



ICLG

The International Comparative Legal Guide to:

Gambling 2019

5th Edition

A practical cross-border insight into gambling law

Published by Global Legal Group, with contributions from:

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London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
November 2018

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ISBN 978-1-912509-44-7
ISSN 2056-4341

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Introductory Chapter:

1	Shaping the Future of Gaming Law – Jamie Nettleton, International Masters of Gaming Law	1
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General Chapters:

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

Country Question and Answer Chapters:

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

Continued Overleaf ➔

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Country Question and Answer Chapters:

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

EDITORIAL

Welcome to the fifth edition of *The International Comparative Legal Guide to: Gambling*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of gambling.

It is divided into three main sections:

One introductory chapter. This chapter has been contributed by Jamie Nettleton, President of the International Masters of Gaming Law.

Three general chapters. These are designed to provide readers with an overview of key issues affecting gambling law, particularly from a multi-jurisdictional perspective.

Country question and answer chapters. These provide a broad overview of common issues in the regulation of gambling in 43 jurisdictions, including eight US states.

All chapters are written by leading gambling law practitioners and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Jason Chess of Wiggin LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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Shaping the Future of Gaming Law

International Masters of Gaming Law

Jamie Nettleton



IMGL is pleased once again to write the opening chapter of *The International Comparative Legal Guide to: Gambling 2019*. The guide is a complement to IMGL's goal of "Shaping the Future of Gaming Law" through publications, high-quality conferences and IMGL's Masterclasses.

The International Comparative Legal Guide to: Gambling brings together the knowledge and expertise of leading gaming lawyers from jurisdictions all over the world. It is a useful guide and introduction to gambling regulation in these jurisdictions and is also useful as a directory of trusted law firms that specialise in the field of gaming. As President, I am proud that many of the authors who have contributed to this Guide are IMGL members. IMGL is committed to being the pre-eminent global gaming law networking and educational organisation. Its members dedicate a lot of time and energy to maintaining, encouraging and participating in an open international dialogue between regulators, attorneys who practise gaming law, compliance officers, accountants, educators, gaming executives and other representatives of the industry. This is particularly relevant in the context of the rapid development in gambling regulation globally to address emerging technologies, and the changing approaches in harm minimisation. These issues are addressed at IMGL conferences which are held twice a year; at IMGL Masterclasses, which take place at major gaming events; and they are also addressed through our members' contributions to high-quality publications, such as *The International Comparative Legal Guide to: Gambling* and IMGL's own publications. The conferences, publications and IMGL Masterclasses play an important role in furthering IMGL's goal of education in the gaming industry.

IMGL currently has members from over 55 countries and 51 states in the United States. This represents a material increase from last year and it is pleasing that our membership is continuously expanding. IMGL is constantly recruiting new members to widen its global presence, including experts from emerging gaming jurisdictions. (Membership is by invitation.)

2018 has been a particularly busy year for IMGL and its members. There have been many gambling sector developments in which IMGL members have been at the forefront. These include the liberalisation of sports betting in the United States following the US Supreme Court decision in *Murphy v. National Collegiate Athletic Association*, and the legalisation of casinos in Japan.

IMGL now has the following publications: *American Gaming Lawyer*; *Indian Gaming Lawyer*; *European Gaming Lawyer*, incorporating *La Ley del Juego* (our publication for South and Central America, Mexico and Spain); and *Canadian Gaming Lawyer*. In addition, the *Gaming Law Review and Economics* is an IMGL publication. IMGL Masterclasses have been so well received that IMGL has now presented IMGL Masterclasses at more than 10 gaming conferences around the world, including the International Casino Exposition (ICE) in London, Excellence in iGaming (EiG) in Berlin, the eGaming Summit in the Isle of Man, International Association of Gaming Regulations (IAGR) conferences and iGB Live! in Amsterdam. Much like IMGL, *The International Comparative Legal Guide to: Gambling* has been successful in being truly international and of high quality. We hope this fifth edition of the Guide will continue this tradition as a comprehensive multi-jurisdictional overview of gambling-related laws and regulations. This edition should continue to encourage the international exchange of knowledge and expertise among gaming law experts and industry members.

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Jamie Nettleton, Partner, Addisons

Jamie Nettleton heads the gambling law practice of Addisons. 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.

It is Jamie's global reputation that sees him sought after to advise gaming machine manufacturers, wagering operators, casinos, social media, online gambling and other gambling service providers. Jamie's advice 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 the preparation of prospectuses. Jamie works closely with these clients in developing their Australian business strategies, particularly in connection with new technologies.

Jamie's position at the forefront of gambling law has seen him elected as President of the International Masters of Gaming Law, in addition to 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.



IMGL is a non-profit association comprising over 340 members globally. Its members are recognised as the leading experts in their jurisdictions and are involved in most material gambling sector developments and issues worldwide. Every year, IMGL hosts two major conferences, in addition to IMGL Masterclasses at international gaming events and expos. Past IMGL conferences have been held in Copenhagen, Dublin, Peru, San Francisco, New York, San Diego, the U.S. Virgin Islands, and more. These IMGL conferences and Masterclasses feature speakers who are experts in the gaming industry and topics which are at the forefront of all leading developments in the gambling sector globally. IMGL conferences also feature social networking events such as receptions and a Gala Dinner held at a historic and elegant venue.

U.S. States May Now Legalise Sports Betting – But the Federal Wire Act Affects State Implementation

Greenberg Traurig, LLP

Mark Hichar



On 14 May 2018, the U.S. Supreme Court issued its long-awaited ruling in the New Jersey sports betting case *Murphy v. NCAA, et al.* (138 S. Ct. 1461 (2018)). In a 6–3 ruling, the Court struck down as unconstitutional the Professional and Amateur Sports Protection Act (the “PASPA”, codified at 28 U.S.C. §§ 3701 – 3704). The PASPA was the federal law that, since its enactment in 1992, made it unlawful for state, local and tribal governments to operate, promote, license or authorise sports betting, and prohibited non-government operators from conducting sports betting pursuant to state, local or tribal law. (The PASPA provided exceptions for sports betting in operation prior to its enactment. These exceptions applied to sports betting conducted in Nevada, Delaware, Montana and Oregon. Only Nevada could conduct single-game sports betting, however.)

The primary issue in *Murphy* was whether the PASPA provision prohibiting state authorisation of sports gambling schemes violated the “anticommandeering” rule embodied in the 10th Amendment to the U.S. Constitution – the amendment that reserves to the states the powers not granted to Congress. The sports leagues and the U.S. Department of Justice (“DoJ”) had argued that, while the anticommandeering rule prohibits Congress from compelling states to enact legislation, *prohibiting* states from enacting new laws is different and does not violate the rule. They argued that “commandeering occurs ‘only when Congress goes beyond precluding state action and affirmatively commands it’”. (*Murphy*, p. 1478.) The Court disagreed, stating:

“This distinction is empty. ... The basic principle – that Congress cannot issue direct orders to state legislatures – applies in either event. [The PASPA provision prohibiting state authorization of sports gambling] unequivocally dictates what a state legislature may and may not do, [and therefore] violates the anticommandeering rule.” (*Id.*)

The Court also held that the PASPA anti-authorisation provision did not constitute a valid preemption provision under the Constitution’s Commerce Clause. (U.S. Const. Art. I, Sec. 8, Cl. 3.) The Court stated:

“Regardless of the language sometimes used by Congress and this Court, every form of preemption is based on a federal law that regulates the conduct of private actors, not the States. ... [T]here is simply no way to understand the provision prohibiting state authorization as anything other than a direct command to the States. And that is exactly what the anticommandeering rule does not allow.” (*Murphy*, p. 1481.)

Finally, the Court held that no provision of the PASPA was severable from the anticommandeering provisions. The Court stated that the PASPA provisions restricting conduct by private actors “were obviously meant to work together with the provisions ... that impose similar restrictions on governmental entities. If Congress

had known that the latter provisions would fall, we do not think it would have wanted the former to stand alone”. (*Murphy*, p. 1483.)

Concluding its opinion, the Supreme Court reversed the lower court, stating:

“The legalization of sports gambling requires an important policy choice, but the choice is not ours to make. Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own. Our job is to interpret the law Congress has enacted and decide whether it is consistent with the Constitution. PASPA is not. PASPA ‘regulate[s] state governments’ regulation’ of their citizens. The Constitution gives Congress no such power.” (*Murphy*, p. 1485.)

The Supreme Court’s landmark opinion did not make sports betting legal throughout the United States. While it has been, and will continue to be, the catalyst for dramatic changes in state gambling laws, the opinion only struck down the federal law that prohibited states from authorising and regulating sports betting, should they wish to do so. Thus, states are now free to decide for themselves whether sports betting should be allowed within their boundaries. This is consistent with the U.S. federal approach to other forms of gambling. In general, the authorisation and regulation of gambling is left to the prerogative of each state.

State Responses to *Murphy*

After the decision (and in some cases prior to and in anticipation of the decision), several states enacted laws and/or regulations to authorise sports betting. These include New Jersey, the petitioner and appellant in *Murphy*, as well as Delaware, Mississippi, Pennsylvania, Rhode Island and West Virginia. At the time of writing (September 2018), New Jersey now has gone live with Nevada-style sports betting at the state’s horse racing tracks and Atlantic City casinos, and it is also available via the Internet and mobile networks. Sports betting is also live at Delaware’s video lottery facilities, at Mississippi’s and West Virginia’s casinos, and at the Santa Ana Star Casino in New Mexico, pursuant to a tribal-state compact between the State of New Mexico and the Pueblo of Santa Ana Native American Tribe. At the time of writing, sports betting via mobile sports books is available only in New Jersey and Nevada, and sports betting via the Internet is available only in New Jersey. Before the end of 2018, sports betting is expected to go live in Pennsylvania, which has authorised mobile and online sports betting as well as casino-based sports betting, and in Rhode Island, which has authorised sports betting at its two state-run casinos. Several other states are looking seriously at authorising sports betting, including New York, which in 2018 came close to passing a bill that would have authorised sports betting online as well as at certain bricks-and-mortar locations in the state.

Other Stakeholder Responses to *Murphy*

There is disagreement among stakeholders as to whether sports betting should be regulated at the state or federal level. Promptly after the Supreme Court's decision was announced, the National Football League ("NFL") issued a statement asking Congress "to enact a core regulatory framework for legalized sports betting". ("NFL, MLB, NBA, NCAA and others react to Supreme Court decision on Sports Betting", by Tom Schad, USA Today, 14 May 2018.) Similarly, the National Basketball Association ("NBA") issued a statement after the decision in which it said: "We remain in favor of a federal framework that would provide a uniform approach to sports gambling in states that choose to permit it, but we will remain active in ongoing discussions with state legislatures." (*Id.*) However, the NBA, along with Major League Baseball ("MLB"), had already been and is continuing to lobby state legislatures to include in their sports betting legislation (1) a requirement that in-game data be obtained exclusively from the leagues and (2) a fee to be paid to the leagues as a "royalty", calculated as a percentage of "handle" (i.e., gross wagering). (Initially, the NBA and MLB referred to this fee as an "integrity fee", and argued it was necessary to compensate the leagues for their additional efforts to keep the games free from corruption. They have since changed their position, and now refer to the fee as a "royalty" to compensate the leagues for the use of their product – i.e., the sports events they organise.)

In August 2018, Senate Minority Leader Chuck Schumer (D-NY) came out in favour of a federal legislative sports betting framework that would, among other things, prohibit play by persons under 21, require that bookies share wagering data with sports leagues, require that official league data be used to determine betting outcomes, and require that league agreement be obtained as to the types of bets that are permitted. ("*Protecting the Games We Love After Murphy v. NCAA: A Federal Framework for Consumer Protection and Sports Integrity*", by Sen. Chuck Schumer.) However, the American Gaming Association ("AGA") – arguably the most recognised and powerful gaming industry lobby in the United States – opposes a federal framework for sports betting. In response to Senator Schumer's proposal, the AGA issued a statement saying:

"The casino gaming industry shares Senator Schumer's goal in preserving the integrity of sporting events and providing consumer protections. Federal oversight of sports betting was an abject failure for 26 years, only contributing to a thriving illegal market with no consumer protections and safeguards. New federal mandates are a nonstarter." ("*Senate Minority Leader Chuck Schumer suggests federal framework for sports betting*", by Darren Rovell, [ESPN.com](https://www.espn.com/story/sports/betting/senator-schumer-suggests-federal-framework-for-sports-betting), 29 August 2018.)

In addition, Ethan Wilson, a policy director for commerce and financial services for the National Conference of State Legislatures stated earlier:

"The Supreme Court decision was a big win for states, and not just on the issue of sports betting. ... States can now debate this issue to decide whether they want sports betting or not, and that's much better than having a one-size-fits-all regulatory scheme imposed by the federal government." ("*Leagues Turn to Congress as Last Resort on Sports Betting*", by Tony Batt, [GamblingCompliance](https://www.gamblingcompliance.com/news/leagues-turn-to-congress-as-last-resort-on-sports-betting), 18 May 2018.)

Thus, the states and the AGA oppose the imposition of a federal regulatory framework on state-authorized sports betting. The sports leagues have been unsuccessful thus far in getting state legislatures to designate the leagues as the exclusive provider of game-play data or to mandate that the leagues be paid a percentage of the sports betting handle. Nevertheless, the sports leagues are continuing their efforts to have these included in state sports betting legislation,

and at the same time seeking the same measures in a federal bill. Whether these efforts by the leagues will be successful remains to be seen.

The Wire Act and the Intermediate Routing of Sports Bets

Even though the PASPA has been struck down, the Wire Act (18 U.S.C. §§ 1081, 1084) remains intact. The Wire Act is the federal statute that prohibits the transmission by gambling businesses across state or international borders of sports bets and information assisting sports bets, using a "wire communication facility". "Wire communication facility" is defined in the law as "any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission". (18 U.S.C. § 1081.)

The Wire Act provides an exception for the transmission of information assisting sports bets if the information is transmitted from, and received in, a state or foreign country in which betting on the particular sporting event is legal. However, no exception exists for the transmission of actual "bets or wagers", and that term has been held to include offers of bets transmitted to a bookmaker even before acceptance. (*United States v. Ross*, 1999 U.S. Dist. 22351 (S.D.N.Y. 1999).)

Due to the Wire Act's prohibitions, states authorising sports betting are doing so exclusively on an intra-state basis. This means that they require sports bettors to be physically located within the authorising state's borders when initiating sports bets, and that all sports bets be received and accepted within that same authorising state. In addition, states authorising online and mobile sports bets are requiring that such bets be received and processed using equipment located within the state, and that operators implement geofencing technology to ensure that bettors are located within the state at the time bets are initiated. By way of example, the Pennsylvania Gaming Law enacted in 2017 provides: "Except as provided in this part [of the Law relating to sports wagering], all individuals wagering on sporting events through authorized sports wagering must be physically located within this Commonwealth or within a state or jurisdiction with which the board has entered a sports wagering agreement." (Pa.C.S. § 13C11(a)(3)(i).)

However, because Internet information packets and mobile transmissions generally travel via the most efficient route available at the time of transmission, unless a sports betting operator uses a private closed-loop system (which many consider impractical given the cost and inconvenience), it is possible that sports bets will travel across state lines on an intermediate routing basis before returning to the state in which such bets were initiated and are later accepted. This gives rise to the question of whether such intermediate routing of sports bets across state lines violates the Wire Act.

Whether the intermediate routing of sports bets across state lines violates the Wire Act depends on the interpretation given the Act by applicable law enforcement bodies, and ultimately by the relevant courts. In Nevada, for example, where intra-state mobile sports betting exists today, "wireless phone transmissions ... including those used for mobile sports wagering — often travel through routers in Arizona, California or Utah because of the network topology and function". ("*Analysis: Net gambling bill accidentally criminalizes some Nevada sports bets*", by Howard Stutz, [Las Vegas Review-Journal](https://www.reviewjournal.com/news/analysis-net-gambling-bill-accidentally-criminalizes-some-nevada-sports-bets), 20 May 2015, quoting Las Vegas gaming attorney Greg Gemignani.) There, the relevant enforcement bodies and regulators seem to take the position that such intermediately routed transmissions do not give rise

to a Wire Act violation. (At the time of writing, there are no reported court rulings regarding the Wire Act's applicability to the intermediate routing of state-authorized sports bets.)

There is little doubt that the "Internet" is a "wire communication facility" for purposes of the Wire Act. Several Wire Act prosecutions have involved wagering via the Internet (see, for example, *United States v. Cohen*, 260 F.3d 68 (2nd Cir. 2001)), and the Internet was expressly held to be a "wire communication facility" by the federal Court of Appeals for the First Circuit. (*U.S. v. Lyons*, 740 F.3d 702 (1st Cir. 2014).)

Although no reported case relates directly to this point, one case addresses whether the Wire Act applies when illegal sports bets that are initiated and received in the same state are intermediately routed outside the state. In *Yaquinta v. United States*, 204 F. Supp. 276 (N.D. W.Va. 1962), at issue was whether the Wire Act applied to the use of a wire communication facility to carry information assisting in wagering on horse races, where the messages were initiated and ended in West Virginia, but were routed through Ohio. In West Virginia at the time, *pari-mutuel* wagering on horse races at licensed racetracks was lawful, but off-track wagering on such races was not. (Thus, the case did not involve state-authorized sports betting.)

The defendants argued that the congressional intent expressed in the Wire Act was not to make criminal the use of an interstate wire communication facility to carry messages beginning and ending in the same state, but rather was to prohibit certain interstate wire transmissions that began and ended in different states. The court rejected this argument, stating that "the intermediate crossing of a State line provides enough of a peg of interstate commerce to serve as a resting place for the congressional hat, if that will serve the congressional purpose". (*Yaquinta*, at 278.) The court thus held the Wire Act applicable to the wire transmissions at issue.

The 10th U.S. Circuit Court of Appeals reached a similar conclusion in *United States v. Kammersell*, 196 F.3d 1137, 1139 (10th Cir. 1999), *cert. denied*, 530 U.S. 1231, 120 S. Ct. 2664, 147 L. Ed. 2d 277 (2000), a non-gambling case. In that case, the defendant was charged under 18 U.S.C. § 875(c), which prohibited the transmission "in interstate or foreign commerce [of] any communication containing any threat to kidnap any person or any threat to injure the person of another". At issue was whether a threatening "instant message" between two points in Utah, but routed through other states, constituted a transmission "in interstate or foreign commerce". The 10th Circuit affirmed the lower court's holding that the transmission was in interstate commerce, notwithstanding the fact that the transmission originated and was received in the same state. The defendant's threat "was unquestionably transmitted over interstate telephone lines", and thus fell "within the literal scope of the statute and [gave] rise to federal jurisdiction". (*Kammersell*, at 1139.)

Yaquinta and *Kammersell* thus provide support for the view that a gambling operator's wire transmission of sports bets between points in the same state, but where the transmission is intermediately routed out of the state, constitutes transmission in interstate commerce for purposes of the Wire Act. Other courts could come to that same conclusion. However, it would be contrary to one of the Wire Act's key purposes to use it to prohibit online sports bets transmitted between two points in the same state, and intermediately routed outside the state, where the state expressly authorized online sports betting within its boundaries.

This is apparent from the decision in *Yaquinta*. In that case, there was no question that the wagering at issue was illegal under West Virginia law. At issue was whether the wire transmissions constituting the illegal conduct were in interstate commerce so as to make applicable the federal statute. This is different from a situation where the underlying wagering is expressly legal in the

state in which the betting transmissions begin and end. In the latter situation, the conduct clearly would be legal under applicable state law if it all occurred within the state – i.e., if the wagering-related transmissions never crossed the state's boundaries. To make such conduct illegal merely because the wagering transmissions, although sent and received in the same state, were routed outside it, would be contrary to one of the Wire Act's key purposes, which is "to assist the various States ... in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses ...". (*Yaquinta*, at 279, quoting from U.S. Attorney General Robert F. Kennedy's letter to the branches of Congress dated 6 April 1961.)

Moreover, and more to the point, the court stated: "[T]he objective of the [Wire] Act is not to assist in enforcing the laws of the States through which the electrical impulses traversing the telephone wires pass, but the laws of the State where the communication is received." (*Yaquinta*, at 279.)

Sterling Suffolk Racecourse Ltd. P'ship v. Burrillville Racing Ass'n, 989 F.2d 1266, 1273 (1st Cir. 1993) provides additional support for the argument that the Wire Act does not prohibit the intermediate routing of sports bets and information from assisting the placing of such bets when such betting is lawful in the state in which such bets originate and are accepted. In that case, the United States First Circuit Court of Appeals stated: "[W]e think it clear that Congress, in adopting [Wire Act] section 1084, did not intend to criminalize acts that neither the affected states nor Congress itself deemed criminal in nature." However, the United States Second Circuit Court of Appeals later distinguished that case and limited this broad statement, making it significantly less supportive of the argument. That court stated:

"Although, as [the defendant/appellant] notes, the First Circuit has stated that Congress 'did not intend [for Wire Act § 1084] to criminalize acts that neither the affected states nor Congress itself deemed criminal in nature,' it did not do so in the context of a § 1084 prosecution. See *Sterling Suffolk Racecourse Ltd. P'ship v. Burrillville Racing Ass'n*, 989 F.2d 1266, 1273 (1st Cir. 1993). Instead, that case involved a private bid for an injunction under RICO (18 U.S.C. § 1961 *et seq.*) and the Interstate Horseracing Act (15 U.S.C. §§ 3001-07) ("IHA"). *Id.* At 1272-1273. It does not stand for the proposition that § 1084 permits betting that is illegal as long as it is not criminal." (*United States v. Cohen*, 260 F.3d 68, 74 (2nd Cir. 2001).)

Still, the case does not address the situation where the underlying betting is expressly authorized.

Further, in a case discussing the interstate transmission of sports bets, but not their intermediate routing, the U.S. Court of Appeals for the Eighth Circuit stated:

"The prohibition in [Wire Act] § 1084(a) encompasses bets and wagers as well as information assisting bets and wagers, whereas the exception in § 1084(b) is limited to information assisting bets and wagers. Thus, the plain language suggests that Congress intended to prohibit *all* interstate wagering by wire, whether or not legal in the States between which the bets are transmitted. There is explicit support for this interpretation in the legislative history. See H. Rep. No. 87-967 (1961), as reprinted in 1961 U.S.C.A.N. 2631, 2633. One unreported case reflects a federal indictment broadly construing § 1084 in this fashion, and the district court denying defendant's motion to dismiss. See *United States v. Ross*, No. 98 CR. 1174-1(KMV), 1999 U.S. Dist. LEXIS 22351, 1999 WL 782749, at *3 (S.D.N.Y. Sept. 16, 1999)." (*United States v. Bala*, 489 F.3d 334, 342 (8th Cir. 2006) (emphasis in original).)

Some practitioners argue that the Unlawful Internet Gambling Enforcement Act (the "UIGEA", codified at 31 U.S.C. § 5361, *et*

seq.) operates to modify the Wire Act so as to make the intermediate routing of otherwise lawful intra-state sports bets irrelevant. The UIGEA prohibits gambling businesses from knowingly accepting credit, electronic funds transfers, cheques and payments by other means in connection with “unlawful Internet gambling”, and requires payment networks and financial institutions to establish policies and procedures reasonably designed to identify and block the acceptance of unlawful Internet gambling transactions. The UIGEA carves out from its provisions state-regulated intra-state gambling where applicable state laws or regulations include age and location verification requirements reasonably designed to block access to minors and persons located out of such state. (31 U.S.C. § 5362(10)(B).) The UIGEA also provides that “[t]he intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made”. (31 U.S.C. § 5362(10)(E).)

However, unlike the UIGEA, the Wire Act contains no exception with respect to intermediate routing. In addition, it is unlikely that the UIGEA would be held to modify the Wire Act because the UIGEA states that “[n]o provision of [the UIGEA] shall be construed as altering, limiting, or extending any Federal or State law ... prohibiting, permitting, or regulating gambling within the United States”. (31 U.S.C. § 5361(b).)

Finally, in the *Murphy* case, the U.S. Supreme Court stated as follows:

“Similarly, 18 U. S. C. § 1953, which criminalizes the interstate transmission of wagering paraphernalia, and 18 U. S. C. § 1084, which outlaws the interstate transmission of information that assists in the placing of a bet on a sporting event, apply only if the underlying gambling is illegal under state law.” (*Murphy*, at 1483.)

However, this statement is *obiter dictum* – language unnecessary to the decision, addressing an issue that was not briefed by the parties in the case. As stated by the U.S. Supreme Court: “It is, of course, beyond dispute that we [i.e., the U.S. Supreme Court] are not bound by the dicta of our prior opinions.” (*Printz v. United States*, 521 U.S. 898, (1997).) Further: “[*Obiter dicta*] may be respected but ought not to control the judgment in a subsequent suit when the very point is presented for decision”. (*Williams v. United States*, 289 U.S. 553 (1933).)

In addition, the Supreme Court’s *dictum* is narrow – it does not refer to actual sports bets, but rather to “information that assists in the placing of a bet on a sports event”. The *obiter dictum* is correct that the Wire Act’s outlawing of such information – i.e., information assisting in the placing of sports bets – is prohibited only if the placing of such sports bets is illegal in the state where it is placed or the state where it is received, or both. This is because of the Wire Act exception contained in clause 18 USC § 1084(b). However, the *dictum* does not speak to the sports bets themselves, to which the exception in § 1084(b) does not apply. Accordingly, the better reading of the Supreme Court’s *dictum* is that it applies only to information assisting in the placing of sports bets, not to actual sports bets.

For these reasons, the Supreme Court’s *dictum* does not support the argument that the Wire Act does not prohibit the intermediate routing of sports bets that are initiated and accepted in a state where such betting is expressly authorised.

Thus, a gambling business that accepts online sports bets initiated and received in a state in which such betting is legal, but where the bets are intermediately routed through another state (whether or not

sports betting is legal in that other state), might be held to violate the Wire Act, depending on the relevant court’s interpretation of that law. However, this form of intra-state sports betting appears to be happening in Nevada without challenge from regulators or law enforcement; and if a court were to hold that the Wire Act prohibited such conduct, such would be contrary to one of the Wire Act’s key purposes. Indeed, had the underlying wagering in *Yaquinta* been legal, it seems unlikely that the prosecution would have been brought; and if it had been, it seems unlikely that the court would have found the defendants guilty under the Wire Act, even if the wagering-related transmissions constituted actual bets and wagers (as opposed to mere information assisting in the placing of bets and wagers). Had the underlying wagering in *Yaquinta* been legal in West Virginia, there would have been no need to use the Wire Act to assist the State in the enforcement of its laws. Conversely, using the Wire Act to prohibit state-authorized sports betting, where the bets are initiated and received in the authorising state but intermediately routed outside the state, would constitute the use of the Wire Act to thwart state law – directly contrary to one of the Wire Act’s primary purposes. It is illogical that the Wire Act would be used toward such ends inconsistent with its intended purpose.

Nevertheless, the DoJ is not immune from such thinking. Before the DoJ opined (in 2011) that the Wire Act applies only to sports betting, the DoJ took the position that the Wire Act covered betting of all types. In 2005, the DoJ warned the Illinois State Lottery against selling lottery products via the Internet, even when expressly authorised by the State, stating that “the acceptance of wagers through the use of a wire communication facility by a gambling business, ... from individuals located ... within the borders of the state (but where transmission is routed outside of the state) would violate federal law”. (Letter dated 13 May 2005 from Laura H. Parsky, Deputy Assistant Attorney General, U.S. Department of Justice, Criminal Division, to Carolyn Adams, Illinois Lottery Superintendent.)

In summary, it is uncertain whether the Wire Act prohibits the intermediate routing (by a gambling business using a wire communication facility) of sports bets across state lines, when the underlying sports betting is lawful in the state in which the sports bets are initiated, received, and otherwise made. At the time of writing, there has been no reported case of enforcement of the Wire Act against gaming operators transmitting or receiving sports wagers, or information assisting in the placing of sports wagers, between points in the same state, where the underlying wagering was expressly authorised by the laws of the state.

Conclusion

The *Murphy* decision has dramatically changed the legal landscape for sports wagering in the United States. With the demise of the PASPA, states now are free to choose for themselves whether to authorise sports betting, and if they decide to authorise it, they may determine what bets to authorise and how the betting should be regulated. To date, several states have authorised sports betting, and no doubt more will follow.

However, the *Murphy* decision did not affect the Wire Act. As long as the Wire Act remains unchanged, sports betting in the United States will be implemented exclusively on an intra-state basis, with no bets being transmitted or received across state lines. Whether the intermediate routing of state-authorized sports bets across state lines violates the Wire Act is an open question.

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Nothing is Permanent Except Change: A Commentary on the State of Global Online Gambling Regulation

WH Partners



Dr. Joseph F. Borg



Dr. Samuel Gauci

Introduction

A jurisdiction's policy and the position it takes with reference to specific matters is affected by a number of elements. Such elements include: the ideology of the political party/ies in government; cultural differences and religious beliefs; court judgments; the financial situation of the jurisdiction; local business interests; and others. This is no different to online gambling.

We have seen many changes and developments in government policy in various countries, particularly when it comes to gambling policy. As a result, we have moved away from a time when governments were either not interested in regulating online gambling or considered online gaming to be evil and that it should be banned, to a situation where there have been substantial developments globally in the regulation of online gambling with numerous jurisdictions reviewing their policy and position on online gambling by taking initial steps towards regulating online gaming. The constant change we have therefore seen and consolidated over the past five years or so is that the majority of jurisdictions are now in favour of regulating online gambling and have taken the required steps to do so.

The fundamental principles on which gambling regulation is based are common to all, these being mainly to ensure: that gambling is fair and safe; that minors and vulnerable persons are protected; and that gambling is free from crime and money laundering. All legislators should legislate with these principles in mind, and do so in a manner which they deem most effective. This should, in principle, also bring about a convergence of legislation of various jurisdictions in the methods they adopt to ensure that these principles are addressed. Unfortunately, this has not consistently been the case, since very few legislators try to seek uniformity in the compliance obligations of operators, making it extremely difficult and costly for operators to comply with the various rules of the different jurisdictions. It must not be forgotten that this is a service that by its nature is cross-border, which is offered on the internet to persons of different nationalities and residing in numerous countries. Ultimately, however, the service itself remains the same and it is only the varying legislative requirements that makes the service different in certain details. Another unfortunate matter is that many jurisdictions impose certain conditions in order to collect more taxes or to protect incumbents or local businesses. This, in the end, affects the end user, resulting in less attractive products and less choice.

Global Overview

Operators have always kept a keen eye on the position the US takes on the regulation of online gambling, and eagerly await the opening

of US states to legislation. Operators, as a general rule, have stayed away from offering their services in the US, due mainly to it being illegal to offer online sports-betting. We have seen the US moving from a position where online gambling is banned to a situation where a number of states have legislated in favour of online gambling and have licensed operators. A number of states who have regulated also share online liquidity, which is something that would not have been conceivable a few years ago. Online sports-betting, however, has remained prohibited, although we have seen major developments this year in this respect due to a fundamental court ruling which has opened the door to regulating online sports-betting.¹

Moving to Europe, 2018 has been a very busy year for Sweden, where we have seen the approval of the Gambling Act, which establishes that, as from 1st January 2019, operators will require a licence to offer online gambling in Sweden. This legislation has been anticipated for a number of years and has seen interest from a large number of operators that are interested in either continuing to offer their services in Sweden or who would like to start offering their services in this jurisdiction.

We expect to see a transition of operations from the current set-up whereby operators largely operate in Sweden by means of a gaming licence issued by the Malta Gaming Authority, to a migration of such operations and players to the new licence to be issued by the Swedish Gambling Authority.

As for Malta, on 1st August 2018 the overhaul of the Maltese gaming legislation came into force, which saw the repeal of the previous legal framework for the introduction of the new Gaming Act and the regulations and directives issued thereunder. The new legislation has streamlined and simplified the licensing requirements and process, made it easier and more effective to offer new games, and established a framework that responds to the ever-changing technological evolution.

Malta, by introducing the new legislative framework, is building on the previous legislative framework and the experience it has garnered over the years of regulating the online gambling industry.

The above-mentioned countries are examples of the international trends which are developing in various jurisdictions around the globe. Jurisdictions such as the Netherlands continue to discuss a new legislative framework to regulate online gambling with the intention of issuing such legislation, but are, however, currently more focused on enforcing the current framework which surely requires amendment. Jurisdictions in South America are also discussing and reviewing if legislation should be enacted to regulate online gambling, while jurisdictions such as Spain and Italy have re-opened their licensing window, albeit for a limited period, for new operators to enter the market. Other jurisdictions persist in prohibiting online gambling.

However, from the examples mentioned above, we see that legislation is developing in a manner whereby online gambling is regulated in most jurisdictions by the enactment of frameworks which are applicable to the needs of the particular jurisdiction, that also attempt to make such frameworks attractive for operators to adopt.²

Other Influences

The gambling industry has not only been affected by the introduction or amendment of gambling legislation in various jurisdictions; operators have also been required to apply and adopt changes to their operations due to other legislative requirements. In this respect it has been a very busy year for gambling operators operating in Europe, with the obligations to apply and comply with the amendments to anti-money laundering legislation via the 4th Anti-Money Laundering Directive, and amendments to data protection legislation in view of the General Data Protection Regulation (GDPR). Both areas are of utmost importance to the gambling industry and strict compliance is necessary to ensure that operators do not breach such requirements. The changes in both areas were significant; therefore attention and resources were required to amend operators' processes and procedures to ensure that they were compliant. The operators needed to enhance their capabilities and expertise in both areas.

In the AML sphere, gambling operators became obliged entities and, although most operators had already applied procedures and processes to combat money laundering, they had to ensure that the legislative requirements were adhered to and that the necessary checks were conducted to verify players' identities and that players' funds were derived from legitimate sources. Many regulators also introduced the requirement that a money-laundering reporting officer (MLRO) be appointed to oversee that operators continue to comply with these fundamental functions.

In the data protection area, operators had to ensure compliance with the GDPR and the rights it grants to players to have their data protected and processed as required. This process also led to amendments to the operators' policies and procedures and in many cases required that new provisions to the terms and conditions be applied and consent obtained from players to ensure that they received information which they requested.

Innovation also remained very high on operators' agendas, as this has always been an area where the industry has constantly excelled. The main areas where the industry has progressed were in evaluating the benefits that may be derived by using blockchain, cryptocurrencies and artificial intelligence. The gambling industry has been advocating for the introduction and/or further use of such technology and has been working with regulators to implement the benefits of these technological advancements.

Blockchain is a tool for operators to have their games and services operated on a decentralised system, which would be beneficial in many aspects. A blockchain would give further reassurance that games and transactions are transparent because everything would be recorded on the decentralised system without the possibility to untraceably delete any entry. This would guarantee complete trust in games, systems and transactions, ensuring that both the player and the operator are guaranteed that everything is recorded and that there is always a fair outcome.

This is also positive for gambling regulators because the use of blockchain would facilitate regulators' monitoring of operators' compliance, since the blockchain will record certain essential information. Submission of testing certificates, although very relevant and essential, are applicable until the day that they are issued and therefore the system may be modified thereafter, with

limited ways of verification without further testing and certification being submitted. The blockchain would eliminate such a risk, since such information and data is recorded on the blockchain and may be reviewed and confirmed at any moment.

Smart contracts are another aspect which could be adopted by online gambling operators and would largely benefit players, operators and regulators. Since smart contracts would be coded and stored on the blockchain, this again means they cannot be altered without being recorded and, therefore, where the smart contract regulates the relationship, what is coded would be applicable and implemented in all cases without exception. This could revolutionise games because they would be completely regulated by smart contracts without the need for third parties to be involved, and the result would always be according to the terms of the coded smart contract without any error and/or abuse.

Smart contracts also have the potential to change the way users deposit and withdraw money by creating a situation where there is no requirement for a third party to process payments, hence also eliminating related fees and making the payment instant from the player to the operator and *vice versa*. Payments may, however, still be a stumbling block due to the requirement to use cryptocurrencies which is still an area that finds the most resistance. It might be most beneficial, at this stage, to primarily promote the use of blockchain and the vast benefits that it creates and allows without the necessity to use cryptocurrencies.

An online gambling operator's main goal is to make the player's experience more enjoyable and the use of blockchain technology surely has the potential to achieve this, since the player experience would benefit greatly in terms of transparency, fairness, and efficiency.

Unfortunately, regulators tend not to keep up with the innovative pace of the industry; therefore such innovation cannot be adopted in a timely manner as is required by the industry, although development has been seen. At the beginning of October 2018, the Malta Gaming Authority issued a document stating it will accept applications as from 1st January 2019 for licensed operators to use certain benefits and aspects of blockchain and cryptocurrencies for a sand-box period of approximately 10 months, in order to better understand its applicability and benefits, with the intention to regulate such use after the sand-box period ends. It will be interesting to see how this develops and how other jurisdictions will react to the applicability of this new reality.

We are also experiencing an interesting convergence between gaming and gambling, particularly with social games, fantasy sports and elements around the esports industry. In particular, we have also seen the growth of loot-boxes, which have become more attractive and relevant especially due to the constant exponential growth of esports. This is a phenomenon which needs to be understood well and clarity needs to be established globally on whether there is a requirement to regulate the offering of loot-boxes or not. It is important that all stakeholders participate in such an analysis to ensure the best outcome. It is taken for granted that reputable operators offering loot-boxes want to ensure that there are safeguards in place so that children either do not have access to the purchase of loot-boxes or, as a minimum, they are limited on the amount they can spend. This would also ensure that adults who grant minors access to their payment facilities are more in favour of their children accessing loot-boxes to enhance their gaming experience. Through dialogue between operators, regulators and possibly game developers, the right approach to addressing loot-boxes should be sought. There has been a first step in this direction by means of the signing of an agreement between 16 gambling regulators from Europe and the United States to attempt to address the loot-box issue. These regulators are encouraging stakeholders to engage in a dialogue.

Conclusion

The online gambling industry never sits back and operates without changes and new challenges to address. It is an industry which faces an always changing and evolving legislative environment, which it constantly needs to monitor to ensure it complies with such legislative requirements at all times. However, it also pushes boundaries in the applicability of new technology to continue to keep its services appealing, innovative and relevant. Therefore, what is truly constant for the gambling industry is change.

Endnotes

1. For further analysis, please see chapter 2: *U.S. States may now Legalise Sports Betting – But the Federal Wire Act Affects State Implementation*, by Mark Hichar of Greenberg Traurig, LLP.
2. For further detail on gambling laws and regulations by jurisdiction, please see the respective country-focused chapters to this guide.



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Money Laundering and the Gaming Industry in Macau SAR

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Macau Special Administrative Region of the People's Republic of China ("Macau SAR") is by far the world's largest gaming market. The gaming sector dominates the economy of the former Portuguese enclave in Southeast Asia, both directly and indirectly. In 2013, gaming accounted for approximately 64.7 per cent of GDP; in 2015, gaming-related taxes formed 77.1 per cent of all taxes; and in 2017, the sector brought in almost 76 per cent of Macau SAR's total revenue.

In 2017, Macau SAR received 32 million-plus visitors, mainly from China, Hong Kong, Japan, South Korea, Taiwan and Thailand. The great majority of these visitors gamble in local casinos. One does not need to emphasise that casinos are cash-intensive businesses and, as such, at higher risk of money laundering. Since the day the Macau SAR authorities decided to put an end to the gaming industry monopoly, the world changed considerably and money laundering has become an issue of major interest to worldwide authorities. Thus, the local legislator understood the gambling industry's vulnerability to those looking to launder money, and put in place several legal reforms and mechanisms in order to enable this jurisdiction to cope with the new challenges this "new era" has brought our world.

Macau SAR was subject to two mutual evaluations by the Asia/Pacific Group on Money Laundering ("APG"). The first one took place in 2006 and the second happened 11 years later, in 2017. Following the 2006 mutual evaluation, Macau SAR's legal framework on anti-money laundering and combating the financing of terrorism ("AML/CFT") has undergone major reforms. The SAR has completed numerous thematic assessments on gaming, alternative remittance systems and cross-border controls. In 2015, Macau SAR completed its first National Risk Assessment ("NRA"). It has a yearly AML/CFT strategic plan that addresses ML/TF risk. In 2016, Macau SAR amended all sectoral AML/CFT enforceable instruments for all Financial Institutions ("FI"), Designated Non-Financial Businesses and Professions ("DNFBP") and other local designated sectors to address requirements on risk assessments and to include some additional requirements. It has also introduced a new Asset Freezing Law for Terrorism Finance and Proliferation Financing ("PF") to add to the SAR's previous framework for targeted financial sanctions. Macau SAR is either compliant or largely compliant with 37 of the 40 Recommendations of the Financial Action Task Force on Money Laundering ("FATF").

In the second and most recent mutual evaluation (2017), APG produced the following key findings:

"Macau, China has coordination mechanisms established at a multi-agency level for AML/CFT and among agencies on specific issues or operational areas. The AML/CFT Working Group comprises all relevant agencies and has proven mainly effective in coordinating policy, annual plans and recently the National Risk Assessment, as well as promotion and awareness activities. The 2015 NRA

provides a foundation for Macao, China's understanding of its money laundering/terrorist financing risks and to address key vulnerabilities as the jurisdiction's AML/CFT strategic plan demonstrates.

- Overall, the authorities see the transfer of proceeds from overseas crime as exposing Macao, China to greater ML risks than domestic crime, which is reasonable. However, the authorities have a mixed understanding of major risks related to foreign proceeds, regional organised crime, cross-border movements, and corruption.
- The authorities access and use a large range of intelligence-rich information. The Financial Intelligence Office use of multi-source intelligence and sound analysis results in a high number of disseminated Suspicious Transaction Reports opened for investigation. Law Enforcement Agencies' use of Suspicious Transaction Reports and other relevant information is largely consistent with Macao, China's regional context, exposure to foreign risk and the intelligence value of non-Suspicious Transaction Reports information.
- The lack of a cross-border disclosure or declaration system is a major intelligence gap for a jurisdiction exposed to high-risk from vast numbers of visitors and cash-intensive businesses, particularly casinos and related high-value dealers, although mandatory threshold reporting by the gaming sector helps mitigate this gap.
- There have only been five Money Laundering convictions. A shortage of prosecutorial resources in the Public Prosecutions Office, heavy evidentiary requirements for third party Money Laundering, and the lack of an adequate policy directive have hampered the quantity and quality of Money Laundering investigations and prosecutions, resulting in a low conviction rate, with a correspondingly low average sentence length ranging from three to five years for just the Money Laundering offence. Overall, Money Laundering investigations do not match the risk profile.
- Except for one major corruption case involving up to US\$100 million, confiscations are limited to cash/currency and casino chips, with only one case of shares confiscated and another case of one half of a commercial property.
- There are minor deficiencies in Macao, China's Terrorism Finance offence. Financing of terrorism not directly linked with a specific terrorist act is not specifically criminalised; instead it is indirectly criminalised through reliance on rules of interpretation. The financing of foreign terrorist fighters is also not directly criminalised but criminalisation is achieved through the broad concepts of "preparatory acts" and "provision of material support".
- Implementation of Terrorism Finance-related sanctions is sound. In practice, no assets have been frozen in connection with targeted financial sanctions, which does not seem unreasonable within the context of Macao, China's risks.

- Macao, China has a good understanding of the terrorist financing risk in its Non-Profit Organisation sector and has conducted two risk assessments of the Non-Profit Organisation sector. Macao, China has assessed its risk as low. To monitor the risks of Non-Profit Organisations in association with countries with a high risk of terrorism, GIF conducts quarterly reviews of data on funds flows in and out of Macao, China. To date, other than three Suspicious Transaction Reports that were flagged for initial review, there is no record in the Public Prosecutor of any Non-Profit Organisation being suspected of Terrorism Finance or any enforcement actions taken.
- Macao, China's framework to implement the relevant UN counter-proliferation financing sanctions (PFS) is similar to its framework for TF. In practice, no assets have been frozen in connection with PFS, which does not seem unreasonable within the context of Macao, China's risks.
- Macao, China has controls in place to restrict the import and export of dual-use materials which are overseen by the Macao Customs Service (SA). Data on trade provided by the SA indicates that trade with high risk countries such as Iran and North Korea is minimal and limited to food stuff and petroleum for domestic use.
- There is sound implementation of preventative measures in the financial sector and also by the six concessionaires/sub-concessionaires (casinos). With the exception of notaries and accountants, implementation in other FATF-designated Designated Non-Financial Businesses and Professions is at an earlier stage.
- All financial institutions (FIs), DNFBPs and other sectors are subject to AML/CFT supervision with resources devoted to higher risk and material sectors. Sound risk-based supervision is undertaken in the two most significant sectors – the Gaming Inspection and Coordination Bureau (DICJ) supervised gaming sector and Monetary Authority of Macao (AMCM) supervised financial sector. Compliance has improved because of supervisory actions undertaken. While there is AML/CFT supervision of other DNFBPs and other sectors (pawnshops, and high value good dealers e.g. vehicles), supervision is not fully risk-based, regular or comprehensive.
- Macao, China has increased the transparency of local legal persons by ensuring that basic and beneficial ownership information is publicly available through the Commercial and Movable Property Registry (CR) database. Notaries are required to verify documents prior to registration with the CR and they are subject to supervision. Macao, China has precluded bearer shares since July 2015. However, beneficial ownership information of legal persons is not always available readily or on a timely basis where there are foreign legal persons Anti-money laundering and counter-terrorist financing measures in Macao.
- While trusts and similar legal arrangements cannot be created under the present legal regime and no trust management company has ever been registered either with AMCM or with the CR since the enactment of Decree-Law no. 58/99/M, foreign trusts do operate on a very limited scale in Macao, China. There is a requirement for trustees in limited circumstances to disclose their status to FIs. There are requirements for FIs and DNFBPs to identify whether a customer is a trustee acting on behalf of a trust.
- Macao, China gives priority to international cooperation and provides a range of international cooperation, including Mutual Legal Assistance (MLA), extradition, intelligence/information, and beneficial ownership information. The overall quality of assistance is generally sound and timely, as confirmed by feedback received from other jurisdictions. Overall, Macao, China authorities are proactive in seeking international cooperation for a range of purposes, including ML, criminal investigations and recovery of assets.”

From a gaming industry point of view, Macau has developed the AML systems in place considerably. Concessionaires/sub-concessionaires nowadays exercise different degrees of preventive measures in proportion to their respective risk. After determining inherent risks posed by their customers/patrons in relation to products, services, and delivery channels, local operators put in place several different measures to mitigate the risk of money laundering. Acceptance of VIP customers under the premium loyalty programme for the purposes of customer due diligence is at “zero threshold”. Concessionaires/sub-concessionaires undertake continuous monitoring of the gaming transactions of patrons and VIP players, as well as reclassification of risk profiles. VIP customer onboarding is subject to multi-layered and enhanced screening, first by gaming promoters (junkets) and then concessionaires/sub-concessionaires. Screening is supported in international and well-known public database services that are contracted by gaming operators for such specific purpose.

Walk-in customers are also subject to a similar multi-layered process, but due to the characteristics of these specific clients and their respective links to the operator, the due diligence may not be as accurate as it is for long-term clients. In addition, an escalation process is implemented in cases of a high-risk scenario/event. Casinos extend due diligence processes even to the financial activity (payment methods) of their customers such as wire transfers, alternative remittance (inter-property transfer), and limiting repayments of gaming credit and cashier orders, direct bank remittances or remittances through a money changer.

Large cash reporting mechanisms (“ROVE”) provide an additional mitigating tool, as customer due diligence is also required on transactions identified by ROVE. The above practices help mitigate the customer due diligence threshold gap for occasional customers. Concessionaires/sub-concessionaires also apply sound internal control measures. They apply “Know Your Employee” processes when hiring officers and staff, and there is senior management involvement in the so-called anti-money laundering committee of each operator on a periodic basis and in the event of a crisis situation or event escalation. Periodic assessments (proactive and reactive) of ML/TF risks are conducted by internal teams to ensure updated risk levels and scores. In addition, comprehensive vetting of gaming promoters applicants, including an annual review of contracts, is undertaken by the great majority of the local operators. The absence of AML/CFT profiling of individual gaming promoters has been addressed through the issuance of their risk assessment framework to enable concessionaires and sub-concessionaires to focus on higher-risk gaming promoters.

There is adequate surveillance and a monitoring team screening all properties on a 24/7 basis to prevent fraud and gaming irregularities. As part of the contractual arrangements between concessionaires/sub-concessionaires and the gaming promoters as third-party introducers, and as direct reporting entities, the gaming promoters are also implementing their own mitigating measures; although, with respect to this matter, it could be helpful to grant more powers to the concessionaires/sub-concessionaires to control the level and efficiency of the measures gaming operators put in place. Measures like conducting enhanced due diligence, AML/CFT training, ongoing monitoring and the screening of transactions, should be also put in place by local gaming promoters to the same extent that gaming operators are doing so with their own staff, customers and overall operations. To some extent, concessionaires/sub-concessionaires mitigate the compliance lapses of gaming promoters, including the reporting of suspicious transactions.

Screening policies and procedures to identify politically exposed persons (“PEP”) (foreign and domestic), and mandatory screening of the gaming promoters’ database, are in place. There is also a periodic sharing of typologies between the Gaming Inspection and Coordination

Bureau (“DICJ”) and concessionaires/sub-concessionaires. Multi-layered customer due diligence is applied to VIP patrons with automated transaction monitoring in place. In practice, all casinos apply customer due diligence on the following, even prior to the issuance of the DICJ guideline on AML/FTC in 2016: (a) all alternative remittance transactions (enhanced due diligence); (b) all customers who are granted gaming credit, or use incoming bank remittances, cheques and cashier orders as their means of payment regardless of threshold; (c) all payees of gaming cheques and outgoing bank remittances regardless of threshold; (d) all VIP customers referred by gaming promoters; (e) all customers who have an ongoing relationship with the casino, including gamers from the mass market sector who have taken out membership (there are many incentives offered to join); (f) all casino front money account holders during account opening for the deposit/withdrawal of funds; and (g) identification documents for occasional customers. In addition, transactions by mass market gamblers which exceed MOP500,000 (US\$62,500) are captured by ROVE. Perhaps a new (lower) should be put in place, at least to cope with international standards, but there are understandable difficulties in implementing this measure. Fortunately for local operators, the amount of transactions above the international threshold of US\$10,000 is enormous and the adoption of this amount as reference threshold would be very difficult to effectively comply with.

A low threshold is also set up by gaming concessionaires (in both mass and VIP) to obtain the ID information to track the aggregation of MOP500,000 (US\$62,500).

Official reports say that the gaming sector accounted for the highest number of attempted transactions, which were eventually reported as suspicious transactions. There were 135 attempted transactions identified with suspicious transaction reports (“STRs”) by the gaming sector from 2013 to 2015. There were specific instances when business was refused by casinos such as: (i) incomplete or failed customer due diligence such as third-party remittance to gaming promoters; (ii) failure to produce ID information or other personal information for the purchase/redemption of chips; and (iii) refused bank remittance and third-party remittance transactions due to suspected fraud. It is not clear whether any of the 135 attempted transactions squarely fall under the abovementioned parameters, and which casino entity (concessionaire/sub-concessionaire or gaming promoter) handled them.

However, the application of enhanced measures by gaming operators does not happen and, in general, only basic customer due diligence is applied. The requirement of the DICJ regulation for approval or involvement by at least senior management level in the on-boarding process of gaming promoters’ PEP customers, is not uniformly implemented. This happens especially where the local regulator has not granted gaming operators (concessionaires and sub-concessionaires) powers to enforce more effective customer due diligence on the part of the gaming promoters operating in their casinos. Some measures, including the use of screening programmes provided by concessionaires/sub-concessionaires, which are also responsible for the customer due diligence information provided by the gaming promoters as third-party introducers, are being taken. It should, however, be noted that there should not be concessionaires/sub-concessionaires to exclusively support the costs associated with the purchases of these screening programmes, as the gaming promoters are also benefiting from such customers. As noted earlier, both concessionaires/sub-concessionaires and gaming promoters should work together to implement enhanced due diligence.

Another relevant matter that constitutes a challenge from an AML/CFT standpoint is that concessionaires and sub-concessionaires are aware of the use of phone and proxy betting and other activities to circumvent customer due diligence, including beneficial ownership requirements. For phone proxy betting, concessionaires/sub-

concessionaires have put in place extensive surveillance facilities to monitor the casino floor and have customer profiles for their regular patrons. The ban on the use of mobile phones at gaming tables by the DICJ in May 2016 has helped, and the number of instances of proxy betting has decreased significantly since then. However, implementation remains a challenge for concessionaires/sub-concessionaires given the evolving nature of this risk.

Macau SAR granted three gaming concessions using an open tender process, which adopted international standards for suitability and financial assessment procedures, including those applied by the International Association of Gaming Regulators. The three concession contracts were entered into in 2002 for up to 18–20 years. Authorities also approved, as part of this process, sub-concessionaire arrangements for each of the three concessionaires between 2002 and 2006. As a result, six companies are granted authorisation to operate casinos. The focus is to regulate the six companies, not to grant licences to individual casinos. There are no new concessions for concessionaires or sub-concessionaires until the current contracts for the six companies expire between 2020 and 2022. These six concessionaires/sub-concessionaires are, however, permitted to open new casinos at any time during the concession period. As at 31 December 2017, there were 40 casinos in Macau.

The suitability assessment procedures for the gaming sector are set out in Article 14 of Law no. 16/2001 and Article 8 of the Regulation Governing the Condition for the Public Tender to Concessions for the Operation of Games of Fortune in Casinos, the Concession Contract and the Appropriate Qualifications and Financial Capacity of the Bidders and Concessionaires, Administrative Regulation no. 26/2001, to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, or being an operator of a casino. The first suitability assessments were carried out by the DICJ before the concessionaires/sub-concessionaires were granted the concessions to operate games of fortune and chance and other casino games in Macau. The suitability assessment also covered shareholders – natural persons or legal persons who directly or indirectly hold 5 per cent or above of the company’s share capital. The assessment procedures set out in Administrative Regulation no. 26/2001 require persons or companies to disclose to the DICJ extensive information, including criminal background, assets and liabilities, past business or work experience and known associates.

The DICJ has undertaken ongoing monitoring to ensure continued compliance, as the suitability assessment is ongoing throughout the term of the concession and, in particular, when there are changes in shareholders, directors, or key employees. Concessionaires/sub-concessionaires are obliged to have adequate control procedures in place to identify changes of such persons and must inform the DICJ in accordance with Article 26 of the Concession Contract, so the DICJ can carry out a suitability assessment of any changes. No breaches of such licensing have been identified by the DICJ. Concessionaires/sub-concessionaires spoken to by the team also highlighted that the six gaming companies operating in Macau SAR are listed on major share markets. As such, they are open to media inquiry, shareholders and the scrutiny of the financial markets.

Macau SAR has applied AML/CFT measures, including licensing and ‘fit and proper test’ requirements, to include gaming promoters and their formal collaborators. This is a necessary response to the inherent risk of the sector, and the reliance of concessionaires/sub-concessionaires on gaming promoters to undertake preliminary customer due diligence and introduce business. Under the current regime, the DICJ undertakes separate market entry/licensing requirements for gaming promoters and their formal collaborators, which are additional to the due diligence undertaken by concessionaires/sub-concessionaires before entering into a business relationship with gaming promoters, as under Articles 29 and 30 of the Administrative Rule 6/2002,

gaming concessionaires/sub-concessionaires are jointly liable with the gaming promoters for the activities carried out by them, their directors and collaborators, within the casino areas, as well as for the accomplishment by them of the legal and regulatory obligations.

The DICJ has a range of remedial measures that it can impose on concessionaires, sub-concessionaires and gaming promoters. In practice, the majority of supervisory action taken by the DICJ is based on the issuing of written communication reports that require concessionaires/sub-concessionaires to take remedial action to enhance their AML/CFT policies and procedures. Where there are unresolved significant control deficiencies, a warning letter would be issued. The last warning letter was issued by the DICJ before 2012. Warning letters are highly likely to have a negative impact on the share price of a warned concessionaire/sub-concessionaire, and they are, therefore, a dissuasive instrument. However, most of the time, these kinds of communication remain confidential and unacknowledged by the “market”.

To date, especially in relation to gaming promoters, the preferred remedial action has focused on the suspension and non-renewal of licences, which is an expedient tool, as licences are issued/renewed annually, despite the array of tools at the DICJ’s disposal. While this approach appears to be effective, the more stringent supervisory approach towards gaming promoters started only in late 2015, when the DICJ revoked the licences of eight gaming promoters due to ROVE reporting breaches, although poor AML/CFT compliance is considered generally in licence renewal decisions.

Over the last 10 years, the AML/CFT system on the concessionaires/sub-concessionaires in Macau SAR has developed and matured. Through AML/CFT system reviews, gaming promoters’ ROVE reviews, and a proactive outreach programme to concessionaires/sub-concessionaires, the impact of supervisory action on compliance has received positive feedback from the gaming sector. The DICJ provided some examples which highlighted the impact of supervisory action on compliance, including the issuing of a non-winning cheque, cashier orders from gaming promoters and under-reporting of ROVE reports by some gaming promoters.

The principal means through which the DICJ promotes a clear understanding to the gaming sector is the interaction mechanism built into the ongoing AML/CFT reviews using the 2007 audit procedure manual. The updated DICJ AML/CFT Guideline became effective from May 2016 and introduced some key changes from the previous guideline issued in 2006. Major changes included:

- The introduction of a risk-based approach and continuous evaluation of internal controls by concessionaires and sub-concessionaires.
- Updated definitions, and distinguishing between foreign and domestic PEP.
- A requirement for the DICJ to pre-approve the AML/CFT internal rules and procedures issued by concessionaires and sub-concessionaires.
- Greater obligations to identify the ultimate beneficiaries.
- Greater control and review by concessionaires and sub-concessionaires of STR reports and large transaction reports submitted by gaming promoters.

In conclusion, the Macau SAR jurisdiction is following worldwide standards on AML/CFT but, of course, there is always some room

for improvement. Based on the quoted findings, APG selected and recommended to the Macau SAR authorities a group of actions qualified as “priority” that should be put in place with the objective of enhancing the SAR’s performance with respect to compliance with the FATF Recommendations:

- i. Establishment of a specific, consolidated operational AML/CFT strategy for all law enforcement agencies, especially within Judiciary Police, which covers parallel investigations, use of financial intelligence in money laundering, terrorism finance and predicate offence, and seizure of illegal proceeds. This should include adopting written internal policies, procedures and mechanisms for more effective cooperation, coordination, investigation and seizure. The strategy should clearly emphasise the importance of investigating identified high risks.
- ii. Approve and implement the proposed amendments to the anti-money laundering and control and finance of terrorism legislation to (i) address the identified deficiencies in the terrorism finance offence; (ii) facilitate money laundering investigations and prosecution by the relevant authorities, and (iii) establishment of an effective legal framework on asset recovery to ensure the actual tracing, seizure and confiscation of criminal proceeds and the subsequent management and recovery of value from the assets confiscated.
- iii. Enactment and implementation of proposed cross-border cash declaration system and regulations.
- iv. Take the necessary steps to improve the capability of its law enforcement agencies to proactively identify and investigate money laundering (and confiscate proceeds of crime) and terrorism finance, particularly complex and foreign predicate money laundering; organised crime, gaming related usury, fraud and drugs; and the misuse of legal persons. Law enforcement agencies need to balance their current focus on ATM/debit card risk with attention also paid to fraud, gaming and other high risks.
- v. Focusing GIF strategic intelligence more on high-risk foreign proceeds and regional crime trends. GIF should approach regional intelligence units to produce joint strategic reports on common risks of interest, with input from law enforcement agencies. Designated non-financial businesses or professions supervisory authorities such as Administration of Justice Department (“DSAJ”), Institute for Promotion of Macau Investment (“IPIM”), Economy Department (“DSE”), and DICJ should continue to ensure that covered institutions have an increased level of understanding of their ML/TF risks and AML/CFT obligations; particularly among the higher risk entities or those not as aware of the AML/CFT requirements e.g. real estate agents and high value goods dealers. Competent authorities should continue working with DNFBBs to increase compliance with STR reporting, particularly for third party junket introduced business, agents and notaries involved in real estate transactions.
- vi. The CR and DSAJ shall continue and enhance their monitoring of compliance by companies and notaries to the company incorporation regulations and DSAJ AML/CFT Guideline and impose sanctions for non-compliance.
- vii. The Asset Freezing Coordination Commission shall continue to coordinate and implement obligations under PF United Nations Security Council Resolutions (UNSCRs) under the recently introduced Freezing Law.”

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Pedro Cortés has been a lawyer at Rato, Ling, Lei & Cortés since 2003 and a partner since 2006, having extensive experience in gaming, corporate, finance and IP law.

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Rato, Ling, Lei & Cortés – Advogados is a law office located in the Macau Special Administrative Region of the People's Republic of China, with its origins in the office of Gonçalves Pereira & Rato. Having begun operations in the 1980s, the office has evolved to its present configuration of four Senior Named Partners – Frederico Rato, Paula Ling, Lei Wun Kong and Pedro Cortés – two of whom are also Private Notaries; and one other Partner, Chang San Si.

We have a partner office in Hengqin, People's Republic of China – ZLF Law Office – and recently opened a desk in Lisbon – Lektou Portugal.

With more than 30 years of legal practice in Macau, our strong professional and academic profile, together with our extensive experience and full integration within the Region, are a guarantee of the quality of the services we offer.

Additionally, our consistently updated expertise and specialisation, combined with proven professional practice in diverse areas of law, allow us to offer a prompt, effective and efficient response to our clients; from intervention in negotiations, disputes and alternative dispute resolutions hearings to regular and continuous legal advice on various aspects of law.

Australia

Julian Hoskins



Senet Legal Pty Ltd

Matt Zaba



1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	The Australian Communications and Media Authority (ACMA). Online casino gaming is prohibited in Australia under the Interactive Gambling Act 2001 (Cth) (Interactive Gambling Act). However, a person may still apply for an 'internet gaming licence' in the Northern Territory. Provided the internet gaming licensee only offered their product to persons outside of Australia, such action would not be subject to the Interactive Gambling Act's prohibitions.	* (See detailed response below table.)
	Poker	ACMA. Online poker is prohibited in Australia under the Interactive Gambling Act.	Poker is typically played within casinos and is regulated as a table game by the State and Territory gambling regulators detailed below. In addition to casinos, poker is also played in hotels and clubs without generally being regulated in the same manner as a traditional casino table poker game, provided no third party (i.e., the gambling venue) gains a percentage or share of any amount bet.
	Bingo	Online bingo is regulated by the State and Territory gambling regulators detailed below.	Bingo is regulated by the State and Territory gambling regulators detailed below.
Betting	Betting	Online betting is regulated by the regulators detailed below.	Land-based betting is regulated by the regulators detailed below.
	Sports/horse race betting (if regulated separately to other forms of betting)	Covered above under 'Betting'.	Covered above under 'Betting'.
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	Betting on fantasy sports in Australia is offered by corporate bookmakers primarily licensed in the Northern Territory (Corporate Bookmakers). The relevant regulatory bodies are the Northern Territory Racing Commission (NTRC) and Licensing NT.	There is currently no land-based betting on fantasy sports in Australia.
Lotteries	Lotteries	Online lotteries are regulated by the regulators detailed below.	Retail lottery sales are regulated by the regulators detailed below.

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Social and skill-based gaming (as described) are not regulated by gambling regulators, however age classifications and other restrictions apply to such games.	Social and skill-based gaming (as described) are not regulated by gambling regulators, however age classifications and other restrictions apply to such games. Skill-based gaming machines (which are a mixture of skill and chance) are expected to start emerging in casinos shortly (subject to regulatory approval). If these games are not entirely skill-based (that is, there is an element of chance) then they will be subject to the relevant gaming laws.
	Skill games and competitions with no element of chance	Any skill games and competitions with no element of chance are not typically regarded as gambling.	Any skill games and competitions with no element of chance are not typically regarded as gambling.

* There is no single overarching statute regulating gambling activities in Australia, nor is there a single overarching gambling authority. Instead, gambling in Australia is regulated at both the State/Territory and Federal level.

Each of Australia’s eight mainland States and Territories separately regulates gambling activities within each of their respective jurisdictions.

In addition, a series of Federal statutes also cover certain aspects of gambling activity throughout Australia.

State/Territory level

Set out below are the regulators responsible for regulating gambling activity in each Australian State and Territory:

1. Victoria (Vic)

The Victorian Commission for Liquor and Gambling Regulation is Victoria’s independent gambling authority responsible for ensuring compliance and licensing.

The Office of Liquor, Gaming and Racing is a division within Victoria’s Department of Justice and Regulation responsible for policy, legislation, regulation and major licensing.

2. New South Wales (NSW)

Liquor and Gaming New South Wales (**L&GNSW**) sits within the NSW Department of Industry and is responsible for policy, licensing and compliance. Separately, the Independent Liquor and Gaming Authority Board (**ILGA**) is an independent statutory decision maker responsible for a range of casino, liquor, registered club and gaming machine regulatory functions. A number of ILGA’s routine licensing functions are delegated to L&GNSW.

3. Queensland (Qld)

The Queensland Office of Liquor and Gaming Regulation (**QOLGR**) is responsible for licensing and compliance and the Office of Regulatory Policy (**QORP**) is responsible for indigenous policy and the development and management of liquor and gambling harm minimisation. The QOLGR and QORP sit within the State’s Department of Justice and Attorney-General.

4. Australian Capital Territory (ACT)

The Gambling and Racing Commission sits within the portfolio of the Minister for Regulatory Services and is the ACT’s independent gambling authority responsible for compliance, licensing and education.

5. South Australia (SA)

The Independent Gambling Authority is SA’s independent gambling authority primarily responsible for regulating casinos, gaming machines, betting and lotteries and related policy development and problem gambling initiatives.

Consumer and Business Services sits with the Attorney-General’s Department and is responsible for licensing and compliance in relation to wagering, casinos and gaming machines.

The Lotteries Commission of South Australia sits within the Auditor General’s Department and has the primary function of promoting and conducting lotteries in South Australia. It has appointed a master agent to operate the Commission’s brands and products.

6. Tasmania (Tas)

The Tasmanian Liquor and Gaming Commission sits within the Department of Treasury and Finance and is Tasmania’s independent gambling authority responsible for licensing and compliance.

7. Western Australia (WA)

The Western Australian Department of Racing, Gaming and Liquor sits within the portfolio of the Minister for Racing and Gaming and is responsible for policy, licensing and compliance matters.

8. Northern Territory (NT)

The NTRC is largely responsible for compliance matters.

Licensing NT is responsible for licensing matters affecting all gambling activities in the NT.

NTRC and Licensing NT sit within the NT Department of the Attorney-General and Justice.

For completeness, it is worth noting that, to a lesser extent, local government bodies in most States and Territories also regulate gambling from a local government and town planning perspective, but typically only as it relates to gaming machines and their operation within their municipal district.

Federal level

The Australian Constitution provides the Federal government with power to regulate and govern, among other things, telecommunications, money and trade amongst the States and Territories.

Using these powers, the Federal government has enacted legislation regulating, amongst other things, interactive gambling, anti-money laundering and counter-terrorism financing (**AML/CTF**) and consumer and competition protections (also known as anti-trust matters in some other jurisdictions).

Set out below are the relevant regulatory bodies and a brief description of how they regulate gambling:

1. Interactive gambling

ACMA is the body responsible for media and communications regulation throughout Australia, including monitoring and enforcing the regulation of gambling online and over the telephone (referred to as the interactive gambling laws).

ACMA monitors compliance with and enforces the interactive gambling laws.

Australia's Federal interactive gambling laws prohibit certain activities, such as:

- online casinos, slot machines and poker;
- online wagering services that accept 'in-play' betting on live sports events;
- online instant lotteries;
- online wagering services provided without a licence issued by an Australian State or Territory; and
- providing or facilitating the provision of credit by certain interactive wagering services providers to their customers.

ACMA has the power to, amongst other things, instigate civil proceedings in Australia, notify border protection agencies of the names of directors/principals of offending illegal offshore operators (who may then be placed on a 'movement alert list' thereby disrupting any travel to Australia) and liaise with foreign regulators to stop alleged offenders.

2. AML/CTF

The Australian Transaction Reports and Analysis Centre (**Austrac**) is the regulator responsible for money laundering and terrorism financing.

Under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (**AML/CTF Act**), certain gambling activities are classified as "designated services" and as such reporting entities are required to develop and maintain a compliant AML/CTF Program and report certain transactions to Austrac, including by way of threshold transaction reports (**TTRs**) and suspicious matter reports (**SMRs**).

Failure to comply with the AML/CTF Act, including not maintaining a compliant AML/CTF Program and not filing TTRs and/or SMRs (or filing them late), can result in large civil penalties and possible criminal exposure. For example, in 2017 a large Australian gambling company paid a AUS \$45 million civil penalty to Austrac for failure to comply with certain requirements under the AML/CTF Act.

3. Competition

The Australian Consumer and Competition Commission (**ACCC**) is responsible under the Competition and Consumer Act 2010 (Cth) (**CCA**) for, amongst other things, enforcing Australian consumer protection laws. From a gambling perspective, the ACCC monitors compliance by gambling service providers of their obligations under the CCA, including gambling advertising (to ensure the consumer is not being treated unconscionably or unfairly in breach of the CCA). It also takes appropriate enforcement action where it deems necessary.

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

Relevant legislation

As detailed above in question 1.1, there is no single overarching statute regulating gambling activity in Australia. Legislation regulating gambling activity in Australia exists at both the State/Territory and Federal level.

Set out below is a list of the primary legislation governing gaming, betting, lotteries and social/skill arrangements for each Australian State/Territory, as well as at the Federal level.

For completeness, the authors note that the list of gambling-related legislation below is not a conclusive list. There are many pieces of legislation which are incidental to gambling activity (for example,

legislation setting the applicable gambling tax rates). There are also various subordinate legislative instruments which have not been included.

Vic

- Casino (Management Agreement) Act 1993 (Vic).
- Casino Control Act 1991 (Vic).
- Gambling Regulation Act 2003 (Vic).

NSW

- Betting and Racing Act 1998 (NSW).
- Casino Control Act 1992 (NSW).
- Gaming Machine Act 2001 (NSW).
- Lotteries and Arts Union Act 1901 (NSW).
- Public Lotteries Act 1996 (NSW).
- Unlawful Gambling Act 1998 (NSW).

Qld

- Casino Control Act 1982 (Qld).
- Breakwater Island Casino Agreement Act 1984 (Qld).
- Brisbane Casino Agreement Act 1992 (Qld).
- Cairns Casino Agreement Act 1993 (Qld).
- Jupiters Casino Agreement Act 1983 (Qld) and Queen's Wharf Brisbane Act 2016 (Qld).
- Charitable and Non-Profit Gaming Act 1999 (Qld).
- Gaming Machine Act 1991 (Qld).
- Interactive Gambling (Player Protection) Act 1998 (Qld).
- Keno Act 1996 (Qld).
- Lotteries Act 1997 (Qld).
- Wagering Act 1998 (Qld).

ACT

- Casino Control Act 2006 (ACT).
- Gaming Machine Act 2004 (ACT).
- Interactive Gambling Act 1998 (ACT).
- Lotteries Act 1964 (ACT).
- Pool Betting Act 1964 (ACT).
- Race and Sports Bookmaking Act 2001 (ACT).
- Racing Act 1999 (ACT).
- Totalisator Act 2014 (ACT).
- Unlawful Gambling Act 2009 (ACT).

SA

- Authorised Betting Operations Act 2000 (SA).
- Casino Act 1997 (SA).
- Gaming Machines Act 1992 (SA).
- Lottery and Gaming Act 1936 (SA).

Tas

- Gaming Control Act 1993 (Tas).

WA

- Betting Control Act 1954 (WA).
- Bookmakers Betting Levy Act 1954 (WA).
- Casino (Burswood Island) Agreement Act 1985 (WA).
- Casino Control Act 1984 (WA).
- Gaming and Betting (Contracts and Securities) Act 1985 (WA).
- Racing and Wagering WA Act 2003 (WA).
- Racing Bets Levy Act 2009 (WA).

NT

- Gaming Control Act (NT).

- Gaming Machine Act (NT).
- Racing and Betting Act (NT).
- Unlawful Betting Act (NT).

Federal

- Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth).
- Financial Transaction Reports Act 1988 (Cth).
- Interactive Gambling Act 2001 (Cth).

Permitted or prohibited gambling activity

In broad terms, the laws throughout Australia (at both the State/Territory and Federal level) permit or prohibit the offer of Relevant Products as follows:

(a) Operator Licence

An operator Licence is required to conduct the following gambling activities in Australia:

- casinos;
- retail wagering (**Retail Wagering**), under which licence-holders (**Retail Wagering Licensees**) offer: (i) *pari-mutuel* (totalisator) betting on racing (thoroughbred, harness and greyhound); and (ii) fixed-odds betting on racing, virtual/simulated racing, sports and other approved events. With the exception of virtual/simulated racing (which is generally only offered in retail venues including hotels and clubs), such betting is generally offered at racecourses, retail venues, online and by telephone. The Victorian Wagering and Betting Licence includes not only wagering and betting but also a betting exchange;
- lotteries;
- keno; and
- instant lotteries to persons in Australia.

These operator Licences are nearly always State or Territory based and are typically monopolistic or very limited in numbers.

(b) Bookmaker Licence

Sports and racing bookmaking requires a bookmaker licence (**Corporate Bookmaker Licence**). Nearly all Corporate Bookmakers are licensed in the Northern Territory. There is no limit on the number of bookmaker licences the NT may issue and Corporate Bookmakers are only permitted to operate online and via telephone.

Fantasy sports betting in Australia is typically permitted under a Corporate Bookmaker Licence.

An individual (or sometimes incorporated) bookmaker operating at a racecourse in Australia (**On-course Bookmaker**) is required to hold a State or Territory based on-course licence. With the exception of question 2.2, the remainder of this Australian chapter, as it relates to bookmakers, focuses on Corporate Bookmakers only.

(c) Gaming venue and machine licences

A gaming venue licence as well as a permit/licence for each gaming machine is required to operate gaming machines in Australia.

The only exception to this is in relation to a casino operator Licence, which typically includes permission to operate gaming machines within the casino premises. The authors note that the new casino operator licence in NSW issued for the Barangaroo casino, does not include permission to operate gaming machines.

(d) Poker

Poker (outside of a casino) is typically permitted provided that no person gains a percentage or share of the amounts wagered.

(e) Bingo

Laws differ between the States and Territories regarding bingo. If the gross proceeds are below a certain threshold, then in most States and Territories no Licence is required to offer bingo.

(f) Social/Skill arrangement

As a general rule, social games (no prize money) and skill games (no element of chance) are not classified as being a gambling activity and as such are not regulated under the relevant gambling laws. For completeness, the authors note that betting on fantasy sports in Australia is typically offered pursuant to a Corporate Bookmaker Licence.

2 Application for a Licence and Licence Restrictions

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

Casino table gaming and gaming machines, Retail Wagering, lotteries and keno all require an operator Licence, which is typically long-dated and is granted by the relevant Australian State or Territory.

Sports and racing bookmaking (fixed-odds online and telephone only) requires a Corporate Bookmaker Licence. Nearly all Corporate Bookmakers are licensed in the Northern Territory.

Gaming machines are offered in casinos, hotels and clubs. In relation to hotels and clubs, a venue requires both a gaming venue Licence and also a permit/Licence for each gaming machine a venue operates. Gaming machines in WA can only be offered in the casino.

Bingo is regarded as minor gaming and may be conducted for fundraising purposes by community or charitable purposes. A State or Territory Licence is typically required to operate a bingo centre in the relevant jurisdiction.

Social gaming with no prize being either money or money's worth does not require any Licence given that it is not regarded as gambling under Federal, State and Territory law. Similarly, a skill game with no element of chance is also not considered gambling and does not require any Licence.

Gaming machine and other equipment manufacturers, software developers and technical services suppliers selling products and/or services used for gambling-related activities are also required to hold a relevant Licence.

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

Each State and Territory has a relevant Casino Control Act (or similar legislation) under which casino Licences have been issued. There are currently 14 casino Licences on issue, with a process underway for the expected development of an integrated resort and casino in northern Queensland. A casino Licence permits the relevant casino to typically offer traditional table games and gaming machines.

Retail Wagering is offered by State and Territory based totalisator agency boards (**TABs**) pursuant to sole Licences in the relevant State or Territory, thereby providing them with a form of 'retail exclusivity'. There is co-mingling of State and Territory totalisator pools through pooling arrangements, with three Australian totalisator pools.

Corporate Bookmakers (generally holding a bookmaker's licence issued in the Northern Territory) offer online and telephone fixed-odds betting on racing, sports and other approved events. All fantasy betting typically occurs through Corporate Bookmakers in Australia.

On-course Bookmakers holding an On-course Bookmaker's Licence offer fixed-odds betting at racecourses and also limited telephone betting. Some On-course Bookmakers also offer online fixed-odds betting.

Similarly to State and Territory Licences issued to TABs for the purposes of Retail Wagering, most lotteries Licences are also currently sole Licences enabling lottery tickets and other lottery products (including instant lottery tickets) to be sold in retail (through newsagencies) and also online in some jurisdictions. State and Territory lotteries engage in pooling arrangements pursuant to what is known as the ‘bloc agreement’, under which jackpots are pooled, making the customer offering more attractive.

Hotels and clubs hold a venue operator’s Licence and a permit/licence to operate each gaming machine within the licensed premises. There are often strict local government planning requirements which must be met in relation to gaming machines.

Gaming machine and other equipment manufacturers, software developments and technical services suppliers selling products and/or services used for gambling-related activities are also required to hold a relevant Licence. Such Licences often require the licensee to comply with complex national standards, as adopted by the relevant State or Territory.

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

Any applicant for a Licence is generally required to undergo a probity assessment to determine whether such applicant is ‘fit and proper’ to be granted a Licence. The processes are generally quite extensive and it can sometimes take up to 12 months for State and Territory gambling regulators to complete in relation to new applicants seeking major Licences.

Casino Licences can typically only be applied for through a competitive tender process run by the relevant State or Territory. The same applies in relation to Retail Wagering Licences and also lotteries and keno licences. The number of Licences available is limited (typically only one per State and Territory, except in the case of current casino Licences held in each of Qld, NT and NSW) and the processes are very infrequent.

An application for a Corporate Bookmaker Licence issued in the Northern Territory typically takes between three and six months for approval and can be made at any time. There is no maximum number of Licences which can be issued. The same applies in relation to any permit required to operate bingo.

The number of gaming machines available in each State and Territory is strictly regulated. In the case of a casino, it will depend upon the relevant casino Licence. In the case of a non-casino gaming venue (hotel or club), whilst a venue operator’s Licence is relatively straightforward and readily available (but can still take 6–12 months for approval of new entrants), the number of gaming machines which such venue may be permitted to operate is limited based on the ‘entitlement’ or permit/Licence to operate those gaming machines. Various States (including NSW and Vic) have implemented harm minimisation measures to cap the number of gaming machine permits/Licences on issue in certain lower socio-economic areas.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

All Licences are subject to strict restrictions as set out in the relevant legislation and also, typically, separate Licence conditions. A breach of a Licence condition often triggers a breach of the relevant legislation, and *vice versa*.

The main restriction of an operator Licence relates to what gambling activity can be offered and through which channel. This is often

intended to support a ‘sole operator’ or ‘limited operator’ model, under which overlapping product is limited and retail exclusivity is generally preserved. Other restrictions include the usual requirement for regulatory approval of a new product, financial and other reporting to government and other relevant gambling regulators, strict advertising restrictions (including in relation to inducements to open accounts and/or gamble) and responsible gambling obligations.

Corporate Bookmakers typically have less onerous Licence restrictions. A key obligation of a Corporate Bookmaker Licence is the requirement to establish a physical place of business in the NT and locate computer servers there, notwithstanding that most Corporate Bookmakers have head offices in other jurisdictions such as NSW or Vic.

In Australia, gambling harm issues are often associated with gaming machines and the Licence restrictions relating to the operation of gaming machines include more detailed responsible gambling obligations. Pre-commitment and other harm minimisation and consumer protection measures have been implemented in relation to gaming machines in Australia with mandatory opt-out pre-commitment proposed to be implemented as part of a National Consumer Protection Framework (NCPF). These restrictions necessarily extend to the design, functionality and support required from gaming machine and other equipment manufacturers, software developments and technical services suppliers.

Any permit required for bingo is generally subject to very basic restrictions (usually in relation to approved rules). Bingo is considered low-risk from a responsible gambling perspective.

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

The duration of major operator Licences depends upon the legislative framework in the relevant State or Territory and is subject to possible change upon a Licence renewal or new Licence being issued.

There are various current casino Licences which are perpetual, whereas a number of others currently expire between 2050 and 2093. In relation to wagering and betting, apart from Vic and NT (where the licences expire in 2024 and 2035, respectively) and WA (where retail wagering and betting is operated by the State), the expiry dates of current Retail Wagering Licences are also similarly long-dated and range between 2062 and 2100.

In the case of lotteries, aside from Tas (where a licence expires in 2020) and WA (where lotteries are owned and operated by the State), the expiry dates are generally shorter than in relation to Retail Wagering, however they still range between 2028 and 2072. Keno, as a similar product to lotteries, has a similar Licence duration. Apart from Vic (where the licence expires in 2022), the key keno licences in Qld, NSW and ACT expire in 2047, 2050 and 2064, respectively.

Gaming machine permits/Licences have typically been perpetual in Australia, other than in certain States such as Vic, which currently run for a period of 10 years (however, the term has been extended to 20 years in relation to entitlements which operate from August 2022 onwards).

Gaming machine and other equipment manufacturers, software developments and technical services suppliers selling products and/or services used for gambling-related activities typically have perpetual Licences which are often administrative in nature and remain on issue subject to the payment of periodic fees.

Casinos are generally subject to periodic Licence review (often every five years). The vulnerability of the above Licences to revocation or suspension is low. It is rare for material proceedings or other materially adverse action to be initiated by gambling regulators against major licensees.

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

Casino Licences provide that casinos are only permitted to offer casino games and gaming machines to patrons present within the casino. It is illegal to offer online casino gambling in Australia.

Retail Wagering Licensees offer: (i) *pari-mutuel* (totalisator) betting on racing (thoroughbred, harness and greyhound); and (ii) fixed-odds betting on racing, virtual/simulated racing, sports and other approved events. With the exception of virtual/simulated racing (which is generally only offered in retail venues including hotels and clubs), this betting is generally offered at racecourses, retail venues, online and by telephone. The Vic Licence includes not only wagering and betting but also a betting exchange.

Corporate Bookmakers can offer fixed-odds betting on racing, sport and other approved events online and over the telephone.

Lotteries licensees can offer their approved lottery products through retail newsagencies, third party agents and also online. Keno licensees can offer their product through retail venues, online in-venue only (in the case of NSW) and online (in the case of the ACT).

Hotels and Clubs are permitted to provide approved gaming machines in the licensed premises.

There are comprehensive Federal, State and Territory advertising restrictions which apply to the lawful advertising of gambling services. In addition to the usual responsible gambling warnings, it is often an offence to advertise an inducement to open a betting account and/or gamble.

The Federal government has recently enacted new 'rules' which restrict gambling advertising and odds promotion during broadcasts of live sport, with one key objective being to limit its exposure to children. These new rules have recently been extended to online streaming of live sport.

Separately, the CCA imposes penalties for, amongst other things, misleading and deceptive conduct (including through advertising).

2.7 What are the tax and other compulsory levies?

The State and/or Territory taxes which apply to gambling product depend upon the relevant Licence under which the product is being offered and also the relevant product.

State and Territory taxation on casinos is determined on a case-by-case basis (typically during negotiations with the relevant State or Territory government at the time). By way of example, putting aside a Federal company tax of 27.5% on profits and a goods and services tax (GST) of 10% on the gross revenue, the sole casino licensee in Melbourne has paid a multi-million dollar licence fee to the State for the right to operate the only casino. In addition, that licensee currently pays the State a tax of 21.25% of its gross gaming revenue from table games and 31.57% of its gross gaming revenue from gaming machines in respect of regular players, together with a 1% community benefit levy. The sole casino licensee also pays a tax of 9% of 'high roller' gaming revenue, together with a 1% community benefit payment. Finally, the sole casino licensee pays an additional

casino 'super tax' based on gross gaming revenue, which increases depending upon gaming revenue levels, with a maximum tax payable of 20%. The relevant taxation amounts are reduced by the GST paid by the casino licensee in relation to these services.

In relation to Retail Wagering:

- the current totalisator commission (take-out rate) charged by the relevant Licensee in respect of key licences in Vic, NSW and Qld varies depending upon bet type but may be up to 25% with a maximum rate of 40% in Vic for international pooling. The taxation payable by the relevant Licensee in Vic, NSW and Qld respectively, is 7.6% of player loss, 13.5% of commission and 14% of commission (with a GST offset in relation to the latter); and
- the current taxation payable on fixed-odds racing and sport for Vic, NSW and Qld, respectively, is 4.38% of net investment (with an increased rate of 10.91% of net investment for simulated racing), 7.43% of net investment (with an increased rate of 10.91% of net investment for simulated racing, after the first AUS \$255 million bet *per annum*), with a proposed reduction up until 2020–21 to reduce taxes and achieve racing tax parity with Vic and 10% of gross revenue (with a GST offset).

There is no wagering tax payable in SA as they have imposed a 15% point of consumption tax (POCT) on net wagering revenue over AUS \$150,000 on all bets taken from SA residents, which commenced in 2017.

Most States and Territories have recently introduced, or have committed to introduce, a POCT on bets taken from their residents (which is payable by the Retail Wagering Licensee and also any Corporate Bookmaker irrespective of the location of the relevant entity). This is a departure from the previous 'point of supply' regime, under which States and Territories derived no betting tax revenue from Corporate Bookmakers taking bets online in the relevant jurisdiction.

The POCT rates currently range between 8% to 15% of 'net wagering revenue', with various compensatory arrangements in place or to be determined, to ensure that the racing industry is not adversely impacted. The wagering and betting taxes payable in Vic by the Retail Wagering Licensee are being abolished with effect from 1 January 2019 once the Vic POCT regime commences. The NSW POCT commences on the same date, however wagering taxes payable by the Retail Wagering Licensee in NSW will remain, with a corresponding POCT offset.

Retail Wagering Operators and Corporate Bookmakers are also required to pay race field fees/product fees to racing controlling bodies and sports controlling bodies, respectively, in relation to bets taken on their product. These fees are generally a percentage of turnover and depend upon the relevant product.

Lotteries are subject to relatively high State and Territory taxation rates. For example, in the key States of Vic, NSW and Qld, respectively, the rates are 79.40% of player loss where GST is payable and 90% of player loss where GST is not payable, 76.918% of player loss (player subscriptions net of prize liability) less GST payable on subscriptions and sales commissions and 73.48% of monthly gross revenue for declared lotteries (with lower rates for instant scratch-its and soccer pools). By contrast, taxation of keno across the same three key States is 24.24% of player loss, 8.91% of player loss (increasing to 14.91% where player loss exceeds AUS \$86.5 million) and 29.40% of monthly gross revenue, after deducting any casino commissions. Various States also set minimum player returns.

State and Territory taxes on gaming machine revenue are complicated and vary significantly. By way of example, in Vic where average revenue per gaming machine is greater than AUS \$12,500 per month, the tax rate is 54.20%.

There is also a Federal Goods & Services Tax of 10% payable on gambling products, however State and Territory taxation rates often take this into account and it is set off against taxation payable to State and Territory governments.

2.8 What are the broad social responsibility requirements?

All gambling-related Licences issued by a State or Territory are subject to strict requirements relating to responsible gambling and harm minimisation. Included in this are restrictions at a State and Territory level in relation to gambling advertising and also inducements to open an account and/or gamble. In addition, the Federal government has also recently introduced amendments to the Interactive Gambling Act to restrict gambling advertising and odds promotion during live sport, with more stringent restrictions occurring during the hours of 5.00am to 8.30pm.

In September 2017, all State and Territory gaming Ministers agreed in principle to key elements of a NCPF for online wagering, which will include (once implemented) a nationally consistent approach to harm minimisation measures such as mandatory opt-out pre-commitment, a national self-exclusion register and activity statements for various gambling activities.

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

Austrac is the money laundering and terrorism financing regulator in Australia.

Under the AML/CTF Act, certain gambling activities are classified as “designated services” and as such reporting entities are required to develop and maintain a compliant AML/CTF Program and report certain transactions to Austrac, including by way of TTRs and SMRs.

Failure to comply with the AML/CTF Act, including not maintaining a compliant AML/CTF Program and not filing TTRs and/or SMRs (or filing them late), can result in large civil penalties and possible criminal exposure. For example, in 2017 a large Australian gambling company paid a AUS \$45 million civil penalty to Austrac for failure to comply with certain requirements under the AML/CTF Act.

Virtual currencies are not currently used as a real-money alternative for gambling in Australia by any of the major operator Licence holders. They are currently the subject of consideration by the various State and Territory gambling regulators. In 2018, a Corporate Bookmaker proposing to be Australia’s first bookmaker to accept ‘crypto-currency’, was prevented from doing so by the NTRC. Notwithstanding the ongoing consideration by gambling regulators, Austrac regulates virtual currencies as a designated service.

3 Online/Mobile/Digital/Electronic Media

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

Online gambling is the fastest growing gambling segment in Australia (growing at approximately 15% *per annum*) and is likely to continue. Only local operators holding relevant Licences may offer gambling products to Australian residents. The Interactive Gambling Act provides that it is unlawful for overseas-based

operators not holding a relevant State or Territory Licence to provide online gambling services to Australian residents.

The regulator responsible for enforcing the Interactive Gambling Act, ACMA, was recently given extended consumer protection responsibilities and powers as part of the Review of Illegal Offshore Wagering, relating to the enforcement of prohibitions on providing or advertising illegal interactive gambling services. Included in this is the ability to notify border protection agencies of the names of directors/principals of offending illegal offshore operators (who may then be placed on a ‘movement alert list’ thereby disrupting any travel to Australia). Further, a scheme is currently being considered under which, amongst other things, offending websites will be “blocked” by local internet service providers following direction by ACMA.

Casino licensees cannot offer online casino games in Australia (it is prohibited under the Interactive Gambling Act, which also prohibits online poker). Retail Wagering Licensees and Corporate Bookmakers can offer online betting.

Lotteries licensees can also offer their products online. The ACT Keno licensee can offer its product online and the NSW Keno licensee can offer its product online in hotel and club venues only (using geo-fencing technology).

Legislation was recently enacted to prohibit bets being taken (by a Corporate Bookmaker) on the outcome of a lottery, with such provisions commencing with effect from January 2019.

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

The Interactive Gambling Act contains restrictions which apply to Retail Wagering Licensees and Corporate Bookmakers in relation to live (or ‘in the run’) betting on sport. Such betting is limited to telephone betting and betting within a Retail Wagering environment.

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

Gaming machines operate in all Australian casinos (except the ACT) and licensed hotels and clubs (except WA). Some Australian casinos are in the process of introducing skill-based gaming machines, subject to regulatory approval.

Aside from gaming, Retail Wagering Licensees own and operate electronic betting terminals (EBTs) in retail venues (in a TAB, on-course, in hotels and in clubs) to facilitate totalisator and fixed-odds betting. EBTs may be used to place live bets on sport. Most Retail Wagering Licensees also offer virtual racing in retail venues.

Keno licensees offer self-service terminals for their keno product in hotels and clubs.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

State and Territory laws contain a broad range of provisions relating to gambling which imposes obligations on licensees, associates of licensees, staff, suppliers and sometimes customers. Federal law also applies in respect of the Interactive Gambling Act, the AML/CTF Act and the CCA.

Recent action by State and Territory based gambling regulators against licensees has related to breach of licence conditions in relation to a casino, and also breach of advertising restrictions by

Retail Wagering Licensees and Corporate Bookmakers. At a Federal level, a large Australian gambling company paid a civil penalty of AUS \$45 million to Austrac in relation to admitted breaches of the AML/CTF Act.

Whilst Federal, State and Territory laws and regulations are often capable of being contravened by directors and other officers of licensees, recent regulatory action has been taken against corporate licensees only. As regulation tightens, it is expected that this will change going forward and that directors and other officers will be actively pursued in relation to alleged breaches of relevant gambling and related laws.

State and Territory laws often also contain a range of offences in relation to unlawful gambling, which can include organising the unlawful event as well as participating in it.

4.2 What form does enforcement action take in your jurisdiction?

State and Territory licensees are expected to have appropriate controls in place to ensure that they comply with their Licence obligations, including relevant laws and any conditions attaching to their Licence.

State- and Territory-based gambling regulators have shown a willingness to work cooperatively with licensees in relation to possible breaches of local laws, however recent prosecutions for breaches of advertising restrictions relating to inducements demonstrate that some offences will not be tolerated where appropriate warnings have been given and operators fail to meet the necessary standards.

In the case of breaches of the AML/CTF Act by gambling services providers, Austrac has recently shown that it will prosecute civil penalty offences. The AML/CTF Act also contains criminal provisions and it is possible that Austrac may seek to apply these provisions in relation to non-compliance going forward.

Enforcement action by ACMA is also likely to increase given the breadth of their powers in relation to gambling advertising and odds

promotion during live sport. The implementation of the NCPF will also most likely result in increased enforcement action, however the framework is yet to be finalised.

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

There are no international laws which would impact on liability or enforcement of local Federal, State or Territory laws in Australia relating to gambling service providers.

Notwithstanding this, local regulatory authorities work closely with their international counterparts, including in relation to intelligence and information sharing. This may have a direct impact on the ongoing suitability of a licensee, associate of a licensee, staff, supplier or other person, including whether they are 'fit and proper' for the purposes of local law.

4.4 Are gambling debts enforceable in your jurisdiction?

Gambling debts legally incurred are enforceable in Australia, however any such debts are only likely to arise in relation to casinos (in particular, with their VIP clients).

Corporate Bookmakers were banned from offering credit to their customers in 2018 as part of the implementation of measures announced in relation to the NCPF.

5 Anticipated Reforms

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

The key changes are the NCPF and also the POCT (in those jurisdictions which have not yet introduced it). An overview of the NCPF is detailed in question 2.8.

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Prior to commencing with Senet Legal, Julian held various General Counsel roles within Tabcorp, one of the world's largest gambling and entertainment companies, over a period of almost 10 years.

Prior to Tabcorp, he held several senior positions in large law firms in Australia and Europe, specialising in mergers and acquisitions, capital markets and regulation, predominantly acting for highly regulated clients including those in the gambling sector, as well as some of the world's leading banks, non-bank financial institutions, corporates and insurers.

Julian holds a Bachelor of Laws (Honours) and a Master of Laws from the University of Melbourne. In 2016 he was recognised by *The Legal 500* in the GC Powerlist: Australia and New Zealand, as one of the Top 100 General Counsel in Australia and New Zealand.

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Matt is a Principal of Senet Legal. He works with various governments and their agencies, regulatory and industry bodies, corporate suppliers and service providers, and investors in the gambling and entertainment industry.

Matt previously worked as general counsel at Tabcorp where he led the legal and regulatory work for the recent AUS \$11 billion Tabcorp Tatts combination. He knows what truly matters to the industry, how it operates and its layers of complexity.

Matt's approach is pragmatic and commercial. He understands people have a unique set of circumstances surrounding their problems, and he enjoys making the complicated easy.

Matt has worked for a top-tier law firm in Australia and also worked on Wall Street in New York. He holds degrees in law and science from the University of Melbourne, as well as a postgraduate degree in finance.



Senet Legal Pty Ltd is an Australian law firm which specialises in the provision of legal services to clients in all sectors of the gambling and entertainment industry.

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Austria

Thomas Talos



Nicholas Aquilina



Brandl & Talos Attorneys at Law

1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Austrian Ministry of Finance (<i>Bundesministerium für Finanzen</i> , “BMF”).	BMF and competent government authority in <i>Bundesländer</i> .
	Poker	BMF.	BMF.
	Bingo	BMF.	BMF.
Betting	Betting	Competent government authority in the nine Austrian federal states (<i>Bundesländer</i>).	Competent government authority in <i>Bundesländer</i> .
	Sports/horse race betting (if regulated separately to other forms of betting)	Competent government authority in <i>Bundesländer</i> .	Competent government authority in <i>Bundesländer</i> .
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	Not expressly defined by Austrian law.	Not expressly defined by Austrian law.
Lotteries	Lotteries	BMF.	BMF.
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Not expressly defined by Austrian law.	Not expressly defined by Austrian law.
	Skill games and competitions with no element of chance	Not expressly regulated and – depending on the product – this may be subject to trade law.	Not expressly regulated and – depending on the product – this may be subject to trade law.

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

The most important set of Austrian laws applicable to all types of gaming and betting activities is the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*). The E-Commerce Act (*E-Commerce Gesetz*) is relevant for the provision of online gambling and betting.

The Unfair Competition Act (*Bundesgesetz gegen den unlauteren Wettbewerb*, “UWG”), which is based on the EU Unfair Commercial Practices Directive, contains a blacklist of trade practices that are prohibited in all circumstances *per se*, including in the gambling sector.

The federal Gambling Act (*Glücksspielgesetz*, “GSpG”) regulates games of chance and in particular refers to lotteries, land-based casinos, online gambling (“electronic lotteries”) and poker (which, despite the ongoing international debate on whether this is a game of skill or a game of chance, is expressly defined as a game of chance in the GSpG), and sets the framework for the regulation of slot machines at the level of the *Bundesländer*.

According to Section 1 GSpG, a game of chance is a game “*in which the decision on the outcome of the game depends solely or predominantly on chance*”. In order to trigger the licensing requirements under the GSpG, the game must further be played against monetary consideration (pay in) in order to acquire the chance of winning money or money’s worth (pay out) and be organised by an entrepreneur.

The UWG prohibits operators from, for example, directing advertising at minors or establishing promotional pyramid games where a consumer pays a consideration for the opportunity of receiving compensation that is derived from the introduction of new consumers into the gaming scheme. In addition to those activities that are considered unfair in all circumstances *per se*, certain trade practices, such as advertising campaigns, can also be prohibited under the UWG if they are considered unfair due to, for example, their aggressive nature. It must be noted, though, that Section 56 para 1 GSpG excludes any proceedings under the UWG being initiated against the holders of licences and concessions under the GSpG as regards their compliance with the requirement to advertise their products in a responsible manner.

While the GSpG prohibits minors from entering land-based casinos and slot machine arcades, as well as using slot machines outside arcades, protection of minors is, in principle, regulated by the *Bundesländer* in local minor-protection laws (*Jugendschutzgesetze*)

and local betting acts. According to these laws, in general, minors are banned from entering betting premises. It should be noted that many local laws, however, do not restrict minors from participating in lotteries or exempt lotteries offered by the lottery monopoly from age restrictions. In Upper Austria, the legal age for gambling is 18, save for lotteries offered by the lottery monopoly (16 years).

Section 168 of the Austrian Criminal Code (*Strafgesetzbuch*, “StGB”) includes a prohibition on organising and/or promoting gambling without a licence according to the GSpG. Section 52 GSpG also contains a catalogue of administrative criminal offences subject to fines of up to EUR 22,000 or even EUR 60,000 in case of the provision of illegal gambling.

Skill games: Skill games do not fall under the definition of games of chance and, as such, are not subject to the GSpG. While there is no sector-specific regulation of skill games, general customer protection laws, e-commerce provisions and the Austrian Civil Code apply to skill games, social games and E-Sports, save for when such games consist of elements subjecting them to the legal regime of the GSpG (an element of chance, an element of consideration and a prize of money or money’s worth). Traditional games of skill are considered “permitted games” under the federal Austrian Trade Act.

As regards prize draws/prize competitions, besides the applicable UWG, it must be noted that taxes apply and are regulated within the GSpG.

2 Application for a Licence and Licence Restrictions

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

Austrian law requires only the operator to hold a licence. Advertising is considered a licensee’s accessory right.

In addition to the requirements described in question 2.2 below, the applicant (and/or its directors, if applicable) has to be considered reliable by the authority.

There are no licence requirements for B2B activities in Austria.

As regards betting and slot machines outside land-based casinos, some *Bundesländer* require premises licences under betting legislation and/or trade law.

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

Games of chance are subject to a federal gambling monopoly stipulated in Section 3 GSpG. The operation of (i) lotteries, and (ii) land-based casinos can be licensed according to Sections 14 and 21 GSpG respectively.

Lottery games, online gambling and VLTs: Lotteries are subject to a single licence pursuant to Section 14 GSpG – *de facto* constituting a monopoly. This licence may be granted to corporations established in the EU or EEA with a minimum share capital of EUR 109 million. A corporate seat in Austria is required unless the company has a comparable lotteries licence in its state of incorporation, is subject to a comparable gambling supervision and such supervisory authority cooperates with the BMF. If the applicant provides evidence for these criteria, it is sufficient to have a mere local presence.

In October 2012, the single licence, which is valid for the maximum statutory duration of 15 years, was again granted to *Österreichische Lotterien GmbH*, the only company ever to be licensed in Austria.

According to Section 12a GSpG, “electronic lotteries” are covered by the lotteries licence. Electronic lotteries cover all types of games of chance offered by electronic means, including casino-style games. As such, the scope of Section 12a GSpG is considered to cover all types of online gambling save for online betting, and exceeds the scope of lottery-style games the single licensee (monopolist) may operate offline. The licence also covers operating VLT outlets.

Casino games and poker: According to Section 21 GSpG, a casino applicant must be a corporation established within the EU or EEA under the same circumstances and applying the same restrictions applicable to the lottery licence. The minimum share capital is EUR 22 million. In 2010, the total amount of land-based casino licences to be granted for a maximum duration of 15 years was increased from 12 licences to 15. Following the expiry of the 12 “old” licences that had all been held by *de facto* monopolist *Casinos Austria AG*, these licences were again granted to the same company in two “packages”, one including the “city” locations and one including the “rural” locations of the existing land-based casinos.

The three new licences were individually granted by the BMF in a separate licence tender in 2014. The licence decisions were cancelled by the Federal Administrative Court (*Bundesverwaltungsgericht*) in 2015, which found the licence tender to be in violation of the principle of transparency under EU law. The Supreme Administrative Court (*Verwaltungsgerichtshof*) confirmed this decision in 2016. It is currently unlikely that the BMF will start a new licensing procedure for these three licences. The 12 licences which were granted to *Casinos Austria* remain valid.

Art 1 GSpG expressly defines poker as a game of chance. Poker is generally permitted only in casinos, with an exemption granted to poker casinos that are operated under licences issued on the basis of the Austrian Trade Act. Holders of such permissions may operate poker casinos until 31 December 2019 (transitional period).

Betting and slot machines outside land-based casinos: As previously stated, betting and slot machines are regulated at *Bundesländer* level. Due to the varying ages (some dating back to as early to 1919, others having entered into force in 2018) and quality of the local laws, licensing requirements as well as the exact product scope and licence term differ significantly. **Betting licences** are generally available without quantitative restrictions. In general, applicants have a **right to be granted a betting licence** after having fulfilled all legal requirements. Betting licences may be granted to natural persons as well as to companies. As for slot machines outside casinos, an applicant must be based in the EU or EEA. Further, the applicant must be a company with a supervisory board and a registered office in Austria and it needs to fulfil certain stock capital requirements.

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

As regards lotteries and casinos, the BMF is required to grant licences based on a transparent tender procedure. Applicants have to prove that they fulfil the licensing criteria mentioned in Sections 14 and 21 GSpG respectively. There is an application fee of EUR 10,000 and a fee of EUR 100,000 payable when receiving a licence. Licensing procedures and requirements for the operation of slot machines outside casinos and betting depend on *Bundesländer* laws.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Restrictions are generally product-specific (please refer to question 2.6 below).

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

Lottery games: The lotteries licence was granted in 2012 and is valid until 2027.

Casino games: There are, in principle, up to 15 licences available, each of which has a maximum duration of 15 years. Six licences were granted to Casinos Austria in December 2012 and another six licences in September 2013.

Slot machines outside casinos: Maximum duration of 15 years.

Betting: Varies according to local laws at *Bundesländer* level.

A lottery or casino licence can be withdrawn by the BMF, if the licensee violates provisions of the GSpG or decisions by administrative authorities. The violation of licensing obligations can be sanctioned with fines of up to EUR 22,000. Withdrawing the licence is applied only as *ultima ratio*, if all other means (e.g. administrative penalties) fail. Essentially, the same applies for sports betting licences under *Bundesländer* laws. According to Section 53 GSpG, the authorities have the right to confiscate slot machines operated in violation of applicable legislation.

Decisions of the BMF to withdraw a licence can be appealed before the Federal Administrative Court (*Bundesverwaltungsgericht*); the withdrawal of a sports betting licence can be appealed before the relevant Regional Administrative Court (*Landesverwaltungsgericht*).

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

Betting: The product scope varies according to local laws; while some *Bundesländer* allow only sports betting, others (e.g. Vorarlberg, Salzburg) also allow social bets (e.g. on political events). Most *Bundesländer* have introduced restrictions on betting on certain events, including virtual events, restrictions on the maximum stakes (e.g. EUR 500 in Salzburg, Upper Austria) and restrictions on live betting or certain maximum opening hours for betting shops. A number of *Bundesländer* have limited anonymous play by introducing a requirement to use personalised customer cards for all bets with stakes that reach certain thresholds (e.g. EUR 70 in Carinthia). For instance, Vienna allows live betting only on end results and partial results. Vorarlberg has introduced minimum distance requirements for betting locations.

Slot machines outside casinos: Subject to Section 5 GSpG, the maximum stake per game is EUR 1 (EUR 10 in cases where the operator holds a casino licence). Winnings per game are limited to EUR 1,000 (EUR 10,000 for casino licensees). Players must not be able to play games simultaneously. After two hours of playing, the machine has to shut down automatically. There are also requirements on minimum distances between gaming halls and provisions on how many machines may be installed in one location (10 to 50 machines in gaming halls, one to three machines outside gaming halls, e.g. in restaurants). According to the GSpG, the number of slot machines outside casinos is limited to a maximum

of three licences per *Bundesland*. Further, there is a restriction of a maximum of one machine per 1,200 inhabitants. A number of further restrictions include, e.g., minimum distance requirements between gaming machines.

VLTs: The operation of VLTs is subject to the lottery monopoly. The main legal restrictions regarding licensees are stipulated in the GSpG. According to the GSpG, in municipalities of more than 500,000 inhabitants, there must be at least two kilometres between a VLT outlet with more than 15 machines and a casino. Otherwise, the distance between venues with more than 15 machines must be 15 km.

Casinos and lotteries: There are no restrictions on maximum stakes or pay-outs. Section 56 GSpG obliges casino and lotteries licensees to restrict their advertising to a “responsible scale” (*verantwortungsvoller Maßstab*); however, non-compliance with this provision effectively remains unsanctioned, in particular as the UWG does not apply. Advertising illegal gambling carries an administrative penalty of up to EUR 22,000.

2.7 What are the tax and other compulsory levies?

Gaming and betting taxes are levied at the point of consumption and apply irrespectively of whether or not the operator holds a licence in Austria. Further, according to Section 6 para 9 of the Austrian VAT Law (*Umsatzsteuergesetz*), betting and games of chance are exempt from 20% VAT, save for draws placed on slot machines outside casinos and VLTs under the lotteries licence. Operators have to pay the following taxes:

Product	Tax rate
Betting (offline and online)	2% tax on stakes
Online gambling (“electronic lotteries”)	40% on gross gaming revenue (“GGR”) (stakes minus winnings)
Lottery games	2–27.5% on stakes
Slot machines outside casinos and VLTs under the lotteries licence	10% on net gaming revenue (“NGR”) + municipal fees
Land-based casinos	30% GGR (stakes minus winnings minus bonuses); slot machines in casinos: 30% on NGR (stakes minus winnings minus VAT)
Other slot machines and VLTs	30% on NGR
Other offline games of chance	16% on stakes

2.8 What are the broad social responsibility requirements?

Social responsibility measures mainly include providing staff with responsible gaming training.

The GSpG provides for a number of player protection regulations, most of which have to be fulfilled by an operator in order to receive a licence. The Austrian Gambling Act regulates, for instance, access to casinos (see question 2.6 above). Some of the *Bundesländer* betting acts provide that players must be able to self-exclude. Further, operators are obliged to observe new anti-money laundering (“AML”) rules provided by the FM-GWG (see question 2.9 below).

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

The GSpG also contains provisions regarding the protection of minors. The AML provisions in the GSpG largely refer to the

new Capital Markets Anti-Money Laundering Act (*Finanzmarkt-Geldwäschegesetz*, “FM-GWG”) that entered into force on 1 January 2017. The amendments – enacted to implement the EU’s 4th AML Directive – increased the AML-related obligations of gambling operators licensed under the GSpG. According to the new AML provisions, gambling providers are subject to enhanced due diligence obligations, e.g. stricter customer identification, regarding suspicious financial transactions or customers living in high-risk countries. With the entry into force of the new AML Act, states such as Upper Austria and Styria are passing legislation which may affect player verification.

The local betting acts have been amended to implement AML provisions as required by the EU’s 4th AML Directive. Amendments to the Carinthian Betting Act entered into force in January 2018 and amendments to the Upper Austrian Betting Act entered into force in June 2018. On 7 July 2018, an Act amending the Vienna Betting Act entered into force (with some provisions becoming effective three to six months following the official announcement). The Act implements the 4th AML Directive, broadens the definition of a betting intermediary, and introduces stricter player protection measures and licensing requirements.

All suspicious activities must be reported to the Financial Intelligence Unit (*Geldwäschemeldestelle*). Moreover, licensees must nominate an AML officer and train their employees regarding AML risks and AML risk avoidance. Special provisions apply to dealing with politically exposed persons. Land-based casinos and slot machine operators are obliged to check the identity documents of all customers.

3 Online/Mobile/Digital/Electronic Media

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

Online gambling: The GSpG mentions online activity in Section 12a, defining so-called “electronic lotteries” as games “*in which the player participates directly using electronic media and the outcome is decided centrally and provided on electronic media*”. The operation of “electronic lotteries” is subject to the single lottery licence, thereby constituting a *de facto* monopoly for online gambling. Section 12a GSpG does not further describe the product scope. The BMF (and the current *de facto* monopoly holder, *Österreichische Lotterien GmbH*) consider the licence to cover all games of chance offered online, including online casino games, which are outside the scope of the products that *Österreichische Lotterien GmbH* may offer offline. As regards compliance of the Austrian (online) gambling monopoly with EU law, please see question 4.3 below.

Online betting: Licences for (in general, land-based) sports betting are granted by the *Bundesländer*, which apply if sports betting is offered in the territory of a certain province (e.g. in a betting shop). Some Austrian provinces have extended the applicability of their legislation to online operators whose servers are located in the respective province (e.g. Salzburg). Betting legislation at *Bundesländer* level is not considered to apply to operators located outside the respective territory; neither does it subject them to any local licensing obligation. In general, Austrian law currently does

not contain provisions on the blocking of Internet service providers (“ISPs”) or payment service providers (“PSPs”).

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

Sanctions provided for the illegal offer of land-based gambling also apply to online gambling. This applies, in particular, to the administrative fines described in question 1.2 above.

Blacklisting websites, ISP and financial blocking are not part of the sanctioning measures of Austrian law. Despite doubts as regards compliance of the (online) gambling monopoly with EU law, the BMF firmly considers it illegal to offer online gambling without an Austrian licence.

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

The GSpG contains basic provisions regarding the operation of slot machines and video lottery terminals (“VLTs”). Further details are provided in the laws of the *Bundesländer*. There are several technical requirements concerning slot machines, including adequate warning and data protection systems in case of technical failures. Further, there is a minimum duration for certain games and players are only allowed to play for a maximum amount of time, after which the slot machine must automatically switch off for a cool-off period. Further, certain pay-out ratios must be applied. The technical requirements must be evidenced by a technical expert opinion. Slot machines must be connected to the Federal Computing Centre (*Bundesrechenzentrum*).

Some *Bundesländer* have added technical requirements for betting terminals to their laws, including that terminals must not enable placement of bets by more than one person (including by connecting terminals with other terminals or gadgets via Bluetooth or WiFi). Betting terminals must have a serial number that needs to be submitted to the authorities. In some *Bundesländer*, betting terminals may only be operated if a specifically trained responsible person is present, and the terminal must be able to store all data on placed bets in a so-called “electronic betting book” or database. In some *Bundesländer*, stake limits for betting terminals apply.

The main legal and technical requirements for operating VLTs are stipulated in the GSpG. VLT outlets require a location permit issued by the BMF. Further, VLTs must be connected to a central server operated by the Federal Computing Centre.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

In the first place, the operators are held liable for violations of the GSpG. However, directors and other legal or natural persons supporting illegal activities carried out by the entity in connection with gambling (e.g. advertising illegal gambling) can also be subject to sanctions under the GSpG and/or Section 168 StGB.

Further, participation in illegal gambling as a regular source of income may be sanctioned under Section 168 StGB. A similar provision is also included in the GSpG, sanctioning the participation in unlicensed “electronic lotteries” by means of administrative fines.

4.2 What form does enforcement action take in your jurisdiction?

Recently, enforcement measures have been heavily concentrated on the allegedly illegal provision of slot machines. Besides fines, sanctions include the confiscation of slot machines.

Most local authorities have also consistently taken a strict approach towards the operation of allegedly illegal offers in retail betting shops. For example, local authorities have closed licensed betting shops and confiscated betting equipment, arguing that the operators do not observe restrictions on the betting offer, such as certain restrictions on live betting.

Given the remaining doubts on the compliance of the gambling monopoly with EU law (see question 4.3 below), Austrian authorities currently still seem reluctant to take enforcement measures against online gambling operators offering their products under the EU market freedoms. Due to the point of consumption taxation, the tax authorities also enforce tax provisions against operators which do not hold an Austrian licence.

In particular, criminal sanctions under Section 168 StGB are being applied only very rarely, which is due to the administrative sanctions stipulated in the GSpG taking precedence over Section 168 StGB in case an offence could be sanctioned under both provisions.

There is no case law on authorities applying sanctions against players taking part in unlicensed gambling or betting offers.

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

As Austria is a Member State of the EU, Austrian law is heavily influenced by EU law, including case law from the Court of Justice of the European Union (“CJEU”). According to the CJEU, any national measure hindering the exercise of the EU market freedoms or rendering the exercise of these rights less attractive must: be justified by overriding public interest objectives; be suitable for securing the attainment of these objectives; not go beyond what is necessary to achieve these objectives; and be applied in a non-discriminatory manner.

Conformity of Austrian gaming legislation with EU law has often been tested in national court proceedings, with several cases having been referred to the CJEU (*Engelmann, Dickinger and Ömer, HIT and HIT Larix, Pfleger, Admiral Casinos and Online Games*). These rulings have led to various reforms of the GSpG (including the introduction of the requirement for transparent licensing procedures). The CJEU concluded that the Austrian *de facto* monopoly “*appears to be disproportionate*”. The Austrian case law is currently not consistent as regards the compatibility of the Austrian *de facto* monopoly with EU law. In August 2016,

the Austrian Constitutional Court was dealing with a request put forward by the Supreme Court (*Oberster Gerichtshof*) to rule on the compatibility of the Austrian gambling monopoly with the Austrian Constitution, given that the Supreme Court’s 4th Chamber had held the gambling monopoly to be contrary to EU law. The Constitutional Court (*Verfassungsgerichtshof*) rejected the Supreme Court’s referral for formal reasons but ruled on a number of administrative complaints filed by slot machine operators, which were based on the same arguments as the referral of the Austrian Supreme Court, confirming the compliance of the GSpG with EU law and the Austrian Constitution. In November 2016, the Supreme Court issued its final decision on the case it had referred to the Constitutional Court, stating that the questions regarding the monopoly’s compliance with EU law had been sufficiently clarified. In May 2017, the Supreme Court again issued a decision reiterating its view that the GSpG is in line with EU law.

Although the three Austrian high courts appear to take a similar approach as regards the compatibility of the GSpG with EU law, the Regional Administrative Court of Upper Austria (*Landesverwaltungsgericht Oberösterreich*) has issued several contrary decisions and submitted cases regarding the compatibility of the Austrian gambling regime for preliminary ruling to the CJEU. There are two preliminary ruling requests, regarding the compatibility of the Austrian gambling legislation with EU law, currently pending before the CJEU: *Gmalieva* (C-79/17) and *Gmalieva and Naderhirn* (C-633/17).

4.4 Are gambling debts enforceable in your jurisdiction?

Section 1271 of the Austrian Civil Code provides that, in general, gambling debts are unenforceable. A gambling debt is considered *obligatio naturalis* and cannot be enforced before the court. However, Section 1274 of the Austrian Civil Code provides an exception for operators licensed in Austria.

5 Anticipated Reforms

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

As noted above in question 2.9, local betting acts have been amended mainly to implement AML provisions as required by the EU’s 4th AML Directive. Further, the *Bundesländer* are in the process of updating their betting laws (with some still dating back to 1919), e.g. the new Salzburg Betting Act entered into force on 1 June 2017. The new Styrian Betting Act has been passed by the Styrian parliament and entered into force on 1 January 2018. The new Upper Austrian Betting Act entered into force on 1 June 2018.

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Dr. Thomas Talos, LL.M. (Virginia) is a founding partner of Brandl & Talos and an expert on M&A, capital markets, corporate law and international gambling law.

He advised on bwin's IPO, has led all acquisitions in the company's history, led the company's merger with PartyGaming Plc in 2011 and advised on bwin.party's takeover by GVC Holdings PLC, completed in February 2016; as well as GVC's GBP 4 billion acquisition of Ladbrokes Coral Group plc, completed in March 2018. He continues to advise GVC on legal and regulatory issues.

Thomas advises gaming companies at an international level and is highly regarded for his specific industry knowledge in the DACH region (Germany, Austria and Switzerland), where he provides legal advice and regulatory guidance to operators active or seeking to become active in these markets. In January 2017, Thomas was mandated as Tipico Group's counsel. Tipico operates branches in Germany, Austria, Croatia and Gibraltar. In summer 2018, Thomas advised Sportradar Group and its founder and CEO Carsten Koerl as lead counsel on the exit of EQT and the sale of shares to Canada Pension Plan Investment Board and Silicon Valley-based growth equity firm TCV. The deal, valued at USD 2.4 billion, is one of the largest tech deals in the DACH region to date.

Thomas is co-editor of a comprehensive commentary on Austrian EU merger law and co-author of *Social Gaming in Europe*.

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Mag. Nicholas Aquilina is an Attorney at Brandl & Talos, specialising in international gaming, betting and entertainment law, European Union law, Social Gaming, E-Sports, Fantasy Gaming, Skill Gaming, payments and cryptocurrencies as well as E-Commerce.

Nicholas provides regulatory, commercial, general corporate and transactional legal advice to various leading international online and land-based gaming and betting companies. This includes regular advice and representation of clients before national regulators, at European associations, before European Union institutions and the Court of Justice of the European Union. Nicholas has assisted clients in numerous licensing procedures across Europe and the US.

Nicholas has provided regulatory and transactional advice on numerous large-scale transactions in the gaming and betting sector. Most recently, he advised GVC Holdings Plc on the acquisition of Ladbrokes Coral Group plc (March 2018; deal value: GBP 4 billion), London-based private equity fund Novalpina Capital LLP on the acquisition of Estonian casino operator Olympic Entertainment Group (March/April 2018; deal value: EUR 300 million) and Sportradar Group on regulatory matters related to the exit of EQT and sale of shares to Canada Pension Plan Investment Board and Silicon Valley-based growth equity firm TCV (July 2018; deal value: USD 2.4 billion).

Since joining Brandl & Talos in 2009, he frequently contributes to Austrian and international legal journals and regularly speaks at international conferences, including International Masters of Gaming Law, the International Association of Gaming Regulators, the Gaming Regulators European Forum, the iGaming Forum, iGB, SiGMA and IIR – Austria's leading gambling conference. He is a co-author of *Social Gaming in Europe*.

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Brandl & Talos is one of Austria's leading law firms in the areas of capital markets law, banking, corporate/M&A, white-collar crime, as well as **national and international gaming and entertainment law**.

The Team has been advising clients in the gaming and betting industry **for more than 20 years** and gained **significant experience** through advising bwin Interactive Entertainment AG from its early days as a small Austrian start-up to its IPO and becoming one of the world's leading publicly listed online gaming companies. Following its merger with PartyGaming Plc and the subsequent takeover by GVC Holdings PLC, Brandl & Talos maintained its role as lead regulatory advisor and advised on GVC's GBP 4 billion acquisition of Ladbrokes Coral Group plc, completed in March 2018.

Today their clients include numerous **major players** in the gaming and betting industry, such as GVC Holdings Plc, Tipico, Sportradar, Century Casinos, Olympic Entertainment Group and the European Betting and Gaming Association ("**EGBA**").

Many years of experience in advising on international transactions in the gaming and entertainment sector enable the Team to offer clients transactional, strategic and regulatory advice, and make it possible to cover both the transactional and the specific regulatory aspects of gaming and betting law within this industry.

Belgium



Sirius Legal

Bart Van den Brande

1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Gaming Commission.	Gaming Commission.
	Poker		
	Bingo		
Betting	Betting	Gaming Commission.	Gaming Commission.
	Sports/horse race betting (if regulated separately to other forms of betting)		
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)		
Lotteries	Lotteries	Gaming Commission.	Gaming Commission.
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Gaming Commission.	Gaming Commission.
	Skill games and competitions with no element of chance		

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

All matters that are subject to the Law of May 7, 1999 (*Wet van 7 mei 1999 op de kansspelen, de weddenschappen, de kansspelinrichtingen*

en de bescherming van de spelers, as amended by the two laws of January 10, 2010) are regulated by the Gaming Commission. This includes all gambling and betting activities.

Matters that fall outside the scope of this law, due to the fact that they are not considered games of chance, are: promotional contests that do not include an element of chance (this excludes sweepstakes); sporting activities; games that offer no financial gain and only allow the player to continue playing for a maximum of five consecutive times; card games or parlour games that do not offer any financial gain and are played outside gaming establishments; and games exploited by amusement parks or fairs and occasional games organised by local associations no more than four times a year on account of a special event or by an unincorporated association with a social or charitable cause or a non-profit organisation for a social or charitable cause, that require only a very limited bet and can only muster a material advantage of limited value to the gamblers.

The Gaming Commission is a commission composed of a president and two representatives from each of the six competent Ministries (Ministry of Justice, Ministry of Finance, Ministry of Economic Affairs, Ministry of Internal Affairs and Ministry of Public Health).

Local authorities in turn regulate building and exploitation permits for casinos and gambling or betting halls. Permits do not necessarily have the same conditions or the same duration as gambling licences, which has led, in 2017, to the difficult situation whereby certain casinos must renew their exploitation permits for 30 years, even though it is uncertain that they will retain their gambling licence when this comes up for renewal in one or more years' time.

The Law of May 7, 1999 on games of chance, bets, gaming establishments and the protection of players, as amended by the law of January 10, 2010 (*Wet van 7 mei 1999 op de kansspelen, de weddenschappen, de kansspelinrichtingen en de bescherming van de spelers*, as amended by the two laws of January 10, 2010), explicitly states that all games of chance and bets and the exploitation of gaming establishments are prohibited unless they are licensed by the *Kansspelcommissie*. Offering these unlicensed games is prohibited, but it is also prohibited to promote them, and to participate in them, if you are aware of their unlicensed nature.

Games of chance are all activities that combine a direct or indirect payment by the player with the chance to win or lose something insofar that this chance depends, even partially, on coincidence.

The consequence of this is that commercial contests, sweepstakes, lotteries organised by advertisers, private poker games and bingo games are restricted or even forbidden.

Other applicable legislation includes Book VI of the Belgian Commercial Code concerning Consumer Protection and Market Practices (*Boek VI van het Wetboek Economisch Recht betreffende Consumentenbescherming en Marktpraktijken*), which contains a

series of rules that also apply to gambling providers (information to the consumer, fair trade practices, distance sales for online gambling, etc.).

The Law of December 31, 1851 (*Wet van 31 december 1851 op de loterijen*) gives the Belgian National Lottery a monopoly on all lottery games, scratch card games with money prizes and tombola games with very strict and limited exceptions for tombola games organised for a good cause.

Several articles in the Belgian Penal Code sanction illegal gambling activities (articles 301, 302, 303 and 304 of the Belgian Penal Code – *Strafwetboek*).

Local building and exploitation regulations are relevant as far as permits for physical offline casinos and gambling halls are concerned.

Also relevant is the self-regulating Sector Code on Advertising for Gambling activities, dating back to October 2016, which will be replaced by a new law that will limit advertisement for gambling activities by the beginning of 2019.

2 Application for a Licence and Licence Restrictions

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

All gambling and betting, both online and land-based, requires a licence. The licence system is based on a closed number of licences per category (see question 2.2) and with separate licences for online activity that can only be obtained by providers that are already in possession of a land-based licence.

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

The law distinguishes nine types of licences.

Gaming industry providers must, depending on the nature of their activities, obtain one or more of the following licences:

- Class 1 activities (casinos) require a licence A. If activities include the offering of games or bets over the internet, an additional licence A+ is required.
- Class 2 activities (amusement arcades) require a licence B and, if the activities take place over the internet, an additional licence B+.
- Class 3 activities (establishments that sell alcohol, and cafés) require a licence C, for the permission to exploit a maximum of two games (bingo and/or one-ball).
- Class 4 activities (bookmakers) require a licence F. To organise bets, a licence F1 is required. Bookmakers that take bets on the account of licence F1 holders (gaming establishments) require a licence F2. For betting over the internet, an additional licence F+ is required.

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

Applications should be filed with the Gaming Commission by registered letter containing the form that can be found in Annex 1 of several Royal Decrees:

- For Class A: *Koninklijk besluit van 19/07/2001 betreffende de werking en het beheer van de kansspelinrichtingen klasse I, de wijze van aanvraag en de vorm van de vergunning klasse A.*

- For Class B: *Koninklijk besluit van 22/12/2000 betreffende de werking en het beheer van de kansspelinrichtingen klasse II, de wijze van aanvraag en de vorm van de vergunning klasse B.*
- For Class C: *Koninklijk besluit van 22/12/2000 betreffende de werking en het beheer van de kansspelinrichtingen klasse III, de wijze van aanvraag en de vorm van de vergunning klasse C.*
- For Class D: *Koninklijk besluit van 20/06/2002 betreffende de modaliteiten van de aanvraag, de vorm van de vergunning klasse D en de vereiste bekwaamheden en getuigschriften voor het uitoefenen van een beroepsactiviteit in een kansspelinrichting klasse I of II.*
- For Class E: *Koninklijk besluit van 22/12/2000 betreffende de modaliteiten van de aanvraag, de vorm van de vergunning klasse E.*
- For Class F1: *Koninklijk besluit van 22/12/2010 betreffende de vorm van de vergunning klasse F1, de wijze waarop de aanvragen voor een vergunning klasse F1 moeten worden ingediend en onderzocht en de verplichtingen waaraan vergunninghouders F1 moeten voldoen inzake beheer en boekhouding.*
- For Class F2: *Koninklijk besluit van 22/12/2010 betreffende de vorm van de vergunning klasse F2, de wijze waarop de aanvragen voor een vergunning klasse F2 moeten worden ingediend en onderzocht en de verplichtingen waaraan vergunninghouders F2 moeten voldoen inzake beheer en boekhouding.*
- For Class G1: *Koninklijk besluit van 21/06/2011 betreffende de vorm van de vergunning klasse G1, de wijze waarop de aanvragen van een vergunning klasse G1 moeten worden ingediend en onderzocht en de verplichtingen waaraan de houders van deze vergunning moeten voldoen.*

This form will be sent to the applicant by the Commission at the applicant’s request. For Class G and F licences, an electronic procedure is also possible.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Every licence held by a natural person requires that the person is in full possession of their civil and political rights and behaves in a manner which fulfils the requirements of their position. If the licensee is a legal entity, its directors and managers need to meet those same requirements (Articles 31, 36, 41, 43/5, 43/10, 45, 50).

Holders of licences A, B, C, E, F1, F2, G1 or G2 need to obtain a statement from the FOD of Finance, which states that all fixed and undisputed tax liabilities are satisfied.

If the holder of a licence A, B, E, F1, F2, G1 or G2 is a natural person, they need to be a subject of an EU Member State. Legal entities (which cannot be a non-profit organisation) should be incorporated in compliance with Belgian law, or the law of an EU Member State.

A holder of licence A, B, E, F1 or F2 needs to present proof of their credibility and financial capacity and must at all times give the Commission meticulous intelligence which offers transparency, the operations and the identity of the shareholders, and it must monitor all future alterations in these matters.

All holders of licences A or B have to be registered in the *Kruispuntbank van Ondernemingen* (companies register) as a commercial company.

There are only nine A licences available in Belgium (article 29), which means that there are only nine casinos within the entire country. They are only allowed on the territory of the municipalities of Blankenberge, Chaudfontaine, Dinant, Knokke-Heist, Middelkerke,

Namen, Oostende, Spa and one of the 19 municipalities of the Brussels Capital Region. In each of these municipalities, only one casino is allowed, and only after the municipality enters into a concession agreement with the applicant. Both table games and automatic games are allowed; the average hourly loss for each game is set at 70 EUR.

A licence A can only be granted to applicants in possession of a valid concession delivered by the municipality in which the Class 1 gaming establishment is to be located.

At present, there are 180 licence Bs, of which 179 are actually in use by a licence holder. A 2015 law change decided to bring this number down to 150 by the end of 2017. A licence B establishment cannot be established in close proximity to schools, hospitals, places frequently visited by youths, places of worship or prisons. The average hourly loss is set at 25 EUR.

To be granted a licence B, the licensee needs to present an agreement, as delivered by the municipality in which the Class 2 gaming establishment would be located, which is concluded on the condition of the granting of the licence.

The number of F1 licensees is limited to 34 on Belgian territory. Mobile betting offices are limited to a total of 60 licence F2 holders. Fixed offices are limited to 1,000 licence holders. Following a 2015 law change, this number will be brought down to 600 by the end of 2017.

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

- Class A licences are valid for 15 years.
- Class B licences are valid for nine years.
- Class C licences are valid for five years.
- Class E licences are valid for 10 years.
- Class F licences are valid for nine years.
- Class G1 licences are valid for five years.
- Class G2 licences are valid for one year.

Licences can be revoked or suspended if licence conditions are no longer met. There is no periodical review, but there is constant monitoring by the Gambling Commission.

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

The key limit for licence As is the minimum age of customers for entering a casino, set at 21.

For licence B establishments, the minimum age for entry is 18. It is forbidden to place a restaurant or bar in the area where gambling activities take place.

For licence Cs, the minimum age for customers is 18, but contrary to licence As and Bs, the law does not make age verification at the doors obligatory.

For licence F2s, the minimum age for customers is 18 years old.

For licence G2s, customers must also be 18 years old.

2.7 What are the tax and other compulsory levies?

The taxation of games of chance is regulated by the “code of taxes equal to the income tax” (*Wetboek van de met de inkomstenbelastingen gelijkgestelde belastingen van 23 november 1965*), articles 43 through 93.

The taxation of games of chance is a regional competence, so each of the three regions has separate tax rates. At present, taxes are collected by the Federal Government, but as of January 1, 2017, the Flemish Region will take responsibility for tax collection on its territory.

A general tax of 15% (11% in the Walloon area) is levied on the gross amounts of wagers. There are exclusions from this tax, including: national lotteries; pigeon races, if the participant is the one wagering; and games of chance organised by non-profit organisations.

A tax of 15% is levied on all horse and dog races. This amount is levied on the gross margin. A 2015 decree of the Flemish Government (*decreet van 3 juli 2015 houdende bepalingen tot begeleiding van de begroting 2015*) extends the 15% flat tax to horse and dog races and sporting events outside the EU, whereas before, these were not subject to taxation.

If the wagers are organised online, 11% is levied on the gross margin, being the result of the total amount wagered minus the amount paid to the people betting.

Taxable persons are those placing bets.

Besides this general taxation system, casinos are also taxed on the gross margin, depending on the type of game played.

A fixed tax is levied on the gaming machines themselves, which is applicable to machines in Class A, B and C establishments.

2.8 What are the broad social responsibility requirements?

The game room has to be kept strictly separated from spaces in the gaming establishment that serve a different purpose, and also from spaces outside the gaming establishment that are accessible to the public, so that the gambling games cannot be followed from outside the game room.

A draft of a Code of Ethics has been on the table for over three years now, but has yet to be approved. This Code will most likely include the following subjects:

- privacy of the game players;
- a prohibition on the exploitation of unapproved games;
- the obligation to inform the Commission when organising demonstration games;
- a prohibition on focusing publicity on vulnerable persons;
- the prohibition of certain content in publicity campaigns;
- the obligation to inform game players and the staff;
- a guarantee of payment upon winning; and
- a prohibition for staff on accepting gifts from game players.

In October 2016, the sector agreed upon a self-regulation Sector Code on Advertising for Gambling Activities, including, among others, the obligation to refrain from advertising towards minors and to incorporate warning messages in all advertising materials.

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

Suppliers of Class 1 gaming establishments (casinos) have to inform the Belgian Financial Intelligence Processing Unit (CTIF-CFI) if they notice that:

- a client sells or buys counters using a false identity, an alias, or any other way that makes identification of that person more difficult;

- a client sells or trades counters for an amount of 1,000 EUR or more, coming from other casinos;
- a client purchases counters for an amount of 10,000 EUR or more, paid with cash or with a bank or credit card;
- a client purchases counters for an amount of 2,500 EUR or more using foreign currency;
- a client sells counters for an amount of 2,500 EUR or more for one or more cheques or bank transfers;
- a client purchases counters for an amount that is not proportionate with his financial situation;
- a client sells counters when his game play is not proportionate with a normal game pattern and the profit is absent or subordinate;
- a client deposits cash, cheques or others for an amount of 2,500 EUR or more;
- there is a payment of counters to a third party on the request of the client;
- there is a payment of counters and the client asks for a proof of payment; or
- there is a regular purchase or selling of counters by a client under the abovementioned thresholds, supposedly to avoid a declaration to the CTIF-CFI.

There are no specific rules regulating the use of virtual currencies or cryptocurrencies. What is important to know is that in a recent report on loot boxes in computer games (*Research Report on Lootboxes*, FPS Justice Gaming Commission, Brussels, April 2018), the Gambling Commission underlines that just because virtual currency is used in a game this does not mean that there is no wager, since it is generally accepted that it is sufficient that it is possible to be able to attribute a value to a wager (“*Kansspel*” in *Recht en Onderneming*, K. Andries, N. Carette and N. Hoekx, Die Keure, 2006, 249). Value can be defined as the degree of usability: specifically, items that the player finds useful or nice and for which he pays money. The Gaming Commission and the Highest Belgian administrative court (The *Raad van State* or Council of State) consider that neither the purchase of the game nor the subscriptions that are connected to games for playing online can be considered as a wager, but only the amounts that constitute real compensation for participating in the game and where it is possible for the wager (either in its original amount or augmented) to be returned to the player in the form of profit (Judgment no. 232,752 by the Council of State, dated 29 October 2015; *Research Report on Lootboxes*, FPS Justice Gaming Commission, Brussels, 2018, 9–14).

A differentiation must be made between a created currency value in the regular course of the game (game-play currency) and the paid currency (in-game currency). Game-play currency consists of virtual currencies (points, coins, crystals, etc.) that a player gets when playing the game but that he cannot necessarily purchase. It is a type of virtual reward system for the player. Usually he will be able to bet these currencies in the game at some point. This is not considered a “wager” or “bet”. The situation is different when it comes to currencies that can be purchased directly with money (in-game currency). In-game currency is an additional “layer” on top of the game whereby purchases are made in the game with money. So when the player purchases in-game currency to be able to participate in a game that will offer him a chance to win or lose, this will indeed constitute a wager in the sense of the Belgian Gaming and Betting Act because an asset value is brought into the game that serves as a participation fee/compensation fee for participating in a game that offers a chance to win or lose (*Research Report on Lootboxes*, FPS Justice Gaming Commission, Brussels, 2018, 10).

3 Online/Mobile/Digital/Electronic Media

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

Online activity is restricted, in the sense that a Belgian licence is required, and the required licences can only be acquired if the applicant can link his online activities to a land-based establishment that has the appropriate Belgian licence.

Licences from foreign jurisdiction are not recognised. Foreign operators need to acquire a Belgian licence. If they wish to offer online services, they need both the land-based and the online licence or they need to seek cooperation with the holder of a Belgian licence (land-based and online).

Only licence A holders can acquire a licence A+, which is the licence required to exploit online casino games in Belgium and to Belgian consumers. This also implies that the duration of the licence A+ is directly linked to the licence A that accompanies it. Furthermore, if the licence A is revoked, so is the A+.

For licence B holders, an additional licence B+ makes it possible to offer online games. This licence B+ is in its duration also linked to the licence B.

Licence F1 holders can apply for the additional licence F+, which gives them permission to offer their online services. This licence is also linked in its duration to the licence F1.

Mobile gambling (in-phone games) requires a licence G1, and media games require a licence G2. Both activities are under the scrutinous watch of the Gaming Commission.

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

Other applicable legislation includes Book VI of the Belgian Commercial Code concerning Consumer Protection and Market Practices (*Boek VI van het Wetboek Economisch Recht betreffende Consumentenbescherming en Marktpraktijken*), which contains a series of rules that also apply to gambling providers (information to the consumer, fair trade practices, distance sales for online gambling, etc.).

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

Depending on where terminal/machine-based gaming is offered, either a licence A (in casinos), a licence B (in amusement arcades) or a licence C (in cafés, bars and establishments that sell alcohol, and cafés where a maximum of two games is permitted (bingo and/or one-ball)) is required.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Natural persons, chairmen, managers and representatives shall bear civil liability. The same rule is applicable to shareholders of corporations that are not legal entities if the shareholders, managers or representatives have breached the relevant legislation.

4.2 What form does enforcement action take in your jurisdiction?

Unregulated supplies are strictly forbidden. Only supplies that are regulated and approved are legal. The gaming commission updates its “blacklist” on a regular basis. It currently contains around 100 providers. This blacklist contains the websites that are blocked in Belgium because they do not have the necessary licence.

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

The four freedoms of the Treaty on the Functioning of the European Union must be respected at all times.

4.4 Are gambling debts enforceable in your jurisdiction?

Gambling debts are by nature unenforceable obligations, but gambling debts towards licensed operators are considered enforceable.

5 Anticipated Reforms

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

Minister of Justice Koen Geens presented a preliminary draft bill in June 2018, together with a series of royal decrees that aim to better protect the player by restricting advertising for games of chance and expand the possibilities for local authorities to control betting and café games. The design has now been approved in the Council of Ministers and will soon be submitted to the parliament.

Advertising for games of chance will be prohibited:

- during the live coverage of sports competitions (regardless of the medium used). This means that no gambling advertisement may be broadcast during an interruption of a game, race or contest;
- 15 minutes before and after programmes that specifically address children and minors;
- before 8pm, except in the case of the broadcast of sports matches (before and after a sports competition that is broadcast live in the afternoon, gambling advertising is permitted, but not during the sports competition); and
- on sports equipment and equipment of underage sports teams.

Further measures:

- only one spot for gambling can be shown per advertising block; and
- all commercials will have to contain a message about responsible gaming and must state the minimum age, together with the message ‘gamble in moderation’.

Limitation of games of chance in pubs:

- the automatic machines that are placed in pubs such as electronic card games are brought under the control of the gambling commission and the municipalities;
- per café, a maximum of four devices is now set, that can only function with coins;
- all devices are to be equipped with an E-ID card reader to check the age condition of 18 years; and
- the municipalities will now decide on the granting of the permit for aircraft.

Fewer betting offices and public participation municipalities:

- the number of betting offices will gradually decrease from 684 to 600.



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SIRIUS.LEGAL

BUSINESS LAW FIRM

Sirius Legal is a Brussels-based Belgian boutique law firm, specialising in internet law, advertisement law, media and entertainment law, IP/IT, consumer protection and gambling. The Sirius Legal team is a small and young but experienced team of law professionals that try to offer tailor-made solutions to a wide range of clients, ranging from multinationals to individual players.

Sirius Legal has offices in Brussels, Antwerp and Mechelen.

Brazil

Edgar Lenzi



LenziAdvocacia / BetConsult

Marcelo Munhoz da Rocha



1 Relevant Authorities and Legislation

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

Relevant Product	Who regulates it in digital form?	Who regulates it in land-based form?	
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	<p>Gambling in Brazil has been illegal and without structured legislation since 1946. Brazil's legislation on gambling – Decree Law 3688/1941 – prohibits gambling and establishes the penalty for those who conduct it. According to this law, the operation of gambling in Brazil is a criminal misdemeanour. The mentioned Decree Law considers the following to constitute gambling:</p> <ul style="list-style-type: none"> ■ games in which winning or losing depends exclusively or mainly on luck; ■ betting on horse racing outside of a racetrack or other authorised area; and ■ sports betting. <p>After a reform in 2015, the legislation was changed to provide for a fine to be applicable to players or bettors who are found participating in gambling, live or online. The fine ranges from two thousand (2,000.00) reais to two hundred thousand (200,000.00) reais.</p> <p>However, Brazil is very close to having gambling legalised, as there are currently two bills being processed by the Brazilian Congress with that aim: Bill 442/1991 (at the Chamber of Representatives); and Bill 186/2014 (at the Senate).</p> <p>Also, PL 7413/17 (the new Tourism Bill) is ready to be voted on. This has an amendment that adds the legalisation of casino games, online games and bingo games (including regular bingo games as well as bingo games in soccer stadiums with a capacity of at least 15,000 people).</p> <p>On the jurisprudential side of the analysis, the Rio Grande do Sul Court of Justice has a consolidated jurisprudential position in recognising that any imputation of gambling operations should result in a declaration of atypicality. The main argument is that Decree Law 3,688/1941 was not welcomed by the Brazilian Constitution because it is not compatible with the Principle of Free Initiative and many other fundamental rights and guarantees.</p> <p>This discussion was taken to the Brazilian Supreme Court by means of an Extraordinary Appeal (RE 966.177) filed by the Public Prosecution Office of the State of Rio Grande do Sul.</p> <p>The Supreme Court has recognised that this matter has general repercussions; however, the Court has not yet analysed the matter.</p>	
	Poker	<p>Poker has been recognised by the Brazilian judicial system as a skill game, and therefore, buy-in poker tournaments may be conducted by poker operators. There is no entity responsible for granting specific poker licences. However, the operator must only conduct buy-in tournaments. In cases where a cash game is conducted, it can be interpreted as gambling, and therefore the operator could be charged for hosting gambling activities.</p>	<p>Poker has been recognised by the Brazilian judicial system as a skill game, and therefore, buy-in poker tournaments may be conducted by poker operators. There is no entity responsible for granting specific poker licences; however, regular licences and permits such as fire department approval apply, as do municipal authorisations (<i>alvarás</i>), for land-based poker clubs.</p>
	Bingo	<p>The commercial operation of bingo halls and bingo games is prohibited by the Brazilian legal system. However, there is a new possibility for bingo games in Brazil. Law 13,019/2014 authorises third-sector organisations (non-profit entities, cooperative entities, religious organisations, etc.) to carry out prize draws and promotions as a way of obtaining complementary funds to finance their own activities. This has opened a new set of possibilities that can be explored.</p>	
Betting	Betting	Betting is prohibited under Decree Law 3,688/41 (please see “Gaming” above).	

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Betting	Sports/horse race betting (if regulated separately to other forms of betting)	Horse race betting is authorised and legal in Brazil; however, only within racetracks. If horse race betting is done outside a racetrack it is considered gambling, and is therefore illegal. Sports betting is also prohibited under Decree Law 3,688/41, therefore there is no form of regulation. There is a possibility that sports betting might be legalised soon, in a licence grant format or operated directly by Caixa.	
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	Since fantasy sport is considered to be a skill game, similar to poker and others, it is a game in which the result does not depend exclusively or mainly on luck, but on the skills and strategy of the people who play them. Therefore, fantasy sports are not considered to be gambling; however, there is no regulation on this. It is not illegal, since it is neither gambling nor sports betting, so there is no entity responsible for granting licences.	
Lotteries	Lotteries	Caixa Econômica Federal ("Caixa") is a Brazilian public bank that holds the constitutional monopoly for federal lottery operation in Brazil. At the federal level, only Caixa may operate lotteries in Brazil. No licences are granted for private people to operate lotteries. Recently, Caixa has created a website that allows people to place lottery bets online.	
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	The model used for social games is legal in Brazil and does not require licences from any entity. Even social games inspired by gambling-type games are allowed, but without real money betting involved. There is no entity responsible for granting licences for social or skill games.	
	Skill games and competitions with no element of chance	Skill game competitions such as poker, chess, e-sports and others are allowed in Brazil, and do not fit under the legal definition of Gambling. There is no entity responsible for granting licences for social or skill games.	

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

Gambling in Brazil has been illegal and without structured legislation since 1946. However, the legalisation of gambling in the South American country is very close to becoming a reality; indeed, never in recent Brazilian history has the Brazilian Congress been so close to having the matter legalised and regulated.

The entire body of law on the subject (which is against gambling – casinos, bingo halls, slot machines, video-bingo, etc. and also sports betting) is based on Decree Law 3,688/41.

Although it is an old law (more than 75 years of age) it is still efficient, therefore it is applicable to this chapter.

According to this law, the following are considered gambling: games in which winning or losing depends mostly or only on luck; sports betting; and horse race betting done outside of a racetrack.

Therefore, the most popular types of gambling are currently prohibited: casino games; bingo games; cash game poker games; and sports betting. It should be noted, however, that buy-in poker tournaments are not considered gambling, like other skill game tournaments.

2 Application for a Licence and Licence Restrictions

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

Since gambling is prohibited, there are no such licences, permits or authorisations.

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

Please see question 2.1 above.

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

Please see question 2.1 above.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Please see question 2.1 above.

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

Please see question 2.1 above.

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

Since gambling is prohibited, this does not apply.

2.7 What are the tax and other compulsory levies?

Please see question 2.6 above.

2.8 What are the broad social responsibility requirements?

Please see question 2.6 above.

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

Please see question 2.6 above.

3 Online/Mobile/Digital/Electronic Media

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

As explained, the operation of gambling in Brazil is illegal. However, there are several websites that offer gambling services for Brazilian users, such as casino-type games and sports betting, among others.

It is illegal to conduct online operations from Brazil. Operators located inside the Brazilian territory will be liable for the penalties present in Decree Law 3,688/41 (simple imprisonment from 3 (three) months to 1 (one) year).

Operators located outside of the Brazilian territory are not subject to Brazilian criminal legislation, and therefore cannot be prosecuted as if they were local operators.

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

If the product to be offered is a gambling product – a game in which winning or losing depends mostly or exclusively on luck, sports betting or horse betting done outside of a racetrack – then it may not be conducted online, via mobile, digitally or electronically.

However, if the operator is aiming to develop a social game or a fantasy sports game or any other skill game without aleatory results, like the conducting of online buy-in poker tournaments, then he/she may do so. The restrictions are those established under Decree Law 3,688/41.

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

All types of slot machine are prohibited, as are video-bingo machines.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Liability is held by the person who establishes or hosts gambling in a public or publicly accessible place, whether they charge for entrance or not. This person will be liable to a penalty of imprisonment from 3 (three) months to 1 (one) year. As mentioned above, gambling

is considered to be: games in which winning or losing depends exclusively or mainly on luck; horse bets outside of the racetrack or of the place where horse bets are allowed; and sports betting.

In addition, a person who is found gambling, online or by any electronic way is liable to a fine of between R\$ 2,000.00 (two thousand reais) and R\$ 200,000.00 (two hundred thousand reais).

4.2 What form does enforcement action take in your jurisdiction?

The State Civil Police forces are most often responsible for investigating gambling operations that are linked to other crimes such as money laundering and corruption. The Public Ministry may also conduct investigations in the same way.

The Federal Police has also conducted several operations against gambling, which have also often led to the discovery of other crimes such as money laundering, tax evasion and corruption.

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

According to the Principle of Territoriality, which is applied within Brazil, Brazilian criminal law shall only be applied when the criminal offence happens inside the Brazilian territory. For this reason, it is not possible to introduce criminal legislation against operating and/or providing gambling formats from outside the Brazilian territory.

The mentioned Decree Law 3,688/41 has been recognised by the current Brazilian Constitution as a Federal Law, and is therefore applicable within the entire Brazilian territory.

The only way that Brazilian criminal law could be applied to actions which have taken place outside Brazil would be if there were an international treaty with such provisions.

As for State Laws, they may not provide for the criminalisation of actions. Only federal-level legislation may provide for this.

4.4 Are gambling debts enforceable in your jurisdiction?

The Brazilian Superior Justice Court has recently decided that gambling debts outside of the Brazilian territory may be judicially enforced inside the Brazilian territory. However, the same cannot be applied for gambling debts contracted inside Brazil, since it is an illegal activity.

5 Anticipated Reforms

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

A) PL 442/1911 and PLS 186/2014

First and foremost, there are the two gambling bills that are being processed by the Brazilian Congress, which are PL 442/1991 (the House of Representatives' Bill) and PLS 186/2014 (the Senate's Bill).

The Senate's Bill was discussed at the Constitutional and Justice Commission (CCJ) of the Senate. The vote by the Commission was for the rejection of the PLS. However, even after not being approved by the Senate's CCJ, the bill awaits inclusion on the Senate's Plenary agenda for a vote.

As for PL 442/1991 – the House of Representatives' Bill – it is currently waiting to be included on the Chamber's Agenda for a vote. In 2017, an Urgency Request for the vote of PL 442/1991 was brought

by the House's Plenary; however, no progress was made on this matter. The biggest issue with regard to the House's Bill is the fact that there is no consensus on what gaming types should be legalised.

B) The new Tourism Bill

There has been some movement, principally towards the approval of casinos, and possibly other forms of gambling like online gaming and bingo halls. The Chamber of Representatives' Plenary is analysing the PL 2724/2015 – which provides that the controlling of airline companies is allowed under foreign capital. Congressman Paulo Azi has presented a substitute bill for such PL, also adding the provisions of PL 7413/17, which is the new Tourism Bill. Some time ago, an amendment was put forward for the inclusion of integrated casino resorts only, which was the subject of much debate.

At the same time, Congressman Andrés Sanchez presented another amendment to the new Tourism Bill authorising the holding of games of fortune, such as bingo (regular bingo games and also bingo games in soccer stadiums with a capacity of at least 15,000 people), online games and also integrated casino resorts. However, the new Tourism Bill and its amendments have not been voted on yet.

Recently, Rodrigo Maia (Speaker of the Chamber of Representatives) offered his view on the legalisation of gambling. He believes that the regulation of gambling in Brazil is very important for the country and for Rio de Janeiro, creating jobs and generating income for the Public Administration. He explained clearly that he is in favour of legalisation, but that his preferred model is one of integrated casino resorts and online gambling. Also, he gave a guarantee that the matter, following debate, will be voted on in the Chamber.

C) LOTEX

During the past couple of years, the Brazilian Federal Administration has been trying to conduct a bidding process for LOTEX – the Brazilian Instant Lotteries. The initial idea was to grant a single licence to one operator or a consortium of operators. The Ministry of Finance – the entity responsible for the LOTEX bidding initially – has presented the lottery format at several roadshows in Las Vegas, London and in Rio de Janeiro. The bidding was supposed to happen in July 2018, but did not take place due to lack of interest.

However, the process will now be conducted by Caixa, according to Nelson Antonio de Souza (Caixa's President).

Caixa is redesigning the business model, with the aim of presenting a better opportunity for the interested bidding competitors. They intend to resume the process before the end of 2018.

D) The State Lotteries situation

There is, currently, a Constitutional debate about the existence of the State Lotteries, as well as on what they may or may not provide. The core of the discussion relates to the date of the State Lottery's creation.

State Lotteries created before Decree Law 204/1967 have the vested right to hold Lottery games, even with the constitutional change that granted the Federal Union the lottery monopoly in Brazil. The aforementioned State Lotteries may operate lottery games, including games with technological innovations.

There is, however, a discussion about the constitutionality and isonomy of this system in relation to the other States, i.e. those that did not have a Lottery before 1967. These States have started a lawsuit in the Brazilian Supreme Court in order to have this subject analysed by the judges. They wish to obtain a court decision that grants them the right to hold their own lotteries, competing with Caixa.

The mentioned dispute is under analysis by the Supreme Court and, depending on what they decide, a big window of possibility may open should the Court find that other States may have their own lotteries as well. They will not be able to have a huge variety of games; however, it is likely that numerical lottery-type games (e.g. scratch cards, keno, and maybe even sports betting) will be allowed.

E) The Brazilian Supreme Court discussion on the constitutionality or unconstitutionality of the gambling prohibition in Brazil

Also, there is a very important judicial debate about the constitutionality of article 50 of Decree Law 3,688/1941 (which is the piece of legislation that prohibits of Gambling in Brazil). The centre of this discussion is the possible atypicality of the conduct of holding/operating gambling activities in Brazil because, according to many judges and courts, Decree Law 3,688/1941 was not received by the current Brazilian Constitution (which dates from 1988).

This is the case because in order for a law that is prior to the Constitution to be valid, it must be received by the Constitution; in other words, it cannot be contrary to the principles, guarantees and values that the Constitution introduced to the legal system. If it is contrary to such principles, guarantees and values, it will be considered unconstitutional, and therefore should be considered to be outside of the legal system and produce no effects.

This discussion was taken to the Brazilian Supreme Court by means of an Extraordinary Appeal (RE 966.177) filed by the Public Prosecution Office of the State of Rio Grande do Sul, and it was determined by the Ministers that this possible non-reception of Decree Law 3,688/1941 should be ruled on by the Court before the end of 2018.

Note

Please note that the above answers are in accordance with the current legal situation in Brazil (September 2018), which may change following the country's general elections in October.

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Bulgaria

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Denitza Dimitrova



1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	State Commission on Gambling Bulgaria.	
	Poker	State Commission on Gambling Bulgaria – casino gaming licence covers poker operations.	
	Bingo	State Commission on Gambling Bulgaria.	
Betting	Betting	State Commission on Gambling Bulgaria.	
	Sports/horse race betting (if regulated separately to other forms of betting)	State Commission on Gambling Bulgaria – casino gaming licence covers poker operations; betting licence covers betting on sports events, greyhound and horse racing.	
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	Fantasy betting, i.e. betting on Virtual Sports/events, is regulated by the State Commission on Gambling Bulgaria under the betting licence without falling under different game types.	
Lotteries	Lotteries	State Commission on Gambling Bulgaria.	
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	State Commission on Gambling Bulgaria – the game/licence type is “raffle”.	
	Skill games and competitions with no element of chance	Not applicable.	

In addition to those mentioned in the table above, there is another licence type which covers the organisation of activities related to the manufacturing, distribution, servicing, import and distribution of gambling equipment. All licence types are non-transferable and give the rights only to provide services that are explicitly listed in the licence.

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

The Gaming Act, 2018, permits the offering of gaming services for both land-based and online operations only if a licence for a specific game type is granted to the organiser.

Only “legally capable individuals” of age for who no restrictions are provided in the Gaming Act or in other acts may participate in gaming. Persons with legal incapacity may receive tickets or tokens for participation in a conventional lottery, pools, and raffles only as a gift.

Organising gaming activities is forbidden in public state-owned and municipally-owned buildings and in the land belonging to them, in sites of the Ministry of Defence, Ministry of Interior, in buildings housing state administration structures, irrespective of the type of ownership over them, in educational, health care and medical institutions, and also in buildings which are co-owned, without having the prior notarised written agreement of all co-owners.

The activities listed above are forbidden to persons or on sites not having the respective licence issued by the State Commission for Gambling, as well as the actual performance of the activity under an issued licence if the Licence Certificate under Article 34, issued by the Chairperson of the State Commission for Gambling, has not been obtained.

Gaming is only allowed for persons of a legal age (over 18 years old).

2 Application for a Licence and Licence Restrictions

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

A valid licence issued by the State Commission on Gambling Bulgaria explicitly stating the type of game that will be organised, and an evaluation report by an approved gaming laboratory (approved

by the State Commission on Gambling Bulgaria) to confirm the compliance of the software or devices that will be used, is required in order to operate a gaming company in the territory of Bulgaria.

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

Gaming and activities under the existing Gaming Act may be organised by:

1. Companies registered in the Republic of Bulgaria or in another EU Member State, another state signatory to the European Economic Area Agreement, or the Swiss Confederation, meeting the requirements of the Act.
2. Sole proprietors – only gambling games on gambling machines and activities relating to the manufacture, import, distribution, and servicing of gambling equipment.
3. The state – only for supporting sports, culture, health care, education, and social services.
4. Non-profit legal entities designated to perform social work activity, registered under the Non-profit Legal Entities Act – in the cases stipulated by the Act.
5. Non-profit legal entities registered in another EU Member State, in another state signatory to the European Economic Area Agreement, or in the Swiss Confederation, through a branch designated to perform social work activity – in the cases stipulated by the Act, with the exception of political parties.

A licence for organising games in a casino may only be issued to a limited liability company or a joint stock company with registered shares.

Each game and activity under the said Regulations within the territory of the Republic of Bulgaria may **only** be organised under a licence issued by the State Commission for Gambling.

Foreign persons may participate in the companies listed above in cases where in addition to all other requirements set forth by the Regulations, those companies, directly or through companies under their control within the meaning of the Additional Provisions of the Commercial Act, meet at least one of the conditions below:

1. To organise games in a casino at a hotel with three or more stars where the hotel is owned by the company or a company under its control.
2. To have also invested in organising other activities in the territory of the Republic of Bulgaria, have funds not less than the BGN equivalent of EUR 10,000,000 at the official exchange rate of EUR to BGN, and have made available not less than 500 jobs.

The requirements shall not apply to foreign persons that are registered in another EU Member State, another state signatory to the European Economic Area Agreement, or the Swiss Confederation, or are citizens of such a state.

Persons that shall not be issued a licence

A licence for organising gaming activities, for manufacturing, distribution and servicing, and for import, distribution and servicing of gaming equipment shall not be issued to a sole proprietor or a legal entity, including related persons within the meaning of the Additional Provisions of the Commercial Act, where one of the following conditions are present:

1. An owner, partner, shareholder with qualified interest, manager, member of management or controlling body of a company or non-profit legal entity, who has been found guilty of an intentional crime of general nature, except in cases where the same has been officially rehabilitated.
2. The applicant or any of the persons under item 1 above have been declared bankrupt and any creditor has remained

unsatisfied, and three years have not elapsed since the date of effectiveness of the court decision which declared the bankruptcy.

3. The applicant or any of the persons under item 1 above have committed crimes against the financial, tax, or social security system and this has been established by an effective verdict, or they have overdue public liabilities exceeding BGN 5,000, and no security amounting to the principal and interest has been provided.
4. The applicant or any of the persons under item 1 have performed activities as a sole proprietor and have participated in a company, the licence (permit) of which for organising gambling activities has been permanently revoked, or against which a penalty has been enforced for performing gambling activities without a licence.

A licence for organising gaming activities, for manufacturing, distribution and servicing, and for import, distribution and servicing of gambling equipment for gambling activities shall not be issued to a sole proprietor or a legal entity in case of unproven source of the funds for organising games and activities under the existing Regulations.

A licence for organising games shall not be issued where a person directly involved in organising the game or in the management of the gambling hall or the casino has been convicted of an intentional crime of general nature, except in cases where the same has been officially recognised as reformed.

A licence for organising games and for performing related activities shall not be issued where the licence for organising gaming or activities of the persons, as well as of their owners, partners, shareholders with qualified interest, managers, members of management or controlling body has been revoked in other EU Member States, in signatories to the European Economic Area Agreement, or in the Swiss Confederation, and this has been confirmed in official correspondence by the competent authorities of the respective state.

Organising gaming is forbidden in public state-owned and municipally owned buildings and in the land belonging to them, in sites of the Ministry of Defence, Ministry of Interior, in buildings housing state administration structures, irrespective of the type of ownership over them, in educational, health care and medical institutions, and also in buildings which are co-owned, without having the prior notarised written agreement of all co-owners.

Physical and/or legal persons are prohibited to install and/or use gaming equipment or communication equipment and/or accept wagers, and/or pay out winnings, or assist or intermediate in any other way for the actual performance of activities of organising gaming without a licence.

Storage of gaming equipment for organising games outside the sites for which a licence is issued is prohibited.

Use of equipment which is not approved by the State Commission for Gambling, or for which the tax due under the Corporate Income Tax Act is not paid, is prohibited.

The manufacture, distribution and servicing, as well as import, distribution and servicing of gaming equipment without a licence issued by the State Commission for Gambling, and also the actual performance of the activity without a Licence Certificate is prohibited.

Licensed organisers may not engage in any activity of manufacturing, import, distribution and servicing of gambling games equipment, except for import of gaming equipment for their own needs.

Licensees may use gaming equipment from a gaming provider only if a proper certificate is issued by an approved gaming laboratory confirming the compliant status of the games and after an approval issued by the State Commission on Gambling. Providers may obtain a licence for manufacturing, distribution and servicing, as

well as import, distribution and servicing of gaming equipment with the purpose to be able to provide games to retail operators.

It is very important to mention here that in cases where an applicant has a valid licence to engage in gaming activities issued by a competent authority of another EU Member State, another state signatory to the European Economic Area Agreement, or the Swiss Confederation, facts and circumstances that form the requirements for the issuance of a licence according to the legislation of the state where he was licensed may be taken as proven in the proceedings for consideration of his application. In such a case, the Commission shall request the necessary information from the competent authority of the respective EU Member State, another state signatory to the European Economic Area Agreement, or the Swiss Confederation in line with the cooperation agreement of information exchange signed between them. In the absence of such an agreement, the applicant must provide a certificate of proof of these facts and circumstances issued by the competent authority of the state where the licence was issued, which shall certify, as follows:

1. The requirements set out in the legislation of this state in relation to the issuance of a gaming licence.
2. Proof that the person issued a licence by the competent authority meets these requirements, and the documents based on which this was proven.

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

Together with providing all required relevant due diligence documentation for the company (which includes company and financial data) and related persons, i.e. directors and shareholders, the company must comply with the requirements listed in the Act related to confirmation of investments, depending on the type of licence they are applying for, plus confirmation of having the required amount as a deposit to secure the funds for organising the relevant game. Investments and funds requirements are set in the Regulations as follows:

1. Investments made that amount to not less than BGN 1,000,000 and funds for organising the game that amount to not less than BGN 1,000,000 – for the conventional lottery and numbers lottery games of pools and lotto.
2. Investments made that amount to not less than BGN 1,000,000 and funds for organising the game that amount to not less than BGN 1,000,000 – for betting on outcomes of sports competitions and horse and dog races, betting on chance events and bets relating to the correct guessing of facts.
3. Investments made that amount to not less than BGN 100,000 and funds for organising the game that amount to not less than BGN 200,000 – for raffles, numbers lottery games, bingo and keno, instant lottery, and gambling games with slot gambling machines.
4. Investments made that amount to not less than BGN 600,000 and funds for organising the game that amount to not less than BGN 600,000 – for gambling games in a casino.
5. Investments made that amount to not less than BGN 600,000 – for online betting, and that amount to not less than BGN 300,000 – for gambling games via other electronic means of communication, and means for organising the game that amount to not less than BGN 1,000,000.
6. Investments made that amount to not less than BGN 600,000 – for the manufacture, distribution, and servicing of gambling equipment.
7. Funds for organising activities of import, distribution and servicing of gambling equipment that amounting to not less than BGN 200,000.

The investments listed above have to be made in the territory of the Republic of Bulgaria or in the territory of another EU Member State, or in the territory of another state signatory to the European Economic Area Agreement, or the Swiss Confederation.

For licences with a 10-year validity, the required investments are the following:

1. BGN 1,000,000 – for organising numbers lottery games, bingo and keno.
2. BGN 2,000,000 – for organising gambling games in a casino.
3. BGN 400,000 – for organising raffles, instant lotteries, and gambling games with gambling machines.
4. BGN 10,000,000 – for conventional lottery, numbers lottery games such as pools and lotto, betting on outcomes of sports competitions and horse and dog races, betting on chance events and bets relating to the correct guessing of certain facts.
5. BGN 2,000,000 for organising online gaming or games via other electronic means of communication.
6. BGN 1,200,000 – for the manufacture, distribution and servicing of gambling equipment.
7. A licence for import, distribution and servicing of gambling equipment shall be issued for a term of 10 years only where the funds for organising the activity, which has been proven in advance to the Commission, exceed BGN 400,000.

Directors and shareholders must confirm to the State Commission that they have clean criminal records and no history of juridical proceedings against them, as well as for the company that is applying for a licence, especially in relation to any gaming operations that are previously organised by them which includes any administrative proceedings in relation to licences issued by the State Commission.

Online gaming operators must confirm that:

1. Their communication equipment and the central point where the central computer system of the organiser is located in the territory of the Republic of Bulgaria or in the territory of another EU Member State, in the territory of another state signatory to the European Economic Area Agreement, or in the Swiss Confederation.
 2. They have an account opened for depositing wagers and paying out winnings opened with a bank licensed in the Republic of Bulgaria, or with a bank licensed in another EU Member State, or in another state signatory to the European Economic Area Agreement, or in the Swiss Confederation, which operates in the territory of the Republic of Bulgaria pursuant to the Credit Institutions Act.
 3. The central computer system of the organiser has a system for registration and identification of game participants, as well as a system for keeping and submission in real time to a server of the Commission and of the National Revenue Agency of all simultaneous gambling sessions, the wager made by each player and the winnings paid out to each player. The central computer system shall mandatorily ensure online registration of each transaction in the system of the Commission and the National Revenue Agency according to a procedure and in a manner as set forth in an ordinance of the Minister of Finance after coordination with the Chairperson of the State Agency for National Security.
- The gambling software and any new software version shall have to be approved by the State Commission for Gambling based on tests made by an approved laboratory.
4. The existence of an authorised representative of the company, registered in another EU Member State, in another state signatory to the European Economic Area Agreement, or in the Swiss Confederation, with an address in the territory of the Republic of Bulgaria and having representative powers to an extent which allows him/her to conclude contracts on behalf of the foreign person and to represent the foreign person before the state authorities and courts of the Republic of Bulgaria.

Once collected and ready, all the documents can be submitted to the State Commission together with the licence application and the relevant application fee specified for the licence type.

The application fees are as follows:

1. Lotto games:
 - a) traditional lottery – BGN 20,000;
 - b) raffles – BGN 2,000;
 - c) number games, toto, lotto, bingo and others – BGN 20,000 for each type of game; and
 - d) scratch lottery – BGN 20,000 per game.
2. Sports betting, horse and greyhound racing – BGN 20,000.
3. Betting on random events and events related to the guessing of facts – BGN 20,000.
4. Slots – BGN 7,500.
5. Casino and table games – BGN 35,000.
6. Remote gaming activities – double the amount for each of the above listed games with the exceptions of b) and d).
7. Development, selling and support/service of gaming equipment – BGN 20,000.
8. Import, selling and support/service of gaming equipment – BGN 20,000.

The State Commission on Gambling may request additional documents and proofs to be provided with the submitted application. Once the application is approved by the State Commission, the licence will be awarded to the applicant after the receipt of the licence fee that corresponds to the licence type.

The licence fees are as follows:

1. Lotto games:
 - a) traditional lottery – BGN 20,000;
 - b) raffles – BGN 5,000;
 - c) number games, toto, lotto, bingo and others – BGN 20,000 for each type of game; and
 - d) scratch lottery – BGN 20,000 per game.
2. Sports betting, horse and greyhound racing – BGN 20,000.
3. Betting on random events and events related to the guessing of facts – BGN 20,000.
4. Slots – between BGN 7,500 and BGN 25,000 depending on the number of gaming places/seats.
5. For casino with five table games and 15 slots – BGN 35,000 + BGN 2,000 for each additional table and + BGN 100 for each additional slot machine.
6. Development, selling and support/service of gaming equipment – BGN 20,000.
7. Import, selling and support/service of gaming equipment – BGN 20,000.
8. For remote gaming licences – BGN 100,000.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

The licensee may only offer the games that are listed in the licence issued by the State Commission on Gambling. Game currencies that are allowed are EUR and BGN. Cash payments are not allowed where it comes to remote gaming activities.

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

Licences in Bulgaria are granted for five- or 10-year terms depending

on the decision of the State Commission and specific requirements that the applicants should meet. The State Commission reviews/controls the operator, i.e. conducts a compliance review, on the first and third year of operations.

Termination of a licence

A licence shall be terminated:

1. upon the expiry of its term;
2. if it is permanently revoked;
3. with the winding up of the legal person or with the death of the physical person that is the sole proprietor to whom the licence was issued;
4. before the expiry of its term upon the person's request; or
5. upon the issuance of a new licence for the same activities to the same person for the same type of gambling game and at the same site.

Upon termination of a licence on the grounds under items 4 and 5, the organiser shall be obligated, within a seven-day period from receipt of the notification of the Commission's decision, to return the Licence Certificate to the Commission.

Extending the term of validity of a licence

Upon the written request of the organiser of games, which must be filed not earlier than six months and not later than two months prior to the expiration of the term of validity of an effective licence, the Commission may make a decision by which it extends the term of effectiveness of an issued licence for a term of validity of the same length, where the following conditions have been met simultaneously:

1. Within the term of validity of the licence for activities of an organiser that has been granted a licence for organising gaming activities for a respective site, there are no effective penal decrees of violations under the Act.
2. No enforcement administrative actions have been applied.
3. A notarised declaration must be submitted on the date of filing of the request for extension of the term of validity to confirm that no circumstances have occurred that obstruct the development of gambling activities.

For extension of the term of validity of an issued licence, the organiser shall only pay the fee for issuance of a licence.

Suspending and resuming activities

An organiser of gaming activities may suspend its activity for a certain period of time by filing an application to the Chairperson of the Commission and to the National Revenue Agency. The organiser shall be obligated to file the application at least seven days prior to the date of discontinuation of the activity. Within three days of filing the application, the organiser shall submit his Licence Certificate for safe-keeping by the Commission. In case of *force majeure* circumstances, the application shall be filed immediately upon the occurrence of the said circumstances.

When resuming activities, an organiser is obligated to file an application to the Chairperson of the Commission and to the National Revenue Agency, which explicitly names the date of resumption of organising gambling games. The organiser shall receive the Licence Certificate from the Commission on the day prior to the day of commencement of activities.

In case of a temporary suspension of activities at the central point or at the points of acceptance of wagers and payment of winnings, an organiser of gambling games is obligated to file an application to the Chairperson of the Commission, which indicates the licence number, the address of the site, and the period of suspension of activities. The application shall be filed not later than the day following the date of discontinuation of activities.

Suspension and resumption of activities shall not have any impact on the term of validity of the issued licence.

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

Direct advertising of gaming, including advertising of such games targeted at minors and underage persons, as well as sending unsolicited electronic messages containing information about a gaming to an unlimited number of persons is prohibited.

The following is permitted to be publicly placed:

1. names of the games;
2. the organiser's registered trade mark;
3. game results and winnings; and
4. conducted draws.

Gaming activities organisers that have been licensed under the Act have the right to sponsor events and activities in support of sports, culture, health care, education and social welfare.

2.7 What are the tax and other compulsory levies?

Sector	Taxation rate
Online gambling (online and other means of telecommunication)	<p>20% tax on gross gaming revenues (GGR – the difference between the bet and the winnings) + a fixed rate of BGN 100,000 (Article 30(4) of the Gambling Act).</p> <p>Online operators are furthermore liable to pay an annual contribution of BGN 50,000 towards the prevention of underage gambling, prevention of gambling addiction, promotion of responsible advertising and the resolution of disputes between gambling operators and players (Art. 10a GA).</p> <p>The organisers of gambling activities in which the stakes for participation is by the cost of telephone or other electronic communications service are taxed at a rate of 15% on turnover (Articles 236–238 of the Corporate Income Tax Act, amended January 3, 2014).</p>
Casinos (land-based)	<p>For slot machines/electronic gaming devices in casinos, per gaming seat – BGN 500 per quarter (Article 245 of the Corporate Tax Act).</p> <p>For roulette, per gaming table in a casino – BGN 22,000 per quarter (Article 245 of the Corporate Tax Act).</p> <p>For other gaming equipment in a casino, per piece of equipment – BGN 5,000 per quarter.</p> <p>Since January 1, 2014, casino operators are furthermore liable to pay an annual contribution of BGN 10,000 towards the prevention of underage gambling, prevention of gambling addiction, promotion of responsible advertising and the resolution of disputes between gambling operators and players (Article 10a of the Gambling Act).</p>
Slot machines (land-based)	<p>For slot machines in gaming halls, per gaming seat – BGN 500 per quarter (Article 245 of the Corporate Tax Act).</p> <p>Since January 1, 2014, operators are furthermore liable to pay an annual contribution of BGN 5,000 towards the prevention of underage gambling, prevention of gambling addiction, promotion of responsible advertising and the resolution of disputes between gambling operators and players (Article 10a of the Gambling Act).</p>

Sector	Taxation rate
Betting (land-based)	<p>15% on turnover (Article 30(3) of the Gambling Act).</p> <p>Since January 1, 2014, operators are furthermore liable to pay an annual contribution of BGN 5,000 towards the prevention of underage gambling, prevention of gambling addiction, promotion of responsible advertising and the resolution of disputes between gambling operators and players (Article 10a of the Gambling Act).</p>
Lottery games (land-based)	<p>Since January 1, 2014, operators are furthermore liable to pay an annual contribution of BGN 5,000 towards the prevention of underage gambling, prevention of gambling addiction, promotion of responsible advertising and the resolution of disputes between gambling operators and players (Article 10a of the Gambling Act).</p>
Bingo (land-based)	<p>Since January 1, 2014, operators are furthermore liable to pay an annual contribution of BGN 5,000 towards the prevention of underage gambling, prevention of gambling addiction, promotion of responsible advertising and the resolution of disputes between gambling operators and players (Article 10a of the Gambling Act).</p>

2.8 What are the broad social responsibility requirements?

In order to comply with the measures of socially responsible gambling adopted by the European Committee for Standardisation, any organiser must undertake to transfer to the account of the State Commission for Gambling the following annual contributions:

1. for online gaming organisers – BGN 50,000;
2. for organisers of gaming in a land-based casino – BGN 10,000; and
3. for all other type of games organisers – BGN 5,000.

The funds above shall be spent on activities related to the protection of young people from gambling, prevention and treatment of gambling addiction, conducting responsible promotion and advertising, and quick and efficient resolution of disputes between game organisers and game participants under certain conditions and according to a procedure set forth by the Minister of Finance.

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

Virtual currencies are not regulated and not permitted. Large payments are subject to local AML regulations. Payment processing can be offered only through EU/EEA licensed providers.

Organisers are prohibited from entering into any relationship whatsoever with gaming participants for the purpose of providing loans or credits under any form for participation in gaming.

3 Online/Mobile/Digital/Electronic Media

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

Gaming activities can be organised by:

1. Companies registered in the Republic of Bulgaria or in another EU Member State, another state signatory to the European Economic Area Agreement, or the Swiss Confederation, meeting the requirements of the Act.
2. Sole proprietors – only gambling games on gambling machines and activities of manufacturing, import, distribution, and servicing of gambling equipment.
3. The state – only for supporting sports, culture, health care, education, and social services.
4. Non-profit legal entities designated to perform social work activity, registered under the Non-profit Legal Entities Act – in the cases stipulated by this Act.
5. Non-profit legal entities registered in another EU Member State, in another state signatory to the European Economic Area Agreement, or in the Swiss Confederation, through a branch designated to perform social work activity – in cases stipulated by the Non-profit Legal Entities Act, with the exception of political parties.

A licence for organising games in a casino can only be issued to a limited liability company or a joint stock company with registered shares.

Companies that are registered in jurisdictions other than those listed above cannot be awarded a licence to operate in the territory of the Republic of Bulgaria.

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

Restrictions related to basic GDPR rules and electronic communication/marketing may have an impact on gaming operations, and licensees must be very aware of them when offering their services under the licences issued by the State Commission.

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

Land-based betting terminals are allowed together with all approved and certified types of gaming machine such as slot machines, bingo machines, lottery draw machines, electronic roulettes, BJ, electronic

bingo and lotto, approved tables for organising table games in land-based casinos, and all types of approved online RNGs – slots, roulettes, blackjack, bingo, keno, etc.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Each game and gaming activity that falls under the Gaming Act within the territory of the Republic of Bulgaria may only be organised under a licence issued by the State Commission on Gambling.

4.2 What form does enforcement action take in your jurisdiction?

Enforcement is conducted through IP blacklisting of companies that organise gaming activity within the territory of the Republic of Bulgaria without a valid licence issued by the State Commission on Gambling. Additionally, administrative penalties for breaches listed in the Gaming Act are enforced.

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

All applicable EU regulations, such as the GDPR, AML directives and others have an impact upon liability and enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

There are no specific terms on gambling debts listed in the Gaming Act. However, standards are enforced under the Commercial Act and under the Obligations and Contracts Act.

5 Anticipated Reforms

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

The latest discussed changes to the existing Gaming Act were sent to the EU Commission for ratification and include two major points: 1) stricter rules for advertising of gaming activities and games; and 2) an increase of the responsible gaming contribution from a fixed fee per annum to a percentage of the gross gaming revenue (but not less than the existing amounts published in the Regulation), of a suggested ~3%.



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Denitza Dimitrova is a gaming, online payments and fintech consultant by profession, having more than 15 years of gaming experience. Consultant Dimitrova has a first degree together with a Master's Degree in Company Law from the University of London, as well as a *Magister Juris* in European and Comparative Law from the University of Malta.

She has held the post of Manager, Legal and Enforcement at the Malta Gaming Authority (MGA) (formerly Lotteries and Gaming Authority, LGA) and subsequently acted as Legal Director of the MGA. Her career at the MGA commenced with the inception of the Malta Gaming Authority back in 2004, and she formed part of the team that drafted the Malta Remote Gaming Regulations, 2004, that established a benchmark in online gaming.

Consultant Dimitrova's private practice as a gaming consultant extends to more than 10 years, advising international gaming companies in relation to their gaming operation, including some of the biggest players in the online and land-based gaming industry. Currently, her expertise covers licensing and legal consultancy in online gaming in the following countries: Malta; Bulgaria; Spain; Romania; the UK; Italy; Greece; and Curaçao.



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DD Consultus is based in Malta and specialises in the online gaming industry, online payment processing and the services related thereto.

DD Consultus offers senior international gaming consultancy to all sectors of the gaming industry, including but not limited to, online gaming, land-based casinos and arcades, software and platform providers and gaming machines manufacturers. Our gaming practice encompasses all aspects of gaming law, including licensing, corporate, legal and financial compliance, acquisition, mergers and development. Our consultants have previously occupied strategic posts in the Malta Gaming Authority (MGA) for a number of years and with their expertise in the gaming industry, provide tailor-made solutions and consultancy to our gaming clients, locally and internationally.

DD Consultus' professional services also extend to the provision of services in the field of online payments and the acquisition of financial institutions and electronic money licences in Malta, as well as consultancy to online payment processors.

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Canada

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1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	<i>Alberta</i> Alberta Gaming and Liquor Commission (“AGLC”).	<i>British Columbia</i> Gaming Policy and Enforcement Branch of the Ministry of Finance. <i>Manitoba</i> Liquor and Gaming Authority of Manitoba. <i>New Brunswick</i> Gaming Control Branch of the Department of Public Safety. <i>Newfoundland and Labrador</i> Consumer Affairs Division, Consumer and Commercial Affairs Branch of Service NL. <i>Northwest Territories (Territory)</i> Department of Municipal and Community Affairs. <i>Nova Scotia</i> Alcohol, Gaming, Fuel and Tobacco Division of Service Nova Scotia. <i>Nunavut (Territory)</i> Consumer Affairs, Department of Community and Government Services. <i>Ontario</i> Alcohol and Gaming Commission of Ontario (“AGCO”). <i>Prince Edward Island</i> a. Prince Edward Island Lotteries Commission. b. Consumer Services section of the Department of Environment, Labour and Justice (regulates bingo, raffles, casino nights, and charitable gaming). <i>Quebec</i> <i>Régie des alcools, des courses et des jeux</i> (authority over, amongst other things, the operation of casinos as well as contests, certain types of lotteries, and VLTs other than those in casinos). <i>Société des loteries du Québec</i> (“Loto-Québec”), a provincial government agent, (i) operates the casinos located in Quebec, and (ii) regulates traditional lotteries and bingo as well as gaming machines located inside casinos. <i>Saskatchewan</i> a. Saskatchewan Liquor and Gaming Authority (“SLGA”). b. Indigenous Gaming Regulators (“IGR”). <i>Yukon Territory</i> Professional Licensing & Regulatory Affairs Branch of the Department of Community Services.
	Poker		
	Bingo		
Betting	Betting	Respective provincial regulator – please see above.	

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Betting	Sports/horse race betting (if regulated separately to other forms of betting)	Respective provincial regulator – please see above.	Betting on horse races is governed by the Canadian Pari-Mutuel Agency.
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	Not formally addressed in any legislation so no regulator.	Not applicable.
Lotteries	Lotteries	Respective provincial regulator – please see above.	
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Not regulated except by generic provincial consumer protection laws.	
	Skill games and competitions with no element of chance		

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

(a) Gambling law and regulation

The overarching statute that governs gambling activity in Canada is the federal *Criminal Code* (the “Code”). Sections 201 through to and including section 206 make all types of gambling, betting and lotteries illegal throughout Canada, with very limited exemptions such as *pari-mutuel* betting on horse races (provided for in section 204). While the federal Code is the applicable prohibitory statute, all of the regulatory statutes (and regulators) are provincial with the one exception being *pari-mutuel* betting on horse races which is governed by the federal Canadian Pari-Mutuel Agency.

The operation or provision of casinos, bingo, ticket lotteries, betting (other than *pari-mutuel* betting), poker and other card games, electronic games such as slot machines and video lottery terminals (“VLTs”) are activities that constitute gambling unless they fall within one of the few exceptions in the Code. This is true whether the activities are provided in a land-based facility or digitally.

There are a number of activities that are prohibited by the Code but may not be thought of as “gambling” in the colloquial sense of the word. For example, a competition or draw for a prize may fall into any one of a number of baskets depending on its structure. For example, if no consideration is payable in order to enter the competition, Canadian case law has made it clear that any person hosting or offering such a competition is not illegally operating a common gaming or betting house. Furthermore, the Code, and the little case law there is on the subject, draw fine distinctions between games of pure skill, games of pure chance, and games of mixed chance and skill. As a result, a number of idiosyncratic “rules” have evolved, the best example being the “mathematical skill-testing question” which is added to contest rules in order to transform a competition from an illegal contest of pure chance to a legal contest of mixed chance and skill. In sum, any competition for a prize must be examined through the lens of section 206 of the Code in order to determine whether it might constitute an illegal lottery.

Games of pure skill (that is, skill games and competitions with no element of chance) do not fall within the definition of an illegal lottery in section 206(1) of the Code and so can be legally provided without the consent of a regulator or any other government body. It is important to note that Canada’s highest court, the Supreme Court of Canada, has made it clear that if there is any element of chance built into the structure of a game, it will be considered a game of mixed chance and skill and not a game of pure skill. The concept of a “dominant factor” is not recognised by the courts in this country. Poker, for example, is considered to be a game of mixed chance and skill as there is an element of chance in the game flowing from the dealing of cards. Games of chance, and games of mixed chance and skill, are considered illegal lotteries unless no consideration is paid to enter, play or win a prize. Based on generally accepted interpretations of section 206, it is possible nonetheless to structure a game of either nature so as to render it legal.

The conduct of fantasy sports or shares competitions is not currently addressed by any federal or provincial statutes or regulations. There is presently an active debate amongst gaming regulators and Canadian lawyers about the legality of daily fantasy sports, some taking the position that competitors are merely engaged in a form of betting and therefore engaging in illegal conduct, while others take the position that it is a game of pure skill and therefore a legal competition. Having said that, it is generally agreed that if a person other than a competitor bets on the outcome of a fantasy competition, that constitutes illegal betting.

Social gaming with no prize in money or money’s worth is not regulated *per se* by any government body although, like any other consumer product, they are subject to review and regulation by provincial consumer protection ministries and the federal Competition Bureau.

Set out below are the national and provincial statutes that apply to activities that are generally agreed to constitute gambling.

National

At the federal level, the Code is the primary legislation that impacts gambling in Canada, as it contains both the primary prohibitions and exceptions respecting gambling and the federal penal law concerning proceeds of crime including money laundering (Part XII.2) and the financing of terrorism (sections 83.02, 83.03, and 83.04).

The Competition Act is the only federal statute that is applicable to contests and competitions. Section 74.06 of the Competition Act prohibits any promotional contest that does not disclose the number and approximate value of prizes, the area or areas to which they relate, and any important information relating to the chances of winning such as the odds of winning. Any person who is found to have contravened this section is liable to a fine.

Provincial

Set out below are the primary gambling statutes in each province.

1. *Alberta*
Gaming and Liquor Act.
2. *British Columbia*
Gaming Control Act.
3. *Manitoba*
 - a. The Liquor and Gaming Control Act.
 - b. The Manitoba Liquor and Lotteries Corporation Act.
4. *New Brunswick*
Gaming Control Act.
5. *Northwest Territories*
Lotteries Act.
6. *Nova Scotia*
Gaming Control Act.
7. *Saskatchewan*
 - a. The Alcohol and Gaming Regulation Act, 1997.
 - b. The Saskatchewan Gaming Corporation Act.
8. *Ontario*
 - a. Gaming Control Act, 1992.
 - b. Ontario Lottery and Gaming Corporation Act, 1999.
9. *Quebec*
 - a. Act respecting the *Société des Loteries du Québec*.
 - b. Act respecting Lotteries, Publicity Contests, and Amusement Machines.
10. *Yukon*
Lottery Licensing Act.

(b) Advertising and marketing

The advertising and marketing of regulated Relevant Products is subject to the provisions of the applicable provincial gambling statutes and guidelines. For example, in Ontario any entity that supplies the OLG (Ontario's lottery corporation) with Relevant Products must comply with the OLG's Marketing and Advertising Standard which in turn incorporates the standards for marketing and advertising established by the AGCO (Ontario's gaming regulator). Unregulated Relevant Products must comply with the general legislation applying to any unregulated service in Canada, including the federal Competition Act and provincial consumer protection acts such as Ontario's *Consumer Protection Act*. Additionally, section 13.1 of Ontario's *Consumer Protection Act* prohibits the advertisement of an "internet gaming site" in the province if it is operated contrary to the Code. To date, there are no reported cases that consider this section or the prohibition.

(c) Tax and duties

As the majority of private corporations providing Relevant Products in Canada are, of necessity, merely registered suppliers of gambling products and services to the provincial governments, there are no industry-specific taxes or levies. Such companies are required to comply with generally applicable federal and provincial income tax laws but there is no separate regime of taxes within the industry. The providers of unregulated Relevant Products are subject to generally applicable tax laws.

(d) AML/terrorist financing

The Code's provisions regarding proceeds of crime and financing of terrorism synchronise with the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("PCTFA"). The PCTFA was enacted (and has been subsequently amended) to implement measures to detect and deter money laundering and the financing of terrorist activities, to facilitate the investigation or prosecution of money laundering and terrorist financing offences (including establishing record-keeping and client identification requirements for financial services providers and other persons that engage in businesses, professions or activities that are susceptible to being used for money laundering, and the financing of terrorist activities), and to respond to the threat posed by organised crime by providing law enforcement officials with the information they need to investigate and prosecute money laundering or terrorist financing offences. Section 5(k) specifically identifies casinos as a type of organisation that must comply with all requirements in Part 1 (Record Keeping, Verifying Identity, Reporting Of Suspicious Transactions And Registration) of the Act. The Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") was established in 2000 by the federal government to act as Canada's financial intelligence unit. FINTRAC is the regulatory body overseeing compliance with the PCTFA and its regulations. As noted above, the only entities that can legally supply regulated Relevant Products in Canada are provincial governments (either directly through their respective lottery corporations or through service suppliers to those lottery corporations) and charitable organisations licensed by provincial governments. In all cases, those entities are subject to Canada's anti-money laundering ("AML") legislation (namely (i) the PCTFA, and (ii) Part XII.2 (Proceeds of Crime) of the Code and, in particular, section 462.31 which outlines the offence of laundering the proceeds of crime).

(e) Consumer protection

All persons providing Relevant Products (whether regulated or unregulated) in Canada must comply with provincial consumer protection statutes such as Ontario's *Consumer Protection Act* and Quebec's *Act respecting Lotteries, Publicity Contests, and Amusement Machines*.

2 Application for a Licence and Licence Restrictions

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

As noted above, gambling in Canada is a provincial Crown monopoly pursuant to section 207 of the Code. With very limited exceptions such as those for charities and local fairs, no person other than a provincial government is legally permitted to supply gambling facilities or services in Canada. Notwithstanding the foregoing, all provinces do require registration of any person supplying goods and services for use in the operation of gambling facilities and the provision of gaming services by the province. As the provincial governments, out of necessity, must contract out the vast majority of such services, in reality this is the "licensing" scheme in Canada. Any company that wishes to supply gambling facilities may approach a provincial government with a proposal for a gambling facility which the government would, by law, be required to conduct and manage, with the proponent of the plan acting as the operator under contract with the government.

There is no substantive difference in the treatment of land-based and digital offers of the Relevant Products. Companies that offer digital gaming products are only permitted to supply their products to the applicable provincial operator who will then provide the product to consumers in its jurisdiction.

There are no firm residency requirements or restrictions on persons applying for registration. Each applicant will, however, be required to pass a risk assessment and provincial regulators may take a position on what constitutes “honesty and integrity” that would preclude the registration of a company that, in the regulator’s view, had not complied with Canadian law (for example, by providing offshore online gaming services to Canadian residents).

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

As noted above, companies are not granted “licences” but rather are registered to provide gaming services to the province. The persons who are required to be registered as gaming suppliers differ from province to province, but only to a minor extent. Typically there are tiers of gaming registrants ranging from individuals who will be working in casinos through to the companies that are operating those casinos.

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

Each province has its own process for applying for gaming supplier registrations but, again, they are relatively similar. Generally, in order to be registered as an operator or supplier, a company must complete three forms: (i) an application for registration; (ii) an enterprise disclosure form; and (iii) a personal disclosure form. The initial risk assessment involves the review of an applicant’s completed application materials as well as information obtained based on a standard background check. This information is evaluated based on five criteria which are considered key indicators of an individual’s or business’s appropriateness to be registered. The five criteria related to businesses (e.g., suppliers) applying for a gaming registration are: (i) honesty and integrity; (ii) financial responsibility; (iii) compliance with the law; (iv) registration type; and (v) financial gain from registration.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

As persons are registered within a particular class of gaming suppliers, they are by definition restricted with respect to the activities in which they can legally engage. They are then restricted by the terms of the contract entered into with the provincial lottery corporation or other agent of the Crown to whom they will be supplying goods or services.

There are no firm residency requirements or restrictions on persons applying for registration. Each applicant will, however, be required to pass the risk assessment outlined in question 2.4 below and provincial regulators could take a position on what constitutes “honesty and integrity” that would preclude the registration of a company that, in the regulator’s view, had not complied with Canadian law (for example, by providing offshore online gaming services to Canadian residents).

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

Each province differs in this regard but as the organisational structures are similar, Ontario will be used as an example. The AGCO issues registrations with expiry dates. Prior to expiry, the registrant must complete and submit the same form as used for the initial application for registration. Each registrant must also pay an annual fee (e.g., \$100,000 for casino operators) in order to maintain their registration.

Registrations may be revoked for any number of reasons but only after disciplinary action short of revocation. In Ontario, registrants who are not in compliance with the law usually receive a warning first, followed by a monetary penalty if still non-compliant. If the registrant continues to be non-compliant, the AGCO will issue a notice advising the registrant that they have 15 days in which to appeal the decision to a separate government appeal tribunal that is not associated with the AGCO. If the registrant does not appeal or loses on appeal, the registration will be revoked.

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

The key limitation for all regulated Relevant Products arises from the fact that such products must be provided exclusively by a provincial government. The lottery corporations in each province will decide which types of products they wish to carry from time to time and are able to change those policy decisions at will. As the providers of the products to the residents of their respective provinces, the provincial government (either through the applicable lottery corporation or through one of its branches (typically Finance)) will exercise significant control over the selection of products, the locations in which the products will be placed, and the marketing that is permitted.

Some unregulated Relevant Products such as fantasy leagues and eSports are in a grey zone as various provincial regulators have taken the position that, in their view, such products contravene the Code. Other unregulated Relevant Products such as play-for-free games are only limited by the requirement to comply with laws generally applicable to all service providers in Canada.

2.7 What are the tax and other compulsory levies?

As the majority of private corporations operating in the gambling industry in Canada are, of necessity, merely registered suppliers of gambling products and services to the provincial governments, there are no industry-specific taxes or levies. Such companies are required to comply with generally applicable federal and provincial income tax laws, but there is no separate regime of taxes within the industry.

2.8 What are the broad social responsibility requirements?

As the providers of gambling services in their respective jurisdictions, the provincial lottery corporations have all addressed social responsibility in their regulations and policies, if not in their statutes. Any private companies that provide services to the public on behalf of the lottery corporations are required to conform with

those policies and regulations. Those policies generally include training programmes for employees regarding responsible gaming, advising and informing all players concerning responsible gaming and how to make informed choices about products and play in general, and the operation of voluntary exclusion programmes. Once again, using Ontario as an example, the OLG has a Responsible Gambling Centre at all sites, with staff from the Responsible Gambling Council at eight locations; there is mandatory training for all front-line and management staff; and they run a self-exclusion programme that uses technology such as facial recognition. It is a given that minors are excluded from all forms of gambling activity including the purchase of lottery tickets.

While the foregoing is not applicable by statute to unregulated Relevant Products, providers of such unregulated products would be well advised to voluntarily comply with the same policies.

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

As noted above, the only entities that can legally supply gambling in Canada are provincial governments (either directly through their respective lottery corporations or through service suppliers to those lottery corporations) and charitable organisations licensed by provincial governments. In all cases, those entities are subject to Canada's anti-money laundering ("AML") legislation (namely (i) the PCTFA, and (ii) Part XII.2 (Proceeds of Crime) of the Code and, in particular, section 462.31 which outlines the offence of laundering the proceeds of crime). At present, virtual currencies are not recognised by any level of government in Canada. They are regulated but only to the extent that virtual currency dealers are required to comply with Canada's anti-money laundering laws. Having said that, the Canadian Securities Administrators (an umbrella organisation of Canada's provincial and territorial securities regulators) recently issued a guidance document on cryptocurrency offerings which included advice on the application of Canadian securities law to certain types of those offerings.

3 Online/Mobile/Digital/Electronic Media

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

There is no accepted legal definition of online, mobile, digital or electronic gaming (for the purposes of this section "digital gaming") in Canada. Provincial governments, alone or in concert, are permitted to provide any digital gaming activity that they desire, subject only to the restrictions in section 207(4). That section provides that permitted lottery schemes (that is, those that a provincial government may offer) do not include the activities of "bookmaking, pool selling or the making or recording of bets ... on any race or fight, or on a single sport event or athletic contest". Most provinces have read this to prohibit any type of sports betting other than parlay betting. Legal online sports betting therefore does not permit betting on single games or other types of sporting events. While there is no legislation or case law that specifically criminalises or otherwise prohibits the provision of digital gaming by private companies, it is generally accepted that private digital gaming

provided from within Canada for Canadian players will be caught by the prohibitions found in the Code. There is less certainty around the issue of digital gaming provided by persons whose operations are located entirely outside of Canada. To date, there have been no charges laid against any such offshore operator, and so the law in that regard remains untested. Having said that, all levels of government and all of the provincial regulators have taken the position that such operations are illegal and should be closed down.

In the case of unregulated Relevant Products, operators may provide such products from inside or from outside of Canada, although as noted elsewhere in this chapter, fantasy leagues and eSports remain in the grey zone in terms of legality in Canada.

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

There are no material restrictions on legal (that is, government-run) digital gaming in Canada. With respect to offshore on digital gaming, neither the provincial governments nor the federal government have taken steps to limit access to such sites. While there are presently no statutory or regulatory restrictions on payment processing by such operators, or that constitute ISP blocking, blacklisting or currency restrictions, the Province of Quebec passed legislation that would, if in force, require internet service providers to block Quebec residents from accessing private online gaming sites. The Quebec legislation is suspended pending review by the courts. See question 5.1 below for further details.

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

Provincial governments are allowed to provide any form of terminal or machine-based gaming that they choose. Therefore, all such gaming is "permitted" by law. For policy reasons, there are varying restrictions from province to province with respect to the nature of the games and their locations within the applicable jurisdiction. For example, VLTs are provided to the public by provincial lottery corporations in all provinces other than British Columbia and Ontario. Similarly, provincial lottery corporations provide slot machines in casinos and/or at race-tracks in all provinces other than Newfoundland and Labrador. There are no slot machines available in two of the three territories (Nunavut and Northwest Territories), while they are available in Yukon. Fixed-odds betting terminals ("FOBTs") have not appeared in Canada, although it would be legal for a provincial lottery corporation to provide FOBTs to residents of their jurisdiction. Private companies are prohibited from operating any type of gambling machine anywhere in Canada except pursuant to a registration issued by a provincial regulator.

The type of payment accepted at these machines is dependent entirely on provincial regulation. Having said that, cards are either strongly recommended or required for AML purposes.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Breaches of the federal Code are a matter of criminal rather than civil law and thus the ambit of liability is, in practice, quite narrow. While the Code is drafted broadly, Canadian courts have exercised their discretion under the principles of statutory interpretation to ensure that such sections are read narrowly, given that they are

penal in nature. On the other hand, the courts do not appear to be as concerned by a broad application of section 201(2) which provides that every person found without lawful excuse in a common gaming house or common betting house is guilty of a summary conviction offence. As summary conviction offences are the most minor offences in the Code and typically result in a small fine, courts are willing to convict individuals who are caught in sweeps of illegal sports betting events and large poker operations. The Code makes it possible for directors, officers and senior management to be charged and convicted of a criminal offence with respect to the activities of their corporation pursuant to the sections of the Code concerning aiding and abetting and parties to an offence (sections 21, 22, 22.1, and 22.2).

Breaches of provincial gambling legislation involve, almost by definition, breaches of the requirement to obtain a registration for the supply of gaming services and to comply with the regulations concerning such activity. The service supplier (registered or unregistered, as the case may be) is liable, as well as the directors and officers in some cases. In practice, culpability does not typically flow to individuals if the service was being supplied by a corporation unless there is egregious conduct involved.

4.2 What form does enforcement action take in your jurisdiction?

Prosecution of gaming offences is not common, primarily because of the monopolistic nature of the industry and the resulting lack of private operators. As the legislation governing gaming at the top level is criminal, most prosecutions will be criminal. Provincially, prosecutions are administrative for the most part. On the rare occasion that someone is charged with a gaming-related offence in Canada, it usually involves illegal card houses or other physical sites that are hosting illegal gaming activities.

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

While there are no reported cases in which Canada has attempted to extradite an individual from another country in order to face gambling charges in Canada, Canada has agreed to extradite Canadians to the U.S. to stand trial for gambling offences. There are no reported cases in which a Canadian court has chosen to take jurisdiction over a case involving gambling activities that took place outside of Canada, or over cases involving gambling services provided to Canadians by persons located outside of Canada.

4.4 Are gambling debts enforceable in your jurisdiction?

If the debt is incurred in a legally operated gambling facility, such debts are considered a form of consumer debt and are treated

accordingly. However, if the gambling debt is incurred in the course of illegal or private gambling, provincial gaming laws prohibit the use of civil proceedings to collect such debts. As an example, section 47.1 of Ontario's *Gaming Control Act* states that "no person may use civil proceedings to recover money owing to the person resulting from the [sic] participating in or betting on a lottery scheme unless the lottery scheme is authorized under subsection 207 (1) of the Code".

5 Anticipated Reforms

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

The Canadian Gaming Association plans to work with a federal Member of Parliament to, once again, put forward a private member's bill that would amend the Code to permit betting on single sports events. There is a modest sense of optimism that this – the third time in which a bill on the subject has been put forward – will lead to a positive amendment to the gaming provisions of the Code.

On the provincial front, the attempt by the Quebec government to block illegal gaming sites moves forward through the courts. To recapitulate, on May 18, 2016, the National Assembly of Quebec passed its budget into law pursuant to an omnibus act (*Loi concernant principalement la mise en oeuvre de certaines dispositions du discours du budget du 26 mars 2015*, L.Q. 2016, ch. 7 and hereinafter the "Budget Act"). Section 12 of the Budget Act amended Quebec's consumer protection act (namely *La Loi sur la protection du consommateur*) to put into place a regime whereby internet service providers ("ISPs") would be required to block Quebec residents from accessing illegal internet gaming sites. On July 27, 2016, the Canadian Wireless Telecommunications Association (on behalf of its ISP members) filed a motion in the Quebec Superior Court requesting that the court find the ISP-blocking provisions to be invalid, primarily on the basis that they are unconstitutional. On September 1, 2016, the CRTC issued an open letter to Canada's Attorney General stating that in the CRTC's preliminary view, the ISP-blocking provisions were very likely unlawful. On July 18, 2018, the Quebec Superior Court issued its judgment finding that the proposed legislation was indeed unconstitutional. Quebec is appealing the decision to the Quebec Court of Appeal. It is expected that it will be appealed to the Federal Court of Appeal and then, given the significant constitutional issues raised, it will be heard by the Supreme Court of Canada. The conclusion of most legal commentators is that the provisions are certainly unconstitutional and will be struck down, likely on appeal.

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Danielle Bush is a partner at the Canadian law firm of Miller Thomson LLP. Ms. Bush provides legal advice and services (including negotiating and drafting software licence agreements, and providing legal opinions) to companies involved in all aspects of the gaming industry including lottery corporations, casino operators, gaming regulators, gaming software companies, payment processing companies, and online gaming operators. She regularly advises clients on a broad range of gaming-related issues including online gaming, sports betting, fantasy sports leagues, and lottery products. Sports betting is a particular interest, as are the related issues of probity, and the prevention and penalisation of match-fixing.



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Cyprus

Filippos Kamenos



Spyros Tsakonitis



National Betting Authority of Cyprus

1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Prohibited.	Cyprus Gaming and Casino Supervision Commission.
	Poker	Prohibited.	Cyprus Gaming and Casino Supervision Commission.
	Bingo	Prohibited (but see question 1.2 below).	Not regulated.
Betting	Betting	National Betting Authority.	National Betting Authority.
	Sports/horse race betting (if regulated separately to other forms of betting)	Nicosia Race Club.	Nicosia Race Club.
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	Prohibited.	Prohibited.
Lotteries	Lotteries	Prohibited.	Ministry of Finance.
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Not regulated.	Not regulated.
	Skill games and competitions with no element of chance	Not regulated.	Not regulated.

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

The following laws apply:

- (a) Betting Law of 2012 – (L. 106(I)/2012, as amended):
 - Regulates land-based and online sports and other betting.
 - Created the National Betting Authority.
- (b) The Taxation of Horseracing Bets and Sweepstakes Law 1973 (L. 48/1973):
 - Regulates horse racing in Cyprus, its provision by the Nicosia Race Club (and its representatives) and its taxation.
- (c) Lottery Act (Cap. 74):
 - Regulates lotteries, bingo and skilled competitions.
 - With the exception of small-scale lotteries/bingo, which are a secondary event in a context of other non-profitable/charitable/festive events and private (for members of an organisation or association) lotteries/bingo, which are allowed under specific conditions, only the state is allowed to perform lotteries.
- (d) The Agreement between the Hellenic Republic and the Republic of Cyprus regarding the games offered by OPAP (Ratification) Law of 2003 (L. 34(III)/2003).
- (e) Certain Games of Chance Law of 2018 (L. 52(I)/2018):
 - Certain games of chance were introduced in 2003 under a state-granted monopoly to OPAP through the bilateral agreement between the Hellenic Republic and the Republic of Cyprus [ratified by L. 34(III)/2003 above under (d)]. The Certain Games of Chance Act is the new framework under which these games are offered, under a single licence, with the National Betting Authority as the new regulator.
- (f) The Casino Operations and Control Law 2015 – (L. 124(I)/2015):
 - Regulates state-granted monopolies for casino games.
 - Licence valid overall for 30 years, while for the first 15 years it will be an exclusive concession.
 - Created the Cyprus National Gaming and Casino Supervision Commission.
- (g) Games Machines, Skill Machines and Entertainment Machines Law of 1996 (L. 32(I)/1996):
 - Prohibits the provision of any game of chance, betting, gambling, lottery, bingo, etc. through machines.

2 Application for a Licence and Licence Restrictions

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

The licence regime pertaining to betting differentiates between land-based (Class A) and online (Class B) operations.

Land-based operators may offer their services either through their own establishments or through authorised representatives. The latter case entails a separate licence – a Class A Authorised Representative’s licence – which may be granted to a natural or legal person. In any occasion, a Premises Licence for each betting establishment should be obtained either from the Class A licensee or the Authorised Representative. The vast majority of betting establishments are operated by these representatives.

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

According to section 28 of the Betting Law of 2012 (“the Law”), an application for a bookmaker’s licence (Class A or Class B) may only be submitted by a company of limited liability with shares, that is incorporated either in the Republic or abroad, and whose main activity is the provision of betting services. Overseas companies are required to be registered as a foreign company at the relevant registry of the Department of Registrar of Companies of Cyprus.

Moreover, the applicant company must have a share capital of at least EUR 500,000 and submit to the National Betting Authority (“NBA”) a bank guarantee of EUR 550,000 from a commercial or cooperative bank offering banking services in Cyprus or in a Member State of the European Union.

As noted under question 2.1 above, Class A (land-based) betting services may offer their services either through their own establishments or through Authorised Representatives, and in this case a separate licence is necessary: a Class A Authorised Representative’s licence. Also, a Premises Licence for each betting establishment should be obtained by the person who “runs” the establishment (Class A licensee or the Authorised Representative).

Class B (online betting) applicants are subject to the additional requirement of establishing a back-up server within the Republic, capable of copying in near real-time data relevant to the provision of these services.

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

A betting licence applicant must provide details pertaining to all facets of his business. These include financial information, criminal history and current proceedings as well as any participation or interest in any other commercial activity. This obligation, according to section 14 of the Law, extends to directors and anyone in possession of a significant interest in the applicant company.

The National Betting Authority will then assess whether the applicant qualifies as “fit and proper” in the context of section 29 of the Law, for either a Class A or Class B licence. The Authority should be convinced that the applicant has or may obtain satisfactory financial resources and retains the minimum required financial reserves so as to ensure the payment of winnings to the players, maintains a

suitable control and accounting system for the provision of betting services, applies terms and conditions which ensure satisfactory protection to the player and ensures the suitability of any other equipment proposed to be used. Moreover, the NBA assesses the business and financing plan of the applicant for the next three years, anti-money laundering and know-your-customer procedures, internal procedures and agreements with third parties.

The application must be accompanied by a bank guarantee (see question 2.2) set to expire six months following the expiration of the licence, and the fee must be paid in advance (see question 2.7). If the application is rejected, the amount is returned with 25% of the fee retained as administration/examination costs (section 27 of the Law).

As regards the Casino Operations and Control Law 2015, the sole licence was issued in 2017 by the Cyprus National Gaming and Casino Supervision Commission. No other licence is expected to be issued for the time being.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Licensed premises are not allowed to offer or provide any service or product other than those licensed. The sale of food and drinks is prohibited and even the facilitation or promotion of Class B operations within a betting shop is not allowed.

Online operators, on the other hand, have an obligation to verify the identity of all new players within the first 30 days of registration (section 56 of the Law) and may not allow any withdrawal of funds if the account details are yet to be verified (section 59 of the Law).

Various betting activities such as slot machines, online casinos, betting exchanges, spread betting and dog-racing betting are explicitly prohibited (see question 4.1 below), while betting may only be carried out on sport or other future events.

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

(i) Duration

According to section 24 of the Law, Class A and Class B licences may have a duration of either one or two years. Applications for renewal must be submitted at least three months prior to the licence expiration date (section 14 of the Law).

(ii) Vulnerability to review, suspension or revocation

According to section 21 of the Law, grounds for suspension exist when the licensee (Class A, Class B or Authorised Representative):

- does not comply, without legitimate reason, with any of the conditions of its licence; or
- omits without legitimate reason to fulfil its financial obligations in respect of the provision of betting services.

According to section 22 of the Law, grounds for revocation exist when:

- the licensee (Class A, Class B or Authorised Representative) or any holder of a significant interest, or officer or ultimate beneficiary of the operator, is convicted of any relevant (according to the Law) offence;
- the licensee is under liquidation or bankruptcy;
- the licence was obtained under fraud, false representations or deceit;
- the actual circumstances upon which the licence was issued and which, according to the present Law for the time being in force, constitute a prerequisite for the issue of the same, have been substantially modified;

- (e) the licensee provides credit facilities to the player or establishes direct or indirect means for the provision of similar facilities;
- (f) the licensee fails to comply with any condition of its licence after the expiration of six months of suspension of its licence according to section 21;
- (g) the licensee is convicted under the provisions of section 55 of the Law;
- (h) the licensee fails to comply with the provisions of section 68 of the Law; or
- (i) the licensee does not implement the procedures for the prevention of money laundering activities in accordance with the Prevention and Suppression of Money Laundering Activities Law.

The NBA, prior to suspending or revoking a licence, will send a notification to the licensee for its said intention and call upon it to express its views within a period of not less than three (3) weeks from the date of the notification.

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

Provided that the services are legal, the NBA does not impose limits in any of the services offered by the licensees but does in fact review all related terms and conditions, in accordance with section 14 of the Law, in order to ensure adherence to the Law and satisfactory protection for the player.

Furthermore, certain restrictions are imposed through the Code of Advertising in terms of content, timeframes, sponsorships and responsible gaming messaging. In respect of bonus schemes, it is worth noting that a promotion which requires the player to bet either a minimum amount or a determined number of bets within a specified time, in order to qualify for a bonus or a reward scheme, is prohibited (however, this provision does not apply to reward schemes which involve registration or deposit rewards or those that are publicised on the operator's website).

2.7 What are the tax and other compulsory levies?

According to section 71 of the Law, betting tax is set at 10% on the net proceeds of the operator. A further 3% is payable as mandatory contribution, two-thirds of which are allocated to the Cyprus Sports Federation, while the rest is allocated for the purpose of strengthening the mechanisms and protection programmes for young persons and addicted gamblers.

Moreover, all licensees are subject to an annual licence fee. Section 26 of the Law requires Class A and Class B licensees to pay an up-front fee of EUR 30,000 for one year or a total of EUR 45,000 for a two-year licence, whereas Authorised Representatives pay a EUR 2,000 fee for one year and EUR 3,000 for a two-year licence, both of which include premises.

2.8 What are the broad social responsibility requirements?

Section 41 requires the holder of a betting shop licence to place and maintain, in a prominent position: (a) the licence for the premises; (b) a sign prohibiting entry for underage persons; and (c) the terms and conditions of the operator. The said sign as well as the terms and conditions must be available in Greek, English and Turkish.

Under Part VI of the Law, online operators may only register adult persons electronically and each person may only have one account. Player verification must occur within the first 30 days of registration, during which no funds can be withdrawn prior to verifying the identity, the address and the age of the player.

Online operators may only provide services through a “.com.cy” domain, a distinction which aims at differentiating licensed from unlicensed activities particularly in the eyes of the public (section 64 of the Law). These websites include contact details regarding the operator and a link to a dedicated Responsible Gaming site specialising in assisting problem gambling. Moreover, online operators must offer traditional self-help tools such as loss limits (deposit, bet or loss limits), time limits and self-exclusion, while the cooling-off period is set at seven days.

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

Cyprus has incorporated the 4th Anti-Money Laundering Directive into domestic legislation through the amending of the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007–2018.

Consequently, in an effort to guide the market into a uniform implementation of these amendments, the NBA has dedicated its efforts to issuing both an AML Directive and a practical guide addressed at online and land-based operations. The practical guide is set to address, amongst other matters, the concerns of Class A operators regarding the EUR 2,000 threshold provided in the 4th Anti-Money Laundering Directive, especially given that until now, land-based betting was completely anonymous. The dialogue with the operators has concluded and the Directive is now at the final stages of drafting.

At the moment, credit card, debit card, electronic transfer and electronic money are provided for as the sole means of payment for receiving Class B (electronic) betting services. While accepting cash is prohibited for providing Class B betting services, it is permitted for Class A betting services.

3 Online/Mobile/Digital/Electronic Media

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

Entities which are interested in offering online/mobile/digital/electronic betting within the jurisdiction of Cyprus must submit an application for a Class B licence. No distinction is made between operators located inside Cyprus and those located outside Cyprus. The Law describes “electronic betting” as a bet which is carried out through telecommunications. Telecommunications are in turn defined as communications via: (a) Internet; (b) telephone; (c) television; and (d) any other electronic means or other technology. A holder of a Class B licence may offer any of his regulated products worldwide, as long as no Member State's or third country's laws are violated.

Unlicensed entities, whether licensed in other jurisdictions or not, are prohibited from offering betting services within the Republic of Cyprus without a licence issued by the NBA.

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

The NBA has, in accordance with section 65, implemented an ISP-blocking list which is updated on a weekly basis and essentially blocks entry to unlicensed betting providers.

Online operators cannot accept cash for providing betting services or facilitate it through providing credit (section 58 of the Law), and all principal support provider contracts are reviewed by the Authority during the licensing process.

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

Terminals may only be used in land-based operations. Please see questions 3.2 and 2.4 above.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Under the Law, the offering of illegal gambling services as well as the participation in illegal gambling are criminally punishable, either by imprisonment or fine or both.

Specifically, the provision of betting services without a licence is a criminal offence punishable on conviction by imprisonment for up to five years or a fine of up to EUR 300,000 or both (section 74 of the Law). The same sentences are provided for the provision of illegal betting such as spread betting, exchange betting, slot machine betting, online casino betting and dog-racing (sections 82, 81, 78, 79 and 83 of the Law respectively), while whoever participates in illegal betting is punishable by imprisonment of up to one year or a fine of up to EUR 50,000 or both (section 76).

In respect of advertising, criminal liability is provided for specific types of advertisements, e.g. those which promote betting as a means for social success or those that may influence underage persons to bet. Those offences are punishable on conviction by imprisonment for up to six months or a fine of up to EUR 30,000 or both, while advertising in order to promote any illegal betting such as spread betting, exchange betting, online casino betting and dog-racing are punishable on conviction by imprisonment for up to one year or a fine of up to EUR 50,000 or both (section 85 of the Law). As section 85 of the Law explicitly states, the onus rests on “anyone who advertises...”, thus, apart from the operator, the liability of the advertising media could not be excluded. In practice, so far, the licensed operators submit their draft advertising plans to the NBA in order for them to acquire the regulator’s pre-approval.

4.2 What form does enforcement action take in your jurisdiction?

Enforcement action most often takes the form of criminal prosecution by the Police, usually of operators and Authorised Representatives for providing illegal betting products.

Given that the NBA currently lacks the statutory power to impose financial penalties, in cases of persistent violations or disregard of the Law and the NBA’s warnings, the NBA may resort to the suspension or revocation of the operator’s or authorised representative’s licence. These cases are not very common, mainly because most mistakes and omissions are swiftly remedied upon consultation and cooperation between the regulator and licensees.

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

Cyprus, being an EU Member State, is subject to all EU legislation and case law of the European Court of Justice.

4.4 Are gambling debts enforceable in your jurisdiction?

According to section 89 of the Law, irrespective of the provisions of any other law of the Republic of Cyprus, any dispute in respect of an agreement relating to a bet processed in accordance with the provisions of the Betting Law of 2012 is not an obstacle and does not prevent the taking of any legal steps to enforce the agreement, subject to any rule of law or provision in the law relevant to the nullity of an agreement due to illegality.

In the cases of illegal and/or unregulated betting, the general provision of section 30 of the Contract Law (Cap. 149) will apply and the gambling debt will be unrecoverable.

5 Anticipated Reforms

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

The NBA is currently in the process of drafting new legislation aimed at overhauling the current Law. This new piece of legislation is intended to introduce new products for the licensees and powers for the NBA, unify certain sectors of the industry (with the exception of state-granted monopolies) and allow innovation to flourish, ultimately positioning Cyprus as an international gaming hub. Part of a series of changes, this legislation will be the outcome of a long and constructive dialogue between the relative state authorities, social partners, licensed operators and all relative stakeholders.

Last May, the NBA announced an open consultation regarding the licensing framework of land-based bingo halls. The consultation has now been concluded and its outcomes are being evaluated.

Moreover, a new Code of Advertising and Regulations regarding Player Protection are in the final stages of drafting.

It is worth noting that the NBA has commissioned several internationally renowned experts for matters such as internal restructuring, anti-money laundering directives and tax analysis.

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Spyros graduated in Law from the University of Westminster in 2012 (LL.B. with Honours) and in 2013 acquired a Master in Science (M.Sc.) in the field of Politics from Birkbeck, University of London. In 2015 he was admitted to the Cyprus Bar Association, and in 2016 he completed his postgraduate degree in International Shipping Law (LL.M. Merit) at Queen Mary, University of London. He has been working with the National Betting Authority for over two years as an internal legal advisor, primarily focused on overhauling the current domestic gaming framework.



NATIONAL
 BETTING
 AUTHORITY

The National Betting Authority (NBA) is the body responsible for the regulation, supervision and control of betting activities which are carried out within the territory of the Republic of Cyprus.

Denmark

Horten

Nina Henningsen



1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	The Danish Gambling Authority.	
	Poker		
	Bingo		
Betting	Betting	The Danish Gambling Authority.	
	Sports/horse race betting (if regulated separately to other forms of betting)		
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example, in relation to sport or shares)		
Lotteries	Lotteries	The Danish Gambling Authority.	
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	The Danish Gambling Authority. Depending on the circumstances, the provision of such games in Denmark is also regulated by the Danish regulation on marketing and consumer protection, which is the responsibility of the Danish Consumer Ombudsman.	
	Skill games and competitions with no element of chance		

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

The primary legislation for gambling activities in Denmark is the Danish Act on Gambling ("Gambling Act").

Supplementing the Gambling Act is a series of specific Executive Orders:

- Executive Order no. 1301 of 15 December 2011 on non-profit lotteries.
- Executive Order no. 1302 of 15 December 2011 on gaming machines in arcades and restaurants (as amended with Executive Order no. 1562 of 11 December 2015 and Executive Order no. 690 of 8 June 2016).
- Executive Order no. 1304 of 15 December 2011 on reimbursement rates for certain games.
- Executive Order no. 65 of 25 January 2012 on land-based betting.
- Executive Order no. 66 of 25 January 2012 on the provision of online betting.
- Executive Order no. 727 of 9 June 2017 on partial exemption from the Anti-Money Laundering Act for certain games.
- Executive Order no. 772 of 9 June 2017 on land-based casinos.
- Executive Order no. 773 of 9 June 2017 on online casinos.
- Executive Order no. 1403 of 1 December 2017 on reporting etc. to the State Prosecutor for Serious Economic and International Crime.
- Executive Order no. 1704 of 20 December 2017 on notification and publication of information about domestic politically exposed persons ("PEPs").
- Executive Order no. 72 of 29 January 2018 on the special contribution to the sport of horse racing.

Licensed games in Denmark shall also have their games certified in accordance with the Danish Gambling Authority's certification programme.

The provision of gambling in Denmark is subject to the Anti-Money Laundering Act ("AML Act") and general rules on marketing in the Danish Marketing Practices Act, which supplements the marketing provisions in the Gambling Act. Furthermore, financial regulation is relevant in relation to the supply of payment services, e-money, etc., as well as regulation on consumer protection in relation to information requirements towards players, which can be applicable. Additionally, there are rules on the players' right to withdraw from a transaction. Finally, licensed games are subject to the Danish Gambling Duties Act.

All of the Relevant Products are permitted according to Danish law, conditional upon specific requirements. However, please note that commercial lotteries are a monopoly.

2 Application for a Licence and Licence Restrictions

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

If a game (i) is offered to the Danish market, (ii) is subject to the payment of a stake to participate, and (iii) falls within one of the following categories:

- 1) lotteries, where the chance of winning is solely based on chance;
- 2) combination games, where the chance of winning is based on a combination of chance and skills; and
- 3) betting, i.e. where the chance of winning is dependent on the outcome of an event,

the provision of such game requires a licence from the Danish Gambling Authority (“DGA”).

As social/skill arrangements do not normally meet the above criteria, such games generally do not require a licence.

Examples of games that can be provided without a licence:

- Games without a stake, but with the opportunity of winnings.
- Games with a stake, but without the opportunity of winnings.
- Games with a stake and winnings, where there is no element of chance, such as: chess; quizzes; bridge with duplicate cards; sports events; certain types of computer games, etc.

Regarding the specific types of licences, please see questions 2.2 and 2.3 below.

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

The Danish gambling market is only partly liberalised, and thus the provision of lotteries is kept under a monopoly. The provision thereof is thus reserved for the Danish state-owned entity Danske Spil. Therefore, it is not possible for anyone else to obtain a licence to provide lotteries. However, it is possible to obtain a licence for non-profit lotteries.

In general, Danish gambling licences can be divided into two main categories: 1) online gambling licences; and 2) land-based gambling licences.

1) Online gambling

There are two different types of online gambling licence available in Denmark: a betting licence; and an online casino licence. The betting licence also covers the provision of land-based betting.

2) Land-based gambling

As for land-based gambling, there are two main types of land-based licence available in Denmark: a casino licence; and a limited licence covering only gaming machines.

Please note that the Gambling Act has recently been amended, with effect as of 1 January 2018, where betting on horse, dog and pigeon racing, in addition to online bingo, has been liberalised and is now part of the online casino licence and betting licence.

Further, it is possible to apply for a revenue-restricted licence according to which the gross gambling revenue (stakes minus winnings) (“GGR”) cannot exceed DKK 1,000,000 (approximately EUR 134,300).

There are no limits on the number of licences to provide online gambling, or on having gaming machines in arcades or restaurants.

There is a restriction on the number of land-based casino licences that may be issued.

It is not possible to get key-personnel or subcontractor licences, and subcontractors are generally not obligated to obtain their own licence – on the condition that they only act as suppliers to the gambling operator. However, this is based on a specific assessment of the obligations between the parties.

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

As mentioned above, Danish gambling licences can be divided into two main categories: 1) online gambling licences; and 2) land-based gambling licences.

1) Online gambling

The application fee is DKK 273,500 (approximately EUR 36,700) for a betting licence or an online casino licence (2018 level); however, if the party applies for a combined betting and online casino licence, the fee is DKK 382,900 (approximately EUR 51,500) (2018 level). For applicants with an annual GGR of less than DKK 1,000,000 (approximately EUR 134,300), a “revenue-restricted” licence may be issued, and the fee is DKK 54,700 (approximately EUR 7,300) per licence (2018 level).

Online gambling operators have to pay an annual fee for holding the licence. The fee is based on their GGR. Additionally, the licence-holders have to pay gambling duty based on their GGR; see question 2.7 below.

Any person wishing to provide online gambling to the Danish market must (i) be at least 21 years old, (ii) not have a legal guardian, (iii) not be subject to insolvency proceedings, (iv) not have been convicted of criminal offences which render it probable that the person will abuse their access to gambling, and (v) not have any debt owing to public authorities.

If the person does not live in Denmark or in another EU/EEA country, the person must have appointed a representative living in Denmark or – if the appointed representative is a legal entity – established in Denmark.

Any company that wishes to provide online gambling to the Danish market must be established within the EU/EEA or have an appointed representative in Denmark. Furthermore, the members of the board and the directors must meet the requirements for physical persons mentioned above.

When appointing a representative, the representative must be approved by the DGA and, in order to obtain this approval, the representative must meet requirements similar to the ones being imposed on physical persons mentioned above.

If these minimum requirements are met, the applicant must further prove that it will be able to provide online gambling in a sound financial and professional manner.

The assessment is made by the DGA based on a large number of financial and technical documents, which the applicant is required to submit. The requirements for a revenue-restricted licence are less comprehensive.

The DGA may either choose to grant a full licence, grant a conditional licence or reject the application. Applicants failing to submit sufficient documentation or failing to live up to the requirements set forth by the DGA will normally be given a chance to take remedial action by providing the missing information before the application is rejected.

The DGA will consider the overall picture, and if it finds that the necessary requirements are met, it will issue a licence. From the

handing in of an application to the DGA, the issuing of a licence will normally take between three and six months.

As a main rule, there is no refund of the application fee, which will be forfeited if the application is rejected. If the applicant applies again, a new fee must be paid.

2) Land-based gambling

The process when applying for a land-based casino licence and a licence to set up gaming machines is similar to the one described above and supplemented by the Executive Orders on land-based casinos and gaming machines in arcades and restaurants. Accordingly, there are, e.g., requirements for the persons working within a land-based casino.

At the time of writing (August 2018), there are seven land-based casino licences. For a long period it was not possible to apply for new land-based casino licences, but in the summer/autumn of 2018 the DGA opened a four-month application slot, which ended on 2 October 2018.

Applying for a licence to set up gaming machines is subject to a fee of DKK 627 (approximately EUR 84) (2018 level) per gaming machine.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

When a licence to provide gambling to the Danish market is issued, specific conditions are set forth in the licence. These usually relate to technical requirements and the games covered by the licence.

Subsequently, a licence to provide gambling will only cover the games which have been applied for, and if the licence-holder wishes to supply new games, approval from the DGA will have to be obtained.

Furthermore, the Gambling Act imposes a general requirement that the licence-holder must be able to provide gambling in a sound financial and professional manner, and although a licence has been granted, the DGA will continue to monitor the licence-holder to ensure the requirement continues to be fulfilled.

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

The different licences are issued for different periods of time: the “revenue-restricted” licence to provide online gambling is limited to one year; whereas a normal licence to provide online gambling (betting and/or online casino) can be issued for up to five years. Before expiration of the licence, it is possible to apply for renewal. This process is similar to but less comprehensive than the regular application process described under question 2.3 above.

The land-based casino licence is issued for a period of up to 10 years, while the limited land-based gaming machine licence is issued on an individual basis and may be granted for an unlimited period of time.

The DGA monitors the gambling market and can at any time open a procedure for revocation of a licence if it finds that the licence-holder can no longer supply games in a sound financial and professional manner. Such a procedure has to our knowledge not yet been opened.

Decisions made by the DGA may be appealed to the National Tax Tribunal for a fee of DKK 400 (approximately EUR 54). The decision made by the National Tax Tribunal must be brought before the Danish courts within three months of the decision. Otherwise, the decision from the National Tax Tribunal will be final.

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

Only players above the age of 18 are allowed to participate in the online games that have been liberalised. Further, before participating in online gambling, the player must also be registered with the gambling provider. The registration process involves providing the online gambling provider with extensive information, including personal information.

In relation to betting, it is not permitted to offer betting on sports events for adolescents under the age of 18.

All marketing of gambling must (i) present the odds of winning in a correct and balanced way so that it does not give the impression that the chance of winning is greater than it actually is, (ii) present gambling as entertainment, (iii) not be targeted at children or persons under 18 in relation to the design of the communication or the choice of media used, (iv) not use well-known persons to suggest, contrary to the truth, that participation in gambling has contributed to the person’s success when that is not true, and (v) not have any content that gives the impression that participation in gambling offers a solution to financial problems or gives the player social acceptance.

When marketing a bonus offer, all conditions must be disclosed in a clear and unambiguous manner within the immediate context of the bonus offer. However, depending on the media type, a referral to another medium for additional information concerning the offer can generally be accepted in the form of “one click away”. Bonuses may not be offered to single players on conditions which differ from the conditions offered to other players. The player shall have at least 60 days to meet any conditions associated with the payment of a bonus.

There is no ban on international liquidity in betting pools and casino games.

Land-based licences have specific requirements regarding opening hours, etc. Land-based providers must give full access to the public (except for persons under the age of 18), regardless of nationality.

2.7 What are the tax and other compulsory levies?

The provision of games covered by the Gambling Act is subject to duty under the Danish Gambling Duties Act. The calculation of the duty varies depending on the type of game. For an overview, see the below schedule.

Type of game	Duty percentage payable	Duty period
Betting (both online and land-based)	General	20% of the GGR, defined as received stakes minus paid out winnings.
	Betting exchanges (both online and land-based)	20% of the amount charged in commission.
Online casinos	General	20% of the GGR.
	Poker and other cases where the gambling operator’s profit is the commission charged	20% of the amount charged in commission.

Type of game	Duty percentage payable	Duty period
Land-based casinos	45% of the GGR minus the amount of special tipping chips plus an additional 30% on the part of the GGR that exceeds DKK 4,000,000 (approximately EUR 538,000).	One calendar month.
Physical gaming machines in restaurants or gaming arcades	41% of the GGR. For gaming machines in restaurants, an additional 30% on the part of the GGR that exceeds DKK 30,000 (approximately EUR 4,025) is added. For gaming machines in gaming arcades, an additional 30% on the part of the GGR that exceeds DKK 250,000 (approximately EUR 33,600) is added plus DKK 3,000 (approximately EUR 400) per machine up to 50 machines and DKK 1,500 (approximately EUR 200) per machine exceeding 50.	One calendar month.
Non-profit lottery	Cash prizes	15% of the amount that exceeds DKK 200 (approximately EUR 27).
	Prizes consisting of goods or services (market value)	17.5% of the amount that exceeds DKK 200 (approximately EUR 27).
Prizes in connection with free games (i.e. games where no stake is paid)	Cash prizes	15% of the amount that exceeds DKK 200 (approximately EUR 27).
	Prizes consisting of goods or services (market value)	17.5% of the amount that exceeds DKK 200 (approximately EUR 27).

A negative GGR in one duty period cannot be carried forward for set-off against the positive GGR in subsequent periods. Subsequently, if there is a negative GGR for one period, the duty must be declared at DKK 0.

Marketing costs that are not actual winnings for the players (e.g. bonuses, free spins, etc.) cannot be deducted when calculating the GGR.

In addition to these duties, a licensed online gambling operator must also pay an annual fee for the licence. The annual fee is fixed in classes varying from DKK 54,700 (approximately EUR 7,350) (2018 level) to DKK 4,923,000 (approximately EUR 661,300) (2018 level). The annual fee is due one month after the effective date of the licence and then on an annual basis.

Having a gaming machine is subject to an annual fee of DKK 627 (approximately EUR 84) per gaming machine.

With the liberalisation of betting on horse racing, betting providers that provide gambling on horse racing will be charged 8% of the GGR of betting on horse races on Danish horse racing tracks. The fee will be calculated on a three-month period.

Depending on the circumstances, the gambling operator may also be obligated to pay regular Danish company tax (particularly if the gambling operator is established/incorporated in Denmark).

2.8 What are the broad social responsibility requirements?

The purpose of the Gambling Act is (i) to maintain the consumption of gambling services at a moderate level, (ii) to protect young people and other vulnerable people from being exploited through gambling or developing a gambling addiction, (iii) to protect players by ensuring that gambling is provided in a fair, responsible and transparent manner, and (iv) to ensure public order and to prevent gambling as a means to support crime.

This results in several obligations being imposed on Danish licence-holders, and especially on holders of a Danish licence to provide online gambling.

Such obligations include the obligation for online gambling providers to monitor the players' consumption of gambling, providing the players with the possibility of "cooling off periods" and providing access to a state-controlled Register of Voluntarily Excluded Players ("ROFUS"), as well as having their gambling system set up so that every time a player attempts to log in, the system automatically checks whether the player has registered himself with ROFUS, and if so, the system denies him access to his account.

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

Danish licence-holders may only receive payments into a gambling account from a payment services provider that provides these services legally in Denmark pursuant to the Danish Payments Act.

According to this Act, payment services may only be provided in Denmark by certain types of providers which have been granted authorisation in Denmark, in the European Union or in a country with which the European Union has entered into an agreement for the financial area.

If the service provider does not hold a Danish authorisation, it cannot begin its operation in Denmark before it has obtained a cross-border authorisation, *cf.* the Danish Financial Business Act. The authorisation is granted when the Danish Financial Services Authority has received notification from the supervisory authorities in the service provider's home country.

Furthermore, gambling operators are not allowed to provide credit facilities to the players.

The 4th AML Directive was implemented as of 26 June 2017 via the new Danish AML Act. This had the effect that the AML regulation now covers both online and offline casinos and betting; thus, as of 26 June 2017, all gambling providers are required to identify and assess the risk of money-laundering and financing of terrorism within their business on the basis of their business model. In regards to that risk assessment, they are required to have sufficient written policies, procedures and controls that can effectively limit the risk of money-laundering and financing of terrorism. Additionally, the gambling providers are required to commence a customer due diligence with their customers. In certain situations, customer due diligence may require enhancement, while in other situations a simplified due diligence is sufficient. The new AML Act is very comprehensive and the above is not exhaustive. At present, it is not known if the DGA will make a specific guideline for gambling or if gambling will be included in the general guideline from the FSA.

Gambling providers are also obligated to inform the Danish State Prosecutor for Serious Economic and International Crime of any suspicious transactions.

There is no specific regulation concerning gambling with virtual currencies and, thus, the Gambling Act will apply if such activity can be characterised as “gambling” pursuant to Section 5(1)(i) of the Gambling Act, the most central condition being whether there is a chance of winning a prize.

3 Online/Mobile/Digital/Electronic Media

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

The Danish Gambling Act applies when an operator markets itself against the Danish market.

Online gambling is defined as gambling activities between a player and a gambling provider through the use of remote communication. The Danish Gambling Act does not distinguish between operators located inside Denmark and outside of Denmark. However, please note that any company that wishes to provide online gambling to the Danish market must be established within the EU/EEA or have an appointed representative in Denmark.

Cash deposits to online gambling accounts are prohibited. Further, a licence holder may not permit transfers of money, gambling tokens, etc. between gambling accounts.

It is prohibited to offer online lotteries as these activities are reserved exclusively for the state-owned company Danske Spil.

Any gambling provider violating this prohibition risks losing its licence and/or being prosecuted by the police, which can lead to fines being imposed.

Similarly, if a gambling provider provides games which are not covered by the licence, the gambling provider risks losing the licence and/or being imposed with a fine.

If a gambling provider who directs its provision of gambling to the Danish market does not have a licence, the DGA can further request the Bailiff’s Court to issue an ISP block of the website.

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

The DGA has the legal grounds in the Gambling Act for asking the Bailiff’s Court to ISP block an unlicensed website, which they have used on several occasions. Every time ISP blocking is granted, the relevant websites are listed on the DGA’s website.

The DGA also has the legal grounds for asking the Bailiff’s Court to order the payment services providers to block payments to unlicensed operators.

The gambling provider is obligated to perform a customer due diligence before setting up a gambling account for the player.

It is a requirement under the Danish regulation that the website (and all communication with the players) is available in Danish and the gambling duty is calculated and payable in Danish Kroner. However, the website can also be available in other languages and use other currencies.

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

It is possible to obtain a licence to set up and operate slot machines in (i) restaurants with a licence to serve alcoholic beverages (maximum three gaming machines), and (ii) slot machine arcades (premises without a licence to serve alcoholic beverages, but staffed during business hours).

The slot machines must be separate and identifiable units. Furthermore, they must be approved by an accredited testing institute and connected to a central monitoring system at the DGA. This approval is generally valid for five years.

The slot machines must be arranged in a way that only coins or vouchers that can be exchanged for money can be used for payment of the game. However, the DGA can accept other forms of payment.

The stake per game is limited to DKK 1 (approximately EUR 0.13) and the maximum winnings per game to DKK 600 (approximately EUR 80).

Self-Service Betting Terminals are permitted in betting shops and in regular shops under certain conditions.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

It is the entity which provides gambling to the Danish market which will be held liable for breaches of the Danish gambling legislation. The customer will not be held liable.

Anyone assisting the gambling provider can in theory be considered complicit and thus also be held liable.

4.2 What form does enforcement action take in your jurisdiction?

The sanctions for breaching the Danish gambling legislation/regulation range from a warning to up to two years in prison, dependent on the specific offence. The most common sanctions are a warning and an order to correct the offence or a fine. The DGA does not have the power to issue fines and thus will be obligated to hand over the matter to the Danish police with the recommendation that the police issue a penalty notice which the violator can choose to accept and try in court. The DGA can also choose to revoke the gambling provider’s licence.

In relation to gambling providers who direct their provision of gambling to the Danish market without a valid licence, the DGA will request the Bailiff’s Court to issue an ISP block of the website.

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

The European Court of Justice has established through its practice that gambling for money is covered by Articles 49 and 56 of the TFEU.

The European Court of Justice has also ruled that national measures which are able to hinder the exercise of these freedoms or make the exercise of those rights less attractive, must be justified by overriding public interest, be suitable for securing the attainment of the objective they pursue, and not go beyond what is necessary in order to attain it. According to the European Commission, the Gambling Act fulfils these requirements, as the Gambling Act was notified to the Commission in accordance with the Information Procedure Directive.

4.4 Are gambling debts enforceable in your jurisdiction?

It is necessary to differentiate between legal gambling and illegal gambling.

In legal gambling, any debt is in theory enforceable, but there should be no indebtedness, as the provision of gambling using a credit facility is not allowed. Subsequently, participants must deposit the amount of money they intend to play for, before being able to play.

Illegal gambling debts are generally not enforceable, as they will most likely be considered contrary to the general Danish principle of law and decency.

5 Anticipated Reforms

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

In June 2018, a large majority in the Danish Parliament entered into a political agreement to limit gambling addiction. The political agreement will be converted into regulation, which will come into force on 1 January 2019. At the time of writing (August 2018), we have not yet seen the actual regulation. However, from the political agreement it is clear that the regulation will set up stricter requirements in relation to bonuses, marketing, etc. and strengthen the use of ROFUS.



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Nina Henningsen has been involved in several high-profile cases relating to the media and entertainment industry. Nina thus advises many national and international media clients in matters regarding clearance of copyrights and related rights in connection with the numerous new means of distribution of radio, TV and music on all platforms, including "start-over" and "catch-up" TV, "TV-Everywhere" SVOD, TVOD, EST and APPs.

Nina is also head of Horten's Gambling Law team, which is Denmark's largest and most experienced. Thus, she has thorough experience in advising major international online gambling providers and platform providers on all aspects of Danish gambling legislation, including the complex licensing process.

Nina Henningsen is ranked in the following legal directories:

- *The Legal 500* – Leading Individual and Recommended Lawyer – Media & Entertainment.
- *Chambers* – Gaming & Gambling (worldwide) and TMT.
- *Best Lawyers* – Media Law.

HORTEN

Horten is a full-service law firm that covers all legal practice areas. Horten specialises in sectors characterised by strict regulation or where technological development and innovative approaches are fundamental – such as entertainment, energy and supply, life sciences and healthcare, IT, technology and media, as well as the public sector.

Horten uses its special expertise within regulated areas proactively to solve complex problems and think innovatively. Due to its in-depth knowledge of the regulation of the Danish gambling market and the different market players, Horten has great understanding of the regulatory, technical and operational conditions of relevance and importance to Danish and international clients, and advises on all aspects relating to the gambling and gaming sector. Horten has Denmark's largest and most experienced team of attorneys specialised in gambling legislation, and the team is recognised as Denmark's leading gambling law team both nationally and internationally.

Dutch Caribbean

Peter Muller



Xavier Rico



Gaming Legal Group / GLG Compliance

1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Aruba (country within the Kingdom of the Netherlands): Ministry of Justice, Security & Integration.	Aruba: <i>Departamento di Asuntonan di Casino</i> (“DAC”) of the Ministry of Justice, Security & Integration.
	Poker	Curaçao (country within the Kingdom of the Netherlands): the Curaçao eGaming Licensing Authority (“CIGA”) as mandated by the Curaçao Minister of Justice.	Curaçao: the Curaçao Gaming Control Board (“CGCB”, http://gamingcontrolcuracao.org), advisor to the Curaçao Minister of Justice.
	Bingo		
Betting	Betting	(Dutch) Sint Maarten (country within the Kingdom of the Netherlands): Ministry of Tourism, Economic Affairs, Transport & Telecommunications. Bonaire (special municipality of the Netherlands): No regulatory framework in place (Executive Council of the Island Territory of Bonaire). Sint Eustatius (special municipality of the Netherlands): No regulatory framework in place (Executive Council of the Island Territory of Sint Eustatius). Saba (special municipality of the Netherlands): No regulatory framework in place (Executive Council of the Island Territory of Saba).	Sint Maarten: Ministry of Tourism, Economic Affairs, Transport & Telecommunications. Bonaire: Executive Council of the Island Territory of Bonaire. Sint Eustatius: Executive Council of the Island Territory of Sint Eustatius; however, no casinos present. Saba: Executive Council of the Island Territory of Saba; however, no casinos present.
	Sports/horse race betting (if regulated separately to other forms of betting)		
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)		
Lotteries	Lotteries	Aruba: Ministry of Finance, Economic Affairs & Culture. Curaçao: Ministry of Finance. Sint Maarten: Ministry of Finance. Bonaire: No regulatory framework in place (Executive Council of the Island Territory of Bonaire). Sint Eustatius: No regulatory framework in place (Executive Council of the Island Territory of Sint Eustatius). Saba: No regulatory framework in place (Executive Council of the Island Territory of Saba).	Aruba: Ministry of Finance, Economic Affairs & Culture. Curaçao: Ministry of Finance. Sint Maarten: Ministry of Finance. Bonaire: Dutch Ministry of Finance. Sint Eustatius: Dutch Ministry of Finance. Saba: Dutch Ministry of Finance.
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Aruba: Ministry of Tourism, Public Health & Sports. Curaçao: Ministry of Education, Science, Culture & Sports. Sint Maarten: Ministry of Education, Culture, Youth & Sports Affairs.	
	Skill games and competitions with no element of chance	Bonaire: Executive Council of the Island Territory of Bonaire. Sint Eustatius: Executive Council of the Island Territory of Sint Eustatius. Saba: Executive Council of the Island Territory of Saba.	

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

Aruba, Curaçao and Sint Maarten (countries within the Caribbean part of the Kingdom of the Netherlands)

Each country within the Kingdom of the Netherlands is responsible for its own regulation, with the exception of Kingdom relations and defence. For this purpose, every country within the Kingdom has its own laws and regulations, including the regulation of gambling activities. As a result, the authority of the Dutch Gambling Authority (“DGA”) is limited to the country of the Netherlands only. On the other hand, gambling licences that have been granted in countries within the Kingdom other than the Netherlands are not valid within the country of the Netherlands. Furthermore, the “Priority Criteria” as formulated by the DGA do not allow operators from these (or other) countries to actively target Dutch residents of the country of the Netherlands. As a result, when engaging in this form of activity, these operators may receive a fine. The DGA has been known to fine operators as well as affiliated suppliers, although these actions should be seen as symbolic rather than effective, since the ability of the DGA to collect these fines is limited.

Aruba’s first casino opened in 1959. Since then, it has been a popular tourist destination for gamblers. Casinos are open to both locals and foreigners; however, locals are prohibited from visiting casinos more than eight times per month. Although the island is famous for land-based casinos, most other forms of gambling are also legal in Aruba. The relevant laws applying to the supervision of gambling on Aruba are the “State Ordinance for Hazard Games” (AB 1990 GT 44, Dutch: “*Landsverordening Hazardspelen*”, or: “LHS”), the “State Ordinance for Licensing Hazard Games” (AB 1990 GT 45, Dutch: “*Landsverordening Speelvergunningrecht Hazardspelen*”, or: “LSH”), the “Regulations on Taxation of Hazard Games” (AB 1990 GT 8, Dutch: “*Besluit ter uitvoering van artikel 3 van de Landsverordening Speelvergunningrecht Hazardspelen*”, or: “BLSH”), the “Ordinance on Lotteries” (AB 1988 GT 25, Dutch: “*Loterijverordening*”, or: “LVO”), the “Lottery Decree” (AB 1988 GT 26, Dutch: “*Loterijbesluit*”, or: “LB”), the “State Ordinance for the State Lottery” (AB 1992 GT 115, Dutch: “*Landsverordening Landsloterij Aruba*”, or: “LLA”), the “State Ordinance on Airport Gaming Devices” (AB 2006 GT 13, Dutch: “*Landsverordening Speelautomaten Luchthaven*”, or: “LSL”), the “Ordinance on Licences” (AB 2002 GT 1, Dutch: “*Vergunningverordening*”, or: “VV”), the “Aruban Criminal Code” (AB 1991 GT 50, Dutch: “*Wetboek van Strafrecht van Aruba*”, or: “WvS”), the “Civil Code of Aruba” (AB 1989 GT 100, Dutch: “*Burgerlijk Wetboek van Aruba*”, or: “BW”), and the “State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing” (AB 2011 no. 28, Dutch: “*Landsverordening voorkoming en bestrijding witwassen en terrorismefinanciering*”, or: “LWTF”).

The relevant laws applying to the supervision of gambling on Curaçao are the “State Ordinance Casino Industry Curaçao” (AB 1999, no. 97, Dutch: “*Landsverordening Casinowezen Curaçao*”, or: “VCC”), the “State Decree Casino Industry Curaçao” (Dutch: “*Landsbesluit Casinowezen Curaçao*”, or: “BCC”), the “State Ordinance regarding Labour in Hotels, Restaurants, and Casinos” (PB 2000, no. 67, Dutch: “*Arbeidsbesluit hotels, restaurants en casinos*”, or: “BHRC”), the “State Ordinance concerning the Exploitation of Hazard Games on the International Market by Means of Service Lines” (PB 1993, no. 63, Dutch: “*Landsverordening buitengaats hazardspelen*”, or: “LBH”), the “National Ordinance Penalization of Money Laundering” (PB 1993, no. 52, Dutch: “*Landsverordening strafbaarstelling witwassen van geld*”,

or: “LSWG”), the “National Ordinance Identification when Rendering Financial Services” (O.G. 1996, no. 23, Dutch: “*Landsverordening identificatie bij financiële dienstverlening*”, or: “LIF”), the “National Ordinance Reporting of Unusual Transactions O.G.” (PB 1996, no. 21, Dutch: “*Landsverordening melding ongebruikelijke transacties*”, or: “MOT”), and the “Penal Law of Curaçao” (Dutch: “*Strafwet van Curaçao*”, or: “SvC”). As per January 2014, the CGCB has issued licence regulations for sports betting. Land-based casino licence holders, who wish to offer sports betting in their casino, may apply for the required CGCB written approval. Upon approval, the regulations will be attached to the casino licence, and the licensee’s sports betting must be conducted in accordance with all of these regulations.

Sint Maarten did “inherit” the former Dutch Antilles’ State Ordinance for Hazard Games (PB 1993, no. 63) which, in principle, offers the possibility to grant licences that allow remote gambling operations. The moratorium on gambling licences has been lifted. These are regulated by the Ministry of Tourism, Economic Affairs, Transport & Telecommunications.

Bonaire, Sint Eustatius and Saba (special municipalities of the Netherlands) (“BES Islands”)

On each of the BES Islands, article 1 of the “Hazard Games BES I Act” (Dutch: “*Wet hazardspelen BES I*”, or: “HGBES I”) allows the granting of a licence to operate a land-based casino by each Executive Council. The “Hazard Games BES II Act” (Dutch: “*Wet hazardspelen BES II*”, or: “HGBES II”) regulates games of chance that are deemed to have a social or cultural purpose. Lottery operations are regulated by the “Lottery Act BES” (Dutch: “*Loterijwet BES*”, or: “LWBES”). Taxation of games of chance is regulated in the “BES Gaming Licence Tax Act” (Dutch: “*Wet speelvergunningrecht hazardspelen BES*”, or: “WSHBES”). The “Gaming Tax Act” (Dutch: “*Wet op de kansspelen*”, or: “WOK”) does not allow remote gambling activities on the BES Islands.

2 Application for a Licence and Licence Restrictions

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

Aruba, Curaçao and Sint Maarten

On Aruba, in order to operate a land-based casino, an entity does not necessarily have to be of Aruban origin. However, a casino licence shall only be granted if the operator operates a hotel on the Island of Aruba. On Curaçao, the applicant for a casino licence (online as well as land-based) needs to be a locally formed legal entity, with a local managing director, as certified by the “Curaçao Chamber of Commerce & Industry” (“CCC”). Furthermore, the applicant should hold a business permit, but it is allowed to delegate these responsibilities to a management services company. Moreover, a land-based casino licence shall only be granted if the operator operates a hotel on Curaçao. A separate (cumulative) licence exists, as already mentioned, for sports betting operations.

On Sint Maarten, the moratorium on gambling licences has been lifted. The regime, regulated by the Ministry of Tourism, Economic Affairs, Transport & Telecommunications, resembles the regime in Curaçao.

BES Islands

On the BES Islands, the operation of a land-based casino needs to be connected with a hotel venture (HGBES I). No separate casino ventures are allowed. Remote gambling operations are not allowed.

Furthermore, those who wish to organise a bingo or “*Bon kun’e*” may apply for a licence, as regulated by HGBES II. Legal entities may be granted a lottery licence, as regulated by LWBES. Small promotional lotteries shall be tolerated, if compliant with local regulations. On Bonaire, licences have been granted to only two small boutique casinos. The other BES Islands do not host land-based casinos at this time.

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

Aruba, Curaçao and Sint Maarten

On Aruba, as already mentioned, the operation of a land-based casino needs to be connected with a hotel venture. No separate casino ventures are allowed, with the exception of a special licence that may be granted to a supplier of gaming devices that are placed at the airport. Furthermore, other than the casino licence, no special licences apply in the field of gaming, as most requirements have been included in the casino licence, such as a required certificate of good standing for all casino employees. Casino employees, however, are subject to prior written approval by the DAC.

Furthermore, participants in the supply chain need to comply with the general VV, which contains rules and regulations regarding the distribution of alcohol, opening hours and related topics. Interestingly enough, the operator of the casino is not required to hold a casino licence in person, as long as the operator is engaged in a “casino contract” with the licence holder.

On Curaçao, as already mentioned, the operation of a casino needs to be connected to a hotel venture as well. The hotel is required to operate a minimum of 150 hotel rooms, although some exceptions regarding already existing ventures have, in the past, been made to this rule. The CGCB also accepts personal applications by legal individuals, as long as the local entity is still in the process of formation. In 2015, the application of the Curaçao establishment Campo Alegre for a land-based casino licence was denied by the CGCB. The applicant operated the required minimum of 150 rooms; however, the application was nevertheless denied, since a substantial number of the guests of the applicant appeared to generate income by providing “exotic” services to other guests of local origin when staying on the premises. Claims by the applicant that these guests should be seen as only “exotic tourists” having a good time (as it appears with other tourists) were denied by the courts.

Some specific rules and regulations regarding personnel working in casinos are specified in the BHRC. As a general rule, casino staff need to be of good standing and aspect and without a criminal record. Curaçao offers two types of licence for remote gaming: a master licence; and a sub-licence. Whereas both licences fully cover gaming operations, the distinction is that a master licence holder may license third parties. Sub-licence holders, however, do not have the ability to sub-licence. The sub-licence grants the same rights as a full licence.

Land-based casinos on Sint Maarten, which fall under the scope of the Ministry of Tourism, Economic Affairs, Transport & Telecommunications, are hardly regulated at this time.

BES Islands

On the BES Islands, as mentioned above, the operation of a casino needs to be connected with a hotel venture. Since only the BES Island of Bonaire hosts two small boutique casinos, specific details concerning the operation of these casinos have been arranged within the respective individual licences.

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

Aruba, Curaçao and Sint Maarten

The application for a casino licence (including online licences) on Aruba should be filed with the DAC. The applicant shall have to comply with several requirements and provide all the required documentation, including, but not limited to: (1) the Articles of Incorporation and Rules and Regulations; (2) disclosure of all directors as well as (if applicable) the Board of Commissioners; (3) disclosure of all beneficial owners; (4) disclosure of affiliated ventures; (5) detailed description of operations; (6) disclosure of the organisational structure; (7) information on company solvency; (8) a detailed floor plan of the casino; (9) an excerpt from the CCC; (10) a business establishment permit; (11) information on business hours; (12) a Certificate of Good Standing; (13) a Certificate of Incorporation; (14) a Casino Operating Agreement; (15) a list of all personnel employed, combined with a certificate of good conduct of all employees; and (16) rules of all games that are being offered by the operator.

According to article 2, LHS, the licence is personal and non-transferable. Only a person of good standing is allowed to operate gambling activities. Operations must, at all times, be in compliance with any and all conditions, rules and regulations set forth by the Minister of Justice, otherwise there may be a penalty of closure and/or withdrawal of the permit by the DAC. The granting of a casino licence is subject to ministerial discretion and is granted via ministerial decree. Based on article 4, LHS, the licence shall be subject to renewal every five years.

The application form for a licence to operate a land-based casino on Curaçao should be filed with the CGCB, together with a model business plan. Furthermore, the applicant should provide proof of the fact that: (1) his hotel project and, consequently, the casino are primarily aimed at the international market; (2) the casino is viable within the hotel project; (3) the minimum paid-up capital is available for the casino, equal to the amount invested for the casino, increased by 100,000 Netherlands Antilles florins (“*Nafl.*”); and (4) all VCC requirements have been met. As a first step in obtaining a licence to supply remote gaming facilities on Curaçao, an applicant needs to register with the CCC as a local legal entity. This will trigger a mandatory investigation by the Ministry of Justice, which may take approximately six weeks to complete.

If the applicant has not been rejected at this time, he may be granted a provisional licence. The applicant needs to provide information including, but not limited to: (1) declarations of good standing for all ultimate beneficial owners involved; (2) copies of the passports of the ultimate beneficial owners; (3) bank references of the ultimate beneficial owners; (4) copies of the utility bills of the ultimate beneficial owners, no older than three months; (5) proof of the fact that minors shall effectively be denied access to the online casino; (6) proof of sufficient information on the website for the prevention of gambling addiction; (7) details on the location of the customer and transaction database, which needs to be located on Curaçao; (8) information on the primary market the website shall be targeting; (9) details concerning the online software that shall be used; (10) third-party certification of the random generator software; and (11) a financial feasibility study for the first three years.

Land-based casinos on Sint Maarten, which fall under the scope of the Ministry of Tourism, Economic Affairs, Transport & Telecommunications, are hardly regulated at this time.

BES Islands

Licence applications need to be filed with the Executive Council of the desired island.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Aruba, Curaçao and Sint Maarten

The licence holder of a casino on Aruba remains liable and responsible at all times for all casino operations, even though he is allowed to delegate casino operations to another operator, as long as these parties have engaged in a “casino contract”. This contract may not be changed without prior DAC approval. The licence holder shall make sure that there shall be no abuse of alcohol on the premises. Daily supervision shall be delegated to a casino supervisor. Furthermore, the operator is required to allow state casino inspectors on the premises at any time. The licensee is not allowed to provide any form of credit to Aruban residents.

A Curaçao licence holder operating a land-based casino remains – similarly to the rules and regulations on Aruba – liable and responsible at all times for all casino operations, even though he is allowed to delegate casino operations to another operator, as long as these parties have engaged in a “casino contract”. This contract may not be changed without prior CGCB approval. Furthermore, the CGCB needs to approve the game rules and all slot machines, as well as opening hours. In general, the applicant should prove, to the satisfaction of the CGCB, that the casino business meets the minimum internal control standards (“MICS”). It is worth noting that, in general, a holder of a licence for remote operations shall not be able to receive cash flow on the island of Curaçao if this cash flow is related to gambling activities. Therefore, online licence holders need to resort to an offshore bank account, e.g. on the island of Malta.

Licensing in Sint Maarten falls under the scope of the Ministry of Tourism, Economic Affairs, Transport & Telecommunications. The online regime resembles that of Curaçao. Land-based casinos are hardly regulated at this time.

BES Islands

On the BES Islands, as mentioned above, the operation of a casino needs to be connected with a hotel venture. Since only the BES Island of Bonaire hosts two small boutique casinos, specific details concerning the operation of these casinos have been arranged within the respective individual licences.

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

Aruba, Curaçao and Sint Maarten

On Aruba, based on article 4, LHS, a land-based casino licence shall be subject to renewal every five years, although the DAC may also revoke the licence at any time, giving three months’ notice. The casino licence shall be revoked if the hotel operations are not consistent.

On Curaçao, a land-based casino licence is issued for a term of three years. Renewal of the licence is subject to the discretion of the CGCB. A Curaçao master licence for the operation of remote gaming is issued for a term of five years. In principle, it shall be renewed automatically, subject to compliance with regulations. The sub-licence is valid for an indefinite period, depending on the validity and general terms and conditions of the master licence, in accordance with the “IP agreement”. However, the Minister of Justice shall retain the discretionary authority to revoke a master licence if and whenever he sees fit. By IP agreement, the master licence holder also tends to retain the authority to revoke a sub-licence if circumstances so dictate.

Licensing in Sint Maarten falls under the scope of the Ministry of Tourism, Economic Affairs, Transport & Telecommunications. The online regime resembles that of Curaçao. Land-based casinos are hardly regulated at this time.

BES Islands

Since only the BES Island of Bonaire hosts two small boutique casinos, specific details concerning the operation of these casinos have been arranged within the respective individual licences.

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

Aruba, Curaçao and Sint Maarten

On Aruba, in addition to licence requirements, the licence holder needs to comply with VV regulations, which include rules and regulations regarding the usage of alcohol on the premises. No visitors under the age of 18 are allowed. The licence holder is not allowed to provide Aruban residents with any form of credit.

On Curaçao, in addition to licence requirements, the licence holder is responsible for maintaining a policy that shall prevent gambling addiction. Also for this purpose, the “150 rooms rule” was introduced, safeguarding that a majority of the income of the licence holder would derive from hotel operations and not gambling operations.

In addition to licence requirements regarding remote gambling, sub-licence holders need to comply with all specific instructions of the master licence holder, in compliance with the IP agreement. General regulations require that the operator shall at all times display a specific logo, which certifies that the licence holder is operating under a valid master licence or sub-licence. Furthermore, the website needs to display information on the prevention of gambling addiction.

Licensing in Sint Maarten falls under the scope of the Ministry of Tourism, Economic Affairs, Transport & Telecommunications. The online regime resembles that of Curaçao. Land-based casinos are hardly regulated at this time.

BES Islands

Since only the BES Island of Bonaire hosts two small boutique casinos, specific details concerning the operation of these casinos have been arranged within the respective individual licences.

2.7 What are the tax and other compulsory levies?

Aruba, Curaçao and Sint Maarten

On Aruba, article 1, BLSH imposes a monthly 4% levy on gross casino proceeds plus a fixed fee of 5,000 Aruban florins (“AFL”).

Article 1, LB requires an Aruban lottery licence holder to distribute 80% of all lottery proceeds after taxes: (a) 40% of the proceeds are to be distributed to lottery winners; and (b) 40% of the proceeds are to be distributed to sports organisations.

Curaçao has introduced several Economic Zones (“E-Zones”) with a reduced corporate income tax rate of 2% on net profits, which is expected to be maintained until 2026, provided companies remain in annual compliance. The turnover generated through local business may not exceed 25% of the total turnover. This rate is not applicable on the profit of an E-Zone company if it is generated by the sale of goods or services to companies located in the former Netherlands Antilles or generated through the rendering of services to affiliated companies located in the country. In addition, there is no import

duty or turnover tax charged on goods entering the E-Zones. The fees for a remote master licence on Curaçao include a Nafl. 60,000 setup fee, plus a subsequent monthly Nafl. 10,000 for the first two years. After that, the operator can negotiate with the government of Curaçao. Sub-licence fees are set by master licence holders and may vary.

Licensing in Sint Maarten falls under the scope of the Ministry of Tourism, Economic Affairs, Transport & Telecommunications. The online regime resembles that of Curaçao. Land-based casinos are hardly regulated at this time.

BES Islands

Gaming tax imposition is provided for in the WSHBES.

2.8 What are the broad social responsibility requirements?

Aruba, Curaçao and Sint Maarten

On Aruba as well as Curaçao – with the exception of general regulations imposing the responsibility to safeguard visitors against the potential hazards of repetitive gambling and abuse of alcohol – no specific rules and regulations exist regarding limitations on advertising casino ventures to the general public. Minors are not allowed to visit an Aruban or Curaçao casino. Furthermore, the number of visits to a casino by an Aruban resident has, by law, been limited to eight per year.

Licensing in Sint Maarten falls under the scope of the Ministry of Tourism, Economic Affairs, Transport & Telecommunications. The online regime resembles that of Curaçao. Land-based casinos are hardly regulated at this time.

BES Islands

As part of the country of the Netherlands, the BES Islands need to comply with Dutch law. For this, we would like to refer you to our Netherlands chapter within this guide.

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

Aruba, Curaçao and Sint Maarten

Based on article 9, LWTF, a service provider is forbidden to enter into a business relationship or to carry out a transaction, if: (1) it has not performed customer due diligence; (2) it is not able to carry out the customer due diligence; or (3) the results of the customer due diligence do not comply with LWTF requirements. On Aruba, article 6, paragraph 1, subsection e. of the LWTF states that a financial service provider shall perform customer due diligence if it performs casino cash transactions with a value of AFL 5,000 or more. Furthermore, article 1, subsection 5 defines the operator of a casino as a designated non-financial service provider, extending the due diligence obligations of the service provider to the casino operator as well. All unusual transactions need to be reported without any delay to the “Reporting Centre, Unusual Transactions” (article 20, LWTF, Dutch: “Meldpunt Ongebruikelijke Transacties”, or: “MOT”). The following information needs to be provided: (1) the identity of the client; (2) the nature and number of the identity document of the client; (3) the nature, time, and place of the transaction; (4) the amount and designated use and origin of the money, securities, precious metals, or other values involved in a transaction; (5) the circumstances based on which the transaction is considered unusual; (6) if it concerns a transaction regarding a

high-value object, a description of the object in question; and (7) the indicator or indicators pursuant to which the transaction has been designated as unusual.

AML regulations of Curaçao are generally comparable with those of Aruba, with the difference that there has been a more extensive implementation of FATF regulations. As a result, regulations on combating the financing of terrorism have also been introduced. Curaçao has also instituted an MOT (www.mot.cw). Rules and regulations are generally comparable to those of Aruba, with the exception that rules and regulations are a little more advanced than those of Aruba.

Licensing in Sint Maarten falls under the scope of the Ministry of Tourism, Economic Affairs, Transport & Telecommunications. The online regime resembles that of Curaçao. Land-based casinos are hardly regulated at this time.

BES Islands

As part of the country of the Netherlands, the BES Islands need to comply with Dutch law. For this, we would like to refer you to our Netherlands chapter within this guide.

3 Online/Mobile/Digital/Electronic Media

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

Aruba, Curaçao and Sint Maarten

Online gambling is legal in Aruba and Curaçao. The government issues licences to online gaming providers. Remote operators may legally serve both local and foreign gamblers. Online licensing in Sint Maarten falls under the scope of the Ministry of Tourism, Economic Affairs, Transport & Telecommunications. The online regime resembles that of Curaçao.

BES Islands

As part of the country of the Netherlands, the BES Islands need to comply with Dutch law. Remote gambling is currently not allowed. For this, we would like to refer you to our Netherlands chapter within this guide.

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

Aruba, Curaçao and Sint Maarten

Although the Netherlands-based gambling regulator DGA has no authority on Aruba, the DGA “Priority Criteria” do not allow operators from these countries to actively target Dutch residents of the Netherlands. As a result, if an operator engages in this form of activity, the DGA may impose fines: the DGA has been known to fine foreign operators as well as affiliated suppliers. This is worth mentioning regarding all operators who use Dutch language on their websites, since the Dutch language is only spoken in a limited number of regions. The DGA has been known to be indiscriminate against all operators using the Dutch language, generally assuming that websites are targeting the country of the Netherlands.

As already mentioned, cash flow derived from remote gambling activities may, in general, not be received by any onshore bank account on Curaçao. Online licence holders therefore need to resort to an offshore bank account, e.g. on the island of Malta.

Online licensing in Sint Maarten falls under the scope of the Ministry of Tourism, Economic Affairs, Transport & Telecommunications. The online regime resembles that of Curaçao.

BES Islands

As part of the country of the Netherlands, the BES Islands need to comply with Dutch law. For this, we would like to refer you to our Netherlands chapter within this guide.

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

Aruba, Curaçao and Sint Maarten

A casino licence on Aruba and Curaçao includes the possibility of installing gaming devices, as long as they shall be located on casino premises. As mentioned earlier, no separate gambling facilities are allowed unless they are connected to hotel operations, binding these operations to hotel premises, with the exception (on Aruba) of gaming devices, which may be placed on airport premises, under a special licence. Licensing in Sint Maarten falls under the scope of the Ministry of Tourism, Economic Affairs, Transport & Telecommunications. The online regime resembles that of Curaçao. Land-based casinos are hardly regulated at this time.

BES Islands

Since only the BES Island of Bonaire hosts two small boutique casinos, specific details concerning the operation of these casinos have been arranged within the respective individual licences.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Aruba, Curaçao and Sint Maarten

On Aruba, article 8, LSH makes casino board members and representatives personally liable for imposed taxes regarding casino operations. Furthermore, the licence holder cannot limit any form of responsibility in connection with casino operations, even though he is allowed to provide a mandate to another party. On Aruba, the offering of games of chance is punishable by a maximum fine of AFL 25,000 or imprisonment of up to two years (article 266, WvS), with the exception of the organisation of a cockfight, punishable only with a fine of AFL 50 (article 477a, WvS). On Curaçao, the intentional offering or facilitation of hazard games is punishable by a maximum fine of Nafl. 25,000 or imprisonment of up to two years (article 2:215, section 1, SvC). The facilitation of “Ponzi schemes” is punishable by a maximum fine of Nafl. 100,000 or up to four years of imprisonment (article 2:215, section 2, SvC). On Sint Maarten, illegal facilitation of gambling is hardly counteracted.

BES Islands

As part of the country of the Netherlands, the BES Islands need to comply with Dutch law. For this, we would like to refer you to our Netherlands chapter within this guide.

4.2 What form does enforcement action take in your jurisdiction?

When dealing with unregulated supplies in the gambling sector in this region, administrative fines are the most likely method of enforcement. However, in addition to any monetary sanction, the authorities have the authority to impose various sanctions, including imprisonment.

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

Aruba, Curaçao and Sint Maarten

Aruba, like Curaçao, is in the process of implementing international AML standards, as provided by the “Financial Action Task Force” (“**FATF**”). Consequently, those international standards for anti-money laundering which apply generally also apply to, e.g., Aruban and Curaçao casinos. In general, it can be observed that the legislation of Aruba and Curaçao is highly comparable, since they were both members of the former Netherlands Antilles. On Sint Maarten, illegal facilitation of gambling is hardly counteracted.

BES Islands

As part of the country of the Netherlands, the BES Islands need to comply with Dutch law. For this, we would like to refer you to our Netherlands chapter within this guide.

4.4 Are gambling debts enforceable in your jurisdiction?

Aruba, Curaçao and Sint Maarten

On Aruba, article 4a, LHS excludes games of chance from article 7A:1807, BW as long as they have been offered on a legitimate basis, in the possession of a valid permit. As a result, gambling debts are indeed enforceable on Aruba. A similar provision has been included in the Civil Code of Curaçao. On Sint Maarten, all forms of gambling are illegal. As a result, we feel that gambling debts that were made on Sint Maarten shall not be enforceable. A great number of jurisdictions have banned residents from Sint Maarten from gambling online. On Sint Maarten, illegal facilitation of gambling is hardly counteracted.

BES Islands

As part of the country of the Netherlands, the BES Islands need to comply with Dutch law. For this, we would like to refer you to our Netherlands chapter within this guide.

5 Anticipated Reforms

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

Aruba, Curaçao and Sint Maarten

Although gambling is legal and regulated, Aruba has in the past been (heavily) criticised for lax enforcement of (amongst others) gambling laws by the Caribbean Financial Action Task Force (“**CFATF**”) in its *Mutual Evaluation Report on Anti Money Laundering and Combating the Financing of Terrorism*.

Aruba has actively sought to diversify its economy, in particular by developing its offshore activities, through the licensing of offshore banks and the development of offshore companies. However, the measures in laws and regulations that should ensure transparency and integrity of these vehicles are still inadequate. The level of criminality on Aruba has increased considerably in recent years. Due to its geographical location and travel facilities, money laundering is primarily linked to drug trafficking, and risks have been identified for cross-border movement of cash in the real estate and jewellery sectors, and through the misuse of exempt companies. Some online casinos have also been accused of being involved in money laundering.

The Aruba legislative requirements have many gaps relative to the FATF standards, and this is exacerbated by a lack of clarity and consistency in the scope and the extent of the obligations.

Combating the Financing of Terrorism (“CFT”) has never been seen by the government as a major risk, nor have FATF regulations been implemented in this field. As a result, in general, Aruba’s system of AML/CFT preventive measures is incomplete and lacks coherence and effectiveness. Aruba has been advised by the CFATF to urgently review the structure of the regime, including the legislation, and dedicate more resources to the agencies in charge of AML/CFT. Aruba should also give clearly defined tasks and priorities to each of those agencies. Not being subject to AML/CFT requirements creates potential opportunities that could be misused by money launderers and other criminals. Consideration should be given to reviewing and updating the legislation.

Unlike Aruba, Curaçao has adopted the eight FATF Special Recommendations on Combating Terrorist Financing. The Central Bank of Curaçao underscores the importance of having all measures in place and keeping up with new developments to maintain the name and reputation of its financial sector. Therefore, from its inception, the Bank has invested much time and human resources in the Committee against Money Laundering (“CIWG”). With the recent demands of EU Member States (led by the UK) to hold a costly licence not only in the operator’s jurisdiction but also in the country in which a player is based, combined with covenants of regulators in player jurisdictions and the cutting of payment provider services, the gaming regime of Curaçao has suffered some setbacks, with many operators leaving for EU whitelisted Member States such as Malta. Also, some incidents in 2015 brought into question the capacity of the regulator to take swift action against certification impersonators, who claimed to be regulated under the Curaçao gaming regime while, in fact, they were not. An infamous case is that of the “Grand Parker Casino scam”, in which the Israeli authorities detained two men of Israeli origin, accusing them of posing as 12 Curaçao regulated online (to the layman, seemingly unrelated) casino ventures, in which they succeeded for years, from as early as 2012, without being uninterrupted until the summer of 2015, when the online casino was finally shut down by, it would appear, the US Federal Bureau of Investigation. A positive outcome of all this was that the incident sparked renewed dialogue between market representatives and the Curaçao government on how to prevent such scams ever happening again in the future.

Nevertheless, Curaçao was white-listed by the “Organization for Economic Co-operation and Development” (“OECD”) and has fully adopted the FATF standards. Combined with a favourable tax regime and the low-cost ability to develop new technology, Curaçao still represents one of the more favourable gaming regimes to set up shop, although it might be favourable to combine the “best of both worlds” of Curaçao and Malta.

In 2016, the CGCB issued the AML/CFT Guidelines Complementing the “AML/CFT Regulation”, adapted to the local “land-based” casino industry, to further combat money laundering and terrorist financing. These guidelines contain a practical and pragmatic sectoral implementation of the AML/CFT rules, promoting the compliance of casinos with the legal obligations. During various information sessions, the casino industry has been updated on the new regulations.

Notable were the remarks of Gino Campbell, Managing Director of the CGB during a local convention that was held from 14 to 16 August 2017 in the Renaissance Hotel & Casino, inviting market participants to work together with the CGB in strengthening the regulatory framework. Although there is “still a long way to go”, Mr. Campbell was confident that Curaçao would continue to see a positive trend in the development of its economy and investment climate, while at the same time improving matters of compliance.

In 2018, Curaçao has moved to implement measures against Base Erosion and Profit Shifting (“BEPS”), as (pre)defined by the Organization for Economic Co-operation and Development

(“OECD”), coupled with anti-transparency provisions, derived from Europe’s Fourth Anti-Money Laundering Directive (“4AMLD”).

The arrival of such changes was imminent. The OECD produced its 15 standards (“Actions”) against BEPS in 2015, by request of the G20 Finance Ministers and Central Bank Governors in 2013. Nevertheless, the methods of implementation by the Curaçao government have left a lot to be desired. Curaçao did not decide, or communicate to the market for that matter, on any implementation before June 6, 2018, three weeks before expiration of a ‘fatal’ deadline for implementation, although it already committed two years before to the following Actions:

- Action 5/6 requires the identification of preferential features and/or the granting of treaty benefits under inappropriate circumstances, which can facilitate base erosion and profit shifting and therefore have the potential to unfairly impact the tax base of other jurisdictions;
- Action 13 requires Curaçao to implement country-by-country reporting for multinational enterprises (“MNEs”). An obligation to report transfer pricing documentation on an annual basis for each jurisdiction in which the MNE has established entities/business relationship;
- Action 14 calls for an effort to make dispute resolution mechanisms more effective. It includes a commitment to implement a minimum standard to ensure that treaty-related disputes are resolved in a timely, effective and efficient manner; and
- Action 15 requires a mandate for the development of a ‘multilateral instrument’, designed to provide an innovative approach to international tax matters. The goal of this instrument is to modify existing bilateral tax treaties to implement tax treaty-related BEPS measures, reflecting the rapidly evolving nature of the global economy and the need to adapt quickly.

Action 5/6 led the OECD to the identification of three preferential features within the Curaçao jurisdiction, deemed inappropriate, according to BEPS standards, being: (1) the “**Exempt Company**”; (2) the “**Export Exemption**”, both of which were flagged for lacking substance; and (3) the “**E-zone**”. The implemented measures put a stop to all of these preferential regimes. It also *de facto* ended the benefits connected to the privacy foundation *Stichting Particulier Fonds* (“SPF”). Although the E-zone, with a tax rate of only 2%, was not abolished in the strict sense of the word, it was stripped of all benefits, since its function has been strictly limited to the sales of goods only, also including a 9% sales tax (no deductions allowed) for goods sold in Curaçao. The Exempt Company as well as the Export Exemption have been abolished altogether. The Exempt Company has been converted into the Curaçao Investment Company (“CIC”). Curaçao authorities may now also freely and without any notification, without the necessity to obtain any consent, distribute information to (potential) tax payers. Furthermore, no rulings may be requested without making payable a fee of €250, however there are no measures in place to force the government to expeditiously formulate an answer.

It is expected that these changes shall heavily impact on the Curaçao services industry, which for the better part could have been prevented, if measures had been designed with a little more diligence and not been implemented and communicated at the last moment. This process has been the complete opposite of Malta’s 2018 overhaul (also reviewed by Gaming Legal Group) and which, unlike the Curaçao overhaul, carries the hallmark of a responsible and transparent regulator.

The team of Gaming Legal Group has published several articles on this topic, in which the measures are discussed in more detail. These are available to download for free at www.gaminglegal.com.

Turning to Sint Maarten, in 2011, the government of Sint Maarten introduced some gambling policies in the field of gaming; a brief entitled *Rules of the Game*. The policy does at this time include regulations for a financial oversight mechanism. However, it appears that no such controls have been made effective to date. This lack of financial oversight presents a high risk of money laundering and organised crime. The casinos do not appear to comply with the current MOT regulations. In 2013, the CFATF noted:

“There is no comprehensive regulatory and supervisory AML regime in Sint Maarten for casinos; however, the Examiners were advised that within the Government there has been discussion regarding the creation of a Gaming Control Board. There are no AML/CFT requirements for internet casinos. It is to be noted that [the] threshold for casinos does not comply with the threshold set by FATF.”

It is noted that the government has in the past hired outside consultants to evaluate the casino industry and assess different regulatory options in detail; this has resulted in detailed reports

on the functioning of the government, such as the report issued in 2014 by PricewaterhouseCoopers, titled: *Integrity Inquiry into the functioning of the Government of Sint Maarten*. However, it is not expected that the regulatory situation in Sint Maarten will improve any time soon.

BES Islands

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Note

Please note that Gaming Legal Group and its affiliated entities cannot accept liability for this publication, since one should always consult a legal professional for the purpose of retaining individual advice.



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“Gaming Legal Group” is a symbiosis between the law firm “GLG Litigation” based in the Netherlands, specialising in gaming litigation and “GLG Compliance” based in the Netherlands, Malta, Cyprus, Curaçao and the Dominican Republic, specialising in all matters of compliance. Gaming Legal Group has rapidly built itself a reputation as a world-renowned niche specialist in the field of gaming. It has a focus on hybrid cases in which government, tax, civil and financial law are often combined. Gaming Legal Group always tries to aim for a scientific and/or innovative approach. This is what makes Gaming Legal Group a worldwide “mover and shaker”. The leading opinions of Gaming Legal Group are followed worldwide. Would you like to know more? Please take a look at our other chapters in this guide, covering the Netherlands, Malta and the Greater Antilles, check out www.gaminglegal.com or follow us on Twitter @gaminglegal.

Enhancing Compliance

The department of GLG Compliance, located in Emmastad and Gaito, Willemstad, Curaçao, is the organisational compliance “watchdog” of the Gaming Legal Group. Its mission is to assist clients in maintaining and enhancing their compliance procedures. Research may benefit voluntary “policing”, preparations for a lawsuit, or function as preparatory work for company restructuring. The team is formed by Peter Muller, Xavier Rico and Nicole Lourens.

France

Cloé Si Hassen



Marine Travailot



Startlaw

1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Forbidden.	Minister of the Interior.
	Poker	<i>Autorité de régulation des jeux en ligne</i> (ARJEL).	Minister of the Interior.
	Bingo	Budget Minister and Minister of the Interior.	Budget Minister and Minister of the Interior.
Betting	Betting	ARJEL.	Budget Minister and Minister of the Interior.
	Sports/horse race betting (if regulated separately to other forms of betting)	ARJEL.	Budget Minister, Minister for Agriculture and Minister of the Interior.
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	Forbidden.	Forbidden.
Lotteries	Lotteries	Budget Minister and Minister of the Interior.	Budget Minister and Minister of the Interior.

Relevant Product	Who regulates it in digital form?	Who regulates it in land-based form?
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Does not fall within the scope of the gambling ban. Authorised subject notably to compliance with the provisions of the Consumer Code.
	Skill games and competitions with no element of chance	
		Budget Minister and Minister of the Interior.

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

Gambling is subject to a general prohibition (Article L. 322-1 of the Internal Security Code) with limited exemptions for:

- Gambling played in a physical and online network under exclusive rights and as part of a qualitative and quantitative regulatory policy. The monopoly operating model has been maintained for physical (“hard”) and online lottery games (draws, scratching, etc.) as well as physical points of sale in the case of sports and horse betting, and for physical casinos.
- Three sectors of the online gambling market (sports betting, online horse racing, online poker) following the opinion delivered by the European Commission on 27 June 2007, asking France to open up the online sports betting sector to competition.

Act No. 2010-476 of 12 May 2010 put into practice this opening to competition limited to the three types of online gambling mentioned above. The monopoly of *La Française des Jeux* (FDJ) has been maintained over online and hard scratch and draw games as well as over hard sports betting. The monopoly of racing companies (and in particular the *Pari mutuel urbain* (PMU)) has been maintained over hard horse betting. Similarly, casinos have retained their monopoly over casino gaming (including slots and casino table games such as roulette and blackjack), such only being allowed on a hard basis.

According to Article 3 of the law of 12 May 2010, “minors, even emancipated minors, may not take part in gambling whose public offer is authorised by law. Legally authorised gambling and betting operators are required to prevent the participation of minors, even emancipated minors, in the gambling or betting activities they offer”.

Any commercial communication in favour of a legally authorised gambling and gambling operator is prohibited in the various media accessible to minors.

2 Application for a Licence and Licence Restrictions

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

- **Casinos and gaming circles:** opening authorisation issued by the Ministry of the Interior, after consulting the Consultative Commission for Circle and Casino Games (CCJCC).
- **FDJ, PMU and lottery:** approval issued by the FDJ after approval by the Ministry of the Interior (Decree No. 2017-1306 of 25 August 2017 on the operation of registration posts for lottery games, sports prognostic games and horse betting and racing companies Decree of 5 December 2017 establishing the list of documents to be provided for applications for authorisation to operate registration posts for lottery games, sports prognostic games and horse betting).
- **Online games and betting (horse betting, sports betting and online poker):** the ARJEL’s operator licence.

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

- **Casinos and gaming circles:** authorisation to operate takes place after the opinion issued by the deliberative assembly of the local authority concerned, the implementation of a public service delegation procedure and a *commodo-incommodo* investigation. A set of specifications sets out the conditions of operation and the relationship between the designated *cessionnaire* and the local authority.

Authorisations are granted “after an investigation, and in consideration of specifications drawn up by the municipal council and approved by the Minister of the Interior” and are temporary. The authorisation order sets their duration and defines: the nature of authorised gambling; their operation structure; the measures for monitoring and controlling the enforcement officers; the conditions for admission to gaming rooms; the opening and closing hours; and the rate and method of collection of levies on gambling proceeds.

- **FDJ, PMU and lottery:** originally, SCCJ’s (the Central Racing and Gaming Service) investigations focused exclusively on the morality of candidates. They have evolved to include a financial component related to the fight against money laundering. The PMU operating licence is granted to the person managing the establishment and not to the point of sale and therefore cannot be included in the sale of an establishment.
- **Online games and betting (horse betting, sports betting and online poker):** the ARJEL’s licence is issued after inspection of:
 - the software used by the operator which needs to be compliant with a standard called the Technical Requirements File as per the 2010 law and Decree No. 2010-509 dated 18 May 2010.
 - Legal representatives and directors responsible for gaming and betting operators referred to in Articles L. 561-2 9 and L. 561-2 9bis of the Monetary and Financial Code who are subject to compliance with prudential measures in the fight against money laundering and terrorist financing.

These operators are required to exercise due diligence on transactions, monitor suspicious financial commitments, and have Know Your Customer procedures in place in compliance with TRACFIN regulations. They must also provide for internal risk analysis systems and ensure the identity of the winning players.

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

- **Casinos and gaming circles:** the CCJCC reviews all requests for the introduction of a new game made by one or more casinos. These requests are examined by the CCJCC, after advice from the SCCJ on the report issued by the Directorate of Public Freedoms and Legal Affairs (DLPAJ). The SCCJ also launches a procedure for the approval of equipment with a technical examination. Once authorisation has been obtained, the game is put into operation for a limited period.
- **Online games and betting:** the applicant, a natural or legal person who wishes to market online games and betting, must submit an application for approval by category of game or betting to the ARJEL. The approval is issued by the ARJEL for a renewable period of five years. The ARJEL issues authorisations only to applicants who have the technical, economic and financial capacity to meet, on a long-term basis, the obligations attached to its activity and its obligations to safeguard public order, combat money laundering and terrorist financing and the fight against excessive or pathological gambling.

Pursuant to Article 1012 of the French Tax Code, a fixed fee is payable by each operator for any request for the issuing or renewal of an authorisation. The amount of this fee varies according to the number of authorisations (horse bets, sports bets, circle bets).

Subject to exception, the ARJEL shall decide on the application for approval within a period which may not exceed four months from the date of submission of the application for approval.

Article 23 of Act No. 2010-476 requires authorised operators to obtain two certifications:

- The first certification must be obtained within six months of the operation of the hardware support as defined by Article 31 of the same Act.
- The second certification must be obtained within one year of the date of approval. It concerns compliance by the licensed operator with all legal and regulatory obligations applicable to its activity. It must be updated annually.
- **FDJ, PMU and lottery:** to obtain approval, a file must be lodged with the FDJ or PMU. This file is sent to the SCCJ for advice. The FDJ or PMU shall communicate to the operator the notice received from the Ministry. The licence will be effective after the approval issued by the SCCJ.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Licensees must provide all information relating to:

- their identity and the structure of their possible company in the case of a legal person; and
- any criminal convictions or administrative penalties relating to the owner (natural person or corporate officer of the company).

Licensees must also be able to prove their ability to maintain the compliance of the games they propose with the applicable regulations and need to designate the person or persons domiciled in France who are responsible for them.

A set of specifications also needs to be presented by the licensee, including obligations related to the organisation of games and betting as well as the guarantee of respect for public and social order in the field of games.

In support of their application and throughout the duration of the authorisation, these operators must demonstrate their ability to fulfil these obligations and be transparent both for the organisation and supply of games or bets and for the management of the company or, in the case of a legal person, its capital structure.

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

- **Casinos and gaming circles:** The SCCJ controls licensed businesses. It fulfils a preventive and administrative role in casino or gambling circles. The SCCJ is present for the administrative openings and closures of casinos and gambling circles. It also carries out the audit and technical and regulatory control of the establishments. At the end of the audit, written observations shall be notified to the establishment's management. The conclusions of these audits are sent to the Central Directorate of the Judicial Police (DCPJ), the DLPAJ and the Prefect. These conclusions are used during the CCJCC's review of the renewal of ministerial gaming licences.
- **Online games and betting:** The approval is issued for a period of five years and is renewable.

An inspection is carried out by the ARJEL after one year of operation. Audits are then carried out by the authority throughout the duration of the licence.

Sanctions ranging from a simple warning to the withdrawal of the licence may be imposed by the ARJEL in the event of non-compliance with legal and regulatory obligations (Article 43 of Act No. 2010-476 of 12 May 2010 on the opening to competition and regulation of the online gambling sector).

- **FDJ, horse betting (PMU) and lotteries:** Decree No. 2015-338 of 25 March 2015 amended Article 27 of Decree No. 97-456 to specify that "at the request of the Minister of the Interior, [the authorisation] may be suspended for a maximum period of six months or withdrawn [...] after an adversarial procedure initiated at the request of the Minister of the Interior".

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

The payback ratio is the proportion of bets that operators return to players in the form of winnings. Regulations may determine minimum or maximum proportions for the ratio because it can have an effect on a game's addictiveness or the propensity for a game to be defrauded.

Online games:

- Horse betting and online sports betting: the Decree of 4 June 2010 sets a limit of 85% on the payback ratio. Control of this is entrusted to the ARJEL.
- Online circle games: the payback ratio is not capped.

Hard games:

- Games under exclusive rights of the FDJ: for lottery games, Decree No. 78-1067 of 9 November 1978, as amended, stipulates that the share allocated to winners must be between 45% and 75% (it must be less than 70% on average for scratch cards); for sports betting, the payback ratio is capped for all games in the range of 75%.

- Casino games: the payback ratio is only fixed for slot machines, as Article R. 321-17 of the Internal Security Code stipulates that it must not be less than 85% of the stakes.
- Horse betting (PMU): under Article 18 of the aforementioned Decree of 13 September 1985, the TRJ is regulated between 60% and 90%. Its determination varies according to a calculation of the operator for each bet according to the mass of issues to be shared.

The management of the gambling ban file is carried out by the Gaming Facilities Office of the Ministry of the Interior, attached to the DLPAJ, which is competent to impose a restriction on individual freedom to gamble, either on the basis of a person's voluntary request or on the basis of an administrative police measure taken in response to public disorder caused by a person in a gambling establishment. The SCCJ receives people who wish to be banned from gambling. Online gaming operators are, each month, recipients of this file. For online games and betting, consultations must be carried out at each account opening request and at least once every eight days. If the answer is yes, the opening or use of the corresponding player account is blocked.

The 2010 Act, in its Article 7, issued commercial communication requirements that apply to both hard and online games. The CSA intervened on numerous occasions after having noted various breaches in the broadcasting of advertisements and sponsorships in favour of these operators. In June 2009, the Professional Advertising Regulatory Authority (ARPP) adopted an ethical recommendation. A partnership agreement was signed with the ARJEL on 23 May 2013.

2.7 What are the tax and other compulsory levies?

The profits made from gambling do not constitute a lucrative occupation or a source of profit that should give rise to taxation. The main issue is the qualification of the gain according to its risk. Indeed, gains made by professional players under conditions that eliminate or significantly reduce the risk normally inherent in gambling are considered taxable. This position, confirmed by case law, is applicable to the usual practice of poker, including online poker, provided that the game of poker cannot be regarded as a game of pure chance and provided that it is played under conditions comparable to a professional activity.

Businesses involved in the gambling industry are subject to special taxation rules. In addition to the ordinary taxes and social security contributions applied to gaming operators (corporate income tax (CIT), VAT, etc.) (with the notable exception of the PMU with regard to the CIT), gambling is subject to a special tax system based on bets, with the exception of land-based casinos, whose taxation is based on the gross proceeds of the games. In addition, the calculation of VAT follows specific rules: casinos, circles and gaming houses are exempt from VAT, while the VAT applicable to sports betting and online circle games is based on the net proceeds of the games, less the bonuses granted to players by operators.

2.8 What are the broad social responsibility requirements?

The objective of the State's gambling and gambling policy is to limit and control the supply and consumption of gambling and to control its operation in order to:

1. prevent excessive or pathological gambling and protect minors;
2. ensure the integrity, reliability and transparency of gambling operations;
3. prevent fraudulent or criminal activities as well as money laundering and terrorist financing; and

4. ensure the balanced and equitable development of the different types of game in order to avoid any economic destabilisation of the sectors concerned.

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

In casinos, all payment methods, plates, tokens and tickets available are subject to the reporting obligation provided for in Article 464 of the Customs Code.

Cash payments are capped by Article D. 112-3 of the Monetary and Financial Code in order to limit the risk of money laundering and terrorist financing.

For social games and video games, the question of the supervision of loot boxes is currently being debated in France. A senator referred this question to the ARJEL to determine whether loot boxes could be qualified as gambling. While the ARJEL has indicated that there may be excesses in the loot box offers, a reflection on a framework for these practices is on its way.

3 Online/Mobile/Digital/Electronic Media

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

As the law currently stands, French residents are prohibited from participating in gambling through a site or application that has not been approved by the ARJEL.

Pursuant to Act No. 2010-476 of 12 May 2010 on the opening to competition and regulation of the online gambling sector, it is prohibited for natural and legal persons:

- to propose to the public an offer of bets or gambling without being a licensed person. The penalties are three years' imprisonment and a fine of 90,000 euros; and
- to advertise for an unauthorised site. The sanction is a fine of 100,000 euros.

The gaming regulatory authority may also impose additional penalties and block unauthorised gaming sites in France.

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

It is formally forbidden for minors to participate in gambling, whether online or physical.

In addition, online gambling operators must also ensure compliance with French regulations applicable to consumers (Consumer Code), to the processing of users' personal data (GDPR) and to the banking regulations.

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

For online casino games, only circle games are allowed; online slot machines are prohibited.

Slot machines may only be installed and operated in casinos that have the necessary approvals.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Operators (natural and legal persons) may be held civilly and criminally liable in the event of illegal gambling and, in particular, in the event of the absence of a licence.

4.2 What form does enforcement action take in your jurisdiction?

Decree No. 2008-612 of 27 June 2008 on the organisation of the central administration of the Ministry of the Interior assigns to the Central Directorate of the Judicial Police the supervision of gambling establishments and racecourses.

The SCCJ is responsible for the supervision of gaming establishments, racecourses, horse and sports betting and games related to new technologies. It fulfils an administrative and judicial police role, and ensures that the regularity and sincerity of the games are respected, as well as the protection of players and the defence of the interests of the State.

Within the ARJEL, a team of investigators is dedicated to the search for illegal sites. This team issues formal notices to illegal operators to stop their activity.

In the event of non-compliance with the formal notice, the Paris Regional Court (TGI) is asked to order Internet service providers (ISPs) to block access to these sites.

In addition, a so-called "reminder to the law" (RAL) procedure was introduced at the beginning of 2015. Out of 373 sites that were the subject of a reminder to the law, 239 were brought into full or partial compliance, without initiating any more cumbersome procedure.

Finally, the effectiveness of blocking orders sent to ISPs has been strengthened by an agreement with Google (the preferred search engine for 92% of the French population) which, upon receipt of these orders, delists the domain names reported to it.

With regard more specifically to sports betting, any person betting on a competition and having specific information about it is liable to be punished for fraud.

In the event that an outside person tries to "buy" an athlete, the specific offence of sports corruption applies.

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

The opening up of the sector to competition is the result of the implementation of EU legislation. Indeed, by decisions of 1994 (ECJ, 24 March 1994, Case C-275/92; ECJ, 26 April 1994, Case C-275/92; ECJ, 26 April 1994, Case C-275/92, C-272/91), the EU Court of Justice held that the organisation and operation of a lottery or game of chance in a Member State by a public or private entity was a "services" activity within the meaning of Article 50 EC and should, as such, be subject to the freedoms of provision of services and establishment enshrined therein.

4.4 Are gambling debts enforceable in your jurisdiction?

According to Article 1965 of the Civil Code: "the law does not grant

any action for a gambling debt or for the payment of a bet” which allows the courts to declare the nullity of contracts, and particular loans, intended for a prohibited gambling activity.

5 Anticipated Reforms

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

The Court of Auditors, in an investigation report commissioned by the National Assembly’s Public Policy Evaluation and Control Committee, made several recommendations:

Gaming policy and regulation

- To create an inter-ministerial committee responsible for defining public policy on gambling, including the ministries in charge of the budget, the interior, agriculture, health, sports and the economy; and
- to entrust the regulation of all hard and soft gambling and online gambling to an independent administrative authority comprising the Online Gaming Regulatory Authority, the Commission for Exclusive Rights Gaming, the Advisory Commission on Circle and Casino Gaming and the Gaming Observatory.

Effectiveness and proportionality of regulations

- To strengthen the powers of the regulatory authority to better fight illegal supply; and
- to reduce the duration of experimentation with new games by reducing the authorisation procedure.

Protection of players and fight against fraud

- To make use of the player card or any other means of identification mandatory, starting with the games most likely to lead to addiction, fraud and money laundering;
- modernise the file of gambling bans and extend its use, including at points of sale in the physical network, in order to better protect problem gamblers;
- establish a legal framework strengthening the ethics of horse racing along the lines of what has been done in the field of sport: provide for criminal offences in the field of doping and race fixing; strengthen the prevention of conflicts of interest by extending betting bans and controlling them; and regulate the activity in relation to horse prognoses; and
- standardise cash usage limits for both betting and winnings in order to fight fraud and money laundering.

Taxation

- To carry out a comprehensive study of the impact of gambling taxation under the aegis of the Inter-ministerial Gaming Committee.

As mentioned in question 2.9, the question of the supervision of loot boxes is being examined within the ARJEL and by several European regulators.

Similarly, although betting on e-sports is currently prohibited in France, a change on this subject is requested by some players and could be accepted by the legislator in the coming years.

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Admitted to the Paris Bar in 2012, Cloé Si Hassen assists and represents entrepreneurs, companies and their managers in all areas of business law in both advisory and litigation.

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Cloé holds degrees in litigation and business criminal law from the Universities of Paris 1 Panthéon Sorbonne and Versailles. She worked for several years in a Parisian business law firm before creating Startlaw.

Cloé has developed legal and technical expertise in the field of e-sports, gaming and media.

Aware of the need to structure e-sports in France, Cloé is involved in developing understanding in the sector and lobbying the French authorities.

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A business lawyer admitted to the Paris Bar since 2011, Marine Travailot assists and represents companies and their managers, particularly in the startup ecosystem. She decided to specialise in this field following a simple observation: despite the development of innovative companies and the multiplication of incubators, startups meet difficulties in finding legal help adapted to their specific needs and environment.

A holder of diplomas in business law and corporate tax law obtained respectively at the University of Paris 1 Panthéon Sorbonne and Paris 2 Panthéon Assas, Marine obtained an executive MBA in International Economic Strategy in order to offer to her clients a global strategy and to provide them with a more complete response to the issues raised.



Startlaw is a law firm for innovative companies and start-ups, founded by Cloé Si Hassen and Marine Travailot, two professionals specialised in business law and trained respectively in litigation and tax law.

Startlaw defines itself by combining its dynamism and understanding of its customers' environment.

Startlaw's lawyers assist their clients both in the creation and structuring of their financing and in their day-to-day legal needs.

The goal of StartLaw's lawyers is to create a sustainable and dynamic partnership that will enable innovative companies to no longer consider the legal and tax aspect as a burden but as a differentiation tool at their disposal.

Startlaw is resolutely a modern law firm and has developed partnerships with legal-technology companies and a specific expertise in the emerging sectors of e-sports and the collaborative economy.

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Melchers Law Firm

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1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Online casino gaming is prohibited under the Interstate Treaty on Gambling (“Interstate Treaty”). Consequently, the Interstate Treaty does not provide for a licensing procedure or determine a competent authority. Regulatory intervention has so far only been initiated on a state-by-state basis by the respective gambling supervisory authorities (mostly the Ministries of the Interior in the respective state) in charge, despite the fact the German states could theoretically instruct one state to act on behalf of multiple states as per the Interstate Treaty. In Schleswig-Holstein, the Ministry of the Interior is the regulator responsible for supervising licensees under the former Schleswig-Holstein Gaming Act (repealed in 2013). It will also be the regulator responsible should action be taken against non-Schleswig-Holstein licensed operators on the basis of the Interstate Treaty.	Bricks-and-mortar casinos are regulated under state laws, not federal law, and the Ministry/Senate of the Interior of the respective state will, in general, be the authority responsible for licensing and supervision.
	Poker	See above.	Poker is permitted, in most of the German states, in state-owned casinos and regulated by the Ministry/Senate of the Interior of the respective state. In Saxony and Baden-Wuerttemberg, poker is not expressly mentioned, but will be approved when presenting an adequate gaming concept when applying for a licence, and is therefore not excluded.
	Bingo	Since bingo is generally considered a lottery product, it is subject to the state monopoly and thus regulated as detailed below (Lotteries).	Since bingo is generally considered a lottery product, it is subject to the state monopoly and thus regulated as detailed below (Lotteries).
Betting	Betting	The Interstate Treaty only regulates sports betting. Other forms of betting (with the exception of horse race betting; see below) are affected by the total ban if offered online.	The Interstate Treaty makes it a precondition for an operator to hold a licence, yet does not provide for licensing opportunities for betting on non-sports events.
	Sports/horse race betting (if regulated separately to other forms of betting)	The central responsibility for issuing sports betting licences was assigned to the state of Hesse. Initially, Hesse’s Ministry of the Interior took on this responsibility. The responsibility has since been shifted to the Regional Council of Darmstadt. The Regional Council also handles online horse race betting licensing.	The central responsibility for issuing sports betting licences was assigned to the state of Hesse. Initially, Hesse’s Ministry of the Interior took on this responsibility. The responsibility has since been shifted to the Regional Council of Darmstadt. Horse racing associations are licensed and supervised by the authorities responsible in the respective state (mostly the Ministries of the Interior or Regional Councils entrusted with these responsibilities depending on the case).

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Betting	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	The classification of fantasy betting as gambling depends on the individual circumstances and particularly on the mechanics of the respective game. There is no specific authority responsible for fantasy betting matters.	
Lotteries	Lotteries	The Ministries of the Interior or Regional Councils entrusted in in the respective states will be the authorities responsible for licensing and supervision of their respective state lottery company. The same applies to brokers of state lottery products, which can be privately-owned entities, unless these operate in multiple German states, as the Ministry of the Interior of Lower Saxony will be the nationwide responsible licensing and supervisory authority in that case.	
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	"Social" gaming does not fall under the definition of games of chance and hence lacks specific regulation.	
	Skill games and competitions with no element of chance	Skill games and competitions with no element of chance do not fall under the definition of games of chance and hence are not affected by gambling regulation.	

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

Games of chance are defined as games where payment of consideration is required in order to acquire a chance to win and the determination of winnings is entirely or predominantly a matter of chance. Any gambling activity falling within this definition is subject to specific gambling legislation.

The Interstate Treaty, originally concluded by the federal states with effect as of July 2012, sets out the main objectives of gambling regulation and provides for a state monopoly on the organisation of lotteries, the licensure of sports betting (including non-tote fantasy sports bets) up to a maximum of 20 licences and the prohibition of online casino gaming. The Interstate Treaty is implemented by specific state legislation; in particular, the Gaming Acts of the individual states. The German Criminal Code penalises the organisation or advertising of games of chance if these must be considered "unauthorised".

Between January 2012 and February 2013, the state of Schleswig-Holstein pursued its own gambling regulation. The Gaming Act of Schleswig-Holstein, contrary to the Interstate Treaty, allowed for the issuance of licences for private sports betting and online casino operators. However, due to a change in government, Schleswig-Holstein ultimately acceded to the Interstate Treaty. During the time the Gambling Act of Schleswig-Holstein was in force, a total of 48 licences for the operation of sports betting and/or online casino gaming were issued. These will expire sometime between May 2018 and the end of February 2019. Schleswig-Holstein has, however, decided to introduce a transitional arrangement, which is based on the Interstate Treaty, and intends to allow sports betting operations during an interim period until licences are issued under the Interstate Treaty or a new Interstate Treaty or other legal framework. At the time of writing, a transitional arrangement comparable to the one introduced with respect to the sports betting sector has not been introduced for the online casino sector. It is unclear if such a transitional arrangement will be introduced before Schleswig-Holstein online casino licences start to expire.

Casino gambling (bricks-and-mortar) is considered a matter of state law, not federal law, and primarily regulated by the various Casino Acts and the Gaming/Casino Ordinances of the respective states. The Casino Acts usually distinguish between table games (e.g. roulette, card games) and slot machine gaming. Although subject to controversy, the majority of German courts have so far regarded poker as a game of chance and not a game of skill. Therefore, poker is only permitted in state-owned casinos and may not be offered online. The latter does not apply to online casino licensees of Schleswig-Holstein.

Online casino gambling: The Interstate Treaty does not provide for a licensing system for online casino operations and, instead, sets out a total ban on any online games of chance other than sports betting, horse race betting and lotteries, see sec. 4(4) of the Interstate Treaty. The total ban has been heavily criticised under EU law. Still, a questionable judgment was handed down by Germany's highest administrative court, the Federal Administrative Court, in October 2017, which confirmed the lawfulness of the total ban under national and EU laws. This means that enforcement activity may increase. A constitutional complaint has been filed against this judgment.

Betting: The Interstate Treaty only considers (online and retail) sports betting, i.e. fixed odds sports betting on the outcome of sports events or parts of sports events (sec. 3(1) 4 Interstate Treaty) to be licensable. Bets on non-sports events (e.g. social/financial betting or secondary lotteries) are not permitted. *Pari-mutuel*/pool betting is reserved for the state monopoly. No national sports betting licences have been issued to date despite a licensing process having been initiated in 2012. This is because it could not be completed as it was confirmed to violate the principle of transparency and non-discrimination by German and European courts.

Slot machine (amusement machines with prizes – "AWPs") gaming is regulated under federal law. The Trade Regulation Act and the Gaming Ordinance provide the framework regulation and set out the requirements applicable to AWPs; the Interstate Treaty and gaming legislation of the individual states include further restrictions to gaming hall premises, such as a requirement for a minimum distance to be maintained between such premises.

Horse race betting: For traditional reasons, horse race betting is regulated under federal law. The Race Betting and Lottery Act contains provisions on the organisation of bets on horses and taxation rules for lotteries and sports betting in general.

Lottery including bingo: Only state lottery companies may apply for operating licences. Private operators may only apply for distribution (brokering) licences, allowing them to sell lottery tickets on behalf of the state lottery companies to promote the products offered by the state lottery companies.

Social/skill games – if understood as play-for-free games – generally do not fall under the definition of games of chance and hence lack specific regulation. They may be operated without a licence, yet restrictions may apply resulting from general consumer or minor protection laws.

Similarly, games will not be subject to gambling regulation if they qualify as a skill game, which is often the case in relation to e-gaming/e-sports offerings, but the character of the game will always have to be assessed on a case-by-case basis.

Prize competitions and draws, i.e. games where, instead of money, prizes or advantages of money's worth can be won, again may or may not fall under specific gambling regulation, depending on how they are set up in the individual circumstances. Generally, the provisions on lotteries apply. However, the Sweepstakes Ordinance created by the State Media Authorities and/or the Interstate Treaty on Broadcasting, as well as associated provisions, may also be of relevance in certain scenarios.

2 Application for a Licence and Licence Restrictions

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

It will depend on the gambling product as to whether there are licences available and which licences or other permits are required or can be applied for, for the lawful offer of the relevant products to persons located in Germany. By product, the following licences are currently (albeit, in parts, only theoretically) available to private operators:

Casino gaming (including poker): Licence for the operation of land-based casinos (although the majority of casinos are state-operated).

Sports betting: Licence for the operation and brokerage of online sports betting across Germany, and for land-based sports betting in betting shops. No licences could be issued to date because the licensing process was confirmed to have been unlawfully designed and conducted. Since May 2017, any EU/EEA operator has the opportunity to apply for a "quasi-licence" in the context of a transitional arrangement introduced by the state of Schleswig-Holstein. The transitional arrangement is intended to allow sports betting operations in Schleswig-Holstein during an interim period until licences are issued under the Interstate Treaty or a new Interstate Treaty/other legal framework, and may be considered to provide an opportunity for operators to demonstrate their willingness and readiness to be regulated by a German authority. By doing that, operators arguably improve their legal defence if their operations are challenged, and secure themselves a stronger regulatory/compliance position.

Horse race betting: Bookmaker licence under the Race Betting and Lottery Act, as well as online horse betting licence pursuant to sec. 27(2) of the Interstate Treaty.

Slot machine gaming: Licence for land-based slot machine gaming (AWPs) in gaming halls or restaurants and bars.

Lotteries: Licence for the brokerage and sale of traditional state lottery products (land-based and online); licence for the operation of small or charitable lotteries which have their draw results published less than twice a week, have a top prize worth less than EUR 2 million and do not have a scheduled jackpot. The operation of traditional lottery products, such as the national lottery or other large-scale lotteries, as well as pool-betting, is subject to the state monopoly. Private operators may not apply for such licences. They may only apply for a licence allowing brokerage of the state lottery products.

The former regulation in Schleswig-Holstein, further, enabled private operators to obtain licences for **online casino gaming**, with the exception of bank-holder games such as blackjack, baccarat and roulette. In total, 23 such licences were issued. The Gaming Act of Schleswig-Holstein continues to apply in relation to these licensees. However, the licences are due to expire sometime before end of February 2019 and, at the time of writing, no transitional arrangement similar to the one introduced by the state of Schleswig-Holstein in respect of sports betting has been introduced.

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

There is no uniform structure for the licensing regimes available in Germany. As online casinos are forbidden under the Interstate Treaty, there is no licensing regime available for online casino operators. For sports betting operators, the Interstate Treaty theoretically provides for a licensing process, but, at the time of writing, the Schleswig-Holstein "quasi-licence" introduced in the context of the sports betting transitional arrangement is the only official permit which can currently be applied for in practice. Available licences for casinos are tendered by the respective state, while an application for a licence to operate a gambling hall can be made at any time.

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

There is no general process of applying for a gambling licence because each process very much depends on which kind of licence an operator applies for. Any application process will, however, set out certain requirements that the applicant or the business corporation needs to fulfil in order to qualify for a licence. These will mainly concern the applicant's reliability and expertise, and will include examining the applicant's financial capability. Applicants will also need to demonstrate that they are willing to provide safe and transparent services and wish to comply with the gaming regulation. It is a characteristic of German licensing processes that applicants will be required to prove their qualifications by submitting so-called "concepts", i.e. detailed descriptions of their business and related policies (including, e.g., responsible gaming, IT security, anti-money laundering ("AML"), business and marketing concepts).

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Every licence is restricted with regard to its duration and requires the licensee to be and remain "reliable", i.e. ensure business conduct complying with local laws and tax obligations as well as personal reliability of staff. The Interstate Treaty restricts the application of the licence to the territory of the Federal Republic of Germany and countries that recognise the German permit for their sovereign territories. Licences issued by states, which have no cross-state effect, will generally be limited in scope to the territory of the state in question.

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

Comparing the Casino Acts of the individual states, licences for the operation of land-based casinos usually have a licence term of about 15 years. Licences issued under the Gaming Act of Schleswig-Holstein lasted for six (plus, if they had been considered extendible, four) years. The “quasi-licences” issued under the new transitional agreement created by Schleswig-Holstein are intended to be valid during the interim period between licence expiry and the issuance of actual licences under the Interstate Treaty or enactment of a new law. Sports betting licences, once issued pursuant to the Interstate Treaty, were supposed to be valid for a seven-year experimental period – the experimental period as it is currently set out in the Interstate Treaty is scheduled to end on 30 June 2019. At the time of writing, it is not yet clear whether the German states will find a common approach regarding reforms before this experimental phase ends. In any case, the ending of the experimental phase would not result in severe consequences for the sports betting industry as the state monopoly, which would “come back to life” in that scenario, has been clearly confirmed to be unlawful by the Court of Justice of the European Union (“CJEU”).

Any licensee needs to comply with all the requirements during the whole period of holding the licence. If an operator fails to comply with the licence conditions, any licence may be revoked. Licences, however, will not be revoked immediately and without prior notice. Operators will usually be contacted by the regulators and will be given a chance to comment on and review the alleged violations of the licence conditions and to resolve the issues within a certain timeframe.

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

Casino gaming (including poker): Some federal states limit the number of tables and slots allowed in casinos. However, there are no restrictions on payouts, maximum wins/losses or the duration of games. Barred players may not enter the gaming area or play in casinos. Strict entrance controls need to be established in order to ensure that this is the case. These controls include matching the players with a nationwide player-barring database. Online casino operations are affected by the online ban.

Sports betting: Fantasy betting is allowed, whereas bets on anything other than sports are prohibited, e.g. financial or social betting. Such bets may therefore not be offered. Regarding in-play betting, the situation is unclear. The Interstate Treaty prohibits some forms of in-play betting, but fails to provide a definition of these prohibited in-play bets. Also, the competent authority, the Hessian Ministry of the Interior and other institutions have so far not provided any clear guidance as to what exactly they consider prohibited/missible in-play betting. In addition, the Interstate Treaty proposes a maximum monthly stake limit in the amount of EUR 1,000 to be adhered to. This restriction, along with the restrictions on bet types, has been at the centre of lobbying efforts in recent years and, at the time of writing, we are starting to see some positive trends towards German regulators possibly reconsidering these restrictions for the future. Further, current regulations state that land-based sports betting should only be allowed in a restricted number of betting shops and that a minimum distance between betting shops and possibly also other gambling premises needs to be maintained. According to the intention of the law, betting shop licences can only be issued once the national

sports betting licence has been issued, meaning that the restrictions on betting shops arguably should not apply yet. Still, more and more German states are trying to (prematurely) impose restrictions on betting shops, e.g. by introducing toleration regimes, which arguably lack a legal basis. In any case, disputes are expected in the future.

Horse race betting: Operators of horse race betting have to comply with certain stake limitations, e.g. bookmakers operating on racecourses may not accept stakes of less than EUR 15 and regarding online horse race betting, a monthly stake limitation of EUR 1,000 needs to be adhered to.

Slot machine gaming: Other than slot machine gaming in casinos, slot machine gaming offered on other premises, such as gaming halls, restaurants or bars is subject to multiple restrictions. These restrictions predominantly deal with the number of machines allowed (gaming halls: maximum 12, restaurants/bars: maximum three), minimum distances between gaming halls ranging from 250m to 500m and game restrictions (minimum/maximum stakes, payout ratios and duration of games).

Lotteries (including tote): Lotteries may not be operated by private operators. They are subject to the state monopoly, i.e. the 16 lottery companies that together form the State Lottery and Tote Association (Deutscher Lotto and Totoblock).

Material promotion and advertising restrictions in relation to the above: Advertising of games of chance is subject to a very restrictive regime in Germany and is affected by an abundance of laws and regulations, including the Interstate Treaty, the Gaming Acts of the individual states, the Advertising Guidelines, the Code of Practice of the German Advertising Council, the Act Against Unfair Competition and specific minor protection legislation, such as the Act for the Protection of Minors or the Interstate Treaty on Broadcasting and the Interstate Treaty on the Protection of Minors in the Media. Operators will typically be required to submit a marketing concept as part of their licence application, which sets out how they intend to advertise their products whilst sufficiently ensuring player protection at the same time. Often, particularly in the land-based casino sector, the licences issued will specify further advertising restrictions. Any advertising of unauthorised games of chance, misleading advertising or advertising directed at minors or other risk groups is prohibited, as is most online and TV advertising. Exceptions to the prohibition on online and TV advertising apply in relation to sports betting, horse race betting and lotteries where operators can apply for specific advertising permits. However, since no sports betting licences have been issued so far and the constitutionality of the Advertising Guidelines has been called into question, these are of limited practical relevance.

2.7 What are the tax and other compulsory levies?

A characteristic of the taxation of gambling products is that it largely depends on the product type and the regulations in the respective federal state. Accordingly, tax rates vary considerably throughout Germany.

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

Throughout Germany, any operator offering licensed or unlicensed sports or horse race betting is subject to a 5% federal tax on stakes.

In addition to regular corporate taxes, slot machine operators have to pay municipal amusement tax. Depending on the law of

the respective municipality, slot machine operators are subject to a 12%–20% amusement tax which is based on the gross income generated from the slot machines.

Since 1 January 2015, all online casino operators – not only the non-EU-based online casino operators – have been subject to VAT. In 2017, it was officially confirmed by the Federal Ministry of Finance that GGR (and not stakes) is the tax base for German VAT on online casino revenues. A significant fiscal risk for online casino operations in Germany was thereby removed as the tax base had been a subject of debate up until then. The confirmation was the achievement of considerable lobbying efforts headed by the German Online Casino Association (the “DOCV”).

2.8 What are the broad social responsibility requirements?

Some of the main objectives of the Interstate Treaty are the prevention of addiction and criminal acts, channelling the market away from the black market, and to ensure the integrity of sports. Starting with the qualification and reliability of the operators being prerequisites for acquiring a licence, there are many other requirements linked to social responsibility. In essence, these concern the protection of players and minors and the safety of gambling operations. Safety, in this context, especially means: safe payment and transaction methods; adhering to youth, customer and data protection laws; keeping AML and IT standards; and being reliable in paying taxes and levies.

Gambling operators are required to provide a so-called “social concept” to demonstrate their policy and approach towards the protection of players and minors and intended measures in order to reach these goals. Operators need to be familiar with the impact of games of chance and the inherent risk of addiction and show this in their social concepts. They have to train their staff on detecting problematic players and gambling behaviour and on the responsible operation, execution and commercial brokerage of public games of chance.

Players should be encouraged to assess their own gambling activities by reality checks and self-tests, need to be able to set their own deposit or loss limits, and need to be made aware of the risk of addiction through brochures or responsible gaming websites. Gambling operators are required to offer information on where players may seek help, such as contact details of support services (counselling and therapy). Players need to be informed about self-barring and third-party barring, and made aware of the possibility of taking gaming breaks. Sec. 8 of the Licensing Ordinance of Schleswig-Holstein, for example, provides for “cool-down periods” (24 hours) and temporary (minimum one-month) gaming breaks.

Social responsibility also means ensuring that minors and barred players do not participate in gaming activities. Therefore, ID checks need to be in place and the players’ identities have to be matched with central barring databases.

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

Implementing the Fourth Anti-Money-Laundering Directive (“4AMLD”), Germany introduced a new German AML Act which entered into force on 26 June 2017. As expected in the course of the implementation of the 4AMLD, AML obligations have been extended to more land-based operations. Before the new AML

Act entered into force, only casinos were subject to certain AML obligations if transactions exceeded a threshold of EUR 2,000 in the land-based sector; now sports betting retail outlets are equally affected.

In an online gambling environment, if operators are not licensed in Germany, are based in the EU, do not have a local presence in Germany and target German customers, it is partly questioned whether German AML laws apply and there are legal arguments to support this doubt. German regulators have, however, made it very clear that they intend to apply the standards and requirements regarding AML to online gaming operators if these target German customers. Consequently, online gaming operators serving German customers are advised to adopt appropriate and extensive risk management systems and to familiarise themselves with the extensive requirements, e.g. in the context of the identification and verification of players and gambling-related payment transactions in order to quickly find viable ways to implement the appropriate AML measures within their business. At the time of writing, the implementation guidelines are still being debated by the Gambling Committee, the Federal Ministry of Finance, the Finance Ministries of the states and German trade associations.

Virtual currencies, understood as a type of digital money/e-money, are not regulated under gambling law in Germany but are subject to financial/banking regulation. Unless virtual currencies are incorporated into a game as “closed virtual currency”, i.e. cannot be exchanged for real money or something of money’s worth in the real world, operators may be required to obtain a banking licence to allow the use of such currencies. Taxation will play a role in the assessment of whether the incorporation of virtual currencies makes sense from an economic perspective. Bitcoins act as a good example; although the German Federal Financial Supervisory Authority (“BaFin”) provided guidance on the legal assessment and taxation of bitcoins in 2013 and 2015, it is yet to be determined conclusively whether bitcoin transactions are to be considered VAT-exempt or not.

3 Online/Mobile/Digital/Electronic Media

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

There is no difference in the regulation between operators located inside Germany and operators located outside. If they operate in Germany, and hence offer products on the German market, the Interstate Treaty applies, irrespective of where the operator is based.

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

The Interstate Treaty prohibits not only the operation and brokerage of online gambling, but also advertising for games of chance on the Internet. Certain licensed operators (sports betting, horse race betting, lotteries) may, however, apply to the Regional Government of Duesseldorf in the state of North-Rhine Westphalia for individual or general permits. As per the Interstate Treaty, any advertising of gambling products needs to comply with the conditions set out in sec. 5 of the Interstate Treaty and the Advertising Guidelines, which are generally concerned with the content of advertising and its means of publication, but were held to be unconstitutional by the Bavarian Constitutional Court in a decision of 25 September 2015 and arguably do not currently apply as a result.

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

Machine-based gaming is only permitted in land-based casinos, restaurants, bars and gaming halls, and only subject to a licence. Online slots are, at the moment, only permitted if they are operated under a Schleswig-Holstein licence.

AWPs are governed by federal law – the Trade Regulation Act and the Gaming Ordinance. The Gaming Ordinance allows for a maximum of three machines to be operated in restaurants and bars and a maximum of 12 machines per gaming hall. It further imposes gaming limits (maximum stakes, maximum losses, etc.). Machine gaming is also subject to the Interstate Treaty and the respective state laws. The Interstate Treaty allows the states to define a minimum distance that needs to be maintained between other gaming halls and/or between gaming halls and youth facilities/addiction centres. None of the above restrictions, however, apply to machine gaming in state-owned casinos.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

In general, the operator is held liable for breaches of gambling regulations. However, in some cases, the liability can be more extensive.

4.2 What form does enforcement action take in your jurisdiction?

Unauthorised operations and distributions as well as advertising for unauthorised games may be interdicted based on the Interstate Treaty on pain of fine. Penalties range between approximately €10,000 and €50,000 per circumvention, depending on the administrative enforcement laws of the German state in question.

The Gambling Acts of the individual German states authorise regulators to sanction illegal gambling and related advertising as an administrative offence with administrative fines, whereby the amount of fines which can be imposed ranges up to approximately €500,000 as per the various Gambling Acts of the German states.

Furthermore, competitors may attempt to file for cease-and-desist orders with civil law courts because the prohibition of unauthorised organisation and distribution of games of chance falls under the scope of the Unfair Competition Act. These orders are usually on pain of a fine amounting to approximately €250,000 per contravention.

Besides administrative/regulatory enforcement, there do exist rules under the German Criminal Code, under which the organising or distributing of unauthorised games of chance at a commercial level is punishable by imprisonment. But the liability under this Criminal Code only pertains to individuals and not to legal entities.

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

First and foremost, liability and enforcement are clearly subject to German law and the German authorities.

However, being part of the European Union, German law is, of course, influenced by European law and European case law. This impacts on the understanding and interpretation of the law – and thereby may also affect enforcement, or at least the authorities' attitude towards liability and enforcement.

In recent years, German enforcement authorities, in particular German prosecutors, have been reluctant to enforce gambling law violations; one likely explanation for this being that German gambling regulation has been characterised by legal uncertainty due to it facing severe criticism in light of EU law for years now. In relation to sports betting, on 4 February 2016, the CJEU confirmed that any enforcement action brought against sports betting operators in a situation where an unlawful *de facto* monopoly persists (as is held to be the case in Germany) is incompatible with EU law (*cf. C-366/14, Ince*). It will have to be assessed whether and to what extent the recent judgment of the Federal Administrative Court, which was handed down on 26 October 2017, impacts on these findings and the approach so far taken by German prosecutors. At the time of writing, a constitutional complaint filed against the Federal Administrative Court's judgment is still pending.

4.4 Are gambling debts enforceable in your jurisdiction?

Sec. 762 (1) 1 of the German Civil Code does not provide for gambling debts to be enforceable. They are regarded "debts of honour". However, due to sec. 762 (1) 2 of the German Civil Code, gambling debts that are settled cannot be reclaimed once paid. A further exception applies due to sec. 763 of the German Civil Code, as it provides that contracts made in connection with state-approved lotteries or raffles are binding, and hence enforceable. The same arguably applies to sports betting debts from a licensed operation, once the sports betting licences have been granted.

5 Anticipated Reforms

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

At the moment, all gaming and betting related operations are primarily governed by the Interstate Treaty on Gambling. However, following the wave of national court decisions confirming the unlawfulness of the sports betting licensing process and its incompatibility with EU law, and the clear decision of the CJEU in the *Ince* case (C-336/14) in February 2016, it became unavoidable for the German states to react to the criticism and consider reforms to this Treaty. A first attempt at such reforms was the Amendment Treaty, which was intended to enter into force in 2017. However, ultimately, and due to state elections leading to changes in state governments, the Amendment Treaty did not receive the necessary number of ratifications, as three of the German states – Schleswig-Holstein, Hesse and North-Rhine Westphalia – refused to ratify the Amendment Treaty and implement it in state law. Instead, they pushed for a broad reform and the introduction of licensing opportunities for the online casino sector.

At the time of writing, there is still a huge divide between the German states as to whether the Interstate Treaty should be reformed, and how this should take place. While North Rhine-Westphalia, Hesse and Schleswig-Holstein still must be considered to be the strongest supporters of a reform of the Interstate Treaty (including with regard to online casinos) and have had some success in convincing other states to be open to such reforms, other states continue to be opposed to broad reforms and feel supported in this view by the Federal Administrative Court's judgment of 26 October 2017. Further, a number of states continue to avoid taking a clear position for or against reform.

Part of the current discussion seems to be to reach possible agreement on common solutions in the sports betting sector, but to include an "opening clause" allowing states (or a group of states) to license online

casinos on a state-by-state basis when amending the Interstate Treaty. Despite resulting in a fragmented German regulation, this would be an interesting setup, considering that the states currently pushing for an opening include some of the most populous states in Germany. At the time of writing, it is unclear whether the German states will be able to find common ground during the course of 2018 or if they are too divided. If the German states cannot agree on any type of reform during the course of 2018 and none of the German states decides to end the discussions to seek an individual solution, the reform discussions – and the current legal *status quo* – will continue, possibly until 2021.

Acknowledgment

The authors would like to acknowledge a third author, Jessica Maier, LL.M., whose input has been invaluable in the preparation of this chapter.

Jessica Maier advises 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 in administrative court proceedings or out-of-court negotiations and interactions. She has provided guidance to clients in various licensing proceedings and advises clients on the regulatory developments in Germany which impact on their business. Jessica regularly contributes to gambling law and industry publications. She is a member of the International Association of Gaming Advisors (“IAGA”) and Global Gaming Women (“GGW”). Like all members of the Melchers Gaming & Betting Law Practice Group, Jessica has access to an excellent international network and is experienced in lobbying.

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For more than 30 years, attorneys of Melchers have been advising leading companies in the gaming and betting industry. Gaming and betting law has therefore been established as one of the core competences of the firm.

Melchers is a commercial law firm with offices in Heidelberg, Frankfurt am Main and Berlin. Our specialised lawyers provide advice in all areas of commercial law. As a full-service law firm, our advice in gambling-related matters includes all corresponding areas of law, such as competition, company and administrative law. The firm’s professional expertise in the area of gaming and betting law makes it one of the prime addresses in Germany for national and international clients in the gaming sector seeking forward-thinking and customised legal strategies. We are committed to substantial client relationships and support our clients in successfully introducing and sustaining gaming and betting products on the highly regulated German market. In the event of regulatory measures, we meet these with the appropriate legal response. Melchers’ attorneys have considerable experience in lobbying and work to develop communication with regulators, which in many cases may be helpful in avoiding litigation.

Gibraltar

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1 Relevant Authorities and Legislation

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

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

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

The Gambling Act 2005 (the "Act") represents the main piece of legislation in connection with gambling activity in Gibraltar. The Act is significantly modelled on the UK Gambling Act 2005 and covers the licensing and regulation of land-based and remote gambling. It sets out the guidelines to be followed, makes provision for the form of application for a gaming licence and establishes the standards with which existing and prospective operators are expected to comply.

The regulation of all licensed gambling activity falls within the remit of the Gambling Commissioner and his regulatory team. The Gambling Commissioner is appointed by the Minister for Gambling (whose office extends to the role of the licensing authority, the "Licensing Authority") and is required to ensure that operators holding licences act within the terms of their licence agreements and the Act, and in a way that maintains the good reputation of the jurisdiction.

The Act provides for the licensing and regulation of both land-based gambling and remote gambling; the definition of 'gambling' in the Act includes:

- betting (including pool betting) and bookmaking;
- gaming; and
- promoting or entering a lottery.

Furthermore, 'betting' is defined as "*making or accepting a bet on:*

- *the outcome of a race, competition or other event of any description;*
- *the likelihood of anything occurring or not occurring; or*
- *whether anything is or is not true – but does not include any bet made or stake hazarded in the course of, or incidental to, any gaming and the expressions bet, betting and booking shall be construed accordingly*".

'Gaming' includes all types of casino games, poker slots, machine gaming, bingo and all other number games without limitation. It is defined as "the playing of a game of chance for a prize" and a 'game of chance' includes:

- (a) *a game that involves 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; and*

- (d) a game where a computer generates images or data taken to represent the actions of another participant or participants in the game.”

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”.

The Companies Act 2014, which came into effect in November 2014, impacts upon companies carrying out gambling activities in Gibraltar. The Act is modelled on various aspects of UK legislation and also incorporates EU obligations. It sets out the regime of company procedures and basic requirements to which companies providing gambling services must adhere.

In connection with the Act, the Gambling Commissioner has issued various Codes of Practice (the “Codes”) for the Gambling Industry which specify detailed requirements to be met by remote and non-remote licence holders in Gibraltar; these Codes can be found at the Government of Gibraltar website at www.gibraltar.gov.gi/new/remotegambling. The Gambling Commissioner’s guidance in the ‘Generic Code’ expands upon a range of requirements found in the Act, such as the duty for operators to publicise rules, and the procedures relating to complaints, responsible gambling, operating procedures and internal controls. With regard to remote gambling licence holders, the ‘Generic Code’ also goes into detail in respect of, *inter alia*, the relevant information to be included on websites, the integrity of equipment and customer registration. In addition, a further Code of Practice published by the Gambling Commissioner is dedicated to anti-money laundering arrangements (see question 2.9 below).

Further, with regard to online operators, the Gambling Commissioner has published guidelines on the ‘Remote Technical and Operating Standards for the Gibraltar Gambling Industry’. These guidelines elaborate upon the principles established in the Codes and provide clear and comprehensive assistance on how to meet the broader policy requirements of Gibraltar’s regulatory framework.

The Act covers all types of gambling products and offerings set out in the table of question 1.1 above. In Gibraltar, there is no legislation which specifically or implicitly addresses the concept of social gaming within the parameters of the above definition. The Act is clear and unambiguous in that, to fall within the definition of ‘gaming’ (and thus fall within the gambling legislative and regulatory framework), the activity in question must involve a prize. As such, we take the view that if a game does not involve a prize element, it falls outside the regulatory regime and can generally operate from Gibraltar without obtaining a licence. The activity will not be treated as ‘gambling’ or ‘gaming’ and thus any operator or provider of such games would not require any specific licence in Gibraltar.

2 Application for a Licence and Licence Restrictions

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

Under the Act, the Licensing Authority may grant licences of the following descriptions to effect the law:

- (a) a bookmaker’s licence;
- (b) a betting intermediary’s licence;
- (c) a gaming operator’s licence;
- (d) a gaming machine licence;

- (e) a lottery promoter’s licence;
- (f) a pools promoter’s licence; and
- (g) a remote gambling licence.

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

As mentioned above, the Licensing Authority for Gibraltar is the Minister responsible for gambling. Under the Act, it is the statutory responsibility of the Minister to deal with all licensing matters such as the granting, varying any renewal of licences in respect of gambling services. The Minister shall have regard to the general policy of the Government of Gibraltar and shall comply with any general directions given by the Government pursuant to that policy.

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

An application for a gambling licence usually involves the submission of a preliminary synopsis of a proposal to the Licensing Authority setting out the background to the applicant, its promoters and the nature of its business. Detailed information should also be given on the activities that the company proposes to undertake from Gibraltar, the operational presence that it will establish and the reasons the company wishes to be based in Gibraltar. Consideration will also be given to the economic benefits the proposal will bring to Gibraltar. The Act grants the Licensing Authority the discretion to grant or refuse any application.

An initial proposal may take any time between two and four weeks to be considered, after which the Licensing Authority may communicate an in-principle indication to grant a licence subject to satisfaction of all due diligence and other statutory requirements. Once the applicant has received an in-principle steer, the full application process, including due diligence, may take between three and six months.

The formal application should be made to the Licensing Authority in the form and manner it may prescribe from time to time and accompanied by individual questionnaires and such documents as it may require.

Regulatory approvals, such as those required for white-label services, are also directed to the Licensing Authority, Gambling Division, with an explanation of the nature of the arrangements between the parties and due diligence documentation on the partner/provider.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

With regard to the licences set out at (a) to (f) in question 2.1 above, the Licensing Authority, at its sole discretion, may attach specific conditions on any type of licence depending on the particular circumstances and the nature of the business of a licence holder. It is evident that none of these licences authorises any form of remote gambling (except insofar as the Licensing Authority may specifically extend the scope of a bookmaker’s licence or a lottery promoter’s licence to authorise taking bets or selling tickets over the telephone).

Similarly, a remote gambling licence does not authorise any form of gambling other than remote gambling. As noted earlier, all licences are personal to the licence holder and are non-transferable.

Online gaming operators are required to enter into a licence agreement with the Licensing Authority, which further defines the

limits placed upon individual licensees. The approved premises, licence period and type of activity (business to consumer – “B2C”, business to business – “B2B”, or both) is clearly identified. The licence agreement will also specify the authorised games which a licensee is permitted to operate, such as blackjack, roulette, poker and slot games. There is a limit placed on the number of generic games which may be offered and any change to this list of authorised generic games requires the prior approval of the Licensing Authority.

A licence agreement may attach further conditions in order to ensure that regulatory and good governance requirements are met; licensees agree that they will be bound by the Codes of Practice and advertising guidelines and agree to adhere to audit and AML requirements. It is also provided that the ownership and corporate structures of online operators will not be altered without the consent of the Licensing Authority. Further conditions also ensure that the effective management and control of the licensee always remains in Gibraltar, and that licensees maintain adequate financing available to pay all current and reasonably estimated prospective obligations in respect of prize pay-outs.

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

Remote gambling licences are issued for a period of five years, but must be renewed annually upon payment of a licence fee. The licence can be renewed upon expiry of the principal five-year term.

The Act provides that the Licensing Authority may suspend or revoke a licence by way of providing the licence holder with notice in writing. A licence holder will be able to make representations to the Licensing Authority which will be considered before any final decisions on suspension or revocation are made; instead of revoking or suspending a licence, it is also possible for the Licensing Authority to add, remove or amend a term of the licence. However, if at any time the Licensing Authority considers that a licence holder is carrying on their activities in a manner which is prejudicial to the public interest, it shall have power to immediately and without prior notice suspend that licence on such terms as it considers appropriate.

Further, the Licensing Authority may revoke, suspend or may refuse to renew a licence if:

- (a) the Licensing Authority is no longer satisfied that the licence holder is a fit and proper person to hold the licence;
- (b) the licence holder or any shareholder, director, executive manager or interested person has been convicted of an offence which, in the opinion of the Licensing Authority, affects the fitness of the licence holder to hold the licence;
- (c) the licence holder is or has been concerned in any transaction which, in the opinion of the Licensing Authority, is either illegal or improper or has been guilty of any other conduct which, in the opinion of the Licensing Authority, is liable to bring Gibraltar into disrepute;
- (d) the licence holder has contravened any term relating to the licence;
- (e) the licence holder has failed to discharge financial commitments relevant to its gambling activities, including commitments to participants, or the Licensing Authority has reasonable grounds to believe that such a failure is imminent;
- (f) the licence holder has become or is about to become insolvent, has been or is about to be petitioned into bankruptcy or insolvency, or has applied to take advantage of the protection of any bankruptcy or insolvency law;
- (g) a trustee, receiver, liquidator or administrator has been appointed in respect of the licence holder under the provisions of the laws of any jurisdiction;

- (h) the licence holder has applied for a winding-up order, or is compelled by any means or for any reason either to discontinue or to wind up his operations;
- (i) the licence was directly or indirectly obtained by a materially false or misleading representation or in some other improper way;
- (j) the licence holder has failed to maintain a physical presence in Gibraltar;
- (k) the licence holder has failed to make timely payment of any fees, duties or levies payable pursuant to the Act;
- (l) the licence holder has failed to comply with any provision made by or under this Act or any regulation as may be prescribed; or
- (m) there is, in the opinion of the Licensing Authority, some other relevant and sufficient reason in the public interest for not renewing the licence.

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

The Act, the terms of the licences issued and the Gambling Commissioner’s Codes of Practice set out the general parameters on the provision of various gambling services in Gibraltar. The Gibraltar Government has always reflected a permissive attitude when it comes to the provision of gambling services and therefore, so long as the services are covered by a licence and the licensee complies with the usual obligations on internal monitoring, anti-money laundering and compliance with the regulatory obligations for the provision of services in other jurisdictions, there are no substantive limits imposed. All products, except for lotteries, are capable of being offered to customers. In relation to the advertising of products, the legislation, however, does explicitly require that these are not: (a) indecent, pornographic or offensive; (b) false, deceptive or misleading; (c) intended to appeal specifically to persons under the minimum permitted age; or (d) in breach of copyright laws.

2.7 What are the tax and other compulsory levies?

With regard to non-remote licence holders, each operator shall pay such charges, fees and gaming taxes as may be prescribed by the Licensing Authority in connection with the carrying on of activities authorised by the particular licence and business.

With regard to remote gambling, licence holders are subject to gaming duty at the rate of 0.15% of the gross gaming yield on gaming receipts in each year with an exemption up to the first £100,000. A licence fee of £100,000 will also be required by the licensing authority upon the granting of a B2C gaming licence and £85,000 for a B2B gaming licence and is payable annually thereafter.

With regard to Gibraltar’s corporate tax rate, all companies in Gibraltar are subject to a standard tax rate of 10%. Further, despite its position as part of the EU, Gibraltar does not levy any value-added tax on any services rendered.

It should be noted that Gibraltar offers tax incentives to certain individuals wishing to relocate to Gibraltar which cap the amount of liability to local income tax; these incentives are available to those undertaking specialised employment in Gibraltar and high-net-worth individuals. There are two main schemes available. Of more immediate relevance, the HEPSS system (high executives possessing specialist skills) is specifically targeted towards attracting senior executives. Individuals wishing to apply will need to possess special skills and experience that are of benefit to Gibraltar. A

second system, Category 2 Individual Status, exists to encourage the relocation of high-net-worth individuals to Gibraltar; only the first £80,000 of their assessable income is taxable in Gibraltar subject to a minimum tax payable of £22,000 and a maximum of £29,080. It is common for gaming companies and other international businesses seeking to relocate to Gibraltar to make use of such schemes in structuring the presence of the owners or senior management locally.

2.8 What are the broad social responsibility requirements?

The Licensing Authority and Gambling Commissioner impose firm rules relating to both responsible gambling and the prohibition of underage gambling. The Codes of Practice state that licence holders must provide self-exclusion facilities for their customers. Customer requests for self-exclusion should be implemented by the licence holder as soon as practicable and, once the ban is implemented, the operator should prevent the customer from using all known existing accounts under its control. Further, the customer will be prevented from opening new accounts using the same or similar registration details.

In the case of remote licence holders, there is a requirement that operators make information available online to customers in respect of responsible gambling practices, usually by way of a clear link on their website to responsible gambling information, including details of organisations committed to tackling problem gambling; this should be provided in the language of the predominant users or intended users of the websites. Further, with regard to non-remote licence holders, there should be pamphlets offered at the premises promoting responsible gambling.

In addition, operators are obliged to take reasonable steps to prevent minors from engaging in gambling activities; the minimum age for gambling in Gibraltar is 18. In cases where a substantive reason to believe a customer is underage arises, the operator must ensure that gambling is suspended and no winnings are paid out.

Further information in respect of the Gibraltar online gambling industry's commitment to promoting responsible gambling can also be found on HM Government of Gibraltar's website at www.gibraltar.gov.gi/new/remote-gambling which contains links to the various codes of conduct and on the Gibraltar Betting and Gaming Association ("GBGA") website at www.gbga.gi; the GBGA is a trade association representing online gaming operators in Gibraltar.

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

The European Commission's Anti-Money Laundering arrangements (including counter-terrorist financing) in the Fourth Money Laundering Directive have been transposed into Gibraltar law (it is worth noting, however, that the European Commission, the European Parliament and the Council of the European Union agreed on the amendment to the Fourth EU Anti-Money Laundering Directive (the amendment being the Fifth EU Anti-Money Laundering Directive) on 15 December 2017; when the latter is published in the Official Journal of the European Union, it would leave 18 months for the same to be transposed into national law). The overarching legislation in relation to AML requirements is as set out in the Proceeds of Crime Act 2015 (the "2015 Act") which consolidates established and new obligations. The Codes of Practice issued by the Gambling Commissioner relating to anti-money laundering (the

"AML Code") input the requirements of the 2015 Act and other international obligations. These requirements apply to all financial transactions associated with defined gambling activities carried out by licence holders. Detailed guidance is also provided in respect of considerations specific to both remote licence holders and non-remote casino licence holders.

With regard to remote gambling, the Act and the AML Code specify that a licence holder may take all reasonable and proportionate steps in relation to a customer's account should it become aware, or have reason to suspect, that the customer has obtained a benefit by any illegal conduct, including the immediate suspension or closure of that account. Licence holders must notify the Gambling Commissioner in writing, within 24 hours or as soon as reasonably practicable, of any alleged money laundering; any resulting investigation carried out by the Gambling Commissioner, Financial Intelligence Unit or any other law enforcement body requires the co-operation of the licence holder.

In addition, the licence agreements entered into by online operators and the Licensing Authority require a licence holder to confirm that they fully understand and will comply with the anti-money laundering obligations under Gibraltar law and the guidelines published by the Gambling Commissioner.

At present, Gibraltar does not allow licensees to use virtual currencies for gambling. Whilst the Gibraltar Government announced the release of the distributed ledger technology regulations on 1 January 2018 (with the token regulations being released later this year), there is currently no indication that the use of cryptocurrencies will be adopted and accepted by the Licensing Authority in the context of gambling.

3 Online/Mobile/Digital/Electronic Media

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

Gibraltar law prohibits the provision of any facilities for remote gambling without a valid licence. For the purposes of the Act, a person is viewed as providing such facilities if even one piece of remote gambling equipment is situated in Gibraltar. Further, the Act creates a requirement for licence holders to safeguard the integrity of equipment and allows the Gambling Commissioner to impose restrictions upon licence holders in respect of their software suppliers. The Act also creates obligations in respect of ensuring that there are systems in place to promote responsible gambling and ensure the registration of all participants. The Act's restrictions are explored in greater detail in the Codes of Practice issued by the Gambling Commissioner.

As set out under question 2.8 above, Gibraltar law prohibits the supply of any form of online gambling services to users under the age of 18. These age restrictions require online operators to ensure that the registration requirements for applicants include a positive action on behalf of the applicant to acknowledge the age limit as well as providing their date of birth and the relevant registration details.

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

The Act creates a duty for licence holders to ensure that rules are publicised and readily accessible. The Code of Practice issued by the

Gambling Commissioner states that online operators must provide a live link from their home page, an ‘about us’ page and the customer registration pages on their website to a dedicated presentation of the relevant rules. With regard to gambling through mobile phones and similar devices, the Gambling Commissioner recognises that it will be more problematic for licence holders to meet the obligation to publicise rules given the limited display capabilities of mobile devices. Upon logging into their account, licence holders must take reasonable steps to provide all mobile customers with a summary of the information required on the website, including a reference that the information provided is only a summary and that full details are set out on a nominated website. In cases where new customers register with operators by way of a mobile device, the information on rules should be accompanied by e-mail, SMS or written advice at the time of registration in respect of where the full information can be accessed.

The Gambling Commissioner’s Guidelines on Remote Technical and Operating Standards for the Gibraltar Gambling Industry (the “Guidelines”) detail the equipment, software and services which are required to be used by remote licence holders. Licence holders’ computer equipment is required to meet the standard set out in the Guidelines in respect of system security and product reliability, including proof of software testing.

With regard to customer registration, operators must ensure that all players are registered in the form specified in the Act which includes collecting the player’s full name, residential address and age. The information collected should be accurate and kept up to date; it must also be kept in accordance with data protection principles.

The Act also empowers the Licensing Authority to prescribe certain restrictions in respect of the advertising of a licence holder’s gambling facilities (as described above). Although to date no 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; or
- in breach of copyright laws.

Online operators will also be bound by the terms of their licence agreement (see question 2.4 above).

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

Machine-based gaming in Gibraltar is only allowed on the premises of the holder of a gaming machine licence; anybody in breach of this requirement is guilty of an offence. Under the Act, the term ‘gaming machine’ is defined as “*a machine constructed or adapted for playing a game of chance ... which:*

- (a) *has a slot or other aperture for the insertion of money or money’s worth in the form of cash or tokens; and*
- (b) *requires no action by the player other than the actuation or manipulation of the machine or apparatus in order to play the game of chance;*

and, for this purpose, “machine” includes any apparatus”.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

The Act creates various offences in respect of those who are in breach of its provisions. Anybody providing any form of gaming

facilities or acting as a betting intermediary without being the holder of a relevant licence is guilty of an offence under the Act (subject to certain exceptions).

Further, any person playing in a gaming establishment which does not hold a relevant licence is also guilty of an offence; this offence extends to anybody who is present and is found escaping from an unlicensed gaming establishment who shall be presumed to have been playing illegally.

Where an offence under the Act has been committed by a body corporate, it is possible for any director, secretary or other officer of the body corporate (or any such person purporting to act in such capacity) to be found to be liable for such a breach. This may be the case if an offence is proved to have been committed with the consent or connivance of, or be attributable to any neglect on the part of, any director, secretary or other officer.

4.2 What form does enforcement action take in your jurisdiction?

Gibraltar is a small jurisdiction and this assists in allowing the authorities to closely monitor any unlicensed supplies. A key theme of the approach to gambling regulation in Gibraltar is maintaining the highest regulatory standards achievable through direct and ongoing engagement with licence holders and suppliers. The authorities impose significant penalties on those persons providing gambling services without having previously sought and obtained the relevant approvals and licences. On summary conviction, the penalty will include: (i) a fine of up to £5,000; and/or (ii) a maximum of three months in prison. On conviction on indictment, the penalty will include (i) a fine, and/or (ii) a maximum of one year in prison.

Under Part VIII of the Act, the Licensing Authority is granted extensive powers of investigation, reporting and powers of entry where a licence holder is suspected of carrying on activities contrary to the Act, the provisions of a licence, 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 Act also enables a Justice of the Peace to grant the Gambling Commissioner and/or the police a warrant to search premises.

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

No, there are no non-national laws that impact upon enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

Yes, in Gibraltar, gambling debts are enforceable. Although traditionally under common law, these debts have not been enforceable; the position under Gibraltar law has been clarified in section 50 of the Act (validity of gaming contracts and security for winnings) so that a gambling debt in Gibraltar is enforceable.

5 Anticipated Reforms

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

The process of review of the Act and Codes of Practice announced by the Government of Gibraltar continues.

A draft report was prepared for the Gibraltar Government’s consideration by the working group established for such purposes

and a consultation paper has been circulated amongst the industry. The aim of the review is to strengthen and build on Gibraltar's strong licensing and regulatory reputation in this area and modernise various aspects of the licensing and enforcement provisions.

The UK Government is still very much involved in negotiations with the EU in respect of arrangements post-Brexit. The Gibraltar legislative review will need to necessarily weave into the assessment the outcome of any negotiations between London and Brussels and how Gibraltar fits into this dynamic by virtue of being part of the EU through the UK's accession. The Gibraltar Government has been involved in this process.

Operators will be required to remain very focused on managing the challenges and positive benefits of a new environment. Despite the impact of any Brexit negotiations, Gibraltar has built up a critical mass of knowledge, personnel, regulatory experience and political support for the online gambling industry. These features and the jurisdiction's broader attractions are, and will remain, in place. Gibraltar is determined to ensure that its economy will remain highly competitive and very attractive as a base from which to operate international business.



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Andrew Montegriffo is a senior associate at Hassans, having been with the firm since 2011. He is an associate in the Corporate and Commercial Department at Hassans and forms part of the Gaming team. After graduating from the University of Nottingham with an LL.B. (Hons) degree, he went on to obtain an LL.M. in Commercial Law before undertaking the Bar Professional Training Course. He is a member of the Honourable Society of the Middle Temple and has been called to the Bar of England & Wales and Gibraltar.

Andrew has been heavily involved in advising remote gambling operators on a full range of regulatory, tax, corporate and employment matters including advising in relation to data protection and intellectual property. He regularly advises operators on licensing and regulatory matters and has been involved with the successful establishment of numerous operators in Gibraltar.



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Louise Lugaro is an associate within the Corporate and Commercial Department in the firm's Online Gaming team.

Louise's practice consists primarily of corporate and commercial work and is also regularly involved in private client work. She advises various gambling operators in Gibraltar in relation to licensing and regulatory matters and has been involved with the establishment of numerous operators in Gibraltar.

Louise graduated from the University of Leeds with a 2:1 LL.B. (Hons) degree in Law and Accounting. She completed her LPC at the University of Law, London and attained the Professional Certificate of Competence in Gibraltar Law from the University of Gibraltar in 2016. She qualified as a Solicitor in March 2017 and is a member of both the Law Society of England and Wales and the Gibraltar Bar.



Hassans International Law Firm was founded in 1939 and is the largest firm in Gibraltar. It is one of the world's foremost offshore law firms which offers an 'old world' approach to client service combined with a 'new world' approach to business and technology.

We are consistently ranked by *Chambers & Partners* as the leading firm in the jurisdiction, have been voted Offshore Law Firm of the Year by Citywealth IFC Awards for the last three years, and were shortlisted for Offshore Law Firm of the Year by The Lawyer Awards last year.

Our lawyers are trusted advisers to clients, both locally and overseas, who seek legal guidance in a fast-moving, multi-jurisdictional world. Though rooted in Gibraltar, the firm has an international clientele in key jurisdictions around the world, including the US, UK, Israel and Europe, with many assignments involving cross-border advice.

Greater Antilles

Frederik van Eijk



Gaming Legal Group / GLG Compliance

Pedro Batista



1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Dominican Republic: <i>Dirección de Casinos y Juegos de Azar</i> (“DCJA”). Haiti: None (prohibited). Puerto Rico: None (prohibited).	Dominican Republic: <i>Dirección de Casinos y Juegos de Azar</i> (“DCJA”). Haiti: <i>Ministère de l’Economie et des Finances</i> . Puerto Rico: Puerto Rico Tourism Company (“PRTC”). Jamaica: Casino Gaming Commission (“CGC”). Cuba: None (prohibited). Cayman Islands: None (prohibited).
	Poker	Jamaica: Betting, Gaming and Lotteries Commission (“BGLC”). Cuba: None (prohibited). Cayman Islands: None (prohibited).	Dominican Republic: <i>Dirección de Casinos y Juegos de Azar</i> (“DCJA”). Haiti: <i>Ministère de l’Economie et des Finances</i> . Puerto Rico: Puerto Rico Tourism Company (“PRTC”).
	Bingo	Jamaica: Betting, Gaming and Lotteries Commission (“BGLC”). Cuba: None (prohibited). Cayman Islands: None (prohibited).	Jamaica: Betting, Gaming and Lotteries Commission (“BGLC”). Cuba: None (prohibited). Cayman Islands: None (prohibited).
Betting	Betting	Dominican Republic: <i>Dirección de Casinos y Juegos de Azar</i> (“DCJA”). Haiti: <i>Ministère de l’Economie et des Finances</i> . Puerto Rico: Puerto Rico Tourism Company (“PRTC”). Jamaica: Betting, Gaming and Lotteries Commission (“BGLC”). Cuba: None (prohibited). Cayman Islands: None (prohibited).	Dominican Republic: <i>Dirección de Casinos y Juegos de Azar</i> (“DCJA”). Haiti: <i>Ministère de l’Economie et des Finances</i> . Puerto Rico: Puerto Rico Tourism Company (“PRTC”). Jamaica: Betting, Gaming and Lotteries Commission (“BGLC”). Cuba: None (prohibited). Cayman Islands: None (prohibited).
	Sports/horse race betting (if regulated separately to other forms of betting)	Dominican Republic: <i>Dirección de Casinos y Juegos de Azar</i> (“DCJA”). Haiti: None (prohibited). Puerto Rico: None (prohibited). Jamaica: Betting, Gaming and Lotteries Commission (“BGLC”). Cuba: None (prohibited). Cayman Islands: None (prohibited).	Dominican Republic: <i>Dirección de Casinos y Juegos de Azar</i> (“DCJA”). Haiti: <i>Ministère de l’Economie et des Finances</i> . Puerto Rico: <i>Administración de la Industria y el deporte Hípico</i> (“AIDH”) & Puerto Rico Tourism Company (“PRTC”). Jamaica: Jamaica Racing Commission (“JRC”). Cuba: None (prohibited). Cayman Islands: None (prohibited).
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	Dominican Republic: <i>Dirección de Casinos y Juegos de Azar</i> (“DCJA”). Haiti: <i>Ministère de l’Economie et des Finances</i> . Puerto Rico: Puerto Rico Tourism Company (“PRTC”). Jamaica: Betting, Gaming and Lotteries Commission (“BGLC”). Cuba: None (prohibited). Cayman Islands: None (prohibited).	Dominican Republic: <i>Dirección de Casinos y Juegos de Azar</i> (“DCJA”). Haiti: <i>Ministère de l’Economie et des Finances</i> . Puerto Rico: Puerto Rico Tourism Company (“PRTC”). Jamaica: Betting, Gaming and Lotteries Commission (“BGLC”). Cuba: None (prohibited). Cayman Islands: None (prohibited).

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Lotteries	Lotteries	Dominican Republic: <i>Lotería Nacional</i> . Haiti: None (prohibited). Puerto Rico: None (prohibited). Jamaica: Betting, Gaming and Lotteries Commission (“BGLC”). Cuba: None (prohibited). Cayman Islands: None (prohibited).	Dominican Republic: <i>Lotería Nacional</i> . Haiti: <i>Ministère de l’Economie et des Finances</i> . Puerto Rico: <i>Administración de la Industria y el Deporte Hípico (“AIDH”)</i> . Jamaica: Betting, Gaming and Lotteries Commission (“BGLC”). Cuba: None (prohibited). Cayman Islands: None (prohibited).
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Dominican Republic: <i>Ministerio de Deporte, Educación Física y Recreación</i> . Haiti: None (prohibited). Puerto Rico: None (prohibited).	Dominican Republic: <i>Ministerio de Deporte, Educación Física y Recreación</i> . Haiti: <i>Ministère de la Jeunesse, des Sports et de l’Action Civique</i> . Puerto Rico: Department of Sports and Recreation.
	Skill games and competitions with no element of chance	Jamaica: Ministry of Culture, Gender, Entertainment and Sport. Cuba: None (prohibited). Cayman Islands: None (prohibited).	Jamaica: Ministry of Culture, Gender, Entertainment and Sport. Cuba: None (prohibited). Cayman Islands: None (prohibited).

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

Dominican Republic

The primary source for regulating gambling in the Dominican Republic is *Ley 351-64*, which dates back to 1964. Under this law, casino gaming was deemed as the source for attracting tourists to the country. Further essential amendments were introduced to *Ley 351* in 1965, 1998 and 2006 (as amended by *Ley 24-98* and *Ley 29-06*). Originally the Dominican Republic authorities were entitled to license online sports betting services (only). However, no new licences of this kind were issued to sports book companies operating from outside the country since 1996. Following the trend of liberalising the attitude to online gambling legalisation, in 2006 the Ministry of Finance of the Dominican Republic was granted the right to issue licences for games of chance, including electronic games of chance, pursuant to paragraph 29 of Article 3 of *Ley 494-06*. However, until February 2011, there were no announcements regarding any iGaming operator actually being granted such gambling licence. This might have been caused by a time-consuming procedure for the Ministry of Finance to determine the qualification requirements for the licensees. Nevertheless, as for the date of passing the law, there were no clear impediments for the international iGaming companies to become eligible for the online gambling licence in the Dominican Republic. In fact, the laws known as *Ley 139-11* and *Ley 494-06* laid the basis for attracting multinational iGaming operators to the Dominican Republic. *Ley 139-11* involves the amendments in terms of the general fiscal system and, in particular, deals with: (i) the increase in the corporate annual income tax; and (ii) changes in the fiscal system, which apply to casinos and other establishments offering gambling services. The most significant impact on the development of gaming in the Dominican Republic could very well entail an increase in the tax rate from 25% to 29% for all companies in all industries generating a national source of income. This also impacts casinos operating in the country, based on the tables in operation, combined with a tax on the gross sales of slot machines, including telephone and online gaming operations.

Puerto Rico

The primary source for regulating gambling in Puerto Rico is the

Puerto Rico Games of Chance Act and its (extensive) Regulations of 1948 (“PRGCA”). Via amendments, regulation has also been introduced to regulate video lottery terminals (“VLTs”) in off-track betting parlours. Chapter I of the PRGCA institutes the regulating authority, PRTC. According to Section 2.1, Chapter II, PRGCA, no person may own or operate a casino unless a franchise licence has first been issued to each and every person who is entitled to qualify or who is obligated therefor, pursuant to Section 2.1, PRGCA. Players can only bet on horse races taking place at the “Camarero Racetrack”, and the state also offers traditional and electronic lottery games. According to Puerto Rico law, all casinos must be maintained on the property of a hotel or resort. Slot machines may only operate within those licensed casinos. Separate slot halls are prohibited. The PRGCA legalises certain forms of casino gambling in licensed establishments in order to promote the development of tourism; however, it also provides that no casino shall be permitted to advertise or otherwise offer their facilities to the public of Puerto Rico. However, certain regulations permit restricted advertising through media outside Puerto Rico. The current law does not cover Adult Entertainment Machines and this has led to the uncontrolled spread of illegal slot machine parlours, which take a bite out of casino profits. Several legal gambling venues have closed and total revenues have dropped significantly. Casino owners have complained about these problems and have asked the Puerto Rican regulator to make current laws clear and more flexible.

Jamaica

The Jamaican Gambling Law of 1899 defined “unlawful gambling” to include cock-fighting, and the act of betting or of playing a game for a stake when practised in or upon any path, street, road or place to which the public have access, in any spirit-licensed premises except in certain clubs approved by the Governor, or in a common gaming house as defined under the law. During the 1950s and 1960s, two major developments occurred in relation to gambling in Jamaica. Firstly, bookmakers expanded their business and, secondly, there was a significant increase in the amount of money being spent on football pools and similar gambling promotions overseas. Technological advances in radio and telephone brought the gambling activities of Great Britain and the United States closer to Jamaica. The norms and attitudes of the early 1900s could no longer be expected to remain unchanged in the face of these exposures. Nowadays, all forms of gambling are regulated under the Betting, Gaming and Lotteries Act (“BGLA”). Several amendments to the BGLA came into effect on June 22, 2010. In May 2014, another package of amendments came into effect, expanding Jamaica’s

current gambling offering. As a result of the amended Act, between 20 and 40 new licensed sports betting shops were allowed to open. Licensed operators would also get the right to offer sports wagers and lottery sales via telephone and text. The amended BGLA also gives the BGLC some regulatory teeth, allowing it to fine unlicensed sports betting operators between USD 150k and USD 500k. It was estimated that before these amendments came into force, between 30% and 40% of the gambling taking place on Jamaica was not sanctioned by the BGLC. Regarding the regulation of land-based casinos, the Casino Gaming Act 2010 (“CGA”) Part iv, Section 13 (1) provides that a person shall not operate a land-based casino, except in accordance with the provisions of the CGA, any regulations made thereunder and a casino gaming licence. The CGC is the body authorised to issue casino gaming licences to entities wishing to operate as a casino gaming facility and persons wishing to work in the casino gaming industry. The decision to permit casino gaming is linked with the Government’s plan to improve and expand the tourism industry by developing a number of large integrated resorts, of which casinos would be a part. The BGLC has stated that Jamaica is not yet equipped to regulate remote gambling. It is, however, expected that the market will open up for remote gambling in the near future.

Cuba & Cayman Islands

In these jurisdictions, there is currently no legal framework in place that allows any form of gambling.

2 Application for a Licence and Licence Restrictions

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

Dominican Republic

Currently, the procedure for obtaining a Dominican gambling licence only refers to land-based casinos. Potential operators need to be owners, lessees or licensees of a first-class hotel. However, licensees can delegate the management of the casino to a third party. In that case, the manager will be responsible for complying with the casino legislation and the payment of gaming taxes. In February 2011, the first and, at the time of publication of this chapter, only online gambling licence in the Dominican Republic was issued to the “Amaya Gaming Group Inc.”, an entertainment solutions provider for the gaming industry.

Haiti

Haiti currently offers no legal framework to apply for any gaming licence.

Puerto Rico

Any person who is interested in operating a casino can apply for a franchise licence in Puerto Rico, which allows the licensee to operate a casino, granted in accordance with the provisions of Chapter 2, PRGCA. Also, non-corporate applicants may apply if they are able to provide sufficient information on each person who, directly or indirectly, holds any beneficial interest or ownership in the applicant, or who, in the opinion of the Commissioner, has the ability to control the applicant. In accordance with Section 2.6, Chapter 2, PRGCA, the franchise applicant is required to own, manage and/or operate a hotel that meets certain minimum requirements for any of the designated zones. Puerto Rico has three designated zones: “Zone Number 1” includes the municipality of San Juan (excluding the historical zone defined by the Planning

Board) and the municipalities of Carolina, Loíza and Río Grande. A Zone Number 1 hotel is required to operate a minimum of 300 hotel rooms against a minimum annual turnover of USD 15 million. “Zone Number 3” comprises the portion of the historical city of San Juan that is described in Resolution No. Z-7 of March 28, 1951, issued by the Planning Board of Puerto Rico, and the international airports in Puerto Rico. A Zone Number 3 hotel is required to operate a minimum of 125 hotel rooms against a minimum annual turnover of USD 5 million. “Zone Number 2” includes the rest of the geographical and territorial space of Puerto Rico, not included in Zone Number 1 or in Zone Number 3. A Zone Number 2 hotel is required to operate a minimum of 150 hotel rooms against a minimum annual turnover of USD 10,000,000. The PRGCA currently includes no provisions that allow for a remote gambling licence.

Jamaica

Any person may apply for a land-based casino licence if he provides proof that he is a company, duly incorporated under the laws of Jamaica. Furthermore, the applicant and his associates must have arranged a satisfactory ownership structure. Only residents of Jamaica may apply for a licence to conduct a bingo/raffle under the provisions of Section 51 (1) of the BGLA. Gaming machine operators must apply to the BGLC for licences to operate any such machines via the appropriate application form.

Cuba & Cayman Islands

Please see question 1.2 above.

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

Dominican Republic

Article 2, *Ley* 96-88 states that the importation of slot machines, parts, spare parts and auxiliary equipment and its installation, operation and replacement must be approved by the Commission of Casinos in the same way as the licence for the operation of casinos is obtained. Article 29, *Ley* 96-88 states that casino operators must request the corresponding authorisation before contracting their employees. The request can be made by filling in an application form, with a certificate of no criminal record of the employee attached to the form.

Puerto Rico

According to Chapter 6, PRGCA, any person who intends to be employed by a casino franchise licensee is required to obtain an Employee Licence, a Casino Supervisory Licence and/or a Key Employee Licence. The specific licences are issued depending on the position of the employee, e.g. a Casino Supervisory Licence is required for the following positions: casino shift manager; poker shift supervisor; security investigations supervisor; controller; credit manager; chief financial officer; or hotel marketing executive. Sections 6.4–6.9, PRGCA provide the general (extensive) criteria for staff to obtain an Employee Licence. Section 6.19, PRGCA obliges licensees to disclose any changes in function or position within 15 days following the change in position. According to Chapter 7, PRGCA, any person who intends to do business in the Commonwealth of Puerto Rico is required to apply for a Casino Service Industry Licence if they: (1) manufacture, supply or distribute devices, machines, equipment and items or articles which (a) are specifically designed for use in a casino, (b) are needed to conduct an authorised game of chance in Puerto Rico, (c) have the capacity to affect the outcome of the play of an authorised game of chance in Puerto Rico, or (d) have the capacity to affect the calculation, storage, collection, or control of revenue generated by a casino licensee from gaming operations, including those from slot

machine operations; (2) are a gaming equipment servicer or repairer; (3) provide services directly related to the operation, regulation or management of a casino; (4) are schools that teach games of chance and gaming techniques in Puerto Rico; (5) are credit-report service providers for casinos and suppliers of security services for casinos; (6) are individual junket operators and respective companies; and (7) provide such other goods or services determined by the PRTC to be so utilised in, or incidental to, gaming or casino activity as to require licensing in order to contribute to the public confidence and trust in the credibility and integrity of the gaming industry in the Commonwealth of Puerto Rico. Since casino operations are allowed only in designated areas, no separate premises licence is required.

Jamaica

Part iv, Section 14 (1) of the CGA provides that any approved developer, or a company nominated by the developer, that is desirous of operating a casino in an integrated resort development may apply in the prescribed form and manner to the BGLC for a casino operator gaming licence or temporary casino gaming licence. No person shall be employed in a specified office in a casino unless he is the holder of a personal Employee Licence. Vendors of casino equipment and their employees need to apply for a Casino Equipment Vendor Licence and a Casino Equipment Employee Licence, respectively.

Cuba & Cayman Islands

Please see question 1.2 above.

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

Dominican Republic

Applications for casino licences are submitted to the Ministry of Tourism and evaluated by the DCJA, which functions under the responsibility of the Secretary of Finance and forwards its recommendations to the Executive Branch. Casinos must operate in connection with a hotel categorised as “first-class”. Applications must include a description of the games of chance to be offered and how each one will function, as well as a description of how the gambling halls will be managed, including the maximum bets that will be accepted and the hours that related tourist attractions and hotel accommodations will operate. Furthermore, the following information needs to be included in the application: (1) the nature of the games that would be installed and a description of how they work; (2) conditions of admission to the gaming venues; (3) maximum limits on the accepted bets; (4) operating hours; (5) attractions and bonuses offered to players; (6) a receipt demonstrating the payment of the application fee; (7) a feasibility study which provides an outline of the project, including details on investment, infrastructure (drawings, photos, etc.), installation of the tables and machinery, and tourism projection; (8) a copy of all documents related to the incorporation of the corporation that will operate the casino; (9) certification stating that the operating company has no outstanding debts with the Department of Project Development and Finance of the Central Bank (“*Dept. de Desarrollo y Financiero de Proyectos del Banco Central*”); (10) a certificate of no criminal record of the shareholders; (11) the operator should be solvent; and (12) operators need to submit a letter to the Minister of Finance, requesting a licence to install a casino. After the application is evaluated by the National Casino Commission, it submits a report setting out its conclusions. On the basis of these conclusions, the Executive Branch of the Government will make the decision on whether the licence can be granted to the operator. If the casino is deemed eligible, the licence is issued by the Casino Department of the Finance Secretariat. Article 10, *Ley 351* states that a copy of the licence, once granted, shall be published in a daily newspaper of

Santo Domingo, and a copy of the licence shall furthermore be fixed in a visible and prominent place within the gambling establishment. No licence can be transferred without the previous authorisation granted by the DCJA.

Puerto Rico

Section 2.2, PRGCA states that any person interested in obtaining or renewing a franchise licence to operate a new casino must request an endorsement letter from the PRTC, certifying that the project of the applicant meets the minimum requisites of the PRTC as to the location and physical facilities of the casino and the hotel. This endorsement needs to be filed with a sworn application with the Commissioner of Puerto Rico. Upon receipt, the Commissioner shall forward a copy of the application to the PRTC in order for the PRTC to evaluate the application and make the appropriate final recommendation to the Commissioner. An adverse recommendation from the PRTC shall carry an automatic denial of the application for a franchise by the Commissioner. The licence shall be issued after the PRTC imparts the final favourable recommendation, the Commissioner concurs with the same and the Commissioner receives payment of the licence fees for the first quarter of operation.

Jamaica

An application, pursuant to Section 1, CGA, for a casino licence needs to disclose the following information: (a) a copy of the articles of incorporation or Memorandum of Association of the applicant; (b) a copy of the certificate of incorporation of the applicant; and (c) a letter of good standing of recent date. Furthermore, the applicant needs to provide information on the integrated resort development in which the permanent casino facilities will be sited, as well as site plans, floor plans and drawings referred to in the description of the casino facilities. If the applicant is the nominee of an approved developer, the nomination document whereby the approved developer has nominated the applicant for purposes of an application for a casino gaming licence or, as the case may be, a temporary casino gaming licence, should be provided.

Furthermore, résumés need to be provided for each of the directors, the chief executive officer, the corporate secretary and any other officer or employee reporting directly to the chief executive officer. The applicant needs to provide a business plan for the casino gaming enterprise, which, in the case of an application for a casino gaming licence, shall be for at least five years from commencement of casino gaming operations or, in the case of an application for a temporary casino gaming licence, shall be for the proposed duration of the licence. Subsequently, a Personal History Disclosure Form needs to be filed, as well as a Jamaican Supplemental (Personal) Form or a Multi-Jurisdictional Personal History Disclosure Form to be completed by each director, officer and employee of the applicant named in the application, and by each individual who holds, directly or indirectly, 5% or more of the voting shares of the applicant. A Jamaican Supplemental Business Entity Form needs to be completed by each business entity (other than an individual) which, directly or indirectly, holds 5% or more of the voting shares of the applicant, except if the applicant is a subsidiary, when a Business Entity Disclosure Form is to be completed only by the ultimate parent company and each business entity that indirectly holds, through the ultimate parent company, 5% or more of the voting shares of the applicant.

All of this information needs to be delivered to the Secretary of the BGLC, accompanied by a letter which shall be signed on behalf of the applicant and which shall conform to the Third Schedule. Where an applicant fails to comply with any requirement under Section 17 of the Act for the provision of information or the furnishing of records or other documents to the BGLC, thus entitling the BGLC to refuse to consider the application, the BGLC shall notify the applicant of such refusal in writing. An application for a land-based casino gaming licence shall be accompanied by a

non-refundable application fee of USD 50,000. In addition to the application fee, an applicant shall, pursuant to Section 16 (3) of the CGA, make a deposit of USD 100,000, to be used by the BGLC for expenses reasonably undertaken by the BGLC in connection with investigations and enquiries conducted by the BGLC with respect to the applicant. Within 30 days after receiving an application, the BGLC shall provide the applicant with an estimate of the total reimbursable expenditure anticipated to be incurred by the BGLC to complete the investigations and enquiries pursuant to Section 1, CGA. During the course of the investigations and enquiries, the BGLC shall, on a monthly basis, provide to the applicant a statement with detailed accounting of all reimbursable expenditure incurred during the investigations and enquiries period.

Within 30 days after the conclusion of the investigations and enquiries, the BGLC shall apply the deposit paid to any reimbursable expenditure then outstanding and return any monies remaining from the deposit to the applicant. The BGLC may refuse to consider an application where the applicant fails to make the deposit, or replenish the deposit as the case may be, and the BGLC is therefore unable to carry out or cause to be carried out investigations and enquiries it considers to be necessary. The BGLC may waive the payment of the application.

Cuba & Cayman Islands

Please see question 1.2 above.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Dominican Republic

Applicants who wish to apply for a land-based casino licence have to meet the following requirements: (1) potential operators need to be owners, lessees or licensees of a first-class hotel; however, licensees can delegate the management of the casino to a third party, and in that case, the manager will be responsible for complying with the casino legislation and the payment of gaming taxes; (2) the gambling facilities must be located in an area considered of interest to tourists; and (3) the operator should be solvent and its shareholders or partners should have a good reputation.

Puerto Rico

Section 2.14, PRGCA contains “Disqualification Criteria” on which basis a franchise licence shall be denied in the following events: (1) failure to provide evidence that the applicant is qualified to operate a casino; (2) conviction of a felony offence; or (3) failure to provide sufficient credentials. Section 2.15, PRGCA provides additional relevant criteria: (1) involvement in litigation over business practices; (2) failure to comply with court rulings; (3) financial ability to develop and operate a facility; and (4) capacity and aptitude of the managers, consultants, and other contractors to develop and carry out the operations of a casino franchise. Furthermore, employees of the franchise licence-holder are bound to an extensive number of behavioural rules and regulations, with failure to comply resulting in the penalty of immediate suspension or revocation. For example, Section 3.7, PRGCA states: (1) treat the public with politeness and courtesy; (2) refrain from making comments with respect to wagers or advising the players; (3) refrain from requesting tips from players and from acts or gestures that may lead to obtainment of such tips; (4) no casino employee shall play and/or bet directly or indirectly, or in any other manner play in the casino where he works or in any other authorised casino in Puerto Rico, even after working hours. Any person who has ceased to work and still holds a valid licence must surrender the same before betting and/or playing in a casino; and (5) every casino employee shall observe the strictest and utmost honesty in the performance of his work in the casino.

Jamaica

In relation to a land-based casino licence, the CGC expects the operator and his associates to be fit and proper persons to be associated with the management or operation of the casino. The operator and his associates are required to be of a sound and stable financial background and need to have a satisfactory ownership structure in place. Furthermore, they need to have obtained the funding and staffing necessary to operate and ensure the financial viability of a casino.

Cuba & Cayman Islands

Please see question 1.2 above.

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

Dominican Republic

Casino licences in the Dominican Republic can be modified or cancelled by the DCJA for reasons of public order or a grave breach of the requirements or obligations established by Ley 351.

Puerto Rico

Section 2.20, PRGCA states that the licence period for a (renewed) franchise licence shall be three years. After the initial two licence terms, the renewal period shall be four years. A granted licence is, at all times, subject to the authority of the Commissioner and the PRTC to deny, revoke or suspend. Furthermore, applicants are required to pay the application fees and investigative costs. Upon renewal of any licence, the Commissioner shall issue an appropriate certificate and validating device or sticker that shall be placed in a visible and accessible place within the casino. Section 6.9, PRGCA states that all Casino Employee Licences and Casino Supervisory Licences shall be issued by the PRTC for a period of two years, and all Casino Key Employee Licences shall be issued by the PRTC for a period of three years. However, any licence may be suspended or revoked at the discretion of the PRTC.

Jamaica

A casino licence in Jamaica shall remain valid for an indefinite period. However, a land-based casino licence shall expire when: the applicant/operator fails to pay the initial licensing fee within 30 days following the granting of the licence; the applicant/operator fails to commence operations within the time specified in the licence; or the applicant/operator suspends operations for more than 90 days other than by reason of *force majeure* or a suspension order from the BGLC. Every Gaming Machine Licence granted by the BGLC shall be valid for a period of 12 months from the date of issue and may be renewed no fewer than 45 days before expiration.

Cuba & Cayman Islands

Please see question 1.2 above.

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

Dominican Republic

All casinos in the Dominican Republic need to have a responsible administration. The names, profession, address and identification documentation of officers and managers must be declared and added to the register of the DCJA. Any changes in the administration must be communicated to the DCJA. Members of the responsible administration cannot be substituted by other persons (individuals or

companies) without the prior authorisation of the DCJA. Underage gambling in the Dominican Republic is strictly prohibited. Operators who allow minors to gamble commit a punishable offence. Land-based casinos are allowed to offer their services to customers from 4:00 pm to 6:00 am. According to *Ley 308-06*, providing alcohol to players is only allowed from 12:00 pm until 2:00 am on Fridays and Saturdays. Article 8, *Ley 308-06* states that the Ministry of the Interior and the police shall enforce this law, its regulations and other legal provisions which in effect dictate, for which it will have a Department of Alcoholic Beverage Control (*Departamento de Control Bebidas Alcohólicas* – “COBA”) with trained civil personnel equipped with the authority to attest documents, assisted by police and, if necessary, the military. The COBA is empowered to investigate, inspect establishments, raise tax assessments and recognise and control all types of premises and facilities in order to verify compliance with this Act. The owners or managers, or others responsible, shall be obliged to lend the necessary support and assistance for carrying out checks relating to the verification of compliance with the provisions of this law, and must not, through active opposition or simple omission, obstruct, hinder or impede the development of this work. Casinos in the Dominican Republic are now allowed to conduct their operations in any currency.

Puerto Rico

Section 7.2, PRGCA contains a general requirement that all provided services should not harm the trust, credibility and integrity of Puerto Rico’s gaming industry. Chapter 12, PRGCA prescribes general obligations regarding the prevention of compulsive gambling and regulations that will allow self-exclusion. Each franchise licensee is obligated to establish a training programme and identify a person to be responsible for training, or coordination of training, to ensure that regulatory requirements are implemented, administered and monitored to maintain the minimum standards. The franchise licensee is furthermore required to implement an employee training plan which includes training manuals and other materials necessary to educate employees about compulsive gambling issues, such as the psychology of the compulsive gambler, methods of recognising compulsive gambling behaviour, and intervention techniques.

Jamaica

The Responsible Gaming Code of Conduct (“RGCC”) states that all operators should be committed to promoting high standards of responsible gaming at their businesses. The RGCC demonstrates a commitment to four significant groups; these are: (1) employees; (2) customers; (3) the public; and (4) minors. All operators must recognise the importance of having employees who are able to recognise the signs of a potential gambling disorder in a patron, and who will commit to promoting principles of responsible gaming. To accomplish this, operators will: (a) organise and conduct professional development training and educational workshops on responsible gaming which must be attended by all relevant employees at least twice per year – these workshops will be geared towards helping employees identify and intervene when they recognise that a customer is a minor or displaying signs of a gambling disorder; (b) educate new employees on the business’s policies on practices relating to responsible gaming as a part of their induction/orientation process; (c) make information/materials promoting responsible gaming, including the RGCC and the code of ethics, available to all employees; (d) make information on how to access help regarding treatment for gambling disorders readily available – this must include the RISE Life Management Services toll-free help line and treatment initiatives; (e) establish a clearly delineated staff gaming policy which must address whether or not gaming is strictly prohibited among staff – if staff members are permitted to gamble, the policy must specify under what conditions they are permitted;

for example, whether in uniform or not, or whether there will be limits as to the amount to be spent on a given gaming occasion; and (f) recognise employees who diligently work at incorporating the practices of the Code of Conduct and responsible gaming through an employee award system.

Cuba & Cayman Islands

Please see question 1.2 above.

2.7 What are the tax and other compulsory levies?

Dominican Republic

Article 14, *Ley 351-67* states that establishments which operate games of chance are subject to a monthly tax, which may not be less than RD\$ 2,000 nor more than 6% of the gross income for each establishment, according to the Executive Power after recommendation of the DCJA. This tax shall replace the Income Tax and must be paid in advance to the *Colectarías de Rentas Internas* within the first five days of each month. The failure to pay any fixed monthly tax will result in the immediate cancellation of the licence granted. No other communication is required apart from that from the Ministry of Finance via letters certified, which leaves the General Directorate of Internal Taxes able to receive owed securities, whose collection will be subject to coercive measures regulating the collection of taxes. Article 15, *Ley 351-67* states that before a concession in accordance with this law enters into force, the licensee shall give security in the form of a deposit, which shall not exceed RD\$ 20,000. This deposit is primarily that of any other obligations and penalties that the licensee might incur, including taxes. Article 16, *Ley 351-67* states that 10% of the revenue collected by virtue of the provisions of Article 14, *Ley 351-67* should benefit the municipality or municipal district where the establishment is based. Ninety per cent of the revenue collected shall benefit general healthcare and the development of tourism.

Other levies include:

- Casino licence application fee: RD\$ 10,000,000.
- Transfer of the casino licence to a third party: RD\$ 4,000,000.
- Transferring shares of a company that owns a casino licence: RD\$ 4,000,000.
- Publication costs on behalf of a casino licence: RD\$ 50,000.
- Applying for registration of the responsible administration: RD\$ 1,000,000.
- Slot machine licence application fee: RD\$ 500,000.
- Change of casino name-holder: RD\$ 50,000.
- Slot machine establishments application fee: RD\$ 5,000,000.
- Import/export of slot machines: RD\$ 10,000.
- Moving slot machines to another establishment: RD\$ 10,000.
- Requesting a casino inspection regarding opening or reopening: RD\$ 50,000.
- Request to modify a casino licence to add a quantity of table games, request to certify an administration procedure: RD\$ 1,000.
- Closure (land-based) and miscellaneous: RD\$ 25,000.
- Online gambling licence application fee: RD\$ 10,000,000.
- Transfer of an online gambling licence to a third party: RD\$ 4,000,000.
- Applying for registration of the responsible administration: RD\$ 1,000,000.
- Request to certify an administration procedure: RD\$ 1,000.
- A 10% tax is levied over the gross revenue of all online gambling operations.

Puerto Rico

The provisions of Subtitle C of the Puerto Rico Internal Revenue Code of 2011 (“PRIRC”) govern the imposition and administration of the excise tax regime in Puerto Rico, which also includes certain taxes on gambling and the levying of licence fees on certain wholesalers and retailers. Subtitle C, PRIRC, Section 3040.02 levies a tax of 10% on certain gambling winnings obtained in banks and 20% on all winnings from pools, betting against the bank, daily doubles, and subscription funds, or from any other betting transactions legally authorised on the racetracks of Puerto Rico. According to Section 2.21, PRGCA, each applicant for a franchise licence or an applicant to renew a franchise licence shall pay a non-refundable application fee of USD 25,000 upon the filing of the application. In addition, a franchise licensee applicant is required to pay an initial fee of USD 15,000 to defray investigation costs. The Commissioner shall have the authority to request additional investigative fees as necessary to conduct the investigations contemplated by this Section. Failure by an applicant or franchise licensee to pay the application fee or investigative costs shall be cause to deny the application or revoke a franchise licence. According to Section 6.15, PRGCA, fees payable for the initial application for an Employee Licence, or for its renewal, shall be determined by the PRTC based on the position occupied by the employee; provided that said fees are USD 100 for an Employee Licence, USD 250 for a Supervisory Licence, and USD 500 for a Key Employee Licence. All licences shall be subject to an annual payment by the franchise licensee to the Commissioner, which shall be payable quarterly in advance. Overall revenues are subject to a yearly fee: (a) less than USD 25 million: USD 50,000; (b) in excess of USD 25 million and up to USD 50 million: USD 100,000; (c) in excess of USD 50 million and up to USD 100 million: USD 150,000; and (d) in excess of USD 100 million: USD 200,000.

Jamaica

An application for a casino gaming licence shall be accompanied by a non-refundable application fee of USD 50,000 and a deposit of USD 100,000 for investigative expenses. Owners of locally manufactured gaming devices (also referred to as “ten cents” machine licensees) pay an annual levy of USD 5,000 in respect of each machine. Each owner or operator of the prescribed premises shall pay an annual levy of USD 2,500. Additionally, the payment of the following fees by the licensees must be made to the Commission: (a) a licence fee of USD 4,000 in respect of each gaming machine specified on the application; (b) a fee of USD 1,000 to cover the provision by the Commission of an identification disc in respect of each gaming machine specified on the application; and (c) a premises fee of USD 1,000. Levies are due annually on April 1. If paid after April 1, fines shall apply. All taxes are to be paid directly to the Inland Revenue Department. Tax receipts are to be kept as proof of payment and submitted during licensing and registration. BGLC Licensing and Registration fees are to be paid directly in cash to the BGLC Office or deposited into the BGLC’s BNS Account. Following the roll-out of the Tax Administration (“TAJ”) Revenue Administration System (“RAIS”) on September 5, 2016, there were changes to the filing of Returns and Payment of levies and taxes associated with Betting, Gaming and Lottery activities, ensuring that all gaming machine operators with imported slot machines have a full understanding of the requirements. The BGLC has an extensive overview of all taxes, (application) fees and levies available. For more information, visit <http://www.bgic.gov.jm>.

Cuba & Cayman Islands

Please see question 1.2 above.

2.8 What are the broad social responsibility requirements?

Dominican Republic

Article 8, *Ley 351* states that, once in operation, a gambling establishment will not be allowed to direct advertisements in any form to residents of the Dominican Republic.

Puerto Rico

Chapter 12, PRGCA includes strict regulations regarding self-exclusion. Once a patron has been admitted to the self-exclusion list, the franchise licensee-holder needs to ensure that self-excluded persons do not receive, either from the franchise licensee or any agent thereof, junket solicitations, targeted mailings, telemarketing promotions, player club materials or other promotional materials relating to gaming activities. Patrons placed on the voluntary exclusion list may not return to the casino until their written request for the exclusion to be rescinded is made to the PRTC and the PRTC has provided that person with written permission to return; the excluded person’s name will then be removed from the exclusion list and his privileges will be restored. After the first request to be voluntarily excluded, the patron shall wait a minimum of one year before requesting removal from the exclusion list; a second request leads to a minimum exclusion of two years; and a third request shall lead to an exclusion for life. Section 3.1, PRGCA states that any franchise licensee may advertise or promote itself within the jurisdiction of Puerto Rico, only and exclusively when its advertisements or promotions: (1) are directed at foreign tourists, even though said advertisements incidentally may reach the residents of Puerto Rico; and (2) do not invite residents of Puerto Rico to visit the casinos. Licensees are furthermore allowed to distribute and place advertisements or promotions for their casinos in: (i) airplanes that have landed in Puerto Rico; (ii) cruise ships that are in Puerto Rican territorial waters; (iii) areas restricted to passengers in Puerto Rican airports; and (iv) tourist piers in Puerto Rico. Licensees may furthermore publish advertisements or promotions in magazines, newspapers, film, television, radio, or other publications that are locally distributed, provided that they are mainly directed or oriented to informing foreign tourists of the tourist attractions and facilities. Licensees are invited to use the word “casino” in their hotel name. However, this word may never be used separately from the hotel name.

Jamaica

The Responsible Gaming Code of Conduct (“RGCC”) states that advertising of the gaming product must be done in a responsible manner and include responsible gaming messages in advertisements. The RGCC also stipulates that: (a) advertisements must not be offensive or indecent in nature, false or misleading in any way about odds, prizes and chances of winning, and must comply with the advertising laws of Jamaica; (b) advertisements must not be designed to appeal specifically to minors; (c) advertisements must not feature anyone who appears to be below the legal age to participate in gambling activity; (d) licensees must get written permission from the customer to send (via email, text message, or any other means) messages or advertising to such customer; and (e) customers must be able to opt out of receiving direct messages (via email, text message, or any other means) or advertising.

Cuba & Cayman Islands

Please see question 1.2 above.

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

Dominican Republic

Ley 494-06, on the Organisation of the Treasury Department (“MHA”), eliminated regulatory dispersal with respect to games of chance. The Ministry of Finance was awarded exclusive authority for granting licences and for inspecting the operators of that sector, which include lottery games, draws, charity raffles, casinos and gaming establishments, slot machines and other electronic games, bingo and any other manifestation of the same. From June 2011, absolute regulatory authority took effect, conferred by *Ley* 494-06 on the MHA; as a result, *Ley* 139-11 entered into force, which, in the area of taxes, charged the General Directorate of Internal Taxes with the responsibility of collecting and overseeing taxes related to casinos, lottery outlets, sports betting outlets, slot machines, telephone games and online games. Said concentration of regulatory and tax functions has promoted a process for drafting rules, designing information systems and creating databases, which must formalise the monitoring of the activities of the sector and the implementation of policies and procedures geared toward mitigating risks in the area of money laundering. The laws concerning money laundering are based on the international standards in this area, namely those of the Financial Action Task Force (“FATF”).

Puerto Rico

The United States, responsible for monitoring and regulating Anti-Money Laundering (“AML”) activities in Puerto Rico, has recently begun to focus more on the money laundering threats posed by the commonwealth to the U.S. The Financial Crimes Enforcement Network (“FinCEN”) serves as the U.S. Financial Intelligence Unit (“FIU”) and consequently acts as the FIU for Puerto Rico. Recently, FinCEN designated Puerto Rico as a High Intensity Financial Crime Area (“HIFCA”). The designation of HIFCAs was outlined in the Money Laundering and Financial Crimes Act of 1998 and put into effect as an addition to the Bank Secrecy Act. The HIFCA programme was created to concentrate federal and local law enforcement in specific areas most prone to money laundering activities. Currently, all areas of Puerto Rico are listed as HIFCAs. However, the United States has been cracking down on enforcement, including holding banks and other financial institutions responsible for failing to report suspicious activity.

Jamaica

Casino gaming in Jamaica is regulated in accordance with the functions of the CGC, its regulatory powers and the international industry standards. The CGC has taken on the responsibility for preventing money laundering and the financing of terrorist activities in relation to casino gaming. It is intended that the gaming industry in Jamaica will be regulated to guard against the industry being manipulated by criminal elements. Consequently, those international standards for anti-money laundering generally also apply to casinos. To mitigate the possibility of money laundering, inspectors or authorised persons can enter any premises at any reasonable time in order to: (a) ensure compliance with any regulations; (b) inspect any accounts, books, documents, records or articles; or (c) require the production of records and accounts which the casino operator is required to keep. Risks are regularly being reviewed to determine any increase in the overall risks and the appropriate mitigation measures to be applied. The FATF recommendations that set the global standards single out those business sectors believed to be at highest risk of money laundering; this list includes casinos. Casinos

are therefore subject to similar, but not identical, international standards established for financial institutions. To properly guard against money laundering and financing of terrorism, it is critical that any regulatory regime takes into account these requirements. For ease of reference, any consideration of the best regime for casinos to guard against money laundering should take into account the two main issues for casinos. These relate to: (a) the AML measures that casinos are required to put in place to prevent money laundering; and (b) the regulatory regime that national governments are expected to put in place to deal with money laundering as it relates to the casino industry. The laws concerning money laundering are based on the international FATF standards in this area. Upon designation, the obligations that apply to businesses in the regulated sector also apply to casinos in Jamaica. To guard against money laundering and financing of terrorist activities, the FATF recommendations require casinos to put in place the following measures to prevent money laundering and the financing of terrorism:

- (a) Take customer due diligence measures where transactions with the customer exceed specified thresholds.
- (b) Perform record-keeping requirements as set out in the FATF recommendations on both customer identification as well as transactions which exceed particular thresholds.
- (c) Have measures in place to identify “Politically Exposed Persons” (“PEPs”). These are persons who hold high political or governmental office, as well as persons who hold high office within international organisations. These persons are essentially treated as *prima facie* “high-risk”. Institutions that have this obligation are required to have measures in place to identify such customers, obtain senior management approval prior to entering into these business relationships, take reasonable measures to establish source of wealth and source of funds, as well as to conduct enhanced monitoring of the business relationship.
- (d) Have measures in place to deal with the money laundering risks presented by products that utilise new technologies capable of being used to launder funds. Before using or developing these products, casinos should carry out a risk assessment exercise in order to implement measures to minimise or eliminate these risks.
- (e) Have measures in place to mitigate the money laundering risks that arise in dealing with introducers and intermediaries. In such cases, a casino may be introduced to new clients, placing reliance on the due diligence of the party who is introducing the client and thereby reducing the level of customer due diligence that would normally be undertaken by the casino. The FATF recommendations outline the preconditions to be undertaken when relying on such introductions in order to mitigate the risks. These include ensuring that the casino can obtain the relevant due diligence information from the third party upon request. The party being relied upon should also be regulated for anti-money laundering and be from a country that has an acceptable level of country risk. A casino should be wary of relying on an introducer or intermediary if that third party is from a country with weak AML regulatory regimes.
- (f) Implement measures for internal controls to protect against the risk of money laundering. Where the entity is part of a group of entities, a group-wide policy should be implemented to deal with protecting the group against money laundering.
- (g) Casinos (like other gatekeeper professions and financial institutions) should also have measures to deal with parties or transactions emanating from high-risk countries. These are countries with weak anti-money laundering regimes, and in such cases additional due diligence measures should be exercised.
- (h) The reporting of suspicious transactions is a fundamental plank in a country’s anti-money laundering policies. Casinos

should be obliged to report transactions to the designated authority where there is a reasonable suspicion that the transaction involves proceeds of crime.

- (i) The law should also provide protections for entities (and their directors/officers) that make the reports referred to in investigations.
- (j) In addition, there should be sanctions for “tipping off” suspects to the fact that such a report has been made or that an investigation is underway.

Cuba & Cayman Islands

Please see question 1.2 above.

3 Online/Mobile/Digital/Electronic Media

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

Dominican Republic

In order to hold an online gambling operation licence, the operator has to comply with the following restrictions: (1) homologation of the technical systems; (2) identification of the participants; (3) redirection to a specific website with the domain name “.do”; (4) security requirements of the technical systems of the game; (5) implementation of a control system that captures and registers all game operations and economic transactions; and (6) the operator is required to allow inspections by the DCJA and connection to the system if necessary.

Puerto Rico

At this time, the PRGCA has no framework in place that allows remote gambling. Section 3.31.11, PRGCA stipulates the minimum requirements for management information systems and application software controls for gaming devices. Adequate business continuity procedures include:

- (1) daily backup of data files;
- (2) backup of all programs;
- (3) secured off-site storage of all backup data files and programs, or other adequate protection; and
- (4) written recovery procedures, which are tested on a sample basis at least annually, with documentation of results.

For each computerised gaming application that may be accessed remotely, the written system of internal control shall specifically address remote access procedures including, at a minimum: (a) the type of gaming application, version number, the vendor’s name and business address, if applicable; (b) the procedures used in establishing and using passwords to allow authorised vendor personnel to access the system through remote means; (c) the personnel involved and the procedures performed to enable the physical connection to the system when the vendor requires access through remote means; (d) the personnel involved and the procedures performed to ensure the physical connection is disabled when the remote access is not in use; and (e) any additional requirements relating to remote access specified by the PRTC or Commissioner.

In the event of remote access, the franchise licensee is required to prepare a record of the access to include: (i) the name of the employee authorising access; (ii) the name of the authorised programmer or manufacturer’s representative; (iii) the reason for remote access; (iv) a description of work performed; and (v) the date, time and duration of access.

Documents may be scanned or directly stored to an unalterable storage medium under the following conditions: (1) the storage medium shall contain the exact duplicate of the original document; and (2) all documents stored on the storage medium shall be maintained with a detailed index containing the gaming operation department and date. This index shall be available to the PRTC and Commissioner upon request.

Upon request and adequate notice by the PRTC or Commissioner, hardware, software, terminals, printers or other necessary equipment shall be made available to the PRTC or Commissioner so that they can conduct their auditing procedures. Controls shall exist to ensure the accurate reproduction of records, up to and including the printing of stored documents used for auditing purposes. The storage medium shall be retained for a minimum of five years, and original documents must be retained in accordance with records retention requirements as set forth in Section 3A.4, PRGCA.

Jamaica

Auditors, under the direction of the Director of Enforcement and Investigations, will conduct audits on the casino’s system of internal control. The functions of the auditor also extend to ensuring compliance with approved games and their rules.

Cuba & Cayman Islands

Please see question 1.2 above.

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

Dominican Republic

Operators are required to submit a description of the technical devices installed, a description of the measures that guarantee the quality and security of said devices, a description of the structure of the technical staff, and a description of the technical systems to develop the game activities concerning the licence.

Puerto Rico

At this time, the PRGCA has no framework in place that allows remote gambling.

Jamaica

At this time, the BGLC/CGA has no framework in place that allows remote gambling.

Cuba & Cayman Islands

At this time, these nations have no framework in place that allows remote gambling.

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

Dominican Republic

Article 4, *Ley 96-88* states that the authorisation granted to a casino for the installation and operation of slot machines will be done in the way that Law No. 351 provides for the licensing of gaming casinos. This authorisation may not be transferred without the consent of the DCJA.

Puerto Rico

Section 4.22, PRGCA states that it is illegal for any person to have in his possession any slot machine in Puerto Rico, except when the slot machine is in the possession of authorised persons, or any employee or agent who acts on their behalf, and exclusively for the purpose of maintaining for its (licensed) use, or using said

slot machines in the operation of its authorised casino. A detailed floor plan needs to be submitted, prior to placements of the gaming devices. Before transporting or moving any slot machine into Puerto Rico, or within Puerto Rico from an authorised location to another authorised location in or outside of Puerto Rico, the manufacturer, distributor, seller or any other person who causes such slot machine to be transported or moved shall, at least 15 days prior to any movement or transportation of any slot machine, notify the PRTC in writing and submit: (1) the full name and address of the person transporting or moving said slot machine; (2) the full name and address of the person who owns said slot machine, including the name of any new owner in the event that title is being transferred in conjunction with its transportation or movement; (3) the method of shipment or movement and the name of the carrier or carriers; (4) the full name and address of the person to whom the slot machine is being sent and the destination of said slot machine, if different from said address; (5) the quantity of slot machines being transported or moved and the serial number, denomination and description of each slot machine; (6) the date and hour of delivery to or removal from any authorised location in Puerto Rico; (7) the port of entry or exit; and (8) the reason for transporting the slot machine.

Jamaica

Gaming machine operators must apply to the BGLC for licences to operate any such machines using the application forms provided by the BGLC. These forms include declaration of designated premises. Completed application forms must be submitted to the BGLC along with receipts evidencing payments of the annual levy required by the BGLC.

Cuba & Cayman Islands

Please see question 1.2 above.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Dominican Republic

Article 11, *Ley 351-67* states that operators, managers and/or shareholders of an authorised casino are required to present responsible stewardship. The names, profession, address and personal identity cards should be registered and known to the executive authorities at all times.

Puerto Rico

Section 13.4, PRGCA regulates sanctioning violations of the PRGCA and regulations. The Commissioner and PRTC may initiate criminal and/or regulatory enforcement actions against any person licensed under the PRGCA and regulations. Any person who wilfully fails to report, pay or truthfully account for and pay any licence application, investigative or franchise fees imposed by the provisions of the PRGCA and regulations, or wilfully attempts in any manner to evade or defeat any such fee or payment thereof, shall be subject to regulatory sanctions and shall be liable for the imposition of a sanction of three times the amount of the licence fee evaded and not paid, collected by or paid over to the Commissioner or PRTC. Any person who, without obtaining the requisite licence as provided for by these regulations, works or is employed in a position whose duties would require licensing under the provision of these regulations, shall be liable for the imposition of sanctions and subject to a fine of not more than USD 1,000 and/or suspension or revocation of licence.

Jamaica

Owners of premises on which gaming machines are operated without a licence, as well as operators who are in default of the provisions of the BGLA, will be liable to punishment by fine and/or imprisonment upon conviction.

Cuba & Cayman Islands

Please see question 1.2 above.

4.2 What form does enforcement action take in your jurisdiction?

Dominican Republic

Article 18, *Ley 351-67* states that individuals or directors of the entities that violate regulations or obligations shall be sentenced to a fine or correctional imprisonment for a term of one month to one year, or both penalties combined. Article 19, *Ley 351-67* states that Article 410 of the Penal Code shall apply in the event of offences that have not been covered by *Ley 351-67*.

Puerto Rico

When dealing with unregulated supplies in the gambling sector, administrative fines are the most likely method of enforcement. However, in addition to any monetary sanction, the Commissioner and PRTC shall have the authority to impose the following sanctions upon any person licensed pursuant to the Act and regulations: (1) revoke the licence of any person convicted of any criminal offence; (2) suspend the licence of any person pending a hearing and determination in any case in which licence revocation could result; (3) suspend or revoke the ability of any franchise licensee for violation of any provisions of the Act or regulations relating to casino operations; (4) assess civil penalties as may be necessary to punish misconduct and to deter future violations, which penalties may not exceed USD 10,000 for each violation; and (5) issue warning letters, letters of reprimand or censure, which shall be made a permanent part of the file of each licensee so sanctioned. In considering appropriate sanctions in a particular case, the Commissioner and PRTC shall consider: (1) the risk to the public and to the integrity of gaming operations created by the conduct of the person facing sanctions; (2) the seriousness of the conduct and whether the conduct was purposeful and with knowledge that it was in contravention of the Act and regulations; (3) any justification or excuse for such conduct; (4) the prior history of the licensee with respect to compliance with the Act and regulations; (5) the corrective action taken by the licensee to prevent future misconduct of a similar nature from occurring; and (6) in the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee. The Commissioner and PRTC may impose any schedule or terms of payment of such penalty as they may deem appropriate. While criminal proceedings may be undertaken in certain circumstances, this is not considered to constitute the norm.

Jamaica

The Financial Investigations Division Act (“FIDA”) is aimed at establishing the Government department, the Financial Investigations Division (“FID”), which has sufficient independence and authority to effectively deal with the multidimensional and complex problem of financial crime (Article 3, FIDA). The FID has a broad mandate to confiscate all sorts of information and documentation if it is expected that this information shall benefit an investigation of a financial crime. Based on the Proceeds of Crime Act (“POCA”), the CGC has powers to issue directives to

gaming lounge operators. The purpose of this is to provide detailed guidance on the requirements of the POCA and practical guidance on how to implement such requirements into their daily operations. The POCA and the Proceeds of Crimes Regulations 2007 impose duties and responsibilities on businesses in the regulated sector to prevent and detect money laundering. Businesses in the regulated sector fall under two categories: financial institution (“FI”); and designated non-financial institution (“DNFI”). Failure to comply with regulations under the POCA and the Terrorism Prevention Act (“TPA”) will constitute an offence, and a court, in determining whether a person has complied with any of the requirements of these regulations, shall take into account any relevant guidance in place at the time concerned. The CGC uses a risk-based regulatory regime, which underpins its licensing, compliance and enforcement functions. This ensures that focus is placed on those operators and issues where the impact of failure to deliver the licensing objectives would be highest. Thus, when conducting a compliance examination of policies and procedures, consideration will be given to the size, scope and complexity of the activities of the establishment. The CGC strategy for managing and mitigating identified risks encompasses: (a) prevention, through the provision of guidance, advice and information; (b) detection, through monitoring and assessment; and (c) deterrence, through investigation and enforcement.

Cuba & Cayman Islands

Please see question 1.2 above.

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

Dominican Republic

The Dominican legislative framework has adopted the international AML standards, as provided by the FATF. Consequently, the international standards which apply for anti-money laundering, generally also apply to, e.g., Dominican casinos. Please refer to question 2.9 on AML guidelines.

Puerto Rico

As mentioned above, the Commonwealth of Puerto Rico is a United States territory and residents enjoy protection by the U.S. courts. Furthermore, as mentioned above, the United States is responsible for monitoring and regulating AML activities in Puerto Rico.

Jamaica

The Jamaican legislative framework has adopted the international AML standards, as provided by the FATF. Consequently, the international standards which apply for anti-money laundering generally also apply to, e.g., Jamaican casinos. Please refer to question 2.9 on AML guidelines.

Cuba & Cayman Islands

Please see question 1.2 above.

4.4 Are gambling debts enforceable in your jurisdiction?

Dominican Republic

Gambling debts are considered to be enforceable if the debt originated from a wager on a legitimate basis.

Puerto Rico

In Puerto Rico, the valid obligation to pay gambling debts is legal and enforceable. What is interesting in this respect is the position the Commonwealth of Puerto Rico assumes within the legal system of the United States. Although Puerto Rico is not a State and thus does not come under the constitutional provision of full faith and credit, a federal statute assures enforceability of Puerto

Rican judgments. Such acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. The current legal viewpoint seems to recognise that these debts are incurred where they are entirely legal and where the gambling involved is sanctioned by the Government. To allow one to incur such a debt and then, safe in his home jurisdiction, to renege on his validly assumed obligations would be an unjust benefit to the patron. The U.S. courts are reluctant to allow the defendant to assert a violation of public policy to avoid legally incurred debts.

Jamaica

The courts have, over the years, decided that in order for a transaction to constitute a bet or a wagering contract, and thus be enforceable, it was essential that each party should either win or lose. A transaction with a bookmaker constituted a bet or a wager, since, depending on the outcome of the events, either the bookmaker would lose or the person effecting the transaction would lose. By contrast, where the transaction took place by means of a totalisator, the courts held that such transaction did not, by law, constitute a bet or a wager because the owner of the totalisator could not win or lose, since his only benefit was his fixed predetermined percentage derived from the total amounts recorded by sales on the particular race. The transaction did not constitute a bet and, therefore, no act of gaming, unlawful or otherwise, took place.

Cuba & Cayman Islands

Please see question 1.2 above.

5 Anticipated Reforms

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

Dominican Republic

The expansion of online gambling is, at this time, being welcomed by all, including the national lottery. Members have been asked to join the discussion and make their own recommendations.

Puerto Rico

In July 2015, the Hilton Casino, one of the biggest and most well-known casinos in Puerto Rico, closed after 40 years of operation. Its closure illustrated Puerto Rico’s struggling economy. Puerto Rico’s Hotel & Tourism Association announced that it was the seventh casino to close in the preceding five years on the island of 3.5 million people, which was entering its ninth year of recession and struggling with a 12.6% unemployment rate. Gambling taxes represent the majority of revenue for the PRTC, which is responsible for promoting the island. A portion of that revenue also goes to the University of Puerto Rico, the island’s largest public university. Critics have in part blamed such closures on an estimated 45,000 illegal gambling machines that operate across the island, with the Government seizing hundreds of machines in occasional raids. About 90% of casino clients in Puerto Rico are locals, not tourists, according to the PRTC.

Jamaica

With significant amendments of the BGLC, which aim to shore up the Government’s balance sheet via additional gambling tax revenue, Jamaica seems to be preparing to regulate online gaming in the near future. The BGLC has stated that the only way this goal – an increase in revenue – can be accomplished is through a significant expansion of the country’s current gambling offering.

Cuba

Even though gambling was at one time a significant part of Cuban tradition, casinos are currently blacklisted on the Caribbean island. Formerly, the country was famous for its popular casino establishments. This all changed in 1959 when the then Prime Minister Fidel Castro abolished all legalised gambling and betting activities. Following Castro's restrictions, the city of Havana lost its outstanding rank as a casino destination. The current Cuban gambling laws still prohibit all forms of gambling. Just like land-based gambling, online gambling is also forbidden in Cuba. Those who attempt to bypass the prohibitions are subject to severe punishments.

Under President Obama, the United States had moved to normalise relations with Cuba, leading some to speculate on a future liberalisation of gambling laws to accompany the expected resumption of U.S. tourism. However, following the 2016 elections, President Trump has rowed back significantly on this rapprochement between the two nations.

Cayman Islands

We do not expect the Cayman Islands to legalise gambling in the near future, since a CITA representative has stated that the Cayman Islands have for several years successfully competed against many other Caribbean destinations that already offer gambling. CITA states: "One needs to consider what type of visitors gambling might attract, and there should also be studies done on whether Cayman's existing visitors would be in favour of or against the introduction of gambling."

Note

Please note that Gaming Legal Group and its affiliated entities cannot accept liability for this publication, since one should always consult a legal professional for the purpose of retaining individual advice.

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GAMING LEGAL GROUP | Litigation & Compliance

"Gaming Legal Group" is a symbiosis between the law firm "GLG Litigation" based in the Netherlands, specialising in gaming litigation, and "GLG Compliance" based in the Netherlands, Malta, Cyprus, Curaçao and the Dominican Republic, specialising in all matters of compliance. Gaming Legal Group has rapidly built itself a reputation as a world-renowned niche specialist in the field of gaming. It has a focus on hybrid cases in which government, tax, civil and financial law are often combined. Gaming Legal Group always tries to aim for a scientific and/or innovative approach. This is what makes Gaming Legal Group a worldwide "mover and shaker". The leading opinions of Gaming Legal Group are followed worldwide. Would you like to know more? Please take a look at our other chapters in this guide covering the Netherlands, Malta and the Dutch Caribbean, check out www.gaminglegal.com or follow us on Twitter [@gaminglegal](https://twitter.com/gaminglegal).

Finding Patterns in Financial Information

The department of GLG Compliance, located in the Zona Colonial, Santo Domingo, is the financial "think tank" of the Gaming Legal Group. Its mission is, always in a discrete and diligent fashion, to find patterns in financial information. This information can be used in a wide variety of ways. Research may benefit preparations for a lawsuit, or function as preparatory work for company restructuring.

Although geographically focused on the Greater Antilles and the Americas, the combined Dutch and Dominican team is multilingual and speaks Spanish, French, English and Dutch fluently. The team is formed by Frederik van Eijk, Pedro Batista and Josefina Santana.

India



Ganesh Prasad



Surbhi Kejriwal

Khaitan & Co

1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Individual state governments under the respective state legislation.	
	Poker		
	Bingo		
Betting	Betting		
	Sports/horse race betting (if regulated separately to other forms of betting)		
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)		
Lotteries	Lotteries	Central government and state governments under the <i>Lotteries (Regulation) Act, 1988</i> and the rules framed thereunder and also individual state governments under the respective state legislation.	
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Games such as crossword puzzle competitions, missing-word competitions, picture prize competitions or any other competitions are regulated by the central government under the <i>Prize Competition Act, 1955</i> and the rules framed thereunder.	

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Social/Skill arrangements	Skill games and competitions with no element of chance	Individual state governments under the respective state legislation. While for most states such games and competitions are outside the purview of gambling/betting and therefore unregulated, some states provide no exception – please see response to question 1.2 for details.	

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

The Indian Constitution has, in List II (State List), Seventh Schedule, granted the individual state governments the right to enact legislation to govern gambling. However, prior to the enactment of the Indian Constitution in 1950, the central government enacted the *Public Gambling Act* in 1867 which governed gambling across India. Following the enactment of the Indian Constitution, various states including Bihar, Chattisgarh, Madhya Pradesh, Punjab, and Uttar Pradesh adopted the *Public Gambling Act, 1867*. Certain other states have enacted their own gambling laws modelled on the central enactment. These include Andhra Pradesh (*Andhra Pradesh Gaming Act, 1974*), Telangana (*Telangana Gaming Act, 1974*), Maharashtra (*Bombay Prevention of Gambling Act, 1867*), Kerala (*Kerala Gaming Act, 1960*) and Tamil Nadu (*Tamil Nadu Gaming Act, 1930*). Karnataka, on the other hand, has enacted the *Karnataka Police Act, 1963*, which relates to the maintenance of public order (including gambling). The several pieces of legislation that govern gambling are collectively referred to hereunder as "**Gambling Laws**".

Most Gambling Laws are archaic and are meant to apply to gambling in physical premises. Absent any re-enactments or substantial amendments to Gambling Laws, the archaic provisions of such legislation would nonetheless have to be extended to the online space. Only the states of Nagaland and Sikkim have enacted laws that apply specifically to the online space. Recently, Telangana amended its Gambling Law to extend its provisions to online gaming as well.

Gambling Laws expressly prohibit persons from owning, occupying, using, permitting to use, managing and conducting the business of a "common gaming house" (i.e., premises in which cards, dice, tables or other instruments of gaming are kept or used for profit or gain).

The Gambling Laws of most states and union territories prohibit gambling for profit or gain. Most state Gambling Laws exclude “games of skill” from the scope of gambling, without identifying which specific games are games of skill. Therefore, where an action is brought against an operator in relation to a particular game, the courts will adjudicate on whether the relevant game is a “game of skill” or a “game of chance”, based on the facts of the case.

However, the Gambling Laws of Assam, Orissa and Telangana have a blanket prohibition on skill- and chance-based gaming, whether for profit or gain. The state of Telangana recently, through the *Telangana Gaming (Amendment) Ordinance, 2017*, amended the Gambling Laws applicable in Telangana, which, *inter alia*, extended the scope of the Gambling Laws to the online gaming space, and deemed rummy to be a “game of chance” as it partly involved skill and partly luck or chance. These amendments to the Gambling Laws applicable in Telangana are in conflict with the Supreme Court of India’s observation that rummy is a “game of skill” and falls outside the purview of the Gambling Laws. Interestingly, the state of Telangana passed a subsequent ordinance to its Gambling Law removing the exemption available to a “game of skill” entirely.

Following these amendments, rummy now fell squarely within the ambit of the Gambling Laws applicable in Telangana. Both the ordinances have been challenged by online rummy gaming websites in the Andhra Pradesh & Telangana High Court. The proceedings are ongoing. In the meantime, both the ordinances received the approval of the Telangana Legislative Assembly and were notified as amendments to the Telangana Gambling Law in December 2017.

Poker is considered to be a game of skill, or specifically excluded from the ambit of Gambling Laws, in the States of West Bengal, Sikkim, Goa, Nagaland and Daman & Diu (by legislation) and in Karnataka (by judicial precedent). Presently, poker is being tested in a court of law against the principle of “skill” *versus* “chance”. The Gujarat High Court has ruled that poker is a game of chance. This order of the Gujarat High Court is under appeal.

The Gambling Laws of the following states and union territories specifically allow for persons to conduct certain gambling activities in certain places, and under a licence specifically issued for this purpose (see response to question 2.1 below for further details): (a) Goa and Daman & Diu under the *Goa, Daman & Diu Public Gambling Act, 1976* and certain notifications issued by the Goa and Daman & Diu state governments (“**GDD Gambling Law**”); (b) Nagaland under the *Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015* and *Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Rules, 2016* (together, “**Nagaland Gambling Laws**”); (c) Sikkim under the *Sikkim Online Gaming (Regulation) Act, 2008* and *Sikkim Online Gaming (Regulation) Rules, 2009* (together, “**Sikkim Gaming Laws**”) and (d) West Bengal under the *West Bengal Gambling & Prize Competition Act, 1957* (“**WB Gambling Law**”).

Lotteries are governed separately by the *Lotteries (Regulation) Act, 1988*, and the central and state rules framed thereunder (collectively, “**Lottery Laws**”). The central government, by way of the *Lotteries (Regulation) Act, 1988*, has authorised states to organise, conduct and promote lotteries. Lotteries are specifically prohibited in certain states, including Himachal Pradesh and Nagaland.

Prize competitions are regulated by the *Prize Competitions Act, 1955* and *Prize Competitions Rules, 1959* (together, “**Prize Competition Laws**”). Prize Competition Laws regulate only skill-based competitions such as crosswords and missing-word puzzles, etc., where prizes are offered for the solution of any puzzle based upon the building up, arrangement, combination or permutation, of letters, words or figures. Competitions that fall under the purview

of Prize Competition Laws do not typically involve wagering or betting of any kind. However, they may involve payment of an entry fee.

The Foreign Direct Investment policy that is issued every year under the *Foreign Exchange Management Act, 1999* and the rules and regulations made thereunder (collectively, “**Exchange Control Regulations**”) expressly prohibit foreign investment in entities that are involved in (a) lottery, including government, private lottery, online lotteries, etc., and (b) gambling and betting, including casinos, etc. Hence, foreign direct investment is not permissible in entities that conduct games of chance that are illegal under the Gambling Laws.

The Foreign Direct Investment policy also expressly prohibits foreign technology collaboration in any form including licensing for a franchise, trademark, brand name, management contract; in lottery business, gambling and betting activities. Parties nonetheless implement novel structures to avoid falling under the prohibition.

The *Income Tax Act, 1961*, the *Finance Act, 1994*, the *Central Goods and Services Act, 2017*, the respective *State Goods and Services Act, 2017*, the *Union Territory Goods and Services Tax Act, 2017*, and the *Integrated Goods and Services Act, 2017* (together, “**Tax Laws**”) impose certain taxes in relation to gambling services.

Under the *Indian Penal Code, 1860* (“**IPC**”) and the *Information Technology Act, 2000* (“**IT Act**”), publishing and transmitting material “which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons” is prohibited and a violation thereof is punishable. Therefore, if obscene matter is used for advertising betting and gambling activities, the provisions of the IPC and the IT Act may be attracted. Further, the *Information Technology (Intermediaries Guidelines) Rules, 2011* (“**IT Rules**”) require ‘intermediaries’ like internet service providers, network service providers, search engines, telecom operators, etc. not to host or transmit any content which, *inter alia*, relates to or encourages gambling. Further, the IT Rules require intermediaries to remove content relating to or encouraging gambling within 36 hours, either “upon receiving actual knowledge or on being notified to do so”.

2 Application for a Licence and Licence Restrictions

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

As stated in the response to question 1.2 above, there are only a small number of states in India that allow operators to conduct gambling activities under a licensing regime.

Under the GDD Gambling Laws, licences are issued for installing and operating games of electronic amusement or slot machines in five-star hotels or on-board offshore vessels. The GDD Gambling Laws do not expressly prohibit bodies corporate controlled by non-residents from holding licences. However, the restrictions under the Exchange Control Regulations would apply to a licensee irrespective of the foregoing.

Under the Nagaland Gambling Laws, licences are issued for offering: (a) chess; (b) sudoku; (c) quizzes; (d) binary options; (e) bridge; (f) poker; (g) rummy; (h) nap; (i) spades; (j) auction; (k) solitaire; (l) virtual golf; (m) virtual racing games (including horse and car racing); (n) virtual sports (including soccer, cricket, archery, snooker, bridge and pool); (o) virtual fighting; (p) virtual wrestling; (q) virtual boxing; (r) virtual combat games; (s) virtual adventure games; (t)

virtual mystery and detective games; (u) virtual stock/monopoly games; (v) virtual team selection games; and (w) virtual sport fantasy league games. A licensee should be established under the laws of India and controlled by resident Indians but should not be engaged in gambling (defined as “wagering or betting on games of chance, but does not include betting or wagering on games of skill”).

Under the Sikkim Gaming Laws, licences are issued for offering: (a) roulette; (b) blackjack; (c) pontoon; (d) *punto banco*; (e) bingo; (f) casino brag; (g) poker; (h) poker dice; (i) baccarat; (j) *chemin de fer*; (k) backgammon; (l) keno; (m) super pan 9; and (n) other sport games which involve prediction of results of sporting events and placing a bet on the outcome, in part or whole, of such sporting event. The Sikkim Gambling Laws do not expressly contain any restrictions on the residential status of licensees. Additionally, the *Sikkim Casino Games (Control and Tax) Rules, 2002* permit the state government to issue licences to persons to operate casinos in five-star hotels.

The Nagaland Gambling Laws and Sikkim Gaming Laws allow persons, under licence, to offer gambling services online.

The WB Gambling Law allows owners, lessees and occupiers of a race course to seek a licence for conducting horse racing and pony racing. The WB Gambling Law does not expressly provide any restrictions on the residential status of licensees.

As discussed previously, lotteries can be conducted only by state governments under Lottery Laws. However, certain persons can apply to the relevant state government to become agents to conduct lotteries, or distributors of online and offline lottery tickets.

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

Under the GDD Gambling Laws, individuals, partnership firms and bodies corporate can seek a licence. A licence issued under the GDD Gambling Laws is typically for a period of five years. Each licensee can operate only a prescribed number of slot machines.

Under the Nagaland Gambling Laws, individuals, partnership firms and other legal entities can seek a licence. A licence issued under the Nagaland Gambling Laws is for a period of five years, and is deemed to be renewed each year as long as the yearly licence fee is duly paid and the licence is not revoked.

Under the Sikkim Gaming Laws, individuals, companies and partnership firms can seek a licence. A licence issued under the Sikkim Gaming Laws is valid for a period of five years and can be renewed upon the payment of a renewal fee.

The licences offered under the above legislation are personal in nature and are not for specific premises. However, the licences typically mention the premises on which facilities can be provided.

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

The process for applying for a gambling licence is detailed under Gambling Laws, including providing *pro forma* applications, licences, licence fees (which may vary depending on the number of games chosen and size of the gambling facility) and strict time periods for processing of applications.

In the application form, an applicant is typically required to give basic personal information, an undertaking that the applicant will comply with the relevant Gambling Law, the games that the applicant proposes to offer (in case of the Nagaland Gambling Laws and the Sikkim Gambling Laws), and the number of slot machines proposed

to be set up (in case of the GDD Gambling Laws). Applications are made to the relevant licensing authority, which scrutinises and approves applications. However, under the Nagaland Gambling Laws, the licensing authority forwards applications to empanelled firms (lawyers, financial experts and information technology companies). The empanelled firms review the applications and either certify that the licensee has satisfied requirements or make further recommendations to the licensing authority. The licensing authority may refer the recommendations to an *ad hoc* committee for its opinion on the recommendations, and may, on consultation with the *ad hoc* committee, issue a licence.

In Goa, the annual licence fee ranges from INR 100 million to INR 400 million (~GBP 1,130,000 to ~GBP 4,484,000). In Daman & Diu, the annual licence fee is INR 2 million (~GBP 22,500) for a set of 20 slot machines on offshore vessels, and an annual licence fee of INR 8,500 (~GBP 100) per “mother” machine, and INR 6,000 (~GBP 70) per additional slot machine.

In Nagaland, the licence fee is INR 1 million (~GBP 11,200) per game, or INR 2.5 million (~GBP 28,000) for a bouquet of games (three or more games), each year for the first three years, and INR 2 million (~GBP 22,500) per game, or INR 5 million (~GBP 56,100) for a bouquet of games, each year for the next two years. In addition to the annual licence fee, 0.5 per cent of the yearly gross revenue generated (less service tax) is payable as royalty.

In Sikkim, the annual licence fee is INR 10 million (~GBP 112,000). Additionally, a licensee is required to pay 10 per cent of: (a) the yearly gross gaming yield (i.e., the total of (1) all bets or stakes made, and (2) the price of all chances sold, less (3) the value of all winnings and prizes due); or (b) INR 50 million (~GBP 573,000), whichever is higher. Further, the licensee is required to furnish a bank guarantee of INR 50 million (~GBP 561,000) in favour of the state government every year, at the time of issue and renewal of the licence.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

The GDD Gambling Laws, in addition to restricting the number of slot machines, require licensees to display conspicuously the licence granted and make available appropriate facilities for proper conduct of the games, etc.

Under the Nagaland Gambling Laws, in addition to restrictions on ownership discussed in response to question 2.1 above, the: (a) licensee should not have any criminal history; (b) executive decisions of the licensee should be taken in India; and (c) operations and technology support (platform, software and services, etc.) should be controlled, maintained and operated in India.

The Sikkim Gaming Laws require the licensee to: (a) operate only in Sikkim; (b) provide certain details on the website or online portal, including licence details and hyperlinks to websites of the state government and “players anonymous”; and (c) ensure that only persons above the age of 18 can play on their website or online portal. Further, on 17 July 2018, the Sikkim state government issued a notification amending the Sikkim Gaming Laws, mandating the requirement of having a photo identity card issued from outside the state of Sikkim for entry into gaming zones. Therefore, entry of locals belonging to the state of Sikkim, to both online gaming and betting kiosks as well as casinos in five-star hotels, stands as banned in the state of Sikkim.

The above Gambling Laws also impose reporting obligations on licensees and typically restrict transfer and assignment of licences.

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

See the response to question 2.2 above for further details on the validity of licences. Licences are usually renewable upon expiry after the payment of renewal fees.

Recently, for the financial year 2018–2019, Goa and Daman & Diu have prescribed increased licence and renewal fees.

Licences are not typically revoked or nullified unless there is a violation of licence terms or a contravention of relevant Gambling Laws.

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

There are no specific advertising laws in India. However, the Advertising Standards Council of India, a self-regulated organisation, prescribes an advertising code. This code does not expressly prohibit gaming-related advertisements. However, certain Gambling Laws, including those applicable in Goa, Daman & Diu, Gujarat, Karnataka, Maharashtra and West Bengal, expressly prohibit the publication of information that facilitates gaming.

Additionally, with respect to online gaming, the IT Act and the IT Rules require an intermediary (i.e., any person who, on behalf of another person, receives, stores or transmits that message or provides any service with respect to that message – typically, an internet service provider) to publish rules and regulations informing users of computer resources not to host, display, upload, modify, publish, transmit, update or share any information that relates to gambling. Notwithstanding the foregoing, gaming advertisements are prevalent online.

Sikkim Gaming Laws specifically permit the advertisement of online games, subject to certain restrictions, which, amongst others, require that the advertisement of an online game: (a) must contain a URL or hyperlink (in each case if advertised online) to the website offering such online game; (b) should not be indecent, offensive, false, deceptive or misleading and should be based on facts; (c) should not contain any statement as to the legality or otherwise of online game betting in states and union territories other than Sikkim; and (d) should not be directed at any state other than Sikkim in which online games or any kind of online game is prohibited.

Lottery Laws allow for the promotion and advertisement of lotteries by lottery providers. The IPC prohibits the promotion and advertisement of lotteries. However, Lottery Laws exempt persons who are authorised to promote and advertise lotteries under such laws.

2.7 What are the tax and other compulsory levies?

Tax Laws levy a direct tax of 30 per cent (exclusive of surcharge and cess) on income from winnings from lotteries, crossword puzzles, races (including horse races), card games and other games of any sort, or from gambling or betting of any form or nature whatsoever. Service providers making payments to winners are required to withhold tax of 30 per cent (exclusive of surcharge and cess) at the time of making payments to winners if the winnings exceed INR 10,000 (~GBP 113). If the winnings are wholly in kind, or partly in kind and partly in cash and the cash component is insufficient to meet the withholding obligations in respect of the whole winnings, service providers are required to ensure that tax at the above rate

has been paid in respect of whole winnings (and not just the cash component) before they are released.

The central and state governments implemented a uniform goods and services tax (“GST”) with effect from 1 July 2017. GST has subsumed most of the indirect taxes, including service tax, value-added tax, luxury tax and entertainment tax (except when imposed by various municipalities). The rate of taxation on casinos, lotteries and betting activities, including any admission or access to facilities for the aforesaid activities, is up to 28 per cent (exclusive of cess or surcharge). However, online games of skill and other gaming activities could potentially be regarded as other recreational services and be subject to the rate of taxation of up to 18 per cent (exclusive of cess or surcharge). These rates of taxation may vary based on the exact nature of each game offering.

2.8 What are the broad social responsibility requirements?

Gambling Laws do not expressly place social responsibility requirements on service providers. However, certain Gambling Laws require service providers to ensure that persons below a certain age are not allowed to enter premises (in the case of casinos) or access online games.

Additionally, companies that provide gambling services and have a net worth of INR 5 billion (~GBP 56.5 million) or more, or turnover of INR 10 billion (~GBP 11.2 million) or more, or net profit of INR 50 million (~GBP 561,000) or more, are required to spend at least 2 per cent of their average net profit for the preceding three years on corporate social responsibility activities, which include eradicating extreme hunger and poverty, promoting education, promoting gender equality and empowering women, reducing child mortality and improving maternal health.

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

India’s principal AML regulations, the *Prevention of Money Laundering Act, 2002* and *Prevention of Money Laundering (Maintenance of Records) Rules, 2005* (together, “PMLA Laws”) do not restrict entities from supplying gambling services. However, the PMLA Laws impose certain record-keeping, “know your customer” and reporting obligations on gambling service providers. Record-keeping obligations including the maintenance of records of all transactions, the identity of clients, and cash transactions or series of cash transactions exceeding INR 500,000 (~GBP 5,600), for a period of five years. These records, and a report on measures taken under the PMLA Laws, have to be reported to the prescribed authority on a monthly basis.

India’s central bank, the Reserve Bank of India, has noted the usage of virtual or crypto currencies. While usage of virtual or crypto currencies is presently not regulated, the Ministry of Finance, Government of India, along with the Reserve Bank of India, are presently working on regulating virtual currencies, including bitcoins.

Customers typically use cash or bank transfers to fund gambling activities. Prepaid instruments (or e-wallets) may be used and are popular with Indian players gambling on foreign gambling portals. India enacted legislation in 2015 that seeks to tax undisclosed foreign income and assets. Prepaid instruments are treated as bank accounts under the legislation. Income earned and deposited in foreign prepaid instruments are liable to tax as a result.

3 Online/Mobile/Digital/Electronic Media

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

Only the Nagaland Gambling Laws and Sikkim Gaming Laws discuss issuance of licences for the provision of gambling services online (see responses to questions 2.1 and 2.2 above for further details). The Gambling Laws applicable in Telangana prohibit the provision of gambling services online.

Other Gambling Laws were enacted prior to the internet and refer to a physical gaming house. However, like certain other Indian laws, such other Gambling Laws can be and are applied to the online space. Indian courts have on several occasions applied such other Gambling Laws to online gambling and gaming. Consequently, persons contravening these Gambling Laws in the online space can be prosecuted by the appropriate authorities.

Most Lottery Laws do not contemplate online lotteries. However, the Lottery Laws of certain states (such as Sikkim) allow online lotteries and the online sale of lottery tickets.

To avoid triggering breaches under state laws, typically, online gaming service providers put in place eligibility conditions and certain technical entry barriers for players residing in states where no exception for “game of skill” is available – for instance, most online rummy gaming companies have barred players from Telangana, Orissa and Assam.

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

The IT Act and the IT Rules require intermediaries to publish rules and regulations informing users of computer resources not to host, display, upload, modify, publish, transmit, update or share any information that relates to gambling (see response to question 2.6 above for further details). A service provider offering online gambling and gaming is itself unlikely to suffer any consequences. However, an intermediary who knowingly hosts or publishes information that relates to gambling is liable to a fine. Consequently, an intermediary may, on identifying a service provider who offers online gambling and gaming, and displays and uploads information relating to gambling, take down the relevant website or instruct the service provider to stop displaying and uploading such information.

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

The GDD Gambling Laws allow for a certain number of slot-based machines to be provided in five-star hotels and offshore vessels. Sikkim Gaming Laws allow only intranet gaming terminals to be provided. The intranet gaming terminals ensure that games can be played on the premises of the licensee and with persons on the same intranet.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Typically, any person who: (a) owns, occupies, or uses any premises

as a “common gaming house”; (b) permits such premises to be used as a “common gaming house”; (c) manages or assists in conducting business of a “common gaming house”; (d) advances or furnishes money for the purpose of gaming; and (e) is found in a “common gaming house” gaming, or present for the purpose of gaming, is liable for prosecution for breaching Gambling Laws. Gambling Laws presume that any person found in a “common gaming house” during any gaming activity is present for the purpose of gaming.

Further, persons who operate lotteries in contravention or outside the purview of Lottery Laws can be prosecuted under Indian criminal law.

Additionally, an intermediary can be prosecuted under IT Laws if it knowingly hosts or publishes information that relates to gambling (see response to question 3.2 above for further information).

4.2 What form does enforcement action take in your jurisdiction?

Gambling Laws prescribe a fine, imprisonment, or both, for contravention. Fines range between INR 200 (~GBP 2.5) and INR 5,000 (~GBP 56), and a term of imprisonment between one and three years.

A contravention of the Gambling Laws of Goa, Daman & Diu, Nagaland and Sikkim can lead to the suspension or cancellation of licences.

Foreign direct investment and foreign technology collaboration in gambling activities are prohibited under Exchange Control Regulations. A contravention of Exchange Control Regulations entails penalties of: (a) three times the sum involved in such contravention, where such amount is quantifiable; or (b) INR 200,000 (~GBP 2,300), where the amount is not quantifiable; and (c) INR 5,000 (~GBP 57) for every day during which the contravention continues, in case of a continuing default. Additional penalties may be levied upon a failure to pay the penalty in full. In addition to the levy of the above penalties, the relevant authorities may require the foreign investment or foreign technology collaboration to be unwound.

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

No, they do not.

4.4 Are gambling debts enforceable in your jurisdiction?

Wagering contracts (other than in relation to horse racing) are *prima facie* void under Indian contract law. Winners will not be able to approach the appropriate authorities to cause service providers to pay winnings from gambling. However, given the legal sanction under the Gambling Laws of Goa, Daman & Diu, Nagaland and Sikkim, winners should be able to approach the appropriate authorities to recover winnings from licensed organisers.

5 Anticipated Reforms

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

The Law Commission of India (“LCI”), which operates under the aegis of the Ministry of Law and Justice, Government of India, is tasked with, amongst other items, “identifying laws which otherwise require changes or amendments and to make suggestions for their amendment”. Pursuant to this mandate, the LCI, after

seeking views and suggestions from the general public and other stakeholders, released its report on 5 July 2018. The report analysed the history of gambling in India and other parts of the globe; the current legal and constitutional framework governing Gambling Laws in India; laws in other international jurisdictions, etc. After a detailed analysis, the law panel came to the conclusion that it is better for parliament or state legislatures to legalise and strictly regulate gambling and betting activities rather than banning them. The commission recommended that while it is desirable to ban all gambling activities, it may not be practically possible to enforce it. Thus, it stated that the most prudent approach would be to regulate

gambling/betting with a stringent set of regulations. However, this caused a furore in the country and immediately on 6 July 2018, the LCI issued a press note clarifying that legalising betting and gambling is not desirable at present and the suggestion to regulate gambling/betting should be considered by the parliament or state legislatures in future, only if a complete ban is not effective in India.

The government of India has issued a statement that the report of the LCI is currently under consideration. In the given circumstances, it remains to be seen whether the central government will take steps to enact a law to regulate betting and gambling, as suggested by the LCI.



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1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Not applicable.	Not applicable.
	Poker	Not applicable.	Not applicable.
	Bingo	Not applicable.	The District Court/An Garda Síochána (police).
Betting	Betting	The Revenue Commissioners.	The Revenue Commissioners.
	Sports/horse race betting (if regulated separately to other forms of betting)	The Revenue Commissioners.	The Revenue Commissioners.
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	Not applicable.	Not applicable.
Lotteries	Lotteries	Regulator of the National Lottery; An Garda Síochána; or the District Court.	Regulator of the National Lottery; An Garda Síochána; or the District Court.
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Not applicable.	Not applicable.
	Skill games and competitions with no element of chance	Not applicable.	Not applicable.

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

Gaming

Casino-style games are regulated (and to a large extent prohibited) by the Gaming and Lotteries Acts 1956 to 2013 (the "**G&L Acts**"). Poker is also regulated by the G&L Acts as it falls within the definition of "gaming" as a "a game (whether of skill or chance or partly of skill and partly of chance) for stakes hazarded by the players".

Lottery products are also regulated by the G&L Acts, although the National Lottery is governed by the National Lottery Act 2013.

Section 43 of the Finance Act 1975 (as amended) regulates the operation of "gaming machines".

Sections 120–129 of the Finance Act 1992 regulate the operation of "amusement machines". "Amusement Machines" are defined under section 120 of the Finance Act 1992 as: "[a] machine which (a) is constructed or adapted for play of a game, and (b) the player pays to play the machine, and (c) the outcome of the game is determined by the action of the machine, and (d) when played successfully, affords the player an opportunity to play again without paying".

Betting

The Betting Acts 1931 to 2015 (the "**Betting Acts**") provide for a licensing scheme for the operation of a bookmaking business, which includes both online/offline bookmakers and betting intermediaries.

The Totalisator Act 1929 regulates the operation of tote (or "*pari-mutuel*") betting.

Lotteries

The National Lottery Act 2013 regulates the operation of the National Lottery (which is the largest lottery in the State).

Lotteries (aside from the National Lottery) are regulated (and to large extent prohibited) by the G&L Acts. Small lotteries or charitable lotteries are permitted where a permit or licence is obtained.

Social/Skill Arrangements

"Social games" which do not require a stake or are otherwise free to enter are more or less outside the scope of the current Irish legislation.

Skill games and competitions with no element of chance tend to generally fall outside the scope of the G&L Acts.

2 Application for a Licence and Licence Restrictions

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

Gaming

Irish law does not currently provide for the licensing of casinos, and casino-style games are more or less prohibited by Irish law. Notwithstanding this, a number of casinos do operate in the Irish market as “private members’ clubs”.

Low stakes slots machines (“gaming machines”) and “amusement machines” may be made available to the public where an appropriate licence is obtained.

Betting

A bookmaker must obtain a bookmaker’s licence from the Revenue Commissioners in order to operate. There is (in principle) no limit to the number of licences that may be issued. The same can be said for remote bookmakers’ licences and remote betting intermediary licences.

A licence is required to operate a tote machine. Historically, only two totalisator licences have been issued. A totalisator licence is currently held by Tote Ireland Limited (a wholly owned subsidiary of State horse racing body, Horse Racing Ireland). Bord na gCon (the national greyhound board) holds a licence to operate a totalisator at greyhound tracks.

Lotteries

The National Lottery operator must obtain a licence to hold the National Lottery from the Irish Government. The operation of the licence itself is regulated by the Regulator of the National Lottery. The National Lottery is operated by a single licence holder and there is a competitive bidding process when the licence expires.

Small or charitable lotteries may be operated on the basis of permits or licences issued by An Garda Síochána or the District Court. There is no competitive tender/bidding process and no monopoly for small lotteries.

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

Gaming

An “amusement machine” licence is granted by the Revenue Commissioners for the public place specified in the application. Excise duty must be paid on the issue and renewal of a licence and the applicant must also produce a tax clearance certificate in accordance with the Finance Act 2002.

A “gaming machine” licence is applied for in a similar manner; the licensing body is the Revenue Commissioners. A gaming licence is required for each premises where a gaming machine is available for play.

Any individual or company may apply for an amusement machine or gaming machine licence.

Betting

Retail betting licences, remote betting licences and remote betting intermediary licences are issued by the Revenue Commissioners and may be applied for by any individual or company. In the case of a company, its “relevant officers” make the application on its behalf.

There is, in principle, no limit to the number of each of these licences that may be granted.

Before an application for such a licence can be made, applicants must first obtain appropriate certificates of personal fitness and tax clearance certificates.

Any individual or company may apply for a totalisator licence although note our comments above that, historically, only two totalisator licences have been issued. It is unlikely this position will change in the short term.

Lotteries

The National Lottery licence is awarded by the Irish Government on a 20-year term. The last such licence was granted in 2014. The awarding of this licence is subject to a competitive tender process.

A small lottery licence may be awarded by a District Court/An Garda Síochána. It is normally a requirement of such a licence that the lottery be run for charitable purposes.

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

Gaming

Irish law does not currently provide for the licensing of casinos. However, the G&L Acts prohibit public casinos and some operators have relied on this approach to operate private members’ clubs which operate as casinos/card clubs. The operation of such private members’ clubs, including opening hours and age restrictions, is unregulated except that anti-money laundering legislation applies to their activities and they are also subject to the usual taxation (including value-added tax). Most private members’ clubs require people to join as members before they can participate in any gambling.

Betting

If a bookmaker wishes to operate from a physical shop, it must first obtain a certificate of registration of premises in addition to the usual licence requirements (which are set out elsewhere in this chapter).

The process for applying for a remote bookmaker licence or a remote betting intermediary licence is different. At a high level, the application process can be described as follows. An applicant must first place an advertisement (in a prescribed form) in two national newspapers. Not less than 14 days after the advertisement is published, at least two “relevant officers” of the applicant must make applications for certificates of personal fitness. The applicant must then submit its licence application within 21 days of the issuance of the certificates of personal fitness. In addition to and in parallel with this, the applicant must also apply to the Revenue Commissioners for a tax number, obtain a tax clearance certificate and register for the payment of betting duties with the Revenue Online Service.

Lotteries

The Regulator of the National Lottery holds a competition regarding the grant of the National Lottery licence and the Minister for Public Expenditure and Reform may issue a direction to the Regulator regarding the terms of this competition. As noted above, the National Lottery is normally granted for a 20-year licence term (and the last such licence was granted in 2014).

A Garda Síochána Superintendent may issue permits for one-off small lotteries with prizes of up to €5,000 in total.

The District Court may issue a licence to a charity for periodic/recurring small lotteries with prizes of up to €30,000 per week. A licence is normally issued after a short hearing in the District Court.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Gaming

An amusement machine or gaming machine licence will be restricted to certain public places as set out in the licence and may contain restrictions within the licence.

Betting

The operation of a physical bookmaker's office is subject to a number of requirements contained in the Betting Acts. For example, there is a general prohibition on offering goods and services from a bookmaker's shop aside from bookmaking services and the sale of non-alcoholic drinks, newspapers, confectionery and fruit. The opening hours of bookmakers' shops are also regulated by statute and the licence holder may not permit overcrowding or loitering in the shops.

Accepting bets of less than €0.06 is prohibited for licensed bookmakers.

Section 16 of the Betting Acts sets out the circumstances under which a bookmaker's and/or remote betting intermediary licence may be revoked by the District Court (on the application of the Minister for Justice and Equality).

Lotteries

The National Lottery licence granted by the Irish State to the operator of the National Lottery contains conditions to which the operator is bound. The licence includes provisions relating to player protection mechanisms and governing unclaimed prizes, as well as the terms of the establishment of the National Lottery Fund. The licence itself can be reviewed on the Regulator of the National Lottery's website.

Small lotteries must not be for the personal benefit of the permit/licence holder. A licensed small lottery must also be for charitable purposes.

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

Gaming

There are statutory maximum duration, review, suspension and revocation terms for an amusement machine licence. These are specified in each licence.

Betting

The timeline for remote betting/remote betting intermediary licence applications can be seen at question 2.3. For retail bookmakers, online bookmakers and remote betting intermediaries, licences are granted for up to 24 months ending on 30 November the following year (for retail bookmakers) or 30 June (for remote bookmakers and remote betting intermediaries). The amount of the fees payable for the annual renewal of the licences is based on the turnover of the bookmaker/betting intermediary. If a licence is not renewed, it will automatically expire.

The Betting Acts set out the grounds on which a licence can be revoked. By way of example only, a licence may be revoked where the Certificate of Personal Fitness of a relevant officer of the licence-holding entity is revoked. The licence holder may make representations and may appeal revocation to the High Court.

Lotteries

The current National Lottery licence was granted for a 20-year term in 2014.

The reasons for revocation of the National Lottery licence include, but are not limited to, the actions of the licence holder damaging the reputation of the National Lottery or of the State, a term of the licence being breached, or if the licence holder is not taking sufficient steps to prevent fraud regarding the National Lottery.

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

General Advertising and Broadcasting Rules

The Advertising Standards Authority for Ireland (the "ASAI"), which is an industry body that promotes and monitors compliance with advertising standards, includes a chapter on the promotion of gambling products in its Code of Standards for Advertising and Marketing Communications in Ireland.

The Broadcasting Commission of Ireland (the "BCI") is an independent statutory organisation which regulates broadcasting standards via its General Commercial Communications Code (the "Code"). The Code lays down standards with respect to all forms of commercial communication, including advertising and sponsorship. The Code states that it is acceptable to address commercial communications and to seek to promote betting services to those who wish to bet. In addition to this, the Code also provides that the address of the service provider and factual descriptions of the services available should be contained in such communications.

The Code does, however, prohibit a number of activities, including: anything that could be deemed an "encouragement to bet"; information detailing discounts, special offers, inducements to visit any betting establishment (including online); and references to betting odds available or any promotional offer intended to encourage the use of services of that nature.

Casino Gaming

The G&L Acts provide that a gaming activity will be illegal where it promotes or provides facilities for any kind of gaming: a) that by reason of the nature of the game, the chances of all the players, including the banker, are not equal; or b) in which any portion of the stakes is retained by the promoter or is retained by the banker otherwise than as winnings on the result of the play. The type of gaming described here is defined as "unlawful gaming" under the G&L Acts. The promotion (or assistance in promotion) of unlawful gaming is a breach of the G&L Acts.

Betting

A number of limits to the provision of betting services are provided in section 20 of the Betting Acts.

For example, section 20(1) provides that a retail bookmaker may not set up or maintain in or around his 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) prohibits a bookmaker from: "proclaim[ing] or announc[ing] or permit[ting] 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".

In addition, section 20(4) prohibits a retail bookmaker from exhibiting (or permitting to be exhibited) in or outside his shop (or which 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”.

Lotteries

The promotion of unlicensed lotteries is prohibited under the G&L Acts. Licensed lotteries must be carried out for a primarily charitable purpose and are subject to prize limits.

2.7 What are the tax and other compulsory levies?

A licence fee of €10,000 is payable on the initial issue of a licence for remote bookmakers and remote betting intermediaries. The fee payable for renewal of these licences is calculated based on annual turnover. This renewal fee ranges from €10,000 to a maximum of €500,000 (where annual turnover exceeds €500,000,000). A fee ranging from €10,000 up to a maximum of €200,000 (where annual turnover exceeds €200 million) is payable for remote betting intermediaries.

Betting duty of 1% is payable by bookmakers (including remote bookmakers).

Betting intermediary duty, which is currently 15% of “commission charges”, applies to remote betting intermediaries. The Finance Act 2002 (as amended) defines “commission charges” 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”.

Value-added tax is applied to supplies of eGaming services in Ireland on a point-of-consumption basis. Pursuant to the Council Directive 2006/112/EC (VAT Directive) and its implementing regulations (282/2011/EU), value-added tax is also likely to apply to gaming operators who are licensed outside of Ireland but accept Irish customers.

2.8 What are the broad social responsibility requirements?

Question 2.6 details some of the restrictions with respect to advertising and promotion. For the most part, however, Ireland’s gambling laws are silent in terms of social responsibility obligations. A notable exception to this is the National Lottery, which must be operated in a way that generates money for good causes and small local lotteries (which must have a primarily charitable purpose). National Lottery tickets must not be sold to people aged under 18 years. The engagement in a betting transaction with a person under the age of 18 years is also prohibited.

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

Ireland implements European anti-money laundering legislation and is due to shortly transpose the Fourth Anti-Money Laundering Directive via the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2018.

The Central Bank of Ireland is reviewing the use of virtual currencies across the economy. Aside from e-money, virtual currencies are currently unregulated in Ireland.

3 Online/Mobile/Digital/Electronic Media

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

For the most part, Irish law has not generally been updated to take account of the internet. The G&L Acts apply to gambling products in general (i.e. casino or lottery-style games) and therefore apply equally to online gambling, though they have not been updated to take online gambling specifically into account.

Online gambling products are often provided to Irish consumers by operators who are lawfully licensed in other jurisdictions. Taking into account the potential application of Irish consumer protection law, such operators normally seek to ensure that consumer contracts are not governed by Irish law and that such contracts are executed and performed outside of Ireland. In addition, the G&L Acts will apply to those operators and it is important for them to be mindful of the rules surrounding the promotion and advertising of unlawful gambling products.

The Betting Acts were updated in 2015 in order to regulate and license betting services and betting intermediary services which are delivered remotely. The Betting Acts define “remote” as “any electronic means” which includes the internet, telephone and telegraphy (including wireless telegraphy). Therefore, a licence is required for all those who wish to provide remote bookmaking or remote betting intermediary services to customers in Ireland.

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

Under the Betting Acts, it is unlawful to provide a service that would “enable” an unlicensed bookmaker or unlicensed betting intermediary to have access to or use any internet address or any internet domain for the purpose of providing remote bookmaking or betting intermediary services. The scope of this provision is untested in court at the time of writing.

Under the Betting Acts, the Revenue Commissioners are charged with the enforcement of these provisions.

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

The Finance Act 1975 (as amended) governs the provision and licensing of “gaming machines”. See question 1.2. Section 4(1) of the 1956 Act prohibits the promotion or provision of facilities for gaming on slot machines.

Fixed-odds betting terminals (FOBTs) are uncommon in Ireland (certainly among the main high-street operators). Although their legality has been not been tested in the courts, they are generally regarded as an unlawful form of gaming and there seems to be very little political will to introduce or regulate them.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Under section 32D of the Betting Acts, it is possible for a prosecution

to be taken against any person including a “director, manager, secretary or other officer” of a company where the company has breached the Betting Acts “with the consent or connivance” of the person in question. Section 45 of the G&L Acts contains a similar provision.

The operator of the National Lottery must be a company and this company is primarily responsible for breaches under the National Lottery Act 2013. Under the 2013 Act, the main sanctions are monetary fines, which will be imposed on the operator company.

4.2 What form does enforcement action take in your jurisdiction?

The Irish Revenue Commissioners actively police the market to ensure that the appropriate tax is being remitted and, in the case of bookmakers, that the appropriate licences are in place.

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

The law of the European Union applies in Ireland and is constantly developing. The law on the free movement of services within the EU is particularly important in this context. European consumer protection laws or “conflict of law” regulations may also be relevant.

4.4 Are gambling debts enforceable in your jurisdiction?

Gambling debts are not enforceable in Ireland. Per section 36 of the G&L Acts: “every contract by way of gaming or wagering is void”, and “no action shall lie for the recovery of any money or thing which is alleged to be won or to have been paid upon a wager or which has been deposited to abide the event on which a wager is made”.

The recent case of *Sporting Index Limited v John O’Shea* [2015] IEHC 407 discussed the enforceability of gambling debts. In the case, the Irish High Court found that a UK-based spread betting operator called Sporting Index could not enforce a gambling debt owed to it by an Irish resident, Mr. O’Shea, as to do so would be contrary to the clear intent of the G&L Acts.

The unenforceability of gambling debts is reciprocal as between betting operator and customer, meaning a customer cannot sue an operator who refuses to pay a gambling debt. There is, however, a deterrent in place for betting operators (including betting intermediaries) who refuse to pay out: when an operator applies for renewal of its licence, it must be certified as being a “fit and proper person” by the Minister for Justice and Equality. When considering fitness, one consideration that may be taken into account by the Minister is whether the operator “unreasonably refuses or refused to pay sums due to persons who won bets made with [it]”. Therefore, should the operator refuse to pay out gambling debts, this could result in the refusal of the Minister to certify fitness and ultimately in the loss of the licence.

A proposal to make gambling contracts enforceable (in most circumstances) is currently contained in the heads of the Gambling Control Bill (discussed in more detail below).

to reform Ireland’s gambling laws was released. The draft heads referred to the bill as the “Gambling Control Bill” (the “Bill”). The Bill has not made significant progress through the legislative process since its initial publication, although at the time of writing, the Bill is on the Government’s published legislative agenda and is currently being further updated.

It is difficult to predict with any great certainty what the Bill will look like if and when it is finally passed. Based solely on the draft heads of Bill, we would expect that new legislation in this area would at least cover the following:

A New Regulator

The Bill proposes to bring all forms of gambling under the supervision of a dedicated gambling regulator – the Office of Gambling Control, Ireland (the “OGCI”). This in and of itself would be a significant reform of the law, as currently the closest that Ireland has to a gambling regulator is the Revenue Commissioners (which has the authority to issue certain licences, most notably, bookmakers’ licences) as well as the District Courts and the Gardaí Síochána (which have the power to issue local lottery licences).

A New Licensing Regime

The OGCI would oversee a new licensing regime incorporating 43 categories of gambling licence or registration. For the first time, it would be possible to apply for a licence to operate a land-based casino (though there is a proposal to cap the number of such licences). It is also proposed to introduce a licensing regime for operators who wish to offer gambling products (such as casino-style games) to Irish customers. The Bill specifically excludes the operation of the Tote from its provisions, but it does provide for the licensing of pool betting products.

Player Protection

The Bill would introduce player protection measures (a feature which is somewhat lacking from the current Irish law on gambling products). Specifically, there would be an obligation on operators to report suspicious betting patterns, a prohibition on the offering of credit and the introduction of “player cards”. The precise functionality of the “player cards” is unclear at this point. Certain games may be prohibited on public policy grounds and the Bill reiterates the Government’s intention to retain the ban on fixed online betting terminals.

Gaming and Lotteries (Amendment) Bill

In advance of any progress being made by the Bill, the Government has separately proposed some piecemeal changes to the G&L Acts, which were previously in the form of the draft Courts and Civil Law (Miscellaneous Provisions) Bill 2017 (the “Misc Provisions Bill”). The Misc Provisions Bill sought to reform and update the regime governing small or local lotteries. In particular, the Misc Provisions Bill sought to clarify the basis on which a charitable lottery licence may be obtained, increase stake and prize limits and standardise the age limits for entry. In May 2018, it was confirmed that these proposals would instead be contained in a separate Gaming and Lotteries (Amendment) Bill, which is yet to be published.

5 Anticipated Reforms

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

Anticipated Reforms

It is widely acknowledged that Ireland’s gambling laws are outdated and overdue for reform. In July 2013, the draft heads of a new bill

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For over 15 years Deirdre has advised international and large national entities on gaming, gambling and lotteries activities, online, physical and remotely delivered. Not only does she understand the licensing regime applicable to remote operators, but also appreciates how the legislation dating from the 1930s and 1950s applies to today's bookmakers, other operators, affiliates and service providers. Clients value her pragmatic approach and her ability to help clients model their offerings and agreements in a compliant, business-friendly manner.

Matheson's Betting and Gaming team is one of the leading specialist practices in this area in Ireland. We offer expert advice to operators in this space in relation to licensing, regulatory advice, taxation, e-commerce, commercial contracts, advertising and IP structures. Our partners have worked with many of the leading names in the gaming and betting sectors. Our betting and gaming clients work with us on transactions, disputes, tax and projects because of our ability to cut through complexity and to mitigate risk.

Our experience ranges from advising traditional retail bookmakers and private members' clubs/casinos in relation to their operations in Ireland, to advising large multinational online gaming operators providing remote and non-traditional online gaming and betting services to Irish consumers.

We also assist businesses in Ireland with using lotteries as a tool in marketing promotions and competitions in a compliant manner.

Isle of Man

Claire Milne



Sophie Corkish



Appleby (Isle of Man) LLC

1 Relevant Authorities and Legislation

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

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

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

Online Gambling

The principal legislation regulating the online gambling industry

is the Online Gambling Regulation Act 2001 (OGRA). All forms of online gambling and gaming are potentially licensable under OGRA with the exception of spread betting, as set out in the Online Gambling (Prescribed Descriptions) Regulations 2007. Please note that spread betting would fall to be regulated by the Isle of Man Financial Services Authority.

Land-based Gaming

Casino gaming is regulated by the Casino Act 1986 (CA 1986). The Casino Regulations 2011 provide for the operation and control of casinos in accordance with the CA 1986 and set out a list of prescribed games which may be played in the gaming room of a casino which includes, among others, bingo and poker.

Land-based Betting

The Gaming, Betting and Lotteries Act 1988 (GBLA) and the Gaming, Betting and Lotteries (Amendment) Act 2001 regulate land-based betting and bookmaking and amusements with prizes. The GBLA permits gaming, which is defined in the GBLA as “the playing of a game of chance for winnings in money or money's worth, whether or not any person playing the game is at risk of losing any money or money's worth”, subject to certain prohibitions set out therein.

Land-based Lotteries

The National Lottery Act 1999 and the GBLA regulate lotteries in the Isle of Man. The UK National Lottery is available on the Isle of Man and, apart from any small society lotteries, is the only legal land-based lottery operating on the Island.

Social / Skill arrangements

Social gaming with no prize in money or money's worth falls outside of the definition of gaming set out in the GBLA and OGRA (see above), and is therefore not currently regulated by statute. Land-based skills games with no element of chance are regulated under the GBLA.

2 Application for a Licence and Licence Restrictions

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

The licence necessary for each of the Relevant Products will depend on the type of gambling being offered and the legislation which applies.

Gaming

A casino licence is required to operate a casino in the Isle of Man. The Casino (Licence Applications) Regulations 1986 set out to whom an application for a casino licence should be made and matters that should be included in such an application.

The Council of Ministers, under the CA 1986, can grant up to two licences for the operation of a casino in the Isle of Man.

Betting

In order to use premises as a betting office in the Isle of Man, the premises will need to be licensed as a betting office and the person using the premises needs to be licensed as a bookmaker.

It is an offence to use non-licensed premises for betting or to operate as a bookmaker without a permit under the GBLA.

No licence is required under the GBLA for betting transactions which are authorised by a licence under OGRA and carried out in accordance with the provisions of the GBLA and terms of the licence (other than the negotiating or receiving of any bet from a person in the Island by means of a telecommunication).

Online Gambling

Where an operator intends to establish in the Isle of Man and provide certain forms of online gambling, they must hold a licence under OGRA. To be eligible for an OGRA licence, operators must satisfy the following criteria:

- they must establish a Manx company;
- they must have at least two local directors, who must be individuals and not corporate entities;
- they must appoint at least one resident Designated Official, or where that Designated Official cannot reside in the Isle of Man, an Operations Manager; and
- they must either register players on Isle of Man servers or they must operate under a network services licence which obliges them to establish the network services in the Isle of Man.

There are a number of different licences under OGRA, including:

- 1) The main OGRA licence:
 - Costs £35,000 *per annum* and runs for an initial period of five years. The initial licence application fee is £5,000.
 - With approval of the GSC, operators with a full licence can offer technology to sub-licensees under the reduced-fee sub-licence scheme (see further below).
- 2) Sub-licences under OGRA:
 - Can be obtained if the applicant wishes to operate exclusively with a technology provider with a full OGRA licence. Players register with the sub- licensee but may then access games provided by the Isle of Man business partner’s game server. The business partner must hold a full OGRA licence. To qualify as a sub- licensee, the operator may only use the services of one Isle of Man- licensed software/platform provider at any given time. The full OGRA licensee, however, can offer its services to as many sub- licensees as it wishes and may, in addition, register its own players.
 - Operators with a full OGRA licence can offer technology to sub- licensees under the reduced-fee sub- licence scheme.
 - Any new operator that wants to use the games offered by a network operator can obtain a sub- licence; the condition being that the sub- licence holder is tied exclusively to the network operator for its games.
- 3) Network services licence:
 - Must be obtained if the operator wishes to allow one or more players registered with another non-Isle of Man- licensed operator on to its Isle of Man server without re- registering the player details.
 - Costs £50,000 per year.

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

The process of applying for a licence under OGRA, the GBLA and CA 1986 is set out at question 2.3 below.

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

OGRA

In respect of an application to conduct online gambling activities, the application form, vetting forms, associated paperwork and application fee must be submitted to the inspectorate. Once the application has been accepted, the general time period for a licence to be processed is typically 10 to 12 weeks. The inspectorate may request to meet with the Designated Officials and the Operations Manager (where appointed) to discuss the business model and gain an understanding of the key officials with regard to the business being proposed.

Assuming there is no delay in the application process, there will be a formal hearing approximately 12 weeks after the application has been formally accepted. Notification will be received as to whether the application was successful shortly after the formal hearing.

GBLA

An application under the GBLA should be made to the GSC. A copy of the application will be sent to the Chief Constable and to the Collector of Customs and Excise in the Isle of Man. The applicant will be required to publish in a newspaper, published and circulating in the Island, a notice of the application which shall state that any person who desires to object to the grant of the permit or licence should notify the GSC. Where the licence is in respect of any premises, the applicant should also post a notice outside the entrance, or on the site of the proposed entrance. The GSC will hold a meeting to consider such applications.

CA 1986

For an application to hold a casino licence, guidance should be sought from the GSC. There is currently only one holder of a casino licence on the Island.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

The GSC has the power to issue licence conditions that operators must comply with and these can be specific to a particular operator depending on the circumstances. The following are the standard licence conditions for all OGRA licences:

- the operator must ensure that the games, gambling software and financial software offered are demonstrably secure, reliable, and capable of being audited;
- from time to time, the operator must ensure compliance with all applicable legislation, including regulations, that are in force, and must seek approval for any changes made to the system;
- the GSC has no blacklists where an operator may not offer its gambling services, but the GSC requires the operator to take legal advice regarding any jurisdiction in which it takes players/does business, and to liaise with the GSC in this regard;
- the operator must protect the players’ funds paid to it by either holding those funds in a designated account as specified by the Online Gambling (Participants’ Money) Regulations 2010 (as amended) or placing those funds in a trust or other mechanism approved by the GSC;

- all players' funds paid to the operator must be held on trust irrespective of the mechanism used to protect them, and players must be told of, and agree to, the treatment of any interest and capital that arises as a result of the funds being held by the operator. Before players' funds may be moved from a client account to an alternative protection mechanism, the GSC must approve the mechanism;
 - the operator must not operate, or be associated or linked with, online gambling sites not regulated by OGRA except with the consent of the GSC. If the GSC approves the association or link, any reference or linked access to the associated gambling sites must be made through a web page that indicates that the player is leaving the jurisdictional control of the Isle of Man;
 - the operator must allow all activities permitted by its licence, and any associated transactions, to be the subject of random audit by or on behalf of the GSC;
 - the operator must, if so requested by the Isle of Man Treasury, take an active part in any forum or consultative body established by the Treasury relating to the operation and regulation of online gambling in the Isle of Man;
 - operators are required to make a proportionate contribution, over the course of each year throughout the duration of the licence, to one or more organisations that conduct research into the prevention and treatment of gambling-related harm, develop harm prevention approaches and/or identify and fund treatment of those harmed by gambling;
 - other than with the consent of the GSC, an operator must commence the online gambling allowed under its licence within nine months of the licence being granted;
 - operators must fully comply with any "anti-money laundering and countering the financing of terrorism" provisions that apply to the business and/or any type of gambling permitted under its licence;
 - operators may not exclude residents of the Isle of Man from placing bets or stakes with Isle of Man-licensed online gambling sites, except with the agreement of the GSC;
 - operators must supply sufficient information from an independent source or sources to demonstrate the probity of suppliers of any gambling or financial software they operate;
 - operators must operate through trading accounts in a bank located in the Isle of Man unless agreed otherwise with the Isle of Man Treasury. In addition, any bank accounts for trading or gambling purposes should be located in the Isle of Man unless agreed otherwise with the Treasury;
 - operators must maintain accounting systems approved by the GSC and conform with such internal and external accounting practices as the GSC may require. Not later than six months after the end of every accounting year, the operator has to deliver to the GSC a copy of its accounts in the form required by the Companies Act 1982 or as defined by United Kingdom G.A.A.P. and certified by a qualified auditor;
 - operators are required to demonstrate to the GSC compliance with all Advertising Standards Authority Codes and industry self-regulatory codes or such other codes as may be applicable. All operators are required to provide hyperlinks on their websites to any problem gambling organisation that may be specified by the GSC;
 - if the operator enters into a business-to-business relationship with an entity that is not licensed by the GSC, the operator is required to use its best endeavours to ensure that those entities adhere to the GSC's core principles as set out above. In addition, there is an obligation on the operator not to bring the Isle of Man into disrepute, either of its own accord or through its relationship with third parties;
 - services offered by an operator and/or by any part of its group from a jurisdiction other than the Isle of Man shall not make reference either directly or indirectly to the GSC or a licence granted by the GSC; and
 - operators must not allow a person (or persons considered by the GSC to be acting in concert) to assume or increase ownership of the operator, directly or via other holdings or arrangements, unless: (a) the ownership of the licensed company is wholly public; (b) the ownership of that person (or those persons acting in concert) afterwards is 5% or less of the operator; (c) the ownership of that person (or those persons acting in concert) has been approved by the GSC and noted in the minutes of a GSC meeting; or (d) the operator has obtained the written permission of the inspectorate for that person (or those persons acting in concert) to assume or change their ownership prior to the GSC's approval. The licence will be suspended if any person has ownership of the licensed operator in contravention of this condition unless the GSC provides confirmation, in writing, that the operator can continue to operate.
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- 2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.**
-
- OGRA licences last for an initial period of five years but can be renewed thereafter for subsequent five-year periods. In the event that the operator fails to abide by any licence condition, the GSC can terminate the licence in accordance with the terms of section 13(4)(b) of OGRA.
- In respect of a casino licence, a licence will remain in force for a period of one year from the date on which it was granted, unless it is cancelled or surrendered. The GSC may renew a licence for successive periods of one year on the application of the holder of the licence, provided that a casino licence shall not be renewed so as to be in force after the expiry of 10 years after the date on which it was originally granted. If the GSC is satisfied that the holder of the licence would not be eligible to be granted a new licence, then the GSC can refuse to renew the licence for the reasons set out at section 5 CA 1986.
- Licences issued to those conducting gambling activities under the GBLA will, unless cancelled or surrendered, continue in force for the period stated in the licence. The GSC can refuse to grant or renew a bookmaker's licence or a licence in respect of any premises for the reasons set out in Schedule 1 GBLA.
-
- 2.6 By Relevant Product, what are the key limits on providing services to customers? Please include in this answer any material promotion and advertising restrictions.**
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- See licence conditions at question 2.4 above.
- Advertising is regulated for both land-based and online gambling-related activities.
- OGRA** – The Online Gambling (Advertising) Regulations 2007 (**Advertising Regulations**) apply to online operators.
- The Advertising Regulations contain restrictions regarding the type of advertisements that an operator can produce. "Advertisement" is defined as "*includ[ing] every form of advertising or promotion, whether by means of the Internet, in a radio or television programme or message (whether broadcast or not), in a written or printed publication, by the display of notices, signs, labels or showcards, by means of circulars or other documents, or through any other medium*". The Advertising Regulations also state certain details that are required to be set out on the website of each operator.
- GBLA** – under the GBLA, no advertisement may be published:
- indicating that any particular premises are a licensed betting office;

- indicating where any such office may be found; or
- drawing attention to the availability of, or to the facilities afforded to persons resorting to, such offices.

The above restrictions do not apply where the advertisement: (i) is published in a material form; (ii) is published inside but not outside a licensed betting office; or (iii) complies with such restrictions as may be prescribed and is, in such manner as may be prescribed, published outside a licensed betting office from a place inside such an office or in premises giving access to such an office.

An advertisement is defined under the GBLA as including every form of advertising, whether in a publication, by the display of notices, by means of circulars or other documents, by an exhibition of photographs or a cinematograph film or by way of sound broadcasting, television or by means of a telecommunication system.

CA 1986 – no advertisement of a casino may be published, exhibited or distributed in the Island or elsewhere unless:

- it is not indecent or offensive;
- it is based on fact;
- it is not false, deceptive or misleading in any material particular;
- it has no sexual content;
- it is not directed at persons under 18;
- it does not contain any material in breach of copyright; and
- any claims on payouts are substantiated by the return-to-player performance of the game.

The Consumer Protection Act 1991 also contains provisions regarding misleading advertisements. A complaint can be made to the Office of Fair Trading where a consumer believes an advertisement is misleading.

2.7 What are the tax and other compulsory levies?

Under the Gambling Duty Act 2012, gambling duty is charged on the gross gaming yield of any:

- gaming (within the meaning set out in the GBLA);
- betting (except for the playing of a game of chance or skill by means of a controlled machine);
- lottery (except for those lotteries which form part of the UK National Lottery); and
- online gambling.

The rates of the duty are:

- for gross gaming yield not exceeding £20,000,000 *per annum*, 1.5%;
- for gross gaming yield exceeding £20,000,000 but not exceeding £40,000,000 *per annum*, 0.5%;
- for gross gaming yield exceeding £40,000,000 *per annum*, 0.1%; and
- for gross gaming yield from pool betting, 15%.

Companies that are resident in the Isle of Man are taxed on their worldwide income at 0%, 10% or 20%. For individuals resident in the Island, for tax purposes, there is an income tax base rate of 10% with a 20% higher rate.

2.8 What are the broad social responsibility requirements?

In respect of online gambling activities, there is a requirement for operators to contribute a sum to the Isle of Man Government's Problem Gambling Fund.

In addition, a person who conducts online gambling must not allow a minor or those in a country or territory prescribed by regulations to participate. Minors include those persons under the age of 18.

There are restrictions under the GBLA on betting transactions with a minor and inciting a minor to bet. The Casino Regulations 2011 provide that no person under the age of 18 can enter a gaming room when a gambling activity is taking place.

There are also the restrictions in relation to advertising as described in question 2.6 above.

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

The current substantial Isle of Man anti-money laundering laws are:

- a) the Anti-Terrorism and Crime Act 2003 (**ATCA**);
- b) the Terrorism and Other Crime (Financial Restrictions) Act 2014; and
- c) the Proceeds of Crime Act 2008 (**POCA**).

(Together the **AML/CFT Acts**.)

In addition to the above, the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Act 2018 has recently come into force in the Isle of Man. This gives the GSC additional powers, including the power to restrict online gambling and casino licences and activities for AML/CFT reasons and, in respect of land-based gambling, permits the GSC to conduct on-site inspections. It also gives the GSC additional sanctioning powers.

POCA is the Isle of Man's primary anti-money laundering legislation. Under the AML/CFT Acts, the Department of Home Affairs is responsible for making such codes as it considers appropriate for the purposes of preventing and detecting money laundering and the financing of terrorism. The Money Laundering and Terrorist Financing (Online Gambling) Code 2013 (**Code**) is the current code specific to the online gambling sector in the Isle of Man, and all persons licensed by the GSC pursuant to OGRA must comply with the Code, with the GSC responsible for overseeing compliance.

Paragraph 4 of the Code obliges all operators to establish an AML/CFT framework, which can be summarised as follows:

- all players must be identified;
- a risk assessment process must determine if a player poses a higher risk of money laundering or financing terrorism;
- some players are automatically high-risk;
- enhanced due diligence must be considered for high-risk players – enhanced due diligence may require that identity is evidenced;
- players' transactions must be monitored on an ongoing basis;
- some transactions automatically trigger the requirement for identity to be evidenced;
- records must be kept to prove that AML/CFT work has been undertaken and to allow law enforcement to access information and reconstruct transactions;
- under certain circumstances, reports on suspicious transactions must be made to the Financial Intelligence Unit (**FIU**) in the Isle of Man;
- operators may need to make reports to the FIU to obtain a defence against money laundering when handling criminal property;
- staff must be screened and must be properly trained in AML/CFT;

- technological developments must be monitored for any AML/CFT vulnerabilities they create; and
- operators must monitor the fitness of their own AML/CFT compliance.

The GSC does allow virtual currencies to be used for gambling. Changes in 2017 made it possible for an Isle of Man gambling operator to accept deposits in money or money's worth in certain circumstances. This includes convertible and non-convertible virtual currencies. Convertible virtual currencies include cryptocurrency (such as bitcoins) which can be bought and sold through independent exchanges for fiat currency. Non-convertible virtual currencies include virtual goods such as digital "skins" for avatars and weapons in video games and other digital objects that have functions in video games, in addition to in-game currencies that can be used to buy such objects. The GSC issued a guidance note in relation to virtual currencies in May 2017.

3 Online/Mobile/Digital/Electronic Media

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

If an operator performs any of the following functions in the Isle of Man then it will require an OGRA licence:

- registering players – for the purposes of gambling;
- striking a bet;
- offering the game; or
- providing hardware or operating systems (including the hosting of such operations), which enables online gambling to occur, unless the hosting is done by a telecom operator.

Operators that are performing the above functions outside the Isle of Man, or who do not have premises or conduct gambling on the Isle of Man, will not need to be licensed by the GSC, but specific advice should be sought depending on the circumstance.

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

Other domestic legislation will apply to operators, including legislation on data protection, consumer protection, anti-bribery and corruption, and sanctions.

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

Any terminal/machine-based gaming on the Isle of Man is governed by the Gaming (Amendment) Act 1984 (GAA) and associated regulations.

The GAA defines a "controlled machine" as any machine a player pays to play, whether mechanical, electric or electronic, which is designed or adapted for the playing of a game of chance or skill or both.

Any premises that wish to have a controlled machine located in them are required to have a certificate. The GSC may, in accordance with the provisions of the GAA, grant a certificate; this being:

- a full certificate;
- a restricted certificate; or
- a club certificate.

Examples of premises that can hold a certificate include public houses, betting shops and casinos.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

OGRA – the holder of a licence who fails to comply with any part of OGRA or the Operations Manager (where appointed) or Designated Official who fails to comply with a requirement imposed by the GSC. Directors and officers of a body corporate may also be liable in certain circumstances.

GBLA – the licence holder where there is failure to comply with the GBLA, including any breach of the prohibitions contained in the GBLA, or where an advertisement is in breach of the GBLA. Directors and officers of a body corporate may also be liable in certain circumstances.

CA 1986 – the sanctions under the CA 1986 can be imposed on both the director of the casino and the licence holder. The director of the casino must ensure that the Casino Regulations 2011 are complied with or he will commit an offence under the same. Any breach of the licence terms will be an offence by the licence holder. Directors and officers of a body corporate may also be liable in certain circumstances.

GAA – the occupier of the premises or the person responsible for the management or control of the premises shall be liable if any controlled machine is kept for use on the premises without a certificate and any person selling or supplying controlled machines without a licence. Directors and officers of a body corporate may also be liable in certain circumstances.

4.2 What form does enforcement action take in your jurisdiction?

The GSC has the power to cancel or suspend a licence under OGRA, and to refuse to renew a licence under the GBLA and CA 1986, as set out in question 2.5.

There are also certain offences for which a licence holder, director or occupier of premises (as applicable) may be personally liable. The offences will depend on the legislation which applies and the type of gambling.

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

The United Kingdom's Extradition Act 1989 has been repealed in the UK but was extended to the Isle of Man, where it continues to apply.

4.4 Are gambling debts enforceable in your jurisdiction?

Yes, for online gambling debts. Section 23 of OGRA states that no contract entered into in the course of online gambling shall be void or unenforceable.

No, for other gaming or wagering. Section 40 of the GBLA states that every contract by way of gaming or wagering is void, and that no action shall lie for the recovery of any money or thing which is alleged to be won or to have been paid upon a wager or which has been deposited to abide the event on which a wager is made.

5 Anticipated Reforms

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

There are currently no changes to gambling legislation set out in the timetable of the Manx parliament.



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Claire Milne is a partner within the Corporate department in the Isle of Man. She is Team Leader for the Intellectual Property and Science & Technology teams in the Isle of Man.

Claire has over 20 years' experience (both in-house and in private practice) of all aspects of contentious and non-contentious IP rights across the spectrum, and has dealt with all aspects of commercialisation of IP rights for businesses ranging from start-ups and university spin-outs to large multinational pharmaceutical companies. She has also worked on major bespoke software and hardware development projects, especially for the financial services and gaming sectors. Claire specialises in advising online gaming and gambling operators, e-business companies and telecoms companies, and also advises on data protection and outsourcing issues. Claire was Chair of the Isle of Man Gambling Supervision Commission from 2007 to 2012.



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Sophie Corkish is an associate within the Corporate department in the Isle of Man, specialising in banking and asset finance transactions, including ship finance matters. She joined the firm as a trainee and after completing her two-year period of articles, Sophie qualified in November 2017 as an Isle of Man Advocate.

Sophie acts for many international financial institutions, law firms and corporate service providers, advising on the full range of key and complex legal issues that affect both their own businesses and those of their clients.

APPLEBY

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With over 470 people, including lawyers and professional specialists, across the Group, Appleby delivers sophisticated, specialised services, primarily in the areas of Corporate, Dispute Resolution, Private Client and Trusts, Regulatory and Property. The Group advises public and private companies, financial institutions, and high-net-worth individuals, working with these clients and their advisers to achieve practical solutions, whether in a single location or across multiple jurisdictions.

Israel

Herzog Fox & Neeman Law Office

Yehoshua Shohat Gurtler



1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Digital casino gaming is prohibited in Israel.	Land-based casino gaming is prohibited in Israel.
	Poker	Israeli courts have ruled that poker is a form of casino gaming, and is therefore prohibited in Israel.	Israeli courts have ruled that poker is a form of casino gaming, and is therefore prohibited in Israel.
	Bingo	Bingo is considered a lottery and may not be conducted in digital form in Israel.	Bingo is considered a lottery and is not offered as a service by the National Lottery (which does, however, offer a form of Keno).
Betting	Betting	The Israel Sports Betting Board (ISBB) operates the only form of digital sports betting permissible in Israel.	The Israel Sports Betting Board has a monopoly on the regulation and offering of land-based betting services.
	Sports/horse race betting (if regulated separately to other forms of betting)	See above regarding sports betting. Horse race betting was discontinued in Israel in 2018.	See above regarding sports betting. Horse race betting was discontinued in Israel in 2018.
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	The only forms of betting permissible in Israel are those operated by the ISBB (see above). The ISBB does not offer fantasy betting at this time.	The only forms of betting permissible in Israel are those operated by the ISBB (see above). The ISBB does not offer fantasy betting at this time.
Lotteries	Lotteries	Digital lotteries are not presently offered by the Israeli National Lottery.	The Ministry of Finance regulates the activities of the Israeli National Lottery (<i>Mifal Hapayis</i>).
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Digital social gaming is not the subject of specific regulation in Israel.	Social gaming is not the subject of specific regulation in Israel.
	Skill games and competitions with no element of chance	Digital skill competitions fall outside the definition of gambling and are not regulated in Israel.	Skill competitions fall outside the definition of gambling and are not regulated in Israel.

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

Israeli law imposes a general ban on gambling activities, with two exceptions in the form of a national sports betting operator and a national lottery monopoly. These services are regulated as follows:

- *Mifal Hapayis* (the National Lottery) – established in 1951, the Israeli National Lottery offers scratch cards, a weekly subscription lottery, and various other lotteries and raffles. The operations of *Mifal Hapayis* are supervised and regulated by the Ministry of Finance.
- *Israel Sports Betting Board* (ISBB) – 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.

Other than these exceptions, the Israeli Penal Law 5737-1977 (the Law) prohibits the organising of lotteries, betting and games of chance, as well as operating venues where such activities take place.

Chapter Twelve of the Law, entitled ‘Prohibited Games, Lotteries and Betting’, contains several provisions relating to gambling, including a prohibition on organising “*lotteries, betting and prohibited games*” (Section 225), and a prohibition on “*participating in prohibited games*” (Section 226).

The Law defines these terms, as follows:

- ‘*prohibited game*’ – a game at which a person may win money, valuable consideration or a benefit according to the outcome of a game, that outcome depending more on chance than on understanding or ability;
- ‘*place of prohibited games*’ – premises on which prohibited games are regularly conducted, whether open to the public or open only to certain persons, whether or not they are also occupied for some other purpose;
- ‘*lottery*’ – any arrangement under which it is possible – by drawing lots or by some other means – to win money, valuable consideration or a benefit, the outcome depending more on chance than on understanding or ability; and
- ‘*betting*’ – any arrangement under which it is possible to win money, valuable consideration or a benefit, the outcome depending on a guess, including lotteries connected to the outcome of games and sporting competitions.

Thus, the Law defines three categories of gambling. In practice, these have been given broad definitions which, cumulatively, cover practically all forms of gambling. It is worth noting that the definitions of these categories overlap and, consequently, certain types of gambling activity may fit more than one category.

Israeli courts have recognised, *inter alia*, the following as gambling games, under Chapter Twelve of the Law: roulette; other casino games; bingo; slot machines; betting; lotteries; and sports betting.

Israeli courts have established that in order to determine whether a game is ‘based on chance more than understanding or ability’, the predominance test will be used (i.e. whether the predominant element determining the outcome of the game is chance or skill).

In a March 2011 ruling related to ‘betting’, the District Court of Tel Aviv determined that in situations where a particular activity combines elements of skill and chance, the ‘*social interest and utility*’ of the game in question should also be taken into account when considering its legality (Class Action (Tel Aviv) 30284-01-10 *Simon Davush v Connective Group Ltd.*).

The only exception to the aforementioned prohibition on gambling is provided for in Section 230 of the Law which states that the Law does not apply “*to a game, lottery or betting that meets the following three conditions*”:

- (1) *its conduct is intended for a certain circle of persons;*
- (2) *it does not exceed the scope of amusement or entertainment; and*
- (3) *it is not held in a place of prohibited games or a place for the conduct of lotteries or betting”.*

Israeli courts have stated that this exception must be narrowly construed. In connection with online gaming, special emphasis must be placed on the first requirement under Section 230, limiting the game’s targeted audience to a certain circle of persons. (See, for example, Criminal Appeal (Supreme Court) 9140/99 *Amos Romano v The State of Israel.*)

Unlike many other jurisdictions, Israeli law does not include consideration in the definition of gambling. The payment of consideration by a participant is not a prerequisite for an activity to be considered illegal. Therefore, a social game – even a game that is free to play – may be considered a ‘prohibited game’ under Israeli law, if the player stands to gain something of value based on the outcome of the game. Given that the prohibition encompasses any game of chance from which a player may glean a benefit, the legal conclusion is the same in cases where the player is able to win virtual currency which is of no monetary value, but may be used as credit to take part in other games. A different legal assessment may only be applicable if a social game does not involve any prizes of real world value, i.e. those games in which the player stands to gain no tangible benefit as a result of the outcome of the game.

2 Application for a Licence and Licence Restrictions

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

The only licences available for gaming in Israel are the licences granted to *Mifal Hapayis* permitting it to offer a limited range of lottery products, and the permission granted to the ISBB to offer a limited range of sports betting activities.

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

The licences granted to the National Lottery and ISBB are regulated by the Penal Law and the Law for the Regularisation of Sports Betting 5727-1967. These laws do not provide for an “open” commercial licensing process.

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

This is not applicable in our jurisdiction.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

This is not applicable in our jurisdiction.

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

The licence granted to the National Lottery is for a 10-year period. The ISBB's authority to organise sports betting under the law is perpetual. No other licences are available.

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

Israeli courts have taken the following approach to specific forms of gambling:

- *Poker* – poker is not defined by Israeli legislation. Nevertheless, in several decisions (a few of them rendered many years ago) Israeli courts have opined that certain forms of poker constitute 'prohibited games' as defined in Section 224 of the Law.
- *Betting* – the Law prohibits the offering of betting in Israel, excluding the sports betting services offered by the ISBB. Originally, the ISBB offered betting on soccer games only. In 1996 its services were expanded to include basketball games and in 2011 a further expansion added additional sporting activities (local and foreign). Finally, in 2013, wagering on foreign (UK and Irish) horseracing events was introduced. In a recent press conference, Israel's Minister of Finance has announced his intention to overturn the ISBB's permit to offer wagering on horseracing events.
- *Casino games* – as with poker, there is no legislation which refers specifically to casino games. Nevertheless, various casino games (including, for example, blackjack and roulette) have been recognised through case law as 'prohibited games' under Section 224 of the Law. (See, Class Action (Tel Aviv) 30284-01-10 *Simon Davush v Connective Group Ltd.*)
- *Slots and other gaming machines* – slot machines are not specifically mentioned in Israeli legislation. However, Israeli courts have considered gaming machines to be illegal as either a form of lottery or as 'prohibited games'. (See, Civil Appeal 813/88 *Astablismant Nahal Ltd. v Saul Barzri.*)
- *Bingo* – bingo is not specifically mentioned in Israeli legislation but Israeli courts have considered bingo to be an illegal form of gambling.
- *Lottery* – lotteries are given a broad definition in the Law (Section 224) and may only be offered by the National Lottery monopoly (*Mifal Hapayis*). The latter may offer traditional lotteries, scratch cards, keno, and similar fixed-odds games. The permissible activities are defined in the permit granted to the Lottery by the Minister of Finance.

It is also worth noting that (unlike some other jurisdictions) Israeli law does not view "binary options" (also called "binary bets" in some jurisdictions) as a form of gambling. The Tel Aviv District Court ruled that binary options are governed by Israel's securities laws, not by the laws governing gambling. However, trading in binary options is prohibited for Israeli residents, and a law passed in 2017 prohibits Israelis from engaging in binary options trading (and ancillary activities) with non-Israeli residents as well.

2.7 What are the tax and other compulsory levies?

Under Israeli law, the winners of prizes (including those who win prizes through the lotteries and betting activities organised by the State-licensed monopolies) may be subject to taxation.

In the event that the value of any prize is more than approximately NIS 50,000, the winner of such prize is subject to taxes in Israel and the organiser of the betting activity is required to withhold tax at source. The rate of tax varies for prizes between NIS 50,000–100,000 and is set at 30% for prizes above NIS 100,000. Furthermore, in the event that the prize is not a monetary prize, it is customary for the prize to be transferred to the winner only after the winner provides the organiser with the required amount of withholding tax.

2.8 What are the broad social responsibility requirements?

A person must be at least 18 years old to participate in gambling. Until 2007, when a statutory ban was imposed, lottery tickets could be sold to minors. Under the current law, any lottery or betting retailer that provides services to a minor could be subject to a fine or imprisonment.

Furthermore, *Mifal Hapayis*'s permit requires that it maintain a responsible gaming policy. The policy requires, *inter alia*, the national lottery to invest an annual sum in research on problem gaming and on the social impacts of gaming. The lottery is required to invest 3.5% of its annual marketing budget in campaigns related to responsible gaming, and detection, prevention and treatment of problem gaming. In addition, the lottery must invest an annual sum in providing treatment for problem gamblers. The lottery is required to post information on its website and at sale points regarding the risks associated with gambling and the treatment available for problem gamblers. Finally, the lottery must conduct its sales and marketing in accordance with the ethical and responsible gaming principles adopted by the World Lottery Association.

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

In order to foil financial transactions related to online gambling, the Bank of Israel has issued a guidance note placing substantial burdens on financial transactions involving foreign online gambling. *Conduct of Banking Business Procedure No. 411*, issued by the Bank of Israel, imposes stringent restrictions on Israeli banks and financial institutions in relation to transactions related, *inter alia*, to online gambling. Thus, although there are no specific laws regarding payment blocking, secondary legislation exists to enable the Israeli authorities to instruct financial institutions to block the processing of online gambling transactions.

Mifal Hapayis is subject to specific requirements related to AML. These include the obligation to register players purchasing tickets with potential prizes over a specified sum, identification of prize recipients, and restrictions on cash payments over a specified amount.

Virtual currencies may not presently be used for gambling in Israel.

3 Online/Mobile/Digital/Electronic Media

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

The provisions of the Law do not explicitly refer to online gambling. Nonetheless, online gambling is considered illegal to the same extent

as terrestrial gambling. Recent court decisions and the official opinions of various government agencies, including the Ministry of Justice, the Israel Police, the State Comptroller and others, have clarified that the definitions and prohibitions found in the law regarding gambling apply, *mutatis mutandis*, to online gambling. (See, for example, Special Requests, (Tel Aviv) 908617/07 *Carlton v The National Unit for the Investigation of Fraud*; Special Requests (Jerusalem) 1153/02 *The State of Israel v Aberg'il*; Annual Report 61B for the Year 2010 and the Accounting Year 2009, Jerusalem May 2011, Chapter 3 at p. 357, published by the State Comptroller and Ombudsman of Israel.)

Moreover, the Israeli Supreme Court has ruled that enforcement and punitive measures directed against illegal online gambling should be stricter than those related to terrestrial gambling, as the former poses a greater risk to the social interest. (See, for example, Special Criminal Appeal (Supreme Court) 7064/12 *Or Pando v The State of Israel*; Administrative Appeal (Supreme Court) 3782/12 *The Commander of the Tel Aviv-Jaffa District Israel Police Israel v The Israel Internet Association*; Criminal Appeal (Supreme Court) 6889/11 *The State of Israel v Eliran Oved*.)

The ISBB operates an online betting portal. *Mifal Hapayis* has not been permitted to offer its services online.

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

See question 4.2 below.

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

Historically, *Mifal Hapayis* operated 500 instant game machines through authorised vendors. However, in 2017, upon renewal of *Mifal Hapayis*'s 10-year concession, its permit to operate instant game machines was revoked and the operation of the terminals has been discontinued.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Gambling operators active in the Israeli market may be exposed to criminal enforcement by the local authorities.

Section 225 of the Law provides for imprisonment for up to three years or a fine of up to NIS 452,000 for those organising or conducting a prohibited game, a lottery or betting.

In recent years, Israeli law enforcement authorities have conducted a number of efforts aimed at cracking down on online gambling available in Israel. These have included a number of high-profile arrests and subsequent legal proceedings.

The advertising of gambling is also prohibited under the Penal Law and under the Communications Law (Telecommunications and Broadcasting) 5742-1982. Section 227 of the Law provides that a person advertising lotteries or betting is liable to a penalty of up to one year's imprisonment or a fine of up to approximately NIS 150,000.

4.2 What form does enforcement action take in your jurisdiction?

The Israel Police have taken enforcement action against online gambling operators including, *inter alia*, confiscation of gambling equipment and conducting raids on venues related to the operation of online gambling. It should be noted, however, that such enforcement actions have thus far only targeted online gambling websites that explicitly target the Israeli market as well as online gambling companies linked to local criminal organisations. Israeli authorities have never taken enforcement action against foreign operators with no presence in Israel and which have not specifically targeted the Israeli market.

The Police have also attempted to order Israeli ISPs to block access to online gambling sites, however the blocking orders have been struck down by the Israeli Supreme Court for lack of explicit legal authority. (See, Administrative Appeal (Supreme Court) 3782/12 *The Commander of the Tel Aviv-Jaffa District Israel Police Israel v The Israel Internet Association*.) A Bill entitled "Bill for Restrictions on Usage of Premises in Order to Prevent Offences (2nd Amendment), 5774-2014" is presently before the Israeli legislature. The bill would empower the Israel Police to issue orders aimed at preventing access from Israel to websites offering online gambling services. The Bill has not yet been adopted as law.

Secondary legislation enables the Israeli authorities to instruct financial institutions to block the processing of online gambling transactions.

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

This is not applicable in our jurisdiction.

4.4 Are gambling debts enforceable in your jurisdiction?

Under Israeli law, a contract or debt which is contrary to the public policy and social interest is unenforceable. No binding legal precedent is available with specific regard to gambling contracts, but a ruling by a court of first instance concluded that gambling-related debts are contrary to public policy and therefore unenforceable.

5 Anticipated Reforms

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

The Ministry of Finance has also recently announced the establishment of a public committee to review the existing legislation in Israel pertaining to sweepstakes and promotional prize draws, with a view at possibly restricting or re-regulating such activities.


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Yehoshua Shohat Gurtler is a member of HFN's Gaming Department, advising clients on a range of issues related to the laws of online gaming, concentrating primarily on matters pertaining to regulation, licencing and litigation. In addition, Yehoshua advises clients on other aspects pertaining to the regulation and licencing of e-commerce, with a specific focus on Forex and derivatives trading. Yehoshua also advises clients on the regulatory aspects of cryptocurrencies and blockchain, with a particular focus on initial coin offerings (ICOs).



Having advised internet gaming companies since the earliest days of the industry, Herzog Fox & Neeman's e-Commerce and Gaming department has developed a wealth of experience allowing it to keep pace with the evolving regulatory, commercial and corporate challenges unique to the world of online commerce (specifically – online gaming and financial technologies).

HFN's clients operate at all levels of the gaming products and services supply chain, and include: operators and suppliers (whom HFN assists in obtaining and maintaining licences, continuing compliance with laws and regulations, and observing best practices); banks and payment intermediaries (providing analyses of the financial and reputational risks of dealing in the gaming sector); and national governments and regulators.

The Gaming department provides a full range of services to its clients, including licensing, regulatory, tax, commercial and e-payments, as well as coordinating and assisting in the implementation of public offerings and other exit strategies. Day-to-day B2B and B2C commercial work for clients includes:

- Software development, licensing, support and maintenance and white-labelling (procurement and supply).
- Intellectual property (brand protection, rights assertion, etc.).
- Marketing affiliation, advertising arrangements and sponsorship.
- Risk management.
- All types of arrangements with payment processors and financial institutions.

HFN provides a fully integrated, multi-jurisdictional regulatory advisory service to the gaming industry. Complementing the firm's significant UK, European and Asian expertise is a worldwide network of quality local advisers designed to provide clients with a vital understanding of the multitude of laws and regulations that govern their activities; an essential prerequisite in a global market.

Specific regulatory experience includes:

- drafting online gaming statutes and regulations for key gaming jurisdictions;
- advising banks, investors and intermediaries on their participation in the gaming sector;
- providing regular jurisdiction-specific risk analyses (notably in relation to the UK, EU, US and the Far East);
- creating corporate, tax and trust structures and generally advising clients on issues such as funds segregation, financial services, regulatory compliance and taxation; and
- working with clients pursuing gaming licences and undergoing probity and suitability checks in various jurisdictions.

Italy

Giorgio Gallenzi



Grimaldi Studio Legale

Marco Della Croce



1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Agenzia delle Dogane e Monopoli (“ADM”)	ADM
	Poker	ADM	ADM
	Bingo	ADM	ADM
Betting	Betting	ADM	ADM
	Sports/horse race betting (if regulated separately to other forms of betting)	ADM	ADM
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	ADM	ADM
Lotteries	Lotteries	ADM	ADM
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	ADM	ADM
	Skill games and competitions with no element of chance	ADM	ADM

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

The general principle governing gambling/betting activities for money (hereinafter also referred to as “**Relevant Activities**” or

“**Relevant Products**”) within the Italian legal system is that, unless expressly permitted by law, Relevant Activities are prohibited.

The relevant principle is stated in Article 1 of Legislative Decree No. 496 of 14 April 1948, which states as follows: “*The organization and exercise of games of skill and betting competitions, for which a reward of any kind is paid and for whose participation is required the payment of a monetary sum, are reserved to the State.*” The meaning of the aforementioned provision is that Relevant Activities must be authorised and regulated at a State level (regions do not have the authority to issue laws in such field, except for limited cases). Thus, offering non-authorised Relevant Products is illegal and in the most serious cases may be deemed as a criminal offence.

The Italian legal system holds that while allowing the exercise of gambling activities, certain public interests are still to be protected. Accordingly, the State maintains the power to regulate, control and limit the exercise of Relevant Activities.

Gambling activities are regulated by primary legislation (civil code and specific law provisions) and secondary legislation (*ad hoc* regulations generally issued by the national gambling authority). State laws provide a “high level regulation” of gambling activities as the in-depth regulation is devolved to second-level regulations.

A crucial role in the organisation of the gambling sector is played by the national gaming authority, *Agenzia delle Dogane e dei Monopoli* (Italian Agency of Customs and Monopoly – “ADM”), which has incorporated the *Amministrazione Autonoma dei Monopoli dello Stato* (Autonomous Administration of State Monopolies), the national authority entrusted with gambling matters.

ADM is responsible for the regulation, supervision and control of Relevant Activities in Italy. Among its duties, ADM is entrusted to: (i) verify that the gambling operators operate in compliance with the applicable laws and regulations; (ii) issue licences (as defined hereinafter); (iii) restrict illegal gambling; and (iv) collect gaming-related duties and taxes.

With the exception of social/skill arrangements which are not deemed “gambling activities” pursuant to Italian law, Relevant Products are regulated.

A number of laws and regulations have been issued over the years in respect of the Relevant Activities. Provisions affecting gambling are sometimes contained in acts concerning different and various subjects. Secondary regulations are revised and/or updated from time to time. Specific regulations are also issued in connection with new games.

Please find below a non-exhaustive summary of laws and regulations, as amended from time to time, which regard or contain provisions for the major Relevant Products permitted under Italian law:

- Lotteries: the Law of 4 August 55, no. 722; the Law of 26 March 1990, no. 62; DPR of 20 November 1948, no. 1677;

Ministerial Decree of 12 February 1991, no. 183; and various subsequent regulations.

- Lotto: the Law of 2 August 1982, no. 528; Presidential Decree of 7 August 1990, no. 303.
- Sports betting other than horseracing events: Ministerial Decree of 1 March 2006, no. 111.
- Horseracing events betting: the Law of 23 December 1996, no. 662 (Art. 3, no. 77 *et seq.*); the Law of 30 December 2004, no. 311; and the Law of 4 August 2006, no. 248.
- Land-based bingos: Ministerial Decree of 31 January 2000, no. 29; and ADM Directorial Decree of 16 November 2000.
- Remotely played skill games with cash prizes, as well as games of chance with fixed odds and card games not organised as a tournament: Ministerial Decree of 17 September 2007; and ADM Directorial Decree of 10 January 2011.
- Remotely played fixed odds betting with direct interaction among players: Ministerial Decree of 18 March 2013, no. 47.
- Betting on simulated events: ADM Directorial Decree of 12 February 2013; and ADM Directorial Decree of 27 July 2016.
- Land-based gaming machines (*i.e.* slot machines and video lotteries): R.D. of 18 June 1931, no. 773; and various subsequent laws and regulations.
- As for land-based gambling casinos, only four are permitted in Italy: *San Remo*; *Saint Vincent*; *Campione d'Italia*; and *Venezia*. Such casinos operate under special laws and most operational matters are regulated by the respective local authorities. Recently, the *Campione d'Italia* casino closed due to a severe financial crisis.

2 Application for a Licence and Licence Restrictions

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

The regulatory ‘*concessioni*’, licences, permits, authorisations or other official approvals (collectively, “Licences”) are required in order to lawfully offer Relevant Products to persons located in Italy, depending on the Relevant Product.

The type of Licence required to operate Relevant Activities is mainly a *concessione*.

Licences are normally issued by means of public tenders. Driven by the principle of protecting general interests, in the public tenders’ rules, it is normally required that the bidders prove that they possess a certain degree of technical, economic, financial and operational reliability.

Although the offer of Relevant Products is not specifically regulated by EU legislation, the general principles for public procurement set out by EU regulation shall apply: non-discrimination; transparency; equal treatment; and freedom of establishment.

The number of available Licences, the economic terms and the requirements to participate in public tenders for the award of a Licence vary from tender to tender.

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

ADM is empowered to issue and manage the public tender, award the Licences, define the relevant structure as well as regulate the relevant operations. ADM constantly supervises the operations of the licensees.

Each tender contemplates its own specific process and set of regulations. The economic offer proposed by bidders is generally a crucial – but not the only – criterion to evaluate the applications. According to past practices, it is also possible that Licences are granted on a “first come, first served” basis, provided, however, that the applications and the participant are compliant with the rules and the requirements of the tender.

Once a *concessione* is granted, a relevant contractual instrument (*convenzione*) ruling the terms for providing the services, including obligations, requirements and guarantees, is normally entered into between the awarded licensee and ADM.

Licences are granted for a certain period of time. Certain Licences are granted to one or a few operators, and others to a broader number, depending on the Relevant Activities.

It is generally possible to transfer Licences, normally by means of a transfer of a going concern or of the shares of the company holding a Licence. The transfer may be subject to the approval of ADM, which verifies that the intended transferee possesses the requirements set out by applicable laws to hold a Licence. At least a notification to ADM is normally required or appropriate.

Authorisations/approvals may also be required for other players in the gambling market (*e.g.* certain service providers).

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

The process of applying for a Licence depends on the specific rules of the tender. Based on a law provision which provides for or allows the issuance of new Licences, ADM launches a tender through a tender notice (request for proposal) setting out the rules of the tender, including the requirements for the bidders to qualify, which are generally both economic and technical. Extent and complexity of the requirements depend on the relevance of the Relevant Product (*e.g.* higher where large investments are needed).

In the tender recently launched for online gaming, 120 new Licences were made available on a “first come, first served” basis. The tender was open to licensees having a Licence applicable in Italy or in Europe, and international (including non-EU) operators with technical/infrastructural capacity, with revenues of at least EUR 1.5 million over the past two years. Evidence of capability and/or guarantees were also required. Participants were required to launch at least one game within the nine months following the award.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

The possibility to become a licensee is generally subject to the award of a tender issued by ADM. Therefore, the first set of restrictions is placed upon bidders depending on the *ad hoc* rules of the tender.

Most common requirements relate to economic, financial and technical matters. Often, the release of bonds or financial guarantees is required.

In addition, integrity requirements are provided, so that participation in a tender is restricted to entities (including the directors) that have not committed certain criminal offences, and whose activity is carried out in compliance with tax and employment laws.

Requirements should be maintained throughout the entire life of the licence. Licensees which no longer fulfil the requirements may be sanctioned.

Licensees are directly obliged *vis-à-vis* the Italian tax authorities, including ADM, to pay duties and taxes.

Licencees are under a duty to deal carefully with possible conflicts of interest. In the recently issued tender for the award of online gaming Licences, participants were required not to have an interest in sports teams or activities which may raise potential conflicts of interest.

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

The duration of a Licence varies depending on the Relevant Product and is usually set out in the calls for tender.

The last tender for online gaming, launched in January 2018, was for the award of four-year period Licences, thus expiring in 2022. The next tender for ‘*Supenalotto*’ is expected to be for a nine-year Licence (*concessione*), for scratch-off lotteries (*Gratta e Vinci*) the envisaged duration was six years, while for sports betting, including horse racing, as well as for *Lotto*, it is nine years. The last tender bid for the award of the *Lotto concessione* has been contested based on the main argument that the Government decision to award the *concessione* to a sole operator is against free competition principles.

During its supervisory activity, ADM constantly monitors gambling operators’ activities, and can request clarifications to licencees and verify that they are fulfilling their duties. In case material breaches are ascertained, the Licence can be suspended and also revoked. For instance, ADM can revoke the Licence in case of non-payment of the duties or for criminal convictions.

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

Relevant Products cannot be offered to people under 18 years old. Limitations on the amount of wagers/games are provided.

Licences for *Gratta e Vinci* or *Supenalotto* are granted to large operators, as massive investments, mainly infrastructural, are needed to operate such lotteries.

Pursuant to the recently enacted Law Decree of 12 July 2018, no. 87, it is no longer possible to advertise, directly or indirectly, games with winnings in cash and gambling on any channel, including sports, cultural, artistic events, TV or radio programmes, press, publications, billboards and electronically, digitally and online, including social media. As for sponsorship agreements, the prohibition shall enter into force from 1 January 2019. Severe financial fines are set for non-compliance.

In providing the Relevant Activities, the operators shall make reference to possible diseases (*i.e.* gambling addiction) that gambling might cause.

2.7 What are the tax and other compulsory levies?

The tax regime applicable to online-based gambling activities is straightforward: a flat 20% rate applies to games of skill (like poker tournaments and cash games), casino games and bingo. For online sports betting, the rate is equal to 22%.

The tax rate applicable to land-based gambling activities is 18% on profits (the total wagered amount, less the amount that is paid out on winnings) for land-based sports betting, while for video lottery terminals (“VLTs”) and amusements with prizes (“AWPs”), the tax rate is based on turnover, and tax rates may vary from 6% up to 19%.

It is worth highlighting that the tax regime for the gambling sector is a subject of frequent political discussion, and rates have been

changing. A proposal to increase tax rates on sports betting and gambling currently lies with the Italian Parliament.

2.8 What are the broad social responsibility requirements?

The main social interests that the Italian gambling regulatory system aims to protect are prevention of possible gambling addictions and criminal actions, safeguarding of public faith and health, particularly in respect to customers, and integrity of games (this refers to sports betting).

For online gambling, online operators shall grant to each player the possibility to auto-exclude himself from the game and shall grant to each player the possibility to set up a stop loss on a daily basis (players can auto-limit the amount that can be lost in a day).

In land-based casinos, players can ask to no longer be accepted as guests by casinos.

It is worth noting that the EU Commission, with its Recommendation of 14 July 2014, no. 2014/478/UE, set a series of principles directed at the Member States to increase the level of protection of the health of customers, with particular respect to minors, in their gambling regulations.

As mentioned, pursuant to the recently issued Law Decree of 12 July 2018, no. 87, advertisements for gambling and betting activities have been banned.

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

The anti-money laundering (“AML”) regulation provides that gambling operators must carry out so-called customer due diligence. ADM sets out AML-related duties, especially in terms of “know your client” activities.

AML imposes on the licensee, *inter alia*, the obligation to implement procedures and supervisory systems that can reduce the risks relating to AML and terrorism financing, to collect, store and retain personal data of customers, and report to the relevant authorities any suspicious transactions. Duties to comply with AML provisions may be also required of other players in the gambling sector.

As virtual currencies have not yet been regulated, the use of such currencies for Relevant Activities is not permitted so far.

3 Online/Mobile/Digital/Electronic Media

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

The Italian regulatory system makes a fundamental distinction between duly authorised operators and non-authorised operators, rather than operators located inside operators located outside the Italian territory/jurisdiction.

In the last few years, tenders for Licences have been opened to non-Italian operators, in line with EU and international trade principles of free competition.

However, the principle is that non-authorised operators, Italian and foreign, cannot offer Relevant Activities in Italy in online/mobile/

digital/electronic form; they have the duty to ensure that their website is not reachable from the Italian territory. If they do not comply, ADM can block the website(s). On ADM's website, there is a list available of websites that have been blocked due to offering gambling products without a valid Licence; according to the list, more than 7,000 websites have been blocked.

Telematic networks are managed and operated by licensees granted Licences by ADM. The latest available list, updated in 2017, awarded 12 Licences.

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

An act providing for the progressive reduction of AWP's was approved in 2017, so the number of such machines should be reduced from 400,000 to 265,000. This reduction is apparently under way. ADM prescribes strict terms and timing for: (i) notification of ADM of the location and tracking movements of the machines; (ii) disposal and destruction of the machines (within six months from the cessation of the relevant authorisation) and relevant communications; and (iii) transference of the machines abroad (to foreign operators) and relevant communications.

Compliance with privacy and data protection laws and regulations is also required of licensees and other players in the gambling sector.

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

New slots and VLTs are permitted. Construction requirements must be certified. Distribution and installation are subject to specific Licences (*nulla osta*).

The games offered to customers must include elements of skill or entertainment. Currently, AWP's minimum pay-out is 70%, while for VLTs it is 85%.

AWP's and VLTs can be installed in authorised commercial premises, gaming houses, betting shops and bingo halls.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

The law may be breached not only when illegal gambling is offered, but also when gambling which is legal in principle is offered by operators without a proper Licence.

As Relevant Activities are a regulated activity under Italian law, persons who operate gambling activities reserved to the State, without holding a valid Licence, are liable and subject to sanctions.

Then, within the regulated gambling market, licensees are obliged to operate Relevant Activities in compliance with applicable laws and regulations, including the tender rules, terms of the agreements entered into by the awarded licensee (*e.g. convenzioni* ruling the *concessioni*), and the prescriptions issued from time to time, mainly by ADM.

Accordingly, the main liability in case of non-compliance is placed upon the licensees. In certain cases, providers of licensees' services or products may also be held liable (*e.g.* the systems holders (*'titolari di sistema'*) under the ADM Directorial Decree of 21 March 2006 for lotteries, bingo and certain remote bets collection).

As for online gambling, ADM has the power to block websites that offer Relevant Products in Italy without a proper Licence.

4.2 What form does enforcement action take in your jurisdiction?

As stated above, unless expressly authorised, Relevant Activities are prohibited. Operators that offer Relevant Activities without the correct Licence may face both administrative and criminal sanctions. In certain cases contemplated by Articles 718, 719 and 720 of the Italian Criminal Code, imprisonment may be imposed.

Possible breaches of the applicable gambling laws and regulations are investigated by ADM as well as police forces, depending on the violations.

Since illegal gambling may also be determined to constitute tax evasion, tax authorities and *Guardia di Finanza* (the Italian law enforcement agency under the authority of the Minister of Economy and Finance) play a role in restricting illegal gambling and tax law violations.

As mentioned, as a consequence of breaches of the obligations placed on the licensee, the Licence may be suspended and also revoked if the breaches are not remedied or are continued, particularly for the most serious violations.

As long as the machines are connected to central systems, ADM is provided with effective enforcement capacity as it can exercise its supervisory activity constantly and take actions in real time.

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

As a member of the European Union, Italy is subject to EU legislation. Although EU law does not provide for specific regulation of gambling activities, general principles of European law, such as those mentioned under question 2.1 above, apply.

International treaties and interstate cooperation between police forces must also be considered.

4.4 Are gambling debts enforceable in your jurisdiction?

The Italian State generally discourages gambling/betting for money. Evidence of this attitude can also be found in the Italian Civil Code. Pursuant to Article 1933 of the Italian Civil Code, no actions can be brought against claims deriving from games or bets even if such are not prohibited by law. Nonetheless, if a loser pays his debt, he cannot recover what he has voluntarily paid without fraud. However, such provision has not in fact affected the operation of Relevant Activities.

5 Anticipated Reforms

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

The draft update to the Document of Economic and Finance ("*DEF*"), currently under discussion, which outlines the Government's medium-term (2019–2021) economic policy strategy, sets out an increase in the one-off tax withdrawal (*'prelievo unico erariale'*) for AWP's and VLTs.

Moreover, within the context of measures against tax evasion, the introduction of so-called "bills lotteries" is also mentioned, which are monthly draws where the ticket is given by the code of the bill which is delivered to customers upon the purchase of goods. A prize for winning such lottery should be also recognised by retailers.

Shared liquidity with other EU State markets in online poker is a subject of further potential reform.

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Japan



Nagashima Ohno & Tsunematsu

Masayuki Fukuda

1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Prohibited.	The Casino Supervising Commission (the “Commission”) (note: it has not yet been established).
	Poker	Prohibited.	The Commission.
	Bingo	Prohibited.	The Commission.
Betting	Betting	Only online betting on horse races, bicycle races, motorcycle races and motorboat races operated by the Japanese government or municipal bodies is permitted.	Only land-based betting on horse races, bicycle races, motorcycle races and motorboat races operated by the Japanese government or municipal bodies is permitted.
	Sports/horse race betting (if regulated separately to other forms of betting)	Please see above.	Please see above.
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	Prohibited.	Prohibited.

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Lotteries	Lotteries	Only lottery tickets issued by municipal bodies may be sold via the Internet.	Only lottery tickets issued by municipal bodies are permitted.
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Not specifically regulated.	Not specifically regulated.
	Skill games and competitions with no element of chance	Not specifically regulated but excessive prizes might be banned by the Consumer Affairs Agency.	Not specifically regulated but excessive prizes might be banned by the Consumer Affairs Agency.

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

For many years, all gaming activities operated by the private sector, either in digital form or in land-based form, were prohibited as criminal offences under the Penal Code. However, the Integrated Resort (“IR”) Promotion Law and the IR Implementation Law were enacted in 2016 and 2018, respectively. Under these statutes, gaming activities conducted by licensed casino business operators in land-based form within IRs are legalised. Meanwhile, online gaming activities are still prohibited. Betting on horse races, bicycle races, motorcycle races and motorboat races and lotteries are only operated by the public sector, and are only made in land-based form (although the betting on such races and the purchase of lottery tickets may be done via the Internet). There are no statutes specifically regulating social/skill games either in digital form or in land-based form.

2 Application for a Licence and Licence Restrictions

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

While casino business licences are necessary for the lawful offer of gaming activities in Japan, such licences may only be granted to IR operators (who operate a complex mixture of facilities, such as convention centres, recreational facilities, tourist facilities and accommodation facilities, as well as casinos) certified by the Minister of Land, Infrastructure, Transport and Tourism under the IR Implementation Law. In other words, a stand-alone casino business operator (a non-IR operator) will not qualify as a licensed casino business operator.

Under the IR Implementation Law, the maximum number of certified IR areas is three (which number will be reviewed seven years after the issue date of the initial certifications). Each IR area may have only one casino, which will be operated by one casino business operator.

IR/casino business operators must be companies incorporated under the Companies Act (typically, a *kabushiki kaisha* (“KK”) or a *godo kaisha* (“GK”). There are no residency or nationality requirements to become an owner of an IR/casino business operator, but any person who wishes to own 5% or more of the voting rights, shares or interests of or in an IR/casino business operator needs to obtain the permission of the Commission.

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

As mentioned above, the Commission may grant a casino business licence to a certified IR operator to operate a casino business in a casino activity area, which is located inside its IR area.

In addition, the Commission regulates certain other IR/casino-related parties: (a) a casino facility provider must obtain a licence from the Commission if it manages and leases casino facilities to a casino business operator; and (b) the owner of any land that is used for IR/casino facilities must obtain the permission of the Commission if it transfers or leases the land to an IR/casino business operator. Since the casino business operator may not execute a contract under which it will pay the counterparty an amount in proportion to the gross gaming revenue (“GGR”), the rent of such casino facility or land shall be agreed in a fixed amount.

Any shareholder having 5% or more of the aggregate voting rights, shares or interests of or in a licensed casino business operator or a casino facility provider must obtain the permission of the relevant authority, on the basis that: (i) major holders of such voting rights, shares or interests may materially affect the casino business operator’s casino business or the casino facility provider’s casino facility management or lease business, by exercising their rights as holders of these voting rights, shares or interests; and (ii) they receive distributions from the casino’s profits. Licensed casino business operators and licensed casino facility operators must periodically file with the Commission a list of all holders of voting rights, shares or interests, pursuant to the rules of the Commission.

To maintain casino business operators’ integrity and exclude anti-social forces, etc. from casino operations, casino business operators must only enter into contracts with counterparties who satisfy certain eligibility criteria, such as having sufficient social credibility and

not being categorised as an anti-social force, etc. To achieve this purpose, a casino business operator must obtain the permission of the Commission if it wishes to enter into: (i) contracts regarding a casino business or any other relevant business within a casino activity area (i.e., the provision of food and drinks, concerts and other entertainment and goods); (ii) contracts delegating the operation of the business of the casino business operator; (iii) contracts for fundraising; (iv) contracts for the lease of a facility by the casino business operator; and (v) contracts whose term or consideration exceeds the threshold period or amount that is set forth in the rules of the Commission. Similarly, a casino facility provider can only enter into contracts with persons who satisfy certain eligibility criteria that are similar to those described above, and must obtain the approval of the Commission if it wishes to enter into: (a) contracts regarding the lease of a casino facility; (b) contracts delegating the operation of the business of the casino facility provider; (c) contracts for fundraising; and (d) contracts whose term or consideration exceeds the threshold period or amount that is set forth in the rules of the Commission. Likewise, the owner of any land that is used for IR/casino facilities must obtain the permission of the Commission if it wishes to transfer or continue to own the land or create lease or any other right over it.

Furthermore, to ensure the sound operation of casino businesses, casino-related equipment providers must obtain the approval of the Commission if they wish to manufacture, import or sell casino-related equipment. In addition, on the basis that the quality and functionality of casino-related equipment affect the sound operation of casino businesses, casino-related equipment providers shall comply with technical standards for casino equipment. Casino-related equipment providers also have to (a) pass an inspection of electro-magnetic casino-related equipment that is conducted by an inspection institute that is designated by the Commission, and (b) examine non-electro-magnetic casino-related equipment on their own and report the result of such examination to the Commission.

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

The certified IR operator will file with the Commission an application for a licence for casino business operation, and the Commission will examine whether such applicant satisfies certain eligibility criteria, such as its capability to operate a casino business in terms of human resources, social credibility, financial stability, anticipated profitability, the floor area for casino activities, the technological quality of the casino facility’s structure and equipment, the technological quality of the casino-related equipment, and certain other factors. If the IR operator satisfies these criteria, the Commission will grant a licence for casino business operation. Strict background checks on the casino business operator’s officers, directors, employees, subsidiaries, affiliated companies and other relevant persons and entities (including external persons who have a controlling power over any casino operation) will be carried out during the above licensing process. Detailed information will be required to be submitted to the Commission to check the integrity and soundness of the IR operator’s business, and out-of-pocket expenses for such background checks will be borne by the applicant.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Only one casino facility may be opened within one IR area, and the maximum floor area of casino activity will be regulated by a Cabinet Order (which is expected to be 3% of the total floor area of the IR area).

After the completion of the construction of the relevant casino facility, the licensed casino business operator will file with the Commission an application for an inspection of the casino-related equipment, tools, computer programs and recording media including such programs, and it will not be able to commence the operation of the casino facility until it has passed this inspection.

The licensed casino business operator will have to establish and comply with the following internal rules: (a) the rules of the method of business operation; (b) the terms of use of the casino facility; (c) the rules for the prevention of problem gambling; and (d) the rules for the prevention of the transfer of criminal proceeds (anti-money laundering).

Every three months, the licensed casino business operator must report to the Commission on the status of the casino operation and the casino facility. In addition, whenever it finds any unlawful activity or material breach of laws and regulations, it must report it to the Commission without delay. Furthermore, every fiscal year, the licensed casino business operator must report to the Commission on its casino-related financial business (i.e., details of (i) money transfers between customers' own accounts and customers' accounts that are managed by the licensed casino business operators, (ii) receipts of money from customers, (iii) money lending to customers, and (iv) its currency exchange business).

The licensed casino business operator is prohibited from having a third party operate its casino business in the name of the licensed casino business operator. With regard to the delegation of the operation of a casino business, in general, a casino business (including its pertinent businesses) must be conducted exclusively by the licensed casino business operator and only (a) the maintenance or repair of casino-related equipment, (b) the collection of casino-related debt from customers, and (c) certain other activities may be delegated to a third party in accordance with the Commission's rules, on the condition that contracts pertaining to such delegation must be approved by the Commission. Similarly, the casino business operator may have a third party provide goods or services within its casino facilities; again, on the condition that contracts pertaining to the delegation of the provision of such goods or services must be approved by the Commission.

If the licensed casino business operator wishes to carry out a merger (by which the casino business operator will be extinguished and the casino business operation will be succeeded by the surviving or new company), corporate split or transfer of its casino business, it must file with the Commission an application for the approval of such transaction.

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

The duration of a casino business licence is three years and a renewal will be required to extend it for another three years, so that the Commission can check that the licensee has maintained its integrity.

The casino business licence may be revoked by the Commission: (a) if the licence was obtained by making a false statement or by using any other unjust means; (b) if the licensed casino business operator has not commenced its casino operation business within six months after passing the inspection of the constructed casino facility; (c) if the casino operation business has been suspended for six months or more without any justifiable reason; or (d) in certain other cases.

If the certification of the relevant IR Area Implementation Plan is revoked, or if the licence of the relevant casino facility provider is revoked or invalid, then the licence of casino business will also be automatically revoked.

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

- (a) **Entry into Casino Facility:** The maximum number of entries into casino facilities by customers other than non-resident foreigners is three times per week and 10 times per 28 days, in order to prevent any increase in the number of problem gamblers. One entry will be counted if a customer enters the casino after the lapse of 24 hours since the previous entry.
- (b) **Customers' ID:** When customers enter or exit the casino activity area, their identity must be confirmed by the casino business operator, and certain ineligible customers will be prevented from entering the casino activity area. Customers other than Japanese non-resident customers or short-stay foreigners must use statutorily required individual number cards (so-called "My Number Cards") to prove their identities, while non-resident Japanese or short-stay foreigners may use their passports or other forms of ID.
- (c) **Types of Gaming:** The Commission will set forth in its rules the specific types and methods of permissible gaming (i.e., activities involving a competition for gaining or losing money depending upon coincidental factors, which may be conducted between the casino business operator and the customers or among the customers themselves using equipment or tools installed in a place within the same facility), which are socially acceptable to ensure the public's trust in, and understanding of, the sound operation of casino businesses, taking into consideration the current status of gaming in foreign countries.
- (d) **Promotion and Advertisement:** In order to prevent problem gambling and maintain the sound upbringing of young people, good morals, a clean entertainment environment and the protection of customers, (i) false or over-exaggerated expressions and explanations, (ii) expressions and explanations which may not be objectively proven to be true, and (iii) expressions and explanations which may violate good morals or damage a clean entertainment environment are prohibited; and the installation of signboards, posters and other advertisements and the distribution of leaflets concerning casinos are prohibited outside the IR area. In particular, for the sound upbringing of young people, the distribution of leaflets and the solicitation of minors to visit casinos are prohibited, irrespective of whether it takes place outside or inside the IR area. Furthermore, every advertisement or promotion of a casino business or a casino facility shall contain (x) a warning regarding the connection between the use of casinos and problem gambling, and (y) a notice that minors' entry into casinos is prohibited. Furthermore, the casino business operator must (A) educate and train its employees to comply with these rules, (B) create internal compliance rules, (C) appoint persons in charge of activities that are necessary for compliance with these rules, and (D) appoint persons to audit such activities. The Commission may order any person who makes any advertisements or promotion that is in violation of these rules to suspend or correct such advertisements or promotion by a certain deadline.
- (e) **Comps:** Although complimentary items ("comps") may be useful to solicit foreign tourists and VIP customers, the provision of comps whose types, method of provision or amounts are so excessive that they might be against good morals is prohibited for casino business operators and other business entities. Casino business operators are obligated to keep records of (a) the dates on which comps are provided or exchanged with chips, (b) the names of the customers who received or exchanged such comps, and (c) the amounts and types of comps provided or exchanged with chips. In addition, casino business operators must properly recognise the content, economic value and method of provision of

comps by third parties and must take measures that are necessary to ensure that such comps are appropriately provided by third parties. Furthermore, the casino business operator must (i) educate and train its employees to comply with these rules, (ii) create internal compliance rules, (iii) appoint persons in charge of activities for compliance with these rules, and (iv) appoint persons who will audit such activities. The maximum amount of giveaways provided under Article 4 of the Act against Unjustifiable Premiums and Misleading Representations (Law No. 134 of 1962, as amended) is not applicable to comps provided by the casino business operator that are pertinent to its casino activities.

- (f) **Junket Business:** In some countries, marketing/promotion, gaming (on casino floors rented or leased from casino operators) and money lending/collection and other casino activities to wealthy customers are collectively categorised and statutorily regulated as “junket business”. However, in Japan, casino activities can only be conducted by licensed casino business operators. Therefore, there are no special rules regarding “junket business” in the IR Implementation Law and each activity of junket business is regulated by the relevant general rule.

2.7 What are the tax and other compulsory levies?

The casino business operator bears: (a) a floating national tax, the amount of which is (i) 15% of the GGR (which is composed of (X) the aggregate chip amount received from customers, less the amount refunded to customers, and (Y) the profit gained from betting among customers) per month, and (ii) a fixed tax which covers the administrative expenses of the Committee; and (b) a floating municipal tax, the amount of which is 15% of the GGR per month. The casino business operator shall pay these taxes to the Japanese government on a monthly basis, by a specific day of each month.

The Japanese government and the relevant municipal body impose entrance fees on customers other than non-resident foreigners entering casino facilities, in the amount of 3,000 yen as the national entrance fee and 3,000 yen as the municipal entrance fee (6,000 yen in total). The casino business operator shall collect these entrance fees from customers upon their entry into casino facilities for the Japanese government and the municipal body, and shall pay such amount to the Japanese government on a monthly basis, by a specific day of each month.

2.8 What are the broad social responsibility requirements?

Since the gambling licence is a privilege, the licensed operator shall have high standards of ethics and integrity, and shall take measures that are necessary to ensure responsible gambling, the protection of minors, anti-money laundering and certain other public interest policies.

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

- (a) **AML:** Members of organised crime groups or those who used to be members of organised crime groups during the last five years are prohibited from entering casino facilities. The casino business operator must: (i) follow know-your-customer (“KYC”) procedures (confirmation of the identities of customers, the purposes of their transactions, the professions or business purposes and identities of the persons controlling

judicial entities); (ii) keep records of transactions; and (iii) notify the authority of any transaction that is suspected to be a transfer of criminal proceeds. In addition, the casino business operator must: (iv) take measures that are necessary to prohibit the transfer of chips among customers and the carrying of chips from within the casino facilities to outside; (v) show signs stating that “the transfer or carrying of chips from within the casino facilities to outside is prohibited” in the area of verification of customers’ identification, as well as the area of casino activities; and (vi) notify the Commission of any delivery of chips or other casino-business-related transactions that accompany the payment or receipt of cash exceeding a certain amount.

To comply with these rules, casino business operators must: (I) establish internal rules for the prevention of transfers of criminal proceeds, which set forth clear procedures for the above measures; (II) take measures to update, from time to time, information regarding matters that need to be verified when conducting casino transactions (e.g., details of identification documents that are required from customers, etc.); (III) provide education and training to employees; (IV) put in place a system for implementing anti-money laundering measures, such as the appointment of a supervising manager; (V) conduct self-evaluations and internal audits concerning their anti-money laundering measures; and (VI) take any other measures that are required under the rules of the Commission.

- (b) **Credit Card/ATMs/Money Lending and other Financial Activities:** To prevent problem gambling, only non-resident foreigners are permitted to purchase chips using credit cards. For the same reason, automatic teller machines (“ATMs”) are not permitted to be installed within casino facilities, and only ATMs without money-lending functions are permitted to be installed in areas surrounding casino facilities. To enhance customers’ convenience, (i) money transfers, (ii) receipts of money, (iii) money lending to customers, (iv) currency exchanges, and (v) other incidental activities are permissible subject to (I) certain restrictions, such as the prohibition of excessive loan collection measures, (II) the requirement to pay a deposit to make money transfers, etc., and (III) other regulations that are similar to those under the Money Lending Act or the Payment Service Act (for the purpose of preventing money laundering, all money transfers and receipts carried out by casino business operators upon customers’ requests are only carried out via financial institutions, and each customer’s deposit is only transferred to that customer’s own account).

In addition, considering that money lending might accelerate problem gambling, access to money borrowing is only available to (x) customers who have the financial capability to deposit with the casino business operator cash exceeding a certain amount, and (y) non-resident foreign customers. Also, to prevent excessive lending, casino business operators shall check customers’ capabilities to repay their loans, and shall set a separate cap on the loan amount for each customer.

3 Online/Mobile/Digital/Electronic Media

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

- (i) In order to strictly manage entry into casino facilities and prevent problem gambling, only casino activities that are conducted within casino facilities are permitted under the IR Implementation Law. Therefore, online casino activities, whose operators and players are located within Japan but outside the casino facilities, are not permitted.

- (ii) It is not clear whether Japanese residents are permitted to use online casino services whose operators are located outside Japan, but it may amount to illegal gambling if betting is carried out within Japan. In 2016, a number of users of such foreign online casino services were arrested for allegedly committing the crime of gambling. Meanwhile, in 2017, a user of a foreign online casino service was investigated, and his home was searched by the police, but prosecutors ultimately decided not to prosecute this user.

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

Online gambling is still illegal even after the IR Implementation Law became effective. Please see question 3.1 above.

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

Terminal/machine-based gambling is prohibited, unless it is conducted by a licensed casino business operator within its casino facilities.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

In general, the operator of the casino facility is liable for any breach of the relevant gambling legislation. If the breach is so material that it constitutes illegal gambling, then criminal sanctions might be imposed upon the customer (for the conduct of gambling), as well as the operator of the casino facility (for gaining a profit by operating a place for gambling) under the Penal Code of Japan.

4.2 What form does enforcement action take in your jurisdiction?

The Commission might impose administrative sanctions, such as the issuance of an order requiring the revocation of a licence, the

suspension of a business, improvements to be made to a business, etc. If a case involves serious wrongdoing, a prosecutor might investigate the case and bring criminal proceedings for gambling offences.

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

There are no treaties or other international laws which have an impact upon liability or enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

Debts which arise from illegal gambling are not enforceable. However, once such debts are paid, the debtor may not be able to recover them. Meanwhile, debts which arise from legal gambling would be enforceable.

5 Anticipated Reforms

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

As stated above, the IR Implementation Law was approved by the Diet in July 2018. Under the law, up to three IR areas will be initially approved by the Minister of Land, Infrastructure, Transport and Tourism. It is currently expected that the candidate municipal bodies will choose IR/casino business operators and other consortium members in around 2019 through 2020, the Japanese government will approve the initial IR areas in around 2021, and the first batch of IR/casinos will be opened in around 2024 to 2025, at the earliest. Pro-casino municipal bodies are already actively pursuing requests for concept ("RFC"), requests for investment ("RFI") or other processes as preparation for the filing of an application for a certification of IR Area Implementation Plan, while private casino business operators are mulling over the candidate IR area in which they will make an application for selection, the concept of the IR/casino business plan and the composition of the consortium that they should establish to build and operate their IR/casino facilities.

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NAGASHIMA OHNO & TSUNEMATSU

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Macau

Pedro Cortés



Rato, Ling, Lei & Cortés – Advogados

Óscar Alberto Madureira



1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	N/A	DICJ
	Poker	N/A	DICJ
	Bingo	N/A	DICJ
Betting	Betting	N/A	DICJ
	Sports/horse race betting (if regulated separately to other forms of betting)	Gaming Inspection and Coordination Bureau (“DICJ”). In the case of horse betting there is no digital form but, otherwise, bets can be placed remotely.	DICJ
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	N/A	N/A
Lotteries	Lotteries	N/A	DICJ
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	N/A	DICJ
	Skill games and competitions with no element of chance	N/A	N/A

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

The legal framework governing Macau’s gaming industry is the following (by sector and in chronological order):

1. Lotteries and *Pari-mutuels*

- Ordinance no. 27/86/M, dated 1 February 1986 and Law no. 12/87/M, dated 17 August 1987 (Instant Lottery).
- Concession Contract with Sociedade de Lotarias Wing Hing Limitada, dated 24 August 1990 and extended to 31 December 2017 (Chinese Lotteries).
- Ordinance no. 163/90/M, dated 27 August 1990 (Horse Racing).
- Ordinance no. 138/98/M, dated 5 June 1998 (Sports Lottery – Football).
- Chief Executive Order no. 62/2000, dated 27 April 2000 (Sports Lottery – Basketball).

2. Games of Chance and Fortune

- Decree-Law no. 47/98/M, dated 26 October 1998 (Administrative Licensing Legal Framework).
- Decree-Law no. 39/99/M, dated 3 August 1999 (article 1171 Macau Civil Code).
- Decree-Law no. 40/99, dated 3 August 1999 (Commercial Code: gaming companies and commercial contracts).
- Law no. 16/2001, dated 19 September 2001 (“Macau Gaming Law”: setting the general framework for the operation of games of fortune in casinos).
- Administrative Regulation no. 26/2001, dated 29 October 2001 (sets the general terms of the public tender required to select the concessions to operate games of fortune in casinos, as well as the suitability and financial capacity requirements of bidders and concessionaires).
- Administrative Regulation no. 6/2002, dated 20 March 2002 (sets the rules and requirements for the licensing of gaming promoters’ operations), amended by Administrative Regulation no. 27/2009, dated 10 August 2009 (regarding the payment of commissions or other remunerations to be paid by gaming concessionaires to gaming promoters).
- Administrative Regulation no. 34/2003, dated 18 September 2003 (setting up of the DICJ).
- Law no. 5/2004, dated 14 June 2004 (Gaming Credit Law).
- Law no. 10/2012, dated 27 August 2012 (establishes the terms to enter, work and gamble in casinos).

- Administrative Regulation no. 26/2012, dated 26 November 2012 (sets the rules applicable to the supply of gaming machines and related gaming equipment).
- 3. Criminal Penalty Regime**
- Law no. 8/96/M, dated 22 July 1996 (Unlawful Gaming Act).
- Law no. 9/96/M, dated 22 July 1996 (Criminal Offences in Animal Racing Act).
- Law no. 6/97/M, dated 30 July 1997 (Organized Crime Act), partially revoked.
- Law no. 2/2006, dated 3 April 2006 (Anti-money Laundering Act).
- Law no. 3/2006, dated 3 April 2006 (Anti-terrorism Financing Act).
- Administrative Regulation no. 7/2006, dated 7 April 2006 (preventive measures for the crimes of money laundering and financing of terrorism).
- Instruction no. 1/2016, dated 21 April 2016 (DICJ Instruction on Anti-money Laundering and Combatting of the Financing of Terrorism for the Gaming Sector).

2 Application for a Licence and Licence Restrictions

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

Macau follows an administrative concession system, under which the Government and private entities legally incorporated in Macau as a public limited company by shares (S.A. companies) enter into a concession contract for the operation of games of fortune, following a selection made by means of an international bidding process. Therefore, the operation of games of fortune in casinos, *pari-mutuels* (horse racing), lotteries and sports betting can only be legally pursued by means of a concession agreement between Macau SAR and each concessionaire.

According to the law, licence applicants should also have a managing director, who must be a Macau permanent resident owning at least 10% of the applicant company’s share capital.

The monopoly of games of fortune and chance in casinos ceased in 2002 after an international bid issued by the local Government. Since then, and pursuant to article 7 of the Macau Gaming Law, three gaming concessionaires (SJM, Galaxy and Wynn) have been granted a licence to operate those games until 2020/2022. Subsequently, after modifications in the concession contracts, the establishment of three sub-concessions has been authorised by the Government (MGM, Venetian and Melco Resort), despite being completely autonomous from the original concessions, except with regard to their contract terms.

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

There are no available Licences.

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

Under Administrative Regulation no. 26/2001, which was enacted to regulate all aspects regarding the awarding of a temporary gaming

concession, Macau follows a concession system by which a licence to operate is granted to the successful applicants, following a public tender.

After a tender committee is set up under the Executive’s order, the interested companies/bidders, as well as their directors, key employees and shareholders holding more than 5% of the share capital, will be subject to a suitability and financial capacity assessment under the supervision of the DICJ, and prior to the issuing of the authorisation.

Once the public tender is completed, on the assumption that all requirements have been met, a concession agreement must be signed between the concessionaire and the Macau Government, which will further legitimise the activity of the former.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Firstly, suitability requirements are, beyond any doubt, important restrictions for gaming operators, not only at the initial stage of concession, but also for pursuing their activity. Pursuant to articles 14 and 15 of the Macau Gaming Law, experience, repute and probity are absolutely mandatory requirements for all concession holders, as well as financial capacity. Needless to say, the aforementioned conditions must be maintained and verified for the entire period of concession (20 years).

Likewise, all directors and shareholders holding at least 5% of the gaming operator’s corporate capital, as well as key employees, will be continuously subject to suitability monitoring by the DICJ.

Moreover, according to the same piece of legislation, casino concessionaires and sub-concessionaires are not allowed to operate with a capital below 200 million Patacas.

Competitive restraints are also placed upon gambling operators, namely prohibiting anti-competitive agreements and practices among the concessionaires and sub-concessionaires or companies from the same groups, as well as the abuse of a dominant position and the control of shareholdings. As a consequence of the latter, casino operators, and their main shareholders holding at least 5% of the corporate capital, cannot, directly or indirectly, hold 5% or more of the capital of other operators.

Last, but not least, the Macau Gaming Law establishes Macau as a “continuous gaming zone”, which means that only in exceptional cases, and upon Government approval, can licence holders suspend casino operations for a limited period of time. Besides, the exploitation of games of fortune and chance should only take place in a previously authorised brick-and-mortar casino, despite it being possible for the Government to authorise the said activity to be carried out on board a ship or an aircraft registered in Macau, as well as in the customs-cleared area of Macau International Airport’s international departures.

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

Under article 13 of the Macau Gaming Law, the maximum term of a gaming concession is 20 years, which must be clearly set under the concession contract. However, in case a concession is granted for a shorter period of time, one or two additional extensions are legally permitted, up to the said limit of 20 years. This may be the case for SJM and MGM, whose concessions were initially granted for a term of 18 years.

Despite the above, concession contracts might be exceptionally and extraordinarily extended up to 25 years upon justifiable grounds and duly substantiated by the Chief Executive.

According to article 43 of the Macau Gaming Law, a previously granted concession may be unilaterally terminated by the Government in cases where there is a breach of the concession agreement, as well as the infringement of any other legal provision governing the underlying activity, or even for reasons of public interest.

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

Assuming that a concession has been awarded by means of a public tender, concession holders can only provide the services described by the Macau Gaming Law and stated in the concession agreement. Therefore, table games and game machines (slots) can only be offered inside land-based casinos and other authorised venues, whereas horse racing and sports betting concessionaires are offered outside casinos.

As a matter of fact, neither sports betting nor *pari-mutuels* are deemed to be games of chance and fortune. According to the Macau Gaming Law, it is not legal to offer *pari-mutuels* or operations offered to the public (lotteries) in a casino environment, even though the same piece of legislation provides that lotteries might be exploited by casinos after a dispatch of the Secretary for Economy and Finance and assuming that an amendment to the concession contract is made.

In summary, the concessions and sub-concessions of games of fortune and chance cover: all games mentioned in article 3 of the Macau Gaming Law (table games); other games of chance authorised and regulated by the Government after 2001; and authorised electric or mechanical machine games (slot machines). The forms of gaming not covered by casino concessions and sub-concessions are: *pari-mutuels* (horse racing); operations offered to the public (sports betting and lotteries); and interactive casino games (understood as online games).

Regarding promotion and advertising restrictions, and according to the Advertisement Act enacted in 1989, games of fortune and chance cannot be advertised if the games themselves are the main focus of the advert. The act thus allows gaming operators to advertise games of fortune and chance whenever the games are not the essential element of the advert. Despite this restriction, the concession and sub-concession contracts executed by the Government since 2002 (when the Advertisement Act was enforced) require operators to conduct advertising and marketing campaigns both in Macau and abroad.

2.7 What are the tax and other compulsory levies?

Under article 27 of the Macau Gaming Law, gaming concessionaires and sub-concessionaires are required to pay a special gaming tax of 35% of the gross gaming revenue, payable until the 10th of each month.

In addition to the mentioned Special Gaming Tax, gaming operators are also subject to a payment of 1.6% of their gross gaming revenue for public foundations that promote cultural, scientific, social,

economic and educational development (Macau Foundations), as well as 2.4% for funding urban development, tourism promotion and social security.

Moreover, a 5% tax is also levied on the commissions or other compensations paid to gaming promoters.

Despite the abovementioned taxation system, efforts have been made to alleviate the tax burden, provided that all concessionaires and sub-concessionaires have been exempted from the Income Complementary Tax.

Lastly, pursuant to article 20 of the Macau Gaming Law, concession and sub-concession agreements provide for the obligation of payment of an annual premium which is comprised of a fixed amount of 30 million Patacas (approx. USD 3.8 million) and by a flexible amount which will mostly vary according to the number of table games and electronic gaming machines operated, including slot machines. That being said, concessionaires and sub-concessionaires are required to pay 300 thousand Patacas (approx. USD 37.5 thousand) for each VIP table; 150 thousand Patacas (approx. USD 18.8 thousand) for every table game allocated to the mass market, as well as 1 thousand Patacas (approx. USD 125) for every gaming machine.

2.8 What are the broad social responsibility requirements?

There is not a high degree of social responsibility and control over harm caused by the Macau gaming industry, although Law no. 10/2012 (“Conditions of Entering, Working and Gaming at Casinos”) implemented a voluntary self-exclusion, along with third-party exclusion services, in which patrons or direct family members (article 6), respectively, may apply for exclusion from all or some of the casinos in Macau SAR for a maximum period of two years.

Furthermore, the DICJ has been putting some effort towards further enhancing public awareness of responsible gaming, although there are no legal impositions for gaming operators.

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

Over the years, continuous efforts have been made to combat money laundering in Macau. Aside from the main AML framework, which consists of Law no. 2/2006 (AML Law) and Administrative Regulation no. 7/2006 (“Preventive Measures for the Crimes of Money Laundering and Financing of Terrorism”), the DICJ, since last May, has set a higher standard for AML compliance by introducing new measures aimed at implementing a risk-based approach and enhancing customer due diligence procedures, mainly related to the identification of patrons and the reporting of suspicious transactions (Instruction no. 1/2016).

It is widely known that money laundering is a very serious concern within the Macau gaming industry and, therefore, with the entry into force of new instructions intended to be implemented by casino concessionaires and sub-concessionaires, an important step has been taken towards stricter compliance with the Asia Pacific Group’s guidelines.

In turn, virtual currencies are not permitted to be used for gaming activities in Macau SAR.

3 Online/Mobile/Digital/Electronic Media

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

There are no laws and regulations in Macau SAR that regulate all forms of remote gambling, including Internet and mobile gaming. Interactive games of fortune and chance cannot be exploited by gaming concessionaires under Law no. 16/2001; such Law, in its article 4, states that interactive gaming concessions are separate from concessions for the operation of games of fortune and chance in casinos in Macau. Hence, all forms of online gambling in Macau are considered outlawed.

The only legal options for remote gambling in Macau are limited to horse racing and sports betting, solely offered by the Macau Jockey Club and Macau SLOT, respectively.

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

Considering the lack of legislation on remote gambling, as well as on access, registration and effective bets on overseas online gaming websites, players located in Macau are free to access those websites on a passive basis. There are no laws and regulations that prevent Internet Service Providers from blocking consumers from accessing the websites of gambling operators licensed overseas.

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

According to Administrative Regulation no. 26/2012, which provides the rules applicable to the supply of slot machines and related equipment in Macau SAR, only approved gaming machines, as well as electronic table games from authorised manufacturers, can be supplied to gaming operators. The authorisation by the DICJ is subject to a strict suitability assessment of the applicant manufacturer as well as its shareholders and directors, despite the possibility of licensed manufacturers from specific jurisdictions (Nevada, New Jersey, Mississippi, Australia, New Zealand, Great Britain and Singapore) submitting a request for the said procedure to be waived.

Table games and gaming machines can only be offered inside brick-and-mortar casinos and other authorised venues, although the Macau Gaming Law provides that the Macau Chief Executive may authorise, for a specified time, the operation of any games of fortune and chance on board a ship or an aircraft registered in Macau when outside Macau SAR and operating on touristic routes, as well as electronic gaming machines, playing directly into tokens or money, in the customs-cleared area of Macau International Airport's international departures.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Gaming operators are subject to the regulatory control of the DICJ, which is responsible for enforcing the legal framework applicable

to the gaming industry in Macau. Therefore, under Administrative Regulation no. 34/2003, the DICJ is legally entrusted with the power of monitoring, supervising and thus investigating and sanctioning any administrative infringement committed by gaming concessionaires and sub-concessionaires, gaming promoters, as well as electronic gaming machine manufacturers.

Moreover, according to article 43 of the Macau Gaming Law, shareholders with more than 10% of the share capital of any gaming concessionaire or sub-concessionaire will be jointly liable for the payment of any imposed fines, even if the said operator has been dissolved or has ceased activity for any reason.

4.2 What form does enforcement action take in your jurisdiction?

Illegal gaming activities are subject to Law no. 8/96/M on unlawful gaming, which sanctions all forms of operation, promotion or assistance to gaming outside the authorised areas, as well as any fraudulent or illicit gaming in authorised areas, or any unlicensed granting of loans or gaming credits to patrons.

Hence, any infringement of the provisions regarding the offering of unlawful games of chance and fortune in unauthorised venues will be punished with up to three years of imprisonment or with the imposition of a fine. In turn, participation may be subject to a fine of up to a maximum of 180 days, whereas any individual found in an illegal gaming site may be liable for the payment of a fine of up to 90 days. Fraudulent games are punished with up to five years of imprisonment. On the other hand, the illegal operation of games of fortune and chance in authorised venues is punishable by a maximum imprisonment of three years or a fine. In turn, participation is punished with imprisonment for up to six months or a fine. Lastly, game usury is subject to a maximum imprisonment of three years.

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

No, there are no international laws with an impact upon liability and enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

According to article 1171 of the Macau Civil Code, gaming and betting may be: a source of standard enforceable civil obligations; a source of natural obligations; or void. Therefore, and in the terms of the said provision, the enforcement of gambling debts is only possible when specific laws so provide, which therefore applies to any gaming activity that is legally regulated, authorised and taxed.

5 Anticipated Reforms

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

The Macau legal framework has been subject to some recent changes. Despite the fact that some of these law amendments are strictly and exclusively related to gaming, considering the importance that the gaming industry has in the local economy, such amendments will definitely have some impact on Macau as a whole.

In May 2017, Macau's Government imposed facial recognition and identification card checks at ATMs (including devices located within

casinos) before Chinese UnionPay cardholders can withdraw cash. This is seen as a stepped-up measure to curb money laundering in the jurisdiction and, according to a report by local authorities, by the end of July the vast majority of local ATMs will have been installed with the relevant technical devices.

By the end of July 2017, the Macau Legislative Assembly (AL) passed the Government-initiated Tobacco Prevention and Control Law's amendment bill, which allows casinos to set up smoking lounges in gaming areas, in line with the standards set by the Government. The bill is slated to take effect on 1 January 2018. The major amendments refer to the obligation of setting up smoking lounges to the officially required standards within a year of the law coming into force. Existing smoking lounges and smoking areas (VIP rooms only) can remain during the one-year interim period before the new smoking lounges are fully operational. The new law bans the sale of e-cigarettes in Macau.

It is likely that, in the near future, the Macau Government will amend Administrative Regulation no. 6/2002, which sets the rules and requirements for the licensing of gaming promoters' operations, with the objective of imposing requirements for casinos and junket operators to assume more due diligence and operational obligations, and to adopt more pre-emptive measures. It is true that, since 2016, the local regulator, the DICJ, has implemented some relevant measures concerning the auditing of gaming promoters' operations,

which culminated in a significant reduction of valid operating licences, but it is likely that the Macau authorities will continue their quest to introduce worldwide standards for this activity.

In perhaps the not-so-near future, some changes to the current taxation on gaming activity may occur, as some of the gaming operators' representatives have already publicly admitted that, according to regional and worldwide standards, Macau's gaming taxes are considerably high. However, it is not expected that such changes (reductions) on the current gaming tax may occur before the term of the existing gaming concessions.

Recently, on 12 July 2018, an amendment to Law no. 10/2012 was approved in general by the Legislative Assembly.

Following the Public Consultation conducted between 27 September and 26 October 2017, Macau SAR Government elaborated a proposal to revise Law no. 10/2012, which establishes the legal framework of the Conditions of Entering, Working and Gaming at Casinos.

The amendments proposed have two main objectives:

- to protect gaming employees from the negative impacts of their exposure to gaming and thereby promote a "Responsible Gaming" environment; and
- to simplify and introduce a more effective sanction procedure in several areas of the gambling legal framework.

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Rato, Ling, Lei & Cortés – Advogados is a law office located in the Macau Special Administrative Region of the People's Republic of China, with its origins in the office of Gonçalves Pereira & Rato. Having begun operations in the 1980s, the office has evolved to its present configuration of four Senior Named Partners – Frederico Rato, Paula Ling, Lei Wun Kong and Pedro Cortés – two of whom are also Private Notaries; and one other Partner, Chang San Si.

We have a partner office in Hengqin, People's Republic of China – ZLF Law Office – and recently opened a desk in Lisbon – Lektou Portugal.

With more than 30 years of legal practice in Macau, our strong professional and academic profile, together with our extensive experience and full integration within the Region, are a guarantee of the quality of the services we offer.

Additionally, our consistently updated expertise and specialisation, combined with proven professional practice in diverse areas of law, allow us to offer a prompt, effective and efficient response to our clients; from intervention in negotiations, disputes and alternative dispute resolutions hearings to regular and continuous legal advice on various aspects of law.

Malta

Leo Rodenburg



Frederik van Eijk



Gaming Legal Group / GLG Compliance

1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Malta Gaming Authority (“MGA”)	MGA
	Poker	MGA	MGA
	Bingo	MGA	MGA
Betting	Betting	MGA	MGA
	Sports/horse race betting (if regulated separately to other forms of betting)	MGA	MGA
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	MGA	MGA
Lotteries	Lotteries	MGA	MGA
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	MGA	MGA
	Skill games and competitions with no element of chance	MGA	MGA

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

The Malta regulatory framework has undergone a substantial and

ambitious overhaul in 2018, partly inspired by standards in relation to the Base Erosion and Profit Shifting actions (“BEPS”). The overhaul is meant to enhance Malta’s general competitiveness, particularly for the B2B environment, and furthermore enhance consumer protection, to innovate reporting and to streamline taxation in a two-tier framework. It is also noteworthy that B2B organisations do not have to pay special gaming taxes on their revenue. By reducing the amount of tax levied on companies that provide these components, Malta is taking a big step toward promoting innovative and fully featured gambling sites. The overhaul has significantly affected all of the three existing tiers. All primary legislation has been repealed and replaced with a one primary act: the Gaming Act, which, as a first tier, governs framework legislation, regulating all gaming services in and from Malta. It is aimed at establishing the framework itself, providing the fundamental principles of gaming and is subdivided into eight areas: Regulatory Objectives and Governing Principles; Establishment, Functions, Powers and Conduct of Affairs of the Malta Gaming; Authorisations; Protection of Minors and Vulnerable Persons; Rights and Obligations of Players; Enforcement and Sanctions; Financial Provisions; and Administration & Administrative Review. It applies to all forms of games in Malta, including land-based casinos, social gaming and skill games. The first tier also establishes the regulatory authority.

It is complemented by a second tier, which establishes policy rules via subsidiary legislation, subdivided into six areas: (1) authorisations; (2) compliance & enforcement; (3) premises; (4) player protection; (5) commercial communications; and (6) fees & taxation. The regulations are published by Legal Notice by the Minister responsible for and on the advice of the Malta Gaming Authority. It, for example, outlines the detailed requirements for the granting of licences, including the procedures and requirements of the technical systems involved. The multi-licensed system has been replaced by just two forms of licences: Business-to-Consumer (“B2C”); and Business-to-Business (“B2B”) critical supply.

The regulations included in the second tier are as follows: Gaming Authorisations Regulations; Gaming Commercial Communications Regulations; Gaming Compliance and Enforcement Regulations; Gaming Definitions Regulations; Gaming Player Protection Regulations; Gaming Premises Regulations; Gaming Licence Fees Regulations; Gaming Tax Regulations; Social Causes Fund Regulations; Gaming Act Regulations; Poker Tournament (Locations) Regulations; Gaming Devices Regulations; Amusement Machines Regulations; Commercial Tombola (Bingo) Regulations; Rate of Taxation on Takings Generated by Junket Regulations; and Cruise Casino Regulations.

The third tier provides various directives and other binding and non-binding (advisory) instruments. These instruments contain the detailed processes and requirements, are published by the Malta Gaming Authority and amended from time to time, ensuring that the law responds to technological advancements in a timely manner.

Instruments included in the third tier: Directive 1 of 2018 – Start-Up Undertakings Directive; Directive 2 of 2018 – Player Protection Directive; Directive 3 of 2018 – Gaming Authorisations and Compliance Directive; Directive 4 of 2018 – Directive on the Calculation of Compliance Contribution; Gaming Parlours No Objection Certificate; Locations for Gaming Parlours Directive; Registration of Players Directive; Self-Barring Directive; Policy on Outsourcing by Authorised Persons; Quantification of Administrative Fines Guiding Principles; Consultation Process Guidelines; Fit and Proper Guidelines; Shared Conduct of Gaming Business Agreement Procedures; and Directions Applicable to Gambling Advertising (Broadcasting).

2 Application for a Licence and Licence Restrictions

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

Acknowledging the convergence of land-based and online gaming, the former ‘multi-licence’ system has been streamlined into a ‘two-type’ B2B/B2C ‘first tier’ licence system, covering various types of activities across multiple distribution channels.

In order to cut through unnecessary bureaucracy, a second tier of approvals greenlights the systems, distribution channels and game types, all used under one licence. Only substantial changes in risk profiles and/or operations may trigger a requirement of prior approval.

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

With reference to question 2.1, the regime structure has been significantly streamlined. Only two types of licences exist. In comparison to the former regulatory framework, these licences are ‘horizontally’ based, hence covering various types of activities across multiple distribution channels. This risk-based approach allows the regulator to quickly and expeditiously respond to technological market developments. It also allows the regulator to focus supervisory resources in areas of the market that are deemed of higher risk to consumers. Key regulatory drivers within the new regulatory structure are: (1) Gaming Authorisations Regulations; (2) Gaming Compliance and Enforcement Regulations; (3) Gaming Commercial Communications Regulations; (4) Gaming Player Protection Regulations; and (5) Gaming Premises Regulations.

The new B2C licence is ‘horizontally’ structured and covers land-based (casino, lottery, secondary lottery against fixed odds) as well as online channels (commission-based against controlled skill games).

The new B2B licence is ‘horizontally’ structured as well, and covers all aspects of game provision (casino, lottery, secondary lottery against fixed odds, commission-based and controlled skill games) as well as back-end services.

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

The application process of both licences is equally structured, starting with the licensing process, followed by prior approval of technical and operational capabilities, followed by prior approval of aspects of risk management, concluded by final notification of the setup of the complete operation.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Only applicants that are based within the European Economic Area (“EEA”) may be eligible to hold a licence. An applicant needs to satisfy the MGA of: (i) being capable of sustainably financing the gaming service or supply; (ii) having the necessary competence, technical know-how and resources to carry out operations; (iii) having a business model to carry the gaming offering in a viable way and in a way that is compliant with the applicable regulatory instruments in force; and (iv) being fully compliant with all regulatory requirements. Licences may come, on a risk-based merit, with additional rules and limitations attached, which may be amended, supplemented, or revoked by the MGA at any time. Depending on the circumstances, additional rules and regulations may be added to the already existing duties of the licence holder regarding methods of player recruitment and solicitation. Furthermore, the licence holder is, by law, at all times required to be fully aware of the signals of gambling addiction, and he or she is required to execute policies aimed at the prevention of risks that are associated with gambling addiction. A licence granted by the MGA may impose conditions relating to: (a) the proper operation of interactive games; (b) the protection of players; (c) the prevention of money laundering; and (d) exigencies of public interest. As already mentioned, the granting of a licence is a revocable privilege. Furthermore, licences may never be (deemed) reassigned or transferred upon the penalty of the licence to be considered null and void. Furthermore, the MGA needs to be notified if one or more of the following transpires: (a) any change in the Board of Directors or management of the licensee, or any material changes in the information and documentation provided; (b) any resolution or intended resolution, or any application or intended application to the Court, or any other action for the dissolution and winding up of the licensee; and/or (c) intended material changes in shareholdership, such as, but not limited to, a merger, the intention to transfer a qualifying shareholding in the licensee, and the intention to increase an existing holding which is not a qualifying shareholding, so as to cause it to become a qualifying shareholding in a licensee.

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

Licences issued by the MGA are no longer limited to a five-year period. The licence term has been extended to up to 10 years. The regulations also, on a risk-based approach, provide for a licence with limited duration.

The new regime calls for a ‘trust-based’ approach, which entails notification to the MGA of existing key functions within licensed companies, with the Authority approving the person or persons conducting these key functions. These key officers are required

to prove their competence through experience, certification and continuing professional education and development. Key officers are required to have a full understanding of obligations in connection with their position. Key officers who can provide proof of having developed at least two years of experience as a legal, finance or compliance officer in the gaming or financial services industry, however, within a period of five years preceding the application, shall be deemed satisfactory.

Under the new regime, the MGA has been granted extended authority to monitor and enforce. Operators' data is subject to ongoing and transparent access. In the event of a suspected breach of protocol, licensees are required to undergo an extensive compliance review process. The MGA furthermore has the opportunity to blacklist non-compliant licensees.

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

The MGA has significantly advanced its position on player protection by including functions of the Responsible Gaming Foundation ("RGF"). Furthermore, it has imposed new, stronger restrictions of, and limitations on, advertising. The new regulations also include 'special' aspects of advertisement such as sponsorships, bonuses and promotions. New regulations include limitations on advertising on social media. Advertisements can no longer be based on gaining personal prestige or (alleged) success stories of (alleged) players.

The Gaming Commercial Communications Regulations ("GCCR") provide all key regulatory drivers regarding customer services, material promotion and advertising, such as (1) general obligations and limitations; (2) responsible gaming; (3) protection of minors and vulnerable persons; (4) sponsorships; and (5) misleading and unfair promotional schemes.

2.7 What are the tax and other compulsory levies?

The Gaming Licence Fees Regulations ("GLFR") provide for a two-tier licence fee for operators of gaming services in possession of the full 10-year licence. Licence fees payable per activity have been abolished in favour of a singular fee made up of fixed and variable parts. A fixed licence fee of €25,000 is due every 12 months, in advance, while the variable component is calculated according to gaming revenue generated *in lieu* of the licence itself. Each game type has a different sliding scale of fees as a percentage, or as part of a fixed bracket, of the total gaming revenue, and for each game type. The variable component of the licence fee includes a minimum payable fee, as well as a maximum cap of €500,000 or €600,000. The variable licence fee is payable monthly, and is calculated throughout the financial year of the operator. Furthermore, start-ups, fulfilling the criteria considered in the Gaming Licence Fees Regulations, are afforded a moratorium for the variable licence fee for the first six months.

Providers of critical supplies are also subject to a licence fee, varying according to the service provided.

Game providers are subject to a yearly licence fee, ranging between €25,000 and €35,000 depending on the revenue generated by the provider, whilst providers of back-end services, or a control system whereby essential regulatory data is captured, stored or otherwise processed shall be subject to a fee ranging between €3,000 and €5,000 annually.

The GLFR also prescribe the relevant fees payable for the other licence types, or approvals, including the limited duration licence, cruise casino approval, low-risk games approval, recognition notice and the material supply certificate. Furthermore, additional administrative fees for *ad hoc* approvals, such as the approval of key persons, junket leaders, changes in qualifying interest, approval of new game types, approval of gaming devices or premises amongst other fees are also contemplated therein (source: www.mga.org.mt).

2.8 What are the broad social responsibility requirements?

With reference to question 2.6, the GCCR provides all key regulatory drivers regarding customer services, material promotion and advertising.

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

Malta has indeed welcomed the forthcoming application of anti-money laundering and combating the funding of terrorism requirements to holders of licences to operate games of chance via means of distance communication. By virtue of Legal Notice 372 of 2017, the Fourth Anti-Money Laundering Directive (Directive 2015/849) has been fully transposed into Maltese law by means of the Money Laundering and Funding of Terrorism Regulations. These regulations have repealed and replaced their previous 2008 incarnation with effect from January 1st, 2018.

Furthermore, the MGA is engaging with the gaming industry and conducting a number of workshops so as to increase awareness and appreciation of money laundering risks. It has furthermore rigorously updated its internal risk management in order to 'feed into' the adopted risk-based horizontal approach. BEPS-inspired, an increase in presence and substance in Malta is expected to further positively impact the risk profile of an operator. The MGA has announced that its priorities on this front will focus on the onboarding and continuous monitoring of its licensees and gaming operators based in Malta. It has stated that an effective anti-money laundering framework is not only dependent on legal provisions but also on effective coordination between public and private bodies on an ongoing basis, particularly with the Malta Police Force. MGA's aim is to create consistency in its anti-money laundering requirements across all sectors, as required, to prevent launderers targeting 'weak links in the chain'.

3 Online/Mobile/Digital/Electronic Media

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

The updated regulatory framework follows the convergence between online gaming and land-based gaming in terms of the products and technology used. The convergence and simplification of all regulated gaming activity, both online and offline, has led to two categories of licences, with reference to question 2.1.

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

See question 3.1.

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

See question 3.1.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Notwithstanding the relevant provisions of Malta's Criminal Code (Chapter 9 of the Laws of Malta), substantial sanction provisions have been included in part VII (with reference to the Third Schedule) of the Gaming Act. The following actions, committed by presidents, directors, managers, or any other officers exercising executive functions in a company or other undertaking, organisation, club, society or other association or body of persons, are deemed criminal offences, punishable with (doubled in case of recidivism) a fine of not less than €10,000 and not more than €500,000 or to imprisonment for a term of not more than five years, or to both such fine and imprisonment:

- (a) Providing a service which requires an authorisation without the necessary authorisation, or aiding or abetting such a provision.
- (b) Acting contrary to, or not adhering to the fullest extent possible to, an order issued by the MGA, howsoever named.
- (c) Committing forgery, facilitating illegal gambling by providing a location and/or providing false or misleading statements.
- (d) Preventing, obstructing, or delaying any police officer or any officer of the MGA lawfully authorised to enter any premises suspected to be used in contravention of any regulatory instrument, or giving an alarm or warning in case of such entry.
- (e) Failing to effect payments to the MGA when lawfully due.
- (f) Failing to effect payments to players when lawfully due.
- (g) Failing to seek the prior approval of the MGA, as may be required by any regulatory instrument, when effecting changes which require such prior approval.
- (h) Failing to ensure the integrity and availability of essential regulatory data.
- (i) Any other breach specified in any regulatory instrument which is defined therein as giving rise to a criminal offence or an offence against the Gaming Act.

If found guilty, the company or companies in which the guilty person has been vested with the power of legal presentation shall be held equally liable.

4.2 What form does enforcement action take in your jurisdiction?

See question 4.1.

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

See question 2.9.

4.4 Are gambling debts enforceable in your jurisdiction?

As generally is the case in other respectable nations, in Malta, illegal gambling transactions shall not be enforceable. Article 1713 of the Civil Code provides: "(1) The law grants no action for a gaming debt, or for the payment of a bet; (2) Nor does it grant any action – (a) for the recovery of any sum lent by any person who knew that such sum was intended for gaming; (b) for the recovery of any sum lent by any person interested in the game, for the payment of money lost at such game." These provisions are of public order and cannot be derogated and need to be applied *ex officio*. This led to an interesting ruling of the Maltese Court of Appeal, dated March 28th, 2014, in which a local casino in Malta denied winnings to a participant in a lottery event. The casino had 'supervised' (and not organised, as was decided by the Court) a lottery event and claimed that the authorisation of the department of lotteries did not derogate from article 1713, Criminal Code and it was therefore not expressly derogated by law. The debt was therefore – in the opinion of the casino – not legally enforceable, with reference to "*Salvatore Grech v Carmelo sive Charles Bennett*" (Vol. XLV-11-553, dated January 27th, 1961). However, the Court noted that the relations between the parties did not arise from a debt from gambling and in this respect article 1713 of the Civil Code did not apply. As a result, the debt was indeed enforceable and the claims of the casino were dismissed.

5 Anticipated Reforms

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

All considered, with its innovative, transparent and 'holistic' approach, the 2018 overhaul has in our view resulted in a remarkable and impressive regulatory structure. Its designers have truly mastered the challenges that come with combining the ever-increasing pace of technological development with the extensive and time-consuming process of approval and implementation of new legislation. Hats off to the MGA.

Note

Please note that Gaming Legal Group and its affiliated entities cannot accept liability for this publication, since one should always consult a legal professional for the purpose of retaining individual advice.

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Frederik van Eijk has an exceptional “knack” for finding patterns in financial information. As a former financial controller, his outstanding skills strongly add to the quality of services within Gaming Legal Group.



GAMING LEGAL GROUP | Litigation & Compliance

“Gaming Legal Group” is a symbiosis between the law firm “GLG Litigation” based in the Netherlands, specialising in gaming litigation and “GLG Compliance” based in the Netherlands, Malta, Cyprus, Curaçao and the Dominican Republic, specialising in all matters of compliance. Gaming Legal Group has rapidly built itself a reputation as a worldwide renowned niche specialist in the field of gaming. It has a focus on hybrid cases in which government, tax, civil and financial law are often combined. Gaming Legal Group always tries to aim for a scientific and/or innovative approach. This is what makes Gaming Legal Group a worldwide “mover and shaker”. The leading opinions of Gaming Legal Group are followed worldwide. Would you like to know more? Please take a look at our other chapters in this guide, covering the Netherlands, the Dutch Caribbean and the Greater Antilles, check out www.gaminglegal.com or follow us on Twitter @gaminglegal.

Strategic Compliance

The Department of GLG Compliance, located in Valletta, Malta, specialises in strategic compliance. Its objective is to assist clients in their search for innovation opportunities created by regulation and deregulation. The team is formed by Leo Rodenburg, Frederik van Eijk and Stephen Dullaghan.

Mexico

Begoña Cancino



Creel, García-Cuéllar, Aiza y Enríquez, S.C.

Sofía Castañón



1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Not expressly regulated in Mexico.	General Bureau of Gaming and Raffles (<i>Dirección General de Juegos y Sorteos</i> , the “Bureau”) of the Ministry of Internal Affairs (<i>Secretaría de Gobernación</i> , the “Ministry”).
	Poker	Not expressly regulated in Mexico.	The Ministry through the Bureau.
	Bingo	Not expressly regulated in Mexico.	The Ministry through the Bureau.
Betting	Betting	Broadly, this is not expressly regulated in Mexico. In a particular way (as described in question 3.1): the Ministry through the Bureau.	The Ministry through the Bureau.
	Sports/horse race betting (if regulated separately to other forms of betting)	The Ministry through the Bureau.	The Ministry through the Bureau.
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	Not expressly regulated in Mexico.	Not expressly regulated in Mexico.

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Lotteries	Lotteries	N/A.	National Lottery for Public Assistance.
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Not expressly regulated in Mexico.	The Ministry through the Bureau.
	Skill games and competitions with no element of chance	Federal Consumer Protection Agency and, in some cases, the Ministry through the Bureau.	Federal Consumer Protection Agency and, in some cases, the Ministry through the Bureau.

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

In Mexico, gambling and gaming matters are governed by: (i) the Federal Gaming and Raffles Law (the “Law”); and (ii) Regulations of the Federal Gaming and Raffles Law (the “Regulations”).

Pursuant to the Political Constitution of the United Mexican States, gambling and gaming activities and all other Relevant Products are considered federal matters; thus, their legislation is reserved for the Mexican Congress. This means that the Law and its Regulations are applied across all Mexican territory.

In addition, other laws or regulations may apply to this matter, such as the Federal Consumer Protection Law, the Federal Law on Protection of Personal Data in Possession of Private Entities, the General Health Law, and federal and local Mexican tax laws.

As a general rule, gambling is a forbidden activity in Mexico. Any betting game and raffle transactions must be authorised in advance by the Ministry; thus, the Bureau only has the authority to grant gambling and raffle permits for the activities described in the answer to question 2.1 below. According to the Bureau’s criteria, any other gambling activity not specifically provided by the Law would be unauthorised and rejected due to lack of legal grounds.

2 Application for a Licence and Licence Restrictions

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

Exclusively Mexican entities – commercial companies duly constituted under Mexican laws – can apply for a licence to install gambling facilities.

Licences granted by the Bureau are required for the provision of the following gambling and raffles activities: i) opening and operating horse race betting, greyhound racetracks, frontons, and for setting remote betting centres; ii) opening and operating fairs; iii) opening and operating temporary off-site horse race and cockfighting betting; and iv) holding and organising any of the regulated types of raffle.

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

Exclusively Mexican entities can apply for Licences from the Bureau.

However, a Mexican entity with a physical establishment and a permit to install a gambling facility (the “Licence Holder”) may partner with a non-licensed entity – even foreigners – for the use of its permit through a joint venture or any other association or type of agreement, with prior authorisation from the Bureau, and only when such agreement/partnership does not allow the partner to (i) acquire corporate or administrative control, (ii) become a beneficiary of the Licence Holder, or (iii) assign the operation of the betting centre to third parties.

Premises authorisations are granted through municipal permits, and not by the Bureau.

Furthermore, the Bureau must authorise any advertisement and marketing for gaming activities, betting and raffles, shareholder structure modifications of the Licence Holder, changes in location of establishments, gaming operation systems and the data infrastructure to be used in the facilities, among others.

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

Applications to request a Licence must be filed before the Bureau through the official process and include the following information and documentation:

- a) name, nationality and address;
- b) property and financial statements;
- c) *curriculum vitae*;
- d) professional or patrimonial links with other Licence Holders, shareholders, advisors, beneficiaries or staff members;
- e) an affidavit stating they have no criminal record or history of bankruptcy; and
- f) a credit report from a credit information company.

Legal entities must additionally file:

- a) a copy of the incorporation deed, as well as all modifications;
- b) balance sheets and statements of income;

- c) a certified copy before a notary public of the act whereby the relevant corporate body of the legal entity has authorised the investment in the company requesting the permit;
- d) a list of names, nationalities and addresses of the members of the board of directors and statutory auditor;
- e) a list of shareholders; and
- f) the identity of the final beneficiaries.

The Bureau may take up to three months to grant or reject the application, and may request additional information or documentation. Every granted Licence will be published on the Bureau’s webpage and will be publicly available.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

In addition to the restrictions set forth in the Regulations, additional restrictions may be established on a particular Licence for Relevant Products.

Some of the most common restrictions imposed on Licence Holders or licensees are as follows: to abstain from operating other gambling games and raffles rather than those explicitly authorised by law and/or Licences; to abstain from assigning, transferring or selling the Licence; to abstain from giving credit to players/gamblers; to abstain from installing casinos within 200 metres of an educational institution or religious centre; to abstain from allowing the admission of underage players or people under the influence of alcohol or drugs into the establishments; to forbid the shareholders of the Licence Holder to be individuals or legal entities resident in territories with tax advantages or jurisdictions with low tax rates; to forbid the acquisition of shares of the Licence Holder, directly or indirectly, through trusts; as well as particular advertisement restrictions.

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

Licences for opening and operating horse race betting, greyhound racetracks, frontons, and for setting up remote betting centres will be granted for a minimum validity of one year and a maximum of 25 years. These Licences may be extended for subsequent 15-year periods, with prior authorisation from the Bureau.

Licences for opening and operating fairs, as well as for opening and operating temporary off-site horse races and cockfighting betting, will be granted for a maximum validity of 28 days, or the authorised period, as applicable.

Licences for holding and organising raffles will be granted for a maximum validity of one year.

Licences will lose validity: (i) at the end of the validity period; (ii) at the end of the event, as applicable; (iii) by revocation; (iv) in case of entities, insolvency, dissolution, liquidation or extinction of the permittee; and (v) in case of individuals, insolvency or death of the Licence Holder.

Any infringement of the provision of the Law, such as the transfer of the Licence, the non-compliance with the object established in the permit, the non-compliance of stated operation deadlines, or the substantial modification of the terms and conditions of the authorised gambling and gaming activities, may cause the revocation of the Licence and the permanent closure of the facility, if applicable. All causes of revocation shall be stated on the Licence.

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

The following restrictions apply:

- The admission of underage players or people under the influence of alcohol or drugs into the facilities shall not be allowed.
- Gaming equipment may only be leased or sold to authorised Licence Holders, operators and establishments.
- All bets must be made in the national currency (pesos).
- Establishments are not allowed to grant credit to participants.
- The Licence may contain specific advertisement requirements for the Relevant Products, such as the indication that only individuals older than 18 may participate in gaming or betting activities, the obligation to abstain from explicitly promoting bets placed on gambling facilities, the obligation to abstain from using advertisements that may cause confusion to consumers, and the obligation to include the relevant permit number.

2.7 What are the tax and other compulsory levies?

The following taxes apply to gambling activities in Mexico:

- i) General Bureau of Gaming and Raffles Fees: within the Licence, a licence fee has to be paid to the Ministry, in amounts that range from 1% to 2% of their income, depending on the origin of the bet and their permits.
- ii) Income Taxes (*Impuesto Sobre la Renta* – “ISR”): every individual or entity with a permanent establishment in Mexico must pay an Income Tax for all their income, within an approximate range of 30% for legal entities minus authorised deductions over expenses.
- iii) Special Production and Services Tax (*Impuesto Especial Sobre Producción y Servicios* – “IEPS”).
- iv) Local and State Taxes (depending on the state and location): some Mexican states impose additional taxes on casino users, such as value added tax (*Impuesto al Valor Agregado* – “IVA”).

2.8 What are the broad social responsibility requirements?

There is a responsibility for the prevention of gambling addiction, money laundering and criminal acts committed through authorised establishments or through the black market.

Gambling service providers’ social responsibilities are mainly towards the advertisement of gambling activities, through the non-allowance and non-promotion of underage individuals’ participation in such activities, and inviting individuals through advertisements to game and bet in a responsible and healthy way and always with the main purposes of entertainment, leisure and recreation.

All gambling personnel have to receive special training and, as stated in the answer to question 2.2, must comply with particular requirements set forth in the Law and Regulations in order to provide professional services involving brokerage, cross betting or fronton quartermaster.

In addition, the Bureau collaborates with the National Commission against Addictions (“CONADIC”) and the National Centre for the Prevention and Control of Addictions of the Ministry of Health for the prevention and treatment of gambling addictions.

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

Gambling activities are considered “Vulnerable Activities” pursuant to Mexican legislation; thus, gaming service providers and gambling Licence Holders and operators are required to comply with the regulations provided in the following laws, among others:

- i) the Federal Law on the Prevention and Identification of Transactions with Funds from Illegal Sources (the “Anti-Laundering Law”);
- ii) the Regulations to the Federal Law on the Prevention and Identification of Transactions with Funds from Illegal Sources; and
- iii) the General Rules referred to by the Federal Law on the Prevention and Identification of Transactions with Illegal Resources.

Pursuant to the Anti-Laundering Law, the execution of gambling and raffle activities, as well as the sale of tickets or tokens for such purpose, obliges Licence Holders to identify every client and user involved and verify their identity, accept requests from the clients involved regarding information about the business owner, protect information about the Vulnerable Activity and avoid the loss of this information, allow verification visits to related authorities, and give notice to the applicable authority when any of the aforementioned activities exceeds approximately US\$2,500.00.

All betting game and raffle transactions must be made in Mexican pesos. Thus, virtual currencies are not permitted for gambling.

3 Online/Mobile/Digital/Electronic Media

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

Pursuant to the Regulations, online betting on authorised gaming activities is permitted; however, online betting is only regulated with respect to online bets received by entities which already have authorisation from the Bureau, which have a physical establishment in Mexico, and which carry out authorised betting and gaming activities.

For such purposes, these activities may be carried out at racetracks, dog tracks, frontons, fairs or remote betting centres (*centros de apuestas remotas*). Remote betting centres are establishments authorised by the Ministry to hold and operate betting data on sports competitions, events and games permitted by the Law, carried out in Mexico or abroad which may be broadcasted in time. Such remote betting centres are also allowed to place online bets with respect to sport events. Pursuant to the Regulations, a remote betting centre may receive and match bets; provided, however, that it does not receive and/or match bets from or contained at remote betting centres located abroad.

As previously stated, exclusively Mexican entities can apply for Licences from the Bureau; however, as stated in answer to question 2.2, a Licence Holder may partner with a non-licensed entity, i.e. an Operator which may be located outside Mexican jurisdiction. The foreign-located Operator shall state to the Bureau that it will comply with applicable Mexican legal framework, and that it will not

change its shareholder structure (up to its ultimate parent company) unless the Ministry is informed of such change.

Furthermore, the Law and Regulations do not provide any specific prohibitions/provisions for gaming and betting via the Internet, when offered from an entity that is not related to an establishment authorised to install a remote betting centre, either foreign or Mexican.

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

In Mexico, (i) there are no specific legal provisions applicable to gaming and bets via the Internet when offered from a foreign-based or local operator, (ii) the Law and its Regulations are silent as to a Mexican person placing online bets by any means, and (iii) Mexican legal principles state that private parties are authorised to execute any kind of transaction when not specifically prohibited by Mexican law.

The legislative omission regarding independent online gaming which involves betting leaves unclear the permission or prohibition over such online supplying of gambling services. Thus, the loophole in the Law and its Regulations on this matter is covered by legislation applicable to other related matters.

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

Gambling machines and terminals are only permitted in physically established gambling facilities. Additionally, they shall be formally identified and in compliance with Mexican Official Standards (“NOMs”).

Activities conducted with machines, whereby individuals bet by inserting coins, tokens or electronic devices, subject to chance and with the purpose of obtaining a prize, are also allowed.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

The relevant Licence Holder and its operator, if applicable, are liable. Furthermore, in Mexico, legal entities are criminally liable for crimes committed on their behalf, in their name, for their exclusive benefit, by their legal representatives and/or administrators. On the other hand, directors or legal representatives of the Licence Holder may be liable for breaches made by the relevant entity.

4.2 What form does enforcement action take in your jurisdiction?

What is the approach of authorities to unregulated supplies? As stated in question 3.2, the lack of an updated gambling regulation is currently being covered by legislation applicable to other related matters, such as criminal or commercial law. In this sense, any bad practice in the provision of gambling services in Mexico could be subject to sanctions imposed by other matters such as data and consumer protection, anti-bribery, commercial or criminal matters (e.g. electronic fraud, which would be managed and prosecuted by the Attorney General’s Office).

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

No, they do not.

4.4 Are gambling debts enforceable in your jurisdiction?

No. The Regulations provide specifically that Licence Holders may not grant credit, directly or indirectly, to bettors in betting games or raffle participants, on the development of their permit-related activities.

5 Anticipated Reforms

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

As of 2014, there is a proposal to substantially amend the Law – which dates from 1947 – and, as a consequence, the complete gambling legal framework in Mexico. In general, such amendment proposes a new law aligned with technological advances, innovative business and communication models, and centred on individuals and their freedom of leisure.

In particular, it proposes to incorporate the National Institute of Games and Raffles as a new gaming regulator and autonomous authority, introduce the obligation for all personnel to be certified by such Institute, and properly introduce online gaming.

Unfortunately, to date, such proposal remains unapproved and seems unlikely to be approved within 2018.

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Montenegro

BDK Advokati

Luka Popović



1 Relevant Authorities and Legislation

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

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

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

The main piece of legislation regulating gambling activity in Montenegro is the Games of Chance Act ("Official Gazette of the Republic of Montenegro" No. 52/04; "Official Gazette of Montenegro" Nos 13/07, 73/10, 40/11, 61/13, 37/17) ("**Gambling Act**"). The law differentiates between: (i) games of chance, which include material winnings, for which the players have to pay to play, and in which the outcome of the game depends on chance; (ii) quizzes, where the outcome of the game depends on the player's knowledge, and where the player is not required to pay to play; and (iii) prize draws, which are organised for promotional purposes and where no special payment is required for participation in the game. Games of chance are regulated and can be provided only by licensed entities (concessionaires). Organisers of prize draws do not require a licence, but any instance of a prize draw must be previously approved by the Games of Chance Administration (the "**Administration**"). The organisation of quizzes is not subject to any licence or approval. Social games, with no prize in money or money's worth, and skill games, with no element of chance, do not qualify as games of chance, *i.e.*, as gambling activity, so they can be freely organised.

Regulated gambling products, *i.e.*, games of chance, are classified into two main groups: (i) lottery games; and (ii) special games of chance. In addition to land-based gambling, the Administration regulates online gambling as well.

Lottery games encompass the following games:

- (i) lottery;
- (ii) express and instant lottery;
- (iii) bingo;
- (iv) tombola and TV tombola;
- (v) lotto;
- (vi) keno;
- (vii) sports pools;
- (viii) toto (similar to sports betting, but limited to football (soccer) only);
- (ix) additional games based on lotto and toto;
- (x) video lottery;
- (xi) fonto; and
- (xii) other similar games of chance based on draws.

Special games of chance encompass the following games:

- (i) casino games;
- (ii) slot machines; and
- (iii) betting.

The primary regulatory authority for the gambling industry in Montenegro is the Administration. The Administration is under the supervision of the Ministry of Finance, and the latter acts as the second-instance authority in administrative procedures carried out by the Administration. Also, the Government of Montenegro is in charge of the award of concessions for the lottery and casino games.

Online gambling is subject to a special licence granted by the Administration. It is not a stand-alone licence, but rather a sort of upgrade of an existing concession, as it can be granted only to an operator that already holds a concession for land-based games of chance.

The legislation prohibits certain categories of games of chance, namely (i) games organised abroad where the participation fee is collected in the territory of Montenegro, (ii) games organised in free zones, (iii) games of chance where participants pay a certain amount of money to participants who have previously joined the game and expect payment of a certain amount of money from participants who would join the game later on (cash chains, etc.), (iv) betting organised in contravention of the law or contrary to good business practices or ethics, (v) betting on political elections, and (vi) in cases where the owner/shareholder of a betting shop is also the owner/shareholder of a sports club, such betting shop is prohibited from offering betting on sports events and at the level of competition in which such club is involved. The Gambling Act also regulates the concession fees payable by gambling operators.

Technical requirements for gambling operations are provided for by a series of rulebooks:

- the Rulebook on Spatial and Technical Conditions for Casinos and Forms for Daily Reports per Gaming Table (“Official Gazette of the Republic of Montenegro” No. 10/05; “Official Gazette of Montenegro” No. 14/13, 50/16);
- the Rulebook on Spatial and Technical Conditions for Slot Machine Shops and Report Forms (“Official Gazette of the Republic of Montenegro” No. 10/05; “Official Gazette of Montenegro” Nos 14/13, 50/16);
- the Rulebook on Spatial and Technical Conditions for Organizing Bingo, Tombola and TV Tombola (“Official Gazette of the Republic of Montenegro” No. 10/05; “Official Gazette of Montenegro” No. 14/13); and
- the Rulebook on Spatial and Technical Conditions for Organizing Betting Games (“Official Gazette of the Republic of Montenegro” No. 10/05; “Official Gazette of Montenegro” Nos 17/13, 50/16, 24/17).

The AML aspect of gambling operations is regulated under the Act on Prevention of Money Laundering and Financing of Terrorism (“Official Gazette of Montenegro” Nos 33/14, 4/18), which obliges gambling operators to apply the AML measures, such as client due diligence, monitoring of the business relationship, and monitoring of clients’ transactions.

The Consumer Protection Act (“Official Gazette of Montenegro” Nos 02/14, 06/14, 43/15, 70/17) is also relevant to gambling products. Although this piece of legislation does not contain gambling-specific provisions, its general rules and principles, such as protection from unfairly weighted contracts and unfair business practices, prohibition of misleading advertising, etc., apply to gambling operations as well.

The Value Added Tax Act (“Official Gazette of the Republic of Montenegro” Nos 65/01, 12/02, 38/02, 72/02, 21/03, 76/05, 04/06; “Official Gazette of Montenegro” Nos 16/07, 73/10, 40/11, 29/13,

09/15, 53/16, 01/17, 50/17) is of relevance as it provides for the exemption from the application of value-added tax on gambling products.

The Rulebook on Commercial Audio-visual Communications (“Official Gazette of Montenegro” No. 36/11) prohibits advertisement of gambling during programmes designated for minors.

2 Application for a Licence and Licence Restrictions

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

Relevant Products may be offered by operators holding a concession for a particular gambling product. A separate concession can be granted for (i) lotteries, (ii) tombolas, (iii) casino games, (iv) slot machines, and (v) betting.

In addition to the appropriate concession being in place, an operator must obtain a certificate of technical compliance for slot machines and gaming tables, if applicable.

The granted concession covers land-based gambling products only, and in order to be able to offer gambling products online, concessionaires have to obtain an additional licence. Therefore, licences for online operations can be issued only to an entity already holding a concession for land-based operations, and cannot be granted as a stand-alone licence.

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

Licences (concessions) can be granted only to a Montenegrin company organised either as a limited liability company (*društvo sa ograničenom odgovornošću*) or as a joint-stock company (*akcionarsko društvo*). Licences cannot be granted to other types of companies, foreign companies, or individuals.

Licences for lottery games and casino games are granted on the basis of the decision of the Government of Montenegro and following a competitive public award procedure, whereby a licence for the lottery can only be issued to a single lottery operator. Licences for other gambling products are granted by the Administration upon the operator’s request and do not involve a competitive procedure.

Licences are required only for gambling operators themselves: there are no licensing requirements for other parties involved in the business with the operator, such as suppliers of equipment or facilities.

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

The licence award process for lottery games and casino games differs from the award process for other types of games of chance, in that licences for lottery/casino games can only be issued through an open competitive procedure. This means that interested parties can only apply for a lottery/casino licence when a public procedure has been launched by the Government.

Lottery

The documents that must be provided with the application for a lottery licence are determined in the public call for the award of the licence, and there are no specific guidelines for such provided

under the regulations. The public call must also contain the criteria for the award.

The lottery licence may only be granted to a company incorporated in Montenegro as a joint-stock company. The regulations limit the number of lottery licences to one.

No specific administrative fee is prescribed for the licence application.

Casino

The documents/information to be delivered with the application for a casino licence (following the public call) are as follows: (i) the name and seat of the company; (ii) proof of registration of the company; (iii) a memorandum of association; (iv) a three-year business plan; (v) proof that the minimum share capital requirement of EUR 300,000 is satisfied; (vi) information on the games that will be provided in the casino; (vii) game rules; (viii) information on the planned casino managers and proof of their education and qualification for managing the casino's operations; (ix) casino rules; (x) data on the type and number of gambling machines, with a detailed description for their identification; and (xi) proof that the authorised persons have not been convicted for criminal offences in relation to payment systems and commercial operations and that there are no pending criminal proceedings for such offences. The operator who is awarded the licence must also deliver proof of ownership of, or right to use, appropriate premises for the casino, and proof of a bank deposit or bank guarantee (as security for payment of the concession fees).

The administrative fee payable for the application amounts to EUR 300.

The criteria for the award of the casino licence in the open competitive procedure are determined in the public call. After the decision on the award of the licence is issued by the Government, the awarded operator enters into a concession agreement with the Administration, which regulates mutual rights and obligations.

The awarded casino operator is obliged to pay a one-off fee of EUR 2,000,000.

Tombola

Applications for tombola licences must be submitted to the Administration along with the following documents/information: (i) the name and seat of the company; (ii) proof of registration of the company; (iii) a memorandum of association; (iv) a three-year business plan; (v) proof of ownership of, or the right to use, business premises; (vi) game rules; (vii) proof that the minimum share capital requirement of EUR 75,000 is satisfied; (viii) proof of fulfilment of technical conditions; (ix) proof of bank deposit or bank guarantee; and (x) proof of payment of the administrative fee.

The administrative fee payable for the application amounts to EUR 25.

If the application satisfies all the statutory requirements, the operator and the Administration enter into a concession agreement regulating mutual rights and obligations.

Betting

Applications for betting licences must be submitted to the Administration along with the following documents/information: (i) the name and seat of the company; (ii) proof of registration of the company; (iii) a memorandum of association; (iv) a three-year business plan; (v) proof of ownership of, or the right to use, business premises; (vi) betting rules; (vii) proof that the minimum share capital requirement of EUR 75,000 is satisfied; (viii) proof of fulfilment of technical conditions; (ix) proof of bank deposit or bank guarantee; and (x) proof of payment of the administrative fee.

The administrative fee payable for the application amounts to EUR 25.

If the application satisfies all the statutory requirements, the operator and the Administration enter into a concession agreement regulating mutual rights and obligations.

Slot machines

Applications for slot machine licences must be submitted to the Administration along with the following documents/information: (i) the name and seat of the company; (ii) proof of registration of the company; (iii) a memorandum of association; (iv) a three-year business plan; (v) proof that the minimum share capital requirement of EUR 75,000 is satisfied; (vi) game rules; (vii) data on type and number of slot machines, with a detailed description for their identification; and (viii) proof that the authorised persons have not been convicted for criminal offences in relation to payment systems and commercial operations and that there are no pending criminal proceedings for such offences.

The administrative fee payable for the application amounts to EUR 25.

If the application satisfies all the statutory requirements, the licensee and the Administration enter into a concession agreement regulating mutual rights and obligations.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Licensees have a general obligation to honour the provisions of the concession agreement entered into with the Administration, and to maintain compliance with the technical and other regulatory requirements until the concession agreement's expiry. Licensees' operations are strictly limited to the particular gambling product the licence was granted for, and they cannot engage with other products without a separate licence. The exemption from this rule is casinos, as the casino licence includes the right to offer slot machines as well.

Licensees operating betting shops and slot machine shops, or offering gambling products online, are obliged to establish and maintain a continuous online connection between their electronic control system and the Administration's IT system.

Providing credit to players is prohibited for all licensees and for all types of games, without exception.

There is a mandatory requirement for licensees to maintain the mandatory share capital level. The minimum capital for casinos is EUR 300,000 and for the betting/slot machines/tombola operations it is EUR 75,000. There is no such requirement for the lottery.

With the exception of the lottery operator, licensees must keep either security deposits or bank guarantees as a security for the payment of the concession fees and other duties. The minimum amount of the deposit/bank guarantee is set at (i) EUR 10,000 for tombola, (ii) EUR 30,000 for the first betting shop plus EUR 2,000 for each additional betting shop, (iii) EUR 25,000 for up to three slot machine shops, plus EUR 2,000 for each additional shop, and (iv) EUR 90,000 for casinos.

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

Licences are granted for a fixed term, and are generally extendable, as follows:

- Lottery – 10 years, extendable once for up to five years.
- Tombola – three years, extendable once for up to two years.
- Casino – 10 years, extendable once for up to five years.
- Betting – three years, extendable once for up to two years.

- Slot Machines – three years, extendable once for up to two years.
- Online gambling – the Gambling Act is silent on the duration of the term for online gambling licences, but in practice it is issued for a three-year term, with an unrestricted extension option so it can match the duration of the underlying land-based licence.

Applications for licence extensions must be filed with the Administration at latest three months before the expiry of the original term. There are no fees payable for the extension nor any additional requirements to be satisfied, so extensions are routinely granted in practice.

Licences may be revoked if one of the following cases, exhaustively prescribed by the Gambling Act, occurs: (i) the concession was granted on the basis of incorrect data; (ii) the concessionaire did not start operations within the commencement deadline set out under the concession agreement; (iii) the concessionaire stopped the operations in violation of the Gambling Act; (iv) the concessionaire failed to comply with the prescribed technical, IT, and other requirements; (v) the concessionaire breaches the rules of the games of chance; (vi) the concessionaire fails to pay duties under the Gambling Act or fails to pay winnings to players; (vii) the concessionaire does not allow, or otherwise prevents, the supervision to be performed in accordance with the Gambling Act, or makes the supervision difficult; (viii) the concessionaire incorrectly reports the realised turnover; (ix) the concessionaire lends money to players; (x) the concessionaire breaches the concession agreement; or (xi) facts subsequently become known due to which the concession would not have been granted.

The Administration's decision on revocation of the licence is not final, and it can be appealed to the Ministry of Finance. Furthermore, the Ministry's decision on the appeal can be challenged before the court.

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

Minors under 18 are not permitted to enter casinos, betting shops, or slot machine shops. Gambling facilities must be at least 250 metres away from primary and secondary schools.

It is not permitted to offer betting on presidential, parliamentary, and local elections. It is also not permitted to offer Relevant Products to customers in free zones.

Gambling activity is restricted to entities licensed in Montenegro, and this principle is articulated through several prohibitions. Namely: it is forbidden for customers to participate in games organised abroad if the stakes are paid in the territory of Montenegro; it is forbidden to collect stakes in Montenegro for games organised abroad; and it is forbidden to sell, market, or advertise foreign gambling and lottery tickets in Montenegro.

Advertisements in electronic media cannot promote gambling as a lifestyle or virtue which helps solve life problems, nor can gambling be advertised in programmes aimed at children or 15 minutes before or after such programme. Also, the consumer protection rules provide for a general prohibition of advertising that may jeopardise the health, mental or moral development of minors, which can be interpreted as prohibition of gambling advertisements in any type of media aimed at minors (e.g. books, newspapers, magazines, etc.).

2.7 What are the tax and other compulsory levies?

Relevant Products are subject to concession fees under the Gambling Act, which are determined either as fixed fees or variable fees:

- Lottery – no fixed fee. Variable fee: (monthly) 10% of the sold lottery tickets, less the prize fund.
- Tombola – no fixed fee. Variable fee: (monthly) 10% of the sold lottery tickets, less the prize fund.
- Casino – fixed fee: (annually) EUR 50,000. Variable fee: (monthly) 10% of the stakes received, less the winnings paid out. Additionally, the operator is obliged to pay a one-off fee of EUR 2,000,000 for the award of the concession.
- Betting – fixed fee: (monthly) EUR 500 per betting shop. Variable fee: (monthly) 10% of the stakes received, less the winnings paid out.
- Slot machine – fixed fee: (monthly) EUR 50 per slot machine. Variable fee: (monthly) 10% of the stakes received, less the winnings paid out.
- Online gambling – fixed fee (monthly) EUR 10,000. No variable fee.

All gambling operators are subject to the annual corporate tax of 9% of the net profit.

Gambling products are exempted from VAT.

2.8 What are the broad social responsibility requirements?

The Gambling Act makes a general reference to the principle of protection from risks of criminal, fraud and other adverse impacts pertaining to games of chance, but it largely falls short of providing concrete measures or requirements in that sense. Some restrictions are imposed in the field of protection of minors, so persons under 18 are not permitted to enter casinos, betting shops, or slot machine shops, and gambling facilities of any kind must be at least 250 metres away from schools.

There are not any particular rules aimed at the prevention of problem gaming.

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

The key AML requirement for gambling operators is customer due diligence. This is mandatory when establishing business relationships with customers, whereby the relevant business relationship in this context is one which is expected to be of a lasting nature. The regulations particularly impose this obligation when customers open online gambling accounts. Customer due diligence is also required when the value of a transaction (money spent or won), or a series of related transactions, is EUR 2,000 or above. Furthermore, the customer's identity must be checked at the point of entry to the casino.

Providing credit to players is prohibited, but there are no other relevant restrictions related to payment. Bank cards can be used without restriction as long as there are no limitations set by the card issuer, which may regularly be the case if the bank card is issued in a country with a restrictive gambling regime. The gambling facilities in Montenegro are assigned gambling merchant codes for

card processing purposes, so customers have to take into account whether or not their card is restricted for gambling.

Cryptocurrencies are not regulated in Montenegro, and their use for gambling purposes has not been tested in practice.

3 Online/Mobile/Digital/Electronic Media

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

Provision of Relevant Products via the internet or by other other means of telecommunication (online gambling) is permitted subject to a special licence which can be granted only to operators that already hold a licence for land-based operations. The provisions regulating online gambling are scarce and the matter is underregulated. The only requirement for holders of licences for online gambling is to establish an online connection between the licensees' electronic control system and the Administration's IT system.

Licences for online gambling are granted without any specification, or limitation, of the type or number of games which can be offered. In practice this means, for example, that an operator with a concession for land-based slot machines who is granted an online licence can offer betting games online.

Only Montenegrin companies holding a concession for land-based games are eligible for an online licence, so it cannot be granted to operators outside the jurisdiction.

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

There are no other relevant restrictions.

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

Betting terminals are permitted and can be placed in betting shops, casinos, or slot machine shops. There are no special guidelines or restrictions related to terminals.

The use of terminals in hospitality facilities has been a controversial subject over the past couple of years. Namely, the possibility to place betting terminals in hospitality facilities was introduced in 2016 through an amendment to the Rulebook on Technical Conditions for Provision of Betting Games, the amendment being found by the Constitutional Court as non-compliant with the Gambling Act. The end result is that no new licences can be issued for betting terminals in hospitality facilities, while the existing ones will remain until expiry of the term for which they were issued.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Supply of Relevant Products without a proper licence (*i.e.* without entering into a concession agreement with the Administration) is a criminal offence punishable by a monetary fine or imprisonment of up to two years. The same penalties are prescribed for selling

gambling tickets or for collecting payments for games organised abroad.

The liability for these criminal offences lies with the entity or person who was involved in the illegal gambling operations with intention. Liability of other persons in the supply chain would depend on the nature of their involvement. For example, mere supply of gambling machines to a person who does not have a gambling concession is not punishable *per se*, but if the supplier was aware that the machines were intended for illegal activity, and acted with intention to assist in such activity, that may trigger the supplier's criminal liability.

Licensed organisers of Relevant Products who breach various requirements of the Gambling Act related to specific games can be fined for misdemeanour with a monetary fine of up to EUR 20,000.

The regulations do not provide for any specific penalty or sanctions for players of Relevant Products.

4.2 What form does enforcement action take in your jurisdiction?

The enforcement action related to breaches of the gambling regulations would depend on whether the committed breach constitutes a criminal act or misdemeanour. In the case that the breach qualifies as a crime (such as provision of Relevant Products without a licence), it will be prosecuted in criminal proceedings before criminal courts. Otherwise, the breach will be prosecuted in misdemeanour proceedings before specialised misdemeanour courts.

Where the perpetrator is convicted for a crime related to illegal gambling, the equipment or machines used for the illicit operations are regularly seized.

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

There are no non-national laws that impact upon liability and enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

Gambling debts arising from games organised by licensed operators in Montenegro are enforceable. Since player credit is not permitted, this practically relates to operators' debts for players' winnings. Such debt can be collected subject to the rules of a particular game, which may impose a time limit for collection.

5 Anticipated Reforms

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

Amendments to the Gambling Act have been planned for a while, aiming to improve the current legislation.

The award of concessions for lottery games is currently not subject to an award fee, and this is expected to be changed as the lottery concession is about to be put out to tender for the first time. Certain lottery games have to be clarified, such as the game "toto", which in practice has been confused with betting games.

Online gambling is underregulated, so more extensive regulation is expected in this field.

The controversial question of placing gaming terminals outside gambling facilities should also be covered by the regulatory changes.



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Luka is a partner in the Montenegrin office of BDK Advokati, and is a member of the Montenegrin Bar Association. He was an arbitrator of the Arbitration Board for the Resolution of Consumer Disputes at the Chamber of Commerce of Montenegro for one mandate.

Luka has been managing BDK Advokati's Montenegrin operations since 2013. He is involved in all aspects of the firm's Montenegrin work, and maintains special industry focus on gaming and hospitality. Luka is the head of the firm's gaming practice.

IFLR1000 recognises Luka as a highly regarded lawyer, *The Legal 500* regards him as a leading individual in the legal market, and *Chambers & Partners* ranks him as a top-tier lawyer in Montenegro.



BDK Advokati (BDK) is a full-service law firm with offices in Belgrade (Serbia), Podgorica (Montenegro) and Banja Luka (Bosnia and Herzegovina).

With three offices in the region, distinct practices and industry sectors, BDK is able to offer clients top expertise and premier service standards. BDK is recognised and recommended by the most reputable international directories of the legal profession, such as *Chambers & Partners*, *The Legal 500* and *IFLR*, while BDK partners are ranked among the leading lawyers in their areas of expertise.

BDK is a member of the South East Europe Legal Group (SEE Legal), an organisation assembling leading independent law firms from 12 jurisdictions in South East Europe, which allows BDK to quickly assemble regional teams for cross-border transactions involving jurisdictions outside our direct coverage.

Netherlands

Bas Jongmans



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Gaming Legal Group / GLG Litigation

1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Kansspel- autoriteit	Kansspel- autoriteit
	Poker		
	Bingo		
Betting	Betting	Kansspel- autoriteit	Kansspel- autoriteit
	Sports/horse race betting (if regulated separately to other forms of betting)		
	Fantasy betting (payment to back a “league” or “portfolio” selection over a period of time; for example, in relation to sport or shares)		
Lotteries	Lotteries	Kansspel- autoriteit	Kansspel- autoriteit
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Kansspel- autoriteit	Kansspel- autoriteit
	Skill games and competitions with no element of chance		

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

The Netherlands (Country of the Netherlands, Dutch: “Nederland”) is the main “constituent country” of the Kingdom of the Netherlands. For more information on the Dutch Caribbean and the former (dissolved on 10 October 2010) “Netherlands Antilles” (Dutch: “Nederlandse Antillen”), we would like to refer you to our chapter on the Dutch Caribbean.

As of 1 April 2012, gambling activities originating from and/or aimed at the Netherlands are regulated by the “Dutch Gaming Authority” (Dutch: “Kansspelautoriteit”, or: “KSA”). Regulation includes licensing, compliance, the gathering of intelligence and investigation of potential violations of the “Dutch Gambling Act of 1964” (Dutch: “Wet op de kansspelen”, or: “WOK”). Local municipalities supervise the licensing as well as the operation of local events within their region, which also includes the monitoring of gambling machines in public houses. The “Dutch Metrological Institute” (Dutch: “Nederlands Metrologisch Instituut”, or: “NMI”) provides for testing and compliance, ensuring the technical fitness of gambling machines. The KSA operates as an independent administration under the responsibility of the Dutch Government. This task has been delegated to the Dutch Undersecretary (“Staatssecretaris”) of Security and Justice. The KSA has also been involved in preparations for the launch of a legal framework that should have accommodated the distribution of online gambling licences, officially as of 1 January 2015. However, the proposed legislation was met with heavy criticism from the market as well as the Dutch parliament. In 2014, Gaming Legal Group had already predicted that the draft legislation in its current form would not be workable and acceptable.

A game of chance is by Dutch law defined as an opportunity to compete in the distribution of a prize or premium in connection with the outcome of a random event on which the participants do not have a predominant influence. Under Dutch law, games of chance may be domestic or foreign in origin. A game of chance is deemed domestic if the organiser/operator is a private individual who is deemed a resident of the Netherlands, or a legal entity which is deemed to have its statutory seat within the Netherlands. Since certain financial instruments also meet the abovementioned criteria (stock options, binary options, contracts for difference), the legal definition of a game of chance is limited by the *European Markets in Financial Instruments Directive II* (“MiFID II”), which has been implemented in the *Wet op het financieel toezicht* (“Wft”). Therefore, services and products

deemed financial instruments are excluded from the legal definition of a game of chance. This prevents two regulators, KSA and/or the financial regulator *Autoriteit Financiële Markten* (or “AFM”), from claiming authority. European privacy regulations have been implemented in the *Algemene Verordening Gegevensbescherming* (“AVG”). Oversight over these regulations is tasked to Dutch privacy watchdog *Autoriteit Persoonsgegevens* (“AP”).

Currently, in the Netherlands no framework for online gambling is in place. As a consequence, all forms of online gambling are prohibited. Operators cannot opt for a licence at this time.

On 7 July 2016, consensus was reached on the proposed legislation which was then passed to the Dutch Senate for final approval or rejection. The main cause of the many delays has been disagreement between various parties regarding the tax rate to be levied. Originally, a 20% tax rate was proposed for online gaming against a 29% tax rate for land-based casinos. This proposal was opposed by Gaming Legal Group on behalf of many land-based operators who felt that their business would suffer. The proposal was then amended; in its final version, a 29% tax rate is levied from online as well as land-based operators. Despite opposition by the online operators, this proposal was accepted.

Draft legislation currently resides with the Dutch Senate for final approval or rejection. Nevertheless, the Dutch market for online gambling is not expected to *de facto* open up any time soon. The Dutch regulator, KSA, has seen its share of recent departures of key figures including its chairman, Marja Appelman. Several large operators have abandoned their plan to opt for a Dutch licence and have moved on, since currently there is doubt on whether the regulator has the stamina and manpower to coordinate the introduction of a new regulatory system.

It is at this time more likely that the Dutch Gaming Market shall develop in a *de facto* private monopoly. The first signs of this potential outcome have presented themselves. Dutch operators of substantial size have engaged in merging, hence forming one market-dominant private operator.

Violations of the WOK are deemed economic offences, punishable by law under the “**Economic Offences Act**” (Dutch: “*Wet op de economische delicten*”, or: “**Wed**”). With respect to criminal prosecution, the Public Prosecutor has authority; however, the KSA also has the mandate to impose sanctions (administrative fines, including (more or less) a mandate to “name and shame”). If an administrative sanction has been imposed, the same offence shall not be prosecuted by the public prosecutor (“*una via*”, or: “one road” principle).

A game of chance is by Dutch law defined as an opportunity to compete in the distribution of a prize or premium in connection with the outcome of a random event on which the participants do not have a predominant influence. Under Dutch law, games of chance may be domestic or foreign in origin. A game of chance is deemed domestic if the organiser/operator is a private individual who is deemed a resident of the Netherlands, or a legal entity which is deemed to have its statutory seat within the Netherlands. Since certain financial instruments also meet the abovementioned criteria (stock options, binary options, contracts for difference), the legal definition of a game of chance is limited by MiFID II, which has been implemented in the Wft. Therefore, services and products deemed financial instruments are excluded from the legal definition of a game of chance. This prevents two regulators, KSA and/or the financial regulator *Autoriteit Financiële Markten* (or “AFM”), from claiming authority. European privacy regulations have been implemented in the *Algemene Verordening Gegevensbescherming* (“AVG”). Oversight over these regulations is tasked to AP.

2 Application for a Licence and Licence Restrictions

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

Depending on the specific nature of supply, a supplier is required to hold a supplier’s licence.

In general, all Dutch licence application procedures are mainly focused on ensuring that those offering games of chance are suitable (fit and proper) to do so and that their operations will be of a low and therefore acceptable risk to the public. As part of the application and compliance procedures, the applicant is required to provide documentation on the following:

- (1) Identity and ownership.
- (2) Current affairs and history.
- (3) Integrity.
- (4) Competence.
- (5) History of any criminal behaviour.

Gambling facilities, such as software, may be freely produced without a licence. Software may be supplied to foreign operators in a business to business (B2B) environment, if this operator has been fully certified to offer online games of chance to specified legal markets. Dutch AML regulations such as the *Wet ter voorkoming van Witwassen en Financiering van Terrorisme* (“**Wwft**”) make suppliers that cater to the gaming market subject to regular inspections.

Gambling machines may be sold to the market without a specific gambling licence, although machines should always be certified to comply with the legally required specifications.

Gambling machines may be owned by anyone if they are not being operated (thus for collection purposes). If gambling machines are operated and the machine is being leased from the owner, the owner (lessor) as well as the *de facto* operator (lessee) is required to hold specific licences.

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

In principle, an applicant should have its principal or a subsidiary permanent establishment somewhere within the European Union or European Economic Area, or in a state that has been identified by the Dutch Minister of Justice as having sufficient safeguards against criminal activity such as money laundering and the financing of terrorism. These criteria have been codified in the abovementioned Wwft.

Wwft provisions are generally aimed at two goals:

- (1) the notification of unusual and/or irregular transactions; and
- (2) the identification of transaction participants.

The Wwft includes some standard notification requirements regarding larger withdrawals, deposits and/or cash payments. The identification requirements are extensive, since these include the screening of several categories of persons, if involved, such as political figures and/or persons who have been suspected in the past of preparing terrorist or other criminal activities such as money laundering and tax evasion. The identification and notification requirements are in general limited to professionals and/or persons involved in rendering specific professional services. Professionals who do not execute Wwft obligations properly may be held liable. Ideally, the applicant should

have full legal status as a legal entity. Alternatively, a legal partnership (Dutch: “*Vennootschap onder Firma*”, or: “**VOF**”) or private individual may also qualify. Participants such as legal entities and/or private individuals who function as ultimate beneficial owners are required to present evidence of good standing and reputation. This proof could be provided via a certificate of good standing that has been issued by the local or national administration, and can also include a recommendation by a private individual. These requirements may also be extended to members of the staff who operate within certain establishments that offer games of chance.

Depending on the type of licence, third parties may also be required to hold a specific licence for their appointed tasks. For example, in the case of gambling machine operation, the legal owner of the gambling machine is required to hold a specific ownership licence. However, the proprietor of an arcade establishment is required to hold a separate arcade licence with an additional licence attached in which the maximum number of allowed gambling machines is described. In addition to all these requirements, by law, a separate integrity check must be performed. The specifics of these integrity assessments are being regulated by the “**Administrative Integrity Assessments Act**” (Dutch: “*Wet Bevordering Integriteits Beoordelingen door het Openbaar Bestuur*”, or: “**BIBOB**”). This integrity assessment may be performed by the local administration and/or municipality, nicknamed: “**Small Integrity Assessment**” (Dutch: “*kleine BIBOB*”). The local administration may also opt to invoke a national assessment screening, which is performed by the national BIBOB institute, nicknamed: “**Large Integrity Assessment**” (Dutch: “*grote BIBOB*”). This investigation results in non-binding advice in which the licence applicant’s risk status is earmarked as low, medium or high. Since the abovementioned advice is non-binding, the administrative body that has opted for the national BIBOB assessment has a final say in the matter. Due to the extensive amount of research involved with a national assessment procedure, the concrete application procedure may take up to a year to reach completion. The licence applicants are required to pay for all integrity assessments. Whether or not an administrative authority will opt for a small or large integrity assessment, traditionally, heavily depends on the region. For example, the region of Amsterdam is infamous for opting for a large integrity assessment. Depending on the scope of the investigation, costs for initiating this procedure may vary from EUR 500 up to EUR 5,000.

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

Due to lack of transparency, typical for various application procedures required for collecting all necessary licences, it is recommended that a licence applicant seeks professional advice before completing and returning any forms that may have been made available by local and/or national authorities. Please note that national and/or local authorities do not offer the option of informal pre-compliance, so that any irregularities (even if they were initial) may result in an undesired track record. In 2016, the Dutch gambling regulator invited potential licence applications to “pre-register” for an online gambling licence. Gaming Legal Group feels that this pre-registration does not bring an applicant in a better position and one should first seek professional guidance before entering into any application process whatsoever.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Licences may come with additional rules and limitations attached, which may be amended, supplemented, or revoked by the proper authorities at any time. Depending on the circumstances, additional

rules and regulations may be added to the already existing duties of the licence holder regarding methods of player recruitments and solicitation. Furthermore, the licence holder is, by law, at all times required to be fully aware of the signals of gambling addiction, and he or she is required to execute policies aimed at the prevention of risks that are associated with gambling addiction.

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

Time limits on applications are heavily dependent on the application of a specific type of licence. For example, a gambling machine ownership licence could be relatively easily obtained within the time frame of a month, whereas the application for an arcade establishment licence could take years. Duration of an issued licence also varies. Some licences need to be extended every year, while location-based licences can have a duration of several, up to 10 years. One should therefore consult with a local professional prior to starting any desired application procedure.

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

The operation of the licence holder is strictly limited to the scope of its specific licence. Due to the nature of the abovementioned WOK legislation, any non-licensed activities connected to gambling operations will be stipulated as illegal and open up the participating subject or subjects to criminal prosecution. In this regard, a noteworthy subject of interest is the current position of the operation of online games of chance. These specific activities are currently restricted since the WOK legislation does not provide for a licensing structure.

2.7 What are the tax and other compulsory levies?

Dutch gambling tax, “*Kansspelbelasting*”, or: “**KSB**”) is a source tax; individuals and/or entities may be taxed with KSB at a rate of 29%. The rate was temporarily increased on 1 January 2018 to 30.1% in order to compensate for the delay in the regulation of online gambling. The tax rate shall be decreased again, six months after the online gaming regime has come into force. As Gaming Legal Group already predicted last year, the online regime did not come into force, and as a result, the increase shall not be cancelled any time soon. KSB is levied from:

1. Operators who have the legal ownership of gambling machines. The tax is calculated over the gross revenues. These machine owners are solely responsible for the payment of this type of gaming tax, even if these machines are placed with third parties, such as in a public house. In 2012, the Amsterdam Higher Tax Court ruled that the entire legal taxation paragraph was in violation of the First Protocol with the Human Rights Treaty, since it was deemed excessive. This ruling, however, was overturned in 2012 by the Dutch Supreme Court, who ordered The Hague Higher Tax Court to investigate ramifications for individual entrepreneurs. As mentioned above, in July 2015, in this individual case, an amount of EUR 1.4 million was awarded in damages. The operator was represented by Gaming Legal Group.
2. Operators of table games. This currently involves only one entity, the state-owned Holland Casino. However, illegal operators may also be taxed under this provision.
3. Those who operate domestic *online* games of chance. Please note, this currently only involves illegal operators since no

legal paragraph is yet in force that provides for games of chance that are legal.

4. Those who are entitled to prizes that exceed the amount of EUR 449 (exemption of 2016), won by participating in a (land-based) Dutch game of chance that is not a table game or machine-operated game. Please note that it is expected that this threshold will be significantly lowered when (and if) the proposed online gambling regime comes into force.
5. Dutch residents who are entitled to prizes that exceed the amount of EUR 449 (exemption of 2016), won by participating in any foreign game of chance.

These tax provisions have been and still are under constant legal scrutiny and dispute due to potential conflicts with European Directives and basic European rights such as the European right to freedom of establishment and freedom of services. The enforcement of several provisions has been limited by national and international case law.

Private individuals who have paid KSB may, under certain circumstances, deduct this source tax from their personal income tax.

Those who offer games of chance are exempt from indirect, value-added tax. Due to this exemption, they are not allowed to deduct payable VAT on costs of operations, resulting in a higher cost base.

Compulsory levies include a yearly payable administrative destination fee for licence-holders, to provide for KSA funding, varying from EUR 1,000 up to EUR 50,000 (in 2016).

The fee for arcade proprietors and/or gambling machine-owners is based on the maximum number of allowed gambling machines (*de facto*, spaces are counted, not the number of machines actually present).

2.8 What are the broad social responsibility requirements?

Social responsibility requirements usually include a substantial donation to charity; furthermore, market participants are required to participate in the compensation and prevention of effects connected to addictive behaviour.

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

As of 2014, several Dutch payment providers entered into an agreement with the Dutch regulator to discontinue services for online gambling operators who are deemed illegal. This covenant has been initially aimed at blocking payments to (sanctioned) foreign operators who (still) continue to target the Dutch market. However, it is expected by Gaming Legal Group that the scope of this covenant shall be extended to also block future Dutch providers who shall not comply with (future) domestic regulations for online gambling. Furthermore, it is expected that the regulator will follow the European trend in targeting any operation that fails to disclose ultimate beneficial owners, often shielded by a trust and/or fiduciary ownership. In 2015, the KSA also imposed a fine to several trust companies abroad, suggesting that these companies facilitated the illegal offering of games of chance. As these cases unfolded, as it appears, no case against a trust company has held up in court. On 8 September 2016, additional AML provisions in the Wwft were added to the authority of the KSA, making it possible for the KSA to impose administrative sanctions to operators, held in violation of AML regulations.

Cryptocurrencies remain at this time unregulated in the Netherlands.

3 Online/Mobile/Digital/Electronic Media

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

Currently, in the Netherlands no framework for online gambling is in place. As a consequence, all forms of online gambling are prohibited. Operators cannot opt for a licence at this time.

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

No gambling opportunities may be offered via online means at this time.

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

Gambling machines and terminals must be approved by the NMI. In public houses, a maximum of two gambling machines is allowed. Placement conditions for gambling machines in arcades depend on local administrative policies.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

All (licensed or unlicensed) persons who engage in licence-restricted activities are primarily held responsible in case of violations. However, third parties, including legal and tax professionals, may also be held responsible if it is established that they have (on a structural basis) consciously supported and/or assisted persons in committing offences and/or crimes.

The Dutch regulator KSA has the authority to sanction those who are in violation of the WOK. KSA also has the authority to intervene in illegal operations. Sanction policies have been made public via a “sanction factsheet”, available to download at the KSA website (kansspelautoriteit.nl).

4.2 What form does enforcement action take in your jurisdiction?

Administrative measures include the optional use of administrative force (in cooperation with police law enforcers) or by imposing a conditional, progressive penalty. The KSA is also allowed to punish violators by imposing an administrative fine, maximised at EUR 830,000 (in 2018). The KSA may also demand the removal of certain commercial outings, demand a blockade of payments and/or exchange information with other gambling regulators.

In principle, a violator will receive administrative punishment. However, certain aggravating circumstances may lead to criminal prosecution and punishment. If an administrative sanction is imposed, the violator can no longer be prosecuted on a criminal basis.

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

The Netherlands is a member of the “*Financial Action Task Force*” (“**FATF**”) and has adopted and codified FATF (fourth) AML standards in its local legislation and regulations.

Several gambling law and tax provisions have been and still are under constant legal scrutiny and attack due to potential conflicts with European Directives and basic European rights such as the European right to freedom of establishment and freedom of services. Enforcement of several provisions has been limited by national and international case law.

4.4 Are gambling debts enforceable in your jurisdiction?

Article 7A:1825 of the Dutch Civil Code states that obligations resulting from participating in a game of chance are only enforceable if the game was offered on a legal basis. However, if the loser has paid voluntarily, he may not claim restitution, unless there has been fraud on the part of the winner. If the obligations are indeed enforceable, a judge may reduce obligations if these are deemed excessive.

5 Anticipated Reforms

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

The Dutch have been endlessly debating rules and regulations for the domestic online market. Although legislation for such an online regime was adopted by Dutch parliament in 2016, it is yet to be approved by the Dutch Senate. Even if the regulation shall be approved, it already seems to have been outdated. Furthermore, with recent departures of key officials including its former chairman Marja Appelman, many doubt if the Dutch regulator has the experience and stamina to coordinate a successful implementation of the online gambling regime within the Netherlands.

As a result, many operators have moved on to opt for a Malta licence in light of European *Gambelli* case law.

The views of Gaming Legal Group on the Dutch online regime have been debated and discussed all over the world. For a closer view on developments, please contact any of our teams in the Netherlands, Malta, Curaçao, the Dominican Republic or Cyprus.

Note

Please note that Gaming Legal Group and its affiliated entities cannot accept liability for this publication, since one should always consult a legal professional for the purpose of retaining individual advice.



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Bas Jongmans, attorney at law, studied tax litigation at Leiden University, specialising in the offset of tax losses. After working for several years within several international and litigation tax practices, he launched "**Gaming Legal Group**", a symbiosis between the law firm "**GLG Litigation**" and "**GLG Compliance**".

Bas is a member of the "**Dutch Order of Tax Advisors**" (Dutch: "*Nederlandse Orde van Belastingadviseurs*", or: "**NOB**"), the "**Dutch Bar Association**" (Dutch: "*Nederlandse Orde van Advocaten*", or: "**NOVA**"), the "**Dutch Order of Mediators**" (Dutch: "*Nederlands Mediation Instituut*", or: "**NMI**") and the "**Dutch Association of Attorneys and Tax Litigators**" (Dutch: "*Nederlandse Vereniging van Advocaten-Belastingkundigen*", or: "**NVAB**").

Bas has produced various scientific publications within various areas of expertise, available for download at www.gaminglegal.com.



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GAMING LEGAL GROUP | Litigation & Compliance

"**Gaming Legal Group**" is a symbiosis between the law firm "**GLG Litigation**" based in the Netherlands, specialising in gaming litigation, and "**GLG Compliance**" based in the Netherlands, Malta, Cyprus, Curaçao and the Dominican Republic, specialising in all matters of compliance.

Gaming Legal Group has rapidly built itself a reputation as a worldwide-renowned niche specialist in the field of gaming. It has a focus on hybrid cases in which government, tax, civil and financial law are often combined. Gaming Legal Group always tries to aim for a scientific and/or innovative approach. This is what makes Gaming Legal Group a worldwide "mover and shaker".

The leading opinions of Gaming Legal Group are followed worldwide. Would you like to know more? Please take a look at our other chapters in this guide covering Malta, the Dutch Caribbean and the Greater Antilles, check out www.gaminglegal.com or follow us on Twitter @gaminglegal.

GLG Litigation: Attorneys at Law

Although it is preferable to prevent a legal procedure, the attorneys of GLG Litigation specialise in gaming-related court procedures as well as equine law. Our attorneys represent clients in the courts of the Netherlands as well as in the Dutch Caribbean.

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Brækhus Advokatfirma DA

1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	The Norwegian Gaming and Foundation Authority (<i>Lotteri- og Stiftelsestilsynet</i>).	
	Poker		
	Bingo		
Betting	Betting	The Norwegian Gaming and Foundation Authority (<i>Lotteri- og Stiftelsestilsynet</i>).	
	Sports/horse race betting (if regulated separately to other forms of betting)		
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)		
Lotteries	Lotteries	The Norwegian Gaming and Foundation Authority (<i>Lotteri- og Stiftelsestilsynet</i>).	
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Not applicable.	
	Skill games and competitions with no element of chance		

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

Gambling activities in Norway are regulated by the following acts:

- The Totalisator Act of 1 January 1927 no. 3.
The Totalisator Act regulates horse racing and related betting activities and prescribes that said activities require authorisation.
- The Gaming Scheme Act of 28 August 1992 no. 103.
The Gaming Scheme Act grants Norsk Tipping the exclusive right to operate gaming schemes related to sporting events and other competitions that are not governed by other acts.
- The Lottery Act of 24 February 1995 no. 11.
The Lottery Act prescribes that the provision of a lottery without an authorisation is prohibited. As a general rule, authorisation is only granted to organisations with a humanitarian and socially beneficial purpose, where proceeds are distributed for said purpose.
Section 1, first paragraph, letter a) of the Act defines "Lottery" as any gaming activity such as casino games, betting, lotteries, slots, skill games and any other gambling activity, either online or offline, that requires a payment and may provide winnings as a result of a draw, guess, chance or any other procedure that is partly or wholly determined by a random event. Any activity fitting this description and falling outside the scope of the Totalisator Act or the Gaming Scheme Act is consequently regulated by the Lottery Act.

The legislation mentioned above generally prohibits the provision, marketing or distribution of any form of gambling activity without an authorisation from the Norwegian Gaming and Foundation Authority. It is important to note that the prohibition only applies to the provision of gambling activities within Norway or, in rare instances, where the Authority finds that a foreign-based operator has targeted Norwegian customers. For more information regarding marketing and provision of payment services on behalf of gambling operators and liability issues, see questions 2.6, 2.9, 4.1 and 5.1.

The Norwegian Tax Act of 26 March 1999 no. 14 contains a special provision concerning income generated from incidental winnings in gambling activities in Section 5-50; see question 2.7 below.

At the time of writing, gambling operators are not subject to the current Norwegian Money Laundering Act of 6 March 2009 no. 11. However, this is set to change with the new Money Laundering Act that will enter into force on 15 October 2018. Said Act implements the EU Directive 2015/849 on the prevention of the use of the

financial system for the purposes of money laundering or terrorist financing (Fourth EU Anti-Money Laundering Directive) and will encompass gambling activities that require authorisation under the Totalisator Act, the Gaming Scheme Act and the Lottery Act. For more information, see question 2.9 below.

Furthermore, there are several regulations that govern specific areas of gambling, the most important being:

- Regulation on the Norwegian Gaming and Foundation Authority and the Lottery Registry of 21 December 2000 no. 1366.
- Regulation on Setup Permits for Entertainment Machines of 11 September 2000 no. 960.
- Regulation on Entertainment Machines of 15 September 1995 no. 793.
- Regulation to the Act on Lotteries of 24 February 1995 no. 185.
- Regulation on Totalisator Activities of 24 August 2007 no. 1011.
- Regulation on Bingo of 30 November 2004 no. 1528.
- Regulation on the Prohibition against Payment Provision for Gambling without Norwegian Authorisation of 19 February 2010 no. 184.

2 Application for a Licence and Licence Restrictions

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

Any organisation may apply for an authorisation to provide gambling activities, though authorisations to operate commercial gambling activities are not provided, as Norsk Tipping and Norsk Rikstoto are the sole providers of gambling services in Norway by virtue of the Norwegian gambling monopoly. As such, gambling activities are prohibited without an authorisation from the Gaming and Foundation Authority, *cf.* the Norwegian Lottery Act Section 6 and the Norwegian Gaming Scheme Act Section 2.

There is a limited right for private organisations to apply for authorisation to provide private lotteries, poker and bingo under the applicable legislation, though national or foreign organisations are not eligible to request a full gaming authorisation from the Authority.

An authorisation to hold a lottery may be granted to local, regional or nationwide organisations who have a humanitarian or socially beneficial purpose within the area in which the lottery is held.

Commercial gambling organisations may act as intermediaries for the organisers with the aforementioned humanitarian or socially beneficial purpose.

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

In accordance with the Norwegian Lottery Act Sections 7 and 5, second paragraph, and the Regulation on the Norwegian Gaming and Foundation Authority and the Lottery Registry Chapter 5, the following gambling activities are exempt from the requirement of authorisation:

- Pre-drawn or post-drawn lotteries:
 - With an annual turnover not exceeding NOK 200,000.

- Where the organisation behind the lottery has a humanitarian or socially beneficial purpose.
- Where the organisation has given 14 days' prior notice to the Authority before the sale of lottery tickets, *cf.* the Regulation on the Norwegian Gaming and Foundation Authority and the Lottery Registry Section 5-1, first paragraph.
- Where the organisation does not utilise a commercial third party to organise the lottery.

The following gambling activities are exempt from both the requirement of authorisation, as well as the requirement of having a humanitarian or socially beneficial purpose:

- Lotteries:
 - Provided that they are not accessible by the general public.
- Private poker games:
 - That are held in a private home.
 - That do not have an organised or professional character.
 - With less than 10 participants belonging to the same social circle.
 - Where the participants are all over 18 years of age.
 - Where the entry fee does not exceed NOK 1,000 per person.
- Bazaars:
 - Where the proceeds go to a specific purpose.
 - Where the activity is concluded in one day.
 - That do not sell lottery tickets beforehand.
 - That do not involve a prize exceeding NOK 1,000.
 - Where the price of each lottery ticket does not exceed NOK 5.
 - Where the maximum value of a single prize does not exceed NOK 8,000.
 - Where the maximum value of all prizes does not exceed NOK 40,000.
 - Where all prizes are drawn at the same time and with the participants in attendance.
 - Where the organiser has not engaged the help of an intermediary against payment.

Consequently, any organisation wishing to hold a lottery with an annual turnover exceeding NOK 200,000 or for other purposes, or otherwise provide any other gambling activity, must acquire a prior authorisation from the Gaming and Foundation Authority, *cf.* the aforementioned Regulation Section 2-1 and the Norwegian Lottery Act Section 6. Said organisations must be registered with the Norwegian Central Coordinating Register for Legal Entities (NCCRLE) and have a humanitarian or socially beneficial purpose.

If a lottery activity is to be held in a fixed location, the proprietor of the location must also hold an authorisation. An authorisation is required if the implementation of lotteries is entrusted to an operator in return for payment. In regard to the limited number of authorisations, see question 2.3.

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

In order to apply for a gambling authorisation, an application is filed using the applicable form provided by the Gaming and Foundation Authority. Certain authorisations are only granted by public application, hereunder:

- Lottery activities where a private organisation is responsible for the drawing of winnings and where said organisation

has a humanitarian or socially beneficial purpose, *cf.* the Regulation on the Lottery Act Section 7. The aforementioned Regulation prescribes that only five such authorisations may be valid at the same time. Currently, no new authorisations are expected to be granted until 2025.

- Land-based tournament poker, *cf.* the Regulation on the Lottery Act Section 8.

Authorisations are only granted to local, regional or nationwide organisations or foundations.

Application fees range between NOK 1,250 and NOK 20,300, with additional yearly licensing fees applicable if the application is approved.

Depending on the type of gambling activity in question, the applicants may be required to submit, *inter alia*:

- A police certificate of good conduct of the organisation's chairman of the board, the proprietor or other participants.
- Financial statements, annual report and auditor's report.
- Articles of association.

After submitting an application, the Gaming and Foundation Authority will issue a non-binding preliminary evaluation of the matter.

A final decision may take anywhere between six and 12 months.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

See questions 2.1 and 2.8.

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

The type of gambling activity in question determines the duration and possible expiry of an authorisation.

For lottery activities as described in the Regulation on the Lottery Act Section 7 and in question 2.3 above, an authorisation is valid for a period of nine years.

Authorisations for land-based poker tournaments are valid for a period of three years, *cf.* the Regulation on the Lottery Act Section 8 and question 2.3 above.

Authorisations for pre-drawn or post-drawn lotteries or bingo are valid for a period of one year, *cf.* the Regulation on Bingo Section 2 and question 2.2 above.

An authorisation may be revoked where the holder has breached the Norwegian Lottery Act, other legislation or terms provided in accordance with the Lottery Act. The authorisation may also be revoked where a gambling device used in the gambling activity does not perform satisfactorily, or where the holder has breached public order or otherwise facilitated the creation of an environment harmful to children and adolescents.

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

The terms and restrictions of an authorisation differ depending on the type of authorisation. The Regulation on Bingo and the Regulation on the Lottery Act Sections 5, 6, 7a and 8 provide a number of restrictions, *inter alia*:

- Lotteries:
 - The value of the main prize cannot exceed NOK 2,000,000.

- The total value of the prizes must amount to a minimum of 25% of the lottery's allowed turnover.
- The organisation may not use more than 15% of the lottery's turnover on marketing.

- Poker tournaments:

- The value of the main prize cannot exceed NOK 2,000,000.
- The maximum allowable number of participants is 5,000.
- Participants must be over 18 years of age.
- The authorised organisation must receive a minimum of 5% of the turnover. The operator may recuperate costs incurred in arranging the tournament, with a limitation of 10% of the turnover.

- Bingo:

- The maximum allowable turnover per year is NOK 700,000.
- The authorised organisation must receive a minimum of 15% of the profits (30% from electronic bingo and pre-drawn bingo games).

- Post-drawn and pre-drawn public lotteries:

- The maximum allowable turnover cannot exceed NOK 100,000,000 per year.
- The authorised organisation must receive a minimum of 20% of the turnover.

- Lotteries drawn by a commercial organisation:

- The maximum allowable turnover cannot exceed NOK 300,000,000 per year.
- The authorised organisation must receive a minimum of 50% of the turnover.

All foreign and non-authorised organisations are prohibited from marketing online gambling activities in Norway, *cf.* the Norwegian Lottery Act Section 11 and the Gaming Scheme Act Section 2.

However, the ban is not effectively enforced by the Gaming and Foundation Authority. The lack of enforcement is mainly due to the Authority's lack of resources, consequently making it difficult for the Authority to supervise all marketing activity.

As such, gambling-related advertising is a common feature. This is partly due to the aforementioned lack of resources, as well as jurisdictional issues, risk assessments and Directive 2010/13/EU, which prescribes that if a broadcaster advertises in accordance with the laws of the broadcaster's country of origin, said advertising is considered legal regardless of the laws of the country to whom the broadcaster broadcasts.

However, even if the marketing activity is carried out from outside of Norway, the Authority has issued administrative orders in cases where it considered the marketing activity to have been directed towards Norwegian customers, *cf.* the Authority's decision of 9 November 2016 against PlayCherry Ltd. and Spillautomater.com.

2.7 What are the tax and other compulsory levies?

Winnings considered incidental prizes exceeding NOK 10,000 are taxable at a rate of 23%, *cf.* the Norwegian Taxation Act Section 5-50 (1). This includes winnings from foreign gambling organisations. Some exceptions apply, as follows:

- Prizes won from lotteries held for the benefit of a humanitarian or socially beneficial aim, such as those provided by Norsk Tipping and Norsk Rikstoto, *cf.* the Taxation Act Section 5-50 (2). This exception may also apply to gambling and lotteries in other EEA countries which are comparable to the gambling activities or lotteries that are legally available in Norway and subject to public oversight and control in the applicable country.

- If you are gambling professionally, the winnings may be regarded as income through self-employment. As a result, you will be taxed as a tradesman, and be able to enter costs related to your gambling as deductible. This exception only applies in cases of extensive gambling activity where said activity is considered suitable to make profits.

2.8 What are the broad social responsibility requirements?

In order to arrange bingo, lotteries or other gambling activities, an organisation must generally apply for authorisation from the Gaming and Foundation Authority, *cf.* the Norwegian Lottery Act Section 6, first paragraph, and the Gaming Scheme Act Section 2.

Authorisation is usually only granted where the organisation has a humanitarian or socially beneficial purpose, *cf.* the Act Section 6, second paragraph, and Section 5, first paragraph. In an assessment of whether said organisation should be granted authorisation, the Authority takes into account the degree of a socially justifiable distribution of the income from the bingo or lottery endeavour. Furthermore, the Authority may stipulate additional conditions for the authorisation related to combating gaming addiction.

As mentioned in question 2.5, an authorisation may be revoked where the holder has breached public order or otherwise facilitated an environment harmful to children and adolescents.

The age limit for gambling in any form is 18 years, *cf.* the Lottery Act Section 8a.

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

Currently, the Norwegian Money Laundering Act of 6 March 2009 does not encompass gambling activities. This will change with the new Money Laundering Act, which will enter into force on 15 October 2018. The new Act will encompass gambling activities that require authorisation under the Totalisator Act, the Gaming Scheme Act or the Lottery Act.

For instance, the owners and leadership of a gambling operator will be subject to suitability requirements aimed at deterring money laundering. While the contents of such requirements have not yet become law, they will be included in a future revision of the Gaming Scheme Act and the Lottery Act.

When gambling operators become encompassed by the new Money Laundering Act, such operators will have a duty to inspect and report any irregular activity, prepare risk evaluations and establish compliance programmes.

Financial institutions will have to conduct customer checks of single transactions by customers of gambling operators who do not have an established customer relationship with the financial institution. Such customer checks will be mandatory for all electronic transactions surpassing NOK 8,000. Likewise, gambling operators will be subject to the duty of customer checks for all transactions exceeding NOK 16,000.

As previously mentioned, the Norwegian Lottery Act Section 11 prohibits the facilitation of lottery activities without authorisation, *cf.* question 2.8 above. This prohibition includes the provision of services enabling the payment of any winnings and buy-ins, entry fees, stakes, etc. between a gambling organisation and its customers. This prohibition applies to all third-party payment providers who offer their services to Norwegians, regardless of whether the payment provider is based within Norway or abroad.

Norway implemented payment blocking between gambling organisations and customers in 2010 through the Regulation on the Prohibition against Payment Provision for Gambling without Norwegian Authorisation of 19 February 2010 no. 184. The aim of this Regulation is to complicate the payment process of these unauthorised organisations in order to secure regulated and controlled gambling activities.

The aforementioned Regulation grants the Authority the power to actively enforce the prohibition by passing resolutions or individual decisions on financial institutions within Norway, ordering them to refuse electronic payment transactions to and from uniquely specified account numbers. As such, banks and other financial institutions are prohibited from facilitating payments to or from these bank account numbers.

Furthermore, Norwegian financial institutions are required to block all transactions bearing the Merchant Category Code 7895, which is used to identify gambling operators.

In order to circumvent the aforementioned prohibition and the measure of payment blocking, foreign gambling operators have long used third-party payment service providers.

In order to counter this circumvention, the Gaming and Foundation Authority has passed several resolutions ordering the blocking of specific account numbers, for instance the resolution of 29 March 2017 that prohibited the processing of payment between foreign gambling operators and Norwegian customers through seven bank account numbers used by two gambling operators and five third-party payment service providers.

However, there is some doubt as to the effectiveness of the Authority's prohibition due to the feasibility of amending or creating new bank account numbers used by the gambling operators or third-party payment service providers to facilitate the payment between the aforementioned organisations and their customers. Furthermore, the Authority does not actively pursue third-party payment providers, due to a mixture of lack of resources and jurisdictional issues.

Norway has since proposed an amendment to the Regulation on the Prohibition against Payment Provision for Gambling without Norwegian Authorisation. If enacted, the amendment would greatly increase the Authority's ability to combat the processing of payments to or from gambling operators without authorisation. For more information on the proposal, see question 5.1.

In regard to virtual currencies, Norwegian law does not regulate the question of whether virtual currencies may be used for gambling activities.

3 Online/Mobile/Digital/Electronic Media

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

Norwegian law does not differentiate between online gambling activities and their land-based counterparts.

The Norwegian gambling monopoly provides Norsk Tipping and Norsk Rikstoto with the exclusive right to offer online gambling activities within Norway, effectively prohibiting foreign gambling organisations from offering the same services. Norsk Tipping offers various online gambling activities, such as blackjack, roulette and other games.

As such, the provision of online gambling activities is prohibited where the organiser does not have an authorisation in accordance with the Norwegian Lottery Act Section 6, first paragraph, or the Gaming Scheme Act Section 2. As previously mentioned, said authorisations are generally only attainable where the organisation has a humanitarian or socially beneficial purpose.

In spite of the strict gambling laws, it is neither illegal for Norwegians to gamble on foreign gambling websites, nor is it illegal for a foreign gambling operator to tacitly offer its services to Norwegians where it holds a licence in another EU/EEA Member State. However, the Authority has pierced the veil in certain cases; see question 4.1.

The Gaming and Foundation Authority does not supervise foreign gambling operators, regardless of their legality. This means that private individuals are able to gamble at their own risk using said websites, as there are no guarantees that prizes will actually be paid out.

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

See questions 2.9 and 5.1.

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

With the exception of certain terminal/machine-based machines in bingo halls and Norsk Tipping's own *Multix-automats*, terminal/machine-based gaming is prohibited in Norway.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

The provider or organiser of a gambling activity can be held liable for any breach of the relevant gambling legislation. Organisations who license machines/terminals or software to gambling operators or otherwise facilitate the gambling activity through marketing or payment processing are likewise subject to liability if they violate the relevant gambling legislation, *cf.* the Norwegian Lottery Act Sections 6 and 11 and the Gaming Scheme Act Section 2.

Customers are not subject to liability. Likewise, foreign-based gambling operators are not liable under Norwegian gambling law if they hold a licence in another EEA country and do not specifically target Norwegian customers. In assessing whether Norwegian customers are targeted, the Authority would consider whether the operator displays stakes or winnings in Norwegian currency, whether its website can be viewed in the Norwegian language and whether the operator has Norwegian-speaking customer service.

4.2 What form does enforcement action take in your jurisdiction?

The Gaming and Foundation Authority has the power to issue administrative orders to the organisation responsible for the provision of the illegal gambling service or the facilitation of marketing, payment processing or other appurtenant services.

Such administrative orders usually require that the organisation cease and desist its purported unlawful operations or rectify the situation. The Authority may also issue a compulsory fine in order to ensure that the order issued is implemented within a specified time limit.

While the Authority vigorously pursues violations, the scarcity of such violations results in little enforcement.

Violations of the relevant gambling legislation can also be punished by regular fines, or by imprisonment for up to three years. Compulsory or regular fines are by far the most common sanction.

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

No, they do not.

4.4 Are gambling debts enforceable in your jurisdiction?

As a general rule, gambling debts are unenforceable under Norwegian law, *cf.* the Enforcement Act for the General Civil Penal Code Section 12. The aforementioned provision prescribes two situations in which gambling debt is considered unenforceable.

Firstly, if the gambling debt has been acquired through the participation in an illegal game or similar activity, the debtor is not liable for the payment of the debt. The unenforceability of the aforementioned debt applies regardless of the debtor's or opposing gambler's knowledge of the illegality of the game, *cf.* the Norwegian Supreme Court's judgment in *Rt. 2003 s. 1210*.

Secondly, where the debtor has acquired a debt through a loan, the debtor is not liable for the payment of the debt unless the creditor had no knowledge that the loan was going to be used in gambling.

5 Anticipated Reforms

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

As previously mentioned in question 2.9 above, the Norwegian Money Laundering Act will be replaced by a new Act that will encompass gambling activities. This will influence compliance requirements for such entities, *cf.* question 2.9 above.

In its latest attempt to limit the use of foreign gaming operators by Norwegian customers, a proposal for changes to the Regulation on the Prohibition against Payment for Gambling without Norwegian Authorisation was released on 20 April 2018. A public hearing was held with a deadline of 15 August 2018.

The purpose of this proposal is to send a clear and unambiguous signal to third-party payment providers within Norway that the prohibition against the facilitation of payments to and from foreign gaming operators applies on general basis.

If the proposal is enacted, it will greatly expand the scope of obligations of payment providers within Norway, and the Authority will be granted the authority to adopt resolutions ordering the blocking of transactions of named foreign gambling operators or third-party payment providers, as opposed to the current limitation of ordering the blocking of specific account numbers. At the time of writing, the proposal is both unclear and ambiguous as to how such enforcement is to be conducted.

Furthermore, the proposal includes an investigatory duty for financial institutions to identify and block all gambling-related transactions. The proposal mandates financial institutions to investigate *ex officio* all transactions that may violate the prohibition and discontinue all payment transactions linked to gambling activities that lack authorisation.

The proposal has come under heavy criticism by the Norwegian Better Regulation Council (*Regelrådet*), a governmental impact assessment scrutinisation board falling under the authority of the Norwegian Ministry of Trade, Industry and Fisheries.

In summary, the Council argues that the proposal may be adverse to the right to privacy under the General Data Protection Regulation (GDPR). Furthermore, the council argues that the proposal lacks

sufficient description as to how it would be enforced and has deficiencies in the investigation of alternative measures that could fulfil the purpose of the proposal.

While no clear timeline exists as to when the proposal would become law, the Authority has suggested entry into force in January 2019. It remains to be seen whether the proposal will become law at that time, and whether it will survive in its current form.



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Brede A. Haglund is a partner in Brækhus' department of Technology, Industry and Trade.

His practice primarily concerns commercial contracts and the technology sector, including data protection and privacy law matters.

Mr. Haglund founded and heads our Gaming and Entertainment desk. He is key account manager towards Norsk Tipping and has assisted Norwegian players and investors in the international gambling and entertainment market since 2008. Mr. Haglund has assisted in the establishment of professional gaming entities abroad and other M&A-related activity.

Mr. Haglund covers national and international tax law and corporate law. He regularly advises on end-of-year tax reporting for several Norwegian professional poker players, including inbound and exit tax issues. He is the author of *Taxation of Poker*, a yearly guide published by the Norwegian Poker Association.

Mr. Haglund's experience with data protection, technology, IT and cloud services will potentially bring value to service providers in the gaming industry.



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His practice focuses primarily on commercial ICT contracts, company law, and data protection and privacy law matters.

Mr. Mollan counsels clients on best practices concerning privacy law and has worked with clients in overhauling their privacy policies and procedures. He also has good knowledge of EU/EEA law and competition law.

Mr. Mollan graduated from the University of Oslo (LL.M.) in 2015 where he specialised in EU competition law, petroleum contracts and company law. He wrote his thesis on investigational duties as a pre-emptive measure against insider trading.

Prior to joining Brækhus, Mr. Mollan interned at Heathrow Airport Holdings Ltd. (formerly British Airport Authority Plc) in London, United Kingdom. He also studied Chinese and international business law at Santa Barbara City College, USA.

BRÆKHUS

ADVOKATFIRMA

Brækhus is one of the few law firms in Norway with a dedicated group of experts in gaming and entertainment activities. Our lawyers have experience in establishing international service offerings, sales processes, tax issues, national and EU/EEA legal issues, financial requirements, marketing law, optimisation of ownership and the development and licensing of intellectual property rights and general legal and commercial relationships in Norway.

Today's technology enables the collection and utilisation of personal data at an unprecedented scale. Brækhus has expertise in privacy, risk management, consent and information sharing.

Brækhus understands the regulatory landscape of the gaming industry, both within Norway and at the European level. We have knowledge of regulatory conditions and decision-making processes, as well as technical and operational aspects that are important to our clients.

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1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Philippine Amusement and Gaming Corporation (“PAGCOR”).	PAGCOR.
	Poker	PAGCOR.	PAGCOR.
	Bingo	PAGCOR.	PAGCOR.
Betting	Betting	PAGCOR.	PAGCOR.
	Sports/horse race betting (if regulated separately to other forms of betting)	PAGCOR.	Philippine Racing Commission. Note also that under the Local Government Code of 1991, local government units are authorised to license and regulate: cockfighting; the commercial breeding of gamecocks; and the establishment, maintenance and operation of cockpits.
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	PAGCOR.	PAGCOR.
Lotteries	Lotteries	Philippine Charity Sweepstakes Office (“PCSO”).	PCSO.

Relevant Product	Who regulates it in digital form?	Who regulates it in land-based form?	
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Not regulated as gaming. May be classified as promotion and regulated by the Department of Trade and Industry (“DTI”).	Not regulated as gaming. May be classified as a promotion and regulated by the DTI.
	Skill games and competitions with no element of chance	Not regulated.	Not regulated.

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

The Revised Penal Code prohibits all forms of gambling, unless allowed by law. Consequently, the law allows the following gambling activities, subject to regulations: horse racing; cockfighting; sweepstakes; lotteries; and gaming casinos, including online gaming when the game is accessed outside the Philippines by foreign-based players. PAGCOR generally regulates gaming activities in the Philippines and issues the licence to operate a gaming activity.

With respect to online/offshore gaming operations, PAGCOR promulgated the Rules and Regulations for Philippine Offshore Gaming Operations (“POGO Rules”). The POGO Rules provide for the licensing, registration, or accreditation not only of actual offshore gaming operators (which can only offer gaming activities to offshore players) but also of service providers providing components of the online gaming process, such as gaming agents, gaming software/platform providers, gaming support providers, business process outsourcing facilities, and data/content streaming providers.

Other than PAGCOR, authorities regulating certain special economic zones in the Philippines may also host and license gaming entities whose activities and gaming equipment (including computer servers) will generally be limited within such economic zone. These authorities are the Cagayan Special Economic Zone Authority (“CEZA”), the Aurora Pacific Economic Zone and Freeport Authority (“APECO”), and the Authority of the Freeport Area of Bataan (“AFAB”).

2 Application for a Licence and Licence Restrictions

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

Onshore casinos

In general, PAGCOR licenses onshore gaming casinos, including the integrated resorts operating at the "Entertainment City" complex in Manila.

Companies who wish to supply gaming equipment and gaming paraphernalia to onshore gaming establishments shall enrol with PAGCOR as "suppliers". The enrolment does not expire but is non-transferable. The supplier shall also secure from PAGCOR a Permit to Possess Gaming Equipment/Paraphernalia. After enrolling and obtaining a Permit to Possess, the supplier shall remain under PAGCOR regulation, as it is required to notify PAGCOR of every activity that it seeks to undertake, such as importation, pull-out of equipment from its storage facility to another facility or a gaming establishment, ship-out, and even product demonstration. Only gaming equipment/paraphernalia approved by PAGCOR shall be used in gaming casinos or establishments in the Philippines. Further, the supplier shall observe PAGCOR packaging guidelines.

The CEZA, APECO, and AFAB may also issue licences to land-based casinos operating within their respective special economic zones.

Gaming equipment

Companies who wish to supply gaming equipment and gaming paraphernalia to PAGCOR-licensed onshore gaming establishments shall enrol with PAGCOR as "suppliers". The enrolment does not expire but is non-transferable. The supplier shall also secure from PAGCOR a Permit to Possess Gaming Equipment/Paraphernalia. After enrolling and obtaining a Permit to Possess, the supplier shall remain under PAGCOR regulation as it is required to notify PAGCOR of every activity that it seeks to undertake, such as importation, pull-out of equipment from its storage facility to another facility or a gaming establishment, ship-out, and even product demonstration. Only gaming equipment/paraphernalia approved by PAGCOR shall be used in gaming casinos or establishments in the Philippines. Further, the supplier shall observe PAGCOR packaging guidelines. Also, there are specific pre-use inspection/approval requirements that apply to technology, machinery, or equipment to be used by a licensee.

For onshore gaming operations in special economic zones, the licensee shall obtain the CEZA/APECO/AFAB's written approval for every item of interactive gaming equipment used by the licensee to conduct interactive games, including computer software.

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

Licensees are allowed to conduct only the activities that are specified in their respective licences. As a licence is a mere State privilege, it is strictly construed against the licensee. All gaming-related licences are also non-transferable.

Please see question 2.1 above for further discussion.

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

Licences from PAGCOR shall be applied for directly with the PAGCOR Gaming Licensing Development Department or the Offshore Gaming Licensing Department, as the case may be.

Meanwhile, written applications for a licence to operate in special economic zones shall be filed with the master-licensor of the CEZA, APECO, or AFAB, as applicable, which shall then conduct a mandatory investigation/background check on the applicant. Licensees of the CEZA, APECO, and AFAB may no longer apply for licences with the PAGCOR.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Licensees are allowed to conduct only the activities that are specified in their respective licences. As a licence is a mere State privilege, it is strictly construed against the licensee.

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

Pertinent rules and regulations generally allow the revocation of a licence when the licensee: violates pertinent laws as well as terms and conditions of the licence; is no longer suitable to hold a licence; gave a materially false or misleading information; is found to have insufficient resources to conduct its business; or is winding up or has been subject to receivership. PAGCOR may issue provisional licences which contain certain conditions that must be fulfilled by the licensee, failing which such licence will be revoked.

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

Promotions and advertising materials of PAGCOR licensees must be duly approved by PAGCOR. There are also advertising ethics generally observed with respect to the advertising of casinos and gaming activities.

2.7 What are the tax and other compulsory levies?

The tax framework for operators participating in the gaming industry varies depending on the licence carried.

Onshore gaming

Licence fees paid by the licensees of onshore gaming casinos and integrated resorts shall be an amount equivalent to the licence fee rate per gaming table, provided in the Licence, applied to the gross gaming revenue. Then, PAGCOR imposes a 5% fee on the non-gaming revenue of the licensee, such as income derived from all food & beverage, retail, and entertainment outlets, theme parks, museums, and similar operations, within the casino/integrated resort.

CEZA licence

The following gaming taxes are imposed by the CEZA on interactive gaming licensees:

- gaming levy of 2% of the gross win every month, the gross win computed based on the formula: (turn over) – (player wins) – (merchant discount);

- US\$ 48,000 yearly for sports book operations; and
- US\$ 48,000 yearly for sports betting.

APECO licence

APECO licensees are subject to similar gaming taxes imposed by the CEZA. APECO has set the gaming levy to 2% of the gross win every month, and in no case lower than US\$ 5,000 per table per month.

POGO licence

Subject to revision, the following gaming taxes are imposed by PAGCOR on licensed POGOs:

- US\$ 10,000 / month per table for a live studio set-up;
- US\$ 100 / month per player for random number generator-based games, such as card dice, wheel and tile games, slots, video poker, and arcade-type and skill games; and
- US\$ 40,000 / month for sports betting activities.

For the purpose of monitoring the correct declaration and payment of gaming taxes, PAGCOR requires that licensed POGOs shall fully integrate their operations with PAGCOR's intermediation platform and that all their wagering, financial, and administrative software shall be submitted to PAGCOR for evaluation and approval.

Tax on Winnings

Prizes won from games of chance are subject to a 20% final tax withheld by the game operator prior to the payment to the winner. However, prizes amounting to PHP 10,000 or less shall be declared as ordinary income of the winner at the end of the tax year and subject to the regular individual income tax rates between 5% and 32%. Winnings from sweepstakes and lotteries operated by the Philippine Charity Sweepstakes Office are tax-exempt.

2.8 What are the broad social responsibility requirements?

Gaming licensees are required, as a condition to maintaining their licence, to spend a minimum percentage of revenue for charity purposes. For example, PAGCOR requires its casino licensees to set aside 2% of its gross gaming revenues generated from non-junk tables, for a chosen charitable institution.

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

In 2017, the Philippine Congress passed into law Republic Act No. 10927, which identifies casinos, including ship-based and Internet-based casinos, as covered institutions for the purpose of compliance with anti-money laundering laws.

In Asia, the *Bangko Sentral ng Pilipinas* ("BSP") pioneered the licensing and regulatory framework for virtual currency exchanges – entities that provide facilities to convert or exchange fiat currency (a government-issued currency that is legal tender in the country of its issuance) to virtual currency, or *vice versa*. The BSP allows virtual currency exchanges to register as a remittance and transfer company. The regulations were issued in February 2017.

In May 2018, the CEZA launched Offshore Virtual Currency Business Rules that will allow licensing of "offshore virtual currency exchange services". The following services may be licensed by the CEZA, provided that they take place offshore, i.e. outside the Philippines:

- Conversion or exchange of fiat currency into virtual currency.
- Conversion or exchange of virtual currency into fiat currency.

- Conversion or exchange of one form of virtual currency into another form of virtual currency.

Nonetheless, under this framework, an offshore gaming licensee of the CEZA which seeks to engage in virtual currency exchange services will still have to separately apply for a VC exchange licence.

3 Online/Mobile/Digital/Electronic Media

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

A Philippine Offshore Gaming Operator ("POGO") is Philippine-based operator offering games of chance, including e-games and sports betting, via the Internet (i.e., provides the game to players, takes bets, pays players' winnings) exclusively to offshore players, excluding Filipinos, whether in the Philippines or abroad.

The following licences, registrations, and accreditations are available under the POGO Rules:

1. Offshore gaming licence.
2. POGO gaming agent accreditation.
3. Gaming software/platform provider registration.
4. Gaming support provider registration.
5. Business process outsourcing registration.
6. Data/content streaming provider registration.

PAGCOR-regulated entities under items 2 to 6 above may offer and render support services to Philippine-based and foreign-based online gaming operators only when they are also duly registered with PAGCOR.

Meanwhile, PAGCOR is also authorised to operate or license out "electronic games" which are computer-based games that are accessible only within PAGCOR-designated "e-games cafés" or "e-casinos". These gaming facilities are computer-based but are not connected to the World Wide Web. Therefore, these "electronic games" need to be played on-site. E-casinos must strictly observe zoning rules and requirements on distance from schools and churches.

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

POGOs need to: post a performance bond with PAGCOR; prevent any temporary stoppage of operations without prior notice to PAGCOR; submit monthly reports to PAGCOR; comply with anti-money laundering laws, rules, and regulations; integrate their operations with PAGCOR's intermediation platform; and be solely responsible for preventing Filipino players from accessing their operations.

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

All wagering, financial, and administrative software to be implemented by a POGO licensee shall be submitted to PAGCOR for evaluation and approval. Prior to actual use / implementation, PAGCOR shall also conduct a testing and inspection of the wagering system, particularly the system intended to safeguard against betting by Filipinos and other prohibited persons. Further, the licensee shall

not install, modify, decommission, remove, or destroy any hardware equipment to be installed by a POGO licensee within the territorial jurisdiction of PAGCOR without prior PAGCOR evaluation and approval. Finally, within six months from the commencement of its operations, a licensee shall fully integrate its online/offshore gaming operations with PAGCOR's intermediation platform.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Both individual players as well as the persons or entities hosting illegal gaming within the Philippines could be held liable under current anti-illegal gaming laws.

4.2 What form does enforcement action take in your jurisdiction?

Persons who are found guilty of violating anti-illegal gambling laws and regulations could be held liable for fines, suspension or closure of the business, and even imprisonment, when decreed by the court.

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

Philippine laws are territorial. Nonetheless, foreign regulators may seek the assistance of their Philippine counterparts in enforcing foreign law where a case has sufficient Philippine links. For example, the Bangladesh central bank sought the cooperation of Philippine authorities in recovering amounts stolen from its reserve account and laundered through a Philippine bank and casinos.

An entity operating a gaming website that is based in a foreign country and does not engage a Philippine-based entity for any gaming support or component may not be criminally liable under Philippine law, even if the website and its advertisements are available and accessible to individuals in the Philippines. There is currently no long-arm statute in the matter of Philippine gambling criminal laws. However, the individual accessing from the Philippines the said gaming website may be held criminally liable, including potentially for the criminal offence of illegal access under the Philippine Cybercrime Prevention Act of 2012.

4.4 Are gambling debts enforceable in your jurisdiction?

It depends on the legality or illegality of the transaction for which the gambling debt was incurred.

Article 2014 of the Civil Code provides that no action can be maintained by the winner for the collection of what he has won in a game of chance.

However, the same provision allows any loser in a game of chance to recover his loss from the winner, with legal interest from the time he paid the amount lost, and subsidiarily from the operator or manager of the gambling house, unless both the winner and the loser perpetrated fraud, in which case, the loser could not recover his loss. If the winner committed cheating or deceit, the loser may also claim exemplary damages from the winner, and subsidiarily from the operator or manager of the gambling house.

In *Yun Kwan Byung vs. PAGCOR*, G.R. No. 163553, Dec. 11, 2009, the Philippine Supreme Court clarified that Article 2014 of the Civil Code applies when the gambling activity that caused the loss was illegal. It ruled that local courts will not enforce debts arising from illegal gambling, such as in a case where a junket player seeks to collect from a junket operator by virtue of an illegal junket agreement.

5 Anticipated Reforms

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

In 2017, the Philippine Congress passed into law Republic Act No. 10927, which identifies casinos, including ship-based and Internet-based casinos, as covered institutions for the purpose of compliance with anti-money laundering laws.

Acknowledgment

The authors would like to thank Tristan T. Delgado for his contribution to the writing of this chapter. Tristan is an associate with four years' experience handling matters involving telecommunications, media, technology, intellectual property and data privacy.

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Romulo is known for its experience and integrity. The firm leverages its traditional law practice in representing a diverse range of gaming clients in a heavily regulated industry, ensuring full compliance with all gaming laws. In parallel, the firm is adept to the changes in the regulatory environment brought about by legal, technical, social and even political aspects of the practice, and has successfully navigated these changes to address the needs of its clients. Its lawyers are able to advise on all facets of the gaming industry – from casino operators, integrated resorts, electronic machine suppliers and software providers, to financial institutions, real estate developers and other stakeholders.

Poland

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1 Relevant Authorities and Legislation

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

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

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

The main act which regulates the provision of gambling and gaming

products to Polish residents is the act of 19 November 2009 on gambling games (as later amended; the "Gambling Act"). In addition, there are a number of secondary regulations issued by the Minister of Finance on the basis of authorisations set out in the Gambling Act. These concern, for example, technical requirements applicable to mandatory archiving of information by online betting operators, the manner of issuing winning certificates to players, or keeping gambling-related books of the operator. In general, the Gambling Act prohibits operators from offering online games of chance other than betting which can be organised on the basis of a licence issued by the Minister of Finance. Other online gambling games can be organised only by the exclusive right holder, i.e. state-owned company Totalizator Sportowy sp. z o.o. The Gambling Act, if read literally, also prohibits operators from offering social games as long as they feature an element of chance. This appears, however, to be contrary to the justification of the provisions at hand. With respect to games offered offline, they can be organised either in a licensed casino or by the exclusive right holder, except for betting, which can be organised on the basis of a licence. Poker tournaments in which no cash winnings are permitted and the value of winnings does not exceed annually revised thresholds can be organised without a licence.

The English translation of the Gambling Act is available at the Minister of Finance website (<https://www.finanse.mf.gov.pl/documents/766655/6144946/Gambling+Law+v.09.2017.pdf>; please note that this document is not regularly updated).

2 Application for a Licence and Licence Restrictions

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

There are three types of Licences which are required to offer Relevant Products to Polish residents: (i) permit to run a casino; (ii) licence to offer betting products; and (iii) notification on commencement of a licensable activity. The last option applies only in specific circumstances to some games organised offline.

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

The Gambling Act was adopted in 2009 and heavily amended in 2016, i.e. during the period when many European Union countries turned to more liberal, licence-based gambling systems and modern

taxation of gambling activities. However, the Polish lawmakers took an opposite direction and petrified the restrictive gaming regime introduced in the early 1990s. The recent amendment introduced a monopoly regime over the majority of gambling games, both on the online and offline side of the business. The most restrictive approach was taken with respect to online games: the monopoly covers all games except for betting, which can be organised by private, licensed entities. The wording of the law, if interpreted literally, leads to a conclusion that even social games are subject to the monopoly, although this potential restriction does not appear to attract the interest of the authorities (not to mention that there are doubts as to whether literal interpretation is in line with the spirit of the law).

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

The licensing process is a formal procedure which obviously is not a modern one. Depending on the type of licence sought by the applicant, the law requires that a number of documents, enumeratively listed in a provision applicable to a given type of licence, are provided together with the application. The Gambling Act provisions are vague and offer no guidance as to the content of the documents required. For example, a betting operator who intends to offer online betting must file, among other things, the technical documentation of the website which will be used to offer betting services to customers. The law does not provide for any mandatory elements of the document. The regulator issued informal guidance on what they expect to see in the technical documentation. However, even with the explanatory document in hand, the operator who files the application should expect numerous requests from the regulator, who normally asks for clarifications or additional explanations. Another example is a technical auditor's opinion confirming that betting slips are properly secured against being tampered with by an unauthorised person. In this case no guidance is issued; however, in practice, the regulator expects this opinion to comply with requirements applicable to a formal opinion of an expert constituting evidence in court proceedings.

The procedure itself is challenging for applicants, in particular those who are a part of a multinational group. Each foreign document must not only be translated into Polish by a sworn translator but also it needs to be prepared in such a way which is understandable to the regulator's clerks who rarely deal with standardised documentation of foreign operators. This is, in particular, problematic in the case of terms and conditions of the game, which are subject to the Minister's approval. The regulator has got used to a specific wording of that document which, needless to say, hardly resembles T&Cs currently used by foreign companies. (Luckily, in most cases, this is more a presentation issue, rather than inadmissibility of a solution the operator wants to have in their T&Cs.) Moreover, if the regulator determines (at its own discretion) that a given document fails to comply with the requirements (which in some cases are not even impliedly set out in the law), it will request the applicant to provide it within the statutory deadline of seven days. Again, this extremely tight deadline is a challenge for any applicant, especially a foreign one. There is no possibility of extending this particular deadline under the law.

Once the formal requirements are positively verified by the regulator, it commences the review of the file on the merits. During this stage of the process, the deadlines are determined by the Minister of Finance; normally, one should expect a deadline of two weeks to, even, 30 days. As these are not statutory deadlines, an applicant may expect some flexibility on the side of the officials, if a given document requires more time to be adjusted to the Minister's needs.

By law, the licensing procedure should be completed within six months, which is already a relatively long period of time. The problem, however, is that the law allows the regulator to extend the deadline without the need to provide a precise explanation of the extension which would reasonably justify the delay. In practice, the licence proceedings usually last around nine months, in some extreme cases even up to a year or longer. The extension risks should be mitigated at an early stage of the proceedings by ensuring that the application file complies with the most recent practice of the regulator.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Once the licence is issued, the operator must provide the collateral (either a bank or insurance guarantee, or a cash deposit), the amount of which depends on the type of licence (in the case of a casino – PLN 1,200,000; cash bingo arcade – PLN 60,000; offline betting – PLN 40,000 for betting shops (the law provides for an algorithm of calculation of the collateral, which depends on a number of shops); and online betting – PLN 480,000). The collateral is payable within the deadline set out in the licence (usually, this is one year of the licence being issued, depending on the wording of a licence application).

The successful licensee must also pay a one-off licence fee which covers the entire period of validity of the licence. The fee depends on the type of licence: (i) for a casino – approx. PLN 1,432,000; (ii) for cash bingo – PLN 246,000; (iii) for betting – it depends on the number of betting shops covered by a licence; (iv) for online betting – PLN 403,000, assuming the licence covers one website address used for offering betting. The licence fees depend on the average salary indicator, as annually revised by the Main Statistical Office.

The licensee must file a gambling tax return every month and pay the gambling tax (the rate depends on the type of Relevant Product offered; for example, in the case of online betting, the tax is 12% of the total value of collected stakes without deducting payouts). The licensee is also required to provide quarterly reports to the regulator and provide any such statistical, financial or other information as the regulator may require.

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

A gaming Licence is issued for six years; exceptions are as follows: (i) Licences for lotteries, raffle bingo games, promotional lotteries and audiotext lotteries are issued for a period no longer than two years; or (ii) in the case of a poker tournament, for the period during which the tournament takes place.

If a licensed operator breaches the law, the Licence issued to it or provisions of its own T&Cs, the Minister of Finance may issue a decision requiring the company to cure deficiencies within the period determined by the regulator. The regulator may revoke the Licence in the following cases:

- (i) the operator fails to cure deficiencies in a timely manner;
- (ii) the operator materially breaches any provisions of law which apply to the gambling operations;
- (iii) the share capital of the operator is reduced below the statutory minimum;
- (iv) the company decides to resign from operating games or does not offer them for a period of six months (the latter applies only to casinos and bingo game arcades);

- (v) a board member or a shareholder is convicted for a dirty money laundering crime;
- (vi) two occasions in which a minor participates in games in the same betting shop (does not apply to online betting);
- (vii) the company's failure to provide AML documentation, as requested by the regulator, which would confirm its compliance with AML laws;
- (viii) the company's failure to provide audited financial statement (or when the auditor's opinion indicates material breach of accounting laws); or
- (ix) conducting gaming activity by a foreign EU/EFTA operator without having appointed a representative for the period of at least two months.

The decision on Licence revocation is effective at the moment of its receipt. This basically means that the operator who decides to challenge the decision, even if the latter has been unlawfully issued, must refrain from the provision of games during the process of the licence's potential reinstatement.

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

The only type of gambling which can be advertised is betting, provided it is offered by a licensed operator (in addition, some of the Relevant Products may be advertised by the monopoly). The restrictions applicable to advertisement of betting are similar in nature to those applicable to alcohol, i.e.: (i) it cannot be addressed to minors or depict them; (ii) it does not associate game participation with physical or intellectual abilities; (iii) it does not suggest that gambling is a way of dealing with personal conflicts or financial problems; (iv) it does not show refraining from gambling or moderate participation in games in a negative way; (v) it does not depict wagering higher amounts as a method increasing chances to win; and (vi) it does not associate gambling with sexual attractiveness, relaxing, working or studying and/or a professional context, success in life or financial success.

In addition, there are prohibitions on placing betting adverts in radio and TV (unless after 10pm and before 6am), in press addressed to minors, on covers of journals or magazines or in public places (except for sport or mass events sponsored by the operator). Advertisements must include information on gambling-related risks, risks relating to participation in unlicensed games and information about the permit held by a given operator.

Betting operators may also sponsor clubs, events, etc., and disseminate information on such sponsoring.

2.7 What are the tax and other compulsory levies?

Gambling tax depends on the type of games and is as follows:

- (i) non-monetary lotteries and bingo: 10% of turnover (i.e. all stakes paid with no deductions);
- (ii) monetary bingo or telebingo: 25% of the nominal value of cards used for the bingo game;
- (iii) audiotext lotteries: 25% of the gross income of the organiser obtained from the game and calculated in accordance with applicable tax regulations;
- (iv) poker tournament: 25% of the winnings (with deduction of entry fees), which is payable by the winning player;
- (v) slot machine game, roulette, dice game, card game (other than poker in a poker tournament): 50% of gross gaming revenue; and

- (vi) betting: 12% of turnover or 2.5% (in the case of horse-betting or betting on other animal competitions).

Other taxes apply to games offered by the monopoly.

In the case of betting, all licensed operators transfer the cost of the tax to the players (tax is deducted from wages before the bet is resolved). This increases the market vulnerability as, even though blacklisting measures have been put in place, Polish players are financially encouraged to place bets with offshore operators.

Winnings are subject to Personal Income Tax payable by players (except for winnings in betting below PLN 2,280 and winnings obtained in a casino). Betting operators must deduct the personal tax amount and pay it on behalf of a successful player. This requirement does not apply to betting operators who are foreign EU/EFTA companies (their customers pay the income tax on their own).

2.8 What are the broad social responsibility requirements?

The only requirement is that the operator must adopt standard responsible gaming rules which are subject to ministerial approval. The regulator has its internal requirements, not published anywhere, on how the compulsory elements of the rules (for example, a mandatory self-exclusion mechanism) should be addressed in the document.

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

The operators must provide AML documentation confirming the legality of funds used to organise gambling under a licence. In addition, the regulator may request additional documentation from an operator during the Licence's validity period. The Act of 1 March 2018 on counteracting money laundering and financing of terrorism (which implements Directive 2015/849 into the Polish legal system) imposes on gambling operators the duties of an "obliged entity" (as defined in the Directive). The Gambling Act, in addition, requires that online betting operators use only payment methods (bank transfers, credit cards, payment institution services, etc.) which ensure that money used for betting originates from a verified source.

3 Online/Mobile/Digital/Electronic Media

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

In theory, there are no differences. Any type of Licence may be obtained by either a Polish LLC or a joint-stock company, or by a foreign operator being such company. In the latter case, the operator must originate from an EU/EFTA country, currently organise games in another EU/EFTA jurisdiction, and must appoint a local representative (a Polish resident or a company established in Poland) who essentially would act as an intermediary between the authorities and the foreign operator. The representative deals with day-to-day matters of the operator (such as filing tax returns, fulfilling reporting requirements and providing the regulators with documents and access to premises during statutory audits).

Operators from countries other than EU/EFTA may apply for a licence only through a Polish/EU or EFTA-based subsidiary.

The requirements relating to the provision of online betting (i.e. the only Relevant Product which may be offered on the Internet) by a licensed company are the same for both Polish and foreign licensees (except for some duties which, in the case of the latter, are by law assigned to a representative). These include: (i) archiving requirements; (ii) introducing T&Cs and responsible gaming rules which are subject to ministerial approval; (iii) ensuring that advertisement practices are in line with requirements listed in the law; (iv) filing monthly tax returns; (v) complying with the reporting requirements (quarterly or *ad hoc*, as requested by the regulator); (vi) notifying the Minister of Finance of material changes in the structure (board member appointments/dismissals, change of business name, shareholding changes, etc.); (vii) issuing winning certificates, if requested by a customer; and (viii) evidencing winnings and certificates issued to the players.

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

The secondary legislation issued on the basis of authorisations included in the Gambling Act require the operators to issue winning certificates in writing. Under the Civil Code, these must therefore be issued on paper with a handwritten signature, which clearly is not a modern solution addressing current industry standards, where most documentation is produced and distributed in electronic form. Similar restrictions apply to records of winnings and certificates issued to players which, under the aforementioned regulations, must again be kept in writing and with the use of official forms obtained from the regulator.

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

Terminal/machine-based gaming may only be organised in licensed private casinos or by the monopoly company. The latter has not commenced operating any gaming arcades as yet.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Under the law, the following persons can be held liable for breaching the Gambling Act: (i) those who organise them; (ii) those who participate in the process of production or dissemination of gaming advertisements which breach the law; and (iii) those who play (provided that they played unlicensed games when they were physically present in Poland, which in most cases appears difficult for the authorities to prove). There are two types of liability which may potentially apply: criminal (imprisonment or fine); and administrative (fine). In general, both apply to individuals who commit a prohibited act within Poland.

Finally, the Gambling Act allows the Minister of Finance to blacklist a domain which is used to organise unlicensed gambling to Polish individuals. By law, once a domain is included in the ministerial register (publicly available at <http://www.hazard.mf.gov.pl>), Internet service provider (ISP) and payment service provider (PSP) blocking applies. The procedure does not involve notifying the domain owner of the blacklisting, which raises doubts as to whether it correctly protects the interests of individuals.

4.2 What form does enforcement action take in your jurisdiction?

The authorities may commence formal investigations against persons involved in organising gambling games without a licence, those who advertise them in a way contrary to the law, or customers playing unlicensed games. All such actions constitute criminal fiscal offences. Under the Penal Fiscal Code of 10 September 1999, in most cases the only potential sanction which may be imposed on a foreign company which offers games on the Internet to Polish residents is the blacklisting of domains used to organise unlicensed games. The authorities focus on those people who are Polish residents; usually, they target the players (sometimes using bank account information collected during other proceedings) or local suppliers of foreign unlicensed operators (for example, those who designed an advert or printed it).

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

Poland remains a part of the European Union. For this reason, the relevant Polish regulations must comply with the requirements set out in the Treaty on the Functioning of the European Union and the numerous decisions of the Court of Justice of the European Union (CJEU). There are sound legal arguments that key provisions of Gambling Act fail to comply with the aforementioned requirements. For example, based on the public announcement of highly ranked governmental and parliamentary officials, the recent amendment to the Gambling Act (under which the blacklisting and online gambling monopoly were introduced), the restrictive measures adopted by Polish lawmakers were justified mostly by the need to finance governmental projects rather than out of genuine care about players and their protection. The law also includes solutions, the wording of which itself raises doubts from the perspective of their compliance with EU law (such as discriminatory measures applicable to foreign operators during the licensing procedure, or unclear statutory conditions of issuing licences). The process of verifying these arguments is complex and time-consuming, as it requires the involvement of the CJEU. There are several proceedings now pending in Poland, in which operators challenge the law and decisions issued against them, also invoking EU law arguments. It is unlikely, however, given the procedural steps and typical timing of proceedings before the CJEU, that these proceedings will be completed before early 2020.

4.4 Are gambling debts enforceable in your jurisdiction?

Yes, assuming the debts accrued in the course of gambling activity which is licensed in Poland.

5 Anticipated Reforms

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

For the time being, no proposals are discussed or contemplated by the lawmakers. It is likely that the only potential change in the Polish gambling regulations will depend on the outcome of several cases in which offshore operators challenge the Gambling Act and seek the support of the CJEU.

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Bartosz Andruszaniec has over 18 years of experience in advising clients on various aspects of Polish and EU law. Bartosz gained his expertise over 15+ years of work for the largest multinational law firms as well as when running his own individual practice before joining WH Partners. He is an experienced M&A, corporate and commercial lawyer who has worked on the largest transactions in Poland (including the PLN 18bn sale of a telecoms company, Polkomtel SA, and the merger of the Polish banking subsidiaries of KBC and Santander). Gambling is an area of particular interest for Bartosz. He has advised the industry leaders for over 12 years, offering them regulatory, compliance and commercial advice on a day-to-day basis.

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WH Partners is a Malta-based leading law firm, with consulting rooms in London, Prague, Livorno and Warsaw. The firm has a well-established, internationally recognised practice advising clients on regulation and licensing of gaming & gambling, blockchain applications and financial services, tax, private client, M&A, banking and finance matters, intellectual property, data protection, real estate and employment law.

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Portugal

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1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	The Portuguese Gambling Regulatory Authority [<i>Serviço de Regulação e Inspeção de Jogos</i> of <i>Turismo de Portugal</i> (SRIJ)].	SRIJ.
	Poker	SRIJ.	SRIJ.
	Bingo	SRIJ.	SRIJ.
Betting	Betting	Fixed-odds sports betting is regulated by SRIJ. <i>Pari-mutuel</i> sports betting is operated under an exclusive right system by <i>Santa Casa da Misericórdia de Lisboa</i> (SCML), subject to the supervision of the Social Security Ministry.	Sports betting is operated under an exclusive right system by SCML, subject to the supervision of the Social Security Ministry.
	Sports/horse race betting (if regulated separately to other forms of betting)	SRIJ.	<i>Pari-mutuel</i> horse race betting is operated under an exclusive right system by SCML, subject to the supervision of the Social Security Ministry.
	Fantasy betting (payment to back a “league” or “portfolio” selection over a period of time, for example in relation to sport or shares)	Not regulated.	Not regulated.
Lotteries	Lotteries	Operated under an exclusive right system by SCML and subject to the supervision of the Social Security Ministry.	Operated under an exclusive right system by SCML and subject to the supervision of the Social Security Ministry.
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Ministry of Internal Affairs.	Ministry of Internal Affairs.
	Skill games and competitions with no element of chance	Not regulated.	Not regulated.

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

The specific legislation applicable by product is:

- a) Land-based casino gaming, poker and bingo operated in casinos – Decree-Law No. 422/89, of 2 December, as amended by Decree-Law No. 114/2011, of 30 November, and Decree-Law No. 64/2015, of 29 April.
Land-based bingo operated in bingo halls – Decree-Law No. 31/2011, of 4 March, as amended by Decree-Law No. 65/2015, of 29 April.
- b) Online casino gaming, poker, bingo, online fixed-odds sports betting and online horse race betting – Decree-Law No. 66/2015, of 29 of April, as amended by Law No. 13/2017, of 2 May and Law No. 101/2017, of 28 August.
- c) Land-based *pari-mutuel* sports betting – Decree-Law No. 84/85, of 28 March.
- d) Land-based *pari-mutuel* horse race betting – Decree-Law No. 68/2015, of 29 April.
- e) Land-based lotteries – Decree-Law No. 40 397, of 24 November 1955, as amended by Decree-Law Nos. 43 399, of 15 December 1960, and 120/75, of 10 March, and by Decree-Law No. 479/77, of 15 November, as amended by Decree-Law Nos. 11/88, of 15 January, 96/91, of 26 February, and 200/2009, of 27 August.
- f) Online lotteries and online *pari-mutuel* sports betting – Decree-Law No. 282/2003, of 8 November.
- g) “Social” gaming with no prize in money or money’s worth (skill and prize competitions and draws) – Decree-Law No. 422/89, of 2 December, as amended by Decree-Law No. 114/2011, of 30 November, and Decree-Law No. 64/2015, of 29 April.

The abovementioned legislation permits the offer of the respective Relevant Products to persons located in Portugal.

Among the legislation that impacts upon gambling activity are the following acts:

- AML/FT measures – Law No. 83/2017, of 18 August.
- Data Protection Regulation – Law No. 68/98, of 26 October, in its updated version, and General Data Protection Regulation.
- Publicity Code approved by Decree-Law No. 330/90, of 23 October, in its updated version.

2 Application for a Licence and Licence Restrictions

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

Land-based casino gaming, poker and bingo are subject to a concession agreement granted by the State through a public tender.

The operation of online gambling requires a licence granted by SRIJ through an administrative procedure.

In both cases, the grant of concessions/licences shall be dependent on the following cumulative conditions: having its social security and tax affairs in order; and being of good standing, with technical and financial capacity.

No licences are, or shall be, issued regarding any of the games entrusted to SCML (State-run games), since its operation was awarded by the State in the form of an exclusive right.

The Ministry of Internal Affairs establishes, for each social gaming category (skill and prize competitions and draws), the conditions deemed to be suitable, as well as the respective regime.

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

Only legal entities incorporated in the form of a limited liability company or equivalent with a registered office in the EU or in a State which is a signatory of the EEA which is bound to administrative cooperation in the field of tax and in combating fraud and money laundering, provided that, in the case of foreign companies, they have a branch in Portugal, may be a concessionary (land-based casinos) and/or licensee (online gambling).

The concessionaries of bingo halls outside the casinos may be a public or private entity.

Concessionaires and licensees are the sole guarantors responsible towards the SRIJ.

Persons who supply equipment or facilities to the providers of the above referred Relevant Products do not need to obtain licences or other forms of authorisation.

The Portuguese legislation clearly distinguishes between online and land-based gambling and online and land-based providers are not required to collaborate with each other.

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

The operation of casino gaming, poker and bingo is granted by the State through a public tender which specifies all the terms and conditions that the applicants must fulfil. These terms and conditions include, among others, 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, the possibility of its renewal and the awarding criteria. Additionally, specific conditions related to financial obligations and to touristic and cultural development are set forth in the public tender.

The operation of online gambling is granted by SRIJ through an administrative procedure. There are four different types of licences available: fixed-odds sports betting; *pari-mutuel* and fixed-odds horseracing bets; bingo; and other games of chance (casino gaming and poker).

There is no limit to the number of licences to be granted and applicants may apply for a licence at any time.

The licence application has to be submitted through the standard form approved by SRIJ. SRIJ verifies the applicant’s good standing and fulfilment of the technical, financial and economic requirements. The applicant must present a structuring plan of the gambling technical system, incorporating the best practices in software architecture and technology, containing, among others, 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 rules for calculating and paying prizes, the way in which all the transactions in the player account are made and how transactions

which 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 shall proceed with the down-payment of the licence fees, present the safety deposits, and obtain certification of the technical gambling system and subsequent homologation by the SRIJ. Only then will the licence be issued and the licensee may begin the operation.

During the term of the licence the operator may request authorisation to operate new types of games of chance besides those referred to above, the rules of which must be previously approved in a regulation issued by the SRIJ.

The authorisation for operating new types of games is endorsed on the licence, after the proper certification and official approval of the gambling technical system.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

The operation of land-based casino gaming and poker may only occur in casinos and within the designated geographical gambling area, or out of the casinos, in special cases previewed in the law (for example, slot machines gaming rooms, aircraft and ships). There are actually 10 gaming areas: Azores; Algarve; Espinho; Estoril; Figueira da Foz; Funchal; Porto Santo; Póvoa de Varzim; Troia; and Vidago-Pedras Salgadas. In each gaming area only the respective concessionaire may operate a casino.

State-run games are operated by SCML's mediators and in other venues as long as they have a valid permit.

Regarding online gambling, operators must present a technical gambling system (hardware and software, which includes the website, the reporting front-end and the gambling platform).

The technical gambling system has to include security mechanisms, ensuring, in particular:

- the integrity, availability and confidentiality of the communications, and of all the information processed and stored;
- registration of all actions in relation to each player;
- registration of all transactions and operations carried out;
- registration of players and players' accounts;
- registration of all the changes and occurrences which take place on the gambling platform; and
- the authentication and identification of players.

The technical gambling system has to be located in premises to which SRIJ has access at any time. The reporting front-end (infrastructure) has to be located in Portugal.

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 SRIJ, in particular to carry out control, audit and supervision actions.

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

The duration of the concession agreements, as referred to in question 2.3, is defined in the respective public tender and its renewal is only possible if it is previously foreseen in the public tender.

The duration of the existing concession agreements is between 15 and 20 years.

The concession agreements may be suspended or terminated, according to the gravity of the infringement, in cases of repeated non-compliance of the legal or contractual obligations.

Licences for online gambling 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 following requirements: social security and tax affairs in order; good standing, technical capacity and economic and financial capacity; fees paid; no outstanding fines; security deposits in order; and not having persistent shortcomings in the execution of an essential requirement in the course of the operating activity.

The licences may be suspended or revoked, according to the gravity of the infringement, by SRIJ at any time if licensees, in the specific cases foreseen in the law, do not comply with their legal obligations or are no longer able to operate in a sound financial manner.

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

There is a general obligation on providing gambling to customers in a social responsible manner and the law does not foresee any limits regarding stake limits, jackpot progressive or rollover limits, but obliges the operators to establish limits in order to comply with responsible gambling.

Advertising of land-based and online gambling is allowed by law as long as it is conducted in respect of the protection of minors, as well as of other vulnerable risk groups, highlighting the entertainment aspect of gambling and does not demean non-players, does not appeal to aspects relating to obtaining easy winnings, does not suggest success, social achievement or special skills as a result of gambling, or encourage excessive gambling practices.

It is expressly prohibited to aim gambling adverts at minors, to feature minors in such adverts, and to advertise gambling in schools or other infrastructures intended to be frequented by minors or within 250 metres in a straight line from schools or other infrastructures intended to be frequented by minors.

Bingo halls and land-based casinos are open up to 12 hours per day, the latter over a period between 3pm of each day and 6am of the following day, to be established by the concessionaire.

Online fixed-odds sports betting and horserace betting may only occur, respectively, on the sports and on the horse races contained in a list approved by the SRIJ. This list also contains the betting types that are allowed and is updated upon request of the operators.

2.7 What are the tax and other compulsory levies?

Gambling in Portugal is subject to different taxes according to different types of games:

1. Land-based casino games (including poker and bingo operated in casinos) are subject to a special gambling tax, known as IEJ, which varies according to the geographical gambling area where the casinos are located, and varies between 4.5% and 40% of the gross gambling revenues (GGR). No other general or local tax is claimed regarding the exercise of the activity or of any other activities to which the concessionaire companies may be obliged under the terms of the concession agreements and for the period of time these agreements are in force.
2. Land-based bingo in bingo halls (traditional and electronic) is subject to a Stamp Duty of 25%.

3. Online gambling is subject to a special online gambling tax, known as IEJO, which varies according to the following:

- i) In games of chance (including bingo), and on *pari-mutuel* horseracing bets, the IEJO is levied on the GGR of the operator. The IEJO rate on these games varies between 15% and 30%.

When the fees charged by the operator are the sole revenue deriving directly from operating games of chance in which the players play against each other, the IEJO is levied on these fees at the rate of 15%.

- ii) In fixed-odds sports betting and fixed-odds horseracing bets, the IEJO is levied on the revenue from the amount of the bets placed. The IEJO rate on these games varies between 8% and 16%.

When the fees charged by the operator are the sole revenue deriving directly from operating fixed-odds sports bets or fixed-odds horseracing bets in which the gamblers play against each other, IEJO is levied on these fees at the rate of 15%.

The revenue deriving directly from the pursuit of activities liable to the IEJO is not liable to Corporate Income Tax (IRC) and Stamp Duty.

4. State-run games are subject to Stamp Duty of 4.5% on the amount of the bet and of 20% of the amount of the prize that exceeds €5,000; an exception is made to mutual horserace betting, which are subject to IEJ at a rate that varies from 15% to 30% of GGR.

2.8 What are the broad social responsibility requirements?

In gambling operations, the integrity, reliability and security of such operations must be safeguarded, and awareness of the complexity of this activity must be assured. In addition, the holding of preventive awareness-raising and information activities, the drafting of codes of conduct and the dissemination of good practices must be fostered.

Operators must adopt measures which ensure responsible gambling and provide the players with the necessary information, fostering moderate, non-compulsive and responsible attitudes.

Before beginning operations, online operators must also draw up a plan which, among others, includes the following matters:

- general policy of information about the operator and the online gambling it offers;
- policy of information and communication to the player about responsible gambling behaviour and the dangers of dependence on and addiction to gambling, which includes a permanent message about responsible gambling on the website;
- measures adopted by the operator which seek to protect minors and persons self-excluded from gambling, and preventing the access of such persons to online gambling;
- mechanisms made available on the website which permit the players to limit the amounts deposited in their account and the bets placed;
- self-exclusion mechanisms, the way in which these are publicised on the website, and how to access them; and
- the timing of the game or of the bet, in cases where this is applicable.

The SRIJ shall foster, in liaison with the competent entities, the holding of studies aimed at identifying addictive behaviour and propose the adoption of preventive and deterrent measures.

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

All providers of gambling services are subject to AML/FT measures.

The law establishes an obligation for providers of gambling services to apply customer due diligence measures to gambling services providers for transactions amounting to €2,000 or more whether the transaction is carried out in a single operation or in several operations which appear to be linked.

The law also foresees specific simplified due diligence measures applicable to casinos and bingo halls. These concessionaires must identify and verify the ID of all customers at least in one of the following situations: (i) when the customer enters in the casino or the bingo hall; or (ii) when he purchases or exchanges gambling chips (in casinos) or purchases gambling cards or collects winnings (in bingo halls).

In casinos, the issuing of cheques in exchange for chips are allowed only to previously identified players, as long as these players have acquired those chips through a bank card or cheque in the maximum amount equal to the sum of those acquisitions. The cheques that may be issued shall mandatorily be nominative and crossed with a prohibitive clause indicating endorsement.

The online gambling legal framework, although approved in 2015, included due diligence measures anticipating the transposition of the 4th AMT/FT Directive. Players' registrations on gambling websites only become active after their identities have been verified, after which players may engage in online gambling.

Only electronic payment methods using the legal tender in Portugal and that allow the traceability of the transactions are acceptable and, for funding the player account, the operators may only allow payment methods supplied by payment service providers duly authorised by the competent authorities and that allow the person ordering the payment operation to be identified. Operators are obliged to register all gambling and financial transactions.

SRIJ supervises the implementation of the AML/FT Law by casinos and online gambling operators.

Virtual currencies are not allowed for gambling in Portugal.

3 Online/Mobile/Digital/Electronic Media

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

In Portugal the online legal framework regulates the operating of and engagement in casino gaming, poker, bingo, fixed-odds sports betting and *pari-mutuel* and fixed-odds horserace betting, when engaged in remotely, through electronic, IT, telematics and interactive media, or by any other means. The regulation foresees technical requirements for different forms of forms of distribution, namely mobile and digital.

The law is applicable to online gambling supplied to customers located in Portugal even where gambling is served and hosted from places outside Portugal.

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

The law empowers SRIJ to order the ISPs to block access to gambling websites that do not hold a licence issued by SRIJ.

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

Slot machines and machines operating casino games, poker and bingo are allowed in casinos, gambling rooms (at the moment there is only one gambling room in Azores), ships and aircraft registered in Portugal, when outside Portuguese territory.

Betting through terminals is allowed in SCML's mediators' venues and in other venues specifically authorised for the purpose.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Any person who operates land-based games in places other than those legally authorised shall be subject to criminal charges.

The same is applicable to those who, by any means and without being duly authorised for the purpose, operate, promote, organise or consent to operating online gambling, or make it available in Portugal through servers situated in or outside of the national territory.

An administrative offence is foreseen for those who breach the exclusive rights of operating the games entrusted to SCML.

Regarding the so-called "supply chain", only the ISPs are subject to an administrative offence if they do not comply with the notification made by SRIJ to block illegal websites.

There also exists an administrative offence for players who play on illegal websites.

4.2 What form does enforcement action take in your jurisdiction?

SRIJ provides technical support to and cooperates with the police authorities with regard to the prevention and punishment of illegal practices relating to land-based casino gaming, poker and bingo. These actions take place regularly and randomly across the country.

SRIJ also develops administrative cooperation mechanisms with the relevant authorities regarding the prevention and punishment of illegal online gambling and practices. SRIJ may notify ISPs in order to prevent access to, the availability of, and the use of unlawful online gambling, without a previous judicial court order.

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

Portugal is a member of the EU, therefore Portugal respects the freedoms of TFEU; namely, as regards gambling, those covered by its Articles 49 and 56.

Notwithstanding, the ECJ admits that some restrictions on gambling may be justified by overriding reasons in the public interest, such as consumer protection and the prevention of both fraud and incitement to squander money on gambling. The ECJ also admits that the objective of combating criminality linked to gambling is capable of justifying restrictions on fundamental freedoms under those rules. Portugal has drawn up the online gambling legislation according to these principles.

4.4 Are gambling debts enforceable in your jurisdiction?

According to the Portuguese Civil Code, gambling agreements are void and do not constitute a source of civil obligations; but when lawful, they are a source of natural obligations.

This means that the "debts" resulting from unlawful gambling are incapable of creating any obligation for participants.

The Portuguese online gambling legislation has expressly foreseen the mandatory constitution of a security deposit of €500,000, by the operators, as collateral for the performance of its legal obligations, including the payment of the estimated balances of the player accounts (prizes).

A similar rule can be found in the bingo legal framework – demanding a bond that guarantees the fulfilment of all legal and contractual obligations, including the payment of prizes.

5 Anticipated Reforms

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

In accordance with the law, SRIJ has already presented to the Portuguese Government the reassessment report of online legal framework. Therefore, a review of the law is expected by the end of 2018 or by mid-2019.

The announced review on Decree-Law No. 422/89, of 2 December, is yet to occur.

A change in law is being discussed in order to transfer to municipalities the competences to authorise the operation of "social" gaming with no prize in money or money's worth (skill and prize competitions and draws).



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Gonçalo Afonso Proença is a founding Partner of LGPAS in 2017.

He was a Counsel of Cuatrecasas until 2017 and an Associate Lawyer since 2005.

He is a notable practitioner in Public Law and Litigation and provides current legal advice to clients in public procurement law.

Gonçalo's areas of particular expertise include gambling, contracting law, litigation, namely, actions for damages arising from (i) extracontractual liability of the state and other public entities, and (ii) non-compliance of concession contracts, and pre-contract procedures.

He has been a legal advisor on matters concerning the concession contracts of casino games of chance in Portugal and the financing of tourism promotion through the gaming concessionaries.

Gonçalo was involved in the 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.



Luiz Gomes & Associados (LGPAS) is a law firm in Portugal with a team of highly qualified lawyers that are highly regarded for their in-depth knowledge of the law.

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The firm specialises in aviation and airports, corporate governance and compliance, energy and natural resources, cross-border transactions, financial institutions, public procurement, gaming, insurance, privacy and information management, real estate and tourism, and payment services.

Romania

Cosmina Simion



Nestor Nestor Diculescu Kingston Petersen

Ana-Maria Baciu



1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	National Gambling Office.	National Gambling Office.
	Poker	National Gambling Office.	National Gambling Office.
	Bingo	National Gambling Office.	National Gambling Office.
Betting	Betting	National Gambling Office.	National Gambling Office.
	Sports/horse race betting (if regulated separately to other forms of betting)	Not regulated separately, but falls under the general category of betting.	Not regulated separately, but falling under the general category of betting.
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	Not specifically regulated under Romanian gambling legislation. Depending on its characteristics, it may be qualified by the National Gambling Office within the category of "other types of games of chance".	Not specifically regulated under Romanian gambling legislation. Depending on its characteristics, it may be qualified by the National Gambling Office within the category of "other types of games of chance".
Lotteries	Lotteries	National Gambling Office. Lottery gambling is under the monopoly of the Romanian state.	National Gambling Office. Lottery gambling is under the monopoly of the Romanian state.

Relevant Product	Who regulates it in digital form?	Who regulates it in land-based form?	
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Not qualified as a game of chance, since it lacks one of the mandatory elements provided under Romanian regulation – a monetary prize.	Not qualified as a game of chance, since it lacks one of the mandatory elements provided under the Romanian regulation – a monetary prize.
	Skill games and competitions with no element of chance	Not qualified as a game of chance, since it lacks one of the mandatory elements provided under the Romanian regulation – chance/randomness.	Not qualified as a game of chance, since it lacks one of the mandatory elements provided under the Romanian regulation – chance/randomness.

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

The Romanian legislation which impacts upon gambling activities comprises the following main normative acts:

- (i) Government Emergency Ordinance no. 77/2009 on the organisation and operation of games of chance ("GEO no. 77/2009");
- (ii) Government Decision no. 111/2016 for the approval of the Methodological Norms for implementation of GEO no. 77/2009 (the "Secondary Legislation");
- (iii) Government Emergency Ordinance no. 20/2013 on the organisation and functioning of the National Gambling Office and for the modification and supplementation of GEO no. 77/2009;
- (iv) Government Decision no. 298/2013 on the organisation and functioning of the National Gambling Office;
- (v) Law no. 227/2015 regarding the Fiscal Code ("Romanian Fiscal Code");
- (vi) Law no. 207/2015 on the Fiscal Procedure Code;

- (vii) Order issued by the President of the National Gambling Office no. 47/2016 for the approval of content, reports and access to information transmitted by remote gambling operators to the National Gambling Office;
- (viii) Order issued by the President of the National Gambling Office no. 48/2016 for the approval of the procedure for fulfilling the conditions for connecting land-based slot machines and betting-type games of chance; and
- (ix) Order issued by the President of the National Gambling Office no. 93/2016 for the approval of the mandatory requirements for certification and audit of the remote gambling systems.

As a matter of principle, the Romanian regulation permits the offering of any of the Relevant Products on the Romanian market, both in land-based and digital/online forms, provided that the necessary licences and authorisation(s) are obtained by the operator intending to offer the respective Relevant Product.

As regards the social/skill games referenced under question 1.1, these sorts of product are not expressly regulated under the Romanian gambling legislation and should not normally be qualified as games of chance. Thus, in accordance with GEO no. 77/2009, a game of chance is defined as a product which cumulatively meets the following characteristics: (i) the charging of a participation fee; (ii) the game being based on the random selection of results; (iii) monetary winnings; and (iv) public offering of the respective game by the organiser to the participants.

Therefore, any game that lacks one (or several) of the mandatory elements provided by the legal definition should not be qualified as a game of chance and, in principle, should not be permitted in Romania without obtaining the licences and authorisation(s) imposed by the gambling regulation.

2 Application for a Licence and Licence Restrictions

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

In order to lawfully offer the Relevant Products in Romania, a gambling operator must apply for and obtain both (i) a Class 1 licence to organise games of chance, as well as (ii) one or several authorisations to operate games of chance.

In addition to business-to-consumer (“B2C”) operators, which are required to obtain the Class 1 licence and related authorisation(s), Romanian regulation also imposes the licensing requirement on business-to-business (“B2B”) providers specialised in the gambling industry which supply products/services to licensed B2C operators. Such providers are required to obtain a Class 2 licence granted by the National Gambling Office.

The categories of B2B suppliers for which the National Gambling Office has issued Class 2 licences are the following:

- manufacturers, distributors as well as other entities performing activities with gaming means or gaming components (Note: this type of Class 2 licence is relevant for the land-based sector);
- software providers;
- providers of platform management and hosting services;
- providers of live casino streaming services;
- certification laboratories, auditors and conformity assessment bodies;

- payment processors; and
- marketing affiliates.

The list of licensed B2C online operators may be accessed at the following link from the regulator’s website – <http://onjn.gov.ro/approved/> – while B2B providers holding a Class 2 licence are listed here: <http://onjn.gov.ro/lista-licentiati-clasa-a-ii-a/>.

As regards lottery gambling, GEO no. 77/2009 expressly sets forth that the organisation and operation of lottery games, whether as land-based or online/digital activity, fall under the monopoly of state company “Loteria Romana” which, by law, is granted the necessary licence (i.e. Class 3 licence) to offer lottery gambling in Romania.

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

In line with the regulation, B2C operators are required to hold both a Class 1 licence as well as one or several authorisations in order to offer gambling services in Romania. As regards online operations, the Secondary Legislation sets forth that authorisation is granted for the entire activity conducted on the same gambling platform, which may be connected to one or several Internet domain names. Another particularity for online gambling is that, pursuant to GEO no. 77/2009, the online casino licence includes online poker as well as online slot-machine gambling, so an operator holding the online casino licence may also offer online poker and online slots on its Romania-designed platform.

The licensing and authorisation regime for land-based gambling varies by reference to the type of activity for which each these permits is granted. For example, in case of land-based slot-machine gambling, authorisation is granted for each gaming machine (the regulation also imposes a minimum of 75 machines to be operated by the same organiser, under the penalty of having all authorisations as well as the licence withdrawn); while for land-based poker clubs or land-based casinos, authorisation is granted for the location where the respective operations are conducted.

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

The Class 1 licensing and authorisation process may be considered generally straightforward. With the exception of land-based casinos, poker clubs and bingo operations, the legislation regulates a closed-box procedure, all regulatory approvals being granted based exclusively on documents submitted for the analysis of the National Gambling Office, without the applicant or its representative(s) being present in front of the regulator for the hearing when the application is analysed and voted on. In the case of land-based casinos, poker clubs or bingo gambling (as well as for the Class 2 licence application by providers of casino streaming services), the regulation sets forth that in order for the licensing documentation to be put forward for the approval of the regulator, a team formed of representatives of the National Gambling Office and Ministry of Internal Affairs shall conduct a prior inspection of the location in order to ensure that it observes the regulatory conditions.

The list of documents to be submitted in the process is indicated by the legislation, such documents being aimed at providing information on the applicant (up to the ultimate beneficial owner(s)), its good standing (as well as the good standing of its legal representatives and shareholders) – including the capacity to cover debts towards the Romanian state budget or the applicant’s own players at any moment – but also must detail the technical and reporting system

intended to be used when carrying out the respective gambling activity in Romania. Nevertheless, the legislation also provides for the obligation of the applicant to provide any other data or information, as requested by the regulator.

From a procedural perspective, the complete licensing and/or authorisation documentation must be submitted at least nine business days prior to the date of the meeting of the National Gambling Office's Supervisory Committee (such meetings being generally organised twice a month), which is the body within the regulator competent to decide upon licence applications.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

The Romanian gambling regulation comprises certain provisions which, depending on the envisaged business model, may be considered restrictive or cumbersome, such as:

- only companies established within the EU, EEA or Swiss Confederation may apply for a Class 1 gambling licence;
- online operators which do not hold their main gaming server in Romania are required to establish safe and "mirror" servers on the Romanian territory, for the purpose of replicating data from the main server, and report information, on a continuous basis, to the National Gambling Office;
- online operators are required to open bank accounts in Romania, as well as to perform all transactions with the players via a Class 2 licensed payment processor;
- both land-based and online operators are required to rely only on those B2B providers holding the necessary Class 2 licence(s) granted by the Romanian regulator;
- the introduction in Romania of land-based gambling equipment may be performed only with the prior notification of the regulator;
- foreign online operators are required to appoint a local authorised representative for the purpose of representing the operator in relation to the Romanian authorities; and
- bonuses granted by online operators may be advertised only on limited channels (i.e. operator's own website(s), Class 2 licensed affiliates website(s) or e-messages to active players on the operator's database).

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

The Class 1 licence is valid for 10 years and may be renewed for identical periods of time, while the authorisation is generally granted for one year (with the exception of the authorisation for land-based temporary games, which is valid for three months) and must be renewed/prolonged on an annual basis.

The Secondary Legislation sets forth that the licences and authorisations may be prolonged, upon request, for identical validity periods in the case that, at least 30 days in advance of the expiration date, the licence holder proves that the conditions taken into consideration at the moment of the initial licence/authorisation continue to be observed.

In accordance with GEO no. 77/2009, the licence and authorisation enter into force on the first day of the month following the one during which the licence/authorisation application was approved by the regulator and the taxes owed by the operator were paid in advance.

The licence or authorisation may be **cancelled** in cases where it is discovered that at the moment of granting the licence/authorisation, the applicant provided false or inaccurate information which, had

it been known, would have led to the dismissal of the licence/authorisation application. In this situation, a new licence application can be submitted after a minimum of five years from the date on which the cancellation decision becomes final in the administrative appeal system, or from the date on which the court judgment becomes final and irrevocable.

The National Gambling Office may decide to **revoke** the Class 1 licence, depending on the consequences of the breach, for cases such as: (i) failure to comply with the obligations of payment to the Romanian state budget, or payment of the respective obligations with delay; (ii) the operator no longer has the organisation of games of chance as its main object of activity/scope of business; (iii) a final judgment of conviction without rehabilitation has been issued against the operator; or (iv) any of the shareholders or legal representatives of the operator keep their position for more than 30 days, when a final judgment of conviction without rehabilitation has been issued against the respective individual/entity, in Romania or in a foreign jurisdiction, for a crime stipulated by the Romanian gambling legislation or for any other crime committed with intent, to which a minimum two-year prison sentence was applied.

After the Class 1 licence has been revoked, a new application can be submitted after at least one year from the date on which the revocation decision became final.

The regulator may also decide to **suspend** the Class 1 licence for situations such as the breach by the operator of its terms and conditions or game rules, which generates damage for the player, or for any other reasons, even though not expressly regulated in the legislation, until the situation is clarified.

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

One of the general key limits under the Romanian regulation is the prohibition of minors under 18 years old from participating in any kind of gambling activity.

In terms of sector-specific limits, it is worth noting the prohibition from operating a casino within a hotel having a classification of less than three stars, and the prohibition from placing AWP slot machines within gaming halls dedicated to slots with unlimited stakes and winnings. In addition, land-based gambling locations are subject to several restrictions in terms of signalling their activity.

Romanian legislation contains certain restrictions related to gambling advertising. Some of the most significant may be deemed to be the following:

- spamming is forbidden – publicity in the form of unsolicited e-messages that include information regarding a game of chance, addressed to an unlimited number of recipients, is forbidden;
- sending advertising materials to self-excluded players from online platforms is prohibited;
- advertising of gambling services which are not authorised in Romania is prohibited;
- outdoor advertising may not be placed within or near educational institutions, socio-cultural or religious premises; and
- bonuses granted by online operators may be advertised only on limited channels (i.e. the operator's own website(s), a Class 2 licensed affiliate's website(s), or e-messages to active players from the operator's database).

In terms of the regulator's approach in relation to gambling advertising, it is worth mentioning that the former management

of the National Gambling Office (replaced in May 2018, having been operational for only one year) drafted and published on its website, at the beginning of 2018, the Code of Ethics regarding responsible communication in gambling. This Code is not of a regulatory nature *per se* and the former president of the authority has stated that operators, in view of the principle of social responsibility, should voluntarily adopt the Code and apply stricter rules in terms of advertising their activities (the English version of the Code is published on the following page of the regulator's website: <http://onjn.gov.ro/wp-content/uploads/Onjn.gov.ro/Rela%C8%9BiiPublice/Joc-responsabil/Ethical-code-on-responsible-gambling-ENG.pdf>). The former management of the regulator also requested the industry's feedback on the Code and, at that time, the Code remained to be finalised. Based on the latest discussions between the industry's representatives and the gambling office, it appears that (at least at the time of writing of this chapter) the new management does not endorse this Code of Ethics.

In addition, with regard to potential restrictions in relation to TV commercials for gambling, please refer to question 5.1 below.

2.7 What are the tax and other compulsory levies?

Taxes for land-based gambling

For land-based gambling, the licence tax is a flat fee of a specific amount depending on the type of land-based games operated, which may range from EUR 5,000 per year (in the case of tombola or poker clubs) to EUR 95,000 per year for land-based casinos.

The authorisation tax for land-based activities is also paid on an annual basis and is calculated by reference to the following criteria:

- (i) **Operator's revenue:** in the case of betting activities, bingo broadcast on television, and tombola, the authorisation tax represents 16% of the operator's revenue, but not less than a specific amount which varies depending on the type of game (EUR 90,000 for betting; EUR 115,000 for televised bingo).
- (ii) **Number of locations/gaming means:** land-based casinos entail an authorisation tax of EUR 60,000 per table (for Bucharest) or EUR 30,000 per table (for locations outside Bucharest); each slot machine with unlimited winnings requires an authorisation tax of EUR 2,600; while in the case of bingo performed in gaming halls, the operator is bound to pay an authorisation tax consisting of EUR 7,000 per location plus 3% of the value of the printed cards mandatorily purchased from the Romanian National Printing House.

The legislation also imposes certain special taxes for the following categories of land-based gambling:

- entry fee for casinos (RON 50 = approx. EUR 10) and poker clubs (RON 30 = approx. EUR 7); and
- vice tax for unlimited-winnings slot machines and video-lottery machines (VLT) of EUR 400 per post (terminal) per year.

As a separate payment obligation, organisers of land-based games of chance are required to contribute EUR 1,000 per year to the public fund for the prevention of gambling addiction (not yet established).

In addition, organisers of land-based games of chance must establish a guarantee fund in order to cover the risk of non-payment of the obligations to the state budget. The amount of the guarantee varies according to the type of gambling activity; being set up either per machine (slot), per gambling table or per premises and activity (for example, for land-based betting the level of the guarantee is EUR 7,000 for the activity itself and an additional EUR 100 for each agency, but no more than EUR 100,000 for that operator).

Taxes for online gambling

An operator of online gambling must pay an annual licence tax, calculated by reference to the operator's turnover, which ranges

between EUR 6,000 per year (for an annual turnover of less than EUR 500,000) to EUR 120,000 per year (for a turnover exceeding EUR 10,000,000).

The authorisation tax for online gambling is also paid on an annual basis and amounts to 16% of the income obtained from gambling activities (GGR), but not less than EUR 100,000 per year.

The administrative taxes for applying for and obtaining a Class 1 online licence are as follows: (i) EUR 2,500 for analysis of the file, paid when the documentation for obtaining the licence is submitted to the National Gambling Office; and (ii) EUR 8,500 for the issuance of the licence.

In addition, online licensed operators will have to make an annual contribution of EUR 5,000 to the fund for the prevention of gambling addiction (which is, however, yet to be established).

Also, in order to cover the risk of non-payment of the obligations to the state budget, operators of online gambling must establish a guarantee fund, according to the provisions of GEO no. 77/2009. The guarantee is established in the amount of EUR 100,000 per type of game organised (online casino, online betting, online bingo and keno).

Taxes for licensed B2B providers

The regulation also sets forth that a B2B provider holding a Class 2 licence is bound to pay an annual licence tax of EUR 6,000 and contribute EUR 1,000 per year to the fund for the prevention of gambling addiction (again, this fund is not yet established).

In addition, certification and auditing bodies for online gambling operators must set up a guarantee fund in the amount of EUR 250,000 in order to cover the risk of non-payment of obligations to the state budget.

Corporate income tax

Operators established as Romanian legal entities, as well as foreign operators generating a permanent establishment in Romania, will also be required to pay the general corporate income tax in the amount of 16% applied to taxable profit. The law provides an exception regarding land-based casino activities, where it is stated that this category may be subject to a 5% turnover tax in the case that the profit tax is less than 5% of their revenue.

Income tax on players' winnings

As regards the taxation mechanism for the winnings obtained by players from online gambling operations, until 23 March 2018, the online operator was required to only inform the player and the tax authority about the revenues obtained by the player in the previous year, and afterwards the players themselves were required to file a tax statement regarding the revenues obtained, after which the tax authority would calculate the tax due and issue a decision on the tax which the player was required to pay. However, following the amendment of the Romanian Fiscal Code, as of 23 March 2018, the mechanism has changed in the sense that the online operator now has the obligation to withhold the related tax from each withdrawal performed by the player from the account opened on the platform.

As a particularity applicable to land-based activities, revenue obtained by players from casino, poker club, slot-machine and scratch card operations which does not exceed RON 66,750 (approx. EUR 15,000) is not subject to taxation.

2.8 What are the broad social responsibility requirements?

The gambling regulatory framework is focused on protecting minors and preventing their access to gambling, as well as ensuring the integrity and transparency of gambling activities and maintaining a fair game system which is constantly supervised.

All entities involved in the gambling industry which hold a licence granted by the Romanian regulator (both land-based and online operators, as well as licensed B2B providers) are required, pursuant to GEO no. 77/2009, to pay an annual contribution to a public fund whose main purpose is to finance programmes and activities aimed at ensuring a responsible gambling environment and preventing gambling addiction cases. However, at the time of writing, this public fund has not been created yet, so the contributions imposed by the law are not yet payable. Nevertheless, the draft government decision for the creation of the public fund was published a few months ago on the National Gambling Office's website and is available, in Romanian language only, here: http://onjn.gov.ro/wp-content/uploads/Onjn.gov.ro/Rela%C8%9BiiPublice/transparenta-decizionala/proiecte-acte-normative/Proiect-HG-infiintare-fond-%C8%99i-adminstratia-fondului-16_05_2018.pdf.

As regards online gambling, the Secondary Legislation specifically provides that the platforms must be designed to enable responsible gambling functions such as setting daily, weekly or monthly deposit limits, the possibility for players to permanently or temporarily self-exclude from gambling, etc. In addition, online operators are obliged to inform players who have opted to self-exclude of the possibility of receiving counselling and treatment for gambling addiction at a treatment centre.

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

In accordance with GEO no. 77/2009, all payments to players participating in online gambling must be made only through a payment processor which holds a Class 2 licence granted by the National Gambling Office, irrespective of whether the respective payment entity already holds the necessary authorisations/approvals in accordance with the banking/financial regulation.

By comparison to foreign-licensed operators active in Romania, those operators incorporated as Romanian companies are subject to the entire Romanian legal framework, which may potentially generate additional legal obligations. In this sense, it is worth noting that, based on the recent quasi-official interpretation of the Romanian AML Office, only Romanian-based operators are subject to the local AML law (as such implements the EU Directive), while foreign entities fall under the AML regulations existing in their country of origin.

While the Romanian gambling legislation does not specifically regulate the use of virtual currencies for gambling operations, GEO no. 77/2009 expressly provides that any payment instrument used for gambling must comprise the identification details of the individual who operated the respective instrument. This regulatory requirement may lead to the conclusion that virtual currencies which cannot enable this identification standard are not permitted under the Romanian gambling regulation.

3 Online/Mobile/Digital/Electronic Media

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

The Romanian gambling legislation does not provide for different legal regimes for the provision of the Relevant Products, depending

on the nationality of the operator. As mentioned above, in order to obtain a licence, it is not mandatory for the operator to be established as a Romanian legal entity; it is permitted to apply for the licence as long as the applicant is incorporated in an EU or EEA jurisdiction or the Swiss Confederation. Furthermore, Romania is not a “ring-fenced” market in the sense that the online platforms designed for Romania may, as a matter of principle, also be accessible from abroad (as long as the applicable foreign laws allow this structure).

Nevertheless, irrespective of whether the licensed online operator is a Romanian or foreign company, as long as the main gaming server is not placed in Romania, the respective operator will be required to establish safe and “mirror” servers in the Romanian territory.

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

In order to protect consumers from unlicensed gambling activities, the National Gambling Office has the responsibility to identify those websites that enable access from the Romanian territory to online gambling operations which are not licensed in accordance with the local regulation.

Moreover, pursuant to GEO no. 77/2009, the Romanian regulator must also: (i) identify websites used for carrying out marketing, advertising and publicity activities or any other promotional activities relating to unlicensed online gambling; and (ii) communicate all information identified to the ISPs, so that access to these websites and unlicensed gambling websites can be blocked. In addition, the regulator shall communicate the information about the unlicensed gambling websites to the payment processors, so that any payments to and from these websites can be blocked.

The unlicensed gambling websites are included by the National Gambling Office on a blacklist, available at the following page on the regulator's official website: <http://onjn.gov.ro/lista-neagra/>.

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

As to the possibility to link land-based terminal/machine-based gambling with online operations, the Secondary Legislation sets forth explicitly that it is prohibited to install any kind of devices in land-based gambling locations which allow access to online gambling platforms.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

In accordance with GEO no. 77/2009, liability for the lawful organisation and operation of gambling activities pertains entirely to the operator which holds the licence and authorisation(s).

Under the Romanian regulation, performing gambling activities in the absence of the necessary licence and authorisation(s) represents a criminal offence sanctioned by imprisonment or criminal fine. GEO no. 77/2009 also sets forth that the operator (legal entity) found guilty of performing unlicensed gambling shall be mandatorily dissolved and the amounts of money obtained from the illegal activities shall be confiscated.

The relevant provision from GEO no. 77/2009 sanctioning the performance of gambling activities without a licence is broadly phrased, in the sense that it states that performing any activities in

the field of gambling without a licence or authorisation represents a criminal offence. This could theoretically be interpreted as encompassing all gambling-related activities that require such licence or authorisation, including the performance of B2B activities.

In addition, for B2B activities, a specific article provides that carrying out any B2B activities in the absence of the necessary Class 2 licence is considered a minor offence and is sanctioned with a fine ranging between RON 50,000 and RON 100,000 and the confiscation of the amounts derived from the illicit activity.

From the perspective of the players, participation in unlicensed online gambling, from the Romanian territory, represents a minor offence sanctioned by a fine ranging between RON 5,000 and RON 10,000.

4.2 What form does enforcement action take in your jurisdiction?

At the time of writing, the regulator has included on the blacklist of unlicensed gambling websites more than 1,000 domain names (the full list is available at: <http://onjn.gov.ro/lista-neagra/>) and has instructed all ISPs to block access to these websites and redirect all traffic to an IP address that is publicly known to belong to the Special Telecommunications Service (a central specialised structure which organises and coordinates the activities in the special telecommunications field for the Romanian public authorities, having a military structure and being part of the national defence system).

Gambling has also been on the agenda of the National Audiovisual Council since the beginning of 2017. The audiovisual regulator has recently summoned several TV stations to enter into legality due to the fact that they broadcast commercials for online gambling services (licensed in Romania) during timeframes considered by the Council as available to the general public, thereby breaching the principle of protection of minors.

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

Under EU Directive 98/34/EC, when intending to introduce a regulation for the provision of information in the field of technical standards and regulations, EU Member States (thus, including Romania) must notify the European Commission and other Member States about the draft regulations regarding products and information society services (such as online gambling) before adopting them.

4.4 Are gambling debts enforceable in your jurisdiction?

In accordance with the Romanian Civil Code, only debts arising from duly licensed and authorised gambling operations are enforceable.

5 Anticipated Reforms

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

The following regulatory initiatives, if enacted, may have a significant impact on the Romanian online gambling market:

- **Advertising restriction for gambling** – while the audiovisual legislation currently in force does not include any explicit restriction regarding the time-spans for broadcasting gambling commercials, in April and then December 2017, the National Audiovisual Council (the “NAC”) issued warning decisions against several TV stations because they had aired gambling commercials during timeframes “available to children” and hence the audiovisual principle regarding the protection of minors had been breached. Based on the argumentation presented in the decisions, it appears that, in NAC’s opinion, gambling commercials cannot be broadcast between 07:00 and 23:00. Even if these decisions were not of a regulatory nature *per se*, based on certain information available on the market, it seems that, as of 1 January 2018, (at least) some Romanian-licensed broadcasters have taken the approach of complying with this decision and have ceased transmitting gambling advertisements between 07:00 and 23:00. However, at least one sports broadcaster, licensed in a foreign jurisdiction, does not appear to be following the same approach as the local channels.

At this stage, it appears that the NAC’s intention is to create a regulatory framework for broadcasting gambling advertisements and the industry has proposed to the audiovisual regulator several circumstantiations and exceptions with respect to the permitted time interval (e.g. the allowance of commercials in the context of a live sport event, irrespective of when it is broadcast, etc.).

- **Amendment of the monthly statement submitted to the National Gambling Office** – online operators are required to provide to the regulator, on a monthly basis, a statement including, among others, the financial figures (e.g. total stakes, total prizes, revenue, etc.) obtained in the reporting month. The regulator has launched discussions with industry representatives in order to issue an order amending the template of such monthly statement. One of the envisaged amendments concerns the clarification of the mechanism regarding the taxation of bonuses granted by operators.
- **Creation of the public fund for preventing gambling addiction** – as mentioned in question 2.8 above, the draft government decision for the establishment of the public fund for preventing gambling addiction has already been published on the website of the gambling regulator. All licensed operators and B2B providers will be required, in accordance with the regulation, to pay an annual contribution to this public fund.

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Legal & Tax

NNDKP is a preeminent full-service business law firm active in Romania, and a trusted legal and tax advisor to domestic and international companies, financial institutions and entrepreneurs. We line up as one of the most reputed and strongest teams in Romania.

In gaming, our dedicated practice has been at the forefront of the development of the Romanian gambling market. We have been building our expertise over several years, since the first international companies active in this field started tackling Romania. Members of our team have been directly involved in the drafting of the primary and secondary Romanian gambling legislation.

We are well equipped to provide specialised gaming advice combined with seamless access to a vast pool of resources across various business law areas, including IP, tax, commercial, M&A, data protection, competition and more.

Operators, financial services providers, industry-relevant associations, auditors and certifiers, marketing affiliates in the gambling industry and software/platform suppliers for the gaming industry regularly turn to us for expert legal advice in this industry.

Singapore

Lau Kok Keng



Rajah & Tann Singapore LLP

Daniel Quek



1 Relevant Authorities and Legislation

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

Relevant Product	Who regulates it in digital form?	Who regulates it in land-based form?	
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	<p>All forms of online gambling involving games of chance, including casino gaming, are prohibited in Singapore by the Remote Gambling Act 2014 (“RGA”) unless they are exempted from the RGA by the Minister. The main entity involved in enforcing the RGA is the Gambling Regulatory Unit (“GRU”) which operates under the Ministry of Home Affairs (“MHA”). The MHA is supported by the Infocommunications Media Development Authority (“IMDA”) and Monetary Authority of Singapore (“MAS”) in relation to certain measures stipulated in the RGA, such as the blocking of online gambling websites and blocking of payment from such websites, respectively. The Ministry of Social and Family Development (“MSF”) also works closely with the MHA to tackle problem gambling.</p>	<p>The Casino Regulatory Authority (“CRA”) is the statutory body responsible for regulating the two land-based casinos in Singapore, ensuring that their management and operations are free from criminal influence or exploitation, and that gaming activities in casinos are conducted with integrity. The MSF also works closely with the CRA to tackle problem gambling.</p> <p>In addition, the Singapore Police Force has established a Casino Crime Investigation Branch within its Criminal Investigation Department to investigate and deal with casino-related criminal offences.</p>
	Poker	Same as above.	If done in casinos, same as above. Terrestrial betting (excluding casinos) is regulated by the Common Gaming Houses Act (Cap. 49) (“CGHA”) and the Betting Act (Cap. 21) (“BA”). The main entity involved in enforcing the CGHA and the BA is the MHA.
	Bingo	Same as above.	Same as above.
Betting	Betting	Same as above. The only two entities granted certificates of exemption under the RGA to offer online betting are Singapore Pools (Private) Limited (“SPPL”) and the Singapore Turf Club (“STC”). Both operators are owned by the Singapore Totalisator Board, a statutory board in Singapore.	<p>Terrestrial betting (excluding casinos) is regulated by the CGHA and the BA. The main entity involved in enforcing the CGHA and the BA is the MHA.</p> <p>The only two entities granted exemptions under the CGHA and BA to offer non-casino betting are SPPL and STC. Both operators are owned by the Singapore Totalisator Board, a statutory board in Singapore.</p>
	Sports/horse race betting (if regulated separately to other forms of betting)	Same as above.	Same as above.
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example, in relation to sport or shares)	Since online fantasy sports betting constitutes a game of chance, it is prohibited in Singapore by the RGA. The main entity involved in enforcing the RGA is the GRU which operates under the MHA. The MHA is supported by the IMDA and MAS in relation to certain measures stipulated in the RGA, such as the blocking of online gambling websites and blocking of payment from such websites, respectively.	Since fantasy betting constitutes a game of chance, it is prohibited in Singapore by the CGHA and/or the BA. The main entity involved in enforcing the CGHA and the BA is the MHA.

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Lotteries	Lotteries	Online public lotteries are prohibited in Singapore by the RGA, save where they are offered by SPPL, or are otherwise exempted from the RGA by the Minister. The main entity involved in enforcing the RGA is the GRU which operates under the MHA. The MHA is supported by the IMDA and MAS in relation to certain measures stipulated in the RGA, such as the blocking of online gambling websites and blocking of payment from such websites, respectively.	Public lotteries available to the general public are regulated by the CGHA. Private lotteries are regulated by the Private Lotteries Act (Cap. 250) (“PLA”). The main entity involved in enforcing the CGHA and the PLA is the Singapore Police Force (“SPF”) which operates under the MHA.
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	This is not considered as gambling and is hence not regulated by Singapore legislation.	This is not considered as gambling and is hence not regulated by Singapore legislation.
	Skill games and competitions with no element of chance	Same as above. Online games of skill are regulated only by their respective game rules and organisers.	This is not considered as gambling and is hence not prohibited under Singapore gambling laws. Sports and games of pure skill are regulated instead by national sports associations and international sports federations based on the respective applicable game rules.

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

1.2.1 The main legislation relating to digital/remote gambling are:

- RGA (Act 34 of 2014), which regulates remote gambling activities in Singapore as well as those conducted outside Singapore which are offered to Singapore residents. The RGA prohibits all forms of online gambling activities unless an exemption is obtained or unless the gambling activity falls under the Remote Gambling (Exempt Persons) Order 2015 (“RGEPO”). Remote gambling is defined as using remote communication to gamble. Remote communication includes the internet, telephone, television, radio, or any other kind of electronic or other technology for facilitating communication, unless otherwise designated by the Minister.
- RGEPO, which provides that where a person provides a remote gambling service for participation in an incidental lottery, customer lottery or non-commercial organisation lottery, that person is exempted from sections 10, 11, 12 and 13 of the RGA. However, there are various standard conditions to be complied with by exempted parties, such as prior submission of material information about the lottery to the Specialised Crime Policy Branch of the Criminal Investigation Department of the Police, and notification of every winner of the prize won.

1.2.2 For terrestrial casino gaming, the main legislation/regulations are:

- Casino Control Act (Cap. 33A) (“CCA”), which regulates the two licensed casinos in Singapore and all activities arising from their operations; and
- various regulations passed pursuant to the CCA, including:
 - Casino Control (Entry Levy) Regulations 2010, which require Singapore residents to pay a levy to enter the licensed casinos;
 - Casino Control (Conduct of Gaming) Regulations 2009, which govern the issuance, redemption and use of chips and chip purchase vouchers, together with the conduct of table games offered at the casino;
 - Casino Control (Advertising) Regulations 2010, which regulates the publication and distribution of casino advertisements and promotions;
 - Casino Control (Responsible Gambling) Regulations 2013 (“CCRGR”), which require the two licensed casinos to put in place a responsible gambling programme;

- Casino Control (Credit) Regulations 2010, which regulate the extension of credit for gaming in a casino by a casino operator to a patron who is neither a citizen nor a permanent resident of Singapore; and
- Casino Control (Patron Dispute Resolution) Regulations 2009, which regulate the resolution of disputes between a casino operator and a patron of the casino, including disputes as to alleged winnings, alleged losses and the manner in which a game is conducted.

1.2.3 Terrestrial betting and lotteries are governed by:

- BA, which regulates the conduct, promotion and advertising of betting on horse racing and other sporting events. Betting is prohibited unless expressly exempted;
- CGHA, which regulates the conduct, promotion and advertising of public gaming and public lotteries. Such gaming and lotteries are prohibited unless expressly exempted;
- Common Gaming Houses (Exemption) Notification 1996 (“CGHEN”), which exempts certain organisations from the operation of the CGHA;
- Common Gaming Houses (Private Bodies – Exemption) Notification (“CGHPBEN”), which exempts private bodies and their members from the operation of the CGHA, subject to conditions specified in the Schedule to the CGHPBEN;
- Betting and Sweepstake Duties Act (Cap. 22) (“BSDA”), which imposes duties payable on betting and sweepstakes activities;
- PLA, which prohibits all forms of private lotteries unless a permit is obtained; and
- The Singapore Totalisator Board (Advertisements) Regulations 2010, which impose restrictions on SPPL and STC in respect of time, frequency, duration, content and manner of publication and distribution of their respective gaming advertisements.

1.2.4 Of general application to all the Relevant Products (excluding social/skill arrangements) are:

- Civil Law Act (Cap. 43) (“CLA”), section 5 of which provides that all agreements by way of gaming or wagering shall be null and void unless they relate to legalised gaming;
- Advertising Standards Authority of Singapore (“ASAS”) Advisory on Gambling Advertisements and Promotions, which offer a set of voluntary and self-regulating guidelines on gambling-related marketing communications; and
- Responsible Gambling Code of Practice (“RCPG”), which was introduced by the National Council on Problem Gambling (“NCPG”) to minimise the potential harm of gambling. It has been adopted by existing gambling operators and major clubs that run jackpot rooms in Singapore.

1.2.5 The following deal with money obtained from illegal gambling for the purposes of commission of serious crimes and the funding of terrorism-related activities:

- Organised Crime Act (No 26. of 2015) (“OCA”);
- United Nations (Anti-Terrorism Measures) Regulations (Cap. 339, section 2(1));
- Terrorism (Suppression of Financing) Act (Cap. 325) (“TSOFA”);
- Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act (“CDSA”);
- MAS Notice 626 – Prevention of Money Laundering and Countering the Financing of Terrorism – Banks pursuant to section 27B of the Monetary Authority of Singapore Act (Cap. 186); and
- MAS Guidelines to MAS Notice 626 on prevention of Money Laundering and Countering the Financing of Terrorism.

2 Application for a Licence and Licence Restrictions

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

For digital/remote gaming operations:

- Unless they fall within the exemptions in the RGEPO referred to at 1.2.1 above, operators who wish to offer the Relevant Products to Singapore residents would have to apply to the Minister for Home Affairs for a certificate of exemption, authorising them to provide a Singapore-based remote gambling service with a Singapore-customer link.
- For those who fall within the RGEPO exemptions, they would have to comply with the standard conditions set out in the RGEPO, such as notification to the police authorities at least four weeks before any advertisement publicising or promoting a remote gambling service is published, as well as conditions on how winners are to be notified.
- Any person may also obtain an *ad hoc* exemption from the RGA on a case-by-case basis, subject to the conditions imposed for the exemption.

For terrestrial casino operations:

- prospective operators will have to apply for a casino licence under the Casino Control (Casino Licence and Fees) Regulations 2009. Casino licences have been granted to two casino operators, and the Singapore government has stated that it has no plans to grant any more licences to additional operators;
- casino operators must also apply for special employee licences on behalf of various categories of people they wish to employ, as required under the Casino Control (Licensing of Special Employees) Regulations 2009. Such categories include employees who perform senior management or other executive functions, or whose function have significant influence over the casino operations, or who provide technical support services relating to the maintenance, rectification or repair of gaming equipment in the casino premises; and
- under the Casino Control (Casino Marketing Arrangements) Regulations 2013, international market agents (otherwise more commonly known as junket operators) looking to enter into a casino marketing arrangement with casino operators must apply for an international market agent licence, or if they have representatives, an international market agent representative licence. A licensed international market agent is not allowed to employ or use the services of a person to

organise, promote or conduct a casino marketing arrangement within any casino premises unless that person is the holder of a valid international market agent representative licence.

Terrestrial betting services (excluding casinos):

- For prospective operators looking to offer terrestrial betting services on games of chance (excluding casinos), they will have to apply to the Minister for Home Affairs for an exemption. Any exemption granted will typically be subject to conditions imposed in the gazetted exemption, as well as to additional conditions which are set out in the letter of approval to the applicant. Such conditions include:
 - disclosure in printed publicity material of the methodology of the promotion, details of the prizes to be distributed, the manner of their distribution, and the time, date and place of the draw. Copies of such publicity material must be made freely available to all participants;
 - for lucky draws, the draw must be conducted by the organisation’s/company’s employees or officers only; and
 - the draw shall not involve the use of any game, method, device, scheme or competition that has previously been banned under the CGHA.
- The CGHPBEN provides private bodies, such as a company (or employees for instance), co-operative society, a society, mutual benefit organisations and trade unions, with an exemption from the provisions of the CGHA, provided that the gaming is conducted in premises owned by the private body. However, this is subject to conditions specified in the Schedule, which include the following:
 - no person other than a member may have access to or remain in any part of the premises in which any gaming is conducted, or conduct or participate in any gaming in the premises;
 - the private body must not allow any of its members to conduct or participate in any game other than certain stipulated games such as mahjong and Russian poker; and
 - no member below the age of 18 can participate in any gaming conducted in the premises.
- Private lottery and fruit machine operators must obtain permits from the Singapore Police Force for the promotion and conduct of a private lottery. This will be subject to various conditions, including the following:
 - no profit shall accrue to any individual person from the conduct of such lottery;
 - no commission either in money or money’s worth, including by way of free tickets or chances, shall be payable in respect of the sales of tickets or chances;
 - there shall be a time limit for the conduct of the lottery; and
 - the requirement of a security deposit.

Under section 31 of the PLA, the Minister may exempt a social welfare society from the PLA where it is promoting a private lottery for purposes conducive to the welfare of the public or any class thereof.

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

See question 2.1 above.

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

For digital/remote gaming operators, an application for a certificate of exemption allowing an operator to provide remote gambling services can be made. A certificate of exemption will only be issued if the Minister is satisfied that it is in the public interest to do so.

The RGA does not set out the procedure involved in the making of this application, but it is likely to be by way of a written application to the Ministry of Home Affairs. In determining whether it is in the public interest to issue a certificate of exemption, the Minister may have regard to factors such as whether the applicant is established or based in Singapore, whether any director or key officer of the applicant has been convicted of criminal offences in Singapore whether the applicant is a not-for-profit entity that distributes the money forming part of its funds to public, social or charitable purposes in Singapore, and whether the applicant has a consistent track record of legal and regulatory compliance applicable to it, whether in Singapore or elsewhere.

For exempted customer and non-commercial organisation lotteries under the RGEPO, material information about the lottery would have to be provided to the customers, and to the Head of the Specialised Crime Policy Branch, Criminal Investigation Department, Singapore Police Force (“**Head SCPB**”) at least four weeks prior to the publication of any advertisement about the lottery. A written undertaking will also need to be provided to the Head SCPB that the organiser of the lottery will give an audited statement of accounts, the results of the lottery and the description and value of the prizes to Head SCPB no later than three months after the last draw of the lottery.

For terrestrial casino operations, the Casino Control (Casino License and Fees) Regulations 2009 sets out the process and payable fees for operators looking to apply for a casino licence. Every application shall be accompanied by:

- an application fee;
- such documents as the CRA may specify evidencing the applicant’s ownership of the designated site;
- the disclosure of corporate or individual information in the form provided by the CRA for the applicant and such associates of the applicant as the CRA may specify; and
- such other documents as the CRA may require to determine the application.

The fees for this are as follows:

- Application for a casino licence: S\$1,100.
- Casino licence fee:
 - To operate the only casino in operation: S\$22.8 million *per annum*.
 - To operate one of the two casinos in operation: S\$19 million *per annum*.
- Casino licence fee for a casino licence granted or renewed on or after 15 January 2016:
 - To operate the only casino in operation: S\$26.4 million *per annum*.
 - To operate one of the two casinos in operation: S\$22 million *per annum*.
- Application for renewal of casino licence: S\$850.
- Application to redefine casino boundaries: S\$270.

For exemptions under the BA and CGHA for terrestrial betting, as in the case of digital/remote gambling exemptions, the legislation does not set out the procedure involved in the making of this application, but it is likely to be by way of a written application to the Ministry of Home Affairs. Unlike the RGA, the BA and the CGHA do not state explicitly that exemptions are to be granted only if the Minister is satisfied that it will be in the public interest to do so, or list factors that the Minister should consider.

For public lotteries conducted by a business organisation for the purpose of promoting the sale of any product or service exempted under the CGHEN, the methodology of the promotion, the details of the prizes to be distributed, their manner of distribution, and how the winners are determined, and the time, date and place of the draw must

be made available to all participants of the lottery and sent to the Head, Gambling Suppression Branch, Criminal Investigation Department, Singapore Police Force (“**Head GSB**”) at least four weeks prior to the launch of the promotion. The prize information must also be published in a newspaper, should the total value of prizes exceed S\$10,000.

Private clubs and societies may apply to the Singapore Police Force to obtain a private lotteries permit to allow them to operate fruit machines or conduct private lucky draws and tombolas. They would have to satisfy certain criteria, such as that they must be a validly established society, that their Constitution does not prohibit the offer of such private lotteries, and that they have been in operation for at least a year and have at least 500 ordinary members. They would also have to submit their audited annual statement of accounts and a floorplan of the clubhouse showing the location of the proposed fruit machine room.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

For digital/remote gambling operators, exemptions may be granted based on certain conditions as the Minister may consider appropriate, including conditions:

- to ensure that the management and operation of a remote gambling service remain free from criminal influence or exploitation, and are carried out by employees, officers, agents or contractors of an exempt operator who are suitable;
- to ensure that the integrity of remote gambling transactions is maintained;
- to contain and control the potential of remote gambling to cause harm to young persons, vulnerable persons and society at large;
- providing for the type of remote gambling service and corresponding remote gambling products that may be offered by the exempt operator; and
- providing for controls over advertising or promotional activities that may be published or carried out by the exempt operator.

Additionally, under the RGEPO, incidental lotteries, customer lotteries and non-commercial organisation lotteries are exempted from the RGA.

- An incidental lottery is defined as a lottery:
 - which takes place as an incidental activity for entertainment at events such as a fair, dance, dinner, sporting event that may be attended by the general public or any section of the public;
 - the receipts for which are only supplied to attendees of the event;
 - in respect of which no charge is collected by the event organisers beyond the fees for attending the event; and
 - the result of which is made public to the attendees.
- A customer lottery is defined as a lottery:
 - which is conducted by a business organisation for the purpose of promoting the sale of any product or service (other than a gambling service) by the organisation;
 - receipts for which are supplied only to customers who have purchased the product or service;
 - in respect of which no charge is collected except for a reasonable charge for the value of the product or service where sold or supplied;
 - from which no profits will be made by the business organisation;
 - material information about which is given to the customers or to the general public, and to the Head SCPB at least four weeks before any advertisement regarding the lottery is published;

- in relation to which no remote gambling service operator is involved in its provision;
 - whose arrangements do not include a roll-over; and
 - which satisfies standard conditions for an exempt remote gambling service as set out in section 6 of the RGEPO.
- A non-commercial organisation lottery is one:
- which is promoted wholly by a non-commercial organisation for any of the organisation's purposes;
 - in respect of which the organisation keeps a record of the name and address of its members;
 - where every member is issued with a receipt conferring the right to win prizes in that lottery, such receipt containing the name, address and other information of the organisation, the details of the prizes, date and time of the draw and details of how prizes which are not won or claimed will be dealt with;
 - the price of participation in which is shown on the receipt and is paid in full in advance to the organisation;
 - the arrangements for which do not include a roll-over;
 - the draw for which is not within 12 months after another lottery is conducted by the same organisation;
 - which does not involve any remote gambling service operator, and the net proceeds of which are applied to a purpose for which that organisation is conducted; and
 - which satisfies standard conditions for an exempt remote gambling service as set out in section 6 of the RGEPO.

For terrestrial casino operations, the Casino Control (Responsible Gambling) Regulations 2013 also sets out the requirement that a casino operator must submit a responsible gambling programme for its casino to the Authority for approval at the same time it submits its application for a renewal of its casino licence, or within such period after the application as the Authority may allow in any particular case. There are other regulations that casinos must adhere to, including regulations on the casino layout, gaming equipment, internal controls, patron dispute resolutions and surveillance operations.

For terrestrial non-casino betting operations:

- Paragraph 3 of the CGHEN allows public lotteries to be conducted by a business organisation for the purpose of promoting the sale of any product or service as long as certain conditions are complied with. These conditions include:
 - the disclosure of the methodology of the promotion, the details of the prizes to be distributed, their manner of distribution, and if the winners are determined solely or partly by a draw, the time, date and place of the draw, in printed publicity material, copies of which shall be freely available to all participants and two copies of which shall be sent to the Head, Gambling Suppression Branch, Criminal Investigation Department at least four weeks prior to the launch of the promotion;
 - the publication in a newspaper of prize information where the total value of prizes exceeds S\$10,000; and
 - the prohibition against requiring participants to pay any money apart from payment for the product or service purchased.
- Paragraph 4 of the CGHEN exempts public lotteries which are promoted by members of the National Council of Social Service, charities or institutions of public character, subject to the fulfilment of the conditions set out at paragraph 5, as well as the requirements that:
 - the price of each lottery ticket, the name and address of the organisation promoting the lottery, and details of the prizes be clearly on the ticket; and
 - the proceeds of the lottery be applied for the purpose of the organisation promoting the lottery.

- Paragraph 5 sets out the conditions to be fulfilled in respect of the exemptions granted under paragraphs 3 and 4. These conditions include the requirement that the lottery be conducted by the organisation and its officers, the draw be conducted in public, and that the lottery does not involve the use of any game, method, device scheme or competition, or instrument and appliance for gaming that has been declared illegal under the CGHA.
- Paragraph 6 of the CGHEN exempts lotteries which are promoted as incidental to other entertainment – for example, lotteries offered at dinner and dance, sporting or athletic events. The conditions which are applicable to this exemption include the following:
 - the lottery must be incidental to admission to the entertainment event, and participation in the lottery is limited to those attending the event;
 - participation in the lottery shall not be the sole or substantial inducement to persons to attend the entertainment event, and there shall be no payment for participating in the lottery in addition to the payment for attendance at the event;
 - the lottery must not involve the use of any game that is gazetted as a lottery or a game of chance or mixed game of skill and chance. Games currently gazetted as such include the *chap ji kee* game, mahjong, roulette, Russian poker and the *fishing* game; and
 - the lottery must not involve any instrument which has been gazetted as instruments or appliances for gaming. Instruments currently gazetted as such include English playing cards, mahjong tiles, the standard dice and the roulette wheel.

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

For digital/remote gambling operations:

- A certificate of exemption listed under the RGA is valid for such period as may be specified in the certificate and may be extended thereafter, with or without additional conditions.
- The certificate of exemption is not transferable and not assignable, and any attempt to do so would render the certificate void.
- The exempt operator is also required to comply with any direction given by the Minister at any time in relation to the conduct, supervision or control of the operator's operations. The direction is to take effect at the earliest practicable time.
- The Minister may also impose regulatory sanctions on the exempt operator if the Minister is satisfied that the exempt operator has, *inter alia*:
 - failed to comply with conditions in the certificate of exemption;
 - failed to comply with a direction by the Minister; or
 - done anything which in the Minister's opinion is injurious to the public interest or security of Singapore.

Such sanctions can include the issuance of a letter of censure, the variation of a condition of a certificate of exemption, or a financial penalty.

For terrestrial casino operations:

- A casino licence shall be valid for three years, or a shorter term if the Authority is of the opinion that the term of three years is not appropriate.
- Section 4 of the CCA also allows for a casino licence to be cancelled or revoked due to public interest considerations.

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

For digital/remote gambling operations, the RGA makes it an offence to publish or authorise the publication of a remote gambling service advertisement in Singapore unless the publisher can prove that the advertisement was published for or at the direction of an exempt operator. It is also an offence to promote, or authorise a promotion of, remote gambling in Singapore. SPPL and STC, which offer remote gambling services, are subject to the Singapore Totalisator Board (Advertisements) Regulations 2010, which places restrictions on the content, time, frequency, duration, manner of publication or distribution of gaming advertisements. Approvals must be obtained from the Minister if the publication of a gaming advertisement falls outside of these restrictions. A player, or his close family members can apply to the National Council for Problem Gambling (“NCPG”) for the player to be excluded from utilising his/her SPPL and/or STC betting accounts for online gambling.

For terrestrial casino operations, section 116 of the CCA imposes an entry fee levy on Singaporeans and permanent residents of S\$100 every 24 hours to enter or remain in a casino, and S\$2,000 for an annual membership to either of the two casinos. Under section 131 of the CCA, persons below the age of 21 are not allowed to enter or remain in, or take part in any gaming on, any casino premises. Division 3 of the CCA deals with self-exclusion orders, such as family exclusion orders or visit limits, and other exclusion orders imposed by operation of law. The latter category includes undischarged bankrupts, a person on a social assistance programme, or a person who has made a voluntary application to be excluded. Persons under these orders are not allowed into casinos. A player or his family members can apply for an exclusion order from the NCPG prohibiting an individual from entering the casinos in Singapore. The Casino Control (Advertising) Regulations 2010 also stipulates that no publication or distribution of casino advertisements or carrying out of casino promotions are allowed except with prior approval from the CRA.

For terrestrial betting (excluding casinos), a player or his close family members may also apply to the NCPG for him to be excluded from gambling on fruit machines in private clubs and associations. The BA makes it an offence for advertisements on a place that is opened, kept or used as a common betting-house or betting information centre within or outside of Singapore, or in any manner which invites or solicits any person to commit a breach of any of the provisions of the BA.

With effect from November 2017, access to slot machine rooms in private clubs will be restricted to those aged 21 and above (up from the previous 18), and only individuals who hold a membership term of at least one year will be allowed in. Members will no longer be allowed to bring guests into the jackpot rooms. The operating hours of slot machine rooms has also been limited to between 10am and 11pm, and starting from May 2018, all clubs operating slots must enforce the self-exclusion scheme that applies to the two casinos. Promotions relating to jackpot machines are prohibited within and outside the clubs, while no ATMs, credit card facilities or any other forms of electronic funds transfer facilities are allowed in slot machine rooms.

2.7 What are the tax and other compulsory levies?

Gambling winnings are not taxable, as they are deemed to be windfalls, instead of income.

For digital/remote gambling operations, under the Betting and Sweepstake Duties Order, the Inland Revenue Authority of Singapore (“IRAS”) imposes a 25% duty on the amount left after taking the amount of bets received minus winnings paid out and Goods and Services Tax (“GST”) on totalisator or *pari-mutuel* betting in connection with horse racing and other sports betting.

For terrestrial casino operations, section 116 of the CCA states that a citizen or permanent resident of Singapore cannot enter into or remain in a casino unless an entry levy of S\$100 for every consecutive period of 24 hours or S\$2,000 for an annual membership is paid to the casino. The casino operators are subject to duties on their gross gaming revenue, which is the total amount of net wins received on all games conducted within the casino premises, minus GST. The duty is 5% on gross gaming revenue from premium players who open a deposit account of at least S\$100,000 with the operator, and 15% on gross gaming revenues from other players.

For terrestrial betting operations (excluding casinos), under the Betting and Sweepstake Duties Order, the IRAS imposes a 25% duty on the amount left after taking the amount of bets received minus winnings paid out and GST on totalisator or *pari-mutuel* betting in connection with horse racing and other sports betting. The duty on Sweepstakes is 30% of the amount contributed towards the sweepstake minus GST, while totalisator or *pari-mutuel* betting (excluding horse racing) and any other system or method of cash or credit betting (e.g. 4D and Singapore sweep) attracts a duty of 30% on the amount left after the total amount of money betted minus GST.

For private lotteries, section 15 of the PLA provides that the following duties are leviable:

- a) 30% on the total amount raised from any private lottery that does not involve a fruit machine by the promoter of the private lottery; and
- b) 9.5% on the total amount wagered by players of each fruit machine in order to play it (without any deduction of winnings paid out).

2.8 What are the broad social responsibility requirements?

The NCPG works with the MSF to deal with social concerns related to gambling. The RCPG which it developed has been voluntarily adopted by SPPL, STC as well as by various private clubs which operate slot machine rooms.

Casino operators are required under the CCRGR to implement a responsible gambling programme, which cover areas such as pre-commitment or voluntary loss limit, operator-imposed casino exclusion, patron education and employee training on responsible gambling, and intervention for problem gambling.

The two casino operators in Singapore contribute to local community and social causes as part of their corporate social responsibility, while SPPL and STC are non-profit organisations owned by the Singapore Totalisator Board, and the proceeds from SPPL’s and STC’s gambling operations are used to fund various social programmes in key sectors of Singapore’s economy such as the arts, community development, education, health, social service and sports.

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

There are a number of laws aimed at restricting the flow of money derived from the commission of serious crimes (including proceeds

from illegal gambling) from being laundered or channelled to terrorism activities, or from benefitting organised crime groups. As gambling is a sector vulnerable to such money-laundering, terrorist financing and organised crime risks, gambling service operators are required to be vigilant to ensure that they are not liable for abetment of offences, and to avoid a forfeiture of their proceeds. The relevant legislation are:

- RGA – under Part 4, ISPs can block access to online remote gambling services, while financial institutions or financial transaction providers can block payment transactions. Please see question 3.2 for further information.
- CCA – section 139 requires casino operators to perform customer due diligence measures to detect and prevent money laundering and the financing of terrorism.
- Casino Control (Prevention of Money Laundering and Terrorism Financing) Regulations – this sets out the various AML obligations of the casinos, including conducting due diligence on customers and reporting suspicious transactions to the Suspicious Transaction Reporting Officer (“STRO”). Certain transactions by casino patrons are also prohibited.
- OCA – this legislation provides for the making of financial reporting orders, organised crime prevention orders, disqualification orders and orders for the confiscation of gains derived from organised crime activity.
- United Nations (Anti-Terrorism Measures) Regulations (Cap. 339, section 2(1) – this subsidiary legislation makes it an offence to provide or collect funds for terrorists, deal with property of terrorists and provide resources and services for the benefit of terrorists.
- TSOFA – this allows for warrants for seizure and orders for restraint of property of forfeiture to be made against “terrorist property”.
- CDSA – confiscation orders can be made to deprive offenders of the benefits derived from serious criminal conduct, the definition of which includes a number of gambling-related offences.
- MAS Notice 626 – “Prevention of Money Laundering and Countering the Finance of Terrorism – Banks” issued pursuant to section 27B of the Monetary Authority of Singapore Act (Cap. 186) sets out due diligence measures which banks should take to monitor for suspicious transactions, as well as the steps banks should take to report suspicious transactions based on the requirements of the CDSA and TSOFA.

In respect of cryptocurrencies, operators who have not received exemptions or licences from the appropriate authorities would not be able to offer gambling services using cryptocurrencies. This is because gaming is essentially defined as playing a game of chance for money or money’s worth. Money’s worth is defined in the RGA as anything recognised as equivalent to money, including virtual credits and tokens purchased within or as part of the game. Cryptocurrencies would in all likelihood be deemed to be money’s worth.

For exempted/licensed operators, there is no explicit law or regulation prohibiting the use of cryptocurrencies for gambling. However, the existing licensed/exempted digital/remote gambling service operators, casinos and terrestrial betting operators in Singapore do not currently accept virtual currencies.

The banking regulatory authority MAS has so far not regulated cryptocurrencies save where they amount to capital markets products, such as shares, debentures, futures contracts and contracts or arrangements for purposes of leveraged foreign exchange trading. However, due to the risk of money laundering and breaches of age and territorial restrictions arising from the anonymity offered by crypto transactions, AML and CFT requirements will soon be imposed on intermediaries that buy, sell or exchange cryptocurrencies. A new law – the Payment Services Bill – is currently undergoing public

consultations and if passed, will seek to regulate activities involving the provision of virtual currency services, and empower MAS to regulate payment services for money-laundering and terrorism financing risks.

3 Online/Mobile/Digital/Electronic Media

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

In general, the RGA prohibits the provision of gambling services using remote communications without obtaining an exemption from the Minister of Home Affairs. Section 10 of the RGA prohibits overseas based remote gambling operators from offering their services to Singapore customers, while section 11 of the RGA makes it an offence for a remote gambling service to be based in Singapore, regardless of whether that service has a foreign or Singapore customer link.

In respect of the liability of individual customers of remote gambling services, section 8 makes it an offence for an individual in Singapore to gamble with an unlicensed operator, regardless of whether the operator is located within or outside Singapore.

Section 9(1) makes it an offence for a person, called an agent, in Singapore to undertake activities which facilitate the commission of a section 8 offence, whether that agent is inside or outside of Singapore. Section 9(2) makes it an offence for an agent in Singapore to undertake activities which facilitate individuals outside Singapore to gamble using remote communication.

Part 3 of the RGA, as stated at question 1.2, deals with remote gambling advertising and promotion, and affects those who promote the services of remote gambling operators.

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

Part 4 of the RGA allows an authorised officer (including a police officer) to notify the operator of an online location used for remote gambling to cease such unlawful use within 14 days. If this is not done, the officer may direct the IMDA to order an ISP to block access to a particular online location that is used to access or facilitate remote gambling. An access blocking order can be given after investigation and consideration of a number of factors, including the volume of end traffic at the online location by end users in Singapore, the technical feasibility of complying with the order, and the burden placed on the ISP.

Payment transactions can also be blocked by an authorised officer directing the MAS to give a financial institution a payment blocking order, or to give a financial transaction provider a payment blocking order. The provider must then block payments, or otherwise prevent or prohibit transactions, where the use of certain merchant category codes is customarily associated with gambling transactions.

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

Various gaming machines and equipment are allowed in licensed casinos, subject to them meeting certain technical requirements imposed by the CRA, under section 102 of the CCA.

There are also self-betting kiosks available in STC and SPPL outlets, where bets can be placed on horse races, sporting events and other betting systems like 4D and TOTO.

The PLA permits members of private clubs and societies to play fruit machines located within their premises if the requisite permits for said machines have been obtained.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Liability is generally provided for in the applicable legislation. Customers, operators, promoters, advertisers, facilitators, agents and intermediaries may all face different liability under the law, depending on the offences committed. In particular, sections 9, 10 and 17 of the RGA are all expressed to have extra-territorial effect.

There is also the possibility that the offence of abetment under sections 108, 108A and 108B of the Penal Code may be committed by a person who abets the commission of a gambling offence, including an offence that is committed outside Singapore which would be considered an offence if it were committed in Singapore.

4.2 What form does enforcement action take in your jurisdiction?

The various gambling laws allow the Singapore Police Force to enter premises where unlawful gambling is suspected to have taken place, e.g., section 183A of the CCA, section 34 of the RGA, section 16 of the CGHA, sections 11, 12 and 14 of the BA and section 26 of the PLA.

Persons suspected of committing offences under the various gambling laws may be arrested and charged, and subject to the criminal justice process. The penalties for gambling-related offences range from warnings to fines and custodial sentences.

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

There are no non-national laws that directly impact upon enforcement. There have been instances where Singapore's courts have allowed, or not allowed for various reasons, the enforcement of a gambling debt incurred in a jurisdiction where gambling is allowed. Please see the answer to question 4.4 for more information.

4.4 Are gambling debts enforceable in your jurisdiction?

Sections 5(1) and 5(2) of the CLA provide, respectively, that gaming and wagering contracts are null and void, and that no action shall be brought to recover debts relating to wagers. However, this does not apply to monies or contributions to be awarded to winners of any lawful game, sport, pastime or exercise. In respect of digital/remote gambling and terrestrial betting operations (excluding casinos), sections 5(3A), 5(3B), 5(3C), 5(3D) and 5(3DA) exclude contracts relating to gaming activities supervised or conducted by operators who have received the requisite exemptions/licences under the RGA, CHGA and BA from the operation of section 5(2), except where the contract involves: i) the lending of any money or other valuable thing for such gaming or wagering; ii) the extension of any form of credit for such gaming or wagering; or iii) the giving of security in respect of i) and ii) above.

In respect of terrestrial casino gaming, section 40 of the CCA read with section 108 also allows for certain contracts in relation to casino gaming to be valid and enforceable. These pertain to contracts entered into with a casino operator or his agent, or any contract for any transaction permitted under section 108 which deals with credit. In general, gambling on credit is not allowed save in the case of premium players. A casino operator or a licensed junket promoter may also provide chips on credit to a person, but only if that person is not a citizen or permanent resident of Singapore, or if he is a premium player and if the casino operator or licensed junket promoter and the person satisfies the requirements of any relevant controls and procedures approved by the CRA.

There remains some ambiguity over whether Singapore courts are prepared to allow for the enforcement of gambling debts incurred in a foreign jurisdiction where the laws permit gambling. Ultimately, the key issue discussed by the courts is whether such enforcement is contrary to Singapore's public policy.

In *Las Vegas Hilton v Sunny Khoo Teng Hock* [1997] 1 SLR 341 ("Sunny Khoo"), the plaintiff sued the defendant in Singapore to recover monies that the defendant had borrowed to gamble at the plaintiff's casino. The Singapore High Court felt that the loan agreement was governed and enforceable by Nevada law, not Singapore law, and it was not against Singapore public policy to allow the plaintiff to recover loans given to the defendant to gamble legally in Las Vegas.

The Singapore High Court took a different stance in *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 3 SLR 412, stating that the clear wording of the CLA meant that gaming and wagering debts would not be enforced by the courts in Singapore, regardless of where the gambling transaction took place. In *Star City Pty Limited (formerly known as Sydney Harbour Casino Pty Limited) v Tan Hong Woon* [2001] 2 SLR(R) 36, the Singapore Court of Appeal seemed to revert back to the holding in *Sunny Khoo* in holding that enforcing genuine loan contracts which are valid and enforceable under the applicable foreign law was not contrary to public policy, and that societal attitudes had changed such that gambling was no longer regarded as objectionable. However, it would be against public policy for the courts to be used by casinos to enforce gambling debts disguised in the form of loans.

The next major case was *Burswood Nominees Ltd (formerly Burswood Nominees Pty Ltd) v Liao Eng Kiat* [2004] 2 SLR 436 ("Burswood"), which involved the registration of an Australian judgment under the Recognition and Enforcement of Commonwealth Judgments Act ("RECJA") to recover a gambling debt. The Singapore Court of Appeal stated that under the RECJA, a higher threshold of public policy needed to be met for the foreign judgment not to be enforced. They then reaffirmed the position in *Burswood* that gambling *per se* was not contrary to the public interest, and that it would be against public policy to allow Singaporeans to run up debts overseas and evade their debts by relying on the CLA.

Subsequently in *Poh Soon Kiat v Desert Palace Inc* [2010] 1 SLR 1129, a differently constituted Singapore Court of Appeal disagreed that societal attitudes had ceased to regard gambling as objectionable, instead holding that gambling in general, and in particular unregulated gambling and gambling on credit, was against Singapore's public policy. Hence, the court felt that the decision in *Burswood* was not good law and should be reviewed if a similar case arose. The Court of Appeal also stated its preliminary view that common law actions brought to enforce a foreign judgment would be barred by section 5(2) of the CLA if the underlying cause of action was based on a gambling debt. However, it declined to express a conclusive position on this, preferring for this issue to be dealt with more fully as and when an appropriate case arose in the future.

5 Anticipated Reforms

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

No intended changes have been brought up publicly.



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Kok Keng is recognised as a leading lawyer in his field by publications such as *Chambers*, *Asia-Pacific Legal 500*, *The International Who's Who of Internet, e-Commerce & Data Protection Lawyers*, *Sports & Entertainment Lawyers*, and *Information Technology Lawyers*. Kok Keng is a member of the International Masters in Gaming Law, an arbitrator with the Court of Arbitration for Sport, and a member of the Singapore Copyright Tribunal, having been appointed to a second three-year term by the Minister for Law.

Kok Keng works with state as well as private gaming operators, and has helped companies that wish to enter into the gaming industry undertake due diligence, feasibility studies, regulatory analysis and clearance, and assist on their contracts with gaming vendors and suppliers. Some of his notable work includes advising a consortium bidding for the Singapore Integrated Resorts tender, establishing the legal framework governing legalised sports betting in Singapore, and providing legal support for the implementation of telephone betting and, more recently, remote betting operations in Singapore.

He has authored various publications on gaming law, including the Singapore chapter in the *International Comparative Legal Guide to: Gambling 2016* and in the *Lex Mundi Global Gaming Guide 2017*, and an upcoming book on *Gambling Law & Practice in Singapore*, as well as various articles which have been published in the *International Sports Law Journal*, the *World Online Gambling Law Report*, and *European Gaming Lawyer*.



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Daniel Quek is a member of Rajah & Tann Singapore LLP's Intellectual Property, Technology, Sports and Gaming Law Practice, probably the only one of its kind in the country. He has acted for clients on a broad range of contentious and non-contentious matters. Specifically for gaming, Daniel has assisted local and international clients with issues relating to domestic and cross-border operations, both online and terrestrial gambling operations and related services. Before embarking on his legal career, Daniel previously trained as an engineer, and served in the Singapore government where he developed strategies to grow Singapore's technology sector.

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1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	a) Ministry of Finance of the Slovak Republic (“Ministry”). b) Financial Directorate of the Slovak Republic (“Financial Directorate”).	a) Ministry. b) Financial Directorate. c) Tax offices. d) Customs offices. e) Municipalities.
	Poker	a) Ministry of Finance of the Slovak Republic (“Ministry”). b) Financial Directorate of the Slovak Republic (“Financial Directorate”).	a) Ministry. b) Financial Directorate. c) Tax offices. d) Customs offices. e) Municipalities.
	Bingo	c) Tax offices. d) Customs offices.	
Betting	Betting	a) Ministry. b) Financial Directorate. c) Tax offices. d) Customs offices.	a) Ministry. b) Financial Directorate. c) Tax offices. d) Customs offices. e) Municipalities.
	Sports/horse race betting (if regulated separately to other forms of betting)	a) Ministry. b) Financial Directorate. c) Tax offices. d) Customs offices.	a) Ministry. b) Financial Directorate. c) Tax offices. d) Customs offices. e) Municipalities.
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	Not applicable.	Not applicable.
Lotteries	Lotteries	a) Ministry. b) Financial Directorate. c) Tax offices. d) Customs offices.	a) Ministry. b) Financial Directorate. c) Tax offices. d) Customs offices.

Relevant Product	Who regulates it in digital form?	Who regulates it in land-based form?
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth Skill games and competitions with no element of chance	Not applicable.

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

Act No. 171/2005 Coll. on gambling games, as amended (“Gambling Act”) contains comprehensive regulation that applies to the Relevant Products. There are various other laws and regulations which also impact upon gambling activity.

The Gaming Products, Betting Products and Lotteries, as defined above, are permitted.

However, there is a state monopoly for the operation of the following gambling games, as a licence for their operation can only be granted to the national lottery company wholly owned by the state:

- numerical lotteries;
- special bingo;
- cash receipt lotteries; and
- Internet Games.

“Internet Games” are defined in the Gambling Act as gambling games in which a gambler participates through a connection via the Internet to the game server of the gambling game operator or an entity authorised by them, on which game systems are placed using software, through which the gambling game is operated, and the gamblers play against this game system or against each other. The Gambling Act also expressly states that the transmission and collection of data and information connected with the operation of gambling games realised via the Internet is not considered to be the Internet Game.

Despite the state monopoly over the operation of the Internet Games and with the Ministry’s consent, fixed-odds betting games are operated via Internet by several private operators who hold individual licences to operate betting games.

Major licensed operators of betting also offer bets on virtual sports/ eSports, including via Internet as a communication channel, under their individual licences to operate bet games.

There is no specific regulation of skill games, social games, fantasy, virtual or eSports in the Gambling Act. That does not mean that they are not permitted or do not constitute gambling games as such. They are considered gambling games and are regulated by the Gambling Act if they involve: (i) payment of a deposit in cash or other asset; (ii) winning; and (iii) a result depending solely or predominantly on luck or a previously unknown circumstance or event.

2 Application for a Licence and Licence Restrictions

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

A general licence issued by the Ministry, or an individual licence issued by the Ministry or municipality, is required.

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

There are two types of licences – a general licence and an individual licence.

I. General licence

The following games may only be operated on the basis of a general licence issued by the Ministry:

- a) in-kind draw lotteries;
- b) raffles; and
- c) off-casino card games.

II. Individual licence

The individual licences are:

- a) licence for the operation of lottery games;
- b) licence for the operation of casino gambling games;
- c) licence for the operation of bet games;
- d) licence for the operation of gambling games by means of gambling machines;
- e) licence for the operation of gambling games operated by means of technical equipment operated directly by gamblers or operated by means of telecommunication equipment, and for the operation of video lottery terminals;
- f) licence for the operation of Internet Games;
- g) licence for the operation of state lottery;
- h) licence for the operation of a charity lottery; and
- i) licence for the operation of Other Games.

An individual licence is issued by the Ministry or municipality. The municipality issues an individual licence for gambling game operation by means of the gambling machines that are located in its territory. In all other cases, including the licence for the operation of gambling machines in casinos, or if bets are made in foreign currencies, the individual licence is granted by the Ministry.

Any licence may be granted or issued only to a legal person with a registered office in the territory of the Slovak Republic. Such legal person can have foreign ownership only if they have a registered office or permanent residence in another EU Member State or a Member State of the Organisation for Economic Co-operation and Development (OECD).

An individual licence can only be issued and held by a joint-stock company or limited-liability company with an established Supervisory Board.

There is no limitation on the number of licences which can be issued for each type of gambling game.

As stated above, there is a state monopoly for the operation of the following gambling games, as a licence for their operation can only be granted to the national lottery company wholly owned by the state:

- a) numerical lotteries;
- b) special bingo;
- c) cash receipt lotteries; and
- d) Internet Games.

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

I. General licence

In the general licence, the Ministry will determine the conditions for the operation of in-kind draw lotteries, raffles and off-casino card games. The Ministry shall issue the general licence for a number of legal persons not determined beforehand. After meeting the conditions specified in the general licence, an operator may operate the gambling game for which this general licence is issued. Prior to commencement of the operations under a general licence, an operator has to make a written notification of intention to operate the respective gambling game to the locally competent tax office.

II. Individual licence

The Gambling Act contains a list of documents and information which an applicant for an individual licence shall provide in its application irrespective of the type of gambling game it wants to operate. The information which needs to be provided relates to the applicant, its officers, directors and shareholders, its business activities and source of funds; and includes, *inter alia*, proof of good standing and minimum capital as required by the Gambling Act, proof of satisfaction of technical and personal requirements as set out in the Gambling Act, proof of payment of a financial surety as required by the Gambling Act, proof of no debts to the tax authorities, proof of payment of application fee, a game plan which has to be approved by the Ministry, a business plan which shall include expected revenues in the first three years of operations, expected expenses and the extent of liabilities in connection with the operations, and documents on the technical assessment of the equipment and systems which will be used during the operation of gambling games.

The Gambling Act also contains certain additional specific requirements for certain types of games. For example:

- i) In case of the following games:
 - casino gambling games;
 - gambling games by means of gambling machines;
 - gambling games operated by means of technical equipment operated directly by gamblers;
 - video lottery terminals; or
 - Other Games,

an applicant has to provide a written declaration that the operation of such games is not restricted by a generally binding order of the municipality in the territory in which it wants to operate. The applicant must also provide the municipality's opinion on placing in its territory the casino, technical equipment or video lottery terminals, respectively. Such opinion is valid for one year and a new opinion must be supplied to the Ministry upon its expiry each year.

- ii) In case of bet games and bingo, applicants must also provide the consent of the municipality in the territory of which the betting office is to be located or bingo is to be operated.

The individual licence for most types of gambling game shall be granted no later than within 15 business days from the day of submission of a complete application for granting an individual licence. In case of application for granting an individual licence for the operation of casino gambling games, the Ministry shall make a decision on whether or not to grant the licence within 60 days from the day of submission of a complete application.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

During the entire duration of the licence, the licensee has to comply with the Gambling Act and any conditions set out in the licence.

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

A general licence is issued for an indefinite time period.

An individual licence can be granted for a maximum of:

- a) two years for pecuniary draw lotteries, pecuniary-in-kind draw lotteries and instant lotteries;
- b) five years for bet games;
- c) five years for bingo, except for special bingo;
- d) one calendar year for gambling machines, except for the gambling machines operated in casinos, for which an individual licence is granted for a period corresponding to the life-cycle of gambling machines; however, for no longer than the end of the validity of the licence for gambling game operation in casinos;
- e) two years for gambling games operated by means of technical equipment operated directly by gamblers, or for gambling games operated by means of telecommunication equipment, and for the operation of video lottery terminals;
- f) five years for a state lottery;
- g) two years for gambling games in a casino;
- h) five years for a charity lottery; and
- i) two years for any Other Games.

The Ministry or municipality can revoke an individual licence if the gambling game is not operated in compliance with the conditions laid down in the Gambling Act or the conditions specified in the individual licence. The Ministry or municipality will revoke an individual licence if such facts occur or additionally emerge, for which it would not be possible to grant the individual licence; or if it finds out that the data, based on which the individual licence was granted, are not true.

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

It is prohibited to accept stakes, accept bets, pay out winnings, draw lots, and perform other acts leading to the determination of the result of a gambling game, as well as to perform other acts which are during the operation of a gambling game performed publicly, or during which communication between the player and the operator takes place, except for the publishing of results of gambling games,

and except for the operation of the numerical lottery Eurojackpot including its supplementary game, on the following days:

- a) Good Friday;
- c) 24th and 25th December;
- d) national days of mourning; and
- e) outside of opening hours.

Municipalities may, by a generally binding order, prohibit the existence of 'gambling houses' in their territory and thus also the existence of gambling machines and video lottery terminals (among others) in their territory.

2.7 What are the tax and other compulsory levies?

In addition to the general income tax, which amounts to 21% of the taxable profits, gambling game operators shall pay a gambling levy, as follows:

- a) 15% of the game principal to the state budget in the case of draw lotteries and raffles;
- b) 20% of the game principal to the state budget in the case of numerical lotteries;
- c) 20% of the amount calculated as the difference between the game principal and the winnings paid out to the state budget in the case of instant lotteries;
- d) 6% of the game principal in the case of charity lotteries and bet games (except for race bets), of which in the case of rate bets, 5.5% of the game principal shall be paid to the state budget and 0.5% of the game principal to the budget of the municipality in which the establishment is situated;
- e) 4.5% of the game principal in the case of bingo, of which 4% of the game principal shall be paid to the state budget and 0.5% of the game principal to the budget of the municipality in which the bingo room is situated;
- f) 4% of the game principal to the state budget in the case of special bingo;
- g) 1% of the game principal to the state budget in the case of race bets;
- h) 30% of the game principal in the case of casino gambling games including board games and gambling games operated through technical equipment operated directly by gamblers, out of which 27% of the game principal shall be paid to the state budget and 3% of the game principal to the budget of the municipality in which the casino is situated;
- i) EUR 2,600 per calendar year and per gambling machine to the state budget, in the case of gambling games operated through gambling machines on the basis of an individual licence granted by the municipality, regardless of the period of operation during the calendar year. In the case of gambling machines operated on the basis of an individual licence for the operation of gambling games in casinos, EUR 4,700 per calendar year to the state budget for each such gambling machine regardless of the period of operation during the calendar year, and EUR 2.20 per each such gambling machine per day (subject to a minimum of EUR 800 per machine, per calendar year) to the budget of the municipality;
- j) EUR 3,900 per calendar year per technical device, regardless of the period of operation during the calendar year, to the state budget, in the case of gambling games operated through technical equipment operated directly by gamblers, and EUR 2.50 for each such technical device per day (subject to the minimum of EUR 900 per device per calendar year) to the budget of the municipality;
- k) EUR 4,700 per calendar year to the state budget, per video lottery terminal, including the terminals operated on the basis of an individual licence for gambling game operations

in casinos regardless of the period of operation during the calendar year, and EUR 2.20 for each such terminal per day (subject to the minimum of EUR 800 for each terminal per calendar year) to the budget of the municipality;

- l) EUR 200 per table per calendar month or EUR 1,500 per table per calendar year to the state budget in the case of off-casino card games;
- m) 10% of the game principal to the state budget in the case of gambling games operated through telecommunication devices;
- n) 27% of the difference between the stakes received and the winnings paid out in the case of Internet Games, to the state budget; and
- o) in the case of Other Games, the Ministry shall specify the amount of the levy, taking into consideration the amount of the levy referred to in letters a) – n) in respect of a gambling game, the nature of which is the most similar to the relevant Other Game.

2.8 What are the broad social responsibility requirements?

Minors cannot participate in gambling games and the operators are obliged to take measures to prevent them from participating in gambling games.

As of 1 January 2019, any natural persons included in the register of the natural persons excluded from gambling (“register of excluded persons”) will not be allowed to participate in most types of gambling games, and operators will be obliged to take measures to prevent such persons from participating in such games. Persons included in the register of excluded persons will also be prohibited from entering any ‘gambling house’ and operators will be obliged to ensure compliance with this prohibition.

Operators must keep a game plan of the gambling game which they operate in a visible place in all rooms used for the operation of gambling games which the gamblers can access.

The operators of:

- a) casino gambling games;
- b) gambling games operated by means of gambling machines;
- c) gambling games operated by means of technical equipment directly by gamblers or operated by means of telecommunication equipment; and
- d) video lottery terminals,

shall be obliged to place, in a visible place on the technical equipment operated by them and intended for the operation of the gambling game, the telephone number of a specialised healthcare institution operating in the area of prevention, diagnostics and treatment of substance and non-substance addictions, which will be published on the Ministry’s website.

Operators of a gambling game who use the Internet for data transmission and collection and operators of Internet Games shall, *inter alia*, provide players, in a visible place during the entire game, with information on health risks resulting from excessive gambling, warning that gambling games represent a risk of high financial loss, and information on the time spent playing the game.

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

Customers can make their stakes in cash or cashless (via bank account transfer, bank cards or other payment systems permitted under Slovak laws).

Neither the Gambling Act nor any other piece of legislation regulates virtual currencies. Their use in gambling games is thus not regulated either.

Gambling operators are obliged to identify players and comply with all other relevant obligations under the AML Act.

3 Online/Mobile/Digital/Electronic Media

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

Internet Games constitute a ‘state lottery’ and a licence for the operation of a state lottery can only be granted to a national lottery company wholly owned by the state.

Despite the state monopoly over the operation of Internet Games and with the Ministry’s consent, betting games are operated via the Internet by several private operators who hold individual land-based betting licences.

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

The Financial Directorate compiles and publishes on its website, on a weekly basis, a list of websites through which legal persons or natural persons provide or promote unlicensed gambling games via the Internet (“Blacklist”).

The Financial Directorate can request a local court to issue an order addressed to Internet service providers instructing them to prevent access to the website through which an unlicensed operator offers gambling games via the Internet (“Site Blocking Order”) and/or an order addressed to payment service providers instructing them to prevent the execution of a payment operation or other payment service in favour of a bank account used by an unlicensed operator offering gambling games via the Internet (“Account Blocking Order”).

A Site Blocking Order or an Account Blocking Order must be issued within seven days from the filing of the request by the Financial Directorate. The Gambling Act states that no remedy is admissible against the Site Blocking Order or the Account Blocking Order.

If the reasons for the issuance of a Site Blocking Order or an Account Blocking Order cease to exist, the Financial Directorate shall ask the respective court to cancel it.

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

The following types of terminal/machine games are permitted under the Gambling Act:

- i) gambling games operated by means of gambling machines;
- ii) gambling games operated by means of technical equipment operated directly by gamblers; and
- iii) video lottery terminals.

It is only possible to operate all of these machines in a ‘gambling house’, which means a room or a set of rooms connected to each other, purpose-fitted and set up for the operation of such games. A ‘gambling house’ must be situated in an isolated area with a separately lockable entrance and must be part of a building construction with walls. A ‘gambling house’ can only be located in:

- a) hotels, motels, and lodging houses;

- b) buildings used for trade and services;
- c) buildings used for culture and public entertainment; and
- d) apartment dwelling houses, if a majority of the owners of the units in such houses provide their written consent.

The minimum number of such machines/terminals in any given 'gambling house' is 12.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Liability primarily lies with the operators and persons who promote the gambling games.

However, in addition, persons who, based on a contractual or similar relationship, perform activities connected with the operation or promotion of gambling games, are liable under the Gambling Act. This is a broad and catch-all category which can potentially even include other entities in the supply chain.

Internet service providers and payment service providers are also liable and face sanctions in the case that they do not comply with the Site Blocking Orders and Account Blocking Orders.

4.2 What form does enforcement action take in your jurisdiction?

Unlicensed land-based offers can be targeted based on the Gambling Act in administrative proceedings, as well as based on the Criminal Code in criminal proceedings.

Unlicensed online offers are targeted by the Financial Directorate. It has the powers to include such offers on the Blacklist and request the local court to issue Site Blocking Orders and Account Blocking Orders. A penalty of up to EUR 500,000 may also be issued to unlicensed operators.

The Financial Directorate compiles and issues the Blacklist on a weekly basis. The Blacklist is available at: <https://www.financnasprava.sk/sk/infoservis/priklady-hazardne-hry>.

The Site Blocking Orders and Account Blocking Orders are issued by the regional Court in Banska Bystrica and are available at: <https://www.financnasprava.sk/sk/elektronicke-sluzby/verejne-sluzby/zoznamy/prikazy-sudu-k-zakazanym-ponuk>.

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

Yes. The Slovak Republic is a Member State of the EU. EU laws are therefore applicable.

In particular:

- the freedoms guaranteed by the Treaty on the Functioning of the European Union;
- case law of the European Court of Justice; and
- obligations under Directive 98/34/EC and Directive (EU) 2015/1535,

impact upon enforcement by the Slovak authorities of the Gambling Act *vis-à-vis* operators based in other EU Member States.

4.4 Are gambling debts enforceable in your jurisdiction?

The Civil Code states that winnings from bets and games are not enforceable. It also states that it is not possible to enforce loans

made knowingly in connection with a bet or a game. Nevertheless, this does not apply to gambling games under the Gambling Act. As such, the winnings from the gambling games and loans made in connection with the gambling games regulated by the Gambling Act are enforceable.

5 Anticipated Reforms

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

In September 2018 the Slovak government approved a draft of a new gambling act prepared by the Ministry. It also has to be approved by the Slovak Parliament. The proposed effective date of the new act is 1 March 2019, except for some provisions which will be effective as of 1 June 2019. The main changes which are relevant for operators (primarily online operators) are:

- i) The creation of a new gambling regulator, called the Office for Regulation of Gambling ("Office"). Currently the regulator is the Ministry. It is foreseen that the Office will be financed by contributions in the amount of 0.7% of turnover in the case of operators of certain lottery games, and 0.7% of gross gaming revenue ("GGR") in the case of operators of other games.
- ii) Opening the Slovak market for foreign operators – even operators with a registered office outside of Slovakia will be able to obtain a licence. However, foreign operators will be required to have a representative in Slovakia who will need to register with the Office and communicate with the Office on behalf of the operators.
- iii) Allowing private operators to obtain an online licence for most types of games. Currently, only the state monopoly holds the online licence. Under the new regime, the state monopoly will only apply to numerical lotteries, special bingo and receipt lotteries.
- iv) A tax on online games is proposed at 22% of GGR. A tax on land-based games will in some cases be based on turnover (e.g. betting will be subject to 6% tax of the turnover), in some cases on GGR (e.g. some of the casino games will be subject to tax rate of 30% of GGR) and will in some other cases be set at a fixed amount (e.g. for gambling machines in gambling premises).
- v) A licence application fee for each of the Internet casino games and Internet betting games set at EUR 3 million. If operators apply for licences for both online casino games and online betting, the combined application fee will be EUR 5 million.
- vi) Online betting licences and online casino licences are to be issued for a maximum period of 10 years. In the case of a combined licence for land-based and online casinos, the maximum licence period is five years with an option for an additional five years (which can be exercised by the operator). The same 5 + 5-year period applies to a combined licence for land-based and online betting.
- vii) Licences for online casinos are to be issued with effect as of 1 July 2019 and applications for them are to be filed only on or after 1 March 2019. Licences for online betting are to be issued with effect from 1 July 2020 and applications for them are to be filed only on or after 1 July 2019.
- viii) Blacklist, Site Blocking Orders or Account Blocking Orders issued under the old Gambling Act are to stay in place as if issued under the new regime. A licence can be issued only to applicants provided that neither they nor any member of the same group of companies were included on the Blacklist for a period of 12 months prior to the date of their licence application.

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Spain



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LOYRA Abogados

1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	The Directorate General for the Regulation of Gambling (<i>Dirección General de Ordenación del Juego</i> – “DGOJ”), part of the Ministry of Finance.	The relevant authority within the competent Autonomous Region, of which there are 17.
	Poker		
	Bingo		
Betting	Betting	DGOJ.	Not regulated yet.
	Sports/horse race betting (if regulated separately to other forms of betting)		
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)		
Lotteries	Lotteries	The Spanish State.	The relevant authority within the competent Autonomous Region. See above.
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Not regulated, as long as the game does not imply any profit for the promoter or operators.	Not regulated, as long as the game does not imply any profit for the promoter or operators.

Relevant Product	Who regulates it in digital form?	Who regulates it in land-based form?
Social/Skill arrangements	Skill games and competitions with no element of chance	Not regulated.

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

Gambling activities in Spain can be divided into the following categories:

- “public gambling”, which is a State monopolistic activity entrusted to two incumbent operators, SELAE and ONCE, which are in charge of managing a series of passive, deferred, result-type lottery games and sport and charity pool betting; and
- “private gambling”, made up of licensed private operators, who are subject to an intense regulatory burden and which comprises all other types of gambling (land-based and online).

The Spanish Constitution divides regulatory and other powers over a series of matters between the central State and the Autonomous Regions (*Comunidades Autónomas*) (“Regions”). The Regions have taken on the regulation, authorisation, taxation and supervision of private and public gambling activities within the scope of their respective territories.

Any State-wide gambling offering is subject to the competence of the Ministry of Finance and General Government. Within the same, the Directorate General for the Regulation of Gambling (*Dirección General de Ordenación del Juego* – “DGOJ”) regulates, authorises, supervises, controls and, if necessary, penalises gambling activities in the Spanish State. Hence, it has competence over private and public online gambling offered in more than one Region.

Gambling is understood to be any activity involving risking sums of money, or items of economic value in whatever form, on future and uncertain results which depend to some degree on chance, and which allow these sums to be transferred between the participants, regardless of whether the level of skill of the players has a decisive impact on the results, or if the results depend wholly or fundamentally on luck, stakes or chance. The prizes may be in cash or in kind, depending on the type of game. Any activity falling within this definition is subject to specific gambling legislation. Social games are commonly understood to have no cash or economic-value prizes; hence they are not considered as part of this definition.

Common legislation for land-based and online gambling

Gambling operators and activities are subject to the relevant laws governing the environment, zoning, advertising and anti-money laundering, in addition to gambling regulation and taxes.

*Land-based gambling***a) Casinos**

Each Region has established a licensing regime to install and operate casinos. Usually, whenever a certain Region intends to grant a licence for a new casino, it must call and conduct a public tender, where applicants submit their proposal, which must comply with the requirements of the tender in terms of investment size, technical and financial suitability, location, potential for employment creation, guarantees, feasibility study, etc. The licence is granted to the applicant who attains the best score according to a scale provided in the tender. Typically, the total number of casinos that can be authorised within a concrete Region, as well as the number of casinos that can be operated by the same operator (and its group of companies), are limited.

Once the licence to install the casino has been granted, the applicant must obtain the authorisation to operate it, which is not transferable. However, transfers of ownership of the applicant/operator are permitted, provided the Region is notified or, in some Regions, approved.

Generally, any company that intends to operate a casino must be duly incorporated in Spain, have a certain minimum share capital and have the operation of casinos as its primary business purpose. Shareholders, directors and top-level management need to undergo a suitability analysis and comply with regulatory requirements.

In the last few years, both the Regions of Madrid and Catalonia have approved legislation framing the licensing of “integrated resort”-type casinos to be installed and operated in their territory.

b) Bingo halls

Regions have passed legislation for the installation and operation of bingo halls, including many requirements as to registration with the competent authority, incorporation and corporate purpose, and the provision of financial guarantees. In addition, bingo hall operators must comply with filing requirements related to employees and obtain authorisations for transfers of ownership or variations in the terms and conditions of the licence. Over the past few years, electronic and inter-connected bingos have been regulated in several Regions. Bingo halls may also, under certain conditions, operate Type B machines.

c) Sports betting

Regarding sports betting, regulation is variable across the Regions and sports betting terminals and counters can only be installed in certain gambling locations. Dedicated sports betting locations may also be opened in certain Regions.

d) Gambling machines

Manufacturers and distributors must comply with legislation regarding the physical characteristics of the machines, amounts wagered, prize payout statistics and locations where each type of slot machine may be placed. In certain Regions, transfers of ownership interest in machine manufacturers and distributors are subject to prior authorisation or notification to the relevant Region.

Registration and homologation of each machine model is mandatory. Additionally, each machine must be labelled with the name of the manufacturer and the relevant operating permit. Moreover, machine manufacturers, distributors and operators must register with and be approved (in terms of technical, reputational and financial suitability and compliance) by the gambling authority of the Region in which they intend to conduct business. Machine operators are also required to deposit financial guarantees which vary across each Region and must keep records and documentation related to the machines they

operate. In addition, there are regulations on the types of locations at which machines can be installed and the number of machines that can be placed in each of them.

Regulations refer to three general types of machines: Type A (amusement only – although excluded from Directive 123/2006/CE); Type B (amusement-with-prize – “AWP”); and Type C (casino-type). There are sub-types and other classifications that are omitted herein for the sake of simplicity. AWP machines installed in bars are the most common (maximum payout: €500).

Multi-position machines, and the possibility of linking them in certain locations and under a number of requirements, are generally allowed in the Spanish Regions and may offer larger prizes (i.e. the highest is €80,000 in the Madrid Region for bingo).

e) Gambling arcades

Regional laws and regulations have some differences, but the key requirements for the grant of a licence for the operation of gambling arcades are the following: (i) registration with the regional registry as a gambling arcade operator (including a statement as to the machine type(s) that are intended to be installed); (ii) a specific gambling arcade licence; (iii) provision of financial guarantees; (iv) municipal licences for the operation of the location of the gambling arcade; (v) communication to the competent gambling authority of any change in the information supplied; and (vi) in some Regions, annual or monthly reporting of key information.

f) Regional lotteries

The Regions may also regulate public gambling activities (lotteries) that take place within their respective territories.

Online gambling operations – State level

Online gambling is regulated by Law 13/2011, of 27 May 2011, on the regulation of gambling (“Law 13/2011”), which applies to the offering of gambling via interactive means both from Spain and to Spain.

There are three types of general licences: “bets”; “contests”; and “other games”. In addition, the online gambling verticals that can be offered via a singular licence are as follows: “bingo”; “blackjack”; “roulette”; “baccarat”; “slots”; “poker”; “complementary games”; “fixed-odds betting”; “fixed-odds sports betting”; “sports pool betting”; “fixed-odds horse betting”; “horse pool betting”; and “exchange betting”. If not comprised within the latter definitions, they cannot be offered.

Law 13/2011 has been implemented with the approval of a long set of regulations (Royal Decree 1613/2011 on technical requirements, and Royal Decree 1614/2011 regulating licences, authorisations and gambling registers), resolutions (technical, regulatory implementation, procedures and responsible gambling) and ministerial orders (one for each type of gaming vertical, i.e. singular licences).

Currently a new tender has been called (Ministerial Order HFP / 1227/2017 published in the Official State Gazette of 16 December 2017); this third call for tender carries various amendments to the previous ones, but the most relevant is the one-year period for submission of documentation and applying for the general licences (the submission deadline is Monday 17 December 2018, at 1:00 p.m.).

2 Application for a Licence and Licence Restrictions

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

Please see question 1.2 above.

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

Licences are granted by compliance with a certain framework that is predefined in applicable laws and regulations (from the competent Regions or the central State, as the case may be) and, thus, any applicant interested in the grant of a licence will know *a priori*, with a significant degree of legal certainty, if he/she has the capabilities (and suitability) to comply or not.

Prospective licensees, apart from specific requirements related to each type of gambling type or gambling location licence, generally need to meet the following conditions: (1) personal compliance requirements; (2) registration with the relevant gambling registry; (3) deposit of financial guarantees; and (4) compliance with tax and social security obligations.

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

Land-based gambling

Please see question 1.2 above.

Online gambling – State level

As described above, at least two licences must be applied for (general and singular licence). General licences are granted via an open public tender (no limited number of licences, to date) that contains requirements regarding technical, financial, reputational compliance, software security and reliability requirements, and anti-fraud and anti-money laundering requirements. A company which seeks to obtain a licence must, among many other requirements, be a public limited company or limited liability company, with the company address in a European Economic Area (“EEA”) Member State (“MS”), which has the sole corporate purpose of organising, marketing and operating gambling activities.

- Process financial obligations: among others, meeting the fees related to the regulated gambling activity, which are: €38,000 for technical reports; €2,500 for registering each licence; and €10,000 for each gambling licence.
- Technical obligations: among others, creating a specific website under an ‘.es’ domain; redirecting to the specific website under an ‘.es’ domain; and implementing an internal monitoring system to capture and register gambling operations and financial transactions in Spanish territory.
- Timing: once the application is submitted, there is a maximum period of six months to award the licence (or not). This term can be increased due to certain legal circumstances. Licences will be granted provisionally and from this moment gambling operation may begin, with the commitment to submit, within a period of four months, the final report of the gambling technical systems certification.

A guarantee in cash, real estate mortgage, insurance or security for an amount of €2,000,000 for general betting and other games licences or €500,000 for contest general licences must be set. The amount of the guarantees is reduced from year two onwards.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

A licensee will not be granted a licence or it will be withdrawn if it or its management get involved in certain circumstances related to, e.g., crime, bankruptcy, failure to comply with the State or Regions’ gambling regulations, tax, or Social Security obligations, etc.

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

Land-based gambling

- Casino: 10–15 years, renewable for the same periods of time.
- Gambling machines: five-year renewable term.
- Gambling arcades: (depending on the Region) the licence may be indefinite, e.g. Andalusia; or limited to 10 renewable years, e.g. the Canary Islands.
- Bingo halls: (depending on the Region) the licence may be indefinite, e.g. Andalusia; 10 years, e.g. Valencia; or five years, e.g. the Canary Islands.
- Sports betting: Madrid and Valencia – 10 years; and Andalusia and Basque Country – indefinite.

Online gambling – State level

General licences: valid for 10 renewable years. Singular licences: valid for three to five years, depending on the type of game. The licences will be annulled in the following cases: a) by express waiver from the licence holder; b) if the validity period elapses; and c) by termination by the DGOJ for a number of reasons.

Regulators supervise, inspect and monitor licensed gambling operators as to their compliance with licensing requirements, and respond to breaches by giving directions, imposing penalties or, at the limit, revoking the gambling operator’s licence.

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

Common restrictions on land-based and online gambling

There are certain groups of people who are restricted from gambling; among others, minors (under 18 years old), people who have been declared disabled by law or judicial resolution, and people who have voluntarily requested that their access to gambling be prohibited.

Depending on the Region, gambling arcades can be limited in number (e.g. Basque Country) and/or a minimum distance imposed between each other or to youth and learning facilities (e.g. Castilla y León), except for the Madrid, Extremadura and Asturias Regions, which have no limitations, including limitations regarding size. Likewise, the opening hours are different depending on each Region and on each type of gambling facility. This is also the case for bingo halls, which are subject to regulations on size, number, location and opening hours, with the exception of the Madrid and Extremadura Regions.

Currently, credit to gambling patrons is generally prohibited under Spanish law.

Online gambling

Only residents from the Region’s territory can play on regional online gambling webpages. State-wise, Law 13/2011 does not prohibit non-residents to play in an ‘.es’ gambling webpage or app against a Spaniard, but it is the operator’s obligation, in compliance with other jurisdictions’ gambling regulations, to block players’ IPs from jurisdictions where gambling is prohibited for their residents.

Advertisements

Regarding State-wide online gambling activities, to carry out gambling activities on audio-visual programmes, news media or websites, operators must have authorisation. The applicable rules are: (i) the general Law 34/1988, on publicity, and others that do not make an express reference to gambling; (ii) the code of conduct of

AUTOCONTROL, which is not mandatory; and (iii) the existing provisions of Law 13/2011, in particular articles 7 and 8, as well as several provisions contained in regulations that develop Law 13/2011.

The code of conduct sets, among other things, broadcasting timetables, and recommends technical measures such as size, pixels and velocity which the adverts should have, messages that must be shown, such as “play with responsibility”, and a link to the webpage <http://jugarbien.es>.

At regional level, general publicity regulations apply as well. Although traditionally very strict in the Regions, gambling advertisements have been liberalised or subject to prior administrative authorisation.

Promotions such as bonuses are accepted for online gaming. These have traditionally been forbidden for land-based gaming; however, legislation is changing towards liberalisation, depending on each Region.

2.7 What are the tax and other compulsory levies?

Generally, gambling taxes are imposed on the operator, i.e. the person or entity holding the relevant gambling licence. Manufacturers and distributors are not subject to gambling tax.

Gambling machine operators are required to pay gambling tax on a quarterly or half-yearly basis to the Region in which the gambling machine is operated. There is no taxable base, but an annual fixed amount that is paid for each gambling machine and which varies from Region to Region and depends on the type of machine (annual average at approximately €3,500). There are reduced tax amounts for multi-position machines (i.e. the fixed rate is not multiplied by the number of positions at the machine on a linear basis).

Casino operators are required to pay gambling taxes on a quarterly basis to the Region in which they are located. Taxes are based on a sliding scale and assessed on gross gaming revenue (“GGR”) for table games activity, and machines pay the corresponding fixed tax rate. For example, in the Andalusia Region, the sliding scale goes from 15% to 58% and Type C machines are taxed at an annual €5,300 (per position) fixed rate.

Sports betting operators pay a variable tax (for example, 10% in the Region of Madrid) on GGR.

Gambling arcade and bingo hall operators do not pay a specific gambling tax, which is levied on sales of bingo cards, the machines installed and sports betting activities, as applicable, which may be located in each of them.

In addition, gambling operators must pay certain one-off administrative taxes in relation to the grant of authorisations, installation of machines, renewals, homologation of machines, systems and gambling equipment, etc. Gambling activities are VAT-exempt, but gambling operators must bear VAT on any other services acquired from third parties and/or offered to customers. Corporate tax (statutory rate: 25%) and economic activities tax (depending on the municipality) further apply to their activities and locations.

Online gambling

Depending on the specific type of gambling activity, Law 13/2011 establishes 20% of stakes or GGR (Net Profit), defined as the total amount wagered plus any other income that would be directly derived from the organisation or operation of the game, less the prizes paid out to players. This tax is called Tax on Gambling Activities (*Impuesto de Actividades de Juego* –“IAJ”).

The Spanish Government just lowered the IAJ from 25% to 20%.

The IAJ must be filed and paid quarterly, within a month from the end of every quarter.

Gambling activities are exempt from VAT.

Players' tax

Players must declare winnings from gambling in their Personal Income Tax return; however, they can also deduct losses (levelling the winnings at the maximum).

2.8 What are the broad social responsibility requirements?

Gambling operators must draw up a series of measures related to mitigating the possible damaging effects that gambling may cause to persons, and must incorporate the basic regulations for a responsible gambling policy. Therefore, with regard to consumer protection, it is necessary to: a) pay proper attention to risk groups; b) provide the public with the information needed to make a conscious choice about their gambling activities, promote moderate, non-compulsive and responsible attitudes to gambling; and c) inform of the prohibition to participate in games by minors and persons included in a registry (RIAJ), or in the Register of People Linked to Gambling Operators.

Online gambling operators (national) and gaming operators, generally, shall establish financial limits for the deposits each participant may receive daily, weekly or monthly in the different games.

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

Gambling operators and activities are subject to the relevant laws governing AML and terrorism prevention regulations. Directive 849/2015 of the EU and Law 10/2010, modified by Royal Legislative Decree 11/2018, of 31 August, and Royal Decree 304/2014 include specific regulation on payment of prizes and client identification which apply to providers. This regulation is more specific and intense in relation to casinos and online gambling. These regulations require operators to apply customer due diligence measures for single transactions or rewards amounting to €2,000.

Regarding online gambling, cryptocurrencies such as Bitcoin can be implemented as a means of collection/payment and an electronic collection/payment utility with bitcoins, provided that the gambling account of the player is nominated in euros. Regarding land-based gambling, the analysis of playing with bitcoins is a bit different; the rules expressly refer to monetary units in euros (the price of games or bets, the number of prizes, etc.); hence, playing with bitcoins is not possible *a priori*.

3 Online/Mobile/Digital/Electronic Media

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

Online gambling activities are defined as those games that are played with electronic, computerised, telematics and interactive means and those in which personal attendance is of an accessory nature. This scope encompasses the so-called “auxiliary terminals and machines” which are used for the organisation, operation or development of gambling activities. The latter plus the software used are understood to be part of the gambling platform and hence are subject to the same gaming regulations on approval and

certification. However, it is complicated to obtain the Regions' authorisations to install such terminals.

Licences for the offering of online gambling are intended only for Spanish or overseas-based operators – only EEA entities – and operators are required to target only Spanish or Spanish-resident consumers.

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

State-wide online gambling is restricted to the regulated gambling verticals, previously licensed and to be offered according to the technical homologations granted, if breached sanctions are applicable, e.g. offering gambling to the Spanish territory without a Licence is a very serious infringement of the law and a fine of between €1,000,000 and €50,000,000 might be imposed. Regarding enforcement, the Administration has been rather active, with 181 sanctioning proceedings initiated for operating without a Licence during the period 2012 to 2017.

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

Sports betting machines are not prohibited specifically in any Region but have only been regulated explicitly in the Castilla y León Region. In the rest of the Regions they are adapted to other types of gambling machine regulation.

Depending on the Region, the type of gambling facility and on the type of machines, the machines may allow cash or cards (or both). However, AWP's in bars only allow cash as, to date, sports betting is not expressly contemplated for these facilities.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

In Spain, the general rule is that liability for gambling infringements corresponds to those who exploit these activities.

Only in very exceptional cases are third parties liable, such as athletes, coaches or other direct participants, referees performing or acting in the event or sport activity on which they place their bets, as well as the people who resolved appeals against the decisions of those referees.

Audio-visual or electronic communications service providers, mass media, advertising agencies and ad networks will be responsible for the promotion, sponsorship and advertising of gambling when organisers do not have the necessary authorisation to legally advertise those games.

4.2 What form does enforcement action take in your jurisdiction?

Please see question 2.5 above. Regulations distinguish between several types of infringements/sanctions: Very Serious; Serious; and Minor offences. The most serious may lead to revocation of the Licence.

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

General EU rules and principles under the Treaty on the Functioning of the European Union apply to gambling activities, and EU case law has a great impact on the way national markets are and may be shaped, but not upon liability and enforcement.

The MS are free to pursue their own policy, set relevant restrictions on betting and gambling activities and define the required level of protection to safeguard the MS' regulations. Nevertheless, any restrictive measures (such as gambling monopolies or licensing systems) that any given MS may impose in its gambling legislation may constitute restrictions to the freedom to provide services in the internal market of the EU (article 56 of the TFEU) and must satisfy the conditions laid down in relevant case law of the Court of Justice of the European Union about their proportionality, suitability and coherence with regard to achieving the policy objectives of the MS.

4.4 Are gambling debts enforceable in your jurisdiction?

While legal gambling contracts are valid and amounts won can be claimed, in the case of illegal gambling (operated without the relevant authorisations), the amounts won cannot be claimed before any court.

5 Anticipated Reforms

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

Online gambling

New general licence process: the DGOJ has currently promoted the third tender for the online gambling licences process (ending 17 December 2018).

In the context of this decision, there is expected to be a modification of all Ministerial Orders that regulate the different modalities of games, in order to clarify the different types of games that can be offered under different licences.

In addition, the DGOJ is working on new regulations aimed at improving and reinforcing the identification of players.

This situation may result in the period for the third tender being extended.

However, whether those regulations come into force depends on the political stability of the new Spanish government, since all those changes were proposed by the former government.

Land-based gambling

Spanish Regions are constantly amending their land-based regulations to adapt them to new technologies and gambling verticals. Currently, the following are in progress:

- The Autonomous Region of Valencia is amending the Gambling Law in an attempt to “modernise”, increase the protection of players and reduce limitations in planning for casinos and machines.
- Madrid, Murcia and Galicia are working on new laws on gambling.

- The Balearic Islands are regulating to facilitate changes, removals and transfers of machines and to impose minimum distances between gambling arcades.
- The Canary Islands are seeking to renew gambling legislation. Minimum distances between gambling arcades and limitations on the number of machines in exploitation are expected.

It is not clear that all these legislative procedures can be completed before the call for new regional and local elections in May 2019.

Gambling advertising

We do not know if the Regulation on Advertising, which has been “dormant” for over two years, will finally pass in 2018. The DGOJ published a new draft version under the general principles of protection of players and other vulnerable social groups, and has put it out to public consultation until 12 January 2018.



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Ms. Patricia Lalanda Ordóñez was recently made Partner at LOYRA Abogados where she leads the intellectual property, new technologies and data protection department, where her practice revolves around the latest innovating products of the gaming industry. Patricia is a lecturer on subjects such as land-based and online gaming, blockchain, cryptocurrencies and eSports, in various educational centres such as the Autonomous University of Madrid, IE Business School and FIDE (Foundation for Investigation for Law and the Company), and participates in national and international conferences. She frequently publishes on regulatory developments and opinion in leading industry journals. In 2015, Patricia was awarded the title of “40Under40 Emerging Leader” by the American Gaming Association (*Global Gaming Business Magazine*, November 2015 Issue: Emerging Leaders). Patricia studied law at Carlos III University in Madrid and obtained her LL.M. degree in IP, IT and NNTT from the Autonomous University of Madrid. Although currently living in Spain, she lived and studied for six years in New York.



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LOYRA

A B O G A D O S

LOYRA Abogados was the first and continues to be the most specialised boutique law and advisory firm dedicated to gaming and leisure in Latin America and Spain, having worked for many other jurisdictions as well. It is proud of having retained clients ever since its establishment in 1981. The firm has paved the way for governments and gaming companies for over three decades in navigating the transition from traditional brick-and-mortar casinos to the internet and technologically progressive gaming formats of today. LOYRA has highly qualified teams of lawyers with different specialisations, such as Public Law, Corporate Advisory, Tax, IP, Litigation and Labour Law, making the firm a “one-stop shop”. Due to its international practice, the firm’s working languages are English, German, French, Portuguese and Spanish.

Sweden

Nordic Gambling

Maria McDonald



1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Swedish Gambling Authority.	
	Poker		
	Bingo		
Betting	Betting	Swedish Gambling Authority.	
	Sports/horse race betting (if regulated separately to other forms of betting)		
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	Swedish Gambling Authority (unless regarded as a skill game).	
Lotteries	Lotteries	Swedish Gambling Authority.	
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Administrative authorities.	
	Skill games and competitions with no element of chance	Tax agency and administrative authorities.	

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

A new Swedish Gambling Act was voted through parliament on 14 June 2018 and enters into force on 1 January 2019. The new

Gambling Act applies to gambling for money, which is provided in Sweden. Any gambling directed at the Swedish market without a Swedish licence is illegal and it is also prohibited to aid and abet (e.g. market or advertise) such gambling.

The Swedish Gambling Authority has started accepting licence applications under the new legislative framework as of 1 August 2018 and the first licences are expected to enter into force on 1 January 2019.

The Gambling Act is accompanied by secondary legislation and the laws and regulations applicable to the Relevant Products include:

Gambling laws/regulations:

- Swedish Gambling Act (2018:1138).
- Swedish Gambling Tax Act (2018:1139).
- Gambling Ordinance (2018:1467).
- Regulations on licence applications (LIFS 2018:1).
- Regulations and general advice on responsible gambling (LIFS 2018:2).
- Regulations regarding exception from the requirement on registration (LIFS 2018:3).
- Regulations and general advice on state lottery and lottery for good causes (LIFS 2018:4).
- Regulations and general advice on commercial gambling and betting (LIFS 2018:5).
- Regulations and general advice on land-based commercial gambling (LIFS 2018:6).
- Regulations and general advice on gambling on ships in international traffic (LIFS 2018:7).
- Regulations and general advice on technical requirements and on the accreditation of bodies to inspect, test, and certify gambling operations (LIFS 2018:8).

Other relevant legislation:

- Swedish Money Laundering Act (2017:670).
- Swedish Gambling Authority's regulations and general advice on the prevention of money laundering and financing of terrorism (SIFS 2017:2).
- Swedish Consumer Services Act (1985:716).
- Swedish Distance and Doorstep Act (2005:59).
- Swedish Marketing Law (2008:486).
- Swedish Act on Payment Services (2010:751).
- Other publications and documents issued by any relevant competent authority such as the Swedish Gambling Authority, the National Board for Consumer Disputes (*Allmänna Reklamationsnämnden*) or the Swedish Consumer Agency (*Konsumentverket*).
- Any secondary, related, or otherwise applicable laws and EU regulations and directives.

2 Application for a Licence and Licence Restrictions

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

In order to legally provide gambling under the new Gambling Act, a licence must be obtained, unless otherwise explicitly stated in the Act. It is possible to apply for six different types of licences:

1. Licence for state monopoly – including land-based casinos, gambling on land-based gambling machines (slots) and certain forms of lotteries.
2. Licence for charities/good causes – includes certain forms of lotteries and land-based bingo as well as local pool betting at horse racing tracks.
3. Licence for land-based commercial gambling – including certain limited casino games and gambling machines (slots) if provided at an amusement park or at hotel or restaurant premises which hold a permit to serve alcohol. This licence can also include certain land-based card tournaments held outside a casino.
4. Licence for gambling on ships in international traffic – including gambling on gambling machines (slots) and certain limited casino games.
5. Licence for commercial online gambling – including online casino table games, online bingo and computer-simulated gaming machines (slots). Licences can be granted to any operator, including private gambling operators, who satisfy the formal requirements.
6. Licence for betting – including both land-based and online betting. A betting licence also covers betting on horse races, betting on electronically simulated events and the outcome of lotteries (if consent of the entity providing the lottery has been obtained). Betting on occasions where the majority of participants are under 18 years of age, spread betting or betting on events that are offensive or inappropriate is prohibited. Licences can be granted to any operator, including private gambling operators, who satisfy the formal requirements.

Persons and entities located outside of Sweden can also apply for licences. An applicant not resident or established in a country within the European Economic Area (EEA) shall, however, appoint a physical representative who is a resident in Sweden. Furthermore, there is a requirement for the licence holders to have their gambling system (including servers) located in Sweden, unless the Swedish Gambling Authority has entered into an agreement with the regulator where the gambling system is placed or if the licence holder is able to grant the Swedish Gambling Authority satisfactory remote access.

Social games and skill games fall outside the scope of the new Swedish Gambling Act and do therefore not require a licence. It should be noted that winnings from a game of skill will be taxed as income in Sweden.

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

As mentioned above, a licence must be obtained before gambling is offered in Sweden, unless otherwise explicitly stated in the Gambling Act.

Licences under the Gambling Act may be granted to those who:

1. are deemed to have the knowledge, experience and organisation required to run the operation;

2. presumably will run the operation in accordance with acts and other statutes that govern the operation; and
3. are deemed in other respects to be fit to run the operation.

In order for the Swedish Gambling Authority to assess whether an applicant satisfies these criteria, it has provided licence application forms to be filled in and submitted by operators who wish to provide gambling in Sweden. For each type of licence, there are several supporting documents that need to be submitted.

Licences are only available to B2C operators and suppliers of equipment or games are not eligible. However, with certain exceptions, an applicant must, as part of its licence application, ensure that its gambling system is certified by an independent and accredited testing house. Since suppliers’ technical equipment and games will form part of the applicant’s gambling system, such equipment must also be part of said certification.

Individuals representing applicants and/or qualified owners of applicants do not need a separate licence but must disclose certain information as part of the licence application (please find more details below).

It should also be noted that a licence for betting will include the right (but no obligation) to provide both land-based and online betting. Land-based betting can be provided through agents. Agents do not need to hold a licence but will need to be registered at the Swedish Gambling Authority and as part of the registration process, certain due diligence documents need to be provided.

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

When an eligible operator wishes to apply for a licence, it shall fill in the relevant application form provided by the Swedish Gambling Authority. Several supporting documents shall be appended to the application. By way of example, a licence application for online gambling and betting made by a legal entity shall be supported by:

- Annex A – to be filled in by certain key personnel relevant both for the applicant company but also for its qualified owners (legal entities), etc.
- Annex B – to be filled in by qualified owners (legal entities) of the applicant company. The definition of “qualified owner” includes direct or indirect ownership/voting rights of 10 per cent or more.
- Annex C – Gambling Concept Description, including a description of each game and game rules.
- Description of the procedures for handling personal data.
- Business plan.
- Description of the owner/group structure.
- Description of the applicant’s operations.
- Financial documentation.
- Documents showing that the technical requirements for the gambling business have been fulfilled.
- Tax account excerpt from the Swedish tax agency.
- Solvency certificate or a debt extract from the Swedish Enforcement Authority for the last five years.
- Company registration certificate or equivalent (applicant).
- Company registration certificate or equivalent (qualified owners).
- Articles of association or equivalent.
- Powers of Attorney for the contact person and representative.
- Licences held by the applicant, if issued in a country other than Sweden.

- Rejections of an application for a gambling licence, revocation of a gambling licence and court judgments and administrative decisions in cases to which the applicant has been a party, and which relate to gambling activities.

Any documents shall be submitted in Swedish.

Due to the fact that the Swedish Gambling Act has not entered into force (1 January 2019), and has just recently opened its application window (1 August 2018), it is at this stage difficult to determine in detail how the applications and the application process will be assessed and reviewed by the Gambling Authority.

The applicable fees for licences are as follows:

No.	Type	Fee (SEK)
1.	Licence for commercial online gambling	400,000
2.	Licence for betting	400,000
3.	Licence for both 1 and 2	700,000
4.	Renewal of licence under 1–3	300,000
5.	Amendment of licence under 1–3	150,000
6.	Licence for State lottery or lottery for purposes in the public interest	5,000–150,000 depending on balance sheet
7.	Amendment of certain licences under 6	40,000
8.	Licence for bingo	30,000
9.	Amendment of licence under 8	5,000
10.	Licence for local pool betting on horses	3,600
11.	Licence for cash gaming machine, token gaming machine or goods gaming machine – per venue	2,800
12.	Permit for possession of cash gaming machine, token gaming machine or goods gaming machine	3,600
13.	Licence for land-based commercial casino games – per venue	3,600
14.	Licence for casino games – per casino	70,000
15.	Amendment of licence under 14 – per casino	15,000
16.	Card game tournaments	4,000–25,000 depending on number of tournaments
17.	Amendment of persons according to chapter 4, § 3 and 4 of the Gambling Act	800

The Swedish Gambling Authority will also charge a fee of SEK 800 for registration of each gambling agent and there will be an annual oversight fee to recover costs for the oversight activities.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

There are general restrictions in the Swedish Gambling Act applicable to licensees. For example, a licence may not be granted to persons that have entered into administration/bankruptcy, that are below 18 years of age, that have no legal capacity, that have previously operated a business with gross negligence or that have been convicted of serious criminal actions. The same restrictions apply for representatives of legal entities and/or qualified owners of legal entities.

There are also certain restrictions within each licence category and the general principle is that products must be provided strictly in accordance with the provisions in the Gambling Act and its secondary legislation.

It should also be noted that the new Swedish Gambling Act is a framework law and that both the government and the Swedish Gambling Authority have been given extensive powers to issue secondary legislation and to further limit the product offer if deemed necessary.

The Swedish Gambling Authority may furthermore attach conditions to a licence as to how the gambling operations are to be exercised.

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

A licence under the Swedish Gambling Act shall cover a specified period of time and may be granted for a maximum period of validity of five years. Licence applicants shall specify the length of time their application concerns. Subject to payment of the renewal fee, a licence applicant can request a renewal of the licence upon expiration.

It is the Swedish Gambling Authority that exercises oversight for compliance with the Gambling Act and the regulations and conditions that have been issued by virtue of the act.

If the conditions for a licence are no longer met, or if a licence holder otherwise fails in its obligations under the Gambling Act or under regulations or conditions that are issued by virtue of the act, the Swedish Gambling Authority shall order the licence holder to rectify the matter within a given time frame or decide on a prohibitory injunction, a change of conditions or remarks. Licences shall be revoked in cases of serious violation or, if sufficient, a warning shall be issued.

If there are reasonable grounds for revocation, the Swedish Gambling Authority may revoke a licence until the matter of revocation has been definitively closed. However, this may only be done if it is necessary to ensure consumer protection or if it is otherwise necessary for reasons of public interest.

The Swedish Gambling Authority shall furthermore revoke a licence if the licence holder:

- has been licensed by providing incorrect information or by any other improper means;
- has not utilised the licence to commence gambling operations within one year from the licence date;
- has not utilised the licence to run operations for six consecutive months;
- has declared that they will not utilise the licence; or
- has gone bankrupt or if a decision has been made that the company shall undergo forced liquidation.

In the cases referred to above in points 1–3, a warning may instead be issued if doing so is sufficient.

A gambling licence may also be revoked if the licence holder no longer complies with certain other basic criteria in the Gambling Act and if the lack of compliance concerns a person with a qualified shareholding the Swedish Gambling Authority may order the holder to divest such an amount of shares or securities that the holding is subsequently not qualified or, if the holder is a legal person, to remove a disqualified person from the board or management.

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

As also described above, the main restrictions on the Relevant Products lie in that not all licences are available for private companies

to apply for and in practice only online commercial gambling and betting Licences are available to international operators.

In terms of offering and marketing, there is a requirement that any advertising shall employ a degree of moderation. Marketing may furthermore not be aimed specifically at persons under 18 years of age and there are limitations with regards to direct mail, information obligation on clear information, unfair marketing, advertising on radio and television.

An important restriction from a commercial perspective is a licence holder may only offer or provide bonus offers at the first time the player participates in one of the licence holder's games. Given that a bonus is defined as "a discount or similar financial incentive that is directly linked to the gambling", the possibilities of these kinds of promotional activities or rebates must be considered very limited.

Furthermore, even though it is in principle permitted for online operators to operate a multi-brand business, many responsible gambling measures (including the bonus restriction) must be applied across all brands, making it more challenging to operate several brands successfully under the same licence.

Given that the Gambling Act and the particular restrictions described above have not yet been implemented, there are no relevant case studies today. The Swedish Gambling Authority has stated that it cannot give guidance in advance and that case law will have to develop over time to help interpret the provisions.

2.7 What are the tax and other compulsory levies?

The gambling tax rate applicable to the competitive sector is 18 per cent of the gross gambling revenue. The gambling tax of 18 per cent shall be paid on the revenue earned during one taxation period, which is defined as one month.

In addition to the actual application fee, licence holders will also have to pay an annual fee for the oversight performed by the Swedish Gambling Authority. The fee will be calculated to achieve full cost recovery.

2.8 What are the broad social responsibility requirements?

Responsible gambling and social responsibility are considered to be cornerstones of the new Swedish Gambling Act. Besides several requirements in the Gambling Act and the Gambling Ordinance, the Swedish Gambling Authority has issued a specific regulation and general advice on responsible gambling (LIFS 2018:2).

The general starting point of the law is that a licence holder shall protect its players from excessive gambling and help players reduce their gambling when there is reason for it. Consequently, a licence holder shall ensure that social and health measures are taken in the gambling operations (duty of care). The duty of care includes counteracting excessive gambling through continuous monitoring of gambling behaviour. Each licence holder shall create an action plan where all measures are presented and where it is described how this duty of care is implemented and fulfilled.

There is an age limit of 18 years of age for gambling (and 20 years of age to enter a land-based casino) and it is not permitted to offer players credit.

There must be a possibility for players to self-exclude, both with an individual operator but also through a central register administrated by the Swedish Gambling Authority. Players must also be given the opportunity to set a player budget and it is even mandatory for players registered as customers of a licence holder of online

commercial gambling licences and betting licences to set deposit limits by day, week and month. Furthermore, the players shall be given the option to limit their log-in time and self-assessment tests shall be available.

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

As a Member State of the EU, Sweden has implemented the 4th Money Laundering Directive and all the regulations applicable to businesses, including gambling-related operations, which the directive includes are also applicable in Sweden. The Swedish Gambling Authority supervises gambling operators' compliance with the relevant AML laws and has also issued regulations and general advice on the prevention of money laundering and financing of terrorism (SIFS 2017:2).

With regards to online gambling licences and betting licences, an operator must, as part of its licence application, warrant that it has made a risk assessment of how its products and services could be used for purposes of money laundering and financing of terrorism and an assessment of how big such risk(s) are.

A licence applicant shall also warrant that the applicant has documented procedures and routines describing the measures taken in terms of "know your customer" (KYC) and in accordance with the Swedish Money Laundering Act.

Virtual currencies are not explicitly prohibited but only payment services listed in Chapter 1, Section 3 of the Payment Services Act (2010:751) are permitted to be used. The problem with virtual currencies from an AML perspective is that it is considered to be difficult to determine the source of funds. Furthermore, wagers must be stated in SEK. Our understanding is therefore that an operator can use any real currency, where the operator shall at least display Swedish kronor when players stake their wagers.

3 Online/Mobile/Digital/Electronic Media

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

For international operators, it is in practice only possible to apply for an online commercial gambling licence and a betting licence (including both online and land-based betting). The state monopoly may also offer other products online.

A licence applicant not resident or established in a country within the European Economic Area (EEA) must appoint a physical representative who is a resident in Sweden. Furthermore, there is a requirement for licence holders to have their gambling system (including servers) located in Sweden, unless the Swedish Gambling Authority has entered into an agreement with the regulator where the gambling system is placed or if the licence holder is able to grant the Swedish Gambling Authority satisfactory remote access.

It is also important to note that the new Gambling Act only includes gambling that is provided in Sweden. Gambling that is not specifically targeted at the Swedish market falls outside its scope, even if Swedish residents are registered with operators that use such gambling services.

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

Payment processing: Withdrawals are only allowed to be made from the same payment service provider as the player made the deposit to.

Marketing currency restrictions: The only restriction is that when a player wagers, the currency has to be shown in SEK. Also, a majority of the relevant information supplied by the website/mobile/other platforms must be accessible in Swedish.

ISP blocking and/or blacklisting: The Swedish Gambling Authority may, if there are particular reasons to do so, order an internet service provider to create a warning message that is clearly displayed in conjunction with visits to websites that provide gambling without the requisite licence. The message shall inform visitors that the party that is providing the gambling lacks a licence in Sweden and is not under Swedish oversight and that the player is liable for the tax on any winnings.

Payment blocking: If a gambling account is used or can be presumed to be used for the transfer of wagers or winnings to or from an unlicensed gambling operation for which a licence is required, a payment service provider may be ordered by the Swedish Gambling Authority to block electronic payment transactions to and from the account.

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

According to the Gambling Act, a licence to provide betting may include online betting as well as other betting (i.e. land-based). In the Gambling Act, it is also clarified that it is prohibited to allow the player to place his/her own bet with the help of technical or electronic equipment that is provided by the licensee or its gambling agent.

While it seems clear that a betting operator cannot place self-service betting terminals in betting shops which are operated by the player, it would seem that a betting operator in a betting shop can facilitate the use of a betting terminal for the player via agent. As described above, a licensee can provide land-based betting through a gambling agent. The licensee will continue to be responsible for the provision of the betting products but the gambling agent should be able to manage a betting terminal on behalf of the players.

According to the preparatory work, it is clear that the government intends to prevent betting terminals from being used in restaurants and sport bars.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

The main rule is that the gambling operator is liable for all services it provides to the player, e.g. player accounts, advertisement, online casino games. Players are not subject to any sanctions for participating in unlicensed gambling but may need to pay tax on winnings they have gained through such gambling.

Those who intentionally or through gross negligence provide any unauthorised or unlicensed gambling when authorisation or a licence is required under this Act and those who intentionally or through gross negligence promote participation in unauthorised or unlicensed gambling shall be fined or imprisoned for a maximum of two years. There will not be any sentencing in minor cases.

Crimes specified above that have been committed intentionally and that are felonious are punishable by imprisonment for a minimum of six months and a maximum of six years. In judging whether a crime is felonious, particular attention shall be paid to whether or not the offence was committed as part of a crime that is carried out professionally and systematically or is far-reaching or, alternatively, of a particularly dangerous nature.

Payment service providers may be ordered to block transactions if a player's account is used or can be presumed to be used for the transfer of wagers or winnings to or from an unlicensed gambling operation for which a licence is required. If a payment service provider fails in its obligation to reject a payment order pursuant to regulations issued by the government or violates a decision on payment blocking, the Swedish Gambling Authority may decide that the payment service provider must pay a pecuniary penalty.

Those who take inappropriate actions to manipulate the outcome of a game shall be imprisoned for a maximum of two years for cheating. Crimes that are felonious are punishable by imprisonment for a minimum of six months and a maximum of six years. In judging whether a crime is felonious, particular attention shall be paid to whether or not the offence was committed as part of a crime that is carried out systematically or is far-reaching or, alternatively, of a particularly dangerous nature.

Regarding attempts or preparations for unlawful gambling operations or cheating, felonies shall be prosecuted in accordance with the Swedish Penal Code.

4.2 What form does enforcement action take in your jurisdiction?

Typical examples of local enforcement actions would need to be divided into licensed gambling operations and unlicensed gambling operations. If a licence holder fails in their obligations under the Gambling Act or under regulations or guidelines that are issued by virtue of the act, the Gambling Authority shall order the licence holder to rectify the matter within a given time frame or decide on a prohibitory injunction, a change of conditions or remarks. If a licence holder has received remarks or warnings without complying, the Gambling Authority may decide that the licence holder shall pay a pecuniary penalty. Licences shall be revoked in cases of serious violation or, if sufficient, a warning shall be issued.

Unlicensed gambling will be subject to criminal sanctions; please also see above.

Seizures may be made of gambling equipment or other items 1) for which there are reasonable grounds to believe that they are pertinent to the criminal investigation, or 2) which can be presumed to be liable to confiscation under the Gambling Act. Wagers taken in conjunction with a crime according to the Gambling Act shall also be declared forfeit.

Since the new Gambling Act enters into force on 1 January 2019, we do not yet know how common prosecutions and other sanctions will become. Currently, prosecutions are very uncommon, but the Swedish Gambling Authority continuously tries to enforce injunctions and pecuniary penalties on those who advertise operators who do not hold a Swedish licence but target the market.

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

Sweden is a member of the European Union and is directly affected by EU decisions. So far, international operators have used EU law and the fundamental freedom to provide services as a shield when

providing gambling in Sweden without a local licence, but with the new Gambling Act entering into force there should be little or no possibility to refer to such EU law and case law.

4.4 Are gambling debts enforceable in your jurisdiction?

Normally, gambling debts should be enforceable under the new Gambling Act. However, wagers as well as other exchanges taken or made in conjunction with a crime according to the Gambling Act shall be declared void and money may be forfeited. In the event of bankruptcy, players could recover their funds from the licence holder through bankruptcy proceedings and the licence holder has an obligation to keep its players' funds separate from its own funds.

5 Anticipated Reforms

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

The Swedish Government has appointed an inquiry to investigate the new conditions for sports organisations and horse organisations following the re-regulation of the Swedish gambling market. The instructions from the government also include an assessment of the current state monopoly (*Svenska Spel*) and its adaption to the new laws as well as an assessment on how to further counteract any damage caused by gambling.

The Swedish Agency for Public Management has also received instructions to follow up on the re-regulation of the gambling market. It shall, in particular, assess how it affects public health, consumer protection, state finances and the financing of good causes.

It is still early days for the new Gambling Act and it is not yet possible to predict what proposals may come up once reports and assessments from the above investigations have been published.

Acknowledgment

The author would like to thank Ario Mansoori and Malene Linnebjerg, Associates at Nordic Gambling, for their invaluable contribution to the writing of this chapter.



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NORDIC GAMBLING

Nordic Gambling is the only legal firm in the Nordic countries which specialises in gambling-related law such as licensing, compliance advice and public affairs. The firm has gained extensive experience in the industry from working with operators, suppliers, service providers and government regulators.

The partners of the firm have been closely involved in the development of the law and regulation in a number of European jurisdictions, including Denmark and Sweden.

The partners of Nordic Gambling are recognised among the leading legal experts in the gambling industry and are qualified to assist you with whichever legal issue you may encounter.

Switzerland

Dr. Andreas Glarner



MME Legal | Tax | Compliance

Dr. Alexandra Körner



1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Until end 2018: no regulating body, as online games of chance are illegal in Switzerland (art. 5 Federal Act on Games of Chance and Casino ("FGA")). As of 1 January 2019: The Swiss Federal Gaming Board ("SFGB"), based on the new Money Gaming Act ("MGA").	The Swiss Federal Gaming Board ("SFGB").
	Poker	Until end 2018: No regulating body, as online games of chance are illegal in Switzerland (art. 5 FGA). As of 1 January 2019: the SFGB.	The SFGB.
	Bingo	Until end 2018: no regulating body, as online games of chance are illegal in Switzerland (art. 5 FGA). As of 1 January 2019: the intercantonal lottery and betting authority ("Comlot").	Automated and/or intercantonal: the intercantonal lottery and betting authority ("Comlot").
Betting	Betting	Comlot.	Automated and/or intercantonal: Comlot. Neither automated nor intercantonal: the cantonal authorities.
	Sports/horse race betting (if regulated separately to other forms of betting)	No separate regulation.	
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	Switzerland does not have a special regulatory regime for fantasy betting, e-gaming and social gaming. It must be decided on a case-by-case basis if a bet/game qualifies as a lottery, bet or casino game under the gaming regulations. Dependent on that decision, the SFGB or Comlot is the competent regulatory body.	
Lotteries	Lotteries	Comlot.	Intercantonal and/or automated: Comlot. Neither intercantonal nor automated: the cantonal authorities.
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Social games with no prize in money/money's worth are not considered gaming in the sense of the Swiss gaming regulations.	
	Skill games and competitions with no element of chance	As of 1 January 2019: Comlot.	

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

Until the end of 2018, the Swiss Constitution distinguishes between two kinds of gaming: casino gambling; and betting/lotteries (art. 106, Swiss Federal Constitution). The Federal Act on Games of Chance and Casino (“FGA”) is the main federal legal basis for the assessment of any cash gambling games of luck (casino games) in Switzerland. Any other games, such as lotteries and betting, are governed by the Swiss Lottery Act (“SLA”). While organising or offering cash games of luck within licensed terrestrial casinos is legal, the organisation or operation of online games of luck is always illegal. Lotteries and the professional provision of betting services related to sports events are prohibited by the SLA. Exceptions only apply to Swisslos and Loterie Romande, which have acquired licences based on cantonal law.

From 1 January 2019, casino games and lottery/betting will be regulated in one single law: the new Money Gaming Act (“MGA”). The licence regime for terrestrial games remains the same. However, casinos with a terrestrial licence can apply for an extension of their licence to offer online gaming. Licences for (online) lotteries and betting will remain only with Swisslos and Loterie Romande. The MGA introduces the possibility to use IP blocking measures for foreign operators of online gaming and betting if they provide their services to Swiss players.

To the extent the following explanations do not explicitly refer to the regulatory framework in place until the end of 2018, they relate to the regulatory setup in force as of 1 January 2019.

2 Application for a Licence and Licence Restrictions

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

Swiss law distinguishes between terrestrial casino licences (location and operation licences), the extension of the terrestrial licences for online gaming (“online licence”, as of 1 January 2019) and lottery and betting licences (terrestrial or online).

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

Casino licence

A-type casino: no limits in stake, can offer 14 different table games, with unlimited stakes, jackpots and maximum winnings at all slot machines. An A-type casino is only allowed in an area with a population of at least one million people.

B-type casino: usually for spa or resort casinos, with a maximum of three kinds of table games and limited stakes, jackpots and maximum winnings at all slot machines. The maximum number of gambling tables operated per casino is three and for slot machines the maximum is 250. The limit per stake in B-type casinos is CHF 25 and the maximum jackpot offered is CHF 25,000.

Lottery/betting licence

The lottery market is regulated by the SLA. However, the implementation of the SLA is subject to cantonal law. Today, as

well as under the new law, Comlot grants the licences to the lottery providers. So far, only Loterie Romande and Swisslos have received such licences. It is likely that also under the new law, no new providers will receive licences. Small lotteries and small-scale betting operators can apply for a cantonal licence. The small lotteries and small-scale betting may neither be carried out intercantally nor be automatic in order to obtain such a licence.

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

The Swiss Federal Council decides on the maximum number of terrestrial casino licences that may be granted, and also defines the geographical locations of such casinos.

The written application for a casino licence must be submitted to the SFGB. The SFGB reviews the applications and submits a proposal to the Swiss Federal Council (“SFC”). The SFC decides whether or not to grant a licence – this decision is final. Casinos can be operated only after the licence has been granted by the SFC and issued by the SFGB.

Under the new MGA, casinos holding a Swiss casino licence can apply for an online licence. The process of the application is the same as for a terrestrial casino licence.

Applicants for lotteries and/or betting must submit their application to Comlot (art. 5 SLA, art. 105 ss. MGA). However, only Swisslos and Loterie Romande are (and will be) licensed to provide intercantonal lottery and sports betting services.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Licensees may only provide gaming or lottery/betting services within the scope of (i) the licence obtained, and (ii) the applicable regulations. Casino licences contain a wide range of restrictions with regard to the games that may be offered, how these games must be organised, what form and in which amounts payments may be accepted and how the marketing, social concept and security as well as AML procedures are organised. If the licensee fails to comply with the regulations, the SFGB or Comlot may cancel or impose restrictions on the licensee.

Lottery/betting and casino licences are not transferable to any third party. Any legal transaction involving the transfer of a lottery or casino licence is null and void.

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

A casino licence is usually granted for a period of 20 years (art. 12 MGA). After the 20-year period has elapsed, the licence can be extended or renewed. In certain circumstances, the licence may be revoked, restricted or suspended. A revocation of the licence is possible if any of the following apply (the conditions remain the same under the new MGA):

- The requirements for issuing the licence are no longer fulfilled.
- The licensee has obtained the licence based on incomplete or false information.
- The licensee has not started operations within the set time limit by the SFGB.
- The licensee leaves the business inoperative.
- The licence is used for any unlawful or improper purposes.

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

Casino games: the limits on the types of games, winnings and maximum number of slot machines depend on the type of the licence (A licence or B licence, see question 2.2 above).

(Large-scale) lotteries: may only be offered by Swisslos or Loterie Romande.

Small lotteries (with a cantonal licence): the maximum stake for a single bet is CHF 10, with a maximum of 100,000 CHF for total stakes (art. 34 Ordonnance to the MGA).

Small sports bets (cantonal licence): there is a maximum stake of CHF 200 per bet, with a maximum CHF 200,000 for total stakes on one competition day (art. 35 Ordonnance to the MGA).

Small poker tournaments (cantonal licence): there is a maximum stake of CHF 200 per bet, with a maximum CHF 20,000 for total stakes. Additional restrictions apply regarding the number of tournaments, number of participants, duration of tournaments, etc. (art. 37 Ordonnance to the MGA).

Tombola: there is a maximum total stake of CHF 25,000 (art. 38 Ordonnance to the MGA).

Any advertisement for the commercial offering of games of chance is prohibited if made in an obtrusive way (art. 74 MGA). Advertising for money games not licensed in Switzerland is prohibited.

Any prohibited promotion can be sanctioned with a fine up to CHF 500,000 (art. 131 MGA).

2.7 What are the tax and other compulsory levies?

In accordance with the Swiss constitution, a casino's gross revenues are taxed. The collected tax funds flow into Switzerland's pension system.

Terrestrial casinos: the basic tax rate is 40 per cent (for gross gaming revenues of up to CHF 10 million). The federal government can change the current level of taxation rates up to 80 per cent (art. 120 MGA).

Online gaming: the basic tax rate is 20 per cent, up to gross revenues of CHF 3 million. If the gross revenues exceed this sum, the tax rate rises to the maximum rate of 80 per cent (art. 120 MGA).

Gains resulting from cash games of luck which do not exceed CHF 1 million are tax-free. Gains from lotteries or skill games for advertising purposes are subject to tax if the gain exceeds the cantonal boundaries.

2.8 What are the broad social responsibility requirements?

One of the main objections to the deregulation of the casino market is the assumption that deregulation would result in an increase in gambling addiction. Therefore, applicants must present a problem-gambling policy, including measures to prevent gambling addiction and strict security policies (art. 76 MGA).

The social concept of casinos and providers of online cash games of luck must include the following measures:

- information for players about the risks of games, possibilities for self-control, bans, etc.;
- early identification of at-risk players;
- implementation of bans;
- education of personnel; and
- data collection on the effectiveness of the measures.

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

Casinos are subject to the Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sectors ("AMLA") and are considered financial intermediaries. The SFGB has issued an ordonnance to clarify the application of the AMLA for casinos. In addition, the majority of licensed casinos are members of the Self-Regulating Organisation, which sets the AML standards for its members.

Financial intermediaries under the AMLA must comply with different duties of due diligence. For example, casinos must verify the identity of the customer on the basis of an identification document in one of the following situations:

- When they enter a casino.
- When they reach a certain threshold.
- When they establish a certain business relationship (accounts or depots).

In addition, casinos must report any suspicion of money laundering immediately and respect the criminal provisions of the AMLA. A violation of provisions of the AMLA may lead to a revocation of the casino licence. Lottery companies are not yet considered financial intermediaries.

Virtual currencies: neither the new Swiss Money Gaming Act nor the above-mentioned ordonnance have imposed any restrictions on virtual currencies.

3 Online/Mobile/Digital/Electronic Media

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

There is no clear definition of online gambling. However, the chain of distribution to the customer is significant in determining whether a game is classified as remote gaming or online gaming. From 1 January 2019, existing casinos with a Swiss licence can apply for an online licence.

Offering non-licensed online games within Switzerland is prohibited. Foreign, non-licensed operators who offer online cash games of luck to Swiss players may be foreclosed from the Swiss market through the introduction of IP blocking measures to be implemented by the Internet access providers (art. 86 MGA).

However, foreign providers will be able to cooperate with Swiss casinos in order to offer their online services legally in Switzerland. The cooperation will, amongst other requirements, only be approved if the cooperation partner has a "good reputation".

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

Access to online games requires a gaming account with the operator. To be able to open an account, a player must be over 18 years old, Swiss-resident, and not be banned from gaming. The provider of online games must identify the players. Gains from gaming can

only be wired to accounts in the name of the player (art. 45 ss. Ordonnance to the MGA).

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

Gaming machines that involve a predominant element of skill can be operated outside casinos, if permitted by cantonal law (art. 106 para. 4 Federal Constitution). Cantonal permission can only be granted if the gaming machine has been approved by the SFGB as skill-based.

However, if gaming machines involve a predominant element of chance, they must only be operated in licensed casinos.

There are two main categories of slot machines:

- Gaming machines, which have entertainment as their sole purpose (such as table football, pinball and any kind of sports simulator).
- Slot machines, which give the player an opportunity to win money or other prizes of monetary value (such as points, chips or goods).

The rules for the control and construction of the slot machines are set forth in the Casino Ordonnance. The Ordonnance to the MGA contains restrictions as to the stakes for slot machines according to the type of casino licence (A or B).

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

The following parties are liable for breaches of the relevant legislation:

- the casino licensee;
- the customer itself;
- the lottery and betting licensee; and
- the gaming service operator and supporting third parties.

4.2 What form does enforcement action take in your jurisdiction?

The licence may be withdrawn from domestic casinos or lottery/betting operators. In addition, prison sentences and high fines up to CHF 500,000 can be imposed (art. 131 ss. MGA).

Websites of foreign gaming providers can be IP-blocked and the provider will be listed on a public blacklist (art. 86 MGA).

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

No, there are no other non-national laws that have an impact upon liability and enforcement. Switzerland is not a member of the European Union, therefore EU law is not applicable.

4.4 Are gambling debts enforceable in your jurisdiction?

In general, under Swiss law, gambling and betting debts do not give rise to a claim (non-actionable claim; art. 513 of the Code of Obligations [SR 220]).

A claim may arise if the claim arose during a licensed lottery game or during a game in a casino licensed by the competent authority (art. 515 of the Swiss Code of Obligations).

5 Anticipated Reforms

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

The new Money Gaming Act is expected to enter into force on 1 January 2019.

The MGA, on the one hand, will open the online market for Swiss casinos. On the other hand, it aims to strengthen player protection through different measures, such as play suspensions and the offering of treatment, advice against gambling addiction and marketing restrictions. In addition, a number of provisions are in place to ensure secure and transparent gaming operations (for example, new measures against the manipulation of sports competition).

Once the new law has entered into force, it remains to be seen how the new law will prove its worth in practice.

Acknowledgment

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Our attorneys regularly act as advisors to the SRO SCV and assist the Industrial Federation of Swiss Gambling Houses, as well as national and international supervisors and gaming providers, in the implementation of legal and regulatory provisions.

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1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	The Gambling Commission of Great Britain.	The Gambling Commission of Great Britain (for Operating Licences). Local authorities (for Premises Licences).
	Poker		
	Bingo		
Betting	Betting		
	Sports/horse race betting (if regulated separately to other forms of betting)		
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)		
Lotteries	Lotteries		
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Not regarded as gaming where there is no prize offered in 'money or money's worth'.	
	Skill games and competitions with no element of chance	Not regarded as gambling where the element of chance is no more than <i>de minimis</i> .	

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

The main legislation governing gambling in the three forms identified in English law (gaming, betting and participating in a lottery) is the Gambling Act 2005. It is important to note that this instrument does not extend to Northern Ireland, where legislation based on the Gaming Act 1968 continues to apply. Originally the Gambling Act 2005 applied only to those persons who had a physical connection with Great Britain; for example, land-based gambling businesses located in Great Britain or items of remote gambling equipment located in Great Britain. This so-called 'point-of-supply' legislative scheme was reversed (in the case of remote gambling) by the Gambling (Licensing and Advertising) Act 2014, which converted the British system into a so-called 'point-of-consumption' regime which criminalised any person in any jurisdiction who makes available facilities for gambling to British players on a remote basis without British licences. This instrument brought the British system into line with various of the European so-called 'regulated markets', where the requirement to obtain a licence for that market and account for gambling duty extends to remote providers of gambling outside the jurisdiction.

There is extensive gambling regulation in Great Britain, mostly imposed upon licensees by the various conditions and codes of practice attached to their gambling licences which are colloquially referred to by the acronym 'LCCP'. These LCCP impose extensive obligations upon licensees in, amongst others, the fields of social responsibility, anti-money laundering and the prevention of terrorist financing, consumer fairness and transparency and responsible advertising. Other regulation also applies. Gambling operators are subject to the advertising regulations of the British Advertising Standards Authority and the industry British 'Industry Group for Responsible Gambling'. In addition, certain major gambling businesses have in the course of 2017 provided series of undertakings to the British consumer protection authority, the CMA, in relation to player promotions such as free wagers, spins, bonuses and so on, designed to ensure transparency and fairness to consumers and guarantee the ability of consumers to withdraw deposit monies from their accounts.

In addition to the main LCCP, the British regulator also publishes extensive 'remote technical standards' for gambling products as well as a large body of literature comprising regulatory advice, policies and guidance. Of particular importance are the now numerous 'public statements' detailing the acts and omissions of operators that have triggered regulatory action, as an example of 'what to avoid' for other operators.

The financial regulation of gambling is set out mostly in the British Finance Acts and provides for various levels of duty upon different types of gambling. Compared with European financial regimes, the British regime is comparatively benign. In general terms, it imposes low rates of duty (for example, 15%) on profits.

2 Application for a Licence and Licence Restrictions

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

The Gambling Act 2005 provides for a range of licences to be granted to both non-remote (i.e. land-based) as well as remote businesses. Points to note are that land-based casino licences are not freely available and the rollout of major casino resorts envisaged when the legislation was passed has generally not occurred. Casinos in the UK are generally operated under historic licences that were rolled forward under the 'new' Gambling Act 2005. Suppliers of gambling machines made available for use in land-based environments similarly need to obtain their own licence.

As far as remote gaming and betting is concerned, licences are readily available to suitable applicants. Two features of the British licensing regime that potential applicants should note are its requirement that: (i) persons who are not gambling operators but who develop, supply or maintain gambling software may need to possess their own 'gambling software operating licence', quite separate to the licences needed actually to operate gambling; and (ii) the 'key personnel' in any gambling business should possess personal licences or permits. Hence, the typical remote gambling business will require three types of British licence lawfully to offer remote gambling to British residents – an 'operating' licence, a software 'operating' licence and a suite of personal licences for its main personnel.

Generally, gambling licences are either 'remote' or 'non-remote'. This distinction cannot be ignored and the regulator has no power to grant a licence that authorises both remote and land-based activity. Other than that, different types of gambling activity conducted by the same media can be combined – for example, a 'remote' gambling operating licence might well have betting and gaming and software operation endorsed upon it.

There are no tender or bidding processes, other than in the occasional case of land-based casino franchises being proposed. Persons wishing to enter the British land-based casino market have typically purchased existing businesses.

As well as an operating licence, an operator wishing to make gambling facilities available in a land-based environment (e.g. casino, betting shop, bingo hall or arcade centre) will also need to apply for a premises licence authorising that activity from the relevant local authority.

As in many jurisdictions, the main monopoly incumbent is the National Lottery, which has a monopoly on commercial lottery activity. That said, there are numerous charitable lottery operators

which operate under certain regulatory constraints, much to the annoyance of the incumbent monopoly. Furthermore, bookmakers are free, under current British legislation, to offer bets on lottery results other than the British National Lottery.

Licences are available to persons based outside the United Kingdom. Remote licences are, in fact, a legal requirement for any business, wherever located, to offer facilities for gambling to British residents.

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

Eligibility for a British gambling licence depends upon the Gambling Commission's assessment of a variety of factors, primarily the integrity and probity of the applicant and the applicant's ability to conduct gambling in a solvent and responsible manner in compliance with law and regulation. Extensive disclosure of beneficial ownership is demanded and the regulator will also wish to see financial plans, business plans, management structures and the experience and competence of key personnel. Where applications are submitted in good order, with all associated information duly provided and application fees paid, the Gambling Commission aspires to process them in approximately sixteen (16) weeks.

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

The process is as described above. The application fees are assessed pursuant to a somewhat complex online calculation engine on the regulator's website but the point to note is that they are extremely low as compared to – for example – certain US jurisdictions.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Generally, all betting and gaming products may be offered. Commercial lotteries are prohibited and small and large lotteries must have a charitable dimension. Betting on the National Lottery is prohibited. In terms of the regulatory obligations imposed upon licensees by British licences, these are described above.

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

Operating licences are generally indefinite. Personal licences tend to have a five-year duration and must, however, be renewed. The regulator retains wide powers to suspend or terminate gambling licences, but perhaps its most frequently-used regulatory tool (at least to date) has been its power to review gambling licences in the event of misconduct by the operator. This process of formal review – Section 116 of the Gambling Act 2005 – can result in almost any sort of penalty from the regulator.

To date, the regulator has usually reached so-called 'regulatory settlements' with operators who have breached their licences which usually comprise: (i) a divestment of funds to an identified victim which represents the benefit to the operator resulting from the breach, or a donation of an equivalent amount to a charity; (ii) as well as a payment in lieu of a formal fine. These sanctions can run into millions of pounds and several high-profile operators have fallen foul of the British regulator and suffered this outcome. To date, however, no licence for any major operator has actually been suspended or revoked.

The sorts of event that typically trigger this process are where the operator accepts money from players that has been stolen, sometimes via obviously abnormal deposit patterns, and has failed to make appropriate enquiries as to the source of those funds, or the analogous situation where a player gambles far in excess of his means and the operator similarly fails to engage with him, resulting in social harm. An appeal process and an objective tribunal does exist and operators are free to make representations to that body as well as, ultimately, before the courts.

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

The British regime is not particularly restrictive in this regard and persons located in Great Britain are generally free to gamble as they please. For example, so-called 'Novelty Bets' are permitted on non-sporting events and, as mentioned above, betting on lotteries (apart from the British National Lottery) is also permitted. There are extensive marketing and consumer protection restrictions and these are described above. At present (2018) there is an acute regulatory focus in the UK on the advertising and promotion of gambling, and the industry is under considerable pressure in relation to the amount and the content of gambling advertising, particularly where there is a perceived attractiveness to children or young persons or where there is the potential for customers to be misled.

The exclusive right to run a lottery for commercial gain is reserved for a monopoly provider (currently Camelot).

2.7 What are the tax and other compulsory levies?

Tax	Rate	
General Betting Duty	15% for fixed-odds and totalisator bets	
	3% for financial spread bets	
	10% for all other spread bets	
	15% of the commission charges charged by betting exchanges to users who are UK people	
Pool Betting Duty	15%	
Remote Gaming Duty	15%	
Land-Based Casino Gaming Duty	Gross Gaming Yield	Rate
	The first £1,211,750	15%
	The next £835,250	20%
	The next £1,462,750	30%
	The next £3,087,750	40%
The remainder	50%	

2.8 What are the broad social responsibility requirements?

Gambling may not be made available or advertised to persons under the age of 18. There are limited exceptions for traditional activities such as the football pools and the National Lottery where the relevant age is instead 16. Exemptions also exist for products such as fairground amusements.

The bulk of the social responsibility obligations imposed upon British gambling licensees are set out in the second part of the 'Licence Conditions and Codes of Practice' or 'LCCP', as referred to above. Operators are expected to execute robust age verification systems and stakes are required to be refunded to children and young persons and wagers voided. More widely, operators are expected to undertake a risk assessment for their players, both in relation to the potential for money laundering and problem gambling. Operators are expected to understand the affordability of the gambling undertaken by their players, particularly where players are high-spenders. Operators are expected to have systems in place to identify where players are exhibiting behaviours which indicate potential harm. Where it is appropriate to trigger an interaction with a player, operators are expected to recommend socially responsible measures such as cool-off periods and breaks from gambling or self-exclusion. Operators are expected to have in place measures to detect self-excluded persons who might wish to re-register using different details. A centrally co-ordinated self-exclusion database is also about to launch in the UK which operators are required to sign up to.

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

British regulation passes through the full effect of EU anti-money laundering and terrorist financing measures. Otherwise, payment processing *per se* is not licensable under British gambling law and the main restriction is that land-based bingo and casinos may not offer credit for wagers.

3 Online/Mobile/Digital/Electronic Media

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

All gambling hosted by electronic means and available to persons in Great Britain must be licensed by the Gambling Commission.

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

None.

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

A variety of gaming machines are available, categorised according to stakes and payouts, subject to strict regulation as to the limits of those stakes and payouts and the number of machines in any one location. Of particular social and regulatory concern recently have been so-called 'fixed odds betting terminals' located in land-based betting shops in the UK which are seen as causing social problems and in respect of which the British Government plans a reduction in the stake limit to £2. In relation to gaming machines, businesses in the UK have to take careful note of a very difficult and complex statutory definition which has the potential to categorise as 'gaming

machines' all sorts of end-user devices other than 'traditional' fruit or symbol-cabinets depending upon how much gambling functionality is loaded onto them and who is responsible for it. The uploading of gambling functionality onto electronic end-user devices should always be considered carefully.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

As far as players are concerned, they generally only commit an offence where they attempt to gamble whilst underage, or cheat. However, the way that British legislation addresses gambling is to set up a whole series of criminal offences and then provide that the possession of the appropriate licence is a defence. Offences cover the unlicensed offer of gambling, the unlicensed use of premises for gambling, the promotion or facilitation of a lottery, and so on. The legal approach is to completely criminalise gambling but then to make exceptions for persons who comply with the licensing regime, pay the applicable tax, observe the applicable regulation, and so on. Alternatively, there are exceptions in the legislation for low-level or private gambling.

The definitions in British gambling law are extremely broad. Anyone who is involved to any material extent in the provision of gambling, or gambling software, may be committing an offence in the UK if they are not correctly licensed or if they cannot take advantage of one of the limited range of exemptions in the legislation. Software suppliers, games suppliers, sportsbook platforms and certain other B2B suppliers may all be potentially licensable. That said, non-gambling services are generally carved out of this wide net – payment processing, marketing affiliates and other ancillary services such as fraud prevention and age verification are *per se* not regarded as 'gambling'.

4.2 What form does enforcement action take in your jurisdiction?

The British regulator is currently (2018) embarked on a series of enforcement actions against its licensees, as described above. The usual pattern of regulatory enforcement is for the regulator to instigate a review of the operating licence in question, with the consequences described above. At the time of writing, the regulator has not yet seen fit to prosecute mainstream gambling operators for failures in compliance, although there are frequent prosecutions of plainly illegal gambling operations – primarily unlicensed land-

based operations. To date, the typical outcome has been a substantial financial settlement which the operator has negotiated with the regulator in lieu of a formal statutory penalty. To date, the regulator has made limited use of the system of personal management licences to act against individuals. However, these remain available to the regulator and there is no certainty that they will not be used in future if the regulator considers that its licensees are unwilling or unable to learn from the mistakes of others.

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

To date, the Gambling Commission has relied on its statutory powers under British law and its contacts with fellow European regulators. To the surprise of the writer, the British point-of-consumption legislation survived a judicial challenge from the Government of Gibraltar in 2014 and has not been widely questioned as incompatible with the Treaty on the Functioning of the European Union ('TFEU').

4.4 Are gambling debts enforceable in your jurisdiction?

In Great Britain, yes.

5 Anticipated Reforms

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

The British Government passed the Gambling Act 2005 with the intention that centuries of morally ambivalent repression and restriction of gambling should be replaced with a libertarian regime that treated gambling as a valuable contribution to the digital economy and the participation in gambling as a non-pathological leisure choice on the part of the gambler. In the intervening years, however, the absence of political support, press hostility and vociferous opposition from minority groups have given rise to a far less supportive atmosphere. The amount, stridency, frequency and pervasiveness of gambling advertising have caused concern and are under frequent official review. In the view of the writer, it is only a matter of time before formal watershed restrictions are imposed. In fiscal terms, operators have already suffered the removal of tax-exempt status for free bets, and a revenue-hungry Government may well look again at rates of duty. The burden of regulatory compliance is also increasing. Future changes to the law may well reflect some or all of this.

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Chris is a commercial and regulatory lawyer, concentrating on providing UK regulatory and compliance advice to various stakeholders in the online gambling and gaming industries. Chris acts for some of the industry's leading operators and suppliers, as well as smaller start-up companies, advising on the regulation and marketing of betting and gaming products. Chris also regularly advises businesses looking to expand into new markets, and has particular expertise in helping businesses understand the legal and regulatory implications associated with operating in regulated and unregulated markets.

WIGGIN

Wiggin is a law firm focusing exclusively on media, technology and IP. We advise clients on the financing, exploitation and protection of their creative and commercial assets in these sectors.

Alongside its specialist commercial expertise, the firm provides a full legal service across corporate, tax, finance, litigation, employment and property. Wiggin's clients range from leading businesses in broadcast entertainment, music, sport and publishing through to platforms, content retailers, gaming and technology companies and early-stage entrepreneurs.

The firm's Brussels office provides legal support and lobbies EU decision-makers on behalf of clients on a wide range of matters, including EU copyright, audiovisual regulation, data protection, competition policy, trade and e-commerce. Wiggin has also built a network of trusted overseas law firms, with a similar media, technology and IP focus, covering all key worldwide jurisdictions.

USA – California

Jeff Ifrah



Jessica Feil



Ifrah Law PLLC

1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Does not apply.	California Gambling Control Commission (“CGCC”), Attorney General’s Bureau of Gambling Control, and various tribal gaming authorities.
	Poker		
	Bingo		Municipal governing authorities.
Betting	Betting	Does not apply.	Does not apply.
	Sports/horse race betting (if regulated separately to other forms of betting)		California Horse Racing Board.
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)		Does not apply.
Lotteries	Lotteries	Does not apply.	California Lottery.
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Does not apply.	Does not apply.
	Skill games and competitions with no element of chance		

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

The California State Constitution makes gambling illegal. Cal. Const. Art. IV. However, certain forms of gambling, regulated by the state or the state’s Native American tribes, are permitted. Specifically, California permits card rooms, tribal casinos, a state-run lottery, bingo, and *pari-mutuel* wagering on horseracing.

The Gambling Control Act (“GCA”), Cal. Bus. & Prof. Code § 19800 *et seq.* sets out, as part of the state’s Business and Professional Code, licensing terms for entities involved with the gaming market. It also establishes the potential enforcement and disciplinary actions and restrictions on certain transactions. This Act establishes the law for all state card rooms, state relations with tribal casinos, and bingo. The GCA also established the California Gambling Control Commission, which issues regulations and gaming licences.

In addition to the GCA, California allows tribal casinos to offer card games and slots. These casinos are owned and operated by the state’s Native American tribes. The terms, limitations, and regulations pertaining to the tribal casinos are set forth in compacts negotiated between the state and each tribe that runs a casino.

The California Horse Racing Law controls all aspects of horse racing in the state, including *pari-mutuel* wagering. Under the California State Lottery Act, the California State Lottery operates the only lawful lottery in the state.

Consistent with the constitutional prohibition on gambling, the California Penal Code, Cal. Penal Code §§ 330 *et seq.*, provides that it is a misdemeanour for a person to facilitate, sponsor, run, or otherwise operate an illegal gambling operation, including an unlicensed card room or an unauthorised lottery.

At this time, California does not have any online gaming legislation. However, the state has tried many times over the past several years to legalise online poker and other online games.

2 Application for a Licence and Licence Restrictions

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

The Gambling Control Act requires that the owner of a card room

apply for and obtain a state gambling licence through the California Gambling Control Commission (“GCC”). In addition to owners, each key employee at the card rooms and gambling equipment manufacturers and distributors must be licensed.

California also requires registration of certain entities involved in the gaming business that are not directly involved with operating a gaming establishment. Specifically, gaming resource suppliers and third-party proposition player services must be registered with the state.

The state’s tribal casinos are regulated separately, through tribal gaming commissions. The licences necessary to operate a casino on Native American lands are determined by tribal commissions and the state-tribe gaming compacts.

The California Horse Racing Board oversees licensing for all racetracks in the state, including for *pari-mutuel* wagering, and state municipalities have licensing authority over bingo games.

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

There is currently a moratorium on further card room licences in California until January 2020. However, parties interested in operating a card room can acquire a licence from a currently operating card room. Licences for other casinos are only available for the state’s tribes. There are currently 63 active tribal licences, which are negotiated through a compact between the tribe and the state. Compacts set out the terms of the relationship between the state and the operating casino, including revenue sharing, licensing terms, and other specific details for operating a casino on tribal land.

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

When licences for card rooms are available, entities must apply to the GCC for licensure. The card room owner, the owner’s spouse, and key employees must complete individual investigations, which include disclosure of any personal civil or criminal court matters and details on personal assets. Applications for businesses and individuals are all available on the GCC’s website.

Upon submission of the materials, the GCC may schedule an interview with the owners and key personnel. The interview can be conducted in person or over the phone.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Based on the current moratorium, there are no licences available for card rooms in the state until January 2020.

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

Licences must be renewed bi-annually. The initial licence fee is \$6,000, plus a \$1,000 non-refundable deposit. The renewal fee is \$1,000. Further, because California is a community property state, spouses of card room owners must also register with the state.

Licences are a privilege and are held based on the continued compliance and good conduct of the licence holder. They can be revoked by the GCC for a number of reasons, but licence holders are entitled to due process prior to any suspension or revocation action being taken.

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

For currently operating card rooms and casinos, the minimum age to play is 18, although many establishments voluntarily raised the age to 21 to comply with state alcohol law.

Advertising and marketing materials must be approved by the GCC prior to use. The materials cannot be deceptive or misleading to customers, or target children. Advertisements that appeal to children or adolescents or offer gambling as a means of becoming wealthy are presumptively deceptive.

2.7 What are the tax and other compulsory levies?

California law empowers municipalities to collect taxes on card rooms in their jurisdictions. The municipalities set the tax rate for the approved card rooms, which is generally around 15%. In *pari-mutuel* wagering, the state collects a total of 36% of revenue on on-track wagers and about 21% on off-track wagers. Tribal casinos do not pay taxes to the state, but they do make payments to the state and municipalities based on the terms of the compact.

2.8 What are the broad social responsibility requirements?

California has a self-exclusion programme, which does not encompass tribal casinos or *pari-mutuel* horse wagering. The programme allows for a one-year or lifetime exclusion. Most tribal casinos offer their own self-exclusion programmes as well.

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

California does not have any state-level AML, financial services regulations, or payment restrictions specific to the gaming industry. Card room and tribal casino operators are obligated to adhere to federal AML, financial services, and payment restrictions.

At this time, California does not permit virtual currencies for gambling as there is no online gambling in the state. In the social gaming space, some courts have concluded that awards of virtual currency (including just virtual coins and tokens that lack a stated real-world value) in social gaming render such games illegal gambling. The courts considering this question were not considering California law or based in California, but are federal courts with authority over California, so the full impact of these decisions is still unclear at this time.

There are no separate regulations specific to using virtual currencies at a land-based casino in California. However, to accept virtual currencies, casinos may need to adhere to the state’s new financial laws and regulations on virtual currencies, specifically the licensing and regulatory requirements for financial institutions that serve as exchanges for virtual currency. Exchanging virtual currency in California requires a money transmitter licence prior to operation.

3 Online/Mobile/Digital/Electronic Media

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

Online, real-money gaming is not legal in California. Operators that offer real-money gaming in California are subject to state and federal criminal laws, which make such activity punishable with fines and imprisonment.

Free-to-play social gaming and skill-based gaming are permitted in the state and are not regulated.

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

As online, real-money gaming is not permitted, there are no applicable restrictions.

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

Terminal- and machine-based gaming is not permitted in California.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Licence holders are liable under local laws and regulations for violations of California law. The laws are set forth in the California penal code.

4.2 What form does enforcement action take in your jurisdiction?

While the GCC has licensing authority, the Bureau of Gambling Control within the Attorney General's office is charged with enforcement in the state. It investigates suspected violations of the Gambling Control Act and complaints lodged by customers, and recommends and prosecutes cases that are found to have resulted in a violation of state law. Further, the Bureau coordinates multi-jurisdictional investigations with local, state, and federal agencies. The Bureau also assists the GCC with investigations into qualifications of applicants for licensing and conducts ongoing compliance investigations throughout the state.

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

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

4.4 Are gambling debts enforceable in your jurisdiction?

No. Further, although gaming establishments are permitted to extend credit to patrons, California courts have refused to enforce gambling debts based on extension of credit.

5 Anticipated Reforms

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

The status of land-based gaming has been largely consistent in modern California history. The most recent change came in 2000, with Proposition 1A, which amended the state constitution to allow tribal casinos on Native American land. However, there have been efforts in recent years to legalise online gaming, and now that the federal ban on sports betting has been struck down, there has been renewed interest in legalising sports betting.

In 2016, State Assemblyman Adam Gray pushed Assembly Bill 2863 out of committee with unanimous support. Also known as the "Gray Bill", the legislation would have legalised online poker. It seemed poised for success, having gained support from key factions in the state, namely the horse racing industry. For years, the racing industry has worried that online poker and other forms of online gaming present a threat to their industry. The Gray Bill provided an annual \$60 million payment to horse racing from online poker, thus garnering support from that industry.

However, in addition, the state faces issues with the so-called "bad actor" issue. There has been significant opposition in allowing online poker companies that operated in the state after the passage of the Unlawful Internet Gaming Enforcement Act (a federal Act outlawing online poker), to seek licensing if online poker became legal. The Gray Bill allowed the "bad actors" to seek licences, but also empowered state regulators to conduct investigations into these applicants to determine their present suitability. However, this bill died before the full legislature in September 2016. A similar bill was presented in 2017, but also failed to pass.

Since the decision from the Supreme Court in *Murphy v. NCAA*, California – like many other states – has considered legalising sports betting. However, California will need a constitutional amendment to begin sports betting. Such an amendment must pass through the state legislature and then a state-wide voter referendum. Assemblyman Adam Gray introduced this constitutional amendment, but it failed to pass out of the state legislature in 2018, meaning it will be over another year until the citizens can vote on the issue.

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

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

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

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



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

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

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

USA – Illinois

Paul T. Jensen



Erin Lynch Cordier



Taft Stettinius & Hollister LLP

1 Relevant Authorities and Legislation

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

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

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

Gambling is generally prohibited in Illinois unless it falls under one of the exceptions specified in Article 28-1 of the Illinois Criminal Code. Article 28 sets forth a broad definition of what constitutes a gambling offence. Specifically, Article 28 provides that a person commits gambling when he or she knowingly: (1) plays a game of chance or skill for money or other thing of value, *unless such conduct falls within a specific exception as set forth in the statute*; (2) makes a wager upon the result of a game, contest or any political nomination, appointment or election; (3) operates, keeps, owns, uses, purchases, exhibits, rents, sells, bargains for the sale or lease of, manufactures or distributes any gambling device; (4) contracts to have the option to buy or sell any grain or other commodity under certain circumstances; (5) owns or possesses any book, instrument or apparatus by means of which bets or wagers have been, or are, recorded or registered, or possesses any money which he or she has received in the course of a bet or wager; (6) sells pools upon the result of any game or contest of skill or chance, political nomination, appointment or election; (7) sets up or promotes any lottery or sells, offers to sell or transfers any ticket or share for any lottery; (8) sets up or promotes any policy game or sells, offers to sell or possesses or transfers any policy ticket, slip, record, document or other similar device; (9) drafts, prints or publishes any lottery ticket or share, or any policy ticket, slip, record, document or similar device (except as authorised by and conducted in accordance with the laws of the State); (10) advertises any lottery or policy game (except as authorised by and conducted in accordance with the laws of the State); or (11) establishes, maintains, or operates an Internet site that permits a person to play a game of chance or skill for money or other thing of value by means of the Internet or to make a wager upon the result of any game, political nomination, appointment or election by means of the Internet (except as authorised by and conducted in accordance with the laws of the State).

Exceptions to the statutory definition of gambling include: (1) agreements to compensate for loss (i.e., insurance contracts); (2) offers of prizes, awards or compensation to the actual contestant in a *bona fide* contest for the determination of skill, speed, strength or endurance or to the owners of animals or vehicles entered in such contest; (3) *pari-mutuel* betting as authorised by the laws of the State, including the Horse Racing Act of 1975 (230 ILCS 5/1 *et seq.*); (4) manufacture of gambling devices, including acquisition of essential parts, for transportation to any place outside Illinois when

not prohibited by applicable Federal law or as authorised under the Illinois Video Gaming Act (230 ILCS 40/1 *et seq.*); (5) bingo as authorised by the Bingo License and Tax Act (230 ILCS 25/1 *et seq.*); (6) lotteries as authorised by the Illinois Lottery Law (20 ILCS 1605/1 *et seq.*); (7) possession of an antique slot machine that is not used in the operation or promotion of any unlawful gambling activity; (8) raffles and poker runs as authorised by the Raffles and Poker Runs Act (230 ILCS 15/1 *et seq.*); (9) charitable games as authorised by the Charitable Games Act (230 ILCS 30/1 *et seq.*); (10) pull tab and jar games as authorised by the Pull Tab and Jar Games Act (230 ILCS 20/1 *et seq.*); (11) gambling games conducted on riverboats as authorised by the Illinois Riverboat Gambling Act (230 ILCS 10/1 *et seq.*); (12) video gaming terminal (“VGT”) games as authorised by the Illinois Video Gaming Act (230 ILCS 40/1 *et seq.*); (13) games of skill or chance where no purchase is required to participate; and (14) certain other promotion raffles as authorised by the laws of the State and the related rules and regulations promulgated under each relevant Act.

The Illinois Racing Board (the “IRC”) has jurisdiction to regulate every person who holds or conducts any meeting within the State of Illinois where horse racing is permitted for any stake, purse or reward. The IRC consists of eleven (11) members appointed by the Governor with the advice and consent of the Senate, not more than six (6) of whom shall be of the same political party.

The Illinois Gaming Board (the “IGB”) has jurisdiction to regulate every person, association, corporation, partnership and trust involved in riverboat gambling operations and video gaming operations in the State of Illinois, including all persons in establishments where video gaming operations are conducted. The IGB consists of five (5) board members appointed by the Governor with the advice and consent of the Senate. The IGB’s staff conducts audit, legal, enforcement, investigative, operational and financial analysis to ensure the integrity of riverboat and video gambling operations.

The Illinois Department of Revenue (the “IDOR”) is responsible for regulating and issuing licences to conduct bingo games, games of chance involving cards, dice, wheels, random selection of numbers and gambling tickets which may be conducted at charitable games events, pull tabs and jar games.

The Illinois Lottery Control Board (the “ILCB”) and the Department of the Lottery (the “DOL”) are responsible for implementing and regulating the State Lottery. The ILCB consists of five (5) members appointed by the Governor with the advice and consent of the Senate, not more than three (3) of whom shall be of the same political party.

With respect to raffles, the Raffles and Poker Runs Act promulgates authority to the governing body of any county of municipality to establish a specific system for the licensing of organisations to operate raffles in accordance with the Raffles and Poker Runs Act and any additional restrictions set forth by the local governing body.

The Attorney General or State’s Attorney is authorised to enforce the Prizes and Gifts Act, which governs sweepstakes and promotions whereby no payment is required to participate but there remains an element of chance and a prize or gift award. Moreover, the State’s Attorney is generally authorised to enforce any violations of Article 28.

Finally, the Native American Gaming Compact Act (230 ILCS 35/1 *et seq.*) also requires Illinois’ Governor to submit a request for authority to the General Assembly prior to entering into any compact with a Native American tribe authorising such tribe to conduct gaming in Illinois. Illinois does not currently have any Native American gaming activity in operation.

2 Application for a Licence and Licence Restrictions

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

Any qualified person or entity may apply to the IGB for an Owner’s licence to conduct riverboat gambling operations or for a Supplier’s licence to provide gaming equipment and supplies, including real estate, under the Riverboat Gambling Act. The IGB is authorised to award up to 10 Owner’s licences for riverboat gambling operations. There is no restriction on the number of Supplier’s licences that can be issued.

Any qualified person or entity may apply to the IGB for a Terminal Operator’s licence under the Video Gaming Act for the purpose of maintaining and placing up to five VGTs in Licensed Establishments. A Terminal Operator is prohibited from holding a Manufacturer licence or Distributor licence, and from owning, managing or controlling a Licensed Establishment. Moreover, each Terminal Operator is required to qualify as an Illinois resident. To apply for an establishment licence, an entity must either be a retail establishment that holds a liquor licence allowing for alcoholic liquor to be drawn, poured, mixed or otherwise served for consumption or qualify as a fraternal organisation, veterans organisation or a truck stop (as defined by the Video Gaming Act). Additional restrictions on establishment applicants may apply based on their distance from an organisation licensee under the Illinois Horse Racing Act, a riverboat gambling operation, a school, or a place of worship. The IGB also has discretion to restrict licensing to establishment applicants in a mall (as defined in the IGB’s rules and regulations) or if two or more adjacent locations are operated by the same or commingled ownership or otherwise appear to be a single business.

The Illinois Raffles and Poker Runs Act restricts the issuance of raffle licences only to *bona fide* religious, charitable, labour, business, fraternal, educational or veterans organisations that operate without profit and have been in existence for a period of five years immediately before making an application for a licence, with certain exceptions.

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

The Riverboat Gambling Act affords the IGB the discretion to identify which positions must be approved by the IGB and must maintain suitability as a Key Person. Generally, the following individuals are required to be designated and approved as a Key Person for an Owner’s licence: any person with an ownership interest or voting rights of more than 5%; the directors, chief executive officer, president, and chief operating officer, or their functional equivalents; and a gaming operations manager or anyone with influence or control over the conduct of gaming. Certain exceptions are allowed for Institutional Investors (as defined by the Securities and Exchange Commission) that hold or acquire ownership interests in a licensee. In addition, any employee of the riverboat gambling operation must hold an occupational licence. The following individuals are usually required to be designated and approved as a Key Person for a Supplier’s licence: any person with an ownership interest or voting rights of more than 25%; the chief executive officer; and the chief operating officer or their functional equivalents.

The Video Gaming Act similarly affords the IGB the discretion to identify which individuals must be designated and qualify as a Person With Significant Influence or Control (“PSIC”), for both Terminal Operator applicants and establishment applicants. Generally, this includes any owner of a Terminal Operator, any person that shares in the video gaming revenue, as well as any other person who holds a position or level of influence or control that is significant to regulatory concerns and obligations (i.e., the chief executive officer, chief financial officer, or their functional equivalents). With respect to Licensed Establishments, this includes all officers of the applicant (including the IGB-required video gaming manager), direct and indirect owners of the applicant who meet certain ownership percentage thresholds, any individual or entity who will otherwise share in the video gaming revenue of the Licensed Establishment, and certain other individuals with control over video gaming operations at the applicant’s premises as determined on a case-by-case basis. In addition to Terminal Operators and Licensed Establishments, the IGB also issues licences to Manufacturers, Distributors, Suppliers, Terminal Handlers and Technicians to participate in the video gaming industry. The Video Gaming Act also requires the use of a Central Communication System (the “CCS”). The CCS provides real-time communication with, and control over, every active VGT.

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

Under the Riverboat Gambling Act, the applicant for an Owner’s or Supplier’s licence is required to complete an application form and submit an application fee. In addition, any individual or business entity that qualifies as a Key Person must also submit a disclosure form and undergo an investigation. The IGB will conduct a thorough investigation of the applicant and each Key Person over the course of several months. In reviewing the application, the IGB considers the applicant’s and each Key Person’s character, reputation, financial integrity and experience. This involves disclosing an individual’s personal history, including familial relationships, education, employment, criminal background, litigation, and a detailed review of one’s financial history. Among other requirements, an applicant for an Owner’s licence must also demonstrate it has adequate business competence and experience and that the proposed funding of the entire operation is adequate and from a suitable source. It is the applicant’s burden to establish by clear and convincing evidence that it meets all statutory requirements. If the IGB finds an applicant for an Owner’s licence or Supplier’s licence suitable, it will direct the IGB’s Administrator to issue a licence upon payment of the licence fee.

The requirements for any Manufacturer, Distributor, Supplier or Terminal Operator applicant, and any PSIC, are similar under the Video Gaming Act. The application for video gaming establishments applying to host VGTs requires disclosure of all owners and officers of an applicant, and any indirect owners of an applicant subject to certain ownership percentage thresholds. In addition to the applicant itself, all direct owners and officers, as well as certain indirect owners who meet the applicable ownership percentage thresholds, are required to undergo a background investigation. The background investigation requires submission of fingerprints to the IGB and focuses predominantly on the individuals’ criminal history and personal history, including compliance with Illinois and Federal tax obligations. Additionally, prior to licensure, the premises whereupon the applicant proposes to host VGTs must be inspected to ensure compliance with regulatory requirements.

An organisational licence is required to conduct horse race meetings. Only an organisation licensee can apply for and obtain an inter-track wagering licence for on-site *pari-mutuel* wagering. Only an organisation licensee or a person with operating control of a licensed

racing facility can apply for and obtain an inter-track location wagering location licence for off-track *pari-mutuel* wagering. Occupational licences are required for any individual whose work, in whole or in part, is conducted upon an organisation licensee’s facilities, with some exceptions. Applicants will be subject to an investigation regarding the applicant’s character and financial fitness, and certain individuals associated with each type of applicant will be subject to an investigation of their personal and criminal history. Occupational licence applicants are required to submit fingerprints to the Illinois Racing Board. Organisation licensees or third parties who contract with an organisation licensee to conduct advance deposit wagering (“ADW”) must also be licensed by the Illinois Racing Board.

Any individual or entity that wishes to sell lottery tickets at its establishment must obtain a sales agent licence from the Department of the Lottery. Illinois allows online lottery sales by licensed sales agents who are granted online status by the Director of the Department of Revenue and are otherwise authorised to sell online products.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

While the IGB has the authority to place restrictions or conditions on any licence issued pursuant to the Riverboat Gambling Act or Video Gaming Act, such restrictions are not routinely imposed. All licensees are required to comply with the IGB’s rules and the regulations promulgated thereunder and the licences are not generally transferable. In addition, an applicant or Owner’s licensee must immediately inform the IGB of certain changes and must receive prior approval for the following changes: Key Persons; type of entity; equity and debt capitalisation of entity; investors or debt holders; sources of funds; economic development plans or proposals; schedule of operations; capacity or design changes to the riverboat gambling operations; gaming positions; anticipated economic impact; and agreements relating to the acquisition or disposition of property of value greater than \$1,000,000. Licensees must request approval by the IGB and such approval must be granted during an open meeting.

Raffle licence requirements vary by municipality or county. Generally, there are restrictions on the date, time and location of the event as well as where, and by whom, tickets may be sold and the maximum value of the prize awarded.

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

Under the Riverboat Gambling Act, the initial Owner’s licence and Supplier’s licence is valid for a period of one year. Thereafter, the IGB has the discretion to renew the licence for up to four years. Each year the licensee, and each Key Person, is required to submit materials to the IGB for its review and the licensee must pay an annual licence fee. In considering the request to renew the licence, the IGB may examine the timeliness and responsiveness of the information submitted, the background, reputation, character and integrity of each Key Person, the continuing ability to maintain the quality of the products, overall compliance with all rules and regulations and any other information the IGB deems appropriate and necessary to maintain the public confidence in the credibility and integrity of gambling operations.

Under the Video Gaming Act, both the initial licence and any subsequent licence are valid for a period of one year. The renewal process for applicants under the Video Gaming Act is similar to the process set forth above for licensees under the Riverboat Gambling

Act. With respect to Licensed Establishments, it is critical that the establishment maintain a valid liquor licence and be current with all State and Federal tax obligations to remain qualified to hold a gaming licence.

An applicant and licensee have limited statutory rights in the event of a denial or non-renewal of their respective licence. The IGB has considerable authority to issue disciplinary actions against licensees. All requests for hearings and answers to disciplinary actions must strictly comply with the IGB's applicable rules and regulations. Generally, an applicant or licensee may pursue administrative review of any final decision by the Board in the circuit court in accordance with the Illinois Administrative Procedures Act.

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

The Riverboat Gambling Act restricts each Owner's licence to a maximum of 1,200 gaming positions for each licence, determined in accordance with IGB rules. In addition, any enhanced payout, tournament or giveaway must be documented in the Owner's licensee's internal control system and must be approved by the Administrator.

Generally, under the Video Gaming Act, Terminal Operators are responsible for conducting advertising and promotional activities in a manner that does not reflect adversely on, or that would discredit or tend to discredit, the video gaming industry. The advertisement of video gaming is generally not otherwise restricted.

The Attorney General is responsible for enforcing the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.*), which prohibits unfair or deceptive acts or practices, including false or misleading advertisements.

2.7 What are the tax and other compulsory levies?

Currently, under the Riverboat Gambling Act, riverboat casinos are subject to a graduated tax ranging from 15% to 50% of annual gross receipts, dependent upon the total adjusted gross receipts for the period. For purposes of calculating this tax, "adjusted gross receipts" include gross receipts less winnings paid out. Riverboat casinos are also subject to an admissions tax ranging from \$2 to \$3 per admission, dependent on the riverboat's admission totals for the previous calendar year. Applicants for an Owner's licence, Supplier's licence and occupational licence are required to pay an application fee, a licensing fee immediately upon licensure, and an annual fee in connection with each annual licence renewal (or annual update submission, in the case of an Owner's licensee).

Under the Video Gaming Act, net terminal income (defined as the total funds wagered less credits paid out to players) is subject to a 30% tax. Also, the IGB imposes a fee to compensate the provider of the State-wide CCS linking all VGTs, which was initially set at 0.7275% and recently increased to 0.8513%. After payment of the tax and CCS fee, the remaining net terminal income is split equally between the Terminal Operator and the Licensed Establishment. Additionally, the Act imposes an annual licence fee of \$100 per VGT. Many municipalities throughout Illinois impose a similar per-VGT or licence fee, as well. Applicants for Terminal Operator, Distributor, Supplier, Manufacturer, Terminal Handler, Technician and Licensed Establishments are required to pay an application fee, a licensing fee immediately upon licensure, and an annual fee in connection with each subsequent licence renewal.

Under the Horse Racing Act, *pari-mutuel* wagering facilities, including inter-track wagering licensees located at facilities which are licensed to conduct horse races and offsite inter-track wagering locations, commonly referred to as off-track betting facilities ("OTBs"), are required to pay a flat *pari-mutuel* tax of 1.5%, plus additional *pari-mutuel* taxes imposed on ADW, along with an admissions tax and other surcharges. OTBs are also required to pay 2% of their *pari-mutuel* handle to the host city and county. Applicants for an organisation licence, inter-track wagering licence and OTB licence, as well as applicants for an occupational licence are required to pay an application fee and renewal fee.

Under the Illinois Lottery Law, individuals or entities seeking to obtain a licence to sell lottery tickets are required to pay an application fee, and, once granted, a renewal fee each time the licence is renewed. Additionally, each lottery licensee granted online status pursuant to the Department of the Lottery's rules must pay a weekly fee in connection with related telecommunications charges incurred by the Department.

2.8 What are the broad social responsibility requirements?

Generally, every person involved in the gambling industry is responsible for maintaining public confidence and trust in the credibility and integrity of all gambling operations and the regulatory process. In addition, the Riverboat Gambling Act requires licensees to post certain signage, including information regarding the availability of resources to address compulsive gambling and the withholding of delinquent child support. In July 2002, the IGB developed a robust voluntary self-exclusion programme which allows individuals to acknowledge a gambling problem, commit to not visiting any riverboat gambling operation and remove themselves from all mailing, marketing and promotional lists and databases. The IGB remains committed to promoting responsible gaming in Illinois and making valuable changes to the self-exclusion programme. In addition, the IGB imposes certain contracting goals with minority-owned and female-owned businesses.

In February 2018, the IGB established a voluntary, confidential Problem Gambling Registry for Video Gaming (the "Registry"). Persons enrolled in the Registry receive regular emails providing information on problem gambling and links to prevention and treatment resources in Illinois. Participants may terminate their enrolment at any time and registration is open to both in-state and out-of-state residents. The Video Gaming Act similarly requires the posting of signage to promote compulsive gambling resources, and 25% of collected licence fees are appropriated to the Department of Human Services for the administration of programmes for the treatment of compulsive gambling.

Participation in the Lottery is limited to individuals that are 18 years of age or older. Similarly, the Illinois Lottery Law provides for individuals to participate in a voluntary self-exclusion programme for Internet lottery sales. Moreover, each lottery sales agent is obligated to post certain signage regarding compulsive gambling resources.

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

The U.S. Department of Treasury's Financial Crimes Enforcement Network is primarily responsible for the enforcement of Federal anti-money laundering laws governing entities who supply gambling.

The Riverboat Gambling Act requires all wagering tokens, chips, and electronic cards to be purchased from a licensed owner or manager at a riverboat or an IGB-approved onshore facility located where the riverboat docks. Licensed owners and managers may, however, provide wagering tokens, chips, and electronic cards to patrons by extending credit. The IGB's rules promulgated under the Video Gaming Act prohibit Terminal Operators or Licensed Establishments from extending any form of deferred payment to players. The Illinois Racing Board permits ADW, allowing ADW account holders to deposit by cash, cheque, money order, credit card, debit card, other electronic fund transfers, or any other means permitted by an ADW licensee.

3 Online/Mobile/Digital/Electronic Media

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

Under Illinois' criminal laws, a person is prohibited from establishing, maintaining or operating an Internet site that permits a person to gamble or make a wager upon the result of any game, contest, political nomination, appointment or election, with the exception of the Lottery conducted by the State of Illinois in accordance with the Illinois Lottery Law, which allows for the purchase of tickets through the Internet. In addition, *pari-mutuel* betting is authorised in accordance with the Horse Racing Act.

Illinois law defines "Internet" as an "interactive computer service or system or an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, and includes, but is not limited to, an information service, system, or access software provider that provides access to a network system commonly known as the Internet, or any comparable system or service and also includes, but is not limited to, a World Wide Web page, newsgroup, message board, mailing list, or chat area on any interactive computer service or system or other online system".

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

Due to the limited applicability of online sales and wagering, there are no other material restrictions that impact online supplies.

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

The Riverboat Gambling Act allows for approved electronic gaming devices that meet certain minimum standards, subject to the applicable restriction on the number of gaming positions at each riverboat gambling operation.

Illinois has the largest regulated VGT industry in the United States. Each local municipality may elect to "opt out" to prohibit video gaming in their local municipality. The Video Gaming Act allows for up to five VGTs to be placed in Licensed Establishments in participating municipalities. Establishments that are eligible for licensure include (1) any retail establishment where alcoholic liquor is drawn, poured, mixed or otherwise served for consumption on premises, (2) truck stops (as defined in the Video Gaming Act), (3) fraternal organisations, and (4) veterans organisations.

All VGTs in Illinois are connected to a CCS. The VGTs currently accept only cash, but the Video Gaming Act contemplates the use of an electronic card or other voucher which would allow for ticket-in, ticket-out capabilities.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Under Illinois' criminal laws, the participant, promoter, bookkeeper, operator, and advertiser may be held liable for breaches of the relevant gambling prohibition. Illinois' gambling laws cover individuals, natural persons, public or private corporations, governments, partnerships, unincorporated associations, and other entities. Gambling is a Class A misdemeanor and certain subsequent convictions may result in a felony conviction. Under the Video Gaming Act, it is a Class 4 felony to own, operate, possess or have under his or her custody or control, or permit to be kept in any place under his or her possession or control, any device that awards credits and contains a circuit, meter, or switch capable of removing and recording the removal of credits when the award of credits is dependent upon chance.

4.2 What form does enforcement action take in your jurisdiction?

It is illegal to own, operate, use, purchase, rent, sell, manufacture, distribute, have in your possession, or even bargain for the sale or lease of a "gambling device". The definition of a "gambling device" is expansive and includes any machine for the reception of money or other things of value on chance or skill, or where money or anything of value is staked, or even any furniture or equipment designed primarily for use in a "gambling place". A "gambling device" is any property used for gambling not authorised under the Riverboat Gambling Act or the Video Gaming Act. Exemptions under "gambling devices" include, but are not limited to, equipment under the Video Gaming Act and certain vending machines and amusement machines. The Illinois Criminal Code authorises the seizure of gambling devices by State police or local authorities.

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

No, non-national laws do not have any impact on enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

In Illinois, gambling contracts are void *ab initio* under common law and the Illinois Criminal Code. However, certain contracts that relate to gambling are permitted under the strict oversight of various regulatory agencies pursuant to State statutes, such as the Illinois Video Gaming Act, the Riverboat Gambling Act, and the Illinois Horse Racing Act. The listing of exceptions to what constitutes gambling can be found in Section 28-1(b) of the Illinois Criminal Code. Section 28-8 of the Illinois Criminal Code also provides that any person who loses more than \$50 to another person due to gambling can sue and recover the money and costs from the "winner" by filing a lawsuit in the State's lowest courts. An intermediary who merely facilitates the gambling transaction is not considered a "winner". If after six months the person who lost the money does not file a lawsuit, then any person can file the lawsuit against the "winner" to recover the gambling loss. Finally, although there has been litigation in this matter, Illinois courts will also give full faith and credit to foreign judgments for gambling debts that are registered and sought to be enforced in Illinois.

5 Anticipated Reforms

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

The Illinois legislature regularly considers amendments to Illinois' gaming laws, from minor technical changes to various expansion proposals. The legislature has proposed bills to authorise and regulate fantasy sports, sports gambling, and Internet gambling. In recent years, the legislature has considered amending the Illinois

Riverboat Gambling Act to authorise new riverboat casinos in the City of Chicago and at least four other municipalities, additional gaming positions at existing riverboat casinos and slot machines at horse racing facilities. In addition, various bills have been introduced to amend the Illinois Video Gaming Act. These bills include proposals to raise the minimum wager and maximum jackpot amounts, allow progressive jackpots and increase the number of VGTs in truck stops and certain other Licensed Establishments. In addition, the IGB regularly considers and adopts new or revised administrative rules for the riverboat and video gaming industries.



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USA – Indiana

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1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Indiana Gaming Commission (limited mobile gaming only).	Indiana Gaming Commission.
	Poker	Indiana Gaming Commission (limited mobile gaming only).	Indiana Gaming Commission.
	Bingo	Not permitted.	Indiana Gaming Commission.
Betting	Betting	Not applicable.	Not applicable.
	Sports/horse race betting (if regulated separately to other forms of betting)	Indiana Horse Racing Commission – limited mobile wagering and advanced deposit wagering on horse races only.	Indiana Horse Racing Commission – horse races only.
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	Indiana Gaming Commission.	Indiana Gaming Commission.
Lotteries	Lotteries	Indiana Lottery Commission.	Indiana Lottery Commission.
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Not regulated as gaming.	Not regulated as gaming.
	Skill games and competitions with no element of chance	Not regulated as gaming.	Indiana Gaming Commission (professional boxing and mixed martial arts only).

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

Casino Gaming: Authorised, regulated and taxed under Ind. Code 4-33 (Riverboat/Land-based Casinos); Ind. Code 4-35 (Racetrack Casinos); and the rules promulgated by the Indiana Gaming Commission at 68 IAC 1 – 68 IAC 19.

Poker: Currently limited to riverboat and land-based casinos regulated under Ind. Code 4-33 and qualified charitable organisations regulated under Ind. Code 4-32.2.

Bingo: Licensed and regulated by the Indiana Gaming Commission under Ind. Code 4-32.2 (Charity Gaming) and 68 IAC 21.

Sports betting: Prohibited under Ind. Code 35-45-5 (Unlawful Gambling).

Pari-mutuel Wagering on Horse Races: Authorised, regulated and taxed under Ind. Code 4-31 (*Pari-mutuel* Wagering on Horse Races), and the rules promulgated by the Indiana Horse Racing Commission at 71 IAC.

Paid Fantasy Sports: Authorised and regulated by the Indiana Gaming Commission under Ind. Code 4-33-24 and 68 IAC 26.

Lottery: Regulated by the Indiana Lottery Commission under Ind. Code 4-30 and 65 IAC.

2 Application for a Licence and Licence Restrictions

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

Any person seeking to operate a casino, manufacture or distribute gaming supplies or equipment, provide certain services to casinos, or offer paid fantasy sports or charitable gaming must obtain a licence from the Indiana Gaming Commission (“IGC”). A person may not offer *pari-mutuel* wagering at a horse racing track unless a recognised meeting permit has been issued by the Indiana Horse Racing Commission (“IHRC”) and may not operate a satellite betting facility without a licence from the IHRC. Lottery ticket retailers must hold a certificate of authority issued by the Indiana Lottery Commission.

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

Casinos: Under Indiana law, the IGC may issue up to 11 licences under Ind. Code 4-33 for riverboat and land-based casinos. These licences are subject to geographic and numerical restrictions, with 10 allocated to counties adjacent to the Ohio River or Lake Michigan, and one allocated to a historic hotel district. In addition, the IGC may issue two additional licences under Ind. Code 4-35 to casinos located at a horse racing track. All 13 casino licences authorised by law have been awarded and are currently being utilised.

Although no additional casino licences are available, an existing casino licence may be transferred to a new owner of the entity that was awarded the licence. A person that acquires a substantial ownership interest in a publicly-traded casino licensee must file a transfer of ownership application with the IGC within 45 days of acquiring the interest. Prior approval by the IGC is required before an ownership interest in a non-publicly traded casino licensee may be transferred. The IGC may not approve a transfer of ownership interest if the applicant (1) has been convicted of a felony or has an officer, director or managerial employee who has been convicted of a felony, or (2) has had a casino licence revoked in another jurisdiction.

Supplier's licence: A person may not sell or lease any gaming-related equipment, devices or supplies to a casino licensee unless the person is licensed as a supplier by the IGC. A supplier's licence is also required for (1) manufacturers of equipment and supplies that directly affect gaming, (2) suppliers of security services and surveillance systems, (3) suppliers of gaming equipment maintenance and repair, (4) non-governmental entities that lease real property to a casino, and (5) suppliers of goods or services where payment is calculated on a percentage of a casino's revenues. In addition, any entity that serves as the gaming operations manager of a casino must be licensed as a supplier. The IGC may not issue a supplier's licence interest if the applicant (1) has been convicted of a felony or has an officer, director or managerial employee who has been convicted of a felony, (2) has had a supplier's licence revoked in another jurisdiction, and (3) holds more than a 10% ownership interest in a riverboat or land-based casino licensed under Ind. Code 4-33.

Key person & substantial owner licences: Each officer, director or key person employed by an applicant for a casino or supplier's licence must file a personal disclosure form and be found suitable for licensure. In addition, entities holding a 5% or greater interest in the applicant (15% for an institutional investor) must apply to IGC for a finding of suitability.

Junkets: Junket operators and their key persons, substantial owners, employees and agents are required to register with the IGC.

Pari-mutuel horse racing: A person may not conduct horse races at which *pari-mutuel* wagering is permitted unless the person holds a recognised meeting permit issued by the IHRC. By law, the IHRC may only issue two permits, both of which are currently being utilised. The holder of a permit may also apply to the IHRC for a licence to operate a satellite facility ("OTB"). Currently, three of the five OTB licences authorised by the legislature are being utilised by permit holders.

Employees of a permit holder whose job requires them to be present in restricted areas of the racetrack must apply to the IHRC for licensure. All racing participants and officials must also be licensed. In addition, an entity that enters into a contract with a permit holder to provide advanced deposit wagering must apply to the IHRC for a secondary *pari-mutuel* organisation ("SPMO") licence.

Paid Fantasy Sports: A person may not offer paid fantasy sports to game participants located within Indiana unless the person has been issued a game operator licence by the IGC. Licensed game operators may conduct a paid fantasy sports game through a website or on the premises of a casino, horse racing track or OTB pursuant to a contract with the licensed facility.

Bingo: In order to be eligible to offer bingo, an organisation must be a tax-exempt religious, educational, senior citizens, veterans, or civic organisation that has been in continuous existence in Indiana for three years or that is an affiliate of a parent organisation that has been in existence in Indiana for at least three years. Organisations that meet these criteria may be awarded a determination of qualification by the IGC and are eligible to receive licences to conduct bingo, poker and other forms of charity gaming. Persons who manufacture, sell or distribute charity gaming supplies are required to hold a manufacturer's or distributor's licence issued by the IGC.

Lottery: Under the integrated services agreement entered into between the Lottery Commission and IGT Indiana, the Commission maintains actual control and oversight over all lottery operations, and is responsible for accounting, prize payment, security, retailer payment, and retailer licensing. IGT Indiana is responsible for sales, marketing, distribution, and corporate social responsibility. A retailer seeking to sell lottery products at its place of business must hold a certificate of authority issued by the Commission and must enter into a retailer's contract with the Commission.

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

Casinos & suppliers: An applicant seeking to obtain a casino or supplier's licence under Ind. Code 4-33 must file a detailed application with the IGC and submit to a comprehensive background and financial investigation. In addition, any entity holding a 5% or greater interest in an applicant (15% for an institutional investor) is considered a substantial owner and must file the same application and undergo the same investigative process as the applicant.

Each officer, director, individual substantial owner, or key person employed by an applicant for a casino or supplier's licence must file a comprehensive personal disclosure form and be found suitable to hold a Level I occupational licence. Applicants are also required to submit fingerprints and various financial records from the past three to five years. The IGC currently does not accept the multi-jurisdictional personal disclosure form utilised in many states.

Applicants for a casino licence must pay a \$50,000 application fee and a \$25,000 licence fee. An additional \$2 million transfer fee is also required for applicants who currently hold a riverboat or land-based casino licence issued under Ind. Code 4-33 and are seeking a second casino licence issued under Ind. Code 4-33. Applicants for a supplier's licence must pay a \$5,000 application fee and a \$7,500 licence fee. The application fee for a Level 1 occupational licence is \$1,000. Any investigative costs that exceed the application fees listed above are charged to the applicant.

The IGC has financial and background investigators on staff who conduct the licence investigations. The IGC has the authority to issue temporary occupational and supplier's licences while the investigation is pending, provided that a complete application has been filed and a criminal history background check has been completed. Level I occupational licensees must travel to Indianapolis for an in-person interview with investigators before a licence will be granted. After the investigation is completed, staff will compile a report and make recommendations on licensure. Casino and permanent supplier licences are approved by the commissioners

at a regular or special meeting. Temporary supplier's licences and temporary and permanent occupational licences are approved at the staff level.

In addition to filing a completed application, an applicant for a casino licence must also submit an executed power of attorney to the IGC designating a trustee responsible for gaming operations in the event that the IGC revokes or declines to renew the casino licence. A supplier licensee that leases real property to a casino must also submit a POA. Further, an application for a supplier's licence must be accompanied by documentation indicating that a casino licensee will purchase or lease gaming services, equipment or supplies from the applicant. A person whose application for a supplier's licence has been denied may not reapply for a supplier's licence for a period of one year.

Horse racing: A racetrack operator seeking to offer horse races in which *pari-mutuel* wagering is conducted must apply to the IHRC for a recognised meeting permit. Applicants for an initial permit must file a detailed application with the IHRC and submit to a comprehensive background and financial investigation. An applicant for an initial recognised meeting permit must pay a \$25,000 application fee and a \$25,000 investigation fee. Any costs that exceed the fees listed above are charged to the applicant. After the investigation is completed, the IHRC will conduct an administrative hearing and determine whether to award the permit.

The holder of a recognised meeting permit that is seeking to operate an OTB must apply to the IHRC for a satellite facility licence. A \$1,000 fee is due when the licence is issued. In addition, an entity that enters into a contract with a permit holder to provide advanced deposit wagering must apply to the IHRC for a SPMO licence. Applicants for an SPMO licence must also pay a \$5,000 application fee and submit a copy of a proposed contract signed by each permit holder that specifies the manner in which source market fees will be allocated to the permit holders.

Employees of the racetrack operator whose job requires them to be present in restricted areas of the racetrack must also apply to the IHRC for licensure. Individual licence fees range from \$15 to \$100.

Bingo: At least 120 days prior to conducting bingo, poker or other forms of charitable gaming, a non-profit organisation must provide the IGC with documents demonstrating that the organisation is qualified to receive a charitable gaming licence. Such documentation includes a letter from the Internal Revenue Service stating that the organisation is exempt from taxation under Section 501 of the Internal Revenue Code, proof that the organisation has been in existence in Indiana the requisite number of years, copies of bylaws and other organisational documents, and proof that the organisation is in good standing with the Indiana Department of Revenue.

Upon receipt and verification of this information, the IGC will notify the organisation that it is a qualified organisation under Indiana's charity gaming law. The organisation may then apply to the IGC for a licence to conduct bingo or poker games.

A first-time applicant for an annual bingo or charity game night licence must pay a \$50 fee and publish notice of the application in two newspapers. The notice must include the location where the events will be held and information on how persons may protest the issuance of the licence. If the IGC receives 10 or more signed protest letters, it must hold a public hearing to determine whether to issue the licence.

Manufacturers and distributors of charitable gaming equipment and supplies must also be licensed by the IGC. The licensing fee is \$5,000 for a manufacturer or distributor licence, or \$10,000 for a combined manufacturer/distributor licence.

Paid fantasy sports: A person seeking to offer paid fantasy sports to game participants located within Indiana may apply to the IGC for a game operator licence. Applicants must submit a detailed application for the IGC and undergo a background and financial investigation. The initial licensing fee ranges from \$50,000 to \$75,000, depending on the costs borne by the IGC in regulating paid fantasy sports. The IGC may award a temporary licence to an operator while the investigation is pending.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Ownership restrictions: A supplier licensee may not own more than a 10% interest in a riverboat or land-based casino licensed under Ind. Code 4-33. Further, no person may hold an ownership interest in more than two riverboat or land-based casinos licensed under Ind. Code 4-33. This restriction does not apply to Indiana's two racetrack casinos licensed under Ind. Code 4-35 or to supplier licensees that own the real property associated with casinos.

Contracting restrictions: A manufacturer of gaming supplies or equipment may not be paid by a casino licensee based on a percentage of the revenue received from the use of the gaming equipment, or upon the amount of play or use that the gaming equipment receives. A casino licensee may not enter into a contract, transaction or series of transactions with a related party in the amount of \$5 million or greater without first obtaining a favourable fairness opinion from a reputable and independent organisation knowledgeable in the area and approved by IGC.

Debt transactions: A casino licensee may not enter into a debt transaction of \$1 million or more without obtaining the approval of the IGC. This includes bank financings, private debt offerings, and any other transaction that results in the encumbrance of assets.

Prohibition on political contributions: Casino licensees, horse racing permit holders, and any person with an interest in a casino licence or a horse racing permit are prohibited from contributing to state or local candidates or party committees. This prohibition, which extends for three years after the licence or permit is terminated or transferred, includes a political action committee established by the licensee or permit holder, officers of the licensee or permit holder, officers of a parent company, and any individual or entity that holds a 1% or greater interest in the licence or permit. Violators may be charged with a Level 6 felony.

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

Casino & supplier's licences: An initial casino licence is valid for five years, and may be renewed annually upon payment of a \$5,000 fee. A supplier's licence is valid for one year and may be renewed annually upon payment of a \$7,500 fee. Both casino licensees and supplier's licensees may be investigated by the IGC at any time for non-compliance with the state's gaming laws and regulations, and are required to undergo a reinvestigation by the IGC every three years to determine compliance. Further, the IGC may revoke, restrict, or suspend a casino or supplier's licence at any time that it determines the licensee is in violation of the state's gaming laws or regulations, and may revoke a casino licence if it determines revocation is in the best interest of Indiana and will protect and enhance the credibility and integrity of casino gambling operations. A licence for a racetrack casino issued under Ind. Code 4-35 is automatically void if the IHRC revokes or does not renew

the associated horse racing licence. A denial, revocation or non-renewal of a casino or supplier's licence must be appealed to the IGC before an appeal may be filed in court.

Horse racing permits: Recognised meeting permits and OTB licences are valid for one year. The renewal fees are \$5,000 for horse racing permits and \$1,000 for OTB licences, respectively. The IHRC may revoke, suspend or initiate other disciplinary action against a permit holder if the penalty is in the public interest for the purpose of maintaining proper control over horse races or *pari-mutuel* wagering. Specific grounds for discipline include, but are not limited to, financial irresponsibility, animal cruelty, non-payment of state taxes, and disciplinary action in another jurisdiction. A denial, revocation, or non-renewal of horse racing permit or OTB licence must be appealed to the IHRC before an appeal may be filed in court.

Charity gaming licences are issued on an annual or event basis. Renewal fees are based on adjusted gross revenues and range from \$50 to \$26,000. The IGC may revoke, suspend or initiate other disciplinary action against a licensee. Specific grounds for discipline include, but are not limited to, violations of the state charity gaming laws, violations of any other local, state or federal laws that would cause the IGC to believe the licensee is not of good moral character, failure to accurately account for sales receipts from a licensed activity, or failure to accurately account for a licensed supply.

Paid fantasy sports: A paid fantasy sports licence is valid for one year and may be renewed annually upon payment of a \$5,000 fee. The IGC or its executive director may initiate disciplinary action against a game operator licensee at any time for a violation of the state's gaming laws, including, but not limited to revocation, suspension or civil penalties.

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

Casino licensees: Slot machines are currently the only form of gaming permitted at racetrack casinos licensed under Ind. Code 4-35. The number of slot machines that may be offered without additional IGC approval is capped at 2,000. After March 1, 2021, the IGC may authorise wagering on table games at a racetrack casino, subject to a 2,200 cap on table games and slot machines at each racetrack. Riverboat and land-based casinos may offer both table games and slot machines, but the maximum is capped at the number that were offered by the casino licensee on January 1, 2007.

Horse racing permit holders: The IHRC may not issue a permit for *pari-mutuel* horse racing at county fairgrounds or at the state fairgrounds during the state fair.

Paid fantasy sports: A game operator may not advertise a paid fantasy sports contest in any publication or medium that is aimed exclusively to juveniles, or run promotional activities at sports venues used exclusively for K-12 student sports.

2.7 What are the tax and other compulsory levies?

Riverboat & land-based casinos: Indiana imposes a graduated wagering tax on riverboat and land-based casinos licensed under Ind. Code 4-33. For casinos that received at least \$75 million in AGR in the previous year, the rates range from 15% for the first \$25 million of AGR to 40% of AGR in excess of \$600 million. Casinos with annual AGR of less than \$75 million pay a reduced rate of 5% on the first \$25 million plus an additional \$2.5 million if AGR exceeds \$75 million. Casinos also pay a supplemental wagering tax that was enacted in 2018 to replace the since-repealed admissions tax. Rates are set to generate roughly the same amount of revenue as the admissions tax, but may not exceed 3.5% of AGR after July 1, 2019.

Racetrack casinos licensed under Ind. Code 4-35 are subject to a graduated wagering tax imposed on 88% of AGR. Rates range from 25% for the first \$100 million of AGR to 35% of AGR in excess of \$200 million. An additional 10% to 12% of a licensee's AGR must be distributed by the licensee for the support of the horse racing industry. "Racinos" also pay up to \$8 million per year in county wagering fees, which are levied monthly on 3% of AGR.

Racetracks & OTB: Indiana imposes a 2% tax on wagers on live races and simulcasts at a racetrack, a 2.5% tax on wagers on simulcasts at OTBs, and a 0.5% tax on all wagers at OTBs. A daily admission tax in the amount of \$0.20 is also imposed for each person who paid for admission to the racetrack or OTB. In addition, an annual wagering fee of up to \$15,000 must be paid in equal shares to the city and county where the racetrack is located.

2.8 What are the broad social responsibility requirements?

Casino licensees are required to conspicuously display a toll-free number that provides the public with information about compulsive gambling addictions and to post signs at the entrance to the gaming area that inform patrons about the voluntary exclusion programme. Casinos may not directly market to individuals participating in the voluntary exclusion programme. Fantasy game operators must also develop a programme that allows persons to restrict themselves from all contests and must refrain from directly marketing to self-restricted individuals. A licensed secondary *pari-mutuel* organisation must make available to all account holders contact information for a recognised problem-gambling support organisation and must state in all advertising that Indiana residents under the age of 21 are not permitted access to an ADW account.

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

Casino licensees are required to use a cashless wagering system in which a player's money is converted to tokens, electronic cards, or chips that may be used for wagering in the casino. Patrons may not use virtual currencies for wagering. Casinos are subject to federal AML restrictions and reporting. The IGC audit division reviews SARs filed by casinos, and participates in a financial crimes review team with other state and federal agencies to coordinate investigations initiated by SARs.

3 Online/Mobile/Digital/Electronic Media

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

Indiana has taken a narrow approach to authorising the use of online and mobile technology by casino licensees and horse racing permit holders. Currently, limited mobile gaming on an approved geofenced device is permitted in the gaming area of a casino, in an OTB, and in the simulcast area of a horse racing track. In addition, a licensed SPMO may accept advance deposit wagers over the internet for races conducted within or outside Indiana. The holder of a horse racing permit has a right of action against an unlicensed SPMO that

accepts wagers from an individual whose physical location is within Indiana at the time the wager is made. Paid fantasy sports are not considered gambling and may be offered online to Indiana residents by a licensed operator.

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

Indiana has a broad prohibition on gambling over the internet unless such activity is specifically authorised by law. It is a felony for an operator to knowingly or intentionally use the internet to: (1) engage in bookmaking or pool selling; (2) maintain, on a website accessible to residents of Indiana, the equivalent of slot machines, roulette, dice tables or other gambling games; (3) conduct lotteries or sell chances in lotteries; (4) conduct any banking or percentage games played with the computer equivalent of cards, dice, or counters; and (5) accept, or offer to accept, for profit, money or other property risked in gambling. These restrictions apply regardless of whether the prohibited activity occurs in Indiana or in another location during a transaction that directly involves a person located in Indiana. In addition, it is also a felony for a person to knowingly or intentionally accept or offer to accept for profit, money or other property risked in gambling on an electronic gaming device possessed by the person.

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

Terminal and server-based gaming is permitted within casinos, subject to the applicable restrictions on the number of gaming positions.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Under Indiana's criminal laws, the persons on both sides of an illegal gambling transaction may be prosecuted. Entities and individuals

who hold licences or permits issued by the IGC, the IHRC, the Alcohol and Tobacco Commission, and the Indiana Department of Revenue could face civil penalties and other licensure sanctions for violations of the applicable regulatory scheme.

4.2 What form does enforcement action take in your jurisdiction?

The IGC has established a licence control division that is responsible for conducting administrative enforcement actions against persons who engage in illegal gambling and hold a charity gaming licence, retail merchant certificate, tobacco sales certificate, or alcoholic beverage permit. A separate gaming control division has criminal enforcement authority over persons that hold a retail merchant certificate, tobacco sales certificate, or alcoholic beverage permit.

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

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

4.4 Are gambling debts enforceable in your jurisdiction?

A casino that extends credit to a patron may collect on the debt.

5 Anticipated Reforms

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

The Indiana General Assembly is expected to consider legislation in 2019 that would authorise sports betting and allow racetrack casinos to begin offering table games. (Under current law, 2021 is the earliest date that table games may be offered in racetrack casinos.) In addition, the IGC is also expected to pursue legislation in 2019 to simplify Indiana's current system of licensure for bingo and other forms of charity gaming.

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Libby Cierzniak is a partner in the firm's government affairs group, where she focuses her practice on representing corporations, associations and public sector clients before the Indiana General Assembly and state regulatory agencies. Libby has extensive experience in counselling casino owners, suppliers, institutional investors, and lenders on a broad range of gaming regulatory matters, including corporate financings, licensure, transfer of ownership, and bankruptcy/restructuring. She regularly represents local, national and international clients before the Indiana Gaming Commission and the Indiana Horse Racing Commission, and provides guidance on regulatory compliance, contracting, corporate governance, patron disputes and legislative matters. Libby graduated *summa cum laude* from the Indiana University Robert H. McKinney School of Law in 1995.

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USA – Mississippi

Balch & Bingham LLP

Scott E. Address



1 Relevant Authorities and Legislation

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

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

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

Mississippi permits casino gambling, poker and race book and sports pool wagering in accordance with the laws, rules, and regulations pursuant to the Mississippi Gaming Control Act of 1990. See, e.g., Miss. Code Ann. §75-76-1 *et seq.* However, these are not the only forms of gaming that the State regulates. Mississippi also regulates charitable raffle and bingo games pursuant to Miss. Code Ann. §§97-33-50 and 97-33-49, respectively. The State's statutory code includes provisions that regulate daily fantasy sports operations as well. See Miss. Code Ann. §97-33-301 *et seq.* Regulations governing each of these forms of gaming are found at Title 13 of the Mississippi Administrative Code.

The Mississippi Gaming Commission is the primary regulatory body that oversees casino activity (including race books and sports pools), charitable bingo, and daily fantasy sports, but other governmental authorities regulate gambling in the State of Mississippi as well. The Mississippi Department of Revenue assists the Commission with these regulatory efforts. Also, the Commission restricts unsanctioned gambling activity with the help of local police forces.

The State expressly outlaws Internet sweepstake cafés under Miss. Code Ann. §97-33-8, and sections of the Mississippi criminal code enforce criminal penalties against those who do not comply with the Gaming Control Act under Miss. Code Ann. §97-33-1 *et seq.* Mobile and iGaming are not authorised forms of gambling under the Gaming Control Act; however, Internet-based daily fantasy sports contests and on-premises mobile race book and sports pool wagering are permissible.

In August 2018, Mississippi passed "The Alyce G. Clarke Mississippi Lottery Law", thereby creating the Mississippi Lottery Corporation and authorising the establishment and operation of a state lottery. Given the recentness of this development, regulations governing matters of a state lottery have yet to be promulgated.

2 Application for a Licence and Licence Restrictions

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

Mississippi law provides for three different licences associated

with casino gaming: (1) a gaming operator licence; (2) a licence to manufacture gaming devices or associated equipment; and (3) a licence to distribute such devices/equipment. Anyone, either an individual person or an entity, may obtain these licences to conduct activities related to gaming activities. State law also provides for a “finding of suitability” status that permits an individual or an entity to own, control, direct or engage in business with a licensee.

If a person or entity desires to operate a casino or manufacture/sell gaming devices and materials in Mississippi, that person or entity must apply to the Mississippi Gaming Commission for the appropriate licence. Gaming operator licences permit the holders of these licences to conduct gaming operations on particular sites that are unique to each licence. Likewise, manufacturer and distributor licences allow the holders of such licences to engage in the manufacture or trade of gaming devices and materials that have been specifically approved by the Gaming Commission, including the provision of race book and sports pool wagering platforms. The Gaming Commission may limit or broaden the scope of these licences as it sees fit.

Similar licensing and approval requirements apply to charitable bingo and daily fantasy sports operations. Those who operate and/or supply either of these types of operations must apply for the appropriate licences from the Gaming Commission.

Other activities related to the gaming industry require approval by the Gaming Commission as well.

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

Corporate officers and directors of a licensee entity or its holding companies must apply to the Commission for a finding of suitability to associate with the licensee. Gaming employees of any operation regulated for gaming activities must seek work permits from the Commission. In addition, game testing labs and junket representatives must obtain approval from the Commission to operate.

The Commission has also decided to require owners of at least 5% of the voting securities of a licensee or a holding company of a licensee to apply to the Commission for a finding that the person or entity is suitable to associate with the licensee. In addition to this finding of suitability, such person or entity holding over 50% of a licensee, directly or indirectly, must register as a publicly traded company or as a holding company of the licensee.

However, there is an exception for “institutional investors” who own, directly or indirectly, more than 5%, but no more than 25%, of the voting securities of the licensed entity. For this exception to apply, the investor must hold these securities in the ordinary course of business as an institutional investor for investment purposes only. That means that the investor cannot use the securities to alter either the membership of the entity’s board of directors or influence the corporate policies of the licensee, but the investor can vote on issues on which fellow stockholders vote, as well as participate in all other activities that are consistent with the duties and concerns of an institutional investor. An institutional investor owning more than 10% of a licensed entity (but no greater than 25%) must obtain a waiver from the Commission to maintain the exception and avoid the triggering of a finding of suitability requirement.

The State does not permit people or entities with particular criminal backgrounds to obtain either a licence or a finding of suitability. If one has been convicted of a felony by a Mississippi, federal, or other state court, the person or entity cannot obtain a licence or a finding of suitability. The same is true if that person or entity committed any crime according to either federal law or the law of another state

that would constitute a felony in Mississippi. Finally, conviction of a misdemeanour related to gambling, the sale of alcohol to minors, prostitution, or the inducement of others to engage in prostitution will disqualify a person or entity from obtaining a licence or a finding of suitability.

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

The Mississippi Gaming Commission provides the applications to obtain gaming licences, findings of suitability, and daily fantasy sports and charitable bingo licences on the Gaming Commission’s website. The website provides addenda forms that are specific to each type of application. The Commission may charge licensing and/or application fees depending on the type of application submitted, and applicants must also pay an investigative fee deposit before the Commission will consider their applications. In addition to the relevant addenda, any natural person who applies for a finding of suitability to associate with a licensee must complete the International Association of Gaming Regulators’ Multi-Jurisdictional Personal History Disclosure Form which the Commission provides on its website, and two fingerprint cards. The filing of an application triggers a Commission request for various categories of supporting documentation.

The Commission has the power to accept or deny any application for any reason it deems appropriate, and Mississippi courts do not have the power to review these decisions unless the Commission is found to have exceeded its statutory authority. The Investigations Division of the Commission reviews all applications and files findings and reports to the entire Commission for approval. During these investigations, the Investigations Division conducts background checks and interviews applicants and/or representatives of applicants to determine their suitability. The Corporate Securities Division reviews corporate documents and financial statements. The entire investigation process typically takes at least four to six months to complete, but can last even longer depending on the nature and complexity of the applicant and the proposed project. Once the investigation is complete, the applicant or a representative of the applicant must appear at a scheduled meeting before the Commission for its final consideration of the application.

The Commission’s investigative and review powers extend beyond the application process. The Commission has the power to require a licensee or its holding company to disassociate from persons or entities who fail to complete the appropriate applications or are found unsuitable to affiliate with any licensee. The Commission can also order a licensee or its holding company to suspend or fire board members, executives, and employees for the same reasons. Those persons filling positions requiring a finding of suitability have 30 days from the date they begin to perform their duties in which to file an application.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Mississippi allows essentially all forms of traditional casino games and devices, as well as on-premises race book and sports pool wagering. New games must be approved by the Mississippi Gaming Commission before being offered for play in a casino. The minimum age for gaming in Mississippi is 21. The State does not restrict the number of gaming licences. However, licences are not perpetual. Gaming licences are issued for a maximum of three years, and findings of suitability to associate with licensees are issued for a maximum of nine years.

All licensees and those found suitable to associate with licensees must comply with all requirements pursuant to the Mississippi Gaming Control Act and all regulations imposed by the Mississippi Gaming Commission, and any dispute involving a gaming licence must be adjudicated in Mississippi. The Act only permits gaming in the 14 counties that border either the Gulf Coast or the Mississippi River. Voters in each of these counties have the right by local option to allow gaming if they so choose. Currently, nine of the 14 counties allow gaming, and seven of those counties currently have at least one gaming operation carrying out gaming activities.

Mississippi does not restrict the hours that a gaming operation may conduct gaming activities, the number of games it offers, or the amount of space that it may dedicate toward gaming activities. However, the Commission does restrict where structures with gaming activities may be located. For structures within counties that border the Mississippi River, the majority of the gaming floor must be situated over an elevation under the Mississippi River's "bank full" (or flood stage) elevation. Structures that host gaming activities and are within counties bordering the Gulf Coast may reside completely on shore so long as the gaming floor does not extend more than 800 feet beyond the 19-year mean high water line of the Mississippi Sound, St. Louis Bay, or Biloxi Bay. Harrison County, which borders the Gulf Coast, has a special exception that allows the structure to extend past the 19-year mean high water line up to Highway 90.

The Commission also requires licensees to provide certain amenities for its customers. These regulations apply to all new casinos and those that have been previously closed and later acquired for renewed gaming activities. The gaming floor of the operation must have at least 40,000 square feet of space, and the operation must have some amenity that is unique from all other gaming operations. However, the requirements touch more than just the gaming experience. The operation must also include a dining area with a minimum capacity of 200 seats as well as a restaurant that can seat at least 75 guests. In addition, the operation must include a "three diamond" or equivalently rated hotel with at least 300 rooms, and a parking facility that can hold at least 500 motor vehicles. These requirements are designed to encourage economic development and tourism in the area of the casino.

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

The standard term for gaming licences is three years, and findings of suitability are typically granted for nine years. Charitable bingo operator licences are issued for a maximum term of three years, while those for charitable bingo manufacturers and distributors are issued for a maximum term of one year. The term of a fantasy contest operator licence is three years. The licence renewal process is identical to that for an initial licence.

All licences, findings of suitability, and registrations are subject to the Mississippi Gaming Control Act and all regulations promulgated by the Gaming Commission. The Commission may revoke or suspend licences and findings of suitability for failure to comply with these laws and regulations. Any adverse disciplinary action may occur only after the accused has been given notice of the charges and a fair hearing to contest the charges. Any person aggrieved by the final decision of the Commission may appeal such decision to the circuit court of the county in which he resides or has his principal place of business. Regardless, violations typically result in settlement agreements, with financial penalties paid to the Commission.

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

The Gaming Commission currently does not place significant restrictions on a licensee's ability to advertise or promote its business, although the Mississippi Department of Banking prohibits advertisements offering cheque cashing services unless licensed as a cheque casher thereby. Gaming licensees may only acquire gaming equipment and certain associated equipment from manufacturers and vendors with the appropriate licences. For all other goods and services that do not fall under those categories, licensees may acquire those goods and services from unlicensed manufacturers and vendors. However, the Commission has the power and authority to require such unlicensed manufacturers and vendors, and indeed anyone connected or doing business with a licensee, to obtain a finding of suitability to be associated therewith.

2.7 What are the tax and other compulsory levies?

Mississippi imposes a flat annual licensing fee of \$5,000 on all gaming operator licences. The State also levies a tax of up to 8% on all gross gaming revenue, which the gaming operator may use as a credit against Mississippi State income tax liability. Cities and counties may also, and typically do, levy an additional tax of up to 4% on gross gaming revenue.

In addition, gaming operators must pay an annual investigative fee of up to \$300,000, depending on the number of games on the gaming floor, and an annual licensing fee equalling \$81,200 for the first 35 games plus \$100 for every additional game on the gaming floor. The State permits cities and counties to impose similar licensing fees on these games.

Licensed fantasy contest operators pay a fee to the State equivalent to 8% of that portion of the operator's net revenue attributable to play originating within Mississippi.

2.8 What are the broad social responsibility requirements?

The Mississippi Gaming Control Act does not impose strict social responsibility requirements. The Act does implore both the Commission and gaming operators to employ as many Mississippi residents as possible. The Commission itself has set regulations to address gaming-related issues such as gambling addiction and underage gambling. The Commission administers a self-exclusion program for problem gamblers. The minimum age for gaming in Mississippi is 21, except for off-premises online fantasy contests, which requires a minimum age of 18.

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

Gaming patrons may not use either credit cards or virtual currencies for gaming purposes. Casino licensees may offer credit to casino patrons, and may place ATMs on the casino floor for cash withdrawals. Casinos are subject to federal AML restrictions and reporting.

3 Online/Mobile/Digital/Electronic Media

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

Gaming within the State of Mississippi is illegal unless conducted within the confines of licensed premises, i.e., a casino. Accordingly, online gaming is impermissible in Mississippi, with the limited exception of daily fantasy sports contests. Race book and sports pool wagering on mobile devices is allowed, but only within licensed premises.

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

Online and mobile gaming, with the limited exceptions described above, is prohibited in Mississippi.

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

An unlimited number of slot machines, video poker machines, electronic table games and race book and sports pool wagering terminals are permitted within licensed casino premises. Up to 15 electronic pull-tab machines are permitted within licensed charitable gaming locations, i.e., bingo halls.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

The State of Mississippi heavily regulates and restricts gaming devices and materials that are available for play outside of a licensed gaming premises or have been manufactured or distributed without the appropriate licensing, as well as the use of unlicensed or illegal gaming devices and materials.

Those persons manufacturing, distributing, possessing or offering for play illegal gaming devices and materials, or conducting gaming activity outside of a licensed location, are subject to prosecution. Players of such gaming devices and materials are rarely, if ever, prosecuted.

4.2 What form does enforcement action take in your jurisdiction?

The Gaming Commission has exclusive authority to regulate gaming licences according to the Mississippi Gaming Control Act and regulations issued by the Gaming Commission. However, both local law enforcement officers and agents of the Mississippi Gaming Commission have the authority to enforce the laws and regulations that restrict unsanctioned gaming activities in Mississippi. Criminal and forfeiture actions are typically pursued in instances of the use of illegal gaming devices or materials or the occurrence of gaming activities outside of a licensed location.

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

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

4.4 Are gambling debts enforceable in your jurisdiction?

Mississippi permits licensed gaming operators to enforce gaming debts by the appropriate legal processes. Any gambling contracts not expressly legal under the laws of the State of Mississippi are void.

5 Anticipated Reforms

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

The Mississippi Gaming Commission is considering amending its Regulations so as to require casino licence applicants, both initial and renewal, to demonstrate their good faith efforts to ensure that preferential treatment is given to Mississippi vendors in the awarding of contracts, and to demonstrate their efforts to provide Mississippians with an adequate number and quality of employment and promotion opportunities.

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Scott E. Andress possesses extensive experience as a corporate and transactional attorney, with a focus on gaming law. Since the infancy of the Mississippi gaming industry, he has represented its interests, counselling his clients in areas of permitting and approvals, regulatory compliance, transactional and lending matters, and site legality and patron dispute litigation. His work has garnered respect among gaming regulatory agencies, and he serves on the Board of Trustees of the International Association of Gaming Advisors. Scott is also skilled in general corporate and transactional work, including business organisation, corporate governance, mergers and acquisitions, debt and equity financing transactions, and commercial real estate. Scott regularly represents: privately owned and publicly traded casino operators and developers; foreign and domestic gaming equipment manufacturers and distributors; sports betting and lottery providers; commercial lenders and equity investors (banks, private equity management, and investment banking firms); and owners of qualifying gaming sites.

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USA – Nevada

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1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Nevada Gaming Control Board and Nevada Gaming Commission.	
	Poker		
	Bingo		
Betting	Betting	Nevada Gaming Control Board and Nevada Gaming Commission.	
	Sports/horse race betting (if regulated separately to other forms of betting)		
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)		
Lotteries	Lotteries	Nevada Gaming Control Board and Nevada Gaming Commission. Note, however, that there is no State lottery in Nevada. The only lotteries are "charitable lotteries".	
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	No regulation of social gaming.	
	Skill games and competitions with no element of chance	Generally there is no regulation of skill games and competitions with no element of chance in Nevada. That said, however, under some interpretations by the Gaming Control Board, even if there is no element of chance, a skill game may be regulated as a gambling game in certain circumstances when the operator takes a percentage of the gambling "pot" as their payment.	

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

Nevada has a two-tier State gaming regulatory system. The Nevada Gaming Control Board (the "Board") is a three-member, full-time regulatory body consisting of two members and a Chair. The Nevada Gaming Commission (the "Commission") is a five-member, part-time regulatory body consisting of four members and a Chair. All members of the Board and the Commission are appointed by Nevada's Governor. The Board and the Commission work together to regulate all gambling activity in Nevada. This includes Nevada's large "Nonrestricted" casino resorts, such as those found along the famous Las Vegas Strip. This also includes small "Restricted" gaming locations, such as taverns and convenience stores that have 15 or fewer slot machines, and all race books, sports pools, and race tracks in the State, as well as those companies that serve the gaming industry, such as slot machine manufacturers and distributors. Local city and county licensing authorities in Nevada have concurrent jurisdiction over gaming licensing and also issue gaming business licences to gaming establishments located within their jurisdictions.

Gaming in Nevada is as wide-ranging as can be found anywhere else in the world and includes casino table gaming, slot machines, race books and sports pools, and horse racing. Gaming in the State is authorised and regulated under the State's Gaming Control Act and the Regulations of the Nevada Gaming Commission, which are codified as Chapter 463 of the Nevada Revised Statutes (NRS 463). Other relevant Nevada statutes include: NRS Chapter 368A, which provides for a Live Entertainment Tax; NRS Chapter 462, which regulates lotteries (note that only charitable lotteries are allowed in Nevada, and the large State or multi-State lotteries such as Powerball are not permitted in Nevada); NRS Chapter 463A (regulates gaming employees' labour organisations); NRS 463B, which allows for operation by the State/State appointee of a gaming establishment whose licence is surrendered, lapsed, suspended or revoked; NRS Chapter 464, which regulates *pari-mutuel* wagering; NRS Chapter 465, which outlines criminal actions and liabilities regarding gaming; and NRS Chapter 466, which covers horse racing.

The Commission also promulgates regulations that cover all aspects of the licensing, operation, accounting, and discipline for gaming licensees. When it comes to anti-money laundering ("AML") in gaming, Nevada used to have its own set of AML statutes and regulations, but has since deferred to the federal law on this topic and Nevada's casinos are treated as financial institutions under federal law.

2 Application for a Licence and Licence Restrictions

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

Generally speaking, the Nevada State licence categories encompass: (a) gambling operators; (b) manufacturers and distributors of gaming devices, mobile gaming systems, or cashless wagering systems; and (c) certain “service providers”. A gambling operator licence is either “Restricted”, which limits the operator to 15 or fewer slot machines (e.g., a tavern), or “Nonrestricted”, which generally allows the operator unlimited slot machines and table games (e.g., a resort-casino-hotel). Local city/county licensing authorities also issue gaming licences, and it is those authorities who have the power to issue liquor licences.

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

Any person or business entity that wishes to undertake an activity that requires a Nevada gaming licence must first procure such licence before commencing business. Holding companies are required to register with the Commission, and all direct and indirect owners of the applicant are required to be licensed or registered, as applicable. In addition, key officers, directors, and other executives of the applicant entities must be found suitable (get licensed), and any individual who handles day-to-day operations at the licensed establishment must be licensed. In addition, any employee, agent, guardian, personal representative, lender, landlord, or holder of indebtedness of a gaming licensee who, in the opinion of the Commission, has the power to exercise significant influence over the licensee’s operation of a gaming establishment may be required to apply for a licence. Gaming operator licences are both applicant-specific and establishment-specific and are not transferable among persons or establishments (subject to very narrow exceptions). Different licensing requirements apply to public vs. private companies. Local city/county licensing authorities have their own requirements, but they generally defer to the State gaming investigation.

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

Local city/county licensing authorities have sole jurisdiction over the issuance of liquor licences and may conduct an independent investigation of a gaming licence applicant, however, in most cases defer to the gaming investigation performed by the State. Notwithstanding, a local authority may not issue a gaming licence unless the State has approved the applicant.

Once filed, a withdrawal of an application is discretionary and depending on the status of the information received, the Board may decide to move forward to deny the application. The applicant is required to pay the costs of its investigation and the burden of proving suitability is always on the applicant. Only a majority of the five-member Commission is needed to issue a licence. The Commission usually follows the Board’s recommendation, but is not obligated to do so. However, if the Board’s recommendation is to deny the application, it would require a unanimous approval of the Commission in order for the licence to be issued. If there is any concern about an applicant’s ability to receive a licence, the applicant

may apply for “preliminary suitability” (using the same standards as licensing) which, if approved, becomes a valid expression by the Commission that an applicant is personally suitable to obtain a licence for a period of up to two years, and potentially renewable thereafter. This can assuage concerns about the investment in new construction of a gaming project.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Nevada gaming licences may be approved subject to such conditions, limitations, or orders of registration as determined by the Commission. Nevada licensees must at all times comply with applicable statutes and regulations and “self-police” their activities to ensure their continuing “suitability” for licensure. Such self-policing includes the ongoing examination of other business ventures and business associations to ensure that the licensee is complying with the law and not engaging in any activity that would tend to reflect discredit on gaming in Nevada. Generally speaking, large gaming companies have compliance committees who perform these self-policing functions and may be required to deposit funds in a “revolving fund” for the Board’s ongoing monitoring of the licensee’s compliance activities.

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

Unless limited in duration by the Commission (a limitation is typically one or two years), most Nevada gaming licences are issued without an expiration date. Once granted, such licences are revocable privileges, and no holder acquires any vested rights in a licence. In the event of an alleged violation of the Gaming Control Act by a licensee, it is up to the Board to file a complaint and demonstrate that disciplinary action should be taken against a licensee under a “preponderance of the evidence” standard. The licensee receives due process, but most complaints are settled because the process favours the Board. Licensing decisions made by the Commission are not subject to judicial review.

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

In the United States, government regulation of advertising (commercial speech) is generally limited by First Amendment principles. Such speech is not generally subject to government restraint, provided it is not deceptive or misleading and does not advertise unlawful activities. There are not many restrictions on gaining market share or supplying to customers under Nevada law. New games are subject to Board approval, and the offering of certain types of wagers are subject to prior Commission approval. Certain types of wagers are prohibited by regulation. Junket operators are subject to prior Commission approval as “independent commissioned representatives”.

2.7 What are the tax and other compulsory levies?

Under Nevada State law, Nevada gaming licensees must pay: (a) an annual tax and a quarterly fee based on the number of slot machines; (b) an annual tax and a quarterly fee based on the number of table games; (c) a monthly percentage fee based on gross gaming

revenue; and (d) a live entertainment tax equal to 9% of admission charges, if applicable. The rates depend on the number of slot machines/table games and the amount of gross gaming revenue. In addition, licensees are required to remit quarterly 75% of the value of unredeemed slot machine wagering vouchers. The maximum taxation rate for Nonrestricted gaming is 6.75% of the casinos' gross gaming revenue.

Gaming licensees other than casino operators must pay annual fees based on their licence category. A licensee may be required to pay federal and/or local city/county fees and taxes as well.

2.8 What are the broad social responsibility requirements?

A portion of slot machine fees is dedicated to addressing problem gaming issues. Each licensee must post or provide problem gaming materials near gaming, cage and cash access areas. Each licensee must implement procedures for training employees regarding problem gaming. Each licensee must also implement a programme to permit self-exclusion from direct gambling marketing activities. Casinos are also required to adopt policies relating to the prevention of sexual harassment.

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

Nevada follows U.S. federal AML guidelines, publications, regulations and statutes. Third-party virtual currencies are not permitted for gambling use; however, licensees may issue house chips, promotional chips or credits that are used *in lieu* of cash for gambling transactions.

3 Online/Mobile/Digital/Electronic Media

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

Since 2001, Nevada has had statutory authority to grant State licences to conduct online and mobile gaming, which is called "Interactive Gaming" in Nevada. Interactive Gaming operator licences are limited to resort hotel operators. Currently, Nevada grants licences only for online poker, but has the statutory authority to grant licences for all other online and mobile games. Since at least the 1970s, Nevada has permitted licensed race and sports pool operators to offer intrastate remote account wagering. Today, intrastate remote account wagering on sports is facilitated primarily through mobile tablets and smartphones.

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

Most service providers to interactive gaming operators will be required to have some level of licensing or approval. The level of investigation, cost, and time to obtain such licensing or approval is dependent on the role of the service provider in facilitating online gaming. Currently, online poker may be offered only to those in

Nevada and Delaware, and no other forms of online gambling games have been authorised. Remote-account-based sports wagering is offered strictly on an intrastate basis due to U.S. federal laws.

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

Nevada permits online poker to be offered by interactive gaming licensees using TCP/IP-based computing hardware (such as personal computers, laptops, tablets and smartphones). Nevada-licensed Interactive Gaming operators may offer online poker only to those in Nevada and Delaware.

Remote-account-based sports wagering may occur through telephone and approved smartphone, computer and tablet applications. Remote-account-based sports wagering is offered only within the borders of the State of Nevada due to restrictions imposed by U.S. federal laws.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

The foundation for all gaming regulation in Nevada is found in NRS 463.0129. This statutory section is known as "the Public Policy Concerning Gaming". The section heading announces that a "license or approval is a revocable privilege". It acknowledges the vital economic importance of the gaming industry to Nevada and the need to insure that public confidence and trust in these institutions are maintained by regulating persons, locations, practices associations and activities related to the operation of gaming establishments, the manufacture, sale and distribution of gaming devices and associated equipment and the operation of inter-casino-linked systems. The overriding intent is to ensure that gaming activities are conducted honestly and competitively and do not reflect discredit on the State of Nevada and the gaming industry.

That policy statement allows Nevada's gaming regulators to impose obligations upon a broad range of individuals and entities having involvement or association with the gaming industry. Some of these categories include: licensees; gaming employees; manufacturers; distributors; certain software developers; equity holders; landlords; lenders; operators of tournaments; persons furnishing services and property; persons doing business on the premises of a gaming establishment (including lessees of shops, restaurants and nightclubs); and, of course, customers.

Each of the major operating units of the Board is tasked with keeping the industry free from criminal and corruptive elements as well as providing "consumer protection" for casino customers. The settlement of patron disputes is exclusive to the province of the Nevada Gaming Commission with an appeal to the courts only on very limited grounds.

To keep abreast of its regulatory obligations, most Nonrestricted licensees (specifically referencing casino operators) are required to form "compliance committees" to monitor internal control standards, and compliance with federal, State and local laws. These groups are required to self-report to the regulators, circumstances which suggest that they are or may be engaging in an "unsuitable method of operation" a panoply of offences which are generally described in the Nevada Gaming Commission regulations (NGC Reg. 5.011).

There remains a continuing focus on the prevention of money laundering, which includes the requirement that the casino operators "know their customer" in compliance with the rules and

reports required by the Financial Crimes Enforcement Network (“FinCEN”), a division of the United States Treasury. Such filings include currency transaction reports (“CTRs”) and suspicious currency transaction reports (“SARCs”), generally transactions which individually, or in the aggregate, equal \$10,000 in a 24-hour period. FinCEN has imposed substantial fines in the casino industry for violation of these requirements, in some cases up to \$75 million. State gaming regulators have added their own significant penalties for these same violations.

The recent United States Supreme Court decision which declared the Professional and Amateur Sports Protection Act (“PASPA”) to be an unconstitutional commandeering of State Law (*Murphy v. NCAA*) has allowed States that authorise sports wagering within their boundaries to engage in that form of gaming. Provided however, there remain questions regarding the applicability of the Interstate Wire Act of 1961 (“Federal Wire Act”) found at 18 U.S.C. 1084, which prohibits the use of wire communication facilities to transmit bets or wagers, including information relating to bets or wagers through interstate commerce. The Federal Wire Act was intended to target “organised crime” and was seemingly left intact by the *Murphy* decision. Therefore, the use of multi-State facilities to aggregate wagers and information, has yet to be resolved and may still result in federal prosecutions.

As of this writing, any involvement by casino licensees with the marijuana industry is strictly prohibited, with the limited exception of a short-term rental of convention space for education and exhibition purposes by authorised commercial representatives of that industry. No use of marijuana or other legal drugs is permitted on casino property.

Gaming suppliers, or those who furnish a gaming device (defined in NRS 463.0155), must be licensed and their products must be tested first by an independent testing laboratory and then field tested and reviewed by the Board’s Technology Division. Suppliers of products that are not classified as “gaming devices” may fall into the category of “associated equipment” defined in NGC Reg. 14.020(4), or “inter-casino linked systems”, whose standards are described in NGC Reg. 14.100, or interactive gaming service providers as defined in NRS 463.677. Each of these systems is also reviewed by the independent lab and the Technology Division and the manufacturers and distributors are either required to be registered or found suitable after a full investigation (NGC Regs. 14.260–14.305). Additionally, all gaming equipment suppliers who ship gaming devices either into or out of Nevada must be registered with the U.S. Department of Justice in order to be exempt from 15 U.S.C. 1172 (NRS 463.410 and 463.420).

4.2 What form does enforcement action take in your jurisdiction?

Licensees who would offer unregulated or adulterated equipment are subject to disciplinary action, which could include fines and suspensions, licence limitations or revocation (NRS 463.310). It is unlawful for any person, either as an owner, lessee or employee to operate, carry on, conduct or maintain any form of manufacture, selling or distribution of any gaming device, cashless wagering system, mobile gaming system or interactive gaming system for use or play in Nevada without first procuring all required federal, State, county and municipal licences, and it is unlawful for such persons to knowingly distribute such devices from Nevada to any jurisdiction where the possession or use of such devices are illegal (NRS 463.650(1) and (10)). Criminal penalties may be imposed if the gaming equipment is operated with unapproved programs or cheating devices.

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

The Board has entered into Compacts or Memoranda of Understanding with other gaming regulatory bodies throughout the world and regularly shares information concerning persons and investigations which are of mutual interest. As a “law enforcement agency” and a member of the Law Enforcement Intelligence Unit (“LEIU”), agents from the Board perform joint investigations with the world’s premiere law enforcement organisations, including, but not limited to, Interpol, Scotland Yard and RCMP. The Board works cooperatively with anti-money laundering investigations conducted by FinCEN, the Internal Revenue Service (“IRS”), the Federal Bureau of Investigation (“FBI”) and the Securities Exchange Commission (“SEC”) concerning allegations involving the Federal Corrupt Practices Act (“FCPA”), stock manipulation and insider trading. A violation of an international law or federal statute can bring an independent disciplinary action by the Board against a Nevada licensee.

4.4 Are gambling debts enforceable in your jurisdiction?

“Credit Instruments” are defined in NRS 463.01467 and may be enforced by legal process (NRS 463.368). An incomplete credit instrument may be accepted, provided that it is signed by the patron and states the amount of the debt in figures. Under those circumstances, the licensee may complete the credit instrument to be presented for payment. A licensee may accept a credit instrument either before, at the time, or after the patron incurs the debt. A patron’s claim of having a mental or behavioural disorder involving gambling is not a defence in any action by a licensee to enforce a credit instrument and is not a valid counterclaim to such action.

Notwithstanding, each licensee is required to implement procedures and training for all employees who directly interact with gaming patrons in gaming areas. The training shall, at a minimum, consist of information concerning the nature and symptoms of problem gambling behaviour and methods for assisting patrons in obtaining information about problem gambling programmes (NGC Reg. 5.170).

Each credit application must contain a statement, separately signed by a patron, acknowledging the patron’s understanding that under Nevada law a credit instrument is the same as a personal check, and knowingly writing a credit instrument with insufficient funds in the account upon which it is drawn, or with the intent to defraud, is a criminal act in the State of Nevada which may result in criminal prosecution (NGC Reg. 6.118). District Attorneys in Nevada regularly enforce the provisions of NRS 205.130, which makes it a felony to fail to pay in full a credit instrument of \$650 or more for credit extended by a licensed gaming establishment. A person who violates this provision may be adjudged guilty of a category D felony, which is punishable by one to four years in State prison and a fine of \$5,000. Once the case has been submitted to the District Attorney for prosecution, a settlement through the prosecutor’s office requires the payment of a 10% service fee. Although a felony arrest warrant is an extraditable charge, that remedy is seldom utilised.

A debt incurred by a patron for playing an interactive gaming system of an establishment licensed to operate interactive gaming is also valid and may be enforced by legal process (NRS 463.780). In all other respects, with the exception of obligations which are claimed to be owed by the licensee to a patron and which are resolved through a “patron dispute” hearing process by the Board, gaming debts that are not evidenced by a credit instrument are void and unenforceable and do not give rise to any administrative or civil cause of action (NRS 463.361).

Only bonded, duly licensed collection agencies, or a licensee's employees, junket representatives, attorneys or affiliated or wholly-owned corporations and their employees, may collect, on the licensee's behalf and for any consideration, gaming credit extended by the licensee. Notwithstanding, no licensee shall permit any person who has been denied a gaming licence or a work permit to collect any markers on behalf of a licensee (NGC Reg. 5.140).

5 Anticipated Reforms

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

As a worldwide leader in gaming, the State of Nevada engages in a constant cycle of review and revision to its gaming statutes and regulations. Because the Nevada State legislature meets only for 120 days every other year in the odd-numbered years, there were no legislative changes in 2018. The next regular legislative session will run from February–June 2019. Topic areas likely to be addressed by the 2019 legislature will include eSports and the intersection of recreational marijuana and gaming. With the legalisation of recreational marijuana in Nevada and recreational dispensaries operating as of July 1, 2017, gaming licensees in Nevada are faced with many questions of how they can and cannot serve this industry and the standards they will be held to in policing the use of recreational marijuana on their premises.

Acknowledgment

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Dickinson Wright PLLC is a full-service business law firm with more than 475 attorneys practising across more than 40 practice areas and industries. The firm has 19 offices, including six in Michigan and other U.S. offices in Las Vegas, Reno, Austin, El Paso, Columbus, Ft. Lauderdale, Lexington, Nashville, Phoenix, Silicon Valley and Washington, D.C. The firm's Canada office is located in Toronto. Dickinson Wright boasts a team of lawyers with diverse specialties that cover the entire spectrum of today's commercial, Native American and First Nations gaming industries, both nationally and internationally. Our gaming and hospitality practice's areas of expertise include assisting gaming companies with gaming licensing and other regulatory matters, obtaining key amendments to gaming legislation, providing counsel in support of the financing, construction and operation of casinos, and guiding clients in the complex field of Internet gaming and other new gaming technologies. Dickinson Wright lawyers are regularly cited by *Chambers*, *Best Lawyers*, *Super Lawyers*, and other leading evaluating organisations.

USA – New Jersey

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1 Relevant Authorities and Legislation

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

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

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

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

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

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

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

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

2 Application for a Licence and Licence Restrictions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.4 Are any restrictions placed upon licensees in your jurisdiction?

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

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

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

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

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

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

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

2.7 What are the tax and other compulsory levies?

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

2.8 What are the broad social responsibility requirements?

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

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

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

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

3 Online/Mobile/Digital/Electronic Media

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

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

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

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

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

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

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

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

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

4.2 What form does enforcement action take in your jurisdiction?

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

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

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

4.4 Are gambling debts enforceable in your jurisdiction?

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

5 Anticipated Reforms

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

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

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

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

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



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

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



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

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USA – New York

Jeff Ifrah



Jessica Feil



Ifrah Law PLLC

1 Relevant Authorities and Legislation

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

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

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

The New York Constitution prohibits gambling, with the exception of:

- State-run lotteries.
- *Pari-mutuel* betting on horse races.
- Up to seven commercial casinos.
- Certain bingo and lottery games to raise funds for charitable, religious, or not-for-profit organisations.

The New York Penal Law governs the criminal offences associated with gambling. It does not differentiate between land-based or online gambling, but prohibits several specific categories of behaviour, including the following:

- Promoting gambling (such as bookmaking or running a lottery).
- Possessing gambling records (such as lotteries, bookmaking information or easily destructible forms of paper relating to gambling).
- Possessing a gambling device (such as slot machines or other gambling devices).
- Gaming fraud (including defrauding a casino or any other type of fraud in relation to a bet or wager).
- Using counterfeit or unlawful gaming instruments.
- Using or possessing unlawful gaming property (such as false or fraudulent gaming materials), manipulating gaming outcomes, and the manufacturing, selling or modifying of any equipment or devices in violation of gambling laws.

Gamblers are not criminalised by the New York Penal Law.

The New York Racing, Pari-Mutuel Wagering and Breeding Law primarily contains provisions relating to horse racing and regulates the horse-racing industry, including the creation and regulation of off-track betting facilities and licensing. It also contains provisions for destination/resort casinos, which relate specifically to land-based gaming, and for interactive fantasy sports, which relate specifically to online gambling.

The following additional provisions relate to gambling:

- Article 34 of the New York Tax Law, which governs the state-run lottery, other lotteries and the establishment of video lottery terminals at limited locations throughout the state.
- Article 19B of the New York Executive Law and Article 14H of the New York General Municipal Law, which govern charitable bingo games.
- Article 9A of the General Municipal Law, which governs charitable games of chance.

There also are several Indian casinos in New York that operate through tribal-state compacts under the Indian Gaming Regulatory Act. These compacts are not part of the New York Consolidated Laws (that is, the codification of the permanent laws of a general nature of New York enacted by the New York Legislature).

2 Application for a Licence and Licence Restrictions

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

The New York Gaming Commission oversees all licensing and regulatory matters for commercial gaming, including horse racing, casino gaming, state and charitable lotteries, and video lottery terminals, in New York.

The law provides for licensing of: (i) gaming facilities; (ii) casino and video lottery key employees; (iii) vendors for gaming facilities and video lottery; and (iv) bingo.

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

The New York Constitution provides for up to seven commercial casinos in the state, but currently the state legislature has only approved four commercial casino sites. Each of these commercial casinos is currently operating. Employee and vendor licensing remain available as necessary for the commercial casinos and racetracks.

The state’s tribes are authorised to establish casinos on tribal territory, and the tribal gaming commissions oversee the licensing process in those jurisdictions.

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

The New York Racing, Pari-Mutuel Wagering, and Breeding Law provides the standards for gaming facility licences (including racetracks), including the minimum capital investment, the land ownership requirements, and the ability to construct the casino within a designated time frame. To secure a commercial casino licence, the applicant must undergo a due diligence investigation that includes providing information on the date and formation of the applicant, a description of the intended business, compensation and stock structure, background on shareholders and board members, details on past and current legal proceedings (if any), financial statements, audits, tax documents, along with other information at the Commission’s discretion.

The Commission also handles licensing for key employees and vendors for gaming facilities. Key employee and vendor applicants must undergo a suitability determination that includes investigation of their personal history, residential history, education and employment history, and a civil and criminal background check.

Bingo licence applicants must provide information about the proposed premises and intended use for the proceeds of the game.

Interactive fantasy sports operators must register with the Commission and have contests approved. The Commission is due to adopt formal regulations for the application process, and current operators are currently operating under temporary permits.

Application forms for currently available licences are accessible on the Commission’s website.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

The New York Constitution limits the state to seven commercial casinos, with sites for those casinos to be approved by the state legislature. So far, the legislature has approved four sites and those commercial casinos are operating. There are no immediate plans to consider additional sites at this time.

The lottery is exclusively administered by the state lottery.

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

The gaming facility licence carries a \$1 million fee, with potential additional funds for cost of processing. There is an annual licence fee of between \$25 million and \$75 million, depending on the location, along with an annual licence fee of \$500 per slot machine or table game. Initial licences are for a term of 10 years.

Casino key employee and vendor licences are valid for five years and renewable.

Video lottery employee and vendor licences are valid until revoked, suspended, or terminated.

Bingo licences are for single-event use and costs \$18.75.

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

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

Gaming is limited to players 21 years of age or older. There are no specific advertising restrictions; however, advertising must generally comply with fair advertising laws, including those against deceptive advertising or advertising to minors.

The New York Attorney General has previously brought consumer protection and false advertising claims against online daily fantasy sports providers, and that case has since been settled.

2.7 What are the tax and other compulsory levies?

Casinos are taxed at a rate of 10% on all gross gaming revenue from all sources other than slot machines. Slot machines are taxed between 37% and 45% depending on the location of the casino.

Interactive fantasy sports are taxed at 15% of their gross revenue in New York plus an additional tax of the lesser of 5% of gross revenue or \$50,000.

2.8 What are the broad social responsibility requirements?

New York has a broad self-exclusion programme that applies to casinos, horse racing, off-track betting, video lottery terminals, and interactive fantasy sports. The exclusion period can be for one year, three years, five years, or lifetime. The self-exclusion form is available on the Gaming Commission’s website.

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

New York does not have any state-level AML, financial services regulations, or payment restrictions specific to the gaming industry. The state's gaming facilities and tribal casino operators are obligated to adhere to federal AML, financial services, and payment restrictions.

At this time, New York does not permit virtual currencies for gambling as there is no online gambling in the state. Further, there are no separate regulations specific to the use of virtual currencies at land-based casinos in New York. However, to accept virtual currencies, casinos may need to adhere to the state's new financial laws and regulations on virtual currencies, specifically the licensing and regulatory requirements for financial institutions that serve as exchanges for virtual currency. Exchanging virtual currency in New York requires a money transmitter licence and a "BitLicense" (a cryptocurrency-specific money transmitter licence) prior to operation.

3 Online/Mobile/Digital/Electronic Media

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

Online, real-money gaming is not legal in New York. Operators that offer real-money gaming in New York are subject to state and federal criminal laws, which make such activity punishable with fines and imprisonment.

Free-to-play social gaming and skill-based gaming are permitted in the state and are not regulated.

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

As online gaming is not permitted in New York, there are no applicable regulations.

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

The only terminal-based gaming that is permitted are video lottery terminals. Those terminals are restricted to the "racinos" at the state's horse-racing tracks.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Licence holders are liable under local laws and regulations for violations of New York law. The laws are set forth in the New York Penal Code.

4.2 What form does enforcement action take in your jurisdiction?

While the Gaming Commission handles licensing and civil enforcement, local law enforcement and the state attorney general handle criminal prosecution. The Gaming Commission can refer matters to state and local law enforcement for investigation.

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

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

4.4 Are gambling debts enforceable in your jurisdiction?

Gambling debts are not enforced in New York.

5 Anticipated Reforms

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

The most eagerly anticipated reform to gaming in New York is the potential legalisation of sports betting in the state. In 2013, the state legislature passed a law that would allow for sports betting in the state's commercial casinos. Now that the federal ban on sports betting has removed, the Gaming Commission merely needs to promulgate regulations to allow sports betting to begin in the state. No definitive timeline for such regulations has been issued, but regulations are expected in the near future. Once the Commission does issue such rules, under the tribal-state compacts and applicable federal law, the New York tribal casinos may also begin offering sports betting.

Online and mobile sports betting would require new legislation in addition to the 2013 sports betting law. The legislature has indicated an interest in taking up such legislation early in 2019. Draft bills have been circulated and are currently being revised in anticipation of introduction early in the legislative session that begins in January 2019.

Over the past several years, the New York legislature has also considered an online gaming expansion. In 2017, the state specifically considered an online poker bill, but it failed to advance in the state Assembly. Further, online gaming expansion would require an amendment to the state constitution.

Finally, the state is still finalising regulations for interactive fantasy sports. The underlying law went into effect in 2016, but final implementing regulations are still pending.

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USA – Pennsylvania

Jeff Ifrah



Jessica Feil



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1 Relevant Authorities and Legislation

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

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

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

The Pennsylvania Criminal Code makes any form of gambling that is not specifically exempted by the legislature illegal (*18 Pa. Laws § 5513*). This statute is unusual, as it focuses on the actions of game operators, not the players. It specifically prohibits operation, solicitation, or allowing unlawful gambling. Violation of the law is a misdemeanor. Beyond this general prohibition, the following acts have exempted and control permissible gambling in the state:

- **The Pennsylvania Race Horse Development and Gaming Act (Gaming Act) (4 Pa Laws § 1101 *et seq.*)**. This act:
 - established the Pennsylvania Gaming Control Board ("PGCB"), which oversees all regulatory and enforcement matters related to gambling in the state. Currently, the law only covers land-based gambling, as that is the only form of gambling expressly authorised in the state;
 - authorises licensed casinos to offer table games and slot machines; and
 - oversees *pari-mutuel* wagering.
- **Act 7 (H.B. 941, 2016 Pa. Gen. Assemb., Reg. Sess. (Pa. 2016))**. Act 7 controls horse race wagering, and repealed prior legislation related to horse racing in the state.
- **Act 42 (H.B. 271, 2017 Pa. Gen. Assemb., Reg. Sess. (Pa. 2017))**. Act 42 is a significant gaming expansion bill that:
 - legalises online gaming (including poker, slots, and table games) in the state;
 - regulates daily fantasy sports;
 - legalises and provides for the regulation of sports betting;
 - authorises video gaming terminals at truck stops and tablet gaming at airports;
 - authorises up to 10 "satellite" casinos around the state; and
 - legalises online lottery,
 among other various changes to state gaming laws already in effect. The law passed in late 2017 and has been coming into effect throughout 2018.
- **State Lottery Law (72 Pa. Laws §§ 3761 *et seq.*)**. This law governs Pennsylvania's state lottery. There are eight state-specific styles of lottery offered and three multi-state games. The state lottery law establishes the appropriate payouts for winning each game and dictates the cost of playing the lottery and the price of lottery tickets.

- **The Local Option Small Games of Chance Act (10 Pa. Laws §§ 311 *et seq.*).** Pennsylvania allows non-profit organisations and taverns to offer small games of chance, such as pull-tab games, punch board and raffles. The act sets out the licensing requirements for such offerings.
- **The Bingo Law (10 Pa. Laws §§ 301 *et seq.*).** This law authorises non-profit organisations to host charitable bingo games.

2 Application for a Licence and Licence Restrictions

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

Pennsylvania has authorised up to 13 land-based casinos in the state, 12 of which are already operating and the 13th is expected to open in 2020. Each of these casinos, their owners, and key employees must be approved and licensed by the PGCB. The casinos themselves are designated as “slot machine licence holders”. In addition to these primary casinos, the state has authorised an expansion of up to 10 “satellite” casinos in particular locations. These casino locations are being auctioned off, with priority given to the current slot machine licence holders.

For online poker, slots, and table games, operators must secure a licence for each product. Operators can elect to secure a licence for one, two, or all three online products. The current slot machine licence holders are given priority to obtain these licences, but other qualified gaming entities will be given an opportunity as the licensing process continues through 2018 and 2019.

Pennsylvania is currently in the middle of issuing regulations and licences for land-based sports betting. Sports betting licences are being offered to current slot machine licence holders. Specific regulations for online sports betting are still pending.

Beyond the slot machine licence holders, platforms, suppliers, operators, and vendors working with the licence holders must also acquire certain licences or registrations to operate in the state.

Only the state lottery may offer lottery in either land-based or online forms, so no licences are available for lottery products in the state. Businesses that wish to be a lottery retailer in Pennsylvania must apply to the state lottery for approval.

The State Horse Racing Commission has authority over all aspects of *pari-mutuel* wagering, including licensing tracks for wagering.

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

The 13 casinos already hold all available slot machine licences in Pennsylvania. Suppliers of table games and slot machines must be licensed in Pennsylvania and may apply for such licensure directly to the PGCB.

The application process is now underway for online gaming. Pennsylvania has authorised 13 interactive gaming certificates for each online gaming vertical – that is, online poker, slots, or table games – for a total of 39 interactive gaming certificates in the state. The current slot machine licence holders were given the first opportunity to secure these certificates, and at this time, nine slot machine holders have applied. The PGCB has not yet announced the process for outside entities to apply for the remaining certificates.

Beyond the certificates in each vertical, Pennsylvania has authorised an unlimited number of “skins” on each certificate. For a business that wants to operate as a skin, rather than a certificate holder, they must both partner with a certificate holder and also seek an interactive gaming licence. The licence authorises operators to work in partnership and “on behalf of” the interactive gaming certificate holder under the operator’s own brand.

Platform providers and other suppliers that are not customer-facing must also seek a licence, but may do so independently of an established commercial partnership with a certificate or licence holder.

Only slot machine licence holders may apply for sports betting licensure at this time, and the state has yet to approve any licences. However, the first approvals are expected as early as the end of 2018. As regulations for online sports betting have not yet been issued, there is no guidance on that licensure process at this time.

Fantasy sports operators must now be licensed in Pennsylvania as well. They must petition for Fantasy Contest Operator licences before the PGCB.

Beyond the current slot machine licences and the pending online certificates, other land-based gaming expansions are also underway in Pennsylvania, including the approval of 10 “satellite” casinos, video gaming terminals at truck stops, and gaming at the state’s airports. Approval for satellite casinos is being auctioned off based on approved geographic sites. The PGCB is holding periodic auctions among the current slot machine licence holders. There have already been five successful auctions, but the sixth auction resulted in no bidders. Based on this result, the PGCB has suspended the auctions for the time being.

Truck stops that wish to add video gaming terminals and suppliers that wish to provide the terminals to truck stops must undergo a licensing process; the licensing process began in May 2018 and will continue until the PGCB closes the licensing process. The state’s airport authority is handling the roll-out of gaming in airports through partnerships with the current slot machine licence holders, but this process has not yet commenced.

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

For all certificates and licences, the process to apply involves an extensive written application to the PGCB. The written applications – available on the PGCB’s website – require disclosures from the applicant business entity, all members of its ownership, and key personnel. The applications require information regarding the business’s corporate structure, any history of antitrust, trade regulation, or securities violations, any bankruptcy or insolvency proceedings, all current licences the business holds, and any criminal history for the enterprise or its officers.

Key personnel, including owners, directors, and managers must submit a personal history disclosure form. This form seeks information including the individual’s family tree, assets, net worth, criminal history (if any), military service, prior employment, and compensation from prior employment and any current positions.

After submission of the paperwork, the PGCB commences an investigation. This includes interviews with key personnel, investigation of facilities, and testing of gaming products. The PGCB may request personnel to travel to them to interview, or may travel to certain sites as needed.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

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

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

Licences and certificates, once approved, are valid for an initial five-year term and then renewable in five-year terms.

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

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

For the approved forms of gaming, patrons must be 18 or over for *pari-mutuel* wagering, and 21 or over for casino gaming.

The PGCB is still in the process of finalising regulations regarding online gaming advertising. Generally, all forms of gaming advertising must not be deceptive or target children and adolescents. Promotional materials must be approved by the PGCB prior to use.

2.7 What are the tax and other compulsory levies?

Pennsylvania has received a great deal of attention for the costs of licensure and tax rates on various forms of gaming. Many of their rates are among the highest – if not the highest – in the world.

Slot machine licence fees ranged between \$5 million for smaller facilities that were part of resorts and \$50 million for the larger, stand-alone casinos. The auctions for the new satellite casinos have fetched purchase prices ranging from \$7 million up to \$50 million.

For online gaming, the interactive gaming certificates are \$4 million for each vertical or \$10 million for all three. Interactive gaming licences for operators carry a \$1 million application fee. Fees for the various suppliers and manufacturers vary between several thousand dollars up to \$50,000.

All licences carry a fee upon renewal that is a percentage of the original application cost.

The tax rate for land-based and online slot machines is an effective 54% of revenue and an effective 16% of revenue for table games. The tax rate for sports books will be 36%. This effective rate includes the state tax, the local share, economic fund rate, and payments to the race horse development fund. Taxes on truck-stop video gaming terminals are at an effective 52% rate. Racetracks are subject to a 5% tax on the daily amount wagered.

2.8 What are the broad social responsibility requirements?

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

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

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

At this time, Pennsylvania does not permit gambling with virtual currencies.

3 Online/Mobile/Digital/Electronic Media

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

The major question for operation of online gaming in the jurisdiction is the location of gaming servers. Pennsylvania has issued regulations to the effect that for online slots, poker, and table games, the servers must be either located in the state of Pennsylvania or in another location in the United States approved by the PGCB.

A question remains on the location of servers for online sports betting. Unlike other forms of online gaming, online sports betting must contend with the federal Wire Act, which prohibits the transmission of sports betting information across state lines. In this case, the state may be obligated to require online sports betting servers to be located in the state.

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

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

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

Video gaming terminals are expressly allowed in approved truck stops. Other forms of terminal gaming are expected to be approved for sports betting, including kiosks at casinos. Otherwise, there are no general approvals or regulations regarding terminal or machine-based gaming.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Pennsylvania imposes liability on gaming operators and businesses for violation of gaming laws. Further, in the instance of unlawful and illegal gambling operations, the game operators or promoters are held responsible, but not game participants.

4.2 What form does enforcement action take in your jurisdiction?

The PGCB has enforcement authority through the form of civil hearings. The PGCB generally handles complaints from patrons, civil and monetary penalties, and modification or suspension of licences based on misconduct. Criminal matters are referred to the state attorney general for prosecution.

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

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

4.4 Are gambling debts enforceable in your jurisdiction?

Pennsylvania does not have a loss recovery act that allows individuals to reclaim their losses in illegal gambling. Pennsylvania law does provide that players in lawful casinos who use checks to purchase credit or chips must use valid instruments that are enforceable by law.

5 Anticipated Reforms

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

Pennsylvania has just undertaken one of the most significant gaming expansions in the country. Therefore, there are no major legislative changes on the horizon for this state. Some operators hope that the state may revisit the online gaming tax rates in the future, but no proposal for this is currently pending.

However, as the most recent expansion legislation was passed in October 2017, the PGCB is issuing new implementing regulations on a regular basis. The initial focus at the PGCB was interactive gaming. But after the Supreme Court decision in *Murphy v. NCAA* in May 2018, the focus has shifted to sports betting regulations and launch. The state hopes to have its first land-based sports wagering by the end of 2018 and will look to online sports betting after that.

The gaming expansion has been a lofty undertaking, but with the pressure from other states that are legalising sports betting, and following the success of online gaming in New Jersey, Pennsylvania has been working quickly to provide new gaming to the market.

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

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

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

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



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

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

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

NOTES

Current titles in the ICLG series include:

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- Corporate Investigations
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- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
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