by Polish law. The definition of slot machines is particularly confusing. The Act states that these are ‘games played with the use of mechanical, electromechanical or electronic devices, computers included, as well as games that reflect the rules of slot machine games held via the internet network, for cash or in-kind prizes, where the game features an element of chance’. Therefore it may seem that games with no cash or in-kind prizes (such as computer games) do not fall into this category. The definition is expanded, however, as the in-kind prize also constitutes additional play time or the ability to start a new game free of charge. Moreover, in some cases even games with no prizes at all may be considered as slot machines, because under the Act, ‘games played with the use of mechanical, electromechanical or electronic devices, computers included, as well as games which reflect the rules of slot machine games conducted via the internet network, organised for commercial purposes’ are also considered as slot machines, ‘even if there is no possibility to win any cash and/or in-kind prizes, but the game is of random character’. Read literally, this definition may sometimes even cover typical video games. Fortunately, the authorities have not, thus far, pursued the video game market.

As a result of the above-mentioned problems in distinguishing between games of chance and skill, as well as the broad definitions of games in the Act, it is often difficult to assess whether or not certain activities constitute gambling. There is also a problem with games that would constitute games of chance were it not for the fact that their characteristics

5 Article 2(1)(4) of the Act.
6 Article 2(3) of the Act.
7 Article 2(5) of the Act.
do not correspond with all the features of the specific games of chance included in the definitions given in the Act. As the provisions of the Act mostly relate to these specific games, such activities are effectively unregulated, while still fitting within the definition of games of chance (which may only be held in accordance with the Act). For example, free prize draws, which are similar to promotional lotteries but where making a purchase is not required, still constitute a game of chance. There are disputes regarding the legal assessment of this situation. It can be argued that because all games of chance have to follow the Act, and if the Act does not explicitly allow such games to be organised, then they are illegal. On the other hand, free prize draws, in general, do not expose their participants to significant danger—therefore, it is reasonable to expect that they are not outlawed.

Similarly, ‘fantasy league’-style contests are also not defined in Polish law. While in general these resemble skill games more than gambling, such assessment may depend on the details of a particular contest.

In order to address such issues, the Act offers the possibility to obtain a binding interpretation from the minister in charge of public finance in which a game may be assessed on whether it should be treated as a gambling game as understood in the Act.8

Gambling and financial markets are regulated by different legislation and should be considered as separate establishments, although there is no explicit distinction in the Act in this regard. While it can be argued that financial products resemble gambling games in some aspects (the results of both depend on factors outside of participants’ control), it appears that in practice this issue has not caused controversy.

ii Gambling policy

The current state of gambling regulations is mostly the result of the ‘gambling affair’—a political scandal of 2009, where it was revealed that some prominent politicians of the government and the ruling party were cooperating with gambling business owners and tried to amend the laws on gambling in their favour. In response to the affair, the government introduced the Act, which was meant to show that the government is not influenced by lobbying. The Act is therefore very strict, with major areas of the gambling business outlawed.

The government remains opposed to gambling in general, seeing it as a dangerous addiction and a questionable business. It is not outlawed, however, as it is a source of national income. Still, numerous restrictions on gambling are widely considered a significant burden on the development of the market.

iii State control and private enterprise

Until recently, only number games, cash lottery and telebingo were reserved to the state monopoly (in practice, telebingo games are not currently organised). However, from April 2017, the scope of the monopoly has expanded substantially. The state-owned company Totalizator Sportowy sp z o.o. may now offer casino-style games online and operate newly established slot machine parlours.9 Both areas are exclusively granted to Totalizator Sportowy.

8 Articles 2(6)-2(7b) of the Act.
9 Article 5(1b)-5(1c) of the Act.
Moreover, also in April 2017, Totalizator Sportowy was allowed exclusively to organise multi-jurisdictional lotteries in Poland\textsuperscript{10} – such games were not present on the Polish market before.

Private entities operate in other areas regulated by the Act – by managing casinos, betting shops, betting websites, most types of lotteries and bingo. While there are some quantitative restrictions regarding particular licences – the number of casinos and bingo saloons across Poland is limited – it does not seem that monopolies or oligopolies have developed on a national level.

\textbf{iv Territorial issues}

All laws regarding gambling in Poland apply to its whole territory. Municipalities participate in regulating the market only to a very limited extent, by issuing opinions on placing a casino or a bingo saloon on its territory. A positive opinion of the municipality’s council is one of the prerequisites of obtaining a licence.

While the law remains the same for the whole of Poland, the process of its implementation and licencing is decentralised to some extent. While casino licences or betting permits are issued by the minister in charge of public finance (a central authority), several less prominent issues, such as registering slot machines, issuing permits for raffle lotteries and collecting gambling tax, are the responsibility of tax authorities of varying degrees of seniority at the local level.

\textbf{v Offshore gambling}

Offshore gambling is illegal in Poland. The only gambling activities that may be conducted online by private entities are betting and promotional lotteries. Both require obtaining a prior permit. Other forms of online gambling are either restricted to the state company or banned altogether, with no distinction as to whether operations are conducted within Poland or abroad.

It is illegal to participate in unlicensed gambling in Poland. It is also illegal to participate in any gambling held abroad while the player is located in Poland. Both such acts are prosecuted as fiscal criminal offences\textsuperscript{11}.

As offshore operators are not bound by strict laws in Poland (e.g., high tax rates or limitations on types of games to be held online), they were able to offer better service to players than licensed Polish operators. Because of this, offshore operators controlled up to 90 per cent of the market, according to certain studies. As the legal means to act against offshore operators were limited (they are located outside Polish jurisdiction), instead the authorities opted for prosecuting participants, which is much easier. The number of convictions for participation in foreign gambling has risen in recent years.

From 1 July 2017, a new approach will be used against unlicensed (mostly offshore) operators. The government will be able to block access to websites used for offering unlicensed gambling. Payment service operators will also be required to cease providing their services for such blacklisted websites. In anticipation of the new law, some offshore operators have declared that they will cease their operations in Poland, while others aim to obtain a licence in Poland.

\textsuperscript{10} Article 5(1a) of the Act.
\textsuperscript{11} Article 107 of the Fiscal Penal Code.
II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence
The legal issues applicable to gambling are mostly regulated in the Act. Criminal sanctions for illegal gambling are provided in the Penal Code and the Fiscal Penal Code.

ii The regulator
There is no separate specialised regulatory body designated to govern the gambling sector in Poland. The main responsibilities regarding gambling (such as issuing casino licences or betting permits) are granted to the minister in charge of public finance. Some less prominent powers (such as issuing permits for organising promotional lotteries, registering slot machines etc.), as well as enforcement measures are delegated to the National Fiscal Administration (an administrative body responsible for issues connected with tax and customs duty) and its officers – such as the directors of fiscal administration chambers and heads of tax offices.

iii Remote and land-based gambling
The Act does not distinguish between online and land-based gambling in detail. The Act simply includes provisions that apply specifically to forms of gambling conducted ‘through the internet’ – a term which is not defined further. Audiotele lotteries, which require a phone call or an SMS message to participate, are also a form of remote gambling, but these may not be conducted online.

Most forms of online gambling in Poland are either prohibited or restricted to state monopoly. The only exceptions are betting and conducting promotional lotteries, which can be held online, but each of them requires a prior permit.

iv Land-based gambling
In general, gambling may only take place in specific locations as indicated in a relevant licence or permit. There are different restrictions regarding each type of venue.

Casinos are venues where the following games may be played: cylindrical games (roulette), dice games, card games and slot machine games. Casinos are limited in number. Only one casino can operate in a single location (village or city) of up to 250,000 inhabitants. For cities of more than 250,000 inhabitants, the maximum number of casinos is increased by one per each 250,000 inhabitants (two casinos are available for up to 500,000 inhabitants, three casinos are available for up to 750,000 inhabitants and so on), but there cannot be more than one casino per total population of 650,000 inhabitants in a single province. As of January 2017, there are 45 casino licences active in Poland.

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12 In Polish law, acts do not grant responsibilities to specific ministers (such as the Minister of Finance). Instead, every act refers to specific portfolios of government (such as public finance), and these portfolios can be assigned to specific ministers by the Prime Minister.

13 Article 6(1) of the Act.

14 Article 15(1) of the Act.
Cash bingo is only allowed in bingo halls.\textsuperscript{15} These are also limited in number, similar to casinos, but with the threshold of one bingo hall per 100,000 inhabitants, with a maximum of one per 300,000 in a province.\textsuperscript{16} In practice, no bingo halls operated in Poland as of 2015 (more recent data is not available, but it is very likely that this remains unchanged).

Betting shops are entitled to offer two forms of betting: totalisator systems and bookmaking. There is no limitation on the number of betting shops in Poland. There are currently eight betting operators, with several shops for each of them.

Slot machine gaming is restricted to casinos and recently established slot machine parlours operated by Totalizator Sportowy. There is a limitation on the number of slot machines – no more than one per each 1,000 of inhabitants in one district.\textsuperscript{17} They must be located at least 100 metres from other gaming venues, as well as schools, churches, etc. As the amendment to the Act that introduced this type of venue entered into force very recently (1 April 2017), no state-operated slot machine parlours are currently active. On the Polish market there are, however, numerous unlicensed, privately owned slot machine parlours with unclear legal status\textsuperscript{18} that the authorities are trying to close down, but so far this does not seem effective. From 1 April 2017, enforcement attempts will likely intensify, due to amendments to the Act aimed at making it easier to prosecute the operators of such businesses.

Venues which sell national lottery and other state-run number games tickets are not strictly regulated in the Act. The only restriction in practice is an obligation to have a separate cash register for registering sales of lots. In practice, they are operated by private entities acting as agents of the state-owned company, usually at newsagents or other similar locations. There are no restrictions on their number.

\section*{v Remote gambling}

Both betting and promotional lotteries (the only forms of online gambling available for private entities to organise) require obtaining a prior permit to be organised. It is effectively impossible to pursue these operations from abroad, because of the requirement to establish either a branch office or a representative in Poland (for companies incorporated in the European Economic Area (EEA)) or a Polish company (for other entities).\textsuperscript{19}

For betting, all data related to operations is required to be located within the EEA, with remote 24/7 access provided for tax authorities.\textsuperscript{20} A remote betting permit is separate from a land-based one, therefore operators who wish to offer both forms of betting have to obtain two permits (a basic betting licence and a separate licence for each website they want to use for online betting).

The Act does not distinguish between regulations on land-based and online promotional lotteries. For betting, most provisions apply to its both forms, with some of them applicable only to online or land-based forms because of their nature.

\textsuperscript{15} Article 6(2) of the Act.
\textsuperscript{16} Article 15(2) of the Act.
\textsuperscript{17} Article 15(1a) of the Act.
\textsuperscript{18} In short, the provisions of the Act that were intended to outlaw slot machine parlours in 2009 were not notified to the European Commission, which led to controversy on their enforceability. See Section VII, infra, for more details.
\textsuperscript{19} Articles 6(5) and 7a(1) of the Act.
\textsuperscript{20} Article 15d of the Act.
vi Ancillary matters

Certain activity related to gambling, while not constituting gambling *per se*, is also regulated in the Act. In particular, certain restrictions apply to slot machines. Their manufacturers are required to notify the tax authorities of their scope of business, and keep records of the machines they produce. Moreover, every slot machine has to be registered with the tax authorities before being deployed. Performing technical inspections for the purpose of registration is restricted to entities authorised by the minister in charge of public finance. Similarly, it is also required to register equipment used for gaming, such as randomising devices.

Other types of gambling equipment are not directly regulated in the Act. Businesses such as gambling software developers do not need to obtain any specific licences.

Training

Natural persons are required to undergo training in order to perform some specific tasks related to gambling operations. The training requirement is a new institution in Polish gambling law. In April 2017, it replaced the requirement to pass state exams for professional licences.

Training is required for persons directly involved in gambling operations (such as croupiers) as well as supervisors of gambling games, such as directors of gambling venues. Some tasks, notably assisting customers in making bets in a betting shop, are exempt from this requirement. Training may be held internally by a gambling operator or an external training facility; it covers gambling regulations and terms and conditions of games, and has to be repeated after three years.

III THE LICENSING PROCESS

i Application and renewal

Depending on the type of a game, different licences or permits are required. Applications for licences or permits have to be submitted in writing (online filing is not available) to the relevant authority – the minister in charge of public finance or the director of a fiscal administration chamber, depending on the type of game. The specific requirements vary for each type of a game, but in general, the application should include:

- the applicant's identification details;
- information on the planned operation, game or lottery, and any drafts of the terms and conditions of the game;
- financial statements, documents proving the legality of financial resources of the applicant, certificates of no tax or social security arrears, etc.; and
- in case of casino licences, bingo hall permits and betting permits:
  - economic and financial study concerning planned investment and expected profitability, and planned business objectives;
  - certificate or affidavit confirming that the applicant’s operation is compliant with relevant anti-money laundering and counterterrorism financing regulations;

21 Article 23–23f of the Act.
22 Chapter 3 of the Act.
documents proving the right to use the venue where gambling is planned (such as lease agreements); and
• information on the financial status of the applicant and its shareholders.

After examining the application, an administrative decision is issued, either granting or refusing the licence or permit. A resolution may be expected within six months of the date of filing the application (or two months for promotional lotteries, audiotele lotteries or raffle lotteries). These time restrictions are not binding under the general rules of Polish administrative procedure law, and the authorities may take longer to decide in specific cases. The applicant can appeal against the decision.

Casino licences, bingo hall permits and betting permits are valid for six years and may be extended by another six years. Permits for raffle lotteries, raffle bingo, promotional lotteries, and audiotele lotteries are issued for the period of each game, but no longer than two years.

Licences and permits are granted against a fee that is different for each type of gambling activity. Fees are calculated as specific multiples of a base amount. For each calendar year, the base amount is equal to the average monthly remuneration in the second calendar quarter of the previous year as announced by the President of the Central Statistical Office. For 2017, the base amount is equal to 4,244.58 zlotys. For example, the cost of a casino licence is 32,000 per cent (320 times) of the base amount, therefore a licence costs 1,358,265.60 zlotys. A betting permit costs 9,000 per cent of the base amount if the application covers one website.

Where more than one entity applies for a licence that is limited in number (as with casino licences), the minister organises a public tender.

For some games, such as raffle lotteries with only minor prizes, no licence or permit is required and a mere prior notification to tax authorities is sufficient. The notification has to be submitted at least 30 days prior to the planned date of the game.23

ii Sanctions for non-compliance

In general, non-compliance with the Act may result in administrative liability, fiscal-criminal liability or both. The main offence – pursuing gambling operations without a proper licence, permit or notification – constitutes grounds for imposing a fine depending on the type of game that was conducted, in the amount of up to five times the fee for a relevant licence or permit. It is also a crime with sanctions of up to three years’ imprisonment or a criminal fine, or both.24

Other offences include non-compliance with a licence or permit, violating state monopoly, participating in unlicensed gambling or even ownership of a venue where unregistered slot machines are located.25 Administrative fines of up to 250,000 zlotys may also be imposed against internet service providers or payment service providers that fail to comply with obligations concerning website and payment blocking, respectively.26

23 For details on licensing requirements and procedure, see Chapter 5 of the Act.
24 The criminal fine is calculated by multiplying a ‘day-fine unit’ (calculated by the court by taking into account the earnings and other personal circumstances of the offender) by the number of such units as indicated by the court, taking into account the severity of the crime. A fine for conducting unlicensed gambling operations may be between 10 and 720 units, with one unit set between around 67 zlotys and 800,000 zlotys.
25 Article 89 of the Act.
26 These provisions will come into force on 1 July 2017.
The regulator may also revoke a licence or a permit, in whole or in part, if statutory conditions for such revocation (such as a gross breach of the conditions of a licence or permit) are met.\textsuperscript{27} The decision of such revocation is enforceable with immediate effect.

Criminal liability for ancillary acts, such as aiding and abetting illegal gambling operations, is also possible under Polish law. Criminal acts may only be committed by natural persons, but the legal entity in the interest of which the act was committed may be required to cover the fiscal-criminal fines, because of auxiliary liability.\textsuperscript{28} Moreover, an additional fine of up to 5 million zlotys, or 3 per cent of annual turnover, whichever is lower, may be imposed on such entity in case of final conviction of its employee, on the basis of the Act on Criminal Liability of Collective Entities for Punishable Offences.

\section*{IV \hspace{1em} WRONGDOING}

As there is no separate regulator or enforcement body dedicated to gambling issues in Poland, related wrongdoings are handled by authorities such as the police, public prosecutor service and the National Fiscal Administration, depending on the case.

All operators in the gambling sector are of course required to comply with all generally applicable laws. In addition, there are specific anti-money laundering measures imposed on gambling operators. For example, casinos are required to establish the identity of their guests and to provide such information upon request of the authorities.\textsuperscript{29} Moreover, in most cases, the companies that apply for gambling licences are required to prove their compliance with anti-money laundering laws as part of licencing procedure.

In 2016, the Financial Supervisory Authority issued a communication in which it stressed that banks and other payment service operators should not process payments connected with unlicensed gambling, as this may be viewed as aiding and abetting the committing of a crime. After the communication was issued, several banks stopped processing such payments. Further developments in this area are expected in July 2017, when new regulations on payment blocking enter into force (see Section VIII, \textit{infra}).

\section*{V \hspace{1em} TAXATION}

Gambling games, with the exception of promotional lotteries, are subject to gambling tax.\textsuperscript{30} Gambling tax is also applicable to games held by the state monopoly. Different tax rates are used for different games, ranging from 2.5 per cent (for betting on sports competitions by animals) to 50 per cent (for most casino games and slot machines). The taxation base also varies between games, but in most cases the tax is calculated against turnover from a game. This is often criticised as one of the main reasons that makes the Polish online betting operators unable to compete with offshore entities, as currently the tax (12 per cent of turnover) effectively reduces winnings significantly. Recently there were discussions in Parliament to change the taxation of betting to 20 per cent of the gross gaming revenue (GGR), but this proposal was outvoted.

\begin{itemize}
\item \textsuperscript{27} Article 59 of the Act.
\item \textsuperscript{28} Article 24 of the Fiscal Penal Code.
\item \textsuperscript{29} Article 15a of the Act.
\item \textsuperscript{30} Chapter 7 of the Act.
\end{itemize}
Gambling tax is separate from income tax (including corporation income tax), which is also applicable to gambling operators – with the exception of income from organising raffle lotteries and raffle bingo, which is exempt from income tax because it may only be used for charitable purposes. Games subject to gambling tax are exempt from value added tax.

Gambling tax does not apply to participants, with the exception of winnings from poker tournaments (in this case, the 25 per cent tax is deducted from winnings by the tournament organiser). Winnings are subject to participants’ income tax, with the exception of (1) winnings of up to 2,280 zlotys and (2) casino winnings (with no limitations). The income tax rate for income obtained from betting or other games (including lotteries) is 10 per cent.

VI ADVERTISING AND MARKETING

In general, public advertising of most gambling games is restricted in Poland. The definition of advertising is very broad, as it even covers public displays of symbols that resemble gambling games, such as a roulette wheel. In addition, public promotion of gambling games, understood as making public presentations of games, handing over chips or gambling tickets, etc., is also prohibited. These restrictions apply to all casino games, card games and slot machines. On the other hand, number games and lotteries (both operated by state operators and private operators) as well as bingo may be freely advertised.

The general prohibition of advertising and promotion of gambling does not apply when advertising or promotion is held inside gambling premises or on licensed betting websites.

In April 2017, advertising of betting was allowed, although only to a limited extent. Promotion of betting remains illegal, and this may possibly lead to confusion as the definitions of advertising (legal) and promotion (illegal) seem to overlap to some extent. It remains to be seen how this will be resolved in practice. Advertising of betting is only allowed for licensed entities – offshore operators are prohibited from advertising in Poland.

In general, it is now allowed to advertise betting, but the contents and placing of advertisements is heavily regulated. For example, advertisements may not invoke associations between betting and personal success, nor may they encourage paying higher stakes as means of increasing one’s chances to win. Advertising of betting is not permitted on TV and radio, or in cinemas and theatres, between 6am and 10pm, save for advertisements that are broadcasted during transmissions of events sponsored by betting operators (such as football matches). Advertisements are allowed in newspapers and magazines, but not on their covers. Out-of-home advertising of betting is only permitted during mass events and sports events sponsored by betting operators.

In addition to regular advertising, betting operators may also exercise ‘informing about sponsorship’, by displaying their names or other forms of identification (such as logos) in messages in which they inform the reader that they sponsor specific persons or entities (such as sports teams). ‘Informing about sponsorship’ may not include other promotional communication, such as slogans.

31 Articles 29 and 29b of the Act.
32 Article 29(9) of the Act.
33 While this is not expressly stated in the Act for anything other than betting, it can be argued that in fact any form of unlicensed gambling may not be advertised in Poland, as (1) advertising of many forms of gambling is prohibited regardless of whether it is licensed, and (2) especially for offshore gambling, it may be argued that such advertising would encourage committing a crime.
Advertising gambling outside of its permitted scope constitutes a fiscal crime, punishable by a fine of up to 720 day-fine units. Deriving profits from such advertising is also prohibited. Wrongful advertising may also lead to a revocation of a gambling licence.

VII THE YEAR IN REVIEW

The most important event for the gambling sector that occurred recently was the introduction of an amendment to the Act, which came into force on 1 April 2017 (some of its provisions will enter into force on 1 July 2017). For a review of the most significant changes introduced, see Section VIII, infra.

Owing to the significance of the new regulation, much of the past year has been spent discussing the shape of the new laws. In general, it seems that despite claims of the Polish government that the amendment is aimed to protect participants from the dangers of gambling, its primary concern is clearly to increase state revenue. Because of this, while the amendment expanded the scope of legal forms of gambling in Poland, the majority of these new forms may only be pursued by a state-owned company. Several operators appealed to the government to liberalise the gambling market in some aspects (e.g., by introducing more liberal rules on playing poker, widely considered a skill game, not a form of gambling), but these voices were largely ignored. The idea of blocking gambling websites – the first measure of such kind in Poland – was controversial among privacy advocates, but again these concerns were not heard by the authorities.

In other areas, the situation of slot machine parlours in Poland remains disputed. Although effectively outlawed in 2009, many still operate. Their owners argue that the provisions of the Act that restrict gambling to casinos are not binding, because the Act was not notified to the European Commission – a step required when legislation includes ‘technical regulations’ as defined by EU law. After many contradicting local judgments, in October 2016 the Court of Justice of the European Union ruled in case C-303/15 that these provisions do not fall within the scope of ‘technical regulation’. The authorities continue to close down unlicensed slot machine parlours, and with the introduction of the amendments to the Act in April 2017, which greatly increased the related penalties (and even made it a crime to possess a slot machine), enforcement attempts are expected to increase.

VIII OUTLOOK

It is clear that the recent amendments to the Act, which in their major part came into force on 1 April 2017, with some important provisions only enforceable from 1 July 2017, will have a major impact on the market.

Among the most significant novelties introduced in the amendment is the introduction of blocking unlicensed gambling websites. From July 2017, the minister in charge of public finance will be able to select websites that – in his or her opinion – are used to offer gambling games for residents of Poland while not possessing a valid licence or permit. Polish internet service providers will be required to redirect users who try to access them to a government website. Payment service providers will be required to cease cooperation with such blacklisted operators – this measure is intended to cut off their funding. Even though these laws are not

34 Article 110a of the Fiscal Penal Code. See footnote 24, supra.
yet effective, their impact has already been significant. Several foreign gambling websites have closed for users in Poland. There are rumours that major offshore operators have applied for betting permits. Further developments are expected when blocking measures become effective. Offshore gambling, although illegal, constitutes the majority of the online gambling market in Poland, so blocking unlicensed websites is expected to expand the licensed part of the market significantly.

The amendment reintroduces slot machine parlours to the market after their *de facto* banishment in 2009, 35 but this time they will be exclusively operated by a state-owned company. The first venues are expected to open in the fourth quarter of 2017. Totalizator Sportowy is also expected to start an online casino, as this has also become possible under the new regulations (but only for the state).

Several other changes were also introduced. When all is considered, it is possible that owing to the new regulation, the gambling market in Poland will look significantly different after this year.

35 See also Section VII, *supra*. 

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I OVERVIEW

Definitions

The primary pieces of gambling legislation in Portugal are Decree-Laws Nos. 422/89 of 2 December and 66/2015 of 29 April, which permit both online and land-based gambling, and provide the following definitions of games and their different categories:

a. Games of chance: games in which winning or losing is based solely or mainly on chance. Games of chance include casino games (namely, blackjack and roulette) and also bingo, poker and slot machines.

b. Betting: a gambling activity whereby certain amounts of money are placed on the results of a previously identified event, the outcome of which is uncertain and does not depend on the will of the players. The following types of betting are regulated and permitted in Portugal:

- pari-mutuel betting, where a percentage of the bets placed by the betters is distributed among the winners;
- fixed-odds betting, where the better bets against the operator organising the bet on the basis of previously defined odds, and the prize is the result of multiplying the amount of the bet placed for the odds; and
- betting-exchange, where the operator provides an online marketplace for betters to bet against each other.  

d. Lotteries: games in which a prize is awarded when a number or combination of numbers, or a symbol or symbols, drawn at random coincide totally or in part with the ticket held by the player.

‘Other games’ are considered to be similar to games of chance (i.e., contests, raffles, tombolas, advertisement contests, quiz shows) and consist of operations offered to the public where the hope for gain lies both in the player’s chance and skill or only in luck, resulting in a prize of economic value.

These games are regulated as land-based gambling and are subject to the supervision of the Minister of Internal Administration, which establishes the conditions in which each game can be operated as well as the respective regime.
A change in law in the near future may give municipalities the power to authorise such games.

Fantasy leagues and skill competitions are yet to be regulated as gambling activity.

ii Gambling policy
In Portugal the right to operate gambling is reserved to the state and may be granted to private entities through a concession agreement (land-based games of chance), an administrative authorisation and licence (online gambling) or a monopoly regime (state-run games).

The principles laid down in the gambling legislation aim to guarantee public safety and order; prevent excessive and unregulated gambling; control addictive behaviours; protect consumers; protect the integrity of the games; promote responsible gambling; prevent fraud, money laundering and terrorist financing; and demand that operators are fit and proper, and operate in a way that ensures an honest and fair game while preventing minors from playing.

In Portugal, the minimum age for gambling is fixed at 18 years for all types of games and bets.

iii State control and private enterprise
Lotteries, pari-mutuel sports betting, land-based pari-mutuel horse betting and land-based fixed-odds sports betting are state-run games.

State-run games are operated under a monopoly regime by Santa Casa da Misericórdia de Lisboa (SCML), through its Games Department.

SCML is a private entity with public administrative interest under state control and subject to the supervision of the social security ministry.

The operation of land-based games of chance and online gambling is open to competition through the awarding of concession agreements for the former and the issuing of licences for the latter.

iv Territorial issues
The gambling legislation is applicable and enforceable in the national territory of Portugal and the government is the grantor on the concession agreements.

Nevertheless, the procedure for the awarding of concession agreements in the islands of Madeira and Azores is in the competence of the regional government.

v Offshore gambling
The offer of land-based games of chance in places other than those legally authorised is considered a crime in Portugal.

It is also considered a crime if an operator offers (or promotes or organises) online gambling without having a licence issued by the national tourism authority. Portugal does not recognise licences issued by other EU Member States.

Without prejudice to criminal liability, the Gambling Authority has the power to order internet service providers to block illegal websites whenever an illegal operator does not cease its activity and does not remove the gambling service from the internet within a maximum period of 48 hours after being notified for that purpose.

Undertakings that operate illegally in Portugal cease to be considered of good standing and may not be able to apply for a licence.
Gambling advertising by illegal operators is prohibited and is considered an administrative offence. The Gambling Authority is the competent authority to impose the penalties provided by law.

As of May 2017, the Gambling Authority has signed cooperation and information exchange agreements with several regulatory authorities, including Spain, France and the United Kingdom, principally in order to combat illegal online gambling.

The offer of state-run games by entities other than SCML is considered an administrative offence, with the exception of land-based fixed-odds sports betting and land-based pari-mutuel horse racing bets, which is considered a crime.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

With the exclusion of lotteries, which were allowed in the 17th century, all other games were completely prohibited in Portugal until the beginning of the 20th century.

Games of chance were first regulated in 1927. The actual legal framework for land-based games of chance dates from 1989 and was last amended in 2015.

The operation of bingo halls was first regulated in 1982 and the legal framework dates from 2011 and was amended in 2015.

The online gambling legal framework in Portugal is the Legal System of Rules for Online Gambling and Betting (RJO), approved by Decree-Law No. 66/2015 of 29 April.

State-run games are regulated by several legal decrees and, in 2015, the legal framework that defined land-based fixed-odds sports betting and land-based mutual horse racing bets as state-run games was approved.

ii The regulator

The Gambling Inspection and Regulation Service (SRIJ) is the gambling regulatory authority for land-based games of chance, online games of chance, online fixed-odds sports betting, and pari-mutuel and fixed-odds horse racing betting.

State-run games are subject to the supervision of social security ministry.

iii Remote and land-based gambling

The gambling legislation clearly distinguishes between online and land-based gambling.

Land-based gambling means gambling carried out in casinos, bingo rooms or other locations previously authorised for the purpose (e.g., betting shops), and that require the physical presence of the player.

Online gambling means the games of chance, fixed-odds sports bets, pari-mutuel or fixed-odds horse racing bets, in which any devices, equipment or systems are used that enable documents, data and information to be produced, stored or transmitted, when carried out remotely, through electronic, computer, telematics and interactive media, or any other means.
iv  Land-based gambling

Land-based games of chance are subject to a concession agreement granted through a public tender to private undertakings. The operation of games of chance may only occur in casinos existing in specific gaming areas defined by law, or out of casinos in the special cases foreseen in the law (e.g., slot machines, gaming rooms, aircrafts and ships).

In each gaming area only the respective concessionaire may operate a casino.

Bingo is operated in casinos and it is also allowed, by way of a public tender, to be operated by private or public entities in bingo halls in locations previously defined by the member of the government responsible for tourism.

In bingo halls concessionaires may operate traditional and electronic bingo.

In April 2017, Madeira established a slot machine gaming room within a gaming area that is operated by the concessionaire of the casino. It was installed in Funchal’s Pestana CR7 Hotel and is currently the only slot machine gaming room in operation in Portugal.

Betting shops in Portugal are operated by SCML’s mediators and their activity is restricted to state-run games. Besides betting shops, state-run games may also be sold in other venues as long as they have a valid permit.

v  Remote gambling

Upon the approval of the RJO in April 2015, the operation of fixed-odds sports betting, pari-mutuel and fixed-odds horse racing bets, and games of chance were permitted.

The operation of online gambling is allowed by means of a licence granted by the Portuguese Gambling Authority to private undertakings.

There is no limit on the number of licences that can be granted and applicants may apply for a licence at any time.

Operators must present a technical gambling system (hardware and software, managed by the operator, which includes the website, the reporting front end and the gambling platform) to organise and operate online gambling in Portugal.

Operators are required to ensure that the reporting front end (infrastructure) is located in Portugal and contains the necessary information concerning all transactions, in order to safely ensure the permanent flow of information between operators and the Gambling Authority.

The technical gambling system of the operators has to include security mechanisms, ensuring, in particular:

\[ a \]  the integrity, availability and confidentiality of the communications, and of all the information processed and stored;

\[ b \]  registration of all actions in relation to each player;

\[ c \]  registration of all transactions and operations carried out;

\[ d \]  registration of players and players’ accounts;

\[ e \]  registration of all the changes and occurrences that take place on the gambling platform; and

\[ f \]  the authentication and identification of players.

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3 There are 10 gaming areas: Azores, Algarve, Espinho, Estoril, Figueira da Foz, Funchal, Porto Santo, Póvoa de Varzim, Troia and Vidago-Pedras Salgadas.
The technical gambling system has to be located in premises to which the Gambling Authority has access at any time.

In cases where the location of the gambling platform or any of the components thereof is virtual or uses components outside Portugal, the operator has to ensure access and the necessary permits from the premises of the Gambling Authority, in particular to carry out control, audit and supervision actions.

vi Ancillary matters

The manufacture, import, transport, trade, display or publicity of land-based gaming equipment, such as casino tables, roulette wheels, slot machines and computer software, specifically intended for the practice of games of chance has to be previously authorised by the Gambling Authority.

The technical gambling system of online gambling operators has to be certified by third parties previously recognised by the Gambling Authority and if the certification is successful it is subsequently audited and homologated by the latter.

State-run games equipment is verified by SCML.

III THE LICENSING PROCESS

i Application and renewal

Land-based games of chance

The concession of land-based games of chance is granted by the Portuguese state through a public tender to private undertakings, incorporated in the form of a limited liability company or equivalent, with its registered office in a Member State of the EU, or in a state that is a signatory to the Agreement on the European Economic Area, which is bound to administrative cooperation in the field of taxation and the fight against tax fraud and money laundering, provided that, in the case of foreign companies, they have a branch in Portugal.

The public tender specifies all the terms and conditions for the awarding of the concession agreement. These terms and conditions include the cumulative requirements to be met by applicants (good standing, technical and financial capacity), the location of the casino or bingo hall where the gaming activity will be carried out, and the assets allocated to the concession, the period of the concession agreement and the possibility of its renewal and the awarding criteria.

Until 2015 the renewal of the concession agreements in what concerns land-based games of chance was the sole competence of the government. With the amendments made in that year to the legal framework, the renewal of concession agreements is only possible if it is previously foreseen in the public tender.

Remote gambling

The operation of online gambling is granted by means of a licence by the Portuguese Gambling Authority to private undertakings incorporated in the form of a limited liability company or equivalent, as referred for land-based games of chance.

There are four different types of gambling licences available (fixed-odds sports betting, pari-mutuel and fixed-odds horse racing bets, bingo and other games of chance).
The licence application has to be submitted on the standard form approved by the Gambling Authority duly accompanied by the documents required for the verification of the good standing and the technical, financial and economic capacity requirements.

The applicant must also submit a structuring plan of the gambling technical system containing a document describing the gambling technical system, the location in the national territory, where the front-end recording infrastructure will be hosted, the identification of the categories and types of online gambling to be operated, the mechanisms for player self-exclusion and for preventing the registration of players banned from gambling, the betting limits, the allowed payment methods and the rules for calculating and paying prizes, the way in which all the transactions in the player account are made, how transactions that involve transfers of funds between the operator and the player are processed, and the information security mechanisms adopted.

If the decision of the approval to grant a licence is favourable the operator has to proceed with the down payment of the licence fees, present the safety deposits and obtain certification of the technical gambling system in order to the subsequent homologation. Only then will the licence be issued and the operator licensee may begin the operation.

Licences are valid for a period of three years from the date of issue and may be extended for successive periods of three years if the operators maintain all the requirements demanded and the Gambling Authority’s audit is successful.

**ii Sanctions for non-compliance**

In land-based games of chance the non-fulfillment by the concessionaires of their legal and contractual obligations constitutes an administrative offence punishable with a fine and the termination of the concession agreement.

The general rule is the imposition of a fine or sanction. Only in certain cases (e.g., the concealment of gaming revenues, the failure to deliver or to increase the security deposits, the repeated infringement of the gaming legislation or the concession agreement) may the authorities suspend or terminate the concession agreement.

The concessionaires’ responsibilities do not affect the criminal or administrative liability of the respective employees or agents for the infractions they have committed.

The infringement of legal obligations in online gambling constitutes an administrative offence punishable with fines. There are minor, serious and very serious offences of the law and the amount of the fines vary accordingly from €5,000 to €1 million.

According to the gravity of the infringement and the fault of the offender, additional penalties may be imposed, such as prohibiting the offender from partaking in any online gambling and prohibiting the right to take part in contract formation procedures or in procedures aimed at granting licences.

**IV WRONGDOING**

The Portuguese Gambling Authority is the entity responsible for the supervision of the implementation of anti-money laundering (AML) rules by the stakeholders, such as casinos and online gambling operators, and has the power to enter and inspect premises, and investigate all suspicious activity related to money laundering and terrorist financing.
Organised crime including match-fixing are investigated by the Public Prosecutor and police authorities. The Gambling Authority and the sports organisations cooperate closely with the above-mentioned entities, as well as collect relevant information related to this type of criminal activity.

Regarding state-run games, the implementation of AML rules is supervised by the Ministry of Labour, Solidarity and Social Security.

V TAXATION

Gambling in Portugal is subject to different taxes.

Land-based casino games are subject to the special tax on gambling (IEJO), which takes into consideration the different types of the games (games where players play against the casino, games where players play against each other and slot machines) and the geographical gambling area where the casinos are located. The rates grow slightly every five years throughout the concession agreement (until the fifth quinquennium, if applicable).

On average, the rates vary between 4.5 per cent and 36 per cent in terms of gross gaming revenue (GGR).

No other general or local tax is claimed regarding the exercise of the gambling activity. Prize moneys won by players are not taxable.

Land-based bingo operated in bingo halls (traditional and electronic) is subject to stamp duty of 25 per cent.

Online gambling is also subject to IEJO, which varies according to the different type of game or bet:

a in games of chance (including bingo), and on paris-mutual horseracing bets the IEJO is levied on the GGR of the operator. The IEJO rate on these games varies progressively between 15 per cent and 30 per cent;

b In fixed-odds sports betting and fixed-odds horse racing bets the IEJO is levied on the revenue from the amount of the bets placed (turnover). The IEJO rate on these games varies progressively between 8 per cent and 16 per cent; and

c in games of chance in which players play against each other and where the fees charged by the operator are the sole revenue deriving directly from operating, and in betting exchanges, the IEJO is levied at the rate of 15 per cent. The revenue deriving directly from the pursuit of activities liable to the IEJO is not liable to corporate income tax and stamp duty. Prize money won by online players is not taxable.

State-run games are subject to stamp duty of 4.5 per cent on the amount of the bet and of 20 per cent of the amount of the prize that exceeds €5,000. Stamp duty is borne by players. Mutual horse racing bets are subject to IEJO at a rate that varies from 15 per cent to 30 per cent of GGR.

Players’ winnings are not subject to income tax.

VI ADVERTISING AND MARKETING

Until 2015, only the advertising of state-run games was allowed.

With the approval of the RJO in April 2015 the Publicity Code was also amended, which permitted the advertising of all gambling activities.
According to the Publicity Code, the advertising of gambling has to be conducted in a socially responsible manner; must respect the protection of minors; highlight the entertainment aspect of gambling; not suggest success, social achievement or special skills as a result of gambling; or encourage excessive gambling. It is expressly prohibited to advertise any gambling that is aimed at or uses minors in the message. It is also prohibited to advertise gambling within schools or 250 metres in a straight line from schools or other infrastructures intended to be frequented by minors.

The infringement of these rules constitutes an administrative offence punishable by law with a fine and the Gambling Authority is the entity responsible to initiate and manage the administrative procedure.

VII THE YEAR IN REVIEW

The most significant development in gambling in 2016 was the issue of the first online gambling licence, which occurred in May.

Currently, there are four operators holding six licences: two for fixed-odds sports betting and four for games of chance.

Although the Portuguese market is a young market, players have shown a massive interest in the regulated market.

Notwithstanding, there is a controversy among international operators regarding the online fixed-odds sports betting taxation regime demanding a change in the actual tax bases and rates.

VIII OUTLOOK

The RJO was designed with the consideration that an initial period of evaluation would be needed and that within a maximum period of two years after the issue of the first licence (25 May 2016) a reassessment of the framework should be carried out by the Gambling Authority and presented to the government.

The main issues that the Gambling Authority will be focus on are the tax regime and new types of games, such as virtual games and e-sports.
I OVERVIEW

i Definitions

The Romanian primary gambling legislation (Government Emergency Ordinance No. 77/2009 on the organisation and operation of games of chance, as subsequently amended and supplemented), defines the following gambling products:

a Lottery – a game of chance that depends on the random outcome of events consisting of the drawing of numbers, letters, tickets or symbols, regardless of the procedure used and characteristics of the means used to make the draw (drums, wheels, cups and other similar equipment), which can be organised (in case of land-based activity) with or without the players being physically present. In relation to lottery games, the legislation sets forth the rule that both land-based lottery games and online lottery games are under the state monopoly and can be organised only by the Romanian state company, Loteria Română.

b Betting – a game of chance where the participant must indicate the results of future events or where the results are randomly generated by an independent IT system. The legislation expressly regulates three categories of betting: (1) fixed-odds betting (e.g., sports betting), (2) mutual betting and (3) exchange betting, which can be licensed and authorised as land-based or online gambling.

c Casino games – games of chance that make use of specific gaming equipment such as cards, roulettes, dice and gaming tables. A particularity of online casino games is that this category also includes online poker games and online slot machine games, thus permitting the licensed gambling operator for online casino to also offer poker and slot machine gaming on its gaming platform.

d Poker – a game of chance with ‘poker’ playing cards, which is – in case of land-based activities – performed exclusively between the participants in specialised locations.

e Land-based slot machine gaming – defined by reference to one of the following three categories:

- slot machine games with unlimited stakes and winnings played via specific machines or equipment, with the players being physically present, operated in specialised premises where gambling takes place;
- games played via electronic devices that offer limited risk winnings (known in the industry as ‘amusement with price’ (AWP) machines), with the players being physically present, but that cannot be placed in specialised gambling premises; and
• video lottery games, where the players are physically present and for which the gaming equipment must be connected to a central server running the gaming programme, and that validates the win;

\[ f \]

bingo games – games of chance defined by reference to the means used in performing the activity:

• bingo games played in gaming rooms with the winnings generated by random elements that use lottery-type draw equipment and with the players physically present on the premises;

• bingo games organised via television networks, with the players not being physically present at the time of the draw; and

• online bingo games, which are played entirely without the players being physically present, and that are organised and transmitted via any communication system;

\[ g \]

keno games – games of chance only regulated as online gambling activities, which are included in the category of online bingo and keno games;

\[ b \]

tombola – the activity of drawing numbers, letters or other symbols, regardless of the characteristics of the mechanical, electronic, digital or video devices used to make the draw, whereby players (physically present or not) may win prizes only in kind, where the value of the prizes must have a minimum value of no lower than 50 per cent of the total value of the stakes paid to participate in the game. Tombola games may be organised both as land-based or online activity; and

\[ i \]

temporary games – land-based casino games, slot machine games with unlimited winnings and traditional bingo that takes place in tourist resorts or on leisure crafts qualify as temporary games of chance, and are subject to a special temporary licence and authorisation valid for a period of three months.

A distinct category of temporary games exists for poker festivals that are defined by the law as temporary events organised in tourist resorts or other locations, which consist of poker tournaments performed exclusively between the participants. Poker festivals may be organised only by operators that hold a valid licence and authorisation in this respect.

In addition to the above categories expressly defined by the legislation, any other unregulated product that fulfils the conditions of a game of chance (consideration, chance and prize) is also subject to the licensing requirement, since the Romanian regulator is legally competent to analyse such product and determine the category in which the product should be included. This analysis is performed on the basis of a request filed by the operator of the unregulated gambling product with the Romanian regulator, where the game rules and description of the product must be attached to the request.

The legislation does not make any reference to products such as fantasy league, pool betting or spread betting. It is, however, expressly provided that ‘fun games which do not imply winnings based on random elements, but have the purpose to test the force, intelligence or skills of the participant’ as well as ‘sport games, which are not mainly based on hazard and imply skills and knowledge’ are not considered gambling products, and are permitted without a license and authorisation.

As to what concerns derivative financial products, while the gambling legislation does not make any reference to this matter, the Romanian gambling regulator represented in an official letter that binary options as well as other types of secondary financial instruments that are expressly provided within the Markets in Financial Instruments Directive cannot be included on gambling platforms.
ii Gambling policy
Gambling is generally permitted in Romania, provided that the required licences and authorisations are obtained, and the applicable legal provisions are observed in the course of business. Gambling is legally allowed in Romania in both its land-based and online forms.

iii State control and private enterprise
As a matter of principle, the very first article of the primary gambling legislation sets forth that organisation and operation of gambling in Romania represents a state monopoly and may be performed only within the specific legal parameters imposed by the gambling regulation.

However, the legislation creates a legal framework where any private operator that fulfils the requirements provided by the law is able to apply for a licence and authorisation in order to conduct gambling activities in Romania. Currently, the criteria and conditions according to which the licences are granted could not be considered as leading to an oligopoly or monopoly situation.

An exception exists in relation to lottery games. The legislation in force establishes the principle according to which both land-based and online lottery games can be organised only by Loteria Română, thus representing a state monopoly.

Further on, legal provisions set forth that Loteria Română may enter into partnership agreements with other state lotteries, gambling organisers, or other legal or natural persons. Such partnership triggers the joint liability of all the parties involved in the organisation and operation of lottery games.

iv Territorial issues
The Romanian gambling legislation expressly provides that the licence and authorisation granted to a certain operator allows that operator to conduct its activity on a national level, without the need to obtain approvals, authorisations or licences from public authorities other than the Romanian gambling regulator. This provision imposes a notification obligation on local authorities, which means that the operator is bound to inform the local municipality in advance about the commencement of gambling activities in that specific area.

v Offshore gambling
In accordance with the legislation in force, only operators based in the EU, European Economic Area (EEA) or Swiss Confederation may apply for and obtain the necessary licence and authorisation in order to provide gambling services in Romania.

A situation in which a foreign economic operator provides gambling services in Romania without holding the relevant licence and authorisation is explicitly regulated by the legislation as a criminal offence sanctioned by imprisonment from one month up to one year or by a fine. Additional sanctions are also expressly provided in the legislation for a legal entity that offers unlicensed gambling services in Romania: the entity shall be dissolved and the amounts derived from the unlawful activity shall be confiscated.

As a separate tool to control and prevent unlicensed activities, the Romanian regulator manages the ‘black list’ of unlicensed gambling websites. This list currently comprises almost 1,000 internet domain names. In this regard, the legislation also sets forth that internet service providers (ISPs) as well as all service suppliers for the gambling industry, including payment processors, are bound to comply with the decisions taken by the regulator. Specific
reference is made to ISPs that are required to ban access to the blacklisted websites (as well as to those websites promoting unlicensed gambling) under the sanction of a fine ranging from 50,000 lei to 100,000 lei.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

The conditions under which the organisation and operation of games of chance are permitted in Romania are outlined in the following normative acts:

a Government Emergency Ordinance No. 77/2009 on the organisation and operation of games of chance (GEO 77/2009);

b Government Decision No. 111/2016 for the approval of the Methodological Norms for implementation of Government Emergency Ordinance No. 77/2009 on the organisation and operation of games of chance (GD 111/2016);

c Law No. 124/2015 for the approval of Government Emergency Ordinance No. 92/2014 regulating certain fiscal-budgetary measures and amending certain normative acts;

d Government Emergency Ordinance No. 20/2013 on the establishment, organisation and functioning of the National Gambling Office; and

e Government Decision No. 298/2013 on the organisation and functioning of the National Gambling Office.

In addition to the above-mentioned normative acts, gambling activities are also regulated by means of instructions, orders or decisions issued by the National Gambling Office (NGO) in relation to various aspects of gambling activity. The NGO is a specialised body of the central public administration subordinated to the government.

Moreover, certain specific requirements in the field of anti-money laundering and prevention of terrorism are also applicable to gambling activities, and are generally comprised in the following normative acts:

a Law No. 656 of 7 December 2002 on the prevention and combating of money laundering and financing of terrorism; and


ii The regulator

The competent public authority to supervise and control the Romanian gambling market, and to grant licences and authorisations to gambling organisers, is the NGO.

iii Remote and land-based gambling

The gambling legislation distinguishes between online and land-based gambling, with both categories being separately defined in the regulation, as per the following:

a land-based gambling activities are defined as all games of chance irrespective of whether they are expressly regulated by GEO 77/2009 that fulfil the legal conditions related to a game of chance and are performed through gaming means installed in Romania, and that are not transmitted or performed through any kind of communication system (internet, landline or mobile telephone, or any other transmission systems); and
Online gambling activities are defined as comprising all the games of chance irrespective of whether they are expressly regulated by GEO 77/2009 that fulfil the legal conditions applicable for a game of chance and are performed through communication systems of any kind (internet, landline or mobile telephone, or any other transmission system).

iv Land-based gambling

Pursuant to GEO 77/2009 and GD 111/2016, land-based gambling activities may be only operated in specialised locations, which are outlined below.

Casinos

Casinos are the specialised locations used for the operation of games of chance characteristic to casinos. The surface area and structure of casinos must enable the installation of gaming equipment and other technical devices needed to carry out the specific activity, and must be located in buildings intended for use as business premises or in hotels. Business premises are understood to be buildings that were not built for residential purposes (or if they had been built for residential purposes, the intended use was changed), as well as premises located in hotels with a rating of at least three stars, in compliance with the legal regulations in force. If a business premises is modified and its purpose becomes residential, it will no longer be suitable for a casino.

Casinos are subject to minimal legal requirements with regard to the location of the premises, surface and safety equipment. By way of example, according to GD 111/2016, casinos cannot be located inside or nearby an educational establishment, including its related campuses; cultural, arts, health, social or religious establishments; or other similar premises.

Betting agencies

Betting agencies are the specialised locations for betting activities in which at least one dependent betting terminal is operated and that cumulatively meet the specific conditions provided by the law with respect to (1) the surface of the premises (i.e., minimum 15 square metres), (2) the usage of electronic devices, and (3) the minimal mandatory equipment to be found on the premises and the manner in which the equipment shall be operated.

In addition, betting agencies should not be excessively illuminated, except for a situation in which the whole building the betting agency is part of is provided with additional lighting (not just street lighting).

Locations for the operation of slot machines

All premises used for operation of slot machine gaming activities, irrespective of the type of slot machine, are subject to certain restrictions in relation to the advertising of the premises, as follows:

a. organisers will prevent viewing of the activities carried out within the respective premises; and

b. organisers will not suggest gambling activities by using images, text or other symbols.

In addition, with regard to the specific category of AWP slot machines, GD 111/2016 also provides for a general restriction on advertising, which means that the organiser is prohibited from advertising the gambling activity within the premises where this type of activity is conducted.
Locations for operation of bingo games

Pursuant to GD 111/2016, bingo games performed in specialised gaming halls may only take place in locations that will be placed in specialised premises or business premises, which are registered as the organiser’s main or secondary office and that meet a set of mandatory conditions in relation to the logistic organisation – sufficient electrical lighting system, air-conditioning system, sound system, safety-related requirements, back-up electrical circuit, etc.

v Remote gambling

Offering remote gambling products in Romania is subject to a licensing and authorisation procedure. In order to apply for an online licence and authorisation, several technical and operational requirements must be met. The following requirements are of particular importance:

- **localisation requirements** – first, the main server of the operator must be located in Romania or another Member State of the EU or EEA, or in the Swiss Confederation. In addition, if the main server is not located in Romania, safe and mirror servers must be established in Romania;
- **use of Class II licensees** – remote gambling organisers may carry out their activities in Romania by relying only on the products and services offered by B2B suppliers that hold a Class II licence issued by the NGO. The activities that entail the obligation to obtain a Class II licence include software development, platform management, payment processing, marketing affiliation or certification activities.
- **certification requirements** – any operator applying for an online licence must hold a certification for the gambling system (software and platform being included in the scope of certification) issued by a specialised company that holds a Class II licence issued by the NGO.

vi Ancillary matters

Pursuant to GEO 77/2009 and GD 111/2016, the gaming equipment or components used by land-based gambling operators to conduct their activity (e.g., roulettes, slot machines, slot management systems) will be acquired only from an entity that holds a Class II licence issued by the NGO for activities relating to the manufacturing, distribution, repair and maintenance of gaming equipment, as well as import, export, EU acquisition, EU delivery or other related activities involving gaming equipment or components.

With regard to the online gambling sector, as mentioned above, business-to-business (B2B) suppliers are also subject to the Class II licensing requirement. The activities that entail the obligation to obtain a Class II licence include software development (including live casino broadcasting), platform management, payment processing, marketing affiliation and certification activities.

The legislation does not provide for a personal licence requirement for individuals holding specific positions within a gambling operator. There are, however, certain requirements for the licensing process that refer, in particular, to the directors and shareholders of the applying entity. Thus, the licence application must comprise the criminal record checks of these persons as well as affidavits given by such persons disclosing the ultimate beneficial owners and attesting, among other things, their experience in the gambling industry. In addition, directors and shareholders are also required to obtain specific approval from the Romanian police authorities that specialises in cybercrime offences.
III THE LICENSING PROCESS

i Application and renewal

As a core rule, only operators based in the EU, EEA or Swiss Confederation may apply for a license and authorisation.

**Licensing process for land-based gambling**

In order to perform land-based gambling activities, any gambling operator must obtain a Class I licence and one or several authorisations. While the licensing procedure is not product-specific, the authorisation must be obtained for each type of gambling activity intended to be performed.

In order to obtain the licence, the operator must submit an application request along with several corporate and operational documents related to the legal entity itself, and its directors, shareholders and associates (e.g., incorporation and good-standing certificates, articles and memorandums of associations, criminal records certificates for directors, affidavits issued by each director attesting the ultimate beneficial owner, the lack of incompatibility, non-involvement in the events on which the bets are placed).

The authorisation can be obtained by an operator that has been previously granted a Class I licence. However, the regulation allows an operator to submit licence and authorisation applications at the same time provided that the necessary conditions are fulfilled for each of these. The conditions for obtaining the authorisation vary in accordance with the type of gambling activity sought to be performed and refer to operational aspects (such as the game rules for each game offered to the players and the configuration of the gambling premises) or technical requirements (such as certification of the gambling equipment or development of the reporting solution to the NGO of the aggregated financial and operational data of the operator).

From a procedural perspective, the complete documentation must be submitted to the NGO’s registry at least nine working days in advance of the Supervisory Committee’s meeting. Pursuant to GEO 77/2009, ‘requests to be granted with a licence to organise or authorisations to operate shall be resolved within a time frame of 30 days from the date of submission of the complete documentation’. However, considering that the NGO has the competence to request any additional documents or information deemed necessary, in practice, the licensing and authorisation procedure may exceed the maximum 30-day time frame provided by the law.

The Class I licence is valid for 10 years with the exception of temporary games of chance for which the licence is valid for three months. The authorisation is valid for one year, with the same exception – for temporary games of chance, the validity of the authorisation is also three months.

Although the licence has validity for 10 years, fees are owed annually in order to maintain this licence. GEO 77/2009 provides the value of the licence and authorisation fees, values that differ according to each type of game of chance. For example, for land-based fixed-odds betting, the annual licence fee amounts to €25,000; for poker clubs, the licence fee is €15,000 per year, etc. The authorisation fees are set differently – for instance, for fixed-odds betting, the authorisation fee amounts to 16 per cent of the revenues obtained by the organiser, but no less than €90,000 per year; for casino games, the authorisation fee is owed for each gaming table, which amounts to €60,000 per table for Bucharest and €30,000 per table for any other city in Romania.
In addition to the licence and authorisation fees, land-based gambling operators are also required to pay an annual contribution to the public foundation for preventing gambling addiction (which has not been established yet). Such annual contribution amounts to €1,000 and must be paid until 15 December of each year.

As far as the prolongation procedure is concerned, with the exception of temporary games of chance, in respect of which prolongation may be requested only once, the licence and authorisation for organisation and operation land-based games of chance may be prolonged, upon request, for validity periods identical to the initial period providing that, prior to the expiry date, the organiser fulfils the conditions for their extension, as per the provisions of the law.

**Licensing process for online gambling**

To a certain extent, the licensing and authorisation requirements for land-based gambling also apply for online activities. As a preliminary observation, while in the case of land-based gambling activities the authorisation must be obtained for each type of activity (or machine, as the case may be), in the case of online gambling, only one authorisation is to be obtained for all the activities conducted on the same gambling platform (which can be connected to one or several internet domain names).

Other particular conditions applicable for an operator applying for a licence and authorisation to perform online gambling refer mainly to technical and operational requirements.

Thus, the applicant is required to have its entire IT system audited by a specialised testing laboratory that holds a Class II licence, while the gambling software, as well as the random number generation and return-to-player of each game, must also be certified by a Class II-licensed certifier. In terms of the necessary infrastructure, in case the main gaming server is not located in Romania, the operator must establish safe and mirror servers in Romania in order for the NGO to be able to monitor the activity related to the Romanian market and verify any incidents that occur. The gaming server must report to the safe and mirror servers data and information in accordance with NGO Order No. 47/2016. In brief, while the safe server stores rough replica data of the information from the gaming server, the mirror server must contain centralised reports summarising the daily activity and financial results obtained by the operator.

On the operational side, among other requirements, operators that are not Romanian-based companies are required to appoint an authorised representative (a Romanian legal or natural person) to act as the representative of the operator in relation to the Romanian state authorities.

In terms of costs, the licence fee is calculated by reference to the operator’s turnover. GEO 77/2009 provides for several turnover thresholds in order to determine the applicable licence fee (e.g., the minimum amount of the licence fee is €6,000 per year for a turnover of less than €500,000 per year while the maximum amount is €120,000 per year for a turnover exceeding €10 million per year).

The amount of the authorisation fee for remote games of chance is 16 per cent of the organiser’s revenue, but no less than €100,000 per year.

In addition to the licence and authorisation fees, online operators are also bound to contribute to the public foundation for preventing gambling addiction with a contribution of €5,000 per year.
The regulation also sets forth certain administrative fees to be paid by the online gambling operator when applying for a licence, namely:

- a documentation analysis fee of €2,500 paid on submission of the licence with the NGO; and
- a fee for the issuance of the licence of €8,500 per year, per licence.

### ii Sanctions for non-compliance

In principle, failure to observe the legal requirements in the field of gambling may lead to civil, administrative or criminal sanctions.

By way of example, administrative liability may be triggered when:

- the organiser of land-based gambling activities allows individuals to participate in games of chance without having valid identity documents in their possession;
- the gambling organiser, without distinction between land-based or online activities, does not pay the participants the winnings obtained in the activity of gambling in three working days, provided that the conditions imposed to the participant in relation to the proof of winnings are fulfilled;
- the gambling organiser, without distinction between land-based or online activities, fails to notify the NGO of any modifications that have occurred to the data on the basis of which the licence and the authorisation were issued by the NGO;
- the gambling organiser allows credit operations for the benefit of participants in games of chance; and
- the remote gambling organiser promotes any services or activities that are not permitted or are not regulated by the applicable legislation in the field of gambling.

The failure of the gambling organiser to comply with the legal requirements could also lead to the suspension or revocation of the licence by the NGO’s Supervisory Committee.

The operation of games of chance without being granted with the required licence and authorisation constitutes a criminal offence and shall be punished with imprisonment from one month to one year or with a fine. Additional sanctions applicable for the criminal offence of unlicensed gambling are that the gambling operator would be dissolved and the amounts derived from the unlawful activity would be confiscated.

Criminal liability may be also triggered when the following gaming products are offered to the players:

- fraudulent games of chance;
- games of chance through radio channels or through other assimilated transmission means;
- games of chance based on the results of clandestine competitions (such as dog fighting, which is expressly forbidden by the Romanian legislation, illegal car racing, etc.);
- clandestine games of chance, the results of which, rather than being random, are influenced by the skill of the person handling the game for the purpose of obtaining revenues; and
- competition games with winnings of any type through telephone lines or other communication systems, television or radio where the obtaining of prizes is based solely on the accuracy of the answers provided to general questions, which involve a participation fee.
The criminal liability of those involved in money transfers for gambling is not subject to the specific gambling legislation and is to be assessed on a case-by-case basis, as such a situation also has potential implications related to anti-money laundering regulations.

With regard to ISPs, based on the provisions of GEO 77/2009, such are obliged to observe the NGO decisions and ban access to the unlicensed gambling websites included on the regulator's blacklist. Non-observance of this obligation triggers the administrative liability of ISPs, which face a fine ranging from 50,000 lei to 100,000 lei.

With respect to participants in games of chance, according to GEO 77/2009 any individual who participates in Romania in the activity of remote games of chance operated by an unlicensed or unauthorised operator shall face administrative fines ranging from 5,000 lei to 10,000 lei, thus triggering the administrative liability of the player (and not criminal liability).

IV WRONGDOING

One of the main principles governing gambling activity consists of permanently ensuring the prevention and control of criminal activities that may be performed by accessing gambling services.

In this sense, a special focus is given to the anti-money laundering-related obligations incumbent to the gambling organiser in conducting its activity, including obligations generally related to (1) implementing a procedure of permanent collaboration with the competent authority, the National Office for Prevention and Combating Money Laundering and Terrorism Financing, (2) implementing adequate internal policies and know-your-customer procedures, and (3) notifying and reporting certain transactions, as per the guidelines provided by the legislation applicable in the field of anti-money laundering.

V TAXATION

From a fiscal point of view, land-based gambling operators that operate in Romania are subject to a 16 per cent profit tax (which is for all types of businesses and not specific to gambling), in addition to any other fiscal obligations imposed under the Romanian Fiscal Code. The Fiscal Code provides for an exception in what concerns land-based casinos, where it is stated that this category may be subject to a 5 per cent turnover tax in case the profit tax is less than 5 per cent of their revenues.

Online gambling operators are subject to corporate tax in Romania only if they are Romanian fiscal residents or if they create a permanent establishment in Romania. Otherwise, the non-resident gambling operator owes income tax in the country of establishment and will be required to pay the annual licence and authorisation fees in Romania, as well as a contribution to the fund for responsible gambling.

In Romania, the revenues obtained by the players are subject to tax charges. In case of land-based games, the operator is required to withhold the applicable tax and subsequently pay such to the state budget, while in the case of online games, each player is bound to execute individually the tax duties imposed by the Romanian authorities.
VI ADVERTISING AND MARKETING

The advertising of gambling activities performed in Romania by licensed gambling operators is permitted, provided that the principles regarding protection of minors and responsible gambling are observed. In addition, GD 111/2016 also imposes certain requirements in relation to the placement of the advertising material and content-related conditions.

In relation to gambling activities that are not authorised in Romania, according to GEO 77/2009, activities of marketing or advertising or any promotional activity related to unlicensed and unauthorised remote games of chance constitute administrative offences and shall be punished with fine ranging from 50,000 lei to 100,000 lei, and the additional sanction of confiscation of the amounts of money generated from the illicit activity. In this regard, Romanian case law includes one case where a gambling operator was sanctioned because of advertising activities conducted in relation to unlicensed gambling websites.

VII THE YEAR IN REVIEW

Important changes have occurred in the past 12 months in the Romanian gambling market. Thus, 2016 marked the entry into force of Class I licences and authorisations issued for online gambling in Romania. The list of licensed remote gambling organisers in Romania currently comprises 16 operators. In addition, 2016 also marked the starting point for the Class II licensing process for B2B suppliers and, at the time of writing, over 270 Class II licences have been granted by the NGO for all B2B activities subject to the licensing requirement.

VIII OUTLOOK

Currently, there are two pieces of legislation that are pending proposal that, if enacted, will have a significant impact on online gambling activities performed in Romania. The first is the legislative proposal that states that online gambling activities cannot be advertised via audiovisual means. The second is the amendment of the Fiscal Code and the reintroduction of the withholding tax system for revenues obtained by the players from online gaming activities. The fiscal legislation provides for a mechanism whereby each player is bound to pay the tax for the revenues obtained from online gambling based on a declaration filed with the tax authorities. It seems that the tax and gambling authorities’ intention is to amend this system and oblige the operators to withhold the gambling tax for players’ revenues and instead transfer the amount of the tax to the state budget.
I OVERVIEW

i Definitions

The Russian Gambling Law defines gambling as a risk-based agreement on winnings entered into by two or more parties among themselves or with a gambling operator according to the rules set by the gambling operator. The risk element is an essential characteristic for classifying an activity as gambling, especially given the absence to date of detailed regulations on different types of games of chance.

The same law specifically recognises totalisator and bookmaking activities, which are generally subject to less stringent regulation than other types of gambling:

a a totalisator is defined as a gambling venue in which a gambling operator organises bets between players and pays winnings out of the amount of accepted bets after deducting the gambling operator’s fee; and

b a bookmaking shop is defined as a gambling venue in which a gambling operator organises bets between itself and players.

The Gambling Law also encompasses the concept of remote gambling, which entails any form of gambling ‘using data and telecommunications networks (including the Internet) or means of communication (including mobile communications)’.

Lotteries do not constitute gambling within the meaning of the Russian Gambling Law’s definition, and are regulated independently. The Lotteries Law defines a lottery as a game conducted pursuant to an agreement in which one party (the operator) holds a draw for the prize pool of the lottery and the other party (the participant) is entitled to receive the winnings if deemed the winner in accordance with the terms of the lottery.

Russian law and practice do recognise legal concepts such as public promise of a prize, public competition and promotional event, which allow games of skill, business promotions with prize draws and similar contests to be held without triggering gambling or lottery regulations. However, the statutory language dealing with each of these types of events is vague or limited, and official guidance is lacking. Thus, companies operating such events

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1 Alexander Skoblo is a partner and Ekaterina Merabishvili is an associate at Dentons. The authors thank Ethan Heinz and Alexey Matveev, both of counsel, for assisting with this chapter.
should be careful to avoid any elements characteristic of gambling or lotteries, such as a risk factor, an initial stake (bet) or purchase of a lottery ticket, a lack of objective (non-risk based) criteria for determining the winner and a lack of judges.

Prior to 2009, derivatives were regarded from a legal standpoint as a form of gambling, which largely deprived the parties to derivative transactions of any legal means of enforcing their agreements in Russia (because of the fact that, as a general rule, most claims arising out of the operation of or participation in gambling are not cognisable under Russian law). However, as of 2009, derivatives have been expressly regulated by the Russian Securities Market Law and are no longer treated in the same way as gambling.

ii Gambling policy

Russian public policy has tended, particularly in recent years, to reflect conservative and religious values, which naturally promote a more restrictive and paternalistic approach to the regulation of gambling.

Accordingly, as of 1 July 2009 gambling is only permitted within specially designated territories termed gambling zones, of which there may be no more than five, all of which are currently located in relatively remote regions and are generally underdeveloped. However, this restriction does not apply to bookmaking and totalisator betting, which are allowed both within and outside the gambling zones, as well as online. Lotteries must be authorised and operated by the state, and are conducted nationwide.

Before engaging in the organisation or operation of gambling activities, operators must obtain the relevant licence or permit. Bookmakers and lottery organisers are required to make mandatory payments to sports federations and to the federal treasury ‘for important social purposes’, respectively. Losses from participation in gambling and lottery cannot be insured. Poker is treated as a form of gambling, not a game of skill (although it had previously been, for a short time, considered a sport).

As mentioned above, very limited legal protections are available in relation to gambling, and these amount mostly to enforcing payout of winnings.

At the same time, Russians’ propensity for gambling is well documented. Owing to the lack of easy access to lawful gambling venues in the five permitted gambling zones, Russian people turn to remote gambling despite the fact that many online casino sites have been blocked by Russian internet service providers in compliance with the rulings of Russian authorities.

Given the budgetary challenges facing Russia in recent years, Russian officials speak, both in the media and at industry events, of liberalising certain aspects of gambling regulations. However, the draft laws that have been put forward so far have scarcely reflected this attitude.

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4 Civil Code, Chapter 58.
6 For example, an October 2013 poll by VCIOM, the Russian Public Opinion Research Center, indicated that at least 16 per cent of Russian citizens had played poker. Note that this was at a time when online poker had already been made illegal, but before en masse blocking of online gambling sites. It is hard to define precisely how the blocking of online casinos affected the numbers, especially since many gambling news and statistics sites are also blocked in Russia. However, in our experience a large number of Russian players still participate in remote gambling and are important for the industry.
iii State control and private enterprise

Russian gambling operators are private Russian companies that are required to obtain either a licence for nationwide operation of totalisator or bookmaking shops, or a permit to operate in a specific gambling zone. The requirements for gambling operators are quite strict, and the process of obtaining the licence or permit can be burdensome.

Since 2014, all lotteries in Russia are organised either by the Ministry of Sports or the Ministry of Finance by decision of the government. The responsible ministry holds a tender to select a private company to act as the actual operator of the lottery process.7

iv Territorial issues

Gambling (with exception of totalisator betting and bookmaking) is allowed only in the gambling zones designated by the government. There can be no more than five of these, and they must be located within the regions listed in the Gambling Law. A separate state authority is in charge of each gambling zone, handling, among other things, the issuance of operating permits.8 The current gambling zones are:

a Azov-City (Krasnodar region);

b Sibirskaya Moneta (Altai region);

c Primorye (Primorskiy region);

d Yantarnaya (Kaliningrad region); and

e Krasnaya Polyana (Krasnodar region, specifically, Sochi).

All five zones are technically active, in that they each have at least one gambling venue open, but are little developed. Azov-City, frequently regarded as the best developed gambling zone, is scheduled to be closed by 1 January 20199 owing to the opening of a gambling zone in Sochi, while an as yet unidentified gambling zone is planned in Crimea. The abrupt announcement of the impending closure of the Azov-City gambling zone did little to reassure potential gambling investors. Existing casinos are lobbying for the zone’s preservation (notably, only those operators that received their permits before 23 July 2014 may continue to operate in Azov-City pending its closure).

The same law that mandated the closure of Azov-City provided some limited comfort to current and potential gambling operators, by providing that henceforth a gambling zone cannot be closed until at least 10 years after its establishment. However, the law does not prevent the authorities from closing on short notice a gambling zone that has existed for the requisite 10-year period.

Bookmaking shops and totalisators can operate nationwide under a licence issued by the Federal Tax Service. State lotteries also operate nationwide, or, if permitted by an international treaty of the Russian Federation, in the territory of both Russia and other countries.

7 Lotteries Law, Article 13.

8 Gambling Law, Articles 9 and 10.

v Offshore gambling

Because only Russian entities can acquire the licences and permits required to act as gambling operators, it is illegal for offshore operators to offer gambling directly in Russia. However, there is no prohibition on foreign-owned Russian companies obtaining a gambling operator’s permit or licence.

Obviously, Russian regulatory authorities face jurisdictional constraints on their ability to impose sanctions directly upon offshore operators, which usually have no actual business presence or assets in Russia and only provide digital access to gambling sites. Therefore, the principal means of combating offshore operators is to include their websites, and related sites (e.g., advertising sites or e-money sites that explicitly allow payments to offshore gambling operators), in the ‘prohibited websites register’.10 Russian internet service providers are required to block access to such websites, unless and until the prohibited content is removed. More detailed information on the prohibited websites register is included in Section II.v, infra.

Furthermore, because the Russian Advertising Law11 prohibits the advertising of any illegal services, and of licensable services without the relevant licence or permit, advertising the services of an offshore gambling operator is illegal in Russia.

Russian officials have long considered the possibility of imposing sanctions on payment operators and other services providers for facilitating payments to offshore or otherwise unlicensed gambling operators, and penalising Russian nationals for participating in illegal gambling. Several draft laws on the matter have been submitted without success, although another such bill is pending before the Russian Parliament at the date of this publication.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

The Civil Code includes only cursory regulation of gambling activities, setting out basic principles within several articles of its Chapter 58. Instead, the principal regulations are contained in the Gambling Law and the Lotteries Law. The government has adopted a variety of ancillary acts to both the Gambling Law and the Lotteries Law, dealing with such matters as licensing, operator requirements and reporting requirements. At the regional level, the legislatures of each region where a gambling zone is located may adopt acts within their competence in relation to the operation of that particular gambling zone.

Various other provisions relevant to the regulation of gambling (such as advertising regulations, anti-money laundering (AML) requirements, penalties for breach of relevant laws, and so forth) can be found across a range of Russian laws.

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10 The official name of this register is the Unified Register of Domain Names, Website Page URLs on the Internet Data and Telecommunications Network, and Network Addresses Enabling the Identification of Websites on the Internet Data and Telecommunications Network Containing Information Prohibited for Dissemination in the Russian Federation, which was established pursuant to Government Resolution No. 1101 of 26 October 2012.

ii The regulator

Nationwide, regulation and supervision of both gambling and lotteries are undertaken by the Federal Tax Service. In addition, a separate state authority is empowered to regulate each of the gambling zones specifically, including with respect to the issuance of the relevant operating permits (the gambling zone authority). For example, the Department of Tourism, Resorts and External Communications of the Altai Region is currently the gambling zone authority for the Siberskaya Moneta gambling zone.

iii Remote and land-based gambling

As explained in Section I.iv, supra, land-based gambling is only permissible in five dedicated gambling zones, none of which is significantly developed. The only exceptions are totalisator and bookmaking shops, which can operate nationwide. Lotteries, which are not treated as a form of gambling and must be state-run, also function nationwide.

Remote gambling is prohibited, but online lotteries are permitted (subject to general restrictions applicable to lotteries) and operate with the use of electronic lottery tickets.

iv Land-based gambling

The following types of gambling venues may be established only in gambling zones:

a gambling venue: premises dedicated solely to providing gambling services and ancillary services (which may include entertainment, hospitality, catering services, etc.);
b casino: a gambling venue where gambling is organised with the use of gaming tables or other gambling equipment; and
c slot machine hall: a gambling venue where gambling is organised with the use of slot machines or other gambling equipment (except gaming tables).

The following types of gambling venues may be located nationwide:

a bookmaking shop: a gambling venue where bets are made between the gambling operator and the players; and
b totalisator: a gambling venue in which a gambling operator organises bets between players and pays winnings out of the amount of accepted bets after deducting the gambling operator’s fee.

There is a broad range of requirements as to the location, size, outfitting and other parameters of gambling venues, including some that are specific to particular types of gambling venues.

v Remote gambling

Remote gambling is expressly prohibited by law. In addition to levying administrative fines on entities breaking this rule, Russian authorities block the relevant websites. Specifically, the Federal Tax Service may decide to block websites that violate gambling and lottery regulations. On the basis of such decisions, Russia’s key media authority, Roskomnadzor, includes the sites in the ‘prohibited websites register’. Upon receiving notice from Roskomnadzor, the owner of the website or the hosting provider has three days to remove the content that caused the site to be included in the register or restrict access to the site. Otherwise, upon expiration

12 Gambling Law, Article 5.
of such deadline Roskomnadzor updates the register with information on specific web page addresses of ‘prohibited websites’ (the register updates daily at 9am and 9pm). Within 24 hours from such update all Russian internet service providers must block the websites.

Websites need not directly offer gambling opportunities to be included in the register; rather, any page that ‘provides information’ breaching gambling laws may be blocked. In practice, this may include advertising and news sites, among others. One of the best known examples occurred on 14 July 2016, when the websites of the payment systems Qiwi and Skrill were included in the prohibited websites register for containing references to remote gambling and describing and implementing electronic payment capabilities in favour of remote gambling operators. 14 The sites quickly deleted the prohibited comment and were removed from the prohibited websites register.

Online totalisator betting and virtual bookmaking shops are permissible provided operators have the required licence. Online bets are in this case recorded and transferred by a special credit institution – a ‘centre for recording transfers of online bets with bookmaking shops and totalisators’.

As noted in subsection iii, supra, lotteries may operate online, with the use of ‘electronic lottery tickets’.

vi Ancillary matters

Gambling operators must maintain their licences and permits, and to that end must satisfy a variety of requirements such as possessing certain equipment, having rights to appropriately located and outfitted venues, and demonstrating satisfactory financial capabilities. However, their suppliers, counterparties and employees are not currently obligated to acquire a personal licence or permit solely in connection with their participation in the gambling industry. Quality certifications and similar selective requirements as to specific equipment or specific professions may apply, however.

Certain persons, in particular those with outstanding convictions for premeditated crimes of medium gravity, or grave or especially grave crimes (being categories of severity under Russian criminal law) or for economic crimes cannot be shareholders of gambling operators.

III THE LICENSING PROCESS

i Application and renewal

The Gambling Law and ancillary laws and regulations impose a variety of licensing requirements on gambling operators. The list of such requirements for operators seeking a totalisator or bookmaking shop licence includes:

a having processing centres and betting locations registered with the Federal Tax Service;

b having rights to venues located and outfitted in accordance with legal requirements;

c having the minimum required net assets (1 billion roubles) and charter capital (100 million roubles), paid up in own (i.e., not loaned) cash funds);

d employing necessary staff, including security staff;

having a standing bank guarantee covering the bookmaking shop’s obligations for at least five years (this requirement does not apply to totalisators); and

satisfying a broad range of other requirements, including reporting requirements, requirements concerning its internet site, and so on.\footnote{15} Totalisator and bookmaking shop licences are granted by the Federal Tax Service. Along with the application, a prospective operator must submit information on its employees; a calculation of its net assets and information on its charter capital with the required evidence of sources of funding; copies of documents demonstrating that it owns the necessary equipment; and the plans of venues meeting the legal requirements. The formal period for consideration of a licence application is 45 business days, but an applicant should budget additional time for the Federal Tax Service to request additional documents and make other queries, with the expectation that the process may be drawn out because of bureaucracy. In practice, obtaining a licence can take several months.

The initial licence fee is 30,000 roubles, while licence reissuance (e.g., because of change of address of the gambling venue) or issuance of a duplicate costs 10,000 roubles. Licences do not have an expiry date. The operator must become a member of the relevant self-regulating organisation (of totalisator or bookmaking shop operators) within 30 days after acquiring the licence.

Obtaining a permit to organise gambling in gambling zones is governed by acts of the region where the gambling zone is located. The procedures are more or less similar from one region to another as well as to the procedure described above for obtaining a totalisator or bookmaking shop licence. The operator applies to the relevant gambling zone authority and provides documents evidencing that it meets the applicable requirements. There are some differences between the requirements for a gambling operator as opposed to a totalisator or bookmaking shop operator, most notably, perhaps, being that for gambling operators there is no minimum required charter capital threshold and the minimum required net asset value is 600 million roubles instead of 1 billion roubles.

The gambling zone authority is supposed to decide whether to issue a permit within 30 days, although here too delays because of requests for additional documents and bureaucracy may be expected. No fee is payable for issuing a permit. Permits do not have an expiry date but may be voided if, \emph{inter alia}, a recipient does not begin operating within three years after receiving the permit.\footnote{16} Obviously, a permit will no longer be valid if the gambling zone itself is closed.

Lotteries, as aforementioned, are exclusively state-organised. At the decision of the government, the relevant ministry will start a tender to engage a private entity as the lottery operator. Essential requirements for such entities are set out in the Lotteries Law.

\section*{ii Sanctions for non-compliance}

Russian law contemplates various sanctions for breach of gambling and lottery regulations, including in particular as follows:

Organising gambling outside of a gambling zone, including remote gambling, may incur an administrative fine of 700,000 to 1 million roubles for companies, as well as entail

\footnote{15} Government Resolution on licensing of gambling activities of bookmaking shops and totalisators (No. 1130 of 26 December 2011).

\footnote{16} Gambling Law, Article 13(5).
confiscation of gambling equipment. For the same transgression, individuals may face criminal penalties in the form of a fine of 500,000 to 1.5 million roubles or the equivalent of their aggregate salary for three to five years; mandatory labour for a period of 180 to 240 hours; various limitations of freedom of movement and travel for up to four years; and incarceration for up to six years, depending on the gravity of the crime.\textsuperscript{17}

Organising totalisator betting or a bookmaking shop without a relevant licence may incur an administrative fine of 2,000 to 4,000 roubles for individuals, 30,000 to 50,000 roubles for officers, and 500,000 to 1 million roubles for companies, as well as entail confiscation of gambling equipment.

Violations of gambling regulations by gambling operators may incur fines of 300,000 to 1 million roubles together with, in the most severe cases, cessation of all business activity for up to 90 days.

Organising a lottery other than in accordance with a decision of the government may incur fines of up to 300,000 roubles for companies, and in lesser amounts for officers and individuals.

Violation of lottery regulations may lead to fines between 40,000 roubles and 250,000 roubles.\textsuperscript{18}

There is no personal liability for gamblers who participate in illegally organised gambling, although draft laws to address this are proposed from time to time. There is currently a draft law on this topic under consideration by the legislature. Internet service providers that fail to block gambling-related websites on the prohibited websites register and advertisers that violate gambling advertisement regulations may also face penalties.

\section*{IV \hspace{1em} WRONGDOING}

Gambling operators (including totalisator and bookmaking shops and lottery operators) are, alongside banks, insurance companies and others, considered ‘entities dealing in cash funds and property’ within the meaning of the Russian AML Law.\textsuperscript{19} Therefore they must undertake certain AML procedures, including mandatory review of payouts of more than 600,000 roubles in value and the filing of reports with the Russian AML watchdog, Rosfinmonitoring.

Totalisator and bookmaking shops are required by the Gambling Law to undertake additional reporting and other countermeasures to minimise the risk of sports events being fixed.\textsuperscript{20}

\section*{V \hspace{1em} TAXATION}

\textbf{i \hspace{1em} Corporate taxation}

For tax purposes, gambling business is defined as ‘entrepreneurial activities involving the organisation and conduct of games of chance through which organisations receive income in

\textsuperscript{17} Criminal Code, Article 171.2.
\textsuperscript{18} Code of Administrative Offences, Article 14.1.1, 14.1.1-1 and 14.27.
\textsuperscript{19} Federal Law on Counteracting Money Laundering and Financing of Terrorism (No. 115-FZ of 7 August 2001, as amended).
\textsuperscript{20} Gambling Law, Article 6.1.
the form of winnings or charges (or both) for the conduct of games of chance'. Income and expenses relating to gambling activities are disregarded for the purposes of calculation of the corporate income tax base. Furthermore, services involving the organisation and conduct of games of chance are exempt from Russian VAT, with no right to recover (or deduct) input VAT.

Instead, companies involved in the gambling business are subject to a gambling tax. As this is a regional tax, the rates of gambling tax are established by the laws of the constituent entities of Russia, but must be within the following ranges:

<table>
<thead>
<tr>
<th>Taxable item</th>
<th>Tax rate per item (roubles)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gaming table</td>
<td>25,000–125,000</td>
</tr>
<tr>
<td>Gaming machine</td>
<td>1,500–7,500</td>
</tr>
<tr>
<td>Totalisator processing centre</td>
<td>25,000–125,000</td>
</tr>
<tr>
<td>Bookmaking shop processing centre</td>
<td>25,000–125,000</td>
</tr>
<tr>
<td>Totalisator counter</td>
<td>5,000–7,000</td>
</tr>
<tr>
<td>Bookmaking shop betting counter</td>
<td>5,000–7,000</td>
</tr>
</tbody>
</table>

Gambling tax is calculated and paid to the local tax authorities on a monthly basis.

Lottery operators do not pay gambling tax. Their activities are subject to 20 per cent corporate income tax, where the tax base is the sales proceeds from the distribution of lottery tickets less obligatory payments (to the lottery organiser and winners) and overhead expenses. These activities are also VAT-exempt.

This special taxation regime applies to companies conducting their gambling business in Russia within the local regulatory framework. The situation with offshore gambling providers is more complicated.

On the one hand, the Ministry of Finance has opined that since online gambling activities are prohibited by law, the income derived from such activities is not subject to taxation in Russia. However, this opinion was expressed in a letter that is not, in practice, binding on the Federal Tax Service. The risk cannot be excluded that bets paid by Russian gamblers for remote gambling, or a tax base calculated in some other way, might be subject to 15.25 per cent Russian VAT in the light of Russia’s ‘Google Tax Law’, which establishes a new VAT regime for e-services to Russian customers. This law entered into force in 2017, and it is unclear whether the tax authorities will attempt to apply it to gambling providers. Generally, given that there is no precedent for applying these new legislative provisions to gambling operators, it is hard for the time being to assess the likelihood of this risk materialising. At any rate, the likelihood of practical enforcement of this tax against offshore providers remains questionable, with perhaps the most probable outcome being that tax authorities will direct payment operators to withhold the tax.

ii Personal taxation

Gamblers who are Russian tax residents are required to pay 13 per cent personal income tax on their winnings, while the winnings of those who are not Russian tax residents are taxable

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21 Article 364 of the Tax Code.
22 Article 369 of the Tax Code.
23 Federal Law on Amendments to Parts I and II of the Tax Code (No. 244-FZ of 3 July 2016).
at a rate of 30 per cent. The tax base, however, varies depending on the type of game of chance, being: (i) net winnings with respect to amounts received from a bookmaking office or totalisator operator, which are subject to income tax withholding at source; and (ii) gross winnings in all other cases (including lotteries), which are subject to self-assessment and payment when the annual personal income tax return is filed.

VI ADVERTISING AND MARKETING

Advertising of gambling is legal only for operators holding the relevant licence or permit. A range of restrictions apply to advertising of gambling. Such advertising cannot, for example:

- be addressed to minors;
- use images of humans or animals (except for advertising within a gambling zone);
- create an impression of gambling being a source of income; or
- create an impression of guaranteed winning.

Gambling advertising is permitted only if it occurs on TV and radio between 10pm and 7am, within gambling venues, in specialised advertising print media or in gambling zone print media. Bookmaking activities can also be advertised during sports broadcasts, provided that it constitutes no more than 20 per cent of all advertising during the broadcast.24

Breach of advertising laws can give rise to administrative sanctions in the form of an administrative fine of 100,000 to 500,000 roubles for companies and lesser fines for individuals and officers.25

VII THE YEAR IN REVIEW

The spring and summer of 2016 saw debates over the creation of the Krasnaya Polyana gambling zone in Sochi and the future of Russia’s best-developed gambling zone, Azov-City, which is currently scheduled for closure by 1 January 2019. The law terminating Azov-City’s status as a gambling zone did, as a measure of limited comfort, establish that a gambling zone cannot be closed for a period of 10 years after its creation. However, that date is fast approaching for the Yantarnaya, Sibirskaya Moneta and Primorye zones, with business there only beginning to develop. Moreover, there are no limitations on closing a gambling zone on short notice after the expiry of the 10-year period.

In spring 2017, a new law was adopted requiring bookmakers organising sports-related gambling to enter into mandatory agreements with sports federations for the use of their symbols,26 and on the basis of such agreements to make 5 per cent mandatory payments to sports federations (but at a minimum 15 million roubles per quarter under all agreements for each bookmaker). The basis for calculation of payments (profit off bets on events organised by the relevant federations), payment procedure and draft form of the relevant agreement have been determined by acts of the government.

24 Advertising Law, Article 27.
Additionally, on 1 January 2017 Russia began implementing its Google Tax Law, which requires foreign companies providing electronic services to Russian individuals to register for and pay VAT. While the law was created with foreign IT companies in mind (hence its unofficial name), its vague wording and the lack of official guidance could result in its application to offshore remote gambling providers (notwithstanding that their activities in Russia are not legal). The industry is waiting for cases and clarifications to shed light on the application of this law, while many major players in the IT and online gaming sectors are registering for VAT.

VIII OUTLOOK

A variety of bills pending before the legislature may significantly affect gambling regulations in Russia. These include Draft Law 4689-7, which as of 5 May 2017 is before the State Duma, which seeks to make the manufacture, sale and storage of gambling equipment licensable and to hold gamblers liable for participation in illegal gambling; and Draft Law 108659-7, also as of 5 May 2017 before the State Duma and having passed the first reading, which seeks to establish a mechanism for blacklisting offshore gambling providers and other entities violating gambling regulations, and to prohibit credit organisations and other payment operators from facilitating payments to such entities.

It should be noted that similar laws have been suggested and rejected in the past; however, Russian legislature is quite prolific and while many proposed bills are either rejected or ignored, investors would be wise to monitor developments closely.
Chapter 24

SPAIN

Pablo González-Espejo and David López Velázquez

I OVERVIEW

i Definitions

The generally accepted legal definitions of gambling concepts in Spain are set out in Law 13/2011 on gambling, as amended (the Gambling Act), which is the primary piece of legislation governing the state-wide gambling sector in Spain.

Gambling is defined as any activity in which money or economically valuable goods are at stake over future and uncertain results that to some degree depend on chance and that allow the sums to be transferred between the participants, regardless of whether the level of skill of the players is decisive in the results or they depend wholly or fundamentally on luck, stakes or chance. The results must be ‘future’ (thus excluding past facts) and no minimum degree of chance is required (as a result, to the extent that there exists any chance, an activity is considered gambling even if there is a significant skill component).

As regards the main actors of the gambling market, ‘operators’ and ‘participants’, are defined as follows.

Operators

‘Operators’ may be legal or natural persons, as the case may be, of Spanish nationality or of a nationality of any European Economic Area (EEA) Member State with a permanent representative in Spain. However, only limited liability companies are allowed to participate in the public tender for the awarding of general licences for the operation of non-occasional games. The corporate purpose of such entities is limited to the organisation, marketing and operation of games.

The Gambling Act limits the possibility of providing occasional and non-occasional gambling activities to legal and natural persons who fall within the prohibitions set forth in the Gambling Act or the laws of the autonomous communities governing these matters. The Gambling Act imposes obligations on gambling operators to deposit bank bonds or another type of security in order to guarantee compliance with the obligations established in the Gambling Act. In order to protect consumers and guarantee responsible gambling, operators are not allowed to grant loans or any other credit or financial assistance to participants in gambling activities.

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Participants
The Gambling Act does not define the concept of a ‘participant’, but nevertheless identifies the rights and obligations of participants in gambling activities. The Gambling Act confirms that the relationship between gambling operators and participants is subject to private law; therefore, any dispute between operators and participants must be resolved through civil courts, notwithstanding the regulator’s sanctioning powers and arbitration functions.

The Gambling Act defines four specific types of games (lotteries, betting, raffles and contests) and one general category (‘other games’) that serves as a catch-all for activities that fall under the general definition of gambling but not under any of the four specific games definitions.

Betting
Betting is a gambling activity in which money is at stake over results of a previously determined event with an outcome that is uncertain and alien to the betters. The following types of betting are regulated and permitted in Spain:

a ‘pool betting’ or ‘mutual betting’, where a percentage of the bets placed is distributed among the winners;
b ‘fixed-odds betting’, where the better bets against the gambling operator and the prize is the result of multiplying the amount bet for the odds previously fixed by the operator; and
c ‘exchange betting’, where the operator acts as a broker and guarantor ensuring that the bets placed between betters are duly performed, and subtracts the fee previously set by the operator for its services.

Contests
Contests are games, the offer, development and resolution of which are carried out via telecommunications media (e.g., television, radio, internet). In this type of game, the right to win the prize requires any form of payment by the participant, which may consist of telephone calls, sending text messages or any other electronic procedure. If there is no payment by the participant, the activity is not regarded as a contest. The fact that a skill component is involved in addition to chance is irrelevant; the activity would still be considered a contest.

Lotteries
Lotteries are a gambling activity in which prizes are awarded in cases in which the number or combination of numbers or signs stated on a ticket, coupon or electronic equivalent coincides in whole or in part with that produced by way of a draw or event held on a previously determined date or, in the case of instant or pre-sorted lotteries, at a prior time.

Raffles
Raffles are games consisting of the award of a prize upon holding a draw or selection by choice between the acquirers of tickets, coupons or electronic equivalents, the acquisition of which is made upon payment of a price. The prize cannot consist of money.
Other games

Other games are defined as any games that do not fall under the definitions of lottery, betting, raffles or contests, such as poker or roulette, where there is a chance component and money or goods are at stake.

Spanish law does not recognise the concept of ‘skill games’. If games involve any degree of chance, they are deemed ‘contests’ or ‘other games’, as explained above, and their operation would require an administrative licence.

Although there is no express legal definition or reference made in connection with fantasy leagues, they are considered as contests and fantasy operators require an administrative licence to offer fantasy league services in Spain.

Additionally, free prize draws in Spain are categorised as ‘random combinations with advertising or promotional aims’ and defined as raffles aimed exclusively at advertising or promoting a product or service for which participation there is no payment whatsoever by the participant, other than the price that, as the case may be, the participant paid for the acquisition of the promoted product or service. No licence is required for performing these activities, although gambling tax is levied as explained in Section V, infra.

The Gambling Act does not expressly exclude speculative and hedging financial products from its scope. However, the offering of these products is generally subject to licences from other regulatory authorities in Spain and there have been no public or significant cases or controversies as to whether the provision of these financial products could be construed as gambling.

Gambling policy

At a national level in Spain, any sort of game within the scope of the Gambling Act that is not specifically regulated by the Ministry of Finance and Taxation is prohibited. The fact that a game is defined under the Gambling Act is not sufficient for it to be considered permitted, and specific regulations are required for each particular game by the Ministry of Finance and Taxation. In addition to these regulations, each operator must obtain a 10-year general licence for the general category of game (betting, contests or other games) and one- to four-year special licences for the operation of a specific game, as detailed below.

At a regional level, the policy is similar. Each of Spain’s 17 autonomous communities is free to set its gambling policy. The general default rule is that gambling is forbidden unless previously authorised by the regional government of the specific autonomous community.

State control and private enterprise

Until 2010, state-wide gambling was reserved to state-owned operators. Other locally-based games, for which participation physical presence was required (e.g., casinos, bingo, slot machines) could be carried out by privately licensed operators pursuant to the regulations of autonomous communities. Lottery activities were reserved to the state-owned operator Loterías y Apuestas del Estado (LAE), which held a monopoly on state-wide sports and horse betting, and to the National Organisation of the Blind in Spain (ONCE), a Spanish foundation aimed at supporting people with serious visual impairment that operated its own lottery. LAE acted as an operator and regulator. Nonetheless, de facto unlicensed online operators abroad offered games to people participating in Spain.

A comprehensive reform was carried out in 2010 and 2011. Considering the Court of Justice of the European Union’s (CJEU) case law on market transparency and establishing that the entity regulating the market cannot be the entity operating games, state-owned operators
were required to surrender those functions, which were then entrusted to the Directorate General for Gambling Regulation (DGOJ). Following the approval of Royal Decree-Law 13/2010, Spain's regulatory framework now separates those activities. Private operation of games other than lotteries was authorised upon implementation and development of the Gambling Act.

With respect to non-occasional lottery games, however, the Gambling Act maintained the statu quo ante. LAE and ONCE are designated as the entities exclusively authorised to operate such games on a national basis in Spain. The Gambling Act justifies the maintenance of this reserved market for LAE and ONCE on the basis of the significant amount of business generated by lottery games and because lottery tickets are instruments payable to the bearer and, therefore, carry the risk that they may be used for money laundering purposes. Because of these circumstances, operators acting in the reserved lottery market are subject to state control. The reserved framework under the Gambling Act for LAE and ONCE addresses the need to subject the games to strict state control to secure the state's interest in preventing fraud, crime and incitement to squander money on gambling and to avoid the negative effect that gambling may have on Spanish consumers.

With respect to other games, a wide range of private companies entered the market. There are currently over 50 licensed gambling operators state-wide in Spain.

iv Territorial issues
The Spanish Constitution does not list gambling among the matters over which the state has exclusive authority. As a result, pursuant to constitutional rules, the autonomous communities may assume exclusive responsibility in regulating gambling, as most of them have. The scope of this responsibility is limited to the territory of the corresponding autonomous community.

In light of this vertical distribution of authority, autonomous communities have issued regulations for the provision of gambling services at the regional level and, under this authority, casinos and other physical gambling sites in general are operated. The autonomous communities also have the power to regulate gambling activities, including lotteries (except for charitable sports betting games) within the scope of their respective territories, insofar as they do not infringe on the powers reserved to the state.

With regard to state-wide gambling, prior to 2011 only lotteries and sports, including horse race betting games, were regulated and reserved to certain specific operators in a closed market (see Section I.iii, supra). As of 2011, the applicable legislation, including with respect to online gambling, is the Gambling Act.

v Offshore gambling
Prior to the 2011 reform implemented by the Gambling Act, offshore gambling (i.e., gambling services offered to Spanish customers from operators located in foreign countries) was considered a crime. This was deemed to be conduct amounting to smuggling. However, the ability of the Spanish authorities to prosecute those operators was limited and not enforced in practice.

The situation changed dramatically following the ratification of the Gambling Act. Any private gambling operator could apply for licences to offer gambling services legally in Spain and the Spanish authorities took action to ensure that gambling services could not be offered by unlicensed offshore operators. Likewise, unauthorised offshore operators may not advertise, sponsor or promote, in any way, games of luck or chance, or advertise or promote gambling operators, if they lack the necessary authorisation for advertising actions.
The powers of the DGOJ, a body within the government, include the ability to prosecute unauthorised gambling. To prosecute illegal gambling, the DGOJ monitors the market from time to time and has created a blacklist of possible unauthorised operators based on in-house investigations, user reports and complaints received.

It is also important to note that, under the Gambling Act, licences and authorisations issued by foreign countries (including EU and EEA Member States) are not valid or recognised in Spain. Operators licenced in EEA Member States may apply for recognition of their licences in Spain through the issuance of a Spanish licence, but the original foreign licence is not the valid title per se. There are no restrictions on direct and indirect non-EU investments in gambling operators.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

As mentioned in Section I.i, supra, the Gambling Act is the primary piece of legislation governing Spain’s state-wide gambling sector.

Among other aspects, the Gambling Act establishes:

a the legal definition for specific games;

b the games that are forbidden;

c the persons who are not entitled to participate in games governed by the Act;

d rules on the advertisement, sponsorship and promotion of gambling activities;

e rules on consumer protection and responsible policies on gambling;

f the licensing framework for state-wide gambling activities conducted through means of electronic communications (including online games) other than lotteries;

g the authorisation framework for lotteries;

h monitoring measures applicable to operators and participants;

i standardisation of gambling technical systems;

j a sanctioning framework;

k a tax framework; and

l the entities in the reserved market that are authorised to operate national non-occasional lottery games in Spain and the corresponding framework.

The Gambling Act was developed and implemented through the following regulations:

a Royal Decree 1613/2011 of 14 November, which develops the Gambling Act with regard to the technical requirements of gambling activities;

b Royal Decree 1614/2011 of 14 November, which develops the Gambling Act with respect to licences, authorisations and gambling registers; and

c Order EHA 2528/2011 of 20 September sets out the requirements and procedures for appointing independent entities in charge of certifying gambling software and gambling operator security assessments.

The regulations of each of the authorised games in Spain have been issued through 14 ministerial orders.²

² Order HAP/1370/2014 of 25 July, establishing the basic regulations on slot machines; Order EHA 3085/2011 of 8 November, approving the basic regulations on roulette; Order EHA 3086/2011 of 8 November, approving the basic regulations on baccarat; Order EHA 3087/2011 of 8 November,
Each of the 17 autonomous communities has ratified gambling legislation setting out the requirements to operate games (e.g., casinos, bingo locales, betting houses).

There is no significant case law on gambling matters in Spain other than the judgments issued by the CJEU, none of which refers to specific Spanish operators or matters.

ii The regulator

The Gambling Act provided for the creation of a new regulatory body in Spain, the National Gambling Commission (CNJ). However, at the time of writing, nearly seven years after the enactment of the Gambling Act, the CNJ has yet to be formally set up and there are no expectations that this will happen in the short or medium term. Until the CNJ is formally set up, the DGOJ will hold the corresponding powers.

The DGOJ will, therefore, supervise the correct functioning of the gambling sector and safeguard the effective availability and provision of competitive gambling services for the benefit of users.

The powers of the DGOJ include, among others, the ability to:

a. grant gambling licences;

b. run the registries created by the Gambling Act;

c. resolve claims filed by participants against gambling operators;

d. prosecute unauthorised gambling;

e. arbitrate disputes among gambling operators at the request of the parties;

f. implement basic gambling regulations;

g. establish technical and functioning requirements for the games;

h. monitor, inspect and sanction, as the case may be, gambling activities, especially those related to games exclusively assigned to LAE and ONCE under the Gambling Act, without prejudice to the faculties of the relevant Spanish antitrust authorities;

i. approve regulations in the terms developing the Gambling Act;

j. safeguard compliance with money laundering, and terrorism financing legislation; and

k. manage and collect gambling tax.

Finally, the autonomous communities have their own gambling authorities, regulating, supervising and controlling gambling activities within their respective territories.

iii Remote and land-based gambling

Spanish law distinguishes remote and land-based gambling. The state has the authority to regulate the former while, as a general rule, autonomous communities regulate the latter.

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approving the basic regulations on bingo; Order EHA 3088/2011 of 8 November, approving the basic regulations on blackjack; Order EHA 3089/2011 of 8 November, approving the basic regulations on poker; Order EHA 3090/2011 of 8 November, approving the basic regulations on complementary games; Order HAP/1369/2014 of 25 July, approving the basic regulations on betting exchanges and amending several orders; Order EHA 3079/2011 of 8 November approving the basic regulations on fixed-odds betting; Order EHA 3080/2011 of 8 November, approving the basic regulations on fixed-odds sports betting; Order EHA 3081/2011 of 8 November, approving the basic regulations on sports pools betting; Order EHA 3082/2011 of 8 November, approving the basic regulations on fixed-odds horse betting; Order EHA 3083/2011 of 8 November, approving the basic regulations on horse pool betting; and Order EHA 3084/2011 of 8 November, approving the basic regulations on contests.

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As a result, the requirements to operate remote games are identical across Spain while the requirements to set up land-based gambling premises vary in each autonomous community, including the requirements to install machines for the general public to participate in online games.

iv Land-based gambling

In terms of revenue, in 2015 (the most recent data available) land-based gambling represented over 73 per cent of the gambling sector in Spain.³ There are 48 casinos, 307 bingo venues and over 207,000 installed slot machines, which need not be installed in gambling venues and can be placed in bars, pubs and other venues not specialising in gambling activities.

The number of casinos is generally limited by each autonomous community, although a plurality of casinos is located in several autonomous communities (e.g., Madrid). Since 2012, several proposals have been discussed to build a major gambling resort in Madrid known as ‘Eurovegas’. The execution of the project requires several amendments in the applicable law and, to date, none of the potential operators have reached an agreement with the public authorities to build the gambling resort.

Betting shops are authorised in all 17 autonomous communities, subject to the granting of the corresponding licences.

Although lottery tickets can be acquired online (both from LAE and ONCE), they are mainly sold at physical points of sale throughout Spain. LAE and ONCE are responsible for setting up their sales network. LAE has over 10,500 points of sale⁴ (including dedicated points of sale, businesses that are exclusively devoted to selling LAE games; and mixed points of sale, businesses that carry out other businesses and the selling of LAE games is ancillary to their main purpose, e.g., bars, bookstores, tobacco shops). ONCE has over 19,800 points of sale and itinerant sellers.⁵

Amusement arcades are not considered as gambling or gambling machines from a legal standpoint, as the player has no expectation of winning any prize if successful in the game.

v Remote gambling

The operation of remote gambling activities other than nationwide non-occasional lottery games is subject to the granting of licences pursuant to the Gambling Act. The Gambling Act distinguishes between two types of licences:

a general licences – any operator interested in the provision of non-occasional games must obtain a general licence for the relevant general category of game identified by the Gambling Act it intends to offer: bets, contests, or other games; and

b specific licences – the exploitation of each of the specific games within the scope of a general licence is subject to the granting of a specific licence. The granting of the specific licence and its renewal is subject to the conditions and requirements to be determined by the DGOJ for each regulated game.

General and specific licences may not be transferred or assigned to third parties except in the event of merger, spin-off or contribution of assets in the context of a group restructuring, provided that prior authorisation from the DGOJ is obtained.

The installation of equipment and the opening of premises to the public for the operation of games (where the physical presence of players is required, although ancillary to the game) is subject to prior administrative authorisation by the autonomous communities, where applicable, in addition to the general and specific gambling licences.

A gambling licence granted in another jurisdiction will not be valid in Spain, but documentation filed by an operator authorised in an EEA Member State can be validated by the DGOJ in order for the potential operator to be granted the corresponding licence in Spain.

vi Ancillary matters

Gambling operators must have the approved software, equipment, systems, terminals and tools generally required to carry out their activity. Gambling regulations set out the technical requirements for operators’ systems. The DGOJ monitors compliance with technical requirements at different stages:

a Before obtaining the licence, the technical projects and preliminary certification reports are reviewed. In that regard, operators must provide their technical project along with a preliminary certification report of compliance with the technical requirements. If a general licence is requested, an internal monitoring system certification report must also be provided.

b Final approval is awarded within six months of obtaining the licence. General licences are subject to final approval, while single licences remain valid until final approval is obtained.

c Any changes made to the approved system must be reviewed.

d Technical systems must be audited every two years.

e Operators must send a quarterly report to the DGOJ describing the changes made in the period and providing an updated description of the technical system.

f According to proportionality criteria, any substantial changes affecting critical components require the DGOJ’s prior authorisation.

g In the case of special emergencies affecting a system’s security, operators may make substantial changes to critical components and obtain permission afterwards.

On another score, under Spanish gambling regulations, individuals linked to operators must be registered with a special registry run by the DGOJ that records data corresponding to shareholders, directors and employees directly involved in the development of the games, spouses or people with whom gambling operators live, and first-degree ancestors and descendants.

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6 Royal Decree 1613/2011 of 14 November, developing the Gambling Act with regard to the technical requirements of gambling activities, and Order EHA 2528/2011 of 20 September, setting out the requirements and procedures for appointing independent entities in charge of certifying gambling software and gambling operator security assessments.
III THE LICENSING PROCESS

i Application and renewal

The DGOJ is authorised to award general licences by calling a public tender according to the principles of publicity, concurrence, transparency, non-discrimination, objectivity and equality. The process intended to award general licences through a public tender may be initiated by the DGOJ directly or in response to a third-party request. Once a public tender is called for the granting of general licences for a given category of game, no further public tenders may be called until 18 months have lapsed from the previous tender for the same category of game.

There have been two ‘application windows’ since the Gambling Act entered into force: the first from November to December 2011; the second from November to December 2014.

The terms of the tender cannot limit the number of licences to be awarded unless the DGOJ concludes, prior to carrying out the corresponding procedure, that it is necessary to limit the game that is subject of the tender and limit the number of operators entitled to provide it. This limitation may be only based on reasons of public interest, protection of youths or the prevention of gambling addiction.

The final resolution awarding a general licence will establish, among other things, the following aspects of the licence:

a nature and types of gambling activities to be undertaken within the scope of the general licence;

b events that will be taken into account for gambling purposes;

c authorisation to carry out advertising, sponsorship or promotion activities;

d mechanisms to prevent fraud, money laundering and terrorism financing;

e territorial scope of the gambling activity;

f prize conditions and amount, which may not exceed the percentage established in the terms and conditions governing the public bidding process; and

g term, renewal and causes of termination.

In addition, the resolution will establish the obligation to host a specific website with the ‘.es’ country code top-level domain, and to redirect to that website all connections from within Spanish territory or from Spanish user accounts to non-‘.es’ websites whose domain is owned or controlled by the gambling operator, its parent company or its subsidiaries.

Holders of a general licence must provide a guarantee linked to the general licence to secure compliance with the Gambling Act and its implementing regulations. The amount of the guarantee is €2 million for betting or other games general licences and €500,000 for general contest licences. The guarantee may consist of: (1) cash deposited in escrow with the DGOJ; (2) a mortgage over real estate located in Spain; (3) guarantees issued by banks licensed in Spain; or (4) a surety bond issued by an insurance company licensed in Spain.

General licences may be granted for a 10-year period with the possibility for renewal for a subsequent 10-year period, except for cases in which the number of general licences awarded was limited and certain circumstances set forth in the Gambling Act occur that justify the need to call a new public tender after the initial term elapsed.

Operators holding a general licence are entitled to apply for specific licences. Prior regulation of the relevant specific game is mandatory in order to apply for the corresponding specific licence. Any gambling activity carried out without holding the appropriate licence is forbidden. This was the case of exchange betting until 2014: the game was defined under
the Gambling Act; however, unlike other specific games, it was unregulated and, therefore, exchange betting was not allowed. To date, two operators hold a specific licence for exchange betting.7

Specific licences are granted for a term of between one and five years, with the possibility of renewal for subsequent terms of the same period. The regulations governing each type of game establish the term of the corresponding specific licences and the conditions for renewal.

Guarantees linked to specific licences to secure compliance with the Gambling Act and its implementing regulations are also required. The form of the guarantee may consist of any of the alternatives set out for the general licences’ guarantees. The amount depends on the specific game for which the specific licence is granted.8

General and specific licences may be terminated upon occurrence of any of the following circumstances:

- a written waiver;
- expiration of term;
- a resolution by the DGOJ evidencing the existence of any of the following circumstances: loss of all or any of the conditions that justified the granting of the licence; incapacity of the licence holder (owing to death or sudden legal incapacity in connection with natural persons, or winding-up in the event of legal persons, cessation of activities or failure to carry out the activity underlying the purpose of the licence for at least one year); declaration of insolvency; failure to comply with specific conditions set forth in the relevant licence document; assignment or transfer of the licence through merger, split-up or contribution of assets without prior authorisation; or if the licence was obtained by using false statements or altering the conditions that justified its awarding; and
- sanction for very serious violations of the Gambling Act.

Termination of a general licence will result in the termination of the specific licences tied to the general licence.

ii Sanctions for non-compliance

The Gambling Act establishes a sanctioning framework that designates minor, serious and very serious violations of the Gambling Act, as set out below:

- very serious violations include the organised performance or advertisement of gambling activities without the required licences; the unauthorised assignment of licences; repeated default in the payment of prizes without justification; the alteration of previously certified technical systems; and the breach of the obligation to redirect gambling from Spanish participants to a ‘.es’ site;

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7 Betfair International, PLC and Plataforma de Apuestas Cruzadas, SA.
8 Pool sports betting: 1.5 per cent of the gross income; pool horse betting: 1.5 per cent of the gross income; fixed-odds sports betting: 6.5 per cent of net income; fixed-odds horse betting: 7.5 per cent of net income; other fixed-odds betting: 6.5 per cent of net income; exchange betting: 7.5 per cent of net income; bingo: 6.5 per cent of net income; contests: 2 per cent of gross income; roulette: 8 per cent of net income; poker: 8 per cent of net income; blackjack: 8 per cent of net income; baccarat: 8 per cent of net income; slot machines: 8 per cent of net income; complementary games: 6.5 per cent of net income.
serious violations include non-compliance with the terms and conditions of the licences; allowing forbidden players to participate in games; financing participants; and using of uncertified systems; and

minor violations include lack of cooperation with inspectors or agents; failure to inform the public of the prohibition for minors and forbidden players to participate in games and any breach not defined as serious or very serious.

The sanctions for the different categories of violations are the following:

- for minor violations, a fine of up to €100,000 and a written warning;
- for serious violations, a fine ranging from €100,001 to €1 million and the temporary suspension of the activity for up to six months; and
- for very serious violations, a fine ranging from €1,000,001 to €50 million. The following sanctions may also be imposed: loss of general or specific licence (or both), a ban on providing gambling activities under the Gambling Act for up to a maximum four-year term or closure of means used to provide information society services supporting gambling activities. In addition to the above sanctions, in those cases in which the violating entity lacks the relevant licence, the sanctioning authority may also impose the seizure or destruction of any element related to the gambling activity illegally carried out.

The Gambling Act identifies who will be deemed the infringer: legal or natural persons breaching the provisions of the Gambling Act; or legal or natural persons supporting, advertising, promoting or benefiting from such breaches.

IV WRONGDOING

Money laundering, organised crime and match-fixing are dealt with by other law enforcement bodies. Money laundering and organised crime are monitored and prosecuted by SEPBLAC, Spain’s financial intelligence unit, and anti-money laundering and counterterrorist financing supervisory authority.

As far as operators are concerned, any entity responsible for the management, exploitation and marketing of lotteries and other games of chance is subject to Law 10/2010 on the prevention of money laundering and terrorism financing with respect to transactions related to the payment of prizes. Operators must comply with the due diligence measures, internal control measures and the reporting obligations set forth in Law 10/2010.

Since 2010, match-fixing is considered a criminal offence in the Spanish Criminal Code (as a type of business corruption) and is prosecuted by the police with the cooperation of leagues, federations and betting operators.

V TAXATION

The authorisation and organisations of games, raffles, contests, bets, games and other gambling activities provided on a national basis in Spain is subject to the gambling tax, which was created by the Gambling Act.
In general, the gambling tax is based on applying fixed tax rates ranging from 15 to 25 per cent, depending on the gambling activity, to the game’s gross revenue (in the case of mutual bets, raffles and contests) or the game’s net revenue (in the case of bets with consideration or other games).

The reserved non-occasional lottery games are not subject to the gambling tax.

In addition to the gambling tax, the Gambling Act also establishes a gambling duty, the aim of which, among other things, is to cover costs of regulatory activities over the gambling activities undertaken by gambling operators. As a general rule, the gambling duty is equal to 0.075 per cent of the gross revenue of the corresponding game and is payable annually on 31 December.

The following applies to other taxes:

a Personal income tax – winners of prizes from LAE, ONCE and other public entities are subject to special taxation rules pursuant to personal income tax regulations that establish a reduced tax rate and several exemptions (prior to 2013, all prizes derived from LAE games were fully tax-exempt), while winners of prizes from other gambling operators are subject to general taxation rules.

b Corporate tax – with regard to companies, operators are subject to the general framework established in corporate income tax regulations, as well as legal persons winning prizes in games, with the sole exception that losses incurred as a consequence of gambling are non-deductible.

c Indirect taxation – games subject to the gambling tax are exempt from value added tax in Spain. The exemption does not cover management or other ancillary services that may be provided by gambling operators, with the exception of bingo management services, which are also exempt.

VI ADVERTISING AND MARKETING

Any sort of advertising, sponsorship or promotional activities related to any of the gambling activities subject to the Gambling Act or to gambling operators is forbidden unless authorised in the corresponding general and specific licence documents. Should the gambling operator intend to undertake gambling activities through programmes broadcasted by any audiovisual means, whether published in the media or on websites, including those cases where the means to access the prize is the use of premium telephony services or SMS, the corresponding general and specific licences must cover and authorise these possibilities.

Any entity, publicity agency, electronic communication operator, audiovisual operator or information society service directly or indirectly broadcasting or publishing advertisements and promoting gambling activities or gambling operators is obliged to verify that the entity requesting the advertising and promotional activities holds the appropriate gambling licence, and that the licence allows the type of publicity or promotion requested. Otherwise, it must deny the request. The DGOJ, through its website, maintains an updated list of licensed operators. Should the DGOJ identify unauthorised publicity or promotion of gambling activities or gambling operators by any entity, publicity agency, electronic communication operator, audiovisual operator or information society service, it is entitled to instruct them to stop broadcasting or publishing the unauthorised advertisement, or promotion of gambling activities or gambling operators.

The Gambling Act referred to a future regulation to establish the conditions that may be included in the authorisation allowing the advertisement, sponsorship and promotion of
gambling activities that will be included in the general and specific licence documents. To date, this regulation has not been approved, although the DGOJ issued draft regulations in 2015 and opened public information procedures in order for any interested party to provide allegations and assessments for drafting the regulations.

Additionally, Law 7/2010 on audiovisual communications, as amended, establishes that programmes intended to offer games of chance and betting can only be broadcast from 1:00 am to 5:00 am, except draws and other gambling products with a public purpose. Under these exceptions, draws of LAE and ONCE’s lottery games can be broadcast by Spanish television operators outside that time frame. Providers of the corresponding audiovisual communication services have secondary liability for fraud committed through such programmes.

Moreover, the provision by audiovisual communication operators of any type of promotion of gambling activities is subject to the general rules on promotion of economic activities under Law 7/2010.

VII THE YEAR IN REVIEW

The Spanish gambling market underwent a transition in 2016, as was the case with other regulated industries in Spain. The political scenario remained uncertain until the end of October 2016, as neither a president nor a cabinet could be appointed from December 2015 to 31 October 2016. Under these circumstances, regulators like the DGOJ were not in a position to implement new policies or to change existing policies, which means there is a dearth of notable milestones. However, the following factors are indicative of development in the gambling sector:9

a according to the DGOJ’s data, the online gambling market experienced a 32 per cent year-on-year increase in revenue in the 12 months to 31 December 2016. Gross gambling revenue for the full year totalled €323.5 million;

b the number of online active participants surpassed 610,000 users in December 2016; and

c the DGOJ executed a cooperation agreement with the Portuguese regulator to exchange information with a view towards prosecuting illegal gambling.

No significant case law was handed down in 2016.

VIII OUTLOOK

Two general elections had to be held to appoint the new President. The new head of the DGOJ, Mr Juan Espinosa García, was appointed on 30 December 2016 and most of the matters that were pending in 2015 remain so for 2017, including the approval of regulations on the advertising of gambling services and the potential authorisation of multi-jurisdictional liquidity games (i.e., those involving prize baskets funded by users participating from Spain and other countries).

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Chapter 25

SWEDEN

Erik Ullberg, Christel Rockström and John Olsson

I OVERVIEW

i Definitions

Section 3 paragraph 1 of the Swedish Lotteries Act (LA) provides a broad definition of lottery:

...an activity where one or several participants, with or without a stake, can obtain prizes of a higher value than each one of the other participants may obtain.

Lotteries shall include
1. drawing of lots, guessing, betting and similar procedures,
2. amusement at fairs and amusement parks,
3. bingo games, gaming machines, roulette games, dice games, card games, chain-letter games or similar activities.

When assessing whether an activity constitutes a lottery the general nature of the activity shall be taken into account and not only the greater or lesser degree chance present in the individual case.

Prizes (winnings) shall in this act also refer to continuation of the game.

All games and gambling where a winner is appointed primarily by chance will fall within the scope of the LA. The element of chance is, however, not the sole criterion – the general nature of the activity must also be considered. Consequently, chance-based prize draws, sweepstakes and games as well as betting in various forms will all be considered lotteries under the LA. In addition, activities ‘without a stake’ may be considered a lottery, which may not be the case in other jurisdictions.

On the other hand, skill-based contests and games fall outside the scope of the LA, as long as there is no degree of chance in the activity.

In this context it could be mentioned that the Swedish Supreme Court has found that certain games of Texas Hold’em during a poker tournament did not constitute a game of chance. The court established that a prominent Texas Hold’em player must have certain mathematical and strategic skills, and evidently skill is not an insignificant factor when the outcome of a game is determined.2

1 Erik Ullberg and Christel Rockström are partners, and John Olsson is a senior associate, at Wistrand Advokatbyrå.
ii Gambling policy

The objective of the Swedish gambling policy is ‘to meet key public imperatives, such as combating criminality, countering the harmful social and economic effects of gambling addictions, and protecting consumers’.

Accordingly, the Swedish gambling market is highly regulated. In principle, the only actors allowed on the market are non-profit non-governmental organisations, and state-owned or state-controlled companies. Thus, commercial actors are more or less barred from entering the market with only a few exceptions, chiefly that there must be a certain level of entertainment gambling (i.e., gaming with low-value bets and low-value prizes).

In addition to it being prohibited to arrange gaming in Sweden without a permit, it is also prohibited to promote participation in unlawful arranged gaming or gaming arranged outside of Sweden.

Nonetheless, it should be mentioned that a large number of gaming companies are promoting participation in gaming arranged outside of Sweden through the internet (e.g., by means of their own websites or newspapers) directed at the Swedish market. Competition exists as a result of this.

The profit from lotteries and gambling must, in principle, be used for the public benefit. Surplus profits from lotteries and gambling are to finance undertakings of public utility.

The turnover for the Swedish gambling market in 2016 amounted to approximately 46.7 billion krona, of which 77 per cent can be attributed to state-owned company Svenska Spel AB (Svenska Spel) and partially state-controlled AB Trav och Galopp (ATG). In 2015 the state's profits from gambling activities amounted to 6.1 billion krona; consequently gambling is an extremely lucrative business for the Swedish state.

iii State control and private enterprise

Svenska Spel and ATG, which is owned by the horse racing industry, more or less enjoy a de facto monopoly of the Swedish gambling market operating under permits of the government.

Svenska Spel has the exclusive right to arrange sports betting and lotteries (with a few exceptions for local events) and to operate gaming machines and land based casinos, and ATG has the exclusive right to arrange betting on horse racing.

iv Territorial issues

Gambling is regulated nationally. No localities have any favoured status for gambling.

v Offshore gambling

As mentioned in subsection i, supra, a large number of gaming companies are promoting participation in gaming arranged outside of Sweden towards Swedish citizens. As the authorities do not have jurisdiction over the offshore gambling operators, they have instead focused on those in Sweden who carry advertisements for such companies.

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Every year, the offshore gambling companies invest around 2.3 billion krona in advertisements in Sweden, a large part of which is invested in newspapers and TV.\(^5\) As a consequence, the authorities have issued a number of injunctions against media companies over the years. However, injunctions have also been aimed at billboard advertisers, sports teams and webpages with banners linking to foreign gambling companies.

### II LEGAL AND REGULATORY FRAMEWORK

#### i Legislation and jurisprudence

The Swedish gambling market is mainly regulated by two acts: the LA and the Swedish Casino Act (SCA).

Additionally, the Swedish Marketing Practices Act (MPA), which has a general application covering all types of marketing activities, may apply to gambling issues. According to the MPA, marketing must, as a general rule, not be incorrect, unfair or misleading; however, the specific legislation of the LA supersedes the MPA within the scope of its parameters.

The LA is a prohibitory act regulating lotteries.\(^6\) It applies to lotteries arranged for the general public.\(^7\)

The travaux préparatoires of the LA states that a lottery is not considered arranged for the general public if the lottery in question is aimed at both a small and closed group of people who share a provable mutual relationship.\(^8\) Additionally, it is argued that the more people who participate in the lottery, the higher the requirement for a mutual relationship and closeness.\(^9\)

Furthermore, a lottery is deemed to be arranged for the general public also where membership is required of a certain organization, if its principal objective is to arrange lotteries, or where the lottery would otherwise as regard its extent or the conditions for participation be equivalent to a lottery arranged for the general public.\(^10\)

In order for the LA to apply on the arrangement of a lottery, it must be arranged within Sweden.\(^11\) Normally, a lottery is considered to have been arranged as soon as it is marketed to the general public.\(^12\) The arranging of a lottery should be deemed to have taken place where the activities are organised and managed, and where the power over the activities is exercised.\(^13\) This means that it could be argued that a lottery provided from abroad, with

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6 The LA also applies to inter alia lotteries in the form of bingo, gaming machines, roulette games, dice games and card games that are not arranged for the general public, if the game is arranged for the purpose of gain (Section 1 of the LA).
7 Section 1, Paragraph 1 of the LA.
9 Schwalbe, Lotterilagen, p. 54.
10 Section 1, Paragraph 2 of the LA.
the opportunity to participate in Sweden, is not arranged in Sweden according to the LA. On the other hand, under such circumstances, the prohibition to promote participation in lotteries arranged outside of Sweden must also be considered.

ii The regulator

The Swedish Gambling Authority (the Authority) has the overall responsibility for granting permits and supervising the Swedish gambling market (the government grants some permits). The Authority is charged with issuing permits for:

- lotteries that are distributed online;
- lotteries that are to be arranged in more than one county;
- gaming machines; and
- games of roulette, dice and card arranged pursuant to the LA.

The Authority is also charged with the centralised monitoring of compliance with the LA and the SCA, and the more detailed supervision of those lotteries that are arranged under a permit from the Authority or the government.

Furthermore, the Swedish Consumer Ombudsmen has the general responsibility of supervising all marketing activities and of protecting consumers’ interests, inter alia under the MPA.

iii Remote and land-based gambling

The Swedish legislation does not distinguish between remote gambling and bricks-and-mortar gambling in general. However, permits for arranging roulette, dice games and card games can be granted to for-profit entities in some premises, namely in restaurants and hotels that are licensed to sell alcohol, in amusement parks and on ships in international traffic. These ‘restaurant casinos’ are severely limited as to bets and potential winnings, and should only be used to complement the restaurant business.

Svenska Spel’s right to operate land-based casinos is regulated in the SCA. Svenska Spel has applied for, but has not yet been granted, the right to provide online casinos.

iv Land-based gambling

There are only four land-based casinos in Sweden, in Stockholm, Gothenburg, Malmö and Sundsvall. The casinos are established and operated by Svenska Spel’s wholly owned subsidiary Casino Cosmopol AB, under a permit granted by the Swedish government.

The restaurant casinos, operated by hotels and restaurants, consist of around 600 tables in 500 different locations.

Bingo halls are operated by public interest associations, under licences issued from the county administrative board.

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16 Sw. Lotteriinspektionen, www.lotteriinspektionen.se
17 SFS 1994:1000, as amended.
Gambling machines can be found in both restaurants and bingo halls and are operated by Svenska Spel, who has a permit for a maximum of 7,000 gambling machines in restaurants and hotels, and 500 machines in bingo halls.

Lottery tickets are sold in a number of venues, from local sport events and fairs, to grocery stores and betting shops. Many grocery stores and betting shops also offer sports betting via Svenska Spel and betting on horse racing via ATG.

v Remote gambling

Permits for remote gambling can only be applied for by Svenska Spel, ATG and public interest associations.

Svenska Spel has been granted permits to arrange online betting and poker. In 2014, Svenska Spel also applied for a permit to arrange online casinos, however, no decision on the matter has been taken so far.

ATG has a permit to arrange online horse race betting.

vi Ancillary matters

No specific licence is needed for manufacturing equipment for the gambling industry.

III THE LICENSING PROCESS

i Application and renewal

The LA is based on the general principle that all organisation of lotteries requires a permit, and all permits are to be supervised by the state of Sweden (Section 9 of the LA). A licence may only be granted if it can be presumed that the activity will be executed in a suitable manner, from the general public’s perspective.

Permits may, in principle, only be granted to a non-profit organisation that (1) has as its main purpose to promote an undertaking of public utility, (2) carries out its operations so as to achieve that purpose, (3) does not refuse anyone membership in the organisation unless there is a particular reason to do so, and (4) needs the income from lotteries to support its activities.

Permits are granted on a local, regional or state level, depending on the geographical scope of the lottery in question. On the local level it is generally the relevant municipal committee that grants licences, on the regional level it is usually the county administrative board and on the national level it is the Authority or the government that grants permits. The Authority has the central supervisory responsibility regarding the adherence to the LA and decisions based on the LA.

In addition to permits for certain non-profit organisations, as set out above, the government may grant special lottery permits in other cases. Svenska Spel and ATG operate under such permits.

20 In some situations, a permit is not needed, but this is only under specific circumstances and is very restricted (Section 19-21 of the LA).
21 Sw. Kommunstyrelsen.
22 Sw. Länsstyrelsen.
23 Section 45 of the LA.
The LA stipulates a minimum age of 18 years for the participation in gambling on horse races, gambling machines, roulette, games of dice or card games.\textsuperscript{24} It is for the organiser of the activity to ensure that no one under the minimum age is allowed to participate. Moreover, an organiser of a lottery is prohibited from granting credit for wagers in the lottery.\textsuperscript{25}

\textbf{ii} \hspace{1em} \textbf{Sanctions for non-compliance}

Arrangement of a lottery without a permit is a criminal offence subject to a fine, or imprisonment for a maximum of up to six months in severe cases.\textsuperscript{26}

Additionally, promotion of a lottery arranged from abroad may constitute a criminal offence subject to a fine or, in severe cases, a maximum of two years' imprisonment.\textsuperscript{27} However, following a Supreme Court ruling in 2012, this provision has been rendered practically unenforceable against lotteries arranged in other EU Member States, as it would be considered discriminating contrary to EU law, since promoting Swedish lotteries arranged without a permit is not criminalised in a corresponding manner.\textsuperscript{28} This issue has, however, been covered in a Swedish government official report\textsuperscript{29} and is expected to be implemented in Swedish legislation in due course.

The Authority has the power to issue injunctions and prohibitions required to ensure compliance with the LA. Injunctions or prohibitions may be combined with fines.

\textbf{IV} \hspace{1em} \textbf{WRONGDOING}

The gambling sector is not covered by the Swedish Act on Measures against Money Laundering (AML) and therefore licensed entities do not have to take any steps to prevent crime and other wrongdoing. However, a recent government report has put forward a proposal of a new AML where the most of the gambling sector would be included. If the proposed new act is implemented, most gambling entities would have to take certain risk-based measures to prevent gambling being used for money laundering or funding of terrorism, for example customers would have to be identified.

The permits granted to Svenska Spel and ATG include obligations to take steps to prevent crimes and other wrongdoing.

Participation in match-fixing is penalised under the Swedish Penal Code.\textsuperscript{30}

\textbf{V} \hspace{1em} \textbf{TAXATION}

Winnings from lotteries, which also includes poker games, are exempt from taxation if they are arranged within the EU. For lotteries arranged outside the EU, any winnings are taxed as capital income, at a tax rate of 30 per cent.

\textsuperscript{24} Section 35 of the LA.
\textsuperscript{25} Section 37 of the LA.
\textsuperscript{26} Section 54 of the LA.
\textsuperscript{27} Section 54 of the LA.
\textsuperscript{28} Judgment of the Supreme Court of 21 December 2012 in case No. B 3559-11 (NJA 2012 p. 1073). See also judgment of the Court of Justice of the European Union of 8 July 2010 in joint cases C-447/08 and C-448/08.
\textsuperscript{29} SOU 2015:30
\textsuperscript{30} Chapter 10, Sections 5 (a) and (b) of the Swedish Penal Code.
Companies arranging lotteries in Sweden are subject to regular corporate income tax (at present, 22 per cent) and must also pay lottery tax. The lottery tax is 35 per cent of bets less paid-out winnings and is deductible for income tax purposes. Non-profit organisations and Svenska Spel AB are exempt from lottery tax. Restaurant casinos are exempt from lottery tax, but must pay gaming tax based on the number of tables.

Gambling is not subject to VAT.

Winnings from skill-based contests or games will be subject to regular income tax.

VI ADVERTISING AND MARKETING

Generally, the LA prohibits the promotion of participation in lotteries organised without a permit or lotteries organised from abroad within Swedish territory in commercial operations, or otherwise for the purpose of profit. For the same purposes a person is also not allowed, without having the organiser’s consent, to sell lottery tickets or distribute profits in an allowed lottery.

According to the travaux préparatoires of the LA, examples of the promotion to participate in a lottery include the offer, sale or supply of lottery tickets or certificates for participation in a lottery, as well as the collection, mediation of stakes or winnings. Moreover, the distribution of notices relating to the lottery in question (e.g., invitation or register of winners) may constitute a promotion under the LA.

It is not entirely clear how far the territorial scope of the LA reaches. As far as lotteries organised from abroad are concerned the LA will probably not apply simply because Swedish subjects may enter a lottery on a website or some such similar medium. An additional circumstance would have to be present in order to trigger Swedish jurisdiction. In this context a banner on a Swedish website linking to gambling activities provided by a foreign gambling company has been found to be a promotion of a foreign lottery.

Television commercials promoting gambling services on television channels broadcasted from abroad under a foreign broadcasting licence are not that uncommon. And as far as we are aware such promotions have not been challenged under the LA. However, the Authority ordered a Swedish television channel to cease broadcasting sponsorship messages and odds of a foreign gambling company (Unibet) in connection to a sporting event. The Authority’s decision was eventually overruled by the Supreme Administrative Court who found that the order regarding sponsorship messages was in conflict with, among other things, the purpose of the Fundamental Law on Freedom of Expression, and that the odds were to be considered as editorial content and not advertising. The marketing measures were thus allowed.

Furthermore, a subsidiary of Betsson AB (publ) (Betsson), which organises lotteries from abroad under a Maltese licence, acted in a provocative manner when it established a betting shop in central Stockholm. By providing computers connected to the internet within the shop, the company made it possible for customers to place various bets with the

31 Section 38 of the LA.
32 Ibid.
35 Judgment of the Supreme Administrative Court case No. 7800-07 (HFD 2011 ref. 46).
company. The Authority declared this to be in breach of the LA and ordered Betsson to cease its activities subject to a conditional fine. The decision was appealed by Betsson, who relied on EU law for their appeal, but was upheld by the administrative courts.36

If a lottery is promoted in breach of the LA, then the Authority may issue orders and prohibitions subject to a conditional fine.

As mentioned above, the criminalisation of promotion of lotteries is rendered practically unenforceable against lotteries arranged in other EU Member States. As many gambling companies who target the Swedish market operate under a British or Maltese license, the promotion of these companies cannot, for the time being, be subject to criminal prosecution. A report to amend this gap in the legislation has been proposed to the government, but it has so far not been implemented. It should be noted, however, that orders and prohibitions subject to conditional fines can still be used against such promotion.

VII THE YEAR IN REVIEW

In the past few years, several newspapers and other companies have appealed injunctions issued against them by the Authority regarding advertisements for gambling companies who are based outside Sweden. In the court proceedings that have followed, the appellants have invoked that the Swedish Gambling Act is not compliant with EU law and have argued, inter alia, that the restrictions on gambling are not carried out in a consistent and systematic manner, as required by the case law of the Court of Justice of the European Union (CJEU), and that the Gambling Act’s main purpose is to provide revenue to the state.

The European Commission has directed several questions to the Swedish government regarding the LA and in October 2014 the European Commission issued a press release, in which it states that Sweden will be referred to the CJEU for lack of compliance with EU law in the areas of online betting services and online poker services. Despite this, the Administrative Court and Administrative Court of Appeal have, in a series of recent judgments, found that the Swedish Gambling Act is not in conflict with EU law.37

The gambling market has been expecting a proposed licence system for the Swedish market for a while, and has tried to prepare and position themselves for such a system.

VIII OUTLOOK

A review of the Swedish gambling regulation have been considered several times over the past decade, but so far there have been no real changes.

In the past, the European Commission has raised concerns in regards to the Swedish gambling legislation and, as mentioned above, the European Commission issued a press release in October 2014 that Sweden would be referred to the CJEU for lack of compliance with EU law in the areas of online betting services and online poker services.

36 Judgment of the Stockholm Administrative Court of Appeal of 7 December 2009 in case No. 8900-08; leave for appeal to the Supreme Administrative Court was not granted.

Immediately after the European Commission’s press release, the Swedish government announced that they would appoint a committee with the explicit assignment to submit proposals for a new gambling regulation, based on a licensing system.\(^{38}\)

In its report, presented on 31 March 2017,\(^ {39}\) the committee proposes a division of the gambling market into two sectors: one competitive sector and one exclusive. Seeing as Svenska Spel currently operates within both sectors, the committee also proposes a division of Svenska Spel into an exclusive and a competitive section, and that the competitive section possibly should be sold.

Svenska Spel’s exclusive sector would have a continued monopoly on gaming machines and land-based casinos, and would compete with public interest associations with respect to online and land-based lotteries. The non-profit sector would continue to have exclusivity in regard to land-based bingo.

The competitive sector of Svenska Spel would include online casinos, online betting, online poker, online bingo, land-based sports betting and land-based horse racing, where Svenska Spel’s competitive section, ATG and online gambling companies could be allowed to operate under licences. The inclusion of land-based horse racing in the competitive market would therefore mean that ATG will lose its current monopoly.

In order to obtain a licence to provide gambling, applicants should meet the requirements of insight, experience and organisation needed to operate the planned activities; there should be reason to assume that the activities will be operated in accordance with the law and other statutes; and the applicants must be deemed suitable, taking into account their reputation and financial strength. The requirements shall apply to the applicant company’s board, management and shareholders, who own at least ten per cent of the company.

Licences will be valid for a period of up to five years and can be granted to persons living in or companies established in the EU, or to persons or companies outside the EU, if the applicant has appointed a representative who meets the aforementioned requirements and has been approved by the Authority.

Licences would be issued by the Authority, and licence fees and supervision fees would be based on turnover, ranging from 60,000–700,000 krona and 30,000–1 million krona respectively.

The report also proposes a tax rate of 18 per cent based on the gambling revenue. Licensed gambling companies will also, like any other company, pay 22 per cent corporate tax on profits. However, licence and supervision fee, and gambling tax are deductible.

While the report thus opens up to a competitive licence-based gambling market, the committee also proposes that licences should be required to possess or manufacture gambling equipment, or to manufacture, provide, install or modify software for games in connection with online gambling – areas that are currently not regulated. For these areas, licence and supervision fees of up to 30,000 krona are proposed.

In order to maintain the new gambling regulation, the report proposes a strengthening of both the regulation regarding advertising of licensed gambling, as well as sanctions against providing and promoting unlicensed gambling companies, including harsher penal provisions and raised fines compared to the current legislation. No internet service provider (ISP) bans are proposed but the report suggests that ISPs should be required to display a warning.

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\(^{39}\) SOU 2017:30.
message when a visitor attempts to gamble on illegal sites. The report further proposes that the blocking of payment transactions between illegal gambling companies and players should be considered.

The new legislation is proposed to enter into force on 1 January 2019, while licences can be applied for starting on 1 July 2018. The report will now be circulated for comments, and is subject to notification to the European Commission before adoption. However, seeing as there is a broad political support for a re-regulated gambling market, there is a strong possibility that there will be a licence-based gambling market in Sweden within a couple of years.
Chapter 26

UNITED KINGDOM

Carl Rohsler¹

I OVERVIEW

i Definitions

Gambling is an activity that encompasses a number of different activities. As a general description, however, all such activities can be said to be forms of entertainment involving gain and loss based upon risk. As such, gambling exists within a wider landscape of activities including financial transactions, contracts, pure entertainment, sports and other activities. Some of these interfaces are discussed below. However, at its simplest, English law distinguishes between three forms of regulated gambling: betting, gaming and lotteries. For many years, these terms were part of common law, but over the centuries their definitions have been increasingly based in statute. The current legislation, the Gambling Act 2005 (GA), contains definitions of each of the forms of gambling.² These definitions are not exhaustive – in the sense that, for example, the terms ‘gaming’ and ‘betting’ are both defined but the underlying concepts of ‘game’ and ‘bet’ are not. This, it has been said,³ is deliberately intended to create a measure of flexibility allowing judges to categorise new products and schemes as they arise. However, a summary of terms is given below.

‘Gaming’ is the playing of a game (being a game of chance or a game which combines skill and chance) for a prize. (‘Sport’ is specifically excluded from the definition, which gives rise to certain issues in its own right.)⁴ As to the issue of skill or chance, the amount of chance required to fulfil the test is not defined and there is no formal *de minimis* level, (and certainly not a ‘balancing act’ to see which of the two factors predominates in the outcome, as is the case in some legal systems). Any amount of chance in the game will satisfy the definition. Having said this, tiny amounts of chance, such as the toss of a coin to see who will start a game of chess, are not considered to have the necessary impact on the result and are discounted. The concept of a ‘prize’⁵ is widely drawn, to mean essentially anything of value. However, there are, for example, specific exclusions from the definition of gaming machines in relation to returns to the player in the form of an extended playing experience⁶ – that are not sufficient to be characterised as a prize. This is an important consideration when considering ‘social gaming’, which is generally not regulated as a form of gambling under English law.

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² Gambling Act 2005 Chapter 19 Sections 6, 9 and 14.
⁵ GA 2005 Section 6(5).
⁶ GA 2005 Section 239.

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In practical terms, ‘gaming’ includes casino games such as roulette, blackjack and poker, dice games, slot machines and games such as bingo.

‘Betting’ can be summarised as the making of a bet (normally considered a hazarding of value on a future uncertain event, or a past event or fact that is not generally known). Various species of bet are distinguished under English law. First, one may consider ‘pool betting’ – also known as a pari-mutuel – in which the organiser takes in the stakes from the participants and then, from that ‘pool’, returns a portion of those funds to those who were successful, keeping a profit for himself or herself. Pool betting also covers betting where the prize is non-monetary. ‘Fixed-odds’ betting is where the operator (bookmaker) offers odds to potential punters that are calculated to deliver an ‘over round’ profit, and that are then adjusted as volumes of bets on a particular outcome are received. A further species of betting is ‘spread betting’, where the bookmaker offers a ‘spread’ of results, and the participant decides whether the actual result will be above or below the upper or lower limit of the spread. The amount to be won (or lost) is a multiple of the staked amount, depending upon the extent to which the actual result exceeds the spread. Such betting carries with it greater risk to both the bookmaker and the participant, and advertising of spread betting is therefore subject to stricter controls. Finally, it is worth considering two fairly recent gambling innovations that created legal uncertainty under the former regime and that were specifically legislated for under the current GA. The first of these is ‘betting prize competitions’, which is a definition essentially designed to cover the playing of ‘fantasy league’-style contests. The second is the regulation of those who organise peer-to-peer betting networks, in which the bet is struck directly between two end parties, but the organisation of the market place of ‘bids and offers’ is regulated by an operator who takes a small commission from the winner. Such operators are classed as ‘betting intermediaries’, although the open-textured nature of the definition means that it also catches betting agents and brokers.

A ‘lottery’ is a division of prizes by chance event, where the participants pay for the chance to win the prize. Both pre-drawn lotteries (e.g., scratch cards) and post-drawn lotteries are encompassed in the definition. One other term that is frequently used by the public is ‘raffle’. Technically, the term ‘raffle’ has no legal meaning and raffles are treated as a species of lottery. However, for practical purposes they are normally defined by the characteristic of having a guaranteed winner – unlike a lottery where players select numbers and it is a matter of chance as to whether there is a match between numbers selected and a winning ticket. Lottery-style schemes that do not involve the necessary payment, or that rely to a substantial extent on skill, are excluded from the definition of being a lottery and are unregulated in English law, being considered ‘free prize draws’ or ‘skill contests’. Consequently, there are countless consumer contests that avoid characterisation as a lottery.

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7 GA Section 9.
8 GA Section 12.
9 GA Section 10.
10 GA Section 11.
11 GA Section 13.
12 GA Section 14.
13 GA Schedule 2.
14 GA Section 14(5).
15 GA Schedule 2.
by involving skill or avoiding a requirement to pay in order to enter. For the avoidance of doubt, a requirement to pay for goods at their normal price in order to obtain a chance of winning a prize, does not constitute a payment for lottery purposes.\(^{16}\)

An activity might fit within more than one of the statutory definitions, and the legislation contains a number of extra tests to determine whether such an activity is to be treated as one or the other form of regulated activity.\(^{17}\) For example, roulette is a form of gaming that shares many of the characteristics of a bet on a future uncertain outcome, and also has the features of a division of prizes by chance – but it is ultimately treated as gaming by virtue of these rules of disambiguation.

Any form of contest for a prize that does not conform to the definition of either betting, gaming or a lottery is defined as a ‘prize competition’\(^{18}\) and is not regulated as gambling, though it may nonetheless be subject to some forms of legal control under the general law of contract and some consumer protection legislation.

Finally, some forms of speculative investment, contracts for difference or insurance are taken outside the definition of gambling but are regulated under financial services legislation.\(^{19}\) Spread betting is the sole example of a form of gambling that is actually regulated as if it were a financial service. There has been speculation about whether ‘binary betting’ (also known as ‘binary options trading’) should be treated as gambling or a form of financial instrument. At present (and in contrast with the position in the rest of the EU) it is treated as a form of gambling – however, there has been some pressure for this to be recategorised.

**ii Gambling policy**

Gambling has a long history in Great Britain. In past centuries, many forms of gambling were heavily restricted in terms of the places where they may take place or the nature of the participants. However, it is fair to say that gambling has never been the subject of an outright ban and, indeed, lotteries have a long history as tools of government to raise funds.\(^{20}\) In the past 50 years, Great Britain has experienced a significant liberalisation of its gambling market, and now it is generally considered one of the most progressive and liberal jurisdictions in the world. The current legislation permits the existence of casinos, adult gaming centres, high-street bookmakers and bingo halls as well as the location of gaming machines in venues licensed to serve alcohol. Great Britain has both a National Lottery and a range of private lotteries designed to raise money for charities and good causes. The current legislation permits the operation of gambling through remote communication (online, by telephone, etc.) and also permits foreign operators to offer those services to British citizens provided that they are licensed and pay tax. In short, almost all forms of gambling are permitted for those of 18 years and over, and some minor forms of gambling (lotteries and some minor amusement machines) for those over 16. Since 2005, contracts in relation to gambling (e.g., a bet or a gaming contract, or credit given to permit gambling) are enforceable at law just as any other form of contract.\(^{21}\)

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16 GA Schedule 2 paragraph 2(c).
17 GA Sections 16–18.
18 GA Section 339.
19 GA Section 10.
20 Lotteries were traditionally used, even as far back as the 16th century as a way of raising finance for military campaigns, and the buildings of the British Museum were financed in this way.
21 GA Section 335.
The guiding principle of gambling regulation is that individuals should have the freedom to partake in gambling as part of normal adult leisure activity and that, provided that there are adequate protections to ensure that those who operate gambling are fit and proper to do so and operate in a way which ensures fairness for the general public and protections for the vulnerable and children, then gambling should generally be permitted.\(^\text{22}\)

iii **State control and private enterprise**

Gambling in the UK is the subject of private enterprise and principles of free competition rather than being state controlled. Private citizens and companies (whether foreign or UK-based) are all entitled to apply for a licence to operate gambling, and the number of licences are not limited provided that the operator fulfils the tests of being fit and proper to operate gambling set out in legislation and within the discretion of the regulator. There is one slight exception to this policy of free competition, which is the National Lottery. The National Lottery was established in 1993 and is the subject of a separate regime.\(^\text{23}\) Under that legislation, a single licensee is chosen to operate the National Lottery following a competitive tender. Once appointed, the licensee enjoys a monopoly right that was initially set at 10 years and most recently extended to 14 years with the possibility of sub-licences for some aspects of the overall scheme. The National Lottery is protected from competition from other lotteries by virtue of its unique status and government backing, and also because of limits on the prizes available in private lotteries.

iv **Territorial issues**

There is often (even among English lawyers) a good deal of confusion about the British Isles and its various legal subdivisions. The largest concept is that of the British Isles itself, which is a geographical rather than a legal concept and comprises England, the Republic of Ireland, Northern Ireland, Scotland, Wales and a number of islands that have an historical attachment to Britain, including the Channel Islands of Guernsey, Jersey, Sark and Alderney, and the Isle of Man. It should be noted that each of Jersey, Alderney and the Isle of Man are separate legal jurisdictions (being technically crown dependencies) and with completely different gambling law regimes. The same is true of Gibraltar.

Descending to the next level is the United Kingdom, which is comprised of England, Wales, Scotland and Northern Ireland. Southern Ireland is a separate sovereign state, with its own gambling laws. Northern Ireland shares many statutes and legal principles with England and Wales, but its gambling law is separate (and currently the subject of change). In fact, two sections of the GA (Sections 43 and 340) apply directly in Northern Ireland, and in 2013 the government of Northern Ireland announced its intention to reform the existing law,\(^\text{24}\) to create a more up-to-date legislative framework but those changes remain at the stage of proposals and for the present Northern Irish rules somewhat resemble the legislative framework existing in England prior to the enactment of the GA in 2005.

\(^{22}\) GA Sections 1 and 22.

\(^{23}\) The National Lottery etc Act 1993 (and subsequent modifying legislation).

\(^{24}\) The Betting, Gaming, Lotteries & Amusements (NI) Order 1985.
The next level is the concept of ‘Great Britain’, a term that covers England, Wales and Scotland only. The GA generally applies to the whole of this territory, although there are some modifications to language and penalties in relation to offences and procedures that take place in Scotland.25

Within England, Wales and Scotland, there are no further special divisions or territories that affect the application of gambling law, with one exception: the policy in relation to the licensing of gambling premises is, within an overall framework, a matter for local authorities and local licensing committees (which also deal with the licensing of establishments serving alcohol or providing late night entertainment). Technically, the airspace above and territorial waters around Great Britain are also within the jurisdiction for the purposes of gambling, and rules cover vessels, aircraft and vehicles in that territory.26

v Offshore gambling

The legal treatment of offshore gambling in Great Britain has undergone a recent evolution. Prior to the GA, the position was that all gambling that was physically located outside Great Britain was not justiciable under the English courts. The basic legal principle governing legal culpability in relation to offences such as unlicensed gambling laid down a test by which, if the last act in the actus reus27 took place outside Great Britain, that conduct was not justiciable under the British courts.28 So someone offering online gambling services from London would have triggered an offence, but someone offering gambling services to British citizens from a location outside Britain would not. The only types of offences that could be tried before the English courts would be, for example, the advertising of gambling, which was completed at the point of the advertisement being published or available to British citizens.

The Gambling Act created a regime that for the first time permitted online gambling within Great Britain. The following question therefore arose: would the new law seek to criminalise those who offered gambling to British citizens from abroad? The answer was a rather generous compromise. First, in deference to principles of freedom of movement of services and freedom of establishment of businesses under the European Treaty29 any operator established in the European Economic Area30 would be permitted to advertise and offer those services in Great Britain. Further, operators in certain other states who had been approved by the Secretary of State as having regimes that offered an equivalent degree of regulatory protection could also offer and advertise their services (‘whitelisted’ states).31 Operators in other states could still provide gambling services, but could not advertise those services (based upon the approach to criminal justiciability discussed above and which had remained fundamentally unchanged, the act of gambling would be taking place outside the reach of the English criminal jurisdiction).

25 These definitions have endured for many years, but in recent months have been the subject of speculation given calls for some form of independence for Scotland, and perhaps a rethink of the whole of devolved government following Britain’s decision to leave the EU.

26 GA Section 211.

27 ‘The evil act’: meaning the collection of acts required to make up the offence.

28 See, for example, R v. Harden [1963] 1 QB 8.

29 Articles 26 and 28–37 of the Treaty on the Functioning of the European Union.

30 Being the 28 Member States of the EU and Norway, Lichtenstein and Iceland.

31 At its maximum, the whitelist comprised the Isle of Man, Alderney, Gibraltar, Antigua and Barbuda, and Tasmania.
However, by 2014 it had become increasingly apparent, as a result of developments in EU case law,\(^{32}\) that Member States were legally able to restrict gambling services to those who were licensed within that particular Member State (France and Italy are good examples of this more conservative approach). There were also pressures for change from those licensed within the British regime, who argued that the then current approach created competitive disadvantages from a fiscal point of view compared with operators in white list states. The law changed with the introduction of the Gambling (Licensing and Advertising) Act 2014. This provided that any operator that either had gambling equipment located in the UK, or knew or ought to know that British citizens were using those services (wherever that equipment was located) would require an operating licence\(^ {33}\) (and would have to pay gambling duty on profits generated from business in Great Britain). Thus, the current position is that all such operators must seek an operating licence. The old offence of ‘advertising foreign gambling’ has been repealed, because the strictures of the new regime render it otiose.

To date, it is uncertain how many operators from overseas continue to take business from British citizens. The British regulator, the Gambling Commission (the Commission), has indicated that it believes that the new regime is being complied with and policed effectively. However, we are not aware of any proceedings or enforcement actions that have been brought since the change in the law and, since gambling offences are not of a type or severity that permit a claim for extradition, it is difficult to see in practical terms how such enforcement could be effected in relation to an operator who ignored the law, but did not have a presence or assets within Great Britain.

For those licensed under the British regime, the Commission has recently imposed, as part of the licensing criteria, an obligation that licensees must be able to demonstrate on objective grounds (presumably, at least, a legal opinion from a specialist lawyer) that their operations are legal in all the states in which they operate or do business. Apart from that protection, however, there is no explicit prohibition or control on a British licensed operator from taking business in any jurisdiction in the world, although the power to create such a ban remains in the hands of the Secretary of State.\(^ {34}\)

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

The law on gambling in Great Britain is set out in the GA (as amended) and, for the National Lottery, under the National Lottery etc. Act 1993. Taxation of gambling is dealt with under the annual Finance Act, which makes amendments to the Betting and Gaming Duties Act 1981. There are more than 70 statutory instruments that inform the detailed implementation of the basic regime set out in the GA.

ii The regulator

The GA created a single regulator for all forms of gambling (now including the National Lottery) in the form of the Commission. The Commission is a statutory corporation with its

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\(^{32}\) Cases such as C-243/01 Gambelli, C-67/98 Zenatti and others led to shifts in national law in a number of EU states.

\(^{33}\) GLA Section 1.

\(^{34}\) There exists a power under GA Section 44 to create such a bar on gambling with a particular state.
offices in Birmingham. The main officers of the Commission are the commissioners, aided by a staff including enforcement officers and licensing officers responsible for dealing with the day-to-day functions of the regulator. Responsibility for spread betting has been assigned to the Financial Conduct Authority.

### iii Remote and land-based gambling

The GA distinguishes between remote gambling and non-remote gambling. Remote gambling includes gambling through any form of remote communication (telephone, internet, etc.) but not gambling conducted through postal services (e.g., sale of lottery tickets). Non-remote gambling is generally confined to specific licensed premises, such as betting shops, race courses, casinos and adult gaming centres (and requires a further licence covering the premises themselves, which is issued by the local authority responsible for the area in which the premises are located). There are provisions for temporary licences for certain premises that allow gambling to be conducted for a limited number of days each year. An operator may provide both remote and non-remote gambling under a ‘combined licence’. To give a practical example, a large bookmaker may offer betting through a chain of betting shops, through telephone betting with those shops, and through a website that might offer both betting and gaming products. In such circumstances, it would require a betting operating licence (non-remote and remote), a gaming licence (remote only) and premises licences for each of the shops. As far as telephone betting is concerned, this would be covered either by a full remote licence or, in some circumstances, through an ancillary or linked licence permitting certain remote gambling as part of a general non-remote licence.

### iv Land-based gambling

The GA defines a number of different locations in which forms of gambling can take place, with different restrictions based upon the type of gambling to be performed and conditions imposed by a premises licensing regime. There is no formal limit on the number of gambling premises of a particular type that can be granted.

Casinos are designed primarily for gaming, in the form of table games and slot machines, but are also permitted to offer ring games such as poker, and also betting and bingo. Different sizes of casino are defined by the number of table games and the floor area. There are approximately 150 casinos in Great Britain.

Betting shops (sometimes referred to as ‘licensed bookmaking offices’) are entitled to offer fixed-odds and pool betting, and to install a certain number of gaming machines (including, usually, certain ‘fixed-odds betting terminals’). Apart from bookmaker premises, betting is also offered on tracks and at courses during sporting events. In total, there are just under 10,000 such establishments in Britain.

Bingo halls are entitled to offer bingo (main stage and cash-prize mechanised bingo) as well as some forms of gaming machines. Although the playing of organised bingo has diminished over recent years (especially following the introduction of the ban on smoking in public places), there is still a large number of regular attendees at bingo halls in the UK.

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35 www.gamblingcommission.gov.uk.
36 www.fca.org.uk.
37 See, for example, GA Sections 4 and 67.
38 Using premises without a licence being an offence under GA Section 37.
39 GA Section 7.
In addition to the above forms of gambling establishment, there are a number of locations that permit the installation of gaming machines or the operation of equal chance gaming (i.e., gaming where there is no ‘house advantage’). These range from adult gaming centres (a form of ‘mini casino’ offering only machine gaming rather than table games), licensed family entertainment centres (which provide amusements like ‘toy grabbers’ and ‘penny pushers’ mostly of interest to children but that may include some very low-value machine gaming), venues licensed for the sale of alcohol on the premises without food (essentially ‘pubs’) and private members’ clubs and travelling fairs.

The grant and administration of premises licence is a matter for local planning authorities rather than the Commission (it being thought that it is a matter of local policy how venues such as clubs, theatres, pubs, restaurants, cinemas, night clubs and gambling premises are located and managed). The detail of the application process is outside the scope of this work but has considerable similarity to applications for alcohol licensing – having regard to issues such as the nature of the neighbourhood, proximity of schools and churches, potential for public nuisance, and so on.

**v Remote gambling**

Remote gambling is generally permitted. That means that an operator that is licensed by the Commission may provide gambling services to British citizens in the UK via all forms of remote communication (and using equipment that may be located in the UK or abroad). Equally, a remote operator may be licensed by the Commission to offer gambling services to citizens in any jurisdiction in the world using equipment located in the UK. The Act provides that, for each type of gambling (betting, gaming, etc.), there will be two forms of licence available: remote and non-remote forms. Normally, a single licence may only permit either remote or non-remote gambling. However, there are also ‘ancillary licences’ that permit non-remote operators to offer a modicum of remote services (e.g., permitting a bookmaker to offer a telephone betting service) without the full requirements of a remote operating licence.

Nowadays, with widely distributed hardware deployment, care needs to be taken about which types of equipment are physically present in the British jurisdiction and whether the location of particular resources will trigger a licensing requirement.

The legislative rules that apply to remote and non-remote operators are generally the same, although there are differences to take into account in matters such as fairness of random number generators, protection against underage gambling and social responsibility issues that arise more in remote gambling given that the player will not be in the presence of the operator when the gambling takes place.

**vi Ancillary matters**

In addition to the licensing of operators, the legislation provides for the licensing of a number of other activities, outlined in this subsection.

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40 Defined in GA Section 4.
41 GA Section 67.
**Personal licences**

First, there is the concept of the ‘personal licence’, which can apply to individuals in gambling organisations who either perform a particular management function or a particular function (e.g., being a croupier). Personal licences are a guarantee that those occupying a position of trust within an operator are fit and proper individuals, and are personally accountable to the Commission, having specific reporting requirements in relation to ‘key events’ within the operator. As such, the granting of a personal licence not only represents a badge of quality, but also gives the Commission ‘eyes and ears’ within an organisation. The procedure for applying for a personal licence is the same as for an operating licence.

**Gaming machine manufacture**

The GA recognises that, although they do not operate the machines, those who make, repair or install gaming machines have a special responsibility because they can influence the outcome of gaming. Consequently those who operate in this part of the industry also must apply for an operator licence and ensure that all machines that they make comply with technical standards imposed by the Commission.

**Software**

One potentially difficult area of licensing relates to gambling software. Those who produce gambling software on equipment based in the UK or who propose to supply such software to operators licensed by the Commission require a licence. The definition of gambling software is a wide one. There are sometimes difficulties in determining whether a provider of software (particularly one who provides third-party operators with access to equipment on which the software is hosted) has become so involved in the delivery of the overall gambling process that they should be reclassified as full operators. There are also difficult distinctions as to whether software that is essentially ancillary to the gambling process (e.g., back-office accounting) should require licensing at all.

Finally, certain very common forms of gambling do not require premises licences. The sale of lottery tickets can take place at normal retail premises or even on the street. Pools coupons can be collected and distributed through normal newsagents and, of course, private betting and gaming is permitted on domestic premises without a licence of any sort.

### III THE LICENSING PROCESS

#### i Applications

Applications for gambling licences are normally made online through the Commission’s e-filing system. The application consists of a series of questions seeking information on an applicant in order to verify its identity and beneficial ownership, its suitability and expertise to hold a licence, the source of funds for the business and essentially a business plan, and

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42 GA Part 6.
43 GA Section 128.
44 GA Section 65(2)(f).
45 GA Section 41.
46 GA Section 65(2)(i).
47 GA Sections 295–300 and Schedule 15.
details of how the applicant will comply with the various policies and procedures. Checks will extend to understanding the identity of all officers as well as owners with more than a 3 per cent beneficial entitlement (full checks for those with more than 10 per cent ownership).

Some applications pass through the process (normally expected to take between six and 10 weeks) without difficulty. However, more complex applications can be expected to take longer – in some cases many months. The process usually involves a degree of individual investigation and due diligence by the Commission. Sometimes the decision will be taken by a licensing officer, but in complex cases the decision-making power of the Regulatory Panel and the Commissioners themselves may be utilised.

The Commission will consider the application based upon statutory criteria, but with a large degree of discretion as to suitability and likely compliance with the licensing objectives. At the end of the process, the Commission may grant the licence, refuse the licence or grant it subject to conditions that are attached to the licence. A number of licence conditions are imposed directly by statute; another group are contained in the standard Licence Conditions and Codes of Practice and a third level may be imposed individually on licensees.

Licences are granted without time limit and can last indefinitely, but are always subject to annual fees. The Commission also has the power to review a licence and, if it finds that an operator has breached a licence condition, has the power to impose a range of sanctions including revocation of the licence (see subsection ii, infra). Each form of licence has a different application fee based upon the complexity of the application, and the likely turnover of the business in question. Licences may be surrendered or variation of the scope of the licence sought at any time by notice to the Commission. A change in corporate control of a licence holder will trigger the requirement for the new owners to be investigated and approved or the licence will be deemed surrendered.

ii Sanctions for non-compliance

The basic compliance or sanction regime is set out in Sections 33–36 of the GA. It states that those who provide ‘facilities for gambling’ will commit a criminal offence unless they are properly licensed. Thus, operating without a licence (or with a licence but in breach of its conditions) constitutes the primary offence under the GA, carrying a maximum sentence of 51 weeks imprisonment and a fine of up to £5,000, as well as the revocation of any licence. The most serious offence under the GA, however, is that of cheating at gambling, which carries a sentence of up to two years’ imprisonment. There are a host of other offences...
including, for example, inviting someone underage to gamble, illegal advertising of gambling and the promotion of an unlicensed lottery. Prosecutions may be brought either by the police or by the Commission itself. Criminal prosecutions are generally reserved for serious matters and, in particular, circumstances in which gambling activity has taken place without a licence.

In addition to criminal sanctions, the Commission has a range of regulatory penalties that range from a simple warning letter to a financial penalty,60 to the imposition of further conditions on the licence and to the revocation of the licence.

Apart from operators, it is technically possible for those who provide funds for gambling or advertise gambling to commit some of the ancillary offences. However, in practice, it is unlikely that the Commission would initiate a prosecution in relation to these or related inchoate offences, where a licensee was identifiable as a target for prosecution.

IV WRONGDOING

The cornerstone of the GA is its licensing objectives.61 These involve ensuring that gambling is conducted fairly and only by those who are suitable, with due protections for children and the vulnerable, and with the aim of keeping gambling free of crime. The Commission has a number of investigating officers with powers to enter and inspect premises and investigate suspected wrongdoing.62 It is also a criminal offence to supply false information to the Commission.63

Over the last years there has been an increasing focus on issues of money laundering and betting integrity issues. Although the Commission has a power to initiate prosecutions, it would normally simply play the part of collecting information for the benefit both of sporting organisations (in the case of betting integrity matters) and police authorities in the case of criminal matters such as money laundering or dealings in the proceeds of crime.

V TAXATION

The provision of gambling services is considered to be a trade or profession like any other. Therefore, companies that operate as bookmakers or casinos will expect to pay corporation tax at normal rates. Those who operate businesses as sole traders will be liable for personal income tax.

Gambling services are generally exempt from value-added tax (VAT), which can cause a difficulty for operators since they will be liable for input VAT, but will often be unable to set such a liability off against output services that attract VAT.

Instead of VAT, however, gambling services are generally subject to a form of gambling duty, which generally operates at a rate of 15 per cent on net profits.64 In the case of UK operators, this rate applies to all profits generated under the operating licence (no matter where the customer is located) but, for foreign operators, the duty is of course limited to business conducted with UK citizens. There are slightly different rules for the calculation of

60 GA Section 121.
61 GA Section 1.
62 GA Part 15.
63 GA Section 342.
64 Different rates apply for spread betting.
duty in relation to betting and gaming, and separate duties for amusement machines and gaming machines. Taxation of betting exchanges and intermediaries is calculated at the same rate, but in relation to commission earned by the operator.

Lotteries are theoretically liable to pay lottery duty but, in deference of the fact that lotteries are primarily designed as a mechanism for raising funds for good causes (and must use at least 20 per cent of the proceeds for such purposes), the only lottery that is currently obliged to pay lottery duty is the National Lottery.

Finally, there must be a distinction between operators and customers. Customers (i.e., individual gamblers) will not be liable for income tax on gambling winnings. The philosophical basis for such a policy is that the majority of customers will be net losers and therefore a liability to taxation on winnings might give rise to compelling arguments that gambling losses are tax deductible. In the modern gambling environment of online gambling, ‘professional’ poker players and the use of betting exchanges, it is sometimes difficult to tell a customer from an operator, and careful assessments need to be made in judging liability for tax.

VI ADVERTISING AND MARKETING

The current regime for advertising and marketing of gambling services is often misunderstood or misstated. Advertising of gambling is generally permitted in Great Britain. There remains an offence of advertising ‘illegal gambling’65 (which will apply, for example, if gambling services that are not correctly licensed are advertised). However, the former offence of ‘advertising foreign gambling’ has been repealed66 and replaced by a modified offence, which can best be described by the following summary:

…it is an offence to advertise remote gambling services (i) capable of being used by British citizens or (ii) where the relevant equipment is located in Britain and where no relevant licence is held.67

Technically speaking, that offence does not prevent the advertising of gambling taking place in the UK, provided that the services are not made available to UK citizens. This has been a source of controversy since many foreign operators found it commercially useful to advertise gambling services on the shirts of football teams whose matches were widely viewed on television (e.g., across Asia) and that could therefore penetrate markets where there were explicit bans on such advertising (and indeed such gambling). The legislative regime does not specifically prevent such advertising, provided that the operators effectively prohibit British citizens from using them, and it is also possible to obtain a UK licence that permits advertising, notwithstanding that the British public is not being heavily targeted as a matter of practice. Generally, despite the lack of a legal ban, the Commission has suggested that it believes that all advertising in the UK must be by those who hold a licence, and it has made strong representations to relevant sporting bodies not to accept sponsorship from unlicensed operators.

As regards the content and style of advertising, there are no statutory rules or criminal sanctions, with regulation being effected through a series of voluntary codes to which all

65 GA Section 330.
66 Offence, previously Section 331 GA repealed by GLAA Section 3.
67 GLAA Section 4.
operators subscribe. The first of these is a voluntary code for gambling operators, but this is supplemented both by general and industry specific rules, which are dictated by rules on advertising in the broadcast and non-broadcast media by the Commission on Advertising Practice and policed by the Advertising Standards Authority. The rules seek to prevent gambling from being attractive to those under 18 or being seen as more than an entertaining past-time.

VII THE YEAR IN REVIEW

The key event in UK politics and law last year was, of course, the decision to leave the EU, which is discussed in Section VIII, infra. Aside from that momentous decision, other topics have impacted the UK gambling industry. There has been a good deal of focus on new forms of gambling that have become increasingly fashionable – including eSports, betting on lotteries and social-casino-style games. These are, in truth, not new concepts, but with greater popularity, we have seen calls to regulate them. eSports exist at the interface between skill-based contests and betting in relation to what might be summarised as the ‘competitive playing of video games’. At one level, these may be treated as outside the scope of gambling completely as they are generally skill-based contests for prizes. However, where bets are placed upon the outcome of the event or where chance has an impact on the game play, then they can become forms of gambling. We also saw, during the course of 2016, a number of individuals or organisations tapping into the huge success of video gaming (particularly online games) and offering gambling or quasi-gambling mechanisms to allow players to win game attributes or prizes in the form of virtual currencies that in some cases can be translated into real world value because of a secondary market. In one such case (involving individuals operating the ‘furgalaxy.com’ website), there were clear instances of lottery-style games involving gambling that were played to win the virtual currency used in the popular FIFA17 game. The operators of the site both pleaded guilty to operating gambling without a licence. The case was all the more serious since these types of site were very popular with children, which clearly touches on a major area of sensitivity under the Licensing Objectives. To date, the Commission’s position in relation to eSports and virtual currencies is that new law or regulation is not required, but that the situation will be kept under review.

Another area in which there has been rapid development is fixed-odds bets based upon the results of large lotteries. This again is not a new concept (fixed-odds bets on lotteries and similar schemes such as the ‘49’s game’ have been known in the UK since the mid-1990s). However, the marketing of such products has drawn them to wide public attention and some would argue that they blur the interface between lotteries – a 16+ product with a significant charitable donation element and an 18+ betting product that can be offered at a more competitive return to player because there is no ‘good cause’ element. Recently, the government announced a consultation on proposals that the prohibition that currently exists in relation to betting on the National Lottery be extended to cover the pan-European product ‘Euromillions’. It seems likely that the Commission will also seek to ensure that the advertising of betting-on-lottery products be carefully monitored to ensure that consumers are clear on the type of gambling in which they are participating.

In other developments, there has been a number of high-profile regulatory actions against gambling operators for perceived failings in relation to money laundering and know-your-customer checks. This is part of an overall policy move by the Commission towards a more stringent enforcement regime, seeking to oblige operators to be still more vigilant in their regulatory duties. All of this, of course, occurs within the context of the Fourth Anti-Money Laundering Directive, due to become effective in June 2017.

VIII OUTLOOK

On 23 June 2016, the result of a referendum on Britain’s membership of the European Union was announced, with a slim majority in favour of a withdrawal (‘Brexit’). It is still very difficult to say what the impact of this decision on the UK will be, except that all of the signs are that the process will be a long and complex one, and the result seems likely to be a significant separation of the UK from the EU – with options such as membership of the European Economic Area (EEA) or customs alliance appearing to be unlikely solutions at this time. At the time of writing, the government has triggered the two-year disengagement process under Article 50, but the negotiation process has not yet commenced. What will Brexit mean for the UK gambling industry? It could be said that gambling is essentially a matter of national policy only, and will be generally unaffected by Brexit. However, it seems likely that there will be impacts in a number of different spheres. While remaining cautious about predictions, it is perhaps sensible to consider three distinct aspects: gambling as a form of commerce; gambling as a regulated industry and gambling as a legal topic that touches on criminal law.

i Gambling as a form of commerce

Europe has long regarded gambling as a form of service that is subject to the normal rules on freedom of movement and also on freedom of establishment. Indeed, a number of cases before the Court of Justice of the European Union made that point clear. However, European jurisprudence over the years has also emphasised the rights of Member States to derogate from the principles and to make laws that restrict or prohibit gambling to the extent that they are reasonably necessary and proportionate for the protection of public morals, and law and order. In that regard, the UK’s position has traditionally been very liberal, and the GA initially gave rights to gambling operators established in any part of the EEA to do business with the UK population. More recently, the UK’s position has become somewhat more ‘national’ with the focus on a point of consumption test for the licensing and taxation of gambling. Of course, with Brexit, this point of view can be expected to continue and, if anything, intensify.

ii Gambling as a regulatory matter

There is no harmonisation of gambling regulation at the EU level. However the UK is a party to the Cooperation Arrangement between the gambling regulatory authorities of the EEA Member States signed in November 2015. Once the UK is no longer a part of the EU or

69 The vote was 51.9 per cent in favour of leaving and 48.1 per cent in favour of remaining.
70 For example, C-124/97 Läärä and Others, C-67/98 Zenatti, C-243/01 Gambelli and Others, and C-338/04 Placanica.
EEA, then its membership of this arrangement will no longer be guaranteed but, provided that the UK regulatory regime continues to maintain the same standards, there seems little reason why its continued participation in the arrangement should be called into question. This brings into focus one particular issue arising from Brexit, which is whether, despite the potential for exercising full autonomy in relation to its laws, the UK will nonetheless be effectively obliged to maintain national laws very similar to those existing as a matter of EU legislation if it is not to find itself in a position where it becomes effectively cut off from EU markets. This is the case for topics such as money laundering and data protection, for example, both of which are key to the gambling industry. It seems inconceivable that the UK government would jeopardise the ability for data import and export between the EU and the UK by adopting standards that were different, just as it seems highly implausible that the UK will not effectively implement the Fourth Anti-Money Laundering Directive.

iii Gambling and the criminal law

One matter that is not generally considered in an analysis of the impact of Brexit is the extent to which EU law impacts criminal law. However, EU law influences a number of areas, including definitions of certain criminal offences, mutual recognition and cooperation between Member States (e.g., evidence gathering in criminal matters, and dealing with those charged or convicted with offences who are located in another Member State), exchange of intelligence on criminal activities and the operation of EU policing agencies. As to these, the UK has already opted out of most of the definitions of criminal offences, but there is recognition of European arrest warrants, freezing orders and asset confiscation orders. The UK is also one of the biggest users of the European Criminal Records checking system, which it will not be entitled to use once it has left the EU.

iv General impact on UK businesses

Beyond these specific spheres, one must also look to wider issues. Politically, there has already been a debate about the status and future of Gibraltar (see the Gibraltar chapter for more detail) but also from a more general social and economic point of view, the modern UK gambling industry relies upon the talents of many young and technically gifted employees from Europe and elsewhere to power the technology and customer support functions of its operations. It also represents a leisure industry, dependent upon the availability of disposable income. If access to a diverse workforce is reduced or a decrease in consumer confidence occurs as a result of Brexit, then the gambling industry, which has so far remained robust, may face increased challenges.
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Yasmine joined GVZH Advocates as a legal trainee in July 2015 and is mainly involved in IT law, EU law, media and telecommunications law, and intellectual property. She has been actively involved in legal research and she gained knowledge with respect to the drafting of contractual agreements and general commercial reviews for GVZH Advocates. Yasmine is reading for her law degree at the University of Malta. She completed a bachelor’s degree in law with European studies together with a diploma of legal procurator in 2014. In 2015 she obtained a diploma of notary public. She is presently reading for her doctorate of laws degree and is writing her thesis on net neutrality in the European Union.
WAYNE ATKINSON

Collas Crill

Wayne Atkinson is one of the leaders of Collas Crill’s risk and regulatory team and his experience is focused on providing advice on regulatory, compliance and licensing issues. Wayne regularly advises a range of regulatory businesses on risk and regulatory matters as well as related transaction and investment structuring, commercial contract, and mergers and acquisition issues.

Wayne regularly speaks at seminars and conferences in relation to company and regulatory law matters, and is known for his down-to-earth plain-speaking approach to explaining complex legal and regulatory issues.

Prior to joining Collas Crill in 2009, Wayne trained and qualified as a corporate lawyer with Herbert Smith Freehills in London working primarily in the firm’s investment funds and regulatory team. Following this he moved to the British Virgin Islands where he worked for Walkers on a range of investment funds and general corporate transactions.

NICOLE ATTARD

GVZH Advocates

Nicole read law at the University of Malta and completed a bachelor’s degree in law with European studies in 2013, and received a diploma of notary public in 2014. She became a Doctor of Laws in 2016 after having submitted her thesis entitled, ‘Private Enforcement of EU Competition Law: The Way Forward’. She is currently reading for a master of laws degree (LLM) with a specialisation in computer and communications law with the University of London International Programmes. As from November 2013, Nicole joined GVZH Advocates as a legal trainee and in December 2016 she became an associate. Her main areas of practice are real estate, data protection and technology, and media and telecommunications.

NICOLA AUSTIN

Addisons Lawyers

As a solicitor in Addisons’ gambling law practice, Nicola works closely with both local and international companies in the gambling sector on all regulatory and compliance matters relating to their business.

Nicola’s experience lies in providing advice regarding licensing and regulatory issues, consumer issues such as advertising and privacy law, as well as commercial and corporate issues. She also assists foreign companies seeking to enter the Australian market in understanding the legal and regulatory constraints on conducting a gambling business in Australia.

Nicola advises a diverse client base, ranging from established gambling operators to start-up companies, as well as companies providing a range of services within the gambling space.

ANA-MARIA BACIU

Nestor Nestor Diculescu Kingston Petersen

Partner Ana-Maria Baciu co-heads Nestor Nestor Diculescu Kingston Petersen’s gaming practice. She has over 18 years of professional expertise, including 11 years of experience in
assisting clients in the gaming sector. She also coordinates the firm’s IP practice and co-heads the consumer protection and advertising practice.

Ana-Maria is highly specialised in all legal aspects related to the organisation and operation of gambling activities. She has participated in the process of drafting both primary and secondary Romanian gaming legislation. She is a general member of the International Masters of Gaming Law, a regular contributor to specialised publications and a speaker at events on gaming matters.

**JENNIFER CARLETON**
*Brownstein Hyatt Farber Schreck LLP*

Jennifer Carleton is a shareholder in Brownstein’s gaming law group. Jennifer counsels clients on corporate and regulatory matters, focusing on the licensing aspects of deal structures and transactions, mergers and acquisitions, reorganisations, and public finance. She has spent the past 19 years of her career in gaming, first as in-house counsel for an Indian casino and for the past decade as an adviser to the premier public and private gaming companies in the United States.

**VOJTĚCH CHLOUPEK**
*Bird & Bird sro advokátní kancelář*

Vojtěch is a partner in the Czech Bird & Bird office and is head of the intellectual property, technology and communications and media groups in the Czech Republic and Slovakia.

His expertise covers intellectual property and IT law, gaming and media law. He also regularly assists clients in connection with various data protection and related compliance matters, antitrust matters, including anticompetitive practices, abuse of dominance, merger clearances and state aid.

For the past five years Vojtěch has been actively involved in advising gaming companies from market leading national lottery to a small peer-to-peer gambling start-ups.

Vojtěch has been repeatedly recognised and awarded as a leader in his field of expertise (intellectual property and technology, media and telecommunications). He received an ILO Client Choices Award 2014-2015, WIPR Czech Republic 2016 and named the MIP Star 2016–2017.

He is the President of LES Czech Republic, local representative of the ITech Law and active member of the ALAI. As of 2017 Vojtěch is a member of the International Masters of Gaming Law.

**MIA CORBETT**
*Addisons Lawyers*

Working in the gambling law practice at Addisons, Mia advises operators, regulators, affiliates and media groups. Her clients range from established international operators to new start-ups in the Australian market.

Mia advises primarily on privacy, advertising and marketing, anti-money laundering and counter-terrorism financing, licensing, compliance, and sports and racing integrity issues. She has previous experience working in-house with one of Australia’s biggest corporate wagering operators. This allows her a unique perspective from which she can offer clients advice that is both practical and commercially viable.
PEDRO CORTÉS
Rato, Ling, Lei & Cortés – Advogados
Pedro joined Rato, Ling, Lei & Cortés – Advogados in 2003 and is a senior partner. He holds the same position in ZLF Law Office.

His main areas of practice are: gaming, banking and financial, capital markets, real estate, commercial and corporate, intellectual property, and ADR. He is a member of the Macao Lawyers Association, Portuguese Bar Association, Brazilian Bar Association (OAB São Paulo), Justice Department of Guangdong (as a cross-border Macao lawyer), International Association of Gaming Advisors (IAGA) and the International Bar Association (IBA), and is also qualified to work as a lawyer in East Timor. He is member of the Chartered Institute of Arbitrators (CIArb), of the Hong Kong Institute of Arbitrators (HKIA) and of the Hong Kong Institute of Directors (HKIoD). He was lecturer for the master's programme on social sciences – global economic politics at the Chinese University of Hong Kong and is a regular speaker on gaming and non-gaming matters. He also contributes to several legal and non-legal publications.

BEHNAM DAYANIM
Paul Hastings LLP
Behnam Dayanim chairs Paul Hastings’ global advertising, gaming and promotions practice. He has advised gaming companies and service providers, including payments processors, banks, advertisers and other media and content companies, on gaming issues for 20 years and is globally recognised for his expertise in internet gambling, fantasy sports, social casino games and skill gaming. Mr Dayanim is ranked by Chambers USA and Chambers Global as a top gaming lawyer and was named Best Lawyers’ 2014–2015 gaming law ‘Lawyer of the Year’ in Washington, DC.

SEÁN DOWLING
McCann FitzGerald
Sean is an associate in McCann FitzGerald’s corporate group and advises indigenous and multinational corporates in relation to private company law matters including mergers and acquisitions, contractual drafting and negotiation, private equity transactions, corporate re-organisations, joint ventures and general Irish company law and corporate governance issues.

Sean is a member of the firm’s betting and gaming group. As part of that role, he maintains an overview of legal and regulatory developments in the betting and gaming sector. With others in the group, Sean has co-written client briefings on relevant topics including the Gambling Control Bill 2013 and an update on the implications of the pending expiry of remote bookmaker and remote betting intermediary licences. Sean spent a period on secondment in 2016 with one of the world’s largest betting and gaming operators.

PIOTR DYNOWSKI
Bird & Bird Szepietowski i wspólnicy spk
Piotr is a partner at the Bird & Bird Warsaw office and head of the IP, media, technology and communications practice. He advises on all aspects of gaming law, in particular online gambling, social gaming and e-sports. His expertise covers licensing regimes, regulatory issues
as well as advertising and provision of B2B services for gambling industry such as payment services, etc. As an expert on Polish gambling law, Piotr frequently comments on case law developments for gambling compliance and speaks at events such as World Gambling Briefing or ICE Totally Gaming.

In 2010, as the Polish expert he participated in the research conducted by Simon Planzer at Cambridge Health Alliance together with Harvard Medical School and Harvard Law School, investigating associations between European gambling regulations and the actual gambling behaviour of players.

In 2011, he represented the two largest European online gambling industry organisations in complaint proceedings against Poland to the European Commission for violation of the EU law by Polish gambling regulations, which resulted in the European Commission launching proceedings concerning violation of the EU law by Poland at the end of 2013, which terminated only in January 2016 after a number of changes to the Polish gambling regulations were introduced.

He is a legal expert to the Polish Chamber of Commerce.

ERIN ELLIOTT
Brownstein Hyatt Farber Schreck, LLP
As an associate attorney in Brownstein’s gaming law group, Erin Elliott assists on a broad range of gaming and licensing matters. Before attending law school, Erin worked at International Game Technology in Reno, Nevada.

PABLO GONZÁLEZ-ESPEJO
Uría Menéndez
Pablo González-Espejo is a lawyer based in the Madrid office of Uría Menéndez. He joined the firm in 1994 and was made partner in 2004. In 1999, he opened Uría Menéndez’s São Paulo office, which he headed until September 2003. There, he advised foreign investors in Brazil and was one of the first foreign lawyers to be registered with the Brazilian Bar. In October 2003, Pablo returned to the firm’s Madrid office. Since then, he has focused his practice on commercial and company law in the audiovisual, telecommunications, sports, gambling and IT sectors, and continues to manage relations with the firm’s Brazilian clients. In relation to gambling matters, Pablo advised national and foreign operators for their licensing process, the state-wide regulator and a state-owned operator in a variety of matters. Pablo is considered a leading practitioner in M&A, new technologies, telecommunications, media, gambling and sports by the most prestigious legal directories, such as Chambers, PLC Which Lawyer? and Best Lawyers.

YEHOSHUA SHOHAT GURTLER
Herzog Fox & Neeman Law Office
Yehoshua Shohat Gurtler is a member of HFN’s e-commerce and gaming law department, advising clients on a range of issues related to the laws of online gaming, concentrating primarily on matters pertaining to regulation, licensing and litigation. In addition, Yehoshua advises clients on the regulation and licensing of e-commerce and fintech, with a specific focus on Forex and derivatives trading.
Following extensive service in the IDF’s Military Advocate General’s Corp (MAG), Yehoshua also advises and represents clients on homeland security and defence-related issues, including issues pertaining to public international law.

Yehoshua has repeatedly been ranked as a notable practitioner in *Chambers and Partners’* global gaming and gambling rankings.

**BEATA GUZIK**

*Pharumlegal*

Beata Guzik is director of EU public affairs at Pharumlegal. She obtained a master’s degree in law at the European School of Law and Administration, and a master’s degree in landscape planning and GIS at the Warsaw University of Life Sciences.

She has been working on projects involving the use of social media in gaming, social gaming and gamification, as well as questions on corporate social responsibility and social innovation. Beata Guzik is also involved in the EU circular economy policy, EU renewable energy questions and collaborative economy.

**ALAN HEUSTON**

*Mccann FitzGerald*

Alan Heuston is a partner in McCann FitzGerald’s tax group, about which *Chambers Europe* recently noted, ‘They are accessible, technically strong and commercial with their solutions.’

Alan has extensive experience in advising clients on the tax aspects of mergers and acquisitions, reorganisations, restructurings, migrations, capital markets, financial products, banking, and a wide range of other international and domestic tax matters.

He maintains a particular focus in the area of intellectual property and has advised a wide range of domestic and international clients on the tax aspects of setting up operations in Ireland to exploit and develop intellectual property.

Alan leads the firm’s betting and gaming group. Prior to joining McCann FitzGerald, Alan spent a number of years as Director of Tax in Paddy Power Betfair Plc, with responsibility for managing the group’s tax affairs across multiple jurisdictions. As such he has significant first-hand experience of the regulatory and taxation aspects of the betting and gaming sector.

Alan writes and lectures on all topics relating to his practice and is a frequent contributor to client briefings, including recent publications on licensing and advertising issues as they arise in the betting and gaming sector.

**HENRIK NORSK HOFFMANN**

*Nordic Gambling ApS*

Henrik Norsk Hoffmann is a licensed and practising Danish attorney, specialised in gambling law and international transactions.

Henrik has worked with and for the international gambling industry since 2002, and is a general member of the International Masters of Gaming Law organisation.

As the legal representative of a large number of operators in Denmark, Henrik is one of Denmark’s leading gambling attorneys, and has been actively involved in the drafting of the Poker Act, which allowed the offering of land-based poker tournaments. Henrik also played
an active role in developing the current Danish gambling legislation and is often asked to sit on committees with the Danish Gambling Authority to help shape the guidelines regarding the interpretation of Danish gambling law.

In connection with Schleswig-Holstein’s enactment of a liberalised gambling market in 2011 and 2012, Henrik was invited as a special advisor to the government.

JOERG HOFMANN  
_Melchers Rechtsanwälte Partnerschaftsgesellschaft mbB_  

Dr Joerg Hofmann is the immediate past president of the International Masters of Gaming Law (IMGL) and head of the gaming and betting law practice group of Melchers Law Firm. He has been practising 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 and Gambling by _Chambers Global_ since 2011 and, in 2016, was listed as the only German lawyer among ‘Germany’s Best Lawyers’ in the category ‘Gaming Law’ by _BestLawyers_ and _Handelsblatt_. 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’s Who Legal_ for sport and entertainment in Germany.

HITOSHI ISHIHARA  
_Anderson Mōri & Tomotsune_  

Hitoshi Ishihara is a partner at Anderson Mōri & Tomotsune. As the sole Japanese attorney admitted to the International Masters of Gaming Law (IMGL), Mr Ishihara has extensive focus and knowledge concerning Japanese gaming law, including the anticipated law change to legalise casino operations in Japan.

Mr Ishihara also provides a variety of legal services to his clients establishing and doing business in Japan, with an exceptional focus on cross-border transactions. Also, in the intellectual property field, Mr Ishihara has extensive experience in IP licensing and transactions, and also provides advice on regulatory issues.

His distinctive English skill, backed by over seven years’ experience in the United States, enables him to effectively bridge the linguistic and cultural gap faced by his clients.

He is admitted in both Japan and California (United States).

VLADIMÍR KRASULA  
_Bird & Bird sro advokátní kancelář_  

Vladimír is a junior associate in the Czech Bird & Bird office and member of the technology and communications, and commercial groups.

In the area of gaming law he is actively involved in advising clients on licensing issues and regulatory matters related to gaming activities on the Czech market. He is further experienced in advising on commercial matters with a specific focus on IT contractual documentation, outsourcing agreements, negotiations with suppliers, contractual documentation related to e-commerce, payment systems and compliance matters.

Vladimír is also a co-author of the Czech chapter in Thomson Reuters _Gaming Law_ third edition with Vojtěch Chloupek, who is a partner of the Prague’s Bird & Bird office.
NYREEN LLAMAS

Hassans International Law Firm

Nyreen has been practising since 2001 and has developed a breadth of expertise in many aspects of corporate, commercial and private client work. She has advised many individual and large corporate groups in relation to their tax restructuring and financing arrangements.

Most notably, Nyreen has developed expertise in the gaming industry and very regularly advises some of the largest gambling operators in Gibraltar in relation to many aspects of their business and in respect of their regulatory matters. She also formed part of the team who assisted with the flotation on the London Stock Exchange of one of the Gibraltar-licensed gambling operators.

Nyreen is an honours graduate in English and Spanish law from the University of Kent, England and also studied at the Complutense University of Madrid, Spain. She was called to the Bars of England and Wales, and Gibraltar in 2001.

DAVID LÓPEZ VELÁZQUEZ

Uría Menéndez

David López Velázquez is a senior associate of Uría Menéndez. He joined the firm in 2006. From September 2012 to September 2014 he headed up the Mexico City office, where he provided advice and guidance to clients with businesses in Mexico. David focuses his practice on commercial law, mainly advising clients in the media, IT and e-commerce sectors. He also specialises in banking and finance law, and has been involved in major M&A and financing transactions. In relation to gambling matters, David advised national and foreign operators for their licensing process, the state-wide regulator and a state-owned operator in a variety of matters.

ÓSCAR ALBERTO MADUREIRA

Rato, Ling, Lei & Cortés – Advogados

Óscar is a senior associate at Rato, Ling, Lei & Cortés in charge of the Portuguese desk, and is a member of the Macao Lawyers Association, the Portuguese Bar Association and the Hong Kong Institute of Arbitrators (HKIA).

Before joining the firm, he was senior legal counsel for Melco Entertainment and other law firms in Macao. He was also a legal consultant for the Porto City Hall, for the Portuguese National Traffic and Transportation Department, and for the Honorary Consulate of the Republic of Guinea Bissau in Portugal.

He is a member of the Scientific Counsel of the Rui Cunha Foundation, a lecturer and consultant at CRED-MD – Center for Reflection, Study and Dissemination of Macao Law, and a visiting lecturer at the University of Saint Joseph, Macao.

Óscar is also a frequent speaker at gaming and non-gaming conferences around the world and is the author of several legal publications on gaming and non-gaming law.

LUIZ FELIPE MAIA

FYMSA – Franco, Yoshiyasu, Maia, Simões & D’Alessio Advogados

Luiz Felipe Maia is a founding partner of FYMSA – Franco, Yoshiyasu, Maia, Simões & D’Alessio Advogados, and is head of the internet and technology, and gaming teams. Luiz
Felipe mainly counsels clients in corporate, contracts and regulatory matters, including mergers and acquisitions, joint ventures, internet law, gaming law and strategic negotiations in related fields. Luiz Felipe has worked as legal counsel for energy and IT companies, and has practised as an attorney in renowned law firms. Luiz Felipe has a bachelor of laws degree from the University of São Paulo, specialising in business law with a focus on contracts from Getúlio Vargas Foundation, and a master in law degree from Federal University of Pernambuco in civil law. He is also an experienced negotiator and mediator, certified by the Harvard Law School Programme on negotiation, and teaches negotiation courses in business school. Luiz Felipe Maia is member of the International Association of Gaming Advisors and a former general member of International Masters of Gaming Law. Luiz Felipe is a frequent speaker at international gaming events and was awarded for Corporate Livewire Excellence at the Gaming Awards 2016.

JESSICA MAIER
Melchers Rechtsanwälte Partnerschaftsgesellschaft mbB
Jessica Maier advises German and English-speaking clients on all aspects of gambling law with a focus on regulation, licensing and compliance. She has been involved in regulatory due diligence reviews in the context of corporate acquisitions and also supports clients in competition- and antitrust-related issues as well as administrative court proceedings. She has provided guidance to clients in various licensing proceedings, and advises clients on the regulatory developments in Germany that impact their business. Jessica regularly contributes to gambling law and industry publications and is a member of the International Association of Gaming Advisors (IAGA). Like all members of the Melchers gaming and betting law practice group, Jessica has access to an excellent international network and is experienced in lobbying.

EKATERINA MERABISHVILI
Dentons
Ekaterina focuses on banking and corporate issues. She has been part of Dentons teams advising on cross-border finance projects, operation of payment systems and e-payment processes, and on structuring elaborate financial products. She has experience advising on various aspects of gambling-related projects, as well as coordinating Dentons teams worldwide providing similar advice in relation to a wide range of jurisdictions.

ANDREW MONTEGRIFFO
Hassans International Law Firm
Andrew joined Hassans in 2011 and is an associate in the corporate and commercial department. After graduating from the University of Nottingham with an LLB (Hons) degree, he went on to obtain an LLM in commercial law before undertaking the Bar Professional Training Course. He is a member of the Honorable Society of The Middle Temple and has been called to the Bars of England and Wales, and Gibraltar.

Andrew's practice consists primarily of corporate and commercial work. He regularly advises various gambling operators in Gibraltar (both in the remote and land-based sectors) in relation to a broad spectrum of matters including corporate governance, operational and
regulatory issues and has been closely involved with the establishment of numerous licensees in the jurisdiction. He has contributed to various gambling law journals and industry publications and closely follows developments in the industry.

JAMIE NETTLETON
Addisons Lawyers

Jamie Nettleton is the partner at Addisons who heads the firm’s gambling law practice. Both Australian and international gambling operators rely on Jamie’s advice on all aspects of gambling operations, as well as their investments in gambling businesses inbound to Australia and outbound from Australia.

It is Jamie’s global reputation in his field that sees him strongly sought after to advise gaming machine manufacturers, wagering operators, casinos, social media, online gambling and other various forms of gambling service providers. Jamie’s advice to these clients includes licensing, regulatory and compliance issues, sports and racing integrity, consumer, advertising and privacy law issues.

Jamie’s advice to international gambling operators setting up business in Australia extends to preparation of prospectuses and requirements of the Australian Securities and Investments Commission. Jamie works closely with these clients in developing their Australian business strategies, particularly in connection with the use of new technologies.

The results that he has delivered for his clients and his position at the forefront of gambling law have seen Jamie elected as vice president of the International Masters of Gaming Law, and his role as a senior fellow at the University of Melbourne as a lecturer in Gambling and the Law. He has also been ranked as a leading gambling lawyer by Chambers Global every year since 2008.

JOHN OLSSON
Wistrand Advokatbyrå

John Olsson is senior associate at the firm’s Stockholm office and joined Wistrand in 2016. He has previous experience from other law firms where he worked on gaming-related issues as well. He focuses mainly on IP, media, marketing and litigation.
CARLOS F PORTILLA ROBERTSON

Portilla, Ray-Díaz y Aguilar, SC

Carlos F Portilla Robertson was admitted as a lawyer in July 1986 by La Salle University.

He has diplomas in constitutional proceedings and corporate and business law from the Panamerican University, and international business in Mexico and international arbitration from the Free School of Law.

Mr Robertson’s practice includes gambling and legal expertise in the Mexican gaming industry, compliance and online gaming, civil and commercial litigation, bankruptcy and reorganisation proceedings, banking and insurance disputes, consumer protection law, product liability and recall, international and domestic mediation and arbitration, real estate, public and private construction disputes.

He is a member and legal adviser of the Association of Gaming Equipment Manufacture (AGEM México), and a member of the International Masters of Gaming Law, the Mediation and Arbitration Center of the ICC, the National Chamber of Commerce of Mexico City (CANACO), the Arbitration Committee of the Arbitration Centre of Mexico, the Mexican Bar Association and the Spanish Arbitration Society (CEA). He is former president of the Marketing and Advertising Commission of the ICC. He is counsel of the board of directors of ICC Mexico, and ex-chair of the National Association of In-house Companies Lawyers, Queretaro Section, ANADE.

He speaks Spanish and English.

GONÇALO AFONSO PROENÇA

Cuatrecasas

Gonçalo Afonso Proença has been a counsel at Cuatrecasas since 2016 and was a senior associate lawyer between 2005 and 2016. He is a member of the public law department and provides current legal advice to clients in public procurement law.

Gonçalo’s areas of particular expertise within public law include contracting law; litigation, namely, actions for damages arising from liability under contract, tort liability and strict liability of the state and other public entities, and non-compliance of concession contracts; and pre-contract procedures.

He has been a legal adviser on matters concerning the concession contracts of casino games of chance in Portugal.

Gonçalo was involved in the new legal framework for online gambling that was published in Portugal, and has extensive focus and knowledge concerning Portuguese gaming law.

He has a law degree from the School of Law of the Portuguese Catholic University of Lisbon and a postgraduate degree in administrative litigation. He has participated in international gaming law conferences, both domestic and abroad.

He regularly advises clients on a broad range of gaming-related issues, including online gaming, sports betting and fantasy sports leagues.
SHANNA PROTIC DIB
Addisons Lawyers
Shanna is a solicitor in Addisons’ gambling law practice, advising a diverse range of local and international companies that operate in the Australian gambling market, from start-ups to large multinational companies.

Shanna advises gambling operators, media companies and affiliates on the evolving Australian regulatory regime and compliance issues relating to taxation, e-commerce, advertising and marketing, privacy, competition and licensing.

CHRISTEL ROCKSTRÖM
Wistrand Advokatbyrå
Christel Rockström is partner at the firm’s Stockholm office and joined Wistrand in 2002. Christel focuses mainly on IP, media, marketing and litigation. The clients she represents includes international media groups, sports companies and organisations, and gaming companies. She has been working on gaming-related issues and been following the gaming market since 2004.

CARL ROHSLER
Squire Patton Boggs (UK) LLP
Carl Rohsler is a solicitor, advocate and partner at the London office of Squire Patton Boggs (UK) LLP. As head of gambling regulation, he specialises in gambling regulation and intellectual property law. Squire Patton Boggs is one of the world’s largest global law firms with 45 offices spanning 21 countries. Carl was educated in England and obtained an MA at Merton College, Oxford before law school at Chester College of Law, qualifying as a lawyer in 1995. Carl is the author of a number of works on gambling law and practice including Gambling Act 2005: A Current Law Statute, Current Law Statutes Guide to The National Lotteries Act 2007, and Licensing Law and Practice (2008). Carl is on the editorial board of World Online Gambling Law Report, and is a visiting lecturer at the University of Montpellier, France. Carl acts for a number of the leading remote and bricks-and-mortar gambling organisations in the world, and has been recognised as a leading practitioner by both Chambers Guide to the Legal Profession and The Legal 500.

MICHAŁ SAŁAJCZYK
Bird & Bird Szepietowski i wspólnicy spk
Michał is an associate at the Bird & Bird Warsaw office in the IP, media, technology and communications practice. He advises on all aspects of gaming law, in particular online gambling. His expertise covers regulatory issues as well as advertising. He also advises on various IP aspects, in particular in relation to software licensing contracts.

In 2016, together with Piotr Dynowski, he co-authored a chapter on Poland for Gaming Global Guide, third edition by Thomson Reuters.
KATHLEEN K SHERIDAN

*Kathleen Sheridan* is an associate in the advertising, gaming and promotions practice. Ms Sheridan possesses extensive experience in advising companies on the legality of a range of online games, and has represented companies in gaming-related litigation and regulatory counselling.

COSMINA SIMION

*Cosmina Simion* co-heads Nestor Nestor Diculescu Kingston Petersen’s gaming practice. In addition to the gambling industry, her practice focuses on IPT, and the media and entertainment and online industries, having acquired strong expertise in these fields in over 18 years of professional activity. She also co-heads the firm’s consumer protection and advertising practice.

In the gaming field, her experience encompasses the full range of regulatory and operational gaming aspects. Cosmina has also been actively involved in the review and drafting of the Romanian primary and secondary gaming legislation. She is a general member of the International Masters of Gaming Law, a regular contributor to specialised publications and a speaker at events on gaming matters.

NOAH N SIMMONS

*Noah Simmons* is an associate in the advertising, gaming and promotions practice. Mr Simmons has represented companies in gaming-related litigation and regulatory counselling.

VIDUSHPAT SINGHANIA

*Vidushpat Singhania* is an advocate registered with the Delhi Bar Council. He has been a member of the British Association of Sport and Law, the International Association of Sports Lawyers, the International Association of Gaming Advisors, secretary of the Indian Premier League Probe Committee, the FICCI National Sports Committee and the All India Council of Sports. He is a member of the Gaming and Leisure Group of UK-India Business Council, the Regulatory Commission of the Indian Super League and ASSOCHAM’s Sports Committee.

Vidushpat advises on issues pertaining to betting and gambling laws, sports’ league formulation and rights structuring, government policies, TV and broadcasting rights, sponsorship and merchandising contracts, tendering procedure, anti-doping, ticketing, venue hire and brand protection.

Vidushpat is co-author of the book *Law and Sports in India* and has written articles for the International Sports Law Journal, World Sports Law Report, online sport portals and various national dailies. He was involved in drafting the National Sports Development Bill, the Prevention of Sporting Fraud Bill and the National Sports Development Code for Ministry of Youth Affairs and Sports, and has assisted the Justice Mudgal Doping Probe Committee. He was a member of the committee established by the Ministry of Human
Resource Development considering the integration of sports within the higher education system. He also advised on the Right to Play Bill (Haryana), Slum Dwellers Model Act and the Rickshaw Pullers Act.

He has previously worked with the firm Lakshmi Kumaran and Sridharan attorneys, the OC CWG Delhi 2010 and the chambers of Senior Advocate Mr Dushyant Dave. He has also seconded in the sports law department at Squire Sanders LLP, London.

He has completed an LLM in Sports Law from the DeMontfort University, Leicester; an MBA specialising in Human Resources and an LLB from the Government Law College, Mumbai. He holds a certificate in sports law from the University of Pretoria, South Africa.

ALEXANDER SKOBOLO
Dentons

Alex has been advising on gambling-related issues in Russia since the inception of current Russian gambling laws, including advising on regulatory governance and negotiating with government authorities.

Alex has represented and advised multinational corporations, international financial institutions and government agencies, both domestic and foreign, on a wide variety of corporate and commercial, real estate, banking and securities issues, including mergers, acquisitions, public and private placements, divestitures, privatisations, and matters of corporate governance. He has also assisted numerous foreign companies and private equity funds in direct and portfolio investments, including investments through Russian joint ventures, off-shore structures and companies of various types.

Alex is a seasoned negotiator and has successfully negotiated transactions with government authorities at the municipal, regional and federal levels. He was also the founder of Dentons’ Gaming, Hotel & Hospitality practice for Russia, the CIS and Central Europe, and has developed a reputation as one of the leading experts in this field in the region.

MATTHIAS SPITZ
Melchers Rechtsanwälte Partnerschaftsgesellschaft mbB

Dr Matthias Spitz is a senior partner with Melchers and specialises in the area of gaming law with a focus on European law and administrative matters. Since 2013, he has been a member of the International Masters of Gaming Law (IMGL). He advises clients on the legal developments in online gambling and sports betting in Germany and, specifically, on the implementation of new gambling products on the German market, as well as on the development of advertising strategies for operators of online gaming. His areas of practice further cover administrative proceedings against regulatory measures. Matthias frequently publishes articles on regulatory developments in leading industry journals.

MARTINA BORG STEVENS
GVZH Advocates

Martina is a lawyer by profession. She joined GVZH Advocates as an associate in 2015 and focuses on financial services regulation, and corporate and M&A law, where she assists both local and overseas clients across a mixed spectrum of cross-border transactions. Martina read law at the University of Malta and completed a bachelor’s degree in law with philosophy in 2012, and received a diploma of notary public in 2013. She became a Doctor of Laws in

**ERIK ULLBERG**
*Wistrand Advokatbyrå*

Erik Ullberg is a partner at the firm’s Gothenburg office and joined the firm in 2004. He works primarily with advising Swedish and international clients in matters related to advertising, marketing, media, IP and technology. He has extensive experience from matters concerning contentious and non-contentious IP, data protection, social media, online marketing and other marketing matters related to lotteries and gaming. He has contributed to various publications and is also frequently engaged as lecturer within the fields of his specialisation at, among others, Chalmers University of Technology. Erik Ullberg is also the Swedish representative to the Global Advertising Lawyers Alliance (GALA), the leading global network of advertising lawyers.

**JUSTINE VAN DEN BON**
*Pharumlegal*

Justine Van den Bon is an associate at Pharumlegal. She holds a master’s degree in law from the University of Leuven and an LLM in European law from the College of Europe in Bruges. During her studies she did an Erasmus programme at the Stockholm University in Sweden. Justine joined the Pharumlegal team in August 2016 and works on questions related to the internal market and trade (FTA and anti-dumping) as well as on EU energy and environmental law.

**ROBBE VERBEKE**
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Robbe Verbeke is a senior associate at Pharumlegal. Over the past nine years of legal practice as a gambling lawyer, Robbe has acquired an in-depth expertise in all things lotteries and gambling. He regularly acts as counsel for the government, for private operators and for public operators. In this capacity he advises on various matters, drafts contracts, and litigates before national and EU courts, including the CJEU and the EFTA Court.

**PHILIPPE VLAEMMINCK**
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Philippe Vlaemminck is a partner at Pharumlegal. He has more than 30 years’ specialist experience in EU law (regulatory and litigation) and trade law (WTO and anti-dumping). Philippe has considerable litigation experience before the CJEU and the EFTA Court (a total of more than 89 cases). He is widely regarded as a leading player in the current debate on state lotteries and gambling in the EU and WTO, and has been involved as a Member State representative in every gambling case before the CJEU and the EFTA Court (more than 40 cases). He also acts as a legal adviser to various EU Member States on EU law, and is regularly invited as a speaker to lottery and gambling conferences and seminars or to chair panels throughout the EU. He regularly publishes articles on any topics impacting the lottery
sector. Moreover, Philippe was awarded the IMGL President’s Cup and is one of the few individuals who have received the Public Gaming World Lottery Hall of Fame award, as a recognition of its outstanding knowledge of the lottery and gambling sector. He is mentioned in Chambers Global – Gaming & Gambling in Band 1 and is ‘widely praised by peers for having his eye on current trends in the industry’.

ANDREW J ZAMMIT
GVZH Advocates

Andrew J Zammit is managing partner at GVZH and was previously managing partner at CSB Advocates. Andrew is certified by the Institute of Financial Services Practitioners in Malta as a trust law and administration practitioner, and is a member of the Malta Chamber of Advocates, International Bar Association, International Tax Practitioners Association, International Fiscal Association, Malta Maritime Law Association, International Master of Gaming Law, Institute for Financial Services Practitioners (IFSP) and FinanceMalta.
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