

THE
GAMBLING LAW
REVIEW

SIXTH EDITION

Editor
Carl Rohsler

THE LAWREVIEWS

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REVIEW

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PREFACE

Again, the public showed that they would bear their share in these things; the very Court, which was then gay and luxurious, put on a face of just concern for the public danger. All the plays and interludes which, after the manner of the French Court, had been set up, and began to increase among us, were forbid to act; the gaming-tables, public dancing-rooms, and music-houses, which multiplied and began to debauch the manners of the people, were shut up and suppressed; and the jack-puddings, merry-andrews, puppet-shows, rope-dancers, and such-like doings, which had bewitched the poor common people, shut up their shops, finding indeed no trade; for the minds of the people were agitated with other things, and a kind of sadness and horror at these things sat upon the countenances even of the common people. Death was before their eyes, and everybody began to think of their graves, not of mirth and diversions.

Daniel Defoe. *A Journal of the Plague Year*

A year ago, I began the preface to the fifth edition by reminding readers of the most famous epidemic that ever troubled Britain: the Great Plague of 1665, which closed the theatres and silenced the ‘jack puddings and merry Andrews’ in London for a whole year. Writing of that same event years later, Daniel Defoe reminds us that despite the passing centuries, the human impact of plague has actually not changed that much. In another passage from his journal, he remarks how he could only pass along the king’s highway if he obtained a paper from a magistrate to say that he was in full health. The judiciary may have been replaced by the PCR swab or the vaccine passport, but the feeling that the public does not enjoy its normal liberties is scarcely different then than now. Another point that Defoe notes, and which we should not ignore, is that the effect of plagues is marked not in inconvenient days or months, but in decades. ‘Plague Bills’ showing the number of deaths in each parish were first published 1665, and the practice was not formally discontinued until 1679. And so, I begin the preface to the sixth edition of *The Gambling Law Review* in similar terms and circumstances as those of last year.

There have been many changes in gambling law and practice over the last 12 months, but, with perhaps a few exceptions (such as Ukraine), they have been of a minor nature, reflecting perhaps that governments have been so overwhelmed by the social and economic impact of the covid-19 pandemic, that they have simply not had the time to revise the intricacies of betting and gaming regulation. So, in many cases, the legal frameworks that applied in 2020 will still apply in 2021. But the chapters that we each write are designed not only to focus on the details of regulatory change but also to canvas broader themes and directions for the future, and so our authors have all had to try to describe what the future will hold, as well as the past 12 months.

Following that theme, I want in this Preface to talk not so much about gambling, but about the state of the world in which gambling exists and the macro-changes that we now face. In that regard, it seems to me that the question so often asked: ‘when things will get back to normal?’ is not really appropriate anymore. The pandemic has had such a sweeping change on the lives of those in the developed world, that not only have we been forced to break our old habits, but have had enough time to discover and develop new ones. So, no doubt we will go back to restaurants and bars again, and sometimes enjoy high street shopping or a trip to the gym. But there will also, undoubtedly, be permanent changes.

In short, the pandemic, like a world war or a crisis of resources, has created a paradigm shift, a step change. We could go back to our old habits and ways of working. But would that really be such a good idea? Should we want to? The First World War, for all its tragic loss of life, brought us into the modern world and forced societal change at the deepest level. The peace in 1918 brought with it a number of social and legislative changes in the UK of key importance in the century that followed. The Education Act of 1918 enforced a compulsory school-leaving age of 14, recognised special educational needs for the first time and introduced school meals. The Representation of the People Act 1918 allowed (certain) women the right to vote for the first time, and the Sex Disqualification (Removal) Act of 1919 prohibited an employer from excluding someone from a job on the basis of gender. The Ministry of Health Act 1919 created for the first time a minister of Health and made the health of citizens a government responsibility. These pieces of legislation were not the immediate effect of war, but the indicators of underlying changes in the way that society had come to view health, education and the role of women in light of the changes that war had wrought on the collective mind. There was no way back to the innocence of 1914, but there was also much to be gained from recognising that the pre-war period contained injustices and social unfairness that could no longer be tolerated in the post-war world.

If we assume that the current pandemic will resonate in socio-economic terms as loud and long as a major war then, as we emerge from its grip, it is useful to identify and predict the things that may change, and the opportunities that exist to establish new habits that will make our lives better and fairer. Identifying such changes and opportunities is very difficult. My own views are shaped by my perspective – which is a middle-aged professional asked to shoulder the minor inconvenience of homeworking, not a young bar-worker furloughed for almost a year, or a nurse on the front line of treatment and still less a Chinese worker from Wuhan – but let’s nonetheless try to uncover some of the themes.

i Geography – tectonic shifts in our domestic plan

Home/work

The most important collective discovery of the pandemic was our own homes. For millions, it ceased to be the place just to spend evenings and weekends and became the only focus of our lives. Many of us have toyed with the idea of working from home, (or rehearsed the uncomfortable conversation with our bosses about why we do not always need to be in the office). We always thought that we might be more efficient place to work, without a long commute, but there was never the empirical data to justify those theories. Now we have discovered what a year of work without a place of work feels like. The ‘To Let’ boards are springing up in urban centres, and thousands of professionals have experienced the freedoms and inconveniences of a different workplace: our bedrooms, studies, and kitchens. In 2019,

30 per cent of the UK's workforce had experienced working from home. By March 2021, the proportion had grown to 60 per cent.

The implications of this change are in my view very profound. While some are now advocating a return to office life in the summer of 2021, there is increasing evidence that the pandemic will lead to a permanent shift in the workforce away from urban centres and to more suburban and rural settings. Houses with space are more popular and generally cheaper than equivalent houses in towns. The need for large numbers of commuters to move each day to urban centres has been significantly reduced. In short, people will want to work from home more, and homes will feature as more important and valuable resources in our lives. Provided that the communications infrastructure can allow it, more of us will reduce our time in traditional places of work, and very substantially reduce the time travelling to our workplaces. This will have implications ranging from reduction in transport and carbon usage, to the development of smaller towns at the expense of larger cities. We will become a more disaggregated workforce. Over time, that disaggregation may not just challenge existing notions of work–life balance but also blur national boundaries. Once reliance on a physical workplace is diminished, and contributions to working life routinely come via remote communication, then one's workforce can not only be scattered across a country, but just as easily across a continent. We will need to see how employment and tax law deal with these challenges. But in some professional sectors at least, working from home is going to become part of the new normality. That poses challenges for government and infrastructure providers to ensure that our communications networks provide adequate bandwidth outside urban centres as well as within.

Home/school

The transition away from concentrated work spaces, to disaggregated working and living has some interesting impacts from a technological point of view. We have all become more adept at managing our own domestic IT systems, and fortunately by 2020 most companies' IT systems had developed the resilience to operate on a remote basis. So the transition to home working did not actually require very much in the way of new technology, just a greater acceptance of technology that was already there. To give one indicia, the number of daily active users of Microsoft Teams rose from 13 million in July 2019 to 115 million by October 2020.

Home also became school for many. Where once we worried about the number of hours our children were spending online, we were suddenly grateful that they were at least ready-trained digital natives. A whole young generation whose internet experience was limited to fun and games, began to use their PCs for lessons, exams, projects, Powerpoint presentations and multiparty video conferences with an ease that many of their parents could only envy. Perhaps we need to re-examine whether 'limiting screen time' is really an achievable or even desirable aim. And a young generation will have spent a formative year both working from home, and seeing their parents do the same. That generation has already had its 'home/workplace norms' set differently to the generation before. Thousands have seen the concept of leaving home to go to university completely altered – something that again may be a permanent shift, as we have all discovered that learning yoga, cookery or French are all perfectly possible at a distance. Examinations and ways of rating achievement more generally will also permanently change. The lesson for our educators, is that some types of

experience that had previously considered only to be suitable for ‘real world’ teaching could in fact be engaged with adequately (or even optimally) through remote technology. Again, it is not that these things were not possible before the pandemic – but just that they are now a widely accepted alternative.

Home – the new entertainment hub

This conveniently brings us to highlight home as the new hub of entertainment. Of course, our living spaces and mobile devices had become the venues for streamed music, entertainment, sport (and increasingly gambling). But in 2020, home also became our shopping mall, restaurant and bar. In the UK, between November 2019 and November 2020 online food delivery increased by 107 per cent. Conversely, by comparison with the number of seated diners in February 2020, the UK figures for February 2021 were reduced by 99.88 per cent. Even when and if those restaurants return, it seems to me that they will be differently regarded. Expectations in terms of what constitutes value for money will have been reset.

Shopping is both a necessary activity and for many a form of entertainment. So far as its necessities are concerned, we have moved profoundly from a ‘travel and browse’ to a ‘click and receive’ model. The level of service provided by online retailers supported by a much enhanced and digitally managed supply chain has provoked a revolution in the way that we shop. It will be interesting to see the effect that this has on what might be called ‘leisure shopping’ – including for lifestyle goods and clothes. Again, a decline in land-based retail has been occurring over the last decade, but the pandemic has surely had a permanent impact. As restrictions are removed there will no doubt be a resurgence of interest in the high street – but probably not to the levels seen before. While there will still be strong demand for public places to enjoy retail experiences, certain types of shopping (for example normal grocery shopping) may well permanently move to an online model. The question then is how, without the support of traditional tenants like supermarkets, fashion, consumer goods and bookmakers will be able to maintain their presence on the high street and in shopping centres.

What does this mean for land-based gambling? As with shopping generally, we have seen certain types of gambling product transfer substantially from a land-based to an online model. To take one example, National Lottery ticket sales that were predominantly retail based, declined by 18 per cent with the onset of the pandemic, but online registrations subsequently rose by more than 1.3 million. This change is actually a win-win situation for lottery operators and customer alike. The operator now has a direct relationship with customers and does not have to use a retail network to sell tickets or pay commissions. It can know its customer better, check spending patterns, cross market and observe potentially damaging behaviour. For the customer, purchase of tickets is rendered simple, tickets are never lost and numbers are automatically checked. In short, a product that was always very suitable for a remote medium has been pushed by circumstances from retail to online, and it seems unlikely that it will ever go back again. Will the same be true of betting shops adult gaming centres and casinos? I think that it seems clear that casinos will still be seen as entertainment destinations. But the future for adult gaming centres and retail bookmakers seems less certain.

Travel away from home

One sector that has been disproportionately affected by the pandemic is that of international travel. The future of that industry is very interestingly poised. On the one hand, there is

clearly a very large pent-up demand for tourist travel but, on the other, international travel brings with it a host of difficulties in terms of containment of the virus, and may also involve the public stepping outside its comfort zone. For every tourist eager to get back to normal holidays, there are others concerned by new variants. Restrictions on travel generally have had a significant impact on the world's carbon emissions (indeed we have seen the largest annual decrease in carbon emissions since 1900). So will we go back to a life of weekend breaks and convenience tourism? I think that the answer is probably 'yes, we will'. After all, at least for those in the northern parts of Europe and America, holiday travel involves one type of experience that cannot yet be delivered online – sunshine!

The picture for travel therefore seems a nuanced one: it will be harder to justify business travel, when we are not even commuting as much, but it seems likely that tourism will quickly revive to its pre-pandemic levels. Such travel will of course include the traditional gambling and sport hotspots, and hopefully attendance at sporting and tourist event will soon recover – something very much needed by many economies that have suffered profoundly in the past year.

ii The richer and poorer

The pandemic has caused a monumental economic shock. The FTSE, Dow Jones and Nikkei all saw huge losses in the early months of 2020, with the FTSE dropping 14.3 per cent during 2020, its worst performance since the credit crisis of 2008. The announcement of vaccines has caused many of the major indices to rise sharply, many to well above pre-pandemic levels, but stock prices are to some extent speculative reflections of future hopes, and do not adequately reflect the huge long term borrowing in which almost every government has had to engage. Those who print money, have placed their reputations on the line, and over the next decade are either going to have to grow or tax their way out of the crisis. Some extra burden will inevitably fall on the public.

At the household level, the pandemic has not treated everybody equally. Hundreds of thousands have lost their jobs, spent their savings and face an uncertain future. The burden has fallen particularly heavily on the young, who are most likely to be those working in the hospitality and leisure industries. By contrast others have done relatively well. In the UK, there are reports of as many as 9 million 'unexpected savers' who have faced a combination of either working from home or having their incomes supplemented by furlough schemes, and at the same time have been unable to spend anything on entertainments. Certainly, unlike other recessions, there is no 'systemic weakness' in the economy. Strangely, 2020 has seen not only record debts, but also record levels of personal savings.

Thus, while currency of all gambling – leisure spend – has been significantly reduced, in many cases it is a question of fun postponed rather than removed altogether. In the UK, the beginning of the pandemic came serious warnings from regulators asking operators to ensure that their customers, often bored, solitary and impoverished by loss of employment, did not succumb to excess gambling. So what happened? The latest statistics from the UK Gambling Commission (January to November 2020) showed no significant increase in gambling, despite the stories peddled by the media. There was, as might be expected, a continued growth in online gambling, and equivalent decline in the use of retail premises for bookmaking. But these trends are probably what one would have expected whether there was a pandemic or not. It is curious how constant gambling behaviour is in our society.

All of us have had our views changed over the past 12 months, and all of us have tried to maintain a sense of normality in unusual circumstances. It will be very interesting to see

how our society changes as a result. But in the meantime, our group of author-lawyers have at least been able to keep busy working to serve our clients, and monitor developments in this fascinating and evolving area of law.

I wish to thank my contributors for their usual careful and detailed analysis of the gambling laws of their individual jurisdictions. *The Gambling Law Review* now contains 33 chapters, and I hope that next year's guide will cover still more. I also add a note of personal thanks to those in my own domestic and work bubble, my partner Vanessa and my son Louis, who have both had to put up with more of me in the last 12 months than anyone rightly should have to suffer, and to whom therefore I dedicate my own part in this year's edition.

Carl Rohsler

Memery Crystal

London

May 2021

PORTUGAL

Filipe Mayer and Alcina de Oliveira Alves¹

I OVERVIEW

i Definitions

Under certain conditions, the following types of gambling products may be offered in Portugal (said products are regulated under a multitude of legal diplomas):

Lotteries, including instant lotteries or scratch games, are games where a prize is granted depending on the full or partial coincidence between a set of numbers or symbols (state-run games). These types of games are operated as a monopoly both on a land-based and online regime by Santa Casa da Misericórdia de Lisboa (SCML).

Games of chance are games typified by law whose results depend exclusively on chance. The types of games of chance that can be offered by land-based casinos and online websites do not entirely match (being that the first may offer for example keno, boule, cussec and chemin de fer), but are coincidental on the major type of games such as blackjack/21, French and American Roulette, slots and bingo.

Sports betting is placing a certain amount of money on a future sport result the outcome of which is exclusively or fundamentally dependent on chance. The law foresees the following types of sports bets: (1) fixed-odds sports bets (online and land-based, the last a state-run game), where the player places a bet against the operator, who is the organiser of the bet, based on a value equal to or greater than 1.00 (the odds); (2) totalisator/pari-mutuel sports bets (a state-run game), where a percentage of the total amount of bets is reserved for prizes to be distributed among those who correctly guessed the type of result to which the bet referred, with the remainder reverting to the operator that organised the bet; and (3) sports betting exchange (online) which, although foreseen by law and duly regulated, is currently not allowed in Portugal due to the lack of technical rules.

Horse race betting is where a sum of money placed as a bet is associated with a prediction as to a certain kind of result in a horse race or competition, the outcome of which is uncertain and is not dependent on the will of the participants. Horse race betting can be offered online (fixed-odds and pari-mutuel) and land-based (another state-run monopoly operated by SCML). For the moment, no online licence has been issued, nor is land-based horse race betting being operated.

Other types of games of chance are games where the possibility of winning depends on player chance and skill, or exclusively on chance, and which awards prizes that have

¹ Filipe Mayer is a partner and Alcina de Oliveira Alves is a senior associate at CCA Law Firm.

a predetermined economic value with the exclusion of any cash prize. Promoters cannot charge any amount to players as participation fees. This category encompasses raffles, draws, advertising and knowledge contests and quizzes.

Currently, fantasy leagues, e-sports and skill competitions are not yet regulated, but this is an open possibility for the near future.

Regarding complex financial products, Portuguese legal scholars and case law have already ruled that swap contracts, as typified contracts under European law should not, as a result, be subject to the gambling and betting contract regime.

ii Gambling policy

Gambling is allowed in Portugal, but because it is an exclusive right of the Portuguese state, any private operators that seek to develop said activity in Portugal need to get previous approval for this purpose and operate the activity under several legal impositions and under the power of the regulator SRIJ – The Gambling Inspection and Regulation Service. The type of authorisation varies depending on the type of operation (land-based, online or state-run games). Land-based gambling operates under a concession regime (semi-open market), while the online gambling market is open to any operator that asks for a licence and complies with certain good standing, technical capacity and economic and financial capacity criteria. On the other hand, state-run gambling follows a monopoly regime, granted by the state to SCML.

iii State control and private enterprise

From the moment a private enterprise is awarded a concession or licence to operate gambling in Portugal, then the operation is up to said authorised entity, but it must always be conducted under the terms of the applicable legal framework and will always be subject to the SRIJ's – the regulator's – powers.

Besides private enterprises, state-run games are operated under a national monopoly regime granted to SCML by the state, subject to the supervision of the Ministry of Labour, Solidarity and Social Security.

iv Territorial issues

Gambling in Portugal is regulated at a national level for all its verticals. This means that the same set of rules is applicable throughout its territory and there is only one regulator to oversee the operation of gambling, which is the SRIJ in cooperation with judicial authorities when necessary.

The only exception to this is that in the autonomous regions of Madeira and the Azores, and due to a transfer of competences operated by the Portuguese Gambling Law, the procedure for awarding concessions (land-based casinos) depends on the competence of the regional governments.

v Offshore gambling

Only operators awarded a concession to operate land-based gambling in Portugal may engage in said offering on national territory. Non-compliance shall be deemed as a criminal offence, punishable with imprisonment of up to two years and fines up to 200 days. SRIJ will proactively inspect irregular situations.

Likewise, only operators duly licensed to run online gambling in Portugal may engage in this business under national jurisdiction. Non-compliance is a criminal offence punishable by imprisonment of up to five years or a penalty payment of up to 500 days. Negligence is punishable and attempt is punishable. SRIJ will proactively inspect irregular situations.

In what concerns online activities, SRIJ will notify illegal websites and ask them to block their activity for Portugal. If illegal operators do not act, SRIJ has the power to request to the intermediary network service providers to take down and block access to any signalled non-licensed operators that do not comply with prior notices and take-down requests. As a last resort, SRIJ will start a criminal process, presenting the case to the Portuguese Public Prosecutor against the illegal operator, thus impairing any future licence application the operators may request.

Gambling advertising by illegal operators is strictly forbidden and sanctioned, and may also influence any future licence application the relevant operator may present.

Offering state-run games by entities other than SCML is considered an administrative offence.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

From a historiographical point of view, legal gambling in Portuguese territory dates back to 1927.

The land-based gambling legal framework dates back to 1989. It aimed, among other things, to 'emphasise the responsibility of the concessionaires for the legality and regularity of the operation and practice of gambling under the concession' and 'liberalise . . . the access to gambling halls but, on the other hand, emphasise the principle of reservation of admission'. Up to this date, the Gambling Law has been amended 12 times. In connection, a myriad of pieces of ancillary legislation were approved, regulating, inter alia, each of the concessions area and the gambling offer and operational framework.

On the other hand, online gambling was only legalised in 2014, through Law No. 73/2014, of 2 September and further regulated in 2015 by the Online Gambling Legal Regime (Decree-Law No. 66/2015, 29 April) (RJO), following an extensive legal procedure and side-discussions. The diploma recognized the existence of a legal vacuum and a reality and phenomenon which Portugal could no longer ignore. The RJO followed the best practices at the time and entered into force on 28 June 2015. Further regulatory diplomas aimed to frame the operation of the approved legal provisions were published. These regulations envisage all aspects of online gambling activity, from broader matters such as the online technical gambling system and player accounts, to more specific issues as the rules for each type of game that may be offered.

State-run games follow an extensive legal framework, scattered across a number of diplomas dating back to 1955.

Extensive case law has been issued by the Portuguese courts on gambling matters.

ii The regulator

The Gambling Inspection and Regulation Service (SRIJ) is the Portuguese gambling regulator responsible for the control, inspection and regulation of all gambling activity in Portugal (land-based concessions, fixed-odds online sports betting and mutual or fixed-odds horse

race betting and online gambling). It is also the entity that determines the public tenders for public concessions, that issues licenses for online gambling entities, collects all the relevant taxes and instructs any gambling administrative offences. The SRIJ is an integral part of Turismo de Portugal, IP and it is subject to the authority of the Secretary of State of Tourism.

State-run games are operated by SCML under an exclusive right system (monopoly), supervised by the Ministry of Labour, Solidarity and Social Security.

iii Remote and land-based gambling

There is a clear separation, as mentioned in Section II.i.

Within certain conditions, both land-based and online gambling operations are allowed in Portugal.

The main difference between both legal regimes (besides separate sets of legislation for the activity, being that most of the online legal diplomas mimic the land-based rules with the necessary adaptations) is the way the authorisation for its operation is granted.

Land-based gambling must be carried out in casinos, bingo-halls and other duly authorised premises. Operating gambling on a land-based basis is a semi-open activity whose authorisation is awarded through public tenders (concessions). This means interested operators can only present a proposal when a tender is made available in Portugal. Because of the significant investment land-based operators must make, concessions once awarded stay in force for long periods of time (up to 40 years), which means that during this time there is no chance for other operators to try to enter the market.

As for online gambling, the regime is open and any operator may at any given time submit to the SRIJ an approval request for obtaining a licence (currently there are two types of online gambling licenses: one for games of chance and another for fixed-odds sports bets). Assuming that the licence request complies with the applicable legal requirements, and following an extensive licensing procedure, the operator will then be capable of operating online gambling in Portugal.

iv Land-based gambling

As mentioned in Sections I.ii and I.iii, land-based games of chance are essentially conducted through casinos, bingo halls and authorised ancillary premises (for example, slot rooms, aircrafts and ships) and based on concessions granted through a public tender to a private legal entity. There are currently 12 casinos and one slot room, spread across nine gambling zones – Azores, Algarve, Espinho, Estoril, Figueira da Foz, Funchal, Póvoa de Varzim, Troia and Vidago-Pedras Salgadas. The only available gambling zone where no casino currently operates is in Porto Santo.

Bingo may either be conducted in casinos or specific bingo halls – in the latter case, the concession is awarded by means of a licence to public or private legal persons in areas to be determined by the Portuguese Secretary of State of Tourism. There are currently 14 bingo halls operating in the Portuguese territory.

State-run games sale venues are operated by SCML games mediators and directly through an online website, and their activity is strictly limited to state-run games and based on an authorisation issued by SCML's gambling department. This authorisation, of an administrative nature, should identify the games covered by the authorisation, the means by

which the mediation is developed and establish the objectives to be achieved by the mediator within a certain period of time, as well as the possibility of the authorisation being revoked if the objectives are not achieved.

v Remote gambling

As mentioned above in Sections II.i and II.ii, online gambling is carried out on a geo-restricted basis and requires a licence issued by the SRIJ. This means that in Portuguese territory only ‘.pt’ gambling websites may be accessible and also that ‘.pt’ accounts must always be redirected to the Portuguese licensed website.

In technical terms, operators must:

install a dedicated Gateway, to which all accesses by players shall be redirected (web, mobile access, other) which are established from locations situated in Portuguese territory (from a Portuguese IP address) or who use player accounts registered in Portugal. Therefore, access to the website via the Gateway may only be carried out through the top-level internet domain with the “.pt” ending, for Portugal. The operator shall ensure, as appropriate, access to gateway data in a usable format for a possible audit process.

Additionally, operators must:

install a dedicated infrastructure (Safe), located in Portuguese territory, which ensures the safe storage of the gambling and betting data, according to the defined categories. The Safe’s folder structure shall be built on the basis of the structure and frequency specified in accordance with the data model defined by the SRIJ. The operator shall provide the SRIJ permanent access to the Safe, for the purpose of consulting/collecting data, as an integral part of the control and inspection of the gambling activity.

These requirements are expressly foreseen in a regulation dedicated to the online gambling technical system requirements.

vi Ancillary matters

In what concerns land-based operation, the production, export and import, sale and transport of material intended to operate games of chance needs prior approval from the SRIJ. Without the SRIJ approval, producing, advertising, importing, transporting, transacting, exposing or publicising of material intended for games of chance represents a criminal offence.

State-run games equipment such as the points of sale are verified by SCML Gambling Department.

In what concerns online gambling, there are no B2B licences. However, before a licence is granted, the operator system will first be certified and then tested (homologated) as a whole, in order to determine full compliance with applicable law and regulations.

vii Financial payment mechanisms

Currently, the use of cryptocurrencies or other tokens as a payment method for gambling activities is not allowed.

In Portugal, operators may only allow payment methods that use the legal tender in Portugal (euro) or that accept the conversion to this currency, that are supplied by service providers duly authorised by the competent authorities of the relevant countries or jurisdictions and that allow for the person ordering the payment operation to be identified.

Additionally, both land-based and online operators cannot allow mechanisms that may directly or indirectly result in the grant of loans to players.

III THE LICENSING PROCESS

i Application and renewal

In order to operate land-based games of chance, private undertakings must be awarded a concession following a public tender to operate in one of the gambling areas existing in Portugal. These entities must be incorporated as a public limited company, with a registered office in a Member State or in a state within the European Economic Area bound to administrative cooperation in the area of taxation and in the prevention of fraud and money laundering – provided that, in the case of foreign companies, they have a branch in Portugal.

The specific public tender (which has no fixed time limit) encompasses all necessary information relating to that concession, such as qualification criteria, location of the casino, the minimum financial payment due, the payment method or the amount of the guarantees due, and generally follows the envisaged legal procedure and the terms of the procedure and specifications published therein.

As for online gambling operators, the process can be divided into three different phases:

- a* compliance – the applicant must submit extensive documentation to attest good standing, technical capacity, and economic and financial capacity along with the SRIJ official licensing form;
- b* certification of the gambling technical system – the applicant must present certification reports issued by an independent testing lab recognised by the SRIJ. These testing reports must certify the entire platform that is going to be made available in Portugal as being compliant with the applicable national laws and regulations; and
- c* homologation – after the above-mentioned certification reports are accepted by the Portuguese regulator, the SRIJ technical team will perform tests on the applicant's gambling technical system. Homologation works as a double check. Not only will the SRIJ have certifications issued by an independent entity assuring the compliance of the system proposed, but the regulator will also test that compliance in practical terms before the issuance of the license. This is usually the longest phase of an online gambling license procedure. There are homologation fees to be paid.

Besides the phases referred to above, at the end of the licensing procedure, and before licence issuance, an operator will have to pay the licence fees of €12,000 per licence. It will be necessary to present to the SRIJ the responsible gambling policy, the identification details of the bank account through which all the transactions concerning the online gambling and betting activity shall be conducted exclusively and the operator will have to present (per licence) one guarantee, insurance or a bank deposit in the total amount of €500,000 as collateral for the performance of all legal obligations (players' liability) and one guarantee in the total amount of €100,000 as collateral for the payment of the special online gambling tax (i.e., IEJO).

Licences are valid for three years and can be renewed after that time for equal periods of time. The renewal of the license corresponds to an update to the documents delivered in the first phase of the licence procedure as mentioned above. There are renewal fees, corresponding to €12,000 per licence.

ii Sanctions for non-compliance

See Section I.v.

Regarding land-based gambling operators, the main criminal offences concern operating outside the authorised location, which is punishable with imprisonment of up to two years and penalty payment in an amount to be determined by the judicial authority during the course of the following 200 days. Fraudulent gambling, gambling manipulation and forced gambling are also punishable with imprisonment. The infringement of administrative duties by said operators is sanctioned administratively through the imposition of fines that can go up to €24,939,89. This includes, among other things, causing obstacles to inspections and breaching investment and capital obligations.

For online gambling, besides being a criminal offence punishable with imprisonment of up to five years or a penalty payment in an amount to be determined by the judicial authority during the course of the following 500 days for operating (or even promoting) gambling without a licence, failing to comply with any obligation foreseen in the main law (RJO) may result in reprimands, compulsory pecuniary penalties or in the application of an administrative fine by the SRIJ, which – according to the severity of the offence (minor, serious and very serious) – may range from €5,000 to €1 million or 10 per cent of the offender's turnover – if the latter exceeds €1 million. Different values apply if the offender is a natural person.

IV WRONGDOING

Portugal transposed the European Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing in 2017. This introduced new rules both to land-based games of chance operators and online gambling operators, with an emphasis on player identity verification. In land-based casinos, the player's identity has to be confirmed at several different moments; and in online gambling a player account can only be opened after the operator confirms the identity of the player through an official document.

Operators are obliged to report any suspicious activities detected on player accounts that may represent money laundering or terrorism financing to the competent Portuguese authorities (DCIAP and UIF and finally to SRIJ).

V TAXATION

The taxation of gambling income in Portugal varies depending on the type of gambling, the amount of income and the geographical area (for land-based) where the activity is located.

The special gambling tax (IEJ) is applied to land-based casino games, varying according to the geographical gambling area and the amount of income. Tax rates may vary depending on the gross gambling revenue, ranging from 2.5 per cent to 35 per cent.

Stamp duty is applied to bingo (25 per cent) and to state-run games (4.5 per cent included in the amount of the bet and 20 per cent on the amount of the prize if it exceeds €5,000).

The special online gambling tax (IEJO) is applied to online gambling, and the tax rate varies merely depending on the type of game. On games of chance, it is settled monthly at a rate of 25 per cent on the overall gross revenue of the given month. On fixed odds sports bets, it is settled monthly on the turnover of the given month at a rate of 8 per cent.

Prizes won by online players are not taxable. Operators are not subject to corporate tax, sales tax or stamp duty.

VI ADVERTISING AND MARKETING

The rules and principles on advertising are generally the same as on land-based games of chance, bingo games outside casinos and online gambling and betting. Some of these provisions are not applicable to state-run games.

Most of the rules derive from legal diplomas, although the Regulator has issued some more specific guidelines to implement these legal rules.

The rules mainly aim to protect minors and vulnerable people and aim for adherence to the mandatory obligations of responsible gaming.

Regarding protection of minors, it is forbidden, for instance, to associate the game with youth culture or with public personalities who may be admired by children or young people. Advertising of any events in which minors participate cannot contain any references to gambling. Moreover, operators that advertise through social networks or other online content sharing services must activate mechanisms to limit the access of minors and all communications shall include the mention '+18', SRIJ and the SICAD symbol (SICAD being an entity that deals with addictive behaviour in Portugal).

Advertising can only portray gambling as playful and entertaining and never present it as a solution to financial problems, an alternative to work, a way of achieving financial security or of obtaining easy profits.

There are also specific rules regarding what needs to be included in each commercial communication.

Advertising on television and radio is only possible from 10:30pm to 7am and cannot take place 30 minutes before or after a programme targeted at children and young people.

VII THE YEAR IN REVIEW

Two events significantly marked the year 2020: the covid-19 pandemic (with particularly harmful consequences for land-based casinos and bingo halls) and the increase of online gambling activity, and the changes to the tax framework applicable to online gambling.

Also, and following an extensive public discussion on the possible prohibition of online gambling advertising due to covid-19 and compulsory rules of confinement, SRIJ published a set of voluntary rules and good practices, to be followed by online gambling operators.

At the time of writing, 25 online gambling licences have been issued, and 15 national and foreign-based online gambling entities operate in national territory.

Particularly relevant in terms of European case law affecting the Portuguese market, the European Union Court of Justice (EUCJ) issued a ruling on 22 October 2020, in case C-275/19, *SCML v. Sportingbet PLC and Internet Opportunity Entertainment Ltd.* The EUCJ concluded that the rule imposing the exclusivity of online operation of lotteries on SCML is a technical rule, which should have been notified to the Commission in advance.

VIII OUTLOOK

Regarding online gambling, operators were requested to give their opinions on a project concerning the amendment of rules regarding poker in tournament mode. The project was approved and published in the Portuguese Official Gazette of 20 April 2020, Series II.

The regulation of new types of sports – in particular e-sports – is also expected with regard to online gambling,

Regarding land-based gambling, all casino concessions due to expire at the beginning of 2021 have been renewed due to the covid-19 pandemic.

It will be interesting to see if the EUCJ's decision will affect the Portuguese market and if online gambling operators will continue the trend of business volume growth for the second consecutive year.

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